

Nepal

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I. Legal framework and the effectiveness of court processes/legal remedies

1.1 Describe the nature and effectiveness of the following:

(a) Debt recovery remedies where the creditor has no security

Unsecured creditors can seek to recover their claims by filing a civil suit with the Debt Recovery Tribunal or district court, depending on the sum involved and the creditor's legal status. Only a bank or financial institution can invoke the jurisdiction of the tribunal. In addition, the principal debt must exceed Rs500,000 and the creditor must have exhausted all other possible avenues to recover the debt. The creditor and debtor are free to reach a compromise at any time, even where the case is under consideration by the Debt Recovery Tribunal or Appeal Tribunal.

Where the debt is less than Rs500,000 or the creditor is not a bank or financial institution, the creditor can file a civil suit in the district court.

The Debt Recovery Tribunal must reach a verdict within 150 days of the date for final submission of the response letter by the defendant. The period for submission of the response letter may be extended by up to 15 days where there are valid grounds to do so.

Either party may appeal a decision of the Debt Recovery Tribunal within 15 days of receipt of the decision. The Debt Recovery Appeal Tribunal must decide the appeal within 90 days of the date for final submission of the response letter in the appeal.

Debt recovery through the tribunal is considerably more effective than procedures before the general courts.

(b) The enforcement of security

The Banks and Financial Institutions Ordinance 2005 prohibits banks and financial institutions from granting unsecured loans. Banks and financial institutions are free to invoke a 'self-help' remedy to enforce security and recover outstanding loans. If the total outstanding debt cannot be recovered through sale of the security, a civil case may be filed with the district court or the Debt Recovery Tribunal (depending on the amount outstanding) to recover this sum from other unsecured assets of the debtor.

Under the Insolvency Ordinance 2005, secured creditors can enforce their security at any time after the deadline for payment of the debt has expired. However, while the insolvency of a corporate debtor is being investigated, an automatic stay applies which extends to security and leased property. A reorganisation scheme approved by the creditors' meeting and sanctioned by the court in no way affects the rights of secured creditors to use or otherwise deal with their collateral. However, the court can issue an order to bind secured creditors to a reorganisation scheme if their use of the collateral

would be detrimental to the execution of the scheme and the secured creditors voluntarily agree. The court will issue this order only if it is convinced that the creditors' interests can be sufficiently protected.

Where the market value of the collateral is insufficient to satisfy the claim in full, the secured creditor can file a claim with the liquidator or reorganisation manager for the outstanding portion of the claim. To this extent, it will be treated as an unsecured creditor in the proceedings and will enjoy no priority over other unsecured creditors.

The new Secured Transaction Ordinance 2005 governs the taking and enforcement of security rights over movable assets. It provides that parties to a security transaction can arrange for performance of the contract by mutual consent. If the debtor breaches the contract, the creditor has the right to take possession of and sell the collateral, regardless of whether the contract expressly provides for this remedy. However, while this 'self-help' remedy is permitted under the ordinance, it is not yet available in practice. The government is currently putting in place the necessary framework to facilitate this.

(c) Corporate bankruptcy/liquidation processes

The Insolvency Ordinance makes it easier for creditors to initiate insolvency proceedings. It allows creditor(s) representing at least five per cent of the total claims (or debenture holders representing at least five per cent of the total debentures) to file a petition for the commencement of insolvency proceedings. This threshold is nominal when compared to that previously required under the Company Act 1997. However, in the case of banks, financial institutions, insurance businesses and other prescribed undertakings, the prior approval of the respective regulator is required for the initiation of liquidation proceedings. The regulator may also apply for the commencement of insolvency proceedings on its own initiative.

The debtor itself is also free to file a petition for liquidation. In such case the general meeting must have adopted a special resolution to this effect and the board of directors must certify that the debtor is insolvent.

(d) Formal corporate rescue processes

The new Insolvency Ordinance provides for a formal corporate rescue process. When insolvency

proceedings are initiated in accordance with the ordinance, the court appoints an investigating officer to investigate whether liquidation is inevitable or whether there is a possibility of rescuing the company. Based on his findings, the investigating officer will report on whether the debtor can be reorganised. If the court is satisfied that there are prospects of recovery, it will issue an order for reorganisation. A reorganisation manager is then appointed to prepare the reorganisation scheme. He will take over the management of the company for the entire reorganisation period. The manager will convene a creditors' meeting at which the reorganisation proposals will be presented. The creditors' meeting has decisive powers to accept or reject the reorganisation scheme. The Insolvency Ordinance sets a time limit on the reorganisation process. Responsibility for implementing the scheme vests with the debtor's management, although the court may require the reorganisation manager to supervise its implementation. The reorganisation manager can apply to court to modify the scheme, with the creditors' consent. If the debtor fails to implement the scheme, the court may order the termination of the reorganisation at the petition of the reorganisation manager. At the same time, it will issue an order for liquidation of the debtor.

(e) Informal corporate rescue processes

No legislation or established practices or standards govern informal corporate rescue processes. These depend entirely on negotiations between the debtor and its creditors. In practice, the debtor generally prepares a rescue scheme, which the creditors are free to approve or reject.

1.2 What are the formal processes to effect a liquidation of the company's assets?

Two general laws govern the liquidation of a company's assets. The Company Ordinance 2005 governs voluntary liquidation, while the Insolvency Ordinance governs forced liquidation. The scope of application of these laws is strictly demarcated.

A company is free to pursue voluntary liquidation by special resolution of the general meeting or in compliance with the memorandum and articles of association. In the event of voluntary liquidation, the company itself appoints the auditors and liquidators. The liquidator takes responsibility for the company's assets and

accounts. He will settle the company's liabilities according to the order of ranking set out in the Company Ordinance.

Involuntary liquidation follows a different course. Insolvency proceedings may be commenced by court order only. A creditor must serve notice on the debtor's registered office for payment of the claim before filing an insolvency petition.

The court will appoint an investigating officer to investigate the debtor's financial condition. Where appropriate, it can also appoint an interim administrator to manage the debtor. Based on the report of the investigating officer, a resolution of the creditors' meeting and a report submitted by the debtor's management, the court will decide whether to order liquidation of the debtor. If liquidation is ordered, the court will appoint an insolvency practitioner as liquidator. The liquidator will take charge of the debtor's management and assets, books and accounts, and will convene a creditors' meeting and liquidate the company according to set provisions. He must submit a progress report to the court and to the Insolvency Administration Office within three months of his appointment.

1.3 What is the effect on debt collection and the enforcement of security of:

(a) An adjudication of corporate bankruptcy/liquidation?

Upon an adjudication of corporate bankruptcy/liquidation, a liquidator is appointed. The powers of the board of directors cease immediately and the liquidator exercises all managerial powers to effect the liquidation as an independent agent of the company. Upon the commencement of liquidation proceedings, certain transactions – such as the transfer or sale of company shares and the transfer, sale, mortgage or pledge of company assets – are suspended. However, this suspension does not affect the rights of secured creditors to enforce their security.

(b) The commencement of a formal corporate rescue process?

Upon the commencement of formal reorganisation, an automatic stay is triggered. Any party that is aggrieved by the stay can file a petition with the court. Once the reorganisation scheme has been approved by the creditors and sanctioned by the court, the stay on secured creditors is lifted,

although the rights of secured creditors that have agreed to be bound by the scheme may still be restricted.

(c) The initiation of an informal corporate rescue process?

No legislation or established practices or standards govern informal rescue processes. An informal rescue will not affect the rights of creditors, unless they agree to be bound by the process. An unsecured creditor that has agreed to be bound by the process cannot recover its claim during the rescue period, unless the debtor breaches the agreed terms and conditions.

(d) The initiation of an insolvency or insolvency-related process under any special legislation?

Special legislation sets out slightly different rules for the liquidation of different types of enterprises, but is silent on the matter of debt collection and the enforcement of security. For example, the Bank and Financial Institution Ordinance authorises the Central Bank to take control of a bank or financial institution and suspend the existing management in the event of non-compliance with the ordinance and other relevant laws, or incapacity to satisfy its liabilities. If, after a one-year period of supervision and restructuring, the bank or financial institution has poor prospects of continued operation or still cannot satisfy its liabilities, the Central Bank can petition the Court of Appeal for its liquidation. As the ordinance contains no further provisions in this respect, the Insolvency Ordinance further applies as general law.

The same rules apply to insurance companies. The Insurance Board can deregister an insurance company if its liabilities exceed its assets. This provision is based on the balance-sheet test of insolvency. The Insurance Act contains no further provisions in this regard.

Other special legislation deals with the incorporation and liquidation of state-owned enterprises. These can broadly be divided into three categories:

- state-owned enterprises incorporated under the Company Act (ie, prior to the enactment of the Company Ordinance);
- state-owned enterprises established under separate special legislation (statutory enterprises); and
- state-owned enterprises established under the Corporation Act.

State-owned enterprises incorporated under the Corporation Act have unlimited liability. In the event of dissolution, all liabilities and assets devolve to the government. Some statutory enterprises (eg, Royal Nepal Airlines Corporation) also have unlimited liability and the power to liquidate them vests with the government. The Corporation Act prescribes that the power to liquidate any company covered by the act vests with the government. The government will announce the liquidation through notification in the *Nepal Gazette*, and all assets and liabilities of the corporation will devolve to the government. The Insolvency Ordinance, as general legislation, governs all other issues.

1.4 Are insolvency procedures involving a corporation incorporated in your jurisdiction recognised if they are started in another jurisdiction?

The Insolvency Ordinance is silent in this respect. Thus far, Nepal has not ratified or acceded to any international treaty or convention relating to cross-border insolvency; nor are any bilateral agreements in place. There is no practical experience of this kind in Nepal.

However, the Company Ordinance contains some provisions on the cross-border insolvency of a foreign company registered in Nepal. The ordinance requires the company's authorised representative in Nepal to inform the Office of the Company Registrar if insolvency proceedings have commenced in another jurisdiction. However, if the foreign company has already been declared insolvent in another jurisdiction, it must promptly shut down operations in Nepal. Nepalese insolvency law applies to the extent of all business undertaken within Nepal. This aside, there are no provisions on the recognition of cross-border insolvency proceedings in Nepal.

1.5 In what circumstances would the directors or officers of a company in financial difficulties face potential personal liability for continuing to trade? In practice, are any such provisions actually enforced?

The Insolvency Ordinance allows the debtor to file a petition for the commencement of insolvency proceedings either by special resolution of the general meeting or by decision of the board of directors. The directors must certify the resolution and make a declaration in writing.

The Insolvency Ordinance provides that the directors will be personally liable if they continue to trade while knowing that the company is close to insolvency or has already become insolvent.

The Company Ordinance is also relevant here. The directors of a public company are obliged to inform the shareholders if the net worth of the company falls to 50 per cent or less of the paid-up capital. They must prepare an appropriate strategy to rectify the situation and present it for ratification at a general shareholders' meeting. Directors who breach this obligation will be held personally liable and subject to punishment (both a fine and imprisonment).

2. What are the advantages and disadvantages of triggering a formal procedure?

Both liquidation and reorganisation are supervised by a specialised court and are thus characterised by a strong degree of certainty and predictability. As they are standardised, rule-based procedures, the interests of creditors (including minority creditors) and shareholders are subject to a higher degree of protection. The efficiency, effectiveness and fairness of the process is ensured as the investigating officer, reorganisation manager and liquidator are all licensed insolvency practitioners who satisfy eligibility requirements set out in the Insolvency Ordinance. Moreover, the management's performance comes under critical scrutiny in a formal process; if the directors and officers are found guilty of fraud or mismanagement, they will be held personally liable. This may serve as an effective deterrent to the company's successor and afford an opportunity to remove incompetent companies from the marketplace. A formal process may further provide a valuable opportunity to optimise the allocation of resources of a troubled company.

A key disadvantage is the length of time it takes to complete a formal process, which is prolonged by the court scrutiny and detailed procedures involved. In addition, a formal process may not afford a greater degree of liberty to the debtor than an informal rescue. Certain company information is also made public which would remain confidential in an informal rescue.

3. What are the practical options for out-of-court restructuring?

The out-of-court restructuring process is creditor-driven. The debtor presents a model setting out its

preferred options for the creditors' consideration. The creditors play a decisive role in accepting, rejecting or modifying the proposal.

In practice, numerous options are available. The Central Bank Directive allows banks and financial institutions to reschedule or restructure debts. Essentially, the substance of the restructuring agreement is the subject of negotiation between the debtor and its creditors. The most commonly used tools include:

- debt capitalisation;
- issuance of shares;
- debt-to-equity conversions (subject to certain limitations imposed by the Company Ordinance);
- acquisition;
- forgiveness of interest and/or part of the principal; and
- debt rescheduling.

4. What is the effect on the management of a company of:

4.1 An adjudication of corporate bankruptcy/liquidation?

Upon an adjudication of bankruptcy/liquidation, the existing management loses its powers and the liquidator (as independent administrator) exercises all managerial powers in the capacity of an agent. He assumes control of all property of the debtor – except property in the possession of secured creditors – as well as the books and accounts. The positions of all company employees are terminated, except those required to effect the liquidation.

4.2 The commencement of a formal corporate rescue process?

During the reorganisation process, the existing management loses its powers and the reorganisation manager assumes control. The existing management must cooperate fully with the reorganisation manager. Company directors and officer cannot discharge any functions in an official capacity without the written authorisation of the reorganisation manager. The reorganisation manager must state in the rescue scheme whether the existing management will be allowed to continue in this role.

4.3 The initiation of an informal corporate rescue process?

The existing management is normally replaced in an informal rescue process. The creditors usually terminate the existing management and appoint a new panel including just one or two previous directors. The creditors will demand professional management and appoint an internal auditor to supervise the rescue process. For the purpose of transparency, they normally require that a separate revenue account be opened. Creditors' representatives may also participate in the management of the debtor.

4.4 The initiation of an insolvency or insolvency-related process under any special legislation?

Under the Bank and Financial Institution Ordinance, the Central Bank has the power to dismiss managers who fail to comply with the ordinance and related laws. A one-year trial period then follows, during which the bank or financial institution may be run either by the Central Bank itself or by an individual, firm or company specially appointed for this purpose.

5. Roles of key players involved in the restructuring and insolvency process

5.1 Who is responsible for the 'case management' control and administration of a corporate bankruptcy/liquidation, a formal rescue or an informal rescue?

The court supervises the liquidation or reorganisation process. It has broad jurisdiction and decisive powers to accept or set aside the restructuring scheme, and to convert a liquidation into a reorganisation or vice versa. The investigating officer, reorganisation manager and liquidator are all private professionals who are licensed insolvency practitioners. The government does not appoint official receivers. The whole system is thus essentially run by private professionals. The professionals involved must all submit reports to the court. The creditors and other interested parties (eg, lessors of leased property) can inform the court of any problems with the reorganisation manager, liquidator or investigating officer. Effectively, the court acts as a watchdog in the whole process. The Insolvency Administration Office has general supervisory powers over the management of a company in reorganisation or liquidation.

5.2 Who is responsible for the 'case management' control and administration of a case of corporate insolvency under any special legislation?

Under the Bank and Financial Institution Ordinance, the Central Bank can suspend the management of a bank or financial institution for up to one year. At the end of that year, the Central Bank may seek to liquidate the enterprise if it is still unable to satisfy its liabilities. In such cases the Court of Appeal has jurisdiction.

Under the provisions of the Insurance Act, the Insurance Board has the authority to deregister an insurance company. The government then appoints a liquidator to liquidate the company. Under the Corporation Act, the government can liquidate government enterprises established under the act by notification in the *Nepal Gazette*. The government's decision cannot be appealed.

None of the special legislation sets out rules on the reorganisation of a company or corporation (except, to some degree, the Bank and Financial Institution Ordinance). Thus, in the absence of such special provisions, the reorganisation process should accord with the provisions of the Insolvency Ordinance.

5.3 Who is responsible for preparing the restructuring plan in a formal or informal rescue?

Where there are good prospects for restructuring, the court will appoint a reorganisation manager from the panel of licensed insolvency practitioners. The reorganisation manager will prepare the reorganisation scheme and present it to the court. He will also lead the debtor's management throughout the reorganisation process. The reorganisation scheme may variously provide for measures including:

- debt capitalisation;
- the sale of company assets and subsequent settlement of claims;
- the modification of creditor claims in exchange for the issue of securities;
- a change in management; and/or
- amalgamation.

The reorganisation scheme need follow no set pattern or format. The reorganisation manager is free to tailor the scheme to accommodate the debtor's needs. However, the scheme must provide details of the measures to be executed by management in the future, and show that the creditors will derive greater benefit through the

scheme that they would through liquidation. There must be a high degree of certainty that the company will be revived if the scheme is implemented. To amend the scheme, the reorganisation manager must apply to the court stating the reasons for the amendment, after first presenting the proposal to the creditors' meeting.

An informal rescue process is initiated by the debtor. Negotiations with creditors determine the form which the rescue will take. The terms and conditions are dictated by the creditors. While the whole process is necessarily creditor-driven, devising effective supervisory mechanisms is often a complex task.

In the case of consortium financing, the lead bank or financial institution exercises all powers on behalf of other lenders. Even in an informal rescue, the lead bank or financial institution may be authorised by other multiple lenders to take responsibility for credit management control and administration. In other cases, creditors nominated by the group of creditors as a whole may assume this role.

6. What financial information is available to creditors in a corporate bankruptcy/liquidation, a formal rescue and an informal rescue?

The Insolvency Ordinance allows for the involvement of creditors at all stages of the liquidation and reorganisation process. Creditors can access relevant financial and other information on the debtor to safeguard their interests and enable them to make proper decisions.

Before submitting his report to the court, the investigating officer must convene a creditors' meeting at which creditors can demand information on the debtor's financial condition and voice their views on its prospects for recovery. A dissatisfied party can file a petition before the court if an injustice is suffered.

In a reorganisation, the reorganisation manager must convene a creditors' meeting at which the proposed reorganisation scheme must be presented, together with material information which allows the creditors to make an informed decision on the scheme. At the meeting, the directors will address concerns raised by the creditors. The reorganisation manager must then prepare and submit to court a report setting out a summary and analysis of the proposed scheme, and explaining its potential impact on creditors.

The liquidator must prepare and submit his report to the court and the Insolvency

Administration Office within three months of his appointment. The report should spell out:

- the details of the debtor's issued share capital and paid-up capital;
- estimates of its assets and liabilities;
- the liquidator's opinion on the reasons for the debtor's failure; and
- his opinion on the operation of the company and the work of the board of directors.

Before submitting the report, the liquidator must convene a creditors' meeting and thereafter will arrange meetings as he deems necessary. The creditors can form a creditors' committee of up to five members to assist the liquidator in the course of the liquidation.

If the liquidator or the reorganisation manager fails to comply with these provisions, he will be subject to punishment.

The mechanism for providing financial information to creditors depends on the agreement. In case of consortium financing, other lenders usually acquire information through the lead bank or financial institution.

7. Financial issues

7.1 What are the main areas from which funding is generally utilised by companies undertaking either formal or informal restructuring?

Just as responsibility for executing a reorganisation process rests with the debtor's management, so too must the debtor find the necessary capital to fund the process. In almost all cases the debtor is plagued by liquidity problems and in urgent need of new money. The reorganisation manager can obtain loans, either with or without pledging company assets as collateral, if these are required to continue the debtor's operations. All expenses incurred in the reorganisation process have super-priority ranking, which greatly assists the debtor in obtaining the necessary funding.

In an informal process, the source of funding depends on the contract agreed between the debtor and its creditors. Existing creditors may provide funding. If the creditors consent, third parties may also lend to the debtor. In some informal reorganisation programmes, third parties have provided equity participation and created other forms of liquidity. Company assets may additionally be sold.

7.2 In what order are creditors paid in a corporate bankruptcy/liquidation?

The Insolvency Ordinance specifies the order of payment as follows:

- expenses incurred by and remuneration of the interim administrator;
- expenses incurred during the insolvency proceedings;
- expenses incurred by and remuneration of the investigating officer;
- expenses incurred by and remuneration of the reorganisation manager;
- loans obtained during the reorganisation process;
- expenses incurred by and remuneration of the liquidator;
- wages and remuneration due to workers and employees (except directors), and other payments, such as pension payments;
- claims of creditors;
- interest (accruing from the date of the order of liquidation or reorganisation until acceptance of the claim);
- claims of preference shareholders; and
- claims of equity shareholders.

Government claims (eg, taxes) do not have priority over the claims of unsecured creditors; the law treats the government on a par with unsecured creditors. However, special legislation establishes different orders of payment which conflict with the Insolvency Ordinance. For example, under the Bank and Financial Institution Ordinance, taxes payable to the government and loans payable to the Central Bank have priority over claims of other unsecured creditors. The Insurance Act also privileges claims of the government and the Insurance Board over those of unsecured creditors.

7.3 Are there any legal provisions that might operate to invalidate the creation of security, the disposal of an asset or the payment of a creditor by a company in financial difficulties?

The Insolvency Ordinance provides for the invalidation of preferential and fraudulent transactions, and transactions at an undervalue, where these were concluded within a certain period. The following types of transactions are void:

- transactions entered into with creditors in the six months prior to or following the commencement of insolvency proceedings, or

with associated persons (ie, family and relatives of the directors and officers) in the year prior to or following the commencement of insolvency proceedings, involving an amount which exceeded that which should actually have been paid;

- transactions entered into in the year prior to or following the commencement of insolvency proceedings through which the company received no or less value than the current value; and
- any other fraudulent transaction entered into in the two years prior to or following the commencement of insolvency proceedings with the intent to cheat creditors.

7.4 What is the position of both secured and unsecured creditors that vote against, do not agree with or do not consent to either a formal or an informal rescue plan?

A simple majority of the creditors must approve a formal rescue plan. Dissenting creditors can object to the reorganisation scheme in court on the grounds that:

- it is unfavourable to unsecured creditors;
- serious irregularities have been committed, causing prejudice to unsecured creditors; or
- material information has been concealed or false or misleading information provided.

The court can nullify the approved scheme if the objections are proven. The rights of secured creditors are not affected, unless the court orders that they be bound by the reorganisation scheme. Pursuant to the Central Bank Directive, in the case of consortium financing a decision can be reached by simple majority; where the vote is tied, the lead bank or financial institution has the casting vote.

7.5 What action can creditors take if they are not satisfied with the conduct of either a formal rescue procedure or a corporate bankruptcy/liquidation?

Dissatisfied creditors can lodge a petition against the liquidator or reorganisation manager. If the court finds the petition justified, it can issue an order to remove the liquidator or reorganisation manager. If the liquidator or reorganisation manager fails to discharge his duties in good faith and in compliance with the Insolvency Ordinance, he will be subject to punishment.

8 General

8.1 Can the insolvency regime be described as systematic and efficient for:

(a) The liquidation of businesses incapable of being restructured?

(b) The restructuring of debt?

The Insolvency Ordinance covers corporate bankruptcy only. It adopts the cash-flow test together with the balance-sheet test of insolvency. The ordinance gives priority to the restructuring of troubled companies and views liquidation as a last resort. The option to restructure always remains open; during the course of the liquidation, if the liquidator objectively sees a prospect for reorganisation, he can apply for an order to restructure the company. The ordinance prescribes no standard format for restructuring, except by setting certain minimum standards. It thus offers great flexibility for the preparation of a reorganisation scheme.

By specifying low threshold requirements for creditors to initiate proceedings, the ordinance affords them easy access to the insolvency regime; while by allowing debtors to initiate proceedings, it offers them a simple, rule-based exit route. The appointment of a professional investigating officer, reorganisation manager or liquidator by the court ensures that the proceedings are conducted professionally and independently. Creditors' interests are protected by their involvement at each stage of the process, access to financial information and the provisions on automatic stay and the avoidance of prejudicial transactions.

Since the ordinance was introduced only recently, its practical implementation has yet to be seen.

8.2 What are the biggest legal and non-legal impediments to the systematic and efficient liquidation of businesses and restructuring of debt?

The Insolvency Ordinance is just the first step in a sweeping initiative to reform commercial law in Nepal. It incorporates best practices in insolvency law adopted in developed jurisdictions and constitutes a landmark piece of legislation in Nepal. However, one issue on which it remains silent is the recognition of cross-border insolvency proceedings, which is currently the subject of some debate in Nepal. Until legislation on the matter is enacted,

bilateral agreements with neighbouring countries may be an appropriate interim arrangement.

Standards governing out-of-court-restructuring also remain to be developed – in particular with regards to the recognition and registration of informal processes.

Nepal is currently developing a legal structure for the implementation of the ordinance. A commercial court and the Insolvency Administration Office have yet to be established. A further problem is the lack of qualified professionals in this field.

Some legislation also needs to be updated to reflect the spirit of the Insolvency Ordinance. Similarly, certain laws remain problematic. For example, the Income Tax Act 2000 expressly allows debt forgiveness, equity restructuring and debt-for-equity swaps, but these measures can have serious tax consequences which may jeopardise restructuring: if the debt-for-equity swap or equity restructuring results in a change of control due to the transfer of at least 50 per cent of equity ownership, the debtor will be deprived of certain tax benefits, such as loss carry-forwards, which would otherwise have been available. These provisions discourage rescues and should thus be amended.

How the Insolvency Ordinance is implemented will be crucial to its success. There are many challenges ahead. Implementation requires the services of qualified insolvency practitioners such as investigating officers, reorganisation managers and liquidators, as well as the assistance of a commercial court staffed by trained judges to supervise the process. The training of these specialist personnel is thus a critical issue.

8.3 Has the insolvency regime been reformed in the last two years? If so:

(a) What are the reforms?

(b) Are the reforms being implemented so as to facilitate the systematic and efficient handling of corporate insolvency cases?

The Bank and Financial Institution Ordinance was enacted in 2003 as a consolidated statute governing all banks and financial institutions. Subsequently, numerous reforms in the corporate sector took place in the autumn of 2005, including the enactment of the Insolvency Ordinance and the Secured Transaction Ordinance. The new Company Ordinance and Security Ordinance were also

promulgated in 2005. The Company Ordinance governs only voluntary liquidations of solvent company, leaving all insolvency matters under the scope of the Insolvency Ordinance.

8.4 Are there any other legal or non-legal changes in the last two years that have impacted on the operation of the insolvency law regime?

The Company Ordinance prompted a sea-change in the management and operation of companies. It requires the preparation of books of accounts in accordance with accounting standards prescribed by the Accounting Standards Board of Nepal.

The ordinance is playing an important role in enhancing the transparency of company affairs and the accountability of company management. The directors of a public company can be held personally liable if the company's net worth falls below 50 per cent of the paid-up share capital. If they do not disclose this information (which has the potential to conflict with company interests), they will be considered guilty of fraud.

8.5 Is statistical information on insolvency cases and corporate insolvency published? If so, how? Is it easily and freely accessible?

The ordinance has just come into operation and the framework for its implementation has not yet been finalised; the bodies which will implement its provisions are currently being set up. Once this framework is in place, the publication of such information may be expected to commence in the near future.

8.6 What is the most urgent reform required to facilitate the systematic and efficient handling of corporate insolvency cases?

Enhancing the skills and capacity of enforcement agencies such as the Insolvency Administration Office, the adjudicating authority (court) and insolvency practitioners is a prerequisite for the effective implementation of the ordinance. Inconsistent provisions in special legislation and conflicting provisions in other laws should also be amended as a matter of urgency.