

## TECHNICAL ASSISTANCE COMPLETION REPORT<sup>1</sup>

Division: OGC

TA No. and Name  TA 5975 - REG: Promoting Regional Cooperation in the Development of Insolvency Law Reforms		Amount Approved: \$1,500,000  Revised Amount: \$1,500,000	
Executing Agency  Asian Development Bank (ADB)	Source of Funding  Asian Currency Crisis Support Facility	Amount Undisbursed:  \$222,621	Amount Utilized:  \$1,277,379
TA Approval Date: 05 March 2001	TA Signing Date: N/A	Fielding of First Consultants: 01 March 2002	TA Completion Date Original: 31 January 2004 Actual: 30 September 2008  Account Closing Date Original: 31 January 2004 Actual: 25 June 2009
<p><b>Description</b></p> <p>Since the Asian financial crisis in 1997, ADB has been extensively involved in insolvency law reform in Asia. The crisis highlighted various weaknesses in the developing member countries - outmoded insolvency laws, inadequate court systems, and weak enforcement and implementation of insolvency laws. The two regional technical assistance projects, RETA 5795 for Insolvency Law Reform and RETA 5975 for Promoting Regional Cooperation in the Development of Insolvency Law Reforms, have contributed immensely to the development of insolvency law regimes and practices in the region. Under RETA 5795, principles and guidelines were developed for insolvency law reforms. The technical assistance focused on comparative review and evaluation of insolvency law regimes and practices in 11 countries, and then examined the issues in detail in 5 countries (Indonesia, Korea, Malaysia, Philippines, and Thailand). As a follow up to this earlier work, RETA 5975 (RETA) invited attention to development of both formal and informal insolvency frameworks to handle cross-border insolvencies and involved 4 countries – Indonesia, Korea, Philippines, and Thailand.</p> <p><b>Expected Impact, Outcome and Outputs</b></p> <p>The overall aim of the RETA was to promote efficient insolvency regimes, particularly in respect of cross-border insolvency.</p> <p>The specific objectives were to: (i) facilitate the development of sound insolvency frameworks for handling cross-border insolvencies; (ii) facilitate regional cooperation, especially the exchange of ideas and experiences between courts and other competent authorities involved in handling cross-border insolvency cases, formal and informal workouts and restructurings; (iii) review informal insolvency frameworks on a comparative basis to further develop the informal process; and (iv) develop case studies and model frameworks to illustrate how an integrated approach to secured transactions and insolvency law reform could be implemented.</p> <p>The scope included: (i) developing model frameworks for handling cross-border insolvency; (ii) improving the web site created under RETA 5795 to facilitate communications in respect of the RETA between select countries and to host the RETA materials and other relevant information of regional interest; (iii) convening conferences/workshops to facilitate regional cooperation and understanding of issues relating to cross-border insolvency and informal workouts; (iv) formulating model provisions on informal workouts; (v) undertaking a comparative study on informal workouts; (vi) undertaking a comparative study on interrelationship between secured transactions and insolvency; and (vii) formulating model provisions that provide a balance between debtor and creditor rights.</p>			

<sup>1</sup> In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

### **Delivery of Inputs and Conduct of Activities**

The RETA was implemented by the Office of the General Counsel. The original design of the RETA was well formulated, and encompassed key insolvency related issues in the post crisis scenario. Changes in scope and implementation arrangements were undertaken to enhance collaboration with participating countries and to respond to various international initiatives that were concurrently underway. International consulting firm Blake Dawson & Waldron did a commendable job in delivering to their terms of reference, and in preparing and presenting studies at various conferences.

Cooperation extended by Indonesia, Korea, Philippines, and Thailand was invaluable. Their varying experiences, state of development, and diversity provided considerable information in relation to the focus areas.

The implementation period was extended from time to time to accommodate requests from various stakeholders for further developing and disseminating the results of the RETA.

### **Evaluation of Outputs and Achievement of Outcome**

An integral component of the RETA was the conduct of conferences where participants discussed the local studies and country reports, and exchanged views on further development of strategies in respect of insolvency law reform and practice in the region. The first conference was held in Manila from 30 September to 1 October 2002. Country reports were drafted following the Manila Conference. These drafts country reports were then discussed and reviewed at the second conference held in Singapore from 17 to 18 March 2003.

In 2003, the ASEAN Law Association invited ADB to make a presentation about the RETA to 300 delegates at its regional conference. In 2004, INSOL India requested ADB to attend an international conference entitled "Balancing Recovery, Restructuring and Liquidation - the Emerging Challenges in Asia" to discuss and promote the objectives of the RETA. The conference was attended by government and business representatives from the Asian region. Copies of the draft interim report were circulated at this conference.

In May 2004, the Asia-Pacific Economic Cooperation Business Advisory Council, the Pacific Economic Cooperation Council (PECC), and the Asian Bankers' Association (ABA) invited ADB to present on insolvency issues concerning the development of a regional bond market in Asia. Subsequent to ADB's participation, PECC and ABA indicated their desire to collaborate further to promote the RETA recommendations. ABA was keen to consider adoption of principles of informal workouts developed under the RETA. A model agreement to promote company restructuring was also drafted. In conjunction with ABA, a number of consultation meetings with ABA member banks were held throughout the region in 2005 to discuss the draft model agreement to promote company restructuring. As a result of feedback at those meetings, a set of guidelines for informal workouts was developed and the model agreement was further refined.

At its 22<sup>nd</sup> general meeting and seminar held from 17 to 18 October 2005 in Melbourne, Australia, ABA formally adopted a set of guidelines for informal workouts and endorsed the model agreement to promote company restructuring for use by financial institutions throughout the region. In adopting the guidelines and endorsing the model agreement, ABA stated that it sought to address the absence of an international approach to informal workouts in the Asia-Pacific region, which posed a major obstacle to the expansion of investment within the region. During the same meeting, ABA also released a position paper, which contained recommendations that complemented ABA's adoption of the guidelines for informal workouts and its endorsement of the model agreement to promote company restructuring. These recommendations included: (i) adoption of a fast-track formal workout regime; (ii) enactment of legislation providing for creditors' voluntary liquidation or voluntary administration; (iii) promotion of a regional center or centers for the resolution by arbitration of cross-border disputes; (iv) strengthening of cross-border cooperation and assistance in insolvency cases; and (v) the undertaking of measures to enhance institutional capacity.

ADB also co-sponsored the Forum on Regional Insolvency Law Reform in Delhi from 4 to 5 November 2004.

In June 2007, ADB rolled out training programs on informal workouts in Thailand and Korea. These programs were undertaken in close collaboration with ABA, Thai Bankers' Association, and Korea Federation of Banks.

In 2008, ADB published the report "Promoting Regional Cooperation in the Development of Insolvency Law Reforms" which presented the results of the RETA. ADB's law and policy reform website was modified to include an insolvency section which consolidated the activities, findings, and results of both RETA 5795 and 5975.

**Overall Assessment and Rating**

Successful. RETA's design was relevant, and it was implemented effectively and within its budget. Its outcome was successful and sustainable.

**Major Lessons**

Attempts to harmonize regional insolvency regimes, particularly, enforcement of cross-border insolvencies, have raised two-fold issues of sovereignty and reciprocity. The principal objection to the adoption of a cross-border insolvency regime has been the prospective erosion of a jurisdiction's ability to direct and administer its own affairs, and subordination of its national interests and institutions to foreign influence. A requirement of reciprocity was considered and rejected by United Nations Commission on International Trade Law in the formulation of the Model Law. While cogent arguments can be made for and against these issues, it is certain that these will continue to be impediments to further reform of insolvency law in the region, unless a regional or bilateral consensus-based approach is adopted.

Change in implementation arrangements from time to time over an extended period caused account settlement issues which inordinately delayed the closing of the account.

**Recommendations and Follow-Up Actions**

Over the past years, several countries have strengthened their laws and practices, particularly in relation to rescue and rehabilitation, by adopting both formal and informal workout mechanisms. However, more needs to be done in the area of regional cooperation on cross-border insolvencies. Enforcement of claims in cross-border insolvencies is still less than predictable, leading to loss of value for creditors and other stakeholders. To achieve full potential of trade and investment in the region, and ensure that cross-border insolvencies maximize returns to all the stakeholders, the developing countries need to work towards a regional arrangement to deal with consequences of cross-border insolvencies. The outputs of the RETA have contributed to the debate on regional cooperation. It is suggested that ADB continues to further this debate and explore options for regional cooperation with local policy makers, bankers, and other stakeholders.

Prepared by: Ramit Nagpal

Designation: Counsel, Office of the General Counsel