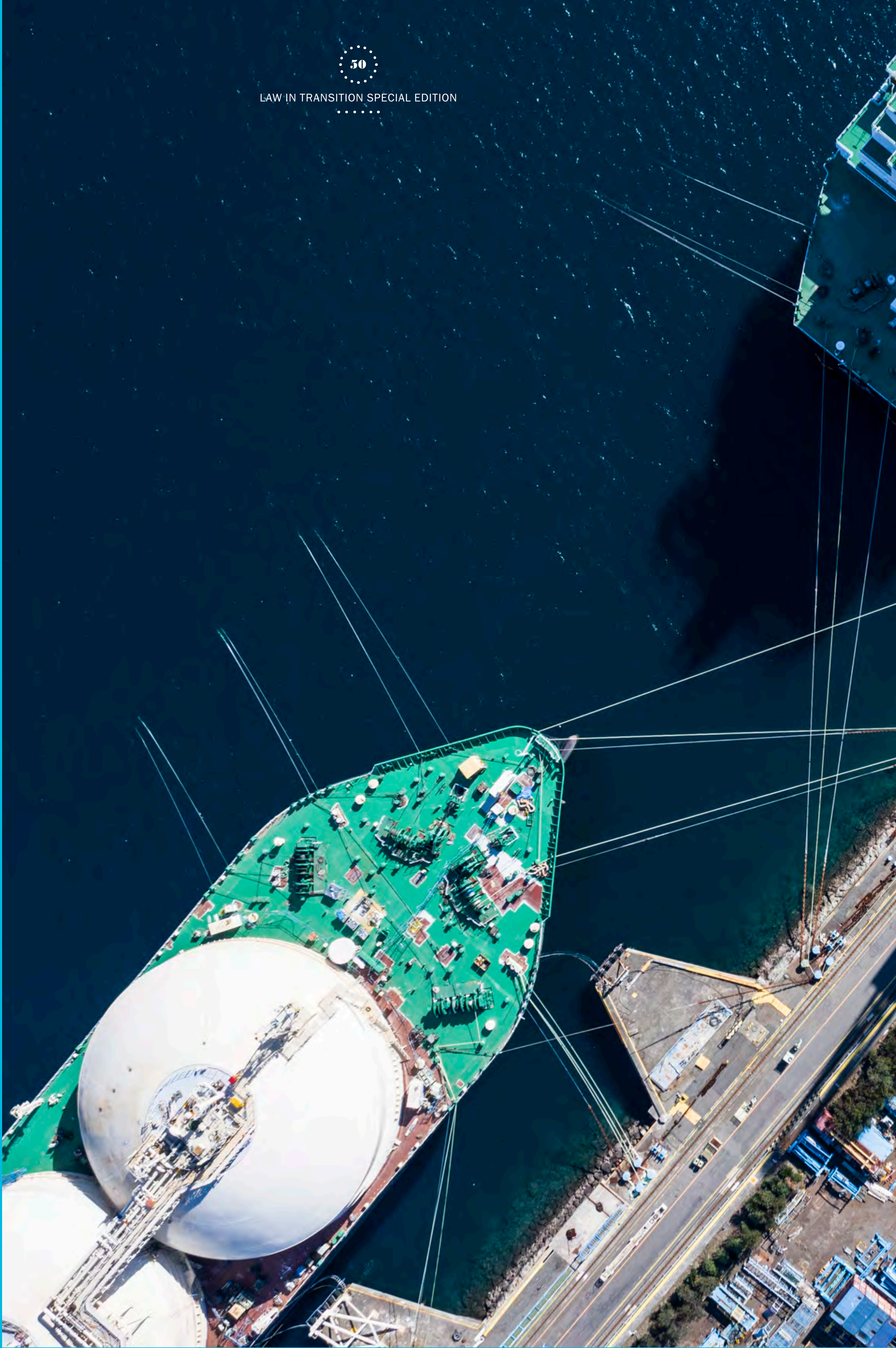

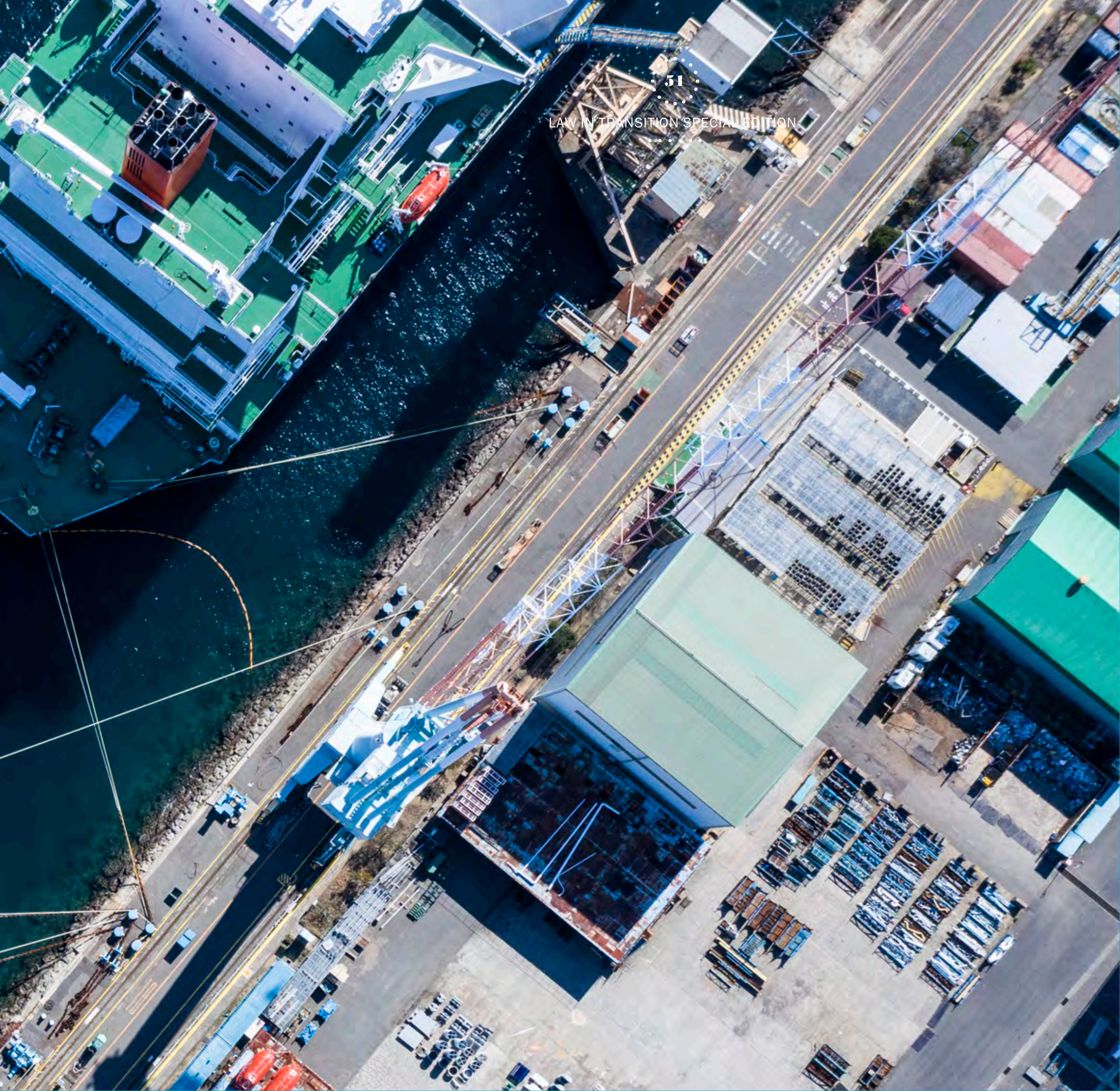

INTEGRATED

The EBRD promotes integration by supporting infrastructure, energy and information technology projects. Integration also involves greater harmonisation with international norms, the strengthening of institutions and the development of regulatory frameworks.

DELIVERING INNOVATION AND IMPACT

Improved PPP framework boosts infrastructure sector

In times of global financial and economic instability many countries experience difficulties in solving large-scale infrastructure problems due to public funding constraints. This is the case for members of the Commonwealth of Independent States (CIS), whose infrastructure restrictions are well known.

International practice demonstrates that PPPs can help attract private investment, managerial experience and know-how to the infrastructure sector. A sound legal framework is a prerequisite.

The OGC, therefore, provided assistance to the CIS Inter-parliamentary Assembly (IPA) in drafting its Model Law On Public-Private Partnerships of 2014.

The main objectives of the Model Law were to harmonise PPP regulation across the region and to bring the national legislation of CIS countries into line with best international practices and the requirements of funding organisations to ensure the bankability of PPP projects.

Regulatory acts based on the Model Law stimulate private investment, including foreign investment, in PPP projects and many of these are in the infrastructure sector. The law provides comfort to investors by regulating in detail the allocation of risk between parties and the consequences of the termination of a PPP agreement, including compensation.

The non-mandatory nature of the provisions of the Model Law allows CIS countries to choose the most appropriate regulatory option for their jurisdiction, while skillful drafting eliminates the scope for controversy and ambiguity in interpreting the document. Importantly, the Model Law provides a conceptual basis for the implementation of cross-border PPP projects in the CIS.

Using the Model Law as a basis, governments have adopted or amended PPP legislation, or are in the process of doing so, in Belarus, Georgia, Kazakhstan, the Kyrgyz Republic,

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Senior Counsel, EBRD

> The main objectives of the Model Law were to achieve the harmonisation of PPP regulation across the region and to bring the national legislation of CIS countries into compliance

Russia and Ukraine. China has also used many of the concepts of the law for its PPP legislation.

For CIS countries to benefit fully from PPPs, however, regional authorities identified a need for PPP guidance and methodological materials to help public officials select, prepare for, implement and monitor PPP projects.

In response, the OGC collaborated with the CIS IPA to develop a set of practical tools and guidance documents for the preparation and implementation of PPP projects. These will help officials to evaluate the effectiveness of PPP projects, develop key performance indicators, improve the selection procedure for private partners, establish a risk-allocation matrix and draft heads of terms for a PPP agreement, among other things.

In the course of several rounds of consultation, national parliaments, authorities and non-governmental organisations in the CIS provided comments on the draft guidance tools; more than 400 comments and suggestions were received after the initial draft of nine modules was presented. Working with our consultants, we considered all of these comments and only seven issues were submitted for consideration by the CIS IPA Standing Economic and Finance Commission when we presented them with the advanced text.

The set of all nine PPP Practical Tools was approved at the CIS IPA Plenary Assembly in St Petersburg on 29 November 2018 and the OGC published the approved set of guidance and methodology materials in March 2019.

Following numerous requests from a number of CIS countries for a continuation of the work, we are now working with the CIS IPA on developing the next set of guidance materials. ■

DELIVERING INNOVATION AND IMPACT

A new restructuring tool for Turkey

Companies facing temporary financial difficulties, but otherwise pursuing a viable business, should have the opportunity to restructure their debt rather than be forced into a value-destructive insolvency process. Restructuring can benefit an economy as a whole by saving jobs and maintaining skills.

Like many other countries, including those in the EU,[1] Turkey is developing its restructuring toolkit. At a time when high inflation and currency depreciation are putting significant stress on foreign currency-indebted and import-reliant Turkish companies, there is undoubtedly a need for well-designed restructuring in the country.

In August 2018 the Turkish Banking Regulatory and Supervisory Agency published a regulation on the restructuring of debt owed to the financial sector. The regulation tasked the Turkish Banking Association (TBA) with developing a set of detailed rules (the Framework Agreement) for all future restructurings.

Importantly, the regulation states that if a restructuring agreement is signed under the Framework Agreement by a majority of banks, representing two-thirds of the banks' receivables, the terms of the agreement can be imposed on a dissenting minority, which is then "crammed down".[2]

The restructuring regulation also contemplates a number of restructuring tools, including new financing, the reduction of principal and interest, and debt-for-equity swaps, not commonly seen in the Turkish restructuring market. Rather, the general tendency to date has been for banks to extend their loan maturities and hope for a recovery. There has also been concern among banks about the embezzlement provisions of the Turkish Banking Law and the potential liabilities of bankers who agree reductions in debt with borrowers.

In September 2018, the TBA published the Framework Agreement on Financial Restructuring, based on the restructuring regulation, to which all Turkish banks were invited to sign up.

The scheme is available to medium and large-sized companies with debts of more than TRY 100 million (around €16 million), which

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> The EBRD is now leading a broader initiative aimed at improving the financial resilience of the Turkish banking sector

face temporary difficulties with repayments or are likely to face such difficulties.

The process starts with a voluntary application by the debtor to one of its largest financiers. The debtor's disclosure obligations are onerous, including information on its assets, as well as on the assets of shareholders and guarantors and of their spouses and children.

The participating banks form a consortium and elect a lead bank that coordinates the process. The application triggers a standstill period of up to 150 days, during which the enforcement of participating banks' rights are frozen.

In addition to the option of "cramming down" any dissenting minority, it is possible for more than one bank holding at least 90 per cent of the banks' receivables to force the dissenting minority to advance additional funds. New loans will be repaid as a priority. Once a restructuring agreement is signed, participating banks cannot initiate enforcement proceedings against the debtor as long as the debtor continues to perform its obligations under the agreement.

The Framework Agreement is primarily applicable to financial institutions regulated in Turkey. Initially, the scheme did not provide for any coordination between participating and non-participating banks.

As a non-regulated international financial institution, the EBRD could not sign up to the Framework Agreement. But because of its sizeable financial exposure to the country, as well as its expertise in law reform, the Bank was keen to engage with the Turkish authorities on how the restructuring of participating and non-participating banks could be coordinated under the Framework Agreement.

The OGC's transactional knowledge and policy-reform expertise was a key factor in convincing our Turkish partners to adjust the scheme to facilitate parallel restructuring conducted by participating and non-participating banks. The Framework Agreement now provides for the sharing of information between groups of creditors and other coordination rules.

To date, there have been relatively few applications by debtors under the Framework Agreement. However, in July 2019 the Turkish parliament adopted legislation that introduced tax incentives and exemption from embezzlement liability for debtors who applied to use the Framework. This may stimulate wider use of this restructuring tool.

With OGC support, the EBRD is now leading a broader initiative aimed at improving the financial resilience of the Turkish banking sector. It seeks to identify opportunities for opening up the secondary markets for non-performing loans (NPLs) and to provide Turkish banks and investors with stronger mechanisms for resolving their NPLs, including in relation to restructuring and insolvency. Further improvements to Turkey's restructuring toolkit are likely. ■

[1] Directive (EU) 2019/1023 on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending the Company Law Codification Directive (Directive (EU) 2017/1132) (CLCD).

[2] A cram-down is the imposition of a majority creditor-approved approved restructuring plan on a dissenting minority of creditors.