From Hibernation to Revitalization: Analysis of Insolvency COVID-19 Response Measures and their Wind-Down

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FOREWORD

Numerous temporary legal, regulatory, and fiscal measures helped flatten the bankruptcy curve during the initial stages of the COVID-19 pandemic. These measures provided "breathing space," both for debtors facing unexpected disruptions to their business operations and for institutions, including courts, justice administrations, and other institutions charged with carrying out insolvency and debt enforcement activities. Indeed, data on insolvency filings indicates that they remained low in 2020 and early 2021 —below pre-COVID levels—a situation partly attributable to unprecedented government and legislative support measures.

The type and scope of COVID-19 emergency response measures varied across jurisdictions according to the impact of the disease and country-specific circumstances, although certain measures were frequently adopted region-wide (for example, insolvency-related legal measures in Europe and debt repayment measures and/or suspension of execution proceedings in the Middle East and Africa). Given uncertainty over the duration of the pandemic, many of these emergency measures have been subject to one or more extensions. The majority have now expired, but a substantial minority remain in place.

Evidence suggests that a rise in insolvency filings has been postponed but not avoided. Relaxation of the support measures, although necessary, is expected to carry some of the businesses that survived the pandemic to the brink of insolvency. Because of this high level of uncertainty, it is critical to understand the temporary insolvency and debt enforcement measures introduced at the onset of the pandemic to prevent widespread insolvencies and how they are now being wound back. It is also important to ensure that when the temporary measures phase out, effective procedures are in place to help deal with the likely increase in insolvencies, via the restructuring of viable firms or the liquidation of nonviable ones.

This report, "From Hibernation to Revitalization: Analysis of Insolvency COVID-19 Response Measures and their Wind-Down," is a commentary and summation of data collected from an original survey jointly conducted by The World Bank Group, INSOL International, and the International Association of Insolvency Regulators (IAIR) in order to analyze and understand the impact of COVID-19 in jurisdictions across the world. In response to the original survey invitation, we received 272 responses from 114 countries.

Chapter 1 provides an overview of the insolvency and debt enforcement–related emergency response measures introduced in diverse jurisdictions. Chapter 2 reports and analyzes the regional data in relation to these measures, based on surveys conducted with experienced insolvency practitioners globally. Chapter 3 offers useful insights from insolvency regulators on challenges in the insolvency regulatory arena during the COVID-19 recovery phase.

The report continues the strong collaboration and partnership between The World Bank Group, INSOL International, and IAIR over decades as our organizations have contributed to global insolvency and restructuring law reform, capacity building, and the forging of new partnerships to achieve fairer, more efficient insolvency processes across the world. We look forward to many more years of mutual friendship, new projects, and the achievement of enduring and impactful work at a critical juncture in the global economy and restructuring and insolvency law and policy across the world.

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More information regarding the World Bank Insolvency & Debt Resolution work can be found at www.worldbank.org/insolvency.

Further information about INSOL International and its technical publications and events can be found at www.insol.org.

Additional information regarding the work of IAIR with insolvency regulators can be found at www.insolvencyreg.org/.

ABBREVIATIONS

AfA	Alliances for Action (Singapore)
AFSA	Australian Financial Security Authority
ANSES	Administración Nacional de la Seguridad Social (Social Security Authority, Argentina)
AO	Administrative Office (US courts)
ASIC	Australian Securities and Investments Commission
BAIA	Bankruptcy Administration Improvement Act (United States)
BCRA	Banco Central de la República Argentina
BIA	Bankruptcy and Insolvency Act (Canada)
CAA	Consolidated Appropriations Act (United States)
CARES Act	Coronavirus Aid, Relief, and Economic Security Act (United States)
CCS	Credit Counselling Singapore
CIGA20	Corporate Insolvency and Governance Act 2020 (United Kingdom)
CIRP	Corporate Insolvency Resolution Process (India)
CJF	Consejo de la Judicatura Federal (Council of the Federal Judiciary, Mexico)
CNJ	Conselho Nacional de Justiça (National Council of Justice, Brazil)
CRAR	Commercial Rent Arrears Recovery (United Kingdom)
EMEA	Europe, the Middle East, and Africa
EU	European Union
FoGAR	Specific Purpose Guarantee Fund (Argentina)
FONDEP	Federal Fund for the Productive Development (Argentina)
GDP	gross domestic product

GFC	global financial crisis
IAIR	International Association of Insolvency Regulators
IMSS	Instituto Mexicano del Seguro Social
IRDA	Insolvency, Restructuring, and Dissolution Act 2018 (Singapore)
LIT	Licensed Insolvency Trustee (Canada)
MAS	Monetary Authority of Singapore
MSEs	micro and small enterprises
MSMEs	micro, small, and medium enterprises
NPL	nonperforming loan
NPO	nonprofit organization
PPIRP	Pre-Packaged Insolvency Resolution Process (India)
PPP	Paycheck Protection Program (United States)
SBA	Small Business Administration (United States)
SBR	small business restructuring
SBRA	Small Business Reorganization Act (United States)
SFP	Secretaría de la Función Pública / Ministry of Public Affairs (Mexico)
SIP	simplified insolvency program; Simplified Insolvency Program (Singapore)
SMEs	small- and medium-sized enterprises
SPP	sole proprietor and partnership
SRP	simplified restructuring procedure
UNCITRAL	United Nations Commission on International Trade Law
USTP	United States Trustee Program
WHO	World Health Organization

EXECUTIVE SUMMARY

The COVID-19 pandemic posed a threat not only to the real and financial sectors of a broad range of countries but also to the workings of insolvency systems within those economies. Insolvency systems were at risk of being overwhelmed with filings for insolvency, potentially leading to overwhelmed courts, inefficient outcomes, and asset fire sales. As such, countries had to decide whether to introduce emergency insolvency and debt enforcement measures to flatten the insolvency curve.

With the world on an uneven path to recovery from the COVID-19 pandemic, businesses continue to face significant uncertainty. At the onset of the pandemic, businesses faced two key challenges. The first and most immediate problem was a rapid and prolonged collapse in demand for many products and services, caused by government lockdowns, social distancing, and changes in consumer behavior. The second, and ongoing, problem for businesses is uncertainty as to future demand for products and services. In 2021, many businesses that would have been planning to resume normal operations were forced instead to shutter once again.

The underlying metrics of firm and financial sector health strongly support the conclusion that an elevated level of forthcoming business failure is still likely. Despite the absence of increased nonperforming loans (NPLs) and insolvency filings to date, many analysts still predict rises in NPLs and insolvencies in the near-to-medium term. Because of the high level of uncertainty, this report takes stock of the temporary insolvency and debt enforcement reforms and measures introduced at the onset of the pandemic to prevent widespread insolvencies and then investigates how those reforms and measures are being wound back.

The World Bank, INSOL International, and the International Association of Insolvency Regulators (IAIR) distributed the survey to experienced insolvency professionals to collect data on emergency insolvency and debt enforcement measures introduced to deal with the effects of the pandemic. Chapter 1 ("General Overview of Response Measures, Their Duration, and Effects of Wind-Down") of this report covers the data collected, including the types of measures adopted; how countries defined the duration of the measures adopted; and the potential effects of the measures' wind-down. The survey specifically inquired about measures affecting: (a) debt repayment; (b) judicial proceedings; (c) involuntary bankruptcy initiation; (d) voluntary bankruptcy initiation; (e) the functioning of insolvency proceedings; and (f) facilitating recovery through bankruptcy. The survey data is based on responses from 114 economies, representing over 84 percent of global GDP and 86 percent of the global population, and includes multiple responses from 71 percent of those 114 economies.

Debt repayment measures were the most prevalent measures introduced by countries in all regions. They were particularly common in the Middle East and North Africa (where 87.5 percent of the countries in the sample adopted them). Even in Sub-Saharan Africa, the region showing the least adoption of debt repayment measures, a majority (63.2 percent) of countries introduced them. This suggests that where insolvency systems were not expected to provide effective solutions, countries leaned most heavily on broad debt repayment measures (affecting both insolvent and non-insolvent debtors).

Measures suspending judicial proceedings were adopted in about three-quarters of high- and middle-income countries. Some countries have opted to address the potential for litigation spikes at inception, suspending non-urgent court proceedings or even, more broadly, all civil proceedings. Others have focused on narrower measures, such as prohibiting attachment of individuals' bank accounts or distrains of employment remuneration or pensions. Yet other countries chose to suspend certain executions or the auction of immovable property.

Measures creating barriers to initiating involuntary bankruptcy procedures were more prevalent among the Organization for Economic Co-operation and Development (OECD) member countries, but uncommon in the rest of the sample countries. The disparity in the adoption of these measures was large across the regions, with 57.1 percent of OECD member countries introducing at least one of these measures, while just 10.5 percent of the countries in the Sub-Saharan region did so. The most common measure adopted was the suspension of specific creditors' rights to initiate insolvency procedures, accounting for 48 percent of the involuntary bankruptcy initiation measures introduced.

Of the measures relaxing rules for voluntary initiation of the bankruptcy proceedings (i.e., suspending directors' duty to initiate insolvency procedures and/or relaxing wrongful trading provisions), the suspension of directors' duty to file for bankruptcy was the most common measure adopted, reaching almost three-fourths of interventions in this area. As for regional frequency, and similar to involuntary bankruptcy initiation measures, a majority of countries in only one region—OECD—introduced at least one of these measures. In stark contrast, only 5.3 percent of the countries in our sample in the Latin America and the Caribbean region introduced one. Voluntary initiation measures were more prevalent in high-income economies and in countries with higher secured creditor recovery rates.

The survey also inquired about COVID-19 emergency measures geared toward facilitating the functioning of any insolvency proceedings opened during the pandemic. Specifically, the survey focused on measures that: (a) extended insolvency procedural deadlines for a limited period of time; (b) suspended the requirement to proceed to liquidation if the business activity of the debtor had stopped while undergoing reorganization during COVID-19; (c) encouraged the use of virtual means (e.g., e-filings, virtual court hearings) for insolvency cases; (d) amended avoidance action rules during COVID-19; and/or (e) suspended rules on subordinating loans by corporate insiders during COVID-19. While the incidence of these types of measures was to a considerable extent health related, low-income countries adopted them much less frequently.

Regarding longer-term measures to prepare insolvency systems for the pandemic's aftermath, the survey studied three issues: (a) establishing out-of-court workout frameworks; (b) creating special insolvency measures for micro and small enterprises (MSEs); and (c) adding specific insolvency rules for the simplification of proceedings. Only in the OECD region did the percentage of countries adopting at least one of these measures surpass a third of the sample, with most adopting both special insolvency measures for SMEs (small- and medium-sized enterprises) and rules simplifying insolvency proceedings.

As most of these measures are meant to be temporary, their gradual phasing out is appropriate. Gradual tapering of emergency measures is necessary as such policies are costly and impact market functioning. Concerns are increasingly arising that the extensive fiscal and monetary policy measures could fuel the financing of so-called "zombie firms" and that prolonging the temporary insolvency measures could cause zombie firms to proliferate. Given that the recovery from the pandemic is uneven across economies and sectors, and to avoid severe consequences from unwinding these measures too quickly, countries would benefit from rolling them back gradually and from carefully targeting ongoing support policies toward viable firms that continue to face severe temporary liquidity problems.

To understand how economies planned to wind down their temporary insolvency and debt enforcement–related measures, the survey inquired about the measures' duration. The duration of debt repayment measures, measures suspending judicial proceedings, voluntary bankruptcy initiation measures (i.e., those intended to avoid pushing debtors into bankruptcy), and measures addressing the functioning of insolvency proceedings (by extending insolvency procedural deadlines, encouraging the use of virtual means, amending avoidance action rules, etc.) tended to be longer in high-income economies. Unsurprisingly, the duration of involuntary bankruptcy initiation measures tended to be higher in economies with less effective insolvency systems.

Measures extending the repayment terms of loans as well as the suspension of periodic debt service obligations (i.e., debt repayment measures) had the longest median duration (close to 500 days), while the shortest median duration (274 days) was recorded for measures suspending judicial proceedings. The mean duration of measures easing the functioning of insolvency proceedings was the second-longest (456 days) of any insolvency or insolvency-related emergency measures. Assuming a starting date of March 1, 2020, this suggests that the average end date for these measures was in May and June 2021. When the measures easing the functioning of insolvency proceedings were introduced, jurisdictions included an expiration date in 58 percent of cases. Most measures without an expiration date came from interventions encouraging the use of virtual means for insolvency cases, where only 31 percent included an expiration date.

When the insolvency and debt enforcement-related emergency measures phase out, effective procedures for restructuring viable firms or liquidating unviable firms will be needed to mitigate the financial and economic damage inflicted by a potential wave of defaults. The anticipated wave of business insolvencies does not yet appear to have arisen, but it is too early to say if the risk has abated. New challenges affecting the recovery path are unfolding in real time in many countries, including new variants of the COVID-19 virus, vaccine accessibility, supply-chain disruptions, and increasing interest rates. One possible long-term effect is that many firms will emerge from the crisis badly scarred. Insolvency regimes therefore must have a full spectrum of tools to use for firms of varying sizes and at different levels of financial distress, helping them either to restructure and quickly recover or to exit the market to free resources for new market entrants. In particular, the following initiatives should be considered: (a) strengthening formal insolvency frameworks; (b) developing informal workout tools; (c) developing electronic platforms to facilitate insolvency processes; (d) facilitating alternative dispute resolution tools; and (e) developing MSE-specific responses and procedures.

Chapter 2 ("Corporate Debt Restructuring: COVID-19 Response Measures and the Road Ahead") addresses these issues in four regions: Asia Pacific, Europe, the Middle East and Africa, and the Americas. The chapter provides a brief overview of the effects of the pandemic in the regions and the approaches taken to minimize the impact on businesses, before looking in more depth at the concrete measures adopted in each region in response to the financial challenges presented by COVID-19. It also considers other temporary relief measures that may not directly relate to insolvency proceedings as such, but that aim to prevent businesses from being pushed into insolvency by the pandemic in the first place. Additionally, it considers a number of permanent insolvency regime reforms passed either during or because of the pandemic.

Countries in the Asia Pacific region introduced a broad range of temporary measures to help businesses survive the impact of COVID-19. These measures included increases in minimum debt thresholds for creditors to initiate insolvency proceedings; limits on the ability to file winding-up applications; increases in the time period for debtors to respond to repayment demands; relaxation of directors' duties; and suspension of creditors' enforcement rights and of employee protection and payment guarantees. More flexible insolvency and restructuring processes were also introduced in some jurisdictions on a permanent basis, and improvements were made to out-of-court restructuring frameworks. Additionally, COVID-19 sparked digital changes and innovation in court processes, many of which are now expected to become permanent features in the management of insolvency and restructuring proceedings.

In Europe, a broad range of temporary relief measures relating to insolvency proceedings and court protocol have been adopted. Generally, most European jurisdictions have offered some form of liquidity support (including some intended to preserve employment) or debtor relief, with Eastern and Central European jurisdictions presenting the widest variety of such measures. Many jurisdictions in Europe reported that, although formal steps toward digitalizing court proceedings had already been taken before the pandemic, the courts only implemented the widespread use of such options in the wake of COVID-19. Proliferation of temporary relief measures, however, has differed starkly between countries within Europe, even those in the same region and with similar legal systems. Austria, Germany, Malta, and Slovenia, for example, have all adopted a significant number of temporary measures directly related to insolvency proceedings, while Albania, Greece, Serbia, and Scandinavian countries have brought in very few such measures or none at all. Many insolvency-related measures adopted in Europe were extended as the pandemic progressed; however, they are generally being allowed to run down or conclude, now that lockdown measures are being eased or lifted.

Aside from the temporary measures aimed at dealing with specific pandemic-related emergencies, European countries have also made structural changes to their insolvency laws. These changes can be divided into two broad categories: changes simplifying restructuring processes and changes to create or strengthen preventative out-of-court restructuring frameworks. Adoption of permanent insolvency-related measures in Europe has not been universal. Twenty-three European countries, including Estonia, Finland, Hungary, and Luxembourg, have reportedly not adopted any such permanent measures at all during the pandemic. However, 19 European countries, including Portugal, Slovakia, and Switzerland, have adopted such measures. In particular, France adopted a notably broad spectrum of permanent reforms. It established an out-of-court preventative restructuring framework; introduced special insolvency measures for micro, small and medium enterprises (MSMEs); and adopted specific insolvency rules to simplify restructuring proceedings.

In Africa and the Middle East, temporary relief measures were less common because the local culture and infrastructure are typically less focused on corporate bankruptcy. In African jurisdictions, virtually no temporary insolvency-related measures have been adopted, and the focus has instead been on broad policy, fiscal, and administrative support measures, such as government assistance for MSMEs and debt repayment measures. Notably, in Africa the pandemic has also accelerated the digitalization of court proceedings. As in many European countries, the courts in Africa had to suspend non-urgent civil proceedings or extend procedural deadlines at some point during the pandemic.

Many other temporary relief measures have been implemented throughout Europe, the Middle East, and North Africa to alleviate the immediate financial distress many businesses faced because of the COVID-19 outbreak. Although these measures are not directly aimed at (initiating) insolvency proceedings as such, preliminary data suggests that they have played an important role in preventing a flow of insolvency proceedings directly resulting from companies' liquidity issues. In the less mature insolvency markets of the Middle East and Africa, these measures were the primary mechanism used to ameliorate the impact of the COVID-19 pandemic on businesses.

In the Americas, debt repayment measures and measures protecting employees were generally common, whereas temporary measures concerning initiation of insolvency procedures were less frequent. Brazil and Colombia were exceptions; both implemented measures relaxing the initiation of the voluntary bankruptcy procedures. Countries in the region also accelerated digitalization of court services during the COVID-19 pandemic crisis. The courts in Canada and the United States took advantage of remote court proceedings. Courts in Argentina, Brazil, Colombia, and Mexico had to suspend non-urgent proceedings and took steps to move toward digitalized procedures. Notably, several countries—including Brazil, Colombia, and the United States—implemented reforms to simplify restructuring processes and introduced new procedures for MSMEs. Brazil and Colombia strengthened their informal, out-of-court workout processes.

Chapter 3 ("Regulatory perspective of COVID-19 emergency measures in specific countries") compiles findings obtained from the members of IAIR and offers data and narratives from eighteen IAIR members who were able to respond to the IAIR survey. The chapter explores three aspects of the pandemic's impact on insolvency processes worldwide: (a) the impact on the number of personal and corporate insolvency cases; (b) the main COVID-19 insolvency measures put in place to address the pandemic's effects on business distress; and (c) the major concerns regarding the pandemic's long-term impact on businesses and the policy responses being discussed to address these concerns.

The survey showed that most countries saw a drop in the number of corporate cases after Q1 2020. Although they then saw an increase in the number of cases, volumes are generally still not back to the levels of the base figure (in Q1 2019). The evidence collated from IAIR members shows that the pandemic has had a significant impact on the insolvency service, in terms of both the numbers of cases and the measures put in place to deal with the pandemic's effects on individuals and businesses in distress.

Most IAIR members implemented a wide range of measures to deal with the pandemic's impact on businesses. These can be divided into three categories: (a) public policies for the protection and support of the general economy and the support of individuals; (b) adaptation of deadlines, hearings, regulations, and judicial procedures relating to insolvency and bankruptcy processes and legislative and regulatory changes to insolvency processes; and (c) other changes to working practices.

Insolvency regulators expressed concerns regarding the long-term impact of the COVID-19 pandemic on businesses. Among these concerns are: (a) the impact of extended lockdowns, especially in the tourism and accommodation sectors; (b) the impact of closed international borders on agriculture and horticulture; (c) the long-term impact on businesses of uncertainty regarding the pace of recovery from the pandemic and the debt arrears accrued as a result of periods of lockdown; (d) the proliferation of zombie firms (non-viable businesses that have not formally exited the market); and (e) the capacity of insolvency systems to handle likely future increases in insolvency cases.

Insolvency regulators proposed policy responses to help address these concerns. The key policy responses proposed are: (a) to establish mechanisms to make bankruptcy procedures easily accessible to those most affected by the COVID-19 health crisis, mainly individuals, and micro and small businesses; and (b) to continue monitoring insolvency activity through the recovery phase to understand where and what kind of further policy support is needed.

1

CHAPTER

GENERAL OVERVIEW OF RESPONSE MEASURES, THEIR DURATION, AND EFFECTS OF WIND-DOWN

Antonia Menezes (World Bank) and Sergio Muro (World Bank)

1. Background

COVID-19 has disrupted and continues to disrupt the economic security of millions of families and businesses. What started as a health crisis has evolved into a crisis of livelihoods and living standards in many parts of the world. The proportion of people living below the extreme poverty line (US$1.90 a day) has risen for the first time since 1998.[1] The World Bank estimates that between 119 and 124 million people fell back into poverty in 2020, and the number was projected to rise to between 143 and 163 million people in 2021.[2]

It is becoming increasingly clear that the impact of the crisis is fundamentally regressive. COVID-19 has disproportionally affected vulnerable segments of populations. In 2020, 8.8 percent of global working hours were lost, compared to the fourth quarter of 2019—the equivalent of 255 million full-time jobs.[3] Young people aged 15 to 24 were more than twice as likely as adults to lose their jobs.[4] Women make up 39 percent of global employment but account for 54 percent of overall job losses, and woman-owned businesses were roughly 6 percentage points more likely to have closed their businesses as compared to male-owned businesses.[5] All of these indicators point to the risk of an uneven recovery,[6] leading to still greater inequality in the coming years.

At the onset of the pandemic, businesses faced two key challenges. The first and most immediate problem was a rapid and prolonged collapse in demand for many products and services, caused by government lockdowns, social distancing, and changes in consumer behavior. The second, ongoing problem for businesses is uncertainty as to future demand for products and services. This is evidenced by the impact of the Delta variant strain, which had particularly severe effects in Africa and parts of the Asia Pacific region, and by the different speed of vaccine rollouts in various parts of the world. As of mid-September 2021, about 5 percent of people in low-income, developing countries were fully vaccinated, compared with about 57 percent of people in advanced economies.[7] In 2021, many businesses that would have been planning to resume normal operations were forced instead to shutter once again.

1 World Bank, Extreme Poverty dataset; https://www.worldbank.org/en/topic/poverty.
2 https://blogs.worldbank.org/opendata/updated-estimates-impact-covid-19-global-poverty-looking-back-2020-and-outlook-2021.
3 International Labour Organisation, "Covid-19 and the World of Work" (January 2021), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf.
4 International Labour Organisation, "Covid-19 and the World of Work" (January 2021), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf.
5 McKinsey, "COVID-19 and Gender Equality: Countering the Regressive Effects" (July 2020), https://www.mckinsey.com/featured-insights/future-of-work/covid-19-and-gender-equality-countering-the-regressive-effects.
6 The global economy is projected to grow just under 6 percent in 2021. See World Bank, "Global Economic Prospects" (June 2021); International Monetary Fund (IMF), "World Economic Outlook" (October 2021).
7 IMF, "World Economic Outlook" (October 2021).

Many experts expected that these economic conditions would translate into widespread increases in rates of nonperforming loans (NPLs) and associated insolvencies, but the available data suggests this has not yet occurred. Unusually for a recession, the available data suggests that the COVID-19 pandemic era has thus far seen insolvencies decline. In its April 2021 World Economic Outlook, the IMF estimated that, six months into 2020, insolvency filing rates were sitting globally at about 80 percent of pre-pandemic levels. By contrast, six months into the global financial crisis (GFC) of 2007–2009, bankruptcy filings had increased to 150 percent of pre-GFC levels.[8] This conforms with World Bank analysis of insolvency filing rates in select economies, which in most countries in the second and third quarters of 2020 were flat or declining.[9] Euler Hermes recently announced that their Global Insolvency Index is likely to post a 15 percent year on year rebound in 2022, after two consecutive years of decline (-6 percent in 2021 and -12 percent in 2020). This will largely depend on how countries wind down their pandemic measures. However, Euler Hermes also forecast that global business insolvencies are likely to remain at a low level in most countries at the end of 2021, and that even in 2022 they would remain below pre-COVID-19 levels in most countries.[10]

Modelling and the underlying metrics of firm and financial sector health continue to suggest that an elevated level of forthcoming business failure is still likely. The World Bank's Business Pulse Survey, conducted on a rolling basis of enterprises in 50 countries, has revealed the outsized impact of the COVID-19 pandemic on MSMEs, especially micro enterprises. From June to September 2020, 48 percent of micro, small, and medium enterprises (MSMEs) and 36 percent of large enterprises reported they were in arrears or expected to be in arrears within six months. Furthermore, 83 percent of MSMEs and 73 percent of large enterprises reported lower monthly sales than in the previous year.[11] Modelling by the Economic Governance Support Unit of the European Parliament suggests increases in the rate of NPLs in Europe of between 30 and 60 percent in most European jurisdictions and over 150 percent in the hardest-hit jurisdictions.[12] Stress tests reveal that all it would take for the median bank to have 20 percent of their capital buffer wiped out is a 3.8 percent increase in NPLs. This is why, notwithstanding the absence of increased NPLs and insolvency filings to date, many are still predicting rises in the near to medium term. For example, the IMF has forecasted that about one fifth of small and medium enterprises (SMEs) would have negative net equity by the end of 2021.[13]

Because of this high level of uncertainty, it is critical to understand the temporary insolvency reforms and measures introduced at the onset of the pandemic to prevent widespread insolvencies and how they are now being wound back. That is the function of this paper, which presents the findings of a survey conducted by the World Bank in collaboration with INSOL International and the International Association of Insolvency Regulators (IAIR). This chapter, in particular, focuses on cataloguing the different insolvency and insolvency-related measures introduced in different jurisdictions and describes the duration and wind-down prospects of these measures. It concludes with a forward-looking discussion of the expected effects of winding down insolvency emergency measures.

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8 IMF, "World Economic Outlook" (April 2021).

9 S. Muro, "The Calm before the Storm: Early Evidence on Business Insolvency Filings after the Onset of COVID-19" (Washington, DC: World Bank, 2020), https://openknowledge.worldbank.org/bitstream/handle/10986/35261/The-Calm-Before-the-Storm-Early-Evidence-on-Business-Insolvency-Filings-After-the-Onset-of-COVID-19.pdf.

10 https://www.eulerhermes.com/en_global/news-insights/economic-insights/insolvencies-well-be-back.html.

11 World Bank "Business Pulse," https://www.worldbank.org/en/data/interactive/2021/01/19/covid-19-business-pulse-survey-dashboard.

12 European Parliament, "Non-performing Loans—New Risks and Policies?" (March 2021), https://www.europarl.europa.eu/RegData/etudes/STUD/2021/651388/IPOL_STU(2021)651388_EN.pdf.

13 IMF, "Insolvency Prospects Among Small and Medium Enterprises in Advanced Economies," Staff Discussion Note (April 2021), https://www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2021/03/25/Insolvency-Prospects-Among-Small-and-Medium-Sized-Enterprises-in-Advanced-Economies-50138.

2. Global overview of emergency insolvency and insolvency-related measures

The onset of the COVID-19 pandemic and the lockdowns that accompanied it plunged the world's economy into a severe recession.[14] The pandemic posed a threat to the real and financial sectors of a broad range of countries but also to the workings of insolvency systems within those economies, insofar as these systems risked being overwhelmed with insolvency filings, potentially leading to overwhelmed courts, inefficient outcomes, and asset fire sales. As such, countries had to decide whether to introduce emergency insolvency and insolvency-related measures to flatten the insolvency curve.[15] These types of insolvency measures served to complement broader measures, such as fiscal and monetary support. The OECD estimates that, as of May 2021, global fiscal support reached the unprecedented figure of US$13.8 trillion, with US$7.8 trillion in additional spending and forgone revenue and US$6 trillion in equity injection, loans, and guarantees since March 2020.[16]

A survey was designed to better understand the insolvency-focused emergency measures introduced in different countries, as well as how the different jurisdictions are considering winding them down. The survey was conceived to gather systematized information on the introduction, duration, and expiration of emergency insolvency and insolvency-related measures. The World Bank, INSOL International, and IAIR partnered to distribute the survey to experienced insolvency professionals around the world who were asked to provide answers for their countries. Contributors from 135 economies were contacted,[17] with at least three independent contributors contacted in more than a hundred jurisdictions.[18] Responses to the COVID-19 section of the questionnaire were obtained from 113 economies,[19] including multiple responses from 71 percent of those economies (see Figure 1).[20] When discrepancies were found among multiple responses from a single jurisdiction, direct communication with respondents helped clarify the matters of contention. The analysis that follows draws from the answers provided to the survey.[21]

The survey's coverage is wide in terms of GDP and population, with more responses being received from economies with more robust insolvency systems. The COVID-19 emergency insolvency measures described below are from economies that represent over 84 percent of global GDP and 86 percent of the global population.[22] The sample includes 87 percent of the economies with an outcome as "going-concern"—that is, not liquidated piecemeal—in the Resolving Insolvency indicator of the Doing Business Report 2020.[23] The average recovery rate of the economies included in this study (46.4 cents on a dollar) is close to twice that of the economies that were left out (24.7 cents on a dollar).[24] These facts suggest that economies from which reports were not returned tend to have weaker insolvency systems in place.

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14 See https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recessionsince-world-war-ii; https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/.

15 See Antonia Menezes and Sergio Muro, "COVID-19 Outbreak: Implications on Corporate and Individual Insolvency," EFI C19 Notes, http://pubdocs.worldbank.org/en/912121588018942884/COVID-19-Outbreak-Implications-on-Corporate-and-Individual-Insolvency.pdf.

16 OECD (2021), "OECD Economic Outlook," OECD Publishing 2021, no. 1 (2021), https://doi.org/10.1787/edfbca02-en.

17 The experienced insolvency professionals were identified through their membership in INSOL International or IAIR or through their prior experience collaborating in insolvency-related World Bank Group projects.

18 The number of contacted survey respondents was the result of difficulties to find contributors in some jurisdictions. Whenever possible, independent answers were obtained from five different respondents from a given jurisdiction.

19 A full list of the jurisdictions covered in the survey and of respondents who contributed to it can be found in the appendix.

20 In all but one jurisdiction, a private sector insolvency professional submitted a response.

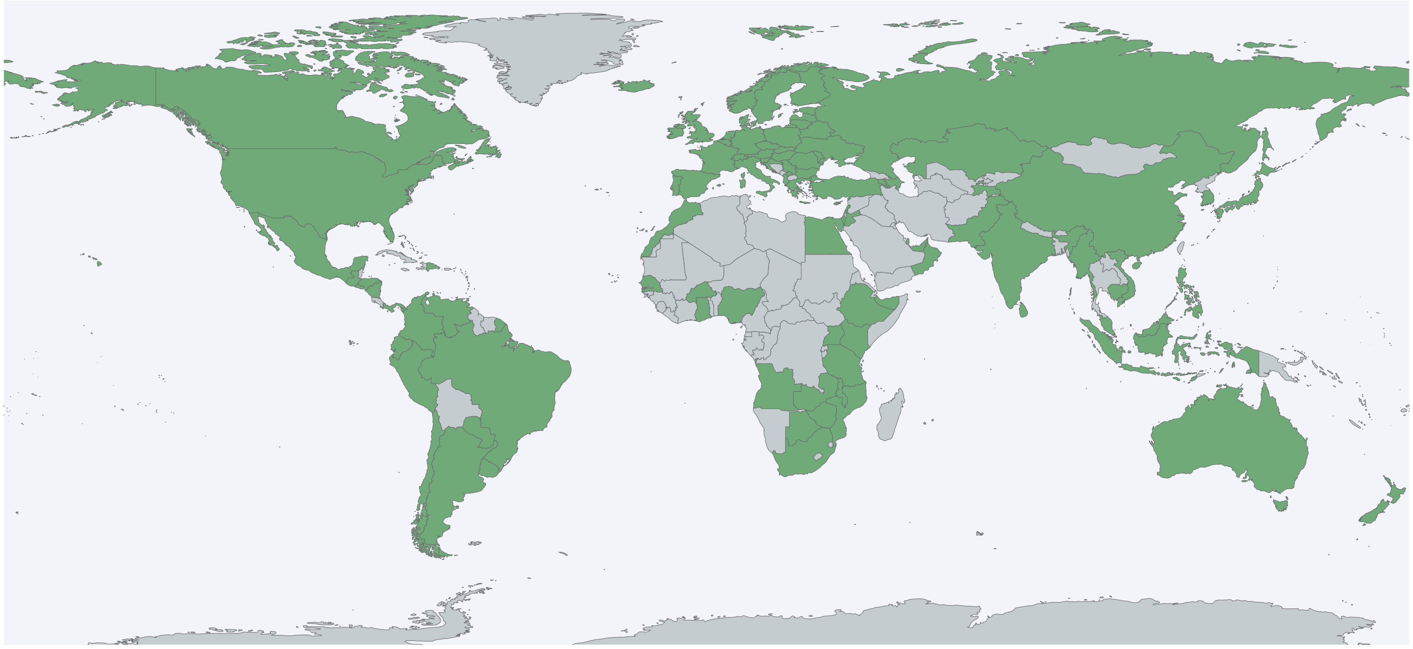
21 The authors have not independently verified the contributors' answers.

22 The sample contains information on 21 percent of low-income economies, 44 percent of lower-middle income economies, 52 percent of upper-middle income economies, and 83 percent of high-income economies.

23 See https://www.doingbusiness.org/en/doingbusiness.

24 These figures also come from the Doing Business Report 2020.

Figure 1. Jurisdictions Covered by the Survey (in green)



Source: World Bank-INSOL-IAIR Survey.

2.1 TYPES OF MEASURES

A common thread of this report is that countries reacted differently in addressing the risk of a wave of insolvencies.[25] Governments responded swiftly to the economic downturn.[26] As mentioned above, monetary and liquidity measures were substantial.[27] These interventions have not been evenly distributed, continuing to be largely concentrated in advanced economies.[28] Additionally, many jurisdictions introduced insolvency and insolvency-related measures to address the effects of the crisis on businesses and individuals. To understand the latter type of measures, and in line with previous work,[29] in what follows we classify them as interventions addressing: (a) debt repayment; (b) judicial proceedings; (c) involuntary bankruptcy initiation; (d) voluntary bankruptcy initiation; (e) the functioning of insolvency proceedings; and (f) facilitating recovery through bankruptcy. This section describes how frequently different types of these measures were introduced across the jurisdictions covered in the survey.

2.2 DEBT REPAYMENT

While in normal times private contracts would be free from state intervention, the pandemic led to greater state interference in commercial and financial transactions.[30] To understand interventions impacting contracts, the timing of the intervention is a relevant factor to consider.

25 Moreover, firms also adjusted to ease the impact of the crisis, with many firms increasing their digital presence or switching to health-related markets to temper sales reductions, cutting expenditures on innovation and non-essential items, and reducing employment demand. See Marie Christine Apedo-Amah, et al., "Unmasking the Impact of COVID-19 on Businesses Firm Level Evidence from Across the World," Policy Research Working Paper 9434, FCI, (World Bank, 2020). See also S. R. Baker, N. Bloom, S. J. Davis, and S. J. Terry, "COVID-Induced Economic Uncertainty," Working Paper 26983, National Bureau of Economic Research (April 2020), http://www.nber.org/papers/w26983.

26 A study of 154 countries has shown that they all adopted at least one financial support measure and that 60 percent adopted at least three measures. See Erik Feyen et al., "Evolution and Determinants of the Financial Sector Policy Response to the COVID-19 Pandemic: A New Global Database," working paper, available from the authors.

27 At least US$6 trillion were injected globally up to July 2021; see https://www.imf.org/en/Topics/imf-and-covid19/Fiscal-Policies-Database-in-Response-to-COVID-19.

28 See International Monetary Fund, "World Economic Outlook: Recovery during a Pandemic—Health Concerns, Supply Disruptions, Price Pressures," (Washington, DC: IMF, October 2021).

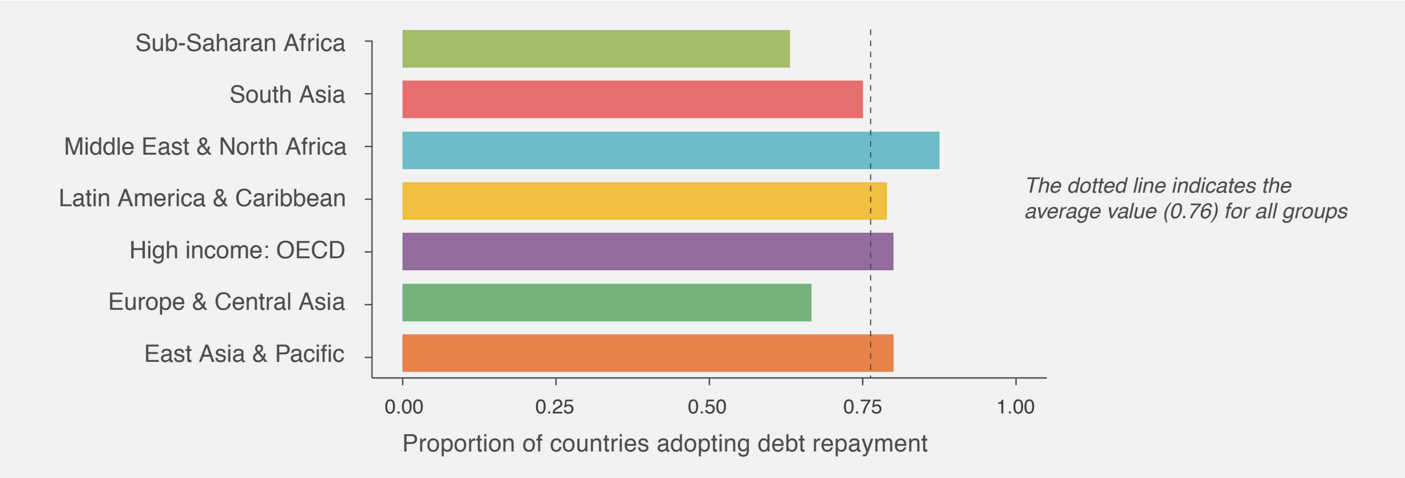
29 See Antonia Menezes and Sergio Muro, "COVID-19 Outbreak: Implications on Corporate and Individual Insolvency," EFI C19 Notes, http://pubdocs.worldbank.org/en/912121588018942884/COVID-19-Outbreak-Implications-on-Corporate-and-Individual-Insolvency.pdf; and Sergio Muro, "The Calm Before the Storm: Early Evidence on Business Insolvency Filings After the Onset of COVID-19," COVID-19 Notes (Washington, DC: World Bank, 2021).

30 For instance, that any intervention has a broad scope and does not discriminate unfairly.

Contractual interventions may focus on the prospects of repayment or may consider the effects of not repaying. Some countries taking the former approach reacted to COVID-19 by deciding to extend the repayment terms of a set of loans[31] or to suspend interest accruals[32] or even periodic debt service obligations.[33] Some countries focusing interventions on the aftermath of defaults have impeded the unilateral termination of certain agreements,[34] prohibited the acceleration of contractual terms,[35] eliminated interests and penalties,[36] or banned the repossession of property.[37] Both of these categories of measures can focus on particular subjects (e.g., consumers[38] or MSMEs)[39] or certain type of transactions (e.g., bullet loans[40] or mortgage payments).[41] Moreover, a moratorium on payments may extend to a variety of different obligations, including social security, tax, or other types of obligations to further support debtors.[42]

To understand COVID-19 emergency measures focused on debt repayment, the survey focused on six intervention subcategories. The survey asked about the introduction of a broad range of measures affecting both the prospects of repayments and the aftermath of default. Specifically, contributors were asked about emergency measures: (a) extending the repayment terms of loans; (b) suspending interest accruals; (c) suspending periodic debt service obligations; (d) impeding the unilateral termination of contractual agreements; (e) prohibiting the acceleration of contractual terms; and (f) eliminating certain interests and penalties. The answers obtained showed that debt repayment measures were frequently introduced by countries in all regions. Figure 2 shows the proportion of countries by region that adopted at least one of the debt-repayment COVID-19 emergency measures described above. These measures were adopted more frequently in the Middle East and North Africa (MENA) (by 87.5 percent of the countries in the sample) than in other regions. Yet, even in the region with least adoption of these measures (Sub-Saharan Africa (SSA)), most countries introduced these measures (63.2 percent).

Figure 2. Proportion of Countries Adopting at Least One Debt Repayment Emergency Measure, by Region

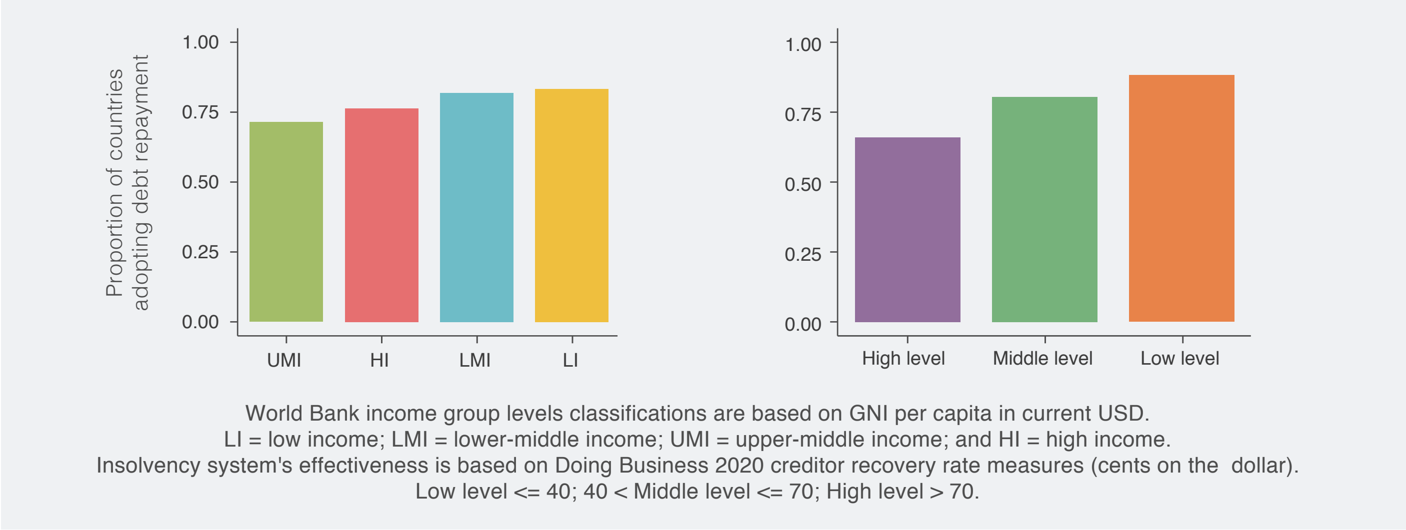


Source: World Bank-INSOL-IAIR Survey.

31 See Portugal's Decree-Law No. 10-J/2020 ("Moratorium Regime"), March 26, 2020.
32 See Spain's Royal decree–law 8/2020. Other countries allow for interest accruals but postpone their payment. See Hungary's Government Decree 47/2020 (the interests accrued during the payment moratorium do not capitalize).
33 See Italian State guarantee scheme to support SMEs affected by coronavirus outbreak; https://ec.europa.eu/commission/presscorner/detail/en/ip_20_530.
34 See Bulgaria State of Emergency Measures Act, enacted on March 20, 2020.
35 See France's Ordinance No. 2020-306 of March 25, 2020.
36 See Bulgaria's State of Emergency Measures Act, enacted on March 20, 2020.
37 See Bulgaria's State of Emergency Measures Act, enacted on March 20, 2020.
38 See consumer credit moratorium in Spain's Royal decree-law 8/2020.
39 See Italian State guarantee scheme to support SMEs affected by coronavirus outbreak; https://ec.europa.eu/commission/presscorner/detail/en/ip_20_530.
40 See Portugal's decree–Law No. 10-J/2020 ("Moratorium Regime"), March 26, 2020.
41 See Spain's Royal Decree–Law 8/2020.
42 See Bulgaria's State of Emergency Measures Act, enacted on March 20, 2020.

The introduction of debt repayment emergency measures appears to relate less to income brackets than to the strength of insolvency systems. The introduction of debt repayment measures was rather stable across economies' GDP per capita categories (Figure 3), with these measures being slightly more common in low-income countries.[43] The situation is rather striking if we look at the effectiveness of different insolvency systems. Using secured creditor recovery rates (as measured in the Doing Business Report 2020) as a proxy of an insolvency system's effectiveness, countries with low recovery rates (up to 40 cents on the dollar) introduced significantly more emergency debt repayment measures than high recovery rate countries (over 70 cents on the dollar). This suggests that broad debt repayment measures (affecting both insolvent and non-insolvent debtors) were leaned on more heavily where insolvency systems were not expected to provide effective solutions to firms facing unexpected distress due to COVID-19.

Figure 3. Proportion of Countries Adopting at Least One Debt Repayment Emergency Measure, by (a) Income, and (b) Recovery Rate



Source: World Bank-INSOL-IAIR Survey.

2.3 JUDICIAL PROCEEDINGS

Judiciaries play a key role in the debt enforcement process and also in insolvency proceedings. Both of these processes typically require some degree of court intervention to assist the claimant in holding a counterparty accountable to the promises made. Nevertheless, unconstrained individual debt repayment or contract enforcement demands during a crisis such as the one sparked by COVID-19 could create additional levels of difficulties for an economy, including severely clogging the judicial system.[44] As such, some countries have opted to address the potential for litigation spikes at inception, suspending non-urgent court proceedings[45] or even, more broadly, all civil proceedings.[46] Others have focused on narrower measures, such as prohibiting attachment of individuals' bank accounts or distrains of employment remuneration or pensions.[47] Still other countries chose to suspend certain executions or auctions of immovable property.

43 The GDP per capita income level used in this paper was obtained from https://blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021.

44 This was the case in the Argentine judiciary during the 2002 crisis. See Catalina Smulovitz, "Judicialization of Protest in Argentina: The Case of Corralito," in *Enforcing the Rule of Law: Social Accountability in the New Latin American Democracies*, edited by Enrique Peruzzotti and Catalina Smulovitz (2006). Once important backlogs accumulate, unclogging the judicial system may take many years.

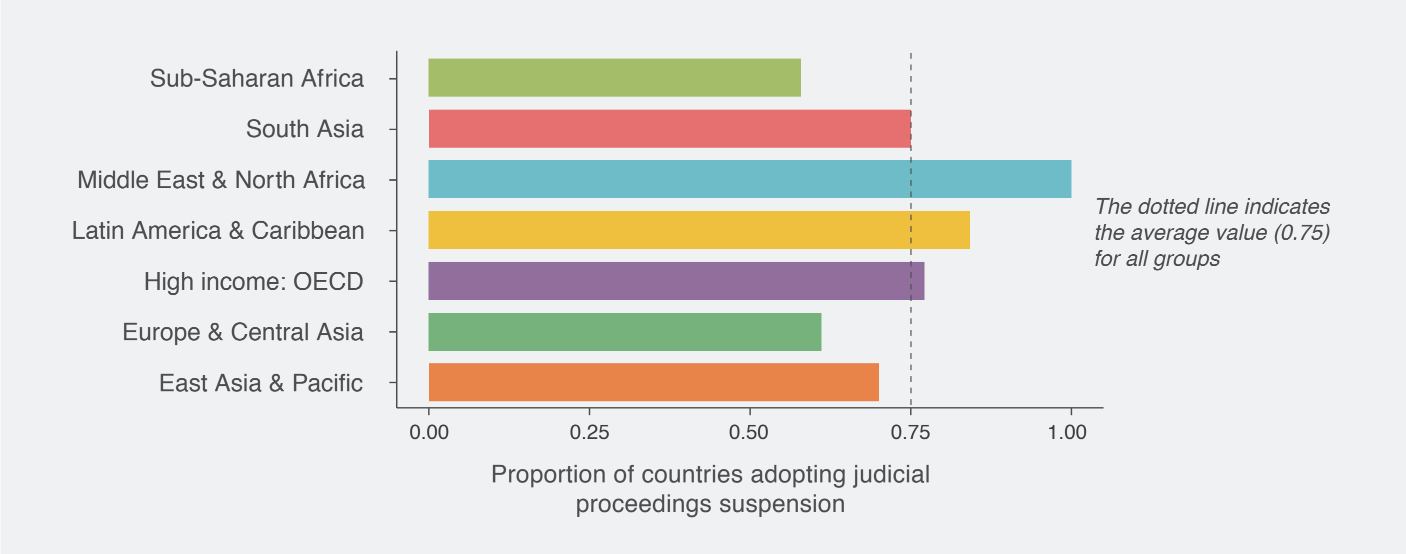
45 See Portugal's Decree–Law No. 10-J/2020 ("Moratorium Regime"), March 26, 2020.

46 See Italian State guarantee scheme to support SMEs affected by coronavirus outbreak; https://ec.europa.eu/commission/presscorner/detail/en/ip_20_530.

47 See Bulgaria's State of Emergency Measures Act, enacted on March 20, 2020.

The survey addressed the introduction of emergency measures suspending judicial proceedings by investigating four types of related questions. The questions were designed to help identify whether different parts of debt enforcement procedures (including collective ones, such as insolvency proceedings) were limited during the pandemic. Specifically, respondents were asked whether measures were introduced in their country that suspended: (a) non-urgent court civil proceedings; (b) execution proceedings; (c) auctions, and/or (d) the repossession of property. Similar to the case of debt repayment measures, this type of measure was also rather common. Figure 4 shows the proportion of countries in each region that adopted at least one measure suspending judicial proceedings. All countries in our sample in MENA adopted at least one of these measures, while only 57.9 percent of the countries in SSA did the same. An interesting element of these measures that differentiates them from debt repayment measures is that their introduction, rather than being to prevent insolvencies, can be understood as relating to the judiciary itself (e.g., protecting judges and court officers from contagion).[48] While more evidence would be needed to parse these different motivations, 34 percent of the jurisdictions studied temporarily suspended the ability to repossess property, suggesting that considerations other than health played a significant role in the use of these measures.

Figure 4. Proportion of Countries Adopting at Least One Judicial Proceedings Suspension Emergency Measure, by Region

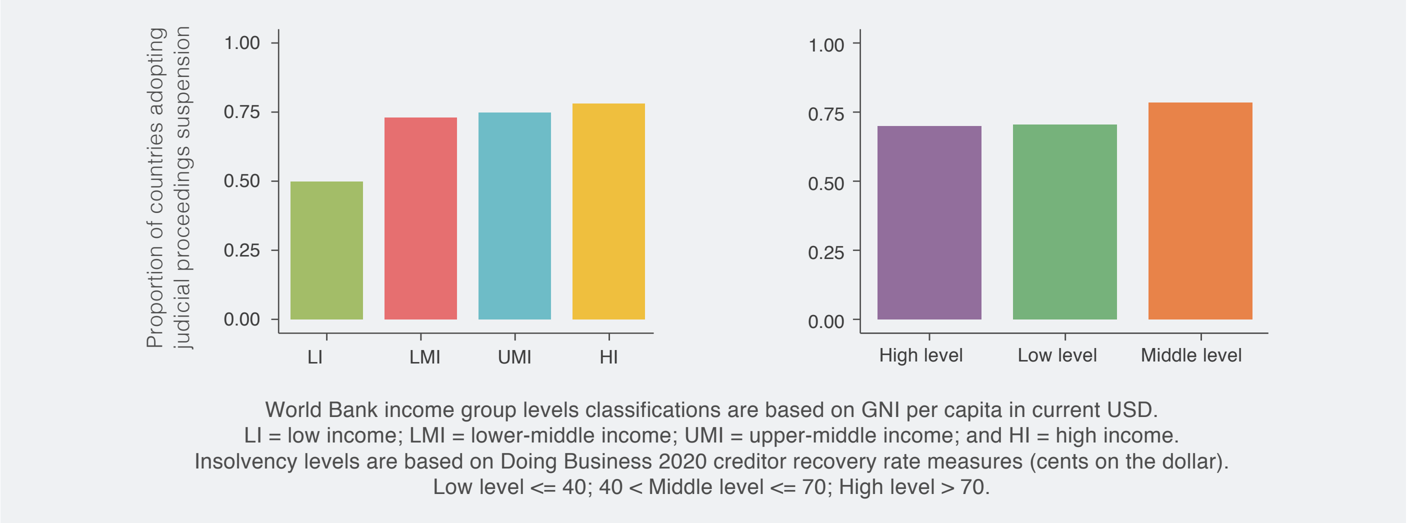


Source: World Bank-INSOL-IAIR Survey.

Suspension of judicial proceedings occurred more frequently in countries with higher per capita income. Within our sample, judicial suspension measures were adopted with similar frequency in high- and middle-income countries (in three-quarters of them). Somewhat surprisingly, these measures were less frequent in low-income countries, being adopted in only half of the countries of this income bracket. In turn, insolvency systems' effectiveness appears to be unrelated to the chances that any of these measures were introduced (Figure 5). As mentioned above, the inward-looking nature of these measures (i.e., the health risks of holding judicial proceedings) may help explain this result.

48 As such, readers must be careful about drawing quick conclusions regarding these measures.

Figure 5. Proportion of Countries Adopting at Least One Judicial Proceedings Suspension Emergency Measure, by (a) Income, and (b) Recovery Rate



Source: World Bank-INSOL-IAIR Survey.

2.4 INVOLUNTARY BANKRUPTCY INITIATION

As already mentioned, crises and recessions are typically accompanied by an increased number of credit defaults.[49] In such contexts, creditors may respond by filing a larger number of bankruptcy petitions, surpassing the ability of insolvency systems to effectively deal with them. With this possibility in mind, several economies considered introducing or increasing barriers to the initiation of involuntary bankruptcy proceedings. Examples of these measures include increases to (or introduction of) the monetary threshold for creditors to commence an insolvency process and suspending specific creditors' rights (such as government creditors), or even all creditors' rights, to initiate insolvency proceedings.[50] On some occasions, creditors' rights to file were not directly affected, but debtors were given additional time to submit a response to a creditor's bankruptcy filing.[51]

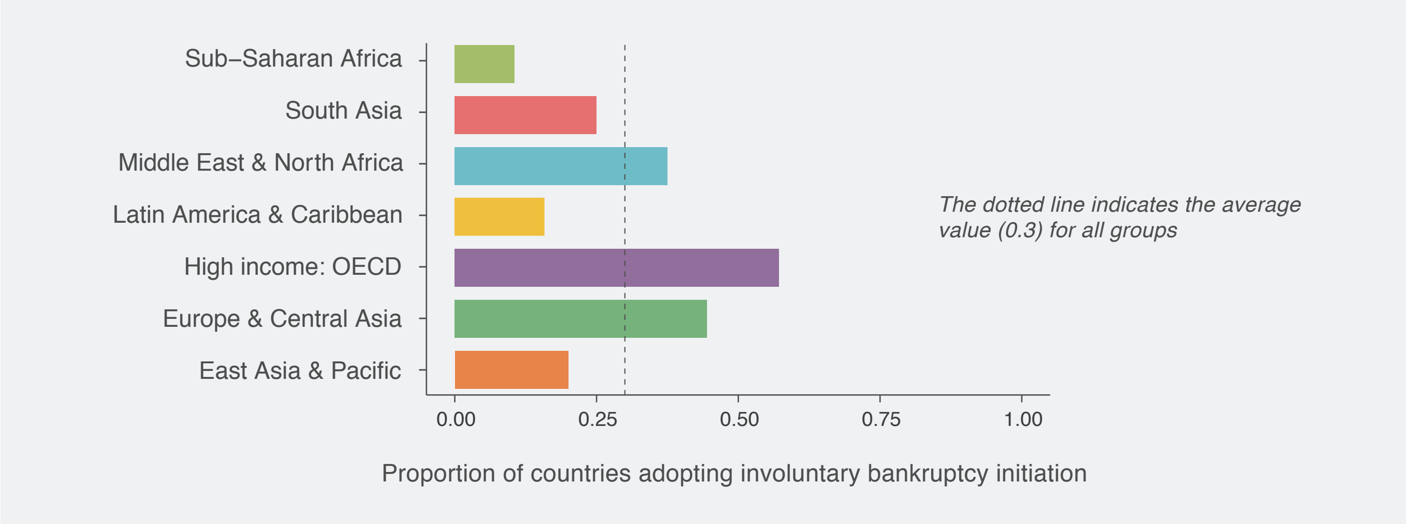
To further understand how economies dealt with the potential increase of creditor-initiated bankruptcy filings, the survey investigated four issues, chosen for their ability to indicate barriers to entry into bankruptcy processes during the pandemic. That is, the survey asked respondents whether their countries had introduced emergency measures that: (a) created a minimum debt requirement for creditors to initiate insolvency procedures; (b) raised minimum debt requirements for creditors to initiate insolvency procedures; (c) suspended specific creditors' rights to initiate insolvency procedures; and/or (d) increased response times for debtors facing petitions to initiate insolvency procedures. With the exception of members of the OECD, these measures were adopted by only a minority of countries (Figure 6). The disparity in the adoption of these measures was large across regions, with 57.1 percent of OECD countries introducing at least one of these measures, while just 10.5 percent of SSA countries did the same. The most common measure adopted was the suspension of specific creditors' rights to initiate insolvency procedures, accounting for 48 percent of all involuntary bankruptcy initiation measures. The least common of the involuntary bankruptcy initiation measures was the introduction or increase of minimum debt requirements to initiate insolvency procedures, having been adopted, respectively, in 4 and 8 percent of the studied economies.

49 See Sergio Muro, "The Calm Before the Storm: Early Evidence on Business Insolvency Filings After the Onset of COVID-19," COVID-19 Notes (Washington, DC: World Bank, 2021).

50 For example, Spain suspended creditors' rights to file involuntary bankruptcy petitions until the end of the state of emergency.

51 Australia provided companies with an increased time frame of six months rather than the then current 21 days, to respond to statutory demands served on them, which will be in effect for six months.

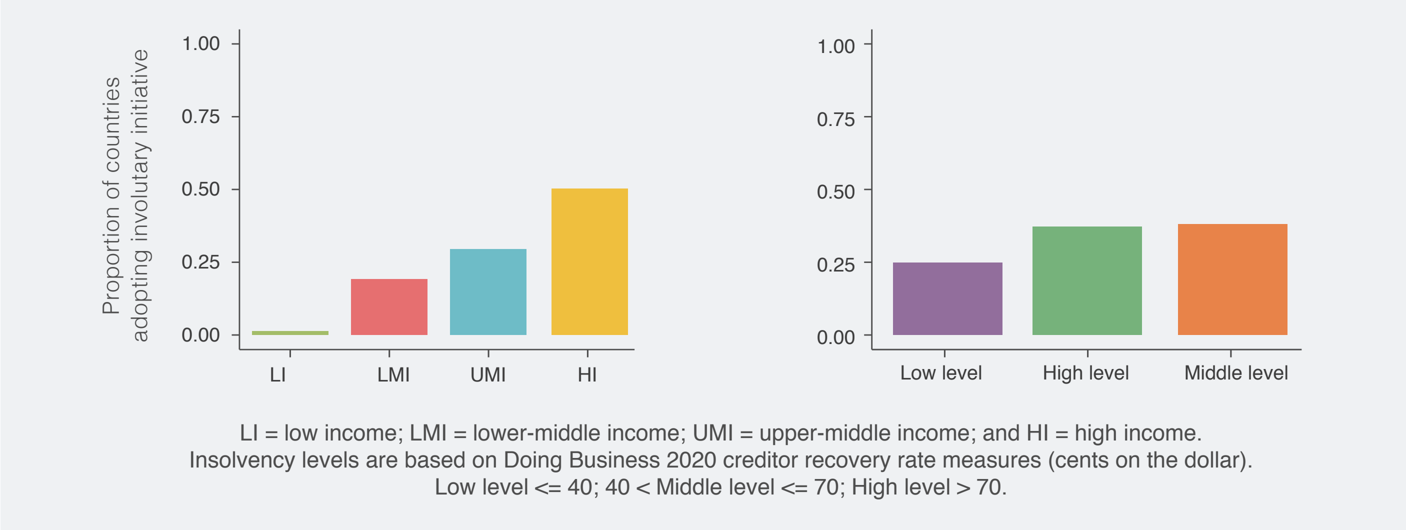
Figure 6. Proportion of Countries Adopting at Least One Involuntary Bankruptcy Initiation Emergency Measure, by Region



Source: World Bank-INSOL-IAIR Survey.

The introduction of involuntary bankruptcy initiation emergency measures can be directly linked to a country's per capita income level. Categorizing economies according to their incomes provides a clear view of their different emphasis on these measures. While almost half of the high-income countries in our sample introduced at least one of these types of measures, no low-income country did. In terms of the effectiveness of insolvency systems, the results are more nuanced (Figure 7). The proportion of countries with a middle level of secured creditor recovery rate (between 40 and 70 cents on the dollar) that introduced at least one of these measures was virtually identical to the proportion of countries with a high level of secured creditor recovery rate. In contrast, the percentage of countries with a low level of recovery rate was substantially lower, at 24 percent.

Figure 7. Proportion of Countries Adopting at Least One Involuntary Bankruptcy Initiation Emergency Measure, by (a) Income, and (b) Recovery Rate

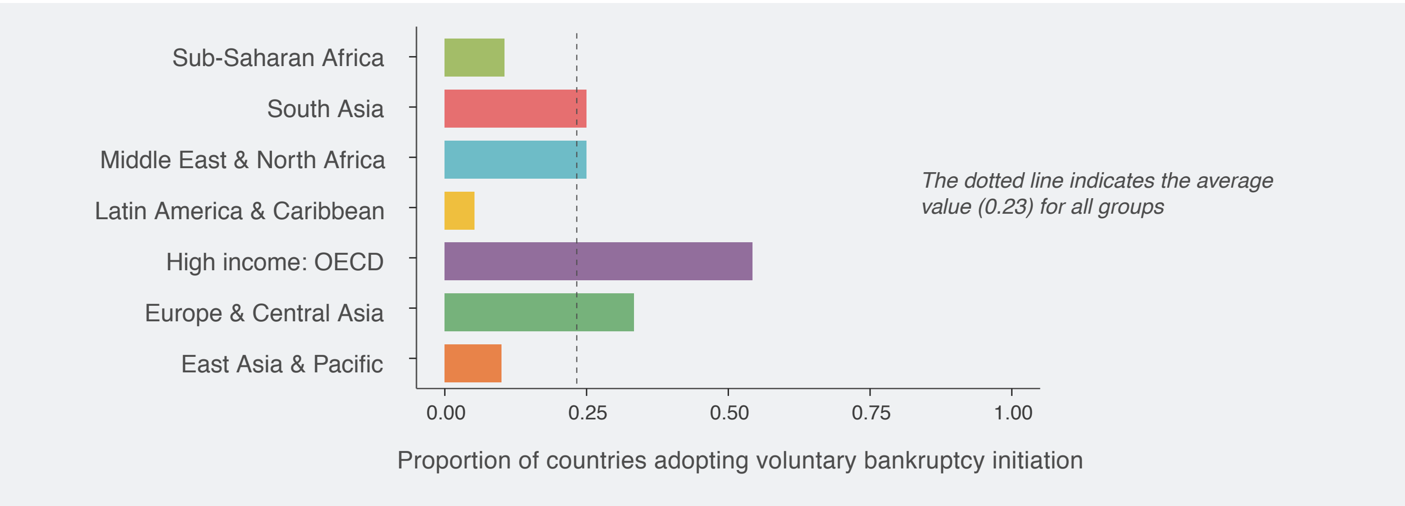


Source: World Bank-INSOL-IAIR Survey.

2.5 VOLUNTARY BANKRUPTCY INITIATION

While debtors may make their best efforts to navigate a crisis, corporate or insolvency rules may funnel a debtor firm into bankruptcy proceedings. A country's corporate law or insolvency law may pay special attention to the protection of creditors' rights as debtors become insolvent. As such, they may impose a duty to file for insolvency on a firm's directors and may even make them subject to liability for continuing to operate outside insolvency when the circumstances require them to file for bankruptcy protection. In the context of the pandemic, some countries suspended the duty to file,[52] while others suspended the personal liability of directors for wrongful trading.[53] With this in mind, the survey specifically addressed both of these options by asking respondents whether emergency measures were introduced to: (a) suspend directors' duty to initiate insolvency procedures; and/or (b) relax wrongful trading provisions. Almost three fourths of the interventions in this area came in the form of suspensions to directors' duty to file for bankruptcy. As for regional frequency, and similar to involuntary bankruptcy initiation measures, only a majority of countries in one region, the OECD, introduced at least one of these measures (Figure 8). In stark contrast, only 5.3 percent of the countries studied in the Latin America and the Caribbean region introduced at least one of these measures.

Figure 8. Proportion of Countries Adopting at Least One Voluntary Bankruptcy Initiation Emergency Measure, by Region



Source: World Bank-INSOL-IAIR Survey.

Voluntary initiation measures were more prevalent in high-income economies and in countries with a higher secured creditor recovery rate. With respect to requirements for debtors to commence proceedings, the evidence shows a similar pattern as with the measures to limit involuntary bankruptcy petitions. Figure 9 shows that many more high-income countries introduced this type of measure than countries in other income brackets, with no low-income economies adopting one. As with the secured creditor recovery rate, the higher this rate, the higher the proportion of countries introducing at least one such measure. To the extent that recovery rate may help predict use of an insolvency system, the results align with a stronger concern over too many filings in countries with more effective insolvency systems.

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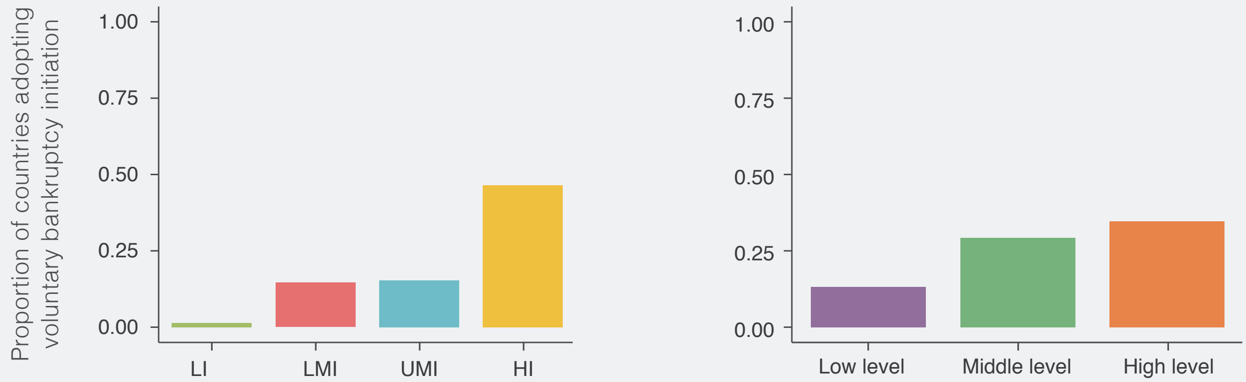
52 Spain suspended the director's obligation to file for bankruptcy until two months after the end of the state of emergency. In Germany, the federal government suspended the director's obligation to file for bankruptcy until September 30, 2020, if the grounds for insolvency were due to consequences of COVID-19.

53 The Australian government has relieved director's of the risk of personal liability for insolvent trading where the debts are incurred in the ordinary course of business.

Figure 9. Proportion of Countries Adopting at Least One Voluntary Bankruptcy Initiation Emergency Measure, by (a) Income, and (b) Recovery Rate



LI = low income; LMI = lower-middle income; UMI = upper-middle income; and HI = high income.
Insolvency levels are based on Doing Business 2020 creditor recovery rate measures (cents on the dollar).
Low level <= 40; 40 < Middle level <= 70; High level > 70.

Source: World Bank-INSOL-IAIR Survey.

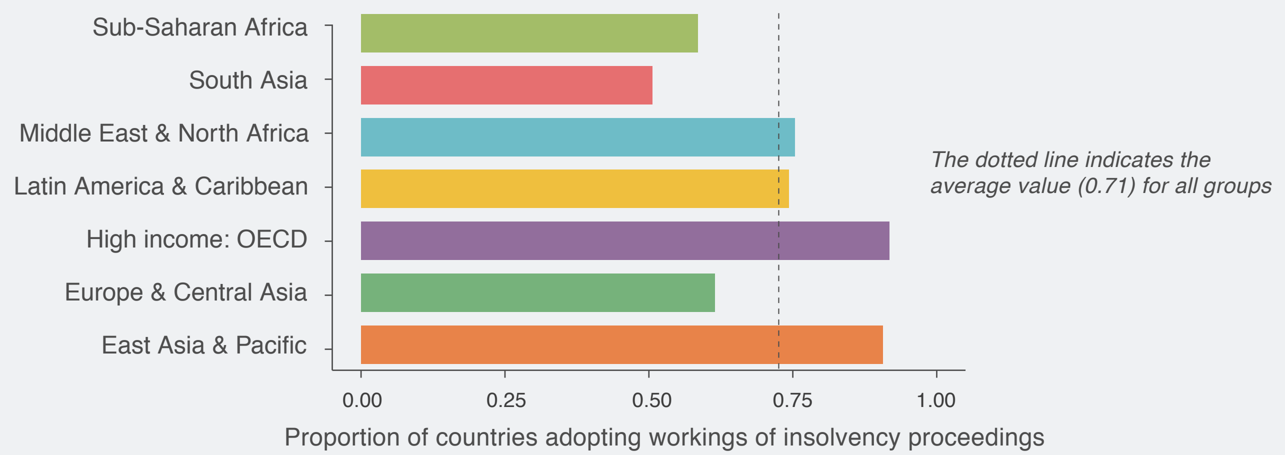
2.6 FUNCTIONING OF INSOLVENCY PROCEEDINGS

In addition to preventing avoidable bankruptcies leading to inefficient outcomes, the survey inquired about COVID-19 emergency measures aimed at the functioning of any insolvency proceeding opened during the pandemic. Specifically, the survey focused on measures that: (a) extended insolvency procedural deadlines for a limited period of time during COVID-19,[54] (b) suspended the requirement to proceed to liquidation if the business activity of the debtor has stopped while undergoing reorganization during COVID-19;[55] (c) encouraged the use of virtual means (e.g., e-filings, virtual court hearings) for insolvency cases; (d) amended avoidance action rules during COVID-19; and/or (e) suspended rules on subordinating loans by corporate insiders during COVID-19. The percentage of countries adopting at least one of these measures was 50 percent or higher across all regions (Figure 10). East Asia and Pacific and the OECD were the regions with the highest proportion of jurisdictions adopting these types of measures, with over 80 percent of countries adopting at least one measure. Within this type of intervention, encouraging the use of virtual means was by far the most commonly adopted (65 percent of all jurisdictions), likely responding to the health necessity.

54 This type of measure sought to account for the additional time expected to be required to respond to different filings or to execute certain tasks within an insolvency case.

55 This type of measure was geared toward addressing situations where productive processes were stopped for health, not economic, reasons.

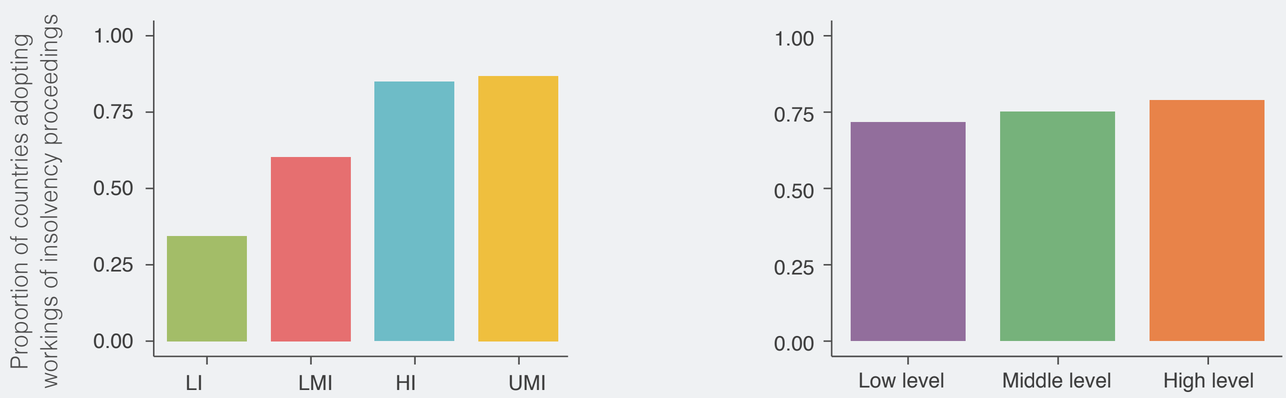
Figure 10. Proportion of Countries Adopting at Least One Functioning of Insolvency Proceedings Emergency Measure, by Region



Source: World Bank-INSOL-IAIR Survey.

While the incidence of these types of measures was to a considerable extent health related, low-income countries adopted them much less frequently. Within our sample, measures to address the functioning of insolvency proceedings were adopted more commonly by countries with higher income levels (Figure 11). To illustrate, about 80 percent of countries in the high- or upper-middle-income bracket of per capita income introduced one of these measures, while only about a third of low-income jurisdictions did so. Perhaps unsurprisingly for measures strongly tied to health issues, the effectiveness of insolvency systems was largely unrelated to measure adoption.

Figure 11. Proportion of Countries Adopting at Least One Functioning of Insolvency Proceedings Emergency Measure, by (a) Income, and (b) Recovery Rate



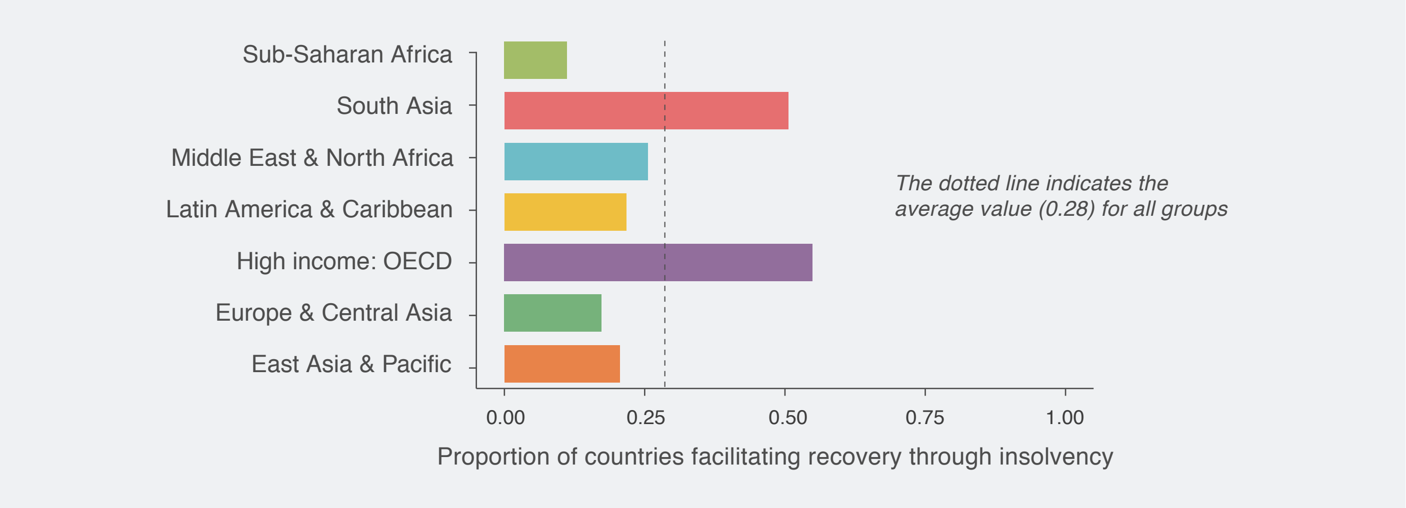
LI = low income; LMI = lower-middle income; UMI = upper-middle income; and HI = high income.
Insolvency levels are based on Doing Business 2020 creditor recovery rate measures (cents on the dollar).
Low level <= 40; 40 < Middle level <= 70; High level > 70.

Source: World Bank-INSOL-IAIR Survey.

2.7 FACILITATING RECOVERY THROUGH BANKRUPTCY

The survey looked into three issues to further understand how economies have tried to prepare insolvency systems to deal with the aftermath of the pandemic. The survey asked respondents to state whether their countries had introduced emergency measures that: (a) established out-of-court workout frameworks; (b) created special insolvency measures for SMEs; and/or (c) added specific insolvency rules for the simplification of proceedings. These issues were chosen for their relative novelty within insolvency systems, under the assumption that more recently created components of insolvency systems would tend to be in greater need of reinforcement to deal with cases after the pandemic subsides. The results are presented in Figure 12. Only in the OECD did the percentage of countries adopting at least one of these measures surpass a third of the sample. The measures most adopted by these countries were both special insolvency measures for SMEs and rules simplifying insolvency proceedings.

Figure 12. Proportion of Countries Adopting at Least One Emergency Measure Facilitating Recovery Through Insolvency, by Region

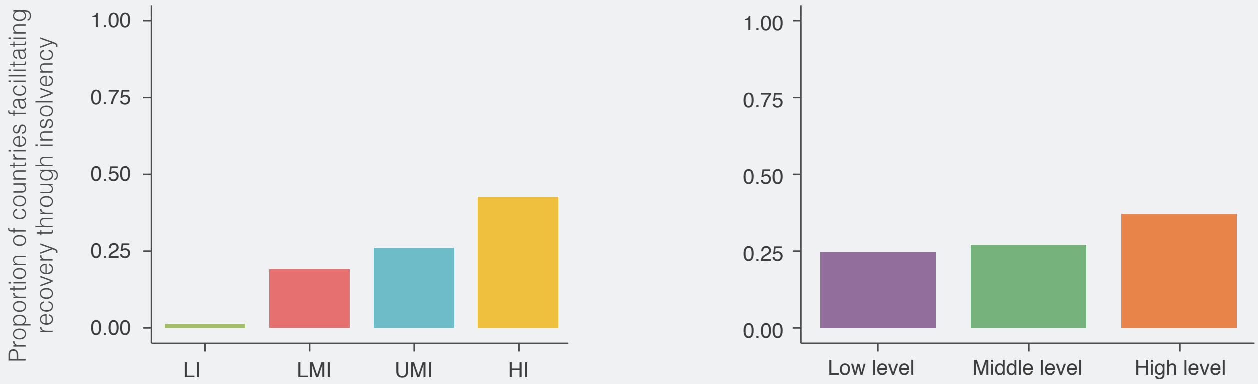


Source: World Bank-INSOL-IAIR Survey.

The results show that countries' efforts to adapt insolvency systems have been uneven, concentrating on measures to deal with the current effects of the crisis while leaving relatively unaddressed measures to prepare for the post-pandemic recovery. While the lack of emphasis on measures facilitating recovery through bankruptcy is evident across regions, it is most evident in low-income countries, where no country in our sample introduced even one such measure (Figure 13). These results underscore a need for countries to recalibrate efforts regarding insolvency systems toward improving post-pandemic recovery. As discussed below, the stronger the insolvency systems are, the less likely it will be that zombie firm proliferation will emerge, which can affect both developed and developing economies.[56]

56 See Sergio Muro and Andrea Castagnola, "Insolvency Systems and Zombie Firm Proliferation in Developed and Developing Economies" (Washington, DC: World Bank, forthcoming).

Figure 13. Proportion of Countries Adopting at Least One Emergency Measure Facilitating Recovery Through Insolvency, by (a) Income, and (b) Recovery Rate



LI = low income; LMI = lower-middle income; UMI = upper-middle income; and HI = high income.
Insolvency levels are based on Doing Business 2020 creditor recovery rate measures (cents on the dollar).
Low level <= 40; 40 < Middle level <= 70; High level > 70.

Source: World Bank-INSOL-IAIR Survey.

3. Duration and winding down of emergency measures

The global economy now shows several indicators of economic recovery, but they are uneven and much remains uncertain. Advanced economies are predicted to experience GDP growth of about 5.2 percent in 2021, and growth for emerging and developing economies is predicted to be even higher, at 6.4 percent.[57] However, this may not reflect the experience of households or of businesses, particularly smaller ones. Employment is expected to recover at a slower pace than GDP, and there is an elevated risk of inflation (see section 1 above), which would increase the distress of businesses by adding to supply chain costs and of consumers by increasing the cost of living.

It follows from these recovery indicators that a cautious tapering of measures is appropriate. Concerns are increasingly arising that the extensive fiscal and monetary policy measures could fuel the financing of so-called zombie firms (i.e. companies that do not make enough money to pay down their debt-servicing costs and often need additional borrowing to stay alive) and that any prolongation of the temporary insolvency measures may cause such firms to proliferate.[58] High rates of zombie firms drain productivity from the economy by creating barriers to entry (whereby new firms must have a higher productivity threshold to compensate for lower market profitability), constraining the ability of other firms to scale up and crowding out credit to healthier firms.[59]

This issue is particularly relevant for countries with a preponderance of small businesses, because small enterprises are more likely to become zombie firms than large enterprises. Financially distressed small businesses with limited or no prospects for future rehabilitation continue to operate, because the obstacles to liquidation are too high. Most insolvency frameworks subject small businesses to the same rules and processes as large companies, but these processes are complex, lengthy, and costly. In these circumstances, insolvency can become "a luxury that many MSMEs cannot afford."[60]

57 IMF, October Economic Outlook, https://www.imf.org/en/Publications/WEO/Issues/2021/10/12/world-economic-outlook-october-2021.
58 https://voxeu.org/taxonomy/term/8207.
59 https://www.oecd-ilibrary.org/economics/confronting-the-zombies_f14fd801-en;jsessionid=mqUdz4LGx7xZ9oaqLcuUubtY.ip-10-240-5-12
60 Aurelio Gurrea-Martínez, "Implementing an Insolvency Framework for Micro and Small Firms," Singapore Management University School of Law Research Paper, No. 21 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3715654.

Many countries are advocating for a "tapering" of support measures rather than a "cliff-edge effect" of withdrawing support too quickly, for fear of the unintended consequences from cutting off support too early. Nonetheless, the right timing for tapering measures depends to a significant extent on circumstances within a particular country. For advanced economies, typically the most prominent concern is about avoiding widespread business insolvency and protecting financial institutions. For emerging and developing economies, typically the more urgent challenge is the government's limited fiscal space and the need to restore budgets using new taxation measures.

Australia is a good example of the difficulties involved in working out the right time to finalize the tapering process. Having effectively eliminated community transmission of COVID-19 by the end of 2020, Australia ended its temporary personal bankruptcy measures in January 2021 and the equivalent measures for businesses in March 2021.[61] In July 2021, the Delta variant emerged in Australia, and most of the country was drawn into extended lockdowns, while most other advanced economies were opening up. While there has been fiscal stimulus, the temporary bankruptcy reforms introduced in the first wave of COVID-19 were not reintroduced.

3.1 INSOLVENCY AND INSOLVENCY-RELATED EMERGENCY MEASURES' DURATION AND WIND DOWN

This section presents evidence collected from the survey to better understand how economies plan to wind down insolvency and insolvency-related measures.[62] As mentioned earlier, emergency measures are typically created to deal with extraordinary circumstances arising from a given crisis. As the circumstances giving rise to the emergency norms dissipate, jurisdictions must decide on the winding down or "sunset" of said measures. Failure to draw down these measures risks disrupting the working of the economic system. The survey specifically asked whether the emergency measures adopted in different jurisdictions contained an expiration date. Where an expiration date was included, the survey asked about said date, as well as any extensions added to the original expiration date.

This section reports on the duration of different categories of insolvency and insolvency-related measures. To account for situations where jurisdictions introduced more than one measure of the same subcategory (i.e., a specific question within the survey), in what follows, country duration of measures is defined based on the longest duration of any of the measures provided as an answer to the survey. As the survey answers did not specify the precise date when a measure was initiated, the duration results presented below assume that all measures were initiated on March 1, 2020.[63] In addition, measures with no expiration are reported separately and do not affect the duration estimates. Finally, to understand further insolvency and insolvency-related emergency measure drawdown, this section presents information on the distribution of measures' duration as well as Kaplan-Meier survival curves by category of insolvency (or insolvency-related) measure.[64] Specifically, to calculate these figures, we looked to each category of insolvency and insolvency-related measures to identify the latest expiration date of any measure within each country and used it to inform the survival model.

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61 See https://www.afsa.gov.au/about-us/newsroom/temporary-debt-relief-measures-ended-1-january-2021 (personal bankruptcy), and https://asic.gov.au/regulatory-resources/insolvency/insolvency-for-directors/temporary-restructuring-relief/ (businesses).

62 It should be noted that countries may have extended the measures after the information was collected; thus all estimates presented in this section should be read as lower bounds.

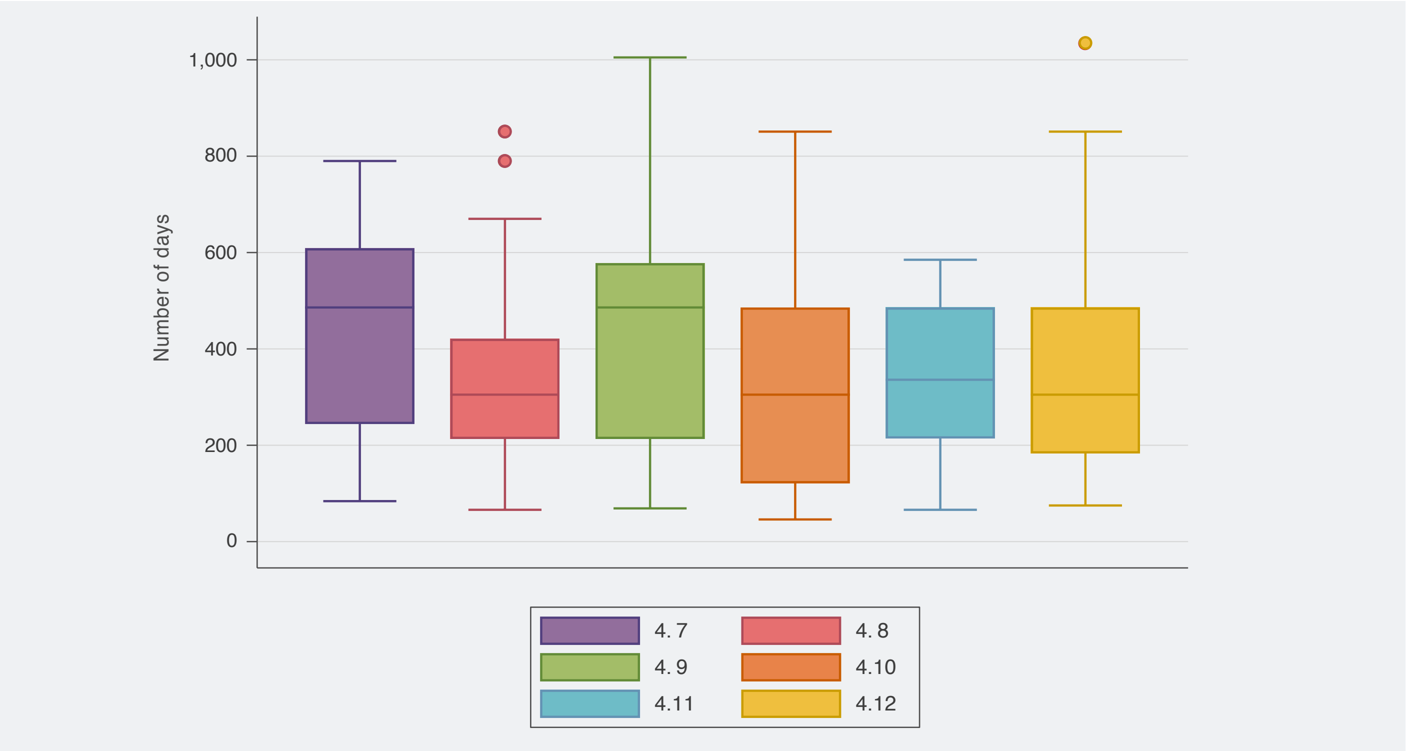
63 This assumption may lead to a longer average duration than actually occurred. Nevertheless, and given the lack of data on emergency measure commencement, it uses a clear rule that is related to a key moment in the global spread of the pandemic and of pandemic-related measures. The World Health Organization (WHO) formally declared COVID-19 a pandemic on March 11, 2020. See WHO timeline, https://www.who.int/news/item/27-04-2020-who-timeline---covid-19.

64 The Kaplan-Meier survival curve is defined as the probability of surviving in a given length of time (in our case, the period in which a given emergency measure is still valid), while considering time in many small intervals. See D. G. Altman, "Analysis of Survival Times," in *Practical Statistics for Medical Research* (London, UK: Chapman and Hall, 1992), pp. 365–93.

3.2 DEBT REPAYMENT

The median duration of debt repayment measures was similar regardless of the specific type of debt repayment measure adopted. As mentioned above, the survey asked about measures that: (a) extended the repayment terms of loans; (b) suspended interest accruals; (c) suspended periodic debt service obligations; (d) impeded the unilateral termination of contractual agreements; (e) prohibited the acceleration of contractual terms; and/or (f) eliminated certain interests and penalties. Exploring each of these measures, 82 percent were introduced with an expiration date or were given an expiration date by the time survey responses were collected. For many measures established with an expiration date, the date was extended (54 percent of all measures had been extended when survey information was collected). Accounting for total duration (i.e., to the last expiration date), Figure 14 shows the duration distribution for economies for which an expiration date was available.[65] The measures extending the repayment term of loans and suspending periodic debt service obligations had the longest median durations of close to 500 days. Yet, the longest recorded duration (1,035 days, equating to an expiry date of December 31, 2022, assuming the start date of March 1, 2020) came from a measure eliminating certain interests and penalties.

Figure 14. Duration Distribution of Debt Repayment Measure, by Specific Measure

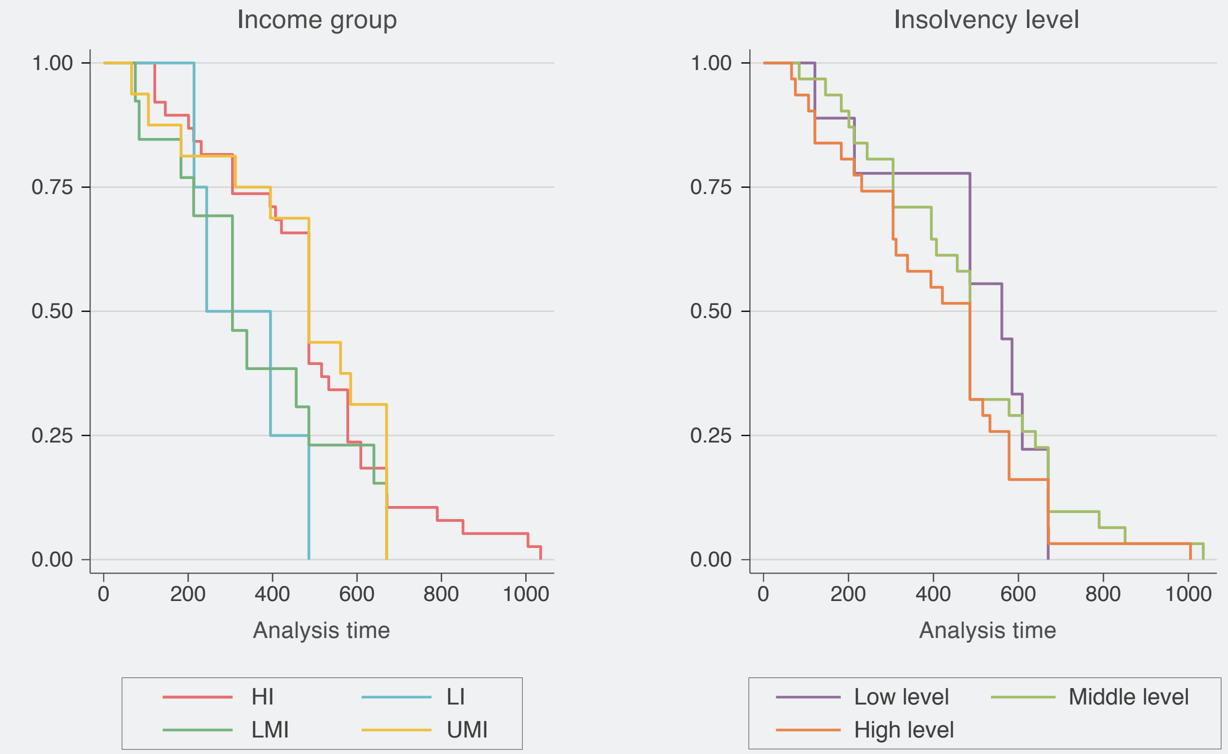


Source: World Bank-INSOL-IAIR Survey.

The duration of debt repayment measures tended to be longer in high-income economies. At 460 days after March 1, 2020 (i.e., June 4, 2021, assuming the start date of March 1, 2020), the model estimates that the probability of debt repayment measures' survival (i.e., measures still in place) was 0.5, while by the time 578 days have passed (September 30, 2021), the probability that a debt repayment measure would survive was just under a quarter. This means that more than three-quarters of temporary debt repayment measures had been withdrawn by September 30, 2021. When looking at survival rates by country per capita income level (Figure 15), higher rates were observed for countries in the higher income level brackets (signaling longer duration). This is in line with these countries' broader ability to support their economies with more robust measures. In turn, survival rates are rather similar for countries in the different insolvency level categories.

65 Some observations were lost due to data availability.

Figure 15. Kaplan-Meier Survival Estimates for Debt Repayment Measures, by Income Level and by Recovery Rate



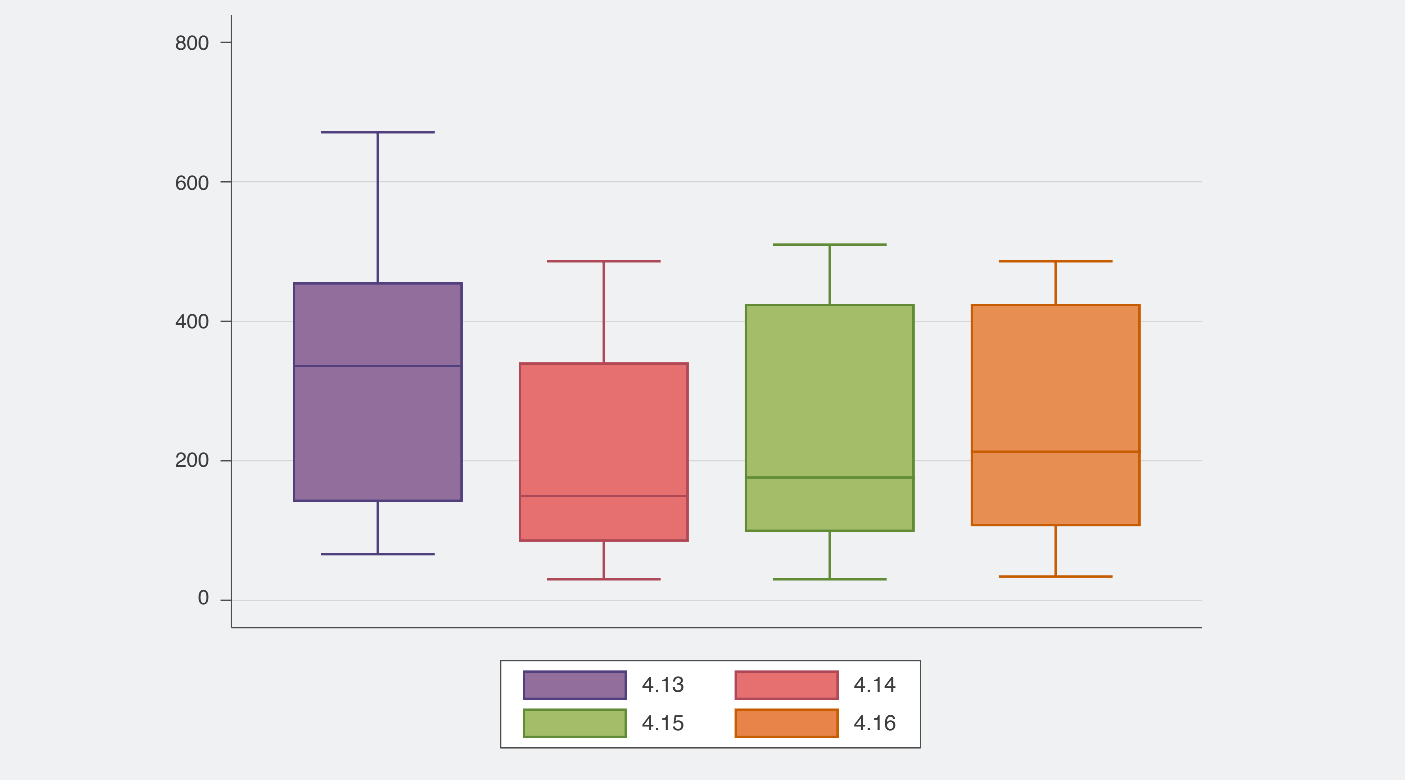
World Bank income group levels classifications are based on GNI per capita in current USD.
LI = low income; LMI = lower-middle income; UMI = upper-middle income; and HI = high income.
Insolvency levels are based on Doing Business 2020 creditor recovery rate measures (cents on the dollar).
Low level ≤ 40; 40 > Middle level ≤ 70; and High level > 70.

Source: World Bank-INSOL-IAIR Survey.

3.3 JUDICIAL PROCEEDINGS

The mean duration of measures dealing with judicial proceedings was the smallest of any type of insolvency or insolvency-related emergency measure. As mentioned above, the survey asked about measures that suspended: (a) non-urgent court civil proceedings; (b) execution proceedings; (c) auctions; and/or (d) the repossession of property. When these measures were introduced, an expiration date was included in 85 percent of the cases. The mean duration of these measures was 274 days, the shortest mean duration of any category of intervention.[66] Accounting for total duration (i.e., to the last expiration date, including any extensions), Figure 16 shows the duration for different types of judicial proceedings measures.[67] The suspension of non-urgent court civil proceedings had the longest mean duration: 308 days. The median duration for the other types of judicial proceedings measures were substantially shorter, with the suspension of execution proceedings lasting 201 days on average. The maximum duration of any measures of this type was 671 days.

Figure 16. Duration Distribution of Judicial Proceedings Measure, by Specific Measure



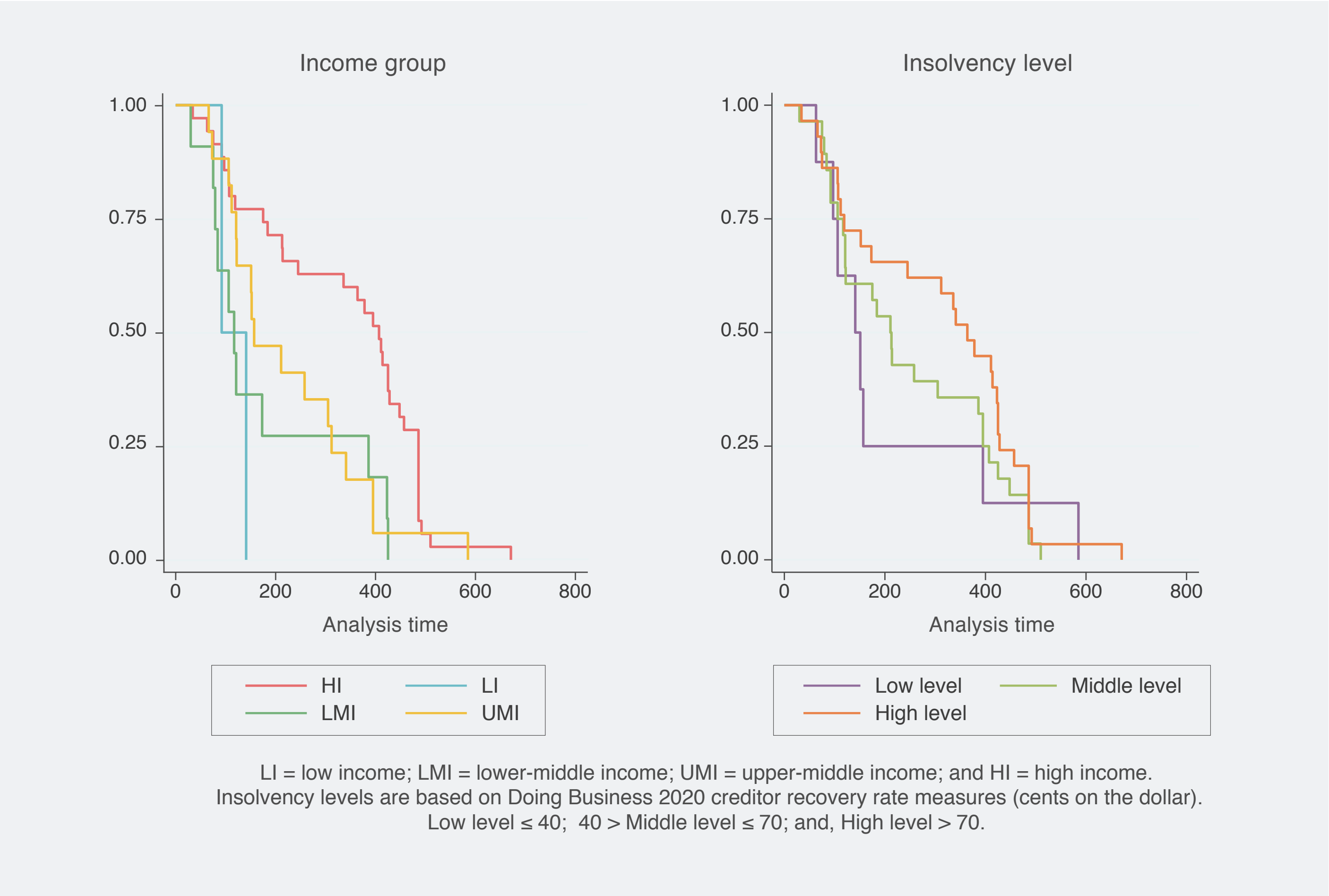
Source: World Bank-INSOL-IAIR Survey.

As with debt repayment measures, the duration of measures relating to judicial proceedings tended to be longer in high-income countries. At 214 days from March 1, 2020 (that is, by October 1, 2020), the model estimates that the probability of survival for a judicial proceedings measure (i.e., the measure remains in place) was 0.5, while after 425 days have passed (April 30, 2021) the probability of survival of a debt repayment measure was just under a quarter. Focusing on survival rates by country per capita income level (Figure 17), we observed higher survival rates for countries in the higher income level brackets. This result is somewhat surprising as higher income level countries tend to have more access to e-courts. Nevertheless, it reinforces the idea that wealthier countries had more capacity to introduce measures of support (fiscal and otherwise).

66 This shorter duration could perhaps be tied to the fact these measures were at least partly motivated by a different objective, that is, to protect judges, lawyers, or litigants from COVID-19 contagion.

67 Some observations were lost due to data availability.

Figure 17. Kaplan-Meier Survival Estimates for Judicial Proceedings Measures, by Income Level and by Recovery Rate



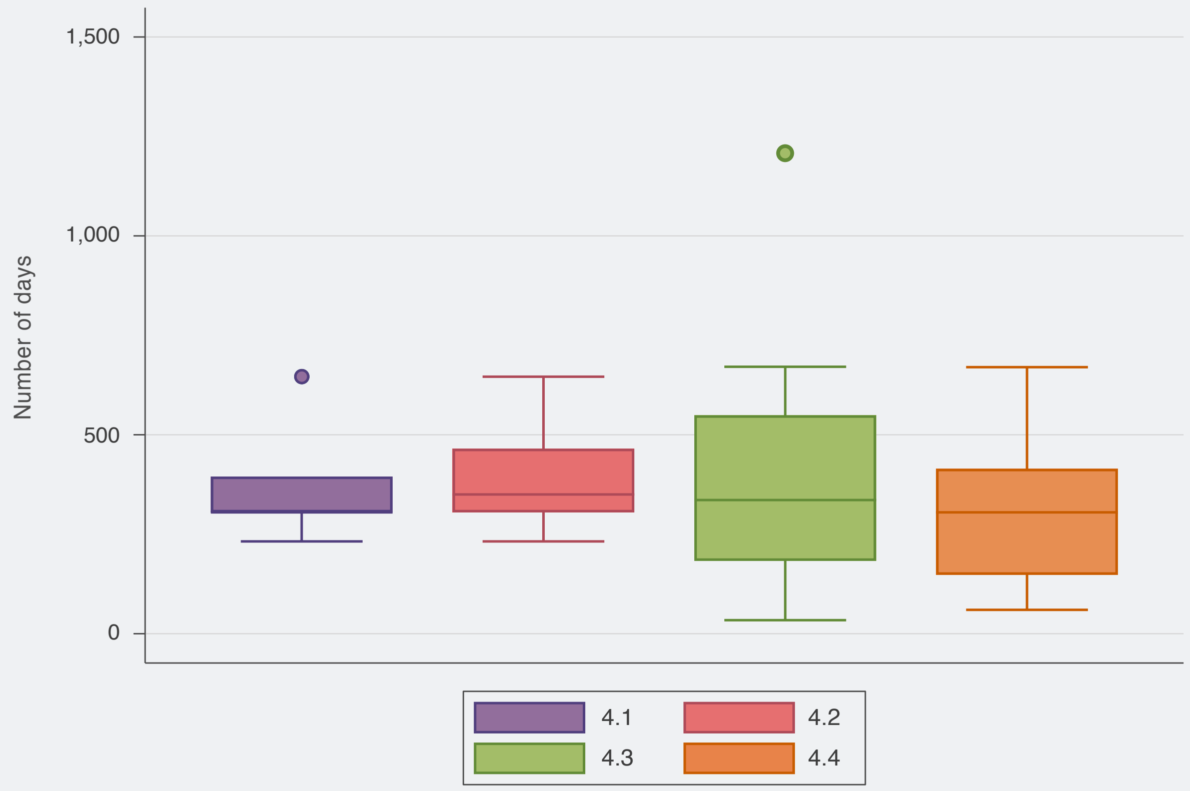
Source: World Bank-INSOL-IAIR Survey.

3.4 INVOLUNTARY BANKRUPTCY INITIATION

The average involuntary bankruptcy initiation measure was shorter in duration than the mean of insolvency or insolvency-related emergency measures, by type. As mentioned above, the survey asked about emergency measures that: (a) created a minimum debt requirement for creditors to initiate insolvency procedures; (b) raised minimum debt requirements for creditors to initiate insolvency procedures; (c) suspended specific creditors' rights to initiate insolvency procedures; and/or (d) increased response timelines for debtors facing petitions to initiate insolvency procedures. Upon inspection of each of the measures reported, it was found that an expiration date was included in 85 percent of them. The mean duration of these measures was 382 days (max duration: 1,208 days). Figure 18 shows the duration distribution for different types of involuntary bankruptcy initiation measures.[68] While measures suspending specific creditors' rights to initiate insolvency procedures and increasing response timelines for debtors facing petitions were more frequent than the other two measures, the median duration is similar across all the measures in this category.

68 Some observations were lost due to data availability.

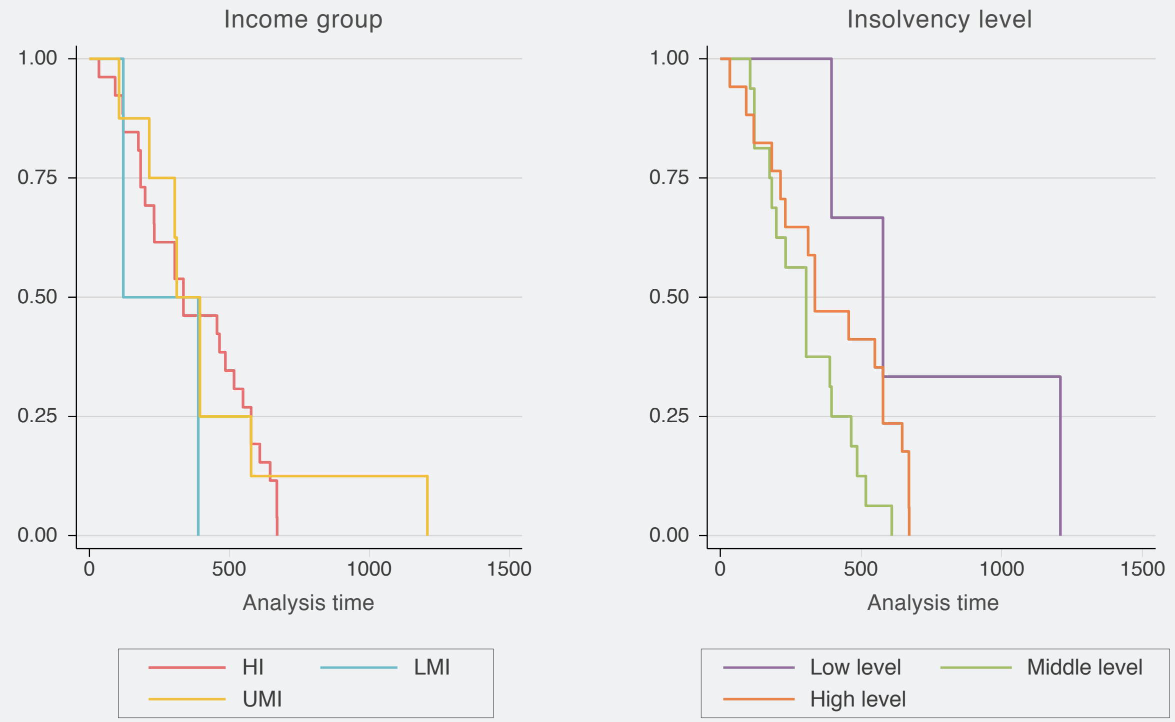
Figure 18. Duration Distribution of Involuntary Bankruptcy Initiation Measure, by Specific Measure



Source: World Bank-INSOL-IAIR Survey.

Survival rates for involuntary bankruptcy initiation measures tended to be higher for economies with less effective insolvency systems. The model estimates that the probability of survival of measures focused on creditors' bankruptcy filings (i.e., the measure remains in place) reached 0.5 after 312 days have passed (i.e., January 7, 2021), while by the time 549 days had passed (September 1, 2021), the probability of debt repayment measure survival was at a quarter. Focusing on survival rates by the insolvency system's effectiveness, as measured by secured creditor recovery rate (Figure 19), survival rates tended to be higher for countries with weaker insolvency systems. This result suggests that countries that doubted the strength of their insolvency systems tried to limit involuntary filings for a longer time, likely aiming to avoid inefficient outcomes.

Figure 19. Kaplan-Meier Survival Estimates for Involuntary Bankruptcy Initiation Measures, by Income Level and by Recovery Rate



World Bank income group levels classifications are based on GNI per capita in current USD.
LI = low income; LMI = lower-middle income; UMI = upper-middle income; and HI = high income.
Insolvency levels are based on Doing Business 2020 creditor recovery rate measures (cents on the dollar).
Low level ≤ 40; 40 > Middle level ≤ 70; and, High level > 70.

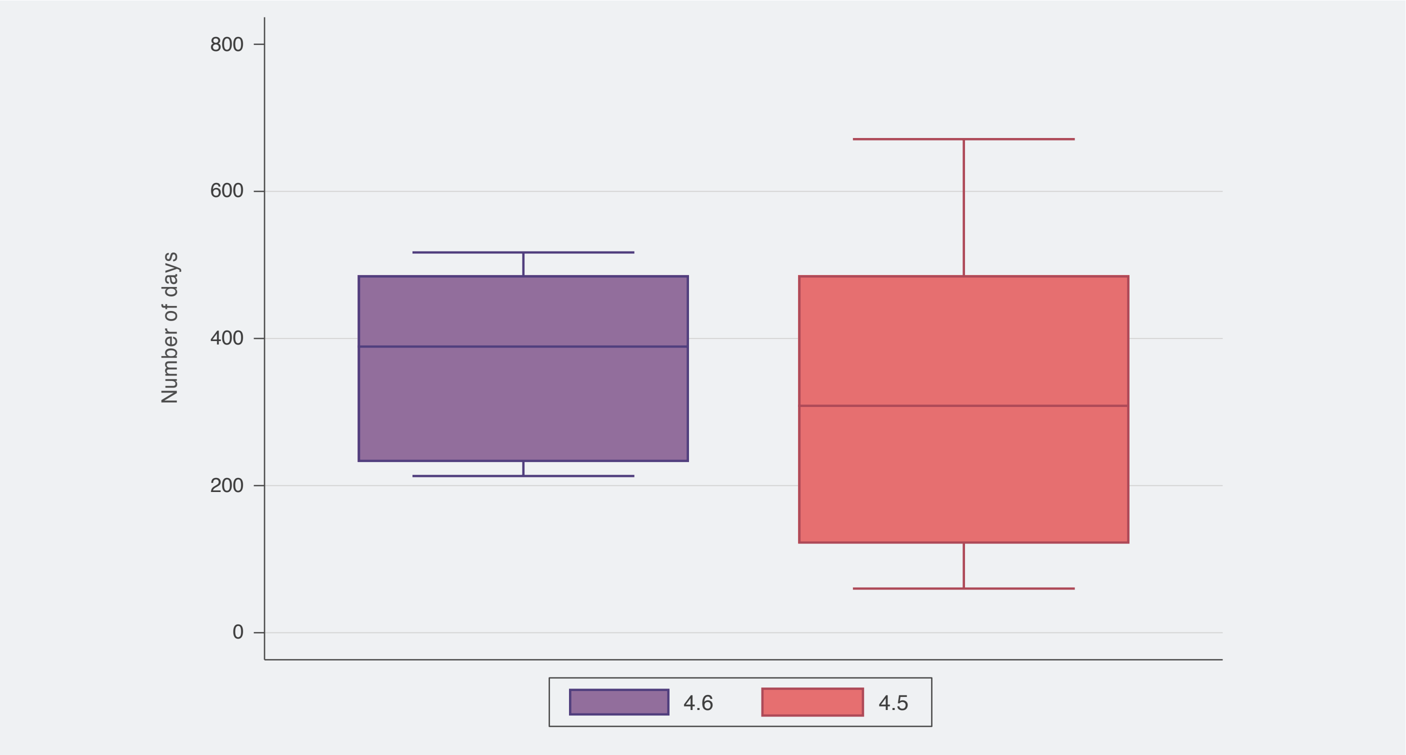
Source: World Bank-INSOL-IAIR Survey.

3.5 VOLUNTARY BANKRUPTCY INITIATION

The median duration of voluntary bankruptcy initiation measures was the second shortest among all types of insolvency and insolvency-related emergency measures. As previously discussed, the survey posed questions about measures that: (a) suspended directors' duty to initiate insolvency procedures; and/or (b) relaxed wrongful trading provisions. When these measures were introduced, they contained an expiration date in at least 86 percent of cases. Figure 20 shows the duration distribution of voluntary bankruptcy initiation measures for economies where an expiration date was included.[69] The measure suspending directors' duty to initiate insolvency procedures had the longest median duration: close to 400 days. Yet the longest recorded duration (671 days) came from a measure relaxing wrongful trading provisions.

69 Some observations were lost due to data availability.

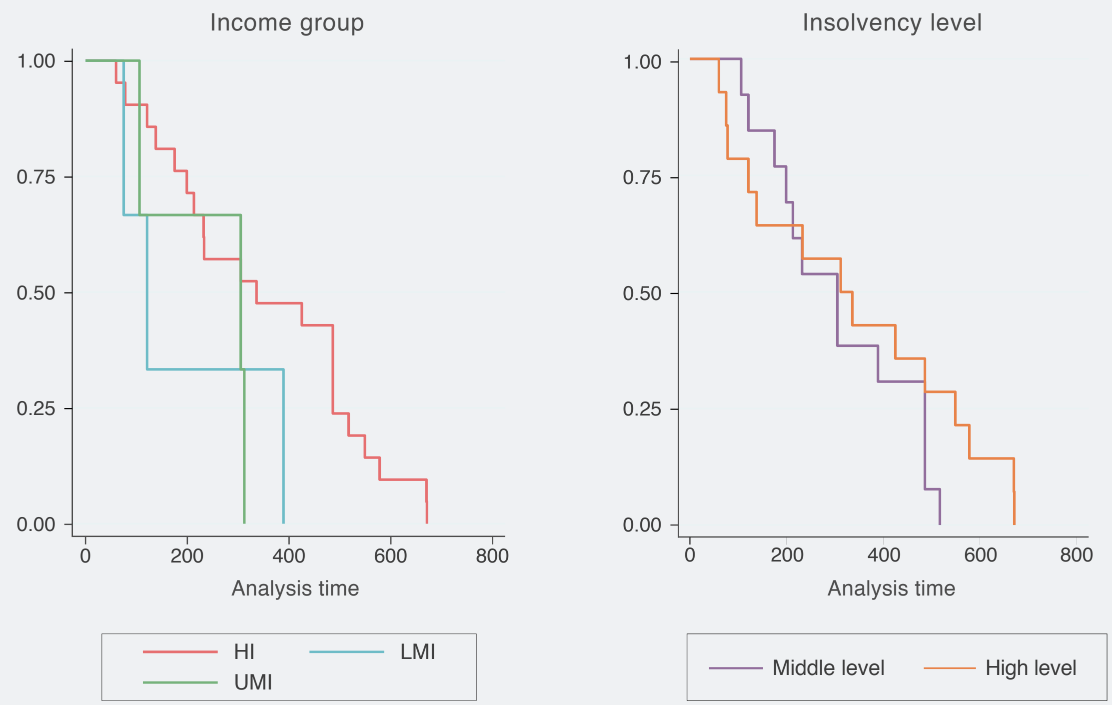
Figure 20. Duration Distribution of Voluntary Bankruptcy Initiation Measure, by Specific Measure



Source: World Bank-INSOL-IAIR Survey.

Voluntary bankruptcy initiation measures (i.e., those aiming to prevent pushing debtors into bankruptcy) tended to be longer in high-income countries. After 305 days (i.e., December 31, 2020) the model estimates that the probability of a voluntary bankruptcy initiation measure's survival (i.e., the measure remains in place) was at 0.5, while after 450 days have passed (May 25, 2021), the probability of a debtor initiation measure's survival was just 0.25. Focusing on survival rates by countries' per capita income level (Figure 21), we observed higher survival rates for countries in the high-income and upper-middle-income brackets. In addition, and after the first 200 days had passed, survival rates tended to be higher for countries with more robust insolvency systems. Together these results suggest that countries with higher incomes have exercised further caution to avoid pushing firms into bankruptcy prematurely.

Figure 21. Kaplan-Meier Survival Estimates for Voluntary Bankruptcy Initiation Measures, by Income Level and by Recovery Rate



World Bank income group levels classifications are based on GNI per capita in current USD.
LI = low income; LMI = lower-middle income; UMI = upper-middle income; and HI = high income.
Insolvency levels are based on Doing Business 2020 creditor recovery rate measures (cents on the dollar).
Low level ≤ 40; 40 > Middle level ≤ 70; and High level > 70.

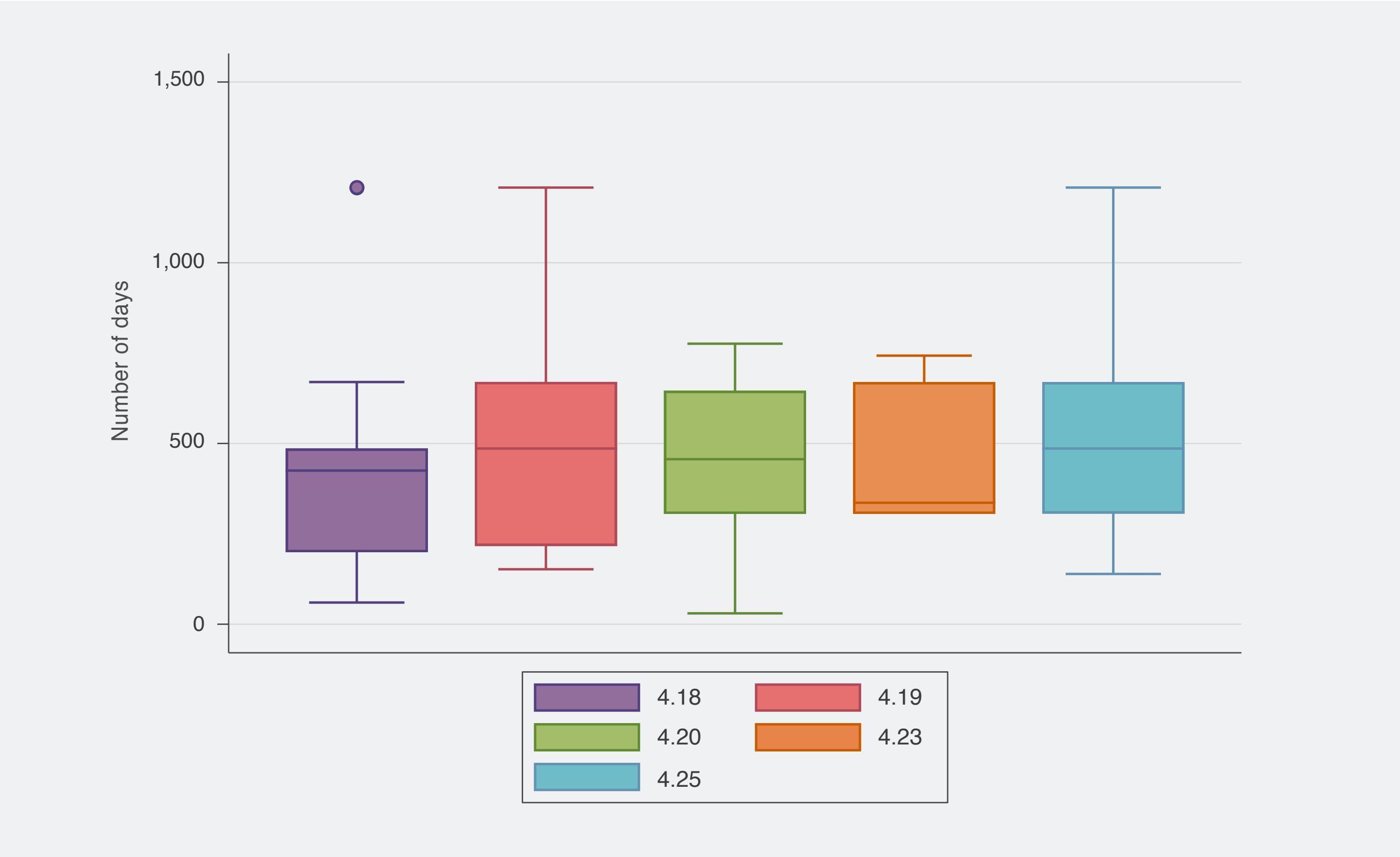
Source: World Bank-INSOL-IAIR Survey.

3.6 FUNCTIONING OF INSOLVENCY PROCEEDINGS

The mean duration of measures to ease the functioning of insolvency proceedings during COVID-19 was the second longest of any insolvency or insolvency-related emergency measures, by type. As noted above, the survey asked about emergency measures that: (a) extended insolvency procedural deadlines for a limited period of time during COVID-19; (b) suspended the requirement to proceed to liquidation if the business activity of the debtor has stopped while undergoing reorganization during COVID-19; (c) encouraged the use of virtual means (e.g., e-filings, virtual court hearings) for insolvency cases; (d) amended avoidance action rules during COVID-19; and/or (e) suspended rules on subordinating loans by corporate insiders during COVID-19. When these measures were introduced, jurisdictions included an expiration date in 58 percent of cases. Most measures without an expiration date came from interventions encouraging the use of virtual means for insolvency cases: only 31 percent included an expiration date. This result signals a welcome willingness to keep this technological innovation into the future.[70] The mean duration of measures easing the functioning of insolvency proceedings during COVID-19 was 456 days (the maximum duration was 1,208 days). Figure 22 shows the duration distribution for different type of measures.[71] Interestingly, the rules with the longest median duration were those suspending the requirement to proceed to liquidation if the business activity of the debtor has stopped while undergoing reorganization and those suspending rules on subordinating loans by corporate insiders during COVID-19.

70 If this type of measure was excluded, 83 percent of measures in the "functioning of insolvency proceedings category" included an expiration date. This result aligns with the numbers seen in other categories of measures.
71 Some observations were lost due to data availability.

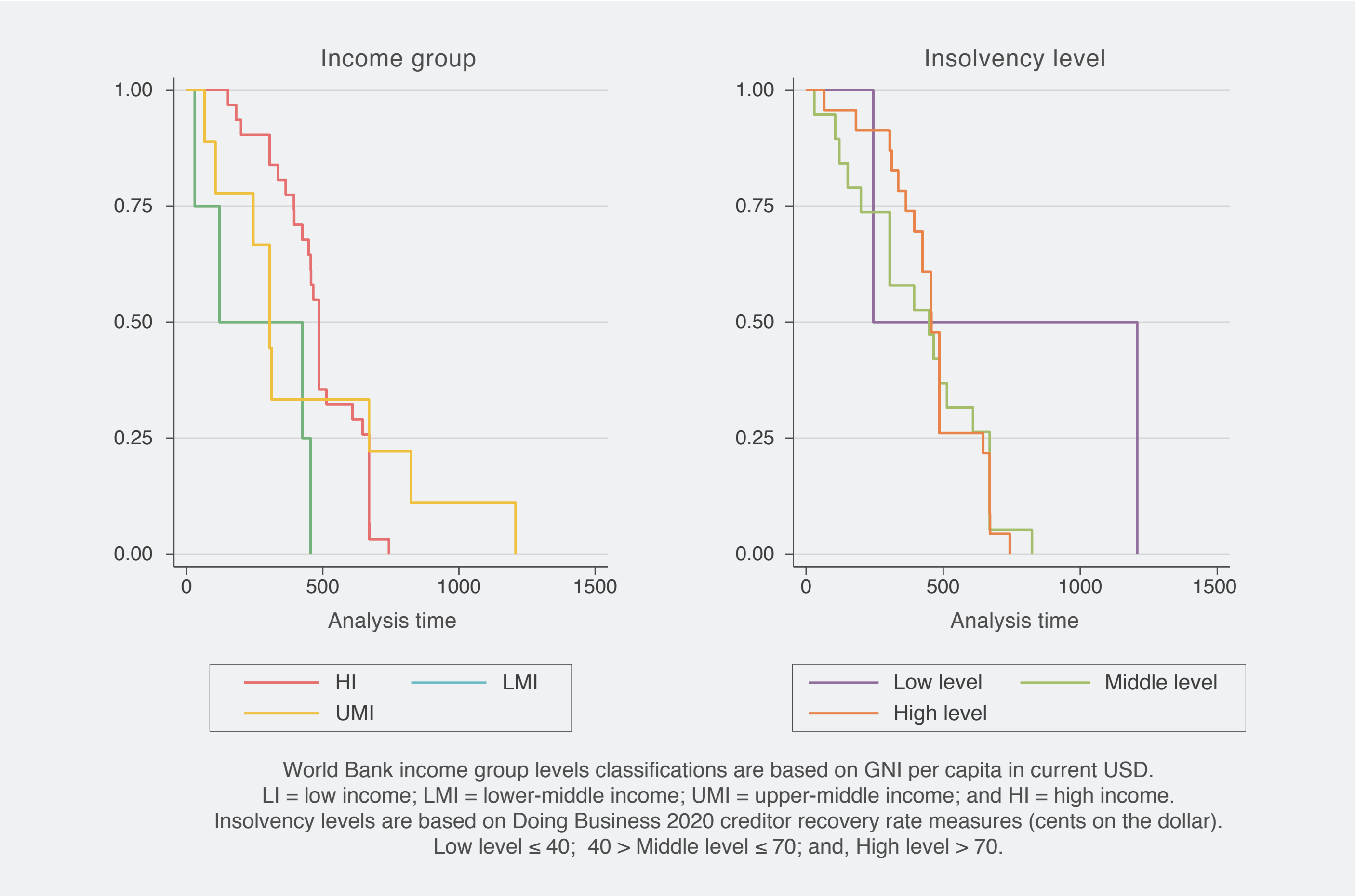
Figure 22. Duration Distribution of Measures on the Functioning of Insolvency Proceedings, by Specific Measure



Source: World Bank-INSOL-IAIR Survey.

Measures on the functioning of insolvency proceedings during COVID-19 tended to last longest for countries in higher income brackets. The model estimates that the probability of survival of measures on the functioning of insolvency proceedings during COVID-19 (i.e., the measure remains in place) was at 0.5 at just under 456 days after March 1, 2020 (i.e., May 31, 2021). In turn, at 646 days after March 1, 2020 (i.e., December 7, 2021), the probability of measure survival drops to 0.25. Focusing on survival rates by countries' per capita income level (Figure 23), survival rates tended to be higher for countries in high- or upper-middle-income categories.

Figure 23. Kaplan-Meier Survival Estimates for Measures on the Functioning of Insolvency Proceedings, by Income Level and by Recovery Rate

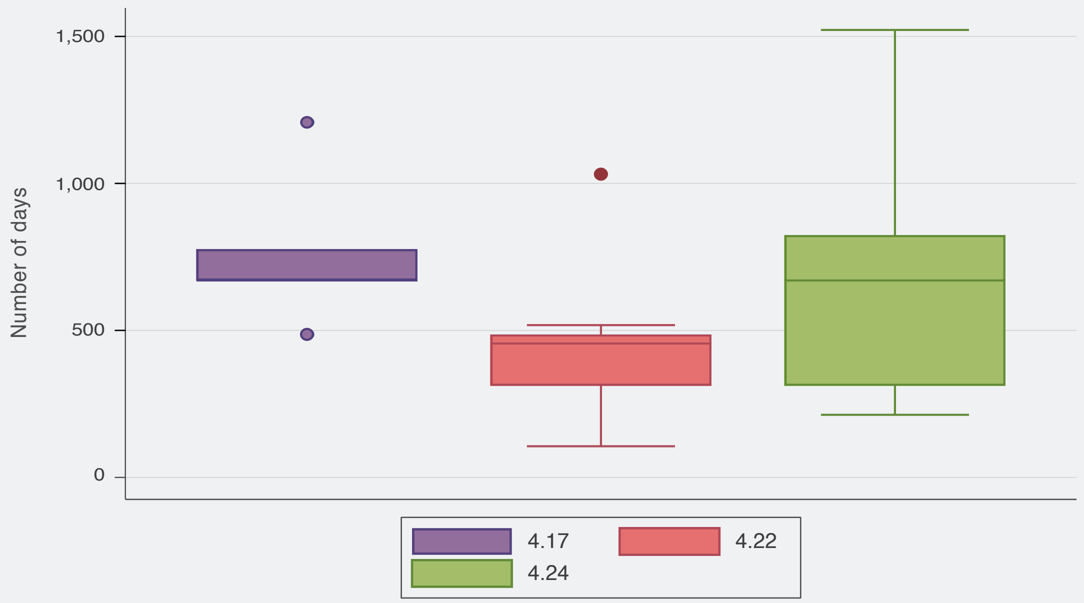


Source: World Bank-INSOL-IAIR Survey.

3.7 FACILITATING RECOVERY THROUGH BANKRUPTCY

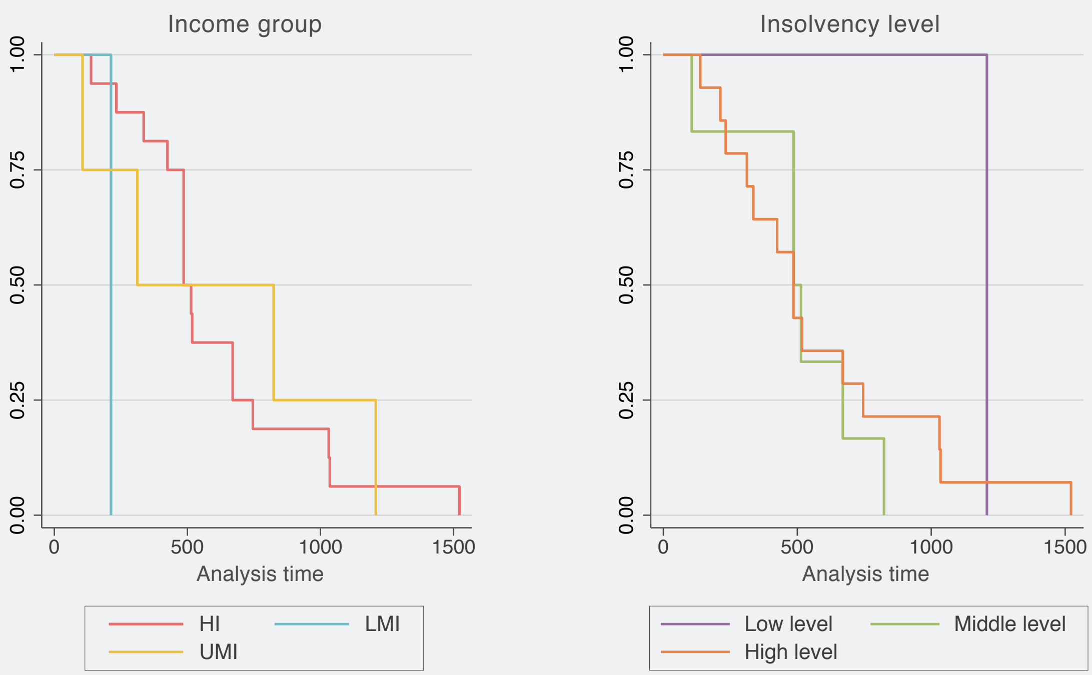
For completeness, this section reports on the duration and survival rates of measures facilitating recovery through bankruptcy. In the previous subsections, the emphasis of the analysis was on measure duration and drawdown as a way to prevent petrifying suboptimal bankruptcy provisions meant only as crisis tools (see Figures 24 and 25). The measures covered in this subsection, on the contrary, seek to be forward-looking and to facilitate recovery. It is perhaps unsurprising that this category of measures had the longest average duration of all the types: 593 days. This group also had the measure with the maximum duration: 1,522 days.

Figure 24. Duration Distribution of Measures Facilitating Recovery Through Bankruptcy, by Specific Measure



Source: World Bank-INSOL-IAIR Survey.

Figure 25. Kaplan-Meier Survival Estimates for Measures Facilitating Recovery Through Bankruptcy, by Income Level and by Recovery Rate



World Bank income group levels classifications are based on GNI per capita in current USD.
LI = low income; LMI = lower-middle income; UMI = upper-middle income; and HI = high income.
Insolvency levels are based on Doing Business 2020 creditor recovery rate measures (cents on the dollar).
Low level ≤ 40; 40 > Middle level ≤ 70; and, High level > 70.

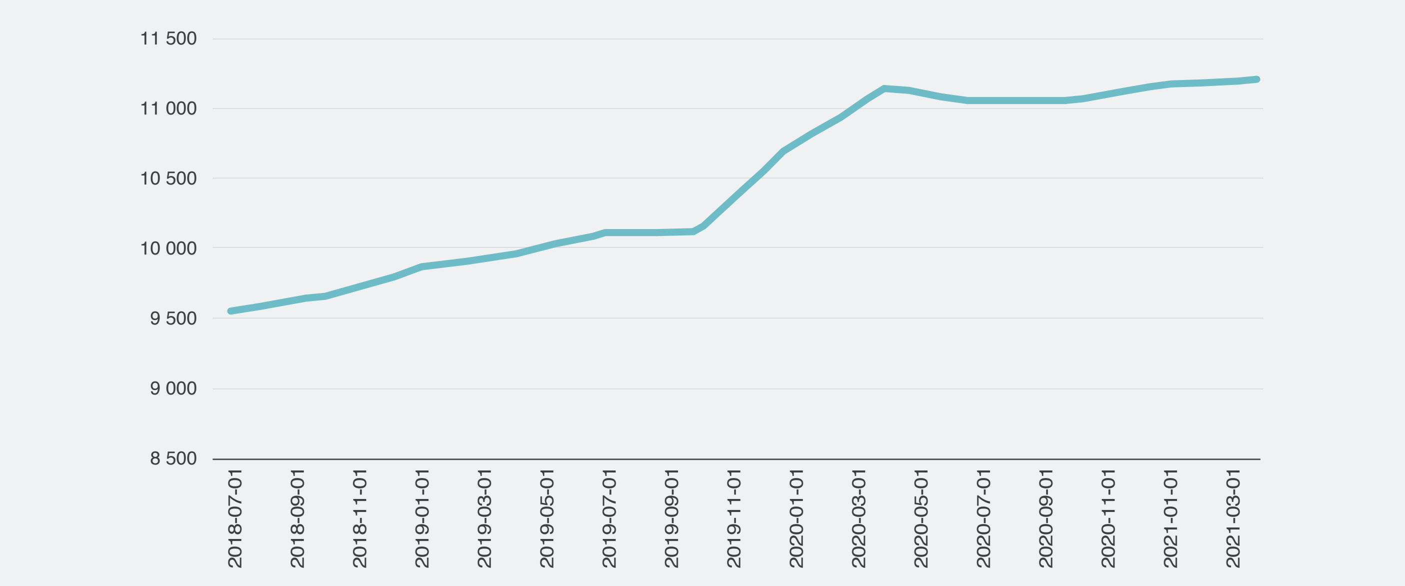
Source: World Bank-INSOL-IAIR Survey.

Taken together, the reported duration estimates show a healthy emphasis on measure drawdown, although a challenge remains with emergency measures without expiration. By day 670 from the start of the pandemic (i.e., December 31, 2021), the probability that the functioning of insolvency proceedings during COVID-19 measures would still be effective was just 10 percent. Similarly, by day 640 from the start of the pandemic (i.e., by December 1, 2021), the likelihood that involuntary bankruptcy initiation measures would still be valid would have reduced to 10 percent. The remaining insolvency crisis intervention tools had even shorter survival curves. At the same time, approximately 15 percent of all emergency measures—excluding measures encouraging the use of virtual means for insolvency cases—did not carry an expiration date more than one year after the initiation of the pandemic. Working to avoid petrifying insolvency rules only meant for a specific and unique crisis will be part of the challenge ahead in many economies.

4. Effects of wind-down

The anticipated wave of business insolvencies appears not to have arisen as yet, but it is too early to say if the risk has abated. Inflation is rising in most countries globally,[72] and there is substantial uncertainty about whether it will be short term or endemic.[73] In the United States, for example, the Consumer Price Index is at its highest level since 2008.[74] The Producer Price Index, which reflects the costs of inputs for businesses and is therefore most relevant for business distress, has risen substantially, with costs as of October 2021 rising 8.6 percent on the previous year.[75] This presents a substantial challenge at the margins of businesses that, on aggregate, took on substantial extra debt in the 2020 to mitigate the COVID-19 demand slump. (Figure 26 shows the sharp rise in US business debt in the first two quarters of 2020.) Moreover, global government debt has also increased to new record levels, adding significant pressure on firms in developing economies.[76]

Figure 26. Nonfinancial Corporate Business; Debt Securities and Loans; Liability, Level, Billions of Dollars, Quarterly, Seasonally Adjusted



Source: Data from the St. Louis Federal Reserve.[77]

72 See quarterly and monthly data at Jongrim Ha, M. Ayhan Kose, and Franziska Ohnsorge, "One-Stop Source: A Global Database of Inflation." Policy Research Working Paper 9737 (Washington, DC: World Bank, 2021), https://www.worldbank.org/en/research/brief/inflation-database.
73 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3881502.
74 US Bureau of Labor Statistics, https://www.bls.gov/cpi/.
75 US Bureau of Labor Statistics, https://www.bls.gov/news.release/ppi.nr0.htm.
76 See Ayhan Kose, Franziska Ohnsorge, and Naotaka Sugawara, "A Mountain of Debt: Navigating the Legacy of the Pandemic," https://documents1.worldbank.org/curated/en/258761633705709997/pdf/A-Mountain-of-Debt-Navigating-the-Legacy-of-the-Pandemic.pdf.
77 Data from St. Louis Federal Reserve; see https://fred.stlouisfed.org/series/BCNSDODNS.

The longer-term effects of the pandemic are even more difficult to predict. The IMF's most recent Economic Outlook forecasts that recovery will be grossly uneven, with output in the developed countries returning to pre-pandemic trends in 2022 but remaining well below trend for emerging markets and developing economies until 2025.[78] This forecast is tempered by the new challenges still unfolding in real time that may affect any recovery path. These challenges include new variants of the COVID-19 virus, vaccine accessibility, supply-chain disruptions, and increasing interest rates in many countries.

There is also the possibility that the pandemic will leave long-term effects that will never reverse. These will only be seen with time, but the possibility is that consumer patterns, mobility, migration from cities to suburbs, and reliance on technology could permanently change. Another possible long-term effect is that many firms will emerge from the crisis badly scarred.[79] Insolvency regimes therefore need to deploy a full spectrum of tools for firms of varying sizes and at different levels of financial distress, geared to either restructure and quickly recover or, alternatively, exit the market to free resources for new market entrants. In particular, the following initiatives should be considered:

1. **Strengthen formal insolvency frameworks.** This includes capacity building for courts, insolvency practitioners, and regulators, as well as law reforms that facilitate timely resolution of bankruptcy proceedings and higher creditor recovery and enshrine transparent rights and priority rules. These steps matter because the underlying legal framework for insolvency has spillover effects for the development of informal workout tools, and other mechanisms to ease high NPL levels, because these frameworks operate in "the shadow of the law."[80]

2. **Develop informal workout tools.** Our analysis from previous crises shows the importance of informal workout tools with minimal or very specific reliance on the courts. Workout solutions can take some pressure off court systems and facilitate more efficient resolution of debtor distress. A variety of frameworks with varying degrees of formality, court, or regulator involvement exist.[81] Recent experience of the operation of corporate workout regimes around the world demonstrates that they must appropriately account for domestic considerations, including a jurisdiction's institutional and regulatory framework and more intangible aspects, such as the existing credit culture.[82]

3. **Develop electronic platforms to facilitate insolvency processes.** Online dispute resolution is an emerging phenomenon that holds great potential to lower the costs and increase the accessibility of insolvency processes. Online integration of early warning tools, typically embedded in the preventive restructuring framework, also has the potential to focus attention on resolving debtor distress at an early stage, such that resorting to the formal insolvency systems is retained for more complex cases or when debtor distress is at a much higher level.[83] The COVID-19 pandemic required many jurisdictions to increase their online capacity and focus on emerging technologies,[84] and it is hoped that lessons learned from this effort will build momentum for making such arrangements permanent and for building on them in the insolvency space.

78 https://www.imf.org/en/Publications/WEO/Issues/2021/10/12/world-economic-outlook-october-2021.
79 https://www.europarl.europa.eu/cmsdata/230723/Topic%202%20binder.pdf.
80 World Bank, "Principles and Guidelines for Effective Insolvency and Creditor Rights Systems" (2021).
81 For a detailed analysis of which informal workout tools are most appropriate in which contexts, see Menezes and Gropper, "Overview of Insolvency and Debt Restructuring Reforms in Response to the COVID-19 Pandemic and Past Financial Crises" (Annexure), https://elibrary.worldbank.org/doi/pdf/10.1596/35425
82 Menezes et al. (2022). "A Toolkit for Corporate Workouts" Washington, DC: World Bank Group.
83 A. Menezes, N. Mocheva, and S.S. Shankar (2020), "Under Pressure: Integrating Online Dispute Resolution Platforms into Preinsolvency Processes and Early Warning Tools to Save Distressed Small Businesses," Vikalpa 45 (2): 79–92, doi:10.1177/0256090920941813.
84 Such changes are cataloged in INSOL International's "Global Guide: Measures Adopted to Support Distressed Businesses through the COVID-19 Crisis," https://thedocs.worldbank.org/en/doc/194131592248086470-0090022020/original/globalguide.pdf.

4. **Facilitate alternative dispute resolution tools for the resolution of business distress wholly or partly outside of court.** Such tools, like mediation and arbitration, enhance the possibility of business restructuring in the face of financial distress. Pre-COVID, tools such as mediation were becoming more commonplace globally, and it is anticipated that this will continue.[85] The United Nations Convention on International Settlement Agreements Resulting from Mediation (dated September 12, 2020), which harmonizes the international approach taken to enforcing agreements reached in the course of mediation, and the 2019/1023 EU Restructuring Directive, which obliged EU member states to implement pre-insolvency restructuring schemes within which restructuring will occur at least in part outside of court, are likely to contribute to the evolution and promulgation of out-of-court resolution of business distress.

5. **Develop responses and procedures specific to MSEs.** The COVID-19 pandemic has caused widespread firm distress, especially among smaller enterprises. Most insolvency frameworks subject smaller firms to the same rules and processes as large companies. The complexity, length, and cost of using these frameworks present obstacles for MSEs. In these circumstances, insolvency can become "a luxury that many [MSEs] cannot afford."[86] Simpler legal processes, keeping debtors in control of their businesses when possible, and making fresh financing available are all reforms that could be usefully targeted at MSEs.

CONCLUSION

This chapter provided a global perspective on COVID-19 emergency measures that were related to or driven by insolvency. Specifically, it reports data arising from a joint survey conducted by the World Bank, INSOL International and IAIR, which examined the introduction, duration, and expiration of emergency insolvency and insolvency-related measures. It is hoped that by better understanding these measures and their wind-down, countries will be more prepared for the stage of recovering from the crisis. Although the long-term effects of the pandemic are uncertain, there is still the possibility of a high number of insolvencies in several regions once the emergency measures have wound down. Countries will also have to grapple with the problem of zombie firms clogging their markets. Longer-term reforms will be needed to ensure that a full array of in-court and out-of-court tools are available to ease firm distress and encourage market efficiency.

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85 N. Mocheva and A. Shah (2017), "Mediation in the Context of (Approaching) Insolvency: A Review on the Global Upswing," *Transnational Dispute Management* 14 (4): 1–12.

86 Aurelio Gurrea-Martínez, "Implementing an Insolvency Framework for Micro and Small Firms," Singapore Management University School of Law Research Paper, No. 21 (2020); https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3715654. The author analyzes MSMEs (including medium-size enterprises as well as micro and small enterprises), but the point applies to MSEs taken alone as well.

2

CHAPTER

CORPORATE DEBT RESTRUCTURING: COVID-19 RESPONSE MEASURES AND THE ROAD AHEAD

Antonia Menezes (World Bank) and Sergio Muro (World Bank)

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ASIA PACIFIC

1. Introduction

Local effects of the pandemic.
Throughout 2020 and 2021, COVID-19 had a significant impact on businesses—both larger entities and small enterprises—across a wide variety of industries in jurisdictions in the Asia Pacific region. This resulted primarily from various state-wide lockdowns implemented by local governments to control the spread of the disease. These lockdowns led to reduced demand for goods and services in many industries and inhibited entities' ability to continue trade and thus to continue employing their workers. More broadly, disruptions to global supply chains during the pandemic also adversely affected businesses' ability to source critical inputs required to sustain operations.

Reduced revenue and capital meant that many businesses faced the prospect of formal insolvency proceedings throughout the pandemic. However, various interim fiscal support and insolvency law measures introduced by local governments enabled many distressed businesses to trade on and navigate the worst of the supply-and-demand shocks experienced.

Overview of changes to insolvency processes and other measures.

Across the surveyed countries in the Asia Pacific region, a broad range of temporary measures were introduced to help businesses survive the impact of COVID-19. These measures included increases in minimum debt thresholds for creditors to initiate insolvency proceedings; limits on the ability to file winding-up applications; increases in the period for debtors to respond to repayment demands; relaxation of directors' duties; and suspension of creditors' enforcement rights and employee protection and payment guarantees. Most of these measures, introduced on a temporary basis and extended for some time, have since been lifted.

More flexible insolvency and restructuring processes were also introduced in some jurisdictions on a permanent basis, and improvements were also made to out-of-court restructuring frameworks. In addition, COVID-19 sparked digital changes and innovation in court processes, many of which are now expected to become permanent features in the management of insolvency and restructuring proceedings in the future.

2. Temporary insolvency-related legal and regulatory measures

2.1 INITIATING INSOLVENCY PROCEEDINGS

Introduced minimum debt requirements for creditors to initiate insolvency procedures.

None of the surveyed countries introduced for the first time minimum debt requirements for creditors to initiate insolvency procedures against debtors during COVID-19. However, as noted below, some countries temporarily increased existing minimum debt requirements during the pandemic.

Raised minimum debt requirements for creditors to initiate insolvency procedures.

Australia, India, Malaysia, and Singapore temporarily raised minimum debt requirements for creditors to initiate insolvency procedures against debtors during COVID-19. The temporary measures in Australia, Malaysia, and Singapore stipulated an original expiration date around the end of 2020, but the measures were later extended. No expiration date was set for increased minimum debt requirements in India.

Measures suspending specific creditors' rights to initiate insolvency procedures.

Of the countries surveyed, only India, Kazakhstan, New Zealand, and Singapore introduced measures suspending specific creditors' rights to initiate insolvency proceedings. Each of these measures was due to expire or did expire around the third or last quarter of 2020, though India and New Zealand extended these measures into 2021.

Measures increasing response timelines for debtors facing petitions to initiate insolvency procedures.

Australia, Malaysia, and Singapore introduced measures increasing the response timelines for debtors facing applications or petitions to initiate insolvency measures. These measures expired around the end of 2020 and were not extended into 2021.

Suspending directors' duty to initiate insolvency procedures or right to initiate proceedings.

Only New Zealand introduced measures suspending the duty of directors to initiate insolvency procedures or their right to initiate proceedings. The absence of such a suspension in other jurisdictions might be due to the lack of an express statutory duty on the part of directors in the first place.

2.2 MEASURES RELATING TO DIRECTORS' DUTIES

Measures relaxing wrongful trading provisions during COVID-19.

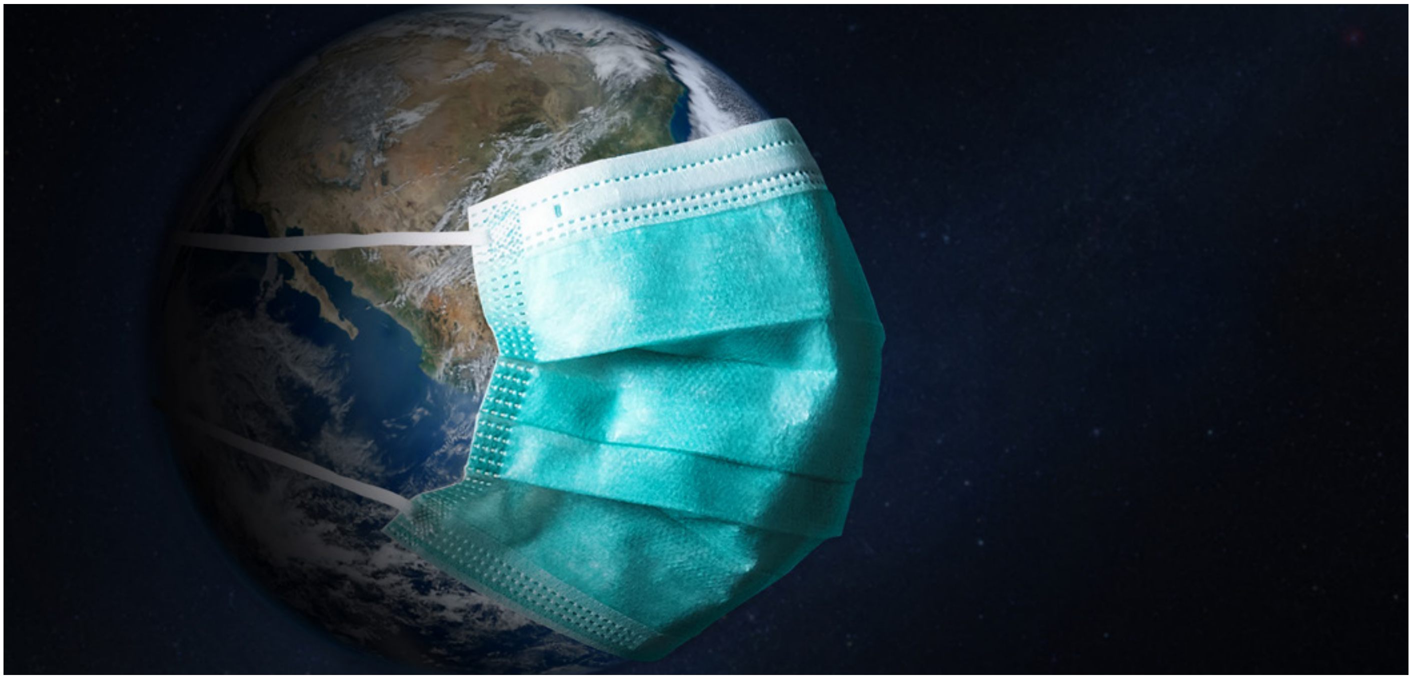
Australia, India, New Zealand, and Singapore introduced measures relaxing wrongful trading provisions during COVID-19. In New Zealand and Singapore, these measures expired by around the third quarter of 2020. In Australia and India, they were extended until the end of 2020 and the end of the first quarter of 2021, respectively.

2.3 MEASURES RELATING TO VOIDABLE TRANSACTIONS / AVOIDANCE ACTIONS

Of the countries surveyed, only New Zealand amended its avoidance action rules during COVID-19.

2.4 SUSPENSION OF RULES SUBORDINATING LOANS PROVIDED BY CORPORATE INSIDERS TO ENCOURAGE NEW FINANCING

None of the countries in the Asia Pacific region surveyed suspended rules subordinating loans provided by corporate insiders to encourage new financing during COVID-19.



3. Other temporary relief: Debtors and employees

3.1 EXTENDING REPAYMENT TERMS

Out of the countries surveyed, a majority introduced measures extending the repayment terms of loans during COVID-19, including Cambodia, China, Hong Kong Special Administrative Region of China (Hong Kong), Kazakhstan, Malaysia, Myanmar, New Zealand, Pakistan, the Philippines, Singapore, South Korea, Sri Lanka, and Vietnam. Most of those measures were extended beyond the original expiration date.

By way of example, in Hong Kong, the Hong Kong Monetary Authority introduced a Pre-Approved Principal Payment Holiday Scheme (Scheme), which took effect in May 2020. Under the Scheme, all principal payments of loans made available by 11 participant banks to corporate customers could be deferred. The Scheme was originally due to expire in November 2020, but considering the wide participation by banks and corporate customers, it was later extended until April 2022.

In Singapore, under the COVID-19 (Temporary Measures) Act 2020, a moratorium was imposed to cover loans such as secured facilities for SMEs and hire-purchase agreements, with the aim of providing temporary relief to parties unable to perform contractual obligations because of COVID-19. In addition to the suspension of repayment under the moratorium, additional acts, including the increase of charges or interest, were also prohibited, effective from May 2020. These industry-wide support measures were extended to September 30, 2021, and December 31, 2021, depending on the scheme applied by the SME, but the Monetary Authority of Singapore has indicated that this will be the final extension of such measures.

3.2 SUSPENDING INTEREST ACCRUALS

Cambodia, China, Kazakhstan, Malaysia, the Philippines, Singapore, Tajikistan, and Vietnam introduced measures suspending interest accruals during COVID-19.

3.3 SUSPENDING DEBT-SERVICING OBLIGATIONS

Cambodia, China, Hong Kong, Malaysia, Myanmar, New Zealand, Pakistan, the Philippines, Singapore, South Korea, Sri Lanka, and Vietnam put in place measures suspending periodic debt service payment obligations during COVID-19.

3.4 SUSPENDING UNILATERAL TERMINATION OF CONTRACTUAL AGREEMENTS

Of the surveyed countries, only Cambodia, Malaysia, and Singapore introduced such measures suspending unilateral termination of contractual agreements.

3.5 PROHIBITING ACCELERATION OF CONTRACTUAL TERMS

Of the surveyed countries, only Malaysia, and Singapore introduced measures prohibiting the acceleration of contractual terms during COVID-19.

3.6 ELIMINATING CERTAIN INTEREST AND PENALTY AMOUNTS

Based on the countries surveyed, Cambodia, Myanmar, India, the Philippines, Singapore, Sri Lanka, and Tajikistan introduced measures eliminating certain interest and penalties during COVID-19.

3.7 BANNING THE REPOSSESSION OF PROPERTY

Malaysia and Singapore put in place measures banning the repossession of property during COVID-19. In the case of Singapore, this was introduced as part of the COVID-19 (Temporary Measures) Act 2020, and the ban extended to preventing the repossession of goods under any chattel-leasing agreement, hire-purchase agreement, or retention of title agreement where the goods were used for business purposes.

3.8 SUSPENDING EXECUTION PROCEEDINGS

Of the surveyed countries, Cambodia, Japan, the Philippines, Singapore, and Vietnam introduced measures suspending execution proceedings during COVID-19. For example, in Singapore, there was a moratorium against the commencement or levying of execution, distress, or other legal process against any property, except with the leave of court and subject to such terms as imposed by the court.

3.9 SUSPENSION OF AUCTIONS

Auctions were suspended in Japan, the Philippines, and Singapore during COVID-19.

3.10 MEASURES TO PROTECT EMPLOYEES

A number of the surveyed countries introduced measures to enhance employee-related rights and entitlements during COVID-19, including Australia, Cambodia, China, India, Indonesia, Pakistan, the Philippines, and Singapore. For example, in India, the Central Government issued advisories or directions in the form of an appeal to employers to continue timely payment of wages and not to dismiss employees. In many of the other jurisdictions listed above, financial assistance was available for certain affected employees.

4. Courts and procedural matters

4.1 SUSPENDED NON-URGENT COURT CIVIL PROCEEDINGS

Of the surveyed countries, Cambodia, Hong Kong, India, Japan, the Philippines, Singapore, and Vietnam suspended non-urgent court civil proceedings for various periods from March 2020, until as late as April 2021 in the case of Cambodia and the Philippines.

4.2 EXTENDING INSOLVENCY PROCEDURAL DEADLINES DURING LIQUIDATION, REORGANIZATION, AND OTHER FORMAL INSOLVENCY PROCESSES

Of the surveyed countries, only Malaysia, the Philippines, and Singapore introduced measures extending insolvency procedural deadlines for a period of time during COVID-19.

4.3 MEASURES SUSPENDING THE REQUIREMENT TO PROCEED TO LIQUIDATION IF BUSINESS ACTIVITY CEASES DURING A REORGANIZATION

Of the surveyed countries, only New Zealand introduced measures of this kind. They were originally due to expire on December 24, 2020, before being extended to October 31, 2021.

4.4 DIGITAL AND TECHNOLOGICAL CHANGES OCCURRING IN THE COURTS

Around two-thirds of the surveyed countries reported digital and technological changes occurring in the courts during COVID-19, for example, in Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, and Vietnam. In most of those cases, adoption of those changes had no expiration date, which indicates that COVID-19 may have sparked longer-term, more enduring improvements in efficiency, time and cost savings in the court process.

5. Permanent insolvency-related measures that were introduced

5.1 CHANGES IN FORMAL INSOLVENCY PROCEEDINGS AND THE TYPES OF ENTITIES

More flexible or simpler formal restructuring processes. Of the surveyed countries, Australia, China, and Singapore reported changes to effect more flexible or simpler insolvency processes.

In the cases of Australia and Singapore, these processes were limited to MSMEs (discussed below).

In China's case, on May 15, 2020, the Supreme People's Court issued Guiding Opinions on Several Issues of Properly Hearing Civil Cases Concerning the COVID-19 Pandemic (Guiding Opinions), and many of the Articles in the Guiding Opinions relate to bankruptcy. For example, courts are instructed not to place companies in financial distress into bankruptcy proceedings if the source of that distress can be tied to the economic and financial impact of the pandemic (Article 18). Further, courts are instructed to actively guide and support a manager or debtor to continue a debtor's business if it is viable, rather than prematurely shutting down (Article 22).

Standalone new procedures exclusively for MSMEs. Australia (which adopted new restructuring and liquidation options) and India (which adopted a simplified "pre-pack" process) reported the introduction of new standalone insolvency processes specifically for the use of MSMEs. In each case, the new measures are permanent, and there is no end date.

In Australia, effective from January 1, 2021, a new small business restructuring (SBR) process was introduced for small businesses with outstanding debts of less than $A1 million. There is also now a streamlined liquidation process for those entities. The SBR process enables directors to appoint a small business restructuring practitioner and develop a restructuring plan to offer to creditors.

Singapore also introduced new insolvency processes for MSMEs. With effect from January 29, 2021, a six-month trial period for a new simplified insolvency program (SIP) commenced. This has now been extended until July 28, 2022. The SIP consists of both a simplified debt-restructuring program and a simplified winding-up program for eligible micro and small companies (those with annual revenue of less than S$1 million and less than S$10 million, respectively). The simplified debt-restructuring program is monitored by a restructuring advisor and dispenses with many of the usual reorganization processes.

5.2 MEASURES TO STRENGTHEN INFORMAL OR OUT-OF-COURT WORKOUT FRAMEWORKS

Only China and Japan reported introducing informal or out-of-court workout framework measures. In China, under Article 18 of the Guiding Opinions, courts are instructed to help a distressed debtor resolve its debt problems through out-of-court mediation, out-of-court reorganization, and pre-reorganization to achieve an early resolution without the use of formal bankruptcy processes.

EUROPE, THE MIDDLE EAST, AND AFRICA

1. Introduction

This section provides an overview of the variety of measures adopted in Europe, the Middle East, and Africa (EMEA) in response to the COVID-19 pandemic and assesses their impact on corporate debt-restructuring frameworks throughout the region. With more than 100 jurisdictions encompassing EMEA,[87] this section cannot provide an exhaustive overview of—or comparison between—all initiatives taken in the region; rather, it aims to provide a data-driven analysis and outline of the spectrum of steps taken to better equip businesses to deal with the pandemic's immediate consequences, as well as the more structural changes and permanent reforms made in its wake.[88]

The next few paragraphs provide an overview of the effects of the pandemic in the EMEA region, and the approaches taken to minimize the impact on businesses, after which we discuss several of the concrete measures adopted throughout the region in response to the financial challenges presented by COVID-19. First, we will identify and discuss several categories of temporary measures directly related to insolvency proceedings and the manner in which court protocols and procedural frameworks were adjusted to the limitations presented by a pandemic-struck society (section 2). Second, other temporary relief measures are considered that may not directly relate to insolvency proceedings as such, but rather aim to *prevent* businesses from being pushed into insolvency by the pandemic in the first place. Finally, several permanent insolvency regime reforms that were passed either during or because of the pandemic are discussed.

1.1 OVERVIEW OF EMEA DEVELOPMENTS IN THE WAKE OF COVID-19

Across the EMEA region, the pandemic was most apparent during three to four waves of cases over approximately 19 months from February 2020 to September 2021. All European and several Middle Eastern and African jurisdictions went into a government-ordered lockdown at some point during that period, which particularly affected certain sectors throughout the region, most directly the travel, hospitality, and leisure sectors. Sectors indirectly affected by the sudden collapse in demand and disruptions to the supply chain included the oil industry, as well as the trade and commerce industry more generally. In several countries, retailers were forced to close for prolonged periods of time, causing a wide ripple effect throughout the market, while school closures in Africa had a similar impact on the education sector and the local economy surrounding it. MSMEs were generally hit harder by the pandemic than were larger firms, with MSMEs particularly being severely affected due to a decline in domestic demand and disruptions in the supply of raw materials.

Meanwhile, some sectors also emerged triumphant, such as online retailers, whose patterns of growth generally accelerated throughout the pandemic, as well as other retailers that benefited from the extra budget available to many consumers and were considerably less affected by the lockdown measures in place. (In Europe, these included grocery shops, do-it-yourself merchants and building supply providers, and manufacturers of home gym equipment; in Africa, the telecom operators were clear winners.)

Despite these lockdown measures, and contrary to the expectations of most commentators at the onset of the crisis, the pandemic saw a clear overall decline in the number of business insolvencies in Europe, starting in the second quarter of 2020.[89] This decline can largely be attributed to swift government responses in the vast majority of European jurisdictions, including the

87 It is noted that there are vast economic, cultural, political, and legal differences between the regions making up EMEA, which to a large extent were amplified by the pandemic. Any observations or generalizations made in this chapter are therefore subject to such reservations.

88 The data relied on in this chapter is based on a survey and questionnaire on the impact of COVID-19 on corporate debt restructuring conducted by INSOL International among 18 jurisdictions in Africa, 40 jurisdictions in Europe, and four jurisdictions in the Middle East.

89 Although the number of business insolvencies increased somewhat between the third quarter of 2020 and the first quarter of 2021 after a sharp decline in the second quarter of 2020, the overall number of bankruptcy declarations remained low compared to pre-COVID-19 levels and appeared to be decreasing again in the second and third quarters of 2021. See https://ec.europa.eu/eurostat/web/products-eurostat-news/-/ddn-20211117-1.

introduction of temporary support measures aimed at compensating business owners for sudden and often complete loss of income.[90] In Africa and the Middle East, the pandemic was not immediately reflected in the number of bankruptcies. While the number of bankruptcies in both regions generally remained low, despite the challenges presented by COVID-19, in these areas there is generally a more pronounced cultural bias against businesses making use of formal insolvency proceedings, and therefore the link between support measures and a decline in bankruptcies is less apparent than in Europe.

The pandemic clearly illustrated that successful emergency remedies and measures adopted in response were often quickly copied across each region. At the same time, it also became clear that governments are dependent on their own political, economic, and cultural dynamics. Significant differences, even between neighboring countries with similar legal systems, were not an exception. Supranational bodies, such as the African Union, the European Union (EU), and the Gulf Cooperation Council, did not prove instrumental in encouraging or causing the adoption of unified COVID-19 relief. However, recent permanent insolvency regime reforms in Europe had common features resulting from EU harmonization efforts.

2. Temporary measures relating to insolvency proceedings and court protocol

OVERVIEW

Generally, a broad range of temporary relief measures relating to insolvency proceedings and court protocols were adopted throughout Europe. The proliferation of these measures, however, differed starkly between countries within Europe, even those in the same region with similar legal systems. Austria, Germany, Malta, and Slovenia, for example, all adopted a significant number of temporary measures directly related to insolvency proceedings, while Scandinavian countries, Albania, Greece, and Serbia brought in very few such measures or none at all.

In Africa and the Middle East, such initiatives were less common because the local culture and infrastructure are less focused on corporate bankruptcy and provide less detailed tools, although the United Arab Emirates made more permanent amendments to its insolvency regime for businesses affected by the pandemic, as will be discussed further below (see section 5). In African jurisdictions, virtually no temporary insolvency-related measures were adopted, and the focus was instead on broad policy and fiscal and administrative support measures, such as government assistance for MSMEs and debt repayment measures, as described in section.

The insolvency-related measures adopted in Europe are discussed below. While many of these measures were extended as the pandemic progressed, they are generally being run down or concluded as lockdown measures are eased or lifted. Therefore, at the date of this writing, the effect of discontinuing these measures remains to be seen.

2.1 MEASURES RELATING TO THE INITIATION OF INSOLVENCY PROCEEDINGS

Measures relating to the initiation of insolvency proceedings played an important role in the initial response to COVID-19 in Europe, both by putting into place barriers to creditor-initiated insolvency proceedings and by relaxing directors' duties to file for insolvency. As most jurisdictions in the Middle East and Africa did not introduce such measures, the following remarks focus on measures adopted in Europe.

90 Based on the data of insolvency filings in 15 economies: S. Muro, "The Calm before Storm: Early Evidence on Business Insolvency Filings after the Onset of COVID-19" (Washington, DC: World Bank, 2020).

In particular, the temporary suspension of creditors' rights to initiate insolvency proceedings was widespread in Europe, with around half of the European jurisdictions adopting such measures in some form. In some European jurisdictions, such as France, Germany, and Italy, creditors were restricted from filing for their debtors' insolvency during the first wave of the pandemic only, while other jurisdictions, namely, Austria, Belgium, Spain, and the United Kingdom (UK), maintained such measures for a longer period, extending them well into 2021 or even 2022. While some jurisdictions implemented legislative and regulatory measures to impose such barriers to filing for insolvency, in other jurisdictions this was more of a practical consequence of court closures. For example, although jurisdictions like Bulgaria and Greece did not formally adopt measures restricting creditor-initiated insolvency proceedings as such, in practice creditors were unable to file for insolvency as a direct result of courts being closed in these jurisdictions for a certain period of time. In other countries, like Cyprus, practical barriers to filing for insolvency were achieved by the introduction of specific debt moratoria provisions and a corresponding prohibition to act against debtors to whom these debt moratoria applied.

At the same time, other temporary measures to restrict creditors from commencing insolvency proceedings proved less popular in Europe following the emergence of COVID-19, such as introducing or raising minimum debt or claim requirements as a barrier to initiating insolvency proceedings. Only four European jurisdictions with minimum debt or claim requirements already in place, namely Hungary,[91] Ireland,[92] Malta, and Romania,[93] raised these thresholds, although there was a marked difference between the relative increases adopted among these jurisdictions. Meanwhile, no countries in Europe *introduced* minimum debt requirements as a temporary relief measure to curtail a rise in insolvency proceedings. Moreover, many European countries extended the response timelines for debtors in insolvency proceedings.

Aside from the obvious relief provided by laws or measures that restrict creditors from taking action, governments across Europe acted swiftly to relax or remove business owners' and directors' duties to initiate insolvency proceedings (that may otherwise have arisen as a result of COVID-19-related lockdown measures and their effects). Most notably, more than half of the European jurisdictions introduced measures temporarily suspending directors' legal duties to initiate insolvency proceedings, while outside Europe very few countries adopted similar relaxations as part of their COVID-19 responses.[94] The scope of application of most of these European measures was dealt with flexibly in time and extended well into 2021, allowing directors more leeway to take effective action in the midst of the immediate financial issues arising from the chaos and uncertainty caused by the pandemic.

Jurisdictions in Europe that suspended directors' duties to file for insolvency proceedings largely overlap with the European jurisdictions that implemented the abovementioned barriers to creditor-initiated insolvency proceedings. In Austria, Belgium, Portugal, Spain, and the UK, such measures were implemented by means of either legislation or regulation. In Estonia and France, some of the restrictions imposed on creditor-initiated proceedings—corresponding to a general suspension of insolvency filings for a certain period of time—were considered barriers.

2.2 MEASURES RELATING TO DIRECTORS' DUTIES

Relatively few measures to ease directors' duties were implemented by relaxing wrongful trading provisions, particularly compared to common law jurisdictions globally,[95] with only two continental European countries, Germany and Malta, and one Middle Eastern country, the United Arab Emirates, adopting such provisions. In the Africa region, no such measure has been reported.

91 Despite the doubled minimum debt requirement to initiate liquidation proceedings, the threshold of 400,000 Hungarian forints (approximately €1,150) remains relatively low.
92 It is reported that the raised threshold from €10,000 to €50,000 applies to petitions for the winding-up of a corporate debtor only. No such monetary thresholds apply to a creditor-initiated examinership, although in practice such creditor petitions are rare.
93 The increased minimum debt requirement from 40,0000 to 50,000 Romanian lei (around €10,000) was made permanent.
94 S. Muro, "The Calm before Storm: Early Evidence on Business Insolvency Filings after the Onset of COVID-19" (Washington, DC: World Bank, 2020).
95 A. Menezes and A. Gropper, "Overview of Insolvency and Debt Restructuring Reforms in Response to the COVID-19 Pandemic and Past Financial Crises: Lessons for Emerging Markets" (Washington, DC: World Bank, March 2021).

3. Other temporary relief measures aimed at preventing a flow of insolvencies

OVERVIEW

In addition to the above-described temporary measures directly related to insolvency proceedings adopted in Europe, a wide range of temporary relief measures were implemented throughout the EMEA region to alleviate the immediate financial distress many businesses faced because of the COVID-19 outbreak. Although these measures are not directly aimed at initiating insolvency proceedings as such, preliminary data suggest that they played an important role in preventing a flow of insolvency proceedings emerging as a direct result of liquidity issues among companies. In the less mature insolvency markets of the Middle East and Africa, these measures were the primary mechanism used to ameliorate the impact of the COVID-19 pandemic on businesses. In Europe, however, liquidity measures and measures specifically aimed at insolvency proceedings were generally used in tandem.

A selection of some of the most relevant temporary measures taken in Europe to prevent insolvencies in the wake of COVID-19 will be discussed below: first, liquidity support, and second, debt repayment measures. Generally, most European jurisdictions offered some form of liquidity support (including with the purpose of preserving employment) or debtor relief, with Eastern and Central European jurisdictions presenting the widest variety of such measures. Middle Eastern as well as some African jurisdictions also offered a broad range of such measures.

3.1 TEMPORARY RELIEF THROUGH LIQUIDITY SUPPORT MEASURES

As an immediate response to the COVID-19 pandemic, most European and Middle Eastern as well as some African jurisdictions either adopted policy-based legislation or regulation-based measures to prevent acute liquidity problems arising among businesses. Such measures include deferring tax duties and introducing emergency funding schemes implemented by governments. Such liquidity support measures were adopted with respect to specific sectors, such as the banking, aviation, tourism, and the hospitality and event industries. Notably, some European and African countries specifically restricted such funding schemes to MSMEs.

Governments also offered liquidity support through government-backed loans or pursuant to emergency legislation on financiers.

BOX 1

CASE STUDY: THE NETHERLANDS

One of the means by which the Dutch government has provided liquidity support has been through the so-called GO-C Facility Scheme, a supplement to the regular government-backed corporate guarantee scheme. As part of this scheme, which is intended to improve companies' access to finance and to safeguard sufficient levels of cash flow for the continuation of business, the state guarantees up to 80 percent (for large firms) or 90 percent (for SMEs) of loans provided by certain banks, which can amount to a maximum of €135 million on €150 million loans. The GO-C Regulations governing this scheme contain several conditions that must be met; some, for example, relate to the profitability and continuity prospects of the borrower and others ensure that a loan is not merely shifting risk toward the Dutch state. Under the GO-C Regulations, the state and the relevant lender enter into an agreement incorporating these requirements, which generally also imposes obligations on the lender to incorporate such provisions in the loan documentation with the borrower. Normally, businesses' shareholders will be required to contribute by making shareholder loans available, while intercreditor agreements must ensure that the GO-C Facility will be repaid with priority. Other jurisdictions have adopted similar schemes. For example, Germany has introduced a state guarantee scheme to ensure that banks continue to provide financing to businesses, guaranteeing up to 90 percent of the risk on loans to cover immediate working capital and investment needs. Norway has implemented a similar guarantee scheme specifically for SMEs.

The majority of European jurisdictions translated concerns over the impact of liquidity issues on employment levels into different types of relief measures. Some of these measures concerned emergency legislation or regulations providing direct financial support to enable businesses to continue to pay salaries and wages,[96] while others allow companies to adopt short-term working measures (and a corresponding decrease in salary) to preserve employment overall (e.g., Austria and Germany). Although most employment-related measures are directed at businesses, some jurisdictions also adopted relief measures addressing employees more directly, for example, through financial compensation schemes or by prohibiting lay-offs.[97]

3.2 DEBT REPAYMENT MEASURES

Many EMEA jurisdictions sought to provide leniency in the context of debt repayment through, among other things, mandatory contract modification measures. These measures were generally adopted in most European jurisdictions and included extending repayment periods or deadlines and suspending interest accruals and debt-servicing obligations.

European jurisdictions vary in how such measures are implemented. Some jurisdictions adopted broad measures extending repayment terms in (emergency) legislation (e.g., Cyprus and Hungary), while other jurisdictions reported such measures were put in place pursuant to guidelines or recommendations from central banking authorities (e.g., Bulgaria, France, Greece, and Ireland) or were being offered by lenders in practice (e.g., Finland and Latvia).

Such measures were also extremely popular in the Middle East, with all respondent countries reporting the introduction of provisions extending the repayment terms of loans in the pandemic, and some of them also reporting a suspension of interest accruals and debt service obligations. In Africa, these measures were widely used as well, but often as instructed by executive orders or (central) banks rather than being implemented through parliaments.

BOX 2

CASE STUDY: UGANDA

In March 2020, Uganda's central bank announced policy measures for a one-year period, effective April 1, 2020, to alleviate the impact of COVID-19. These measures included granting exceptional permission to supervised financial institutions to provide credit relief and loan restructuring to borrowers that were at risk of going into distress due to the COVID-19 pandemic. As of December 2020, 44.6 percent of the gross loans in the banking sector had benefited from the credit relief program, while 29 percent were still in the process of being restructured. In the first half of 2021, a notable decline occurred in the stock of banking sector loans under restructuring. However, some sectors—such as building, construction and real estate, trade and commerce, agriculture, and manufacturing—remained under stress and accounted for 75 percent of loans under credit relief. The Bank of Uganda policy measures, including credit relief, were extended for six months, from April to September 2021. In June 2021, the central bank of Uganda noted that the main risks to financial system stability included uncertainties about economic recovery, disruptive resurgence of the pandemic and its impact on affected sectors leading to increase in credit risk, as well as a potential increase in nonperforming loans sectors following expiry of credit relief measures. The central bank noted that prolonging credit relief measures might lead to unsustainable debt levels and distort incentives for loan repayment; it therefore opted to explore alternative interventions for sectors still severely affected by the pandemic.

96 Either through schemes directly compensating for these costs (e.g., Denmark, Estonia, and the Netherlands), or through temporarily being exempt from paying certain taxes or social premiums (e.g., Hungary and Spain).

97 Italy, for example, extended a general prohibition to this effect until at least summer 2021, while Belgium and Ireland sought to provide relief to those who became unemployed due to the COVID-19 pandemic.

Other debt repayment measures are aimed at alleviating the consequences of non-payment. One-quarter to half of European jurisdictions and some jurisdictions in the Middle East and Africa introduced such contract modification measures, primarily to address serious impending financial distress among businesses. The most straightforward and commonly adopted of such measures included banning repossession of property, suspending execution proceedings, and suspending auctions, while measures eliminating certain interest and penalty amounts were adopted in the majority of European jurisdictions.

In addition, almost half of the European jurisdictions suspended the unilateral termination of contractual agreements, while most of these jurisdictions (around one-quarter of all European jurisdictions in total) also imposed prohibitions on the acceleration of contractual terms. Again, these measures were introduced in different forms, ranging from prohibitions on the unilateral termination of credit agreements or the invocation of clauses under which payment obligations are accelerated, to restrictions imposed in specific contracts, such as real estate lease contracts and employment contracts. Good examples are Germany, Greece, Hungary, and Ireland. This approach was less common in the Middle East, with none of the respondent countries reporting the introduction of such measures.

4. COURT AND PROCEDURAL RELIEF MEASURES

Several measures were adopted throughout Europe to address problems with court proceedings and other procedural difficulties that arose during the COVID-19 pandemic. A large majority of European and African countries suspended non-urgent civil court proceedings at some point during the crisis. In addition, a great many extended procedural deadlines applicable to liquidation, reorganization, and other formal insolvency proceedings. Some countries took more targeted action to address specific difficulties resulting from the pandemic. For example, several European countries, including Italy, Spain, and Switzerland, introduced measures suspending requirements to proceed to liquidation if the business activity of the debtor ceases during a reorganization.

In addition, countries throughout the EMEA region showed flexibility with regard to the logistics relating to hearings in general, which also affected insolvency proceedings. Nearly all jurisdictions adopted measures making it possible to conduct (insolvency) proceedings virtually or electronically. Use of virtual court hearings was pioneered and efforts were made to allow or extend the possibility of filing documents with the court electronically.

More generally, many jurisdictions in the European region report that, although steps toward digitalization of court proceedings had formally already been taken before the pandemic, the courts only implemented the widespread use of such options in the wake of COVID-19. In Africa, too, the pandemic accelerated the digitalization of court proceedings.

5. PERMANENT INSOLVENCY-RELATED MEASURES

Aside from the temporary measures aimed at dealing with specific pandemic-related emergencies, European countries also made structural changes to their insolvency laws. These changes can be subdivided into two broad categories: changes simplifying restructuring processes and changes to create or strengthen preventative out-of-court restructuring frameworks.

The adoption of permanent insolvency-related measures in Europe has not been universal. Twenty-three European countries, including Estonia, Finland, Hungary, and Luxembourg, reportedly did not adopt any such permanent measures during the pandemic. However, 19 European countries, including Portugal, Slovakia, and Switzerland, adopted such measures. France adopted a noticeably broad spectrum of permanent reforms. It established an out-of-court preventative restructuring framework, introduced special insolvency measures for MSMEs, and adopted specific insolvency rules to simplify restructuring proceedings.

In the less-mature insolvency markets of the Middle East and Africa, the pandemic did not in itself result in significant permanent structural changes to insolvency frameworks. However, many jurisdictions in these regions are in the process of adopting insolvency-related legislative reforms, efforts that in most cases pre-date the pandemic. It remains to be seen whether the aftermath of the pandemic will accelerate or otherwise influence the shape of this general trend. The discussion below therefore focuses mainly on permanent measures adopted in European jurisdictions.

5.1 CHANGES IN FORMAL INSOLVENCY PROCEEDINGS OR COURT PROTOCOL TO SIMPLIFY AND ENHANCE FLEXIBILITY

The first category concerns changes to the formal insolvency proceedings or court protocol that simplified restructuring processes and increased flexibility, often by specifically targeting MSMEs. Fourteen European countries introduced COVID-19-specific insolvency rules for the simplification of insolvency proceedings. Of these 14, France, Slovakia, Spain, and Switzerland also included measures tailor-made for MSMEs, while the Russian Federation, Slovenia, and the UK created special COVID-19-specific insolvency rules aimed at MSMEs but did not adopt system-wide changes to simplify proceedings.[98]

5.2 MEASURES TO INTRODUCE OR STRENGTHEN INFORMAL OR OUT-OF-COURT WORKOUT FRAMEWORKS

The second category concerns insolvency law reform strengthening out-of-court restructuring frameworks. Overall, in Europe, reform was being prepared or imminent already prior to the COVID outbreak, but in many countries the reforms were accelerated by the pandemic. For example, the Netherlands and Germany adopted restructuring procedures akin to the English Scheme of Arrangement or the United States' Chapter 11 procedure that provides for debtor-in-possession debt restructuring under court supervision. These reforms took place in the context of the 2019 European Union Directive on Preventative Restructuring Frameworks.[99] The directive set out policy goals with which all EU countries had to align their respective legal systems by July 2021 and called for the adoption of preventative restructuring frameworks. These frameworks should enable debtors to restructure effectively at an early stage and avoid insolvency to limit the unnecessary liquidation of viable enterprises.

Preventative out-of-court debt restructuring processes have been proliferating in the wake of the aforementioned European restructuring directive. Although the details of these schemes differ from country to country, they usually have the following typical features. These schemes often provide a breathing-room period during which there is either a moratorium or a stay on enforcement actions. During or outside that standstill period, a restructuring plan can be negotiated while management remains in control of the day-to-day business operations. When an agreement is reached, it can be made binding on nonconsenting minority shareholders. This reduces the chances of holdout creditors being able to frustrate the restructuring process. One noteworthy difference is that the commencement of the restructuring process is public in some jurisdictions, for example, Spain, but confidential in others, for example, France.

98 It was not always clear from the responses to the questionnaire whether it concerned temporary or permanent measures. For example, Switzerland indicated that it adopted special measures for SMEs but appeared to have adopted only a temporary COVID-19 moratorium for SMEs.

99 EU Directive 2019/1023.

BOX 3

CASE STUDY: THE NETHERLANDS

In the Netherlands, for example, a new restructuring scheme had been planned since early 2019 and was designated as urgent after the COVID-19 outbreak. The Dutch scheme, adopted in October 2020 and entered into force on January 1, 2021, is very similar to a US Chapter 11 proceeding in both set-up and features. It can be initiated either by the debtor or by any creditor (as well as certain specified others) and can lead to the adoption of a restructuring plan which, through majority voting and a cross-class cramdown, can be made binding on all or, if so designated, some of the debtor's creditors. The required threshold is that the scheme should be approved both by a two-thirds majority of creditors in one of the classes of creditors that are "in-the-money" and by the court. During the process, the court is allowed to take provisional protective measures.

BOX 4

CASE STUDY: GERMANY

In Germany, a new preventative restructuring regime called the Stabilization and Restructuring Framework entered into force on January 1, 2021. Germany's regime has an added pandemic-related twist that allows even legally insolvent debtors to access the preventative restructuring framework. These temporary proceedings are available until the end of 2021. The permanent framework is broadly similar to those introduced in the Netherlands and the UK and provides for a cross-class cramdown, a stay or moratorium on enforcement measures, and statutory protections against claw-back claims. The required threshold for court confirmation of a restructuring plan is its approval by a majority of creditor classes. In addition, the debtor has to show that the plan complies, subject to limited exceptions, with an absolute priority rule and that no creditors or shareholders would be worse off under the plan than in a liquidation scenario.

BOX 5

CASE STUDY: THE UNITED ARAB EMIRATES

In the United Arab Emirates, an expedited restructuring process known as the Emergency Financial Crisis was introduced. The process will apply in the context of an Emergency Financial Crisis period. The COVID-19 pandemic was designated as such a crisis, so debtors were able to access these proceedings in the period up to July 31, 2021. This process allowed debtors, on an expedited basis, to negotiate and agree to a restructuring with their creditors under the auspices of the federal bankruptcy law and the supervision of the court. The restructuring could be implemented with the consent of creditors representing two-thirds of the debtor's debts. This process sat alongside other insolvency relief measures, as well as wider and extensive liquidity support initiatives implemented by the government in response to the pandemic.

CONCLUSION

The COVID-19 pandemic has had two significant effects on the toolkits of restructuring experts in the EMEA region. The first is that the urgent need for more liquidity and effective insolvency relief has led to adoption of a flurry of temporary measures. In the Middle East and Africa, where overall the insolvency markets are both less mature and less widely used than in Europe, these measures predominantly focused on liquidity issues, such as extensions of payment periods, interest accruals, and filing deadlines. In Europe's more mature insolvency market (and the same is true for the most developed economies in Africa and the Middle East), relief measures also focused on their insolvency frameworks. In those markets, liquidity relief was supplemented with increased minimum standards for the initiation of insolvency proceedings and relaxation or suspension of directors' duties.

The second effect is that, in some jurisdictions, particularly in Europe, the pandemic appears to have either led to or expedited adoption of permanent structural reforms, with the result that owners and directors of distressed companies have a wider range of options at their disposal that hopefully will increase their resilience to any future crisis. Other jurisdictions—particularly in Africa—are faced with unprecedented levels of distressed assets, while at the same time having a very narrow range of options for dealing with post-pandemic distress.[100]

Finally, while in some jurisdictions across the EMEA region temporary measures expired in the first half of 2021, most jurisdictions extended several measures beyond the summer of 2021. Although it is too early to draw any conclusions as to the effects of winding-down measures, a general trend of economic recovery could be observed in the second and third quarters of 2021, albeit slower in some regions than in others. Again, certain sectors, such as travel and leisure, as well as the education sector in Africa, remain under pressure due to COVID-19 constraints. More importantly, after new lockdown measures were adopted in late 2021, it remains to be seen what approach governments will take to address any new liquidity or insolvency-related concerns that may emerge and what effect this will have on insolvency (frameworks) throughout the EMEA region.

UNITED STATES OF AMERICA, CANADA, AND MEXICO

1. Introduction

1.1 LOCAL EFFECTS OF THE PANDEMIC ON NORTH AMERICA

Starting in March 2020, the economies of North America experienced the economic shock of COVID-19. The COVID-19 crisis resulted in associated business closures, event cancellations, and mandated work-from-home policies, triggering an economic downturn throughout the region and raising unprecedented and widespread concerns about long-term health and financial harms. As a result, regional governments enacted certain economic and financial relief measures to alleviate the impact. To date, however, most, if not all, of these measures have been temporary in nature.

In the United States (US), the COVID-19 pandemic literally shut down the country for weeks at a time starting in March 2020, disrupting workforces, distribution networks, supply chains, and manufacturing throughout the country. The US government (and most businesses), however, adapted quickly to the countrywide shutdowns by implementing work-from-home policies for their workers. The 116th US Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which made US$2.2 trillion of much-needed economic relief available to qualifying businesses and individuals. President Trump signed the CARES Act Bill into law on March 27, 2020.

100 The INSOL Africa Round Table on Insolvency Reform, which took place November 9, 2021, focused on topics related to the current and potential future economic consequences of the pandemic and on tools to combat NPLs, as well as distressed asset management. See https://events.insol.org/website/6145/.

The COVID-19 pandemic also had an immediate, major impact on the Canadian economy. The Canadian government's social-distancing rules limited economic activity in the country, causing major disruptions to Canadian businesses. Companies started considering mass worker layoffs, which were largely prevented by the Canada Emergency Wage Subsidy. Canada's small and medium firms concentrated in the travel and tourism-related industries, such as transportation, restaurants, accommodation, and arts and entertainment, were hit the hardest by the COVID-19 pandemic.

In many parts of Mexico, existing deficiencies in infrastructure, medical equipment, resources, and information technology were exacerbated by the pandemic. The lack of financial support for individuals and businesses has resulted in serious economic, health, and social repercussions for Mexico.

1.2 OVERVIEW OF CHANGES TO INSOLVENCY PROCESSES AND OTHER MEASURES

The US did not implement any sweeping changes to its insolvency laws or processes in response to COVID-19. However, certain direct but temporary changes to US insolvency laws and the funding of businesses by the government were put in place by Congress and the bankruptcy courts. For instance, the amendments to Subchapter V of the Bankruptcy Code and funding made available to businesses by the CARES Act helped immensely to mitigate economic risks in the US.

The insolvency system in Canada largely remained intact, subject to procedural adaptations necessitated by COVID-19. Most of the insolvency legal services that were available in ordinary times remained available despite the restrictions imposed because of the pandemic, although with some accommodation. The Canadian government and courts, on an application by the Superintendent of Bankruptcy, did extend certain timelines under the Bankruptcy and Insolvency Act (Canada) and granted certain relief from failures by debtors to make payments under consumer proposals due to the COVID-19 crisis and its seismic economic impact on Canada.

COVID-19 has had serious effects on Mexico's insolvency system. Traditionally, an insolvent Mexican company would have ready access to the bankruptcy system, including seeking the necessary judicial protection to save the enterprise. Similarly, creditors could obtain access, through the bankruptcy process, to an orderly, transparent and equitable process for the payment of debts, either through a restructure agreed to with the company or, if that is not possible, through its declaration of bankruptcy and liquidation. However, this access changed markedly during the COVID-19 pandemic in Mexico.

2. Temporary insolvency-related legal and regulatory measures

2.1 INITIATING INSOLVENCY PROCEEDINGS

The US, Canada, and Mexico did not introduce any new temporary measures (measures beyond those previously in place), relative to the following:

- Minimum debt requirements for creditors to initiate insolvency procedures
- Measures suspending specific creditors' rights to initiate insolvency procedures
- Measures increasing response timelines for debtors facing petitions to initiate insolvency procedures
- Suspensions of directors' duty to initiate insolvency procedures or right to initiate proceedings

2.2 MEASURES RELATING TO DIRECTORS' DUTIES

The US, Canada, and Mexico did not introduce measures relaxing wrongful trading provisions for commercial debtors or commercial debt obligations during COVID-19.

2.3 MEASURES RELATING TO VOIDABLE TRANSACTIONS / AVOIDANCE ACTIONS

Canada and Mexico did not introduce amendments to avoidance action rules for commercial debtors or commercial debt obligations during COVID-19. In the US, on March 27, 2021, President Biden signed into law the COVID-19 Bankruptcy Relief Extension Act (Extension Act).[101]

101 Public Law No. 117-5.

The Extension Act temporarily extends certain COVID-19 bankruptcy relief provisions enacted as part of the CARES Act, which were further amended and/or extended as part of the Consolidated Appropriations Act (the CAA).[102] Section 547 allows a debtor or trustee to avoid certain payments on account of pre-bankruptcy obligations while the debtor is insolvent.[103] The CAA amends section 547 to prohibit the avoidance of payments made during the preference period after March 13, 2020, for "covered rental arrearages" and "covered supplier arrearages" that had been deferred under a forbearance or similar agreement.[104] For payments to qualify for the exemption from avoidance, they must not include fees, penalties, or interest in excess of amounts that would have accrued without any deferral.[105]

2.4 SUSPENSION OF RULES SUBORDINATING LOANS PROVIDED BY CORPORATE INSIDERS TO ENCOURAGE NEW FINANCING

The US, Canada, and Mexico did not suspend rules subordinating loans provided by corporate insiders to encourage new financing during COVID-19.

3. Other temporary relief—debtors and employees

The US and Canada, but not Mexico, did temporarily enact, adopt, or otherwise put in place certain measures on the following:

- Extending repayment terms
- Suspending interest accruals
- Suspending debt-servicing obligations
- Suspending unilateral termination of contractual agreements (i.e., ipso facto clauses)
- Prohibiting acceleration of contractual terms
- Eliminating certain interest and penalty amounts
- Banning the repossession of property

3.1 EXTENDING REPAYMENT TERMS

The US did not introduce measures extending the repayment terms of loans for commercial debtors or commercial debt obligations during COVID-19, but it did temporarily extend the time to assume or reject nonresidential leases in bankruptcy.

Section 365(d)(3) of the Bankruptcy Code requires a debtor to continue timely performance under its unexpired non-residential real property leases, until such leases are assumed or rejected. The CAA authorizes debtors in small-business Subchapter V cases to seek a delay in performance of 60 days (up to 120 days total) under its unexpired non-residential real property leases, if the debtor has experienced and is continuing to experience a material financial hardship because of the COVID-19 pandemic. Additionally, and without needing to demonstrate a material financial hardship, the CAA also authorizes an additional 90-day extension to the 120-day period for the debtor to assume or reject unexpired non-residential real property leases. With this additional extension, all debtors may have up to 300 days to determine whether to assume or reject such leases. Both provisions are set to expire on December 27, 2022, but they will remain applicable to any case commenced before that date.

Since the start of the COVID-19 pandemic, the Canadian government's COVID-19 relief relating to extending repayment terms was primarily focused on consumer protection over commercial debt obligations. Canada's financial institutions have allowed households but not businesses to defer payments on a range of loans.[106]

102 Public Law No: 117-5.
103 https://www.natlawreview.com/article/covid-19-bankruptcy-code-amendments-consolidated-appropriation-act-and-covid-19.
104 https://www.natlawreview.com/article/covid-19-bankruptcy-code-amendments-consolidated-appropriation-act-and-covid-19.
105 https://www.natlawreview.com/article/covid-19-bankruptcy-code-amendments-consolidated-appropriation-act-and-covid-19.
106 https://www.bankofcanada.ca/2020/11/monitoring-payment-deferrals-during-the-covid-19-pandemic/.

3.2 SUSPENDING INTEREST ACCRUALS

The US did not suspend payments on interest accruals on commercial loans, but many lenders did so voluntarily under agreements with the borrowers. US federal COVID-19 relief relating to measures suspending interest accruals was primarily focused on consumer protection over commercial debt obligations. The temporary measures suspending interest accruals during COVID-19 related to federally held student loan repayment, interest, and collections.

Likewise, in Canada, COVID-19 relief pertaining to measures suspending interest accruals was primarily focused on consumer protection over commercial debt obligations. To help students and young Canadians who have been particularly hard-hit by COVID-19, Canada waived the interest for full-time and part-time students on the federal portion of Canada Student Loans and Canada Apprentice Loans until March 31, 2023.[107]

3.3 SUSPENDING DEBT-SERVICING OBLIGATIONS

The US did not suspend commercial debt-servicing obligations, but many lenders did so consensually with the borrower under agreements. US federal COVID-19 relief relating to suspended debt-servicing obligations was primarily focused on individuals over commercial debt obligations. For example, the CARES Act Relief from Foreclosure: CARES Act § 4022, provided foreclosure relief for "federally-backed loans," which means loans (for one to four family properties) purchased, securitized, owned, insured, or guaranteed by Fannie Mae or Freddie Mac or owned, insured, or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, or United States Department of Agriculture.[108]

3.4 SUSPENDING UNILATERAL TERMINATION OF CONTRACTUAL AGREEMENTS

On March 11, 2020, the WHO designated the outbreak of COVID-19 as a global pandemic. For individual contracts, in the absence of an express force majeure provision, Canadian courts are unlikely to find an implied force majeure provision notwithstanding the occurrence of a likely force majeure event.[109] However, aggrieved parties may be able to rely on the doctrine of frustration. The key criterion for establishing frustration is the occurrence of an unforeseen event that causes a radical change in performance of contract for the relying party.[110] This radical change is generally one that makes performance under existing circumstances impossible or impractical or frustrates the original purpose of the agreement.[111] The onus would be on the party alleging frustration of the contract to prove these elements.[112]

In the US, on December 16, 2020, a decision was rendered that had widespread implications for COVID-19 contract disputes.[113] Judge Denise Cote of the Southern District of New York found that COVID-19 qualified as a "natural disaster" excusing a contractual counterparty's non-performance under a force majeure provision.[114] In *JN Contemporary Art LLC v. Phillips Auctioneers LLC (JN Contemporary)*, an art dealer had a contract with an auctioneer to sell paintings at an auction in New York City.[115] The auctioneer cancelled the auction and terminated the contract after Governor Cuomo declared a state of emergency and issued executive orders that prohibited nonessential businesses from operating due to the COVID-19 pandemic.[116] The art dealer filed suit against the auctioneer to enforce the contract.[117] The court summarily dismissed the case as a matter of law based on the contract's force majeure provision.[118]

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107 https://www.canada.ca/en/department-finance/economic-response-plan.html.
108 See Public Law No. 116-136 § 4022(a)(2).
109 https://gowlingwlg.com/en/insights-resources/articles/2020/covid-19-contract-in-canada-force-majeure-clause/.
110 https://gowlingwlg.com/en/insights-resources/articles/2020/covid-19-contract-in-canada-force-majeure-clause/.
111 https://gowlingwlg.com/en/insights-resources/articles/2020/covid-19-contract-in-canada-force-majeure-clause/.
112 https://gowlingwlg.com/en/insights-resources/articles/2020/covid-19-contract-in-canada-force-majeure-clause/.
113 *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. December 16, 2020).
114 *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. 16 Dec. 2020).
115 https://www.jdsupra.com/legalnews/force-majeure-and-the-coronavirus-9145251/; https://www.pillsburylaw.com/en/news-and-insights/force-majeure-natural-disasters-covid-19.html.
116 *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. December 16, 2020).
117 *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. 16 Dec. 2020).
118 *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. 16 Dec. 2020).

The court in *JN Contemporary* found that the parties did intend to include a "pandemic" as a force majeure event in the force majeure provision of their contract by broadly interpreting the words "natural disaster," which was specifically referenced.[119] The court relied on dictionaries and other sources to find "[i]t cannot be seriously disputed that the COVID-19 pandemic is a natural disaster."[120]

The Court also broadly interpreted the "catch-all" introductory language preceding the list to include any circumstances that were beyond the parties' reasonable control, including "a pandemic requiring the cessation of normal business activity," which circumstances were not limited by the examples specifically listed.[121] The Court's liberal interpretation and application of the parties' force majeure provision was largely driven by the dire COVID-19 circumstances that, for many, made it impossible to perform their contracts.

3.5 PROHIBITING ACCELERATION OF CONTRACTUAL TERMS

The US federal COVID-19 relief relating to the prohibition of accelerated contractual terms was primarily focused on consumer protection over commercial debt obligations. The CARES Act included a temporary foreclosure and eviction moratorium for certain loans on single-family properties applying only to residential leases.[122]

3.6 ELIMINATING CERTAIN INTEREST AND PENALTY AMOUNTS

The US CARES Act Section 4024(b) prohibited landlords of certain rental "covered dwellings" from initiating eviction proceedings or "charg[ing] fees, penalties, or other charges" against a tenant for the non-payment of rent. These protections extended for 120 days from enactment (March 27, 2020).[123] However, it only applied to "covered dwellings."[124] Under the CARES Act, a covered dwelling is one that is occupied by a tenant under a residential lease or by a tenant without a lease.[125]

In Canada, the Highly Affected Sectors Credit Availability Program provides businesses heavily impacted by COVID-19 access to guaranteed, low-interest loans of CAD$25,000 to CAD$1 million to cover operational cash flow needs. The program was available to businesses that operate in sectors such as tourism and hospitality, restaurants, and in-person services.

3.7 BANNING THE REPOSSESSION OF PROPERTY

In the US, many commercial landlords entered into forbearance agreements amending leases to allow commercial tenants time to weather the COVID-19 storm. However, the federal moratorium prohibited a landlord from filing eviction proceedings and charging fees related to the non-payment of rent only relative to "covered dwellings,"[126] that is, those occupied by tenants under a residential lease or tenants without a lease.[127] In other words, the federal 120-day moratorium in the CARES Act only applied to residential landlords.[128]

The Canada Emergency Rent Subsidy provides a rent and mortgage subsidy for eligible expenses to qualifying businesses, charities, and non-profits. This support is available directly to tenants and property owners.[129] The government is proposing to continue COVID-19 business support programs until May 2022 for organizations hit hardest since the start of the pandemic or most affected by public health restrictions.

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119 *JN Contemporary Art LLC v. Phillips Auctioneers LLC*, 2020 WL 7405262 (S.D.N.Y. 16 Dec. 2020).

120 See 2020 WL 7405262, at *7; see also, *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 889 (Pa. 2020), cert. denied, 141 S. Ct. 239 (2020) (COVID-19 pandemic was unquestionably a "natural disaster" that supported the Governor's authority to issue emergency shut-down orders); https://www.jdsupra.com/legalnews/force-majeure-and-the-coronavirus-9145251/; https://www.pillsburylaw.com/en/news-and-insights/force-majeure-natural-disasters-covid-19.html.

121 See 2020 WL 7405262, at *7–8; https://www.jdsupra.com/legalnews/force-majeure-and-the-coronavirus-9145251/; https://www.pillsburylaw.com/en/news-and-insights/force-majeure-natural-disasters-covid-19.html.

122 Public Law No. 116-136; https://crsreports.congress.gov/product/pdf/IN/IN11516.

123 See Public Law No: 116-136 § 4024(b).

124 See Public Law No: 116-136.

125 See Public Law No: 116-136.

126 See Public Law No: 116-136.

127 See Public Law No: 116-136.

128 See Public Law No: 116-136.

129 https://www.canada.ca/en/department-finance/economic-response-plan.html#access_to_credit.

3.8 SUSPENDING EXECUTION PROCEEDINGS

The New York City Council considered legislation to prevent marshals and the City's sheriffs from taking and restituting of property or executing money judgments.[130] The legislation would have paused evictions and debt collection for all New York City renters, including residential and commercial tenants, and those renters would have had additional time to repay their rent.[131] Marshals and sheriffs would have also been barred from collecting debts and performing evictions until April 2021.[132]

Other jurisdictions in the US took various approaches.[133] For instance, in Florida, each county issued administrative orders suspending the service of writs of execution or possession with varying differences—some counties only suspended writs in connection with family courts, whereas other county administrative orders apply broadly to all judicial writs.[134] California, by executive order, permitted local authorities to suspend a writ of possession.[135] By contrast, Minnesota issued a statewide executive order suspending execution of all writs of recovery and residential evictions as well as requiring financial institutions to place moratoria on residential foreclosures.[136]

In other jurisdictions, courts took the lead.[137] The courts of Missouri suspended the issuing of writs of restitution, attachment, execution, and replevin through June 1, 2020.[138] In Texas, courts issued an order suspending execution of writs of possession until after May 7, 2020.[139]

In Mexico, through the resolution published on April 27, 2020, the Council of the Federal Judiciary (Consejo de la Judicatura Federal (CJF)) established the work scheme and contingency measures to be taken by Federal Courts.[140] From May 6, 2020 until May 31, 2020, jurisdictional activities abided by the following rules:

(a) Only new matters qualified as urgent, filed physically or by online trial, would be processed. Each court would follow up on the matters considered urgent. Contact information for courts' personnel would be published.

(b) Matters that were physically filed prior to the contingency would be continued only if the final resolution was pending to be issued.

(c) Matters that were filed online prior to the contingency would be continued, except for matters where the hearing had not yet taken place or where the judicial proceedings required the physical presence of the parties or personal notifications were pending.

(d) Deadlines for applications, claims, appeals, trials, and procedures other than those mentioned above, as well as for filing appeals against judgments and resolutions issued in the trials filed prior to the contingency and physically processed, were suspended; no hearings would be held, and no proceedings would be carried out.[141]

130 See Council of City of NY, Intro No. 1912-2020; https://www.buildingcongress.com/uploads/Documents/COVID19/NYC%20council%204.22.20.pdf.
131 Council of the City of NY, Intro No. 1912-2020 https://www.buildingcongress.com/uploads/Documents/COVID19/NYC%20council%204.22.20.pdf.
132 See Council of City of NY Intro No. 1912-2020 https://www.buildingcongress.com/uploads/Documents/COVID19/NYC%20council%204.22.20.pdf.
133 https://www.steptoe.com/en/news-publications/enforcing-judgments-during-covid-19-times.html.
134 https://www.steptoe.com/en/news-publications/enforcing-judgments-during-covid-19-times.html.
135 https://www.steptoe.com/en/news-publications/enforcing-judgments-during-covid-19-times.html.
136 https://www.steptoe.com/en/news-publications/enforcing-judgments-during-covid-19-times.html.
137 https://www.steptoe.com/en/news-publications/enforcing-judgments-during-covid-19-times.html.
138 https://www.steptoe.com/en/news-publications/enforcing-judgments-during-covid-19-times.html.
139 https://www.steptoe.com/en/news-publications/enforcing-judgments-during-covid-19-times.html.
140 https://www.whitecase.com/publications/alert/covid-19-legal-impact-mexico-measures-issued-various-authorities-eight-part; https://www.bakermckenzie.com/en/insight/publications/2020/03/mexico-suspension-of-activities-covid19.
141 https://www.whitecase.com/publications/alert/covid-19-legal-impact-mexico-measures-issued-various-authorities-eight-part; https://www.bakermckenzie.com/en/insight/publications/2020/03/mexico-suspension-of-activities-covid19.

3.9 SUSPENSION OF AUCTIONS

The US did not introduce federal measures suspending auctions for commercial debtors or commercial debt obligations during COVID-19. However, some states in the US did suspend auctions of property. On March 9, 2021, Governor Cuomo of New York signed the COVID-19 Emergency Protect Our Small Business Act of 2021 (the Act).[142] With respect to commercial foreclosures, the Act provides commercial borrowers with the opportunity to submit a hardship declaration to postpone the initiation of a foreclosure proceeding or stay a foreclosure proceeding that is already pending. As in the case of evictions, there is no provision in the Act that expressly allows a lender to attest that no hardship declaration was provided to a borrower because the borrower did not satisfy the Act's eligibility requirements or to dispute the accuracy of a hardship declaration once submitted by the borrower.

Another provision of the Act addressing commercial foreclosures provides that "any action to foreclose a mortgage pending on the effective date of this act, including actions filed on or before 7 March 2021, or commenced within thirty days of the effective date of this act shall be stayed for at least sixty days, or to such later date that the chief administrative judge shall determine is necessary to ensure that courts are prepared to conduct proceedings in compliance with this act and to give mortgagors an opportunity to submit the hardship declaration pursuant to this act."[143]

On September 2, 2021, New York Governor Hochul signed into law new legislation related to commercial eviction and foreclosure protections (L. 2021, c. 417; Act).[144] The Act continued to provide relief to respondents and defendants in commercial eviction proceedings and certain commercial foreclosure actions in New York until at least January 15, 2022.

In Mexico, through the resolution published on April 27, 2020, the CJF established the work scheme and contingency measures to be taken by Federal Courts, supra, suspending execution proceedings (4.15).

3.10 MEASURES TO PROTECT EMPLOYEES

Unemployment claims were extended in the US by 13 weeks in 2020 and included a four-month enhancement of benefits. Individuals who were typically excluded from unemployment benefits (such as independent contractors) were also eligible in certain cases to apply for benefits.[145]

3.11 TEMPORARY RELIEF

The US Wage and Hour Division was committed to protecting and enhancing the welfare of workers during the COVID-19 pandemic. Federal laws, including the Fair Labor Standards Act and the Family and Medical Leave Act, provide critical worker protections regarding wages and hours worked and job-protected leave during the pandemic.[146]

The Canada Recovery Hiring Program provided a subsidy on eligible salary or wages to help hard-hit businesses hire the workers they needed to recover and grow as local economies reopened.[147]

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142 "Governor Cuomo Signs the COVID-19 Emergency Protect Our Small Businesses Act of 2021 Establishing Eviction and Foreclosure Protections for Small Businesses" (March 9, 2021); https://www.friedfrank.com/siteFiles/Publications/FFTOCCOVID19EmergencyProtectourSmallBusinessesAct03122021.pdf.

143 COVID-19 Emergency Protect Our Small Businesses Act of 2021 (S471A/A3207); https://www.friedfrank.com/siteFiles/Publications/FFTOCCOVID19EmergencyProtectourSmallBusinessesAct03122021.pdf.

144 https://www.nycourts.gov/eposba/.

145 https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf.

146 https://www.dol.gov/agencies/whd/pandemic.

147 https://www.canada.ca/en/department-finance/economic-response-plan.html.

This program allowed eligible employers to hire new workers, increase workers' hours, or increase wages at a pace that worked for them.[148] As with the Canada Emergency Wage Subsidy, eligible employers could apply for support after each four-week period of the program.[149]

Canada has ensured that businesses could continue to get the financial support they needed to invest in their longer-term prosperity, including businesses in hard-hit sectors like tourism and hospitality, hotels, arts, and entertainment. Support was available retroactively to June 6, 2021 and until November 20, 2021.[150]

The Canada Emergency Wage Subsidy provided support to eligible employers to cover part of their employees' wages.[151] This subsidy helped employers re-hire workers, helped to prevent further job losses, and kept employees on payroll at their place of work during the COVID-19 pandemic.[152] This support was available until October 23, 2021.[153]

Canada extended the maximum duration of the Work-Sharing program from 38 weeks to 76 weeks for employers affected by COVID-19.[154] This measure provided income support to employees eligible for Employment Insurance who agreed to reduce their normal working hours because of developments beyond the control of their employers.[155]

In Mexico, in accordance with the Federal Labor Law, employees were obliged to observe the provisions, norms, and measures about work safety, health, and environment indicated by employers for their personal safety and protection.

If an employee was absent from work by reason of being diagnosed with COVID-19, and this disability was declared by a doctor of the Instituto Mexicano del Seguro Social (IMSS), beginning on the fourth day after such declaration, the IMSS would provide the employee a subsidy in an amount equal to 60 percent of the amount of the employee's last salary declared to IMSS.[156] The payment of this subsidy and the duration of the disability would last no more than 78 weeks.[157] If an employer allowed or instructed its employees to cease attending the employer's premises or working centers and to work from their homes or any other place, this would not affect the terms of the employment relationship.[158] The rights and obligations between them would remain unaltered; the employees would continue to be obligated to render their services in the same manner, although now remotely, and the employer would continue to be obligated to pay them their salary and benefits as usual.[159]

Due to the declaration of "Sanitary emergency due to Act of God," a temporary suspension of labor obligations for both (employer and employee) was established.[160] In such an event, employers would be obligated to pay their employees an indemnity consisting of one minimum daily wage up to 30 days, counted as of the date on which the sanitary contingency came into effect.[161]

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148 https://www.canada.ca/en/department-finance/economic-response-plan.html.
149 https://www.canada.ca/en/department-finance/economic-response-plan.html.
150 https://www.canada.ca/en/department-finance/economic-response-plan.html.
151 https://www.canada.ca/en/department-finance/economic-response-plan.html.
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154 https://www.canada.ca/en/department-finance/economic-response-plan.html.
155 https://www.canada.ca/en/department-finance/economic-response-plan.html.
156 https://www.natlawreview.com/article/covid-19-legal-obligations-regarding-employment-matters-mexico.
157 https://www.natlawreview.com/article/covid-19-legal-obligations-regarding-employment-matters-mexico.
158 https://www.natlawreview.com/article/covid-19-legal-obligations-regarding-employment-matters-mexico.
159 https://www.natlawreview.com/article/covid-19-legal-obligations-regarding-employment-matters-mexico.
160 https://home.kpmg/xx/en/home/insights/2020/04/mexico-government-and-institution-measures-in-response-to-covid.html.
161 https://www.natlawreview.com/article/covid-19-legal-obligations-regarding-employment-matters-mexico.

4. Courts and procedural matters

4.1 SUSPENDED NON-URGENT COURT CIVIL PROCEEDINGS

The US federal courts throughout the country took steps to balance the health and safety of employees, litigants, and the public with their constitutional responsibility to keep the courts operating during the COVID-19 pandemic.[162] Many courts asked their employees to work remotely and posted on their internet sites orders and notices that related to jury service, filing deadlines, and other court business, as well as to public access to the courthouse.[163]

The Administrative Office of the US Courts (AO) organized a task force, which now includes representatives from the General Services Administration, the US Marshals Service, and the Federal Protective Service, as well as judges and court officials, to share information and guidance related to the COVID-19 outbreak as it relates to the judiciary.[164] The AO also provided courts, probation and pretrial offices, and defender services organizations with operational, human resources, funding, and other support and guidance.[165]

Many courts suspended jury trials in response to COVID-19.[166] On March 31, 2020, to address health and safety concerns in federal courthouses and courtrooms, the Judicial Conference of the United States temporarily approved the use of video and teleconferencing for certain criminal proceedings and access via teleconferencing for civil proceedings during the COVID-19 national emergency.[167]

The New Jersey Supreme Court, in its initial response to the COVID-19 crisis, in March 2020, authorized a swift transition from in-person to remote court operations.[168] When the virus generally was controlled in New Jersey in June 2020, the court announced a statewide progression from Phase 1 to Phase 2 of its post-pandemic plan, including the incremental resumption of certain in-person matters. Since June 2020, the court has gradually expanded the scope of events and services that may be conducted in person.[169]

As waves of infection spread throughout Canada, its courts fluctuated between resuming activities and easing restrictions and scaling back services and reintroducing restrictions.[170] In most jurisdictions, hearings that were adjourned have resumed; limitation periods previously suspended have restarted; and procedures and timelines for filings have continued on an amended basis.[171]

In Mexico, due to the health emergency, the operation of federal courts is currently limited to "urgent cases," among which, as per General Agreement 8/2020 from the CJF, are requests for interim measures in bankruptcy matters.[172] The Supreme Court of Justice of the Nation suspended administrative and jurisdictional activities from March 18 to April 19, 2020. During this period, no sessions or hearings were held, and procedural terms were suspended. Urgent claims on constitutional controversies continued to be accepted upon submission. Similar suspensions were put in force by the Federal Judiciary Council, the Federal Administrative Court of Justice, the Judicial Power of Mexico City, and the Court of Administrative Justice of Mexico City.

The Ministry of Public Affairs (SFP) procedural term was suspended from March 23 until April 17, 2020. During this period, no hearings were held, and no notices or official requests were issued, except in urgent cases considered as such by SFP. Investigations of administrative offenses, and extremely urgent public acquisition procedures, leasing, and public works were exempt from the suspension.

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162 https://www.uscourts.gov/news/2020/03/17/federal-judiciary-confronts-coronavirus-spread-judicial-conference-acts-court.
163 https://www.uscourts.gov/news/2020/03/17/federal-judiciary-confronts-coronavirus-spread-judicial-conference-acts-court.
164 https://www.uscourts.gov/news/2020/03/17/federal-judiciary-confronts-coronavirus-spread-judicial-conference-acts-court.
165 https://www.uscourts.gov/news/2020/03/17/federal-judiciary-confronts-coronavirus-spread-judicial-conference-acts-court.
166 https://www.uscourts.gov/news/2020/03/26/courts-suspend-jury-trials-response-coronavirus.
167 https://www.uscourts.gov/news/2020/03/31/judiciary-authorizes-videoaudio-access-during-covid-19-pandemic.
168 https://www.njcourts.gov/notices/2020/n201116a.pdf?c=iiR; https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19.
169 https://www.uscourts.gov/news/2020/03/12/judiciary-preparedness-coronavirus-covid-19.
170 https://www.dwpv.com/en/Insights/Publications/2021/COVID-19-and-the-Courts.
171 https://www.dwpv.com/en/Insights/Publications/2021/COVID-19-and-the-Courts.
172 https://www.bakermckenzie.com/en/insight/publications/2020/03/mexico-suspension-of-activities-covid19; General Agreement 8/2020, of the Plenary Session of the Federal Judicature, Related to the Work Scheme and Contingency Measures in the Jurisdictional Bodies for the Public Health Phenomenon Derived from the Virus COVID-19.

The Federal Office of the Consumer suspended activity from March 23 to April 20, 2020, and no procedural terms ran in cases dealing with infractions to the Consumer Protection Law and arbitrations. Special means for dealing with consumer complaints and settlement procedures were established.

The government of Mexico City suspended activity from March 23 to April 19, 2020: no terms ran, and deadlines were suspended for administrative procedures, customer service, and defense mechanisms in progress at different levels of the city government. The deadline to file tax returns relating to local taxes was extended to no later than April 30, 2020.

4.2 EXTENDING INSOLVENCY PROCEDURAL DEADLINES DURING LIQUIDATION, REORGANIZATION, AND OTHER FORMAL INSOLVENCY PROCESSES

Mexico did not introduce measures extending insolvency procedural deadlines during liquidation, reorganization, and other formal insolvency processes due to COVID-19.

The Superintendent of Bankruptcy, supported by the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals, brought an application before Chief Justice Morawetz of the Ontario Superior Court of Justice to extend certain timelines under the Bankruptcy and Insolvency Act (Canada) (BIA) and grant certain relief from failures by debtors to make payments under consumer proposals due to the COVID-19 crisis and its "seismic economic impact on Canada."[173] The relief granted in Ontario was then granted in all 13 Canadian provinces and territories and applied to all 451,536 open insolvency files under the BIA in Canada and any new filings through June 30, 2020.[174]

Mothballing

During the pandemic, US bankruptcy courts were confronted with requests by debtors to temporarily suspend their cases under the courts' equitable powers and a seldom-used provision of the Bankruptcy Code: 11 U.S.C. § 305(a).[175] On March 27, 2020, and again on April 30, a New Jersey bankruptcy court temporarily suspended the Chapter 11 cases of Modell's Sporting Goods, Inc., and its affiliated debtors, which were in the process of conducting going-out-of-business sales.[176] The Delaware Bankruptcy Court, presiding over the Chapter 11 cases of restaurant and brewpub chain CraftWorks Parent LLC and its affiliates, and the Virginia Bankruptcy Court, overseeing the Chapter 11 cases of home-furnishing retailer Pier 1 Imports Inc. and its affiliates, granted similar relief, mothballing the debtors' bankruptcy cases (over the objections of landlords and various other creditors) in an effort to weather the COVID-19 storm and, hopefully, preserve value for all creditors.[177]

173 https://www.mccarthy.ca/en/insights/blogs/restructuring-roundup/certain-bankruptcy-and-insolvency-timelines-extended-june-30-nationwide-due-covid-19.

174 https://www.mccarthy.ca/en/insights/blogs/restructuring-roundup/certain-bankruptcy-and-insolvency-timelines-extended-june-30-nationwide-due-covid-19.

175 See 11 U.S.C. § 305(a); https://www.jonesday.com/en/insights/2020/06/mothballing-bankruptcy-cases-in-the-covid19-crisis.

176 See In re Modell's Sporting Goods, Inc., No. 20-14179 (VFP) (Bankr. D.N.J.) (orders dated March 27 and April 30, 2020); https://www.jonesday.com/en/insights/2020/06/mothballing-bankruptcy-cases-in-the-covid19-crisis.

177 See In re CraftWorks Parent, LLC, No. 20-10475 (BLS) (Bankr. D. Del. March 30, 2020); In re Pier 1 Imports, Inc., No. 20-30805 (KRH) (Bankr. E.D. Va.) (orders dated April 2 and April 28, 2020); https://www.jonesday.com/en/insights/2020/06/mothballing-bankruptcy-cases-in-the-covid19-crisis.

4.3 MEASURES SUSPENDING THE REQUIREMENT TO PROCEED TO LIQUIDATION IF BUSINESS ACTIVITY CEASES DURING A REORGANIZATION

The US and Mexico did not introduce measures suspending the requirement to proceed to liquidation if business activity ceases during a reorganization.

4.4 DIGITAL AND TECHNOLOGICAL CHANGES THAT HAVE OCCURRED IN THE COURTS

COVID-19 continues to impact US courthouse operations.[178] Legal update reports address bankruptcy courts' general orders implementing procedures and adopting protocols due to COVID-19, including court closures, proceeding postponements, and courthouse access restrictions.[179] Attorneys are requested to consult their local court's website for any additional information and updates, as the situation in local courts may change rapidly,[180] and to also reference judges' individual webpages (if any).[181]

In Mexico, if matters that are physically filed and are qualified as urgent, judges and/or the acting secretaries in charge will urge the parties, if possible, to continue through an online trial.[182] The CJF established specific rules for the processing and resolution of online trials:

(a) To act from the Online Services Portal, the interested parties must request the consultation themselves or through a legal representative, by the means of electronic promotion from the same portal.[183]

(b) The proceedings of this type of lawsuit continue as long as no personal notification or intervention of any of the interested parties before the corresponding court is required. If the above-mentioned exceptions are fulfilled, the processing of the case will be suspended until activities are resumed.[184]

(c) The notification of judgments will be electronic; consequently, any appeal against those resolutions must be filed in the same way. Exceptions to the above are made for rulings that must be notified in person; these will only be notified immediately if the case is urgent; otherwise, it shall be notified once activities are resumed.[185]

4.5 OTHER RELEVANT INSOLVENCY CHANGES

The US has implemented some direct changes to its insolvency laws in response to COVID-19.[186] The CARES Act has presented some businesses with additional financing options to mitigate risk[187] and includes a roughly US$2 trillion stimulus package—the largest economic stimulus in recent US history.[188]

178 https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

179 https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

180 https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

181 https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

182 https://www.duanemorris.com/alerts/covid19_pandemic_bankruptcies_mexico_0820.html; https://www.whitecase.com/publications/alert/covid-19-legal-impact-mexico-measures-issued-various-authorities-eight-part.

183 https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf.

184 https://www.duanemorris.com/alerts/covid19_pandemic_bankruptcies_mexico_0820.html; https://www.whitecase.com/publications/alert/covid-19-legal-impact-mexico-measures-issued-various-authorities-eight-part.

185 https://www.duanemorris.com/alerts/covid19_pandemic_bankruptcies_mexico_0820.html; https://www.whitecase.com/publications/alert/covid-19-legal-impact-mexico-measures-issued-various-authorities-eight-part.

186 https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

187 See Public Law No. 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

188 See Public Law No. 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

This economic relief provides expanded protections for American families, workers, and businesses affected by the public health and economic crisis.[189]

A US$500 billion fund controlled by the Federal Reserve was made available for a government lending program directed at distressed companies.[190] Of this total amount, US$46 billion is set aside for industry-specific loans, including US$25 billion for passenger airlines, US$4 billion for cargo air carriers, and US$17 billion for businesses critical to national security.[191] A US$350 billion fund was made available to support small businesses,[192] and relief includes new Small Business Administration (SBA) loan programs.[193]

Significantly, under the CARES Act, the threshold amount that permits businesses to restructure under the streamlined bankruptcy protections available to small businesses under Subchapter V of the Bankruptcy Code was raised from approximately US$2,725,625 to US$7,500,000.[194]

Starting in March 2020, taxpayers with incomes up to US$75,000 per year received US$1,200 in direct payment, an amount gradually reduced for those earning more and phased out for those earning above US$99,000 per year.[195] Qualifying families received an additional US$500 per child.[196] These payments are excluded from the definition of "income" in the Bankruptcy Code for Chapters 7 and 13.[197] The American Rescue Plan Act of 2021 (American Rescue Plan), enacted in early March 2021, provided additional payment of up to US$1,400 for eligible individuals or US$2,800 for married couples filing jointly, plus US$1,400 for each qualifying dependant, including adult dependants.

A new grant program of US$100 billion was also created to support healthcare providers.[198]

Subchapter V

Subchapter V retains some components of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, while adding new features intended to make Chapter 11 more accessible for small businesses.[199]

189 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

190 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

191 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

192 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf. Id.

193 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

194 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

195 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true

196 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

197 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf; https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

198 See Public Law No: 116-136; https://www.restructuring-globalview.com/wp-content/uploads/sites/21/2020/04/COVID-19-Impact-of-Global-Insolvency-Laws-29.04.20.pdf https://content.next.westlaw.com/Document/Iec53b60f6a9511eaadfea82903531a62/View/FullText.html?contextData=(sc.Default)&transitionType=Default&firstPage=true.

199 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

Normally, only a business debtor with non-contingent, secured and unsecured debt less than US$2,725,625 may elect Subchapter V treatment.[200] On March 27, 2020, Congress increased the cap to US$7,500,000 for the next year as part of the CARES Act, in the hope that the higher cap will benefit not only small business owners but also their creditors, suppliers, customers, and employees, and the overall economy.[201] The CARES Act, however, was not designed to last more than a year; and the Subchapter V US$7.5 million debt-eligibility cap was scheduled to expire on March 27, 2021.[202] The Extension Act extended the debt cap through March of 2022.[203]

Much like a Chapter 13 case for individuals with regular monthly income, Subchapter V allows a debtor to spread debt over three to five years, during which time the debtor must devote its projected disposable income to paying creditors.[204] In many cases, this model benefits both debtors (by allowing them to spread payments over time) and creditors (by allowing them a meaningful recovery from debtors who may not have much money on hand but have a realistic expectation of income over time).[205] In a traditional Chapter 11 case, administrative expenses must be paid at plan confirmation; under Subchapter V, they may be paid over the life of the plan.[206] Debts are not discharged until the debtor completes all of its plan payments.[207]

The owners of the debtor in a traditional Chapter 11 case cannot retain ownership interests unless all unsecured creditors are paid in full under the reorganization plan.[208] In Subchapter V, the debtor can confirm a plan that allows the owners to retain their interests, provided that the debtor directs all of its "projected disposable income" to payments to creditors for a period of three years from the confirmation of the plan.[209] (The court may extend the three-year period to not longer than five years.)

200 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

201 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

202 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

203 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

204 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

205 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

206 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

207 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

208 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

209 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

To keep cases moving quickly, theoretically conserving administrative costs, a Subchapter V debtor must normally file its plan of reorganization within 90 days after entering bankruptcy; however, the Bankruptcy Court may extend this deadline "if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable."[210] Considering the COVID-19 environment, courts are likely to grant extensions liberally.

Normally, a Chapter 11 trustee is appointed only for cause, such as fraud or gross mismanagement, and seizes control of the debtor's operations, but under Subchapter V, a trustee is automatically appointed, but the debtor retains control of its assets and operations.[211] Creditor committees—a staple in traditional Chapter 11 cases—are formed only for cause in Subchapter V cases.[212] Although Subchapter V trustees have authority to investigate the debtor's financial affairs, their primary function is to facilitate a consensual plan among the debtor and its creditors, almost like a mediator facilitating a settlement in litigation. Involvement of an impartial third-party may increase the likelihood of a fair and equitable resolution among the debtor and its creditors and may be particularly useful for a small business whose creditors are unwilling to make reasonable concessions in light of the impending financial crisis.[213] Under the supervision of the Department of Justice, approximately 250 Subchapter V trustees—mostly attorneys and accountants—were selected out of over 3,000 applicants. Most had only recently received their first case assignments when the COVID-19 pandemic hit.[214]

Subchapter V also cushions small business owners from certain adverse personal consequences that might otherwise disincentivize a Chapter 11 filing.[215] For example, if the debtor's principal used his or her primary residence as security for a loan to fund the small business, the debtor's plan may modify the loan. Additionally, Subchapter V eliminates the so-called new value rule, which normally requires equity holders to provide "new value" if they want to retain their equity interest in the business.

Rhode Island Non-Liquidating Receivership Program

On March 31, 2020, presiding Justice Alice B. Gibney announced the start of the state's business protection program, the Business Recovery Plan, in response to disruptions caused by COVID-19.[216] This unique program uses a non-liquidating receivership model to keep businesses and their assets intact. The court appoints a receiver to oversee the preparation of an operating plan for businesses in the program. Once new working capital is accessed by the business (using emergency funding under the CARES Act or other sources), it will resume paying its ongoing obligations, under court supervision, to maintain operations, address its debts, and begin to

210 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

211 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

212 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

213 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

214 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

215 11 US Code Subchapter V; https://www.whiteandwilliams.com/resources-alerts-New-Subchapter-V-May-be-the-Bankruptcy-Lifeline-Small-Businesses-Need-to-Survive-COVID-19.html; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/; https://www.jdsupra.com/legalnews/the-future-of-subchapter-v-navigating-7056347/.

216 https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/20-04COVID-19BusinessRecoveryPlan.pdf.

generate revenues again. This program is not intended to cancel or restructure preexisting debt or to take the place of a traditional bankruptcy filing. The duration of the non-liquidating receivership is monitored and determined by the court on a case-by-case basis. If the business succeeds in accessing new sources of working capital under the operating plan, it may present a plan to exit the program and pay its debts from the revenue generated from ongoing operations. If the business cannot operate in accord with the operating plan, the business runs the risk of being placed into a traditional receivership, whereby the business or its assets may be sold for the benefit of creditors.

5. Permanent insolvency-related measures that have been introduced

5.1 CHANGES IN FORMAL INSOLVENCY PROCEEDINGS AND THE TYPES OF ENTITIES

More flexible/simpler formal restructuring processes

Although some have called for making the amendments to US Subchapter V permanent, they currently remain only temporary.[217]

In Mexico, the interim measures regarding commercial bankruptcy, although not permanent, have been included among the emergency cases the district court must hear during COVID-19. This is not a complete solution, however, since judges are prevented from advancing further in the bankruptcy proceedings and could not, for example, appoint a conciliator to seek a viable agreement between a company and its creditors or issue a judgment declaring the bankruptcy.[218]

Standalone new procedures exclusively for MSMEs

Mexico did not introduce permanent or temporary standalone new procedures exclusively for MSMEs during COVID-19. In Canada and the US, however, reforms were introduced specifically to deal with MSMEs.

The CARES Act, by far the largest in American history, contains many provisions focused on providing relief for small to medium businesses.[219] Among these are certain temporary amendments to the Bankruptcy Code, such as section 1113 of Title I of the CARES Act (the Keeping American Workers Paid and Employed Act), which contains amendments to the Bankruptcy Code affecting both small businesses and individuals.

Small business amendments

The CARES Act temporarily amends the recently enacted Small Business Reorganization Act (SBRA) to increase the debt threshold for small businesses eligible to file under the SBRA from US$2,725,625 to US$7,500,000.[220] Without further extensions, this temporary eligibility increase expired on March 27, 2022, and the debt threshold will return to US$2,725,625 (subject to any other dollar adjustments imposed by Congress).

5.2 MEASURES TO STRENGTHEN INFORMAL / OUT-OF-COURT WORKOUT FRAMEWORKS

The US, Canada, and Mexico did not introduce measures to strengthen informal or out-of-court workout frameworks for debtors or commercial debt obligations.

217 Supra at 4.2; 11 US Code Subchapter V; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/.

218 11 U.S. Code Subchapter V; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/.

219 Supra at 4.2; 11 US Code Subchapter V; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/.

220 Supra at 4.2; 11 US Code Subchapter V; https://www.bizjournals.com/denver/news/2021/05/19/first-year-new-bankruptcy-law-for-small-businesses.html; https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/.

LATIN AMERICA

1. Introduction

This overview of Latin America focuses on Argentina, Brazil, Colombia, and Chile.

1.1 REGIONAL OVERVIEW OF LOCAL EFFECTS OF THE PANDEMIC

The Latin American countries have been particularly vulnerable to COVID-19. Despite the reduced number of infected people at the early stages of the pandemic, Argentina and Brazil, among others, soon became global hot spots. In response to the spread of the virus, many countries in the region adopted nationwide lockdowns, border closings, and internal travel restrictions—the lightest in Brazil (where the federal government largely refused to impose lockdowns) and the strongest in Argentina, where a strong lockdown extended for more than nine consecutive months.

Lockdown and travel restrictions, along with changes in public consumption, provoked a recession affecting mainly MSMEs and companies throughout the region. Reductions or losses of sales and working capital as consequences of the local and global recession triggered insolvency and the need to close for many MSMEs, increasing unemployment and poverty. In Chile, for instance, according to a report from the Economic Commission for Latin America and the Caribbean of the United Nations,[221] the pandemic has resulted in reduced domestic demand, lower production levels, and higher unemployment.

When the pandemic broke out at the beginning of 2020, Argentina was already undergoing an endogenous economic crisis. By the end of 2018, Argentina faced an increasing demand for US dollars, accelerating the depreciation of the Argentine peso, the flow of capital out of the country, and the reduction of the net foreign currency reserves of the Argentine Central Bank (Banco Central de la República Argentina (BCRA)). In addition, measures adopted by the government to contain the demand for US dollars helped cause a deep recession, while the demand for US dollars continued. As a result, the government adopted strong foreign exchange restrictions on the purchase of foreign currency; those led to a parallel unofficial blue market, where the gap in the quotation for US dollars with the official foreign exchange market reached peaks of more than 100 percent. In addition, the Argentine federal government has been financing all governmental assistance in connection with the COVID-19 outbreak with heavy money issuance, contributing to increased fiscal deficit and fostering inflation and recession.

As a consequence of the overall general economic situation caused by the COVID-19 pandemic and lockdowns, many debtors faced a strong reduction, or even a complete loss, of their sales and reduction or suspension of their clients' payments as well as restrictions on the delivery of supplies and other setbacks. The COVID-19 pandemic crisis in the region has thus been characterized by reduced or lost cash flow, not only to pay for debt services but also to obtain working capital needed to maintain debtors' operations.

As a result, many small and medium companies and enterprises were forced to close or file for insolvency proceedings. However, private restructuring agreements increased, which creditors prefer to avoid facing insolvency proceedings. The industry segments experiencing the greatest impact have mainly been those related to tourism, leisure and travel, hotels, restaurants, theaters, the retail and the automobile industries, and construction.

221 https://repositorio.cepal.org/bitstream/handle/11362/46504/10/PO2020_Chile_en.pdf.

1.2 CHANGES TO INSOLVENCY PROCESSES AND OTHER MEASURES: REGIONAL OVERVIEW

Some of the surveyed countries adopted temporary insolvency proceedings measures, while all countries in the region adopted economic and tax measures to help reduce the impact of the recession on businesses and individuals and the economy in general. For example, in Argentina all government economic aid was financed through the issuance of money, fostering inflation and aggravating the country's general macroeconomic conditions. In Brazil, on March 20, 2020, the Congress issued Legislative Decree No. 6/2020,[222] declaring a "state of public calamity" (*estado de calamidade pública*), with an end date of December 31, 2020 that was later extended to June 30, 2021.[223] In many countries in the region, the pandemic accelerated the digitalization of administrative and judicial proceedings, which in many cases commenced as temporary features but became permanent.

2. Temporary insolvency-related legal and regulatory measures

On April 15, 2020, and effective April 16, 2020, Colombia established a two-year transitional insolvency regime for businesses and MSMEs that focused on the recovery and rescue of companies affected by the pandemic.[224] The regime included adoption of mechanisms to speed the process to provide financial relief and commercial reactivation.

On July 31, 2020, the Argentine House of Representatives approved a bill to address the emergency in insolvency-related matters. The proposed bill provided for certain limited amendments to the Argentine Bankruptcy Law, like those adopted in response to the 2001 crisis. However, these amendments provided only temporary relief measures, including the suspension of bankruptcy adjudications and enforcement actions, and did not address substantive matters. Despite the emergency and the general economic conditions in Argentina, the Argentine Senate discussed the bill and approved it, with changes, to come into effect on October 15, 2020; but because of the changes introduced, the bill had to be returned for approval to the House of Representatives, where it has not yet been discussed.

The Bill provided for:

- **Emergency declaration:** declared an emergency in insolvency through June 30, 2021.
- **Beneficiaries:** limited the emergency declaration and its benefits only to debtors that filed for reorganization or out-of-court restructurings after March 20, 2020, and to debtors that filed for reorganization or out-of-court restructuring or were subject to bankruptcy petitions filed during the term of the emergency.
- **Exemptions:** excluded from beneficiaries all debtors that performed any of the following transactions during the claw-back period and the two years following the date of effectiveness of the law:
  a) transfer of funds outside Argentina for portfolio purposes or for any other reason to the debtor's shareholders, partners, or entities directly or indirectly affiliated with them and such funds have not been repatriated into Argentina;
  b) any payments to beneficiaries at non-cooperating or low or nontaxation jurisdictions;
  c) the purchase with pesos of any securities for their forthwith sale for foreign currency or transfer to custody accounts outside Argentina; or the purchase of securities with pesos for their forthwith settlement of purchases outside Argentina; and
  d) the creation or settlement of any financial asset outside Argentina and not repatriated into Argentina.
- **Suspension of the term of the exclusivity period in pending reorganization proceedings:** during the emergency, suspended the terms of the exclusivity period, to be re-adjusted by the court.

222 http://www.planalto.gov.br/ccivil_03/portaria/DLG6-2020.htm.
223 https://www.agenciabrasilia.df.gov.br/2020/12/15/estado-de-calamidade-publica-prorrogado-ate-junho/.
224 Pursuant to Decree No. 560/2020 and Decree No. 772/2020; https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=113637; https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20772%20DEL%203%20DE%20JUNIO%20DE%202020.pdf.

- **Extension of the exclusivity period in new reorganization proceedings:** in respect of reorganization proceedings commenced since the commencement of the law, the term of the exclusivity period (within which the debtor had the exclusivity for the formulation, filing, and approval of its reorganization plan) was extended from the original 90-day term extendable for one time by an additional 30 days to a 180-day term extendable for one time by an additional 60 days.
- **Extension of the term for the performance of reorganization plans and out-of-court restructuring agreements:** term for the performance of the obligations under reorganization plans and out-of-court restructuring agreements approved by the creditors and endorsed by the court was extended to up to one year. All obligations due would be payable since the termination of the emergency term.
- **Suspension of bankruptcy proceedings:** the suspension of the bankruptcy proceedings and petitions filed since the Law came into effect.
- **Suspension of security interest's foreclosures and guarantees' enforcement:** the suspension of all foreclosures on any kind of security securing financial obligations and all guarantees in respect of the guarantors.
- **Suspension of auctions:** the suspension of all judicial and private auctions, including on pledges and mortgages.
- **Suspension of the statute of limitations:** the suspension of the term of the statute of limitations and expiration of claims against the debtor, guarantors, and other parties.
- **Prohibition of seizures:** the prohibition of new seizures on bank accounts, except in connection with labor prompt payments and alimentary related claims.
- **Court tax:** reduction of the reorganization proceedings' court tax.

Despite the critical situation and state of emergency, almost two years after the COVID-19 outbreak, Argentina has not yet approved much-needed substantive reform to the Argentine Bankruptcy Law. Moreover, even the temporary measures proposed by the bill have never been adopted, mainly due to the controversial amendments introduced to the original bill by the Senate in respect of the limitations of the beneficiaries and the conditions imposed on those eligible beneficiaries.

2.1 INITIATING INSOLVENCY PROCEEDINGS

Suspending directors' duties to initiate insolvency procedures / right to initiate proceedings

Pursuant to the Colombian Commercial Code (Section 19(5)),[225] the debtor's board of directors has the obligation to report the cessation of payments on its current commercial claims before the competent court. In accordance with Section 90 of the Colombian Insolvency Law, No. 1116[226] (Colombian Insolvency Law), the debtor will be in payments cessation when it is in default for more than 90 days in the payment of two or more credits incurred in the course of its business with two or more creditors, or has at least two enforcement proceedings pending seeking collection of payment obligations filed by two or more creditors, and, in both cases, the aggregate value of those credits represents not less than 10 percent of the debtor's total liabilities.

Section 15.4 of Decree No. 560/2020 of the executive branch of the government of Colombia issued on April 15, 2020[227] suspended, until December 31, 2020, the obligation to report cessation of payments if the cessation relates to the COVID-19 emergency.

Measures increasing response timelines for debtors facing petitions to initiate insolvency proceedings

Brazilian state courts suspended procedural deadlines for certain periods during the COVID-19 pandemic, thus indirectly increasing response timelines for debtors, but no measures were specifically designed to increase response timelines for debtors facing petitions to initiate insolvency procedures.

225 https://leyes.co/codigo_de_comercio/19.htm.
226 https://leyes.co/el_regimen_de_insolvencia_empresarial/9o.htm.
227 https://leyes.co/el_regimen_de_insolvencia_empresarial/9o.htm.

3. Other temporary relief: Debtors and employees

3.1 EXTENDING REPAYMENT TERMS

Regulation 007/2020 of the Financial Superintendency of Colombia, dated March 17, 2020,[228] issued prudential measures to alleviate the financial burden on debtors due to the COVID-19 pandemic. The regulation instructs credit institutions to establish effective mechanisms for individuals and legal entities to negotiate new conditions, including grace periods and increased payment terms, on all commercial, micro, consumer, mortgage, and housing loans that, as of February 29, 2020, were not overdue for more than 30 days. All these restructured loans will keep the credit risk score they had as of such date and will be reclassified after expiration of the grace period. This measure is intended to be temporary during the COVID-19 pandemic emergency, but neither of the referenced laws and regulations provide for a fixed effective term. The maximum term of this relief was 120 consecutive days.

Section 1 of Decree 493/2020[229] of the executive branch of the government of Colombia, issued on March 29, 2020, provided that the granting of the grace periods for the payment of principal and interest under housing loans or housing lease agreements benefited from interest rate coverage and will not be construed as grounds for early termination of the coverage instrument.

Pursuant to Decree No. 560/2020[230] of Colombia's executive branch, installment payments that debtors owed between April and June 2020 under the restructuring process were suspended and deferred until July 2020.

In Brazil, Pursuant to Law No. 14,216,[231] dated October 7, 2021, the executive branch of the government suspended, until December 31, 2021, enforcement of all judicial, extrajudicial, or administrative actions seeking to repossess private or public urban real estate. The suspension applies, among others, to the enforcement of injunctions in actions of a possessory nature and in extrajudicial measures.

Communication "A" 6949[232] of the BCRA of Argentina established that unpaid amounts on financial facilities granted by financial institutions (other than to the financial sector) that were due between April 1 and June 30, 2020, may not accrue punitive interests or penalties.

In Chile, pursuant to Section 2 of the Law No. 19,983,[233] invoices for products and services must be paid within 30 days following receipt of the invoice by the debtor. In exceptional cases, the parties may agree on terms that exceed the statutory term. Law No. 21,217[234] amended Law No. 19,983 to benefit MSMEs by providing that such agreements, except under certain limited exceptions, may not be entered by MSMEs (as defined in the Law No. 20,416) as seller or service provider, on the one hand, and companies that do not qualify as MSMEs under such law, as purchaser or service recipient, on the other. Law No. 20,416[235] defines MSMEs for this purpose as follows:

micro enterprises are those enterprises that have revenues for sale of goods and services and other business activities in the ordinary course of business form less than 2,400 Promotion Units during the last calendar year... small enterprises are those enterprises which annual revenue for sale of goods and services and other business activities in the ordinary course of business are greater than 2,400 Promotion Units but less than 25,000 Promotion Units during the last calendar year and medium enterprises are those enterprises for which annual revenue for sale of goods and services and other business activities in the ordinary course of business are greater than 25,000 Promotion Units but less than 100,000 Promotion Units during the last calendar year.

228 https://scare.org.co/wp-content/uploads/100-superfinanaciera.pdf.
229 https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=111176.
230 https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=111176, 153.
231 http://www.planalto.gov.br/CCIVIL_03/_Ato2019-2022/2021/Lei/L14216.htm.
232 https://www.bcra.gob.ar/Pdfs/comytexord/A6949.pdf.
233 https://www.bcn.cl/leychile/navegar?idNorma=233421&idParte=8660370&idVersion=2020-06-03.
234 https://www.bcn.cl/leychile/navegar?idNorma=1144040.
235 https://www.bcn.cl/leychile/navegar?idNorma=1010668.

In addition, Chilean Law No. 21,217 provides that provisions that *"[h]ave the sole purpose of delaying the payment of the invoice, by establishing payment in installments"* will be null and void, unless an MSME is involved in the terms described above.

Pursuant to Resolution No. 848,[236] dated March 31, 2020, the Agency of Cooperatives of the Ministry of Economy, Promotion and Tourism of Chile authorized the cooperatives subject to the control of the Agency of Cooperatives to refinance up to three installments on their credits to the extent that the credits were in arrears for less than 30 days from the publication of that resolution (April 6, 2020).

According to Law No. 21,229,[237] Decree No. 3,472 of the executive branch of the Chilean government[238] (which created the Guarantee Fund for Small Enterprises) was amended to the effect of expanding the scope of Decree No. 3,472 to all enterprises, temporarily relaxing the eligibility requirements for application of guaranteed loans, extending repayment terms, and establishing a grace period of six months under the loans guaranteed by the Guarantee Fund for Small Enterprises, until April 30, 2021 (further extended until December 31, 2021).[239]

Chilean Law No. 21,299[240] allowed banks and other lenders to grant so-called Postponement Loans to their debtors secured with a mortgage upon their request. The Postponement Loans are new money loans and are not deemed a prepayment of the existing mortgage loan and, therefore, are not subject to prepayment premiums. Their interest rate is capped, and they are exempted from stamp duty. Upon payment of the mortgage loan and granting of the Postponement Loan, the mortgage will attach to the new Postponement Loan by operation of law, provided that the new Postponement Loan is registered with the Real Estate Registry. The law has a term of 64 months from January 4, 2021. The law also provides for an estate guarantee for mortgage loans for housing purposes with an appraisal below US$400,000. The guarantee will be valid for 60 months and may guarantee a maximum of six installments of the mortgage loan partially repaid with a Postponement Loan. Postponement Loans could only be granted during the four months following the first tender under the law.

3.2 SUSPENDING UNILATERAL TERMINATION OF CONTRACTUAL AGREEMENTS AND ACCELERATION OF CONTRACTUAL TERMS

Pursuant to Decree No. 320/2020 of the executive branch of the government of Argentina,[241] contracts for leasing properties for personal or family living; small family business or small agricultural production; rendering services to commerce and industry by small individual taxpayers registered under the Single Tax regime; use by individual professionals; rendering services to commerce and industry by MSMEs; and workers cooperatives or recovered companies registered with the National Institute of Associationism and the Social Economy, which expired before January 31, 2021, were extended until January 31, 2021.[242]

3.3 ELIMINATING CERTAIN INTEREST AND PENALTY AMOUNTS

Pursuant to Decree No. 420/2020[243] of the Ministry of Finance of Chile, interest on taxes paid before December 31, 2020 was waived, and payment of certain taxes was deferred without the accrual of new interests. (See also the preceding two subsections.)

236 https://www.bcn.cl/leychile/navegar?idNorma=1144082.
237 https://www.bcn.cl/leychile/navegar?idNorma=1144600.
238 https://www.bcn.cl/leychile/navegar?idNorma=7134&idParte=7130339&idVersion=.
239 Law No. 21,307 https://www.bcn.cl/leychile/navegar?idNorma=1155424.
240 https://www.bcn.cl/leychile/navegar?idNorma=1154155.
241 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335939/norma.htm.
242 Decree No. 766/2020 of the Federal Executive Power; http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/342555/norma.htm.
243 https://www.bcn.cl/leychile/navegar?idNorma=1143963.

3.4 BANNING THE REPOSSESSION OF PROPERTY

Decree No. 772/2020[244] of the executive branch of the government of Colombia, dated June 3, 2020, provided that, until June 3, 2022, the commencement of a reorganization process under the Colombian Insolvency Law and all precautionary measures granted in foreclosure proceedings attaching non-registrable assets against debtors affected by the COVID-19 pandemic crisis would be released by application of law with the reorganization process commencement order. (See also subsection 5.1 below.)

The National Council of Justice (Conselho Nacional de Justiça) (CNJ)[245] made a nonbinding recommendation that during the COVID-19 pandemic crisis all courts evaluate with special care the extension of all precautionary measures, evictions for lack of payment, and execution proceedings against businesses and other economic agents. Proceedings terms and, therefore, execution proceedings were suspended multiple times since March 2020, originally until April 17, 2020, and later until May 2, 2021. Each of the Brazilian Appellate and Federal Estates Courts suspended terms for proceedings at least once since March 2020. (See also section 5 below.)

In Argentina, pursuant to Communication "A" 6949 of the BCRA, unpaid amortization installments due during a specified period on financings granted by financial institutions (other than credit cards) will be deferred to the payment dates immediately following the original final maturity and will accrue interest at the contractually agreed rate.[246] Communication "A" 6964[247] of the BCRA also limited the interest rate to be charged after April 13, 2020 on credit card balances to a 43 percent nominal annual rate. It also established that all credit card balances due between April 13 and April 30, 2020 must be automatically refinanced for at least one year with a three-month grace period and nine equal monthly installments, without punitive interest or other charges, except for compensatory interest. These refinanced balances could be repaid in total or in part at any time at the discretion of the debtor without a premium.

Pursuant to Decree No. 319/2020 and Decree No. 767 of the executive branch of the government of Argentina,[248] the monthly payment amount under mortgages for the purchase of family-living single properties was frozen until January 31, 2021. The difference between the contract mortgage installments and those resulting from the freezing order and debts owed in connection therewith after March 2020 were to be paid in at least three installments from February 2021, without interest in respect of the differences in amount and with compensatory interest in the case of debts. Enforcement orders in connection with the default in payment of mortgages for that purpose and the term of the statute of limitations in connection with those proceedings in Argentina were also suspended until January 31, 2021.

In Chile, interest accrual has not been suspended. However, Law No. 21,307[249] provided for a limitation on the amount of interest accrued on the loans guaranteed by the Guarantee Fund for Small Enterprises pursuant to Law No. 21,229.[250]

Pursuant to Decree No. 320/2020 of the executive branch of the government of Argentina,[251] the amounts of certain monthly lease rentals were frozen until September 30, 2020, and then further extended until January 31, 2021.[252] This was applicable to properties leased for personal or family living; a small family business or small agricultural production; rendering of services to commerce and industry by small individual taxpayers registered under the Single Tax regime; individual professionals; rendering services to commerce

244 https://www.bcn.cl/leychile/navegar?idNorma=1143963,153.
245 Ordinance No. 63/2020 of the CNJ; https://atos.cnj.jus.br/atos/detalhar/3261.
246 Ordinance No. 63/2020 of the CNJ; https://atos.cnj.jus.br/atos/detalhar/3261, 161
247 http://www.bcra.gov.ar/Pdfs/comytexord/A6964.pdf.
248 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm.
249 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm, 168.
250 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm, 166.
251 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm, 171.
252 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm, 172.

and industry by MSMEs; and for Workers Cooperatives or Recovered Companies registered with the National Institute of Associationism and the Social Economy. The difference between the contract lease fee and the one resulting from the freeze order was to be paid in three to six installments without interest from February 2021.[253] Eviction orders in connection with default in payment on those leased properties, monthly fees, and the term of the statute of limitations in connection with those proceedings were also suspended until January 31, 2021.[254] The terms of lease agreements for the above purposes expiring after January 31, 2021, were extended until January 31, 2022.[255]

3.5 SUSPENDING EXECUTION PROCEEDINGS

In August 2019, Argentina's Federal Tax Authority issued Resolution No. 4557/2019[256] approving a general moratorium for MSMEs registered at the MiPyMES Registry and entities deemed potential MSMEs[257] (including those entities similar to MSMEs but not registered or not holding an outstanding registration certificate). The moratorium, originally approved in connection with the economic crisis that Argentina was suffering at that time for reasons other than COVID-19, was available until October 31, 2019.[258] This moratorium was also approved for facility plans for the payment of taxes and social security payments, withholdings, and tax payments due as of August 15, 2019 (with certain exclusions), including interest and penalties.

In addition, the moratorium suspended attachments and other precautionary orders against MSMEs and comparable entities until November 14, 2019. After several other extensions,[259] the Federal Tax Authority extended until February 28, 2021, the suspension of attachments and other precautionary orders.[260] On February 25, 2021, the Federal Tax Authority suspended until March 31, 2021,[261] commencement of executory proceedings and grants of precautionary measures for MSMEs and seizure of funds or any kind of assets deposited with financial institutions or accounts receivable for other debtors; after several revisions, this was extended until November 30, 2021.[262]

The Federal Executive Authority extended until June 30, 2020, a moratorium on the payment of taxes and social security contributions (with certain limited exceptions) to the Federal Tax Authority due as of November 30, 2019 (including debts under prior moratoriums) by MSMEs,[263] including the waiver of penalties and interest. Pursuant to Decree No. 634/2020 the Federal Executive Authority further extended the moratorium until August 31, 2020.[264]

Argentine Law No. 27,541[265] approved the suspension of the enforcement of all credits held by the Federal Estate and any of its agencies or Federal Estate-owned companies against the public or private entities rendering health services and of the petition of all precautionary measures in connection therewith until December 31, 2020.

Pursuant to Decree No 319/2020 of Argentina's Executive Authority,[266] the monthly payment amount under pledges

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253 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm, 172.
254 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm, 172.
255 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm, 172.
256 http://servicios.infoleg.gob.ar/infolegInternet/anexos/325000-329999/326917/norma.htm.
257 http://servicios.infoleg.gob.ar/infolegInternet/anexos/325000-329999/327624/texact.htm.
258 Further extended until November 30, 2019, by Resolution No. 4616 of the Federal Tax Authority, http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/330756/norma.htm.
259 Further extended until November 30, 2019, by Resolution No. 4630 of the Federal Tax Authority, http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/331670/norma.htm; and further extended until December 31, 2019, by Resolution No. 4638 of the Federal Tax Authority, http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/332429/norma.htm; and further extended until March 31, 2020, by Resolution No. 4655 of the Federal Tax Authority, http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/333646/norma.htm.
260 Resolution No 4926/2021 of the Federal Tax Authority; https://www.boletinoficial.gov.ar/detalleAviso/primera/240286/20210201.
261 https://www.boletinoficial.gob.ar/detalleAviso/primera/241311/20210301.
262 https://www.boletinoficial.gob.ar/detalleAviso/primera/242494/20210330; https://www.boletinoficial.gob.ar/detalleAviso/primera/245027/20210531; https://www.boletinoficial.gob.ar/detalleAviso/primera/248633/20210826.
263 Originally approved by Law No. 27,541; http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/333564/norma.htm.
264 Decree No. 316/2020 of the Executive Power; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335925/norma.htm.
265 http://servicios.infoleg.gob.ar/infolegInternet/anexos/330000-334999/333564/norma.htm.
266 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335938/norma.htm.

indexed by Units of Acquisitive Value[267] was frozen until September 30, 2020. The difference between the contract pledge installments and the ones resulting from the freezing order and debts owed in connection therewith since March 2020 were to be paid in at least three installments from October 2020, without interest in respect of the amount of differences and with compensatory interest in the case of debts. Enforcement orders in connection with default in payment of these pledges and the term of the statute of limitations in connection with those proceedings were also suspended until September 30, 2020.

3.6 SUSPENSION OF AUCTIONS

The Ministry of Work and Social Security of Chile suspended auctions in respect of Credit Units of the General Administration of Pledged Credits and other special auctions between March 2020 and October 2021.[268] (Please also see subsection 3.3.)

3.7 MEASURES TO PROTECT EMPLOYEES

In Decree No. 558/2020,[269] issued on April 15, 2020, the executive branch of the government of Colombia stated the temporary reduction of pension contributions to provide greater liquidity to employers and dependent and independent workers and established measures to protect the retired under the scheduled retirement modality (who receive a minimum monthly salary) from an eventual decapitalization of their pension funds saving accounts.

Through Decree No. 565/2020,[270] dated April 15, 2020, Colombia's Executive Authority adopted temporary measures to protect the rights of the beneficiaries of the Beneficios Económicos Periódicos (periodic economic benefits) or BEPs. The Ministry of Work issued Regulation No. 0033/2020,[271] dated April 17, 2020, establishing that employers and employees could agree on additional compensable paid leave, modifications of the working hours and salaries, modification or suspension of extra-legal benefits, and additional conventional benefits.

On May 8, 2020, Colombia's Executive Authority issued Decree No. 639/2020,[272] creating the Program for the Support of Formal Employment (Programa de Apoyo al Empleo Formal) to support and protect formal employment during the pandemic. During its terms, the Program granted beneficiaries up to four monthly cash payments. Beneficiaries of the Program include entities incorporated or formed before January 1, 2020 and registered with the Public Commercial Registry (with certain exceptions) and individuals that: (a) show evidence of having suffered a reduction of at least 20 percent in revenues, and (b) did not receive such support four times and were not obliged to refund the support to the government. The amount of the support is equal to the product of the beneficiaries' number of employees multiplied up to 40 or 50 percent (for beneficiaries in the tourism, hotel, gastronomic, and recreation industries) of the monthly minimum salary.

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267 In Argentina, indexation of debts continues, prohibited by Law No. 23,928; http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/328/texact.htm. However, certain limited financings, including financings extended by financial institutions guaranteed with pledges and mortgages, could be granted in the equivalent of Units of Acquisitive Value (which are units adjusted by inflation) but disbursed and payable in Argentine pesos. The Argentine Central Bank publishes the quote of each Unit on a daily basis.

268 Resolución 112 Exenta; https://www.bcn.cl/leychile/navegar?idNorma=1143908; Resolución 154 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1144746; Resolución 195 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1146233; Resolución 233 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1147169; Resolución 277 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1147843; Resolución 322 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1148844; Resolución 341 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1149393; Resolución 355 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1149786; Resolución 391 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1151091; Resolución 415 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1152245; Resolución 471 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1154259; Resolución 4 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1154913; Resolución 42 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1156085; Resolución 95 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1157871; Resolución 127 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1158711; Resolución 176 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1160535; Resolución 202 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1162110; Resolución 202 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1163330; Resolución 253 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1164549; Resolución 282 Exenta, https://www.bcn.cl/leychile/navegar?idNorma=1165986.

269 https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=113620.

270 https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20565%20DEL%2015%20DE%20ABRIL%20DE%202020.pdf.

271 https://www.mintrabajo.gov.co/documents/20147/0/0033_compressed.pdf/18cbf638-53af-73b1-c2c3-fcd8d52d0419?t=1587160269891.

272 https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=120720.

By Decree No. 1174/2020, dated August 27, 2020, the executive branch of the government of Colombia approved a Social Protection Minimum Floor for those individuals with a monthly income below the Minimum Monthly Salary.

The executive branch of the government of Brazil issued a series of Provisory Regulations to protect employees and employment, including the regulation of remote work, anticipation of vacation leave, collective vacation leave, offsetting overtime, and absences.[273] Pursuant to Provisory Regulations No. 943/2020 and 944/2020,[274] the Brazilian government also extended extraordinary credit lines for granting loans to aid businesses in paying employees' salaries.

In Argentina, termination of employees without reason or based on lack of or reduction in work and force majeure, and suspension of workers for the same reasons, was suspended for 60 days up to March 31, 2020, further extended until December 31, 2021, except for suspensions (a) based on lack or reduction of work not attributable to the employer and force majeure agreed individually or collectively with the workers and endorsed by the Labor Authority; and (b) because, for the same reasons, the worker does not render any services.[275] The payments made to workers suspended in accordance with the foregoing would be deemed non-remunerative and exempted from the payment of social security contributions except for contributions to the health system and national health insurance system.[276] The Ministry of Work, Employment and Social Security approved an agreement between the Argentine Industrial Union and the General Confederation of Work for the temporary suspension of workers under Section 223 of the Labor Contract Law No. 20,744, with the payment of at least 75 percent of the workers' salaries until September 8, 2020.[277]

The Argentine government also adopted the following labor costs and social contributions benefits:

- Pursuant to Resolution No. 219/2020 of the Ministry of Work, Employment, and Social Security,[278] workers subject to "mandatory social preventive isolation" who could continue carrying out their duties at home were to receive their usual remuneration. Compensation to those workers subject to such an order who could not perform duties from their usual place of work would be deemed non-remunerative and subject only to the withholdings and contributions to the Argentine health insurance system and to the Argentine Institute of Social Services for Retirees and Pensioners. The need to hire workers during "mandatory social preventive isolation" would be deemed extraordinary and temporary, and the salaries of workers hired during such period under this modality would have a reduction of 95 percent of the contribution to the Argentine Social Security System. However, this resolution was soon afterwards abrogated by Resolution No. 279/2020 of the Ministry of Work, Employment and Social Security.[279]

273 Provisory Measure No. 928/2020; https://www.in.gov.br/en/web/dou/-/medida-provisoria-n-928-de-23-de-marco-de-2020-249317429; Brazilian Labor Code (Section 501); http://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452compilado.htm.

274 https://www.in.gov.br/en/web/dou/-/medida-provisoria-n-943-de-3-de-abril-de-2020-251138827; https://www.in.gov.br/en/web/dou/-/medida-provisoria-n-944-de-3-de-abril-de-2020-251138829.

275 Section 223 bis of the Labour Contract Law No. 20,744, http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/25552/texact.htm.

276 Decree No. 329/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335976/norma.htm; Decree No. 487/2020 of the Federal Executive Power; http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/337677/norma.htm; Decree No. 624/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/340412/norma.htm; Decree No. 761/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/342520/norma.htm; Decree No. 891/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/344228/norma.htm; Decree No. 961/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/344673/norma.htm; Decree No. 39/2021 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/346406/norma.htm; Decree No. 266/2021 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/349059/norma.htm; Decree No. 345/2021 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/350000-354999/350341/norma.htm; Decree No. 413/2021 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/350000-354999/351343/norma.htm.

277 Resolution No. 397/2020 of the Ministry of Work, Employment and Social Security, http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/336924/norma.htm; Resolution No. 475/2020 of the Ministry of Work, Employment and Social Security, http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/338418/norma.htm.

278 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335796/norma.htm.

279 http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335988/norma.htm.

- Creation of an Emergency Work and Production Assistance Program[280] that provided certain benefits to all employers complying with any of the following requirements (excluding those rendering services deemed essential): (a) performed activities critically affected by the geographical areas where they were carried out; and/or (b) had a significant number of employees infected with COVID-19 or subject to mandatory isolation or with work exemption (e.g., falling within a risk group); and/or (c) suffered a significant reduction in their invoicing since March 12, 2020.[281] Benefits of the program included:
  - An extension of the expiry of the terms for the payment of employers' contributions to the Argentine Social Security System or a reduction of up to 95 percent on employers' contributions to the Argentine Social Security System.[282]
  - A complementary salary paid by the Social Security Authority (ANSES) to all or a portion of the workers of the eligible companies. The amount of the complementary payment would be equal to 50 percent of the workers' net salary as of February 2020, if it would not be lower than the minimum salary nor higher than two minimum salaries or the total of the net salary for that month. The compensatory allowance would be deemed on account of the full remuneration owed to each worker.[283]
  - A zero-interest loan to small taxpayers and eligible autonomous workers that complied with certain requirements. The loan would consist in an amount credited on the beneficiaries' credit card for a total of up to Arg$150,000 and disbursed in three equal payments including an additional amount equal to the amount of the tax payments and contributions to be made by the beneficiaries to the social security system. One hundred percent of the subsidized interest rate and total financial cost of these loans will be subsidized by the Federal Fund for Productive Development (FONDEP). For this purpose, the federal government approved a transfer of Arg$11,000,000,000 to the FONDEP. Up to 100 percent of the loans could be guaranteed by the Specific Purpose Guarantee Fund (FoGAR) without the need for counter-guarantees. Any remaining amounts not applied to these guarantees would be transferred to other funds managed by the Ministry of Productive Development for promoting the financing of the private sector. For this purpose, the federal government approved a transfer of Arg$26,000,000,000 to the FoGAR.[284]
  - A subsidized interest rate loan for companies. The FONDEP may subsidize up to 100 percent of the interest rate and financial cost of the companies' subsidized loans. The Federal Executive Authority authorized the funding of the FONDEP in the amount of Arg$10 billion for this purpose. In addition, the FoGAR may guarantee up to 100 percent of the subsidized loans without counter guarantees. The Federal Executive Authority authorized the funding of the FoGAR in the amount of Arg$29 billion.[285]

The Emergency Work and Production Assistance Program applied to the eligible companies' economic results obtained since March 12, 2020. The federal government extended the benefits under this program until December 31, 2020.[286]

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280 Decree No 332/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/336003/texact.htm.
281 As amended by Decree No. 621/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/336003/texact.htm. The original subsection (iii) read as follows: "(iii) have suffered a significant reduction of sales since 20 March 2020."
282 As amended by Decree No. 621/2020 of the Federal Executive Branch, Law No 24,013, http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/412/texact.htm; Decree No. 328/88 of the Federal Executive Branch, http://servicios.infoleg.gob.ar/infolegInternet/anexos/75000-79999/77254/norma.htm; Decree No. 2,072 of the Federal Executive Branch, http://servicios.infoleg.gob.ar/infolegInternet/anexos/10000-14999/14113/norma.htm; Decree No. 265/2002 of the Federal Executive Branch, http://servicios.infoleg.gob.ar/infolegInternet/anexos/70000-74999/72195/norma.htm.
283 As amended by Decree No. 376/2020 of the Federal Executive Branch, http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/336470/norma.htm.
284 Decree No. 376/2020 of the Federal Executive Branch.
285 Decree No. 621/2020 of the Federal Executive Branch.
286 Decree No. 823/2020 of the Federal Executive Branch, http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/343565/norma.htm.

Pursuant to Law No. 27,563[287] the Argentine Congress enacted a special program for the protection and reactivation of tourism and related activities until December 31, 2020, for all companies and businesses in the industry having sales below 30 percent, provided that the Chief of the Cabinet of Ministers was authorized to extend the term of the program for an additional 180 days and to grant non-reimbursable financial assistance for the owners of MSEs operating such a business as their sole activity for an amount equal to up to two minimum salaries. Among other measures, the benefits of the program for the eligible businesses were:

- A reduction of 95 percent on employers' contributions to the Argentine Social Security System.
- A complementary salary paid by the ANSES to all or a portion of the workers of the eligible companies. The amount of the complementary payment was equal to 50 percent of the workers' net salary, if it would not be lower than the minimum salary nor higher than two minimum salaries or the total of the net total salary.
- Extension for 180 days of the maturity of all taxes on the assets, equity, or earnings maturing until December 31, 2020.
- Suspension of the order of precautionary measures by the Federal Tax Authority.
- A reduction on the rate of the tax on debits and credits in bank accounts until December 31, 2021.
- Instruction to the Argentine Central Bank to provide through Banco de la Nación Argentina the creation of credit lines for paying for utilities, working capital, and other fixed expenses during the term of the benefits, with zero interest rate during the first 12 months and interest of 20 percent for the remainder of the credit line. This bonus was payable in the form of discount on the services.
- An incentive to the pre-sale of tourism services by means of the recognition of a credit equal to 50 percent of the amount of the tourism services rendered within Argentina that can be applied to the purchase of such tourism services since 2021, up to a maximum amount to be determined by the federal government.
- Creation of a fiscal bonus for paying for tourism services by families with monthly net income below four minimum salaries.

By Decree No. 528/2020,[288] the federal executive branch of the government of Argentina extended until December 9, 2020, the payment of double severance originally approved on December 13, 2019, in respect of termination without cause of employees in the private sector hired before December 13, 2019.

On November 11, 2020, the Ministry of Work, Employment. and Social Security of Argentina approved creation of a program (REPRO II) paying an individual a fixed amount to be paid to workers on account of their salaries for an amount of up to Arg$22,000 for each active worker in May and June 2021.[289]

Pursuant to joint resolution No. 4/2021 of the Ministry of Work, Employment, and Social Security and the Ministry of Productive Development,[290] the Argentine government created a program for young people and MSMEs, seeking to promote employment along with the policies and measures adopted for the promotion and financing of MSMEs. The program granted a series of benefits to the businesses joining the program, including a non-refundable contribution to be calculated and granted by the Secretary of Small and Medium Enterprises.

287 http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/342368/norma.htm.
288 Decree No. 528/2020 of the Federal Executive Power, http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/338561/norma.htm.
289 http://servicios.infoleg.gob.ar/infolegInternet/anexos/340000-344999/344201/texact.htm; https://www.boletinoficial.gob.ar/detalleAviso/primera/245818/20210618.
290 https://www.boletinoficial.gob.ar/detalleAviso/primera/243886/20210503.

On May 8, 2021, the federal executive branch of the government of Argentina issued Decree No. 323/2021,[291] approving a 100 percent reduction on employers' social security contributions, until December 31, 2021, for employers joining the REPRO II program. In addition, the government extended the payment of credits to the beneficiaries of the REPRO II program and extended zero interest credit lines to businesses in the gastronomic sector for the purchase of equipment. The terms of these credits are three years' amortization with a one-year grace period and interest subsidized at 100 percent during the first 12 months and then subject to a rate of 10 percent, also subsidized by the FONDEP.[292]

Other programs under the federal government of Argentina extended credit lines to MSMEs and cooperatives licensees of telecommunications services with a subsidized interest rate of 12 percent, guaranteed by the FoGAR.[293] Pursuant to Decree No. 512/2021,[294] the federal government approved a line of credit at zero interest rate to assist workers in the Simplified Small Taxpayers Regime for a maximum amount of Arg$150,000 each. In a further program, the Ministry of Productive Development of Argentina created a Reactivation and Productive Development of Cooperatives to provide economic assistance to recovered cooperatives holding MSME certificates *(certificados MIPyME).*

The government of Chile adopted a series of measures to protect workers and employers, including tax payment suspensions and deferrals (i.e., suspension of the monthly payments of the companies' tax gain during April, May, and June 2020 and extension of the payment of the valued added tax during those months).[295] On March 24, 2020, the legislative branch of Chile's government enacted Law No. 21.220,[296] which regulated work at a distance and telework.

Pursuant to Law No. 21,227,[297] dated April 1, 2020 (the Employment Protection Act), employees suspended by order of authority or agreement with their employers were granted access to unemployment insurance benefits. This was extended until March 6, 2021, by Decree No. 2,097[298] of Chile's executive branch. Law No. 21,242[299], dated June 24, 2020, established transitional benefits for certain independent professionals to obtain cash benefits for three months, consecutive or not, within the following six months. The cash advances must be returned in three annual installments of 20 percent, 40 percent, and 40 percent, each. Law 21,263[300] made access to unemployment insurance more flexible and increased the benefit amount. These benefits were extended until March 6, 2021, by Decree No. 2,097.[301]

291 https://www.boletinoficial.gob.ar/detalleAviso/primera/244104/20210510.
292 https://www.argentina.gob.ar/noticias/el-gobierno-postergo-el-pago-de-los-creditos-de-quienes-esten-en-el-repro-ii-y-lanzo.
293 https://www.argentina.gob.ar/noticias/el-gobierno-lanzo-linea-de-creditos-por-500-millones-de-pesos-para-mipymes-y-cooperativas.
294 https://www.boletinoficial.gob.ar/detalleAviso/primera/248088/20210813.
295 Law No. 21,225, https://www.bcn.cl/leychile/navegar?idNorma=1144002.
296 https://www.bcn.cl/leychile/navegar?idNorma=1143741.
297 https://www.bcn.cl/leychile/navegar?idNorma=1144080.
298 https://www.bcn.cl/leychile/navegar?idNorma=1152929&idParte=0.
299 https://www.bcn.cl/leychile/navegar?idNorma=1146920.
300 https://www.bcn.cl/leychile/navegar?idNorma=1149144.
301 https://www.bcn.cl/leychile/navegar?idNorma=1149144, 159.

4. Courts and procedural matters

4.1 MEASURES SUSPENDING THE REQUIREMENT TO PROCEED TO LIQUIDATION IF BUSINESS ACTIVITY CEASES DURING A REORGANIZATION

In Colombia, Decree 560[302] suspended until April 15, 2022: (a) the liquidation of the debtor in reorganization proceedings filed and commenced since April 15, 2020, if the debtor fails to file its reorganization proposal within the terms provided in the Colombian Insolvency Law or the reorganization proposal is not confirmed; and (b) the mandatory dissolution of the entities for losses.

4.2 SUSPENDED NON-URGENT COURT CIVIL PROCEEDINGS

In Brazil, proceedings terms were suspended multiple times since March 2020, when the end date set was April 17, 2020, later extended to May 2, 2021. Each of the Brazilian Appellate and Federal Estates Courts suspended terms for proceedings at least once since March 2020. In addition, the Federal Supreme Court of Argentina took an extraordinary judicial recess from March 16, 2020, to July 20, 2020, implying the suspension of procedural terms; the recess provided that the courts would only intervene in urgent matters.[303] (These arrangements are also discussed in subsection 4.4.)

4.3 EXTENDING INSOLVENCY PROCEDURAL DEADLINES DURING LIQUIDATION, REORGANIZATION, AND OTHER FORMAL INSOLVENCY PROCESSES

In Brazil, Law No. 14,112/2020,[304] enacted on December 24, 2020, provided:

- the one-time extension of the stay period for an additional 180 days, provided that the failure of obtaining the votes on the plan was not due to the fault of the debtor; and
- the additional extension of the stay period for an additional 180 days if the debtor submitted an alternative judicial reorganization plan in certain cases.

The CNJ made several nonbinding recommendations,[305] including that, during the COVID-19 pandemic crisis, all courts with jurisdiction on the judgment of business recovery and bankruptcy:

- gave priority to the recovery of the businesses, temporarily trying to avoid converting reorganization cases into liquidation proceedings, given the economic and social importance of those businesses for the Brazilian economy during the crisis;
- suspended the in-person General Creditors' Meeting;

302 https://www.bcn.cl/leychile/navegar?idNorma=1149144, 159.
303 Supreme Court Agreed Order (Acordada) No. 4/2020, https://www.cij.gov.ar/nota-36967-Acordada-4-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 6/2020, https://www.cij.gov.ar/nota-36981-Acordadas-6-2020-y-7-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html;
Supreme Court Agreed Order (Acordada) No. 8/2020, https://www.cij.gov.ar/nota-37011-Acordada-8-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 10/2020, https://www.cij.gov.ar/nota-37074-Acordada-10-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 13/2020, https://www.cij.gov.ar/nota-37185-Acordada-13-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 14/2020, https://www.cij.gov.ar/nota-37290-Acordada-14-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 16/2020, https://www.cij.gov.ar/nota-37410-Acordada-16-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 18/2020, https://www.cij.gov.ar/nota-37521-Acordada-18-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 25/2020, https://www.cij.gov.ar/nota-37695-Acordada-25-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 27/2020, https://www.cij.gov.ar/nota-37806-Acordada-27-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html.
304 http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/L14112.htm.
305 https://atos.cnj.jus.br/atos/detalhar/3261.

- extended the stay period in cases requiring suspension of the in-person General Creditors' Meeting, until a decision on the endorsement of the reorganization plan was possible; and
- authorized the debtor in the process of implementing a reorganization plan approved by the creditors to file a new amended reorganization plan for the creditors' approval within a reasonable time after the debtor filed evidence that his or her performance of the original reorganization plan was adversely affected by the COVID-19 pandemic crisis, provided that the debtor was in the process of performing the obligations of the plan as of March 20, 2020.

4.4 DIGITAL AND TECHNOLOGICAL CHANGES OCCURRING IN THE COURTS

To process all the insolvency proceedings being filed, Decree 772/2020[306] of the executive branch of the government of Colombia, dated June 3, 2020, authorized the use of digital forms for the petition for admission and of other technological tools and artificial intelligence to develop insolvency processes and procedures. These tools and solutions could be applied permanently.

In Brazil, through Ordinance No. 61,[307] dated March 31, 2020, the CNJ established an alternative Emergency Videoconference Platform for hearings during the lockdown period, allowing each court to apply other similar tools. Further, Ordinance No. 329,[308] dated July 30, 2020, authorized virtual hearings and other procedural acts through videoconferencing during the declared state of public calamity. Law No. 14,112[309] provided that general meetings of creditors in reorganization proceedings could be virtual and replaced, to the same effect, by a written consent of the creditors fulfilling the meeting's quorum requirements or by other means satisfactory to the court. (Subsection 5.1 discusses other similar arrangements.)

The COVID-19 pandemic also accelerated digitalization at a national level in Argentina's courts. The Supreme Court adopted a series of measures to foster digitalization of courts and processes, including:[310]

- From March 18, 2020 (except for initial filings, which may not be filed through digital platforms), all filings in the national and federal courts will be completely in digital form;
- Approving the use of digital signatures;
- Approving the use of virtual meetings; and
- Entrusting the National Commission of Judicial Management to develop and implement the required IT systems for the filing of complaints, appeals, digitally signed documents, etc.

The legislative branch of the government of Chile enacted Law No. 21.226[311] on April 1, 2020, which, among other things, instructed the Supreme Court to suspend hearings in certain courts except for cases in which court action is urgent. Except for judicial proceedings before the Supreme Court, Appellate Courts, Family Courts, Labor Courts, and Criminal Courts, among others, where parties are banned from complying with the statutory terms due to COVID-19 restrictions, parties may pursue a claim based on their impediment within 10 days computed from the date the impediment ceased.

In response, the Supreme Court adopted a series of measures, including the prioritization of the remote work of judges, officers, employees, and lawyers; suspension of hearings and regulation of video conferences for, among other things, submission of pleas and virtual hearings, in all cases, subject to each court's technical capabilities.[312]

Pursuant to Resolution No. 53/2020,[313] dated April 8, 2021, the Supreme Court provided that, for purposes of guaranteeing access to due process, the courts will procure use of all technological instruments available to them, prioritizing their flexible use.

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306 https://atos.cnj.jus.br/atos/detalhar/3261,153.
307 https://atos.cnj.jus.br/atos/detalhar/3266.
308 https://atos.cnj.jus.br/atos/detalhar/3400.
309 https://atos.cnj.jus.br/atos/detalhar/3400, 235.
310 Supreme Court Agreed Order (Acordada) No. 4/2020, https://www.cij.gov.ar/nota-36967-Acordada-4-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 9/2020, https://www.cij.gov.ar/nota-37035-Acordada-9-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html; Supreme Court Agreed Order (Acordada) No. 12/2020, https://www.argentina.gob.ar/normativa/nacional/acordada-12-2020-336346; Supreme Court Agreed Order (Acordada) No. 15/2020, https://www.cij.gov.ar/nota-37407-Acordada-15-2020-de-la-Corte-Suprema-de-Justicia-de-la-Naci-n.html.
311 Law No. 21.226, https://www.bcn.cl/leychile/navegar?idNorma=1144003.
312 Supreme Court resolution 41-2020, https://www.bcn.cl/leychile/navegar?idNorma=1143549.
313 https://covid19.carey.cl/wp-content/uploads/2020/04/Acta-N53.pdf.

5. Newly introduced permanent insolvency-related measures

Brazil's Law No. 14,112[314] introduced several amendments to the nation's Insolvency Law *(Lei da Recuperação Judicial, a Extrajudicial e a Falência do Empresário e da Sociedade Empresária)*, including:

a) Encouraging conciliation and mediation before and during judicial reorganization at any level of appeal;

b) Granting urgent relief for the suspension of executions against the debtor for a period of up to 60 days prior to the filing of the judicial reorganization, to attempt to reach an agreement with its creditors. In the event a judicial or extrajudicial proceeding is commenced following such negotiation period, the time limit will be deducted from the stay period;

c) Providing for a conciliation and mediation process in connection with the classification of credits and voting at the general creditors' meeting;

d) Providing for the possibility of creditors filing an alternative reorganization plan if the debtor does not file a plan or obtain the votes on it after expiration of the stay period or its extensions. The alternative plan should have the support of creditors representing a quorum of more than 25 percent of the total credits, subject to the judicial reorganization or more than 35 percent of the credits held by the creditors present at the general meeting of creditors. Alternative plans will apply only to judicial reorganization plans filed after Law No. 14,112 becomes effective.

5.1 CHANGES IN FORMAL INSOLVENCY PROCEEDINGS AND TYPES OF ENTITIES

More flexible / simpler formal restructuring processes

Decree No. 560[315] of Colombia's executive branch established a temporary insolvency regime aimed at aiding businesses and companies affected by the COVID-19 pandemic. The provided tools and measures, available until April 15, 2022, included:

- The filing of petitions under the Colombian Insolvency Law by debtors affected by the COVID-19 pandemic will receive prompt treatment from the courts. The court will not audit the financial information filed by the debtor before admitting the reorganization petition. The debtor will be liable for the veracity and completeness of such information.

- A new process will be created whereby the debtor may negotiate emergency restructuring agreements directly with its creditors and present it for court approval. Negotiations could last up to three months. The restructuring agreement must be approved by creditors representing the same majority requirements provided by the Colombian Insolvency Law for reorganization proceedings. In considering whether to confirm the agreement, the court will only decide based on the legality of the restructuring agreement. An agreement confirmed by the court will have the same effect as a reorganization plan under the Colombian Insolvency Law. During negotiations, ongoing executive processes against the debtor are suspended.

- A recovery proceeding before the Chamber of Commerce will be created. The process will be a mediation before a mediator listed by the chamber for this purpose. The mediator will examine the accounting and financial information of the debtor, verify the credits, and determine the creditors' voting rights and the reorganization proposal, with powers to attest to the agreement and that the creditors granted their consent. The process will last up to three months, during which time ongoing executive processes against the debtor are suspended. After the mediation, the restructuring agreement reached could be filed for validation before the Superintendence of Commerce or the court. Objections may be submitted to any of the alternative dispute resolution processes. The validation will extend the effects of the agreement

314 https://covid19.carey.cl/wp-content/uploads/2020/04/Acta-N53.pdf, 235.
315 https://covid19.carey.cl/wp-content/uploads/2020/04/Acta-N53.pdf.

and decide on the objections made by the creditors that voted against the agreement or abstained from participating in the mediation process. The government will regulate an expedited validation process with the purpose of verifying the legality of the agreement and that it will be binding against all creditors, including those that opposed it or abstained from voting. In the event the restructuring agreement obtains the consent of all creditors, any controversies or objections will be settled by a single arbitrator following the procedure fixed by the court.

- Each of the new processes described above are available to all companies in Colombia, except those subject to special insolvency regimes. If any of these processes fail, the process will be closed, and the debtor may not file for any of those processes during the following year after the process was closed. However, the debtor may file a petition for an insolvency proceeding under the Colombian Insolvency Law.

Standalone new procedures exclusively for MSMEs

The June 3, 2022, Decree No. 772/2020[316] of Colombia's executive branch created an abbreviated reorganization process and an expedited liquidation process for MSMEs (debtors with assets for an amount equal to or less than 5,000 minimum monthly salaries). MSMEs could only file a petition for reorganization under the abbreviated reorganization or the expedited liquidation.

In Brazil, Law No. 14,112[317] admitted rural producers to act as individuals able to request judicial reorganization. The special plan for rural producers could involve credits for less than R$4.8 million, and only credits relating to rural activities, even if not past due, would be subject to the judicial reorganization.

5.2 MEASURES TO STRENGTHEN INFORMAL / OUT-OF-COURT WORKOUT FRAMEWORKS

Brazilian Law No. 14,112[318] reduced the quorum requirement for participating in extrajudicial reorganization processes from three-fifths to 50 percent. The process could commence with the consent of one-third of the classes of creditors, and the 50 percent requirement could be obtained within the 90 days during the proceeding. If the extrajudicial reorganization was not consented to by most creditors, the debtor could then apply for a judicial reorganization.

The São Paulo State Court of Justice has created a virtual mediation pilot project to solve disputes arising in connection with the COVID-19 pandemic crisis, especially negotiations between creditors and debtors. The project seeks to establish preprocedural self-composition through preprocedural mediation to support the negotiation of the obligations of companies and entrepreneurs, with a focus on small businesses, historically unattended by judicial out-of-court reorganization. The project encourages out-of-court reorganization, a faster procedure than judicial reorganization.

316 https://covid19.carey.cl/wp-content/uploads/2020/04/Acta-N53.pdf, 153.
317 https://covid19.carey.cl/wp-content/uploads/2020/04/Acta-N53.pdf, 235.
318 https://covid19.carey.cl/wp-content/uploads/2020/04/Acta-N53.pdf, 235.

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CHAPTER

REGULATORY PERSPECTIVE OF COVID-19 EMERGENCY MEASURES IN SPECIFIC COUNTRIES

Rosemary Winter-Scott, OBE FIoD (International Association of Insolvency Regulators)

1. General Introduction

This chapter explores three aspects of the pandemic's impact on insolvency processes worldwide from the perspective of insolvency regulators:

1. The impact on the number of personal and corporate insolvency cases;
2. The main COVID-19 insolvency measures put in place to address the pandemic's effects on businesses and individuals facing financial distress;
3. IAIR members' ongoing concerns — and policy responses being developed or discussed to address those concerns — given the high degree of uncertainty regarding the pandemic's long-term effects on business distress.

The IAIR is an international body that brings together the collective experiences and expertise of government insolvency regulators from jurisdictions around the world. IAIR members are normally government officials or representatives of the court and have responsibility for insolvency policy and legislation, insolvency practice and administration, and insolvency regulation. This gives them a unique perspective on working with their governments in developing and delivering support to help minimize the impact of the pandemic on individuals and business, while managing large offices of staff and seeing first-hand the impact on the number of insolvency cases overseen by their staff. IAIR currently has 34 members around the world (listed at the end of this chapter) who were asked to provide the following information:

1. Please provide the following data. Assume that filings comprise both reorganization and liquidation filings:
    a) Corporate filings for Q1–Q4 in 2019
    b) Corporate filings for Q1–Q4 in 2020
    c) Corporate filings for Q1–Q2 in 2021
    d) Personal bankruptcy filings for Q1–Q4 in 2019
    e) Personal bankruptcy filings for Q1–Q4 in 2020
    f) Personal bankruptcy filings for Q1–Q2 in 2021
2. Please outline the main COVID-19 insolvency measures that have been put in place to deal with the pandemic's effects on business distress. Please explain whether these measures are temporary (and if so, what is the plan and challenges for winding down these measures) and which measures, if any, have been made permanent.
3. Although there is a high degree of uncertainty regarding the long-term effects of the pandemic on business distress, what are the major concerns in your jurisdiction currently regarding the long-term impact of the COVID-19 pandemic on businesses, and what policy responses are being shaped/discussed to address these concerns?

The information in this chapter is a based on a compilation of the figures and narratives obtained in response to the above questions and requests from eighteen IAIR members:

- Australia AFSA – Australian Financial Security Authority
- Australia ASIC – Australian Securities and Investments Commission
- Canada – Office of the Superintendent of Bankruptcy Canada
- Chile – The Superintendency of Insolvency and Entrepreneurship
- Finland – Office of the Bankruptcy Ombudsman
- Hong Kong – The Official Receiver
- India – Insolvency and Bankruptcy Board of India
- Jersey – Royal Court of Jersey Viscount's Department
- New Zealand – Insolvency and Trustee Service New Zealand
- Northern Ireland – The Northern Ireland Insolvency Service
- Poland – Ministry of Justice
- Scotland – Accountant in Bankruptcy
- Serbia – Bankruptcy Supervision Agency
- Singapore – Insolvency & Public Trustee's Office
- Thailand – Legal Execution Department
- Trinidad and Tobago – Office of the Supervisor of Insolvency
- UK – England & Wales – The Insolvency Service
- United States of America – The United States Trustee Program

2. The impact on the number of personal and corporate insolvency cases

The COVID-19 pandemic was expected to impact on the number of personal and corporate insolvencies around the world. It was anticipated that most areas might experience a drop in cases in light of the plethora of fiscal and monetary support measures described above, followed by an increase as businesses, economies, and those processing the cases returned towards normal functioning.

To investigate this theory, IAIR members were asked for data on the numbers of corporate filings and personal/bankruptcy filings on a quarterly basis from Q1 2019 to Q2 2021.

2.1 DATA LIMITATIONS

While the author would have liked to have obtained data from all its members, it is evident that they are currently working under huge pressures, which affected their ability to contribute to this study.

As the figures began to come in, the challenges of comparing those from one IAIR member with those from others quickly became apparent. Each country records corporate and personal cases differently; for example, some have a number of alternative bankruptcy products that may or may not have been included in the data. Similarly, corporate insolvencies and personal insolvencies can be classified using any of several methods. Some figures are based on all applications, while some are based only on cases that have been processed. Also, the populations and baseline number of cases varies considerably depending on the jurisdiction. As a result, it was difficult to compare the figures from a country with thousands of cases to figures from a country with tens of cases. The raw data is included in the Appendix at the end of this report.

To counteract these challenges and to assist in comparing data, each country's data was examined as a percentage change from a baseline figure for Q1 2019. Relying on pre-pandemic data from 2019, the expectation was that any variations seen in the 2019 data would be due to seasonal variations or general trends in individual countries. Any subsequent changes in 2020 that were not otherwise reflected in the data from 2019 could be attributed to the impact of the COVID-19 pandemic. However, this process assumes that the figures for the "baseline" (Q1 2019) represented normality and were not exceptionally high or low for other reasons unrelated to the pandemic.

Data for two members was not included in the graphs because their numbers of cases were so low. Trinidad and Tobago recorded only one corporate case and zero personal insolvency cases throughout this period, and Jersey's numbers varied between two and zero per quarter. In both cases, no benefit was gained from including the data in the graphs. It was also not possible to include data for the same 15 countries in both the corporate and personal/consumer bankruptcy cases. Serbia does not have personal bankruptcy processes, only corporate bankruptcy. In India, the new insolvency regime relating to personal bankruptcy provided under Part III of the Insolvency and Bankruptcy Code, 2016 has not come into force, except the provisions relating to personal guarantors to corporate debtors in respect of which more than 400 applications have been filed before the Adjudicating Authority. Hence information relating to personal bankruptcy cannot be provided.

Poland did not record data separately for Q1 and Q2 in 2020 due to the COVID-19 pandemic. The only data available was for the first six months of 2020. The figure for the six months was thus divided equally between the two quarters for the purpose of including data for each quarter for the graphs.

It should be noted that, except where specific information has been provided by the member, it is not possible to state the cause of the changes in volumes. Several factors may have resulted in a decrease in volumes, including:

- Government assistance and financial support for individuals and businesses
- More patience from banks, lenders, and creditors during a period of increased hardship for all
- Lockdowns preventing individuals or businesses from accessing the insolvency processes and/or courts and insolvency offices being closed

In some of these cases it may simply be that the insolvencies are still in the pipeline and will come through as a future increase in activity. Several factors may have influenced any rises in volumes, including:

- The introduction of new or simplified processes, or the lowering of entry requirements, making it easier for individuals or businesses to apply. This may or may not have been linked to the COVID-19 pandemic
- Businesses and/or individuals unable to maintain their level of income and becoming insolvent due to the impact of the COVID-19 pandemic
- A short-term increase due to addressing a backlog of cases not registered or processed during lockdown or at the peak of the pandemic

Given that the COVID-19 pandemic is still not over, it may be useful to extend this data collection process and obtain data for later periods.

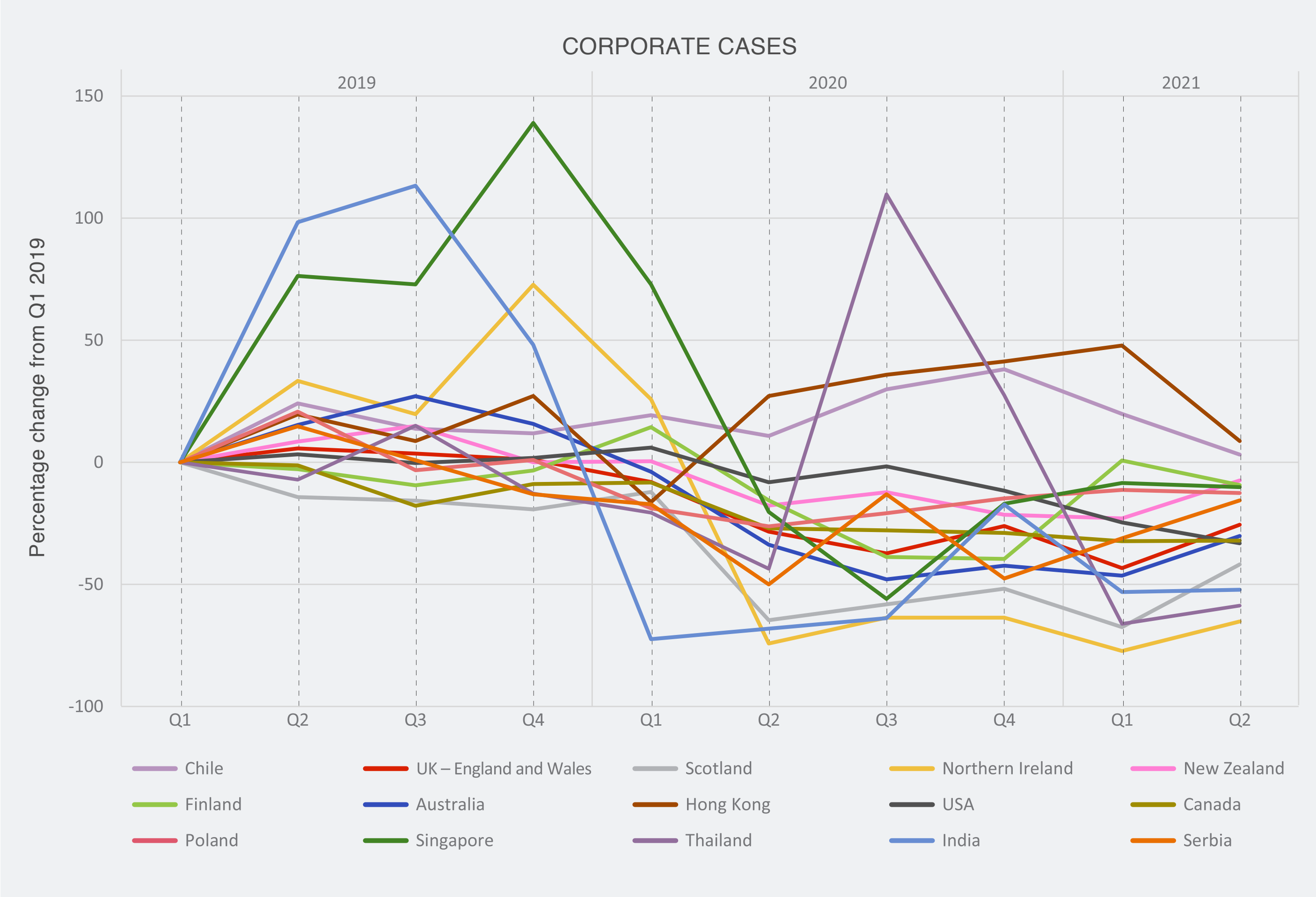
2.2 CORPORATE FILINGS

The data for the **corporate filings** shows that COVID-19 affected the volumes of insolvencies.

After Q1 2020, most countries saw a drop in the number of corporate cases associated with the initial wave of COVID-19 cases and lockdowns. Although they then saw an increase in the case numbers, the volumes are generally still not back to the previous levels of the Q1 2019 base figure.

A few countries are at odds with this general trend, however. Hong Kong saw a decline in cases early in Q1 2020, possibly because the initial impact of the pandemic occurred slightly earlier there than in many other countries, and because of the special work arrangements implemented by the public sector, including the judiciary, in Q1 and early Q2 2020. Hong Kong also quickly re-opened its courts and businesses and saw an initial peak of activity in Q2 as it tackled the backlog of cases. Through the later part of 2020 and first quarter of 2021, the number has remained higher than their baseline, although the number of cases dropped again in Q2 2021, returning closer to their baseline figure.

Figure 27. Corporate Cases



Some countries, such as Australia, Singapore, and the UK – England and Wales, saw major drops in cases in Q3 2020.

India's cases were rising in Q2 and Q3 of 2019 but started to decline in Q4, and further decreased in Q1 2020. The initiation of insolvency proceedings for a default occurring on or after March 25, 2020, until March 24, 2021, was suspended. This did not provide a blanket ban on initiating insolvency proceedings on all defaults but banned proceedings relating to defaults arising during the COVID-19 crisis only. It also did not affect the applications already filed before the Adjudicating Authority (AA) for initiation of corporate insolvency resolution process and ongoing proceedings. Thus, applications for corporate insolvency resolution applications filed before the AA prior to March 25, 2020, were considered and admitted during the period of suspension. The number of applications with the AA at the pre-admission stage had been affected by the nationwide lockdown restrictions and an increase in the threshold of defaults.

Chile did not experience the anticipated drop in the number of cases in Q2 2020 and instead saw a general increase in corporate cases in 2020 when compared to the figures for Q1 2019. Its figures remained high during 2020 and only began to decline in 2021. Further to the data collected for these graphs, Chile's figure for Q3 2021 shows the number of cases continuing to decline below their baseline. It is possible that Chile's later decline in cases is due to the timing of the pandemic in South America in 2021.

The United States saw corporate cases remain similar to its baseline initially in 2020 with only a small drop in Q2 2020. However, the number of cases fell again in Q4 2020 and have continued to fall.

Two countries, Northern Ireland and Singapore, showed a large rise in the number of cases during 2019, similar to India. It may be that their baseline figures (Q1 2019) were unusually low. In both countries, however, the number of cases is relatively small (some of the lowest figures included in the graph), and hence small changes in numbers could show a larger percentage change. Northern Ireland also then saw the biggest percentage drop in case numbers (of 74 percent compared to the baseline of Q1 2019) in Q2 2020.

Serbia saw a dip in Q2 2020 followed by an initial increase in the number of cases in Q3 2020 (though still below its baseline), but this was followed by a second dip in Q4 2020.

In Finland in 2020, filings went down because of the temporary bankruptcy law amendments, restricting creditors' rights to file for bankruptcy. After the amendment was removed, the figures went up again in Q1 2021. The level remained relatively low due to nine months of restrictions, although Finland is now seeing a moderate growth in figures.

In Poland, levels were higher in Q1 and Q2 2021 than they might have been due to the introduction of simplified restructuring proceedings in June 2020. However, respondents believe that the significant state aid available for almost all business entities in 2020 might explain why the number of corporate insolvencies was lower than before COVID-19.

Thailand imposed a travel ban and a curfew around the end of March 2020 as the number of confirmed COVID-19 deaths increased. The situation initially improved but Thailand then faced a further second and third wave of the disease in December 2020 and April 2021. Due to the processes involved, there is often a time lag between when insolvencies are filed at court and when they are registered as an absolute receivership order. This is seen here, where the drop in absolute receivership orders occurs in the quarter after the wave of COVID-19 cases. Despite this, the peak in Q3 2020 appears to be more than any backlog and could not be explained.

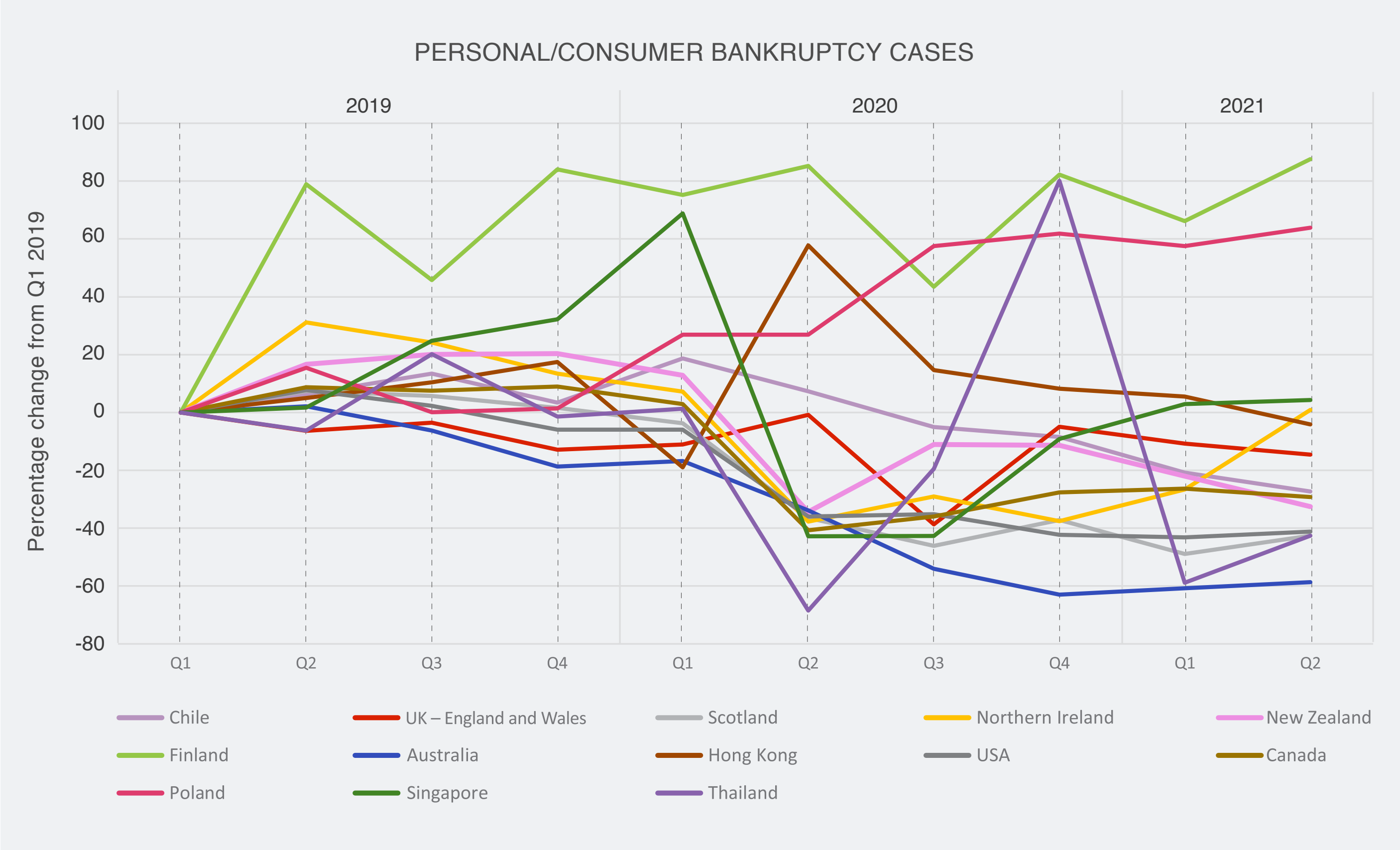
In Canada, as in many IAIR member countries, it is apparent that many businesses and households experienced severe financial pressures as a result of the pandemic, yet their corporate insolvencies remained low. Business insolvencies have stayed about 30 percent lower than 2019 levels, and consumer insolvency also fell. One exception to this trend was a substantial increase in larger corporate restructurings in Q2 and Q3 2020.

Canada hypothesizes that the decline in business insolvencies is likely due to their preventative approach, extending substantial financial and liquidity supports to businesses, and to patience on the part of lenders and banks towards NPLs, including a willingness to enter into informal workouts.

2.3 PERSONAL OR CONSUMER BANKRUPTCY

Personal or consumer bankruptcy also showed some interesting patterns. As with the corporate cases, most countries showed a decrease in the number of cases in Q2 2020.

Figure 28. Personal/Consumer Bankruptcy Cases



Northern Ireland saw a decrease in Q2 2020, followed by an increase in Q2 2021 back to their baseline, whereas the US saw a drop in Q2 2020 and has since seen its number of cases remain about 40 percent below its baseline.

In Australia, the number of personal insolvencies each quarter was declining before the pandemic, but the decline since then has hastened. The last three quarters, Q4 2020 and Q1 & Q2 2021, have been around 60 percent below their baseline, the largest percentage drop of all countries providing data for this study. In the UK – England and Wales and in Scotland, the greatest drop in cases came in Q3 2020.

Hong Kong saw its biggest decrease, in Q1 2020, earlier than most other countries, and after a peak in Q2 (dealing with a backlog of cases), it has seen a general decline in the number of cases through the later part of 2020 and into 2021. The figures for Q1 and Q2 2021 are back to their baseline.

Poland saw an increase in numbers both in Q1 and Q3 2020. Following this, its number has remained over 50 percent higher than its baseline. This later rise is a direct result of the significant change in consumer bankruptcy law as of March 24, 2020, along with the impact of COVID-19.

Finland's figures have been consistently higher than its baseline throughout. The figure used for its Q1 2019 baseline was unusually low, although even allowing for this, the data does not show the same decrease in the number of cases in Q2 2020. For an unknown reason, the total number of cases in 2019 was over 20 percent lower than in 2018, and lower than any previous year since 2010. Finland also shows a pattern of a decrease in Q3 in both 2019 and 2020, but this could be a normal seasonal pattern. The figure for Q2 2021 is over 80 percent above its baseline.

Singapore initially showed an increase in cases and then had a considerable decrease in both Q2 and Q3 2020. The number of cases then rose, and in Q1 2021 it was back to slightly above their baseline.

In Thailand, the peak in Q4 2020 appears to represent more than any backlog and could not be explained.

Chile did not record a drop in the number of cases below its baseline until Q3 2020, but the decline has continued since then, with figures at least 20 percent below its baseline.

3. Main COVID-19 insolvency measures put in place to deal with the pandemic's effects on businesses and individuals facing financial distress

Most IAIR members implemented a wide range of measures to deal with the pandemic's impact on distress among businesses and individuals. These can be divided into three categories:

1. Public policies for the protection and support of the general economy and of individuals, i.e., policies focused on the country's wider economy and not just insolvency processes.
2. Adaptation of deadlines, hearings, regulations, and judicial procedures relating to insolvency and bankruptcy processes, and legislative and regulatory changes to insolvency processes.
3. Other changes to working practices.

These changes will be presented in the above order, with examples provided by IAIR members. In each case, the text included is as provided by the member country. When links to legislation, etc., were provided, they have been included in the footnotes. Though a number of examples show similarities, no attempt has been made to summarize these contributions, recognizing that they include only a sample of IAIR members who could contribute text within the short time required.

3.1 PUBLIC POLICIES TO PROTECT AND SUPPORT THE ECONOMY AND INDIVIDUALS

Australia

The Australian Government introduced a range of new economic measures designed to support Australians and the economy through the COVID-19 pandemic, including disaster and income support payments for individuals and businesses.

Additional support included:

- Jobkeeper – a wages subsidy for businesses significantly affected by the COVID-19 pandemic
- Financial institutions providing deferrals on mortgage and business loans
- Various state-based commercial rental deferral/relief arrangements
- State and local government financial support for specific industry sectors (tourism and the arts prominently).

Canada

Canada took a preventative approach to addressing the risk of business and personal insolvency by way of extending financial and liquidity supports to Canadians and businesses facing hardship as a result of the COVID-19 outbreak. As of May 2021, approximately Can$624 billion (via the federal, provincial, and territorial governments) went to measures to support individuals, families, and businesses through a variety of programs. Support measures included:

- Interest-free loans to businesses
- Rent subsidies
- Wage subsidies
- Extension of loans and credit to businesses in highly impacted sectors
- Loan guarantees for SMEs
- Regional support programs
- Loans for large employers
- Supports to families
- Increased flexibility in employment insurance benefits
- Direct support for low-income Canadians.

These were generally temporary measures, and a gradual but purposeful transition away from these supports was set to take place through the fall of 2021. In recognition that some harder-hit industries continued to require support, the government's 2021 Budget proposed a series of investments to continue supporting the hardest-hit workers and employers, to help address ongoing financial challenges and prevent insolvency.

Chile

Chile's government promoted laws expanding access to financing with state guarantee for companies to ensure working capital, expand existing guarantees, and minimize interest rates to incentivize the economy.

In addition, the government implemented measures related to freezing debts for mortgage and consumer loans and to tax benefits, such as postponement, facilities for paying taxes, and the advance tax refund payments, among others.

Likewise, employment protection laws have been promoted that aim to protect the stability of income and employment for an important group of workers who, having formal jobs, cannot provide services or must adjust their working hours because of health measures to cope with COVID-19. The workers were able to access unemployment insurance funds without ending their employment relationship with their employers.

Hong Kong

The Government set up the "Anti-epidemic Fund"[319] and rolled out several rounds of measures[320] to the extent of over HK$300 billion to assist affected industries and the public. The objectives are to help businesses stay afloat, keep workers in employment, relieve financial burdens of individuals and businesses, and assist the economy to recover once the pandemic is contained. The measures included:

- An employment support scheme
- A job creation scheme
- Job advancement – a new scheme initiated by the Government to encourage people in different sectors to learn new skills and help enterprises apply more technology. These include LAWTECH Fund, COVID-19 Online Dispute Resolution Scheme, and Distance Business Programme. The scheme involves allocation of HK$0.8 billion and it is expected that the implementation of the measures will bring about benefits to various enterprises and individuals to turn crises into opportunities.
- A specific subsidy scheme for hard-hit industries or sectors (e.g., tourism, passenger transport, catering, aviation, education, and construction)
- A pre-approved principal payment holiday scheme and extension of "principal moratorium" for corporations and businesses
- A cash payout scheme to all permanent residents
- A 100 percent personal guarantee loan scheme to provide an extra financing option for the unemployed
- Electronic consumption vouchers to eligible residents.

Jersey

The government of Jersey implemented the following measures in response to the COVID-19 pandemic:

- Deferral of payment of social security contributions and GST payments
- Rent negotiations: three-month rent deferrals were available to business tenants suffering difficulties due to COVID-19; the government is now following the guidance for business tenants and will consider concessions such as rent holidays or early lease terminations in appropriate circumstances
- Guidance for landlords and tenants of commercial and residential property with an associated Practice Direction followed by the Courts, issued in order to encourage open and sensible discussions between landlords and tenants as appropriate
- Additional resource provided for Jersey Business to assist with the provision of free-to-access professional business advice and to encourage regular "health checks" for local businesses.

319 https://www.coronavirus.gov.hk/eng/anti-epidemic-fund.html.
320 https://www.hketco.hk/filemanager/common/doc/home/Fight_the_Virus_Together_en.pdf.

The government has produced a coronavirus business continuity checklist and a range of other schemes including:

- A Co-Funded Payroll Scheme—extended to end September 2021 for eligible businesses
- A Visitor Attraction and Events Scheme 2—extended until March 2022 for all eligible businesses
- A Visitor Accommodation Support Scheme —extended until March 2022 for all eligible businesses
- A Fixed Costs Support Scheme—extended until March 2022 for all eligible businesses
- A Business Disruption Loan Guarantee Scheme —extended to end-September 2021.

Serbia

In Serbia there were a range of economic measures[321] introduced in response to the COVID-19 outbreak. These included monetary policy measures, a moratorium on debt payments, economic support measures, and support for citizens. They did not include any specific insolvency measures.

Singapore

Since April 2020, Singapore's government has announced various policy responses in the Unity Budget, Resilience Budget, Solidarity Budget, and Fortitude Budget, designed to mitigate the impact of COVID-19 on businesses and individuals. The combined value of measures is an estimated S$92.9 billion, amounting to about 19.2 percent of Singapore's GDP. A number of these policies are supported by the COVID-19 (Temporary Measures Act) detailed in the next section.

United States of America

The United States enacted wide-ranging legislation at the federal, state, and local levels to address individual and business distress resulting from the COVID-19 pandemic. As of August 2021, the federal government had expended approximately US$3.4 trillion on the COVID-19 response.[322]

As examples, some of the public policies and programs addressing the economic impact of COVID-19 include:

- Three rounds of direct relief payments to individuals[323]
- Expansion of unemployment benefits[324]
- Emergency rental assistance for individuals[325]
- Mortgage forbearance and limitations on residential foreclosures[326]
- Eviction moratoriums[327]
- Federal loans to companies, including small businesses[328]
- The Paycheck Protection Program—providing small businesses with the resources they need to maintain their payroll, hire back employees who may have been laid off, and cover applicable overheads[329]
- Student loan forbearance for federal student loans[330]
- Relief programs for certain business industries, such as airline and national security[331] and
- Tax credit programs.[332]

321 https://nbs.rs/en/drugi-nivo-navigacije/pres/covid19/index.html.
322 https://www.usaspending.gov/disaster/covid-19?publicLaw=all (as of August 31, 2021).
323 Additional information is available at: https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-families-and-workers/economic-impact-payments.
324 The CARES Act expanded unemployment insurance benefits through various programs. The Federal Pandemic Unemployment Compensation (PUC) provided weekly supplemental benefits of $600 for individuals that received unemployment benefits for weeks of unemployment between April 5, 2020, and July 31, 2020. The Pandemic Unemployment Assistance (PUA) program temporarily provided unemployment benefits to people unable to work for reasons related to COVID-19 who were not usually eligible for unemployment assistance, including the self-employed, independent contractors, and those with limited work. The Pandemic Emergency Unemployment Compensation (PEUC) program provided an additional 13 weeks of unemployment benefits to people who had exhausted all available regular and extended unemployment benefits through December 31, 2020. Additional information is available at: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_14-20_acc.pdf.
325 Additional information is available at: https://home.treasury.gov/policy-issues/coronavirus/assistance-for-American-families-and-workers/emergency-rental-assistance-program.
326 The CARES Act (see Section 3.2, United States II E) imposed a sixty (60) day moratorium on foreclosures for federally-backed mortgage loans and mandates that borrowers under federally-backed mortgage loans be granted forbearances where requested due to financial hardship resulting from the COVID-19 emergency. Further information about the mortgage related relief is available at: http://www.freddiemac.com/about/covid-19.html; and https://www.knowyouroptions.com/covid19assistance.
327 Section 4024 of the CARES Act included a 120-day eviction moratorium.
328 The CARES Act also included several loan programs for small businesses, including the Emergency Economic Injury Disaster Loan and Grants Program, the Paycheck Protection Program and the Express Bridge Loan Pilots Program. More information about the small business loan programs is available at: https://www.sba.gov/funding-programs/loans/coronavirus-relief-options.
329 Additional information is available at: https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program.
330 Additional information is available at: https://studentaid.gov/announcements-events/covid-19.
331 Additional information is available at: https://home.treasury.gov/policy-issues/coronavirus/assistance-for-american-industry.
332 Additional information is available at: https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/small-business-tax-credit-programs.

3.2 GUIDANCE, RELAXATIONS OF TIMESCALES, REGULATION, AND LEGISLATIVE CHANGES TO THE INSOLVENCY PROCESSES

Australia Corporate – ASIC (Australian Securities and Investments)

The Government introduced temporary measures in response to COVID-19. These measures were in place from March 2020 to December 2020.

Statutory demands—Where a debtor company owed a creditor more than $A2,000, the creditor could issue a statutory demand on the creditor requiring the payment of the debt within 21 days. Failure to repay the debt within that time enabled the creditor to commence court proceedings to wind up the debtor company.

From March 2020 to December 2020, the time within which a debtor company had to respond to the statutory demand increased from 21 days to six months. The minimum amount owed before a creditor could issue a statutory demand was also increased from $A2,000 to $A20,000.

Following the expiration of this temporary measure, the Government permanently changed the statutory demand amount to $A4,000.

Temporary Safe Harbour—An automatic temporary Safe Harbour was implemented so that a breach of the director's duty to prevent insolvent trading does not occur if the debt was incurred:

- In the ordinary course of the company's business
- During the six-month period starting on March 25, 2020 (subsequently extended to end on December 31, 2020) and
- Before any appointment during that period of an administrator, or liquidator, of the company.

From January 1, 2021, similar relief was provided to directors who lodged declarations between January 1, 2021, and March 31, 2021, that they intended to appoint a restructuring practitioner to the company. This relief was for three months from the date of the declaration and could be extended for no more than one month. The relief ended upon the appointment of a restructuring practitioner or one of the other prescribed events.

Meetings using virtual technology—In May 2020, the Government issued a determination that temporarily amended provisions of the Corporations Act and related rules and regulations to permit the holding of meetings using virtual meeting technology. The determination:

- Deemed persons participating via virtual technology to be present at the meeting
- Confirmed virtual technology could be used to provide persons a reasonable opportunity to speak at the meeting
- Allowed notices of meetings, and other information regarding meetings, to be provided by including them in an electronic communication or providing details of an online location where they could be viewed and downloaded.

The Government passed subsequent legislation making the temporary measures permanent (with some minor changes), allowing creditors to attend external administration meetings using virtual meeting technology.

Simplified liquidation process[333]—Starting from January 1, 2021, the Government introduced a modification to the creditors' voluntary liquidation process specifically aimed at incorporated small businesses that have liabilities less than $A1 million. This process is not available in court windings up.

The winding up commences as a "standard creditors" voluntary liquidation and, provided the necessary criteria are met, the liquidator can elect to adopt the simplified liquidation process for that winding up. The liquidator can elect to cease the adoption of the simplified liquidation process in specified circumstances.

Small business restructuring[334]—Starting from January 1, 2021, the Government introduced a new form of external administration known as 'small business restructuring' specifically aimed at incorporated small businesses that have total liabilities of less than $A1 million.

333 https://asic.gov.au/regulatory-resources/insolvency/insolvency-for-directors/simplified-liquidation/.
334 https://asic.gov.au/regulatory-resources/insolvency/insolvency-for-directors/restructuring-and-the-restructuring-plan/.

The restructuring process allows eligible companies to retain control of the business, property, and affairs of the company while it develops a plan to restructure the company's affairs with the assistance of a restructuring practitioner.

Australia Personal – AFSA (Australian Financial Security Authority)

The Australian Government introduced a range of new economic measures designed to support Australians and the economy through the COVID-19 pandemic, including disaster and income support payments for individuals and businesses.

Temporary personal insolvency measures were introduced in the *Coronavirus Economic Response Package Omnibus Act 2020*, and associated regulations were also temporarily amended. The Act, which commenced on March 26, 2020, was originally intended to conclude in September 2020, but was extended to December 31, 2020 (changes to associated regulations also reverted on this date). There have been no further extensions or changes to personal insolvency settings since December 31, 2020.

Coronavirus Economic Response Package Omnibus Act 2020: Temporary relief for financially distressed businesses—The Explanatory Memorandum notes that:

> "12.3 The amendments in Schedule 12 to this Bill temporarily increase the minimum amount of debt required to be owed before a creditor can initiate involuntary bankruptcy proceedings against a debtor from $A5,000 to $A20,000.
>
> "12.4 The amendments also: temporarily provide debtors more time to respond to a bankruptcy notice—the period is extended from 21 days to six months; and temporarily extends the timeframe in which a debtor is protected from enforcement action by a creditor following presentation of a declaration of intention to present a debtor's petition—the period is extended from 21 days to six months."

Corporations and Bankruptcy Legislation Amendment (Extending Temporary Relief for Financially Distressed Businesses and Individuals) Regulations 2020[335]—Regulation 4.02AA of the Bankruptcy Regulations 1996 prescribes a temporary increase to the definition of statutory minimum and statutory period in the Bankruptcy Act 1966.

- The ***statutory minimum*** is the minimum amount of debt required to be owed before a creditor can initiate involuntary bankruptcy proceedings against a debtor.
- The ***statutory period*** is the timeframe in which a debtor must comply with a bankruptcy notice.
- The temporarily increased statutory minimum and statutory period were $A20,000 and six months, respectively.

Given the temporary nature of these increases, subregulation 4.02AA(3) provided that regulation 4.02AA was to be repealed six months after the day on which it commenced.

- Accordingly, the regulation was scheduled to be repealed immediately before September 25, 2020.
- The amendment made by this item provided that regulation 4.02AA was repealed at the end of December 31, 2020.

Regulation 4.10A of the Bankruptcy Regulations 1996 prescribes a temporary increase to the definition of default period in the Bankruptcy Act 1996.

The ***default period*** is the timeframe in which a debtor is protected from enforcement action by a creditor following presentation of a declaration of intention to present a debtor's petition. The temporarily increased default period was six months. Given the temporary nature of this increase, subregulation 4.10A(2) provided that regulation 4.10A was to be repealed six months after the day on which it commenced. Accordingly, the regulation was scheduled to be repealed immediately before September 25, 2020.

335 https://www.legislation.gov.au/Details/F2020L01191.

The amendment made by this item provided that regulation 4.10A was also repealed at the end of December 31, 2020.

On January 1, 2021, the relevant statutory period reverted to 21 days and the statutory minimum was set at $A10,000.

Canada

Insolvency regulation changes—The Superintendent of Bankruptcy, Canada used her statutory power to issue directives in order to provide additional flexibility to Licensed Insolvency Trustees (LITs) in the accomplishment of their functions considering the social distance measures imposed, for example, by allowing for videoconferencing and/or teleconferencing for various meetings between LITs and debtors that previously were required to take place in person.

Insolvency Law changes—The Superintendent's statutory power under the BIA to intervene in any matter or proceeding in court, where the Superintendent considers it expedient to do so, allowed her to seek and obtain an omnibus order in each of the provinces and territories. The orders obtained provided flexibility to help debtors affected by the pandemic by extending some delays and giving them more breathing room in some circumstances.

The Time Limits and Other Periods Act came into force in July 2020 and authorized the issuance of targeted Ministerial Orders suspending various statutory time limits, including BIA and CCAA time limits. No Ministerial Orders were issued, however, and as such it did not apply to insolvency matters.

Monitoring—The Government of Canada generally monitors insolvency trends and seeks to ensure that the insolvency regime is effective and responsive to changing market conditions. During the pandemic, the Government enhanced monitoring efforts by: (a) establishing an inter-agency group comprising different departments and regulators, as well as Statistics Canada, to take a global monitoring approach; and (b) seeking feedback from various insolvency stakeholders, such as experts, judges, trustees, and lenders on how the insolvency system was working during the pandemic.

Chile

Chile strengthened pre-bankruptcy mechanisms, such as the Free Insolvency Economic Counseling, a benefit provided for MSEs affected by the economic damages derived from the pandemic. This measure allowed beneficiaries to have free access to an insolvency advisor, who carries out a study on the financial, economic, and accounting situation of the business, in order to diagnose the causes that originated the crisis and to carry out financial, legal, and accounting procedures to overcome them.

The courts of justice considers the issuance of law and instructions to enable jurisdictional bodies to face the COVID-19 pandemic, establishing hearings by electronic means and extending deadlines for carrying out actions in judicial procedures in general, which allowed continuity in processing insolvency proceedings considered "sensitive" for the national economy, for example, reorganization proceedings (mainly restructuring of large companies) and their impact on employment and the economy.

The Superintendency of Insolvency and Entrepreneurship issued instructions to adapt the deadlines and actions of bankruptcy procedures to the health emergency, for example, performance of actions by electronic means, such as diligence of seizure, inventory of goods, auctions or sale of goods, and others.

In addition, on May 19, 2020, the Superintendency of Insolvency and Entrepreneurship introduced an administrative regulation General Character Standard No. 11 allowing debtors and creditors to participate in the Renegotiation Procedures in virtual administrative sessions as part of the Proceeding. This measure is now permanent and has facilitated access for people who, in a significant number, lost jobs or had their jobs affected. Between the years 2020 and 2021, 1,799 telematic hearings were held by the Superintendency.

Law No. 21,354 was enacted in 2021 to provide financial contributions to support micro and small businesses.

These measures, which had the ultimate objective of dealing with the "black out" of several months that produced the total or partial confinement of the national population, prevented an acceleration in insolvency proceedings. However, most of the measures are temporary and, in some cases, a legal modification is required to establish them permanently, which could be addressed in the medium term.

Finland

Temporary Limitation on Creditors' Right to File for Bankruptcy.
On April 16, 2020, the Government of Finland issued a legislative proposal (No. 46/2020) to temporarily amend the Finnish Bankruptcy Act. The reform removed the provision regarding the so-called assumption of insolvency of a debtor (insolvency assumption) in cases where a creditor files for bankruptcy. This provision is typically invoked by creditors in their bankruptcy applications to prove the debtor's state of insolvency. The Bankruptcy Act was temporarily amended to restrict a creditor's right to file for the bankruptcy of a debtor on the basis of an insolvency assumption. The amendment was in force for the nine months from May 1, 2020 to January 31, 2021.

Pursuant to the current Bankruptcy Act, a debtor is deemed insolvent by the court if the debtor has not repaid a clear and undisputed claim that has fallen due within one week of the receipt of a payment reminder. Thus, as a result of the law reform, this assumption was temporarily removed until January 31, 2021.

However, irrespective of said temporary amendment, a creditor could still file for bankruptcy and prove the debtor's insolvency in the other ways set out in law. In such cases, the creditor needs to prove that the debtor's inability to repay the debts when they fall due is not only temporary. It should be noted that the amendment included a transitional provision that sets down two situations in which the insolvency assumption could still be applied: (a) if the payment reminder has been issued to the debtor prior to the adoption of the amendment and (b) if the payment reminder has been issued to the debtor after the amendment's adoption and is based on a debt that has fallen due more than two months prior to the amendment's adoption (May 1, 2020).

From January 31, 2021, as the insolvency assumption was returned to the law, the definition of the assumption itself was temporarily amended to soften the return to the normal bankruptcy legislation. For the eight months from January 31 to September 30, 2021, a debtor was deemed insolvent by the court if the debtor had not repaid a clear and undisputed claim that had fallen due within 30 days (earlier one week) of the receipt of a payment reminder. As of October 1, 2021, payment time has again returned to one week.

The temporary measures noted above have now been wound down and as of October 1, 2021, the normal bankruptcy legislation again applies.

Continuation of Restructuring Proceedings.
Despite payment default, formal corporate restructuring proceedings under the Finnish Restructuring Act must, as a main rule, be discontinued when the debtor is unable to repay debts arising during such proceedings (so-called new debts). In effect, this typically results in the bankruptcy of the debtor. Because of the COVID-19 outbreak, the Advisory Board for Bankruptcy Affairs (Advisory Board) issued a recommendation on March 25, 2020, proposing that the inability to repay new debts should not necessarily lead to the discontinuation of the restructuring proceedings.

The Advisory Board stated that the financial impact of the COVID-19 outbreak could be considered somewhat exceptional. Late payments during this exceptional period did not necessarily mean that the debtor's business was unprofitable or unable to repay its new debts once the situation returned to normal. Thus, the Advisory Board proposed that administrators should discuss the possibility of investigating the success of the payment of new debts that arose during the proceedings over a period longer than the current term. After all the temporary law amendments have ceased to be in force and creditors have returned to follow their normal debt collecting practices, this exception is no longer in practice.

Hong Kong

All insolvency practitioners were advised to adopt as much flexibility as possible in discharging their duties in view of the COVID-19 pandemic (including where possible deferring and relaxing deadlines or obligations in the course of case administration). They were also recommended to implement suitable targeted measures to achieve social distancing when administering the insolvency cases under their purview. No specific insolvency measures were implemented in Hong Kong, in the context of changes made to the insolvency regime, and insolvency filings have continued with the same thresholds and limits as pre-COVID-19.

India

Suspension of sections 7, 9, 10, 116 effective March 25, 2020. Filing of applications for corporate insolvency resolution by the financial creditor, operational creditor, or corporate applicant under sections 7, 9, and 10 of the Insolvency and Bankruptcy Code, 2016 were suspended effective March 25, 2020, for a period for six months; this was further extended for another six months.

Such suspension prohibited initiation of insolvency proceedings on account of defaults arising during the COVID-19 crisis only.

An insolvency proceeding can be initiated for defaults existing before the onset of COVID-19 and for defaults arising after it recedes. It does not affect the applications already filed before the Adjudicating Authority initiating the Corporate Insolvency Resolution Process (CIRP) and ongoing corporate insolvency resolution, corporate liquidation, and voluntary liquidation proceedings.

Increase of threshold of default—The threshold of default for filing an insolvency application was increased from Rs 1 lakh to Rs 1 crore to prevent MSMEs from being pushed into insolvency proceedings. The said measure is a permanent one and to date remains in force.

Prepackaged resolution framework for MSMEs notified—The prepackaged resolution framework for MSMEs provides a hybrid mechanism leaving the debtor in possession of assets and managing the affairs of the corporate debtor, subject to certain declarations the insolvency professional conducts out-of-court.

Benefits of the Pre-Packaged Insolvency Resolution Process (PPIRP) include the following:

- Less time is required, and the process is more cost effective. The process completes in 120 days and many steps are already taken towards resolution before going to the Adjudicating Authority, which results in a lower PPIRP cost.
- Approval of resolution plan by AA takes place within 30 days.
- Management of the Corporate Debtor remains in the hands of the Board of Directors of the Corporate Debtor, therefore, the corporate debtor's operations run smoothly. There is less judicial interference in the PPIRP.
- Pre-packs are primarily intended to provide MSMEs with the ability to restructure their obligations and to start over with a clean slate, while also providing sufficient safeguards to ensure that the scheme is not abused to escape paying creditors.
- The pre-pack provisions have included sufficient safeguards to ensure that the provisions are not abused by criminal promoters. The debtor in possession and creditor in control model safeguards against disruptions in the management of the corporate debtor and resultant deterioration in the value of assets and goodwill of the corporate debtor.

Jersey

Guidance on wrongful trading was published by the Viscount and, separately, by the Jersey Law Society, with a view to avoiding premature insolvency applications due to concerns over wrongful trading.

New Zealand

New Zealand introduced two temporary insolvency measures in response to the COVID-19 pandemic, the first being a Business Debt Hibernation regime and the second a Safe Harbour for directors from liability for breach of certain directors' duties.

Business Debt Hibernation.[336] Otherwise viable companies that were able to pay their debts as they became due on December 31, 2019 but were likely to have significant liquidity problems as a result of the effects of the COVID-19 pandemic lockdown, could elect to enter a Business Debt Hibernation. This would provide a moratorium for one month with the proviso that the creditors could vote on a proposal to extend the period for up to a further six months. This scheme was only available to companies initially entering during 2020, though this was extended to October 2021. No issues were anticipated from ending the scheme, and no further extension was expected.

Safe Harbour.[337] The Safe Harbour provided protection for directors for any liability for breach of directors' duties that could occur if they were acting in good faith while responding to challenges to their businesses as a result of the COVID-19 pandemic lockdown. The Safe Harbour protection applies to the Companies Act duties not to trade recklessly and not to allow the company to incur obligations without a reasonable belief that they will be met when due. The period of the Safe Harbour was from April 3, 2020 to September 30, 2020, with the ability to extend the period. The Safe Harbour protection ended on September 30, 2020 and did not cause any issues. Provisions were put in place such that it only covered companies that were able to pay their debts as they became due before the lockdown started. The provisions do not apply to directors of certain companies, including registered banks, licensed insurers, and non-bank deposit takers.

In addition, planned amendments to the Voidable Transaction provisions were urgently brought forward in the Companies Act, reducing the period of vulnerability for voidable transactions from two years to six months unless the transaction concerned was with a related party, in which case the two-year period still applied to give greater certainty to businesses receiving payments from debtors. Similar amendments were made to the Insolvency Act that relates to some Irregular Transactions in personal bankruptcies. These measures apply only to liquidations and bankruptcies that commenced on or after the date on which those amendments came into force i.e., May 16, 2020, and are permanent.

Poland

Poland introduced a simplified restructuring proceeding and a stay for insolvency filings obligations for entities insolvent because of the pandemic.

Simplified restructuring procedure (SRP). In response to the COVID-19 crisis, the Polish government prepared a simplified version of one of four restructuring proceedings available in Polish law for business entities and entrepreneurs. This law entered into force June 24, 2020, and was initially available for one year, before the transposition of the directive that was to be introduced in July 2021 (Act of June 19, 2020; Official Law Journal no 1086, 2020). The operation of this procedure was extended as the transposition of the directive has been postponed until July 2022, due to the process of parallel digitalization of restructuring proceedings. The electronic system enabling full digitalization of the restructuring proceedings and a new version of the simplified restructuring proceedings should have been available for business permanently from December 1, 2021, however, it is not yet fully working.

The essence of the SRP is to enable the debtor to initiate the procedure without a court decision but with some consequences that were previously only available under court control in three other restructuring procedures, where court involvement is much more significant.

336 https://www.legislation.govt.nz/act/public/1993/0105/latest/LMS349296.html
337 https://www.legislation.govt.nz/act/public/1993/0105/latest/LMS348992.html

The most important features of SRP are as follows:

- It is initiated by the announcement of the debtor in the official commercial journal.
- The debtor must be supported by the insolvency practitioner (licensed by the Ministry of Justice).
- The announcement has the effect of a general stay of individual enforcement actions that covers both unsecured and secured claims (generally, secured claims are not covered by restructuring proceedings in Poland, without the creditor's consent).
- Crucial contracts are protected from early termination, this protection covers lease contracts, license agreements, bank account agreements, credit agreements, property insurance agreements, and letters of credit; it does not cover non-performance of obligations that should be performed after the commencement of the procedure if they are not covered by the arrangement.
- Any conduct of the debtor outside normal business activity is not allowed without the insolvency practitioner's agreement.
- The insolvency practitioner may authorize new financing that will be protected in insolvency procedure if it is presented in the restructuring plan and the plan is accepted.
- The insolvency practitioner may convene a creditors' meeting to vote on the restructuring plan.
- The restructuring plan that covers secured creditors must guarantee that those creditors will be compensated to at least the same level as if they were satisfied from the security.
- Creditors, debtors, and insolvency practitioners may apply to terminate the consequences of the announcement to initiate the procedure if they are detrimental for creditors.
- Debtors must apply for confirmation of the restructuring plan within four months from their announcement; this term cannot be prolonged.
- The announcement protects the debtor from the responsibility for not applying for insolvency, if the restructuring plan is confirmed, or other restructuring procedures are opened immediately after the termination of this simplified procedure.
- The plan may be used only once.
- If, after the debtor's announcement, four months passes without application for confirmation of the plan, the procedure is terminated automatically, *ipso iure.*
- The debtor has civil responsibility for the abuse of this procedure.

On December 1, 2021, the SRP was slightly modified, mainly by the fact that all announcements concerning restructuring proceedings and insolvency practitioner activity were registered and accessible by creditors within the new digitized system for restructuring proceedings.

Generally, the SRP is seen as a great success, leading to it being extended and made permanent with the introduction of the IT system as of December 1, 2021.

Time limit to file for insolvency. As of April 13, 2020, the time limit to file for insolvency is suspended for the period of the declared "state of epidemic," if the insolvency is caused by COVID-19. After the end of the state of epidemic it will run anew. At the same time, the law introduced the rebuttable presumption that any insolvency that occurred during the state of epidemic was caused by COVID-19. To protect creditors, this solution is assisted with the rule in the insolvency law that time limits for creditors to oppose transactions of the debtor in the vicinity of insolvency (e.g., claw back provisions) are prolonged accordingly (art. 15zzra in the Act of March 2, 2020, mentioned above). As of October 13, 2021, Poland remained in the state of epidemic.

Singapore

The main legislative change was the **COVID-19 (Temporary Measures Act) 2020** ("COVID-19 Act"), which was passed by Parliament on April 7, 2020. The COVID-19 Act was subsequently amended by a series of amendment Acts from June 5, 2020, to September 14, 2021, to provide further relief.[338]

The legislative measures introduced by the COVID-19 related legislation to manage business distress include:

- A temporary increase in debt thresholds to be met before commencing insolvency proceedings,[339] supported by a temporary extension of the statutory timeframe within which a debtor is to respond to, or satisfy a demand for payment.[340]
- Temporary relief for a party unable to perform an obligation in certain scheduled contracts,[341] being an obligation to be performed on or after February 1, 2020, as a result of the COVID-19 crisis.
- A rental relief framework for businesses.[342]

With specific reference to the insolvency proceedings, the legislative measures introduced included:

- An increased debt threshold must be met before applications for bankruptcy/personal insolvency can be made.
- The qualifying debt threshold for cases under the Debt Repayment Scheme was increased from S$100,000 to S$250,000. The Debt Repayment Scheme is a pre-bankruptcy scheme set out in the Insolvency, Restructuring and Dissolution Act 2018 (IRDA). The increase in the threshold meant that more individuals could participate in the scheme to avoid bankruptcy.
- An increased debt threshold to be met before a winding-up application may be brought against a company.
- An extension of the time period from 21 days to six months within which a demand for payment by creditors must be satisfied, i.e., giving the debtors more time to pay.
- The suspension of directors' liabilities for wrongful trading, if a company incurred debts and/or liabilities in the ordinary course of business during the prescribed period, before the appointment of a judicial manager or a liquidator.[343]

These measures commenced on April 20, 2020 and ended on October 19, 2020.

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338 The COVID-19 Act was amended by the COVID-19 (Temporary Measures) (Amendment No. 1) Act 2020 on June 5, 2020; COVID-19 (Temporary Measures) (Amendment No. 2) Act 2020 on September 18, 2020; COVID-19 (Temporary Measures) (Amendment No. 3) Act 2020 on November 3, 2020; COVID-19 (Temporary Measures) (Amendment) Act 2021 on February 2, 2021; COVID-19 (Temporary Measures) (Amendment No. 2) Act 2021 on April 5, 2021; COVID-19 (Temporary Measures) (Amendment No. 3) Act 2021 on May 11, 2021; and COVID-19 (Temporary Measures) (Amendment No. 4) Act 2021 on September 14, 2021. For a copy of the statutes, please visit Singapore Statutes online at https://sso.agc.gov.sg.

339 The debt threshold to be met before an application for bankruptcy/personal insolvency could be made was raised from S$ 15,000 to S$ 60,000. The same approach was adopted in respect of the making of a winding-up application against a company based on an unsatisfied statutory demand, where the debt threshold was raised from S$10,000 to S$100,000.

340 The time period within which demand for payment must be satisfied was raised from 21 days to 6 months.

341 The list of scheduled contracts is set out at the First Schedule to the COVID-19 Act. The list of scheduled contracts includes, for example: (a) a contract for the grant of a loan facility by a bank or finance company, where such a facility is secured by any commercial or industrial property in Singapore; (b) a performance bond granted pursuant to a construction or supply contract; (c) an event contract; (d) a tourism-related contract; (e) a construction contract or supply contract.

342 On June 5, 2020, the COVID-19 (Temporary Measures) (Amendment) Act 2020 was passed in Parliament. The Act introduced a new rental relief framework for eligible SMEs, and relief for tenants unable to vacate business premises due to COVID-19. Among the measures introduced was the mandatory co-sharing of rental obligations between the government, landlords, and tenants. Landlords and tenants were encouraged to continue to establish a baseline position for the handling of tenants' rental obligations as well as to continue to try to work out mutually agreeable arrangements that best addressed their specific circumstances. The rental relief framework covered periods from April to July 2020. The COVID-19 (Temporary Measures) (Amendment No.4) Act 2021 was passed to provide inter alia, further rental relief for SMEs and specified non-profit organizations which came into force on October 5, 2021, to cover the rental period from August 15 - 18, 2021. For more detailed information, please visit the Ministry of Law's website at www.mlaw.gov.sg. and https://go.gov.sg/rentalrelief.

343 For the purposes of section 239(6) of the IRDA, a company is not to be treated as incurring debts or liabilities without reasonable prospect of meeting them in full if the debt or liability was incurred: (a) in the ordinary course of the company's business; (b) during the prescribed period (i.e., from April 20, 2020, to October 20, 2020); and (c) before the appointment of a judicial manager of a liquidator of the company. Please refer to section 23(2) of the COVID-19 Act.

The Simplified Insolvency Programme (SIP) was introduced on January 29, 2021 (for an initial period of six months, but which has since been extended by a further period of 12 months to July 28, 2022) to:

- Provide temporary and bespoke insolvency processes to help viable but distressed micro and small companies to restructure their debts in a lower-cost and efficient manner, and
- Where these micro and small companies are unviable, to wind up in a lower-cost and efficient manner. The SIP is administered by the Official Receiver.

Singapore is monitoring the use and efficacy of the SIP and considering the feasibility of implementing the SIP permanently with such modifications and changes as are necessary.

A sole proprietor and partnership scheme (SPP Scheme) to complement the SIP was introduced on November 2, 2020. The SPP Scheme is intended to help sole proprietors and partnerships facing financial distress to restructure their business debts. The SPP is a programme by Credit Counselling Singapore (CCS) with the support of the Association of Banks in Singapore, government agencies including the Monetary Authority of Singapore (MAS) and Enterprise Singapore, and participating financial institutions. The SPP Scheme enables sole proprietors or partnerships to seek the assistance of CCS in restructuring their unsecured business debts owed to the participating lenders.

Apart from the SIP and SPP, the MAS (i.e., Singapore's central bank) together with various banks and financial institutions, worked on a series of initiatives for small businesses facing cashflow difficulties. These initiatives included assisting small businesses in applying for principal repayment and interest moratoriums for secured loans and hire purchase agreements under a scheme known as the Extended Support Scheme.

Trinidad and Tobago

A number of measures were undertaken by the banking sector, judiciary, and the Government of the Republic of Trinidad and Tebago.

Measures extending the repayment terms of loans during COVID-19:

- The Republic Bank Limited provided a moratorium on all loans, including mortgages and HELP loans for up to six months. This moratorium was automatically made available upon request.
- Ansa Merchant Bank Limited provided a moratorium to defer payments on all loans for up to three months.
- First Citizen Bank Limited provided a moratorium to defer loan and mortgage installments that was automatically applied for customers of good standing, along with the commensurate waiver of penalty charges and fees for a period of three months with the possibility of extension for a further three months.
- Scotiabank Trinidad and Tobago Limited offered assistance to customers affected by COVID-19 including mortgage payment deferrals of up to six months (a period of three months with a possible extension of three months).

These measures were all temporary and cover the aforementioned period in each case.

Trinidad and Tobago provided a moratorium between three and six months for the non-accrual of interest and penalties to be waived for the aforementioned period.

Measures encouraging the use of virtual means (e.g., e-filings, virtual court hearings) for insolvency cases during COVID-19: The Judiciary of Trinidad and Tobago implemented e-filing of documents and virtual court hearings for cases.

Measures to assist persons laid off during COVID-19: The Social and Humanitarian Support Programme:

- The Salary Relief Grant provided relief to citizens whose employment had been terminated or suspended without pay or who had suffered a loss of income as a result of the impact of COVID-19; more specifically, to those persons whose employment had been directly affected by the health and safety measures introduced by the Government in response to the danger to public health generated by the COVID-19 pandemic.
- In light of the concerns surrounding possible temporary unemployment during the COVID-19 pandemic, the Government of the Republic of Trinidad and Tobago implemented a temporary Salary Relief Grant and Income Support Grant of up to TT$1,500 for a period of up to three months.
- Further, grants to existing beneficiaries of food support were made for three-month periods, and emergency hampers, food vouchers and market boxes were distributed to families during the last stay-at-home period for a duration of three months.
- A Fuel Relief Grant was made to maxi-taxi and taxi operators.
- Financial Assistance was provided to non-scholarship students studying at UWI Cave Hill and UWI Mona.
- Emergency Relief Grants were made to artists and other creatives.

Measures to assist businesses and SMEs during COVID-19:

- Phase 1 of the Initial Loan Guarantee Programme with resource backing of TT$300 million was offered from June to September 2020, to small and medium enterprises at the country's four largest commercial banks. The banks agreed to administer the programme for businesses with annual gross revenues between TT$6 million to TT$20 million and with a minimum of five employees. Under this Loan Guarantee Programme, the Government agreed to pay the interest on the SME loans commencing three months after the launch of the programme and quarterly thereafter to maturity of the programme or the SMEs' loans, whichever is later.

- Phase 2 of the SME Loan Guarantee Programme was designed and approved in 2021 at the request of the SME sector which experienced difficulty accessing loans under Phase 1. In this Phase, loans were made available to SMEs with annual gross revenues between TT$500,000 and TT$25 million. Further enhancements were made, including:

- The Government-guarantee was extended to 100 percent of the loan amount.
- The repayment period was increased from five years to seven years, inclusive of a 24-month moratorium on principal payments from the date of disbursement.
- The purpose of the loan was extended to purchasing fixed assets, except residential property and financial assets/products, the purchase of goods and vehicles being limited to those items used specifically for the small business.
- Further, in recognition of the administrative difficulties faced by SMEs as a result of the pandemic, the Government agreed to relax the immediate requirement for SMEs to be up to date with their payments to the Board of Inland Revenue and the National Insurance Board. SMEs in the new loan programme were required to be up to date only for the year ended December 31, 2018. However, they must have settled all outstanding statutory obligations for 2019 and 2020 within one year of the disbursement of the facility or made appropriate arrangements with the Board of Inland Revenue and other statutory authorities to settle their obligations, failing which the loan must be repaid in full within two years.

Grant Facility:

- A TT$30.0 million Grant Facility administered by the National Entrepreneurship Development Company was made available to small and micro business operators with annual revenues of less than TT$1 million. This Grant Facility was extended and continued in 2022.

Small Business Liquidity Support Facility:

- A Small Business Liquidity Support Facility of TT$100 million would be managed by credit unions. The facility would aid in the revitalization of the micro and small business sector.

United Kingdom

Permanent Measures

The Corporate Insolvency and Governance Act 2020 (CIGA20). This significant new legislation became UK law on June 25, 2020 and introduced a new permanent restructuring package into the insolvency legislative framework of England, Wales, and Scotland along with temporary measures to respond to the COVID-19 pandemic. Similar legislation was introduced in Northern Ireland where insolvency is devolved.

Restructuring package. The new restructuring package contained two significant and permanent new options for companies facing financial distress (moratorium and restructuring plan), as well a new provision prohibiting contracts being terminated by a counterparty while a debtor company seeks rescue or restructuring opportunities. It is the UK's version of the US Chapter 11 process and is similar to the European Union's Restructuring Directive (2019/1023 of June 20, 2019) which its Member States are gradually implementing.

Moratorium. The first of the new rescue options available to financially distressed companies is a free-standing statutory company moratorium that allows over-indebted but viable companies a period of time during which creditor action is prohibited, so that company directors can consider the most appropriate rescue or recovery process or seek specialist advice, free from creditor action. The period of time is 20 business days, but the legislation provides for extensions.

Entry into the moratorium does not require prior determination of the outcome, so a company could for example use the period of time to arrange a company voluntary arrangement, a new restructuring plan, or simply an injection of new funds or refinancing, any of which would result in the rescue of the company. With the protection from creditor action that the moratorium provides, companies will have more time to ensure that they use the best and most efficient rescue procedure for their particular circumstances, benefitting all of their stakeholders.

The directors of a company remain in control of its day-to-day operations while the moratorium is in place (i.e., it is a "debtor in possession" process) but a licensed insolvency practitioner is appointed as a "monitor," whose role is to oversee the moratorium and ensure compliance with its rules, including, if necessary, to bring it to an end if it appears after all that the company cannot be rescued.

In most cases a moratorium will commence when the company directors file a notice in court, which will comprise statements as to the company's eligibility to use the process, including confirmation of the proposed monitor, and that, in the proposed monitor's opinion, it is likely that the company will be rescued during a moratorium.

Companies may not use a moratorium procedure if they have used one in the previous 12 months. In addition, the company and the monitor must make statements as to its financial position and the prospects for its rescue before it is eligible to enter a moratorium. These safeguards prevent inappropriate use of the moratorium.

Once the appropriate documents have been filed, protection from creditors lasts for 20 business days, but the company can extend it a further 20 business days by filing a further notice at court. Extensions beyond 40 business days can only happen with the agreement of creditors or permission of the court. Creditors can extend the moratorium for up to a year (in total), whereas a court can extend the moratorium for any period.

During the moratorium period the company is required to maintain payments to creditors for debts entered into after the commencement of the moratorium and for wages and for certain payments where the obligation arose prior to the commencement of the moratorium, such as rent during the moratorium period. If these payments are not maintained the monitor of the moratorium must bring the moratorium to an end.

Restructuring plan. The second major new process introduced by CIGA20 is a restructuring plan (Plan), which is an arrangement or compromise that can be agreed between a company suffering financial difficulties and its creditors and shareholders.

The new Plan broadly follows the administrative procedure for the existing "scheme of arrangement" procedure found under section 26 of the Companies Act 2006 but, unlike schemes, the Plan can only be entered by a company likely to suffer financial difficulties (that can be resolved by a restructuring plan) (see section 901A Companies Act 2006). A company prepares a proposal to restructure its debt. It divides its creditors into classes based on the similarity of their rights. These classes are confirmed by the court, which then orders meetings of all the classes of creditors to be held to vote on the proposals. The requisite majority at these meetings is 75 percent or more (by value of debt) voting in favor. However, unlike the scheme of arrangement process, not all classes need to vote in favor of the proposals for the proposal to commence—'cross-class cram down' is possible.

Once the meetings have been held, the company returns to court to have the Plan sanctioned. If not all classes are in favor, a court will sanction the Plan only if at least one class that could expect a return in the most likely outcome if the Plan was not agreed (likely to be an insolvency process such as liquidation or administration) voted in favor of the Plan. Additionally, no member of a dissenting class can be any worse off than it would have been in the most likely outcome if the Plan was not agreed, and the Plan as a whole must be considered just and equitable by the court.

The company's proposal may include a provision that certain creditors are excluded from it. If that is the case, those creditors would maintain their existing rights.

This new process therefore builds on an existing flexible and highly regarded administrative framework (the scheme of arrangement) but allows proposals of companies suffering financial difficulties to be sanctioned by the court where there are dissenting classes of creditors. This will result in more companies being rescued, likely with better outcomes for creditors, suppliers, employees, and other stakeholders.

Furthermore, a Plan does not require a licensed insolvency practitioner, making it flexible and reducing the overall cost.

Termination clauses in supply contracts. CIGA20 also introduces a provision that prevents contracted suppliers of goods and services to a debtor company from obstructing rescue or recovery proceedings by terminating supplies based solely on the insolvency (or past breaches of contract that had not been acted upon prior to the insolvency). Instead, contracted suppliers will be obliged to continue to honor their contracts with the debtor company.

Restrictions on termination of utility supplies have long been a feature in insolvency proceedings, as well as termination of essential supplies for specific insolvency procedures and situations. But the new provision greatly widens the scope of the restrictions on termination clauses in supply contracts, enabling greater opportunities for companies to trade through rescue or insolvency proceedings, thus increasing the chances of recovery or sale of the company's business as a going concern.

The new provision works by preventing clauses in a supply contract which allow for termination of supplies on insolvency, or changes to supply agreements otherwise (e.g., the demanding of ransom payments for supply to continue), from operating. It will apply in all insolvency proceedings, as well as the new restructuring plan procedure described above. The only exceptions would be where the company or the insolvency office-holder consents to cessation of supplies, or the court agrees that the supplies may cease on the grounds of supplier hardship. Some suppliers, predominantly financial services suppliers, are excluded from this provision.

Small companies were temporarily exempted from this provision as a response to the pandemic and this exemption ended on June 30, 2021.

Temporary Measures

The Corporate Insolvency & Governance Act 2020 also introduced a number of temporary measures to support and help businesses avoid unnecessary insolvency in response to the COVID-19 pandemic.

Following their implementation on June 25, 2020, the temporary measures have been variously extended and expired as follows:

- Suspension of serving statutory demands and the restrictions on filing petitions to wind up companies expired on September 30, 2021 and have been replaced by temporary targeted criteria which expired n March 31, 2022.
- Small supplier exemption from termination clause provisions which expired on June 30, 2021.
- Suspension of the wrongful trading provisions expired on June 30, 2021.
- Modifications to the company moratorium provisions and the temporary moratorium rules to support its operation and ease of use during the pandemic period expired on September 30, 2021.
- An additional measure introduced by CIGA 2020 extended the deadline for filing returns with the Registrar of Companies and the relaxing of requirements for Annual General Meetings to be held in a physical location. Both these provisions expired on April 5, 2021.

The Coronavirus Act 2020 introduced a moratorium on commercial landlords preventing the forfeiture of commercial leases, which has been extended various times and expired on March 25, 2022.

In addition, under the Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020, the Government has restricted the use of Commercial Rent Arrears Recovery. This measure supported the moratorium on commercial evictions and expired on March 25, 2022.

United States of America

The United States made a variety of changes to its bankruptcy processes to address the circumstances caused by the COVID-19 pandemic. The following examples reflect the most significant of these changes.

I. COVID-19 Related Measures Implemented by the United States Trustee Program

The United States Trustee Program (USTP or Program) is an executive branch agency established by Congress as the neutral "watchdog" of the bankruptcy system and is charged with the oversight of both consumer and business bankruptcy cases and private trustees. In response to the COVID-19 pandemic, the USTP took steps to ensure that the bankruptcy system remained functional while protecting health and safety during this public health emergency.

A. Meetings of Creditors

Section 341a Meetings of Creditors are administrative proceedings held in every bankruptcy case, typically in person, at which debtors testify under oath. Immediately upon the pandemic declaration, the USTP suspended about 60,000 meetings and acted quickly to transition them from in-person meetings to either telephone or video meetings.[344]

While this measure was temporary, the USTP has extended the requirement that Section 341 meetings be conducted by telephone or video appearance to all cases filed during the period of the President's "Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak" issued March 13, 2020 and ending later.

B. Debtor Audits

By law, the USTP contracts with independent firms to perform audits of a sample of individual debtors' chapter 7 and chapter 13 cases for purposes of determining the accuracy, veracity, and completeness of filings. The USTP suspended these audits because they required debtors to produce additional documentation and often to confer with counsel and financial institutions in responding to the auditors' requests and reports.

344 Additional information is available at: https://www.justice.gov/ust/Local_341_Meeting_Status.

C. Trustee Audits

The USTP contracts with certified public accounting firms to conduct independent audits of the internal controls and cash management practices of private trustees for purposes of ensuring appropriate measures are in place to safeguard bankruptcy estate assets.

The USTP modified its trustee audit protocols to provide for the use of electronic tools so that the audits could be performed remotely to permit social distancing and to accommodate the telework posture of many private trustees' offices during the public health emergency. In addition, to further reduce the burden on the private trustees, the USTP adjusted the sample size for testing certain information, although the auditors retained discretion to increase testing if warranted.

II. Legislative Measures

The federal government passed legislation altering or significantly impacting insolvency processes and practices. State governments also implemented changes that impact debtors in insolvency proceedings.
These measures included:

A. The CARES Act

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law. The CARES Act contained a wide variety of measures designed to respond to problems created by the COVID-19 pandemic and authorized programs costing up to US$2.2 trillion. Although the majority of those programs did not affect insolvency proceedings directly, the following were noteworthy:

- The CARES Act temporarily amended the Small Business Reorganization Act of 2019 (SBRA) to increase the debt limit for eligibility for relief under Subchapter V of Chapter 11 from approximately US$2.7 million to US$7.5 million. Although the limit was set to return to US$2.7 million after one year, subsequent enactments extended the increased limits for successive one-year periods. The most recent limit reverted to US$2.7 million in late March 2022.
- For consumers seeking bankruptcy relief, the CARES Act amended the definition of "income" for Chapters 7 and 13 to exclude COVID-19 related payments from the federal government so that such payments would not be considered "income" for purposes of consumer bankruptcy eligibility.
- The CARES Act also clarified that "disposable income," which generally must be paid to creditors under a Chapter 13 plan, would not include COVID-19 related payments.
- Finally, the CARES Act permitted Chapter 13 debtors with a confirmed bankruptcy plan to request a modification of their plan where the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the COVID-19 pandemic. Additionally, debtors may extend plan payments under their plan for up to seven years after the initial plan payment was due. These changes apply to any case for which a reorganization plan was confirmed before the enactment of the CARES Act.

B. Bankruptcy Administration Improvement Act

In December 2020, Congress enacted the Bankruptcy Administration Improvement Act (BAIA). The BAIA reduces the amount of fees paid by nearly every chapter 11 debtor during the bankruptcy case, which are used to help offset USTP appropriations. The BAIA also redirects excess fees to offset other costs of the bankruptcy system, including bankruptcy judgeships and an increase to private trustees who administer liquidation cases. These provisions will be effective through the 2026 fiscal year. Although the BAIA was not proposed to specifically address COVID-19's impact, its enactment provided for continued stability in the bankruptcy system.

C. Consolidated Appropriations Act, 2021

The Consolidated Appropriations Act of 2021 (Appropriations Act) became law on December 27, 2020. The Appropriations Act further amended the Bankruptcy Code to supplement the changes effected by the CARES Act. The changes implemented under the Appropriations Act are summarized below.

- Amending the Bankruptcy Code to expressly provide that stimulus payments are not property of a debtor's bankruptcy estate. This provision expired December 27, 2021.
- Amending the Bankruptcy Code to provide that no person may be denied relief under three enumerated CARES Act provisions solely because the person is or was a debtor in a bankruptcy case. The three CARES Act provisions are: (a) the foreclosure moratorium and right to request forbearance, (b) the forbearance of mortgage payments for multifamily properties, and (c) the temporary moratorium on eviction filings. This provision expired on December 27, 2021.
- Amending the Bankruptcy Code to give bankruptcy courts discretion to grant a discharge to a Chapter 13 debtor even where the debtor defaulted (on or after March 13, 2020) in not more than three monthly payments under a residential mortgage because of a material COVID-19 related financial hardship. Furthermore, the bankruptcy court may grant a discharge to a chapter 13 debtor whose confirmed plan provides for curing defaults on a residential mortgage and the debtor has entered into a qualifying loan modification or forbearance agreement with the lender. This does not mean the debtor will be discharged of the mortgage debt, but a debtor will be eligible to receive a plan discharge of other debts even though the debtor did not pay all mortgage payments when due under the plan. This provision expired December 27, 2021.
- Amending the Bankruptcy Code in cases under all chapters of the Bankruptcy Code to give the debtor (or trustee) 210 days after the order for relief to assume an unexpired non-residential real property lease. Existing law had provided debtors or trustees 120 days to assume or reject an unexpired non-residential real property lease. This change expires on December 27, 2022.
- Amending the Bankruptcy Code to prohibit a debtor or trustee from avoiding payments made by a debtor during the preference period for "covered rental arrearages" and "covered supplier arrearages." To qualify for the exemption, (a) the debtor and the counterparty must have entered into a lease or executory contract before the filing, (b) they must have amended the lease or contract after March 13, 2020, and (c) the amendment must have deferred or postponed payments otherwise due under the lease or contract. This provision expires on December 27, 2022.
- Under the CARES Act, borrowers under federally backed residential and multifamily mortgages can request payment forbearance because of COVID-19 hardships. In the case of federally backed residential mortgages, the forbearance period can be as long as 12 months. At the end of the forbearance periods, the borrower must pay the deferred mortgage payments in a lump-sum. These deferred mortgage payments caused significant procedural and administrative complications in chapter 13 cases. To address these complications, the Appropriations Act allows qualified mortgage servicers to file a proof of claim for the deferred payments, even if the claims bar date has passed. The Appropriations Act also authorizes debtors to modify a confirmed Chapter 13 plan to address the deferred payment plan. If the debtor fails to modify the plan, the bankruptcy court (on its own motion), the USTP, the Chapter 13 Trustee and/or any party in interest may move for such a modification. These changes expired on December 27, 2021.
- Ordinarily, a Chapter 11 debtor is obligated to timely make all post-petition payments and to perform all post-petition obligations under an unexpired lease of non-residential real property. The Appropriations Act amends the Bankruptcy Code to allow the court to extend a Subchapter V small business debtor's time to perform under an unexpired lease of non-residential real property if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to COVID-19. These changes apply only to cases commenced under Chapter 11 Subchapter V, and they expire on December 27, 2022.

- The Appropriations Act also addressed a much-litigated issue relating to the eligibility of bankruptcy debtors to obtain Paycheck Protection Program loans.[345] The CARES Act created the Paycheck Protection Program (the PPP), a potentially forgivable loan program administered by the Small Business Administration (SBA). The Appropriations Act amends the Bankruptcy Code to permit PPP loans to debtors in Chapter 11, 12, and 13 cases under certain circumstances. It also discusses how claims for such loans are to be paid, as a part of a debtor's plan, if they are not forgiven.

D. American Rescue Plan Act

The American Rescue Plan Act of 2021 (Rescue Plan Act), effective March 11, 2021, resulted in additional changes that primarily affected consumer bankruptcy cases. In response to the Rescue Plan Act, the USTP issued a notice to trustees under Chapters 7 and 13 advising them that:

- Recovery rebates or child tax credits under the Rescue Plan Act should not be considered in administering estate assets or calculating disposable income in Chapter 13 repayment plans.
- Furthermore, United States Trustees will not consider such recovery rebates or additional child tax credits in making means test calculations, filing motions to dismiss for abuse under section 707(b)(2) and (3), objecting to Chapter 13 plans, or taking related actions.

E. Eviction and Foreclosure Relief

Numerous laws were enacted at the federal, state and local levels aimed at limiting evictions or foreclosures during the pandemic. For example, Congress declared a moratorium on evictions at the beginning of the pandemic, which ended in July 2020. Following that, the Centers for Disease Control instituted a temporary federal eviction moratorium for residential tenants, which has also now ended. The eviction moratorium did not relieve tenants of rent obligations, but those tenants also may have been eligible for emergency rental assistance. There was no federal eviction moratorium for commercial tenants. In addition, state and local governments also instituted eviction moratoriums for their jurisdictions. These measures were temporary, and many are no longer in effect.

With respect to residential foreclosures, the CARES Act provided protections for holders of federally backed mortgages, which comprise the majority of residential mortgages. For homeowners at risk of foreclosure, a moratorium was enacted to prevent mortgage servicers from initiating foreclosure on properties owned by homeowners who were experiencing financial hardship due to COVID-19. This moratorium ended on July 31, 2021, but the Consumer Financial Protection Bureau created additional protections for homeowners facing foreclosure. This addition intended to limit foreclosures through January 1, 2022, by adding conditions for servicers that must be met before a foreclosure can be initiated on properties with mortgages that became delinquent during the pandemic. Additionally, states instituted different measures to limit residential foreclosures during the COVID-19 pandemic. Like the federal protections, many of these foreclosure protections have also expired. These measures reduced default and foreclosure risks resulting from the pandemic.

III. Jurisprudential Measures

The COVID-19 pandemic highlighted unique issues in bankruptcy practice, requiring courts to address novel issues of law.

A. PPP Litigation

The CARES Act created the Paycheck Protection Program to extend economic relief to small businesses, which would be administered by the Small Business Administration. The SBA's emergency rules excluded bankrupt borrowers from PPP loans eligibility. On December 27, 2020, Congress enacted the Consolidated Appropriations Act, 2021, PUB.

345 See Section 3.2, III infra. Since the passage of the CARES Act, the SBA has taken the position that companies in bankruptcy are not eligible for PPP loans. As a result, the SBA has denied PPP loans for bankruptcy debtors, and the case law addressing these issues has been inconsistent.

L. NO. 116-260, 134 Stat. 1182. In Title III of the Act—entitled "Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act" (Economic Aid Act) — Congress extended the SBA's authority to guarantee PPP loans through March 31, 2021, and revised certain PPP requirements. Section 320 of the Economic Aid Act made bankruptcy debtors potentially eligible to receive PPP loans if the SBA provided a written determination that bankrupt debtors were eligible. However, the SBA never issued a determination that bankrupt debtors were eligible for PPP loans during the program's duration.

Many bankrupt debtors challenged the SBA's determination to exclude debtors from PPP loan eligibility. The ensuing litigation had mixed results, with some courts finding that the SBA was within its authority to exclude bankrupt debtors from the program and some courts finding that SBA's actions violated anti-discrimination provisions of the Bankruptcy Code. To facilitate bankrupt debtor's efforts to obtain PPP loans, some bankruptcy courts permitted debtors to dismiss their bankruptcy cases with the opportunity to refile or re-open their cases once they obtained those loans.

B. "Suspension" of Cases

A number of retail Chapter 11 debtors, upon the advent of the pandemic, sought remedies whereby the bankruptcy court would suspend proceedings in their cases. This relief has most often been predicated on 11 U.S.C. §§ 305 and 105 of the Bankruptcy Code. The debtors generally sought to be excused from their obligations to remain current on post-petition obligations, most importantly their obligations to pay current rent to landlords under leases of non-residential real property. Some courts approved such relief based upon what they consider their inherent equitable authorities and by applying a "totality of circumstances" test.[346]

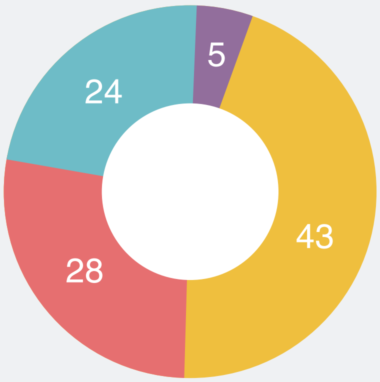
3.3 OTHER CHANGES TO WORKING PRACTICES MANAGING THE OFFICE DURING LOCKDOWN AND AFTER

As the COVID-19 pandemic struck many parts of the world, the offices of the insolvency services shut due to local lockdowns, with staff working from home where possible. For many regulators it was a significant challenge to ensure all staff had the technology, laptop computers, desks, and chairs to work from home. Working from home also required changes to a wide range of processes, including mail opening, phone systems, and holding all meetings by video conference.

In a recent IAIR webinar on October 5, 2021, delegates were asked what stage they were at regarding returning to the office. Forty-three percent of the twenty-one participants still had the majority of staff working from home. Twenty-eight percent had a reduced number of staff in the office. The remaining 29 percent either had the majority of staff back in the office or had worked normally throughout the pandemic.

346 For example, such suspensions were approved in In re Modell's Sporting Goods, Inc., et al., Case No. 20-14179 (Bankr. D.N.J., March 11, 2020).

Figure 29. Office and home working arrangements



Following the initial lifting of lockdowns, challenges have continued as the regulators have had to continue to adapt their offices to facilitate the return of staff in the post-COVID-19 world and even in some cases to return to working from home as further waves of the pandemic occur. At this webinar, delegates were asked which of a list of precautions they had taken or were planning to introduce. The results from the delegates in the webinar were:

- 90 percent were planning to install wipes and hand sanitizers
- 71 percent were planning to institute social distancing and/or one-way movement around the office
- 67 percent were planning to reduce numbers of staff in the office
- 52 percent were planning to require staff to wear masks
- 43 percent were planning changes to common areas and refreshment options available
- 29 percent were planning to install screens
- 29 percent were planning to improve ventilation systems
- 29 percent were planning induction or training sessions to explain the changes to staff returning to the office
- 24 percent were planning to check the temperatures of staff on entry
- 19 percent were planning to make full vaccination mandatory
- 14 percent were planning to introduce routine testing of all staff
- 10 percent were planning to use CO2 monitors
- 10 percent were planning to use QR codes (a tracing app)
- 5 percent were planning building work such as alterations to rooms, toilet cubicles, etc.

Delegates were then asked about their staff's views on returning to the office. They could select more than one option.

- 81 percent had staff who want to come back but on a hybrid model (where they mix working in the office with working remotely)
- 52 percent had staff with health issues who are concerned about returning to the office environment
- 33 percent had a significant number of staff who are reluctant or concerned about returning to the office and who wish to continue working entirely remotely
- 24 percent had staff who were keen to return full-time to the office.

Finally, the webinar delegates were asked about the future of office working and what they anticipated for the future after the end of the current pandemic. They could select more than one option.

- 62 percent expect that a greater number of their staff will work from home the majority of their time than was the case before COVID-19
- 57 percent expect more use of telephone or video working, both as to frequency and as to whom it applies
- 43 percent expect permanent changes to the format of many external meetings (creditor meetings, etc.) to allow these to still take place by telephone and/or video conferencing
- 43 percent expect some of the regulatory and legislative changes introduced during the pandemic to become permanent
- 38 percent expect changes to designated core work hours, to allow staff to adjust their start time to work around childcare and eldercare responsibilities and/or to work schedules (e.g., a compressed week with staff working longer hours per day but fewer days)
- 24 percent expect a greater number of staff to work a hybrid model (combining both office and home-based hours) than was the case before COVID-19
- Only 14 percent expect to return to the previous situation, with staff in the office full-time and no changes to their working day/patterns.

These responses suggest that some of the changes introduced during the pandemic will remain in force, a finding supported by narratives from the surveyed countries.

4. The major concerns regarding the long-term impact of the COVID-19 pandemic on businesses, and the policy responses that are being shaped or discussed to address these concerns

Australia

There are a number of concerns from a regulator's perspective but note that industry and the public may have different concerns:

- Impact of extended lockdowns on businesses that need in-person customers e.g., tourism and accommodation
- Lack of available staff due to extended lockdowns and closed international borders e.g., much of agriculture and horticulture
- Non-viable businesses remaining hidden during the pandemic that will either "fall away" or lead to an increase in unfunded external administrations
- Viability of existing insolvency firms due to depressed insolvency market
- Possibility of an "insolvency tsunami" and whether an adequate number of registered liquidators with access to sufficient properly trained staff will be available.

The policy responses are matters for the Government, which has announced the following reforms.

Possible changes to schemes of arrangement. Consultation on proposed introduction of a moratorium into creditors' schemes of arrangement to make schemes more attractive to larger businesses who cannot adopt the small business restructuring process and do not want to use the voluntary administration (out of Court) restructuring process.

Review of the insolvent trading Safe Harbour regime. The Safe Harbour, established in 2017, provides protection for company directors from personal liability for insolvent trading if the company is genuinely attempting to restructure and to encourage directors to seek advice early on how to restructure and save financially distressed but viable companies.

The government's review assessed whether the Safe Harbour remains fit for purpose in terms of supporting companies to restructure and survive and in particular whether it is suitable for incorporated small businesses.

The review was led by an independent panel of experts and ran for a three-month period between August and November 2021.

Insolvency regime for trusts. Currently in Australia, where an external administrator is appointed over a corporate trustee, there may not be recourse to the trust's assets to enliven the company's right of indemnity. To overcome this, external administrators obtain orders from the Court appointing themselves as receivers or giving them power of sale over the trust assets.

The Government will be consulting on how to address the winding up of corporate trustees and trusts.

The Australian Government continues to monitor the impact of the COVID-19 on individuals and businesses to inform its ongoing response to the pandemic. As part of this monitoring effort, the Government is examining trends in corporate and personal insolvencies as COVID-19 related support measures are gradually wound back.

Canada

The long-term impact on business and uncertainty. In general, the measures described for Canada have worked effectively to stabilize the economy and prevent long-term impacts on business. There have been early signs of a robust recovery, including large gains in real GDP and the recovery of approximately 92 percent of jobs lost between March 2020 and August 2021.[347]

347 https://www.budget.gc.ca/2021/report-rapport/p1-en.html#chap2; and https://www.theglobeandmail.com/business/article-canada-adds-94000-jobs-in-july-as-economy-edges-closer-to-full/.

Despite these encouraging signs, there remains uncertainty on the public health front. Some public health restrictions are ongoing and new variants of COVID-19 make economic conditions uncertain for the months ahead. Many Canadians who had a job before the crisis are still out of work or working sharply reduced hours, worse than in the depths of the 2008 recession.[348] Many businesses, particularly those that rely on close in-person contact or travel, continue to face challenges.

In its Budget 2021 plan, Canada's Government outlined a general approach whereby temporary financial supports for businesses would be transitioned into new and targeted supports for harder-hit sectors, where businesses and workers would continue to receive support.

Rising insolvency levels. On the insolvency side, media reports and some experts have warned that there could be a gradual increase in business and personal insolvency filings. If this occurs, Canada's insolvency system will perform an important economic function by providing businesses and individuals with options to resolve their financial distress, including through liquidation and restructuring.

- First, by encouraging restructuring over liquidation, where possible, the insolvency system in Canada will support the recovery by helping to minimize the impact of insolvency; preserving jobs and business value; reducing spillover effects on suppliers and contractors; and preventing the failure of otherwise viable businesses.
- Second, the quick and efficient liquidation process will support the recovery by maximizing creditor recovery, ensuring the redeployment of assets to productive use, and preventing the build-up of unproductive zombie companies.
- Third, the fresh start provided by the consumer insolvency system will support Canada's recovery by ensuring that bankrupt entrepreneurs can quickly return to the economy, and by encouraging new-business formation.

Chile

An important challenge facing Chile is to establish mechanisms that make bankruptcy procedures accessible to those most affected by the COVID-19 health crisis: mainly individuals, and micro and small businesses.

Currently Chilean observers see that the companies taking advantage of the legislation addressing asset reorganization procedures are classified as "large" by the tax system, since they have the financial capacity to cover the significant costs associated with this procedure such as the fees of the overseer (insolvency representative), sponsoring lawyers, and debt reports prepared by auditors, among others. These costs cannot be covered by micro and small companies, who unfortunately opt for the liquidation procedure most of the time, rather than reorganization.

On the other hand, an eventual increase in people and companies that undergo the liquidation procedure, because of insolvency situations generated or aggravated by the pandemic, is a relevant challenge to improve the processing times of bankruptcy procedures in order to expedite the end of the procedure and also make it more attractive for companies and debtors.

However, the challenges identified are being addressed in the reform project to Law No. 20,720 that modernizes current procedures and creates simplified procedures, aimed at individuals and micro and small businesses, which seeks to incorporate current trends of comparative law in bankruptcy matters, having as a reference the Legislative Guide of the UNCITRAL on Insolvency Regime for the countries, among other regulations.

The legal reform aims to improve access to bankruptcy law and the deadlines involved in the procedures, ensuring a quick and efficient exit from them.

348 https://www.budget.gc.ca/2021/report-rapport/p1-en.html#chap2.

Finland

The Office of Bankruptcy Ombudsman in Finland sees one of its main concerns as determining where are all the insolvent businesses that have not filed an insolvency procedure; are they still operating? They are keen to move the insolvent businesses out of the market and allow viable businesses to live and grow in the fair market mechanism, recognizing that insolvent businesses in the market are inclined to cause disturbances in the concept of a level playing field.

Another concern is the state aid paid to businesses because of difficulties caused by COVID-19. According to the conditions under which state aid was provided, businesses that have not survived or that fail in the future, must under certain circumstances pay the aid back to the state, which may cause the state to be a creditor in the insolvency procedure. This is something Finland hasn't previously had to consider and that the administrators and the state aid issuers need to be aware of, as it affects their status and position in the insolvency proceedings.

At this time, other policy deliberations relative to businesses affected by the COVID-19 pandemic have not yet emerged.

Hong Kong

Economic support is continuing. In September 2021 there was an announcement of the extension of the loan guarantee support policies that have been rolled out previously. There is concern about specific sectors of the economy, most notably, tourism, airlines and cross-border and boundary travel as the borders have remained closed. The focus continues to be on specific targeted support to those struggling legitimately because of the pandemic.

India

COVID-19 pandemic has adversely affected lives, livelihoods, businesses, markets, and the economy, across the globe. In view of demand contraction and supply chain disruptions arising from force majeure circumstances, many companies were on the brink of default in servicing debt obligations. The Government of India took several measures to ameliorate the pains caused by COVID-19.

The insolvency process requires someone to rescue a failing company through a resolution plan. When every company, every industry and the economy is reeling under stress, the likelihood of finding a rescuer for a failing company is remote. If all failing companies were to undergo insolvency proceedings, most of them may end up in liquidation.

While the suspension of sections 7, 9, and 10 of the Code was a short-term measure, other measures, such as enhancement of threshold limits for initiation of CIRP and the prepack framework for resolution of MSMEs, have been brought forward, keeping in mind the long-term impact of the pandemic on businesses.

Jersey

Work is ongoing to assess the structural changes of Jersey's economy. It is noted, for example, that business travel has declined and that employees are working from home, both of which affect the retail sector. The hospitality sector has also been affected by the pandemic.

Highly seasonal businesses, such as those in the events sector, have not had the opportunity to generate the level of profits needed to see them through the quieter off-season, and other businesses continue to be affected by travel disruption.

To support these sectors of the economy, the Government of Jersey extended fixed-cost support under a range of existing support schemes for the visitor accommodation, visitor attractions, and events sectors through to March 2022.

In addition, while the co-funded payroll scheme providing salary support to certain sectors ended at the end of October 2021, officers continued working to determine the right form of longer-term support to address the cashflow challenges faced by these highly seasonal sectors.

The Government of Jersey has also extended the Business Disruption Loan Guarantee Scheme, which provides access to lending for businesses experiencing liquidity challenges as a result of the COVID-19 pandemic. In addition, to assist with the recovery of the economy, the Government ran a pilot productivity support scheme, providing match-funded grants of up to £30,000 to help firms implement changes enabling them to operate more efficiently. The expectation was that this pilot would be reviewed and that a revised (if required) version would be run in 2022.

New Zealand

New Zealand has fortunately seen long periods of time without domestic restrictions on activity. The economy had been performing well up until New Zealand entered another lockdown in August 2021. This has been extended in Auckland and there are concerns being raised relating to hospitality and tourism related businesses. At this stage there are not any plans to make any further changes or add relief to the insolvency laws as a result of the pandemic.

Poland

A main economic concern in Poland is inflation. In terms of insolvency, the data clearly shows that business insolvencies remain low in number, lower even than before the pandemic. There are many reasons for this:

- Generous state aid
- No obligation to file for insolvency
- Easy access to restructuring (under the simplified restructuring procedure or SRP). The number of restructuring filings in 2021 (Q1Q2) was almost as high as the number of all restructuring filings for all of 2020. The SRP, available since the end of June 2020, has become dominant.

Poland faces the danger of having too many zombie firms, improper allocation of resources, and in this way postponement of the eventual crisis. Poland's economy is affected by many factors on completely different levels—economic, political, and others—some of which are out of the nation's direct control including policies related to climate change, and oil, and gas prices; political issues related to its position in the EU; decreasing work force (demographics); economic factors such as too much money circulating on the market and the effect of this on prices; decisions concerning the price of money; and so on.

Respondents voiced concerns that restructuring proceedings or a significant percentage of them might be abused by debtors. Attempts to prevent abuse will include the following:

- Introduction of an IT system that enables much better transparency (as of December 1, 2021)
- Improving administrative methods of supervising the insolvency practitioner profession (Ministry of Justice activity)
- Improving court organization and training of judges dealing with insolvency and restructuring
- Some changes in legislation before the final transposition of the directive (July 2022)—e.g., a better regulatory framework of the insolvency practitioner profession.

Singapore

The pandemic has restricted the movement of goods and people, leading countries to strive to rely less on imports for food and essential items. These developments have major implications for global trade and investments, on which the Singapore economy relies heavily. Given these circumstances, Singapore is likely to face significant structural changes.

Some industries will be disrupted permanently, and companies will have to change their business models to survive. Workers in these industries will be required to re-skill themselves and undertake employment in new and emerging sectors or risk being left behind. To this end, the Singapore government will provide help to companies to enable them to adapt to the new operating environment, as well as support the retraining of workers for new jobs, in order to build up expertise and workforce in growing sectors like medical services, biotech, food production and delivery, and information technology.

The reconfiguration of global supply chains, as countries and companies evaluate their resilience and diversify operations, coupled with accelerating digital transformation and innovation, are likely to see gains that will persist well beyond COVID-19.

The Singapore government established the Emerging Stronger Taskforce in May 2020.[349] Among the key policy recommendations for Singapore as it emerges from the pandemic that are economy and business-focused are:

- **Sustainable Nation Enabling Global Champions and Growing an Agile and Strong Singapore Core.** This policy involves growing a pool of innovative and international large local enterprises and enabling the success of a broad base of companies, through the use of tripartite partners. This can be achieved by continuing to remain open to skills from abroad, even as Singapore concurrently reskills and upskills workers in a manner that is inclusive and digitally oriented.

- **Stronger Together—Institutionalizing the AfA Model.** This is a new model of private-public partnership known as the Singapore Together Alliances for Action (AfA). By tapping into the complementary strengths of the private and public sectors, the approach provides an additional platform for public collaboration, and a key enabler for transformative economic growth.

- **Stronger Together Strengthening International Partnerships.** This approach involves working with partnering countries in the region at the business-to-business level, deepening Singapore's engagement with and knowledge of the region, and establishing more platforms that bring interested companies together.

Trinidad and Tobago

A major concern in Trinidad and Tobago is to revitalize businesses suffering long-term impacts from the COVID-19 pandemic, which will ultimately lead to a sustainable economy and further growth.

The Government of the Republic of Trinidad and Tobago has acknowledged the impact of the COVID-19 pandemic and is working to create a strong fiscal stimulus package to protect the most vulnerable in society as well as private businesses. This package will be supported by an accommodative monetary policy aimed at liquidity expansion. In March 2020, the Central Bank reduced the reserve requirements and the repo rate, enabling the commercial banks and financial institutions to reduce prime lending rates and to institute moratoria on mortgage and instalment payments.

United Kingdom

From an insolvency perspective, the major concerns for the UK involve debt arrears accrued as a result of lockdown periods and how these can be repaid in a way that does not negatively impact the solvency of businesses or their creditors. While these debts may cover many different areas and sectors of the economy, the most significant are taxes, COVID-19 support loans owed to Government, and commercial rent, particularly in those sectors most affected by the national lockdown restrictions.

Commercial rent arrears built up during periods of forced closure or reduced trading threaten the viability of the tenant business and the landlord. Rental arrears accrued during the lockdown period have been ring fenced in anticipation of a binding rent arbitration system, which was legislated for in March 2022.

The development of the rent arbitration scheme is supported by the restrictions on the use of statutory demands and winding up petitions along with the moratorium preventing forfeiture for commercial rent debts and the Commercial Rent Arrears Recovery Scheme, which prevent aggressive landlords from threatening the solvency of the business before the scheme is introduced. Businesses have re-opened, and they must pay their current commercial rent as it falls due for periods falling after the ring-fenced period.

349 https://emergingstronger.sg/

When the remaining temporary insolvency measures introduced by the CIGA20 restricting the use of statutory demands and company winding up petitions expired on September 30, 2021, they were replaced by the following new targeted temporary measures until March 31, 2022, to allow gradual return of the insolvency regime to its normal functioning:

(a) A new requirement for creditors to demonstrate that they have sought to negotiate repayment of a debt, before seeking to wind a company up. A creditor must send a notice to the company giving it 21 days to respond with proposals for paying the debt. Creditors will be required to confirm to the court that they have sent the notice, whether they have received any proposals from the company, and (if so), state why they are not satisfactory. In exceptional circumstances the 21-day response period can be shortened if the court agrees.

(b) The debt owed must be at least £10,000. For the most part, there is not normally a minimum amount that must be owed before a winding up petition can be brought, although if it is based on a statutory demand the debt must be at least £750.

(c) Petitions could not be brought in respect of a commercial rent debt until the end of March 2022 unless the creditor can prove that the non-payment of the debt is not related to the pandemic. The Government extended the moratorium on the forfeiture of commercial tenancies until March 25, 2022, to allow time for the implementation through primary legislation of a rent arbitration scheme. This carve-out of commercial rent from the wider tapering of restrictions on the presentation of petitions has served to not undermine this scheme before it is implemented.

Also of concern are arrears of various corporate taxes and COVID-19 support loans owed to the Government as a result of the pandemic, where the policy response has been to allow deferment of payments and to take a softer approach encouraging contact and Time To Pay Agreements that overall benefit those debtors who initiate contact to reach agreements.

For other debts that have fallen into arrears as a result of the pandemic there are a range of restructuring methods available, including Administration and Company Voluntary Arrangements in addition to the Restructuring Plan introduced by CIGA20.

United States of America

The United States and its constituent states have adopted a wide variety of legislative and administrative remedies in responding to challenges presented by the pandemic. Courts are exploring modifying pre-pandemic procedures based upon adjustments made during the pandemic, including permitting the use of electronic or digital signatures on bankruptcy documents. Also, Congress has directed the courts to evaluate their procedures to address future emergencies. Similarly, the USTP continues to look ahead based on lessons learned during the pandemic, including that more flexibility is feasible. For example, the USTP is studying potential changes to allow the greater use of remote meetings of creditors after the pandemic. Anecdotally, the USTP has seen greater efficiency and creditor participation resulting from the virtual meetings. One challenge is balancing that efficiency with the need to preserve the evidentiary value of the meetings and the solemnity of the proceedings, which are often the debtor's only personal interaction with the bankruptcy system.

Without speculating about potential fluctuations in filings, it is important that the U.S. bankruptcy system is able to adjust to address any significant increases in filings, which has happened historically, for example, prior to the enactment of the 2005 amendments to the Bankruptcy Code. To ensure flexibility and scalability, during the pandemic the USTP designed and implemented a plan to leverage field resources to augment its oversight of Chapter 11 cases. The plan includes efficiently deploying teams of attorneys with strong Chapter 11 experience to assist offices throughout the country in handling rapidly developing cases. It also includes extensive training and the designation of regional coordinators to serve as a resource among their offices on Chapter 11 issues.

5. Summary

The evidence collated from IAIR members shows that the pandemic has had a significant impact on the insolvency service, both in terms of the numbers of cases and in terms of the measures put in place to deal with the pandemic's effects on individuals' and businesses' distress.

I wish to personally thank the IAIR members who contributed to this exercise, when they themselves were under considerable stress.

Though there are a number of similarities between some of the examples provided, the author hesitates to draw general conclusions recognizing that the responses include only a sample of IAIR members.

The changes seen in the volumes of activity would suggest that the pandemic continues to have an impact on the insolvency service. Hence it may be useful if data continues to be collected as we emerge from the pandemic. It is also apparent that some of the changes introduced to support businesses and individuals during the pandemic will remain in place in its aftermath, and there is little expectation that we will return to exactly the same working practices as were in place prior to 2020. There is an expectation from many IAIR members that the COVID-19 pandemic will continue to have an impact on both the economy and working practices of the insolvency regulators.

In the meantime, IAIR will continue to support its members in sharing their practices to assist the insolvency services in developing systems to cope with changing demands in the post-COVID-19 world.

Rosemary Winter-Scott OBE FIoD
IAIR Executive Director
October 30, 2021

Appendix: Raw data

CORPORATE FILINGS										
	2019				2020				2021	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Chile	378	469	430	423	451	419	491	522	453	390
UK – England and Wales	4,184	4,422	4,332	4,229	3,847	2,997	2,624	3,094	2,371	3,116
Scotland	280	240	236	226	246	99	117	135	91	163
Northern Ireland	66	88	79	114	83	17	24	24	15	23
New Zealand	457	496	525	457	459	376	401	359	352	423
Finland	1,542	1,498	1,396	1,490	1,764	1,302	944	932	1,554	1,398
Australia	1,817	2,095	2,309	2,103	1,747	1,203	946	1,047	973	1,269
Hong Kong	92	110	100	117	77	117	125	130	136	100
USA	5,614	5,799	5,595	5,712	5,952	5,154	5,521	4,964	4,231	3,752
Canada	715	706	588	651	656	522	516	508	484	486
Poland	1,220	1,473	1,180	1,231	990	900	966	1,040	1,082	1,067
Singapore	59	104	102	141	102	47	26	49	54	53
Thailand	266	247	306	232	211	150	558	339	90	110
India	301	597	642	446	83	96	109	249	141	144
Serbia BSA	122	140	123	106	101	61	106	64	84	103
Jersey	1	0	0	0	1	0	1	1	0	0
Trinidad and Tobago	0	0	1	0	0	0	0	0	0	0

PERSONAL BANKRUPTCIES/INSOLVENCIES	2019				2020				2021	
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Chile	1,428	1,518	1,620	1,476	1,695	1,533	1,356	1,308	1,131	1,038
UK – England and Wales	32,381	30,330	31,234	28,221	28,795	32,134	19,857	30,792	28,895	27,662
Scotland	3,282	3,526	3,470	3,334	3,161	2,084	1,770	2,063	1,677	1,884
Northern Ireland	578	758	718	656	620	360	410	361	424	583
New Zealand	614	716	737	739	693	403	546	544	479	414
Finland	564	1,009	822	1,038	988	1,045	809	1,028	937	1,058
Australia	6,497	6,636	6,094	5,280	5,404	4,301	2,988	2,406	2,549	2,685
Hong Kong	1,883	1,977	2,080	2,211	1,526	2,971	2,159	2,037	1,986	1,806
USA	186,130	200,540	190,435	175,012	175,146	119,241	120,722	107,399	105,771	109,547
Canada	32,509	35,348	34,953	35,426	33,465	19,272	20,835	23,530	23,955	23,016
Poland	3,707	4,281	3,711	3,759	4,705	4,705	5,838	5,998	5,839	6,075
Singapore	757	770	945	1,001	1,278	433	434	688	779	790
Thailand	1,643	1,541	1,975	1,620	1,665	518	1,322	2,959	676	944
India	16				128				57	
Serbia BSA	No personal insolvency processes									
Jersey	2	0	0	0	0	0	0	0	0	0
Trinidad and Tobago	0	0	0	0	0	0	0	0	0	0

Appendix: IAIR members as on October 31, 2021

1. **AUSTRALIA**
– Australian Financial Security Authority
2. **AUSTRALIA**
– Australian Securities & Investments Commission
3. **BARBADOS**
– Office of the Supervisor of Insolvency
4. **BERMUDA**
– Registrar of Companies
5. **BRITISH VIRGIN ISLANDS**
– BVI Financial Services Commission
6. **CANADA**
– Office of the Superintendent of Bankruptcy
7. **CHILE**
– The Superintendency of Insolvency and Entrepreneurship
8. **CZECH REPUBLIC**
– Ministry of Justice
9. **FINLAND**
– Office of the Bankruptcy Ombudsman
10. **HONG KONG**
– Official Receiver's Office
11. **INDIA**
– Insolvency and Bankruptcy Board of India
12. **INDIA**
– Ministry of Corporate Affairs
13. **JERSEY**
– Royal Court of Jersey Viscount's Department
14. **KENYA**
– Office of the Official Receiver in Insolvency
15. **MALTA**
–The Official Receiver
16. **MAURITIUS**
– Insolvency Service
17. **NEW ZEALAND**
– Insolvency and Trustee Service
18. **PERU**
– National Institute for the Defense of Competition and Protection of Intellectual Property
19. **POLAND**
– Ministry of Justice
20. **REPUBLIC OF IRELAND**
– Office of the Director of Corporate Enforcement
21. **REPUBLIC OF IRELAND**
– Insolvency Service of Ireland
22. **REPUBLIC OF SERBIA**
– Bankruptcy Supervision Agency
23. **ROMANIA**
– National Trade Register Office
24. **RUSSIAN FEDERATION**
– Ministry of Economic Development
25. **SINGAPORE**
– Insolvency Office
26. **SOUTH AFRICA**
– Masters of the High Court
27. **THAILAND**
– Legal Execution Department
28. **TRINIDAD & TOBAGO**
– Office of the Supervisor of Insolvency, Ministry of Finance
29. **UGANDA**
– Uganda Registration Services Bureau
30. **UNITED ARAB EMIRATES**
– Registration Authority, Abu Dhabi Global Market
31. **UK – ENGLAND & WALES**
– The Insolvency Service
32. **UK – NORTHERN IRELAND**
– Insolvency Service
33. **UK – SCOTLAND**
– Accountant in Bankruptcy
34. **USA**
– The United States Trustee Program

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Agustina Silva // Hughes & Hughes
Mariana Arena // Hughes & Hughes
Venezuela, RB
Roland Pettersson // D'Empaire
Rubén Eduardo Luján and Ramón Alvins // Despacho de Abogados miembros de Dentons, S.C.
Ibrahim Garcia Carmona // GHM Abogados
Vietnam
Nguyen Hung Quang // NHQuang&Associates
Zambia
Nitesh Patel // Cotswold Consult Ltd
Yosa Yosa // Musa Dudhia & Company
Zimbabwe
Bulisa Mbano // Grant Thornton
Claudious Nhemwa // C Nhemwa and Associates

IAIR International Association of Insolvency Regulators

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