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Asian Development Bank

Promoting Regional Cooperation in the Development of Insolvency Reform

RETA 5975

Manila Meeting Report

Report on First Conference held in Manila on 30 September and 1 October 2002. For consultation with participants.

Part One: General Introduction

1.1 First Conference

This Report is of the first conference under the Technical Assistance held on 30 September – 1 October 2002 at the headquarters of the Asian Development Bank in Manila, Philippines. The Report is provided as required by the terms of reference for the Technical Assistance.

This conference was confined to a limited number of selected invitees (approximately 40 invitees attended) from the four selected countries for the following reasons:

- First, the conference was aimed largely at senior government officials/policy makers. In the expectancy of their attendance, it was considered that a small 'closed' forum would be appropriate - one that would enable and encourage open discussion and debate on the issues, particularly those that might be considered sensitive.
- Secondly, a small forum would encourage a high degree of inter-active participation amongst the attendees.
- Thirdly, a small forum might better suit the essential purposes of the conference, namely, to discuss the broad issues affecting each subject area of the Technical Assistance and, in particular, to discover issues upon which there was contention and diversity and to understand the basis and reasons for that contention and diversity.

1.2 Conference Agenda

Because of those considerations, the conference was conducted according to the following agenda:

- Formal opening in general session;
- Division into three parallel discussion sessions (namely, cross-border insolvency, informal workouts, and the intersection between secured transactions and insolvency law regimes) conducted throughout the first day;
- Continuation of the parallel sessions early on the second day to reflect upon and prepare a summary of the discussions and any conclusions/consensus reached on the issues raised during each session;
- Reconvening in general session for the remainder of the second day to receive presentations of the summary of each group session, together with general discussion;
- Formal closing in general session.

1.3 Issues Paper

The conference was preceded by the distribution to the participants and others of an Issues Paper prepared by Messrs Harmer and Fisher, two of the international consultants. The Issues Paper:

- describes the broad background, aims, objectives and program of the Technical Assistance;
- provides an explanation and analysis of the three subject areas; and
- identifies the more apparent and important issues arising in those three areas.

The Issues Paper is available on the Technical Assistance website (http://adb.bdw.com).

1.4 Other Material

Arrangements were made for the distribution at the conference of a number of documents relevant to each subject area of the Technical Assistance. These included extracts from the laws of a number of countries on cross-border legislation, the product of the work of a number of institutions on secured transaction legal regimes, and the approach of a variety of jurisdictions to informal workout processes. A full list of this material appears on the Technical Assistance website.

1.5 Ancillary events

Pricewaterhouse Coopers hosted a cocktail gathering on the Sunday evening preceding the conference. Blake Dawson Waldron hosted a dinner on the evening of the first day. The General Counsel of ADB presented certificates recording the participation of the attendees in the conference during the plenary session on the second day.

1.6 Participants

The conference was attended by 40 invitees from the selected countries, together with Ms Clare Wee, Senior Counsel OGC, ADB, international consultants (Ron Harmer, Richard Fisher, Martin Brown, David White and Geoffrey Dabb), and local consultants (Felix Soebagjo, Kyu-Sang Chung, Francis Lim and Dej-Udom Krairit). A full list of the participants appears as annexure "A" to this Report.

1.7 Formal Opening

The General Counsel of the ADB, Mr Gerald A Sumida, welcomed the participants. In his address Mr Sumida spoke of:

- The need for regional cooperation in insolvency arrangements within Asia and the fundamental need to attract investment.
- That a secured transaction regime makes possible the provision of credit financing to business far beyond what is available only from banks.
- Economies are becoming increasingly interdependent and the pan-Asian use of complex corporate structures and financing is growing.

One of the ADB's two purposes is the promotion of regional cooperation.

The challenge is how to strengthen the implementation of laws by finding ways to assist each other when insolvencies involve debtors with assets in countries other than where the debtor is located.

A copy of the opening address is posted on the Technical Assistance website.

Messrs Harmer and Fisher spoke of the origins of the Technical Assistance, remarking that to attempt regional cooperation in the three subject areas is a unique and brave endeavour. They outlined the essential aims and objectives of the Technical Assistance, presented the justifications for development and reform in the three subject areas and the possible barriers or blockages to development and reform. In

respect of the latter, they mentioned the possibilities of political/government policies and sensitivities, commercial sector sensitivities, inadequate laws and the inability to apply existing laws.

Ms Clare Wee also welcomed the participants, thanked them for their involvement and spoke of the commitment that was needed from the representatives of the four selected countries to achieve the aims of the Technical Assistance.

1.8 The Parallel Sessions

The parallel sessions were conducted with the assistance of the Issues Paper, the other material and Power Point presentations.

A summary of the presentations and discussions of each of the parallel sessions (and as refined in the plenary sessions) is the subject of separate sub-reports that follow this introduction.

1.9 Plenary Session

At the plenary session the consultants presented and discussed the outcome of parallel sessions. Some of the action points identified at the parallel sessions were refined.

1.10 Conclusion of Conference

Mr Harmer outlined the future conduct of the Technical Assistance. The next major task is the preparation of terms of reference for the local consultants from the selected countries that will be used for the preparation of country reports. The terms of reference will require the local consultants to consider and advise on a number of important issues that were identified during the first conference in each subject area of the Technical Assistance. It should be noted, however, that it is not intended that the country reports should provide a comparative study of the four selected countries. The aim is to provide in depth information relative to the three subject areas, particularly to reveal tensions that are relevant to regional cooperation in the three areas.

The country reports will be presented and discussed during a workshop to be held in Singapore (19-20 March 2003). That workshop will be held in conjunction with an International Conference conducted by the Insolvency & Public Trustee's Office, Ministry of Law, Singapore.

Another proposed endeavour is to gather economic and commercial information and data that is relevant to the three subject areas. It is hoped to secure the support and assistance of the Economics and Research Department of the ADB in that activity.

Following the Singapore workshop the consultants will prepare a Discussion Paper that will set out tentative proposals for advancing regional cooperation in the three subject areas. That is due to be published in May/June 2003.

Part Two: Parallel Session on Intersection of Secured Transactions and Insolvency Law Regimes

2.1 Introduction

The nature and effect of the intersection of these two regimes is described in the Issues Paper, together with the main issues that arise. This session examined, discussed and debated those and other issues. At the end of the session the participants agreed a series of broad 'consensus' points.

This part of the Report presents a summary of the discussions at the session. The Power Point presentation which was used appears on the Technical Assistance website.

Those who participated in the session are identified in the annexure "B".

2.1.1 Treatment of the subject

Mr Harmer chaired the sessions. Mr Francis Lim, the local consultant for the Philippines assisted in the conduct of the sessions. Also present for considerable periods providing valuable input were Sijmen de Ranitz from INSOL and Jenny Cript from UNCITRAL.

The subject was addressed by outlining the essential areas that a secured transactions legal regime might be expected to cover – creation, registration (or perfection) and enforcement. The session looked at each of those areas from the viewpoint of an insolvency law regime, to consider whether and what support, involvement or intrusion might be required by that regime. The participants considered each of those areas and related their knowledge and experience of their respective jurisdictions. Some initial comment is required on that treatment.

2.1.2 Not a project on secured transactions

The first observation that must be made is that the Technical Assistance does not purport to be a project for the development of a 'model' secured transactions legal regime. The regimes that are practised in the region as they presently stand must be taken and then considered in relation to the impact of an insolvency law regime. This Report does not contain any extensive commentary on the essential features of a secured transactions regime and the possible variations and permutations to such a regime. It may, however, emerge during the course of the Technical Assistance that there are some essential 'core' areas of a secured transactions regime that provide a better basis for the regime (and the intersection) than those that are presently practised. If that is a result, there may be some positive 'indirect' benefits from the Technical Assistance.

2.1.3 Essential areas

The next comment concerns the 'essential areas' to be covered by a secured transactions regime and the justification for them. Secured transactions regimes differ considerably and do not necessarily follow a 'model'. That much became apparent from a consideration of some of the features of the relevant regimes of the four selected countries.

However, there was general acceptance that despite these differences (and having regard to an increasing 'universal' trend in the development of acceptable models and standards), three areas could be identified or marked out as being basic to any secured transactions regime. These are the areas of 'creation', 'registration' (or 'perfection') and 'enforcement'.

The substantive composition or make up of these three areas will be discussed in more detail throughout this Report, but, broadly stated:

- 'creation' covers the scope and basis of the regime (the types of security interests to be covered and the basis for their creation);
- 'registration' (perfection) covers the additional formality of registration or publicity of a secured transaction at some public registry (a formality that most jurisdictions normally require); and
- 'enforcement' deals with the rights (and obligations) of a secured creditor to enforce a security interest in the event of default by a debtor and the manner of such enforcement.

2.1.4 Insolvency or secured transactions overview

A final general comment concerns whether it is more appropriate to set up the essential areas of a secured transactions regime and then probe them by reference to an insolvency regime or vice versa.

The view was taken that the former was more appropriate largely because, of the two regimes, a secured transactions regime would be the more active and utilised, and would be an area of law constantly engaged in by those involved in commercial transactions and relationships. On the other hand, an insolvency regime would operate in a much more passive way, aroused only when the essential elements of the regime are triggered.

That is not to suggest that one regime is more important than the other. It is more a recognition of their relative day-to-day utilisation. Further, since, as this Report will make clear, it is the actual operation of an insolvency law that will normally raise issues concerning the operation of a secured transactions regime, it is more appropriate to review the former by reference to the latter.

2.2 Creation

Creation of secured property interests covers a number of sub-areas. First, what criteria might govern the categorisation of a transaction as a security? Secondly, over what property can a secured property interest be created? Thirdly, how may a secured property interest be created?

2.2.1 What property?

All forms of property should be capable of use for the creation of a secured property interest. A main division is usually made between immovable property (land) and movable property (sometimes variously described as personal

property, chattels, tangible and intangible property). Separate laws may govern these divisions and each division might, in turn, be the subject of more than one governing law. A land or 'real property' law may govern immovable property security interests. A 'personal property' securities or similar law may govern movable property security interests. Securities under this latter category might fall under different laws (for example, a law relating to pledge might govern that type of security interest, a separate law relating to chattel securities might govern that area). Some jurisdictions might have only one law to govern all forms of security.

The session took it as implicit that the subject should be dealt with as a whole and that there was **no purpose in making any essential distinction based solely on the nature of the property to be secured and, from an insolvency law viewpoint, distinctions did not matter**.

The next consideration related to the formalities of creation. These will vary considerably because 'creation' often has more to do with or relates back to the formalities imposed under laws relating to contracts, deeds and property generally (it should be mentioned that creation in this context is primarily and almost exclusively concerned with consensual creation of secured property interests).

The session was not concerned with formalities regarding creation, except to observe that **an insolvency law regime would be assisted if, whatever the formalities were imposed under whatever law/s, creation could be determined by reference to clear, certain and transparent rules. This would assist an insolvency representative in being able to determine if a secured property interest has been created and may help to avoid time consuming and expensive disputes**.

The final consideration relates to the identification or categorisation of secured property interests. Here the main discussion in the session was concerned with 'quasi-security' commercial devices, such as 'retention of title' supply contracts and finance leases, and whether these should be treated as secured property interests based upon 'substance' rather than legal 'form'. Although there was general agreement that **an insolvency law regime would possibly benefit from a 'substantive' approach to secured transactions (for the reason of ease of identification by an insolvency representative)**, the session was concerned not to intervene too far in this area because it would invade areas of contract and other law (in one of the selected countries it was considered that any interference in this area could have constitutional implications).

Two further points raised in the session should be mentioned.

The first concerned the possible intrusion of an insolvency law to invalidate or avoid a secured property interest for want of compliance with the formalities. Although relevant to creation, it was considered that it is best dealt with in detail under registration.

The second concerned the 'creation' of non-consensual secured property interests. These, of course, arise by operation of law (an example is a statutory lien that may be designed to protect or provide for the payment of the claims of workers). The session took the view that it was a matter of domestic policy whether and to what extent a particular jurisdiction might 'create' non-consensual forms of secured property interest and was an area that, although relevant to insolvency (because if taken too far it may have undesired effects in relation to the 'equal sharing' between creditors philosophy of an insolvency law regime), it was a subject best dealt with under the later part of the session dealing with 'intersection'.

2.2.2 Consensus summary

The consensus reached by the session participants about creation of secured property interests was that **laws dealing with creation should be clear, transparent and predictable because it assists in identifying secured property in the event that insolvency proceedings are commenced in respect of a relevant debtor and avoids unnecessary time and expense in disputation**.

2.3 Registration

Registration refers to a requirement under the relevant secured transactions law/s that secured property interests must be registered or recorded in some form of public register. This is almost universally required in relation to a security over land and, in more cases than not, is a common requirement for consensually created secured property interests over movable property (although not normally extending to a possessory form of secured property interest, such as a pledge). It is not, however, a usual requirement in relation to non-consensual secured property interests (such as a workers lien or a lien resulting from a court judgment).

The session generally agreed that the subject of non-consensual secured property interests was best avoided in the context of registration.

2.3.1 Requirement for registration

There was general agreement that a requirement of registration served two concerns that were vital to finance and commerce generally. The first was that registration informed and protected third parties against unknown and undisclosed secured property interests. The second was that registration (or the rules relating to the effect of registration) made the issue of priority between competing security holders over the same property more certain and predictable.

2.3.2 The registration 'system'

The session also discussed registration systems generally. This discussion covered areas such as central/local registries, manual/computer based registries, reliability of registered information and ease/difficulty of accessing and searching a registry. This practical aspect of registration (and the requirement for it) is often overlooked. It appeared that all the selected countries shared a common view that a modern, centralised registry with 'on line' access was a very important component of a secured transactions regime.

The session took the view that **both a requirement for registration and the existence of a modern registration system were regarded as important from an insolvency viewpoint because:**

- **registration normally signifies prima facie validity, enabling an insolvency representative to identify valid secured property interests.**
- **registration governs priority between competing secured property rights in respect of the same property and that will assist an insolvency representative in determining the priorities.**
- **a modern registration system makes it easy for an insolvency representative to quickly search and discover the secured property interests that have been created by an insolvent debtor (with the possible exception of securities created by pledge) and to identify the property involved and the security holder.**

2.3.3 Intervention by an insolvency law

The session then turned to a discussion of the possible intervention on prima facie validity of a secured property interest by the application of rules that are unique to an insolvency law regime.

2.3.4 Failure to register

The first concerned the effect of a failure to register (assuming, of course, that registration is required).

A failure to register may not normally result in invalidity as between the security giver and the security holder. The security can be enforced as between the parties. The real effect of non-registration is felt when a third party takes security over the same property, later in time and without knowledge of the creation of a prior (unregistered) security. Under most secured transactions legal regimes the third party will obtain priority.

But there are a number of jurisdictions whose insolvency law operates to invalidate or avoid an unregistered secured property interest as between the parties themselves. Such provisions are normally tempered, however, to take effect upon the commencement of an insolvency proceeding in respect of a debtor who has created a security interest in property that is unregistered. The effect is that the unregistered security interest is invalid (it will not be recognised) and of no effect against an insolvency representative, who may then deal with the property as if the security did not exist (absent formal insolvency proceedings in respect of the debtor, the security, although unregistered, may still remain valid as between the parties).

The initial justification for this type of intrusion by an insolvency law regime was probably founded on the concept of striking at 'false wealth'. That concept may be considered by some to be outdated, but it still holds sway in many jurisdictions. A further or other justification for this type of intervention is that, by doing so, an insolvency law aids and abets a secured transactions law by underscoring the importance of registration, providing an additional motivation for registration and a sanction for non-registration.

On this issue the session concluded that **if registration was a requirement of a secured transactions regime, it was appropriate that an insolvency law could provide for invalidity or non-recognition in the case of an insolvent debtor where there was a failure to register.**

2.3.5 Application of insolvency 'avoidance' provisions

It has long been the habit or tradition of an insolvency law to recognise that the onset of financial difficulty will often result in 'desperate action by desperate people'. In the face and with the knowledge (or suspicion) of financial difficulty, it is common, for example, for unsecured creditors to press for payment or assurance for their unpaid debts. It is also not uncommon for financiers and others to take advantage of a debtor who is in financial difficulty by providing finance on extreme terms. Possibly less common (but probably more

notorious) is the commission of fraud or other unconscionable behaviour on the part of managers, directors and others who are closely connected with the debtor to remove or put assets and property of the ailing debtor out of reach of creditors.

It is usual for an insolvency law to anticipate such behavioural tendencies and to provide for their correction the application of the 'avoidance of transactions' provisions on the ground that, absent such provisions, the whole fabric of the insolvency law would be destroyed and the law rendered comparatively useless.

An interesting point about such avoidance provisions is that they can be applied even to commercial transactions that have every mark of validity and respectability about them. That leads to their relevance in relation to secured transactions because under a regime that has a requirement for registration, a registered secured property interest will carry the mark of prima facie validity. So the issue for discussion in the session was whether the 'avoidance provisions' of a typical insolvency law regime should be capable of application to otherwise 'valid' secured transactions.

The session was **unanimous** in the view **that a secured transaction should not have any immunity from the application of the insolvency law avoidance provisions.**

2.4 Enforcement of secured transactions

Enforcement refers to the powers that may be given by the secured transactions regime to a security holder to exercise in respect of the secured property as a result of default by the security giver (debtor). This third and final area of a secured transactions regime attracted the greatest discussion and debate during the session because it is here that the real and actual intersection between the two regimes occurs.

2.4.1 Enforcement processes

The session commenced its deliberations in this area by first examining enforcement processes available to security holders in the four selected countries, regardless of the commencement of an insolvency proceeding in respect of the debtor. As regards two of the selected countries, the view was expressed that their enforcement processes were weak and ineffective for a variety of reasons, among which were the absence of 'self-help' remedies, the necessity for court action, delays and incompetence of and corruption in the courts, ineffective enforcement divisions of the courts, and the easy availability of 'interim' and long term protection/injunction orders for a debtor to stall enforcement. This undermined and weakened the 'currency' of secured transaction lending, resulted in high transaction costs (interest charges) and a considerable restriction/limitation on secured lending generally.

The session agreed that a strong and effective secured transactions enforcement system was of prime importance because it contributes to good corporate governance and provides a security holder with a 'credible threat' against a defaulting debtor. Further, that it was in the interests of an insolvency law regime to support a strong secured transactions enforcement system because of the likelihood of the above effects and the probability that secured property enforcement amounted to a strong sign that a debtor was in financial difficulty which may compel proactive steps by the debtor to seek an informal work out or a rescue under the insolvency law.

Now it is necessary to assume that insolvency proceedings have been invoked in respect of a security giver (debtor).

2.4.2 Effect on secured property interests of the commencement of an insolvency proceeding in respect of the debtor

At its most basic, this refers to the possibility that an insolvency regime might intervene to the extent of virtually ignoring or treating secured property interests as though they did not exist. The session was unanimous that this should not be possible because of the incalculable damage that would result to secured finance lending.

A subsidiary issue was whether, as provided by some insolvency law regimes, powers of enforcement, particularly powers of sale or disposal of secured property, should be given over to an insolvency representative (i.e. that, aside of any stay on exercising a power of stay, a secured creditor should not be permitted to exercise the power to sell).

In some jurisdictions this would not amount to much in the way of intrusion because sale enforcement powers under the secured transactions regime were vested in a public official in any event and enforcement by an insolvency representative could sometimes be quicker and more efficient than otherwise. This raises, of course, the possibility that secured creditors might indirectly use the insolvency law system as a better and easier way of enforcement and is another reason why it is desirable that a secured transactions regime should provide its own efficient enforcement mechanisms.

That aside, it was considered that an insolvency regime should follow and not disturb the processes of enforcement available under the secured transaction regime.

2.4.3 Stay or suspension of enforcement powers

This, of course, refers to imposing a restriction on the right of a security holder to commence or continue with enforcement action upon the commencement of an insolvency proceeding in respect of a security giver.

As general propositions **the session took these views:**

- **there should be a stay, even in a case of liquidation, because it may be advantageous to hold the property of the debtor together (a sale of business might still be possible, even in a liquidation context);**
- **the stay should extend to all security holders, even though a security holder may have commenced and was on the brink of completing an enforcement process; and**
- **in a clear case of liquidation the stay should be temporary only and the period of the stay should be short.**

In a case of rescue, the issues concerning the stay are more complex.

2.4.4 Stay or suspension in a case of rescue

A number of particular issues were raised in the session concerning the stay/suspension in a case of rescue. These covered such areas as the nature of the stay, how it should be imposed, to whom should it apply and the period of the stay.

On the issue of **how a stay should be imposed** there were **divided views**. Some favoured the concept of the 'automatic' stay without the need for a court order imposing the stay. However, **a majority considered that only a court should order a stay, despite problems associated with speed and the prospect that assets of the debtor might be sold or disposed of in the interim.**

On the **length of a stay** it was agreed, without descending into debate about actual length, that **it should be for a finite time and that in some jurisdictions it might be appropriate for a court to have power to extend that period (but, again, only for a finite additional period).**

2.4.5 Use of secured property during a stay or suspension

It is apparent that, apart from the bare use of secured property (such as plant and equipment), a real concern of security holders is the potential for the secured property to be sold, disposed of (particularly, for example, in relation to such property as stock in trade or inventory) or otherwise dealt with (as, for example, by using raw materials, over which security might exist, to produce finished goods). The issue is whether this should be permitted and, if so, what terms or conditions should apply to protect the security holder.

It was generally accepted by the session that **for a variety of practical and utilitarian reasons, it had to be recognised that secured property might have to be sold or otherwise dealt with during the stay period. However, if sold or dealt with in such a way that the security would be effectively destroyed, it must only be done in the ordinary course of business or otherwise sanctioned by court order and the insolvency law must apply conditions to protect and preserve the position of the secured creditor.**

2.4.6 Lifting of stay or suspension

The ability of a security holder to apply to lift a stay was regarded as important. It was generally considered that **a secured creditor should be entitled to apply to a court to lift the stay and that the insolvency law should provide the basic conditions that a secured creditor must establish before a court might order that the stay be lifted.**

2.4.7 Secured creditor involvement in approval or rejection of reorganisation plan

It is sometimes questionable to what extent an insolvency law should provide for or insist upon the involvement of secured creditors in the approval or otherwise of a plan of reorganisation. It should be recognised, however, that most jurisdictions do provide for this and, because of that, **the session took the view that**:

- **a secured creditor should have a voting right and power;**
- **secured creditors should be a separate class for voting purposes (and in some jurisdictions may be given an extra weighting or voting power);** and
- **the required percentage majority vote of a secured creditor class should be effective to bind the class (subject to a power of the court to approve or not approve the plan), based on certain standards.**

2.4.8 'New money' finance and the effect on existing secured property interests

This area concerns the need of a debtor in financial difficulty for 'working capital' finance

to maintain and continue business activity in the hope or expectancy that a ‘rescue’ plan will be devised and supported. It is often a critical issue because most financial facilities will have been terminated or suspended once the financial position of the debtor becomes known and the severing of lines of credit will impact on the ability of a debtor enterprise to maintain its business operations.

Although of significant importance, it raises problems to which there are no common or agreed solutions.

Following considerable discussion, **the session ventured the following consensus:**

- **if the raising of new money finance will affect existing secured creditors, it should be subject to either secured creditor consent or to court approval or sanction, subject to appropriate protection for existing secured creditors;** and
- **subject to the above, it could be classified as a ‘super’ priority.**

2.4.9 Priority claims and their effect on secured property interests

A final area of the ‘intersection’ concerned the application of the ‘priority’ claims provisions of an insolvency law to secured property.

The great majority of insolvency regimes favour some one or more groups of particular creditors and do so by affording their claims some priority of payment before other claims. The session did not discuss the merits or otherwise of such a policy. It was more concerned with the issue of whether such an approach might go to the extent of requiring the proceeds of the sale or disposal of secured property to be first applied in payment of such priority claims.

This, it appeared, was not uncommon in some jurisdictions, including two of the selected countries. Notwithstanding (and conceding that the issue was a policy decision for governments) the session was of the view that, **ideally, an insolvency law should not intervene and create entitlements ahead of secured creditor entitlements.**

A sub-issue within the context of priority claims refers back to the earlier discussion about ‘non-consensual’ security interests and their effect upon the ‘priority’ issue. A secured transactions regime that provides for and recognises secured property interests arising by operation of law effectively establishes such claims as ‘priorities’ in a case of insolvency because the claimants are thereby elevated above unsecured creditors and, even possibly, ‘priority’ creditors. Again, however, the session considered that this was a matter of general policy and was not an appropriate issue to debate in the context of the ‘intersection’.

2.5 The search for and the benefits of establishing a reasonable balance between the two regimes

A major purpose of the preceding exploration and discussion at the Manila meeting was to identify the areas of possible conflict or tension between an insolvency law regime and a secured transactions regime and to determine the most appropriate manner to lessen or, even, remove any such clash or conflict.

It was generally accepted that in the areas of creation and registration (or publicity) there was little or no conflict and, indeed, an insolvency law regime could benefit considerably (see, for example, the consensus summary reached regarding creation at 2.2.2 and regarding registration at 2.3.2).

However, in the area of enforcement, conflict and tension were inevitable (because, for example, any action to enforce a security would usually follow from the fact that a debtor was insolvent and coincide with a formal insolvency administration or informal workout involving the debtor). That resulted in the considerable discussion concerning the application of a stay on security enforcement action (at 2.4.3 and following), 'new money' financing (at 2.4.8) and intrusion of 'priority' or privileged claims on the proceeds of realising a security (at 2.4.9).

The discussion on those areas of tension sought an appropriate balance between the competing rights and claims (for example, that the imposition of a stay on security enforcement should be short and/or provide for a lifting of the stay in appropriate circumstances). This led to a final task in the session – to determine the effect on domestic and foreign investment or finance. Although no economic or commercial data was available to the session, **there was a consensus view that an appropriate balance would help to create a commercial and legal environment that, in turn, would impact on the availability and cost of both domestic and foreign investment and finance.**

2.6 Are there differences in the approach to the ‘intersection’ issue by common/civil law tradition jurisdictions

During the session no distinction was drawn between these traditions.

Part Three: Parallel Session on Cross-Border Insolvency

3.1 Introduction

This Report summarises discussions held during the parallel session on cross-border insolvency.

The options available for recognising cross-border insolvency administrations as well as some of the issues affecting the adoption of one or more of these regimes are outlined in the Issues Paper. These options and issues were considered in this parallel session. The Power Point presentation which was used to assist that consideration appears on the Technical Assistance website.

The delegates who participated in this session are listed in the annexure "C" to this Report.

3.2 Options for Recognition of Insolvency Administrations

There are a number of options available to facilitate the recognition of cross-border insolvency administrations. At the outset of the session those options for recognition of insolvency administrations were outlined and discussed. To a large extent the discussions followed the Issues Paper. This Report should be read in conjunction with the Issues Paper with detailed attention in the Report being confined to elaborating aspects of some of these options.

The following options were explained and discussed:

- comity (the body of rules which States observe towards one another from courtesy or mutual convenience, although they do not form part of international law[1]);
- exequatur (the civil law equivalent of comity, defined as a written official recognition and authorisation of a consular officer, issued by the government to which he or she is accredited[2]);
- recognition of foreign judgments;
- unilateral discretionary legislation (for example, the draft Filipino legislation);
- unilateral mandatory legislation (for example, the Australian legislation);
- bi-lateral legislation (for example, the treaty between Singapore and Malaysia);
- multi-lateral or regional treaty legislation (for example, the Nordic Convention);
- economic union legislation (for example, the EC Council Regulation 1346/2000); and
- model law legislation (for example, the UNCITRAL Model cross-border Insolvency Law).

3.2.1 Comity and Exequatur

The options of comity and exequatur were only discussed briefly as they are discretionary, unpredictable in their application and, in the case of comity, not based on legislative recognition.

3.2.2 Recognition of Foreign Judgments

Legislation concerned with reciprocity of foreign judgments is not considered to be generally applicable to cross-border insolvency as such legislation is primarily concerned with enforcement of foreign judgments, not the appropriate recognition of foreign insolvency administrations. In this regard, the recognition of foreign insolvency administrations involves the recognition of a change of control of a private entity, usually in its place of incorporation whose laws govern such matters in any event, and not the recognition of a foreign legal regime as well as the enforcement of a judgment pronounced by a foreign Court.

3.2.3 Unilateral Discretionary Legislation

The current draft legislation before the Philippines Congress was cited as an example of unilateral discretionary legislation. The draft is based on section 304 of the United States Bankruptcy Code and includes safe-guards relating to the recognition of cross-border insolvency regimes, such as the necessity for the court to be satisfied that the administration is genuine and not a "sham". It was reported that generally there is a willingness in the Philippines to pursue reform in this area so as to facilitate recognition of cross-border insolvencies.

[1] J Burke Jowitt's Dictionary of English Law (1977), 377. The Issues Paper also discusses and defines comity.

[2] Black's Law Dictionary cited in New Zealand Law Commission Report No 52, Cross-Border Insolvency, paragraph 20. See also the discussion on exequatur in the Issues Paper.

Incidentally, it was noted that the recently enacted Japanese cross-border insolvency law did not include a requirement that there be a provision for recognition in the insolvency laws of the country of origin of an insolvency administration which was sought to be recognised. However, mutual recognition may be relevant to public policy considerations under the Japanese legislation.

3.2.4 Bilateral Legislation

The treaty between Singapore and Malaysia was considered. Much interest was expressed in this treaty. Participants agreed that the Singapore/Malaysia treaty may be a useful precedent for a bi or multi-lateral treaty/legislative model.

3.2.5 Economic Union Legislation

The European Union regulations in relation to cross-border insolvency recognition were discussed. Of particular note was that the European regulation provides that law of the nation of domicile of the insolvent company applied throughout the EEC once a formal administration had been commenced for that company. This entailed the application of common law in civil law countries and vice versa.

3.2.6 Model Law

The UNCITRAL model law on cross-border insolvency was described and considered. Particular emphasis was placed on the flexibility of the model law and its adaptability to accommodate local policy requirements. It was noted that the European cross-border insolvency regulation embodied a significant amount of content from the UNCITRAL model law. Additionally, a number of countries have adopted modified versions of the UNCITRAL model cross-border insolvency law including:

- South Africa;
- Mexico;
- Japan;
- Eritrea; and
- within Yugoslavia, Montenegro.

In the United States a new Chapter 15 is being proposed for the Bankruptcy Code which is based on the UNCITRAL model law. The United Kingdom, Australia and New Zealand are also considering adopting the model law.

3.2.7 Multilateral Treaty

The Nordic Convention was discussed very briefly. Though it has been in place for decades, it was noted that there is little documentation or anecdotal evidence of its operation.

3.2.8 Unilateral Mandatory Legislation

The relevant legislation in Australia is a rare example of the above type of legislation that contains an inbuilt requirement for mandatory recognition and assistance. This is not, however, universal, because mandatory recognition is only required of cross-border cases originating in certain prescribed countries. In the case of all other countries, recognition is discretionary, and to this extent the Australian legislation is similar to all other unilateral discretionary legislation. There was little discussion about this option.

3.3 Issues affecting the Recognition of Cross-Border Insolvency Administrations

Insolvency law, as with most law, is domestic in the sense that the geographic extent of its operation depends upon the jurisdiction of a nation’s legislature. This limitation applies notwithstanding that the operation of a country’s insolvency law may well impact upon the commercial operations of a company which does business in a number of countries.

For the most part, legislation concerned with recognition of insolvency law regimes in such circumstances does not intrude upon the operation of the domestic insolvency law of any of these countries. Rather it is concerned with harmonising their application to the administration of the affairs of a company which operated in each of them.

Whilst the operation of such legislation may be limited in this way, there is a number of in principle objections as well as practical difficulties to its adoption including, in the case of in principle objections, sovereignty and the need for reciprocity.

A threshold issue which was raised was whether, given the way in which foreign investment was made in each of the selected countries, there was a need for a regime under which cross-border insolvency administrations were recognised.

Action: Determine the modes of conduct of foreign business in the subject countries.

3.4 Sovereignty

During the inception mission it became apparent that there are concerns about adopting legislation which would confer status within the country of the judicial acts of another country which concerns are based upon the desire and need to maintain a country’s sovereignty.

A detailed explanation of the issue of sovereignty was given to the session from the

perspective of Thailand. At the outset Dej-Udom Krairit, the local consultant for Thailand, noted that, in considering the issue of sovereignty, regard needed to be had to the general cross-cultural differences between the East and the West. The following fundamental values and attitudes underpin eastern culture:

- friendliness and mutuality;
- a long-term view;
- non-litigious; and
- a preference for absence of public or unrehearsed debate.

These matters need to be taken into account when dealing with legal and business issues and, in particular, when advancing any proposal for the recognition of cross-border insolvency administrations in the context of this Technical Assistance.

It is also necessary that the difference between common law and civil law systems should be recognised as it affects the mutual recognition of foreign judgments. Another relevant factor in Thailand is that there is no separation between the State and judiciary (the judiciary represents the King at all times). This makes the recognition of foreign judgments in Thailand fraught with difficulty. Indeed participants were only aware of one case where the Thai courts had recognised foreign laws. The case was decided under the laws of Singapore.

Beyond these matters recent Thai history needs to be understood to explain the strong Thai concept of sovereignty. The following events are amongst those that had informed this concept and the strength of opinion which existed in relation to the importance of sovereignty and its maintenance:

- the loss of lands of the Thai Kingdom including in Laos, Cambodia and Malaysia to the French and British;
- the loss of the "Temple Case" in the International Court of Justice; and
- recent adverse experience of International Monetary Fund indirect control during the "Asian Crisis".

The main hope for cross-border insolvency law reform in Thailand lay in mutual recognition of such laws.

It was reported that the attitude to sovereignty in Indonesia is similar to the Thai attitude. A foreign judgment cannot be enforced in Indonesia. It was noted, however, that the New York Convention on Arbitration is a treaty to which Indonesia is a party and that it provides for recognition of arbitral awards. However, according to the Indonesian participants, whilst that may permit the recognition of awards as a matter of theory, such recognition is not necessarily reflected in the practice of the Indonesian judiciary.

Participants from the Philippines said that there was an increasing willingness, from the Philippines perspective, to be part of the global economic community and therefore issues of sovereignty would not necessarily be a major barrier to cross-border insolvency law reform. Similarly, participants from Korea reported that, irrespective of traditional concerns about sovereignty, it was acknowledged that the dictates of modern trade and commerce required a scheme under which cross-border insolvency administrations could be recognised.

3.5 Reciprocity

It was agreed by participants that reciprocity would be an essential ingredient of any cross-border insolvency law reform proposal if it were to be successfully promoted in those selected countries where there was presently resistance to such reforms.

The consensus of the session was that:

- **the recognition of a foreign insolvency regime would be dependant upon mandatory reciprocal recognition (for example a treaty between the ASEAN countries); and**
- **for there to be mutuality of recognition, confidence in the judicial, legislative and administrative procedures of the other selected countries would be imperative (an understanding of such procedures was identified as a necessary starting point to building such confidence).**

There was much interest expressed in the treaty between Singapore and Malaysia as providing a possible model for other like arrangements in the Asian region.

Action: Explore the genesis and gestation of Singapore/Malaysia treaty provisions for cross-border insolvency mutual recognition.

3.6 Protection of Local Creditors

The two issues considered by participants in assessing whether any regime for recognising foreign insolvency should provide protection for local creditors were:

- whether local creditors should enjoy preferential treatment from the local assets of an insolvent multi-national company; and

- whether laws conferring preferential treatment on local creditors can impact upon a re-organisation, for example the inhibition of the sale of assets as part of a multi-national package.

The need to prefer local creditors was not generally perceived to be a major issue in the context of any proposal to facilitate cross-border insolvency administrations. Participants reported that local creditors were not preferred under the insolvency laws of their respective countries. It was agreed that certain categories of institutions such as banks and insurance companies may have to be "ring-fenced" for the protection of local creditors. However, this was not seen as a significant barrier to law reform.

3.7 Economic Benefit Consideration

The identification of an economic rationale for law reform was agreed to be, prospectively, a critical factor in obtaining support from the legislature, judiciary and finance sectors for cross-border insolvency law reform. The session considered the New Zealand Law Reform Report on Cross-Border Insolvency which included an examination of a number of economic factors applicable to the case for reform in New Zealand being:

- the bulk of New Zealand's national income is derived from overseas trade;
- there is a significant level of foreign investment in New Zealand as:

  –95% of shareholdings in banks, and

  –61% of the value of the share market,

  is held by foreigners;
- the level of international investment in New Zealand far outweighs the level of New Zealand investment abroad;
- the top ten New Zealand companies are predominantly foreign owned;
- there has been a large recent flow of new foreign investment into New Zealand; and
- there is a high level of foreign debt owed by New Zealanders[3].

Participants were not able to provide information on their own countries similar to to that detailed in the New Zealand Law Commission report. All agreed that verified data would be useful to gather and could be used as a basis for advocating reform. It was noted that cross-border insolvency law reform did not necessarily enjoy a high priority on governmental law reform agendas. Therefore, a compelling economic case would assist in bringing about a higher priority.

Action: Investigate the extent of the economic interdependence of the four selected countries.

Action: Investigate the extent to which the economies of each of the selected countries is dependent upon foreign investment, whether by way of equity or debt, and foreign trade.

Action: Gain empirical evidence of the impact of effective insolvency laws on the decision making of foreign investors.

The participants were of the view that such empirical evidence or case studies would assist in supporting the case for reform.

3.8 Statement of Principles – A Regional Cooperative Approach

After canvassing the issues discussed above it became apparent that a multi-lateral regional co-operative approach rather than unilateral legislation, was the preferred approach. A treaty or a similar device was identified as the appropriate means of bringing about reform.

The session agreed that it would be desirable to work towards a regional cooperative approach to recognition of cross-border insolvency administrations. The following principles were agreed:

- **that regional cooperation may be facilitated by an addendum to an existing regional treaty such as those applying within ASEAN; and**
- **that parties should be permitted to reserve their position with a right to opt in within a prescribed period.**

Again it was agreed that it would be useful to understand:

- the genesis of the agreement between Singapore and Malaysia; and
- the benefits which have accrued to each as a result of the agreement.

3.8.1 Agreed Actions:

The following actions were identified.

Action: An analysis should be undertaken of the common basic elements which should be found in national insolvency laws and procedures for consideration by governments of selected countries.

[3] New Zealand Law Commission Report No 52, Cross-Border Insolvency, paragraphs 90 to 100.

Part Four: Parallel Session on Informal Work outs

4.1 Introduction

This Report summarises discussions held during the parallel session on informal work outs. The session examined the issues raised in the Issues Paper as expanded by a power point presentation which appears on the Technical Assistance website. At the end of the sessions there was a reasonable consensus amongst the participants which was summarised in another power point presentation given to the wider group at the conference. A copy of that presentation appears on the Technical Assistance website.

4.2 Participants

Martin Brown chaired the sessions.

Mr Felix Soebagjo, the local consultant for Indonesia and Mr Kyu Sang Chung, the local consultant for Korea assisted in the conduct of the sessions.

Also present for considerable periods providing valuable input were Simjen de Ranitz from INSOL and Lampros Vassiliou from Allens Arthur Robinson.

The delegates who participated in the informal work out parallel session are listed in Annexure "C" to this Report.

4.3 Presentation

A power-point presentation was given and was used as the focus for discussion. The following topics were canvassed:

- review of the principles of informal workouts;
- whether the informal workout procedures within the four selected territories had developed as a response to a systemic problem, and whether procedures would require to be revised for more "normal" times;
- whether there was a role in informal procedures for central authorities;
- whether it was necessary to enable an informal process to be effective for there to be credible alternative formal procedures, or incentives for both creditors and debtors to participate in the process;
- whether it was desirable to develop and employ "rules" to govern the process and, if so, how those rules would be applied and compliance assured;
- how issues concerning competing creditor interests should be addressed;
- whether mediation or some other informal deadlock resolution procedure was necessary or desirable;
- whether an informal process would benefit from the possibility of a fast track conversion to a formal process and if so, what were the practical considerations in such a conversion; and
- what were the issues to be addressed in considering a regional or global approach to informal work outs.

4.4 Review of the principles of informal work outs

4.4.1 Common principles

It was noted by delegates that three of the selected countries had a set of principles governing informal workouts. For the fourth selected country, there were not yet formal principles but there was general practice which tended to follow the same guidelines. It was further noted that these principles had been laid down either by or with the strong support of the central authorities in each country. There were, of course, differences between the various sets of principles, but also common principles, which were thought by delegates to be good practice in this area.

These include:

- debtors and major financial creditors should enter into a standstill agreement during the period of which creditors will agree not to enforce their claims and debtors will agree not to deal with assets other than in the ordinary course of business;
- there should be a process to co-ordinate the interests of creditors so that is would not be necessary for all creditors, particularly in a larger work out, to be represented in the day to day negotiations. This co-ordination could take many forms, but was usually through the formation of a Creditor Committee or Working Group. It was noted by delegates that this group did not usually have the capacity to bind other creditors, but could make recommendations and their

recommendations were often persuasive with other creditors. The formation of this group was, therefore, usually an important early step in a successful work out;

- there needed to be provisions for the company to obtain working capital. It was noted by delegates that this was often a difficult area within the negotiations around an informal work out. Whilst the promulgated principles in the selected countries tended to suggest such working capital should be given priority over existing debt, this was difficult to implement in practice as such priority required to be agreed by negotiation between creditors rather than statute;
- the debtor should provide all relevant financial information in a timely manner. This information should be kept confidential by creditors, and should include full disclosure of all assets and liabilities of the debtor, relevant related party transactions, and information on the historical and projected future operating performance of the debtor; and
- the work out should result in a proposal to resolve the financial difficulties of the debtor in a manner which was sustainable on reasonable assumptions of future events and in the interests of the debtor, creditors and the national economy as a whole.

4.4.2 Common Issues

In considering these principles, delegates noted that there were a number of common issues which had been experienced in many instances and which cast a question mark over the appropriateness of informal work out processes.

These included:

- Lack of trust between creditors, particularly in larger work outs where creditors operate from a variety of cultures. This resulted in too many creditors wanting to be on the Working Group and that Group thereby becoming unwieldy.
- This problem was considered to be particularly an issue when the creditors involved a number of domestic financiers and a number of international financiers. The differences in approach taken by the two groups (one favouring consideration of local economic benefit issues and the other favouring a more expedited, market driven solution) often led to conflict between creditors on issues not directly related to the affairs of the borrower, and which were therefore more difficult to address.
- Many creditors not engaging in the process at a high enough level within the creditor. This resulted in junior staff attending meetings but decision makers not becoming involved until the process was well advanced, and then sometimes not agreeing with the direction being taken, which in turn resulted in considerable loss of time and unnecessary cost.
- Difficulty in getting the debtor to meet the costs necessarily incurred in the process, which then led to delays in the action by advisers and again delays in the completion of the process.
- Generally, the process taking longer than was optimal, for reasons discussed above and also because of different negotiating positions and outcomes desired by creditors.
- Restructuring proposals being prepared on the basis of assumptions as to future events which prove, with the passage of time, to have been unrealistically optimistic. This results in the debtor being unable to service even the restructured debt load and the need for further restructuring.

It was considered by the delegates that these, and other similar issues experienced by debtor, creditors and advisers in the informal work out processes, needed to be addressed in seeking to develop a framework for informal work out on a regional basis.

4.5 Systemic problem or solution for normal times: is there a role for Central Authorities?

It was generally considered that the structured informal work out processes introduced into three of the selected countries, had been established in response to a systemic crisis, where the stability of the financial system was at risk. However, delegates were of the view that the processes introduced would, in the main, also be appropriate for "normal" times, although there was some discussion as to what was meant by "normal times", with some delegates being of the view that "normal times" would not return to the region in the foreseeable future.

The view was expressed that informal work outs should be encouraged as a way of dealing with credit crises, but some delegates were of the view that any applicable laws and regulations introduced to facilitate dealing with such crises should be time bound so as to ensure that they remained appropriate to developing economic circumstances.

Most of the delegates expressed the view that central authorities would continue to have an important role in setting guidelines for informal work out either through development of processes by which such work outs should be managed, or through

actively controlling the behaviour of the financial sector by policy decision as to market segments requiring support, or general tightening or loosening of provisioning rules.

Conversely, some delegates expressed the view that during "normal times" a truly informal work out process should prevail ie not one in which central authorities play an active role.

4.6 Is a credible threat of formal insolvency proceedings necessary to encourage adoption of an informal approach?

Most delegates were of the view, when debtors and creditors agreed that a restructuring was required, they would be attracted to the informal work out approach because of the greater flexibility, reduced cost and potential for a faster solution that such an approach offered. However, many delegates remained concerned that in many instances where the business or economy would benefit from such an approach, there was fundamental disagreement between debtors and creditors as to whether a restructuring was required at all, and in those circumstances, the informal approach would be more difficult to sustain. The opinion was expressed that in these circumstances, the credible threat of an alternative forced insolvency process (or direct intervention by central authorities (an approach not generally favoured by delegates)) would be necessary to ensure the active engagement of both debtors and creditors to the restructuring process.

Concern was expressed that, without such an alternative, there was often strong commercial reason for either debtors or creditors to take an approach which was counter to an expedited solution which fairly balanced the interests of all parties.

Particular concern was expressed that the generally accepted lack of certainty in the legal process in one or more of the selected countries was a major impediment to any work out process, be it formal or informal.

Delegates considered it would not be necessary to offer formal incentives to debtors and creditors to enter into informal work outs, but that they did identify the taxation consequences of restructuring as an issue that required consideration, particularly to ensure that any benefits which are available to debtors and creditors from a formal approach should be available from the informal approach as well.

4.7 Is it desirable to introduce rules to govern the informal work out process? If so, how are those rules to be applied and compliance assured?

The view of delegates was that one of the major benefits of the informal work out process was its flexibility. Consequently, the consensus view was that the informal process should be kept as informal as possible.

Delegates recognised their previously expressed view that there was a continuing role for the central authorities in the informal work out process, but their preferred view was that there was not a need for those authorities to drive the process through detailed rules and regulations in areas such as timetables, structure of agreements etc.

4.8 Competing creditor interests

Delegates addressed the issues of how to balance the diverse range of interests and desired outcomes that is usually found in a significant restructuring. It was noted that there were often significant differences of opinion between the various creditor groups as well as between creditors and the debtor. Particular focus of the discussion was the differences in approach taken by banks which were domestic to the relevant country and those international financiers involved in particular operations.

Delegates noted that balancing these competing interests was at the heart of any informal work out and therefore it was neither appropriate nor practical to try to legislate for all possible circumstances.

There was a general consensus amongst delegates that fairness and equity between creditors and between the debtor and its creditors was the principle underlying satisfactory informal work outs. Consequently, it was important that the circumstances surrounding the negotiation process, including any framework set down by central authorities, encouraged such an approach rather than excessively favouring one group against others.

In addition, it was noted that in one of the selected countries, the government, through its debt restructuring authority, would purchase the debt of any creditor who would not co-operate with the informal process. It was thought by delegates from other countries that this approach would not win universal agreement.

4.9 Resolution of deadlocks

Felix Soebagjo led a discussion on the appropriateness of mediation as a way of breaking deadlocks between debtor and creditors or amongst creditors by explaining recent developments in this area in Indonesia.

Delegates expressed considerable interest in the mediation process and how it could be used in the informal work out process but there was a general agreement that this should only be one of the alternatives to the negotiated outcome, not necessarily a mandatory one.

A significant issue requiring further discussion in this area was how to ensure the credibility of the mediator as it was necessary for a mediation process to be successful that all parties had absolute trust in the integrity and capability of the mediator.

4.10 Conversion to a formal reorganisation

Delegates were generally of the view that, as part of an environment where the formal insolvency alternative was a credible threat, a simple process to convert an informal work out to a formal re-organisation was desirable. This would then be useful either in situations where there is an impasse between the parties and one wishes to formalise the process, or where agreement is reached in the informal process, but then formalisation is required to ensure the legal obligations of all relevant parties are clarified. It was also considered that such a simple process would help ensure the compliance by dissident creditors with the majority view, considered by some delegates to be a major issue in the informal work out approach.

Delegates did, however, express concern to ensure that any fast track process retained sufficient safeguards of the interests of minority parties to ensure that the over-arching principle of fairness to all would be maintained.

4.11 Regional cooperation

Delegates expressed the view that **there was sufficient commonality amongst the current informal work out processes operating in the selected countries, either under a regulated regime or in a less structured approach, for cooperation in setting guidelines for informal work outs on a regional basis to be a realistic goal.**

The group recognised that there were a number of issues which would work against such an approach, notably in the areas being addressed under this Technical Assistance, and particularly the concerns surrounding the maintenance of sovereignty.

Nonetheless, **delegates concluded that the increased awareness of the benefits of good corporate governance encouraged such regional approaches and cooperation.**

The view expressed by the majority of the delegates was that this initiative was one considered better driven by the private sector rather than central government although it was recognised that endorsement by government would be essential. Banking associations, stock exchanges and capital markets generally, legal, accounting and trade organisations were all ones which delegates considered had a role to play in promulgating regional cooperation on these issues.

A view was expressed that the initiative was one which required an appropriate authority to be seen to be encouraging this process, and that, for the initiative to work within the region, that authority needed to be one which was generally considered to be associated with the region, and not closely linked with any particular interest group involved in the informal work out process. ADB was put forward as a name to be considered on a preliminary basis.

There was also general consent that the principles developed by INSOL, and as explained to delegates by Simjen de Ranitz, could form a useful starting point for the development of principles appropriate to the Asian region.

Annexure "A"

Participants

Name	Country	Title/Organisation
Mr Samuel Tobing	Indonesia	Chief Operating Officer, Jakarta Initiative Task Force
Mr Mudjiharno	Indonesia	Legal Group Head of PT.,Bank Rakyat Indonesia (Persero)
Mrs Gayatri Rawit Angreni	Indonesia	Compliance Director of BRI, Bank Rakyat Indonesia (Persero)
Mr Ricardo Simanjuntak	Indonesia	Receiver/Kurator & Administrator, Gani Djemat & Partners
Mrs Ari Wahyuni	Indonesia	Ministry of Finance , Republic of Indonesia
Mr Krishna Daswara	Indonesia	Division Head, The Indonesian Bank Restructuring Agency
Ms Rohmawati Parwinarta	Indonesia	Group Head Chairman Office, The Indonesian Bank Restructuring Agency
Ms Lucy Susiana Noor	Indonesia	Group Head Chairman Office, The Indonesian Bank Restructuring Agency
Mr Yong Ho Oh	Korea	Executive Director, Korea Asset Management Corp
Mr Shin Choong-Tae	Korea	General Manager & Head of Restructured Corporate Loan Management Department, Korea Asset Management Corp
Mr Seung Tae Lee (Paul)	Korea	Manager, International Business Department, Korea Asset Management Corporation
Mr Sung-Kyu Lee	Korea	Director, International Legal Affairs Division, Ministry of Justice
Mr Bong Hee Kang	Korea	Executive Vice President, Korea Federation of Banks
Mr. Norberto C. Nazareno	Philippines	Junior President, Philippine Deposit Insurance Corporation
Hon. Oscar S. Moreno	Philippines	Chairman, Committee on Economic Affairs
Atty Rosalinda U. Casiguran	Philippines	Executive Vice President & Chief Operating Officer, Philippine Deposit Insurance Corporation
Atty Cesar L. Villanueva	Philippines	Associate Dean for Academic Affairs, Ateneo de Manila University Law School
Hon. Lilia R. Bautista	Philippines	Chairperson, Securities and Exchange Commission
Atty Monico V. Jacob	Philippines	Chairman, CEO's Inc.
Mr John M. Ryan	Philippines	Partner, Sycip Gorres Velayo & Co
Atty Jose German M. Licup	Philippines	President, Association of Bank Lawyers of the Philippines
Prof. Danilo L. Concepcion	Philippines	Associate Dean, University of the Phillipines
Mr Fortunato B. Cruz	Philippines	Principal, Fortune Managers Corporate Recovery Services
Atty Tristan A. Catindig	Philippines	Managing Partner, Catindig Tiongco & Nibungco Law Office
Atty Manuel D. Yngson	Philippines	Junior President, Insolvency Law Association of the Philippines
Atty Melpin A. Gonzaga	Philippines	Deputy General Counsel, Office of the General Counsel Legal Services
Atty Rolando A.Q. Agustin	Philippines	Deputy Director, Department of Commercial Banks
Mr Fernando B. Caballa	Philippines	Acting Deputy Director, Department of Commercial Banks
Atty Yolando C. Amurao	Philippines	Manager II, Supervisory Reports and Studies Office
Atty Cheselden George V. Carmona	Philippines	Task Manager, Insolvency Law Reform
Mr Daniel J. Fitzpatrick	Philippines	Insolvency Expert
Mr Tumnong Dasri	Thailand	Director, Corporate Debt Restructuring Group, Bank of Thailand
Mr Lampros Vassiliou	Thailand	Partner, Allens Arthur Robinson

Name	Country	Title/Organisation
Mr Suchart Thammapitahkul	Thailand	Vice President, The Law Society of Thailand; Managing Partner, Somnuch & Suthee
Mr Thaweelap Rittapirom	Thailand	Vice President, Bangkok Bank Public Company Limited
Mr Kraisorn Singharajwarapan	Thailand	Official Receiver, Division 5, Legal Execution Department
Mr Ronald Winston Harmer	International Consultant	Blake Dawson Waldron
Mr Richard Fisher	International Consultant	Blake Dawson Waldron
Mr Geoffrey Dabb	International Consultant	Commonwealth Attorney-General's Department
Mr Martin Brown	International Consultant	PricewaterhouseCoopers
Mr David Anthony White	International Consultant	PricewaterhouseCoopers
Mr Michael Sloan	Australia	Blake Dawson Waldron
Mr Felix Soebagjo	Local Consultant	Soebagjo, Jatim, Djarot
Atty Frances Lim	Local Consultant	Abello Concepcion Regala & Cruz
Mr Kyu Sang Chung	Local Consultant	Bae, Kim & Lee
Mr Dej-Udom Krairit	Local Consultant	Dej-Udom & Associates
Ms Jenny Clift	Austria	Legal Officer, Secretariat of the United Nations Commission on International Trade Law (UNCITRAL)
Mr Sijmen H. de Ranitz	The Netherlands	Advocaat, De Brauw Blakstone Westbroek
Mr Tsutsomu Kuribayashi	Japan	Attorney-at-Law, ASAHI Koma Law Offices
Mr David Adams	Indonesia	Partner, PricewaterhouseCoopers
Mr Charles Fransisco	Philippines	Partner, PricewaterhouseCoopers
Ms Cosette Canilao	Philippines	Associate, PricewaterhouseCoopers

Annexure "B"

Intersection between Secured Transactions and Insolvency

Name	Country	Title/Organisation
Mr Ronald Winston Harmer	International Consultant	Blake Dawson Waldron
Mr Mudjiharno	Indonesia	Legal Group Head of PT, Bank Rakyat Indonesia (Persero)
Ms Lucy Susiana Noor	Indonesia	Group Head Chairman Office, The Indonesian Bank Restructuring Agency
Mr Yong Ho Oh	Korea	Executive Director, Korea Asset Management Corp
Mr Seung Tae Lee (Paul)	Korea	Manager, International Business Department, Korea Asset Management Corporation
Mr Noberto C. Nazareno Jr	Philippines	Junior President, Philippine Deposit Insurance Corporation
Atty Cesar L. Villanueva	Philippines	Associate Dean for Academic Affairs, Ateneo de Manila University Law School
Atty Jose German M. Licup	Philippines	President, Association of Bank Lawyers of the Philippines
Atty Manuel D. Yngson	Philippines	Junior President, Insolvency Law Association of the Philippines
Atty Melpin A. Gonzaga	Philippines	Deputy General Counsel, Office of the General Counsel Legal Services
Mr Kraisorn Singharajwarapan	Thailand	Official Receiver, Division 5, Legal Execution Department
Mr David Anthony White	International Consultant	PricewaterhouseCoopers
Atty Francis Lim	Local Consultant	Abello Concepcion Regala & Cruz
Mr David Adams	Indonesia	Partner, PricewaterhouseCoopers

Annexure "C"

Cross-Border Insolvency

Richard Fisher chaired the session on cross-border insolvency. Dej-Udom Krairit, the local consultant for Thailand, assisted in the conduct of the session. Geoffrey Dabb, the international treaties expert for the Technical Assistance, was also present for the entirety of the sessions. Also present for considerable periods providing valuable input were the following participants:

- Jenny Clift from UNCITRAL;
- Simjen de Ranitz from INSOL;
- Tsutomu Kuribayashi, the representative of the Japanese Law Society; and
- Lampros Vassiliou, Partner, Allens Arthur Robinson, Bangkok.

The participants from the four selected participating countries for the session are listed in the table below:

Name	Country	Title/Organisation
Richardo Simanjuntak	Indonesia	Indonesian Bank Restructuring Agency
Mrs Ari Wahyuni	Indonesia	Department of Finance, Republic of Indonesia
Mr Krishna Daswara	Indonesia	The Indonesian Bank Restructuring Agency
Mr Sung-Kyu Lee	South Korea	Ministry of Justice, Republic of Korea
Hon Lilia R. Bautista	Philippines	Chairperson, Philippines Securities & Exchange Commission
Prof. Danilo L. Concepcion	Philippines	Professor, Associate Dean, College of Law, University of the Philippines
Mr Daniel J. Fitzpatrick	Philippines	Insolvency Expert
Mr Suchart Thammapitahkul	Thailand	Vice President of The Law Society of Thailand
Atty. Rolando A.Q. Agustin	Philippines	Deputy Director, Department of Commercial Banks
Hon. Oscar S. Moreno	Philippines	Congressman, Chairman of the Committee on Economic Affairs
Atty. Yolando C. Amurao	Philippines	Bangko Sentral ng Pilipinas

Annexure "D"

Informal Workouts

Martin Brown chaired the sessions.

Mr Felix Soebagjo, the local consultant for Indonesia and Mr Kyu Sang Chung, the local consultant for Korea assisted in the conduct of the sessions.

Also present for considerable periods providing valuable input were Simjen de Ranitz from INSOL and Lampros Vassiliou from Allens Arthur Robinson.

Name	Country	Title/Organisation
Mr Samuel Tobing	Indonesia	Chief Operating Office, Jakarta Initiative Task Force
Mrs Gayatri Rawit Angreni	Indonesia	Bank Rakyat Indonesia, PT
Mr Choong Tae Shin	Korea	Korea Asset Management Corporation
Mr Bong-Hee Kang	Korea	Korea Federation of Banks
Atty Rosalinda Casiguran	Philippines	Philippine Deposit Insurance Corporation
Atty Monico Jacob	Philippines	Chairman, CEO's Inc
Mr Fortunato Cruz	Philippines	Fortune Managers Corporate Recovery Services
Mr Fernando Caballa	Philippines	Acting Deputy Director, Department of Commercial Banks
Atty Yolando Amuraol	Philippines	Bank of Central NG Philippines
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