Article Title: ARCHIVE | Criteria | Corporates | Recovery: Update: Jurisdiction-Specific Adjustments To Recovery And Issue Ratings Data: (EDITOR'S NOTE: — This criteria article is no longer current. It has been superseded by the article titled "Methodology: Jurisdiction Ranking Assessments," published on Jan. 20, 2016. This article updates the July 5, 2007, article, "Jurisdiction-Specific Adjustments To Recovery And Issue Ratings," and incorporates additional jurisdictional work. This article partially supersedes the article titled "2008 Corporate Criteria: Rating Each Issue," published on April 15, 2008.) Whether, when, and how a creditor is repaid in the event of borrower default varies from one legal jurisdiction to another. These distinctions can have a sizable effect on the nominal value ultimately recovered by both secured and unsecured creditors, the time to recovery, and the overall predictability of the recovery process. Creditor Concerns Extending Beyond Default Risk Toward Recovery Creditors are aiming more and more to gauge the probability and time frame for repayment of principal and interest after default, in light of growing economic uncertainty and recent developments in the debt markets, including the growth of the credit default swap markets and the implementation of Basel II guidelines. As a result, insolvency regimes are coming under closer scrutiny with regard to how they will affect the priority rankings of claims, the negotiating power of the various creditors, and the value of the enterprise and collateral given a default. While any particular insolvency proceeding involves some measure of uncertainty regardless of where it takes place, we believe that our jurisdictional analyses and rankings provide meaningful insights into relative degrees of predictability among disparate regimes that approach the insolvency process in different ways and with different motivations. A jurisdiction may be oriented more toward rapid, secured creditor-driven processes, toward debtor restructurings or reorganizations, or perhaps towards protecting noncreditor constituencies or interests. We have sought to reconcile these jurisdictional biases into a framework that allows investors to evaluate and compare jurisdictions on the basis of a standard set of factors. Analyzing And Classifying Insolvency Regimes Accordingly, Standard & Poor's Ratings Services continues to evaluate the complex question of how insolvency proceedings in different jurisdictions are likely to affect post-default recovery prospects, and to consistently incorporate jurisdiction-specific adjustments as we assign our recovery ratings to issuers' speculative-grade debt (see table 1 for Standard & Poor's recovery rating scale). Having examined the main factors that we believe bear upon a jurisdiction's creditor friendliness, we are updating our classification of the major jurisdictions and adding new jurisdictions (bringing the total to 29, from 16 in July 2007). These classifications position those jurisdictions that we perceive as offering the greatest level of creditor protection in the highest group, and those that provide only limited safeguards for creditors in the lowest group. Table 1 Recovery Rating Scale And Issue Rating Criteria (FOR ISSUERS WITH A SPECULATIVE-GRADE CORPORATE CREDIT RATING) RECOVERY RATING RECOVERY DESCRIPTION RECOVERY EXPECTATIONS* ISSUE RATING RELATIVE TO CORPORATE CREDIT RATING 1+ Highest expectation, full recovery 100%¶ +3 notches 1 Very high recovery 90%-100% +2 notches 2 Substantial recovery 70%-90% +1 notch 3 Meaningful recovery 50%-70% 0 notches 4 Average recovery 30%-50% 0 notches 5 Modest recovery 10%-30% -1 notch 6 Negligible recovery 0%-10% -2 notches *Recovery of principal plus accrued but unpaid interest at the time of default. ¶Very high confidence of full recovery resulting from significant overcollateralization or strong structural features. To date, we have studied 29 insolvency regimes for nonfinancial companies in Europe, Asia, North America, and Latin America. (For an in-depth look at debt recovery for creditors and insolvency legislation in the individual countries we have reviewed, please see the list of related articles at the end of this report.) We expect to have analyzed and classified approximately 36 jurisdictions by year-end 2008. We will not assign recovery ratings to debt issued in jurisdictions for which we have not published an insolvency report and that we have not ranked. In these cases, the basis for rating a specific issue different from that of our corporate credit rating on the issuer is similar to that used in investment-grade situations. (For more detail on Standard & Poor's recovery rating methodology and issue-level rating framework, see "Criteria Guidelines For Recovery Ratings On Global Industrials Issuers' Speculative-Grade Debt," published Jan. 7, 2008.) Four Main Factors Shape Jurisdictions' Creditor Friendliness A jurisdiction's creditor friendliness hinges above all on the strength and effective enforcement of its insolvency laws. In this regard, our review of the various insolvency regimes focuses on the following aspects: 1) Security Has the effectiveness of the jurisdiction's insolvency regime in protecting the rights of secured creditors been sufficiently tested?

Does a correctly perfected security interest remain intact in virtually all circumstances? Is there a meaningful risk that existing liens may be "primed" by new money without compensating the creditor with "equivalent value"? And, ultimately, do recoveries for secured creditors generally reflect the full benefit of their security interest (whether through collateral foreclosure, reorganization of the debtor, or otherwise)? 2) Creditor participation/influence Do procedures provide creditors with an opportunity to influence the insolvency proceeding and the process through which recoveries are realized? Is a creditor's influence generally commensurate with its relative position in the capital structure and its reasonable prospects for recovery? Do certain constituencies (unsecured creditors, employees, shareholders, government actors) have a disproportionate influence? Are the procedures tested and proven? And, ultimately, what impact do these factors have on the recovery prospects of secured and unsecured creditors? 3) Distribution of value/certainty of priorities Is value distributed to creditors based on their relative position in the capital structure, or does the distribution of value differ as a result of insolvency rules or practical considerations? More specifically: Are there limitations on the types and amounts of claims that receive priority status over and above pre-petition secured debt claims? Are there legal procedures that enable secured creditors to benefit from the full value of their collateral? Do any stakeholders have undue influence in the process that provides them with a higher recovery than their relative position would suggest? And, ultimately, do these factors result in the distribution of value to creditors in a fair and predictable manner? 4) Time to resolution How much time generally elapses between insolvency and ultimate resolution (including payment to creditors or the ultimate monetization of noncash distributions)? Insolvency Regime Classifications We have classified countries into three categories, placing the most creditor-friendly insolvency regimes in Group A and the least creditor-friendly environments in Group C. For the current version of table 2, see "Insolvency Regime Jurisdictions Ranked By Standard & Poor's." Table 2 Publicly Ranked Jurisdictions As Of June 20, 2008 A1 A2 B C Netherlands South Africa Spain Russia Ireland Germany Turkey Kazakhstan Finland Belgium Mexico Ukraine Denmark Luxembourg Chile Singapore Switzerland France Hong Kong Japan Italy Australia Portugal Brazil U.K. Canada Norway U.S. Sweden Our classification determines jurisdiction-specific adjustments to our recovery ratings--namely, the capping of recovery ratings in countries where we expect creditor recoveries to be negatively affected by the particulars of the insolvency regimes (see table 3). These caps increase the transparency and consistency of our assessments of the impact of countries' insolvency rules--especially those that are less creditor friendly--when assigning recovery ratings. Table 3 Jurisdiction-Specific Adjustments To Recovery And Issue Ratings JURISDICTIONS BY GROUP RECOVERY RANGE (%)* RECOVERY RATING CAP¶ ISSUE RATING NOTCHES§ A 100 1+ +3 B 100 2 +1 C 100 2 +1 ------- A 90-100 1 +2 B 90-100 2 +1 C 90-100 3 0 ------- A 70-90 2 +1 B 70-90 3 0 C 70-90 3 0 *Denotes the recovery range that would be expected, prior to factoring the impact of the jurisdiction on ultimate recovery prospects. ¶Denotes the highest possible recovery rating that could be assigned to an issue, based primarily on the group in which the jurisdiction is classified and the expected recovery range. §Indicates issue-level rating "notches" relative to Standard & Poor's corporate credit rating on the issuer. Group A Group A includes creditor-friendly regimes that facilitate the strongest absolute recovery rates and provide the greatest predictability about recovery outcomes and timing--typically within one to two years--through reliable enforcement of the insolvency laws and clear priority rankings. Our recovery rating scale (and issue-level notching criteria) is unconstrained for all jurisdictions in this category. We have divided Group A into two subcategories, denoting a difference in the degree of jurisdictions' legislation on, and support of, creditors' rights, with A1 countries being the most secured creditor-friendly regimes. A2 countries also have insolvency laws that protect creditor rights and are consistently applied, but these jurisdictions may produce secured creditor recoveries that are slightly less favorable because of various insolvency rules or practices, less direct secured creditor control of the process, or a somewhat longer resolution time frame. Even so, creditors' rights and their protection in practice in A2 jurisdictions are still sufficiently strong for us to fully apply our recovery rating scale and issue rating framework, although additional analytical judgment may be required. For instance, issues with expected recovery rates above 90% will typically be assigned a '1' recovery rating, as per our scale. However, for issues in A2 countries, with expected recovery rates that are only slightly above 90%, we may be inclined to assign a '2' recovery rating if the particular facts and circumstances (e.g., weak debt structuring, a complex corporate or debt structure, or valuation concerns) suggest more uncertainty and thus a more conservative approach. Group B We have placed less creditor-friendly regimes in Group B. Compared with jurisdictions in Group A, creditors in these countries have less control over insolvency proceedings, as debtors or other constituencies (employees, shareholders, government actors) benefit from greater influence or control in the event of financial distress. In addition, the overall proceedings can be lengthy--surpassing two years--and somewhat unpredictable for both secured and unsecured creditors. As a result, recoveries in these jurisdictions may be delayed or may not be fully reflective of the distributions that would be expected based on a creditor's relative position in the capital structure. In light of these issues, recovery ratings in Group B jurisdictions are generally capped at '2'. Issue-level ratings will not be more than one notch above the corporate credit rating--and then only in limited cases with strong collateral coverage where expected recoveries would be firmly within the 90%-100% range absent our jurisdictional related concerns. Group C Jurisdictions in Group C are the least creditor friendly and may offer only limited protection to creditors. Recoveries can be affected by significant and unexpected priority claims, extensive delays during insolvency proceedings, and unpredictable outcomes because of potential external influences that are detrimental to creditors. In light of these issues, recovery ratings in Group C jurisdictions are generally capped at '3', and issue-level ratings typically will not be higher than their corresponding corporate credit ratings. In an exceptional case with extremely strong collateral coverage, however, a very well-secured deal can have an issue-level rating that's one notch higher than its corresponding corporate credit rating, with a recovery rating of '2'. For Regimes Outside The U.S., Empirical Data To Come Over Time There is very little reliable historical default and recovery data available to verify in practice the predictability of insolvency proceedings and actual recovery rates for jurisdictions outside the U.S. To produce our reports and rank regimes, we work with local counsels and insolvency practitioners in order to better understand how the law works in practice. When possible, we analyze real bankruptcies to examine processes and actual recovery. We will refine our analysis of insolvency regimes and update our recovery analytics as needed. Over time, we will also factor in empirical European leveraged loans data collected through a consortium led by Standard & Poor's and currently composed of 11 major European banks and active leveraged finance investors in Europe (see "New Results From European Leveraged Loan Study Confirm Strength Of Asset Class ," published Jan. 31, 2008). France and Italy, among others, have recently enacted significant reforms to their insolvency and restructuring regulations. In these countries, we will take a cautious approach until new legislation has been sufficiently tested. Assessing Recovery Prospects Is More Difficult In Multijurisdictional Cases It has become increasingly common for companies to have assets and operations in more than one country. How international restructurings and bankruptcies are dealt with remains uncertain, as does the practical impact on ultimate recovery rates and recovery times for all creditors. For example, amid the changing EU landscape, the European Insolvency Regulation of 2002 stipulates that main insolvency proceedings be opened in the member state where the debtor has its center of main interest (COMI). Generally, this is the country where managerial decisions are made, and it usually is the location of the company's registered office. In practice, however, debtors and creditors will sometimes attempt to arbitrage jurisdictions to find the most favorable venue to protect their interests; this is known as "forum shopping." To factor in the uncertainties surrounding the choice of jurisdiction for insolvency proceedings, our analysis considers what the COMI is likely to be, but also looks at the geographic spread of a company's assets, debt, and revenues. We then weigh the distribution according to how strong or weak the insolvency regimes are in the respective jurisdictions where the assets are located and revenues are generated. The more complex the cross-border restructuring is, the more expensive and lengthy proceedings will likely be, leading us to factor in increased insolvency costs and delays. Click on this link to see other articles in "Special Report: The Debt Market Spotlight Shifts To Recovery." Click on this link to go to the Special Report Archive. 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