Study on The Effect of the Covid-19 Pandemic on Secured Lending Reform and Access to Credit in APEC Economies

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MODERNIZING SECURED TRANSACTION LEGAL REGIMES IN APEC ECONOMIES THROUGH INTERNATIONAL INSTRUMENTS AND EFFECTIVE DISPUTE RESOLUTION MECHANISMS

I. INTRODUCTION

As economies implemented monetary, fiscal, and regulatory measures to assist businesses during the COVID-19 pandemic, efforts to modernize private law frameworks other than insolvency took a second seat. During the COVID-19 pandemic, many APEC economies sought to do "whatever it takes" to help businesses survive the shock of unique events and to prevent systemic collapse by introducing short-term measures to keep businesses afloat and prevent a wave of insolvencies. Reports classify these measures differently. This Report uses the following classifications: budgetary/fiscal, regulatory, and legal measures. Fiscal policy mechanisms include measures such as subsidies for employers to enable retention of employees, deferral of taxes, and guarantees for loans. Regulatory measures include deferral of loan payments and relaxation of reserve requirements. Legal measures include suspending the rules requiring the filing for insolvency and enforcing creditors' rights. Often, economies deployed relief measures that combined elements of all three. [1]

As economies roll back the short-term measures to return systems to their default settings, many businesses become overwhelmed with debt. This environment threatens to overload the financial system with non-performing loans (NPLs). When the crisis recedes, governments must shift their priorities to avoid being swamped by a wave of insolvencies while allowing viable businesses to restructure without artificially supporting nonviable companies. Support measures are expected to remain in place until clear signs of economic recovery are visible. At that time, policies should shift toward ones that target support to viable businesses.[2]

Economic recovery requires a modern private law framework, especially governing secured transactions, that enables access to credit at reasonable rates. Implementing international standards adopted by the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law (UNIDROIT) facilitates the transition from government support to commercial credit. A modern secured transactions framework is a powerful mechanism to facilitate access to credit, particularly for MSMEs. UNCITRAL and UNIDROIT produced a number of international standards to guide economies in modernizing their secured lending and related (e.g., factoring) laws. These include the Convention on International Interests in Mobile Equipment ("Cape Town Convention") and its Protocols,[3] the UN Convention on Assignment of Receivables,[4] the UNCITRAL Model Law on

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[1] IMF Working Paper, 'Flattening the Insolvency Curve: Promoting Corporate Restructuring in Asia and the Pacific in the Post-C19 Recovery', available at https://www.imf.org/en/Publications/WP/Issues/2021/01/29/Flattening-the-Insolvency-Curve-Promoting-Corporate-Restructuring-in-Asia-and-the-Pacific-in-49997 (hereinafter, "IMF Working Paper").

[2] Id.

[3] Convention on International Interests in Mobile Equipment and its Protocols, available at https://www.unidroit.org/instruments/security-interests/.

[4] UN Convention on Assignment of Receivables, available at https://uncitral.un.org/en/texts/securityinterests/conventions/receivables.

Secured Transactions[5] as well as ongoing projects for the Model Law on Factoring,[6] the Model Law on Warehouse Receipts,[7] and Digital Assets and Private Law.[8]

This Report is part of the APEC Economic Committee's (EC) long-standing efforts to help member economies enhance their business- and investment-enabling legal environments. Central to this effort has been the APEC EC Ease of Doing Business initiative, which includes credit and secured transaction reform, resolving insolvency, and enforcing contracts. This Report is also linked to the APEC EC work on the ODR Collaborative Framework.

The Report focuses on micro, small, and medium-sized enterprises (MSMEs). In APEC, MSMEs account for 97 percent of businesses and over 50 percent of jobs and are regarded as engines of economic growth.[9] According to the World Bank, MSMEs lost more sales and missed more payments during the pandemic than large businesses.[10] MSMEs are engaged in the sectors of the economy which were disproportionately disrupted by the pandemic. Reports, measures, and standards often refer to a particular subset of MSMEs, such as SMEs or MSs. This Report refers to the specific subset of MSMEs, where applicable.

This Report is based on the authors' research, reports from international organizations, the responses from a questionnaire circulated to all APEC economies, as well as comments provided by APEC economies on a draft Report.[11] A webinar was held on December 10, 2021, to discuss the preliminary results of the study. The final Report was presented at a workshop in Tokyo on May 25-27, 2022.

II. Economic Challenges During the COVID – 19 Pandemic

The COVID-19 pandemic affected many sectors and industries in the APEC region. The pandemic and the measures implemented to contain it impacted supply and demand for goods and services. Losses were sustained not only by businesses dependent on in-person sales in the retail, tourism, and travel sectors but also by businesses relying on large orders from the accommodation and food sector. These industries are mostly made up of MSMEs. Disruptions in transport, storage and the manufacturing sectors also aggravated the losses of businesses operating in the wholesale and retail sectors. As the health crisis unfolded, more industries

[5] UNCITRAL Model Law on Secured Transactions available at https://uncitral.un.org/en/texts/securityinterests/modellaw/secured_transactions.
[6] For the UNIDROIT work on the Model Law on Factoring see https://www.unidroit.org/work-in-progress/factoring-model-law/.
[7] For the UNIDROIT work on the Model Law on Warehouse Receipts see https://www.unidroit.org/work-in-progress/model-law-on-warehouse-receipts/.
[8] For the UNIDROIT work on Digital Assets and Private Law see https://www.unidroit.org/work-in-progress/digital-assets-and-private-law/.
[9] Small and Medium Enterprises, available at https://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/Small-and-Medium-Enterprises.
[10] Small and Medium Enterprises in the Pandemic Impact, Responses and the Role of Development Finance, available at https://documents1.worldbank.org/curated/en/729451600968236270/pdf/Small-and-Medium-Enterprises-in-the-Pandemic-Impact-Responses-and-the-Role-of-Development-Finance.pdf.
[11] Several economies provided responses to the questionnaire referred to hereinafter as [Economy] response to the questionnaire.

became affected.[12] Global pandemics have been classified by the World Economic Forum as a potential cause of systemic risk[13], and APEC economies were forced to take measures to contain the growing risk.

Those measures partially restored economic growth. APEC's gross domestic product (GDP) grew at 8.0 percent in the first half of 2021, following a 3.7 percent contraction in the first half of 2020. Growth is projected at 4.9 percent in 2022, but with the anticipated scaling down of fiscal, regulatory and other support measures, it is likely to moderate to 3.2 percent in the medium term. The growth trajectory remains uncertain in light of increasing inflation and commodity prices.[14] Recovery proceeds in an uncertain environment and remains uneven among APEC economies.

Positive developments are overshadowed by emerging risks, particularly growing corporate debt. Exports and imports of merchandise registered double-digit growth rates in the first half of 2021.[15] The APEC Business Advisory Council (ABAC) called for further liberalization of trade through free and fair markets.[16] Despite these positive trends, the government debt reached a 20-year high. Furthermore, the Institute of International Finance estimated that in 2019, corporate debt in APEC economies exceeded 90 percent of GDP, ranging from almost 220 percent in Hong Kong, China, to 23 percent in Indonesia.[17]

While corporate debt has been growing to concerning levels, MSMEs have been struggling to access credit. Increasing the availability of credit for MSMEs has been a priority in the APEC region. MSMEs represent one of the primary sources of employment, economic growth, innovation, and development and play an important role in global supply and value chains. The pandemic has disproportionally affected MSMEs as they operate in the most impacted sectors.[18] Many MSMEs experienced difficulties such as low customer demand, delivery delays or failures, customer insolvency and cash flow issues, increased cost of logistics, and lack of air freight capacity. [19] The APEC Global Supply Chains Resiliency Survey, Small to Medium Enterprises revealed that SMEs rely on governments for support in many areas, including to remove obstacles and create a conducive environment for trade and global business.[20]

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[12] Russia provided an example of leasing companies that were affected by the cash flow challenges faced by their lessees. Russia's response to the questionnaire as well as all other responses are on file.
[13] World Economic Forum (WEF), "Global Risks 2014", at 13 (Geneva: WEF, 2014), available at https://reports.weforum.org/global-risks-2014/?doing_wp_cron=1639604282.9092390537261962890625.
[14] See APEC Regional Trends Analysis, November 2021, available at https://www.apec.org/docs/default-source/publications/2021/11/apec-regional-trends-analysis---november-2021/221_psu_arta_november-2021.pdf?sfvrsn=a041a19_2.
[15] See Denis Hew, The Asia-Pacific's Recovery will be Divided and Fragile, APEC, November 9, 2021, available at https://www.apec.org/press/blogs/2021/the-asia-pacific-s-recovery-will-be-divided-and-fragile.
[16] See APEC Business Advisory Council, People, place and prosperity: Asia-Pacific Business community's call to action, available at https://www2.abaconline.org/page-content/22622931/people-place-and-prosperity-asia-pacific-business-communitys-call-to-action.
[17] Institute of International Finance, April 2020 Global Debt Monitor: COVID-19 lights a Fuse, at 2.
[18] Susan Black, Kevin Lane and Laura Nunn, Small Business Finance and COVID-19 Outbreaks, 11 (Bulletin – September 2021), available at https://www.rba.gov.au/publications/bulletin/2021/sep/small-business-finance-and-covid-19-outbreaks.html.
[19] APEC, Key Trends Report, APEC Global Supply Chains Resiliency Survey, Small to Medium Enterprises, May 2021 available at https://www.apec.org/Publications/2021/05/APEC-Global-Supply-Chains-Resiliency-Survey---Small-to-Medium-Enterprises.
[20] Key Trends Report, APEC Global Supply Chains Resiliency Survey, Small to Medium Enterprises, May 2021.

To rebuild economies, channeling credit to MSMEs will be central. Not only are business growth and employment growth dependent on credit, but constraints in enabling businesses to capitalize on their operations may have broader implications for financial stability. During the pandemic, MSMEs withheld investment and became reluctant to take on new debt due to the high uncertainty of the business environment.[21] As the pandemic support mechanisms are scaled down or withdrawn, NPLs are likely to rise, affecting financial institutions' solvency.[22]

Rebuilding Economies

Many international organizations, including the OECD and the United Nations, have backed economic recovery policies. These policies have generally focused on investment and economic reforms that will reduce the likelihood of future economic shocks and improve the ability of the economy to limit the adverse effects of future crises. Furthermore, as MSMEs have been disproportionately affected by the COVID-19 pandemic, investing in trade finance, supporting innovation, and, more generally, facilitating inclusive access to credit are a cornerstone of such policies. In July 2021, APEC leaders discussed the challenge of supporting economic activities during the pandemic with the IMF and WHO. They recommended forward-looking policies to set the APEC region toward more inclusive and digitally enabled economies and bolster trade mechanisms. The effectiveness of these policies will also depend on regional cooperation.

III. PANDEMIC SUPPORT MEASURES

APEC economies implemented various measures to mitigate the negative economic consequences of the COVID-19 pandemic. Massive fiscal measures to bolster the health system and provide targeted liquidity support to households and businesses, including MSMEs, were quickly rolled out. These measures included enhanced healthcare capacity and support for health workers, direct financial assistance and relief packages, and liquidity to businesses through tax relief, guarantee and loan schemes. APEC economies also implemented monetary policies to maintain the flow of credit and ensure liquidity for businesses (e.g., the Republic of Korea reduced the base rate twice from 1.25 percent to 0.5 percent).

Depending on the economy, pandemic support measures were available to all types of businesses or only certain categories. Several economies (e.g., Russia and Singapore) classified businesses in different brackets depending on the severity of the pandemic effects. Certain categories were eligible for more relief than others. For instance, in Singapore, businesses in the

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[21] Black & et al, supra note18.

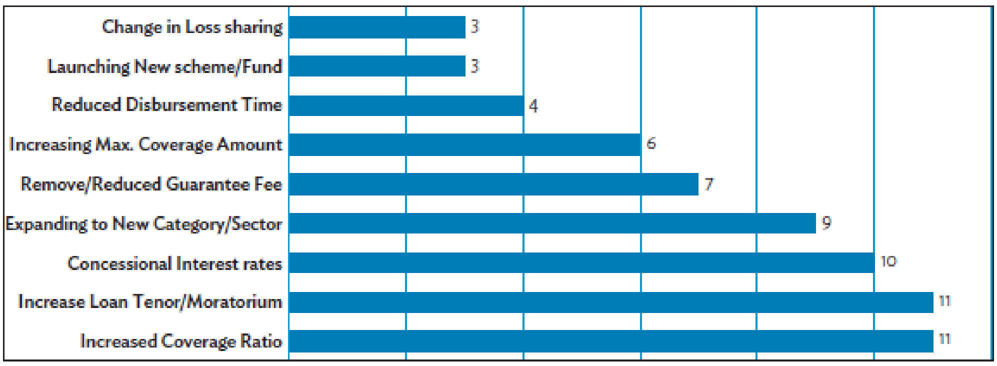
[22] APEC, Consultation Paper on Resolving Corporate Insolvency in APEC Economies in the Aftermath of Covid-19 Pandemic, May 2021, available at https://www.apec.org/Publications/2021/05/Consultation-Paper-on-Resolving-Corporate-Insolvency.

tourism sector could defer 80% of their loan repayments for up to nine months, while those operating in other sectors could opt to do so for up to three months.[23] Other APEC economies targeted particular types of businesses, such as microenterprises. The Republic of Korea revised the Act on the Protection and Assistance of Microenterprises to lay the foundation for the expanded use of the Microenterprise Promotion Fund.[24]

Specific measures entailed reducing payments and extending the repayment period. Russia reduced insurance premiums, ordered refunds of bank charges, extended or automatically renewed certain licenses and exempted small businesses from inspections and audits.[25]

These measures correspond to those taken globally. For instance, UNCITRAL conducted a global survey to which thirty-one economies responded.[26] The survey revealed twelve different types of support measures for MSMEs. These measures generally provided financial assistance in the form of payroll support, payment of utilities, and exemptions from government fees and taxes. Further, MSME measures included deferral of or relief from loans and monthly rental payments and the establishment of lines of credit for MSMEs at low interest rates and collateral or guarantee-free loans. The following Figure summarizes the measures surveyed by the Asian Development Bank (ADB).

Figure 3: COVID-19 Response Measures Taken by the 40 Economies (18 in Asia and the Pacific)



COVID-19 = coronavirus disease
Source: Authors' compilation.

Economies have scaled down many of these measures or withdrawn them entirely and more retraction of public support is expected in the following months. For instance, in December 2021,

[23] Russia and Singapore responses to the questionnaire.
[24] Republic of Korea response to the questionnaire.
[25] Russia response to the questionnaire.
[26] The economies included in the survey were: Angola, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Canada, Czechia, Ecuador, India, Indonesia, Italy, Israel, Japan, Jordan, Kyrgyzstan, Lebanon, Madagascar, Malta, Poland, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Sweden, Switzerland, Thailand, Turkey and the United States of America.

the Bank of Japan announced it was tapering its corporate debt purchase program and scaling down its low-cost funding for financial institutions that support pandemic-affected businesses. The loan scheme to assist SMEs is extended through September 2022.[27]

a. Budgetary and Fiscal Policies

Budgetary and fiscal policies have been critical in ensuring access to credit for MSMEs. Two years into the pandemic, APEC businesses still rely heavily on government support mechanisms. Three policies have been particularly instrumental: i) state guarantees; ii) loan schemes; and iii) export credit guarantees. They were already used in many APEC economies before the COVID-19 pandemic. They were amplified, and new ones were launched to provide liquidity to MSMEs.

Public resources were deployed to subsidize various expenses and payments, such as utilities, taxes, and unemployment benefits. The approach varied. SMEs in Japan were given an economy tax and social security contribution deferral and a reduction in or exemption from property tax. Moreover, each municipality provided different tax relief and deferral programs.[28] The tax deferral period ended on February 1, 2021.[29] Even after the deferral ended, grace periods with lower-than-normal rates were available for those who demonstrated an inability to pay because of the pandemic. In Mexico, each state maintained its tax relief programs.[30] Russia deferred tax payments for six months for companies operating in industries most affected by the pandemic. For those operating outside the designated industries, taxes were partially deferred.[31] An installment restructuring program was created to allow affected companies to retire the debt accrued during the tax holiday.[32]

Other fiscal policies were sector specific to support industries heavily impacted by the COVID-19 pandemic. For instance, as part of its NZD 50 billion (about 35 billion USD) COVID-19 Response and Recovery Fund, New Zealand earmarked NZD 600 million (about 430 million USD) to support the aviation sector and NZD 400 million (about 285 million USD) as a tourism recovery package. Given the variety of measures and their general impact, the remainder of this Section will focus on measures directly impacting lending.

i. State Credit Guarantees

State credit guarantees or credit guarantee schemes (CGS) worldwide have been essential tools to facilitate access to credit for MSMEs. Schemes established in Japan, the Republic of Korea,

[27] Leo Lewis, Bank of Japan to Scale Back Pandemic-Era Economic Support, Financial Times, December 17, 2021.
[28] See COVID-19 Information and Resources, available at https://corona.go.jp/en/action/.
[29] National Tax Agency, 'For taxpayers who face difficulty paying their national tax due to the influence of the novel coronavirus disease (COVID-19)', available at https://www.nta.go.jp/english/tax_payment/01.htm.
[30] Mauricio Martínez D´Meza Violante and Ricardo Gonzales Orta, Mexico stands alone in its tax relief response to COVID-19, International Tax Review, June 9, 2020, available at https://www.internationaltaxreview.com/article/b1lzjrk8hfk2fm/mexico-stands-alone-in-its-tax-relief-response-to-covid-19.
[31] KPMG, 'Russia: Tax relief measures (COVID-19)', available at https://home.kpmg/us/en/home/insights/2020/04/tnf-russia-tax-relief-measures-covid-19.html.
[32] Russian response to the questionnaire.

and Malaysia have successfully channeled credit to the MSME sector; elsewhere, CGS schemes did not consistently deliver the intended effect.[33] In addition to providing liquidity and leverage, CGSs offer regulatory relief.[34] Since the CGS is usually established and supported by the government, a loan guaranteed through a scheme may have a 0% risk weight under the Basel Accords.[35]

During the pandemic, several CGSs increased their coverage ratio (e.g., Hong Kong, China, Malaysia, and the Philippines), expanded to new firms (e.g., Japan and Peru), or relaxed assessment standards (e.g., Peru). Singapore increased the loss-sharing coverage to 90% and extended the qualification criteria so that more businesses may benefit from such loans. However, these are temporary adjustments that are expected to be rolled back. The Singaporean scheme was available until the end of March 2022.

In March 2020, Japan[36] listed SMEs suffering from the COVID-19 pandemic as eligible under its Crisis-related Guarantee Scheme.[37] In the second supplementary budget proposal for the 2020 fiscal year, 12 trillion JPY was allocated to strengthen business cash flows as a countermeasure to COVID-19 effects.[38] Three trillion JPY was invested in financing support through private financial institutions, including credit guarantees and insurance.[39] The Tokyo credit guarantee scheme reported that the total amount in guarantees issued from April to August 2020 was 21 trillion JPY, which exceeded the amount in guarantees issued in the fiscal year in the aftermath of the global financial crisis.[40]

In Papua New Guinea, the government provided K 200 million (about 56 million USD) in guarantees for loans to SMEs.[41] The Chinese Taipei scheme guaranteed between 90 and 100%

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[33] Asian Development Bank, Policies to Optimize the Performance of Credit Guarantee Schemes During Financial Crises, Brief No. 167, at 2, March 2021, available at https://www.adb.org/publications/policies-credit-guarantee-schemes-financial-crises.
[34] Id. at 1.
[35] The Basel Accords are a series of bank regulation agreements (Basel I, II, and III) set by the Basel Committee on Bank Supervision concerning capital risk, market risk and operational risk.
[36] Dubovec, Marek and Owada, Shogo, Secured Lending Stimulants: The Role and Effects of Public Credit Guarantees in Japan (November 2, 2020). University of Pennsylvania Asian Law Review, Forthcoming, available at SSRN: https://ssrn.com/abstract=3788558 or http://dx.doi.org/10.2139/ssrn.3788558.
[37] See Singata Corna Virus Kansensho ni Kakaru Chushokigyosha Taisaku wo Koujimasu [We are Implementing Support to SMEs Regarding the Situation of COVID-19], MINISTRY ECON., TRADE & INDUS. (METI), available at https://www.meti.go.jp/press/2019/03/20200311007/20200311007.html [https://perma.cc/L87N-ZG8T]; Kiki Kanren Hoshou Seido [Guarantee System Related to Emergency], SMALL & MEDIUM ENTER. AGENCY, available at https://www.chusho.meti.go.jp/kinyu/sefu_net_crisis.htm [https://perma.cc/3MTN-9VDS].
[38] See Singata Corna Virus Kansensho ni Kakaru Chushokigyosha Taisaku wo Koujimasu; Bank of Japan, Statement on Monetary Policy, December 18, 2020; June Rhee, Japan Begins Capital Injections for Financial Institutions in Response to COVID-19, June 19, 2020, available at https://som.yale.edu/blog/japan-begins-capital-injections-for-financial-institutions-in-response-to-COVID-19.
[39] See Reiwa2nendo Dai2ji Hoseiyosan no Jigyou Gaiyou [Brief Introduction of 2nd Supplementary Budget for FY 2020], MINISTRY ECON., TRADE & INDUS.(METI), available at https://www.meti.go.jp/main/yosan/yosan_fy2020/hosei/pdf/hosei2_yosan_pr.pdf [https://perma.cc/4BDA-BPEY]
[40] See Shinyouhoshou Jisseki no suii [Transition in Credit Guarantee Issuance], JAPAN FED. CREDIT GUAR. CORPS., available at https://www.zenshinhoren.or.jp/document/hosho_jisseki.pdf [https://perma.cc/U26Z-QPP9].
[41] See International Monetary Fund, Policy Responses to Covid-19, available at https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19.

of loans depending on the nature of the loan (e.g., 100% for working capital loans).[42] This scheme has been extended until June 30, 2022.[43] In Australia, under the COVID-19 SME Guarantee Scheme, the government has supported up to AUD 40 billion in lending to SMEs during the pandemic.[44] The scheme has operated in two phases. The first phase, in effect until September 30, 2020, helped secure working capital loans up to AUD 250,000 to tackle the immediate impact of the pandemic.[45] The government guaranteed 50% of the loan amounts. The second phase, in effect through June 30, 2021, expanded the maximum loan size to $1 million and the scope of the loan to include investment and acquisitions.[46] This phase also supported secured loans and capped interest rates on those loans. The SME Guarantee Scheme was followed by the SME Recovery Loan Scheme, which provided access to an additional AUD 5 million. Loans issued from April 1, 2021, until December 31, 2021, had an 80% coverage ratio, and those issued from January 1, 2022, until June 30, 2022, had a 50% coverage ratio.[47]

ii. Loan Support Schemes

APEC economies launched various loan schemes that i) directly extended loans to SMEs, ii) provided support to banks to restructure loans, and iii) subsidized interest rates on outstanding loans. Mostly, these schemes benefitted from government support, but in some instances, they were launched as private sector initiatives.

Thailand implemented several loan schemes, including the "SME D Happy" and "SMART SMEs" schemes that the Thai Credit Guarantee Cooperation guaranteed. In Papua New Guinea, the government provided a K 600 million credit line (about 170 million USD) to support businesses and individuals.[48] In 2020, the Indonesian government allocated IDR 87.59 trillion (about 6 billion USD) to banks to support an MSMEs loan restructuring program.[49] This facility was extended once in April 2021 and recently until April 2023.[50] Additionally, the government subsidized loan interest payments for MSMEs. SMEs borrowing between IDR 500 million (about 35 thousand USD) and IDR 10 billion (about 700 thousand USD) was eligible for a three percent interest subsidy for three months and a two percent interest subsidy for the next three months.

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[42] Chinese Taipei response to the questionnaire.
[43] Financial Supervisory Commission – Banking Bureau, 'Support Measures,' available at https://www.banking.gov.tw/en/home.jsp?id=291&parentpath=0,290.
[44] See Australian Government Treasury, Supporting the Flow of Credit, SME Recovery Loan Scheme, available at https://treasury.gov.au/coronavirus/business-investment.
[45] Australian Government Treasury, 'Coronavirus SME Guarantee Scheme Phase 1', available at https://treasury.gov.au/coronavirus/sme-recovery-loan-scheme/smes-phase-1.
[46] Australian Government Treasury, 'Coronavirus SME Guarantee Scheme Phase 1', available at https://treasury.gov.au/coronavirus/sme-recovery-loan-scheme/smes-phase-2.
[47] Australian Government Treasury, 'Coronavirus SME Recovery Loan Scheme', available at https://treasury.gov.au/coronavirus/sme-recovery-loan-scheme.
[48] See International Monetary Fund, Policy Responses to Covid-19, available at https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19.
[49] Adrian Wail Akhlas, Bank Indonesia to provide liquidity for banks involved in loan restructuring, The Jakarta Post, May 22, 2020, available at https://www.thejakartapost.com/news/2020/05/20/bank-indonesia-to-provide-liquidity-for-banks-involved-in-loan-restructuring.html.
[50] FitchRatings, 'Loan Relief Extension Highlights Uneven Recovery for Indonesian Finance Companies', available at https://www.fitchratings.com/research/non-bank-financial-institutions/loan-relief-extension-highlights-uneven-recovery-for-indonesian-finance-companies-13-01-2022.

Micro businesses borrowing between IDR 10 million (about 700 USD) and IDR 50 million (about 3500 USD) had their interest subsidy set at six percent for the first three months, then three percent for the following three months.[51]

In Peru, the government established two programs to support SME liquidity. The first program, ReactivaPerú, aims to finance working capital for companies that face short-term payments and obligations. The program funds up to S60 billion (about 15 billion USD) in guaranteed credit for a term of up to 36 months with a 12-month grace period.[52] ReactivaPerú was extended in March 2021, at which time 78% of the program's guaranteed loans were extended to MSMEs.[53] The second program, FAE-MYPE, provides up to S30000 (about 7,500 USD) in credit on preferred terms for up to 36 months with a grace period of 12 months for payments.[54] FAE-MYPE ended in 2020, but a similar program, PAE-MYPE, was implemented in 2021 as an incentive for MSMEs, giving them access to loans up to S60,000 with preferential rates.[55]

The Republic of Korea also provided guarantees on loans made to SMEs through various credit guarantee programs in order to protect businesses, lighten the burden on borrowers, and keep capital markets functional.[56]

Allocation of revitalization funds or similar measures can mitigate the credit shortage of MSMEs in the short term. For example, in the United States, the American Rescue Plan established the Restaurant Revitalization Fund to support restaurants, bars, and similar businesses that suffered revenue losses during the pandemic.[57] In Singapore, the Association of Banks, together with several member banks, and the Ministry of Law, launched the Sole Proprietors and Partnerships Scheme in November 2020 to help eligible businesses in financial distress restructure their unsecured business debts. Under the Scheme, businesses operating as sole proprietors or as partnerships may seek the assistance of a dedicated non-governmental organization to help restructure their debts owed to lenders participating in the Scheme.[58]

iii. Export Credit Measures

[51] Adrian Wail Akhlas and Riza Roidila Mufti, Small businesses get subsidies, loan relief, The Jarkarta Post, April 30, 2020, available at https://www.thejakartapost.com/news/2020/04/30/small-businesses-get-subsidies-loan-relief.html.

[52] The Development Bank of Peru [El Banco De Desarrollo Del Perú], Business Support Programs, available at https://www.cofide.com.pe/detalles1.php?id=1.

[53] USAID, 'USAID Catalyze Peru', available at https://pdf.usaid.gov/pdf_docs/PA00Z4X7.pdf.

[54] The Development Bank of Peru [El Banco De Desarrollo Del Perú], Business Support Programs, available at https://www.cofide.com.pe/detalles1.php?id=1. ; Andina, Peru: Government's measures of support companies in time of COVID-19, April 9, 2020, available at https://andina.pe/INgles/noticia-peru-governments-measures-to-support-companies-at-times-of-covid19-792333.aspx.

[55] Andina, 'PAE-Mype: ¿qué emprendedores pueden acceder a este programa?', available at https://andina.pe/agencia/noticia-paemype-emprendedores-pueden-acceder-a-este-programa-857672.aspx.

[56] Ministry of Economy and Finance, '50 Trillion Won Support Package to Combat COVID-19', available at https://english.moef.go.kr/pc/selectTbPressCenterDtl.do?boardCd=N0001&seq=4862.

[57] See U.S. Small Busines Administration, Restaurant Revitalization Fund, available at https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund.

[58] See Singapore Ministry of Law, Sole Proprietors and Partnerships (SPP) Scheme launched to help businesses in financial distress, Press Release, November 1, 2020, available at https://www.mlaw.gov.sg/news/press-releases/2020-11-01-sole-proprietors-and-partnerships-scheme.

Disruptions caused by the pandemic rippled through supply and value chains, ultimately impacting business financing. The resiliency of global value chains may be measured by five pillars: (i) logistics and infrastructure risk; (ii) market risk; (iii) natural disaster risk; (iv) political risk; and (v) regulatory and policy risk.[59] During the pandemic, the APEC region performed well in terms of market risk and regulatory and policy risk. But disruptions to the supply and value chains highlighted needed improvements in the natural disaster risk pillar and the logistics and infrastructure risk pillar.[60] Trade in services declined dramatically in economies reliant on tourism (e.g., in Thailand, trade in services declined by 61%).[61]

Defaults in trade finance products are very rare, and when they occur, losses are low.[62] The ADB estimated the global trade finance gap in 2020 to be $1.7 trillion or 10% of global trade.[63] During the pandemic, the rate of rejections of trade finance applications rose[64] as 50% of banks surveyed by the ADB expected defaults on trade finance facilities to increase. Improving the global trade finance ecosystem is critical to growing employment to a projected goal of 600 million new jobs by 2030.[65]

Export credit agencies (ECAs) and private credit insurers filled the gap in trade finance. ECAs complement the role of CGSs (see section III.a.i infra) by supporting exports. Governments also provided support to credit insurers to steady supply chains.[66] There may be an overlap in the types of products CGSs and ECAs offer. For instance, CGSs may also provide credit insurance, such as in Sri Lanka. An OECD survey shows that economies took several measures, including: (i) increasing the capacity to support ECAs, (ii) expanding working capital programs, (iii) introducing additional support for exporters, and (iv) introducing more flexible terms and conditions for official support.[67] The OECD survey shows that governments and ECAs have focused their efforts on SME exporters that are particularly vulnerable. Such efforts included measures to increase the availability of working capital to help exporters finance manufacturing costs and to support trade finance to boost exports. Finally, the OECD survey shows that several ECAs are considering targeted measures for hard-hit sectors, such as the aircraft and the cruise ship sectors.[68]

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[59] Divya Sangaraju and Akhmad Bayhaqi, Managing Risk in Global Value Chains: Strengthening Resilience in the APEC Region, APEC Policy Support Unit, Policy Brief 37, at 3, December 2020, available at https://www.apec.org/Publications/2020/12/Managing-Risks-in-Global-Value-Chains.
[60] Divya Sangaraju and Akhmad Bayhaqi, Managing Risk in Global Value Chains: Strengthening Resilience in the APEC Region, APEC Policy Support Unit, Policy Brief 37, at 1; 11, December 2020, available at https://www.apec.org/Publications/2020/12/Managing-Risks-in-Global-Value-Chains.
[61] International Chamber of Commerce, 2021 ICC Trade Register Report, at 7.
[62] Id., at 20.
[63] Asian Development Bank, 2021 Trade Finance Gaps, Growth, and Job Survey, Brief No. 167, at 2, October 2021, available at https://www.adb.org/publications/2021-trade-finance-gaps-growth-jobs-survey.
[64] Id.
[65] Id.
[66] International Chamber of Commerce, 2021 ICC Trade Register Report, at 10.
[67] OECD, Trade Finance in Times of Crisis – Response from Export Credit Agencies, May 25, 2020, available at https://www.oecd.org/coronavirus/policy-responses/trade-finance-in-times-of-crisis-responses-from-export-credit-agencies-946a21db/#boxsection-d1e263.
[68] OECD, Trade Finance in Times of Crisis – Response from Export Credit Agencies, May 25, 2020, available at https://www.oecd.org/coronavirus/policy-responses/trade-finance-in-times-of-crisis-responses-from-export-credit-agencies-946a21db/#boxsection-d1e263.

b. Regulatory Measures

Regulators in the APEC region have adopted several measures to both ease the pressure on MSMEs and spur lending through the banking sector. In particular, regulators have incentivized loan repayment deferral and restructurings. Central banks established dedicated financing programs for financial institutions and reduced capital requirements and interest rates.

Deferrals in the payment of principal and interest have been introduced in a significant majority of APEC economies. In April 2020, Brunei Darussalam's Royal Monetary Authority introduced a three-month waiver of interest on loans, a three-month deferment of loan installments, five percent working capital loans for tourism-related companies, and two percent interest microloans for agriculture.[69] Interim measures, including deferment and restructuring assistance and waived fees, were renewed from December 27, 2021, until June 30, 2022.[70] The Republic of Korea suspended loan interest payments for all SMEs for six months starting April 1, 2020.[71] The Republic of Korea also allowed the extension of debt maturity for MSMEs.[72] By July 2021, these deferred loan payments totaled almost 100 trillion won.[73] Canadian banks provided 89,500 loan deferrals, with a majority of those deferrals amounting to $3.3 billion going to SMEs, but such deferrals are no longer available.[74] Likewise, Australian banks provided both principal and interest loan deferrals from March 2020 until September 2020.[75] Australia's bank regulator announced regulatory support for a second round of deferrals on July 19, 2021.[76] This support included a delay in implementing Basel III reforms until January 1, 2023.[77] Chinese

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[69] See UN Economic and Social Commission for Asia and the Pacific, Asia-Pacific [economies'] COVID-19 policy responses, Brunei, available at https://www.unescap.org/sites/default/d8files/2021-03/Brunei_COVID%20Country%20profile%20230321.pdf.

[70] Brunei Darussalam Central Bank, '', available at https://www.bdcb.gov.bn/Lists/News/DisplayItem.aspx?ID=597&Source=https%3A%2F%2Fwww%2Ebdcb%2Egov%2Ebn%2FPages%2FNews%2DArchive%2Easpx%3FPaged%3DTRUE%26p%5FPublished%5Fx0020%5FDate%3D20220113%2B16%253a00%253a00%26p%5FID%3D603%26PageFirstRow%3D21%26%26View%3D%257b196562BE%2D6354%2D4BDF%2DA6FE%2D9E15C8161C53%257d&ContentTypeId=0x01040013E26435B72C28499D11105B93AD3652.

[71] See UN Economic and Social Commission for Asia and the Pacific, Asia-Pacific [economies'] COVID-19 policy responses, Republic of Korea, available at shorturl.at/cpsFM; World Bank, Map of SME-Support Measures in Response to COVID-19, available at https://www.worldbank.org/en/data/interactive/2020/04/14/map-of-sme-support-measures-in-response-to-covid-19.

[72] Republic of Korea response to the questionnaire.

[73] The Korea Herald, 'Deferred loan payments for businesses total W108tr under COVID relief program', available at http://www.koreaherald.com/view.php?ud=20210725000180.

[74] See Canadian Bankers Association, Focus: Fast facts on bank measures in response to the COVID-19 pandemic, available at https://cba.ca/fast-facts-on-bank-measures-in-response-to-the-covid-19-pandemic; Business Development Bank of Canada, Covid-19: Supports for Canadian Businesses, available at https://www.bdc.ca/globalassets/digizuite/26954-covid-19-supports-canadian-businesses.pdf.

[75] Paulina Duran, Update 1-Australia's NAB prepared to say 'no' to more debt for customers who cannot repay, Reuters, June 15, 2020, available at https://www.reuters.com/article/nab-outlook/update-1-australias-nab-prepared-to-say-no-to-more-debt-for-customers-who-cannot-repay-idUSL4N2DS216.

[76] Australian Prudential Regulatory Authority, 'APRA announces further regulatory support for loans impacted by COVID-19', available at https://www.apra.gov.au/news-and-publications/apra-announces-further-regulatory-support-for-loans-impacted-by-covid-19.

[77] Australian Prudential Regulatory Authority, 'APRA announces deferral of capital reform implementation', available at https://www.apra.gov.au/news-and-publications/apra-announces-deferral-of-capital-reform-implementation.

Taipei extended COVID-19-related payment deferrals until December 2021. The deferral program applied to mortgage, auto and consumer loans, and credit card debt. Borrowers were not required to pay principal or interest. Furthermore, borrowers can apply for an additional three to six-month deferral to repay outstanding debt.[78] The Bank of Russia recommended that credit institutions engage their borrowers in restructuring negotiations to extend payment periods or reduce monthly payments in order to prevent the accumulation of overdue debt. According to the Bank of Russia, the restructuring of a facility should not be regarded as a negative factor by credit bureaus.[79]

APEC central banks established special lending programs to channel low-cost credit to the banking sector to reduce the borrowing costs of MSMEs. The Reserve Bank of Australia, in March 2020, established a term funding facility for the banking system, under which banks were able to access up to $188 billion in funding at a fixed interest rate of 0.25%. This facility, which closed on June 30, 2021, enabled banks to reduce interest rates for borrowers.[80] The People's Bank of China provided a special refinancing fund tailored to the refinancing of SME loans.[81] The Central Bank of Chinese Taipei launched a special accommodation facility to provide assistance to financially strapped SMEs. Its funding was later increased and extended to microenterprises. Between April 1, 2020, and November 1, 2021, financial institutions in Chinese Taipei have approved 282,029 loan applications (microenterprises accounting for 58% of approvals) totaling $15.75 billion.[82] In Malaysia, the Central Bank initially provided a total of RM 1 billion loans (about 240 billion USD) to support the food production industry and, through PENJANA, an additional RM 1 billion (about 240 billion USD) to help finance transformative initiatives in the tourism sector.[83] By mid-September 2021, a total of RM 2 billion had been allocated to the food production sector.[84] In October 2021, an additional RM 1.6 billion was allocated under PENJANA and other vehicles to the tourism sector.[85] The Bank of Russia expanded a refinancing program for loans extended to SMEs, imposed a cap on interest rates, and introduced a new credit facility to shore up lending to SMEs. Furthermore, the Bank of Russia provided low-cost loans – at a 4 per cent interest rate – to credit institutions. While highly-rated institutions could access such loans unsecured, others had to provide a guarantee. Only those credit institutions with a significant proportion of SME loans in their portfolio could access this facility. The Bank of Russia suggested that financial institutions make debt restructuring a high priority to prevent

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[78] Moody's Analytics, FSC [Chinese Taipei] Extends Payment Deferrals in Response to COVID-19 Pandemic, available at https://tinyurl.com/3sy2kyee and https://www.banking.gov.tw/ch/home.jsp?id=540&parentpath=0,524,539&mcustomize=news_view.jsp&dataserno=202106030002&dtable=News.
[79] Russia response to questionnaire.
[80] Reserve Bank of Australia, 'An Assessment of the Term Funding Facility', available at https://www.rba.gov.au/publications/bulletin/2021/sep/an-assessment-of-the-term-funding-facility.html.
[81] The People's Bank of China, China's Monetary Policy Implementation Report for the First Quarter of 2020, May 10, 2020, available at http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4021012/index.html.
[82] Chinese Taipei response to the questionnaire.
[83] See UN Economic and Social Commission for Asia and the Pacific, Asia-Pacific [economies]' COVID-19 policy responses, Malaysia, available at https://www.unescap.org/resources/asia-pacific-countries-covid-19-policy-responses; Shin Associates, Restarting the Malaysian economy: key incentives for businesses, June 16, 2020, available at https://www.lexology.com/library/detail.aspx?g=ec12216d-dc25-40b8-8e25-de0f040ad684.
[84] Central Bank of Malaysia, 'Measures to Address COVID-19 Impact', available at https://www.bnm.gov.my/covid19.
[85] New Straits Times, '2022 Budget: Tourism Industry gets RM1.6b allocation', available at https://www.nst.com.my/news/nation/2021/10/741038/2022-budget-tourism-industry-gets-rm16b-allocation.

SMEs' accumulation of overdue debt.[86] The Republic of Korea provided the Emergency Management Stabilization Fund to support SMEs affected by restrictions on public gatherings.[87]

Regulatory authorities also adjusted prudential standards and loan-loss provisioning. The Australian Prudential Regulation Authority incentivized banks to offer loan deferral to their borrowers affected by the pandemic by waiving the requirement to set aside additional reserves for the repayment deferral.[88] This modification was temporary, with a sunset date of April 2, 2021, but was extended until October 3, 2024, unless an updated responsible lending regime is passed into law.[89] The Authority also revised the prudential framework to lower risk weights for SME lending and increase the eligibility of loans under the internal ratings-based (IRB) approach.[90] Falling prices of assets that were provided as collateral for lending triggered the requirement to create additional loan loss provisions.[91] Australia reformed its consumer credit system in order to simplify access to credit for consumers and small-size borrowers by reducing red tape and balancing strong consumer protection measures with compliance burdens.[92] The Republic of Korea simplified and streamlined loan review procedures and reduced the loan review period to channel credit more quickly to microenterprises.[93]

The Bank of Russia relaxed the loan loss provisioning requirements for credit institutions through the end of September 2020.[94] A specific measure concerning loans to leasing companies authorized credit institutions to continue using the assessment as of January 1, 2020, to prevent the downgrading of facilities. The Bank of Russia also adopted measures to accelerate the implementation of Basel III standards leveling out the playing field between banks using the IRB approach and those using the standardized approach. Amendments to Russian banking policies related to operational risk management have been in force since October 2021.[95] The People's Republic of China introduced a series of measures to support the flow of credit.[96] For instance, it provided up to RMB 1.75 trillion by reducing the required reserve ratio at the beginning of 2020 and in March 2020. Two additional reductions were implemented in July and December 2021.[97]

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[86] Russia response to the questionnaire.
[87] Republic of Korea response to the questionnaire.
[88] Australia response to the questionnaire.
[89] Mortgage & Finance Association of Australia, 'Exemption from responsible lending extended', available at https://www.mfaa.com.au/news/exemption-from-responsible-lending-extended.
[90] Australia response to the questionnaire.
[91] Mortgage & Finance Association of Australia, 'Exemption from responsible lending extended', available at https://www.mfaa.com.au/news/exemption-from-responsible-lending-extended.
[92] Australia response to the questionnaire.
[93] Republic of Korea response to the questionnaire.
[94] Russia response to the questionnaire.
[95] Anton Dzhuplin and Dina Kravchenko, 'Banking Regulation in the Russian Federation: Overview', available at https://uk.practicallaw.thomsonreuters.com/w-023-9296.
[96] The People's Bank of China, Record of the press conference on increasing the scale of local government special debts and strengthening inclusive financial support for small, medium and micro enterprises, April 3, 2020, available at http://www.pbc.gov.cn/rmyh/3963412/3963426/4002107/index.html.
[97] The People's Bank of China, 'The PBC is Scheduled to Lower Required Reserve Ratio on July 15', available at http://www.pbc.gov.cn/en/3688110/3688172/4157443/4287871/index.html; The People's Bank of China, 'PBC to Cut Required Reserve Ratio for Financial Institutions on December 15, 2021', available at http://www.pbc.gov.cn/en/3688229/3688299/3688305/4408001/index.html.

Gradually, regulatory measures adopted in the APEC region have expired or were scaled down. The Monetary Authority of Singapore provided assistance to banks to enable their business borrowers to defer repayment of loans. The program has been scaled down to reintroduce the obligation to repay loans. Similarly, the Bank of Thailand program of loan deferrals, implemented in April 2020, ended in October 2020, but private sector banks have maintained their programs well into 2021.[98] The Central Bank of Chinese Taipei's special accommodation facility was extended several times. As the economy returned to normal, new applications were no longer accepted after December 21, 2021, although preferential rates will remain in force until June 20, 2022.[99]

c. Legal Measures

Economies worldwide implemented many legal measures to stave off default and insolvencies. This section focuses on those introduced in the private law framework. While many of these legal measures were temporary, some economies enacted new laws, particularly in the area of insolvency, to lay the foundation for the restructuring of businesses. Australia also amended its consumer credit legislation to exempt small business lending from some requirements.[100]

The UNCITRAL survey indicated that many economies took measures to preserve business-to-business contractual relations.[101] Economies encouraged more flexibility in the interpretation of contracts and mediation to reduce the need for courts. For instance, Singapore implemented the Re-Align Framework to facilitate the renegotiation of contracts that MSMEs entered (e.g., property leases).[102] Economies also implemented measures such as temporary variations of statutory deadlines or time periods. They reduced sanctions for late payment of debts, limited interest rates and penalties on late payment by natural persons, deferred loan and rental payments, automatically extended contractual terms, and suspended lessors' right to terminate commercial leases.

Globally, the COVID-19 pandemic has led many economies to suspend the effect of some insolvency provisions and even amend insolvency laws and procedures.[103] During the initial phase of the pandemic, many of these measures were temporary and included: (i) suspension

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[98] The Nation, Thailand, 'Debt moratorium for small businesses not to go beyond October, says governor', July 14, 2020, available at https://www.nationthailand.com/business/30391308?utm_source=homepage_hilight&utm_medium=internal_referral.

[99] Central Bank, 'Monetary Policy Decision of the Board Meeting (2022Q1)', available at https://www.cbc.gov.tw/en/cp-448-149596-b051b-2.html.

[100] Australia response to the questionnaire. Exempted regulations include, in various circumstances: credit providers' obligations before entering into a lease, extending credit or increasing credit limits; and prohibitions on offering or raising limits under unsuitable credit terms or entering into an unsuitable lease. See Federal Register of Legislation, 'National Consumer Credit Protection Amendment (Responsible Lending Obligations) Regulations 2020', available at https://www.legislation.gov.au/Details/F2020L01277.

[101] United Nations Commission on International Trade Law, Exploratory work on the impact of COVID-19 on international trade law – Part I, Fifty-fourth session, A/CN.9/1080, June 28 – July 16 2021, available at https://uncitral.un.org/en/commission.

[102] See Singapore Ministry of Law, Re-align Framework to Renegotiate Contracts for Businesses Significantly Impacted by COVID-19, available at https://www.mlaw.gov.sg/realign/re-align-framework.

[103] Insolvency proceedings and bankruptcy proceedings are synonyms.

or restriction of creditors' rights to initiate insolvency proceedings; (ii) suspension of the duty to initiate insolvency proceedings; (iii) suspension or relaxation of liability for wrongful trading; and (iv) suspension of insolvency provisions subordinating shareholder loans.[104] Although the temporary measures helped to ease the initial economic impact of the COVID-19 pandemic, economies are looking for more permanent solutions that will facilitate recovery.[105] These include (i) adoption of special insolvency rules for small companies; (ii) amendments to transaction avoidance rules; and (iii) adoption of rescue financing provisions. The temporary measures have encouraged several economies to reassess their insolvency and restructuring frameworks.[106]

There are four ongoing trends in the international insolvency community: (i) adoption of simplified insolvency frameworks for MSMEs; (ii) implementation of hybrid procedures; (iii) promotion of out-of-court restructuring; and (iv) facilitation of an effective discharge of debts for individual entrepreneurs. The pandemic also encouraged many economies to reconsider controversial provisions in their insolvency legislation.[107] A revised version of the World Bank's Principles for Effective Insolvency and Creditor/Debtor Regimes[108] and the new UNCITRAL legislative recommendations for adopting simplified insolvency frameworks for MSMEs[109] will encourage more jurisdictions to implement quick, simple, and affordable solutions for MSMEs in insolvency.[110]

Australia launched a support package in March 2020 for small businesses, including a new debt restructuring process and simplified liquidation procedures.[111] Temporary changes were also made to the bankruptcy law to protect debtors from liquidation, such as increased protection in debt collection from 21 days to 6 months. Later, Australia enacted a set of provisions facilitating the reorganization of MSMEs. In April 2021, the Bankruptcy Regulations were published to align with the Bankruptcy Act.

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[104] See Aurelio Gurrea-Martinez, Simon Brodie and Pooja Mahajan, Global Guide: Measures Adopted to Support Distressed Businesses through the COVID-19 Crisis: Report, INSOL International and World Bank 2020, available at https://ccla.smu.edu.sg/sites/cebcla.smu.edu.sg/files/2020-12/SGRI/Insolvency%20Responses%20in%20Times%20of%20COVID19.%20World%20Bank%20and%20INSOL.pdf.

[105] Antonia Menezes and Akvila Gropper, Overview of Insolvency and Debt Restructuring Reforms in Response to the COVID-19 Pandemic and Past Financial Crises: Lessons for Emerging Markets, Equitable Growth, Finance, and Institutions COVID-19 Notes, World Bank 2021, available at https://openknowledge.worldbank.org/handle/10986/35425.

[106] Aurelio Gurrea-Martinez, The Future of Insolvency Law in a Post-Pandemic World, Singapore Management University School of Law, at 7, available at https://www.law.ox.ac.uk/business-law-blog/blog/2021/11/future-insolvency-law-post-pandemic-world.

[107] Id.

[108] World Bank Group, Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021,available at https://openknowledge.worldbank.org/bitstream/handle/10986/35506/Principles-for-Effective-Insolvency-and-Creditor-and-Debtor-Regimes.pdf?sequence=1&isAllowed=y.

[109] See UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises (2021) available at https://uncitral.un.org/en/lrimse#:~:text=The%20Legislative%20Recommendations%20on%20Insolvency%20of%20Micro-%20and,specific%20needs%20and%20circumstances%20of%20their%20financial%20distress.

[110] Id., n 28.

[111] Australia response to the questionnaire.

UNCITRAL's survey revealed that seventeen types of bankruptcy and insolvency measures were undertaken.[112] These measures include (i) extending deadlines; (ii) suspending creditors' rights to file for insolvency; (iii) suspending insolvency proceedings; (iv) suspending enforcement orders and realization of collateral through extraordinary moratoria protecting debtors from termination of contracts for the provision of utilities, raw materials, goods and services; and (v) permitting debtors to prioritize the payment of costs related to maintaining the business over earlier debts. These measures require creditor consent.

Before the COVID-19 pandemic, only a handful of economies, such as the United States and Myanmar, had special insolvency regimes in place for MSMEs.[113] Since then, Australia, Colombia, and Singapore have adopted special MSME insolvency frameworks. Singapore adopted a simplified insolvency program for SMEs,[114] and Australia implemented a new permanent framework for small companies.[115] The People's Republic of China recently adopted a new personal insolvency regime facilitating a discharge of debts for individual entrepreneurs.[116]

A study on resolving corporate insolvencies in APEC economies in the aftermath of COVID-19 found that most APEC economies initially focused on implementing measures to contain the crisis, consistent with the approach taken in other regions. Gradually, they refocused their attention on debt restructuring measures.[117] The study reported that several APEC economies do not preclude an enforcement action against the collateral when the debtor attempts a reorganization and that this may thwart reorganization efforts.[118] Collective actions generally increase the value of a business and thus the recovery for all creditors. In some APEC economies (e.g., Peru), secured creditors may appoint a receiver to facilitate the sale of a business as a going concern.[119]

The People's Republic of China was one of the early movers in reforming bankruptcy procedures. In May 2020, its Supreme Court issued special guidelines ("Guidelines") for courts to maintain economic and social stability. Part III of the Guidelines encouraged courts overseeing bankruptcy

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[112] The economies included in the survey were: Angola, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Canada, Czechia, Ecuador, India, Indonesia, Italy, Israel, Japan, Jordan, Kyrgyzstan, Lebanon, Madagascar, Malta, Poland, Russian Federation, Saudi Arabia, Senegal, Singapore, Slovakia, Slovenia, Sweden, Switzerland, Thailand, Turkey and the United States of America.

[113] For an overview of the simplified insolvency framework in the United States, see William Norton III and James Bailey, 'The Pros and Cons of the Small Business Reorganization Act of 2019' (2020) 36 Emory Bankruptcy Developments Journal 384. For Myanmar, see Scott Atkins, "Myanmar" in ABLI, Corporate Restructuring and Insolvency Law in Asia, Asian Business Law Institute 2020, at 489-531.

[114] See Financially Distressed Micro and Small Companies May Apply for Simplified Insolvency Programme from 29 January 2021, *Ministry of Law Singapore*, 28 January 2021, available at https://www.mlaw.gov.sg/news/press-releases/simplified-insolvency-programme-commences.

[115] See New insolvency reforms to support small business, Australian Government, 2021, available at https://www.ato.gov.au/Tax-professionals/Your-practice/Insolvency-practitioners/New-insolvency-reforms-to-support-small-business/.

[116] So far, this regime has only been implemented in Shenzhen. See Shenzhen Daily, 'Bankruptcy law protects honest debtors, Shenzhen Government Online, September 3, 2020, available at http://www.sz.gov.cn/en_szgov/news/latest/content/post_8056555.html.

[117] APEC, Consultation Paper on Resolving Corporate Insolvency in APEC Economies in the Aftermath of Covid-19 Pandemic, May 2021, available at https://www.apec.org/Publications/2021/05/Consultation-Paper-on-Resolving-Corporate-Insolvency.

[118] Id., at 43.

[119] Id., at 44.

cases to "actively guide" negotiations between debtors and creditors through measures such as authorizing installment payments, extending the repayment period, and other non-judicial debt resolutions.[120] The Guidelines created two categories of companies: (i) those financially stable before COVID-19 and (ii) those that had already been in financial distress before COVID-19. For the first category of companies, the Guidelines instructed the courts to actively assist in finding ways for the business to continue operation, while for the second category, normal procedures, including liquidation, would apply.[121]

Several APEC economies imposed moratoria on existing proceedings, restricted the filing of new cases, and generally restricted access to the courts. For example, in Mexico, the Federal Judicial Council issued the General Agreement 8/2020 that limited the operation of federal courts for bankruptcy proceedings to urgent cases only. This measure did not limit the discretion of the judge but rather the type of case that could be heard.[122] This led to courts postponing ongoing proceedings and rejecting new petitions.[123] The March 4, 2022 publication of General Agreement 4/2022 is expected to ameliorate this slowdown, which created two new specialized commercial bankruptcy courts.[124] On a broader scale, the Russian Federation passed Resolution No. 428 on April 6, 2020, which implemented a six-month moratorium on bankruptcy proceedings initiated by creditors against debtors in strategic sectors and debtors in the most affected economic sectors. This moratorium was renewed for three months.[125] Cases already in progress were also suspended, as was the obligation of debtors to file their own cases, although debtors retained the right to file if they chose to do so. An online resource was created by the Tax Service for businesses to discover whether they qualify for the moratorium. Debtors subject to the moratorium could not pay dividends. Property could not be seized during the moratorium. However, any transactions of the company not related to its ordinary course of business during the moratorium could be invalidated if a petition for bankruptcy was filed within three months after the moratorium was lifted. Enforcement rights of creditors, including those secured with collateral, were suspended, and debtors were not required to pay any late fees

[120] Highest Court Issued Guidelines Regarding "Appropriate Conduct of Court Proceedings" during the Epidemic Period, at ¶ 17, May 15, 2020, available at www.court.gov.cn/fabu-xiangqing-230181.html.

[121] See further Austin, Daniel A. and Huan, Yu, Bankruptcy in the Time of COVID-19: Special Measures Adopted by the People's Republic of China Courts During the Period of COVID-19 Prevention and Control, Int Insol Rev. 2021;1-15, May 6, 2021, available at SSRN: https://ssrn.com/abstract=3930066 or http://dx.doi.org/10.2139/ssrn.3930066.

[122] Juan Pablo Moyano and Alejandro Landa Thierry, Commercial Bankruptcies in Mexico During Times of COVID-19, Holland & Knight, May 8 ,2020, available at https://www.hklaw.com/en/insights/publications/2020/05/commercial-bankruptcies-in-mexico-during-times-of-covid19.

[123] IFLR, 'Corporate insolvency & restructuring report 2021: Mexico', available at https://www.iflr.com/article/b1trzqsnzsgnv7/corporate-insolvency-amp-restructuring-report-2021-mexico.

[124] White & Case, 'Mexico: New federal courts for commercial bankruptcy proceedings (concursos mercantiles)', available at https://www.whitecase.com/publications/alert/mexico-new-federal-courts-commercial-bankruptcy-proceedings-concursos.

[125] Library of Congress, Russian Federation: Newly Adopted Amendments to Insolvency law Allow Some Citizens to Go Through Bankruptcy but Avoid Court Proceedings, November 25, 2020, available at https://www.loc.gov/item/global-legal-monitor/2020-11-25/russian-federation-newly-adopted-amendments-to-insolvency-law-allow-some-citizens-to-go-through-bankruptcy-but-avoid-court-proceedings/#:~:text=On%20April%206%2C%202020%2C%20in,continued%20until%20October%205%2C%202020; Alrud, Russian bankruptcy moratorium extended until January, 2021, October 9, 2021, available at https://alrud.com/publications/5f7eeefc768e95541500407f/#:~:text=1587%2C%20has%20extended%20the%20moratorium,%2C%20until%20January%2007%2C%202021.

or default interest. Finally, voluntary bankruptcy became subject to a simplified process, including the sufficiency of a majority vote to accept a settlement agreement.[126]

Singapore enacted the COVID-19 (Temporary Measures) Act in April 2020 that temporarily barred enforcement and suspended insolvency proceedings.[127] The Act also increased the threshold for debts to initiate insolvency proceedings, and extended the period to respond to a demand for payment (from 21 days to six months), rental relief (for up to four months) and other relief from obligations that the person was unable to perform, including under hire-purchase agreements for commercial equipment and vehicles. The eligibility to participate in the Debt Repayment Scheme, which is a pre-bankruptcy process, was widened. In January 2021, Singapore introduced the temporary Simplified Insolvency Programme, initially for six months but later extended through July 2022, to provide assistance to (i) viable but distressed businesses in restructuring their debts and (ii) unviable businesses to liquidate in a more cost-efficient manner.

d. Gender Finance

The impact of COVID-19 has been unequal, with women entrepreneurs in the APEC region sustaining more severe losses from the economic fallout and disruptions caused by the pandemic. According to the APEC Women and the Economy Dashboard 2021,[128] 64 percent of women-led small businesses reported that the pandemic is severely impacting their business operations, compared to 52 percent of men-led companies. McKinsey estimated that women account for 54 percent of COVID-19-induced job losses globally, with women's jobs being almost twice as vulnerable to the pandemic as men's jobs.[129] The APEC Dashboard explains that "the sectors hit hardest by the lockdown measures implemented to curb the spread of the virus, particularly travel and tourism, food and beverage as well as retail sales are more likely to employ women."[130] According to the World Bank, protecting the financial sector's ability to lend is crucial to bridge gender finance gaps. World Bank surveys generally show financial vulnerabilities are greater for women-led businesses than those led by men.[131]

Another significant longstanding issue concerning gender finance is creditors' discrimination based on gender. The APEC Women and Economy Dashboard 2021 reports:

> … women's access to credit remains constrained by creditors' discrimination on the basis of gender. This needs urgent policy action since the number of APEC

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[126] Russia response to the questionnaire.
[127] Singapore response to the questionnaire.
[128] The APEC Women and Economy Dashboard 2021, APEC Policy Support Unit, September 2021 at xiv https://www.apec.org/docs/default-source/publications/2021/9/the-apec-women-and-the-economy-dashboard-2021/221_psu-apec-women-and-the-economy-dashboard-2021.pdf?sfvrsn=b239ad0c_1 (footnotes omitted).
[129] McKinsey Global Institute, COVID 19 and Gender Equality, Countering the Regressive Effects, https://www.mckinsey.com/featured-insights/future-of-work/covid-19-and-gender-equality-countering-the-regressive-effects.
[130] The APEC Women and Economy Dashboard 2021, supra note 128 at xiv.
[131] World Bank, Firm Recovery during COVID-19: Six Stylized Facts (Xavier Cirera Marcio Cruz Arti Grover Leonardo Iacovone Denis Medvedev Mariana Pereira-Lopez Santiago Reyes) October 2021 https://documents1.worldbank.org/curated/en/862851634563353449/pdf/Firm-Recovery-during-COVID-19-Six-Stylized-Facts.pdf.

> economies that instituted laws to prohibit such discrimination has remained persistently low, increasing from 8 to only 9 economies between 2008 and 2020. Compounding this is the fact that, for the period 2015-2018, only 7 APEC economies had laws mandating non-discrimination by creditors on the basis of marital status. These constraints hold back women from engaging in economic and financial undertakings, reducing their capacity to contribute to household income.[132]

To help counter discrimination in women's access to credit, all APEC economies have established targeted financial inclusion programs.[133] Eighteen APEC economies have financial literacy programs that cater specifically to women. Government-linked microloan programs—used by 8 out of 10 women-led businesses—have been launched in 12 economies and technology-enabled microfinance programs are now available in 5 economies.[134] Moreover, at the 2021 APEC Women and the Economy Forum, all APEC economies pledged to[135] "support women's entrepreneurship and women-led MSMEs, including through tackling discriminatory legal and regulatory barriers, to enable better access to employment, business ownership, markets, and credit."

As the World Bank Knowledge Guide on Secured Transaction Reform[136] points out:

> "a modern secured transactions law can unlock new financing opportunities…. Opening this type of financing has the potential to be of particular benefit to women, empowering them to overcome the lack of titled land or the limitations on their power to transfer property without the consent of the husband (still in place in a number of economies) and use the assets they have to gain access to formal credit markets."

However, the Knowledge Guide stresses that "the implementation of a modern secured transactions regime is not sufficient if women lack property rights or power to create a security interest."[137] It also recommends developing credit products tailored to the smaller size and informal structure of women-owned businesses and the types of assets they own.

The APEC Dashboard further recommends that "MSMEs, governments … facilitate access to capital to help [women] shift to digital business platforms."[138] According to the World Bank, digital technology proved to be effective at mitigating the impact of the crisis on firm performance, particularly for women-led firms.[139] The APEC Dashboard notes that digital

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[132] The APEC Women and Economy Dashboard 2021, supra note 128 at iv. See also World Bank, Woman Business and the Law 2021, at 21 available at https://openknowledge.worldbank.org/bitstream/handle/10986/35094/9781464816529.pdf?sequence=7&isAllowed=y ("Noting that globally, 108 economies still lack legal provisions that expressly prohibit gender-based discrimination in access to finance. For women who become entrepreneurs, access to finance is likely necessary.")

[133] APEC Economic Policy Report 2020: Structural Reform and Women's Empowerment (AEPR 2020).

[134] APEC Women and Economy Dashboard, supra note 128 at iv-v, n 5.

[135] 2021 APEC Women and the Economy Forum Statement, https://www.apec.org/Meeting-Papers/Sectoral-Ministerial-Meetings/Women/2021_women.

[136] Secured Transactions, Collateral Registries, and Movable Asset-Based Financing, Knowledge Guide, November, 2019, at 23-24 https://documents1.worldbank.org/curated/pt/193261570112901451/pdf/Knowledge-Guide.pdf.

[137] Id., at 24.

[138] The APEC Women and Economy Dashboard 2021, supra note 128 at xv.

[139] World Bank, Firm Recovery during COVID-19: Six Stylized Facts (Xavier Cirera Marcio Cruz Arti Grover Leonardo Iacovone Denis Medvedev Mariana Pereira-Lopez Santiago Reyes) October 2021

infrastructures also need to be improved, particularly their reliability, speed, and security, while ensuring that internet subscriptions and digital equipment remain affordable for greater digital adoption. According to the APEC Dashboard, these policy responses could widen employment opportunities for women, allowing them access to new technology-related jobs while facilitating business growth for MSMEs.

e. Digitalization

The G20 2020 Financial Inclusion Action Plan identifies SME finance and digital financial inclusion as priority areas.[140] In the same vein, the World Alliance of International Financial Centers recommended leveraging the digitalization of financial services to support SME recovery from COVID-19-induced difficulties.[141] The COVID-19 pandemic has hampered the ability of APEC governments to deliver economic support mechanisms. Nonetheless, many initiatives and policies have aimed to increase digitalization and financial inclusion.[142]

In 2021, the Asia-Pacific Financial Inclusion Forum (APFIF) led a policy dialogue on the continuing emerging priorities in the COVID-19 era.[143] The theme of the forum was the prioritization of the development of the digital economy within the financial sector. In its most recent meeting, the forum proposed several actions for APEC policymakers and regulators to consider, including supporting microfinance providers with the adoption of digital technology, establishing a digital ecosystem, and mobilizing capital through innovative fintech mechanisms.

The APEC Business Advisory Council (ABAC) developed the TOQQA Initiative, which promotes the digitalization of the economy.[144] A program, led by TOOQA Global in collaboration with ABAC Brunei, developed a small enterprise digitalization pilot named BIMP-EAGA, which tests solutions across the Brunei-Indonesia-Malaysia-Philippines East ASEAN Growth Area. In 2020, the project engaged MSEs to test the usefulness and effectiveness of end-to-end digital commerce capabilities. The project concluded that although end-to-end digital commerce capabilities could have a positive impact on productivity and expansion of enterprises, there are many roadblocks to implementing a digital solution. These roadblocks for MSEs include having a low digital end-to-end commerce capability, not knowing how to access digital markets, and lack of trust in digital solutions.[145] In one survey, the ADB found that 56% of surveyed banks had identified the high cost of technology as an impediment to maximizing the potential of digital finance solutions. Banks have also been hindered by a lack of technological

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https://documents1.worldbank.org/curated/en/862851634563353449/pdf/Firm-Recovery-during-COVID-19-Six-Stylized-Facts.pdf.

[140] See Global Partnership for Financial Inclusion, G20 2020 Financial Inclusion Action plan, available at https://www.gpfi.org/news/g20-2020-financial-inclusion-action-plan-0.

[141] The World Alliance of International Financial Centers (WAIFC) is a non-profit association established in 2018 and registered in Brussels, which represents leading international financial centres and facilitates cooperation and the exchange of best practices. Further information is available at https://waifc.finance/.

[142] IDB supports a fintech initiative in the Latin America and Caribbean region to create a conducive environment for fintech development while protecting its users. Available at https://www.iadb.org/en/financial-markets/access-finance.

[143] See APEC Business Advisory Council, Financial Inclusion, available at https://www2.abaconline.org/page-content/22611571/Financial%20Inclusion.

[144] See TOQQA Global, available at https://www.toqqaglobal.com/.

[145] Id.

expertise, insufficient connection, and the lack of interoperability between different platforms.[146]

Digitalization impacts the delivery channels for credit products and their types, some of which are more suitable for digitalization than others. For instance, digitalization accelerates the long-term trend of shifting away from the documentary to open account trade.[147] Such a shift requires a conducive framework for receivables finance that underpins open account trade.

Digitalization of finance and enhancing financial inclusion necessitate legal standards to provide certainty to actors.[148] Global standards also need to facilitate interoperability among the many platforms and "trade ecosystems" that already exist or are likely to emerge in the future. These platforms and ecosystems bring together a variety of actors, including businesses that export and import, ports, customs, warehousing and logistics, and finance providers. The data generated through these transactions could alleviate barriers to accessing credit and make global trade and supply chains more robust. Singapore, the International Chamber of Commerce (ICC), and ADB formed the Digital Standards Initiative (DSI), housed at the ICC, to undertake various standardization initiatives.[149]

IV. USE OF TECHNOLOGY TO RESOLVE DISPUTES EFFICIENTLY: FOCUS ON ODR

The COVID-19 pandemic has forced APEC economies to reconsider their approach to resolving disputes, particularly through the courts and in-person hearings. Several measures have been implemented to digitize judicial proceedings and support the use of alternative disputes resolution mechanisms, such as ODR. This Section considers the use of technology, especially ODR mechanisms under the APEC ODR Collaborative Framework, the UNIDROIT Best Practices on Enforcement, secured transactions and pre-insolvency workouts, APEC courts, and APEC dispute resolution centers.

a. ODR Technology and its Impact on Enforcement through the APEC ODR Collaborative Framework

The UNCITRAL Technical Notes on Online Dispute Resolution[150] define ODR as "a mechanism for resolving disputes through the use of electronic communications and other information and communications technology." The Notes recognize that ODR requires a technology platform and

[146] Asian Development Bank, 2021 Trade Finance Gaps, Growth, and Job Survey, Brief No. 167, at 6, October 2021, available at https://www.adb.org/publications/2021-trade-finance-gaps-growth-jobs-survey.
[147] International Chamber of Commerce, 2021 ICC Trade Register Report, at 6.
[148] See ICC Digital Roadmap, available at https://iccwbo.org/publication/icc-digital-roadmap/.
[149] See International Chamber of Commerce, Digital Standards Initiative, available at https://www.dsi.iccwbo.org/about-icc-digital-standards-initiative.
[150] UNCITRAL, UNCITRAL Technical Notes on Online Dispute Resolution, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf.

that all communications should take place through the ODR platform. The Notes provide for stages in online dispute resolution – online negotiation, mediation, and a third stage which may be arbitration. The use of technology enables parties to communicate and negotiate without the intervention of a neutral person. ODR offers seamless navigation through a myriad of dispute resolution options. The ODR computer-led dispute resolution process reduces timelines and costs to keep them in proportion with the disputed amount. As the UN General Assembly has recognized, ODR (as provided in the UNCITRAL ODR Technical Notes) "can assist the parties in resolving disputes in a simple, fast, flexible, and secure manner, without the need for physical presence at a meeting or hearing." [151]

APEC is the first region to implement the work of UNCITRAL on ODR. The APEC EC adopted the APEC ODR Collaborative Framework and Model Procedural Rules based on the UNCITRAL Technical Notes. The APEC ODR Collaborative Framework and Rules govern ODR proceedings, including online negotiation, mediation, and arbitration of disputes. APEC partners with ODR providers from APEC economies that have opted into the Framework. The APEC EC promotes and lists partnering ODR providers on its website and encourages MSMEs to use the providers to resolve their cross-border commercial disputes.

Several ODR service and platform providers worked with the APEC EC to develop and implement the Collaborative Framework and Procedural Rules including the Guangzhou Arbitration Commission (GZAC) (China), China International Economic and Trade Arbitration Commission (CIETAC), eBRAM International Online Dispute Resolution Center (eBRAM) (Hong Kong, China), Deloitte Tohmatsu (Japan), Fair Way Resolution (New Zealand), CAM Santiago (Chile), Mediate.com/ODR.com (U.S.), Thailand Arbitration Center, ODRasia (Singapore) and Resolve Disputes Online (Australia).[152] All use advanced technologies. Several providers also offer wrap around legal services to help prevent disputes.[153] For example, eBRAM has launched a legal cloud portal to provide secure data and document exchange storage, online Law Tech services, and AI-backed translation.[154] Preventing disputes is also a major objective of the APEC EC Strengthening Economic and Legal Infrastructure (SELI) Friends of the Chair (FoTC). The idea is to put a fence at the edge of the cliff rather than an ambulance waiting at the bottom.

GZAC has experienced excellent initial results with its APEC ODR Collaborative Framework and Procedural Rules compliant platform for domestic disputes. The average time to resolve a dispute on the platform is 23 days, with 62% of the disputes resolved during the negotiation and mediation stages.[155]

These platforms typically contain features that would be highly beneficial to resolving secured transactions disputes or assisting with informal workout processes, including assisting parties in

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[151] GA Resolution 71/138, Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law, available at https://digitallibrary.un.org/record/853454?ln=en.

[152] See Workshop on Implementing the APEC ODR Collaborative Framework at 17-20, 25-26, https://www.apec.org/publications/2022/03/workshop-on-implementing-the-apec-odr-collaborative-framework. GZAC, CIETAC, and eBRAM have agreed to partner with APEC. In order to partner with APEC the ODR provider must be from an economy that has opted into the Collaborative Framework. Thus far, China, Hong Kong China, Japan, Singapore, and the U.S. have opted into the Framework.

[153] Id.

[154] See eBRAM launches the first Hong Kong Legal Cloud Portal to assist legal professionals in navigating the digital new normal, 28 February 2022, *https://www.ebram.org/news_event_item.html?id=76.*

[155] Workshop on Implementing the APEC ODR Collaborative Framework, supra note 152, at 19.

diagnosing their situation; tracking cases, calendar events, and completed activities; enabling multiple disputants and neutrals to interact in an online collaborative workspace; and recording the outcome of any agreement or decision. The EC SELI FoTC, in collaboration with the Ease of Doing Business (EoDB) FoTC, could consider expanding its work on ODR to include resolving creditor disputes and assisting with informal workout processes for MSMEs. APEC EC SELI work on ODR under the Collaborative Framework currently focuses on cross-border disputes in business-to-business transactions. APEC EC EoDB work focuses on the ability to get credit, secured transactions, enforcing contracts, and resolving insolvency.

b. Best Practices on Effective Enforcement

UNIDROIT is developing a guidance document on the effective enforcement of creditor rights.[156] The project originated from a World Bank Group[157] proposal. The UNIDROIT project will develop a guidance instrument to help legislators overcome challenges associated with enforcing creditor rights and ensure well-functioning financial and lending markets. The instrument will detail procedures and mechanisms for enforcing creditors' claims effectively in transnational and domestic civil proceedings. The UNIDROIT working group is identifying best practices for the judicial and extrajudicial enforcement of secured claims that follow accepted international standards, such as the UNCITRAL Model Law on Secured Transactions.

The instrument will include detailed provisions on issues such as the impact of technology on enforcement. In the context of enforcement, technology:

- Enhances collateral monitoring by identifying a change in location, value, or unauthorized asset use.
- Generates digital assets that may be subject to a security right that may need to be enforced against a custodian.
- Generates digital assets for which the holder (and thus the person against whom a claim may need to be enforced) may be difficult to identify.
- Streamlines enforcement procedures via automated notices.
- Enables digital auctions and irreversible automated enforcement through complaint handling mechanisms and ODR platforms.

c. ADR/ODR for Resolving Secured Transaction Disputes and Pre-Insolvency Workouts

[156] Two UNIDROIT representatives, Anna Veneziano and Tereza Rodriguez de las Heras Ballell, outlined the contours of the project at the APEC EC webinar on December 10, 2021.
[157] For further information on the Working Group see https://www.unidroit.org/work-in-progress/enforcement-best-practices/.

The UNCITRAL Model Law on Secured Transactions recognizes ADR/ODR as an alternative to courts for resolving secured transactions disputes. The Guide to Enactment for the UNCITRAL Model Law on Secured Transactions (para. 75) explains that this emphasis on ADR/ODR:

> "is based on the understanding that the use of [ADR/ODR] mechanisms to resolve such disputes is important, particularly for [economies] with inefficient judicial enforcement mechanisms to attract investment, since the lack of efficient judicial enforcement mechanisms is likely to have a negative impact on the availability and the cost of credit."

The World Bank Knowledge Guide on Secured Transactions[158] observes that:

> "ADR mechanisms have proven to be very effective in resolving disputes in a fast, low-cost, and non-adversarial way… Modern technology opens further opportunities for innovation, especially by implementing online dispute resolution mechanisms (ODR) …."

The Knowledge Guide points out that ODR is not a replacement for other extrajudicial remedies but an additional option. For disputes relating to enforcement, the law or regulations should include protection for third parties that do not participate in such proceedings (e.g., other secured creditors with a right in the same asset).

The World Bank's Principles for Effective Insolvency and Creditor/Debtor Regimes[159] note that:

> "An informal workout process may work better if it enables creditors and debtors to use informal techniques, such as voluntary negotiation or mediation or informal dispute resolution. While a reliable method for timely resolution of inter-creditor differences is important, the financial supervisor should play a facilitating role consistent with its regulatory duties as opposed to actively participating in the resolution of inter-creditor differences.

The UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises (2021)[160] recognize the use of informal negotiation, including mediation, to lower barriers to access to insolvency proceedings.

Additionally, the World Bank[161] has pointed out that the use of ODR platforms in informal workout processes may help prevent insolvency of MSMEs:

> "We see ample potential for applying ODR to prevent insolvency of MSMEs. This can be achieved by enhancing the existing ODR platforms to enable multiparty negotiations online—it is discreet, accessible from anywhere by anyone with an internet connection. It is informal and for that reason approachable enough for distressed MSMEs that are often reluctant or have no informal way of reaching all relevant creditors until it is too late.…

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[158] World Bank Secured Transactions Knowledge Guide, supra note 136, at 67-68.
[159] The World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021, supra note 108.
[160] UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises, 2021, supra note 109.
[161] Integrating Online Dispute Resolution Platforms into Pre- insolvency Processes and Early Warning Tools to Save Distressed Small Businesses, Antonia Menezes, Nina Mocheva, and Sagar Siva Shankar, VIKALPA, VOLUME 45, ISSUE 2, APRIL-JUNE 2020 at 82-83, available at https://journals.sagepub.com/doi/pdf/10.1177/0256090920941813.

Once a collective insolvency procedure is initiated in court, the company distress becomes publicly known. This may lead to workers and clients pulling out, trade creditors and state agencies will also get involved in the process, making the prospects of resurfacing from the situation less likely."

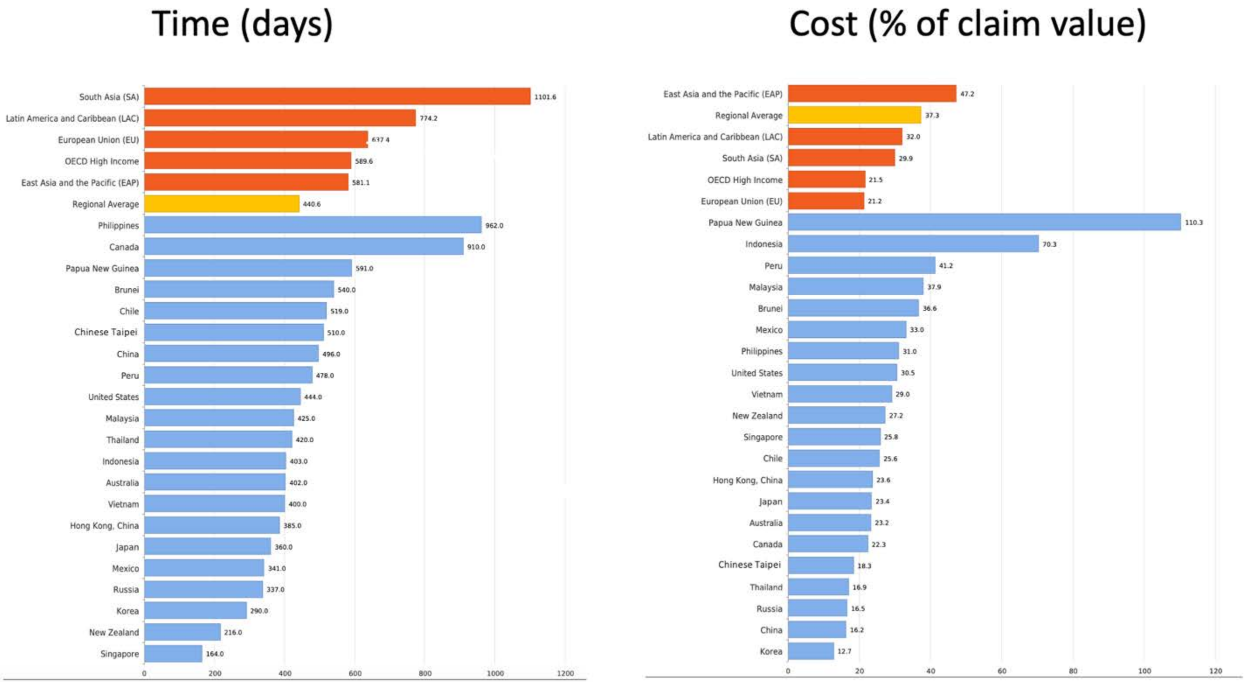
The World Bank[162] also noted that the COVID-19 crisis had increased the need to use innovative methods such as ODR in addressing financial difficulties as early as possible:

> "… the current COVID-19 crisis has exacerbated the need for lawmakers, regulators, and ADR service providers to address the increased demands for change in the way debt resolution tools are provided. The executive branches of government, financial regulators, and courts will have to adapt to the effects of technological change, to utilize the new opportunities that come with it and to mitigate against any downsides."

d. Use of Technology/ODR in Courts

The APEC EC developed the APEC ODR Collaborative Framework in part because of difficulties to resolve contract disputes in APEC courts. According to APEC's work on Ease of Doing Business Enforcing Contracts, prior to the pandemic, it took on average 440 days to resolve a simple contract dispute at a cost of 37 percent of the value of the claim. In some economies, the cost of enforcing the claim exceeded the value of the dispute. The situation is worse for cross-border disputes.

Prior to Pandemic: APEC Courts Not Effective for Enforcing Contracts:[163]



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[162] Id. at 80.

[163] APEC Doing Business 2020 at 54-55, https://www.doingbusiness.org/content/dam/doingBusiness/media/Profiles/Regional/DB2020/APEC.pdf.

Before the pandemic, ODR was applied on a limited basis in APEC economies. The Civil Resolution Tribunal in British Colombia already used ODR for small claims up to CAD 5000 for vehicle accidents as well as condominiums, societies, and cooperative association disputes. In the United States, several courts implemented ODR platforms to negotiate and mediate small claims, payment and landlord-tenant issues, among others. By 2021, at least 89 courts had implemented online dispute resolution processes.[164] In the People's Republic of China, ODR has been implemented in several courts, including in Hangzhou, Guangzhou, and Beijing Internet Courts.[165] In 2020, while China's courts accepted 5% fewer civil lawsuits, an online mediation platform handled more than 5 million disputes.[166] Singapore used ODR for its Community Justice & Tribunals System for selected lower-value contractual, tort, and statutory claims.[167]

The Pandemic caused a seismic shift in how justice is delivered in APEC courts. Today, elements of ODR have been implemented in almost every APEC economy. APEC courts have gone from being technophobes to technology being the new normal. This new paradigm allows greater use of courts, mainly for domestic commercial disputes, including insolvency-related matters. Almost every APEC economy now uses online hearings. For example:

- Hong Kong, China courts conducted 1,000+ remote hearings by late September 2021;[168]
- The Philippines courts conducted 504,609 videoconferencing hearings (civil and criminal) as of September 7, 2021;[169]
- Russian Supreme Court launched an online platform for online proceedings, from filings to video hearings.[170] Twice as many documents were filed with federal courts in 2020 as compared to 2019;[171]
- Brunei Darussalam High Court conducted its first virtual hearing on Zoom with witnesses in Malaysia and counsel in Brunei Darussalam appearing before a Brunei Darussalam High Court judge sitting in Singapore in Oct 2020.[172] By June 14, 2021, criminal

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[164] ABA Journal, 'Online dispute resolution promises to increase access to justice, but challenges remain,' available at https://www.abajournal.com/magazine/article/online-dispute-resolution-promises-to-increase-access-to-justice-but-challenges-remain .

[165] See National Center for State Courts, Courts Using ODR, https://odr.info/courts-using-odr/ for a listing of courts that have implemented ODR.

[166] Xinhua, 'China's online mediation platform faces surging applications', available at http://www.xinhuanet.com/english/2021-02/21/c_139756756.htm.

[167] See Singapore response to OHCHR QUESTIONNAIRE to Singapore: The impact of the COVID-19 pandemic on the administration of justice and the free and independent exercise of the legal profession at 3, https://www.ohchr.org/Documents/Issues/IJudiciary/covid19report/States/Singapore.pdf (last accessed May 1, 2022.

[168] Chief Justice Andrew Cheung Kui-nung, speaking at the 4th UNCITRAL Asia Pacific Judicial Summit: Sustainably Adapting to a New Normal -- Judicial Conference during Hong Kong Legal Week 2021

[169] Supreme Court adapts to Covid-19, The Manila Times, Oct. 11, 2021, available at https://www.manilatimes.net/2021/10/11/tmt-anniversary/supreme-court-adapts-to-covid-19/1817618.

[170] Russian Response to Questionnaire.

[171] UNODC, 'The Russian Judiciary in the Pandemic', available at https://www.unodc.org/dohadeclaration/en/news/2021/06/the-russian-judiciary-in-the-pandemic.html .

[172] OHCHR QUESTIONNAIRE The Impact of the COVID-19 pandemic on the administration of justice and the free and independent exercise of the legal profession, Response from the Judiciary of Brunei Darussalam, at 5; Brunei High Court to Hold Sitting in Singapore, Borneo Bulletin, 16 Oct. 2020, available at https://borneobulletin.com.bn/brunei-high-court-justice-to-hold-sitting-in-singapore/.

appeals before the Supreme Court conducted via Zoom were considered "the new normal";[173]

- Chinese Taipei approved virtual court hearings in civil and criminal cases to prevent a backlog of trials.[174]Under the regulations, virtual hearings would only be allowed in extraordinary circumstances like the pandemic;[175]
- The Republic of Korea revised Procedure Act (Aug. 2021) allows remote virtual trials in civil and criminal proceedings;[176]
- Australia enacted a law to ensure the validity of remote hearings in federal courts and ensure that all Australians can access the federal courts during the pandemic and beyond;[177]
- U.S. courts in every state adopted online hearings and electronic filings, case management, and digital notarization. The Texas court system had never held a civil hearing via video before the pandemic yet conducted 1.1 million remote proceedings across its civil and criminal divisions between March 2020 and February 2021.[178]

Insolvency and bankruptcy courts across APEC frequently used virtual hearings during the pandemic. For example,

- the Seoul Bankruptcy Court organized virtual trials and creditors' meetings;[179]
- the People's Republic of China's Bankruptcy Court routinely used remote network court hearings, and its Supreme People's Court provided a platform that facilitates online creditor meetings; [180]
- In Indonesia, the Semarang Commercial Court and insolvency representatives used online meeting platforms for creditor meetings and online court hearings. Commentators called this the "new normal" in restructuring and bankruptcy practice;[181]
- In the United States, the reorganization of the world's largest provider of remote and offshore satellite communications technology – Australian-based Speedcast International

[173] Supreme Court of Brunei Darussalam, 'Press Release 14 June 2021', available at http://judiciary.gov.bn/Lists/News/NewDisplayForm.aspx?ID=131&Source=http%3A%2F%2Fjudiciary%2Egov%2Ebn%2FLists%2FNews%2FAllItems%2Easpx%23InplviewHashc3f3e468%2Df351%2D45f5%2D8a4f%2Ddc2d40063a7c%3DPaged%253DTRUE%2Dp%5FID%253D136%2DPageFirstRow%253D31&ContentTypeId=0x01004EE1520DB09AC547981D92B83F9B1E48.

[174] Chinese Taipei response to the questionnaire.

[175] Taipei Times, 'COVID-19: Judicial Yuan to allow virtual court hearings ', available at https://www.taipeitimes.com/News/taiwan/archives/2021/06/06/2003758684.

[176] Republic of Korea response to the questionnaire.

[177] Parliament of Australia, 'Bills of the current Parliament', available at https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fs1304%22 .

[178] Eric Scigliano, Zoom Court Is Changing How Justice Is Served, The Atlantic, available at https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392/.

[179] Republic of Korea response to the questionnaire.

[180] Zhang Yang and Stacy Steele, COVID-19 the Current State of Insolvency in China, The University of Melbourne, June 18, 2020, available at https://law.unimelb.edu.au/__data/assets/pdf_file/0006/3409854/Zhang-Yang_Insolvency-China.pdf.

[181] Nurmansyah, Emir and Sidharta, Kevin, August 2020, Restructuring Review – Edition 13: Indonesia, available at https://thelawreviews.co.uk/title/the-restructuring-review/indonesia.

Limited – was carried out entirely online. All creditor meetings, hearings, and trials over the 12 months of the reorganization took place by videoconference.[182]

Example of Digital Empowerment – Papua New Guinea (PNG)[183]

Before the pandemic, the average cost of resolving a simple contract dispute in PNG courts generally exceeded the value of the claim. Additionally, PNG had the lowest internet connectivity rate in APEC. In 2020, with assistance from New Zealand and Australia, PNG courts began processing civil cases through an electronic case management system and the use of remote courts with telephone and video conferencing. PNG installed 30 satellite dishes at rural courts so individuals living in remote areas can access the economy-wide judicial system. Internet connectivity increased by more than 25 percent between 2020 and 2021. By the end of 2022, all defendants in criminal cases are expected to be tracked electronically.[184] Contracts and security interests can now be enforced in PNG courts without the prohibitive cost of travel across the island economy and despite pandemic-related travel restrictions. PNG Chief Justice Sir Gibbs Salika observed: "We want to ensure that justice is accessible to our people. We want connectivity to our people.… Connectivity is going to bring PNG to the rest of the world."

e. Unprecedented Adoption of Communications Technology and ODR by Dispute Resolution Centers

In-person international arbitration has been the preferred method of resolving disputes in cross-border trade in part because of the ability to enforce judgments cross-border under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[185] All APEC

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[182] The New Normal: Impact of the Global Pandemic on U.S. Restructurings - Weil Restructuring, available at https://restructuring.weil.com/what-were-watching/the-new-normal-impact-of-the-global-pandemic-on-u-s-restructurings/.

[183] Rule of Law webinar 3: The New Age of Online Courts: Has the COVID-19 pandemic ushered an era to deliver justice through virtual means? | The Commonwealth, available at https://thecommonwealth.org/rule-law-webinar-3-new-age-online-courts-has-covid-19-pandemic-ushered-era-develop-justice-through;
New Zealand Law Society | Satellite connectivity boosting justice system in Papua New Guinea, Oct. 28, 2020, available at https://www.lawsociety.org.nz/news/legal-news/satellite-connectivity-in-papua-new-guinea/;
Broadband Internet Satellite is Key to Achieving Papua New Guinea's Vision for Effective e-Government Services | Asian Development Bank, available at https://www.adb.org/news/videos/broadband-internet-satellite-key-achieving-papua-new-guineas-vision-effective-e-government-services.

[184] See New Zealand Trade and Enterprise, 'Improving access to justice in Papua New Guinea', available at https://www.nzte.govt.nz/blog/improving-access-to-justice-in-papua-new-guinea .

[185] See UNCITRAL, Convention on Recognition and Enforcement of Foreign Arbitral Awards, available at https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/new-york-convention-e.pdf.

economies have ratified this Convention. However, surveys have also shown cost and lack of speed as the biggest drawbacks to in-person international arbitration.[186] Travel restrictions and health protocols caused arbitral tribunals and parties to rethink the need for in-person arbitration. ADR Tribunals across APEC issued protocols to assist parties with virtual hearings in arbitration proceedings in 2020, including:

- HKIAC Guidelines on Virtual Hearings (Hong Kong, China)[187]
- SIAC Guides – Taking Your Arbitration Remote (Singapore)[188]
- CIETAC Guidelines on Proceeding with Arbitration Actively and Properly During the COVID-19 Pandemic (China)[189]
- KCAB Seoul Protocol on Video Conference in International Arbitration (Korea)[190]
- ACICA Online Arbitration Note and Draft Procedural Order for Use of Online Dispute Resolution (Australia)[191]
- JIDRC Report on Virtual Hearings (Japan)[192]
- AAA-ICDR Virtual Hearing Guide for Arbitrators and Parties (U.S.)[193]

As a result, 2020 has been dubbed "The Year of the Virtual Hearings".[194] However, most providers are focused on large business disputes and not those involving MSMEs. Some providers, such as AAA-ICDR, offer bankruptcy-related services such as mediation for online corporate restructuring.[195] It remains to be seen whether virtual hearings will become the new

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[186] See White & Case, 2021 International Arbitration Survey: Adapting arbitration to a changing world, available at https://www.whitecase.com/publications/insight/2021-international-arbitration-survey.

[187] See Hong Kong International Arbitration Centre, HKIAC Guidelines for Virtual Hearings, available at https://www.hkiac.org/sites/default/files/ck_filebrowser/HKIAC%20Guidelines%20for%20Virtual%20Hearings_0.pdf (last accessed May 1, 2022)

[188] See Singapore International Arbitration Centre, Release of the SIAC Guides – Taking Your Arbitration Remote, available at Augusts 31, 2020, available at https://www.siac.org.sg/69-siac-news/672-release-of-the-siac-guides-taking-your-arbitration-remote.

[189] Wang Chengjie and Wang Bihan, PART TWO: Highlights of CIETAC Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic [Brought to you by CIETAC], August 19, 2020, Asian Legal Business, available at https://www.legalbusinessonline.com/part-two-highlights-cietac-guidelines-proceeding-arbitration-actively-and-properly-during-covid-19.

[190] See Seoul Protocol on Video Conferencing in International Arbitration, available at https://irp-cdn.multiscreensite.com/ffb7ea18/files/uploaded/Seoul%20Protocol%20on%20Video%20Conference%20in%20International%20Arbitration.pdf.

[191] See Australian Centre for International Commercial Arbitration, ACICA Practice & Procedures toolkit, available at https://acica.org.au/acica-practice-procedures-toolkit/.

[192] See Japan International Dispute Resolution Center, available at http://idrc.jp/en/.

[193] See American Arbitration Association, AAA-ICDR Virtual Hearing Guide for Arbitrators and Parties Utilizing Zoom, available at https://go.adr.org/rs/294-SFS-516/images/AAA269_AAA%20Virtual%20Hearing%20Guide%20for%20Arbitrators%20and%20Parties%20Utilizing%20Zoom.pdf.

[194] Maria Fanou and Kiran Nasir Gore, 2020 in Review: The Year of Virtual Hearings, Kluwer Arbitration Blog, February 2, 2021, available at http://arbitrationblog.kluwerarbitration.com/2021/02/02/2020-in-review-the-year-of-virtual-hearings/.

[195] See AAA-ICDR Bankruptcy ADR During COVID-19, available at https://go.adr.org/covid19-bankruptcy-adr.html.

normal in international arbitration after the Covid-19 pandemic.[196] Studies show that laws in APEC economies permit hearings to be held virtually provided that the parties have not agreed otherwise.[197]

To date, ODR has mostly been used for online arbitration and crowd-sourced and AI-powered resolution systems. ODR could leverage advanced technology such as blockchain and smart contracts to enforce the outcome of the dispute resolution process automatically.[198]

V. RECENT SECURED TRANSACTIONS-RELATED REFORMS IN APEC

In the last two years, several APEC economies (e.g., Peru and the Philippines) have undertaken reforms of their secured transactions frameworks. These reforms directly concern the substantive rules governing secured transactions, the implementation of registries, and the enactment of laws that affect critical credit products, such as factoring. Others (e.g., Malaysia and Viet Nam) are undertaking initiatives to enact new laws or amend the existing framework.[199] Japan and the Republic of Korea have made great strides toward reforming their secured transactions systems, spearheaded by the relevant ministries. The Korean Ministry of Justice organized the 2021 International Conference on Ease of Doing Business on 3 December 2021.

In 2018, Peru enacted legislation to create an online registry (*Sistema Informativo de Garantías Mobiliarias*) but has yet to adopt complementary regulations to implement the law.[200] The Peruvian legislation is based on the Organization of American States Model Inter-American Law of Secured Transactions.[201] When in force, the law would create a public and remotely accessible registrations database.[202] *Superintendencia Nacional de los Registros Públicos* (National Superintendence of Public Registries) would maintain the registry.

[196] See Shaun Lee and Low Zhe Ning, SIAC Congress Recap: This House believes that Virtual Hearings are just as effective as In-Person Hearings, Kluwer Arbitration Blog, September 4, 2020, available at http://arbitrationblog.kluwerarbitration.com/2020/09/04/siac-congress-recap-this-house-believes-that-virtual-hearings-are-just-as-effective-as-in-person-hearings/.

[197] See International Council for Commercial Arbitration, Does a Right to a Physical Hearing Exist in International Arbitration, available at https://www.arbitration-icca.org/right-to-a-physical-hearing-international-arbitration.

[198] Amy J. Schmitz and Colin Rule, Online Dispute Resolution for Smart Contracts, 2019 *Journal of Dispute Resolution* 103, 114-15 (2019).

[199] For the Malaysian initiative, see https://www.ssm.com.my/Pages/Legal_Framework/Document/Consultation%20Document%20MPSI%20Bill.pdf.

[200] Contreas & Fernández, The Secured Transaction Regime and the Information System of Secured Transaction, October 9, 2020, available at https://www-cyfconsultores-com-pe.translate.goog/doctrina/blog/2020/10/09/el-regimen-de-garantia-mobiliaria-y-el-sistema-informativo-de-garantias-mobiliarias/?_x_tr_sch=http&_x_tr_sl=es&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=nui,sc.

[201] See Secured Transaction Reform Project, Peru, available at https://securedtransactionslawreformproject.org/reform-in-other-jurisdictions/south-america/peru/; Organization of American States, Model Inter-American Law on Secured Transactions, available at http://www.oas.org/en/sla/dil/private_international_law_Secured_Transactions.asp.

[202] Profeso, Regulations Governing Collateral Security, Legislative Decree 1400, available at https://www.fundacionmicrofinanzasbbva.org/revistaprogreso/en/12856/.

The Philippines passed the Personal Property Security Act in 2018.[203] This Act implements the UNCITRAL Model Law on Secured Transactions. The administering body that has been charged with managing the registry is the Land Registration Authority (LRA).[204] In 2021, the LRA issued Circular No. 11-2021 that provides for the "Implementing Guidelines on the Use of the Philippines Personal Property Security Registry (PPSR) for the Creation of User Accounts to Access the PPSR."[205] The Circular governs various aspects of the registry operations.

The People's Republic of China has successfully made significant reforms in its secured transaction framework and with respect to factoring. In December of 2020, the State Council issued the Decision on the Implementation of Uniform Registration of Security Interests in Personal Property and Rights that went into effect in January 2021.[206] This marks the implementation of a uniform system for registering security interests in personal property and rights administered by the Credit Reference Center of the People's Bank of China.

Several reforms focused on the financing of receivables under factoring activities. The new Civil Code of China added a chapter on factoring contracts.[207] In 2021, Viet Nam reformed its secured transactions framework through Decree 21, providing explicit recognition of the transfer of claims critical for developing the factoring market.[208] Chile has also introduced a new law related to factoring. It is colloquially referred to as the "thirty-day payment law."[209] It provides that invoices issued by any type of entity must be paid within a maximum term of 30 days. This is a default period, and the parties may agree on a longer term.

VI. RECOVERY STRATEGY

As APEC economies roll back measures introduced to soften the economic impact of the COVID-19 pandemic, they need a sound and effective strategy to bolster future economic growth. Lending was not affected by tighter lending standards thanks to the deployment of temporary measures to reduce credit and other risks. As these interim measures are rolled back, the number of NPLs is expected to rise, and the accumulated risks to resurface. The approach and mechanisms for swift NPL resolution must continue to balance the need to reinforce stability within the banking sector with the need for borrowers to resume full operation once the crisis abates. Financial policies should steer lenders toward lending that facilitates restructuring and strengthens viable MSMEs while avoiding giving support to businesses that are no longer

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[203] Department of Finance, Personal Property Security Act, Republic of the Philippines, available at https://www.dof.gov.ph/advocacies/personal-property-security-act/.
[204] Therese Marie P. Amor, A step closer to a Personal Property and Security Registry, Business World, Amicus Curiae, available at https://www.bworldonline.com/a-step-closer-to-a-personal-property-and-security-registry/.
[205] Land Registration Authority, LRA Circular No. 11-2021, Republic of the Philippines, March 15, 2021, available at https://www.lra.gov.ph/services/lra-issuances/2021.html.
[206] Reed Smith, China establishes a [domestic], uniform system for registration of security interests in personal property, February 1, 2021, available at https://www.reedsmith.com/en/perspectives/2021/02/china-establishes-a-national-uniform-system.
[207] Commercial Factoring Expertise Committee of CATIS, A Historical Breakthrough of China's Factoring Legislation, May 28, 2020, available at http://www.cfec.org.cn/view.php?aid=2134&from=singlemessage&isappinstalled=0.
[208] TOQQA Global, supra note 144.
[209] Carey, Law No. 21,131 sets forth a thirty-day term for payment of invoices, May 9, 2019, available at https://www.carey.cl/en/law-no-21131-sets-forth-a-thirty-day-term-for-payment-of-invoices/.

economically viable. Without sufficient support, MSMEs that have the potential to become profitable once again could otherwise become engulfed in a wave of insolvencies. If they cannot distinguish between viable and non-viable MSMEs, APEC economies risk sustaining "zombie companies." Making this distinction and managing the transition to the post-pandemic period will depend on the capacity of an economy's insolvency system and the quality of its legal system.[210]

Economies should consider the following measures to maintain a reliable supply of financing for MSMEs and reinforce insolvency and private dispute resolution systems:

1. Implement international standards on secured transactions adopted by UNCITRAL and UNIDROIT to increase access to credit at affordable rates.
2. Modernize related commercial law frameworks, such as warehouse receipts and electronic transferable records, along with existing and emerging standards provided by UNCITRAL and UNIDROIT to enhance certainty in credit markets.
3. Implement UNCITRAL and World Bank international insolvency standards designed to facilitate the reorganization of MSMEs and swift liquidation of non-viable businesses.
4. Implement international standards and mechanisms to expedite dispute resolution and the enforcement of claims through ODR systems.
5. Ensure that implemented international standards are appropriately coordinated with one another and related, particularly regulatory, frameworks to facilitate market-based financing.
6. Harness innovation, new technology, and digitalization to maximize the benefit of the newly implemented international standards.
7. Share information with other economies and within APEC on best practices concerning the implementation of standards, deployment of credit products, such as factoring, etc.

Secured transactions reforms implementing international standards also open the door to greater participation of MSMEs, including women-led businesses, in the global supply chains by making it easier for them to connect with lenders, importers, and exporters.

APEC economies should encourage the use of technology to resolve disputes and enforce claims, assess what works and doesn't work, and share best practices with other economies. For example, the use of ODR for enforcement in arbitration centers and APEC courts has the potential to become the new normal. A significant percentage of MSMEs may need restructuring, and MSME-specific restructuring approaches may be required. Some APEC economies (including Japan, the Republic of Korea, Malaysia, and Thailand) already have implemented out-of-court insolvency systems for MSMEs. ODR, digital case management, and electronic communications platforms are expected to play a valuable role. [211]

[210] IMF Working Paper, supra note 1.
[211] Id.

Several economies have already laid out plans to transition from pandemic measures. For instance, Malaysia's strategy for managing NPLs includes three fundamental pillars.[212] First, the risks and spillovers from the initial support measures must be addressed. Second, frequent bank engagement will help provide timely and steady support for economic recovery. Lastly, effective institutional arrangements for debt restructuring must be implemented to manage an expected influx of distressed borrowers. These arrangements include out-of-court platforms, namely the Corporate Debt Restructuring Committee (CDRC) for large corporations and the Credit Counselling and Debt Management Agency (AKPK) for individuals and SMEs.[213]

The APEC Economic Committee should consider assisting economies with their recovery strategy as part of its work under the Enhanced Agenda for Structural Reform (EASSR) through the SELI and EoDB FoTCs, by:

1. *Continuing to promote international standards and support capacity building for secured transactions reform through workshops, policy dialogues, and direct assistance to economies*. The SELI FoTC Workplan on Structural Reform under EAASR, endorsed by the EC in October 2021, recognizes that: "The use of international instruments helps APEC economies improve their legal infrastructure to provide access to credit and secured transactions, boosting business recovery and business restructuring for a resilient industry." Additionally, as recognized by APEC leaders and Ministers (APEC Structural Reform Ministerial Meeting Statement (2015), the APEC Ministerial Statement (2014), and the APEC Leaders' Statement (2014)), the benefits of systematic adoption of private law international instruments include greater legal certainty in cross-border transactions, harmonization of finance and dispute resolution systems, closer economic and legal integration among cooperating economies, and the facilitation of export-driven job growth.[214] These texts provide a complete picture of the legal reforms necessary to promote business recovery in each economy and regional and international trade.

2. *Continuing to collaborate closely with international partners such as UNIDROIT, UNCITRAL, and the World Bank*. As noted in the SELI Workplan on Structural Reform under EAASR, these organizations regularly attend APEC meetings and routinely assist with workshops and policy dialogues. They also help with EC technical cooperation and capacity building among APEC member economies. These organizations formed a Joint Network to promote secured transaction reform in December 2021.[215]

3. *Continuing to engage in cross-fora collaboration with other APEC entities*. The SELI Workplan on Structural Reform under EAASR states that "consistent with the EAASR call for greater cross-fora collaboration, a crucial element of SELI's role on structural reform is its work with other fora." For example, the Small and Medium Enterprises Working Group (SMEWG) will focus on five priority areas for its Strategic Plan 2021-2024, including access to finance and alternative financing solutions. The Finance Ministers' Financial Infrastructure Development Network (FIDN) promotes an enabling environment

[212] Fraziali Ismail, Non-performing loans in East Asia and the Pacific – practices and lessons in times of COVID-19, BIS Central banker's speeches, 27 October 2021, available at https://www.bis.org/review/r211112b.htm.
[213] The Credit Counselling and Debt Management Agency (AKPK) absorbed the Small Debt Resolution Scheme (SDRS) for SMEs. Therefore the AKPK serves both individuals and SMEs.
[214] 2015 APEC Structural Reform Ministerial Statement (tools for structural reform), 2014 Leaders' Declaration, para. 32; 2014 APEC Ministerial Statement, para. 48.
[215] See UNCITRAL Joint Network for Coordinating and Supporting Secured Transactions Reforms, available at https://uncitral.un.org/en/content/joint-network-coordinating-and-supporting-secured-transactions-reforms.

for MSMEs to improve access to finance, including through the implementation of the UNCITRAL Model Law on Secured Transactions.

4. *Continuing to engage with the private sector, particularly the APEC Business Advisory Council (ABAC).* EAASR and the SELI Workplan on Structural Workplan under EAASR recognize the need to increase engagement with the private sector. For example, ABAC has encouraged APEC economies to build resilience against indirect impacts of COVID-19 through policies that: (i) keep markets for goods, services, and investment open; (ii) resist any approach toward de-globalization and encourage diversification; (iii) support MSMEs in addressing operation challenges; (iv) leverage digital connectivity; and (v) work collaboratively to plan for re-opening of borders.[216]

5. *Considering expanding the work of SELI on ODR under the SELI Workplan on Structural Reform under EAASR to include ODR for out-of-court restructuring* consistent with the recommendations of the World Bank to help prevent insolvencies of MSMEs. The use of ODR platforms, which include online negotiation and mediation, is ideally situated to assist distressed MSMEs in restructuring their debt.[217]

VII. Glossary of Abbreviations

AAA-ICDR: American Arbitration Association International Centre for Dispute Resolution
ACICA: Australian Centre for International Commercial Arbitration
ADB: Asian Development Bank
ADR: Alternative Dispute Resolution
APEC: Asia-Pacific Economic Cooperation
APEC EC: APEC Economic Committee
APFIF: Asia-Pacific Financial Inclusion Forum
ABAC: APEC Business Advisory Council
AKPK: Agensi Kaunseling dan Pengurusan Kredit (Credit Counselling and Debt Management Agency)
ASEAN: Association of Southeast Asian Nations
BIMP-EAGA: Brunei Darussalam–Indonesia–Malaysia–Philippines East ASEAN Growth Area
CAM Santiago: Centro de Arbitraje y Mediación (Arbitration and Mediation Center)

CDRC: Corporate Debt Restructuring Committee
CGS: Credit Guarantee Scheme
CIETAC: China International Economic and Trade Arbitration Commission
DSI: Digital Standards Initiative
EASSR: Enhanced Agenda for Structural Reform
eBRAM: Electronic Business Related Arbitration and Mediation
ECA: Export Credit Agencies
EoDB: Ease of Doing Business
FAE-MYPE: Fondo de Apoyo Empresarial a la MYPE (Business Support Fund for MSE)
GZAC: Guangzhou Arbitration Commission

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[216] APEC, ABAC COVID-19 Report: Laying the Groundwork for Economic Recovery and Resilience, available at https://www2.abaconline.org/page-content/22621101/business-leaders-submit-recommendations-to-apec-ministers-responsible-for-trade-to-address-the-covid-19-pandemic.
[217] See notes 161-62 supra and accompanying text.

HKIAC: Hong Kong International Arbitration Centre
ICC: International Chamber of Commerce
IDR: Indonesian Rupiah
IMF: International Monetary Fund
IRB: Internal ratings-based
JIDRC: Japan International Dispute Resolution Center
KCAB: Korean Commercial Arbitration Board
LRA: Land Registration Authority
MSME: Micro, small, and medium enterprises
MS/MSE: Micro and Small Enterprises
MYPE: Micro y Pequeña Empresa
NPL: Non-performing loan
ODR: Online Dispute Resolution
OECD: Organisation for Economic Co-operation and Development
PAE-MYPE: Programas de Apoyo Empresarial (Business Support Programs) MYPE
PENJANA: Pelan Jana Semula Ekonomi Negara (National Economic Regeneration Plan)
PPSR: Philippines Personal Property Security Registry
PNG: Papua New Guinea
SELI: Strengthening Economic and Legal Infrastructure
SIAC: Singapore International Arbitration Centre
SME: Small and Medium Enterprises
SMEWG: Small and Medium Enterprises Working Group
UNCITRAL: United Nations Commission on International Trade Law
UNIDROIT: International Institute for the Unification of Private Law
WHO: World Health Organization