



Insolvency and Creditor/Debtor Regimes Report (ICR ROSC) **Romania**

Insolvency and Creditor/Debtor Regimes Initiative
Legal Vice Presidency -The World Bank

Overview

- Introduction to the Insolvency and Creditor/Debtor Regime Report (ICR ROSC), and its process;
- Explanation of the findings and recommendations of the report.



The ICR ROSC

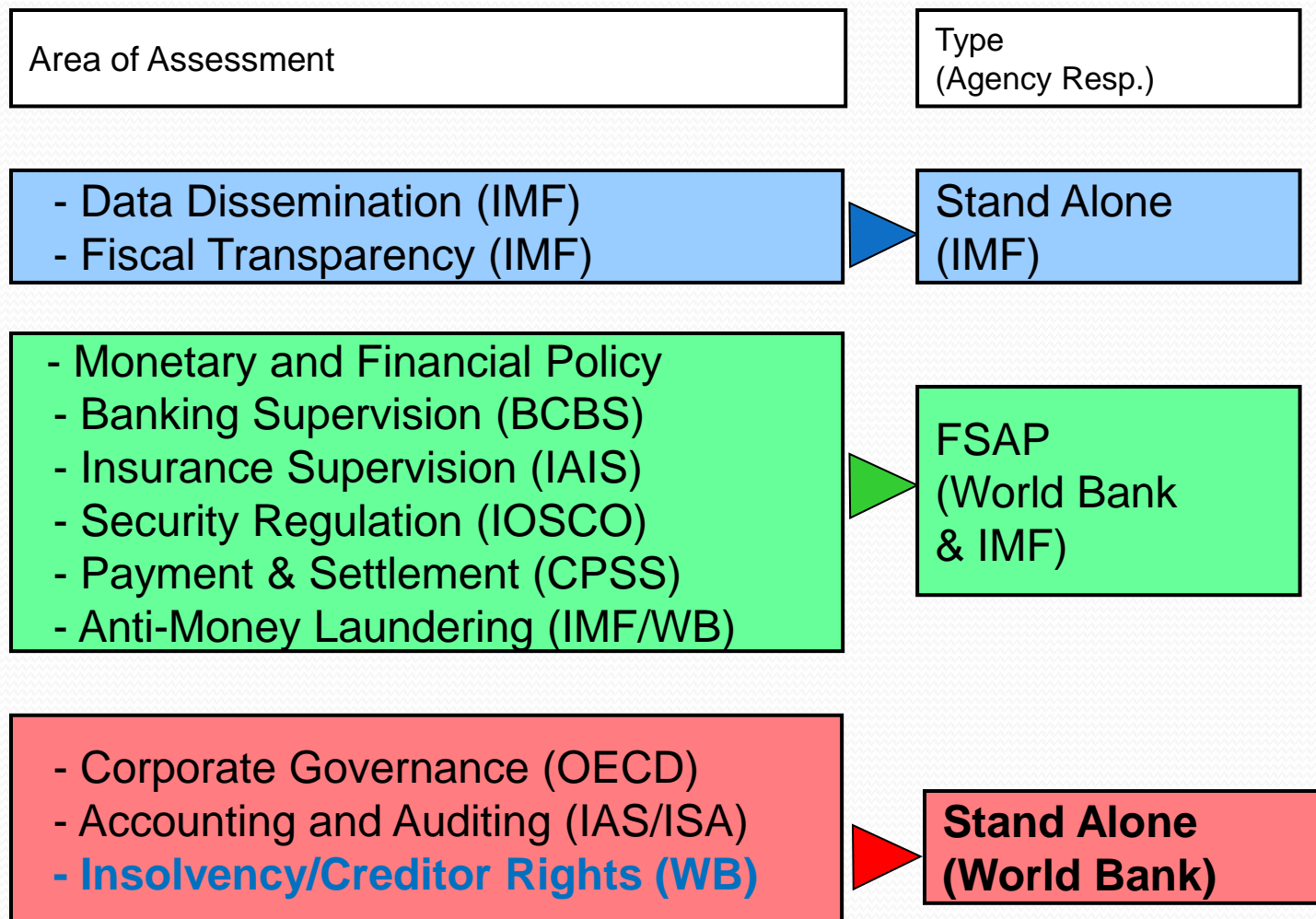
- ❑ ICR = Insolvency and Creditor/Debtor Regimes
- ❑ ROSC= Reports on the Observance of Standards and Codes

Assessment of a country regime

based on **The World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes** [incorporating the recommendations of the UNCITRAL Legislative Guide on Insolvency Law]

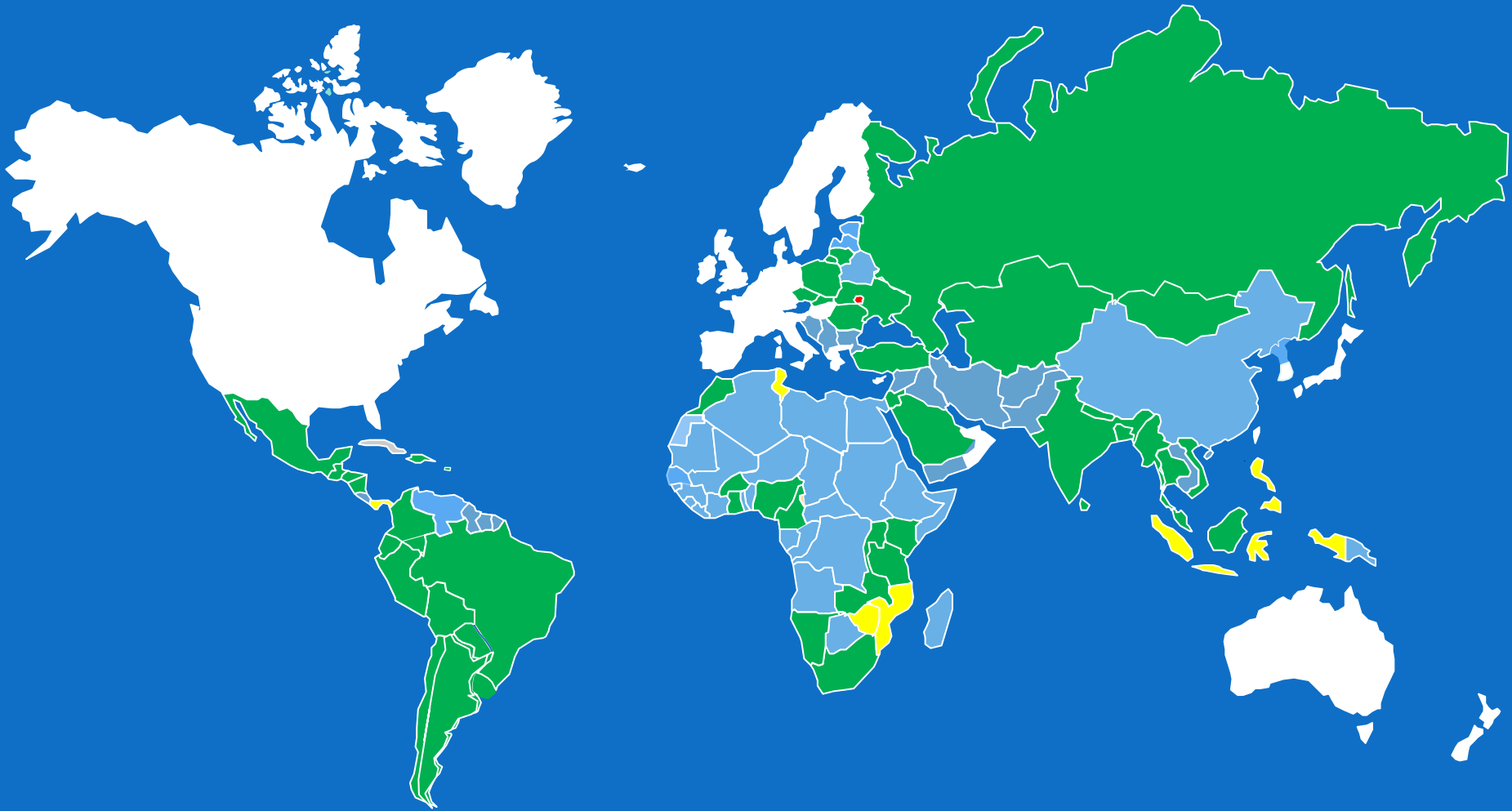


FINANCIAL SECTOR ASSESSMENT PROGRAM and
REPORTS on OBSERVANCE of STANDARDS and CODES (ROSCs)
World Bank- IMF Country Work



FSAP=Financial Sector Assessment Program

The ICR ROSC program



ROSC Assessments

Region	Completed	Final Stages	Ongoing	Projected
AFR / MNA	Cameroon, Kenya, Mauritius, Morocco, Nigeria, Uganda, Zambia, Jordan, South Africa, Burkina Faso, Saudi Arabia, Tanzania, Ghana, Rwanda, South Africa (update), Kenya (update), Kuwait, Namibia			Mozambique, Tunisia, Zimbabwe
EAP / SA	India, India (update), Nepal, Philippines, Sri Lanka, Vietnam, Thailand, Mongolia, Bangladesh, Malaysia, Vietnam (update)			Philippines (update), Indonesia
ECA	Czech Rep, Kyrgyz Rep, Lithuania, Poland, Romania, Russia, Slovak Rep, Slovenia, Turkey, Ukraine, Lithuania (update), Kyrgyz Rep (update), Kazakhstan, Russia (update), Kosovo, Romania (update)		Moldova	Armenia
LAC	Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Uruguay, Dominican Republic, Mexico, Peru, Paraguay, Brazil (update), Colombia (update)			Panama
Total	64		1	6

ICR ROSC Process & Methodology

1. Process and Steps
2. Methodology and Scope


Process & Steps – Romania ICR ROSC

- Original Team: Dr Riz Mokal, Adolfo Rouillon and Dr Ignacio Tirado (working together with Mr. Ioan Chiper of the law firm Stoica & Asociatii, Bucharest).
- Preparatory Work
- Due diligence mission – stakeholder interviews (March-April 2012)
- Review and analysis of relevant information
- Preparation of Draft ROSC (Summary & Annexes)
- Discussions of initial drafts (October 2012- September 2013)
- Revision by Peer Reviewers: Tiberiu Csaki (Romania), Yan Liu (IMF)
- Delivery of final draft (by new team: Dr. Irit Mevorach, Judge Leif Clark) – October 2013; further discussions and receipt of comments from government and other stakeholders; final delivery - April 2014, incorporating additional comments and feedback from stakeholders.

ICR ROSC Methodology and Scope

Diagnostic analysis and Report

- The methodology
- Summary Report - Findings & conclusions
- Annex 1: Principle-by-Principle assessment
- The Scope of the report:



Business
Insolvency and
creditor/debtor
regime

ICR Assessment - Scope

Credit Access / Protection

A1-A5

- ♦ Compatibility of Systems
- ♦ Collateral Systems
 - ➔ immovable / movable
- ♦ Enforcement Systems
- ♦ Public Auction & Collections

Credit Risk Management

B1-B5

- ♦ Credit Information systems
- ♦ Directors and Officers Liability
- ♦ Workout Framework
- ♦ Risk Management Practices

Insolvency

C1-C17

- ♦ Liquidation
- ♦ Reorganization
- ♦ Cross-border insolvency
- ♦ Insolvency of Enterprise Groups

D1-D8 Implementation

- ➔ Institutional Systems
- ➔ Regulatory Systems

Romania ICR ROSC –Findings

- **A:** Access to credit and protection of creditor rights
- **B:** Risk management and restructuring
- **C:** Business insolvency
- **D:** The institutional framework



A: Access to Credit and the Protection of Creditor Rights

A comprehensive range of credit instruments; but room for improvement in terms of creditor protection-

- The land registry (not fully modernized)
- The enforcement process (problems in implementation of the procedures; the auction process)



A: Access to Credit and the Protection of Creditor Rights

(cont.)

Problems with the inter-relation between enforcement- receivership- insolvency; the need to balance interests

- Strategic manipulation of the insolvency regime and effect on the enforcement process
- Role of receivers and consequences of opening insolvency



B: Risk Management and Restructuring

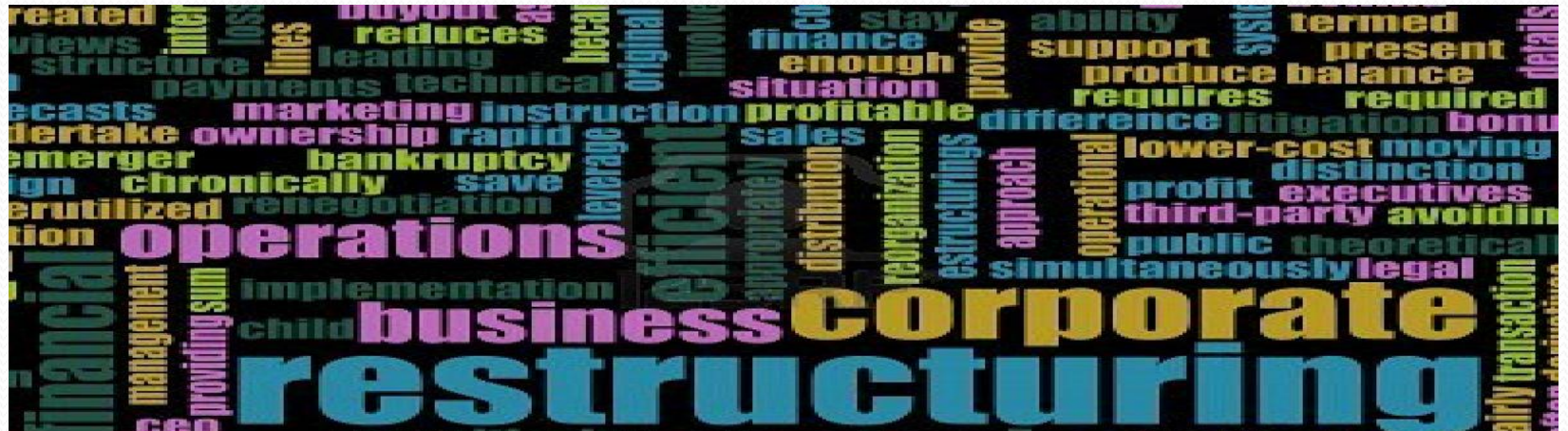
- Developed credit information systems, but there is room for improvement
- Good corporate behavior (i.e. **debtors** addressing their distress) may be encouraged further
- Lenders'** risk management practices can be more robust



B: Risk Management and Restructuring (cont.)

Thus far, minimal use of:

- Informal out-of-court restructurings (workouts)
- Schemes (the preventive concordat)
- * **Important improvements in the 2014 law** (adequate percentage for approval; less cumbersome process; interest accrual may not be suspended; facilitation of participation by tax authorities; deadlines)



C: Business Insolvency Regime

- **2006 insolvency law (assessed in the ROSC)**; 2013 draft law (commented upon in the ROSC)
- **2014 insolvency law**, includes:
 - Pre-insolvency regime (Title I)
 - Insolvency regime (Title II)
 - Cross-border insolvency regime (Title III)
 - A regime for enterprise groups (Title III, Chapter II)
 - A regime for credit institutions (Title III, Chapter III)
 - A regime for insurance undertakings (Title III, Chapter IV)

C: Business Insolvency Regime

(cont.)

Key recommendations of the ROSC:

- **Due process:** problems with notifications; timelines; lack of cooperation by debtors
- **Eligibility & Accessibility:** public entities should be included; creditors should have easier access to the proceeding; debtor abuse should be controlled
- **Provisional measures:** there should be an interim moratorium on enforcement
- **Governance:** the role of the special administrator should be reconsidered; creditors' participation required improvement
- **Administration:** provisions of new finance should be facilitated; avoidance transactions and contractual obligations provisions required modernization

C: Business Insolvency Regime

(cont.)

Key recommendations of the ROSC... cont.:

- **Claims and claim resolution:** issues with priorities; cumbersome resolution process; lengthy observation period
- **Reorganization:** abuse; the problems of the pre-insolvency restructuring regime
- **International considerations:** challenges in implementation; no rules on international groups' insolvency
- **Enterprise groups (domestic):** the consequences of insolvency in groups should be addressed

C: Business Insolvency Regime

(cont.)

Key improvements in the new law:

- **Due process:** enhanced the notification regime; more realistic timelines; stricter duties to cooperate (provision of information)
- **Eligibility & Accessibility:** included public entities; creditor access simplified; addressed debtor abuse (jurisdiction cherry picking)
- **Provisional measures:** introduced interim measures
- **Governance:** [retained the special administrator]; strengthened the creditors' committee system
- **Administration:** new provisions regarding new finance; improved the avoidance and the contractual obligations provisions

C: Business Insolvency Regime

(cont.)

Key improvements in the new law... cont.:

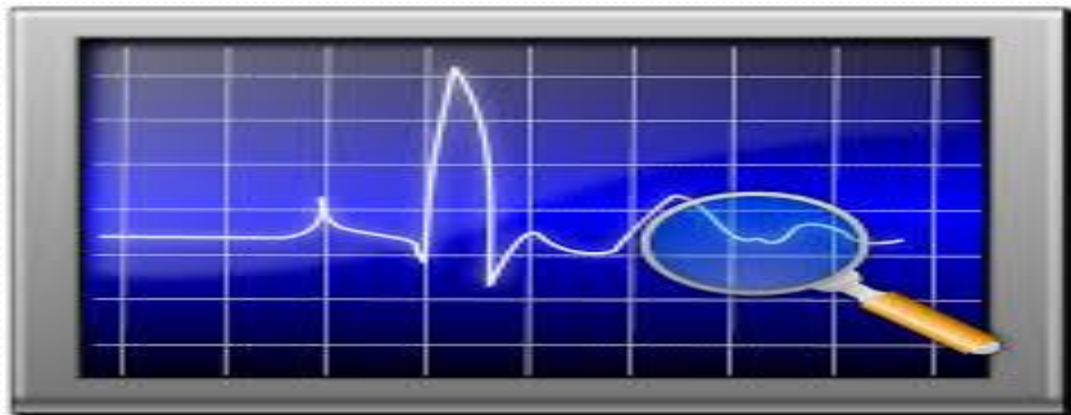
- **Claims and claim resolution:** clarified priority of new finance; simplified claim resolution process; limited the observation period
- **Reorganization:** introduced global approval of plans across classes; the improvement of the pre-insolvency restructuring regime
- **International considerations:** [challenges in implementation]; introduced rules on international group insolvencies
- **Enterprise groups (domestic):** introduced new provisions for enterprise groups in insolvency

C: Business Insolvency Regime

(cont.)

Key areas to monitor:

* pre-insolvency restructuring; * directors' and officers liability; * due process and time frames; * post-commencement finance; * priorities; * the application of the moratorium (and relief from the stay); * the role of the special administrator; * cross-border insolvency; * insolvency of enterprise groups.



D: The Institutional Framework

The judiciary

- Specialization and training challenges
- Efficiency

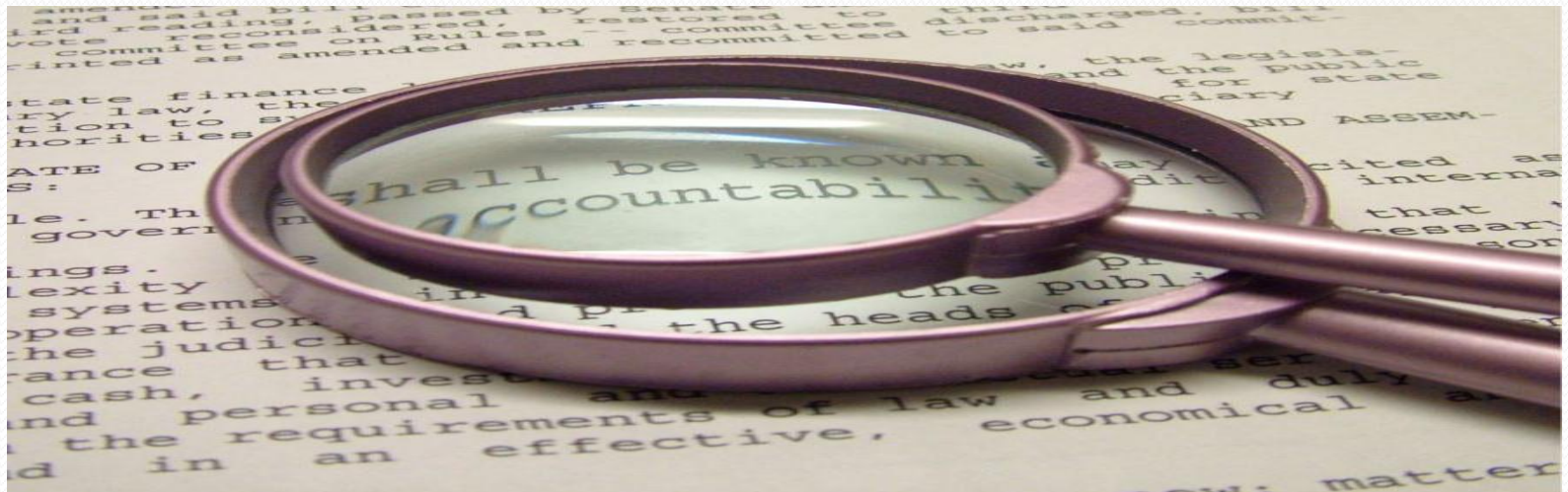


D: The Institutional Framework

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Insolvency practitioners

- Ensuring independence, impartiality and adequate compensation and control mechanisms



Conclusions

- Retain the positive aspects of the insolvency and creditor-debtor regime framework and reinforce them.
- Priority areas: strengthening of creditor rights and enforcement (outside insolvency, and the link to insolvency); enhancement of the institutional framework and the effective implementation of the regime; development of negotiation/rescue culture.

Insolvency and Creditor Rights ROSC Romania

THANK YOU

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