CBR EXTENDED CREDITOR PROTECTION INDEX 1990-2013

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January 2016

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Part 1: Introduction: Coding Creditor Protection (John Armour)

1. General information

As a part of the project on 'Law, Finance and Development' at the Centre for Business Research, University of Cambridge, UK,[1] we constructed a new creditor protection index comprising of 10 variables, which were coded for the period 1995-2005 for 25 countries. As part of a subsequent project on 'Rising Powers', we have extended the number of countries and time period for which this coding has been done. The extended index now covers 1990-2013 (24 years) for 31 countries, a total of 7,440 observations. In addition to coding the extra years, this exercise also involved a review of the coding for the years coded in the earlier index, and in some cases this has been revised in light of new information. This document sets out the supporting references for the coding, which may be found in the associated spreadsheet.

In the case of some countries, data for certain periods are not recorded. This is either because no law was in force on the issue in question for that period, or because of the non-availability of data. Where this is the case, it is indicated in the country report (see below) by the phrase 'not indexed'. The absence of data is coded by a missing score, not by a score of 0 (which would indicate that a law exists but provides no protection), in the Excel spreadsheet.

2. Instructions for coding

Please identify the provisions of law and relevant court decisions applicable to or answering the description of each of the core variables in Part 2. Based on your knowledge and experience of the law in your country, considering the applicable law, please assign values to each individual variable between '0' and '1' for each of the last 13 years and express it in a tabular form.[2] These will be scores for your country for a given area of law expressed as a value between 0 and 1. Here, '0' would stand for no protection or worst protection offered and '1' would stand for the best or maximum protection offered with respect to the particular core variable.

Statutory and case law. A particular legal rule can be based on statutory law or case law, therefore, for the purposes of this exercise both must be considered. Although in civil-law countries court decisions are not regarded as a source of law, please do take them into account while coding because they can bring about an effect which is as important as a statutory provision. Statutory law can be *coded in the year* in which it comes into force and case law can be coded in the year in which it is delivered and reported. Statutes passed but not yet in force or decisions either secret or expected cannot be considered for coding.

Intermediate (non -binary) coding. In some cases, it may be appropriate to use intermediate coding (that is, fractions between 0 and 1) as well as simply "0" and "1". The descriptions of most of the variables in Part 2 illustrate some instances in which we consider this

[1] For further information on the project see http://www.cbr.cam.ac.uk/research/programme2/project2-20.htm.

[2] See the template contained in Part 3.

appropriate. It may be that you consider it necessary to use additional intermediate coding to reflect meaningfully your assessment of a particular provision. If so, please indicate clearly your reasons for the additional intermediate coding.

Explanations or references. Please include short explanations or at least references to the provisions of law or citations of court decisions on the basis of which you assign values to each of the core variables and for each of the changes in these values over the last eleven years in the 'Explanation/Reference' column provided in the template in Part 3.

Comments. The core variables included in Part 2 are proxies for creditor protection law, there may be different legal rules that achieve a similar function in your country. Therefore, please comment on any legal rule that may not be specifically covered by the core variables in Part 2 but which in fact in your country achieves a similar function as any of the core variables and therefore operates as its 'functional equivalent'.

3. Variables on creditor protection

Variable	Description
I. Restrictions on Debtor Activity	
(1) Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*
(2) Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as "dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above

(3) Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realise something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cash-flow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*
II. Creditor Contract Rights (=Facilitation of Secured Credit)	
(4) Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land[3] 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list
(5) Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list

[3] We are unaware of any jurisdiction that does not permit non-possessory security to be taken over land, and does not require this to be registered in some way.

(6) Security: Enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible
III. Creditor Rights in Corporate Bankruptcy Proceedings	
(7) Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to b e aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*
(8) Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility).

	Minimum score: 0, maximum score:1

(9) Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.
(10) Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights.[4] The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).

[4] To the extent that the institution of secured credit is socially beneficial, this subordination will cost creditors as a group more than it benefits them, and the coding is designed on the basis that this is the case. If this assumption turns out to be false, the values of the coding for this variable should be reversed.

Part 2: Countries Coded

1. Argentina: Coded by Aurelio Gutierrez and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2002:0 2003-2013:0.1	No minimum capital is legally required for a Limited Liability Company (*Sociedad de Responsabilidad Limitada*). However, from 2003, some resolutions issued by the General Inspection of Corporation are not admitting the registration of undercapitalized companies. The minimum capital requirement for a Joint Stock Company (*Sociedad Anónima*), was 12.000 Argentine pesos (aprox. 1,637 EUR) until 2012, according to article 186 of Companies Act 1972. However, from 8th October 2012, the minimum capital for capital requirement has increase to 100.000 Argentine pesos (aprox. 12,814.22 EUR), according to article 186 of the Companies Act 1972, amended by Decree 1331/2012.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 0.66	Article 224 Companies Act 1972 regulates the basic dividend restrictions (though there is no obligation to return undue dividends received in good faith). The repurchase by the company of its own shares is authorised under exceptional circumstances enumerated in article 220 of Companies Act 1972: within a prior decision of capital reduction, to avoid serious damages to the company, when the shares are owned by an enterprise or a company that is acquired or absorbed by the company. On the other hand, article 271 Companies Act 1972 regulates the transactions between the directors and the company, prohibiting undervalue ones.
3. Directors' duties to	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors	1990-2013: 0.5	There is no a specified duty to creditors but a general duty to the company, shareholders and their parties (where creditors would be

creditors	realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		included). In cases of damages to anyone of them, the directors will be liable (art. 274 Companies Act 1972). Moreover, in case of insolvency, directors may be personally liable if they knowingly contribute, promote, allow or worsen the state of insolvency of the company with the intention of defrauding creditors (art. 173 Insolvency Act).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	Security interests can be formed over a wide variety of property: movable and immovable assets, securities, shares, cash and receivables. Mortgages can also be established over real estate, ships and aircrafts. Security interests can be obtained through mortgages (art. 3108 Civil Code), pledges (art. 3204 Civil Code), commercial pledges (art. 580 Commercial Code), including floating charges (*prenda flotante*), security assignments and trusts.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	Article 3134 Civil Code states that mortgages needs to be registered in a public office set up specifically for the registration and situated in the capital city of every provinces or in the towns the Provincial governments chose for that purpose. Decree-Law 15.348/1946, 28 May, created a registered pledge, which includes a fixed pledge (arts. 10-13) and a floating pledge (art. 14-16).
6. Security:	Must a secured creditor go to court in order to enforce a security	1990-2013: 1	The Commercial Code regulates special commercial pledges (arts.

enforcement	interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible		580-589) to be used for commercial obligations. In a commercial pledge (contrary to what is ruled for civil pledges) creditors are entitled to private sale (art. 585 Commercial Code). This happens in the case the debtor and creditor have agreed upon a special sale proceeding, otherwise the pledged asset must be sold by public auction, duly announced ten days before such auction take place.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*	1990-2013: 0.5	The Insolvency Act 1971 was amended and substituted by the Insolvency Act 1995, enacted on July 20 and came into force in December 1995. Both insolvency regimes establish two "gateways" to start an insolvency proceeding: (i) a reorganization procedure (*concurso preventivo*), where the debtor may commence bankruptcy unilaterally, but it should prove the suspension of payments (arts. 1 and 11 Insolvency Act 1995); and ii) a liquidation procedure (*quiebra*), which may be initiated by either the debtor or any single creditor.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in	1990-2013: 0.5	Stay does not generally apply to secured creditors, even in reorganization proceedings (*concurso preventivo*). However, if it is necessary for the proceeding, the court may establish a stay for secured creditors. In any event, this stay cannot be longer than 90 days (art. 24 Insolvency Act 1995).

	rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1		
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.	1990-2013: 0.5	In reorganization proceedings, the approval of the creditor´s committee requires the majority of creditors.
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact.	1990-2013: 1	Article 3874 Civil Code defines a privilege as the right of one creditor to be paid before another creditor. The debts covered by a special privilege (this is, secured claims) are the first to be paid with the proceeds of the sale of the debtor´s assets. Article 241.4 of Insolvency Act 1995 lists secured debts (covered by mortgages, pledges, floating liens, etc.) among the special privileges.

	0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).		

2. Belgium: Coded by Theodora Dimitrova and Katrien Morbee

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1999: 0.25 2000-2013: 0.75	Until 1999 it was 250,000 BEF (€6,174). Then increased by *Companies Code* of 7 March 1999, to €18,500. The minimum capital requirements for companies incorporated in Belgium are as follows: **<u>Private limited liability company</u>** The minimum subscribed capital is €18,550. The minimum amount paid on incorporation varies depending on the number of shareholders. If there is only one shareholder, the amount is €12,400. If there are two shareholders, the amount is €6,200. **<u>Public limited liability company</u>** The required minimum share capital is €61,500. **<u>Limited Partnership</u>** The required minimum share capital is €61,500. **<u>Cooperative Limited Liability Company</u>** The required minimum share capital is €18,550. **<u>Cooperative Unlimited Liability Company</u>** There is no required minimum share capital.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following:	1990-2013: 1	**<u>1990-2000</u>** Art. 77bis old Belgian company code ("Gecoördineerde wetten op de handelsvennootschappen. Wetboek van Koophandel. Boek I – Titel IX. Handelsvennootschappen") restricts the distribution of dividends in a public limited liability company ("Naamloze Vennootschap" or "NV"). Artikel 137 and 77bis old Belgian company code restrict the distribution of dividends in a private limited liability company. Art. 52bis old Belgian company code restricts the acquisition of own shares by

	• Share repurchases • “Disguised” dividends, e.g. undervalue transactions with shareholders 0 = less than “basic dividend restriction”(criterion for score of 0.33) 0.33 = “basic restriction” on dividend payments (not waivable without creditor consent) 0.66 = “basic restriction” plus one additional restriction from list above 1 = “basic restriction” plus two additional restrictions from list above		the company for public limited liability companies. Art. 128bis old Belgian company code restricts the acquisition of own shares by the company for private limited liability companies. Art. 442 and 445 old insolvency law (until 01-01-1998) determine that during the suspect period before insolvency of the corporation undervalue transactions by the corporation can be considered void in the context of the liquidation of the company. **2001-2013:** Art 320 of the Belgian Companies Code (came into effect in 2001) stipulates that no profits can be distributed if as a result the net assets of the company would become less than the capital paid. Net assets are defined as the total assets as shown on the balance sheet. Until 2009 companies were allowed to buy back up to 10% of their own shares. Since 1 January 2009 Belgian companies are allowed to acquire up to 20% of their own shares.[5] If a company enters into a transaction at an undervalue before it has been declared insolvent, that transaction may be declared void.
3. Directors’ duties to creditors	Imposing a duty on directors to act in creditors’ interest may protect creditors’ position during a “twilight” period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors “too much” protection. 0= no duty on directors to take creditors’ interests into account 0.5= duty on directors to act in creditors’ interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors’ interests if firm is	1990-2013: 1	**1990-2000** Art. 62 old Belgian company code stipulates that directors of public limited liabilities companies are responsible for the fulfilment of their tasks and responsible for any shortcoming in their governance. They are liable to the company and third parties for all damages resulting from any breach of the corporate law provisions or the companies’ articles. Art. 132 combined with art. 62 old Belgian company code stipulates a similar regime for private limited liabilities companies. Art. 63ter old Belgian company code stipulates that when in case of insolvency the debt is higher than the benefits, the directors can be held liable for all or part of the debt of the company to the extent of the deficit, if it is shown that

[5] http://www.altius.com/en/news/2009/06/17/new-belgian-rules-on-contributions-in-kind-and-acquisition-of-own-shares-share-buy-back/

	balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		a clear error by them contributed to the insolvency. Art. 133bis combined with art. 63ter old Belgian company code stipulates a similar regime for private limited liabilities companies. **<u>2001-2013:</u>** According to Articles 528 and 530 of the Companies Code directors owe duties to creditors both when the company is solvent and when the company has been declared insolvent.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.33	Belgian law recognises non-possessory security interests in land. Security interests in tangible and intangible movable property are traditionally created through a possessory pledge. The Belgian House of Representatives has recently adopted a new legislative Act which is due to come into force in the second half of 2014. The new Act allows the creation of a non-possessory pledge over tangible and intangible movable property.[6] Belgian law also recognises the so-called "pledge of a commercial business" which bears some similarities to the English floating charge (Act of the Pledging of a Commercial Business, 25 October 1919). The main difference between the two is that the Belgian pledge of a commercial business cannot be limited to a specific class of assets: it covers all of the pledgor's movable property. This type of security interest will be abolished when the new Act comes into force.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.33	To be valid a mortgage must be registered with the local land registry. A pledge of a commercial business need to be registered with the tax authorities and recorded in the mortgage keeper register of the pledgor's judicial district in order to become perfected. The new law on non-possessory pledges envisages registration of this type of security interest.

[6] http://www.loyensloeffnews.be/en/publications/newsflashes/belgian-house-of-representatives-adopts-new-act-on-security-interests-on-movable-assets.html

6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 0.5	Creditors must obtain court approval in order to enforce a mortgage or a pledge of commercial business against a debtor. The regular possessory pledge may be enforced without prior court approval.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*	1990-2013: 1	**1990-1997:** Art. 437 of the old insolvency law (in force until 01-01-1998) stipulates that a company is in state of insolvency if two conditions are met: 1. The company has durably ceased making payments, and 2. the creditors have lost the confidence in the company. Art. 440 of the old insolvency law (in force until 01-01-1998) stipulates that a company is obliged to file for insolvency three days after the company has stopped making payments. [with regard to the 1997-2013 index: I believe the article in the current Bankrupcty Code referring to this obligation is article 9 instead of article 6] **1998-2013:** The current insolvency law in Belgium is the Bankruptcy Law of 1997 (in force from 01-01-1998). A company is a state of insolvency if two conditions are met: (i) the company has durably ceased making payments; and (ii) the company has lost the confidence of its creditors (Art 2(1) of the Bankruptcy Law). The directors of a company are under a legal obligation to file for insolvency within one month of the company satisfying the test above (Art 9).

8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2008: 0.5 2009-2013: 0.75	**1990-1996:** Before the changes in 1997, the old law on Judicial Composition did not impose a stay on the mortgage creditors, pledge creditors, and secured creditors. (See Herman Cousy and Eric Dirix, "Continuïteit van de onderneming in moeilijkheden"). **1997-2013:** Belgium introduced the Judicial Composition procedure in 1997 to help companies recover from financial difficulties. The law in this area was changed in 2009 when the Continuity of Undertakings Act was introduced. This act contains a number of possible solutions for companies in distress. There are three types of reorganisation measures: (i) an amicable agreement between the company and its creditors; (ii) judicial reorganisation; and (iii) forced transfer. Under both laws all creditors' claims are suspended for a period of 6 months. Under the Continuity Act, however, mortgagees with security rights in rem are allowed to exercise them after a request for judicial reorganisation has been filed but before it has been granted.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker)	1990-1996: 0 1997-2008: 0 2009-2013:0	Under the old law on Judicial Composition, the court used to be a significant decision-maker as to whether the company continued trading or not. Creditors do not seem to have a significant role in deciding under the Continuity Act.

	0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 0	Secured creditors' claims are subordinated to any costs and debts incurred during the insolvency proceedings, including the insolvency practitioner's fees.[7]

[7] http://www.taylorwessing.com/uploads/tx_siruplawyermanagement/Taking_and_enforcing_security_in_Europe.pdf

3. Brazil: Coded by Caroline Schmidt and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0	There are three basic types of limited liability company in Brazil: • *Sociedade Limitada (LTDA), also named Sociedades por Quotas de Responsabilidade Limitada until before the enactment of the new Civil Code in 2002.* The Limited Liability Partnerships is governed by the Civil Code (Chapter IV) and may be supplementary governed by the Corporations Act. The liability of shareholders is limited to the value of their shares but all are liable for the payment of the capital (article 1052). The capital of the company should be expressed in local currency, and may compromise any kind of property susceptible of pecuniary evaluation (article 997, III). There is no minimum capital. • *Empresa Individual de Responsabilidade Limitada (EIRELI, in Brazilian Portuguese);* The Individual Limited Liability Company, was created by Law 12.441, of July 11, 2011; all of its capital will be centered in a single individual, and all capital must be paid in since the incorporation of the company (article 980-A). The minimum capital for the purposes of the incorporation should be 100 (one hundred) times the minimum wage established by the Brazilian Government (article 980-A), currently R$ 678,00 (Nov/2013), bringing the minimum capital to this date to R$ 67.800,00. The legislation imposes on the Limited Liability companies (*Limitadas*) to apply to EIRELI where applicable. • *Sociedade Anônima* (SA): It is governed by article 1088 of the Civil Code and Law 6.404/76 (Corporations Law). Art. 5º of the Corporations Act states: the statute of the company will fix the level of the company capital, expressed in the national currency. Preliminary requirements for the constitution of the company are governed by article 80, which requires the realization, as input, of 10%, at least, of the issued price of the shares subscribed in cash (article 80, I) and a deposit of the part of the capital in the Bank of Brazil or another bank authorized by the Securities Commission

			(article 80, III).
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 0.66	Art. 30 Law 6.404/76 regulates companies' shares repurchase. Corporations cannot compulsorily repurchase their shares, except in the specific circumstances laid down in the first paragraph of the article. CVM Normative Instruction (IN) 299/99, with changes made by IN 345/00, regulates share repurchase rules. Prior to enactment of this Instruction, tender offers for repurchase of shares were not subject to neither disclosure nor mandatory offers. Art. 201 states the basic restrictions on dividends, art 202 (as modified by Law nº 10.303, de 2001) deals with the definition of the ordinary dividends. Article 202 was further regulated by article 16 of Law 12.838/2013, which informs that the distribution of dividends are now subject of compliance with the requirements established by CVM.
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent	1990-2013: 0.5	As a general rule, directors are not personally liable for obligations incurred in the corporation's name by virtue of administrative acts performed in the normal course of business. Exceptions to this rule can be found in Decree 3.708/19 (Limited Liability Companies Law), article 10 and Article 158 of Law No. 6.404/76 (Corporations Law). Article 158 of Law 6.404/76 lists two basic hypothesis of civil liability of directors: a) for damages caused to the company by virtue of negligence or willful misconduct, even within their powers (Id., item I); b) for actions exceeding the powers granted to them, or contrary to the provisions of the law or bylaws (Id., item II). Bankruptcy Law was governed by the Decree-Law 7.661/45, and later revoked by Law 11.101 of 9 February 2005. Decree 7.661/45 stated that, in the event

	Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.		of declaration of bankruptcy, the corporation's directors and administrators would be identified with the debtor and bankrupt party for criminal purposes (article 191). Acts that can constitute a crime can be, for instance, the failure to keep required books or their late, defective or unclear completion or recognition of false or simulated credits (article 186, VI). The Law 11.101/05, known as *Lei de Falências e Recuperação de Empresas*, in the same way states that directors, managers, administrators and counselors, in fact or in law, as well as the trustee are identified as equivalent to the debtor and bankrupt party for criminal purposes (article 179). Law 11.101/05 establishes the judicial reorganization (*recuperação judicial*). This reorganization aims to overcome of the situation of economic-financial crisis of the debtor, in order to allow the maintenance workers' employment and creditor's interest (article 47), thereby promoting the preservation of the company. Article 47 of the 2005 Bankruptcy Law; and 966, *caput,* Civil Code, are based on the principle of ensuring national development, referred to in Articles 3, II, 23, X, 170, VII and VIII, 174, *caput* and § 1, and 192, of the 1988 National Constitution. In the case of judicial reorganization, a general meeting of creditors should, among others, approve or reject the plan of reorganization submitted by the debtor in order to recover the company (article 35, I, a) and constitute a Creditors Committee (article 35, I, b). The 1945 Bankruptcy Law remains applicable to the legal cases filled before the 2005 legal reform and these cases should be completed in accordance with Decree-Law 7661/1945 (article 192, Law 11.101/2005).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory	1990-2013: 0.66	The principal types of security devices that are taken on movable property are mainly possessory.[8]

[8] The main types of security interests available in Brazil are (1) pledges (*penhor*), (2) mortgages (*hipoteca*), band c) fiduciary transfers/assignments (*alieniação/cessão fiduciária*). The burden of the real security may fall on capital assets (e.g. real estate, livestock, or movable, tangible or intangible, including receivables, and intellectual property). In the (1) pledge (*penhor*), the debtor offers his movable property to the creditor, which will return to his property upon the due performance of the debt. The title of the pledged asset remains with the debtor but possession may or may not be temporarily transferred to the creditor's domain. The (2) mortgage (*hipoteca*) is normally granted over real property and involves the creation of a security interest over real estate and its accessories; (3) fiduciary assignment (*cessão fiduciária*) is

	security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		The law doesn't allow businesses to grant a non possessory security right in a single category of revolving movable assets, without requiring a specific description of the secured assets and it doesn't allow businesses to grant a non possessory security right in substantially all of its assets, without requiring a specific description of the secured assets, while a security right cannot extend to future or after-acquired assets or automatically to the products, proceeds or replacements of the original assets. However, in case of enterprises and business companies (*Industrial e Mercantil*) the law (*Títulos de Crédito Industrial Decreto-lei nº 413, 9 January1969*) has created three different titles (article 19): *penhor cedular (item I), alienação fiduciária (item II)* and *hipoteca cedular (item III),* which are registered with the *Registro de Imóveis* (art. 167 to 288 Lei nº 6.015, 31 December 1973 on the public registries). Now they are covered in the 2002 Civil Code from art. 1447 to 1450. Art. 1451 to 1460 Civil Code (2002) cover pledges over receivables. Before that the subject (*Da Caução de Títulos de Crédito*) was regulated in Art. 789 to 795.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2001: 0 2002-2013: 0.66	There are specific rules to be observed regarding the registration of each type of security. In general terms the registration should respect the following proceedings: 1. The Mortgage is created by public deed and prepared by a notary public. The mortgage is perfect by recording the public deed at the Real State Registry Office. A properly recorded mortgage gives the creditor preference over any prior but unregistered mortgage created on that same property. 2. Pledge may be recorded through a private instrument (*instrumento particular*) and registered either at a Registry of Deeds and Documents in the debtor's domicile in Brazil or at the Real Estate Registry Office where the asset is located, depending on the subset of pledged adopted.

normally created over rights of moveable assets and credit instruments. (4) *Alieniação fiduciária* conveys a personal property interest, through a fiduciary sale, generally as security for a debt such as the purchase price of the personal property. In this case, the debtor retains possession of the property as collateral, while the creditor retains title until the satisfaction of the debt (as regulated by Art. 66, Law 4.728, de 14 July de 1965, which regulates security markets, with new wording given by article 66B, §3, Law 10.931/2004). Since 2005 Bankruptcy Law creditors secured by fiduciary lien are not subjected to the recovery plan (article 49 §3). As a result, the main type of security currently selected by creditors during financial and commercial transaction is fiduciary.

			3. Fiduciary transfer or assignment may be entered into through private instrument registered at the Registry of Deeds and Documents in the debtor's domicile. In the cases of real properties, it should be registered at the appropriate Real Estate Registry Office.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2001: 0 2002-2013: 1	The enforcement of each security is governed by specific proceeding, but in general terms: 1. Mortgage is enforced at the competent court through adjudication of the mortgaged property, by private sale by the creditor or public auction. In any of these options, the judge has to order the proper transfer of ownership at the appropriate Real Estate Registry. 2. The pledged assets the creditor should file a lawsuit requesting possession of the assets. The creditor can also sell the pledge asset, in an out of the court proceeding, in case the debtor has contractually granted the creditor this right. 3. In the fiduciary lien, the creditor may file a suit seeking seizure of assets. Once the creditor has possession of the assets, it has the right to sell the assets in an out of the court private sale. As a general rule, any contractual provision that authorizes a creditor to keep assets offered, as security for non-payment is null and void. Both Civil Codes express prohibition of the creditors (*credor pignoratício*) to retain the pledged item in case of non payment (article 765, 1916 Civil Code, and art. 1.428, 2002 Code Civil), but envisage an out of court procedure (*venda amigável*), if the parties had contractually so agreed (article 774, III, 1916 Civil Code, and art. 1.433. IV, 2002 Civil Code).
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some	1990-2013: 0.5	Art. 9, item III, Bankruptcy Law 1945 states that any secured creditor (*credor com guarantia real*) has the legal capacity to petition for bankruptcy, under the condition that he holds an unpaid instrument, even before its due date, but conditioned that he proves that the assets do not cover the solution of his credit,. Art. 8 deals with voluntary bankruptcy petitioned by the debtor himself. The debtor needs to prove insolvency by exposing its causes, and among others, showing the balance of assets and liabilities, and approximate evaluation of its assets (item I). In the same way, article 97, of the 2005 Bankruptcy Law, stated that any

	criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		creditor can initiate bankruptcy (item IV) under the requirements laid down in art. 94. The debtor can initiate voluntary bankruptcy (id., articles 105 to 107), when not possible to claim judicial reorganization, by stating its reasons, and providing documents that sustain his claim (id., article 105).
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2004: 0 2005-2013: 0.5	Under 1945 Bankruptcy Law, according to Art. 147, caput, reorganisation proceedings[9] apply only to unsecured creditors (*quirografários*). In the case where the creditor does not comply with the reorganisation proceeding, unsecured creditors can initiate legal action to claim their credit (article 147, § 1). Art. 24 of the 1945 Bankruptcy Law provides for the stay of all creditors once the insolvency has been declared. The second paragraph states that the execution proceedings that had already been initiated before the insolvency both by creditors whose debt is not subjected to be paid by instalments (item I) or whose debt comprise, among others, specific object performance (i.e. *quantia ilíquida, coisa certa, prestação ou abstenção de fato*), won't be affected by the stay order (item II). The 2005 Bankruptcy Law states that the declaration of insolvency suspends all the execution proceedings against the debtor (article 6). Again art. 99 states the stay of creditors once the Court has emitted a bankruptcy

[9] The 1945 Law provides for two different types of "*concordata*" (legal moratorium): the "preventive *concordata*" and "suspensive *concordata*" (Article 139).

			declaration (item V), while art. 115 prescribes that all creditors will be able to satisfy their debts only through the ways the bankruptcy law prescribes. The 2005 Bankruptcy Law provisions on judicial reorganization provide for the stay of all creditors (article 49). Once the judicial reorganization pleading is accepted in court, creditors are not allowed to enforce security interest for 180 days (article 6, § 4, the 2005 Bankruptcy Law). After this period, creditors can start or continue to enforce their rights regardless of judicial pronouncement (id. article 6, § 4). There are exceptions to the suspension of the non-extendable period of 180 calendar days in connection with the judicial reorganization proceeding, for the proceedings arising from: (i) the position of the fiduciary owner of real or personal property, financial lessor, owner or committed seller of real estate whose respective agreements include an irrevocable or irreversibility clause (article 199, § 1, 2 and 3); (ii) advances against foreign exchange contracts and advances against delivery of drafts (documentary credits) (article 85, II, article 163, §3, I) ; and (iii) tax debts (article 6 § 7). Such creditors may continue with the enforcement of their rights during such period of suspension as well as after that.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court	1990-2004: 0 2005-2013: 0.5	Under the 1945 Law, the court's involvement has exclusive jurisdiction and is absolute in all the affairs of the bankruptcy (see for instance, article 154, sole § or article 156) or regarding the declaration of a rehabilitation proceeding (*concordata*), as expressed, for instance, in the articles 144 to 145 and 151, § 3. Under the new Bankruptcy Law (2005), the general assembly of the creditors hold the right to decide whether to accept the reorganisation plan (art. 56- 58) or to proceed with the declaration of bankruptcy of the enterprise (art. 73, item I).

	is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 0	The order of priority was mainly stated in Art. 102, Art. 124 and 125 of the 1945 Bankruptcy Law (as amended by Law 3.726, of 11.02.1960) and is the following: 1. Labor and social security credits, plus compensation for accidents at work (art. 102 of the Bankruptcy Law as restated by Law 3.726, 1960, and art. 499, § 1 of the "CLT", as restated by Law 6.449, 1977; art. 157 of Law 3.807, 1960, as restated by Decree-law No. 66, 1966 and art. 1 of Law No. 6830, 1980); 2. Tax credit (art. 5 of Law 6.830 of 22 September, 1980; art. 186, 187 and 188 of the National Tax Code, Law 5.172 of 25 October 1966); 3. Burdens and debts of the bankrupt estate (art. 124, § 1 and § 2 of the Bankruptcy Law); 4. Creditors holding security interests (art. 102, item I); 5. Creditors with special privileges upon certain goods (art.102, item II); 6. Creditors with general privileges (art. 102, item III); 7. Unsecured creditors (art. 102, Item IV). Art. 125 rules that, once an item over which a security interest or a special privilege had been created, was sold, the secured creditors would be given the import of their credit from the sum obtain (though the sum would be diminished of the administrative and procedural fees of the selling of the item and management of the bankruptcy). According to art. 83 of Law 11.101/2005, the ranking of claims in bankruptcy is the following: "The classification of claims in bankruptcy follows the order: I - credit derivatives in labor laws, limited to 150 (one hundred fifty) minimum

			wages per creditor, and those arising from accidents at work; II - secured credits up to the limit of the value of the asset recorded; III - tax credits, regardless the nature and time of incorporation, except tax penalties; IV - credits with special privilege [...]; V - credits with general privilege [...]; VI - unsecured debts [...]; VII - contractual fines and monetary penalties for violation of criminal or administrative laws, including tax penalties; VIII - subordinated claims [...]. " Art. 84 identifies the creditors (*créditos extraconcursais*) that have priority over all those mentioned in art. 83.

Comments

From 1945 to 2005 in Brazil, Decree-Law 7.661 of June 21, 1945 governed bankruptcy proceedings, otherwise referred to as the Bankruptcy Law. In 2005, Brazil passed the Corporate Bankruptcy and Restructuring Law (*Recuperação Judicial e Extrajudicial e Falência do Empresário e da Sociedade Empresária, Lei 11.101,* 9 February 2005).

4. Canada: Coded by Sarah Bradley and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0	No minimum capital requirement.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for	1990-2013: 1	Under the *Canada Business Corporation Act* 1985 (R.S.C. 1985, c. C-44, "CBCA")[10] and equivalent provincial and territorial legislation, dividends (CBCA s.42) and share repurchases (CBCA ss.34(2)) are prohibited if there are reasonable grounds for believing that (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes. Some limited exceptions are set out in s.35 and s.36. Directors who vote for or consent to a resolution authorizing such a divided or share repurchase are personally liable to restore to the corporation any amounts so paid and not otherwise recovered by the corporation (CBCA s.118(2)). Section 101 of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3, "BIA") also provides a mechanism for recovery of such amounts against the

[10] Canadian business corporations can incorporate under federal legislation (the CBCA), or under the incorporation statutes of any one of Canada's 13 provinces and territories. Although most existing Canadian business corporations are incorporated under provincial or territorial incorporation statutes (approximately 10% are incorporated under the CBCA), the provisions of the CBCA are hugely influential: almost all provincial and territorial incorporation statutes are based on the CBCA and are substantively similar to it, and many large and public corporations in Canada are incorporated under the CBCA (approximately 40% of companies on the Standard & Poor's Toronto Stock Exchange Composite Index are CBCA corporations). Therefore, for purpose of coding we will focus on the CBCA, with substantive provincial distinctions noted where relevant.

	score of 0.33) 0.33 = “basic restriction” on dividend payments (not waivable without creditor consent) 0.66 = “basic restriction” plus one additional restriction from list above 1 = “basic restriction” plus two additional restrictions from list above		directors of the corporation if the payments occurred within 1 year of bankruptcy. Undervalue transactions with shareholders can be reviewed and remedied under Canada’s bankruptcy legislation if the transactions took place within 1 year or 5 years of the initial bankruptcy event, depending on whether the transferee is dealing at arm’s-length, whether the corporation was insolvent at the time of the transfer, and whether the transfer was intended to defeat the interests of creditors (BIA s. 96). In 2005, the concepts of “settlements” and “reviewable transactions” were replaced with a single cause of action, "transfer at undervalue" in the BIA. Such transactions may also be grounds for an oppression claim under corporate law regardless of the solvency of the corporation (CBCA s.241).
3. Directors’ duties to creditors	Imposing a duty on directors to act in creditors’ interest may protect creditors’ position during a “twilight” period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors “too much” protection. 0= no duty on directors to take creditors’ interests into account 0.5= duty on directors to act in creditors’ interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors’ interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2004: 0.25 2005-2013: 0.5	In Canada, a director’s fiduciary duty of loyalty is owed to the corporation. Section 122(1)(a) of the CBCA and equivalent provisions in all provincial and territorial legislation (except PEI and Nova Scotia, where substantively similar common law directors’ duties apply) impose on directors statutory duty to “act honestly and in good faith with a view to the best interests of the corporation”. Canadian courts have consistently interpreted this duty as being owed to the corporation itself and not to shareholders, creditors, or any other stakeholder group, even in the vicinity of insolvency. In the unanimous 2004 decision in *Peoples v. Wise*, the Supreme Court of Canada held that although directors of Canadian corporations owe a fiduciary duty exclusively to the corporation, even in the vicinity of insolvency, directors also owe a duty of care to creditors and possibly other stakeholders (under s.122(1)(b) of the CBCA, this is a duty to “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances”). The court’s statement on this issue had no prior case law support in Canada and was widely criticized. In response to *Peoples*, in 2006 the province of Ontario amended the *Ontario Business Corporations Act* (under which approximately 40% of Canadian business corporations are incorporated) to stipulate that directors’ duty of care is owed to the corporation. In the 2012 case of *BCE v. 1976 Debentureholders*, the Supreme Court of Canada clarified that the CBCA duty of care may be the basis for liability to other stakeholders in accordance with principles governing the law of tort and extracontractual liability, but does not provide an independent

			foundation for claims. Creditors of Canadian corporations can also seek a remedy against directors for oppression (CBCA s.241) if the directors have exercised their powers "in a manner that is oppressive or unfairly prejudicial to or unfairly disregards the interests" of the creditor. This is assessed with reference to the reasonable expectations of the creditor. Additionally, personal liability of a director of a bankrupt corporation can arise for: transactions entered into by the corporation while it was insolvent, or which made it insolvent, such as the issuance of dividends or the repurchase, redemption or acquisition of the corporation's shares; misrepresentation and/or wrongful conduct by directors; or the corporation's non-payment of withholding taxes and certain debts, including debts to employees for services rendered.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990—2013: 1	The perfection of security interests is subject to provincial or territorial (rather than federal) jurisdiction, with some limited exceptions,[11] and security interests are available to creditors over a wide range of property all provinces and territories. Provincial land registries and land titles systems govern security against land situate in the jurisdiction, while provincial Personal Property Securities Acts ("PPSAs") in Canada's common law provinces and territories govern the registration and perfection of "security interests" against all other property of debtors resident in the jurisdiction. These statutes are similar in structure and methodology to (pre-2001) Article 9 of the Uniform Commercial Code of the United States, and replaced earlier systems based on British and US common law. The enactment of the PPSAs effectively conglomerated the various security interests and quasi-security interests that were previously recognized, and did away with the previously critical distinction between fixed and floating charges. The PPSAs apply to any transaction that operates to secure an obligation, regardless of the form of document used to grant the interest, and security interests can be created against any or all of a debtor's existing and

[11] Due to the constitutional division of powers in Canada between the provincial and federal governments, security interests relating to property on First Nations reserves, navigation, shipping, aviation, transportation, and intellectual property are governed by federal legislation.

			after-acquired assets, including absolute assignments (sales) of accounts (e.g. trade receivables) or chattel paper (e.g. leases and conditional sale contracts). In Quebec security interests are governed by the Civil Code of Quebec (the "CCQ"), and the categories of collateral susceptible of being pledged are less numerous. When the new CCQ replaced the Civil Code of Lower Canada in 1994, however, a concept similar to the floating charge was introduced into Quebec's civil law under the name 'floating hypothec'.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	The PPSAs and the CCQ all require non-possessory security interests to be registered in order to be perfected.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 1	Where the collateral is moveable or intangible property, under the PPSAs and the CCQ a secured creditor may take possession of the collateral, sell the collateral or take the collateral in satisfaction of the debt without a court proceeding. Where the collateral security is land, the ability of a creditor to take possession of the collateral or sell the collateral will depend on the terms of the mortgage agreement. Canadian mortgage agreements typically provide that the creditors can sell the property without the assistance of the courts ("power of sale" provisions), and a statutory power of sale is provided in Ontario under the Mortgages Act (Ontario). However, the exercise of power of sale rights is far less common in other provinces. As a practical matter, outside of Ontario, Canadian lenders generally sell mortgaged real property following foreclosure proceedings in the courts.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally,	1990-2013: 0.5	The Canadian insolvency regime is principally governed by two federal insolvency statutes: the BIA and the Companies' Creditors Arrangement Act (the "CCAA"). The BIA is applicable to corporations, partnerships and individuals, while the CCAA applies to companies that are bankrupt or insolvent and owe more than $5 million. Although the traditional purpose of the CCAA has been to facilitate restructuring negotiations between a debtor company and its creditors, in recent years "liquidating CCAA" proceedings

	without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		have become more frequent. Under the BIA, only an insolvent debtor can commence a voluntary liquidation by filing an "assignment in bankruptcy" (s.49(1)). The debtor must owe at least $1,000 and admit to or have committed to an act of bankruptcy. Bankruptcy or insolvency is also required under the CCAA. One or more creditors may file an application for a bankruptcy order under the BIA (s.43(1)), against a debtor who owes the creditor at least $1,000 and the debtor has committed an act of bankruptcy within the last 6 months, with some exceptions.[12] Under the CCAA, proceedings may be commenced by the company or by any of its creditors (ss.4-5). There is no requirement for a debtor to commence bankruptcy proceedings if they are balance sheet insolvent.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings	1990-1992: 0.5 1993-2013: 025	Both the BIA and the CCAA allow debtors to reorganize their affairs and each Act provides for the staying of secured creditors, though under the BIA the court can only grant stays for up to 6 months from the commencement of the proceedings. There is no limit on the term of the stays available under CCAA. Under the BIA, if a debtor has filed a proposal or a notice of intention file a proposal, there is an automatic stay of proceedings imposed on secured and unsecured creditors, except secured creditors who took possession of their collateral before the filing or who gave formal notice of their intention to enforce their security more than 10 days before the filing (ss 69-69.1). Prior to 1992, the stay of proceedings did not apply to secured creditors, and they

[12] A creditor cannot apply for a bankruptcy order against banks, trust companies and insurance companies (the Winding-up and Restructuring Act applies), or against individuals engaged solely in fishing or farming (to whom the Farm Debt Mediation Act applies).

	(or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1		were able to enforce their security despite the proposal. Secured creditors are not stayed in bankruptcy proceedings under the BIA (s.69.3). Under the CCAA, the court has wide discretion to make orders it considers appropriate in the circumstances. This typically includes a very broad stay of proceedings in the Initial Order, though such a stay can be amended by the court in its discretion at any time.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.	1990-2013: 1	Restructurings can take place under either the CCAA or the proposal provisions of the BIA, and are subject to court supervision. Both the CCAA and BIA provide that a restructuring agreement must be approved by majority in number and two-thirds in value of each class of creditors to which it is presented. Court approval is also required. The court must be satisfied that the terms are reasonable, calculated to benefit the general body of creditors, that the statute has been complied with, and that the debtor has acted in good faith. Under both Acts, classes of creditors can be created by the debtor or by the court on application. Secured creditors can be included in the same class if their interests are sufficiently similar to give them "a commonality of interest" determined with reference to the nature of the debt, the nature and priority of their security, the remedies available to them, and the treatment of their claims under the proposal (BIA s.50(1.4)). Prior to amendments in 1992, all unsecured creditors were treated equally. Neither the BIA nor the CCAA allocates decision-making rights specifically to creditor classes who, in economic terms, are the "residual claimants".
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces	1990-1991:1 1992-2013: 0.75	Under the BIA, the rights of secured creditors take priority over claims of preferred creditors, unsecured creditors and deferred creditors in the scheme of distribution of the bankrupt estate (s.136(1)). This general priority granted

	the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).		to secured creditors includes and does not differentiate between creditors with a secured interest in land, personalty, intangible assets and general security interests (floating charges). Secured claims may be subordinated, however, in favour of some "super priority" creditors: - Since 1992, unpaid suppliers have had the right to reclaim unsold goods from the debtor within 30 days of the bankruptcy. This claim is given priority over all other claims (s.81.1). - Since 1992, unpaid farmers, fishermen and aquaculturists who have delivered products to the debtor within 15 days of the bankruptcy are entitled to payment of any unpaid amounts. This claim has priority over all other claims to inventory of the debtor, except the unpaid supplier's right to reclaim unsold goods (s.81.2); - Since 2008, employees owed remuneration at the time of bankruptcy are granted a priority charge of up to $2,000 per employee. This claim has priority over all other claims to "current assets", other than the claims of unpaid suppliers, farmers, fishermen and aquaculturists, and withholding taxes deemed to be held in trust (ss.81.3-81.4); - Since 2008, unremitted amounts deducted from employee wages for contribution to a pension fund and any unpaid employer defined pension contributions. This claim ranks in priority to all other claims against the bankrupt's assets, except those listed above (ss.81.5-81.6). - Author's manuscripts and copyright previously assigned to a bankrupt person revert to the author or their heirs, subject to any expenses incurred and to the trustee's right to sell copies already on the market (s.83). Both the BIA and the CCAA give the court the ability to approve "debtor-in-possession" preferential secured lending to insolvent companies during their restructuring. Such debts are given a super priority above that of other secured creditors.

5. Chile: Coded by Aurelio Gutierrez and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0	No minimum capital requirement for either Limited Liability Companies (*Sociedad de Responsabilidad Limitada*) or Joint Stock Companies (*Sociedad Anónima*).
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 1	Article 27 of Joint Stock Companies Act 1981 regulates the purchase by the company of its own share, and limits the possibility to a numbered conditions. In the case of corporations that make public offering of their shares, there are additional requirements contained in article 27.A of Joint Stock Companies Act 1981. On the other hand, article 78 of the same Act regulates dividend distribution. Normal restrictions apply.
3. Directors' duties	Imposing a duty on directors to act in creditors' interest	1990-2013: 0.5	There is no a specified duty to creditors but a general duty to the company,

to creditors	may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		shareholders and their parties (where creditors would be included). In cases of damages to anyone of them, the directors will be liable (art. 45 Joint Stock Companies Act 1981). Moreover, article 46 Corporation Act imposes on the director a duty to inform shareholders and the general public about the legal, economic, financial position of the company.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.66	Non-possessory pledges are regulated by numerous special laws. There are various non-possessory pledges☹ i) pledge without conveyance; ii) industrial pledge; iii) farming pledge; iv) pledge on bearer security made out to banks; pledge on commercial paper and credit instruments; pledge in bonded warehouses; pledge on chattels sold on credit, chattel mortgage on farm machinery and livestock contracts and chattel mortgage contracts. The law recognizes security over most types of movable (both tangible and intangible) assets. A pledge can be constituted for account receivables, intellectual property rights, debtor´s credits against third parties, future and to-be-purchased assets. It cannot be constituted for a shifting pool of assets on a global basis.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4))	1990-2013: 0.5	The mortgage (*hipoteca*) is regulated in the Civil Code (Book IV, Title XXXVIII), and must be registered with the Registry of Mortgages and Liens of the Real Estate Register of the community where the property of the immovable asset

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		is registered. Not all the non-possessory pledges need to be registered, as not all pledge laws provide for registration of the security. Sometimes, even where registration is required, the pledges may be filed at different registries.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 0	It cannot be contractually agreed, during the stipulation of a mortgage or a pledge, that a creditor would be granted retention of title, in case of non compliance. Chilean legislation does not provide alternatives to judicial enforcement, and non-judicial enforcement has not yet been legally admitted. Enforcement proceedings are governed by the Civil Procedural Code 1902. There are two categories of proceedings, depending on whether the obligations are evidenced in an executive title (*título ejecutivo*) or not. Mortgages and pledges are generally considered executive title.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet*	1990-2013: 0.5	Insolvency proceedings can be initiated by one or more of his creditors or by the debtor himself (art. 39 Insolvency Act). A debtor that files for his own bankruptcy must submit several documents and pieces of information about his patrimonial status (art. 42 Insolvency Act), while creditors must specify the grounds for their application and attach documents supporting their statements and provide the necessary evidence (art.43).

	insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.8	In theory, the commencement of the insolvency proceeding will stay of all enforcements against the debtor's assets (art. 71 Bankruptcy Act). However, secure creditors may generally enforce their claims (art. 71 Insolvency Act). However, in case of a reorganisation plan submission appproved by a majority vote of creditors, article 177 bis provides for a stay period of 90 days, binding also on secured creditors. Moreover, in case creditors opted for the alienation of the business as a whole economic entity, secured creditors are stayed from enforcing their individual rights (art. 126 Insolvency Act).
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court	1990-2013: 0.5	Once the bankruptcy is declared, the continuation of the business is decided by the creditors´commitee (art. 112 Bankruptcy Act)

	is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 0	Payments of creditors are regulated in articles 147 to 157 of Insolvenc Act. However, the classification of priviliged creditor is established by article 2472 Civil Code.

Primary legal sources

Joint Stock Companies Act 1981 (*Ley 18046/1981 de Sociedades Anónimas*)

Limited Liability Companies Act 1923 (*Ley 3918, de 7 de marzo de 1923*)

Civil Code 1855 (*Código Civil de 1855*)

Civil Procedural Code 1902 (*Ley 1552/19002, por la que se aprueba el Código de Procedimiento Civil*)

Insolvency Act 1865 (*Código de Comercio, Libro IV, "De las quiebras*") *At the moment (1/1/2013), a new Insolvency Act has been discussing in the Chilean Parliament.

6. China: Coded by T.Natalie Mrockova and Tianshu Zhou (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1992: N/A 1993-2005: 1 2006-2013: 0.11	TZ: "In Chinese Company Act 1993 （ChinCA 1993）, the minimum capital requirement for private companies which operate manufacturing business is 500,000 Yuan (approximately €50,000), for the companies which operate retailing business is 300,000 Yuan (approximately €30,000), for the companies which supply consulting services or high-tech is 100,000 Yuan (approximately €10,000). By contrast, the requirement reduced to 30,000 Yuan (approximately €3,000) for all forms of private companies in Chinese Company Act 2005 （ChinCA 2005）. See ChinCA 1993 art.23 ChinCA 2005 art.26" TNM: "There was no Company law until 1993 (implemented on 1 July 1994) in China. Although the State Council did prommulgate several important regulations (Provisional Regulation on Management of Company Registration 1985, and the Provisional Regulation on Private Enterprises ['Understanding Chinese Company Law' by Minkang Gu, 2nd ed, p.9]), but they are not regarded as equal to the law, and so are not taken into account. However, the Opinions of the State Restructuring Commission from 15 May 1992 for joint-stock companies and limited liability companieshas to be taken into account. It states (Art 12) that minimum amount of the registered capital is 10 million yuan (approx. 1 million EUR), and 30 million yuan for foreign-invested companies (approx 3 million EUR). NB: In certain cases the Guide to the Stock System required capital of 50,000 yuan or 100,000 yuan - see Fang Liufang: 'China's Corporatization Experiment' 5 (1995) Duke Journal of International and Comparative Law 149 at 154 Chinese Company Law 1993 (ChinCA 1993) became effective on 1 July 1994 ==> value of pre-ChinCA 1993 law until 30 June 1994 ==> value identical to the period 1995-2005 for July-December 1994

			Chinese Company Law 2005 (ChinCA 2005) became effective on 1 January 2006, changing the amount of capital needed for all forms of private companies from 500,000 - 300,000 - and 100,000 Yuan (ChinCA 1993) to 30,000 Yuan (Art 26). 30,000 yuan is calculated inot euros according to the annual average exchange rate (CNY:EUR were as follows... until 2009 1:0,1 ... 2010-2011 1:0,11 ... 2012-2013 1:0,12, therefore for simplicity: ISSUE: I am using the median exchange rate of 1:0,11, therefore the required capital was 3300 EUR). If precise calculation is preferable, then simply put in the exchange rate for each year (numerically identical with the value as calculated in this index)."
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-1992: N/A 1993-2005: 0.66 2005-2013: 1	TZ: According to ChinCA 1993 and ChinCA 2005, the dividends must be out of the profits made by the company. Under the creditor protection regime established by ChinCA 1993, dividends only can be distributed to the shareholders where the following conditions have been achieved: The company shall draw 10 percent of its aftertax profits as the company's statutory common reserve. (The company may stop drawing if the accumulative balance of the common reserve has already accounted for over 50 percent of the company's registered capital.) If the accumulative balance of the company's statutory common reserve is not enough to cover the losses of the company in the previous year, the aftertax profits shall be used for covering the losses before the statutory common reserve is drawn therefrom according to the provisions of the preceding paragraph. After the company draws the statutory common reserve from the aftertax profits, it may, upon a resolution made by general meeting, draw a discretionary common reserve from the aftertax profits. After the losses have been made up and common reserves have been drawn, the company may distribute the remaining profits to the shareholders pro rata. The Act also says that the profits distributed must be refunded to the company, where the general meeting or board of directors breaches the dividend restriction. However, the legislation does not clarify that the creditors are entitled to make a claim against the illegal dividends distribution. In addition, the repurchases of share is strictly prohibited by the 1993 Act. On the other hand, the "disguised dividends" (e.g. high remuneration for the shareholder who manages the private company or insider trading by the blockholder) is not properly restricted by the legislations. For these points see, Zhu Ci Yun "Gong Si Zi Ben Li Nian Yu Zhai Quan Ren Li Yi

			Bao Hu" [The Ideology for Capital Maintenance and Shareholder Protection] 2005 (03) Zheng Fa Lun Tan [The Political Science and Law Review] 128-136. TNM: The Opinions 15/5/1992 (full name in explanation under Q.1) touches on dividends in several sections, and is in many ways similar to the ChinCA 1993. Art 23 states that dividends of ordinary shares are not fixed by the provision, and is to be paid out after preferential shares' dividends. In many instances, only general principles are stated and details are left to the companies to decide. Preferential shareholders are entitled to interest payments and have first right to dividends. Art 32 states that re-purchase of shares is forbidden, with the exception where the permission of the Restructuring department and the People's Bank is given. In addition, Art 37 states that if new shares are issued, their value cannot exceed the net assets value of the original company. Art 38 stipulates that no new stock can be issued if the company has been unable to pay dividends for 2 consecutive years. Art 70 makes it clear that profits are to be use in the following order: repay debts/make up losses; then welfare and compulsory payments to the government; then dividends to preferential and ordinary shareholders. As in ChinCA 1993, a statutory common reserve fund must be set up, but the rules are not as clear/well-defined as in ChinCA 1993. There is no real discussion of disguised dividends. Second half of 1994 until end of 2005 have the same value, 0.66, as explained and coded by Tianshu Zhou. Therefore some limited restrictions exist. ChinCA 2005's provisions were explained well by Tianshu Zhou (see below). I have given the new regime a value of 1 because it now addresses the issue of disguised dividends, and retains to an extent the prohibition on repurchase of shares (with exceptions). The ChinCA 2005 inherits the regime of dividend restriction provided by the 1993 Act. In addition, art.20 covers the prohibition of the "disguised" dividends. It says the shareholders those damage the creditor's interests by abusing their limited

			liability or the company's independent personality shall be subject to compensation. Insolvency Act 2006 art.31 says, the administrator may make a petition to the court to revoke the undervalue transaction carried out in the year before the company entering in the bankrupt process. However, art.143 loses the strict prohibition for share repurchases. In some specified conditions, the shares can be repurchased by the company.
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-1992: N/A 1993-2010: 0 2011-2013: 0.5	TZ: Both of ChinCA 1993 and ChinCA 2005 do not include any provision under which directors bear duties to creditors and the case law does not create locus standi whereby the creditor can sue the director rather than the company. TNM: There was no applicable law in 1990-1992. The value of 0 is probably suitable here. The Opinions 1992 do not include any provision on directors' duties to creditors, so the position in 1993-1995 is the same as 1995-2005. ChinCA 2005 came into effect in 2006. On the face of it, there are no directors' duties to creditors. There is no mention of directors' duties in the Insolvency Laws, either. There is no express provision that provides for directors' duties to creditors, despite providing administrative sanctions and criminal punishments in case of fraud and cheating (Arts 199 and 216). Art 150 only provides for civil liability of directors to their companies. It is possible that under Art 20(3) the court might be willing to pierce the corporate veil and to hold the shareholders (if the directors are also shareholders) jointly liable, as Minkang Gu argues (Understanding Chinese Company Law, Hong Kong University Press 2010 (2nd ed.) at 190-1). This is confirmed in academic writing - e.g. Zhao Song, "Lun Dong Shi Dui Gong Si Zhai Quan Ren De Min Shi Ze Ren" [Director's Liabilities to Creditor] 2005(09) Xi Nan Min Zu Da Xue Xue Bao [Journal of Southwest University For Nationalities]106-110. In this article, Zhao made a conclusion that the legislations do not confirm that the directors bear duties to creditor. The position seems to have changed after the recent guidance from the Supreme Court came into effect in 2011: in Guidance on implementing the ChinCA 2005 in 2008, Art.18 and art.19 confirm that in the condition of cash-

			flow insolvent, where the director negligently or fraudulently damages corporate assets or accounting documents, the creditors are entitled to sue the director on the basis of breaching the duty of diligence. The Provisions on Several Issues concerning the Application of the Company Law of the People's Republic of China (III) ("Interpretations"), which took effect on 16 February 2011, provide new interpretations on various articles of ChinCA 2005. It is likely that directors can now be held liable for cash-flow insolvency. (see e.g. http://www.corporatelivewire.com/top-story.html?id=new-liabilities-for-directors-and-senior-managers-in-china).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1994: N/A 1995-2013: 0.66	TZ: Chinese Securities Act 1995 permitted the mortgage of land and security over tangible moveables (e.g. vehicles, shipping and jewelry) and receivables (e.g. mining right, fishery right and land-use right). TNM: I found no laws regulating secured lending before 1995. China Securities Law 1998 was amended 2005, and new laws dealing with secured lending were introduced. Property Law 2007 came into effect on 1 November 2007. Floating charge is added in the legislative framework by Property Act 2007 art.181. However, only the moveables and receivables can be the objects of floating charge. This regime does not cover immovables. See Securities Act 1995 art.34 and Property Act 2007 art.180 and art. 181 For commentary see: Liang Huixing and Cheng Huabin Wu Quan Fa [Property Law] 2ed., Fa Lv Chu Ban She 2000 [Law Press2000] 309 341 Wang Liming, Presentation in Ren Min University of China (15. 12. 2007) Topic: The Development of Securities Regime under the Property Act 2007, the full text of this presentation is available at: http://www.civillaw.com.cn/article/default.asp?id=36636 Williams and Lu 2012 at http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=haitian_lu
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4))	1990-1994: N/A 1995-2007: 0.66 2008-2013: 0.33	TZ: According to the Securities Act 1995 the security over imoveables (e.g. building, plant), some special moveables (e.g. vehicle, aircraft and enterprises' manufacturing equipments) and receivables (state-owned land-use right) must be registered in the local authorities. After the registration, the priority of the

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		security will be given to the secured creditor. For the security over other properties, without registration, the secured creditors are not entitled to defend against the claims made by bona fide third party, although the security has become to be effective after the two parties entering into the security contract. TNM: I found no law that should be codified before 1995, hence N/A value for 1990-1994. According to Property Act 2007, the requirement of mandatory registration only applies to the security over imoveables (e.g. buildings) and certain kinds of receivables (e.g. land-use right for construction purpose). All the security over moveables (including vehicles shipping and aircraft) is not subject to this requirement. However, without registration, the secured creditors are not entitled to defend against the claims made by bona fide third party. As a result, the value changes from 1 November 2007 when the Property Law 2007 became effective, and is reduced to 0.33 See Securities Act 1995 Arts 41 and 42 and art.43; See also Property Law 2007 Arts 187 and 188 See also Liang Huixing and Cheng Huabin Wu Quan Fa [Property Law] 2ed., Fa Lv Chu Ban She 2000 [Law Press2000] 313
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 1	TZ: According to Insolvency Act 1986 and Insolvency Act 2006, the out of court enforcement is available to the secured creditors. They can be stayed for the optimum realisation of their security. However, under the regime provided by Insolvency Act 1986, the out of court enforcement is weak and ineffective, as the law does not require the court to appoint a qualified administrator to take charge of the rehabilitation. Consequently, the creditors' interests cannot be properly protected in the whole process. (It is the main reason why I only give 0.5 to the out of court enforcement under Insolvency Act 1986). According to Insolvency Act 2006, the court must appoint a qualified administrator (e.g. law firms or accounting firms) to supervise the company's rehabilitation. The administrator's powers and duties are stipulated by the Act as well. See Insolvency Act 1986 chapter 4 and Insolvency Act 2006 chapter 8 and chapter 9.

			TNM: There was no law regulating security until 1995, which makes it difficult to evaluate 1990-1995. I decided to give them the same value as they have under the 1995 Securities Act because the treatment was in fact the same. Insolvency Act 1986 only became effective on 1 November 1988, and only for Trial Implementation. It covered only state owned enterprises. Insolvency Act 2006 covers both public and private enterprises.. It became effective on 1 June 2007 Therefore the position was the same from 1988 till June 2007, namely out of court enforcement was possible but weak. From 1 June 2007 a new law is in force which positions secured debt above repayment of non-financial stakeholders (i.e. employees). The situation of security enforcement out of court is similar, but I would ive it a value of 1 - arguably, it was 1 under the previous law
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-*	1990-2006: 0.5 2007-2013: 0.75	TZ: The legislation says where the debtor is unable to repay matured debts; the creditors may file to declare the debtor bankrupt. In addition, the debtors are not entitled to commence bankruptcy unilaterally, unless they are cash-flow insolvent: Insolvency Act 1986 art.7 and Insolvency Act 2006 art.7 TNM: As in (6), position remained the same under the Insolvency Act 1986 from 1988 until 1 June 2007. Under IA 1986 government approval was necessary to commence a bankruptcy procedure. This requirement was removed in IA2006 From 1 June 2007, under the Insolvency Act 2006, Art 7 stipulates that creditor and/or debtor may commence a bankruptcy procedure. Unclear if coded 1 or 0.5, compromise 0.75. There is a one-limb test (cash-flow test where the debtor is unable to pay off debts as they fall due) where creditors file for reorganization or liquidation, and a two-limb test (cash-flow test plus balance-sheet test where debtor's assets fail to meet the debts) if a debtor wants to enter insolvency proceedings voluntarily.

	emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2006: 0.5 2007-2013: 1	TZ: According to the Insolvency Act 1986, secured creditors may not stay in the single-gateway regime where rehabilitation is not a realistic possibility. Art.21 says that the creditor's meeting may make a petition to terminate the administration in the case where the financial condition of the insolvent company is being deteriorated. Similar provisions can be found in Insolvency Act 2006. Art.78 says, the creditors may make a petition to terminate the administration in the following conditions: the financial condition of the insolvent company is being deteriorated and lacks possibility of rehabilitation; the debtors fraudulently damage the assets of the insolvent company; the administrator cannot perform its functions due to the debtors' conducts. TNM: As in (6), position remained the same under the Insolvency Act 1986 from 1988 until 1 June 2007. There was no law regulating security until 1995, which makes it difficult to evaluate 1990-1995. I decided to given them the same value as they have under the 1995 Securities Act because the treatment was in fact the same. From I June 2007, under the Insolvency Act 2006, Art 75 provides for a moratorium: "During the Reorganization period, the secured creditors over the specific asset are stayed from realizing secured claims. Where the secured asset is at the risk of being destroyed or its value is at the risk of being reduced dramatically to the extent of impairing the rights of secured creditors, the secured creditors may request the People's Court to be exempt from the stay" There is no stay under liquidation in IA 2006, the same as in IA 1986. Therefore, the value is 1 for mid-2007 until now.

9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.	1990-2013: 0.5	TZ: According to Insolvency Act 1986, the creditor is the substantial decision-maker regarding whether the firm continues or is closed. The creditors are entitled to prove the resolution of rehabilitation made by debtors. Art.16 says the resolution must be approved by majority of creditors (both of the secured and unsecured creditors). In addition, the debts held by the creditors who approve the resolution should exceed half of the total amount of the debts held by unsecured creditors. Insolvency Act 1986 art.16 and Insolvency Act 2006 art.84 art.85 and art.86 TNM: As in (6), position remained the same under the Insolvency Act 1986 from 1988 until 1 June 2007. From I June 2007, under the Insolvency Act 2006 creditors are important decision makers, and have many powers (more than in IA 1986). The court also has an important to play. Nevertheless, its main role is mostly overseeing the procedures and adherence to the rules. NB: Reorganisation tends to be a debtor-in-possession procedure with administrator's oversight, very similar to the US Chapter 11. Liquidation is mostlz creditor-driven. In Insolvency Act 2006, the decision-making power is also granted to the creditors. Unlike the 1986 Act, the creditors are divided into several classes (secured creditors, employees' remuneration, taxation and unsecured creditors). The resolution will be deemed to be approved where it is approved by all classes of creditors. For certain class of creditors, the resolution will be regarded to be approved where majority of creditors cast their votes on it. The debts held by the creditors who approve the resolution should exceed two thirds of the total amount of debts in this class.
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of	1990-2006: 0 2007-2013: 1	TZ: According to Insolvency Act 1986, the secured creditors subordinate to the employees' claim of remuneration. In other words, the secured properties will be used to pay the employees' remuneration, where the unsecured properties are not enough to cover these claims. This provision is reformed by 2006 Act which confirms that the secured creditors' right does not subordinate to the claims made by other class of creditors.

	security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).		See Li Shuguang "Xin Po Chan Fa De Jiu Da Zhi Du Chuang Xin Yu Tu Po" [The Insolvency Act 2006:Development and Creation] Fa Zhi Ri Bao (Law Daily) 05-09-2006 TNM: As in (6), position remained the same under the Insolvency Act 1986 from 1988 until 1 June 2007. There was no law regulating security until 1995, which makes it difficult to evaluate 1990-1995. I decided to given them the same value as they have under the 1995 Securities Act because the treatment was in fact the same. From I June 2007, under the Insolvency Act 2006, the priority has been changed. In IA 1986, employees' claims took priority. Under IA 2006, secured creditors' claims priority (Arts 109, 113 and 132).

7. Cyprus: Coded by Theodora Dimitrova

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0	The Cypriot Companies Law imposes a minimum capital requirement only for public companies. According to s 4A, it is € 25,629. This requirement was introduced in 2003. The minimum capital required before 2003 was CYP 10,000 (≈€ 17,086).
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent)	1990-2002: 0 2003: 0.33 2004-2013: 1	Cypriot companies are regulated by the Companies Law 1968 which has been amended on a number of occasions. S 53 prohibits companies to give whether directly or indirectly financial assistance for the purchase of the shares of the company. This section was introduced through Law 70(I) of 2003. It was subsequently amended in 2009 to allow private companies to provide financial assistance for the acquisition of their shares in certain circumstances (Law 8 of 99(I) of 2009). Ss 57A to 57E allow public companies to buy back their own shares subject to some limitations in the Companies Law. These sections were introduced through Law 135(I) of 2000. Private companies are not allowed to purchase their own shares. S 56 prohibits public companies to issue shares at a discount. This section was amended in 2003 to allow private companies to do so (Law 70(I) of 2003).

	0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above		Public companies are not allowed to distribute dividends to shareholders if this would cause the net assets of the company to become less than the sum of the issued capital and its reserves (s 169A). This section was introduced in 2003 (Law 70(I) of 2003). The Companies Law does not contain any specific provisions regulating the distribution of dividends in private companies. However, the articles of association are likely to impose the same restrictions.
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0.5	Directors owe a fiduciary duty to act in the best interests of the company as a whole. There is an exception to this general rule: in the case of a company's insolvency directors owe a positive duty to the creditors to make sure the company is properly run. According to s 212 of the Companies Law, a company is deemed to be unable to pay its debts (i.e. insolvent) when it owes to a creditor a sum exceeding €854, and it has failed to pay the sum due within 3 weeks of the date on which a written notice was served by the creditor.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business).	1990-2013: 0.33	Cypriot law recognises the following non-possessory security interests: **<u>Immovable property:</u>** Both legal and equitable mortgages over immovable property are recognised. Cypriot law also recognises charges which grant certain

	The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		rights to the creditor over the property. **<u>Movable property:</u>** It is possible to create a security interest over moveable property through a legal lien or a pledge. However, both of these methods involve taking possession. The only non-possessory security interest over movable property is the floating charge.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.33	**<u>Immovable property:</u>** Both legal and equitable mortgages require registration with the Department of Land and Surveys (Immovable Property (Transfer and Mortgage) Law, No 9 of 1965). However, some sources indicate that registration is not compulsory. If a company grants a charge over its property, it must send the particulars of the charge to the Registrar of Companies within 21 days of the creation of the charge (s 91 of the Companies Law). **<u>Movable property:</u>** The particulars of a floating charge must also be sent to the Registrar of Companies with 21 days pursuant to s 91 of the Companies Law.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 0	A creditor holding a charge or mortgage over the assets of a debtor must apply to the court for a receiver to be appointed (s 336 of the Companies Law). Once a receiver has been appointed, they will sell the property and use the proceeds to pay the creditor. It is possible for a charge agreement to contain a clause allowing the sale of the charged property without recourse to the courts.

7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*	1990-2013: 0.5	There are several insolvency procedures in Cyprus. **<u>Compulsory liquidation</u>** S 213 of the Companies Law states that a petition for the winding up of the company may be presented either by the company or any of its creditors. The substantive grounds on the basis of which the court may decide to wind up a company are listed in s 211. Amongst other things, winding up could be based either on a special resolution by the company or because the company is unable to pay its debts. **<u>Members voluntary liquidation</u>** This route applies only if the company is still solvent and the members have resolved that the company need no longer exist. This type of liquidation is initiated by the directors, and it is only possible if the company can pay its debts in full within 12 months (s 266(1)). **<u>Creditors voluntary liquidation</u>** This procedure is used when the company is insolvent and the creditors want to bring it to an end in order to distribute among themselves the available assets. It requires an extraordinary resolution passed by the members of the company agreeing that the company should be wound up. It also involves the convening of a creditors' meeting the purpose of which is to appoint a liquidator.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic	1990-2013: 0.5	**<u>Liquidation proceedings</u>** S 220 of the Companies Law states that when a winding order has been

	possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1		made no action or proceedings can be commenced against the company except when the court allows it. In addition, s 305 states that where a creditor has issued execution against the goods or immovable property of a company or has attached any debt due to the company, and the company is subsequently wound up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator. **<u>Rehabilitation proceedings</u>** There are two types of rehabilitation proceedings. There is no protection against creditors enforcing their security interests during a company's reconstruction. The appointment of a receiver under the receivership proceedings does not offer any protection against creditors either. However, when a receiver has been appointed to realise a floating charge, creditors will not be able to enforce any judgments obtained against the company.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all	1990-2013: 0.5	The liquidator/receiver plays the most important role in deciding when the company is closed in all of the liquidation and rehabilitation proceedings listed above.

	classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at	1990-2013: 0	The assets of liquidated companies are distributed in the following order: (i) costs of winding up; (ii) preferential debts (s 300 of the Companies Law: taxes due at the date of liquidation or payable 12 months before that date, employees' wages); (iii) interests secured by a floating charge; (iv) unsecured ordinary creditors; (v) deferred debts which were due to members (e.g. declared but unpaid dividends); (vi) share capital of the company.

	(4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).		

8. Czech Republic: Coded by Theodora Dimitrova and Stephan Haidenhein (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990: not indexed 1991-2000: 0.6 2001-2013: 0.7	The Czech Commercial Code came into effect in 1991. **<u>1991-1994:</u>**[13] Listed stock companies: ~ 827,300.- € (s 162 § 3 Commercial Code); up to 12/31/2000: ~ 41,374.- € Other stock companies: ~ 82,730.- € (s 162 § 3 Commercial Code); up to 12/31/2000: ~ 41,374.- € Limited companies: ~ 8,273.- € (s. 108 Commercial Code); up tp 12/31/2000: ~ 4,137.- € **<u>1995-2005</u>** <u>Listed stock companies</u>: ~ 827,300.- € (Art. 162 § 3 Commercial Act-cz); up tp 12/31/2000: ~ 41,374.- € <u>Other stock companies</u>: ~ 82,730.- € (Art. 162 § 3 Commercial Act-cz); up tp 12/31/2000: ~ 41,374.- € <u>Limited companies</u>: ~ 8,273.- € (Art. 108 Commercial Act-cz); up tp 12/31/2000: ~ 4,137.- € **<u>2006-2013:</u>**[14] The minimum capital requirement for limited liability companies is €7,938. The minimum capital requirement for joint-stock companies is €79,384.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend	1990: not indexed	**<u>1991-1994:</u>** The old Commercial Code did not contain any rules regulating the distribution

[13] I used the information provided in the previous study.
[14] http://www.bridgewest.eu/Company%20Formation/Czech%20Republic

	restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1991-1996: 0 1997-2013: 1	of profits. **<u>1995-2005</u>** No rules until 1997 Since 1997: - prohibited repayment of contributions to shareholders according to Art. 123 § 3 Commercial Act-cz; - dividend payments only according to Art. 178 and 179 Commercial Act-cz, evasive transactions ("disguised dividends") prohibited by Art. 179 § 4 Commercial Act-cz; - share repurchase according to strict rules of Art. 161a-c, 179 § 2 Commercial Act-cz **<u>2006-2013:</u>** S 178(2) of the Commercial Code 2001 stipulates that a company may not distribute profits among its shareholders if that would make its equity capital lower than its registered capital. S 179(4) prohibits companies to transfer assets to shareholders without consideration: this may be allowed only in the instances envisaged by the law. Ss 161a to 161c list the circumstances in which a company is permitted to acquire its own shares. S 123(3) prohibits shareholders to request the repayment of their contributions during the company's existence.
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account	1990: not indexed 1991-2013: 1	**<u>1991-1994:</u>** The first Bankruptcy Act since the change of regime in the Czech Republic came into force in 1991. According to it, directors were under a duty to file for insolvency if the company was cash-flow or balance-sheet insolvent (Article 3). **<u>1995-2005</u>** Directors' duty to file for insolvency both if company is cash-flow or balance-sheet insolvent to obtain insolvency assets in favour of creditors, Art. 3 Bankruptcy Act (No. 328/1991, Coll. Of Laws, in force until 12/31/08) (as from 01/01/08 : Art. 3, 5, 98 and 99 Insolvency Act-cz)

	0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		<u>**2006-2013:**</u> Directors' duties are generally owed to the company. However, when the company is in the vicinity of insolvency directors acquire the duty to commence insolvency proceedings (s 98(1) of the Insolvency Act 2006). S 3 defines insolvency as both cash-flow and balance-sheet.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2000: 0.66 2001-2013: 1	**TD:** The Civil Code of the Czech Republic was adopted in 1964. It recognises the following non-possessory security interests: (i) mortgages; (ii) pledges over movable property and receivables. Czech law does not recognise floating charges. The Czech Republic has recently adopted a new Civil Code which will come into force on 1 January 2014. **SH:** Since 2001: Assets over which non-possessory security interests may be granted comprise: -land (Art. 157 Civil Code-cz) -personalty (Art. 158 Civil Code-cz) - receivables (Art. 159 Civil Code-cz) aggregate of assets (Art. 153 § 1 i.c.w. Art. 156 et seqq. Civil Code-cz)
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1994: not indexed 1995-2013: 0.33	**SH:** No obligation to register any non-possessory security interest; Art. 35b Notary Act (JA: I read this as meaning personalty). **TD:** Mortgages over immovable property must be registered with the Cadastral Register. Pledges over a set of assets and moveables must be registered with the Pledge Registry. Pledges over receivables do not require registration.[15]

[15] Kohout and Bruthans, *Czech Republic: Enforcement of Security Interests in Banking Transactions*, pp. 2-5.

6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1994: not indexed 1995-2013: 1[16]	TD: Out-of-court enforcement is possible for all security interests. SH: Out of court enforcement is possible, e.g. via public sale, (cf. Art. 165 § 2 Commercial Act-cz)
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more*	1990: not indexed 1991-2013: 1	**<u>1991-1994:</u>** According to the Bankruptcy Act, a debtor was obliged to commence bankruptcy proceedings if it was insolvent (Article 3). A single creditor could also petition the court providing it could prove the debtor was insolvent (Article 4). **<u>1995-2005</u>** The debtor is obliged to commence bankruptcy proceedings if balance-sheet insolvent. Also, a single creditor may commence bankruptcy proceedings against a debtor if he shows that debtor is insolvent in any respect: however, without any indication for bankruptcy, neither of the parties can commence proceedings, Art. 3, 4 Bankruptcy Act (as from 01/01/08: § 97 and § 98 Insolvency Act-cz) **<u>2006-2013:</u>** Ss 97 and 98 of the Insolvency Act contain the same requirements.

[16] Ibid.

	protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990: not indexed 1991-2013: 0.5	**<u>1991-1994:</u>** Article 52 of the Bankruptcy Act stated that secured creditors' claims were not stayed during liquidation. **<u>1995-2005</u>** Creditors are not stayed if rehabilita-tion proceedings are against all odds, Art. 52 Bankruptcy Act (as from 01/01/08: Art. 249 and 251 Insolvency Act-cz) (JA: interpret as 0.5 in light of TD comments) **<u>2006-2013:</u>** Similarly, the Insolvency Act states that claims against the debtor in bankruptcy shall be considered payable unless the law states otherwise (s 251).
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant"	1990: not indexed 1991-2013: 0	**<u>1991-1994:</u>** Under the Bankruptcy Act the court was the main decision-maker (Articles 39 and 44). **<u>1995-2005</u>** The court is the single decision maker, Art. 39 and 44 et seqq. Bankruptcy Act; as from 01/01/08: Art. 10, 11 Insolvency Act-cz **<u>2006-2013:</u>** The Insolvency Act has considerably improved the position of creditors in insolvency proceedings, but the court remains the main decision-maker regarding whether the company continues to operate (s 11).

	decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights.4 The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990:not indexed 1991-2013: 1	TD: Both the Bankruptcy Act and Insolvency Act rank secured creditors over all other creditors. SH: None of the listed secured claimants' securities is subordinated to preferred claims, Art. 28 Bankruptcy Act; (as from 01/01/08: Art. 157, 298 and 299 Insolvency Act-cz)

9. Estonia: Coded by Theodora Dimitrova

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1994: not indexed 1995-2013: 0.1	The Estonian Commercial Code entered into force on 1 September 1995. S 136 stipulates that the share capital of a private limited company should be at least 40,000 kroons (≈ €2,500). The section was amended in 2010, and it now states a limit of €2,500. S 222 states that the share capital of a public limited company should be at least 400,000 kroons (≈ €25,000). The section was amended in 2010, and it now states a limit of €25,000.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-1994: not indexed 1995-2013: 1	S 157 of the Commercial Code states that private limited companies may pay dividends to shareholders from the net profit or undistributed profits from previous years providing any losses have been deducted. S 159(1) prohibits private limited companies to grant a loan to a person to acquire a share in the company. S 162 disallows private limited companies to acquire their own shares or take them as security save for the exceptions permitted by the law (s 162(2)). S 274 of the Commercial Code stipulates that public limited companies shall not refund or pay interest on a contribution paid by a shareholder. According to s 276, a public limited company may only make payments to shareholders from net profits or undistributed profits from previous financial years for which any losses have been deducted. S 281 prohibits public limited companies to grant loans for the purpose of acquiring shares of the company. S 283 states that a public limited company shall not itself or through a third party acquire or take as security its own shares save for the exceptions provided in the statute (s 283(2)).

3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-1994: not indexed 1995-2013: 0	Estonian law does not impose an explicit obligation on directors to act in creditors' interests when the company is in the vicinity of insolvency. The general rule is that board members owe their duties to the company. However, there are several provisions in Estonian law which protect the interests of creditors. For instance, s 187 of the Commercial Code imposes liability on board members who wrongfully caused damage to creditors to compensate them in solidarity with the company. This section of the Code was amended in 2006, and it now allows creditors to claim compensation for damage caused to a private limited company by its directors if its assets are not sufficient to satisfy the creditor's claim. S 315 lays down the same rule for public limited companies. Directors may also encounter liability based on tort law for breaches of duties established for the protection of creditors (duty to file for bankruptcy; duty to organise accounting).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1992: not indexed 1993-1996: 0.66 1997-2013: 1	Chapter 3 of the Law of Property Act 1993 deals with mortgages as the principal type of security interest granted in immovable property. S 343(1) states that a mortgage extends to the parts, accessories and fruits of immovable property. Security interests over movable property may be established in several ways. S 281 of the Law of Property Act 1993 defines the possessory pledge as one of them. It requires transfer of the pledged thing into the possession of the pledgee. S 297 lists the movable things over which registered security may be created: patents, trade marks, industrial designs, motor vehicles, aircraft, etc. S 2 of the Commercial Pledge Law (effective as of 1 January 1997) stipulates that this kind of pledge extends to all movable property of a company. Therefore, Estonian law recognises floating charges. Lastly, a pledge of rights may be established over financial collateral and

			receivables.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1992: not indexed 1993-1996: 0.33 1997-2013: 0.66	Mortgages of land must be registered with the Land Registry (Law of Property Act 1993). Possessory pledges do not require registration. Registered security over movables must be entered in a public register (s 297). A floating charge needs to be perfected through an entry in the Commercial Registry. Pledges over receivables do not require registration.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1992: not indexed 1993-2010: 0 2011-2013: 1	S 352 of the Law of Property Act 1993 stipulates that if a claim secured by a mortgage is not satisfied, the mortgagee has the right to demand compulsory execution either by compulsory auction or compulsory administration. The mortgagee and mortgagor can agree to a different method of enforcement only after the mortgage has become enforceable. S 292(2) gives pledgees the right to sell the pledged thing (they are in possession) if the claim secured by it has not been satisfied. The rest of the security interests listed above require compulsory execution by public auction. The Estonian Code of Enforcement Procedure was amended in 2011 to allow out-of-court enforcement of collateral by secured creditors.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some	1990-1991: not indexed 1992-2003: 0.5 2004-2013: 0.5	The first Estonian bankruptcy legislation after the country's independence from the Soviet Union was enacted in 1992. The Bankruptcy Act was subsequently amended in 1996 (effective as of 1997). The current Act has been in force since 2004. The 1992 and 1996 Acts stipulated that creditors may commence bankruptcy proceedings only in the circumstances prescribed in detail by the law (s 9). These Acts allowed a debtor to file a petition but it had to explain the cause of insolvency (s 8). The two Acts did not impose an obligation on the debtor to commence insolvency proceedings when balance sheet insolvent.

	criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		S 10(2) of the Bankruptcy Act 2004 states that when filing a petition the creditor must prove the existence of a claim: subsection (2) specifically addresses the debtor's lack of assets to perform its obligations.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1992-2007: 0. 2008-2013: 0.5	Under all three versions of the Bankruptcy Act only a bankruptcy decision prohibits creditors to enforce their claims against the debtor (s 44 of the 2004 Act[17]). Until 2008 Estonian insolvency law was focused primarily on bankruptcy proceedings and liquidation. The Estonian Rehabilitation Act came into force on 26 December 2008. It allows companies on the verge of insolvency to conduct internal reorganisation. The Act envisages automatic stay on secured creditors' claims during the reorganisation period.
9. Outcome of	The ability of creditors to vote on the outcome of	1990-1991: not	The Bankruptcy Act 1992 gave creditors the right to decide whether to

[17] I do not have access to the other two Acts. I have cited them through secondary literature.

bankruptcy proceedings	bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.	indexed 1992-1995: 0.5 1996-2003: 0.33[18] 2004-2013: 0.5	terminate the activities of the debtor at their first meeting: a decision of the creditors' meeting could not be contested in practice. The 1996 Act made the procedure more debtor-friendly: the trustee in bankruptcy submitted a rehabilitation plan and the creditors' meeting had to approve it. If the plan was rejected, the court had the power to order rehabilitation instead of termination of the debtor (s 57). The Bankruptcy Act 2004 restored the power of creditors: s 77 lists decisions on the termination of the debtor as one of the general powers of the creditors' meeting. S 78(2) states that creditors may take such a decision at their first general meeting.
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of	1992-2003: 0.75 2004-2013: 1	Under the 1992 and 1996 Acts claims secured by a pledge or mortgage ranked above all other claims besides insolvency expenses. The only exception was the floating charge which was subordinated to employees' claims and taxes (s 86). The 2004 Act changed this rule: now all types of secured interests rank above unsecured claims.

[18] The court is not a substantive decision-maker but it has the power to veto a decision of the creditors' meeting.

	security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).		

10. France: Coded by Viviana Mollica, Mathias Siems and John Armour (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2003: 0.3 2004-2013: 0	SARL form available until end of 2003 with minimum capital of 50,000FF (=€7,500): Loi n°66-537 du 24 juillet 1966 sur les sociétés commerciales, art 35. From 1 January 2004, SARL form available with no minimum capital: Art L223-2, Loi n°2003-721 du 1 août 2003 - art. 1.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 1	Art L225-210 Commercial Code (ex art. 217-3 loi n°66-537 du 24 juillet 1966) (dividends); Art L225-209 Commercial Code (Law No 2003-7 of 3 January 2003 Art 50 (II) Official Gazette of 4 January 2003) (repurchases); Arts L232-11, L232-12 (disguised distributions). (JA: Was coded as 0.83 for 1995-2005, ie half way between 0.66 and 1, but this level of granularity not adopted elsewhere and seems too subjective; coding of 1 is more in keeping with treatment in other countries in dataset)
3. Directors' duties	Imposing a duty on directors to act in creditors' interest	1990-2013: 1	Until 2005: Art L624-3 Commercial Code: Where management errors have

to creditors	may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		contributed to a lack of assets, court may order that all or some of the debts of the company be borne by its directors. See also Art L624-5. Since 2006 (Loi n° 2005-845 du 26 juillet 2005 de sauvegarde des entreprise**s,** in force since 1 January 2006) : these provisions are now in Art L651-2 and Art L652-1
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2005: 0.66 2006: 0.7 2007: 0.8 2008:0.9 2009-2013: 1	Until 2006: Personalty: Charges not possible over inventory—must be a pledge, which requires dispossession of the debtor. Charges however possible over certain assets, including a purchase money security interest over material and equipment. See M. Gdanski, 'Taking Security in France' in M. Bridge and R. Stevens (eds.), *Cross-Border Security and Insolvency* (Oxford: OUP, 2001), 64-68. 'Entire undertaking': 'The notion of a "floating charge" which crystallises on enforcement of the charge did not exist under French law' (Gdanski, supra, 59). However, a pledge may be given over a 'fond de commerce' (i.e., 'going business'), including commercial name, goodwill, IP, etc, but excluding real estate, book debts, inventory and contractual rights (ibid. 65-66). Since 2006: Ordonnance n° 2006-346 du 23 mars 2006 relative aux sûretés, new Art. 2284 ff. Code Civil, eg, allows non-possessory security interest over personalty; new Art. L527-1 to L527-11 Commercial Code allows 'pledge of stocks' (ie a revolving security). Receivables in particular: (a) Loi du 2 Janvier 1981 ('Loi Dailly') established a statutory framework specifically for the grant of security over book debts. (b) However, a decision from 19 December 2006 of the Cour de Cassation (Cass. com., 19 déc. 2006, n° 05-16.395) created some uncertainty as it rejected the validity of the assignment of receivables unless specifically allowed. (c) But Loi

			n° 2007-211 du 19 février 2007 instituant la fiducie (in force since October 2007) established a type of trust law ('fiducie'), Art. 2011 ff. Civil Code, allowing assigned receivables under certain requirements (eg, initially limited to moral persons subject to corporate tax). (d) Loi n° 2008-776 du 4 août 2008 de modernisation de ''économie (in force mostly since 2009) removed these limitations; further liberalisation with Ordonnance n° 2009-112 du 30 janvier 2009 portant diverses mesures relatives à la fiducie (also in force since 2009), eg, with new Arts 2372-1 ff. Civil Code on the transfer of personalty and assignment of receivables by way of security.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2005: 0.33 2006: 0.66 2007-2008: 0.83 2009-2013: 1	Starting point: registration required for security over corporeal moveables (Art. 2338 Civil Code), but not for pledge of incorporeal assets (Art 2356, 2361 Civil Code). But changes from 2006 to 2009 (see previous variable): new forms of security also require registration, namely, the 'pledge of stock' (Art. L. 527-4 Commercial Code), the 'fiducie' (Art. 2019 Civil Code) and the assignment by way of security (Art. 2372-5 Civil Code).
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2005: 0 2006-2013: 0.5	Until 2006 : not possible at all; see Gdanski, *supra*, 79. See also Art. 2078 Civil Code. Since Ordonnance n° 2006-346 du 23 mars 2006 relative aux sûretés: it is possible to agree on non-judicial enforcement of security interest ('pacte commissorie'), Art. 2348 Civil Code; see also Art. 2372-2 Civil Code.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion)	1990-2013: 0.5	Until 2005: Arts L621-2, L621-1 Commercial Code (single creditor may commence insolvency proceedings, cash flow test). Since 2006 : Loi n° 2005-845 du 26 juillet 2005 de sauvegarde des entreprises (in force since 1 January 2006) modified French insolvency law, in particular introducing rescue proceedings. But the entry into recovery and liquidation proceedings has not substantially changed: see now Arts L631-2, L631-5 and L640-4, L640-5 Commercial Code.

	1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.5	Until 2005: Art L621-40 Commercial Code (secured creditors stayed); but see also Art L622-23 (secured creditors may exercise individual enforcement in liquidation if liquidator has not sold assets within 3 months). Now these provisions are Arts L622-21, L643-2 Commercial Code.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate	1990-2005: 0 2006-2013: 0.25	Until 2005: Art L621-62 Commercial Code: court makes primary decision regarding outcome of case. See also Arts L621-60, L621-61 (judicial administrator, in preparing report, must consult with creditors and employees; report is then influential in court's decision on the case, as iintroduced by Loi no 94-475 du 10 juin 1994 relative à la prévention et au traitement des difficultés des entreprises, in force 21 October 1994). Since 2006: the new law

	action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		(see previous notes) has introduced conciliation proceedings, enabling the company and the main creditors to reach a restructuring agreement. This is seen as a (modest) improvement of creditor involvement: see, eg, Cork & Santonia at http://www.iflr.com/Article/2166556/France-Restructuring-and-insolvency-procedures.html; Cavalier at http://ssrn.com/abstract=1174384
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-1993: 0 1994-2013: 0.75	Art L621-31 I Commercial Code; Loi n° 85-98 du 25 Janvier 1985 relative au redressement et à la liquidation judiciaires des entreprises, art 40 (secured and unsecured debts subordinated), cf Art L621-32 II Commercial Code (debts secured by specific charges of real or personal property are not subordinated in liquidation); Loi no 94-475 du 10 juin 1994 relative à la prévention et au traitement des difficultés des entreprises, in force since 21 October 1994. For the previous law see also Blazy et al (2013) 37 *Journal of Banking & Finance* 1936 at 1939 ('On 10th June 1994, the 1985 legislation was slightly reformed on the following points. First, the secured creditors now benefit from a higher rank in the absolute priority rule (APR) in case of liquidation'). Since 2006: these provisions are now found in Arts L622-17, L622-17 Commercial Code.

11. Germany: Coded by Mathias Siems

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2000: 1 2008-2013: 0.5	§ 5(1) GmbHG (as amended by GmbH-Novelle 1980): 50.000 DM → 25.000 Euro. But with Gesetz zur Modernisierung des GmbH-Rechts und zur Bekämpfung von Missbräuchen (MoMiG), BGBl I 2008, 2026, in force since 1 November 2008, there is also the possibility to set up a *Unternehmergesellschaft* ('start-up company') without minimum capital; but, this company is not allowed to fully distribute its profits until its level of capital has reached the threshold of the regular GmbH. [1] Generally, dividend restrictions follow from. § 233 AktG. Share repurchases are restricted by § 71 AktG. In the original version this section only provided for six very narrow exceptions but since Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (KonTraG), 27. 4. 1998, BGBl. I 786 amended § 71 AktG: now general authorisation possible.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction	1990-1997: 1 1998-2013: 0.8	Generally, dividend restrictions follow from. § 233 AktG. Share repurchases are restricted by § 71 AktG. In the original version this section only provided for six very narrow exceptions but since Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (KonTraG), 27. 4. 1998, BGBl. I 786 amended § 71 AktG: now general authorisation possible. § 57 AktG and & case law (cf. BGH, NJW 1960, 285; NJW 1987, 1194; NJW 1996, 589); cf. also Peter O. Mülbert, 'A synthetic view of different concepts of creditor protection', Working Paper 2006, available at http://ssrn.com/abstract=883625: "It is not entirely clear what kind of transactions the prohibition applies to. While the Second Directive explicitly speaks only of "distributions," German commentators generally agree that so-called concealed distributions (*verdeckte Ausschüttungen* or *verdeckte Einlagenrückgewähr*) are also prohibited by the directive. This term refers to transactions by which corporate funds are conveyed to shareholders indirectly, typically through contracts entered into on unfair terms, such as loans to shareholders with unusually low (or no) interest rates or purchases from shareholders at excessive prices"

	from list above 1 = "basic restriction" plus two additional restrictions from list above		
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 1	Directors' liability possible because: (1) In case of balance sheet insolvency (as defined in § 19(2) InsO) directors must apply for the institution of insolvency proceedings (until 2008 § 92(2)(s.2) AktG; since 2008: § 15a InsO) and must only make payments if they are compatible with the diligence of an orderly and conscientious manager (until 2008 § 92(3) AktG; since 2008: § 92(2) AktG). Violation of the obligation to file for insolvency can lead to directors' liability with respect to creditors (this follows from § 823(2) BGB (BGHZ 29, 100, 103 = NJW 1959, 623; BGHZ 75, 96, 106 = NJW 1979, 1823; BGHZ 100, 19, 21 = NJW 1987, 2433 f; BGHZ 126, 181, 190 = NJW 1994, 2220). Furthermore, there can be a claim based on § 93(2) AktG to pay damages to the company, which can be asserted by the creditors (§ 93(5) AktG); The same is true for a violation not to make incompatible payments (see §§ 93(3)(no.6),(5) AktG). (2) If the directors have committed a crime (§§ 283-283d StGB), this may also lead to directors' liability based on tort law (§ 823(2) BGB). (3) In case of "crisis" equitable subordination is more strict (see Hüffer, *Aktiengesetz*, 7th edn, 2006, § 57 para. 16a). The same rules apply in case of illiquidity, i.e. inability to pay one's debts as they come due (§ 17(2) InsO; see also § 92 AktG). The criminal provisions, which may lead to directors' liability (§ 823(2) BGB with §§ 283-283d StGB), are already applicable in case of "imminent insolvency" (see also § 92 InsO and Becker, *Insolvenzrecht*, 2005, para. 1073). [note: no general obligation to take stakeholder interests into account, but stakeholder interests can be taken into account (cf. Hüffer, above, § 76 para. 12)].
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass:	1990-1996: 0.83 1997-2013: 0.92	Land: § 1113 BGB (hypothec), § 1191 BGB (land charge). Personalty and receivables: *Sicherungsübereignung* (transfer by way of security) possible (case law since 1890; RGZ 26, 180). *Sicherungsabtretung* (assignment by way of security) possible. As such, there is no floating charge in German law. However, courts have accepted global security if certain requirement are fulfilled (for a comparative overview see Hugh S. Pigott, 'The Need for Harmonisation of Collateral Law in

	• Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		Europe', (2004) 15 EBLR 871); in particular (1) identification has to be possible (principle of specificity) (e.g., RGZ 155, 26; BGHZ 7, 365); (2) no violation of "good morals" (§ 138 BGB): violation can occur, e.g., because (a) "over-security" (Übersicherung); (b) inducement to breach contract which provides retention of title; see, e.g., Mayr-Maly and Armbrüster in *MünchKommBGB*, § 138 paras 98 et seq.; Eva-Maria Kieninger (ed.), *Security rights in property in European private law*, 2004, p. 418, 439, 441-2, 481-4. Since 1997 this has become slightly easier (BGH, 27.11.97, BGHZ 137, 212 = NJW 1998, 671: courts imply appropriate waiver into security agreement → no "over security")
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0	Hypothec and land charge must be registered but not *Sicherungsübereignung* and *Sicherungsabtretung*
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 0.5	Depends on type of collateral: (1) possesory pledge: self-enforcement possible §§ 1228, 135 BGB; (2) non-possesory security interest over personalty = transfer by way of security: enforcement depends on contract; default rule: analogy to pledge law (§§ 1228(2), 1234, 1247 s. 2 BGB; see also Kindl in Bamberger/Roth, BGB, Anh. § 930 paras. 25 et seq.) (but: danger that third person acquires personalty in good faith because no registration; coded in variable 5 above); (3) receivables: self-enforcement possible (but usually not transfer to third person; depending on contract) (see Rohde in Bamberger/Roth, BGB, § 381 para. 51); (4) for entire undertaking and financial collateral usually the same rules as in (2) and (3) apply; (5) land: self-enforcement of hypothec or land charge not possible (§ 1147 BGB); but usually notarielly certified deed (§ 794(1)(no.5) ZPO: enforcement arising out of notarielly certified deed possible).
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions.	1990-2008: 1 2009-2013: 0.75	In case of balance sheet insolvency (as defined in § 19(2) InsO) directors must apply for the institution of insolvency proceedings (until 2008: § 92(2)(s.2) AktG; since 2008: § 15a InsO). However, since 18.10.2008, if 'highly likely' that enterprise will continue,

	0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		*deemed* not overindebted even if net assets < 0 (InsO §19(2)). This weakens position of creditors slightly (coded as mid-way—0.75)
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility).	1990-2013: 0.5	For unsecured creditors there is a stay of assets. This means: (1) suspension of pending trials (§ 240 ZPO with § 38 InsO) and prohibition of execution (§ 89 InsO); (2) creditors can only enforce their claims under the provisions governing the insolvency proceedings (§§ 87, 89 InsO); also: claims based on company law can only be exercised by the insolvency administrator (§§ 62(2)(s.2), 93(5)(s.4), 117(5)(s.3), 309(4)(s.5) AktG). (1) does not apply to secured creditors: § 240 ZPO with § 38 InsO is superseded by § 11 KO (until 1999) and § 86(1) InsO (since 1999): "actions of secured creditors pending against the debtor as defendant on the date when the insolvency proceedings are opened may be joined by the insolvency administrator or continued by the plaintiff" (§ 86(1) InsO); then, secured creditor can also execute judgment because the prohibition of execution (§ 89

	Minimum score: 0, maximum score:1		InsO) does not apply for secured creditors (see Uhlenbruck, InsO, 12th edn., 2003, § 89 para 1) (2) does not apply to land-secured creditors: §§ 47, 126 KO (until 1999) and § 49, 165 InsO (since 1999): secured land-creditor can start new proceedings according to § 49 InsO with ZVG. Other secured creditors until 1999: disposition of movables by insolvency administrator (§ 127(1) KO), unless creditor agreed with debtor on own disposition (§ 127(2) KO) → the latter usually happened → secured creditors outside the main insolvency proceedings. Since 1999: Disposition of movables only by insolvency administrator (§ 166(1) InsO; cf. Uhlenbruck, ibid, § 166 para. 1); but § 86(1) InsO for pending trials. These rules are identical for liquidation and rehabilitation proceedings (see also § 217 InsO). It is also irrelevant of whether rehabilitation is a realistic possibility)
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither	1990-1998: 0.5 1999-2011: 0.75 2012-2013: 0.83	No substantive court involvement: - Until 1999: two different procedures: (1) for "compulsory arrangement": §§ 184 et seq. KO (mentioning specific reason for rejection); (2) for "creditors' arrangement": §§ 78 et seq VerglO (mentioning specific reason for rejection) (no discretion). - Since 1999: Court has to confirm the accepted plan (§ 248(1) InsO) based on §§ 250, 251 InsO (no discretion, see Lüer in Uhlenbruck, 12th edn., 2003, § 248 para. 12). No substantive debtor involvement: The debtor either has to initiate or to approve the plan (see § 247(1) InsO). Insolvency law does not specify which person/organ of the debtor is responsible. According to company law, the start of the insolvency proceedings leads to the dissolution of the company (§ 262(1)(no.3) AktG). However this does not mean the end of the company as a legal entity but only as a change of the object of the company (Hüffer, above note, § 262 Rn. 2); Moreover, insolvency proceedings do not affect the general structure of the company (management and supervisory board; general meeting) (e.g., OLG München AG 1995, 232). However, the powers of the administrator and creditors under insolvency law replace most powers of the organs of the company (see Hüffer, ibid, § 264 para. 10). Only insolvency-neutral measures remain possible (Hüffer, ibid, § 264 para. 79: e.g. change of articles and change of capital may be permissible). Continuation of the old company is only possible after the insolvency proceedings have been completed (§ 274(2)(no.1) AktG).

	court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		Creditor involvement: - Until 1999: Two different procedures: (1) for "compulsory arrangement": § 182 KO; (2) for "creditors' arrangement": § 74 VerglO. In both cases majority of votes and majority of persons is necessary (double majority). For secured creditors only to the extent that they waive their right to separate satisfaction, or that such separate satisfaction has failed (§§ 182, 64 KO; §§ 74, 27 VerglO) - Since 1999: Creditors have to approve insolvency plan by groups (§§ 222, 235, 243, 244 InsO). Secured creditors are a separate group if "their rights are encroached upon by the plan" (§ 222(1)(no.1) InsO; see also § 238 InsO). To the extent that they waive their right to separate satisfaction, or that such separate satisfaction has failed (§ 237 InsO), they are always part of the group of non-lower ranking creditors (§ 222(1)(no. 2) InsO). In general each group of creditors has to agree on the plan (§ 244 InsO). However, there is a prohibition to obstruct (§ 245 InsO): i.e. "a voting group shall be deemed to have consented if the creditors forming such group presumably suffer no loss by the insolvency plan compared with their situation without such plan" ((1)(no.1)), and the creditors forming such group participate to a reasonable extent in the economic value devolving on the parties under the plan ((1)(no.2): this is the case if "neither a creditor with a lower-ranking claim to satisfaction without a plan, compared with the creditors forming his group, nor the debtor nor a person holding the debtor's shares receives an economic value" (2)(no.2), cf. cramdown provisions of US bankruptcy law). Furthermore, in some cases lower-ranked creditors shall be deemed to have given consent (§ 246 InsO). Since March 2012: the *Gesetz zur weiteren Erleichterung der Sanierung von Unternehmen* (ESUG) of 7. 12. 2011 has further strengthened the position of creditors, for example, in terms of influencing the appointment of the administrator (or managing the insolvency proceedings themselves, § 270 InsO); it also becomes more difficult for individual creditors to jeopardise the insolvency plan to the detriment of the other creditors (e.g., revision of §§ 245, 353 InsO); generally see http://gesetzgebung.beck.de/news/erleichterung-der-unternehmenssanierung-esug
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces	1990-2013: 1	There are various statutory priorities (§§ 57 et seq. KO; §§ 35 ff. InsO; see also Balz, 23 Brook. J. Int'L. 167 at 174 (1997). However, these do not affect the position as a secured creditor (Uhlenbruck and Berscheid, above note, § 53

	the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).		para. 3; Becker, above note, paras. 852, 1446).

12. India: Coded by Kristin van Zwieten and Priya Lele (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2000:0 2001-2008: 0.05 2009-2013:0	Companies Act 1956 s. 3(1)(iii) as amended by the Companies (Amendment) Act of 2000 (w.e.f. 13 December 2000): minimum paid up capital for private companies of one lakh rupees, or €1,195.97 as at 9 December 2012 (currency conversion http://www.x-rates.com/calculator.html). No change to this position in the Companies Act 2013: see s 2(68), this sub-section in force from 12 September 2013 (see http://www.mca.gov.in/Ministry/pdf/CommencementNotificationOfCA2013.pdf). No initial contribution required for limited liability partnerships incorporated under the Limited Liability Partnership Act 2008 (with effect from 31.3.2009).
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions	1990-1997: 0.66 1998-2013: 0.5	Basic restriction: Companies Act 1956 s. 205, prohibiting distributions other than from profits. Exception for 'interest' paid on shares issued for the purpose of raising finance for the construction of any work or building, or the provision of a plant, that cannot be made profitable for a 'lengthy period', where authorised by articles or special resolution and sanctioned by the Central Government (s. 208, interest rate capped by the Central Government: A. Ramaiya, *Guide to the Companies Act* (17th ed.) p. 2333). Additional restriction: Companies Act 1956, s.77 (restriction on repurchase of shares); Companies Act 1956, Ss.77A, 77AA and 77B introduced by the Companies (Amendment) Act of 1999 with effect from 31/10/1998 read with SEBI (Buy-Back of Securities) Regulations, 1998 and the Private Limited Company & Unlisted Public Limited Company (Buy-Back of Securities) Rules 1999 (relaxation of restriction). • *I think the 1990-1997 period should probably be at least 0.66, since both the basic restriction (s 205, subject to the exception in s 208) and the share re-purchase restriction applied (s 77) throughout that period. I am not sure why the pre-1997 period was previously coded as 0.33, unless it took into account the fact that there is one exception to the basic restriction for construction of construction of plants, as noted above (this provision historically appeared in*

	from list above		*the UK Companies Acts (see for example s 65 of the 1948 Act) but I think it dropped out by the time of the 1985 UK Act).* • *The 1998- period should be adjusted as in the earlier version to take into account the relaxation of the re-repurchase restriction – persisting to 2013 (changes effected by Companies Act 2013 not yet in force).* • *Additionally, there is some judicial recognition of a broader principle that could be invoked in any case of a disguised dividend (see e.g. the Supreme Court decision in Ramesh B. Desai v Bipin Vadilal Mehta AIR 2006 SC 3672: 'Reference has also been made to several decisions rendered by the superior courts in Australia and New Zealand wherein it has been unequivocally held that "a transaction which upon examination can be seen to involve a return of capital, in whatever form, under whatever label, and whether directly or indirectly, to a member, is void"'* [10]). *But I am not aware of any Indian case in which this principle has been invoked to strike down a transaction with a shareholder, so I doubt it should affect the coding.*
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0.5	Liability only for fraudulent conduct of business : S.542 (similar to S.458 and S.630 of English CA 1985)– If in the course of winding up of a company, it appears that any business of the company has been carried on with intent to defraud the creditors of the company or any other person or for any fraudulent purpose, the persons who were knowingly parties to the carrying on of the business (which includes directors), in the manner aforesaid, shall be personally responsible without any limitation of liability for all or any of the debts or other liabilities of the company, as the court may direct. Cases – Heavy withdrawal of money by the directors of a company under interest-free loans with knowledge that the company unable to pay creditors: *Official Liquidator v. Ram Swarup*, AIR 1997 All 72. *(1) I have coded additional years at 0.5 to be consistent with Priya (no change in the statutory rules over the period), but is it right to code liability for fraudulent trading as 0.5 here, given liability does not necessarily coincide with cash flow insolvency?* [JA: Yes I think so] *(2) Additionally, there is some judicial recognition of the* West Mercia v Dodd *principle in India* (*see the Karnataka High Court decision in* Chamundi Chemicals and Fertilisers Ltd (in liquidation) v M C Cherian [*1993] 77 CompCas 1 and the Supreme Court decision in* Bakemans Industries Pvt Ltd v New Cawnpore Flour Mills *AIR 2008 SC 2699) but both these references are strictly obiter so I have not adjusted the coding*

			– *but let me know if you think I should*. [JA: strengthens case for coding at 0.5—see eg similar coding for Ireland]
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	Non-possessory security interests can be taken over all these asset classes.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	All registrable: see ss. 125 and 124 of the Companies Act 1956, to be read with the Transfer of Property Act 1882 and s 3 of the General Clauses Act 1987. The Companies Act 2013 will preserve this position in a clearer provision (see s 77, read together with s 2(16)), but this provision is yet to commence.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1992: 0.25 1993-2001: 0.5 2002-2013: 1	Before 1993, out–of-court enforcement available only in relation to one kind of security interest (the 'English mortgage': see Transfer of Property Act 1882 s 58(e)). In 1993, the Recovery of Debts Due to Banks and Financial Institutions Act 1993 (w.e.f. 24.6.2003) enables faster recovery of debts (whether secured or otherwise) due to banks and financial institutions of the value of Rs.1 M or more through special tribunals [known as Debt Recovery Tribunals] established under the Act in a summary proceeding. From 2002, s.13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFEASI Act) grants special powers of banks/financial institutions/securitisation

			or reconstruction companies to enforce security without court or tribunal order. *KvZ: PL coded the position as 0.5 under the DRT regime (presumably by treating the tribunals as half way between court enforcement and out of court enforcement?). I have coded the pre-DRT position as 0.25, given that out of court enforcement was always possible in relation to one form of security interest (the "English mortgage"), but this may afford too much weight to this form of mortgage (all other forms of mortgage requiring court enforcement).*
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement*	1990-2002: 0.75 2003-2013: 0.63	For industrial companies, mandatory reference to BIFR when balance sheet conditions met: See S.15 and S.23 of the Sick Industrial Companies Act 1985. For non-industrial companies, a single creditor may launch a petition for liquidation when company unable to pay its debts: Companies Act 1956 ss 433 (e), 439 (1) (b) (Code as 0.75= midway between 1 and 0.5) *KvZ: SARFAESI amended SICA s 15 to provide that the reference by debtors (otherwise mandatory, which led to SICA being scored at 1) cannot be made where financial assets have already been acquired by a securitization or reconstruction company under SARFAESI. Should this reduce the SICA score from 2002 onwards, since the effect of the amendment was to make the reference no longer mandatory in these circumstances (thereby removing the informational advantage for creditors associated with a mandatory reference on balance sheet insolvency)?* *JA: coding reduced to 0.63 (midway btw 0.75 and 0.5) after 2002.*

	based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2001: 1 2002-2013: 0.5	Secured creditors may in principle enforce security interest in liquidation proceedings (*Ranganathan v/s Govt of Madras* AIR 1955 SC 604, affirming the right of secured creditors to exercise self-help remedies and to obtain leave of the court to exercise judicial remedies where required by Companies Act 1956 s 446), but may be required to associate the liquidator (under the supervision of the court) so as to ensure the recognition and protection of those preferential creditors to whom the secured creditor is subordinated (*International Coach Builders Ltd v Karnataka State Financial Corporation* (2003) 10 SCC 482; *Rajasthan Financial Corporation v Official Liquidator* AIR 2006 SC 755). The application of this qualifying principle to enforcement action under the SARFAESI Act has not been definitively settled, but it seems likely to me the principle will be applied in this context. Secured creditors stayed in SICA proceedings: Sick Industrial Companies Act 1985, s 22. But SICA was amended by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 to permit secured banks / financial institution creditors (representing not less than 75% in value of 'the amount outstanding against financial assistance disbursed to the borrower') to take enforcement action under s 13 of that Act, thereby enabling them to escape the stay. *KvZ: I am not sure whether the (judicially development) requirement to 'associate' the liquidator in the exercise of enforcement remedies (sometimes expressed as a requirement to obtain the liquidator's consent to the exercise of the enforcement remedy) should affect the coding. At present I have left the coding as 0.5 for liquidation because the core principle of entitlement to stand outside the winding up and enforce is still recognised, although any additional requirement to involve the court/liquidator could adversely affect the ability of secured creditors to enforce in liquidation (this would not necessarily be inefficient, though – given there is no formal rescue alternative for non-industrial firms under the 1956 Act).*
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor	1990-2013: 0.5	For industrial companies in SICA proceedings: all parties can propose scheme but usually an 'operating agency' (a bank, typically a creditor of the debtor) is tasked with preparing the scheme; the consent of every affected institutional creditor

	control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor.
	0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker)
	0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers.
	1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.
			(the Central Government, State Governments, banks and financial institutions) is required by the statute before the scheme can be sanctioned by the BIFR (SICA s 19), though there are some indications of the relaxing of this standard in practice to overcome holdouts (*Oman International Bank SAOG v AAIFR* [2010] 157 CompCas 149 (Delhi)). For non-institutional creditors, BIFR obliged to consider objections by affected parties (see Regs 29, 30 of the BIFR Regulations, 1987), but ultimate decision lies with the BIFR when sanctioning the scheme where approved by institutional creditors.
			
			For non-industrial companies, scheme of arrangement requires creditor vote: Companies Act 1956 S.391 specifies the requirement for meeting of shareholders or creditors with whom the scheme of compromise or arrangement is proposed. (Code as 0.25 = midway between 0 and 0.5)
			
			KvZ: It's not clear to me whether this variable is only concerned with control of the outcome of a restructuring plan, or whether it is concerned with the outcome of bankruptcy proceedings more generally. The coding from last time suggests that perhaps different approaches were taken, as the notes from some jurisdictions refer to both liquidation and rescue procedures while others focus on the process of sanctioning plans only.
			If we are coding for restructuring plans only, the only two legislative routes are the SICA 'scheme' or schemes of arrangement under the CA 1956.
			• *For SICA, I would code at 0.5 throughout because institutional creditors control whether a scheme is sanctioned.*
			• *For schemes of arrangement:*
			  o *I am not sure they should be included at all – since I am not sure they are properly characterised as a bankruptcy procedure, in the absence of an automatic stay (though there is a statutory power for court to order a stay of suits/proceedings while scheme is being negotiated).* JA: agreed, schemes are not included for UK.
			  o *If we are coding the scheme, then I suppose it might be coded at 0.75 given there is a combination of debtor control (board or member approval required) and creditor control (by class). [JA: included because these are route by which restructuring exit from liquidation is achieved]*
			• *In relation to liquidation:*
			    o *Obviously this is not relevant if the variable is only concerned with*

			the process of approving restructuring plans. [JA: need to include because for companies not eligible for SICA, this will be the only bankruptcy regime they enter] ○ *If relevant, then I think that the rule developed in the cases (hardened over time) that the discretion of the courts should be exercised to facilitate rescue wherever possible means that the court is the substantive decision-maker in relation to outcomes under this procedure.* ○ *On the other hand, the court has no power to impose a plan in this procedure; it can only delay making the order to enable the debtor to propose a scheme (subject to creditor approval) or to pursue another form of restructuring with creditors (e.g. through the CDR mechanism).* ○ *So I would code liquidation as 0.25 (midway between court and creditor control). [JA: combination of liquidation at 0.25 and schemes at 0.75 -> 0.5]* •
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 0	Liquidation: Companies (Amendment) Act of 1985: preferential payment of the 'workmen's dues' ranks *pari passu* to all secured creditors, amending ss 529, 530 and introducing s 529A to Companies Act 1956. Also applicable under SICA (industrial companies only) in the distribution of proceeds of sale of the whole of the company's undertaking in a scheme (SICA ss 18(11)), and whenever the proceedings end with the liquidation of the debtor (SICA s 20(4)).

13. Ireland: Coded by John Armour

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	0: 1990-2013	No minimum capital for private companies: Companies Act 1963 ('CA 1963') s 6 – requirements of memorandum for formation of company. (Minimum capital only for public limited companies: Companies Act 1963 s 19)
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1: 1990-2013	Basic dividend restriction: Companies Act 1983 ('CA 1983') s 45 Restrictions on share repurchases: CA 1963 s 60, CA 1983 s 41. Disguised distributions: CA 1983 s 46.

3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0.5	Directors' fiduciary duty shift to take into account interests of creditors in vicinity of insolvency: *Parks v HSBC* [1990] ILRM 341 (aff'd in *Re Frederick Inns Ltd* [1994] ILRM 387; *Jones v Gunn* [1997] 2 ILRM, [1997] 3 IR 1. BUT: no liability for wrongful trading (negligence based); only statutory liability for *reckless* trading in vicinity of insolvency; CA 1963 s 297A (inserted by CA 1990 s 138).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	List of types of registrable security includes most of these: CA 1963 s99. Floating charge is permissible: *Re Keenan Bros* [1985] IR 401
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered.	1990-2013: 1	CA 1963 s 99

	(List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 1	Security may be enforced out of court.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet*	1990-2013: 0.5	Examinership: debtor company must be, or be likely to be, unable to pay its debts: Companies (Amendment) Act 1990 ('C(A)A 1990') s 2; petition may be launched by single creditor. Liquidation: Company must be unable to pay its debts; petition may be launched by single creditor: CA 1963 ss 213(e), 214-5. Receivership: may be launched by a single creditor in consequence of non-payment

	insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 1	Examinership: secured creditors are stayed: C(A)A 1990 s 5(2)(d). Receivership: junior secured creditors will be stayed. Liquidation: secured creditors are not stayed—*Re David Lloyd* (1877) 6 Ch D 339.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court	1990-1999: 0 1999-2013: 0.5	Examinership trumps access to other procedures—eg receivership—no receiver may be appointed once examiner appointed, receiver takes precedence over examiner *if appointed more than 3 days before petition for examinership* : C(A)A 1990 s 3(6). Examiner puts proposals to creditor vote. Vote is conducted by putting creditors into classes (like in a scheme). To be passed: 1990-1999: needed one impaired class of creditors to vote in favour *plus* one impaired class of members : C(A)A 1990 s 24(4)(a). 1999-2013: need only one impaired class of *creditors*: C(A)A 1990 modified by Companies (Amendment) (No 2) Act 1999 s 24. "Impaired" means not being paid in full: C(A)A 1990 s 22(5).

	is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 0.75	Floating charges only are subordinated to preferential and super-preferential claims: CA 1963 s 285

14. Italy: Coded by Viviana Mollica

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2011: 0.5 2012-2013: 0	Art. 2327 c.c. referring to S.p.A. was modified in 2003 by d.lgs. 6/2003, though the new norm became effective only since the 1st of Jan 2004. Before the reform, the minimum capital for a S.p.A. was 200 millions lire (Art. 2327cc), after 2003 it's 120,000 EUR (Art. 2373 cc). The minimum capital requirement for S.r.l. amounts, instead, to 10,000 euro (art 2463, 2° comma 4 cc), and used to be 20,000,000 (art. 2474 comma 1 cc) Italian Lire (almost € 10,000) before the reform. The same minimum capital requirements apply to S.a.p.a. In 2012, with D.L. 24 January 2012, n.1 and following L 24 March n. 27 and D.L. 22 June 2012, n.83 and following L. 7 August 2012, n. 34, two new types of companies were created with the introduction of new 2463 bis cc. These two types of companies had a minimum capital between € 1-10,000 (s.r.l.s and s.r.l.c.r.). S.r.l.r.c. was subsequently abrogated with L. 9 August 2013, n. 99, while s.r.l.s. still remains in existence and now comprises the features of both the previous two new types of companies.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for	1990-2013: 0.66	Normal dividend restrictions apply when the company balance is below the minimum capital requirement. (Art. 2433 and 2433 bis cc pre and post reform-2004. Art. 2433 bis was also modified by D.L. 27 January 2010 n.39). See also art. 2627c.c. Before and after 2004, art. 2357- 2357quater cc regulated the purchase of the company's own shares, establishing that a company cannot, if not within the limits of the distributed dividends and the available funds as stated in the last approved balance sheet, purchase its own shares (no more than a 10th of the company capital before 2003, and no more than a 5th after 2004), though there are exceptions to this principle (2357 bis cc). Art. 2373 regulated the case of conflicts of interests of a shareholder.

	score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above		
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990- 2002: 0.5 2003- 2012: 0.6 2013: 0.7	Art. 2394 regulates the directors' duties to creditors, stating that directors are liable against the company's creditors for the noncompliance of the obligations concerning the integrity of the company patrimony (as defined at 2407 cc) or if they failed to supervise the general conduct of company's business. The action can be proposed by creditors when the company patrimony results insufficient to satisfy their debts. The reform (2003) did not change the scope of the article. No further legislative changes. When a company becomes insolvent, the directors must promptly file for bankruptcy. The courts have also worked towards the definition of directors' duties towards the creditors. In 2002, a court has condemned the directors of a company for violation of the provisions of Art. 2357 cc (purchase of own shares). Recently, the Tribunale di Prato, on 14 September 2012, has established that whether the exact calculation of the damages suffered by creditors in case of directors' liability is not possible, the amount of damages awarded to them will be the difference between the loss of the company when balance-sheet insolvent and the loss of the company the moment bankruptcy is declared (therefore, balance-sheet insolvency is used as a residual, equitative way to calculate damages in cases of directors' liability). Again in 2012, the Tribunale di Verona established that the basis for directors' personal liabilities against creditors for s.r.l. was based on art. 2043 (general tort law) and not art. 2394. In 2010, Tribunale di Nola, recognised that decadence for bringing an action against directors and auditors starts to run from balance-sheet insolvency (but only when creditors are aware of it) and not from the declaration of insolvency
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business	1990-1993: 0.33 1994- 2013: 0.66	Art. 2784 cc defines the pledge and states that movable assets, universality, credits and any other rights having movable as an object, can be secured through a pledge, while art. 2785 refers to special laws concerning pledges in

	finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		special sector. Art. 2810 cc defined the mortgage as specifies that it can be constituted over lands, and certain movable assets like aircrafts, ships, cars… Generally all security interests on movables are possessory. A typical example of a non-possessoy security interests is the so called *'pegno rotativo'* (currently see D. Lgs. 21 May 2004 170): introduced in 1985 covering Parma and San Daniele Ham, it was extended in 1993 with D.Lgs. September 1993 n. 385 and in 1998 with TUB (D.Lgs. 1 September 1998 n. 213), and further elaborated by the Italian Courts in the past decades, and specifically from 1998 onwards with the decisions taken by the cassation Court n.5264/1998, 10695/1999, 4520/2004 and 16914/2003. Yet, it is considered mainly an exception to the general rule. Many commentators (Phillip Wood among others) attribute to the Italian *privilegio speciale* the same function of the English 'floating charge', but the field of application of the *privilegio* is much more limited (an extension is being considered after 2013), and the law lists its only possible uses[19]. *Privilegi speciali* for credits in the industry, agricultural and company sectors are regulated by art. 46 TUB. *Privilegio speciale* was introduced in 1993 by D.Lgs. September 1993 n. 385. *Privilegio speciale* can also be constituted on intangibles. There are security rights for IP. Art. 111 L.aut. (L. 22 April 1941, n. 633) allows non-possessory security interests to be created on copyrighted materials (though mostly related to the profits derived by their exploitation) and Art. 69 of Patent Law allows security interests on any industrial inventions. Securities interests of shares and obligations have to be recorded in the company book and all the formalities for their passage have to be respected.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land	1990-2013: 0	Mortgage of land (and on the *diritti reali* on land) shall be registered. Same apply to mortgage of certain categories of movables (such as aircraft, cars, ships, etc…). Normally, registration does not apply to movables, as security interests on those are of possessory nature. *Privilegio speciale* needs to be registered according to the rules laid down in art. 1524 cc (though it seems a

[19] There is a *privilegio speciale* thought for the need of the industry sector, that secures credits, through all the machinery an industry owns.

	0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		'validity against third parties' requisite rather than a formation prerequisite).
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2004:0 2005-2013: 0.1	A court order is always necessary. The law places a general ban on private enforcement against the debtor default (Art. 2797 cc for pledges and 2891 cc for mortgages). Enforcement follows the norms contained in art. 474-632 c.p.c. See also art. 2744 cc 'divieto di patto commissorio', where the law stated that any transaction (included any contract that has similar effect, such as the *vendita in garanzia*) that establishes that the property of the secured asset will be transferred to the creditor in case of the debtor noncompliance is against the law. Position recently reinstated for disguised private enforcement actions (see Cassation Court decision 19288/2009) . Yet, D. Lgs. 170/2004 introduced a special proceeding to enforce a financial guarantee (financial activity used as a security), that allows creditors to enforce unpaid claims secured by a financial guarantee by selling the secured asset directly, or being assigned by the debtor at a reasonable value (see also Cassazione's decision of 10 November 2008).
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a*	1990-2013: 0.5	Art. 5 of *Legge Fallimentare* (Regio Decreto 16 March 1942, n. 267) defines when a debtor is insolvent. This is a key feature, which is a necessary prerequisite for starting an insolvency procedure. The procedure can be started by the creditors (one or more) of the company, the debtor himself – but only on the condition he is insolvent, the court or a public prosecutor (Art. 6 LF). Art. 6 LF has been modified following D. Lgs. 9 January 2006 n.5, but the change did not regard who could start the bankruptcy proceedings. Between 2005 and 2012, the law has undergone a series of reforms (2005, 2006, 2007, 2009, 2010, 2012 and 2013) , mainly aimed at encouraging the use of pre-bankruptcy proceedings, and in particular with the goal of having a more efficient regulation of the pre-bankruptcy agreement (*concordato preventivo*) and introducing new pre-bankruptcy schemes of arrangements, also as out-of-court debt restructuring plans (*piano attestato di risanamento*)

	requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		and debt restructuring agreements (*accordo di ristrutturazione dei debiti*). In this case, the debtor needs to be facing a 'crisis'/ being in a phase of distress.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.5	Pre-reform art. 51 LF (see above) imposed a stay on all creditors' individual actions. Art. 53 LF dealt with secured creditors (pledge or privilege on movable assets as specified in art. 2756 – credits arising from the conservation and amelioration of the assets and 2761 credits for the carriers, depositary and so on) and stated that enforcement proceedings can still carry on during the insolvency procedure. The secured creditors have to be authorised by the court. During reorganisation, secured creditors' claims aren't exempt from an automatic stay on enforcement. Now, new art. 51 LF reinforces the imposition of a stay on all (whichever nature they are and even for the recovery of debts contracted during the bankruptcy proceeding) creditors' actions. Art. 53 LF remains basically unchanged on what pledge or privilege on movable holders can do (despite a slight modification of the wording by D.Lgs 12 September 2007, n.169, which concerns the procedure to continue their actions). . Also, 182-bis provides for a 60day period stay on the restraining actions or enforcement proceedings of creditors (in case of a debt restructuring agreement). This article was again modified by L. 122/2010. Art. 168, as modified by L.83/2012 provides for a stay of the proceedings in case of a debt settlement (*Concordato preventivo*).
9. Outcome of bankruptcy	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position	1990-2005: 0 2006-2012: 0.1	According to the old procedure- see *Concordato* (Art. 128, 129 and 130 LF), *Concordato Preventivo* - pre-bankruptcy arrangement - (Art. 181) (and

proceedings	both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.	2013: 0.3	*Amministrazione coatta controllata* -art. 188, 190 and 191, abrogated in 2006), the creditors had a voting procedure for establishing whether they wished to stay the proceedings. Yet, it was the Court who made the final decision on the feasibility of the stay and it was effectively up to the Court to decide whether the company should go into winding up. The reform has slightly changed the creditors' role, and it has, ever so slightly, reinforced the rights of the debtor, as well, as he can now be heard by the Court (new art. 15FL) in the hearing that leads to the declaration of the start of the bankruptcy. The creditors' committee (formed by after the opening of a bankruptcy proceeding and composed of three or five members selected from the creditors) has the role of monitoring/supervising the proceedings and issuing opinions. Among those opinions, some are effectively binding on the Court itself (as a result of the new legislation): - continuing the company's activities, or part of them (new art. 104 LF) - debt settlement proposal by the debtor (art.125 as introduced by D.L. 18 October 2012 n 179 and Law 121/2012) Among the non binding opinions: - statement on the closure of the bankruptcy proceeding (new art.119 LF) In *Concordato*, a judgement on the agreement proposal's merit is reserved only to the unsecured creditors and the plan proceeds only if more than 50% of the creditors - expressed in value- approve it (or if there are different classes of creditors, more than 50% of the classes in the highest numbers of classes) at art. 128 LF. Until the introduction the new 2 paragraph of art. 129 by D.L 18 October 2012 n 179 and subsequent L. 121/2012, at the end of this process, it was the Court that would decide whether finally to approve the plan or reject it. After 2012, the Court issues a homologation judgement, if there are no oppositions to the vote. In *Concordato Preventivo*, a judgement on the agreement proposal's merit is reserved only to the unsecured creditors and the plan proceeds only if more than 50% of the creditors - expressed in value- approve it (or if there are different classes of creditors, more than 50% of the classes in the highest numbers of classes) at art. 177 LF. Until the introduction the new 2 paragraph

			of art. 129 by D.L 18 October 2012 n 179 and subsequent L. 121/2012, at the end of this process, it was the Court that would decide whether finally to approve the plan or reject it. After 2012, the Court can only issue a homologation judgement, if there are no oppositions to the vote. In a debt restructuring agreement, the Court may grant approval of the debt restructuring agreement, once it has ruled on any opposing actions (art. 182 bis).
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990- 2005: 0 2006-2013: 0.75	According to old art. 111 LF, all secures claims ranked below a number of preferential creditors: state (Inland Revenue), employees, etc... Art. 54 specified that creditors with pledges, mortgages and privileges had a pre-emption right on the sums obtained from the auction of the secured assets. In 2006, the article was modified and the secured creditors are now ranked after the so called 'preferential' credits (pre-deductible): for instance, judicially approved debt restructuring agreements or pre-bankruptcy agreements, or competent court grants the claims for admission to the pre-bankruptcy agreement procedure or obtaining the court's approval of the debt restructuring agreement, or claims arising from shareholder loans granted to implement a judicially approved pre-bankruptcy agreement or debt restructuring agreement for up to eighty per cent of their total amount. But, according to new art. 111bis preferential creditors are not senior to those secured by a pledge or a mortgage, in respect to the sum recovered from the dispossession of the assets covered by such securities. Which means that art. 111 ranking can be so interpreted: 1. mortgage or pledge holding creditors (in respect to the sums pertinent to their pledge/mortgage) 2. pre-deductible creditors; 3.other secured creditors; 4. unsecured creditors. Creditors who instead hold a *privilegio speciale*, are regulated by a combined reading of art. 111 quater and art. 54 and 55.

15. Japan: Coded by Kenji Hirooka (1995-2005) and Theodora Dimitrova (with advice from Gen Goto)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2005: 1 2006-2013: 0	**<u>1990-2005</u>** There were two major types of limited liability vehicles prior to the enactment of the Companies Act 2006 – a stock corporation (*Kabushiki Kaisha*) and a private limited company (*Yugen Kaisha*). The old Commercial Code prescribed a minimum capital requirement of 10m Japanese Yen for stock corporations (Article 168-4). The old Yugen Kaisha Law prescribed a minimum of 3m Japanese Yen for limited private companies (Article 9). **<u>2006-2013</u>** Japan introduced major reforms to its Company Law in 2006. It abolished limited companies and the minimum capital requirement for company incorporation.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders	1990-2013: 1	**<u>1990-2005</u>** Article 290-1 of the old Commercial Code imposed certain restrictions on dividend payments by stock corporations: dividends were only allowed when calculated according to the law. A similar rule applied to limited private companies (Article 44 and 46 of the Yugen Kaisha Law). In addition, stock companies were not allowed to repurchase their shares except in certain circumstances.[20] In 2001, the old Commercial Code was amended and this repurchase restriction was relaxed: a stock corporation thereafter could purchase its own shares. Such repurchases could only be conducted in accordance with certain procedures and up to the dividend payable amount calculated under the law

[20] The former Commercial Code of Japan lists the following cases as exception to the limitation of repurchase of a company's its own shares (Articles 210, 210-2, 210-3)
(a) Acquisition for the purpose of liquidation of treasury stock;
(b) Acquisition along with a merger or acquisition of the whole business of another company;
(c) Acquisition for the purpose of exercising a right of the company;
(d) Acquisition as a result of a shareholder's exercise of the right to require the company to buy back its shares;
(e) Acquisition of its own shares, for which transfer restriction is imposed, in case a company is designated as a buyer;
(f) Acquisition for the purpose of transferring treasury stocks to its directors or employees.

	0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above		pursuant to Article 210, Paragraph 3 of the old Commercial Code. A similar repurchase restriction rule also applied to private limited companies (Article 24 of the Yugen Kaisha Law). **2006-2013** Article 461 of the Japanese Companies Act 2006 imposes certain restrictions on dividend payments. The total value of the money paid to shareholders cannot exceed the distributable amount available on the day of dividend distribution. 'Distributable amount' is defined in Article 461(2). Article 462(1) states that in the event of a violation of the restriction, the persons who received the money and the executive directors or anyone else involved in the execution of the operation are jointly and severally liable to the company for the amount equivalent to the money paid out. Liability may not be imposed if the persons involved prove they have not acted negligently while discharging their duties. A Japanese stock company may acquire its own shares in accordance with the conditions set out in Article 155 of the 2006 Act. In addition, listed companies which intend to acquire their own shares must comply with the rules in the Cabinet Office Ordinance on Restrictions on Securities Transactions. These rules are designed to identify types of trading behaviour which are less likely to be considered forms of market manipulation.[21] Article 120 of the Companies Act stipulates that companies are not allowed to give property benefits to any person regarding the exercise of shareholder's rights. If the directors of a company violate this rule, they are jointly and severally liable to the company and must restore the amount equivalent to the value given. Liability may not be imposed if the directors prove that they exercised due care in discharging their duties.
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors	1990-2005: 0.5 2006-2013: 0.5	**1990-2005** Article 266-3 of the Commercial Code. **2006-2013** Where directors are grossly negligent with respect to their duties or where

[21] http://www.tse.or.jp/english/sr/unfair/b7gje6000000iaoa-att/b7gje6000000iaus.pdf

	"too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		they knowingly fail to perform them, the Companies Act 2006 allows third parties to sue them (Article 429, Para 1). Liability also arises in the following four specific situations: (i) giving a false notice or statement with respect to an important matter of the business; (ii) making of false financial statements or records; (iii) false registration; (iv) false public notice (Article 429, Para 2). In addition, the Japanese Supreme Court has adopted a doctrine which imposes liability on non-executive directors for grossly failing to monitor the activities of misbehaving managers. The doctrine allows creditors to sue such directors.[22]
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	Japanese law recognises mortgages as a form of non-possessory security interest over immovable property (Article 369 of the Civil Code of Japan 1896). The most common form of security interest over tangible movable property is the pledge (Chapter 9 of the Civil Code). Intangible movables such as shares and other financial instruments, claims and receivables, and intellectual property rights can also be pledged. In addition to the pledge, Japanese law also recognises security assignments (whereby the title passes to the creditor but the debtor remains in possession of the assets) as a form of granting security interests. Japanese law does not recognise floating liens per se. However, it recognises pledges or security assignments over inventory. There is a general requirement in the law that movables must be properly identified before they can be pledged. The law requires that inventory be specified only by kind and location.[23]
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered.	1990-1997: 0.33 1998-2003: 0.66	Mortgages may be created by agreement and must not necessarily be in writing. Article 177 of the Civil Code, however, states that mortgages must be

[22] Kraakman et al, *The Anatomy of Corporate Law, A Comparative and Functional Approach*, p. 136.
[23] http://www.iclg.co.uk/practice-areas/lending-and-secured-finance/lending-and-secured-finance-2013/japan

	(List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	2004-2013: 1	registered in accordance with the provisions of the Real Estate Registration Act 2004 in order to be asserted against third parties. For (5) securities registration, Japan has the "Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims" that is used for asset based lending. It started for assignment of claims in 1998 and expanded to movables in 2004 or 2005, I believe. Pledges over movable property are perfected through continuous possession of the thing pledged (Article 352 of the Civil Code). The creation of security interests over shares must be registered in the pledge section of the pledgee's account in order to be considered perfected even though trading law does not explicitly state this as a requirement. In order to perfect a pledge over nominative claims, a notice must be given to third party obligors (Article 364 of the Civil Code). No registration is required. A pledge over debts cannot be asserted against third parties unless it has been endorsed by the third party (Article 365). According to Article 4(1) and 14 of the Perfection Act, a pledge over claims can be perfected against third parties other than the obligors by registration.[24] A pledge over a trade mark, copyright or patents must be registered with the relevant register in order to be perfected. [NB coding differs from for 1995-2005 in earlier version]
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 0.5	Non-consensual enforcement of security interests may only be conducted following judicial approval. In the case of security interests in immovable property the creditor must petition the court to order an official auction (Article 180 of the Civil Enforcement Act). Article 190 of the Civil Enforcement Act sets out the auction procedure for enforcing security interests over movable property. Similarly, Article 193 lists the procedures applied in the case of receivables and other assets. The judicial route is time-consuming and costly, and therefore interested parties usually consent to a voluntary sale. The enforcement of security interests created by way of security assignment

[24] http://www.jurists.co.jp/en/publication/tractate/docs/200903_ueno_kawato.pdf

			does not require involvement of the courts. The creditor does not need to resort to an official auction because he or she already has title to the property and can sell it in order to recover the debt.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*	1990-2013: 0.5	**1990-2003** The Bankruptcy Act 1922 allowed both secured and unsecured creditors to commence bankruptcy proceedings against a company which was unable to discharge its debts with its assets (Article 127). **2004-2013** Article 18(1) of the Bankruptcy Act 2004 states that a creditor or debtor may file a petition for commencement of bankruptcy proceedings. Article 18(2) requires creditors to demonstrate a prima facie case for bringing a petition. The grounds for commencing bankruptcy proceedings with regard to a legal person are listed in Article 16: the debtor is deemed insolvent when unable to pay its debts in full with its property. The Bankruptcy Act does not impose an obligation on debtors to begin proceedings when they are balance sheet insolvent. Article 19(1)(ii) states that the director of a stock company may file a petition when the necessary grounds are present.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose.	1990-1999: 0.75 2000-2013: 0.90	Security interests can be exercised after insolvency proceedings have commenced under the Bankruptcy Act. Japanese law allows two rehabilitation procedures for companies in financial distress: the rehabilitation process under the Civil Rehabilitation Act and the reorganisation process under the Corporate Reorganisation Act. The Civil

	0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1		Rehabilitation Act which became effective in 2000 does not provide for a general stay on the enforcement of secured creditors' non-possessory interests (Article 53(2)). However, Article 31(1) gives powers to the court to stay the procedure for exercise of security interests for a reasonable period of time if it believes that this may be in the common interest of rehabilitation creditors, and it will not cause undue damage to the auction applicant. Prior to 2000 the old Composition Law applied: it allowed secured creditors to enforce their interests during a company's financial rehabilitation. The Corporate Reorganisation Act 1952 (as amended in 2003) prohibits the exercise of secured creditors' security rights outside of the reorganisation process (Article 50(1)). Instead, secured creditors enjoy priority over other creditors during the distribution under the reorganisation plan.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers.	1990-2013: 0	Japanese bankruptcy law does not impose any statutory requirements to call a meeting of creditors. The creditors' meeting participates in bankruptcy proceedings only with the court's consent. The court must be convinced that the majority of creditors have agreed to partake in the proceedings and that the committee represents the interests of all creditors. In certain circumstances the court may request the committee of creditors to give an opinion in the bankruptcy proceedings. This could be done in various ways: (i) reporting on the state of debtor's assets (Article 31(1)(ii)); (ii) discontinuing of the bankruptcy proceedings due to insufficiency of the debtor's estate; etc. The Civil Rehabilitation Act (effective as of 2000) entitles creditors to vote on the company's rehabilitation plan: they may do so in proportion to the value of their verified declared claims (Article 170(2)(i) and (ii)). Majority in both number and amount is required for the adoption of a plan. The Corporate Reorganisation Act (amended in 2003) entitles creditors to vote on the company's reorganisation plan (Article 191(2)(i)). Claims are separated into two classes: secured and unsecured (Article 196(1)). There are special voting percentages required for the different classes.

	1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights.4 The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 1	There is no systematical subordination of secured claims to other claims. The law does not prohibit ad hoc subordination as long as such subordination is "not against equity" (Corporate Reorganization Act, Art.168, para.1 proviso), but I am not sure if there are some cases that subordinates a secured claim in this way. The classification of different creditors in Japan depends on the nature of proceedings. The general classification follows this order: <u>Administrative expenses</u> This category includes trustees' remuneration, court fees and other expenses associated with the proceedings. In the case of bankruptcy proceedings taxes and labour claims may also be deemed administrative expenses, and thus prioritised. <u>Priority claims</u> These are claims which have been given priority by law. They normally include tax and labour claims. Bankruptcy and civil rehabilitation laws do not allow such claims to be impeded. Their impediment, however, is possible in corporate reorganisation proceedings. <u>Secured claims</u> The law allows secured creditors to foreclose during bankruptcy and civil rehabilitation proceedings. <u>Unsecured claims</u> In bankruptcy proceedings unsecured creditors must wait for the liquidator to distribute the proceeds. Under the other two procedures, unsecured creditors may only be paid by the debtor or trustee in accordance with the rehabilitation or reorganisation plan. <u>Post-commencement claims</u> Creditors who have such claims can only receive payments after the termination of insolvency proceedings.

16. Latvia: Coded by Theodora Dimitrova and Theis Klauberg (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. “Private company” should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2009: 0.1 2010-2013: 0	Latvia declared independence from the Soviet Union on 4 May 1990. The minimum capital requirement for public stock companies is LVL 25 000 (≈ € 35,000) (s 225 of the Commercial Law effective as of 2000). This requirement existed before the Commercial law entered into force in 2002. The minimum capital requirement for limited liability companies was LVL 2000 (≈ € 2,800). This requirement also existed before the Commercial law entered into force in 2002. The requirement was abolished in 2010 with amendments to the Latvian Commercial Code: a limited liability company can now be set up with just 1 lat share capital.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company’s assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends”. To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • “Disguised” dividends, e.g. undervalue transactions with shareholders 0 = less than “basic dividend restriction”(criterion for score of 0.33) 0.33 = “basic restriction” on dividend payments (not waivable without creditor consent) 0.66 = “basic restriction” plus one additional restriction from list above 1 = “basic restriction” plus two additional restrictions from list above	1990-2013: 1	Ss 153 and 154 of the Commercial Law lay down specific rules for the valuation of property contributions by shareholders which aim to reduce the risk of transactions at an undervalue. S 182(1) states that the only payments which the company may make to shareholders can be either dividends or other forms of capital reduction. S 182(2) states that any other payments which are not mentioned in paragraph 1 are unjustified. These include cases where shareholders utilise company property free of charge, when a shareholder receives higher remuneration than the one specified in his or her service contract, or when the company buys property from a shareholder at an inflated price. S 161(4) imposes a restriction on payment of dividends: dividends may not be paid out if the funds of the company are less than its equity. S 192 stipulates that in general a company cannot acquire its own shares. The section lists a few exceptions, but none of them envisage capital reduction. S 204 states that the only ways in which a company may reduce its capital are by cancelling shares or reducing their par value. Similar rules applied before the Commercial Law entered into force in 2002.

3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0	S 169 of the Commercial Law does not impose a duty on directors to act in creditors' interests when the company is in the vicinity of insolvency: they owe their duties to the company.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1991: not indexed 1992-1998: 0.33 1999-2013: 1	The Latvian Civil Code which existed before Soviet occupation and which took effect in 1992 recognises pledging of immovable property (mortgage) and pledging of movable property (possessory pledge) (Article 1279). The Commercial Pledge Law of Latvia (enacted in 1998 but became effective on 1 March 1999) introduced the 'commercial pledge' which may cover: (i) movable tangible and intangible property; (ii) a pool of things; or (iii) the complete assets of an enterprise (Article 3(1)). Latvian law recognises floating charges. Latvia adopted the Financial Collateral Law in 2005 which allows the granting of security interests over cash and financial instruments through financial pledge agreements. The law transposed Directive 2002/47/EC.
5. Security:	This variable captures extent to which non-possessory	1990-1991: not	Article 1281 of the Civil Code stipulates that mortgages must be registered in

registration	security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	indexed 1992-1999: 0 1999-2013: 1	the Land Register in order to be perfected. Possessory pledges are perfected by transfer of the subject matter of the pledge into the creditor's possession. They are difficult to operate, and therefore they have become outdated. Article 16 of the Commercial Pledge Law stipulates that commercial pledges must be registered in the Commercial Pledge Register. The Financial Collateral Law prescribes that that security interests in financial instruments must be perfected through registration in the cash or securities account with the financial institution holding this account.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1991: not indexed 1992-2013: 0.5	Article 1321 of the Civil Code stipulates that a pledgee is allowed to enforce his or her security interest in a mortgaged property outside of court only if the debtor has agreed to it. If there has been no such agreement, the creditor may auction the property only with the court's permission. Article 36(1) of the Commercial Pledge Law (effective as of 1999) allows commercial pledgees to take over the pledged item(s) (unless they already have possession) and sell it. Article 38, however, makes clear that the right of sale must have been granted to the pledgee by the pledgor and registered in the Pledge Register. When the pledge is registered in accordance with the Financial Collateral Law, the pledgee is entitled to enforce his or her security interests provided he or she has observed the terms and conditions of the financial pledge arrangement.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally,	1990-1995: not indexed 1996-2007: 0.5 2008-2013: 1[25]	S 36 of the Law on the Insolvency of Undertakings and Companies (in effect from 1996 until 2007) allowed creditors to commence bankruptcy proceedings against a debtor provided that the conditions in s 39 were met. In addition, s 42 imposed a duty on a debtor to submit an insolvency petition to the court in certain situations. The Insolvency Law which was introduced in 2008 stipulated that a debtor

[25] I think the previous index is not accurate because it does not take into account the relevant law of this period.

	without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		must submit an application for insolvency proceedings if it lacked the assets to satisfy justified creditors' claims.[26] Article 60(1) of the Insolvency Law 2010 allows creditors to commence insolvency proceedings. Article 60(3) imposes an obligation on the debtor to submit an application for insolvency proceedings if it is balance sheet insolvent.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is	1990-1995: not indexed 1996-2013: 0.5	S 90 of the Law on the Insolvency of Undertakings and Companies stipulated that secured creditors may not exercise their rights with respect to the property of the debtor until rejection of the restoration plan, or until the end of the restoration if a plan has been approved. S 96 entitled secured creditors to compensation for the restriction of their rights as a result of the restoration plan. Article 36(1) of the Insolvency Law 2008 stated that a secured creditor may not apply for the sale of pledged property or for insolvency during the legal protection (rehabilitation) proceedings. In addition, Article 99(1) stated that a secured creditor may request the sale of a pledged property when a decision is made regarding the solution of the state of insolvency proceedings.

[26] I do not have access to the Insolvency Law 2008; this information is from the previous index.

	not a realistic possibility). Minimum score: 0, maximum score:1		S 37(1)(2) of the Insolvency Law 2010 imposes a general ban on the enforcement of secured creditors' interests during legal protection proceedings.[27] However, s 37(2) allows for one exception: secured creditors may request the sale of pledged property if the prohibition would cause significant harm to their interests. S 61 of the Insolvency Law 2010 states that a secured creditor may not submit an application for insolvency proceedings of a legal person.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither	1990-1995: not indexed 1996-2007: 0.5 2008-2009: 1 2010-2013: 0.5	According to the Law on the Insolvency of Undertakings and Companies, the creditors' meeting had the power to decide on the state of insolvency, including regarding bankruptcy (s 7(1)(3)). Articles 78(2) and 79 of the Insolvency Law 2008 stated that the creditors' meeting, where the votes are assigned to unsecured creditors, is competent to define the outcome of insolvency proceedings. S 119 of the Insolvency Law 2010 states that the administrator may submit an application to the court for the termination of insolvency proceedings proving there are no objections from creditors regarding the implementation of the plan for settling creditors' claims.

[27] Legal protection proceedings (also extra-judicially) may be initiated when a company experiences short-term financial difficulties, and the executive body of the company has a plan how to overcome them.

	court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights.4 The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 1	Secured claimants are not subordinated.

17. Lithuania: Coded by Theodora Dimitrova

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1993: not indexed 1994-2013: 0.1	The first Company Law of Lithuania came into force in 1994. Article 2(3) imposed a minimum capital requirement of LTL 100,000 (≈ €29,000) for public companies. Article 2(4) imposed a minimum capital requirement of LTL 10,000 (≈ €2,900) for private companies. The Act was replaced by the Law on Companies in 2000. Article 2(3) of the new Act stipulates a minimum capital requirement of LTL 150,000 (≈ €43,500) for public limited liability companies. The share capital required for the incorporation of a private limited company remains the same.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-1993: not indexed 1994-1999: 0.66 2000-2013: 1	Article 49(3) of the Company Law 1994 prohibited companies to declare or pay dividends if the company was insolvent or would become insolvent after the payment of dividends. Article 46 banned companies from purchasing their own shares except in certain circumstances. Article 60(3) of the Law on Companies 2000 imposes the following restrictions on dividend payments: (i) the company is insolvent or would become insolvent after the payment; (ii) the aggregate of profit/loss available for appropriation is negative; (iii) the equity capital of the company is lower or would become lower than the aggregate amount of authorised capital. The rules regarding dividends payments were amended, and as of 1 March 2012 companies are allowed to distribute interim dividends. Article 54 of the 2000 Act allows public limited companies to purchase their own shares but only according to the procedure prescribed by the law. Article 44(9) of the 2000 Act prohibits companies to make advance payments, give loans or offer other safeguards to third parties if such actions are aimed at enabling other persons to acquire shares in that company.
3. Directors' duties	Imposing a duty on directors to act in creditors' interest	1990-1993: not	Under the 1994 Act directors owed duty only to the company.

to creditors	may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	indexed 1994-2005: 0 2006-2013: 0.33	The Lithuanian Civil Code which came into force in 2000 states that directors owe their duties to act in good faith and reasonable manner to the company and members of other bodies of the company (Article 2.87(1)). The Law on Companies 2000 stipulates that directors must act only for the benefit of the company and its shareholders (Article 19(8)). A 2006 decision of the Supreme Court of Lithuania declared that directors may be liable to third parties such as creditors when they violate statutory rules aimed at protecting such third parties. The case concerned bankruptcy fraud, and civil liability was established after the directors in question had already been found criminally liable. Therefore, civil liability to third parties is most likely restricted to exceptional circumstances.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1991: not indexed 1992-1996: 0 1997-2013: 0.66	The law on mortgages in Lithuania is governed by ss 4.170-4.197 of the Civil Code (effective as of 2001) and the Law on Mortgage (effective as of 1992). Mortgages can cover immovable property, ships and aircraft. Pledges under the Lithuanian Civil Code (ss 4.198-4.228) and the Law on the Pledge of Movable property (effective as of 1997) may be granted over any movable property: goods, savings, deposits, receivables, etc. S 4.202 of the Civil Code recognises a pledge over a fluctuating pool of assets. However, in practice Lithuanian law does not recognise floating charges.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4))	1990-1991: not indexed 1992-1997: 0	S 4.185(3) of the Civil Code stipulates that a mortgage must be registered with the Mortgage Register. The Register began operating in 1998. (Coded as 0 from 1992-1997 because Law on Mortgage was in force but no registration

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1998-2013: 0.66	yet). S 4.209(2) of the Civil Code stipulates that when the object of the pledge remains with the pledgor (non-possessory pledge) a pledge bond must be certified by a notary and registered with the Mortgage Register.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2000: not indexed 2001-2013: 0	The parties to a collateral agreement cannot agree that the lender may enforce its security interest out of court (s 4.192 and s 4.219 of the Civil Code).
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow*	1990-1991: not indexed 1992-2000: 0.5 2001-2013: 1	The first Law on Enterprise Bankruptcy came into effect in 1992. S 3 lists the circumstances in which a court will commence bankruptcy proceedings: a creditor may petition the court when it believes: (i) the debtor is insolvent; (ii) the debtor has excessive debt; (iii) the debtor has improperly disposed of some of the enterprise's assets, and as a result the creditor's claim may not be satisfied. The current Enterprise Bankruptcy Law came into force in 2001. Ss 4 and 5 give the right to creditors to initiate bankruptcy proceedings if the debtor has become unable to pay its debts. S 8 imposes an obligation upon the debtor to commence bankruptcy proceedings if the enterprise has publicly announced or notified its creditors of its inability or lack of intent to discharge its obligation.

	insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-1991: not indexed 1992-2000: 0 2001-2013: 0.5	S 23 of the Law on Enterprise Bankruptcy 1992 provided that during a company's rehabilitation period creditors' claims must be satisfied in the same sequence as provided in the event that the company is liquidated. The 2001 Law on Restructuring of Enterprises stipulates that after the court has approved a restructuring order and before a restructuring plan has been approved all creditors' rights to recover their debts become suspended.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court	1990-1991: not indexed 1992-2000: 0.5 2001-2013: 0.5	S 12 of the Law on Enterprise Bankruptcy 1992 states that the creditors' meeting has the right to request the liquidation of the enterprise. S 23 of the Law on Restructuring of Enterprises 2001 also gives the right to the creditors' meeting to request the court to apply the liquidation procedure to the debtor.

	is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-1991: not indexed 1992-2013: 1	S 29 of the 1992 Act gives priority to secured creditors over all other creditors. Similarly, s 34 of the 2001 Act states that creditors' claims secured by a pledge or mortgage shall be satisfied first.

18. Malaysia: Coded by Theodora Dimitrova and Viviana Mollica (1995-2005).

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0	The minimum capital requirement for private companies is RM2. The Kuala Lumpur Stock Exchange (KLSC) imposes specific requirements for public companies: not less than RM60mil for listing on the Main Board, and RM40mil for listing on the Second Board. The Companies Commission of Malaysia published a practice note in December 2012 clarifying the rules on minimum capital for company incorporation. The note explains that the RM2 requirement is merely an industry practice, and it is not a requirement imposed by the law. The note draws attention to several provisions of the Companies Act 1965 which, when read in conjunction, highlight that there is no capital requirement under the 1965 Act.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions	1990-2000: 0.66 2001-2013: 1	The 2001 amendments to the Malaysian Stock Exchange Listing Requirements strengthened the provisions on related party transactions which became stricter than the rules under the Companies Act 1965. The transactions covered by these rules include the acquisition and disposal of assets, the provision and receipt of services. In addition, s 131 of the Companies Act 1965 states that a director who is directly or indirectly interested in a contract or proposed contract with the company should inform the rest of the directors. S 67 of the Companies Act 1965 prohibits the giving of financial assistance to other people by the company for the purpose of purchasing its own shares. S 67A lays down the rules which companies must follow when repurchasing their shares: (i) the company must be solvent at the date of repurchase and will not become insolvent as a result of this transaction; (ii) the purchase is made through the Stock Exchange; (iii) the purchase is made in good faith and in the interests of the company. S 365 of the Companies Act 1965 states that dividends can be paid only out of profits, and imposes criminal liability for failure to observe this rule.

	from list above		
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0.5	The Companies Act 1965 does not impose specific duties on directors to take into account creditors' interests. Before the 2007 amendment, s 132 of the Act stated that directors should at all times act honestly and use reasonable diligence in discharging their duties. In addition the Act prohibited the use of information gained through the position of a director for personal advantages. The 2007 amendment revamped s 132 which now states that directors should exercise their powers for proper purposes and in good faith. Directors shall also exercise reasonable care, skill and diligence in discharging their duties. S 304 of the Companies Act 1965 stipulates that if the business of the company has been carried out with intent to defraud creditors, those who were knowingly a party to this activity shall be personally liable for any of the debts or liabilities of the company. Similarly, s 303 imposes liability on company officers who contracted on behalf of the company for a debt knowing or having no reasonable grounds to believe the company will be able to pay.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land	1990-2013: 1	Malaysian law recognises several types of security interests: (i) matters related to security devices (mortgage/charge/lien) taken on immoveable property are regulated by the National Land Code 1965; (ii) the principal types of security interests created over movable property are: fixed and floating charges, debentures, liens, pledges and assignments of proceeds of contracts.[28]

[28] http://www.shearndelamore.com/assets/templates/images/pdf/paper_publications/Restructuring_and_Insolvency_2009.pdf

	0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.66	The following must be registered with the Registrar of Companies under s 108 of the Companies Act 1965. If not, such charges are void as against the liquidator and any creditor of the company: • Charge to secure an issue of debentures; • Charge on uncalled share capital of a company; • Charge on shares of a subsidiary of a company; • Charge on land; • Charge on book debts; • A charge on calls made but not paid; • A floating charge on the undertaking or property of a company; • A charge on ship or aircraft or any share in a ship or aircraft; • Charge on goodwill, patent or license, on a trademark, or copyright; • Charge on a credit balance of a company in any deposit account; • Charges over land under the National Land Code must be registered under section 243 of the Code. As such charges also come within the ambit of section 108(3)(e) of the Companies Act; such charges must also be registered under the Companies Act.[29] Liens over movable property cannot be registered in Malaysia.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)*	1990-2013: 1	If no payments were made, the creditor (depending on the type of security) can initiate legal proceedings by way of enforcement or he or she can exercise extra-judicial remedies. A substantial degree of self-enforcement is permitted, save for land that is subject to both a fixed charge in a debenture and a statutory charge created under the Code.[30]

[29] The law in this area has not changed.

[30] Enforcement mechanisms differ according to the type of security. Debentures are enforced mainly by the appointment of a receiver and manager over the charged asset. Normally, the receiver and manager would take possession of the assets, including land. However, the Supreme Court in *Kimlin Housing Development Sdn Bhd* [1997] 2 MLJ 805 ruled that land subject to not only a fixed charge but also a statutory charge, could not be sold privately by the receiver using his power of sale under the debenture.

	0 = out of court enforcement is not possible 1 =out of court enforcement is possible		A recent court decision from 2012 confirmed that secured creditors are not required to obtain leave to enforce their statutory remedy from the winding-up court under s 226(3) of the Companies Act 1965.[31]
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*	1990-2013: 0.5	There are two forms of liquidation in Malaysian law: voluntary and involuntary. S 259 of the Companies Act 1965 states that if the liquidator (who has been appointed on the basis of a shareholders' resolution for voluntary winding-up) decides that the company is unable to pay its debts, he or she must summon a creditors' meeting to inform them of the situation. In this case, the creditors can decide to appoint a different liquidator, and the rest of the process is known as creditors' voluntary winding-up. S 217 of the Companies Act 1965 lists contingent or prospective creditors as stakeholders who may petition the court to wind up the company when it is unable to pay its debts (s 218(1)(e)). The meaning of 'unable to pay its debts' was clarified by Justice Siti Norma Yaakob in the case of *Teck Yow Brothers Hand-Bag Trading*: the inability to meet current demands irrespective of whether the company is possessed of assets which, if realised, would enable it to discharge its liabilities in full. This definition has been subsequently recognised in the case law. The Companies Act 1965 does not contain any provisions for mandatory commencement of insolvency proceedings. S 303, however, stipulates that directors may be personally liable to creditors if the company continues trading while insolvent.
8. Stay of secured	It is desirable, from an efficiency point of view, that	1990-1997: 0.5	S 222 of the Companies Act 1965 states that at any time after the presentation

[31] *Ambank (M) Berhad v CA Steel Sdn Bhd [2012] MLJU 421*

creditors	secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1998-2013: 1	of a winding-up petition and before a winding-up order has been made, the company or any creditor may apply to the court to stay or restrain further proceedings. In addition, when a winding-up order has been made or a provisional liquidator has been appointed no action shall be commenced against the company unless it has been approved by the court (s 226(3)). There is no automatic stay in the event of a voluntary winding-up of a company. S 274, however, allows the liquidator or creditors to petition the court to use its powers to stay proceedings. The Companies Act 1965 recognises the scheme of arrangement as the general manner for financial restructuring whereby the company proposes a compromise to its creditors. S 176(10) gives powers to the court to restrain further proceedings in any action or the commencement of any proceedings against the company. The conditions for a restraining order are listed in s 176(10A). The following procedures have become available since 1998: • liquidation of corporate entities; • court approved schemes of arrangement; • private and court appointed receivers (and managers); • special administration by *Pengurusan Danaharta Nasional Berhad* (or Special Asset Management Corporation.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are	1990-1998: 0 1999-2013: 0.5	In the event of creditors' voluntary winding-up, the directors must produce a statement that the company is unable to pay its debts and summon a meeting with the creditors which may decide to liquidate the company. In addition, the liquidator or creditors may petition the court under s 243 to stay the winding-up proceedings.[32]

[32] I have decided to preserve the previous index because there seems to have been an amendment in the law in 1998. I cannot find it anywhere.

	better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights.4 The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2002: 1 2003-2013: 0.75	Until 2003 secured creditors' rights were given top priority in winding-up proceedings (s 291(2)). The rest of the claims followed this order: (i) winding-up costs, employees' wages, workers' compensation, vacation leave remuneration, contributions to superannuation, taxes; (ii) unsecured creditors' claims; (iii) shareholders' claims. In a 2003 decision of the High Court, however, it was established that employees' claims for unpaid wages take priority over secured creditors with security interests such as mortgages, charges, liens or debentures over the employer's land.[33]

[33] *Ban Hin Lee Bank Berhad v Applied Magnetics (M) Sdn Bhd (In Liquidation)* ((2003) 5 CLJ 1

19. Mexico: Coded by Aurelio Gutierrez and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2011: 0.007 2012-2013: 0	Minimum capital requirement for a Limited Liability Company (Sociedad Limitada): 3,000 mexican pesos (174.71 € aprox). From this money, 50% must be paid at the tme of incorporation (art. 63 Corporation Act). However, Joint Stock Companies require 50,000 mexican pesos (2,911.80euros), and 20% of this amount must be paid at the time of incorporation (art. Companies Act). Nevertheless, from 2012, there are no minimum capital requirement for either Limited Liability Companies or Joitn Stock Companies.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 0.66	A company is forbidden from acquiring its own shares, except for judicial adjudication in payment of corporate creditors (art. 134 Companies Act). The directors responsible for the share repurchase in violation of the provisions laid down in article 134 shall be jointly and severally liable to the company and its creditors (art. 138 Companies Act). Moreover, article 196 of Companies Act deals with shareholders having a conflict of interests with the company in a specific transaction.
3. Directors' duties	Imposing a duty on directors to act in creditors' interest	1990-2013: 0	Although it is certainly unclear, there is no a specified directors' duty to

to creditors	may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		creditors.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1999: 0.33 2000-2013: 1	Before 2000, the real property mortgage and the possessory pledges (which required the actual delivery of the asse to the creditor) were the main security instruments used in Mexico. There were hardly non-possesory devices outside agricultural and retail sales, and the system was very scattered. However, the system changes in 2000 it creates two new types of guarantees: i) the guarantee trust; and ii) the nonpossessory pledge. Moreover, the new law allows the creation of security interests in all types of present and future collateral and in relation to bohch and future obligations (arts. 348, 352, 355, 356, 359 and 402).
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4))	1990-1999: 0 2000-2013: 1	The 2000 law defers registration rules to the applicable registry law and procedures, of which the New Commercial Registry Law is part. This new law and operational system creates a centralized, notice-based, computerized

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		registry system.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1999: 0 2000-2013: 1	After 2000, in case of default, the trustee (in case of guarantee trust) or the secured party (in case of non-possessory pledge) may enforce the security interest in an extrajudicial manner (arts. 1414 bis et seq. Commercial Code, New Title 3).
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow*	1990-2013: 0.5	The petition requesting the judicial declaration of commercial insolvency (declaración de concurso mercantil) can be initiated voluntarily by the debtor (art. 20) or involuntarily by a creditor or the Attorney General (art. 21). The condition for both is the insolvency of the debtor.

	insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.5	In the reorganisation stage (*conciliación*), there is a stay of all creditors art. of 65 Insolvency Act). However, in the liquidation stage (*quiebra*), secured creditors can enforce their claims, unless there is an agreement which provides for the payment of their creditors according to article 158 of Insolvency Act, or the payment of the value of their security (art 160 Insolvency Act).
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant"	1990-2013: 0.5	Once the bankruptcy is declared, the continuation of the business is decided by an agreement between the debtor and the creditors´ committee (arts. 157 et seq. Bankruptcy Act)

	decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 0	Secured creditors are subordinated to "specially priviliged creditors" and some expenses of liquidation (arts. 217, 218, 219, 224 and 225 Insolvency Act).

Primary legal sources

Companies Act 1934 (*Ley General de Sociedades Mercantiles de 4 de agosto de 1934*)

Insolvency Act 2000 (*Ley de concursos mercantiles de 2 de mayo de 2000*)

Insolvency Act 2000 (*Ley de concursos mercantiles de 2 de mayo de 2000*)

Insolvency Act 1943 (*Ley de quiebras y suspensiones de pagos de 1943*). Abolished in 2000 by the new Insolvency Act.

20. Netherlands: Coded by Viviana Mollica (1995-2005), Mathias Siems and Thom Wetzer

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2011: 0.7 2012-2013: 0	The minimum capital to be paid up initially for a *besloten vennootschap* (BV), a company limited by shares, is €18,000 (section 2:175(2) BW; ie Civil Code, English translation at http://www.dutchcivillaw.com/civilcodegeneral.htm). The minimum issued and paid-up capital for a public company, *Naamloze Vennootschappen* (NV) is €45,000. Before the Euro was introduced the minimum share capital of a BV was NLG 40,000, (which is 18,151.21 EUR) while of a NV was NLG 100,000 (which is 45,378.02 EUR). Since 1 October 2012: no minimum capital necessary for BV.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2012: 1 2012-2015: 0.83	Share repurchases are restricted in BV´s and NV's (although less so for BV's than NV's). Furthermore, the system rely on rules protecting creditors, i.e. legal capital, restrictions on using the company own capital to finance takeovers of the same company, etc. The primary method to restrict payment of the company's assets to shareholders is the so-called *balance-sheet test* ('balanstest'), see **art. 2:216 BW** for the private limited liability company ("besloten vennootschap", or "BV") and **art. 2:105 BW** for the public limited liability company ("naamloze vennootschap", or "NV"). This test implies that the management board of the BV or NV has to assess whether, in view of the interests of the BV or NV and its creditors, any form of payment to the company's shareholders is prudent ("verantwoord"). In making this judgment, the legal and statutory minimum capital are among the factors that have to be considered. The management board can only refuse the payment to shareholders if it knows or reasonably should foresee that the proposed payment to shareholders will render the BV or NV unable to meet its obligations to creditors. (The more general rules regarding the liability of the management board as formulated in **art. 2:9 BW** and **2:248 BW**, as described in variable 3, also apply in this context.)

			Share repurchases are restricted under **art. 2:98 BW** for NVs and **art. 2:207 BW** for BVs. Following the implementing legislation of Directive 2006/68/EC, **art. 2:98 BW** has become more complex and rigorous, further limiting the ability of the NV to repurchase shares. On the other hand, since the renewal of the law concerning BVs ("Flex-BV Law") in 2012, the test under **art. 2:207 BW** has become less stringent for BVs. (coding consequently reduced by 0.33/2=1.66). Various other ways to divert value from creditors to shareholders ('hidden dividends') are partially addressed by general creditor protection rules. These include the *pauliana* (**art. 3:45-3:48 BW** or, in an insolvency procedure, **art. 42-51 Fw**), which allows for the *ex post* rollback of transactions that compromised the company's ability to meet its obligations to creditors, and the protection against 'unlawful acts' ("onrechtmatige daad") (**art. 6:162 BW**). But these rules do not capture every type of value diversion harming creditors. Hence, creditors usually also rely on covenants, which courts tend to enforce without much scrutiny (**art. 6:248 (2) BW** and case *HR 15 oktober 2003, HR 17 december 2004*). See also: Viëtor, D.A. & Zwalve, A.C.L. (2011) "De Gevolgen van Vreemd Vermogen: Spelletjes Tussen Aandeelhouders en Kredietgevers en Tussen Kredietgevers Onderling" *Onderneming en Recht – "Effecten en Vermogensrecht"*.
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent	1990-2013: 0.5	In principle, a director's liability will be to the company rather than to individual shareholders or creditors. As a general rule, each director has a duty towards the company to properly perform the duties assigned to him (section 2:9 BW). If the company is in financial difficulties, the directors will have greater responsibility for acting in the interests of creditors, and will be more likely to incur personal liability, yet normally that needs serious culpability in order to succeed. A director may be held liable in tort (section 6:162 BW) by a creditor if he entered into a transaction on behalf of the company, while knowing (or should have reasonably been knowing) that the company would not be able to meet the obligations, and would not have sufficient assets from which the debt could be recovered. In the Netherlands, the supreme court have decided in the *Beklamel* (HR 06-10-1989, NJ 1990, 286) case that directors may not deal with a creditor in the knowledge that they would not be able to pay that

	Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.		creditor. This gives an individual creditor the possibility to sue directors personally. If the legal entity does not provide sufficient resources to pay all creditors in the case of bankruptcy of the legal entity, the directors shall be jointly and severally liable for the deficit in the bankruptcy if (a) it is apparent that the management has not discharged its duties properly and (b) it is likely that the bankruptcy was caused by the mismanagement of the board (2:138-248 BW). Bankruptcy holds that the procedure should focus on protecting creditors, but does not specify a duty for directors.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1991: 0.33 1992-2013: 0.66	Prior to the explicit establishment of the non-possessory pledge (1992), a workaround was used to obtain a result that gave the creditor a similar or stronger position in terms of the security held. The title to the property right was transferred to the creditor, under the explicit recognition that physical control remained with the debtor unless the contract was called upon by the creditor. This served as a de facto security interest ("zekerheidseigendom", or "fiduciaire ovedracht tot zekerheid"). See: HR 21 juni 1929 (Hakkers/Van Tilburg). [Note: leading up to the 1992 reforms, this practice was criticised on the basis that it granted more rights to the creditor (property rights) than was functionally required (non-possessory security interest). The introduction of the non-possessory security interest was a response to this concern, and was accompanied by a prohibition on "zekerheidseigendom".] Since 1992: with the introduction of the new Civil Code the notion of non-possessory pledge entered the Dutch legal system. These rules can be found in Book 3, Articles 237 and 239 BW. Article 237(1) states: 'The right of pledge on a moveable thing, on a right payable to bearer, or on the usufruct of such a thing or right, can also be established by an authentic deed or a registered deed under private writing, without the thing or the document to bearer being brought under the control of the pledgee or of a third person.' Article 239(1) states: 'A right of pledge on a right which can be exercised against one or more specifically determined persons and which is not payable to bearer or order, or a right of pledge on the usufruct of such a

			right, can also be established by an authentic deed or a registered deed under private writing without notification thereof to those persons, provided that the right in question already exists at the time of the establishment of the right of pledge or will be directly acquired pursuant to a juridical relationship already existing at that time.' The Netherlands doesn't have a provision that envisages a floating lien, but many assets can be pledged (non-possessory), including rights to brand names, patents etc Security interests ("zekerheidsrechten") are divided in mortgages ("hypotheek", which applies to immovable goods) and "pledges" ("pandrecht"). Within the latter category there are two subcategories of non-possessory security interests, which apply to claims/securities ("stil pandrecht", art. 3:239 BW) and moveable goods ("bezitloos pandrecht", art. 3:237 BW). Many assets can be pledged, as long as they are 'transferable' (art. 3:83 (1) and (3) BW). A "floating lien" does not exist under Dutch law.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1992: 0.33 1995-2013: 0.5	Prior to the 1992 reforms, the following applied: Mortgages had to be established by a notarial deed (art. 1217 (1) BW (old)) and registered (art. 1224 BW (old)). The non-possessory pledge did not exist prior to 1992, and I have not been able to find what the usual practice was when the workaround ("zekerheidseigendom", or "fiduciaire ovedracht tot zekerheid") was used. (But the workaround was a possessory pledge and so does not count for these purposes). Mortgages must be established by a notarial deed and registered (art. 3:260 BW) – note that the requirement to register also applied in the period 1995-2005.

			A non-possessory pledge ("bezitloos/stil pandrecht") can be established by a private deed, in which case it must also be registered in the designated registry, or by a notarial deed. If a private deed is used, the deed itself must meet the general requirements for such a document as set out in art. 156 Rv. (code as 0.33/2 = 1.66, because only registrable if not notarized). No floating charge, so coding is 0.66-1.66= 0.5. A mortgage must be established as a notarial deed and registered; a pledge can be established as either a notarial or a private deed. However, a private deed must be registered with the local tax department (*Belastingdienst*) in order to have effect (merely to certify the date), if it relates to a non-possessory or undisclosed pledge. Other formalities apply in relation to different classes of assets, such as intellectual property rights.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 1	Prior to the 1992 reforms, the situation was functionally similar to the situation after the reforms. The execution of pledge outside courts is normally possible. The primary method is public sale in accordance with local customs and customary terms. Court involvement is required if one wants to execute the pledge through a different method, e.g. private sale (unless both pledgor and pledgee agree to a different method after the pledgee has become entitled to enforce). Special rules apply to banks, which may foreclose on a mortgage if the debtor has stopped his payments; a non-possessory pledge may be transformed into a possessory pledge and the pledge holder can foreclose on that if again the debtor can not fulfill the contract terms [also note: Retention of title should be agreed and notified in writing before delivery, preferably at order confirmation. In case of insolvency, the retention of title claim must be arranged via the administrator/liquidator] Regarding mortgages, art. 3:268 BW specifies the right for out-of-court enforcement ("parate executie"). In the presence of a notary, the creditor (holder of the mortgage) can publicly sell the pledged good if the debtor is in default. In the process, the creditor has to abide by the formal procedural requirements as specified by law ("Wetboek van Burgerlijke Rechtsvordering"). Out-of-court enforcement ("parate executie") is also possible regarding other

			non-possessory pledges ("bezitloos/stil pandrecht") under art. 3:248 BW. The creditor (security holder) can sell the pledged good/claim if the debtor is in default. The parties to the non-possessory pledge can, however, agree ex ante to a term in the agreement stipulating that a court has to establish that the debtor is in default before the creditor can take such action. If no such term has been agreed upon, the parties can still agree ex post (following default) to use a different enforcement procedure. Alternatively, following default each party can request the court to require a different enforcement procedure (art. 3:251 BW).
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-*	1990-2013: 0.5	Preliminary remarks: The Dutch Bankruptcy Act (*Faillissementswet* ; English version at http://www.dutchcivillaw.com/bankruptcyact.htm) came into force in 1986 and it has not been thoroughly revised in the years 1995 until now (see http://leidenlawblog.nl/articles/is-dutch-insolvency-legislation-globalisation-proof). The most significant changes made consisted of a new debt-restructuring regime for natural persons in 1998. At present, the Bankruptcy Act comprises three separate insolvency proceedings: bankruptcy, suspension of payments, and debt reorganization of natural persons. Bankruptcy is intended as a procedure to liquidate the debtor's assets and to divide the proceeds among the creditors. Suspension of payments is meant to be a restructuring procedure, while debt reorganization of natural persons is a liquidation procedure. In the case of bankruptcy the debtor must be in the situation where he has ceased to make payments (Art. 1 of the Bankruptcy Act). When a debtor stops the payments, with a minimum of one unpaid due payment obligation (Art. 6), a bankruptcy proceeding can be initiated. A debtor that is no longer able to pay its debts can be also declared insolvent by judicial order at the request of one or more of its creditors. A creditor who requests the insolvency of a debtor must summarily prove its claim. The Bankruptcy Act does not require any (judicial or extrajudicial) preparatory proceedings. The Court, does however, require a well-founded petition.

	flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.5	The suspension of payment (restructuring procedure) does not affect secured and/or privileged creditors. The bankruptcy provides for a general stay on creditors. Art. 26 of the Bankruptcy Act, states that after the commencement of bankruptcy proceedings, all claims against the debtor may be asserted only in the verification proceeding. If there are legal proceedings pending against the debtor for execution of debts, such proceedings will be suspended after the commencement of the bankruptcy and the claims will have to be filed for verification. Under Art. 350 Bankruptcy Act, a debtor can start an action in front of the Court for an interim termination (in case of new debts incurred during the term of debt restructuring or if there are indications that the debtor is trying to disadvantage his creditors).
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker)	1990-2013: 0.5	A bankruptcy ends by means of an agreement, or by means of a simplified completion (removal in the case of a lack of income) or by means of a distribution to the creditors following verification of their claims. During bankruptcies, a trustee takes over control in among to maximize payout to ordinary creditors. As creditor committees are nearly never formed in the Netherlands, creditors do not have control over the process.

	0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 1	The first debts that should be paid are the debts secured by mortgage or pledge (*separatisten*). Only after the satisfactions of those creditors come highly preferential insolvency debts, preferential debts, the unsecured debts, the subordinated debts and the shareholders.

21. Pakistan: Coded by Theodora Dimitrova and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0	There is no minimum capital requirement for the establishment of private or public companies in Pakistan.[34]
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions	1990-2008: 1 2009-2013: 0.66	Ss 95 and 95A of the Companies Ordinance 1984 regulate the repurchase of shares by companies. S 95 imposes a general ban on share repurchasing and direct or indirect financial assistance. S 95A, which was introduced in 1999, allows listed companies to purchase their own shares provided this has been properly justified and authorised by a special resolution of the general meeting. Such purchases can only be made in cash out of the company's distributable profits. [JA: so key plank of creditors' protection maintained] The law was amended in 2009 to enable companies to buy-back their own shares and convert them to treasury shares: Companies (Buy-Back of Shares) Regulations 2009. Under these regulations, buy-backs need not be paid for out of distributable profits; rather a solvency test had to be satisfied and a minimum debt/equity ratio (3x). S 249 states that dividends may only be paid out of the profits. This, however, cannot be done out of profits made from the disposal of immovable property or assets, unless this is the main business of the company (s 248(2)). S 225 regulates the contracts by agents of a company in which the company is an undisclosed principal.

[34] http://www.icl-directory.com/company_formation_tax_rates_detail.php?country=Pakistan&id=139

	from list above		
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0.5	Pakistani law does not impose any duties which companies' directors owe to creditors. The currently accepted rule is that duties are owed to the company. S 413 of the Companies Ordinance 1984 imposes liability for conducting a company's business with intent to defraud creditors. This rule applies to companies in the course of winding-up and the court can extend liability to directors of the corporate body (s 414). Similarly, s 415 envisages imprisonment for officers of companies which have gone into liquidation and who by false pretences induced a person to give credit to the company.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	The assets over which Pakistani law permits non-possessory security interests include: (i) legal and equitable mortgages over real estate; (ii) charges; (iii) liens; (iv) pledges (for both tangible and intangible movables); (v) hypothecations; (vi) security assignments; (vii) floating charges over all company's assets (banking companies can only create valid floating charges if they have permission from the State Bank of Pakistan that such a charge will not be detrimental to the interests of depositors).

5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	S 121 of the Companies Ordinance 1984 lists all mortgages and charges which must be registered in order to be valid. Mortgages of land and floating charges must be registered. In addition, creating a valid charge over movables such as equipment requires registration with the Registrar of Assurances. Charges over any book debts of the company also require registration.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 1	The Transfer of Property Act 1882 deals with mortgages and charges. S 67 stipulates that secured creditors have the right to foreclose at any time after the mortgage money has become due. S 69 gives secured creditors the power to sell the mortgaged property without the court's intervention. The Contract Act 1872 deals with pledges on moveable property. S 176 allows pawnees to retain the pledged goods as collateral security or sell them, providing they have given the pawnor reasonable notice of the sale.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-*	1990-2013: 0.5	Under s 297 of the Companies Ordinance 1984 the company itself (by passing a special resolution) or creditors may petition the court for a compulsory winding-up order. S 305(e) lists inability by the company to pay its debts as one of the circumstances in which a company may be wound up by the court. It is also possible to have a voluntary winding-up of a company either by the shareholders or creditors' meeting. [JA: this is a 0.5, as debtor cannot commence insolvency proceedings unilaterally unless co insolvent]

	emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.5	s 313 of the Companies Ordinance 1984 states that: "the Court may, at any time after presentation of the petition for winding up a company under this Ordinance, and before making an order for its winding up, upon the application of the company itself or of any its creditors or contributories, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit." Once an insolvency order has been passed or a provisional manager has been appointed, no suit or other legal proceedings may be carried out against the company before a court leave has been obtained first (s 316). Enforcement through out-of-court methods is not affected by s 316. Secured creditors can proceed with the enforcement of their interests notwithstanding the liquidation proceedings, and can rely upon their securities or a decree by the Court, if leave to proceed has been granted.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of	1990-2013: 0.25	Pakistan had no general corporate reorganization procedure during this period. A scheme of arrangement can be undertaken, provided creditors are supportive: S 284(2) of the Companies Ordinance 1984 states that if 75% of the creditors agree to a compromise or arrangement with the debtor company, it shall be binding on all creditors after sanctioned by the court. An administrative rehabilitation process is available for industrial companies. S 296 stipulates that companies owning an industrial unit which is facing financial problems may be declared sick, and any institution, authority, committee or person authorised by the Federal Government may draw up a plan for the rehabilitation and reorganisation of this company. Approval and implementation of such a plan is for the Federal Government (ss 296(4)-(6)). Coding:

	creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		-If an industrial company subject to s 296, become subject to government control – code as 0. -If not an industrial company, no reorganization procedure—secured creditors can continue to enforce in liquidation.—code as 0.5 -- code overall as 0.25.
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights.4 The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 0.75	S 405 ranks creditors in the following order: (1) In a winding up, there shall be paid in priority to all other debts- (a) all revenues, taxes, cesses and rates due from the company to the Federal Government or a Provincial Government or to a local authority at the relevant date and having become due and payable within the twelve months before that date; (b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date and any compensation payable to any workman under any law for the time being in force, subject to the limit specified in sub-section (2); (c) all accrued holiday remuneration becoming payable to any employee or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

			(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions towards insurance payable during the twelve months next before the relevant date, by the company as employer of any persons, under any other law for the time being in force; (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (VIII of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company; (f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; and (g) the expenses of any investigation held in pursuance of section 263 or section 265 in so far as they are payable by the company. (…)(5) The foregoing debts shall- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.”

			In all formal insolvency proceedings, once secured creditors have been paid all other creditors rank equally.

22. Poland: Coded by Theodora Dimitrova

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2000: 0.1 2001-2007: 0.5 2008-2013: 0.1	Polish company law between 1990 and 2000 was regulated by a slightly modernised version of the Commercial Code 1934 which was effective before Poland's occupation. The two main forms of corporate entities allowed by the Code were the limited liability company and the joint-stock company. The minimum capital requirement for joint-stock companies was PLN 100,000 (≈ €24,000). The minimum capital requirement for limited liability companies was PLN 4,000 (≈ €900).[35] The current Polish Commercial Code was introduced in 2001. Originally limited liability companies were required to have at least PLN 50,000 (≈ €12,000) of initial capital and the requirement for joint-stock companies was PLN 500,000 (≈ €117,000). The Code was amended in April 2008 and the new regulations provide for reduced minimum capital requirements for both types of corporate entities: PLN 5,000 (≈ €1,200) for limited liability companies and PLN 100,000 (≈ €24,000) for joint-stock companies.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33)	1990-2000: not indexed 2001-2013: 0.66	**<u>Joint-stock companies</u>** Article 347 of the 2001 Commercial Code gives shareholders the right to participate in profits shown in the company's financial statements which have been examined by an expert auditor and assigned by the general meeting. Article 348 stipulates that the amount to be distributed among shareholders should not exceed the profit for the last financial year increased by undistributed profits from previous years. Article 362 prohibits joint-stock companies to purchase their own shares except in the circumstances envisaged by the law. **<u>Limited liability companies</u>** Shareholders of limited liability companies are also entitled to participate in the profit of the company (Article 191). Article 192 stipulates that the distributable amount should not exceed the profit for the last financial year

[35] http://www.mondaq.com/x/10134/New+Code+Brings+Commercial+Law+Up+To+Modern+Market+Speed

	0.33 = “basic restriction” on dividend payments (not waivable without creditor consent) 0.66 = “basic restriction” plus one additional restriction from list above 1 = “basic restriction” plus two additional restrictions from list above		increased by undistributed profits for previous years and by distributable amounts transferred from the supplementary capital and reserve capitals created out of profit. Article 200 prohibits the company to take up, acquire or take on pledge its own shares.
3. Directors’ duties to creditors	Imposing a duty on directors to act in creditors’ interest may protect creditors’ position during a “twilight” period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors “too much” protection. 0= no duty on directors to take creditors’ interests into account 0.5= duty on directors to act in creditors’ interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors’ interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-1996: not indexed 1997-2013: 1	Polish law does not impose a direct liability on companies’ directors to take into consideration creditors’ interests when the company is in the vicinity of insolvency. However, debtors are since 1997 required to file for insolvency proceedings within 14 days of balance sheet insolvency, and delayed filing for insolvency by the directors of a company is a criminal offence under Art 586 of the Law on Commercial Companies.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor’s assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor’s ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • ‘All assets’ (general, revolving security interest i.e. “floating lien”)	1990-2013: 1	Polish law recognises the following non-possessory security interests: (i) mortgages (Article 65 of the Law on Land Registers and Mortgage 1982); (ii) pledges over movables and receivables (Article 306-335 of the Civil Code 1964); (iii) floating charges which are a type of registered pledge.

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1997: 0 1998-2013: 1	Article 67 of the Law on Land Registers and Mortgage 1982 stipulates that a mortgage must be registered with the Land Register in order to be perfected. Polish law recognises two types of pledge: ordinary pledge and registered pledge. Ordinary pledges require transfer of possession to the pledgee, and have therefore been used less frequently. Registered pledges were introduced through the Law on Registered Pledges and the Pledge Registry which came into force in 1998. Article 7 lists all things which can be the object of a registered pledge: movables, receivables and floating charges are all covered. Article 2 stipulates that the pledge must be entered into the pledge registry in order to be effective.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1997: 0 1998-2013: 0.5	The enforcement of security interests over land requires court approval (Article 75 of the Law on Land Registers and Mortgage 1982). The underlying security agreement of a registered pledge may provide that the creditor can take over the asset without court enforcement proceedings (Articles 22-24 of the Law on Registered Pledges and the Pledge Registry). If the agreement does not contain such a term, the creditor must apply to the court for enforcement of its security.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent	1990-1996: 0.5 1997-2013: 1	The current Bankruptcy and Reorganisation Law came into force in 2003. It replaced the two acts originating from 1934 which regulated corporate insolvency and restructuring. Both pieces of legislation allowed creditors and debtors to commence insolvency proceedings when the debtor had become either insolvent or over-indebted (Article 11 of the Bankruptcy and Reorganisation Law 2003). A 1997 amendment to the 1934 law imposed an obligation on debtors to file a bankruptcy petition within 14 days of the cessation of payments or of continuous over-indebtedness. This provision was retained in the 2003 legislation (Article 21).

	(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-1996: not indexed 1997-2013:0	Bankruptcy proceedings in Poland take one of two forms: (i) liquidation and (ii) composition, the purpose of which is to enable the debtor to agree on a restructuring plan with its creditors and avoid liquidation. Secured claims are normally not suspended during composition; from 1997-2002 it appears they did not even participate in a composition (Lowitzsch, p. 5). In liquidation creditors can only enforce their rights by submitting their claims to the court which oversees the bankruptcy proceedings.[36]
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions	1990-1996: not indexed 1997-2013: 0	The court is an important decision-maker in Polish insolvency proceedings. In a Preliminary Reorganisation Proceeding, the court oversees the debtor's management, who remain in day-to-day control. On entry to "full" bankruptcy proceedings, it is the court which decides whether the debtor will proceed to liquidation or composition.

[36] http://uk.practicallaw.com/4-380-8479#a1011518

	between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		*I infer from Lowitzsch (p. 6) that the court had a similarly important role under the 1997 law, particularly as secured creditors were brought within the estate.*
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-1996: 1 1997-2002: 0 2002-2013: 1	Secured claims rank over all other claims under Polish insolvency law. Debts secured by mortgages or pledges are paid from the sale proceeds of the respective assets (Articles 336 and 345 of the Bankruptcy and Reorganisation Law 2003). Since 2003, secured claims are treated as lying outside the debtor's estate, and so secured creditors are entitled to complete repayment. This was, it appears, also the case prior to 1997 (Lowitzsch, p. 6, 25). From 1997-2002, all secured creditors participated in the statutory ranking of preferential claims (ibid) and were subordinated to some preferential claims Jens Lowitzsch, 'Country Report Poland' in Lowitzsch (ed), *The Insolvency Law of Central and Eastern Europe.*

23. Russia: Coded by Theodora Dimitrova and John Hamilton (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1995: not indexed 1996-2013: 0	The Federal Law on Joint Stock Companies (JSC) was enacted on 26 December 1995. Article 26 of JSC states the minimum capital requirements for open joint-stock companies and closed joint-stock companies[37]: for an open company the minimum capital should be no less than a 1000 times the minimum monthly wage; for closed companies it should be no less than 100 times the minimum monthly wage. Since 1 September 2005 – 800 RUB/month (@34.2 RUB/EUR = €23.3) Since 1 May 2006 – 1100 RUB/month(@34.2 RUB/EUR = €32.2) Since 1 September 2007 – 2300 RUB/month (@35.3 RUB/EUR =€65.2) Since 1 January 2009 – 4330 RUB/month (@46.3 RUB/EUR =€93.5) Since 1 June 2011 – 4611 RUB/month (@41.2 RUB/EUR=€112.1) Since 1 January 2013 – 5205 RUB/month[38] (@40.2 RUB/EUR=€129.3)[39] According to other sources, the minimum capital required for an open joint-stock company is 100,000 RUB, and 10,000 RUB for a closed one.[40] In either case, when scaled according to the measure of this variable, the value is indistinguishable from zero.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be	1990-1995: not indexed 1996-2013: 0.33	**<u>1996-2013</u>** Article 43 of JSC lays down the restrictions on dividend payment. A company is not entitled to pay dividends if: (i) the entire share capital of the company has not been paid up in full; (ii) all stock which must be purchased has not been

[37] Open joint-stock companies are allowed to trade shares publicly without the permission of shareholders; closed joint-stock companies are obliged to distribute their shares among a limited number of shareholders.
[38] http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=15189
[39] Exchange rates calculated using historical data from www.xe.com.
[40] http://www.bridgewest.eu/article/joint-stock-company-russia also http://www.companyformationrussia.com/

	incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above		purchased yet; (iii) if the company is close to insolvency or will become insolvent if it pays out dividends; (iv) if the value of the net assets of the company is less than its charter capital; (v) it has not followed the restrictions based on the particular type of shares. The law on depository receipts was amended on 7 December 2011, and as of 1 January 2013 it requires that the identity of ultimate beneficial owners of depository receipts be disclosed to Russian share issuers where depository receipt holders want to receive dividends.[41] The Federal Service for Financial Markets has deferred the implementation of this amendment until 6 November 2013.[42]
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent	1990-1995: not indexed 1996-2013: 0	The law on JSC does not impose a specific duty on directors to take into account creditors' interests. Article 88 imposes a duty on the executive body of the company to keep reliable financial records which should be made available to creditors. This, however, does not amount to a direct duty owed to creditors. Chapter 1, s 6.1 of the Corporate Governance Code recommends that companies' executive bodies should take into account the interests of third persons, including creditors of the company and state and municipal bodies of the territory where the company or its structural subdivisions are located. A report by CMS Cameron McKenna mentions that the Russian Government has introduced to the Duma a draft law on directors' duties which lists third parties as some of the persons to whom directors may owe duties.[43]

[41] http://www.clearstream.com/ci/dispatch/en/cic/CIC/Annnouncements/ICSD/Custody/Russia/A12244.htm
[42] http://www.dtcc.com/downloads/legal/imp_notices/2013/dtc/int/52-13.pdf
[43] I have not been able to find the text in Russian and/or verify whether the law has in fact been passed.

	Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.		
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1991: not indexed 1992-1994:0.33 1995-2013: 0.66	The Russian Civil Code entered into force in 1995. The Russian Civil Code refers to several types of security of which only the pledge (*zalog*) allows the creation of non-possessory security interests in assets. Article 336 of the Code stipulates that the object of the pledge may be any property (tangible or intangible) or contractual rights, with the exception of rights which cannot be assigned as a matter of law. Article 6 of the Federal Law on Pledge (№ 2872-1 of 29 May 1992) stipulates that the right to pledge things also includes their accessories and inseparable fruits. A mortgage (*ipoteka*) is a type of pledge which creates a security interest over land, buildings, aircraft and ships (Article 5 of Federal Law on Mortgage, № 102-FZ of 16 July 1998). Article 357 of the Civil Code lays down rules regarding the pledge of commodities in circulation which allow the pledger to modify the composition and natural form of the pledged property provided its total cost does not become less than the one indicated in the pledge agreement. Therefore, arguably Russian law allows the existence of floating liens. However, Article 239 of the Civil Code stipulates strict requirements for the form of the pledge contract: it must indicate the object, substance and amount secured against by the pledge. Article 47 of the Law on Pledge states that pledge contracts for goods in circulation should define the kind of goods and their properties, and also the other types of goods which may substitute the pledged goods. As indicated in a report by Clifford Chance, it may be difficult to ascertain the pledged asset sufficiently in order to take an effective pledge over it.[44]
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered.	1990-1994: not indexed	Russian law lays down the following requirements regarding the registration of non-possessory security interests:

[44] *Taking Security in the Russian Federation*, April 2011.

	(List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1995-1997:0 1998-2013: 0.33	<u>Real estate</u> Article 10 of the Law on Mortgage (№ 102-FZ of 16 July 1998) stipulates that a mortgage must be signed by the parties and registered with the Land Registry. <u>Movable property</u> Article 339 of the Civil Code stipulates that contracts on the pledge of movable property shall be in writing and subject to a notary's certification. No further registration is required. The law in this area was amended: as of 10 January 2014 there will be a unified register of notifications of pledges over movable assets which will be updated by notaries. <u>Intangibles (shares and other financial instruments; rights)</u> The pledge must be registered either in the company's register or in the books of a licensed custodian (for publicly issued shares). In the case of participation interests in limited liability companies, the pledge must be signed before a notary and registered at the Unified State Register of Legal Entities.[45] If the pledge is over some sort of rights, no formal registration is required. <u>Intellectual property rights</u> The fourth part of the Russian Civil Code which deals with intellectual property was signed into law on 18 December 2006. If a pledge is created over intellectual property rights, it must be registered with the authority which handles the registration of intellectual property.[46]
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1991: not indexed 1992-2008: 0.5 2009-2013: 1	**<u>1992-2008</u>** Before 2009, the only effective way in which a pledge could be enforced was through a public auction. While it was generally possible for enforcement against pledged property to occur through an out-of-court procedure (usually agreed in advance by the parties in the pledge agreement itself), in practice execution was likely to be levied through the court due to absence or lack of participation of a pledgor in the out-of-court enforcement procedure. Moreover, enforcement of a mortgage or a pledge the granting of which required the consent of a third party (for example, a pledge of a claim against

[45] http://uk.practicallaw.com/1-503-8436?service=crossborder#
[46] http://uk.practicallaw.com/1-503-8436?service=crossborder#

			a third party where the terms of the claim required the consent of that third party in order for the claim to be pledged), was only possible through the court. Where the granting of a mortgage did not require the consent of a third party, execution need not be levied through the court if, following the occurrence of an enforcement event, the mortgagor and mortgagee sign an agreement on the procedure for out-of-court enforcement, and have this agreement notarised. **<u>2009-2013</u>** The rules on enforcement of pledge were significantly amended when Federal Law № 306-FZ entered into force on 11 January 2009. It significantly expanded the opportunities to apply the out-of-court enforcement procedure. It envisaged multiple out-of-court enforcement methods into pledge and mortgage agreements over different types of assets. This, however, is no longer the case. On 17 February 2011 the Supreme Arbitrazh Court of the Russian Federation published a Resolution which clarified how the amended pledge and mortgage laws should be applied in disputes. Even though the Resolution does not technically have legal effect, in practice it significantly affects the application of these laws. It requires the parties to mortgage agreements to select only one out-of-court enforcement method. Failure to comply with this requirement would render the agreement unenforceable. By contrast, parties to pledge agreements concerning movables may agree on multiple out-of-court enforcement methods.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion)	1990-1992: not indexed 1993-2005: 0.5 2002-2013: 1	**<u>1993-1994</u>** Under the Law on Insolvency (Bankruptcy) of Enterprises No. 3929-1 dated 19 November 1992 (effective as of 1 March 1993 and before 1 March 1998) and Federal Law on Insolvency (Bankruptcy) No. 6-FZ dated 8 January 1998 (effective before 2 November 2002), a petition for bankruptcy could be filed by: (i) the chief executive officer of the debtor; or (ii) a creditor. The above legislation gave a right to the debtor to file the petition, but did not impose an obligation. **<u>2002-2013</u>**

	1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		Article 7 of the Federal Law on Insolvency (№ 127-FZ) which was introduced in 2002 gives debtors, creditors and authorised federal bodies such as executive bodies of the Russian Federation and its constituent regions the right to initiate insolvency proceedings. On 30 December 2008 the Duma adopted a few significant amendments to the law on bankruptcy. Among other things, the changes simplify the entry criteria which creditors must meet in order to file for a debtor's insolvency (in particular, the amended law removed the requirement for a writ of execution). In addition, Article 9 stipulates that the executive body of the debtor (in Insolvency Law this means the chief executive officer) is under a legal obligation to commence insolvency proceedings within one month of one of the following events: (i) the satisfaction of the claims of one or more creditors would make it impossible for the debtor to discharge its obligations owed to other creditors; (ii) the levy of execution on the debtor's assets will significantly impede or make impossible the debtor's business activities; (iii) an authorised body of the debtor (in the case of state or municipal enterprises) has decided to file an insolvency petition; (iv) insufficiency of the debtor's assets; (iv) the debtor has ceased to discharge monetary obligations such as mandatory payments to the state.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility).	1990-1992: not indexed 1993-2002: 0.5 2002-2007: 1 2008-2013: 0.5	The old insolvency law did not contain any provisions regarding financial rehabilitation. This therefore was 0.5 (secured can enforce generally). Rehabilitation was introduced as a new bankruptcy procedure in the 2002 revision of the law. The Law on Insolvency (Bankruptcy) of Enterprises dealt with external management as one of the possible procedures but it was not described in as much detail as the 2002 Act. Vitryansky argues that there were numerous loopholes in the previous law which served to discredit the very idea of restoring a debtor's solvency through external management.[47] There are several stages in insolvency proceedings in Russia. Once the stage of supervision has commenced, any actions concerning recovery of funds from the debtor are suspended (Article 63 of the Federal Law on Insolvency). If the debtor has realistic chances of returning to solvency, the arbitration court may be willing to approve a petition for financial rehabilitation which contains a

[47] Vitryansky, 'Insolvency and Bankruptcy Law Reform in the Russian Federation'(1999) 44 McGill LJ, p. 409.

	Minimum score: 0, maximum score:1		debt repayment schedule. Once this stage has begun, the debtor is relieved from paying fines for any overdue performance or non-payment of debts which became due before the introduction of financial rehabilitation (Article 81). Instead, the debtor is charged an interest. Another way to help the debtor restore its solvency is through external management. Article 94 of the Federal Law on Insolvency states that as a result of instituting external administration, creditors' claims to monetary obligations and mandatory payments become subject to a moratorium. (This is now 1) The Russian Duma introduced significant amendments to this area of law on 30 December 2008. During the stages of financial rehabilitation and external management secured creditors have two choices: they can enforce their security or refrain from doing so. The latter gives them the right to vote at creditors' meetings. If the secured creditor wishes to enforce its security, it must apply to the arbitration court for permission: the court may refuse to grant an order if this would make restoration of the debtor's solvency impossible. In addition, secured creditors are entitled to a minimum percentage of the proceeds of secured assets (enforcement of security during liquidation). The amount they receive depends on the nature of the underlying obligation. (This takes us back to 0.5)
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers	1990-1992: not indexed 1993-2001: 0 2002-2013: 0.5	Under the old law creditors could decide on voluntary arrangements. Article 12(2) of the Federal Law on Insolvency 2002 lists the right to petition the court at any stage of insolvency to declare the debtor bankrupt and initiate liquidation proceedings as one of the exclusive competencies of the creditors' meeting. However, as indicated in the previous edition of this study, Russian insolvency legislation envisages a number of cases where the court may disregard the decision of the creditors' meeting and impose a different outcome.

	regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights.4 The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-1992: not indexed 1993-1997: 1 1997-2013: 0	Under the Law on Insolvency (Bankruptcy) of Enterprises No. 3929-1 dated 19 November 1992 (effective before 1 March 1998), secured claims could be settled prior to any other claims. However, Article 134 if the Federal Law on Insolvency ranks creditors in the following way: <u>Category 1:</u> Claims which arose since the initiation of bankruptcy proceedings[48] (court expenses; utility bills and any other current payments). <u>Category 2:</u> Claims which arose prior to the initiation of bankruptcy proceedings (claims for causing life, health or moral damage to individuals; wages; royalty claims under copy right agreements). <u>Category 3:</u> All other claims including claims of secured creditors to the extent these have not been discharged out of the proceeds of secured assets.

[48] This includes court's approval of the insolvency petition.

24. Slovenia: Coded by Theodora Dimitrova and Nina Cankar (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1992: not indexed 1993-2001: 0.25 2006-2013: 0.35	The first Slovenian Companies Act (ZGD) after the disintegration of Yugoslavia came into force in 1993. S 172 stated that the minimum capital requirement for public limited companies must be 3,000,000 tolars (≈ €12,500). S 410 stated that the minimum capital requirement for limited liability companies must be 1,500,000 tolars (≈ €6,200). Slovenian Companies Act distinguishes between two types of private companies, both of which have separate legal personality and give its investors limited liability – a limited liability comapny (d.o.o.) and a corporation (d.d.). D.o.o. is a private company by default, while d.d. can chose whether or not to be listed on the stock exchange. The codings given here are for the d.o.o The current Companies Act (ZGD-1) came into force in 2006. S 171 states that the minimum capital requirement for public limited companies must be €25,000. S 475(1) states that the minimum capital requirement for limited liability companies must be €7,500.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not	1990-1992: not indexed 1993-2013: 0	S 228 of the ZGD 1993 stated that the general meeting may pass a resolution deciding how to use undistributed profits. The old law did not contain any specific restrictions on dividends payments. S 227 prohibited companies to subscribe for their own shares. S 247 of ZGD-1 lays down certain restrictions on companies' acquisition of their own shares. It does not contain any restrictions on dividend payments.

	waivable without creditor consent) 0.66 = “basic restriction” plus one additional restriction from list above 1 = “basic restriction” plus two additional restrictions from list above		
3. Directors’ duties to creditors	Imposing a duty on directors to act in creditors’ interest may protect creditors’ position during a “twilight” period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors “too much” protection. 0= no duty on directors to take creditors’ interests into account 0.5= duty on directors to act in creditors’ interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors’ interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-1992: not indexed 1993-2013: 1	Slovenian law does not impose an explicit duty on directors to act in creditors’ interests when the company is in the vicinity of insolvency. Directors owe their duties to the company. Both the 1992 and 2006 Acts stipulate that creditors may sue individual directors for compensation if the company is unable to repay its debts (s 258(5) and 263(4) respectively). JA: this means that effectively the directors have unlimited liability, and so any breach of duty of care once the company is insolvent would be remediable in favour of the creditors—effectively 1.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor’s assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor’s ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • ‘All assets’ (general, revolving security interest i.e. “floating lien”) 0 = only mortgage of land 0.33 = land + one further from list	1990-1994: not indexed due to lack of sources 1995-2002: 0.33 2003-2013: 0.66	In 2003 the new Law of Property Code was adopted, allowing for non-possessory security interests to be established over tangible moveables as well. Slovenian law recognises the following non-possessory security interests: mortgages, pledges over tangible and intangible property. Slovenia does not recognise floating charges as a form of security.

	0.66 = land + two further from list 1 = land + three further from list		
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-1994: not indexed due to lack of sources 1995-2002: 0 2003-2013: 0.33	The new Law of Property Code requires registration of non-possessory security interests over tangible moveables for which a register of security interests is established. Pursuant to a 2004 decree issued by Slovenian government such a register has been established for inventories, equipment and gear, motor vehicles, caravans and trailors, and animals. Mortgages must be registered with the Land Register in order to be perfected. Pledges over tangible movables must be registered with the Register of Non-possessory Liens. Pledges over receivables do not require registration.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1994: not indexed due to lack of sources 1995-2013: 0	Out of court enforcement is not possible in Slovenia.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent	1990-1994: not indexed due to lack of sources 1995-2007: 0.5[49] 2008-2013: 1	Pre-2008: According to the Slovenian bankruptcy laws a bankruptcy procedure may be commenced unilaterally by a debtor, a creditor or a personally liable member of the debtor, if they show the debtor is cash-flow or balance sheet insolvent (art. 90 of the Insolvency Law). Slovenian insolvency law allows creditors to initiate insolvency proceedings when the debtor has become insolvent. The law also imposes an obligation on the management of the debtor to initiate insolvency proceedings if it has been established that the possibility of successful reorganisation is less than 50% (Insolvency Act 2007. Effective as of 15 January 2008).

[49] I do not have access to the Act. I have replicated the score from the old index. Sources from 2010 indicate that the requirements for initiating insolvency proceedings are as stated above.

	(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-1994: not indexed due to lack of sources 1995-2013: 1	In a rehabilitation procedure secured creditors are stayed, with an exception of secured rights that have been established in the enforcement procedure within 2 months prior to the commence-ment of the rehabilitation proce-dure. The liquidation procedure, on the other hand, does not affect secured creditors who get paid in a separate enforcement procedure procedure (art. 36, 111 and 131 of the Insolvency Law).
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate	1990-1994: not indexed due to lack of sources 1995-2013: 0	The court is a significant decision-maker in the bankruptcy procedure – it decides upon the commencement and conclusion of the bankruptcy procedure as well as issues a decision regarding a distribution of the debtor's assets. The role of the creditors is only to make suggestions to the bankruptcy manager as well as control and supervise its activities (art 72 – 89 of the Insolvency Law). Creditors are not significant decision-makers regarding whether the debtor should be terminated or not.

	control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-1994: not indexed due to lack of sources 1995-2013: 1	Secured claimants get paid in full from a separate fund of debtor's assets that is allocated specifically for this purpose. Secured creditors' claims rank above all other claims under Slovenian insolvency law.

25. South Africa: Coded by Theodora Dimitrova and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0	South African companies were governed by the Companies Act No 61 of 1973 until 1 April 2011 when it was replaced by the Companies Act No 71 of 2008. Neither of the two Acts specifies a minimum capital requirement.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 0.33	**<u>1990-1994</u>** S 90(1) of the Companies Act No 61 of 1973 stipulates that a company may make payments to its shareholders subject to the provisions of this section and if authorised by the articles of association. According to s 90(2), a company shall not make any payments in whatever form to its shareholders if there are reasonable grounds to believe that (a) the company is, or would after the payment be, unable to pay its debts as they become due in the ordinary course of business; or (b) the consolidated assets of the company fairly valued would after the payment be less than the consolidated liabilities of the company. S 90(3) defines 'payment' as direct or indirect payment or transfer of money or other property to a shareholder of the company by virtue of the shareholder's shareholding in the company, but excludes an acquisition of shares in terms of section 85, a redemption of redeemable preference shares in terms of section 98, any acquisition of shares in terms of an order of Court and the issue of capitalisation shares in the company. S 85(4) prohibits companies to make any payment in whatever form to acquire any share issued by the company if there are reasonable grounds for believing that (a) the company is, or would after the payment be, unable to pay its debts as they become due in the ordinary course of business; or (b) the consolidated assets of the company fairly valued would after the payment be

			less than the consolidated liabilities of the company. S 38(1) prohibits companies to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares of the company, or where the company is a subsidiary company, of its holding company. **<u>2006-2010:</u>** The same as above (the Companies Act No 71 of 2008 came into force on 1 April 2011). **<u>2011-2013:</u>** The Companies Act No 71 of 2008 introduced the solvency and liquidity test. S 44 stipulates that the board of directors may authorise the company to provide financial assistance to any person for the purpose of share subscription subject to several conditions: the provision of financial assistance must be (i) pursuant to an employee share scheme; (ii) approved by a special resolution of the shareholders. In addition, the directors may not authorise the provision of financial assistance unless they are satisfied that: (i) immediately after providing the financial assistance, the company would satisfy the solvency and liquidity test; and (ii) the terms under which the financial assistance is proposed to be given are fair and reasonable to the company. According to s 44(4) the board must also comply with any restrictions in the Memorandum of Incorporation. S 46 stipulates that distributions must be authorised by the board and the company must not make any proposed distributions unless it satisfies the solvency and liquidity tests specified in the Act. S 48 allows companies to purchase their own shares providing they comply with s 46. [Code this as 0.33 because the dividend restriction is set using a solvency test rather than “solvency plus”.]

3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0.5	**1990-1994 and 2006-2010:** The Companies Act No 61 of 1973 states that directors have a fiduciary duty to act honestly, in good faith and in a manner the director believes to be in the best interests and for the benefit of the company. This duty is owed only to the company. According to the Insolvency Act 24 of 1936, if during the period immediately before winding up of the company, a director carries out the company's business with the intention of defrauding creditors, he or she may incur personal liability (s 132). Similarly, a director may be personally liable for wrongful trading when he or she knew or should have known that his company was becoming insolvent. **2011-2013:** S 77(3)(c) of the Companies Act No 71 of 2008 provides that a director of a company is liable for any loss, damages or costs sustained by the company as a direct or indirect consequence of the director having been a party to an act or omission by the company despite knowing that the act or omission was calculated to defraud a creditor, employee or shareholder of the company, or had another fraudulent purpose. The Act imposes a duty on directors to act in good faith and for proper purpose, in the best interests of the company, and with the necessary degree of skill, care and diligence (s 76). The Act, however, is silent regarding any duties owed to creditors when the company is in the vicinity of insolvency. The provisions of the Insolvency Act 24 of 1936 continue to apply.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien")	1990-2013: 0.66	Debts owed to banks and other lending institutions and debts owed over immovable property are normally secured by mortgage over real estate. Business debts secured over personal property are either commercial loans or/and trade debts documented by notarial general bonds over movables or cessions of receivables. As a general rule, in order to finalize a lien or pledge, the creditor must be in possession of the debtor's property. This does not apply, however, to a lien arising under the Merchant Shipping Act 57 of 1951. Similarly, special provisions apply to security for financing the purchase of aircrafts. Security over immovable property can be obtained only through a mortgage (Deeds Registries Act 1937).

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		Movable tangible property may be secured through a pledge (possessory interest) or a special notarial bond. Security over financial instruments, claims and receivables, and intellectual property rights can be obtained through a cession in security. South Africa does not recognise floating liens. The closest form of security is the general notarial bond. However, it does not make a lender a secured creditor of the debtor.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.33	**1990-1994:**[50] **2006-2013:** A mortgage over immovable property is created through a mortgage bond. The bond must be registered with the deeds registry where the property is registered in order to be perfected. A special notarial bond must be registered with the deeds registry within three months of the date of its execution. Cession in security over financial instruments may be recorded on the securities account of the borrower. Security interests over patents and trademarks must be registered with the Companies and Intellectual Property Commission in order to be perfected. There are no specific formalities regarding security over claims and receivables. All other forms of security, instead, are recorded in written documents that are retained by the parties.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)*	1990-2013: 1	A cession in security and a special notarial bond do not require the secured creditor to obtain prior judgment against the debtor in order to be able to enforce the security interest. The creditor has the right to sell the assets and use the proceeds to extinguish the debt.

[50] I was unable to find information on this period. Therefore, I have included the same index as the one used for 1995-2005.

	0 = out of court enforcement is not possible 1 =out of court enforcement is possible		Mortgage bonds, on the other hand, require the creditor to obtain a court judgment before proceeding. South African law recognises *parate executie:* the right of a creditor to realise the secured property without first obtaining a court judgment. It is based on an agreement between the parties involved. This right cannot be used if the security concerns immovable property.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*	1990-2013: 0.5	**<u>1990-2010:</u>** S 343 of the Companies Act 1973 lists the modes of winding-up. (1) A company may be wound up: (a) by the Court; or (b) voluntarily. (2) A voluntary winding-up of a company may be- (a) a creditors' voluntary winding-up; or (b) a members' voluntary winding-up. S 346 regulates the application for winding-up to the Court. An application may be made a) by the company; b) by one or more of its creditors (including contingent or prospective creditors); c) by one or more of its members, or any person referred to in section 103(3), irrespective of whether his name has been entered in the register of members or not; d) jointly by any or all of the parties mentioned in paragraphs (a), (b) and (c). One of the grounds for winding-up is the company's inability to pay its debts (s 344(f)). S 345 stipulates that a company or body corporate shall be deemed to be unable to pay its debts if a creditor has served on the company a demand requiring the company to pay the sum due, and the company has failed to pay the debt for three weeks. **<u>2011-2013:</u>** Chapter 9, Schedule 5 of the Companies Act No 71 of 2008 provides for the continued application of the 1973 Act to winding-up and liquidation.
8. Stay of secured	It is desirable, from an efficiency point of view, that	1990-2010: 0.5	**<u>1990-2010:</u>**

creditors	secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	2011-2013: 1	The Companies Act No 61 of 1973 contains provisions allowing a company to be judicially managed in order to help it overcome financial distress. S 435 allows creditors to decide that any claims which arose before the granting of a judicial management order may be paid in preference to all other liabilities. S 359 stipulates that when the Court has made an order for the winding-up of a company or a special resolution for the voluntary winding-up of a company has been registered in terms of s 200 (this includes initiation by the creditors) all civil proceedings by or against the company concerned shall be suspended until the appointment of a liquidator. Therefore, secured creditors' claims are not stayed during liquidation proceedings. **<u>2011-2013:</u>** The Companies Act No 71 of 2008 introduced a new business rescue procedure for companies experiencing financial difficulties. S 133 imposes a general moratorium on legal proceedings against the company during business rescue proceedings. S 133(1)(a) – (e) list the exceptional circumstances in which legal proceedings may be initiated.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of	1990-2010: 0.5 2011-2013: 0	**<u>1990-2010:</u>** S 440 of the Companies Act No 61 of 1973 stipulates that if at any time on application by the judicial manager or any person having an interest in the company it appears to the Court which granted a judicial management order that the purpose of such order has been fulfilled or that for any reason it is undesirable that such order should remain in force, the Court may cancel such order and thereupon the judicial manager shall be divested of his functions. Therefore, the creditors may apply for a cancellation of the judicial management process but ultimately the decision rests with the Court. In addition, s 311 allows the company to reach a compromise with its creditors. The scheme agreed normally allows creditors to recover some of the debts owed by the company. If the debtor defaults on the payments, the creditors can apply to court to have the debtor company placed into liquidation. **<u>2011-2013:</u>** S 132(2) of the Companies Act No 71 of 2008 suggests that business rescue proceedings end when the court has converted such proceedings into

	other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		liquidation proceedings. S 141(2)(a) stipulates that the practitioner (i.e. the person or persons appointed to oversee the business rescue proceedings) must apply to the court for an order discontinuing the business rescue proceedings and placing the company into liquidation if he or she concludes that there is no reasonable prospect for the company to be rescued.
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 1	**1990-2010:** S 342(1) of the Companies Act No 61 of 1973 provides that the assets of a company in liquidation shall be applied towards the payment of costs of liquidation and claims of creditors. The claims of secured creditors are met first; the remainder is used to meet the remaining claims. The order of preference for secured creditors is as follows: (i) immovable assets; (ii) movable assets. **2011-2013:** Claims against a company in liquidation are ranked in the following manner: 1. Administration costs 2. Secured claims 3. Preferent creditors – satisfied from the residue 4. Concurrent creditors[51]

[51] Alex Elliott, "Ranking of administration costs of and claims against a company in liquidation post business rescue", Insolvency and Business Rescue News, Eversheds http://www.eversheds.com/global/en/what/articles/index.page?ArticleID=en/global/South-africa/Ranking_administration_costs

26. Spain: Coded by Aurelio Gutierrez and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0.12	The minimun capital required for a Limited Liability Company (*Sociedad Limitadad* or *Sociedad de Responsabilidad Limitada*) was 500,000 pesetas (=3,005.06 euros) until 31st August 2010, according to article 3 Limited Liability Companies Act 1995. However, from 1st September 2010, the new capital requirement is exactly 3,000 euros, according to article 4.1 of Companies Act 2010. On the other hand, the minimum capital requirement for Joint Stock Companies (*Sociedad Anónima*) was 10,000,000 pesetas (= 60,101.21 euros) until 31st August 2010, according to article 4 of Companies Act 2010. However, from 1st September 2010, the new capital requirement is exactly 60,000 euros, according to article 4.2 of Companies Act 2010.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 0.66	Articles 81-85 LSC regulate outstanding contributions to share capital. These "unpaid shares" are noT possible in a SL. However, in a SA it is possible to pay only 25% of the share price at the moment of the suscription, and the outstanding 75% in a maximum period of 5 years. Arts. 149-150 LSC regulates the so-called Spanish "financial assistance" rules prohibit a company from priving security or guarantees in support of the acquisition of its shares or those of its holding companies. Arts. 134-148 regulates repurchase of shares. Arts. 275-278 establishes specific dividend restrictions.

3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2003: 0.5 2004-2013: 1	Before 1st September of 2004, when the Insolvency Act 2003 came into force, there were no a specified directors' duties to creditors but general duties of diligence and loyalty to the company, the shareholders and also the company´s creditors. The directors were only liable to creditors for damages caused by an act contrary to the law, the charters or their duties (art. 236 Companies Act, which regulates the same duties and liabilities that the old regime for both Limited Liability Companies and Joint Stock Companies). After 1st September 2004, the directors also have a legal duty to request the insolvency proceeding from the point at which they know (or ought to know) the company is unable to pay its debts as they fall due. Thus, they have an "indirect duty" to creditors. If they do not request the insolvency proceeding in this period, they might incur serious liability, including disqualification or personal liability for unsatisfied debts (arts. 172 bis Insolvency Act).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.66	Chattel Morgage (*hipoteca mobiliaria*) and Pledge without Displacement (*prenda sin desplazamiento*) are two types of security interests available with respect to movable assets under Spanish law when the collateral cannot be delivered to the pledgee as required under a normal pledge. These type of security interests are regulated by *Ley de 16 de noviembre de 1954, de hipoteca mobiliaria y prenda sin desplazamiento*. A chattel morgage may be created upon: (i) a commercial business (*establecimiento mercantil*), including the premises of the business and its facilities, its commercial signs, the lease and transfer rights of leases (*derechos de traspaso*), stock and machinery provided that they form part of the mortgaged business; (ii) vehicles; (iii) aircrafts; (iv) industrial machinery; and (v) intellectual property rights: trademarks, patents, copyrights, inventions, etc. On the other hand, a pledge without displacement may be created upon: (i) agricultural business property; (ii) machines and other movable goods which may be identified by their particular characteristics, such as trademark, model, manufacture number, and in regard to which a chattel mortgage may not be established; (iii) inventories and raw materials that are located in a certain place, building or store; and (iv) artistic objects such as paintings, sculptures, books, etc. Finally, it should be noted that the concept of floating charge is not recognized.

5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.66	All forms of non-possessory security interests normally need to be recorded in the relevant registration. [JA: originally coded as 1, but as there is no floating charge, this cannot be correct. 0.66 is more appropriate].
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 1	According to article 129.1 of Mortgage Act 1946, it will be possible to enforce a security interest through an out-of-court sale provided that it has been agreed by the parties in the mortgage contract for the event of default. This out-of-court foreclosure will be taken through a Notary, according to the requirements established in article 129.2 of Mortgage Act 1946.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a*	1990-2004: 0.25 2005-2013: 0.5	Until 1st September 2004, there were four different insolvency proceedings: (i) two insolvency proceedings for "commercial debtors", one of them (*quiebra*) mainly destinated to liquidatation and the another one (*suspensión de pagos*) mainly destinated to seek a reorganisation; and (ii) other two insolvency proceedings for "civil debtors", one of them destinated to liquidation (*concurso de acreedores*) and the other one or a reorganisation by getting a reduction and/or a deferral of its payments (*procedimiento de quita y espera*). Whereas in the *quiebra* and the *concurso de acreedores* creditors were *able* to request the insolvency procedure, the only person legitimited to request "reorganisation procedures" (this is, *suspensión de pagos* and *procedimientos de quita y espera*) were the debtor itself. [Code as 0.25 as greater debtor power than coding of 0.5 conceives (creditor cannot petition as of right), but appears debtor had to be solvent, hence not a 0]. After 1st September 2004, when it came into force the Insolvency Act 2003, and the four pre-existing insolvency procedures become only one (*concurso de acreedores*), regardless of the nature of the debtor, the type of insolvency or the outcome of the bankruptcy proceeding, people legitimated to request an insolvency procedure are both (i) the debtor itself, but only if it is unable to regularly pay its debts as they fall due (art. 2.2 LC), or it proves that we will

	requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		become factually insolvent in the near future (art. 2.3 LC); and (ii) creditors, if they prove some "external indicia" established in the article 2.4 of Insolvency Act 2003 (non-payments of tax or labour obligations during 3 months, unsatisfed executions, etc.). Nevertheless, in these latter cases, the debtor will always be able to prove to the satisfaction to the court that, even though the external indicia was fulfilled, it is *not* unable to regularly pay its debts as they fall due in the sense of article 2.2 of Insolvency Act 2003, unless the "external indicia" proved by the creditor is an unsatisfied execution (where the insolvency procedure is automatically declared). The main difference between the commencement of the insolvency proceeding by the debtor ("voluntary insolvency proceeding" or *concurso voluntario*) and by its creditors ("necessary insolvency procedure" or *concurso necesario*) is that, in the former, unless the court decides otherwise (art. 40.3 Insolvency Act 2003), the directors will keep their positions and the debtor will only be supervised by the office-holder. In the "necessary procedure", however, the directors are directly substituted by the office-holders for almost all their powers, unless the court decides otherwise (art. 40.3 Insolvency Act 2003).
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.5	Once a debtor has entered bankruptcy proceedings, a stay on enforcement proceedings over assets devoted to the company´s activity applies to all creditors (included secured ones), *provided that* the assets covered by the security are necessary to maintain the business as a going concern. In any event, this stay may not be longer than 1 year from the commencement of the insolvency proceeding.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions.	1990-2013: 0	The insolvency proceeding may end up either with the liquidation of the debtor´s estate (*liquidación*) or the arrangement or composition agreement witht the debtors creditors (*convenio*). Until 1st September 2004, the debtor had the ability to decide by the liquidation, even though a potential

	Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		reorganisation was a better solution for the creditors as a whole. Nevertheless, a reorganisation was only possible if the debtor had the agreement of the majority of its creditors. Under the new Insolvency Act 2003, the system is quite similar: the debtor has the ability to decide about the liquidation, whereas if it wants to reorganise the company it would need the agreement of the majority of (unsecured) creditors. Nevertheless, where the old law did not impose limitations in the content of the agreement, the new insolvency regime only allows to agree a reduction of no more than 50% of the creditors' claims and a deferral of no more than 5 years in the payment of the debts (art. 100.1 LC). These limitations, which did not exist under the *Ley de 26 de julio de 1922, de suspensión de pagos* (where the debtor and its creditors were able to agree whatever they want, provided it was not contrary to the law, moral and public order), can only be overpassed in case of insolvency proceedings especially important for the economic system (art. 100.1, *segundo párrafo*, LC).
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4).	1990-2013: 1	During the relevant period 1990-2013, secured creditors haven been paid against the properties, goods and rights vested. Therefore, until the total amount of their security, secured claimants there will not be subordinated to other creditors.

	1 = subordination of no security listed at (4).		

Primary legal sources

Companies Act 2010 (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*)
Joint Stock Companies Act 1989 (*Real Decreto Legislativo 1564/1989, de 22 de diciembre, por el que se aprueba el texto refundido de la Ley de Sociedades Anónimas*). Abolished by the new Spanish Companies Act 2010.

Limited Liability Companies Act 1995 (Ley 2/1995, de 23 de marzo, de sociedades de responsabilidad limitada). Abolished by the new Spanish Companies Act 2010.

Insolvency Act 2003 (*Ley 22/2003, de 9 de julio, Concursa*l)

Commercial Code 1885 (*Código de Comercio de 1885*). Abolished in 2004 by Insolvency Act 2003.

Suspension of payment Act 1922 (*Ley de Suspensiones de pagos de 1992*). Abolished in 2004 by Insolvency Act 2003

Chattel Mortage and Pledge without displacement Act 1954 (*Ley de 16 de noviembre de 1954, de hipoteca mobiliaria y prenda sin desplazamiento*)

Mortgage Act 1946 (*Decreto de 8 de febrero de 1946 por el que se aprueba la nueva redacción oficial de la Ley Hipotecaria*).

27. Sweden: Coded by Tove Lundmark Söderberg

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1995: 0.2 1995-2010: 0.4 2010-2013: 0.2	1973-1995: 50.000 SEK (= € 5.000) 1995-2010: 100.000 SEK (= € 10.000) 2010-2013: 50.000 SEK (= € 5.000) Companies Act of 1944 (1944:705) – Minimum capital 5000 SEK (= € 500). In 1973 the required minimum capital was increased to 50.000 SEK (Prop. 1973:93). Companies Act of 2005 (2005:551, Ch. 1 Sec. 5) – Minimum capital 100.000 SEK. The regulation of separation between private and public companies was enforced in 1995 and at the same time the required minimum capital for private companies was increased to 100.000 SEK (€ 10.000). (For public companies the required minimum capital is 500.000 SEK (= € 50.000)). 100.000 SEK = €10.000. Normalized to 0,4. Recently the Swedish Government approved a reduction of the minimum capital required for private companies to 50.000 SEK, which will come into effect 1 April 2010 (see legislative bill Prop. 2009/10:61). 50.000 SEK = €5.000. Normalized to 0,2.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33)	1990-1999: 1 2000-2013: 0.66	Basic dividend restriction: 1970-: 1 Advanced dividend restrictions, Companies Act 2005 Ch. 17 (previously regulated in Companies Act 1975 Ch. 12). Dividends must undergo a test of legality. Firstly, a dividend must be in agreement with provisions on mandatory creditor protection, for example Ch. 17, Sec. 3 and 4 Companies Act 2005. Second, the decision power of the corporate organs must be followed. Thirdly, shareholder protection, particularly minority rules, must be followed. Share repurchase restriction: Up in till the year 2000 share repurchase was prohibited in Swedish corporate law (Companies Act 1975 Ch. 7 Sec. 2, see legislative bill prop. 1999/2000:34). Share repurchase in public listed companies are now permitted according to Companies Act 2005 Ch. 19 Sec. 13 (before the year 2006 regulated in Companies Act 1975 Ch. 7 Sec. 3, 2000:66). Share repurchase in private companies and unlisted public companies is permitted only in exceptional situations according to Companies Act 2005 Ch. 19 Sec. 4.

	0.33 = “basic restriction” on dividend payments (not waivable without creditor consent) 0.66 = “basic restriction” plus one additional restriction from list above 1 = “basic restriction” plus two additional restrictions from list above		“Disguised” distributions restricted: Value transfers to shareholders may take place only in accordance with the provisions established in the Companies Act for each procedure (Companies Act 2005, Ch. 17, sec. 2), not permitted if they violate the fundamental profit purpose (Companies Act of 2005, Ch. 3, sec. 3). If all shareholders are in agreement or if the general meeting changes the purpose of business in the articles of association, the profit purpose may be disregarded or revised, no decision power for directors. It is also required that the transfers are compatible with provisions on protection of the creditors, the amount limit and the prudence rule (Companies Act 2005, Ch. 17, sec. 3). According to the amount limit, a limited company may carry out a value transfer to a shareholder or another party only if there is full coverage for the restricted equity immediately after the transfer (Companies Act 2005, Ch. 17, sec. 3, 1st para.). The Companies Act 1975 prescribed that a certain portion of net profit for the year must be allocated to the statutory reserve, until the statutory reserve and the share premium reserve together were of a certain size. This ”compulsory saving” obligation in the statutory reserve has been repealed in the Companies Act of 2005.
3. Directors’ duties to creditors	Imposing a duty on directors to act in creditors’ interest may protect creditors’ position during a “twilight” period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors “too much” protection. 0= no duty on directors to take creditors’ interests into account 0.5= duty on directors to act in creditors’ interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors’ interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 1	In case of balance sheet insolvency directors must start winding-up proceedings according to the Companies Act of 2005 Ch. 25 Sec. 13-18 (previously regulated in the Companies Act of 1975 Ch. 13 Sec. 12-17). Violation of the provisions can lead to directors' liability with respect to creditors, furthermore there can be a claim to pay damages to the company, which can be asserted by the creditors. Directors can also be held responsible according to criminal provisions in the Penal Code, Ch. 11 (1968:700, amended through 1976:56) if not acting in the interest of the creditors when company is insolvent.
4. Security: scope	Captures extent to which non-possessory security	1990-2013: 1	Land: Security interest over land requires a signing of a mortgage and

	interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		registration at the Land Office according to the Land Code (1970:994). Requires possession of the mortgage instrument. Personalty: Non-possesory security interest is permitted over personalty by transfer of right of security and registration (Sales of Chattels Act (1845:50) and Enterprise Mortgage Act (2008:990, previously 1984:649). Also possible for airships, ships and patents (requires a mortgage). Receivables: Permitted as enterprise floating/floating charge according to the Enterprise Mortgage Act, otherwise a form of dispossession is necessary according to the Debts Act (1936:81). Security right not possible as chattels according to Sales of Chattels Act. Note: floating charge does not constitute the same security right as for a security right with pledge. Enterprise floating/floating charge is possible according to the Enterprise Mortgage Act for all property in a business for an enterprise as long, as the property is possible to transfer. A mortgage must be given notification (the same as for possession of land). Lesser priority than pledge according to the Preferential Rights Act (1970:797), sec. 4 and 5.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	All registrable: see above.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 0.75	Self-enforcement possible for most security, except over land, as long as not breaching criminal provisions and consent is given from the debtor. For instalment goods and leasing goods enforcement requires a court order and seizure by the local enforcement service, unless the debtor accepts to give back the goods. Execution and seizure are regulated in the Code of execution (1981:774), Ch. 16. Nonpossesory security interest over personalty requires transfer by way of security, enforcement depends on contract. For land, self-enforcement of hypothec or land charge not possible as the mortgage instrument must be handed over, enforcement by the local enforcement services.
7. Entry to corporate bankruptcy	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with	1990-2013: 0.5	Liquidation proceedings can be initiated by a single creditor according to according to the Bankruptcy Act of 1987 Ch. 1, sec. 2 (previously regulated in the Bankruptcy Act 1921 (1975) Ch. 1 sec. 1). A rehabilitation petition, just like

proceedings	its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		a liquidation petition, can be made by the debtor as well as the creditor according to the Enterprise Rehabilitation Act, Ch. 2 sec.1. Before the Enterprise Rehabilitation Act the debtor could apply for composition according to the Composition Act Insolvency must be established regardless of whether the initiative is taken by the debtor or the creditor. Insolvency is defined as a situation when the debtor cannot pay his debts and this situation is not temporary according to the Bankruptcy Act of 1987, Ch.1 sec. 2 (previously regulated in Bankruptcy Act 1921 (1975) Ch. 1 sec. 2). For petition for bankruptcy, by the debtor as well as the creditor, it is required that the debtor has an inability to pay the debts as they fall due for a longer period of time. In the Bankruptcy Act of 1987, Ch. 1 sec. 2, insolvency is defined as a situation when the debtor cannot pay his debts and this situation is not temporary. However, for rehabilitation proceedings insolvency is not necessary to establish. It is sufficient if the debtor is illiquid or a risk that he shortly will be illiquid (temporary inability to pay his debts), according to the Enterprise Rehabilitation Act.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings	1990-2013: 0.5	During the reorganisation, there is a moratorium on all creditors action. During the bankruptcy proceedings, the receiver takes control of the company and the directors' powers cease. The procedure imposes a statutory moratorium on creditors taking action against the company (2 kap. 17 § LFR). While enforcement is still possible on the bankruptcy of the pledgor, rules of an administrative nature would cause delays.

	(or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1		
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.	1990-1996: 0.7 1997-2013: 0.5	In Swedish rehabilitation proceedings composition is separated from the plan. Only the issue of composition has legal impact. Voting takes place on the issue of composition, not on the plan. As a main rule the court should decide that the rehabilitation procedure should seize three months after the decision on rehabilitation procedures, according to the Enterprise Rehabilitation Act, Ch. 4 sec. 7. In special situations, the period is extended to six months. Secured creditors do not have a vote on the issue of composition as their security right is not affected. In a current government bill (SOU 2010:2) a procedure of voting on plan for exit is suggested (however, the bill does not include giving secured creditors voting rights). Unsecured creditors have voting rights on composition according to the Enterprise Rehabilitation Act (1996:764), Ch.3 sec. 3 (previously regulated in the Composition Act (1970:864) sec. 12, (1987:673)). The question of whether a creditor should be considered a secured creditor is regulated in the Preferential Rights Act (1970:797). No plan for exit in Swedish law, the court decides over the end of rehabilitation proceedings. For composition the court decides, depends on the votes by unsecured creditors (although the court can decide against the voting according to the Bankruptcy Act of 1987 , Ch. 3, sec. 27). The power to decide on a rehabilitation procedure to end in advance lies within the court (requires petition by creditor and the purpose of the rehabilitation be deemed to fail according to the Enterprise Rehabilitation Act, Ch. 4, sec. 7). As a main rule the court shall determine that the rehabilitation procedure should seize three months after the decision to start such procedures according to the Enterprise Rehabilitation Act (1996:764), Ch. 4 sec. 7. Possibility to extend the period to six months or longer. See note v. III.5.d. Not possible to end a rehabilitation procedure before 1996, motivating a higher score. On the issue of composition, the same regulation applies before and after the enforcement of the Enterprise Rehabilitation Act in 1996. However, before 1996, court confirmation on composition constituted exit, now the court's decision on composition takes place and thereafter the court decides for the rehabilitation procedures to end.

10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2015: 0.75	The priorities for creditors in liquidation proceedings are stated in the Preferential Right Act (1970:797). Secured creditors supersede statutory priorities, however, when it comes to floating charge creditors do not have the same level of protection. Floating charge is subordinated to some general priorities according to the Preferential Right Act sec. 10 and 10a. Priorities in rehabilitation proceedings concerns composition and is regulated in the Enterprise Rehabilitation Act (1996:764), replacement of the Composition Act (1970:847). Creditors who have claims joined with priorities do not participate in composition proceedings according to the Enterprise Rehabilitation Act, Ch. 3 sec. 3.

28. Switzerland: Coded by Theodora Dimitrova and Viviana Mollica (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013: 0.8	Swiss law recognises two types of companies: public limited companies (AG) and limited liability companies (GmbH). The minimum capital required for public limited companies is CHF 100,000 (≈ € 81,000). The capital must be fully subscribed for on incorporation; it does not have to be fully paid. The minimum capital required for limited liability companies is CHF 20,000 (≈ € 16,000).
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 0.66	Art 660 of the Swiss Code of Obligations gives shareholders the right to participate in the disposable profits of the company. Unless the articles of association state otherwise, dividends are distributed in proportion to the amounts paid up on the share capital (Art 661). Art 674 stipulates that dividends may only be determined after the allocations to reserves have been made. The Code requires 5% of the annual profit to be allocated to the general reserve until it reaches 20% of the paid-up share capital (Art 671). In addition, according to Art 675, dividends may be paid only from the disposable profit and the reserves for this purpose. Art 659 states that companies may acquire their own shares only when disposable equity capital is available. The combined nominal value of the acquired shares must not exceed 10% of the share capital.
3. Directors' duties	Imposing a duty on directors to act in creditors' interest	1990-1991: 0.5	The board members are jointly and severally liable for mismanagement of the

to creditors	may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1992-2013: 1	corporation. In the past few years, there has been a notable increase of court actions against board members on the basis that they neglected to supervise the management diligently. Irrespective of ongoing insolvency proceedings, a creditor may, at any time, propose a claim against directors, if he can show that the directors have caused him both directly and individually to suffer financial loss, as a consequence of an action violating legal provisions exclusively established to protect the interests of the creditor. As most of the obligations of directors stipulated by Swiss law protect either the interests of the company or both the interests of the company and the creditor, it is generally accepted that cases explained above are very rare. In insolvency proceedings, directors can incur civil liability whenever they fail to promptly notify the courts of the company's over-indebtedness. As a general rule directors owe creditors a limited duty of care while the company is solvent. If the company's last annual balance sheet shows a capital loss (i.e. half of the share capital and legal reserves are no longer covered by the company's net assets), the directors must call a general meeting to discuss the available restructuring remedies. If the directors are concerned that the company may be substantially over-indebted, they must submit an interim balance sheet for examination by the auditors. If the auditors conclude that the company is no longer able to meet its liabilities, the board must file with the court a petition for bankruptcy. This requirement was introduced into the law in 1991 and came into force on 1 July 1992.
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land	1990-2013: 0.33[52]	Swiss law recognises the following non-possessory security interests: (i) Mortgage assignments or mortgage certificates which are commonly granted over immovable property; (ii) Pledges or assignments over claims and receivables. Security interests over tangible moveable property can be created either through a pledge or an outright transfer. Both of these methods, however, require the secured party's physical possession of the relevant assets.

[52] I disagree with the previous coding. I cannot find any source indicating that the law has changed since 1995.

	• Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		Swiss law does not recognise the floating lien as a form of security.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0	Mortgage assignments and mortgage certificates require registration with the land register. No registration is required for the perfection of pledges or assignments over claims and receivables.
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-1994: 0 2006-2013: 1	According to Art. 130B which was introduced in 1994 amending the Swiss Civil Code (it entered into force on the 1st of January 1997), a guaranteed asset can be sold privately without recourse to the courts when agreed by the parties. Alternatively, if there is no agreement between the parties, the creditor must obtain court leave for debt enforcement first. There are limited circumstances under which assets may be sold privately when a court leave should be obtained first: e.g. the cost of safe-keeping is unreasonably high.
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy	1990-2013: 0.5	If a company is over-indebted, s 725 of the Code of Obligations imposes an obligation on directors to notify the court. Alternatively, bankruptcy proceedings may be initiated by a creditor whether or not there have been prior enforcement proceedings (Arts 38-55, 64-78 and 88 of the Federal Statute on Debt Enforcement and Bankruptcy 1889).

	proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2013: 0.5	Once debt restructuring is initiated, the company is given a chance to restructure without the threat of enforcement proceedings. Therefore, all creditors' claims are subject to a moratorium (Art. 297 of the Federal Statute on Debt Enforcement and Bankruptcy 1889). The company's assets are distributed to creditors during bankruptcy proceedings, and therefore there is no stay.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate	1990-2013: 0.5	Composition agreements with creditors can take one of two forms: (i) an ordinary debt restructuring agreement which allows the debtor company to continue trading in order to be able to gradually satisfy existing creditors' claims; and (ii) a debt restructuring agreement with assignment of assets which gives creditors the power to dispose of the company's assets. Both types of restructuring proceedings require the approval of a certain

	control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		majority of creditors and a competent judge.
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2013: 1	Swiss law ranks creditors' claims in the following way (Art 219 of the Federal Statute on Debt Enforcement and Bankruptcy 1889): (i) Secured claims; (ii) Debts incurred during restructuring proceedings; (iii) Unsecured claims – subdivided into three classes.

29. Turkey: Coded by Orkun Akseli and Pinar Akman (1995-2005)

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-1994: 0 1995-2000: 1 2001-2010:0.01 2011-2013: 0.2	For corporations – 50,000,000,000TL since 2002 (Turkish Commercial Code Article 272) (~€25,000 in 2002) 1995-2001 – 5,000,000,000 TL = (in 1995 ~ €90,000) For limited companies 5,000,000,000 TL since 2002 (Article 507) 500,000,000 TL (= ~ €9,000 in 1995) ----- For Companies with shares (Anonim Sirket) Between 1990-1995 500,000TL (Turkish Commercial Code Article 272). Between 2002-2010 50,000,000,000TL (Turkish Commercial Code Article 272) (~ €25,000 in 2002) Since 2011 (article 332) 50,000TL and for closed companies with registered capital 100,000TL. For limited companies Between 1990-1995 5,000TL (Turkish Commercial Code article 507) (= ~€3) 1995-2001 – 5,000,000,000 TL = (in 1995 ~ €90,000) Between 2001-2010 500,000,000TL (= ~ €242 in 2001) Since 2011 (Turkish Commercial Code article 580) 10,000TL (=~€5,000) (new Lira introduced in 2005). [JA note: coding is for private companies → limited company data is key].
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases	1990-2013: 0.33	Before 14.02.2011 Turkish Commercial Code Articles 469 and 470 (under 6762 numbered act). After 14.02.2011 under the new Turkish Commercial Code (6102 numbered act) Articles 523 and 509. Companies with shares (Anonim Sirket) cannot decide on distribution of dividends without first determining the amount of cash reserves set out in the Act and in the constitution (Art. 523(1)).

	• "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above		
3. Directors' duties to creditors	Imposing a duty on directors to act in creditors' interest may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1990-2013: 0	Before 14.02.2011: Balance-sheet insolvency must be notified to the court immediately to require the bankruptcy of the company (Turkish Commercial Code Article 324). After 14.02.2011: article 376 and 377. When the Board of Directors become aware of balance-sheet insolvency, they must invite shareholders to a General meeting to present measures to improve financial position in order to avoid bankruptcy (Turkish Commercial Code art. 376(1)). Balance sheet insolvency must be notified to the First Instance Commercial Court to require the bankruptcy of the company (Turkish Commercial Code Art. 376(3)).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land	1990-2013: 1	The general rule for movables is that - subject to exceptions as stipulated by law- their possession has to be transferred to the creditor for security to be established (Turkish Civil Code Article 939 [853]). One exception is for movables for which there is a registry; if there is a registry for the movable, then it can be given as security without transferring possession (Turkish Commercial Code Article 940 [854]). For example, there is a registry for trade-marks. Similarly, receivables can be used for security; if the receivable is established by a bill/deed, then the possession of the bill/deed has to be

	• Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		transferred (Turkish Civil Code Article 954 et seq [868]). Other assets, such as future interest income and dividend income can also be used as security (Turkish Civil Code Article 959 [873]). Finally, there is a special Act for certain undertakings – Act on Security of Commercial Undertakings (1971, Act No 1447). Under this Act, security can be granted over the moveables of the undertaking without possession being transferred. The above substantive information applies equally before 1995 and after 2005 (former Turkish Civil Code articles are written in italics). Turkish Civil Code was revised in 2001. However, in practical terms, the World Bank studies have shown that banks mostly prefer movables or land as collateral.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4)) 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 0.66	The registration of a security [mortgage] over a land is a condition to create security. The security over land must be registered on the land registry (Turkish Civil Code Art. 856(1)). While the general rule for pledge over tangible movables is that the possession of the asset needs to be delivered to the creditor (Turkish Civil Code article 939), under article 940 there are exceptions where the non-possessory security is allowed and the security must be registered (e.g. cattle [art. 940(1)] or tangible movables the registration of security over which is required under specific by laws [art. 940(2)]. Security over intangibles (Turkish Civil Code art. 954 *et seq*) is subject to the general rule for pledge over tangible movables. Unless there are provisions otherwise, security over intangibles will be subject to provisions governing possessory pledge. Thus the possession of the negotiable instrument representing the receivables needs to be delivered to the creditor. Finally under Act on Security of Commercial Undertakings (1971, Act No 1447) the pledge needs to be registered to the Commercial or Artisan registry at the location of the commercial undertaking (art.5).
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)*	1990-2013: 1	Enforcement and Bankruptcy Code Articles 45, 145-153.

	0 = out of court enforcement is not possible 1 =out of court enforcement is possible		
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)*	1990-2013: 1	Before 2011 Turkish Commercial Code Article 324 After 2011 Turkish Commercial Code Article 376.
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose.	1990-2013: 0	Before 2011 Turkish Commercial Code Article 324- the court can postpone bankruptcy if there is likelihood of rehabilitation upon the request of the management board or creditors. After 2011 Turkish Commercial Code Article 376(1) the Board may present measures to improve the financial position of the company in order to avoid

	0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1		bankruptcy. Turkish Commercial Code Article 377 - the court can postpone bankruptcy if there is likelihood of rehabilitation upon the request of the management board or any creditor. In this case articles 179 and 179(b) of the Enforcement and Bankruptcy Code apply.
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant" decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.	1990-2013: 0	Before 2011 The court decides whether or not the company will be bankrupt; can also decide to postpone bankruptcy (Turkish Commercial Code Article 324). Creditors or the management board can ask for bankruptcy to be postponed (Turkish Commercial Code Article 324). After 2011 The court decides whether or not the company will be bankrupt; can also decide to postpone bankruptcy (Turkish Commercial Code Article 376 and 377). Any creditor or the management board can ask for bankruptcy to be postponed (Turkish Commercial Code Article 377).
10. Subordination	Many systems subordinate secured claimants to certain	1990-2013: 1	Enforcement and Bankruptcy Code Article 206.

of secured claimants	types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).		

30. United Kingdom: Coded by John Armour

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	1990-2013:0	No minimum capital for private companies.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	1990-2013: 0.83	Restrictions on dividends (Companies Act 1985 s 263; Companies Act 2006 s 830), repurchases (*Trevor v Whitworth* (1889) 12 App Cas 409; Companies Act 1985 ss 143, 159, 162; Companies Act 2006 ss 658, 659, 690) and disguised distributions (*Re Halt Garage* (1964) Ltd [1982] 3 All ER 1016; *Aveling Barford v Perion* (1989) 5 BCC 677). But private companies may repurchase out of capital (Companies Act 1985 ss 178-80, Companies Act 2006 s 692) hence 0.83 rather than 1 (half way between 0.66 and 1).
3. Directors' duties	Imposing a duty on directors to act in creditors' interest	1990-2013: 1	*West Mercia Safetywear Ltd v Dodd* [1988] BCLC 250 (balance sheet);

to creditors	may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*		Insolvency Act 1986 s 214 (cash flow).
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1990-2013: 1	Goode, *Legal Problems of Creidt and Security* (3rd ed., 2005), pp. 1-30.
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4))	1990-2003: 0.66	Companies Act 1985 s 396, Companies Act 2006 s 860 (some security over personalty need not be registered).

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1990-2013: 1	*Bank of Baroda v Panessar* [1987] Ch 335 (England & Wales); Insolvency Act 1986 s 218 (Scotland).
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow*	1990-2013: 0.5	Single creditor may commence insolvency proceedings: (i) liquidation: *Bowes v Hope Life Insurance Company* (1865) 11 HLC 389; Insolvency Act 1986 ss 122(1)(f), 123; (ii) receivership (until 2003): *Shamji v Johnson Matthey Bankers* [1986] BCLC 278; (iii) administration (from 2003): Insolvency Act 1986 Sch B1, paras 11(a); 14; 27(2)(a).

	insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	1990-2002: 0.5 2003-2013: 1	No stay on secured creditors' claims in liquidation: *Re David Lloyd* (1877) 6 Ch D 339. Only junior secured creditors stayed in receivership (until 2003); secured creditors stayed in administration (from 2003), except for financial collateral (Insolvency Act 1986 Sch B1 para 43; Financial Collateral Arrangements (No.2) Regulations 2003, SI 2003/3226 (implementing Council Directive 2002/47/EC on Financial Collateral Arrangements).
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant"	1990-2002: 0.5 2003-2013: 1	In receivership, secured creditor makes all the decisions: *Downsview Nominees v First City Corp* [1993] 2 WLR 86 (until 2003). From 2003, under streamlined administration procedure, decision is accorded to "residual claimant": Enterprise Act 2002: Insolvency Act 1986 Sch B1, paras 3, 50-53; Insolvency Rules 1986 r.r 2.38-42 (unsecured vote on proposals unless 'under water', in which case secureds may also vote). Court does not decide timing of exit.

	decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1990-2001: 075 2001-2013: 0.5	Floating charge subordinated to preferential creditors: Insolvency Act 1986 ss 40, 178, 178A; Sch B1 para 70. From 2002, all charges over receivables effectively subordinated, as no longer possible to take fixed charge: *Agnew v CIR* [2001] 2 AC 710.

31. United States: Coded by John Armour

Variable	Template	Score	Explanation
1. Minimum capital	Cardinal variable: minimum capital (in Euros) for establishment of a private company. Normalised across {0,1}, with €25,000 = 1. *(There is more variation across countries and over time in private than public companies, because of the Second Directive. "Private company" should be interpreted to mean any business vehicle having separate legal personality and giving all its equity investors limited liability; i.e. it includes the French SARL).*	0: 1990-2013	No minimum capital requirement.
2. Dividend restriction	Dividend restrictions protect creditors from the payment of the company's assets to shareholders. A basic dividend restriction applies to transactions which are explicitly characterised as dividends". To be meaningful, it must be incapable of being waived or altered by the company without creditor consent. However it is possible to get around such a restriction in a variety of ways. Tougher restrictions also include restrictions on one or more of the following: • Share repurchases • "Disguised" dividends, e.g. undervalue transactions with shareholders 0 = less than "basic dividend restriction"(criterion for score of 0.33) 0.33 = "basic restriction" on dividend payments (not waivable without creditor consent) 0.66 = "basic restriction" plus one additional restriction from list above 1 = "basic restriction" plus two additional restrictions from list above	0: 1990-2013	Dividends may either be paid out of surplus, or out of profits from the previous two accounting years ('nimble dividends'): DGCL § 170(a). The restriction of payment to 'surplus' is effectively meaningless because capital may be converted to surplus by a resolution of the board: DGCL § 244(a). Similarly, whilst stock repurchases must not 'impair capital' (DGCL § 160(a)(1)), restriction effectively meaningless as capital may be converted to surplus by board resolution : DGCL § 244(a).
3. Directors' duties	Imposing a duty on directors to act in creditors' interest	0: 1990	*Credit Lyonnais Bank Nederland NV v Pathe Communications Corp*, No Civ A

to creditors	may protect creditors' position during a "twilight" period just before creditors realize something is amiss and put the firm into bankruptcy. Imposing the duty too soon may, however be counter-productive and give creditors "too much" protection. 0= no duty on directors to take creditors' interests into account 0.5= duty on directors to act in creditors' interests if firm is cash-flow (commercially) insolvent 1= duty on directors to act in creditors' interests if firm is balance-sheet insolvent *Practically speaking, balance-sheet insolvency is likely to occur before cashflow insolvency. Creditors may not be aware of balance sheet insolvency, but will start to press for payment if a debtor is cash flow insolvent.*	1: 1991-2013	12150, 1991 Del Ch LEXIS 215 (1991). *North American Catholic Education Programming Foundation v. Gheewalla*, 930 ATLANTIC REPORTER 2d 92, 98–102 (Del. 2007);
4. Security: scope	Captures extent to which non-possessory security interests may be taken over debtor's assets. (Possessory security interests are less useful for raising business finance, as they impede the debtor's ability to use the assets in the business). The assets over which a jurisdiction permits non-possessory security interests to be granted by a corporate debtor may encompass: • Land • Personalty (tangible moveables) • Receivables (intangibles) • 'All assets' (general, revolving security interest i.e. "floating lien") 0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list	1: 1990-2013	Personalty generally and receivables specifically: UCC § 9-102(a); UCC Revised § 9-109(a) (from 1999); 'Entire undertaking' (floating lien) UCC §§ 9-204, 9-205 and UCC Revised §§ 9-204, 9-205 (from 1999).
5. Security: registration	This variable captures extent to which non-possessory security interests must be registered. (List of security interests is identical to (4))	1: 1990-2013	UCC § 9-302(1); UCC Revised § 9-310 (from 1999).

	0 = only mortgage of land 0.33 = land + one further from list 0.66 = land + two further from list 1 = land + three further from list		
6. Security: enforcement	Must a secured creditor go to court in order to enforce a security interest against a debtor in default? *(cf. the position if the debtor is in bankruptcy—variable (8) below—sometimes it is desirable to stay secured creditors from enforcing)* 0 = out of court enforcement is not possible 1 =out of court enforcement is possible	1: 1990-2013	UCC § 9-503; UCC Revised § 9-609 (from 1999) (secured party may take possession of collateral on default without judicial process provided no breach of the peace)..
7. Entry to corporate bankruptcy proceedings	The control of entry to corporate bankruptcy proceedings has important implications for the ability of creditors (debtors) to threaten debtors (creditors) with its use even before bankruptcy has begun, and to use it strategically to advance their positions. 0= debtor may commence bankruptcy unilaterally, without any requirement that they be insolvent 0.5 = single creditor may commence bankruptcy proceedings against a debtor (if they show debtor is insolvent by some criterion) 1 = debtor required to commence bankruptcy proceedings, if they are balance sheet insolvent *(Where a debtor may commence unilaterally without a requirement that they be insolvent, they may use bankruptcy as a threat against creditors. Where a single creditor may invoke bankruptcy, then they may use this as a threat to compel payment; more protective still is a requirement that debtors commence bankruptcy pre-emptively. As for variable (3), it is assumed that creditors may not be aware that a debtor is balance sheet insolvent, but are likely to be aware of its cash flow*	0: 1990-2013	Commencement of a voluntary case does not require the debtor to demonstrate that they are insolvent in either sense: 11 USC §§ 109, 301.

	insolvency: hence a requirement that a debtor commence insolvency based on a balance sheet tests is more protective of creditors; a requirement based on a cash-flow test would add little to a creditor's right to commence insolvency proceedings against the debtor)		
8. Stay of secured creditors	It is desirable, from an efficiency point of view, that secured creditors be stayed if there is a realistic possibility of rehabilitation. There is no justification for such a stay, however, if there is no realistic possibility: this simply impedes creditors' ability to liquidate their collateral for no useful purpose. 0.5 is accorded for *each* of: (a) secured creditors stayed in rehabilitation proceedings (or, in "single gateway" regimes, where rehabilitation is a realistic possibility); (b) secured creditors not stayed in liquidation proceedings (or, in "single gateway" regimes, where rehabilitation is not a realistic possibility). Minimum score: 0, maximum score:1	0.5: 1990-2013	11 USC § 362 (automatic stay: secured creditors stayed in both Ch 7 liquidation and Ch 11 reorganization).
9. Outcome of bankruptcy proceedings	The ability of creditors to vote on the outcome of bankruptcy proceedings better protects their position both *ex ante* and *ex post*. Court control, or debtor control, of the outcomes, undermine creditors' positions. Even where creditors control, there may be tensions between different priority classes over the appropriate action to take. Mechanisms which seek to allocate control rights to the "residual claimant" (i.e. the class of claimants who will, when the proceedings are completed, be expected to get a payout on their claims that is greater than zero but less than 100%) are better, from the standpoint of maximising the realisation values, than mechanisms which always include all classes, or always allocate control to a particular class, of creditor. 0 = *either* court *or* debtor are significant decision-makers regarding whether the firm continues or is closed. (Court is not deemed to be a "significant"	0.5: 1990-2013	Secured creditors do not vote in Ch 7: Trustee, appointed by unsecured creditors, takes decisions about the exit from proceedings. However, must give 'adequate protection' to secured creditors in order to use or sell assets subject to security (11 USC § 363(e)); Secured and unsecured creditors vote in Ch 11: 11 USC § 1122, 1126(a). Court must confirm a Ch 11 plan: 11 USC § 1129.

	decision-maker if its role is only to confirm that a vote of other constituencies was conducted according to correct procedures; court must be a *substantive* decision-maker) 0.5 = creditors are the primary decision-makers regarding whether the firm continues or is closed. That is, neither court, nor debtor, are significant decision-makers. 1 = as for 0.5, except that decision rights are allocated *within* creditors to class who, in economic terms, are the "residual claimants": that is, will benefit (lose from) a marginal gain (loss) in realisations.		
10. Subordination of secured claimants	Many systems subordinate secured claimants to certain types of preferred claims, or even (through partial subordination) general unsecured creditors. This reduces the expected value of secured creditors' rights. The coding for this variable depends on which types of security interest are subordinated. Because creditors may be able to substitute one type of security for another, the greater the range of interests affected, the more pervasive the impact. 0 = subordination of all types of security listed at (4). 0.25 = subordination of 3 types of security listed at (4) 0.5 = subordination of 2 types of security listed at (4) 0.75 = subordination of 1 type of security listed at (4). 1 = subordination of no security listed at (4).	1: 1990-2013	11 USC §§ 507, 726, 1123(a)(1).