

CTCAP | Cape Town Convention
Academic Project

Project Leads:



 **UNIVERSITY OF
CAMBRIDGE**
Faculty of Law

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Economic Evaluation of International Commercial Law Reform

11TH WORKSHOP, 23 January 2025

Jordi Paniagua, Professor of Economics, University of Valencia

Theodora Kostoula, Legal Consultant, UNIDROIT



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Overview

- **Summary of intersessional work**
- **Main changes to the Framework & the Preliminary Draft Guide**
- **Case Study**
- **Questions**



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Project Development & Intersessional work

- ❖ 10° Workshop in September 2024
- ❖ 3° Intersessional Meeting in December 2024
- ❖ Finalisation of Preliminary Draft Guide



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***Main changes to the Framework
& the Preliminary Draft Guide***



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A) General

a) Transaction costs

- Main target of ICLR
- Acknowledging that other economic frictions should be addressed under Factors (e.g., Factor C)

b) Annex 1

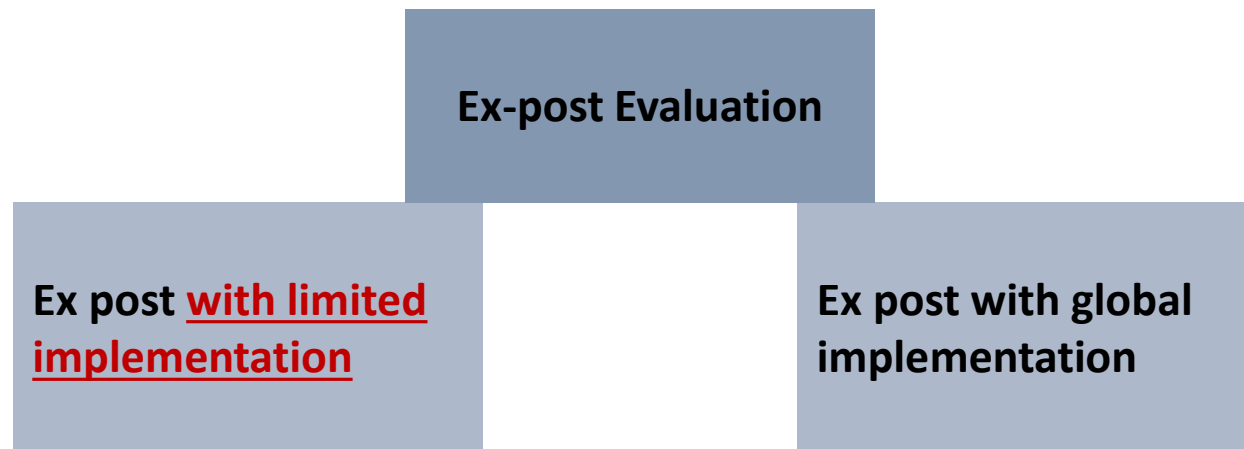
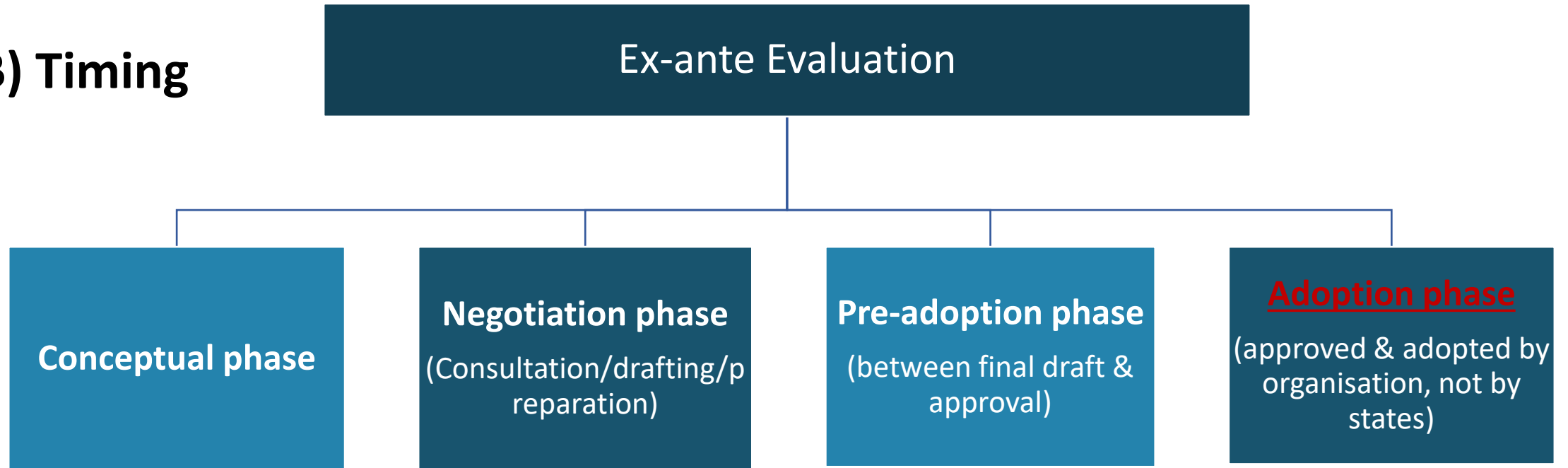
- Re-formulated (graphs are deleted, focus on economic frictions)

c) Drafting points

- “Economic outcomes” vs “economic gains” (footnote 4)
- “Domestic” instead of “national”
- “Facilitating law” instead of “promotional law” (footnote 36)
- ICLR: “reform”, “law reform”, “commercial law reform”
- “Harmonisation” vs “economic integration (footnote 3)
- Private law focus (scope)



B) Timing



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C) Factors

- ✓ indicative questions **relative to the Benchmark**
- ✓ further developed & linked to transaction costs

- ✓ relationship with economic frictions & multiplier effects
- ✓ Practical limits:

- link Benchmarks to the policy goals & market problems of the law reform
- Tied to well-documented multiplier effects

Factor C

Factor D

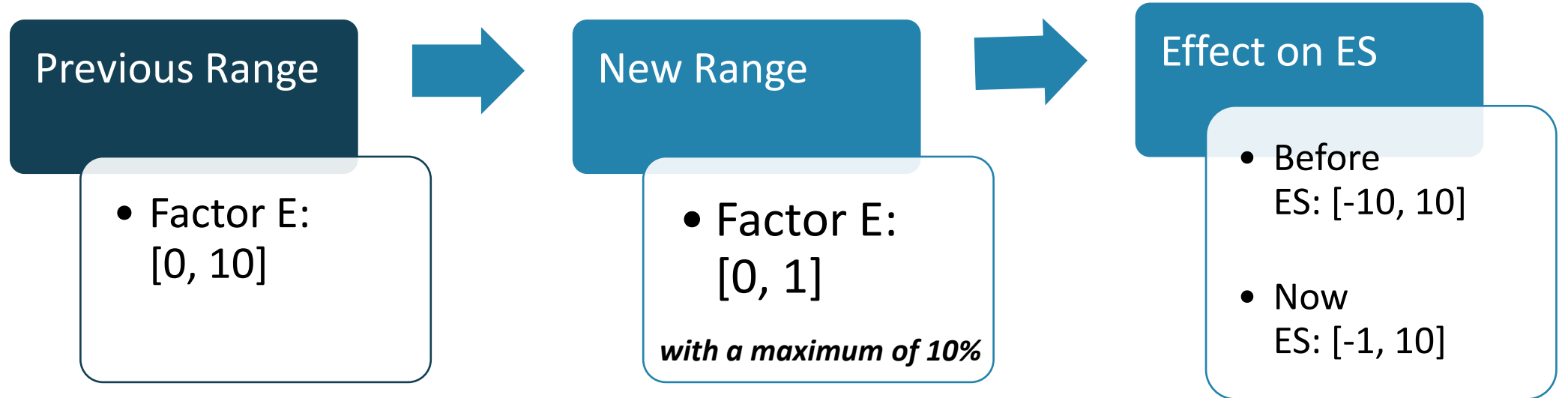
- ✓ indicative questions added



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Factor E



**Bank
Insolvency
Case Study**

$$\begin{aligned} ES &= (A + B + C) \times \frac{D}{3} - E \\ &= (10 + 10 + 9) \times \frac{0.9}{3} - 1 \\ &= 29 \times 0.3 - 1 = 8.7 - 1 = 7.7 \end{aligned}$$

After the Change

$$\begin{aligned} ES &= (A + B + C) \times \frac{D}{3} - E \\ &= (10 + 10 + 9) \times \frac{0.9}{3} - 0.1 \\ &= 29 \times 0.3 - 0.1 = 8.7 - 0.1 = 8.6 \end{aligned}$$



D) EVALUATION *METHODOLOGY* AND WORKFLOW

- a) Identify the baseline scenario.
- b) Summarise the objective(s) of the proposed law reform.
- c) Determine the Benchmark.
- d) Present the key assumptions.
- e) Map and collect data.
- f) Assess causality.
- g) Specify the degree of certainty.
- h) Assign scores.



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E) Benchmark

a) Descriptive definition

- Similar (past) law reform
- Reference Point
- Tool to identify “Best-in-Class” performers

b) Multiple & Diverse Benchmarks

- Encouraged, where appropriate

c) Guidance on selecting and prioritising Benchmarks

- Identify issues addressed
- Seek subject-specific / functional analogies
- Based on available evidence and on economic terms
- Adaptation may be required
- Rigorous ex-post studies: ranking based on similar methodology or quality of evidence
- Conceptual phase: Benchmarks for each alternative option



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d) Degree of certainty

- To reflect the quality of Benchmarks
- E.g. Suboptimal Benchmarks

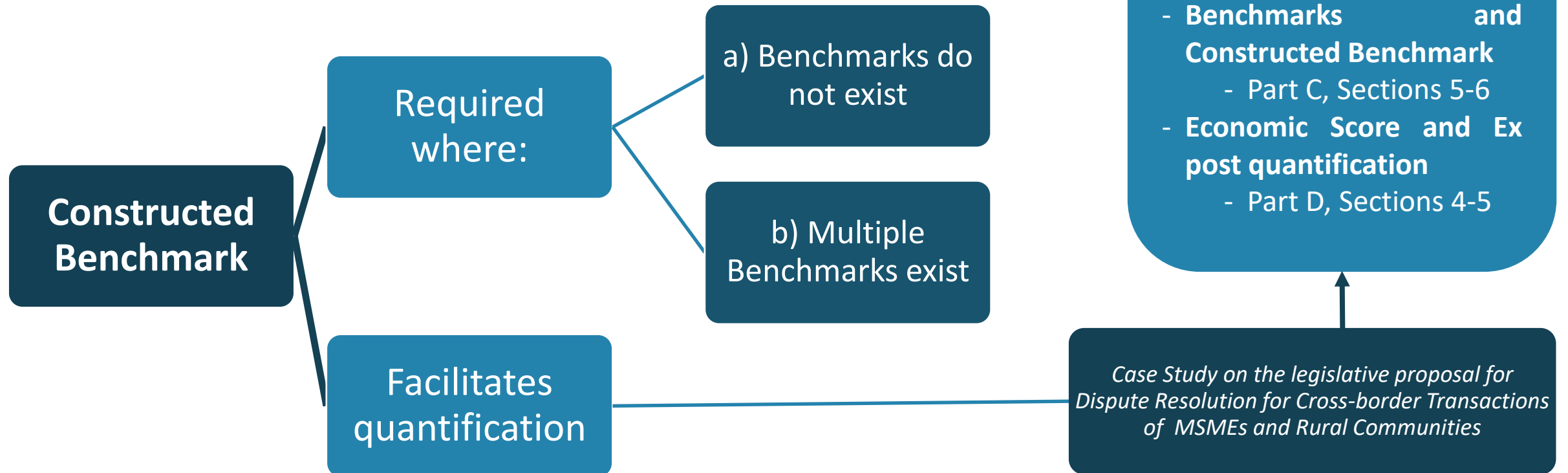


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F) Constructed Benchmark

- The ideally economically beneficial law based on ex-post studies.
- Based on Benchmarks (ex-post studies), not from scratch.



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G) Scoring Methodology

1) Part of the Workflow

2) Guidance on the assignment of scores

✓ Each Factor to be interpreted as a percentage reflecting its “economic correspondence” to the Benchmark

e.g.

Factor meets 75% of Benchmark requirements



7.5 score

✓ Transparent & reliable interpretation



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Case Study

Dispute Settlement for Cross-border Transactions of Micro, Small and Medium Entities (MSMEs) and Rural Communities

Testing how Framework/Guide apply in the early stage of legislation

Analysing Existing Benchmarks: APEC, UNCITRAL, WIPO

Guidance on designing a constructed Benchmark

Quantification with ex-post analyses



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Questions

- 1) List of Abbreviations?**
- 2) Citations (esp. academic work)?**
- 3) Case studies: to be published or for our internal use?**



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Thank you for your attention!
Any Questions?

t.koustoula@unidroit.org

Jordi.Paniagua@uv.es



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Appendix – extra slides



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Agenda Item No. 1: Discussion on the Benchmark, quantification and ex-post analysis

Benchmark

- a) **Descriptive definition** (as a reference point, tool to identify “best-in-class” performers)
- b) **Multiple & diverse B.** : encouraged, where appropriate
- c) **Guidance on selecting and prioritising Benchmarks:**
 - - Identify issues addressed
 - Seek subject-specific / functional analogies
 - Based on available evidence and on economic terms
 - Adaptation may be required
 - Rigorous ex-post studies: ranking based on similar methodology or quality of evidence
 - Conceptual phase: Benchmarks for each alternative option
- d) **Degree of certainty** to reflect the quality of Benchmarks (e.g., suboptimal Benchmarks)



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Agenda Item No. 1: Discussion on the Benchmark, quantification and ex-post analysis

Quantification

- Quantification of economic outcomes
 - By comparison with ex-posts analysis of best practices
 - E.g., Capetown increased GDP by 4% and has ES=10
 - An ICRL with ES=8 is expected to increase GDP y $0.8 * 4\% = 3.2\%$



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Agenda Item No. 2: Discussion on the Framework and its scoring system

$$\underline{ES} = [[\underline{A} + \underline{B} + \underline{C}] \times \underline{D}] / 3 - \underline{E}$$

with degree of certainty (%)



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Agenda Item No. 2: Discussion on the Framework and its scoring system

ES score	Interpretation
As	High economic impact, which suggests that, from an economic perspective, there is substantial merit in pursuing the law reform. This means that the law reform is in line with the Benchmark and could have positive economic gains.
Bs	Good economic impact evaluation, which suggests that, from an economic perspective, there is merit in pursuing the law reform.
Cs	Low economic impact, which suggests that, from an economic perspective, the law reform is indifferent and there is little justification to pursue it.
Ds-F	Low or negative impact evaluation, which suggests that, from an economic perspective, the law reform should not be pursued. This may mean that the reform deviates largely from the Benchmark or may have unintended consequences.

ES Bands	Rating	Interpretation
10-9	AAA	Highest economic impact
9-8	AA	Very high economic impact
8-7	A	High economic impact
7-6	BBB	Good economic impact
6-5	BB	Conjectural economic impact
5-4	B	Highly conjectural economic impact
4-3	CCC	Low economic impact
3-2	CC	Very low economic impact
2-1	C	Lowest economic impact
1-0	D	No economic impact
<0	F	Negative Impact



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Agenda Item No. 4: Discussion on the Factors

- **ES** is economic score indicating the expected relative economic variation from a Benchmark. [range: - 1 to 10].
- **A** is the net, direct gain of the new rules [range: 0 to 10].
- **B** is the net gain of the new rules as a network [range: 0 to 10].
- **C** is the net, systemic, including developmental, impact of the new rules [range: 0 to 10].
- **D** is the extent that the new rules will be effectively applied by courts and authorities [range: 0 to 1].
- **E** is the expected total net cost of creating and transitioning to the new rules [range: 0 to 1].
- **Degree of certainty** is the percentage of probability, or certainty, of the occurrence of the impacts.

Factors

Factor A pertains to the direct (“primary”) effects, including the market size, transaction volume, costs and risk reduction, in the affected market or sector.

Factor B focuses on the international applicability of the instrument and its potential for creating network effects.

Factor C addresses indirect (“secondary”) effects related to broader development objectives, such as gains through employment or increased tourism.

Factor D reflects the extent to which the new rules will be effectively applied by courts and authorities.

Factor E covers the transition costs of a law reform.



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Agenda Item No. 5: Discussion on the Introduction and Annex 1

- The framework focuses “transaction costs”, however Annex 1 develops “economic frictions” in a broader context



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Agenda Item No. 6: Discussion on the contexts of use (timing and nature of law reform) and ex-post analysis (Annex 2)

- IV. CONTEXTS OF USE
- **A. Timing**

<i>Ex-Ante</i> Evaluation			
Conceptual phase	Negotiation phase	Pre-adoption phase	Adoption phase

- **C. Nature of Law Reform**
 - Hard vs. soft law



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Agenda Item No. 6: Discussion on the contexts of use (timing and nature of law reform) and ex-post analysis (Annex 2)

<i>Ex Ante</i> Evaluation				<i>Ex Post</i> Evaluation	
Conceptual phase	Negotiation phase	Pre-adoption phase	Adoption phase	Post adoption with limited implementation	Post global adoption

- Ex post studies are crucial to select the benchmark
 - Degree of certainty
- Causal inference vs. Causal links



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Case Studies

- UNIDROIT Draft Legislative Guide on Bank Liquidation
 - Benchmark exists: Bank Recovery and Resolution Directive (BRRD)
- UNIDROIT Principles on Digital Assets and Private Law
 - Benchmark does not exist
- New Legislative Incentive Related to Dispute Settlement for Cross-border Transactions of Micro, Small and Medium Entities (MSMEs) and Rural Communities
 - Multiple Benchmarks: APEC, UNCITRAL, WIPO



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