

**BOARD
OF
DIRECTORS**

ASIAN DEVELOPMENT BANK

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**TECHNICAL ASSISTANCE TO THE KYRGYZ REPUBLIC
FOR PREPARING THE SECOND PHASE OF THE CORPORATE
GOVERNANCE AND ENTERPRISE REFORM PROGRAM
(FINANCED FROM THE JAPAN SPECIAL FUND)**

The attached Report is circulated for the information of the Board. The President approved the technical assistance on 28 September 2000.

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ASIAN DEVELOPMENT BANK

TAR:KGZ 34167

**TECHNICAL ASSISTANCE
(Financed from the Japan Special Fund)**

TO THE

KYRGYZ REPUBLIC

FOR PREPARING THE

SECOND PHASE OF THE

CORPORATE GOVERNANCE

AND

ENTERPRISE REFORM PROGRAM

September 2000

CURRENCY EQUIVALENTS

(as of 14 September 2000)

Currency Unit	–	Som
Som1.00	=	\$0.0204
\$1.00	=	Som49.05

ABBREVIATIONS

ADB	–	Asian Development Bank
CGERP	–	Corporate Governance and Enterprise Reform Program
EBRD	–	European Bank for Reconstruction and Development
IAS	–	International Accounting Standards
JSC	–	joint stock company
METI	–	Ministry of External Trade and Industry
MOF	–	Ministry of Finance
PESAC	–	Private Enterprise Sector Adjustment Credit
SME	–	small and medium enterprise
SOE	–	state-owned enterprise
SPF	–	State Property Fund
TA	–	technical assistance
USAID	–	United States Agency for International Development

NOTES

- (i) The fiscal year of the Government ends on 31 December.
- (ii) In this report, "\$" refers to US dollars.

I. INTRODUCTION

1. The Government of the Kyrgyz Republic requested project preparatory technical assistance (TA) to prepare the second phase of the Corporate Governance and Enterprise Reform Program (CGERP). The first phase supported by the Asian Development Bank (ADB) was successfully implemented during 1997-1999.¹ This TA aims to develop a program of policy, institutional, and legal and regulatory reforms to strengthen the overall economic environment, in which the Kyrgyz Republic's public and private enterprises can function efficiently.² A Fact-Finding Mission fielded in March 2000 and a subsequent Policy Consultation Mission in July 2000 firmed up understanding with the Government on the objectives, scope, and implementation arrangements for the TA. The TA framework is in Appendix 1.

II. BACKGROUND AND RATIONALE

2. In the CGERP, the Government adopted a comprehensive approach to (i) strengthen the incentives to improve corporate governance structures in both private and state-owned enterprises (SOEs); (ii) develop and implement guidelines for best practices in corporate governance, and establish statutory mechanisms for their enforcement; (iii) reduce enterprises' access to subsidized budgetary loans; and (iv) create a facilitating environment to expedite liquidation and restructuring of nonviable enterprises, and to promote rapid redeployment of viable assets. Following the implementation of the CGERP, there is greater adherence to corporate governance standards and procedures, as outlined in the Handbook on Corporate Governance, and to the Model Company Charter. While basic institutional capacity for corporate governance was established under the CGERP, enforcement of the legislation to protect the interests of all the parties involved in a corporate transaction has been weak. This is because of (i) the lack of awareness of shareholders of their rights and responsibilities; (ii) inadequate protection of minority shareholders' interests;³ and (iii) lack of disclosure and transparency of the financial status of joint stock companies (JSCs) that use old, Soviet-style accounting standards.

3. **Financial Governance.** Poor financial governance has particularly afflicted the Kyrgyz banking sector.⁴ Shareholders in a number of commercial banks interfere in the day-to-day functioning of management in lending decisions, resulting in loans to insiders and connected parties. While banking regulation and supervision have been strengthened over the last few years, weaknesses in legislation and, more importantly, in enforcement have impeded the central bank's efforts to effectively exercise its oversight functions. The poor state of financial governance in banks is confirmed by the cases of Maksat Bank, whose major shareholders instructed managers to withdraw capital with immediate effect, and Kramds Bank and Insan Bank, which were affected by shareholder interference and connected lending to powerful borrowers. Reforms needed to strengthen banking supervision are addressed under the ongoing Financial Intermediation and Resource Mobilization Program.⁵ However, legal and

¹ Loan 1546-KGZ(SF): *Corporate Governance and Enterprise Reform Program*, for \$40 million, approved on 25 September 1997.

² The TA first appeared in *ADB Business Opportunities* in May 2000.

³ An example in point is the ad hoc reorganization and renationalization of the Kyrgyz Gaz Munaizat (KGM), and the transfer of assets to a new entity Kyrgyz Munai. In the case of Kyrgyz Bakai Corporation, in an apparent effort to renationalize a profitable industry, legal proceedings have been initiated against the company for failing to pay allegedly false back taxes. Legal proceedings by a genuine creditor to protect Bakai's assets from the State Tax Inspectorate were dismissed by an Arbitration Court without explanation in October 1999.

⁴ The CGERP did not cover the financial sector.

⁵ Loan 1723-KGZ: *Financial Intermediation and Resource Mobilization Program*, for \$35 million, approved on 17 December 1999.

enforcement reforms to improve financial and corporate governance of the banking sector have yet to be undertaken, due in part to resistance from a number of powerful banks.

4. **Legal and Regulatory Reforms.** According to a recent survey on corporate governance sponsored by the European Bank for Reconstruction and Development (EBRD), investors perceive that the legal and enforcement system in the Kyrgyz Republic provides a rather limited degree of protection to their interests, as opposed to Russia (moderate protection) and Kazakhstan (reasonably comprehensive protection). The Law on Economic Partnerships and Societies is considered to be weak, necessitating the need for a new Joint Stock Company Law, which is currently being drafted. Impediments are prevalent in the judicial system. For instance, though the Law on Bankruptcy (adopted in December 1997 as part of the CGERP) and the Law on Pledge are among the most advanced legislation enacted in the Commonwealth of Independent States, their implementation and enforcement are affected by lack of awareness of liquidation and bankruptcy procedures. Issues that impede effective enforcement are (i) inefficient and time-consuming “appeals” and “supervision of appeals” processes; (ii) lack of understanding by judges of provisions in the relevant laws; (iii) discriminatory treatment meted out to foreign investors and creditors in many cases; (iv) disparities between the Civil Code and the Law on Pledge, and the general failure to fully enforce the provisions of the Law on Pledge; and (v) the failure of the judicial process to protect creditors’ interests, although the bankruptcy and pledge legislation has adequate provisions to create sufficient liquidation pressures.

5. **Enterprise Restructuring.** While the CGERP addressed the policy and legal issues relative to corporate governance and bankruptcy, it did not target enterprise restructuring. The Government identified 29 relatively large SOEs for liquidation, restructuring or rehabilitation, with support through the World Bank’s Private Enterprise Sector Adjustment Credit (PESAC) program approved in 1994. While this program provided an operational framework for enterprise restructuring, weaknesses in the financial and real sectors and policy, institutional, and regulatory constraints have limited its impact on the enterprise sector. Of the 6,000 registered enterprises, the top 80-100 firms contribute more than 70 percent of the total output produced in the economy. A small number of these firms are efficient, but many operate below capacity and incur persistent losses. Of the 536 large enterprises monitored by the National Statistics Committee, 123 are not functioning and 129 are operating well below their capacities.

6. In addition to significant excess capacity, enterprises lack financial discipline. A large number of enterprises in strategic areas such as machine building, light industry, food, and mining are bankrupt. In view of these problems, it is imperative that the viability of the nonfinancial enterprises be rapidly assessed. The assessment should focus on their financial health to identify enterprises that need to be restructured or liquidated on commercial considerations. The reform program should include (i) restructuring of viable yet inefficient enterprises; (ii) liquidation of loss-incurring enterprises; (iii) development of favorable policy, operational and regulatory conditions for formation of small and medium-size enterprises (SMEs) from the assets of the larger enterprises that are restructured; and (iv) development of a policy framework to attract domestic and foreign investments. The Ministry of External Trade and Industry (METI), which oversees the industry sector, tracks the financial health and operations of a large number of enterprises. It has identified about 100 medium-size and large SOEs⁶ and private enterprises that are in acute financial and operational distress, and in need of restructuring or liquidation support. While designing such support schemes for SOEs may be easier, enforcement of bankruptcy proceedings on private enterprises will be a complex

⁶ The state shares in the SOEs are managed by the State Property Fund (SPF), which has the mandate of privatizing state property. Given its role in finding strategic investors for SOEs, SPF has been playing a key role in enterprise restructuring as well.

process. Appropriate modalities to exert liquidation pressures through the banking sector and other creditors need to be formulated. These measures will strengthen the enterprise sector by selling nonviable assets and closing down insolvent and loss-incurring enterprises, though restructuring of enterprises is likely to have a major impact on the labor market. While there may be retrenchments and lay-offs in the short-run, the beneficial effects of enterprise restructuring in the form of improved growth and employment prospects, and subsequent poverty reduction, will be realized over the medium and long-runs. These positive and negative effects need to be carefully examined, and adequate remedial measures and incentives need to be formulated.

7. **Accounting and Auditing Standards.** Recognizing the importance of sound accounting standards, the CGERP supported measures to enhance conformity with international accounting standards (IAS). To this end, the Ministry of Finance (MOF) established a department to develop and approve accounting methodology and standards, promulgate instructions, conduct training, and license professional accounting and auditing activities. IAS have been introduced in a number of SMEs under the Accounting Reform Project financed by the United States Agency for International Development (USAID).⁷ Scores of accountants and auditors have been trained. However, there is still no concrete legal or regulatory framework to adopt and implement IAS, though MOF has passed several resolutions that stipulate conversions of accounts of all enterprises to IAS. Most of the strategic JSCs (such as Kyrgyz Energo and Kyrgyz Airlines) still follow the old Soviet-style accounting standards. This applies also to many public sector entities, including the State Tax Inspectorate.

8. **Aid Agency Support.** Subsequent to the PESAC program, there has been no major multilateral support for enterprise restructuring in the Kyrgyz Republic. The World Bank approved the Public Sector Resource Management Program in 1996 with the objective of improving resource allocation in the public sector, followed by the Financial Sector Adjustment Credit, which aimed at strengthening the financial sector. The World Bank is at present preparing a structural adjustment credit and a public sector governance reform program. EBRD has acted as a catalyst for introducing good governance in enterprises that receive EBRD credit or equity investments. USAID has supported capital market development and training of accountants to implement IAS. The understanding reached with the Government for this TA is based on close interagency coordination. The Government has requested the ADB to play a central role in the area of corporate governance. Support from the other aid agencies in the above-mentioned areas complements ADB's efforts in corporate governance.

III. THE TECHNICAL ASSISTANCE

A. Objective

9. The TA aims to strengthen corporate and financial governance standards and improve the overall efficiency of public and private enterprises in the real and financial sectors. This will be achieved by strengthening the policy, institutional and, legal and regulatory framework for (i) enforcement of corporate governance and bankruptcy procedures, (ii) enterprise restructuring to infuse financial discipline and viability, and (iii) financial disclosure and transparency.

B. Scope

10. The TA will develop a policy reform agenda for implementation under the proposed second phase of the CGERP. Building on the earlier program of assistance, the TA will

⁷ Implemented over four years and completed in August 2000.

- (i) undertake a diagnostic review of the corporate governance reforms adopted as part of the CGERP, and recommend measures to address the remaining weaknesses, particularly with regard to the enforcement of the stipulated standards and practices, and protection of investors' rights;
- (ii) develop the legal and regulatory framework to introduce and enforce better corporate governance standards and practices in commercial banks;
- (iii) develop possible alternative dispute resolution systems (e.g., arbitration);
- (iv) design and implement a rapid assessment of the financial health and viability of selected non-financial enterprises to develop plans for those that need to be restructured or liquidated on commercial considerations;
- (v) formulate modalities to encourage development of new SMEs from viable and underutilized assets of existing and restructured enterprises;
- (vi) evaluate and improve the existing accounting and auditing framework, and help prepare separate laws on accounting and professional accounting associations, guidelines for a national accounting standards board, and the licensing process for accountants, auditors, professional accounting associations;
- (vii) analyze the labor market and broader social impact of enterprise restructuring under the proposed second phase of the CGERP, and formulate policy measures to address any adverse outcomes;
- (viii) formulate a capacity building program covering the court system and judges in the area of corporate governance and bankruptcy processes, that may be supported under the proposed second phase of the CGERP; and
- (ix) estimate the structural adjustment costs resulting from the measures to be adopted as part of the proposed second phase of the CGERP.

C. Cost Estimates and Financing Plan

11. The total cost of the TA is estimated at \$830,000 equivalent, of which \$647,700 is the foreign exchange cost and \$182,300 equivalent is the local currency cost. The Government has requested ADB to finance \$700,000 equivalent, covering the entire foreign exchange cost and \$52,300 equivalent of the local currency cost. The Government will finance the balance of the local currency cost, equivalent to \$130,000, through the provision of counterpart staff and facilities. The Government has been advised that approval of the TA does not commit ADB to finance any ensuing project or program. The TA will be financed by ADB on a grant basis from the Japan Special Fund funded by the Government of Japan. The detailed cost estimates and financing plan of the TA are in Appendix 2.

D. Implementation Arrangements

12. METI will be the Executing Agency for the TA. The Corporate Development Center (CDC)⁸ under the SPF, National Bank of Kyrgyz Republic, National Securities Commission and

⁸ Established under the CGERP.

METI will be the Implementing Agencies for the various TA components. A consultative committee will be established, comprising representatives from the above agencies, the Prime Minister's Office, and the Economic Policy Department of the President's Administration. It will meet thrice to guide TA implementation: at TA inception, midterm review, and final review.

13. ADB will engage a firm, in accordance with the *Guidelines on the Use of Consultants* and other arrangements for the selection of domestic consultants, to provide a team of consultants for a total of 42 person-months, of which 17 person-months will be provided by international consultants and the rest by domestic consultants. Consultants will have expertise in the following areas: enterprise restructuring, enterprise and banking sector financial analysis, legal and regulatory framework for corporate governance, accounting and auditing framework, and poverty/social impact analysis. The simplified technical proposal approach will be used for selecting the consulting firm. The terms of reference for consulting services are in Appendix 3. The office equipment will be procured by the consultants in accordance with procedures acceptable to the Bank.

14. The TA will be implemented over a period of seven months. The consultants will prepare an inception report within two weeks of the start of services. An interim report will be submitted at the end of the second month. A draft final report incorporating all the assessments and recommendations will be submitted by the fifth month after the start of services. The final report, taking into account the comments and concerns of ADB and the Government, will be submitted within six months of TA inception. The TA is planned to commence by January 2001 and to be completed by August 2001.

IV. THE PRESIDENT'S DECISION

15. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance, on a grant basis, to the Government of the Kyrgyz Republic, in an amount not exceeding the equivalent of \$700,000 for the purpose of preparing the Second Phase of the Corporate Governance and Enterprise Reform Program, and hereby reports such action to the Board.

TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions and Risks
Goal <ul style="list-style-type: none"> To enhance corporate governance and efficiency in non-financial and financial enterprises. 	<ul style="list-style-type: none"> Increased profitability; reduction in excess capacity; reduced incidence of governance failures in the banking sector; and speedier enterprise restructuring. 	<ul style="list-style-type: none"> Data from the Ministry of External Trade and Industry (METI); National Bank of Kyrgyz Republic (NBKR); Statistics Committee; and Arbitration Courts. 	<ul style="list-style-type: none"> No political interference Lack of participation of investors in the restructuring process; adverse labor market and social impact of enterprise restructuring.
Purpose <ul style="list-style-type: none"> To strengthen the policy, institutional, and legal and regulatory framework for (i) enforcement of corporate governance and bankruptcy procedures; (ii) enterprise restructuring to infuse financial discipline and viability; and (iii) financial disclosure and transparency. 	<ul style="list-style-type: none"> Increase in the number of bankruptcy cases. Reduction in the number of appeals. Increase in the incidence of enterprise restructuring. Enhanced compliance with financial disclosure rules. 	<ul style="list-style-type: none"> Data from Arbitration courts; METI; NBKR; National Securities Commission; and State Property Fund. 	<ul style="list-style-type: none"> Acceptance of alternative settlement solutions by the judiciary; and willingness to implement these solutions Assumption that civil service reforms will provide incentives in the judiciary. Sound sequencing of reforms - more complex reforms should be introduced later, so as not to derail the reform process.
Outputs <ul style="list-style-type: none"> Recommendations for increasing adherence to corporate governance standards in financial and non-financial enterprises. Alternative legal options to strengthen enforcement of bankruptcy procedures. Identification of enterprises for restructuring. Modalities for enterprise restructuring 	<ul style="list-style-type: none"> Company charters to be in line with model charter, annual general meetings, and election of directors and managers to be carried out properly. Institutions that can provide same services as arbitration courts to function effectively. 	<ul style="list-style-type: none"> TA reports. TA review missions. TA reports & METI data. 	<ul style="list-style-type: none"> No political interference. Broader constitutional difficulties relative to certain alternative legal options.
Activities <ul style="list-style-type: none"> Review of existing operational and legal 		<ul style="list-style-type: none"> TA progress reports. 	<ul style="list-style-type: none"> Consulting services provided as contracted

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

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions and Risks
<p>framework for corporate governance and bankruptcy procedures</p> <ul style="list-style-type: none"> Review of the current state of governance in the banking sector Formulate alternative legal options to strengthen enforcement of bankruptcy procedures Identify modalities for enterprise restructuring Evaluate inconsistencies across legislation to prevent flexible interpretation of laws Formulate recommendations for accounting/auditing reforms Formulate remedial measures to ameliorate adverse labor market and social impact of enterprise restructuring 		<ul style="list-style-type: none"> TA review missions Data from Government counterparts Review of banking sector data Reports of Annual General Meetings of major financial and non-financial enterprises Any policy, operational and regulatory changes introduced as a result of the policy dialogue during TA implementation 	<ul style="list-style-type: none"> Counterpart contributions provided as agreed. Availability of good quality data, and full cooperation from all the concerned enterprises and Government agencies Assumption that liquidation pressures could be exerted easily on unviable and insolvent private sector enterprises through the court system
<p>Inputs</p> <p>Consultants.</p> <p>Counterpart staff.</p>	<p>17 person-months of consulting services by international consultants 25 person-months of services by domestic consultants.</p> <p>Full-time counterpart staff.</p>	<p>TA review missions.</p>	<p>Suitable consultants can be identified on time.</p> <p>Suitable counterpart staff can be identified and made available</p>

COST ESTIMATES AND FINANCING PLAN
(\$)

Item	Foreign Exchange	Local Currency	Total Cost
A. Asian Development Bank Financing (Japan Special Fund)			
1. International Consultants			
a. Remuneration (17 person- months) & per-diem	486,200	0	486,200
b. International Travel	40,000	0	40,000
2. Domestic Consultants - Remuneration (25 person-months)	0	37,500	37,500
3. Translation, Communication and Office Equipment	25,000	0	25,000
4. Seminars and Workshops	0	10,000	10,000
5. Representatives for Contract Negotiations	10,000	0	10,000
6. Contingencies	86,500	4,800	91,300
Subtotal (A)	647,700	52,300	700,000
B. Government Financing			
1. Office/Logistical Support	0	70,000	70,000
2. Counterpart Staff, and Administrative and Translation Support	0	60,000	60,000
Subtotal (B)	0	130,000	130,000
Total	647,700	182,300	830,000

Source: Staff estimates.

OUTLINE TERMS OF REFERENCE FOR THE PROPOSED CONSULTING SERVICES

A. Introduction

1. It is proposed that a total of 17 person-months of international consulting services be engaged to implement the following terms of reference. The team will include (i) enterprise restructuring specialist and team leader (6 person-months), (ii) financial analyst (4 person-months), (iii) legal/regulatory expert (4.5 person-months), (iv) accounting/auditing expert (1.5 person-months), (v) poverty-social impact expert (1 person-month).

B. Scope¹

2. The TA will cover enterprise as well as financial sectors. The consultants will ensure that the tasks outlined in the components below are accomplished during the TA:

- (i) ***Evaluating corporate governance standards in the banking sector.*** While the Corporate Governance and Enterprise Reform Program (CGERP) focused on all joint stock company (JSCs), it did not address issues of governance in financial institutions. This component will assess the governance problems in the banking sector and take stock of the gaps in existing regulatory and supervisory standards compared to internationally accepted corporate governance standards in banks, and recommend remedial measures needed.
- (ii) ***Strengthening enforcement of the existing legal framework for corporate governance and bankruptcy procedures in real and financial sectors.*** While the existing legislation is generally adequate, the implementation and enforcement mechanisms are circuitous and weak. This component will involve a critical examination of the possible short- and long-term solutions to strengthen enforcement. Short-term solutions, given the doubts about the impartiality and efficiency of the court system, may include the acceptance and establishment of arbitration as a legally binding and enforceable mechanism. The feasibility of introducing arbitration as a viable third-party mechanism within the scope of the Kyrgyz Republic's civil code and constitutional arrangements will be examined. Various long-term solutions need to be explored, including publication of judgments and public commentaries on them, legal protection for disclosure of confidential information, tight administrative sanctions against failure to enforce legislation, reducing the number of possible appeals as well as broader reforms to provide right incentives to the judiciary.
- (iii) ***Diagnostic review of the earlier reforms to enhance enterprise sector efficiency.*** This component involves assessment of the impact of the reform measures adopted to strengthen corporate governance and enterprise reform procedures; and performing a diagnostic review to identify the barriers that have impeded the reforms. Based on such a review, measures to address the remaining weaknesses, particularly with regard to enforcement of stipulated standards and practices and protection of investors' rights, will be formulated.

¹ This Section presents the scope of the Technical Assistance (TA) in greater detail and the overall tasks involved, to provide guidance to the consultants.

- (iv) ***Pre- and post-privatization restructuring initiatives in the enterprise sector.*** The tasks here include (i) a rapid assessment of the financial health and viability of the enterprise sector, and preparation of a list of enterprises for further analysis and intervention under the proposed CGERP II; (ii) classification of enterprises on financial, capacity utilization and other considerations, and formulation of a comprehensive plan specifying the policy, institutional and legal measures for liquidating or restructuring enterprises under different categories;² (iii) evaluation of the existing legal framework to implement restructuring and to apply liquidation pressures; and (iv) exploring the feasibility of encouraging development of new small and medium-size ventures from viable and underutilized assets of existing and restructured enterprises.
- (v) ***Policy, legal and regulatory reforms to strengthen accounting and auditing standards in public and private sectors.*** This component will (i) evaluate the existing accounting and auditing framework, and formulate relevant policy, institutional and legal measures to strengthen the norms; (ii) support the setting up of the proposed National Accounting Standards Board and in drafting its operational and implementation guidelines; (iii) evaluate the need for separate laws on professional accounting associations; and (iv) formulate measures to streamline the licensing process for accountants and auditors, and professional accounting associations.
- (vi) ***Poverty and social impact analysis.*** Enterprise-restructuring initiatives may impose significant social costs in the short term in the form of retrenchments and layoffs, unless accompanied by sufficient ameliorating measures. The TA will undertake a comprehensive analysis of the labor market and broader social impact of enterprise restructuring, and recommend compensating policy measures for adoption by the Government under the proposed CGERP II.
- (vii) ***Judicial Capacity Building.*** Effective enforcement of bankruptcy procedures is vital. While basic training was provided under the CGERP, the significant weaknesses that remain indicate the need for a capacity building program covering the court system and judges in the area of corporate governance and bankruptcy processes, which may be supported under the proposed second phase of the CGERP; and
- (viii) ***Structural Adjustment Costs.*** The enterprise restructuring measures, and the corporate governance and bankruptcy reforms are likely to lead to significant structural adjustment costs, which may need budgetary support. This component will estimate the costs involved in adopting the measures to be implemented under the proposed second phase of the CGERP.

² A number of factors will be taken into consideration in formulating appropriate method(s) of restructuring, including: (a) whether or not company voting is needed; (b) whether credits are secured or not; (c) the size and maturity of outstanding Government debts, including tax debts; (d) role of financial institutions; and (e) institutional capacity of the concerned Government departments, agencies, and the judiciary.

C. Terms of Reference

1. Enterprise Restructuring Specialist and Team Leader (6 person-months).

3. This consultant will have significant experience in the following areas: (i) enterprise restructuring in transition economies, preferably in Eastern Europe and Commonwealth of Independent States (CIS) region; (ii) broader corporate governance issues; (iii) managing a diverse team of experts; and (iv) synthesizing inputs of different experts, and being in overall charge of producing a comprehensive set of recommendations for a Technical Assistance (TA) of this nature, which has the objective of designing a policy reform program. With a sound understanding of the scope of the proposed TA and familiarity with the Kyrgyz enterprise sector, this specialist will

- (i) prepare, in coordination with the financial analyst, the criteria for a quick and rapid review of the enterprise sector to prepare a list of enterprises for further evaluation; and subsequently, formulate a set of evaluation criteria to guide in-depth analysis of the shortlisted enterprises; and prepare a list of parameters and benchmarks on which the enterprises need to be assessed under the TA and subsequently under the proposed CGERP II;
- (ii) based on the above, coordinate an in-depth operational, economic, and financial analyses of the identified enterprises; group enterprises into different categories (e.g. viable, nonviable, profitable, loss-incurring, etc.) for further examination;
- (iii) in coordination with the financial analyst and the legal/regulatory expert, formulate relevant first-best enterprise reform and restructuring options for the different groups of enterprises; assess the feasibility of the proposed CGERP II being able to successfully implement the reform and restructuring options; based on such assessment, formulate realistic and achievable options to strengthen the enterprise sector;
- (iv) in coordination with the other experts, evaluate the operational and financial implications involved in restructuring the identified enterprises;
- (v) evaluate the type and scope of support (e.g. operational, financial, credit) that may be needed in the post-restructuring phase for the enterprises; and formulate the modalities for providing such support, after evaluating the likely success of the proposed modalities (e.g., banking system soundness, if credit line type of support is proposed);
- (vi) prepare a project framework, following Asian Development Bank (ADB) guidelines, to provide a coherent framework with which to assess the proposed CGERP II;
- (vii) coordinate with the poverty-social impact expert to ensure that this component is well-integrated;
- (viii) prepare detailed terms of reference and guide the work of the domestic consultants, with support from the other international experts;

- (ix) prepare, with relevant inputs from the other experts, a matrix of policy reforms that can be proposed for consideration under CGERP II;
- (x) oversee the drafting of the detailed terms of reference (TORs) for the domestic consultants under the TA and coordinate their work; and
- (xi) based on all of the above, and in close coordination and cooperation with the other team members, prepare comprehensive TA reports, as outlined in the reporting requirements of the TA paper. Ensure that all the elements of the scope (as outlined in the TA paper and in this appendix) are fulfilled by the Team.

2. Financial Analyst (4 person-months).

4. This expert will have significant experience in the following areas: (i) diagnostic operational and financial assessments of financial and real-sector enterprises in transition economies; (ii) formulating wide-ranging enterprise-restructuring options; and (iii) general banking and broader financial sector issues and environments in the region, particularly in the central Asian region. This expert will

- (i) undertake primary responsibility for an in-depth quantitative and qualitative analysis of the operational and financial health of the enterprise sector;
- (ii) coordinate with, and provide effective support to, the team leader in all relevant aspects of the latter's terms of reference;
- (iii) prepare, in close coordination with the team leader, the following: (a) criteria for quick and rapid assessment of the enterprise sector for shortlisting target enterprises; (b) evaluation criteria, parameters and benchmarks on which to further assess the targeted enterprises; (c) assessments of the targeted enterprises; (d) grouping of enterprises into separate identifiable categories for follow-up analysis; (e) formulation of enterprise reform and restructuring options; (f) feasibility analysis of implementation of such options, based on a review of the operational, policy, legal, and regulatory environments (in real and financial sectors) under which the restructuring modalities will be implemented;
- (iv) based on the above, provide inputs for the preparation of (a) the project/logical framework; (b) policy matrix; and (c) any inputs that the poverty-social impact expert may need in terms of data, advice or assessments;
- (v) draft detailed TORs for the domestic consultants in this area and supervise their work; and
- (vi) prepare relevant reports that will form the basis of the overall TA reports.

3. Legal and Regulatory Expert (4.5 person-months).

5. This expert will have significant experience in the following areas, particularly in transition economies: (i) broader corporate governance issues, problems, and constraints; (ii) broader bankruptcy and insolvency legislation, and implementation of laws; and (iii) comparison

of different laws (e.g., civil, commercial, banking, financial sector) to be able to identify inconsistencies. The expert will

- (i) assess progress made under phase one of the CGERP, with regard to the adoption of corporate governance standards and enterprise restructuring procedures;
- (ii) conduct an in-depth evaluation of corporate governance practices within the banking sector in light of the recent governance-related problems, and formulate remedial operational, policy, institutional, and legal and regulatory measures needed to strengthen corporate governance in the sector;
- (iii) assess weaknesses in the legal and regulatory aspects relative to corporate governance and bankruptcy proceedings, with focus on enforcement of existing legislation and any inconsistencies across legislation;
- (iv) evaluate recent cases of violation of corporate governance practices and application of the various laws relating to bankruptcy (including the Law on Bankruptcy, Law on Pledge, Law on Properties, Law on Economic Partnerships and Societies, the proposed Law on Joint-Stock Companies, the Foreign Direct Investment Act, etc.);
- (v) critically examine the implementation guidelines and the actual practices with regard to implementation of any legislation in the Kyrgyz Republic then review the implementation practices, particularly with regard to the above laws, and the Law on Banks and Banking Activity;
- (vi) with regard to bankruptcy, pledge and JSC legislation, identify problem areas relative to their implementation; formulate appropriate recommendations to strengthen enforcement of bankruptcy and pledge procedures. The recommendations should include short-, medium- and long-term solutions to enhance enforcement of legislation in the mentioned areas (as outlined in item (ii) of the scope in the TA paper and as outlined above);
- (vii) examine the relevant legislation relative to taxation, customs administration, business licensing, JSCs, etc., from the point of view of cross-legal inconsistencies that may be used by authorities to interpret laws in a flexible manner;
- (viii) support the team leader and the financial analyst by providing any legislative advice needed relative to enterprise restructuring, reorganization, and liquidation;
- (ix) provide inputs to the preparation of the logical framework and policy matrix; provide any legal advice that may be needed by the poverty-social impact expert in assessing the labor market effects of enterprise restructuring;
- (x) draft detailed TORs for the domestic consultants in this area and supervise their work; and
- (xi) prepare relevant reports that would form the basis of the overall TA reports.

4. Accounting/Auditing Expert (1.5 person-months).

6. This Expert, with significant experience in accounting reform issues preferably in transition environments, will

- (i) evaluate existing accounting and auditing framework, particularly the feasibility of introducing International Accounting Standards (IAS) in a broad-based manner in all enterprises, including the large JSCs;
- (ii) draft the operational and implementation guidelines for the proposed National Accounting Standards Board (NASB);
- (iii) formulate relevant policy, institutional and legal measures for the proposed CGERP II, including an evaluation of the need for separate laws on accounting and professional accounting associations;
- (iv) formulate measures to streamline the licensing process for accountants and auditors, and professional accounting associations;
- (v) draft detailed TORs for the domestic consultants in this area and manage their work; and
- (vi) provide inputs to the preparation of the logical framework and policy matrix; and prepare relevant reports that would form the basis of the overall TA reports.

5. Poverty-Social Impact Expert (1 person-month).

7. This expert will have significant experience in assessing the social impact of enterprise restructuring initiatives in transitional and emerging economy environments. The expert will pay particular attention to gender dimensions in all of the following tasks:

- (i) prepare a broad assessment of the social safety net provisions that exist to deal with adverse consequences of enterprise restructuring;
- (ii) assess the unemployment impact of the policies adopted and the remedial measures undertaken as part of CGERP, and gauge the measures proposed under the TA against the impact of the earlier program; propose remedial measures for the likely impact of the policy directives under the proposed program;
- (iii) in close collaboration with the enterprise restructuring expert and financial analyst, assess the potential disadvantages and adverse consequences of restructuring the shortlisted enterprises; in addition, estimate the magnitude of costs in terms of retrenchments, unemployment compensation, etc;
- (iv) formulate remedial measures, including short-, medium- and long-term solutions, that can be implemented to mitigate the adverse impact of restructuring;
- (v) draft detailed TORs for the domestic consultants in this area and manage their work; and

- (vi) provide inputs to the preparation of the logical framework and policy matrix, and prepare relevant reports that would form the basis of the overall TA reports.

6. Domestic Consultants.

8. It is proposed that 25 person-months of domestic consulting inputs be procured under the TA, in the following manner: (i) enterprise restructuring (15 person-months), (ii) legal/regulatory component (4 person-months), (iii) accounting-auditing reforms (3 person-months), and (iv) poverty-social impact (3 person-months). The TORs of the domestic consultants will mirror those of the international consultants, and will be prepared by the latter.