

ASIAN DEVELOPMENT BANK

TAR: OTH 34496

**PROPOSED
TECHNICAL ASSISTANCE
(Financed from the Asian Currency Crisis Support Facility)**

FOR

PROMOTING REGIONAL COOPERATION

IN THE

DEVELOPMENT OF INSOLVENCY LAW REFORMS

January 2001

ABBREVIATIONS

ACCSF	-	Asian Currency Crisis Special Fund
ADB	-	Asian Development Bank
DMC	-	developing member country
INSOL International	-	International Federation of Insolvency Professionals
OGC	-	Office of the General Counsel of ADB
TA	-	Technical Assistance
UNCITRAL	-	United Nations Commission on International Trade Law
USAID	-	United States Agency for International Development

GLOSSARY OF TERMS

Cross-Border Insolvency - Cross-border insolvency occurs when an entity that is considered insolvent in one country has assets or debts in another country or other countries. The domestic insolvency laws of each country are likely to be different, yet in a commercial sense all creditors of that insolvent company (domestic and foreign) would expect to be treated similarly. Single jurisdictions experience tremendous difficulties achieving fair and reasonable treatment of all creditors when there is no framework to provide for the handling of extra-territorial, concurrent, or cross-border insolvency issues. The Barings collapse is an example of a cross-border financial insolvency, where assets were at risk of being depleted as they lay outside the jurisdiction of the courts of both Singapore and United Kingdom (Cayman Islands; Hong Kong, China; Japan; and United States [US]).

Frameworks - The term refers to laws, legislation, regulations, or guidelines; institutions (court or equivalent); and administrative procedures of the selected countries.

Insolvency and Bankruptcy - The terms are used interchangeably to mean condition of a business enterprise that is unable to pay debts as and when they fall due, as well as the legal proceedings affecting such enterprise under applicable insolvency and bankruptcy laws. The terms "insolvency law" and "bankruptcy law" are also used interchangeably and broadly to mean laws related to liquidations, receiverships, trusteeships, rehabilitations, administrations, restructurings, and reorganizations of insolvent business enterprises. Although insolvency laws may cover individuals as well as business enterprises, personal bankruptcies will not be the principal focus of the TA. The precise legal definitions of "insolvency" and "bankruptcy" and the detailed nature of applicable insolvency and bankruptcy laws and procedures vary from jurisdiction to jurisdiction.

UNCITRAL Model Law on Cross-Border Insolvency (Model Law) - A model law for cross-border insolvency was developed by UNCITRAL under General Assembly Resolution 52/158 of 15 December 1997. Development of the Model Law was spearheaded by UNCITRAL and INSOL International, an insolvency organization comprising insolvency professionals, such as lawyers, bankers, trustees and receivers. A number of countries in the region, including People's Republic of China, India, Japan, Singapore, and Thailand participated in working group meetings and supported (with few reservations) the Model Law. The Model Law it has been adopted by Mexico and Eritrea. Adoption is pending in Australia, Canada, New Zealand, South Africa, UK, and US.

NOTE

In this report, "\$" refers to US dollars.

I. INTRODUCTION

1. Since the onset of the Asian financial crisis, there has been an unprecedented level of endeavors among developing member countries (DMCs) to develop or reform their insolvency laws. A major contribution of the Asian Development Bank (ADB) to these efforts is regional TA (TA) 5795: *Insolvency Law Reforms*, under which ADB assessed the insolvency laws of 11 Asian economies (collectively, "RETA economies").¹ This proposed regional TA² was developed on the basis of the priority recommendations for reform identified and developed under TA 5795. The TA framework is in Appendix 1.

II. BACKGROUND AND RATIONALE

2. Although bankruptcy is "a defining characteristic of a market economy,"³ an insolvency law ranks low on any government's reform agenda. The onset of the Asian financial crisis produced an environment in which insolvency and related laws became an important part of various governments' reform agendas. DMCs, including the selected countries (listed in para. 11), began to recognize that the lack of frameworks for the systematic restructuring of insolvent or financially distressed corporations, or the liquidation of businesses incapable of being restructured posed impediments to economic recovery by delaying and complicating the rehabilitation of financial sector institutions, inhibiting the growth of domestic markets, and stifling or restricting foreign investment.

3. As a result, many DMCs began reviewing insolvency and related laws and practices (Appendix 2). Many of these efforts may be indirectly attributed to the work of ADB under TA 5795. Assessing weaknesses and developing good practice standards in corporate insolvency law regimes became the subject of extensive consultation, discussion, and publicity among stakeholders in the economies covered by TA 5795. Together with the efforts of other organizations (e.g., IMF and World Bank), TA 5795 contributed greatly to the awareness and recognition of the need for reform and, in some cases, to the actual implementation of reform processes and adoption of the good practice standards developed under TA 5795.

4. Among the critical assessments noted in TA 5795⁴ are (i) the absence of formal laws and procedures for cooperation, assistance, and exchange among bankruptcy courts and related institutions in Asia; and (ii) deficiencies in all of the RETA economies surveyed in providing procedures for cases of cross-border insolvency. The purpose of providing frameworks to govern cases of cross-border insolvency is to (i) create predictability and

¹ TA 5795: *Insolvency Law Reforms*, for \$550,000, approved on 13 July 1998. The economies included under the regional TA are Hong Kong, China, India, Indonesia, Japan, Republic of Korea, Malaysia, Pakistan, Philippines, Singapore, Taipei, China, and Thailand. TA 5795 was commended by and featured in several legal periodicals, such as *Asia Insolvency & Restructuring News*, Issue No. 4, 31 December 1999, and *Global Turnaround*, June 2000; as well by other organizations, such as Group of Thirty in *Reducing Risks of International Insolvency, A Compendium of Work in Progress* (a reference guide published by Group of Thirty, Washington, DC, 2000).

² The RETA Screening Committee approved the TA on 3 December 1999 under the title "Developing Cross-Border Insolvency Solutions." The TA first appeared in *ADB Business Opportunities* (August 2000 Internet Edition).

³ Bankruptcy demarcates the limits of extending credit, confronting risk, entrepreneurial venture, and corporate self-determination, and engages all sectors of the economy. See Carruthers and Halliday, 1998 *Rescuing Business*, Oxford University Press.

⁴ See *Insolvency Law Reforms in the Asia and Pacific Region* published in *Law and Policy Reform at the Asian Development Bank*, Vol. 1, 2000 Edition, which presents good practice standards and recommendations for reforms developed under TA 5795.

certainty in trade and investment transactions; (ii) ensure cooperation between the courts in different jurisdictions involved in cases of cross-border insolvency; (iii) protect and maximize the value of a debtor's assets for the benefit of all foreign and local creditors; (iv) increase the efficiency and fairness of cross-border insolvency administration; and (v) facilitate the rescue of financially troubled businesses. A framework for the handling of cross-border insolvencies will also facilitate the improvement of domestic insolvency law regimes and their application, as a result of heightened international scrutiny and pressure.

5. In addition, the activities under the proposed TA will (i) foster the policy of rescue (as opposed to dissolution/liquidation), which helps to preserve viable companies, thus saving jobs; (ii) build regional cooperation on insolvency which will accelerate the sustainable growth of regional markets; and (iii) provide for more predictable debtor-creditor regimes. This will offer larger markets, economies of scale and division of labor. In these ways, the availability of cross-border insolvency frameworks will contribute to ADB's other efforts at building efficient and sustainable mechanisms for regional economic growth, all of which are essential requirements of pro-poor growth.⁵

6. The globalization of trade and commerce has produced international pressures for DMCs to enact laws and provide institutions that can deal with a variety of cross-border legal issues, such as contract dispute resolution in international contracts, enforcement of arbitral awards and recognition and enforcement of foreign judgments. Attention is now turned to ensuring that cases of insolvency with international aspects receive similar recognition (see, for example, the European Union's Insolvency Regulation, adopted on 29 May 2000). Exploring and promoting regional cooperation in insolvency law and practice in the selected countries (para. 11) will provide the opportunity for assessing barriers to adoption of the Model Law, devising methods for overcoming the barriers, and proposing forms of legislation for adopting the Model Law. UNCITRAL has expressed support for the proposed TA, and will assist in implementing Part A (para. 11(i)).

7. The selected countries recognize the need for frameworks for regional cooperation and assistance in handling cross-border insolvency cases.⁶ ADB is well placed to facilitate such regional cooperation because of both the preliminary work it has done under TA 5795 and its multilateral character. Without a catalyst such as ADB, none of the selected countries are likely, independently or otherwise, to initiate such a step. There has been no regional-based cooperative program in insolvency law other than the recently completed American Law Institute project on transnational insolvency project in the North American Free Trade Agreement countries.⁷

8. The selected countries also recognize the importance of informal out-of-court insolvency processes. The work undertaken under TA 5795 disclosed a clear commercially based cultural preference in the economies studied under TA 5795 for resolving corporate restructuring issues outside of a formal court process. That approach to restructuring is therefore likely to be more

⁵ See para. 74, *Fighting Poverty in Asia and the Pacific, The Poverty Reduction Strategy of the ADB*, 19 October 1999.

⁶ See, e.g., Judge Wisit Wisitsora-At's (Thailand) articles on cross-border insolvency on www.legal-ex-go.th.

⁷ That project was unique in bringing together the governments and policy makers of USA, Canada, and Mexico with the aim of developing and creating areas of cooperation in relation to the insolvency law. The project was conducted through study groups from each country. Each group isolated important key features of their insolvency laws and then, in combination, undertook a detailed study of how these either permitted and encouraged or posed difficulties in cooperation in cases of insolvency with transnational aspects, and how best to overcome such difficulties. A similar approach will be used in this TA.

successful in the region than formal restructuring processes. The Insolvency Report stressed the importance of assessing the application and results of the various regional informal processes, with the goal of strengthening the processes in the form of a more universal framework that is recognized, supported, and applied by banking sectors in all parts of the world. The Lenders Group of INSOL International, recently issued its Statement of Principles for a Global Approach to Multi-Creditor Workouts. The principles are statements of good practice for all multicreditor workouts, and will be used as a guide in assessment and making proposals for reform. INSOL International has also indicated support for the proposed TA and will assist in implementing parts A and B.

9. As both insolvency and secured transactions are concerned with debtor-creditor relationships, there is a need to ensure that any insolvency reforms support secured lending and contribute to a more predictable debtor-creditor legal regime.⁸ The work under TA 5795 identified the impact of secured transaction regimes on insolvency regimes and emphasized that development of or reform in either regime should be accompanied by a corresponding development or review of the other. ADB is the first multilateral to pioneer this integrated approach to law reform. For the approach to be implemented by the selected countries, it is necessary to develop factual case studies to demonstrate the current weaknesses of and impediments caused by existing laws, and to develop model frameworks for reform.

III. THE PROPOSED TECHNICAL ASSISTANCE

A. Objectives

10. The overall goal of the TA is to promote efficient insolvency regimes, particularly in respect of cross-border insolvency. The specific objectives are 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, and 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 can be implemented.

B. Scope

11. The countries to be covered by the TA are Indonesia, Korea, Philippines, and Thailand. These countries were selected because they either have sufficiently developed national systems that contemplate *regional* insolvency issues, or are in the midst of systemic insolvency law reform. Other Asian countries will be invited to participate in conferences and workshops⁹ to ensure that the comparative models for regional cooperation developed under the TA receive

⁸ See The Need for an Integrated Approach to Secured Transactions and Insolvency Law Reforms, *Law and Policy Reform at the Asian Development Bank*, Vol. 1, 2000 edition (Integration Report). The Integration Report has been cited and featured in several leading insolvency periodicals, including *Global Insolvency & Restructuring Review*, *Law & Policy for the International Credit Market*, July/August 2000 edition (A Law Business Research Publication); and the International Bar Association's web site as a conference paper for a conference on insolvency and creditor's rights titled *Insolvency 2000*, held on 11-13 June 2000, Italy.

⁹ Except for the first conference, each of the other conferences and workshops will build on the findings and agreements reached between the selected countries at the previous conferences/workshops.

wide coverage, and to lay the foundation for broader regional cooperation.¹⁰ The primary focus of the TA will, however, be the selected countries. The scope of the TA includes:

Part A - Cross-border insolvency and regional cooperation: (i) develop studies of the key features of the insolvency law regimes of the selected countries on a comparative basis to explore and review common features and areas that pose problems in cooperation; (ii) develop, advocate, and recommend frameworks for facilitation of regional cooperation and contact, in consultation with, among others, the selected countries; (iii) prepare factual case studies (based on actual cases from each of the selected countries during the crisis) and develop case models to demonstrate current impediments to cooperation, methods of overcoming such impediments, and how the Model Law could be adapted for regional use (including alternative proposals for domestic legislation to adopt the Model Law); (iv) conduct, as agreed upon with the Office of the General Counsel, necessary meetings with government officials and policy makers, e.g., inception meeting; (v) conduct at least three regional conferences (one per year) to facilitate the exchange of recent experiences, ideas, and problems;¹¹ and (vi) improve the web site set up under TA 5795 to include materials developed under this TA and other insolvency materials of regional significance, and provide improved links, search tools, updating and maintenance.¹²

Part B - International good practices in informal restructuring processes: (i) study, on a comparative basis, the structured informal workout processes and restructurings adopted by Hong Kong, China; Indonesia; Korea; Malaysia; and Thailand during the Asian financial crisis, their economic impact, and relationship with formal insolvency systems; (ii) review and present for discussion international banking sector models for informal workout processes; (iii) prepare case studies from the selected countries showing their use of informal workout processes; (iv) further develop actual case studies to show the employment of informal processes at an international level; (v) propose recommendations for future reform and adaptation for regional use (including the possible use of formal insolvency regimes and the courts to strengthen informal processes and to facilitate the formal endorsement of restructurings developed through the use of informal processes); and (vi) conduct at least two regional workshops on informal insolvency processes and restructurings.¹³

¹⁰ The TA would benefit from lessons offered by Singapore, which has reciprocal legislation with Malaysia for cooperation and assistance in cases of personal bankruptcy; Hong Kong, China, which has a provision for recognizing insolvencies originating in a foreign country; and Japan, which is currently considering a complete revision of its territorial approach to cross-border insolvency. India, Pakistan, and Taipei, China (the remaining economies studied under TA 5795 will be invited to participate in the meetings and workshops.

¹¹ This will be carried out in cooperation with INSOL International, UNCITRAL, other multilateral and bilateral organizations, and international insolvency bar associations. Participants financed under the TA will be selected in accordance with criteria to be established by the Office of the General Counsel, in consultation with the selected countries.

¹² Easy access to insolvency information of regional importance will facilitate regional cooperation and coordination. Under TA 5795, a web site was developed for publishing materials developed under the TA. The web site currently features the insolvency legislation of the RETA economies, as well as comprehensive studies of the insolvency regimes in them. The web site is a significant resource for the region. It is the logical site to include TA materials, and other insolvency materials of regional significance.

¹³ This will be carried out in cooperation with INSOL International Lenders Group, which has developed universal principles for application in informal workouts.

Part C - Integrated approach to insolvency and secured transactions law reforms: develop studies of the key features of the insolvency and secured transactions laws and their interrelation and prepare case studies from at least two of the selected countries to demonstrate the interrelationship, and develop model provisions that provide for a balance between secured creditors' rights and the collective rights of creditors and the debtor. Model provisions will be discussed at the conferences and workshops under Part A of the TA. Work done under Part A of the TA will also be shared with other relevant groups, such as judicial training institutes, universities, or law societies, for use at the national level in, among others, each of the selected countries.

C. Cost Estimates and Financing Plan

12. The total cost of the TA is estimated at \$1,750,000 equivalent. ADB will finance \$1,500,000 equivalent, on a grant basis, from the Asian Currency Crisis Support Facility (ACCSF), funded by the Government of Japan. Participating institutions, UNCITRAL and INSOL International, will provide an estimated \$250,000 equivalent in kind or through staff participation. The detailed cost estimates and financing plan are in Appendix 3.

D. Implementation Arrangements

13. The TA will be implemented by the Office of the General Counsel with the assistance of international and domestic consultants. About 16.5 person-months of consulting services will be required: 14 international and 2.5 domestic. Indicative terms of reference for the TA consultants are in Appendix 4. The international consultants will identify suitable domestic resource persons to assist with the TA (about 20 person-months/country), and identify and manage the domestic consultants (Philippines) for the work to improve the web site created under TA 5795. All consultants will be recruited in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements acceptable to ADB for recruiting domestic consultants. Equipment for the TA will be leased where possible.¹⁴ Where it is more economical and efficient to procure such equipment, it will be procured in accordance with ADB's *Guidelines for Procurement*. At the conclusion of the TA, ADB's Office of Administrative Services will be consulted on the future life and use of the procured equipment. The TA will be implemented three years, commencing in February 2001.¹⁵

IV. THE PRESIDENT'S RECOMMENDATION

14. The President recommends that the Board approve the provision of technical assistance, on a grant basis, in an amount not exceeding the equivalent of \$1,500,000 for the purpose of Promoting Regional Cooperation in the Development of Insolvency Law Reforms.

¹⁴ For example, it may be necessary to lease equipment for the conduct of the conferences: translation and other conference facilities, software, and a computer.

¹⁵ A lesson from other law and policy reform projects is that law reform is a long-term process. A minimum of three years is justifiable, and indeed is necessary, to ensure that regional cooperation and collaboration are achieved with a sound framework for continuity.

TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	PerformanceTargets	Monitoring Mechanisms	Assumptions/Risks
<p>Overall Aim</p> <p>Promote efficient insolvency regimes - particularly in respect of cross-border insolvency - that promote economic growth</p>	<p>Asian Development bank (ADB) impact assessment and evaluation at conclusion of the technical assistance (TA)</p>	<p>Dialogue and advocacy with governments and insolvency professionals</p>	<p>Inception meetings to ensure interest and commitment of governments to address needed reforms to insolvency frameworks</p>
<p>Objectives</p> <ul style="list-style-type: none"> • Facilitate the development of sound insolvency frameworks for regional cooperation and handling of cross-border insolvencies • Facilitate regional cooperation between courts and other competent authorities involved in handling both formal and informal workouts and restructurings • Review, on a comparative basis, informal insolvency frameworks to further develop and standardize the informal process • Develop case studies and model frameworks to illustrate how an integrated approach to secured transactions and insolvency law reform can be implemented 	<p>Develop applications of Model Law for two of the Selected Countries</p> <p>Conduct at least 3 regional conferences (one per year)</p> <p>Analyze and study the Asian experience with structured informal workout processes</p> <p>Expand the web site set up under TA 5795 to include TA materials</p> <p>Conduct at least two regional workshops on informal insolvency processes and restructurings</p> <p>Comparative review of interrelationship between secured transactions laws and insolvency law regimes (as applied)</p>	<p>Acceptance of TA 5795 good practices and recommendations and TA recommendations</p> <p>ADB participation & review of proposed law reforms</p> <p>ADB dialogue with courts and other institutions, conference preparation and progress reports</p> <p>Feedback from selected countries</p> <p>Consultants' reports and feedback</p> <p>Consultants' report</p> <p>Comparative studies and analysis</p>	<p>As above</p> <p>Obtain agreement from governments and policy makers, and participating organizations to attend conferences/workshops</p> <p>Reaching consensus on recommendations, and accommodating national requirements</p> <p>Informal processes are useful and necessary; and contribute to the overall insolvency frameworks in the region.</p> <p>Case studies are relevant regionally.</p>

(Reference in text: page 1, para. 1)

Design Summary	PerformanceTargets	Monitoring Mechanisms	Assumptions/Risks
<p>Outputs</p> <p>Model frameworks for handling cross-border insolvency</p> <p>Web site improved to facilitate communications on TA between selected countries, and uploaded to include TA materials and other relevant materials of regional interest</p> <p>Conferences/workshops to facilitate regional cooperation and understanding of issues related to cross-border insolvency, informal workout processes, and interrelationship between secured transactions-insolvency</p> <p>Model provisions on informal workouts</p> <p>Comparative study on informal workouts, its impact, etc.</p> <p>Comparative study on interrelationship between secured transactions and insolvency</p> <p>Model provisions that provide a balance between debtor/creditor rights [secured transactions/insolvency]</p>	<p>Consultants recruited</p> <p>Qualified resource persons identified</p> <p>Resource persons guide</p> <p>Web site implementation design provided</p> <p>Conference agenda/conference papers prepared</p> <p>All model provisions, reports, studies, conferences/workshops, etc. are completed per implementation plan and schedule, agreed upon with ADB.</p>	<p>Review of legal documents Progress reports</p> <p>Detailed work plan and terms of reference</p> <p>ADB review of interim reports and dialogue with consultants, participating organizations</p> <p>Review of Web site; review of user "hits" and feedback</p> <p>Draft workshop materials and reports, detailed work plan</p> <p>Participants' feedback</p> <p>Conference attendance & participation Participants' feedback</p> <p>Feedback from international insolvency community</p>	<p>A common cross-border insolvency framework is recognized by selected countries.</p> <p>There is interest among selected countries in furthering understanding of United National Commission on International Trade Law (UNCITRAL) model law.</p> <p>Lack of interest and participation National concerns foreclose interest in understanding the advantages of regional cooperation.</p> <p>Time/resource constraints limit scope.</p> <p>Poor level of analysis and discussions; inaccurate indicators</p> <p>Securing participation of appropriate officials</p> <p>National requirements inhibit generalization.</p> <p>Language and translation issues</p> <p>Sensitivity of issues, availability of statistics and information</p> <p>Difficulty of task Time/resource constraints limit scope of analysis.</p> <p>Technology becomes obsolete. New formats required.</p>

**A BRIEF OVERVIEW OF INSOLVENCY LAW REFORMS IN THE ECONOMIES COVERED
BY TA 5795-REG: INSOLVENCY LAW REFORMS**

A. Hong Kong, China

Hong Kong, China adopted informal workout processes (Guidelines on Corporate Difficulties) during the implementation of TA 5795 and is more advanced in terms of restructuring and informal insolvency frameworks. For comparative purposes, it will be included in the proposed TA.

B. India

The Government of India has formed a committee to review the need for insolvency law reform. In response to the committee's request, the Asian Development Bank (ADB) provided comments and recommendations. India will be invited to participate in the conferences to be held under the proposed TA.

C. Indonesia

Indonesia adopted an informal workout process during the Asian crisis (the Jakarta Initiative); formed agencies to handle debt restructuring (Indonesian Debt Restructuring Agency [INDRA] and the Indonesian Bank Restructuring Agency [IBRA]); and is currently undertaking a comprehensive review of its insolvency laws. ADB is assisting in reviewing the proposed laws. A meeting in Jakarta was proposed by the Organization for Economic Cooperation and Development (OECD) for a detailed review of the draft laws, and the Office of the General Counsel (OGC) participated in this meeting (September 2000). Many other aid agencies are involved in providing training to the judiciary, along with ADB under a TA associated with Loan 1618-INO: Financial Governance Reforms: Sector Development Program. Given the will of the Government for reform, it was considered appropriate to include Indonesia in the proposed TA.

D. Japan

In 2000, Japan completed revising its century-old insolvency system, including provisions for extraterritoriality. Under the proposed TA, the Japanese reform experience will be included for comparative purposes.

E. Republic of Korea

Korea issued guidelines for informal out-of-court workouts during the Asian financial crisis (Financial Institution Agreement for Promotion of Company Restructuring) and is in the process of a comprehensive review of its insolvency laws. Republic of Korea is being assisted in this regard by the World Bank, among others. Officials of Republic of Korea's MOJ attended the symposiums under TA 5795. In light of the ongoing reforms, it was considered beneficial to include Republic of Korea in the proposed TA. Sharing with the selected countries will also be beneficial for the Korean experience with informal workouts.

(Reference in text: page 1, para. 3)

F. Malaysia

During the Asian financial crisis, Malaysia adopted an informal workout process and formed a committee for the same (Corporate Debt Restructuring Agency). It will be beneficial to review, on a comparative basis, Malaysia's experience with informal workout processes, as well as to learn from its cross-border experience with Singapore (personal bankruptcies only).

G. Pakistan

The economic law reform component of TA 3015-PAK: Legal and Judicial Reform identified the need for insolvency law reform. The work carried out under TA 5795 will be taken into account in the proposed loans for Legal and Judicial Reform Program and the Capital Market Development Program II. Pakistan will be invited to participate in the conferences for the proposed TA. Pakistan participated in the secured transactions TA.

H. Philippines

The Philippines recently adopted guidelines for handling restructuring and suspension-of-payments cases by the Securities and Exchange Commission (SEC). However, even more recently, the SEC was stripped of its quasi-judicial functions, including the handling of such cases. While jurisdiction over such cases has been handed to the civil courts, it is unclear what laws the civil courts will be empowered to apply. This is because the insolvency law (liquidation only) has not been amended to include restructuring and is extremely out-of-date. There is also the issue of capacity building. However, this country-specific activity is being taken up under a proposed TA for judicial training currently being processed by OGC, the World Bank and United States Agency for International Development (which has been providing considerable assistance and training to the SEC). ADB has reviewed a draft of a new proposed insolvency law submitted to the Senate in July 2000. It is probable that this draft will now be amended, and a new bill submitted for consideration in 2001. It may be timely to include cross-border provisions for consideration at the same time.

I. Singapore

Singapore has developed very comprehensive insolvency systems, including frameworks for informal workout and conciliation. Singapore was involved in the development of the Model Law and there is little need for capacity. Singapore will be invited to contribute to conference presentations, as well as to attend the conferences for the TA.

J. Taipei, China

There has been little in the way of national reforms to Taipei, China's insolvency framework. Taipei, China will be invited to attend conferences under the TA.

K. Thailand

Thailand has made the most progress in insolvency law reforms since the Asian crisis, and ADB has been providing some assistance in this process. The principles of TA 5795 were developed in participation with leading Thai bankruptcy judges. The Thai Government has publicly noted the need for cross-border insolvency frameworks.

COST ESTIMATES AND FINANCING PLAN
(\$)

Item	Cost (\$)
A. Asian Development Bank Financing (Asian Currency Crisis Support Facility)	
1. International Consultants	665,000
a. Remuneration and Per Diem (14 person-months)	455,000
- Resource Persons (20 person-months x 4 countries)	160,000
b. International Travel (conferences, consultation visits)	50,000
2. Domestic Consultants	15,000
a. Remuneration and Per Diem (2.5 person-months)	10,000
a. International Travel (1 round trip travel to Hong Kong) ^a	5,000
3. Conferences (3), Workshops (2)	445,000
a. Per diems (270 person-days or 18 persons x 3 days x 5 conferences/workshops)	45,000
b. Travel (90 persons or 18 persons x 5 conferences/workshops)	225,000
c. Facilities, organizational and administrative expenses	100,000
d. Interpretations and translations	75,000
4. Publications and Reports (printing, materials, administrative costs)	100,000
5. Support for Regional Insolvency Forums (\$20,000/year) ^b	60,000
6. Travel (participation of resource persons (ADB)) ^c	30,000
7. Equipment, Legal Materials, and Supplies	20,000
8. Contingency	150,000
9. Web site Development Costs	15,000
Subtotal (A)	1,500,000
B. Participation of UNCITRAL, INSOL International	
(1.5 person months x 2 institutions)	250,000
Subtotal (B)	250,000
TOTAL	1,750,000

(Reference in text: page 5, para. 12)

^a The web site is currently managed out of Hong Kong, China. It is intended that web site management be located at ADB headquarters, Manila, Philippines.

^b Will be utilized to cover the cost of ADB sponsored sessions at regional insolvency forums, as well as to fund the participation of qualified representatives from DMCs.

^c To permit participation by ADB staff as expert or resource persons at conferences/workshops.

TERMS OF REFERENCE FOR CONSULTING SERVICES

1. The following terms of reference are indicative of the type of tasks to be performed by the international consultants. However, in evaluating submissions from interested consultants, alternative proposals, including work methodologies, work plans, implementation schedules, and reporting systems, will be assessed. The services of a firm or firms of international consultants with legal, accounting, international banking, and economic expertise are preferred.

A. International Consultants

2. The terms of reference for the international consultants are as follows:

- (i) define working outlines for the studies for each of the selected economies in consultation with the Office of the General Counsel (OGC), covering analysis of laws and procedures for, among others, (a) cross-border insolvency, (b) regional cooperation and coordination; and (c) secured transactions – insolvency interrelationship;
- (ii) define the scope of work and terms of reference for the local resource persons, in consultation with OGC.¹⁶ Resource persons are expected to have expertise in domestic insolvency laws, banking, and corporate debt restructuring, and related insolvency practices;
- (iii) work with the resource persons in each selected economy to revise the working outlines on the basis of discussions with, among others, insolvency practitioners, bankers, borrowers, economists, central bankers and government officials;
- (iv) work with the resource persons to establish in each selected economy working groups comprising, among others, insolvency practitioners, bankers, borrowers, economists, central bankers, and government officials in that economy;
- (v) work with the resource persons in reviewing the laws and procedures impacting on (a) cross-border insolvency, (b) regional cooperation and coordination and (c) secured transactions – insolvency interrelationship;
- (vi) work with the resource persons to prepare the studies, which will include a brief summary of the insolvency laws and procedures related to (a) cross-border insolvency (b) regional cooperation and coordination and (c) secured transactions – insolvency interrelationship, and the deficiencies thereof, and will identify options to consider for revising the relevant bankruptcy laws and related procedures and for improving institutional capabilities;

(Reference in text: page 5, para. 13)

¹⁶ These are country-specific and need to be designed considering local needs and requirements.

- (vii) work with the resource persons to prepare all case studies as described in the TA report and as agreed upon with OGC;
- (viii) produce reports based on a comparative analysis of the studies. It is anticipated that the report will include a comparative study and analysis of the relevant laws and procedures in the selected economies, and with respect to each of them, make recommendations for reform;
- (ix) coordinate and oversee the work of the domestic consultant recruited to carry out the work for web site improvement, and make recommendations for the substantive content of the web site and its expansion;
- (x) organize all aspects of the three conferences and two workshops under the TA and any other preliminary meetings, as agreed upon with OGC, in consultation with, and with the assistance of the resource persons, including (a) identifying participants among policy makers, insolvency practitioners, economists, bankers, central bankers, government officials, and scholars; and (b) structuring the agendas for all of the conferences and workshops;
- (xi) prepare reports or summaries for each conference and workshop, and arrange for their publication, including on the web site; and
- (xii) be responsible for the preparation of all TA reports.

B. Domestic Consultants

3. An individual domestic consultant or a firm of domestic consultants with information technology (web site design and management) expertise will be recruited to handle all aspects of web site design, upgrading, and management for the TA. The terms of reference for the domestic consultants are as follows:

- (i) review the existing web site and submit a design for improvement, taking into account requirements specified by OGC, including linkage with OGC's legal database;
- (ii) liaise with ADB's Office of External Relations to determine the best arrangements for linking the web site with www.adb.org;
- (iii) carry out all necessary tasks to implement the agreed upon design of the web site;
- (iv) as agreed to by ADB or international consultants, regularly maintain and update the web site to include all materials provided by ADB or international consultants; and
- (v) liaise with Development of the Internet for Asian Law Project (Project DIAL) personnel.