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WORLD BANK PRINCIPLES FOR EFFECTIVE INSOLVENCY AND CREDITOR RIGHTS SYSTEMS -- A REVIEW OF THE ROSC EXPERIENCE AND NEXT STEPS

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ACRONYMS

ADB	Asian Development Bank
AfDB	African Development Bank
APEC	Asia Pacific Economic Cooperation
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
CAS	Country Assistance Strategy
EBRD	European Bank for Reconstruction and Development
EU	European Union
FAIR	Forum for Asian Insolvency Reform
FILA	Forum for Insolvency in Latin America
FIRM	Forum on Insolvency Risk Management
FIRST	Financial Sector Reform and Strengthening
FSAP	Financial Sector Assessment Program
FSI	Financial Stability Institute
FSF	Financial Stability Forum
G-20	Group of Twenty
G-22	Group of Twenty Two
GJF	Global Judges Forum
GILD	Global Insolvency Law Database
IADB	Inter-American Development Bank
IAIR	International Association of Insolvency Regulators
IBA (J)	International Bar Association (Committee J)
ICR ROSC	Insolvency and Creditor Rights System ROSC
IFA	International Financial Architecture program
INSOL	INSOL International
IPBA	Inter-Pacific Bar Association
OAS	Organization for American States
OECD	Organization for Economic Cooperation and Development
ROSC	Report on Standards and Codes
TA	Technical Assistance
UNCITRAL	United Nations Commission for International Trade Law

EXECUTIVE SUMMARY

1. The *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems* ("Principles") were discussed by the Executive Directors of the Bank in a Committee of the Whole on April 10, 2001.[1] The Directors saw this as work in progress and instructed Bank staff to take the following steps: (i) engage in a further dialogue and take feedback on the Principles, especially from developing countries, international experts and other organizations; (ii) undertake a series of experimental ROSC assessments using a methodology derived from the Principles; (iii) continue the collaboration with UNCITRAL on its efforts to develop legislative guidelines for commercial insolvency laws; and (iv) report back to the Executive Directors on the outcome of the pilot assessments and any resulting revisions to the Principles based on those experiences.[2] This paper constitutes the report of Bank staff on the completion of these steps and on the finalization of the standard for the assessment of insolvency and creditor rights systems.

2. The Bank has led the effort to develop broad-based benchmarking principles for use in assessing systemic effectiveness of core legal systems that underpin commercial debtor-creditor relationships. The work began in 1999 in collaboration with partner organizations and experts serving on the Bank's Task Force and Working Groups. Advisory partners included: African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, International Finance Corporation, International Monetary Fund, Organization for Economic Cooperation and Development, UNCITRAL, INSOL International, and the International Bar Association (Committee J). The Task Force and working groups comprised more than 70 internationally recognized experts. Prior to the first meeting with the Executive Directors in April 2001, the Principles had been vetted in a series of regional roundtables involving over 700 public officials and private sector specialists from some 75 countries. UNCITRAL staff actively participated in the Bank's initiative. The Principles have now been tested and refined based on assessments completed in 24 countries and ongoing in another 8 countries.

3. UNCITRAL has been leading the work to develop more detailed legislative guidelines in the area of the insolvency law and for secured transactions laws. In 1999, UNCITRAL approved a proposal to develop its *Legislative Guide on Insolvency Law* ("Legislative Guide") to encourage the adoption of effective national commercial insolvency regimes. Following discussions by the Bank's Executive Directors on the Principles in April 2001, UNCITRAL formally began its work on the Legislative Guide in July 2001, which was completed in 2004.[3] Numerous states, inter-governmental agencies

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[1] World Bank 2001 (SecM2001-0192).

[2] The Development Committee acknowledged the Principles at its meeting in April 2001, and encouraged their further development and use Development Committee 2001 (DC/2001-0008/1), *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems* (April 18, 2001).

[3] The UNCITRAL Legislative Guide was endorsed by the United Nations General Assembly on 2 December 2004.

and non-governmental organizations participated in the UNCITRAL effort, many of whom also participated in the Bank's initiative. Bank staff also actively participated in the UNCITRAL working group and contributed to the discussions with the UNCITRAL Secretariat to ensure consistency between the Legislative Guide and the Bank's Principles. In addition, UNCITRAL is currently working on its *Legislative Guide on Secured Transactions* ("Secured Transactions Guide") addressing security interests in movable property. The Secured Transactions Guide, expected to be completed in 2006, sets forth a modern legal framework for the development of a comprehensive secured transactions regime.

4. In view of the coordination and consistency between the Principles and the Legislative Guide efforts, Bank, Fund and UNCITRAL staffs propose to compile the Principles and Legislative Guide into a unified standard on insolvency and creditor rights systems. From the outset, both institutions have coordinated closely on the initiatives, as it was understood that there would be overlaps in substantive areas and the two products would be complementary. The Bank's work was aimed at developing benchmarking criteria based on international best practices in the relevant areas to facilitate comparative assessment of commercial law systems relating to debtor-creditor relationships, while UNCITRAL's Legislative Guide delves more deeply into technical guidelines for the design and development of a commercial insolvency law. As work evolved on both products, staffs recognized the importance of having a common framework and harmonized approach that the international community could use for both evaluation and legislative reform. To this end, both institutions have endeavored to ensure full consistency in the substance of the two documents. Having achieved consistency, Bank, Fund and UNCITRAL staffs have concluded that the two documents can be combined into a unified standard.

5. This paper reviews the experience with the pilot program of ROSC assessments on insolvency and creditor rights systems and addresses the steps for taking the work forward. The paper is outlined as follows: Section I addresses the lessons and experience from using the Principles in the ROSC country assessment program and related technical assistance. Section II identifies the revisions to the Bank's Principles and discusses the development of a unified standard on insolvency and creditor rights systems for use in the ROSC assessment program going forward. Section III presents the conclusions. Annex A contains the revised Principles; Annex B is a draft proposed Foreword explaining the "unified standard" on insolvency and creditor rights systems; and Annex C summarizes the Bank's outreach and partnership activities in this area.

I. LESSONS LEARNED

A. Standards and Methodology

6. **In 1999, the World Bank's initiative to develop benchmarking principles for core commercial law systems was launched, leading to the development of the Principles.** The Principles are designed as a broad-spectrum assessment tool to assist countries in their efforts to evaluate and improve core aspects of their commercial law systems that are fundamental to a sound investment climate and commerce, including credit access and protection mechanisms, risk management and restructuring practices and procedures, formal commercial insolvency procedures, and related institutional and regulatory frameworks.

7. **The Principles were prepared in collaboration with a number of leading partner organizations[4] by a Task Force and working groups comprised of more than 70 international experts**. The Principles were vetted in a series of regional roundtables involving more than 700 participants from 75 countries (mostly developing and middle-income countries), involving high level officials and designated experts from the private sector. The Principles were also posted on the Bank's website for international comment before consideration by the Bank's Executive Directors in 2001. In 2003, as instructed by the Directors, Bank staff began a review of the ROSC experience on insolvency and creditor rights systems and, based on that exercise recently completed a revision of the Principles. The changes to the Principles take stock of the lessons learned from the initial ROSC experience and reflect further feedback from the international community in connection with the Global Forum on Insolvency Risk Management (FIRM), the Forum on Asian Insolvency Reform (FAIR), the Forum on Insolvency in Latin America (FILA) and the Global Judges Forum (GJF), and based on the Bank's ongoing collaboration with its original partners, the European Commission, Group of Twenty, Asia-Pacific Economic Cooperation, International Association of Insolvency Regulators, and others. In particular, Bank staff participated actively in the UNCITRAL working group meetings to develop legislative guidelines for an insolvency law and in the ongoing work to develop a legislative guide for secured transactions involving movable property. The Bank and UNCITRAL organized various independent working group sessions with experts to ensure consistency in the various products between the Principles and the UNCITRAL legislative recommendations.

Scope of the Principles

8. **The Principles articulate a set of benchmarks to evaluate the effectiveness of core commercial law systems that directly affect credit access and risk management and the allocation of credit risk**. The Principles are addressed to commercial law

[4] Advisory partners included the African Development Bank (AfDB), Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), International Finance Corporation (IFC), International Monetary Fund (IMF), Organization for Economic Cooperation and Development (OECD), UN Commission for Int'l Trade Law (UNCITRAL), INSOL International, and the International Bar Association (Committee J).

systems in three primary areas: (i) *creditor rights systems* (credit protection, secured transactions, registries and enforcement procedures); (ii) *risk management and recovery systems* (credit information, director and officer liability with respect to financially distressed businesses, informal business/debt restructuring practices); and (iii) *formal company exit and rehabilitation mechanisms* (liquidation and reorganization). These systems constitute a crucial part of the legal infrastructure to promote a stronger investment climate, and to enable market participants to more accurately assess, manage and resolve default risks in commercial relationships. Strong creditor rights and enforcement mechanisms can widen access to credit at more affordable prices, which in turn is an important driver for commercial growth. Good risk management practices and resolution and recovery mechanisms, including informal and formal restructuring or liquidation processes, also facilitate the recovery of viable businesses and the swift transfer of assets to more efficient market players.

9. **The Principles encourage a broad-based, integrated analysis of the systems covered, offering guidance to policymakers.** The Principles were designed to be flexible so that all country systems could be fairly evaluated on the functionality, effectiveness and efficiency of these systems, irrespective of the legal heritage of the country. The Principles and ROSC methodology serve to promote a policy dialogue with the authorities on the overall functioning of these systems and on measures for strengthening systemic weaknesses. The assessment methodology elicits a broad, integrated picture of a number of core systems that are fundamental to commercial transactions, including credit access and the recovery and restructuring of businesses and their assets. Experience shows that the Principles and assessments have been meaningful tools for reform and can serve as a basis for developing Bank programs and assistance.

10. **The Bank has maintained an ongoing dialogue on the Principles and their applications since 2001.**[5] A number of the revisions to the Principles clarify language and help to maintain the balance between essential core elements of a functional system and minimum standards of good practice based on recognized practices in modern systems. A few gaps were identified in the Principles, which have been addressed in the proposed revisions. On the whole, however, the Principles were found to be sufficiently flexible to accommodate diverse legal systems, and have been tested in the ROSC assessment program in all kinds of countries (as noted in Table 1), while containing enough detail to identify strengths and weaknesses in the systems reviewed.

Methodology and Diagnostics

11. **ICR ROSC assessments have adopted a functional approach that takes into account all aspects of a particular system.** In the view of Bank staff, this approach is consistent with the Bank's developmental mandate and facilitates the initial dialogue with government officials responsible for these areas. Reviews should encompass legal, institutional and regulatory aspects of the core insolvency and creditor rights systems. A system's effectiveness cannot be evaluated solely on the basis of the law, as there are

[5] See Annex C.

often disparities in the laws and the actual practice and behavior of stakeholders. The role of the courts and regulation of participants in the process are critical factors and often have a greater influence in determining whether a system is functioning properly. These other dimensions of the system are equally fundamental in considering how best to design laws and institutions that are workable in practice, and which are compatible with a country's legal heritage.

12. **Reviews take an integrated look at systems in the same manner in which investors and other stakeholders evaluate their risks when lending to or investing in a commercial activity or an enterprise.** Risks are measured and protected on the basis of an array of interrelated systems, each of which functions to create an appropriate balance in the incentives and disincentives that govern market behavior. The Bank's Principles incorporate this integrated approach as part of the assessment process.

13. **The ICR ROSC reports have a number of common features**: (i) executive summary and introduction, (ii) description of country practice in four areas (legal framework for creditor rights and enforcement, legal framework for corporate insolvency, regulatory framework, and credit risk management and corporate workouts), (iii) summary of assessment findings and conclusions, and (iv) policy recommendations. A matrix assessing the degree of compliance with each of the World Bank Principles is provided as an annex to the report, together with additional annexes that are useful in elaborating procedures for dialogue.[6] In cases where a country has developed draft legislation in an area covered, an annex may be attached to the report evaluating the proposed legislation and commenting more specifically on it based on applicable Principles. As part of its methodology, Bank staff reviews are complemented by local expert opinions on the interpretation of laws and regulations. The methodology also requires the examination of other related laws, views of various stakeholders within the system, and the sufficiency of institutional capacity and implementation.

B. A Review of the Experience from the Assessments

14. **As with other Bank-led ROSC modules, the insolvency assessments have been conducted either (i) in connection with the FSAP, (ii) in tandem with the other Bank-led ROSC modules, or (iii) on a stand-alone basis.** This flexibility has enabled the Bank to adapt the assessment to a wider group of countries based on operational objectives and priorities. In the majority of cases, the ICR ROSCs were undertaken on a stand-alone basis or as part of an operational program. Several assessments completed have been undertaken in connection with a more comprehensive review of the financial systems under the Financial Sector Assessment Program (FSAP)[7]. In a number of

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[6] The Principle-by-Principle assessment contains a more detailed description of the relevant legal systems and provides observations about the functionality of those systems relative to the Principles. The approach used in the detailed assessment is consistent with the approach utilized in other standards assessments.

[7] As a general rule, most FSAPs contain a legal framework component that provides a basic overview of the legal framework related to financial systems, including among others, enforcement and insolvency mechanisms. The ICR ROSC is designed to go into much greater detail and evaluates the system against a set of criteria contained in the Principles.

countries, the three Bank-led ROSCs were requested to be carried out contemporaneously to provide the authorities with a more complete picture of the market infrastructure.[8]

Table 1: ICR ROSC Assessments by Region under the Pilot

(as of June 30, 2005)

REGION	COMPLETED [1/]	FINAL STAGES OF COMPLETION	ONGOING
AFR / MNA	Kenya Mauritius Morocco South Africa	Cameroon	Uganda
EAP / SA	India Philippines Vietnam	Nepal Sri Lanka	Singapore
ECA	Czech Republic Kyrgyz Republic Lithuania Romania Russia Slovak Republic Slovenia Turkey Ukraine		
LAC	Argentina Bolivia Brazil Chile Ecuador El Salvador Honduras Nicaragua	Colombia Jamaica Paraguay	

CONTEXT FOR ASSESSMENT (%):	NUMBER / PERCENT		NUMBER / PERCENT		NUMBER / PERCENT	
FSAP	4	17%	N/A		N/A	
FSAP Linked [2/]	9	37%	3	50%	1	50%
Standalone	11	46%	3	50%	1	50%
Total	24		6		2	

1/ For purposes of this table, a ROSC assessment is deemed complete when the detailed assessment and the report are delivered, although there may be subsequent refinements to the report.
2/ FSAP Linked refers to assessments undertaken contemporaneously with the FSAP, often with inputs to the FSAP, but which are prepared as standalone assessments..

Highlights of the ICR ROSC experience

15. **No country assessed to date has been found to fully comply with all of the Principles**. Most industrial countries tend to reflect systems that are fully or largely consistent with the Principles in key areas; laws are reasonably modern and

[8] E.g., Brazil, Czech Republic, India, Mauritius, Philippines, and South Africa.

implementation capacity tends to be relatively strong and effective.[9] In contrast, middle income and developing countries tend to reflect a wide variance in legal modernization efforts in this area. Another striking difference is that institutional capacity in developing countries was found to be more consistently weak, under-resourced and subject to procedural inefficiencies. Some of these weaknesses are attributable to the lack of adequate technological resources that are more readily available in wealthier countries.

16. **The most significant deficiencies among countries assessed to date have been ineffectual implementation of laws due to weak or lax institutional and regulatory frameworks.** Weak implementation mechanisms for enforcement and insolvency procedures in some countries hinder achieving observance of a principle even though the laws are essentially sound. Experience shows that a country with stronger and more effective institutional and regulatory frameworks generally has more effective and efficient insolvency and creditors rights systems, even when the laws have not been modernized . The most common institutional problems are the result of: inadequate training among judges and administrators; inefficient case administration practices and procedures; lack of transparency and inconsistency in decision-making; and ineffective regulation to redress problems of corruption and the risk that interested parties may unduly influence the courts, administrators, trustees or other stakeholders.

17. **Problems in regulation often point to weakness or absence of procedures and institutions to license, qualify and supervise insolvency administrators, enforcement and collection agents, and other specialized professionals.** Some of these problems are systemic in nature and characteristic of the shortcomings in weaker legal systems. These problems will require effective long term capacity building strategies, adequate resources and sustained effort by countries, with support from the Bank and other donors

18. **Creditor rights systems in developing countries reflect a wide range of practices based on legal heritage and sometimes have not been updated to take account of modern lending and collateral practices and needs**. While basic land and mortgage systems are generally functional, frequently laws have not been updated to take advantage of modern lending practices and business needs to tap into the value of business assets for credit or investment purposes, especially in the area of movable property, such as inventory, equipment, receivables, bank accounts, letters of credit, negotiable instruments and acquisition financing devices. Other common deficiencies identified include: (i) the absence of modern national, computerized registry systems for filing security interests, especially over movable assets; and (ii) weak and inefficient enforcement proceedings for both unsecured and secured claims.

19. **Insolvency systems are frequently inefficient, outmoded and unsupportive of modern business needs.** The concept of corporate rehabilitation to rescue enterprise value and preserve jobs is gaining support among industrial countries as well as among the developing countries. Many countries have relied on outmoded systems for achieving

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[9] These findings are based on a comparative study by the European Commission (Directorate General on Enterprises) using the Bank's Principles as a comparative benchmark to assess the 15 EU members and the United States in an effort to promote a better understanding of enterprise recovery and restructuring within the EU. Bank staff collaborated with the EU experts working group in connection with the study.

creditor compromises based on outdated laws. The Principles and the Bank's outreach activities have helped to expand the awareness and importance of having rescue mechanisms.

20. **Partnership may be advantageous where partner organizations have overlapping programs in a country in the area of insolvency or creditor rights systems.** For instance, an assessment was undertaken in Philippines in collaboration with the ADB, which was also providing assistance to the country in connection with reforms on insolvency and capacity building and training programs. In the transition countries, ICR ROSCs complemented EU accession preparations for candidate countries in a number of key commercial areas that were outside the minimum accession framework requirements.

Bank Operational Work & Technical Assistance

21. **ICR ROSC assessments led to a number of applications for the Bank's development work in client countries**. They underpin policy dialogue and lending operations, and provide input to technical assistance and capacity building efforts. ICR ROSC assessments have contributed to an overall strategy for strengthening legal and institutional aspects of the investment climate. The systematic standardized coverage and ability to benchmark against the internationally recognized best practices has been an effective tool for promoting an informed policy dialogue on complex legal systems and useful inputs into key policy documents. In some countries, the ICR ROSC assessment also provided a means for reviewing and commenting on "proposed" insolvency and secured rights legislation in addition to reviewing the existing legal framework.[10] Other countries have used the Principles themselves as a roadmap for ongoing reforms, as have other international organizations.

22. **In addition to their diagnostic value, ICR ROSCs provide valuable information and analysis for the Bank's operational work.** In some countries the assessments formed part of the Bank's financial crisis or programmatic lending strategies for operational assistance, generally involving follow-on technical assistance. Turkey is an important example of the strategic role of the ICR ROSC, where it provided input into lending operations for the sector strategy on enterprise restructuring and distressed asset resolution, leading to legislative reforms to the Execution and Bankruptcy law. Similarly, in Brazil, the assessment contributed to a policy dialogue and strategies to strengthen the corporate sector and address issues concerning enterprise restructuring among private stakeholders. Assessments also have been used to inform the CAS and other Bank products.

23. **IDF Grants have been used as a source of strengthening institutional capacity based on recommendations from the ICR ROSC assessments.** ICR ROSC findings have highlighted the need to addressing the weaknesses in the enforcement systems within countries. These systems often require more resources and take longer to improve

[10] E.g., Bolivia, Brazil, Philippines, Romania, Russia, Vietnam.

through training programs that are designed to improve the standard of conduct and skills of key stakeholders. IDF grants have been extended to strengthen implementation in several countries (e.g., Slovakia and Turkey). Where a higher level of funding is required, other Bank products have been used, such as a Learning Innovation Loan in Croatia (USD $5 million) and a Technical Assistance Growth Loan in Brazil (which contains a component to help implement the new bankruptcy law). In addition, the insolvency ROSC team has coordinated with the FIRST initiative for ROSC follow-up work in Kenya to modernize the Company Registry and is exploring additional opportunities related to developmental reforms and capacity building efforts.

24. **ICR ROSC assessments also identify technical assistance.** Technical assistance has ranged from advice on comprehensive reforms to develop new insolvency laws; on new secured transactions laws and registration process; and on reforms to the tax code to facilitate realization of business losses; to country strategies to privatize state banks or state owned enterprises on a wider scale (Table 2)

Table 2: Bank ICR ROSC Related Technical Assistance[11]

REGION	COUNTRIES	TECHNICAL ASSISTANCE
AFR / MNA	**Kenya**	TA to strengthen company registry and secured transactions, with assistance from FIRST (ongoing).
	Mauritius	TA company law provisions pertaining to corporate insolvency (ongoing).
	Uganda	TA on draft proposed insolvency legislation
EAP / SA	**India**	TA on insolvency law
	Philippines	TA on insolvency law and judicial training / capacity building.
	Vietnam	TA on multiple drafts of the new insolvency law.
ECA	**Czech Republic**	ICR review complemented technical advice on banking privatizations and NPL resolution. TA on insolvency law reforms (ongoing).
	Lithuania	TA on new corporate reorganization law.
	Romania	TA on amendments to insolvency law, and judicial training.
	Russia	TA on amendments to insolvency law and proposed regulatory reforms. New TA project on insolvency law pending discussions with MOEDT.
	Slovakia	TA related to EFSAL and FSAP/ROSC review; reforms include new secured transactions law, registry system, insolvency law, and tax reforms.
	Turkey	TA on amendments to Execution and Bankruptcy Act, and to develop new corporate restructuring procedure.

[11] TA in the areas of insolvency and creditor rights systems provided in connection with non-ROSC or Operational projects includes the following additional countries: **AFR/MNA**–Cameroon, Iraq, OHADA, Tanzania, Tunisia; **EAP /SA**—China, Indonesia, Mongolia, South Korea, Thailand; **ECA**—Albania, Armenia, Azerbaijan, Bosnia, Bulgaria, Croatia, Kosovo, Romania, Serbia.

LAC	**Argentina**	TA on insolvency law (no. 25.289, May 2002).
	Bolivia	TA on insolvency provisions of the Commercial Code and new Voluntary Restructuring Law and its regulations (ongoing).
	Brazil	TA on insolvency law (effective June 9, 2005) and under First Programmatic Loan for Sustainable and Equitable Growth (Report No. 27507 – BR – January 21, 2004). WB TAL (2004) includes a component on implementation of the new Insolvency Law.
	Chile	Comments on the projected reform to the insolvency law and financial legislation ("Second Capital Market Reform Bill"). ICR ROSC findings and recommendations utilized to develop an Insolvency and Creditor Rights Chapter in the Chilean DPR.
	Colombia	TA under preparation related to insolvency and creditor rights legal reforms.
	Ecuador	TA on insolvency law currently under preparation.
	Honduras	TA on insolvency and secured transactions law reforms.
	NUMBER OF TA COUNTRIES/ (COMPLETED ROSCS)	**TA PERCENTAGE FOR COMPLETED ROSCS**
AFR / MNA	3 (of 4)	75%
EAP / SA	3 (of 3)	100%
ECA	6 (of 9)	67%
LAC	7 (of 8)	75%[12]
Total	19 (of 24)	79%

II. STANDARDS FOR INSOLVENCY AND CREDITOR RIGHTS

Principles and standards

25. **The Principles have been found to be substantially on target in their scope, detail and flexibility as an international measurement of the effectiveness of systems governing creditor rights and commercial insolvency.** There are a few exceptions where gaps in the framework have been supplemented. The primary area in which the Principles have been supplemented is the addition of a principle and sub-principles pertaining to modern credit information systems (Annex A, Principle B1), which are a key component of mature credit systems. In a few areas, a principle has been added to supplement a gap in the existing area, which surfaced as a result of the ROSC assessments and in the process of ongoing feedback and dialogue with the international community on the Principles. For the most part, the changes have involved refinements to make a principle more precise, clarify wording, or avoid duplication. In some cases, language has been clarified to ensure that the revised Principles take into account the practices of different legal systems (e.g., Common Law, Civil Law, etc.).

26. **Bank staff has collaborated with UNCITRAL staff and experts to ensure consistency between the Bank's Principles and the UNCITRAL Legislative Guide on Insolvency Law.** World Bank staff has collaborated with the UNCITRAL secretariat,

[12] In Colombia, a TA project is under initiation on legal reforms pertaining to insolvency and creditor rights. This would bring the ROSC TA correlation percentage for ROSCs in the LAC region to 88%. In addition, in Chile, a conference is being organized with a view to discussing follow-on TA.

working group and experts' group to ensure alignment between the Bank's Principles and the recommendations contained in UNCITRAL's legislative guide on insolvency law. The wording of some principles has been revised to ensure a consistent reading of principles and recommendations, while in a few places new principles or sub-principles have been added to more accurately reflect the UNCITRAL recommendations

27. **The Principles have been reconfigured and renumbered to represent a more logical and linear sequencing consistent with the usual progression of the debtor-creditor relationship**. Accordingly, the new structure evaluates credit access and protection issues in Section A, credit risk management, financial distress and recovery/restructuring issues in Section B, formal insolvency in Section C, and implementation through institutional and regulatory frameworks in Section D. Some principles have been shifted to a new section or within the existing sections to achieve a more sensible order of review. Renumbering accommodates future review and adaptation of the principles, as necessary.

Unified Standard on Insolvency and Creditor Rights Systems.

28. **Coordination and Collaboration on the development of a unified standard.** From the outset, both institutions have coordinated closely on the initiatives, as it was understood that there would be overlaps in substantive areas and the two products would be complementary. The Bank's work was aimed at developing benchmarking criteria based on international best practices in the relevant areas to facilitate comparative assessment of commercial law systems relating to debtor-creditor relationships, while UNCITRAL's Legislative Guide delves more deeply into technical guidelines for the design and development of a commercial insolvency law. As work evolved on both products, staffs recognized the importance of having a common framework and harmonized approach that the international community could use for both evaluation and legislative reform. To this end, both institutions have coordinated closely, with the assistance of experts on both sides, to ensure full consistency in the substance of the two documents. Having achieved consistency, Bank, Fund and UNCITRAL staffs have concluded that the two documents can be combined into a unified standard.

29. . **In view of the complementary nature of the Bank Principles and UNCITRAL's Legislative Guide on Insolvency, staffs of the Bank and UNCITRAL, in collaboration with the Fund, have been working to create a unified standard for use in the Bank and Fund operational work.** The unified standard on insolvency and creditor rights systems ("Unified Standard") would include both documents in full,[13] and be accompanied by a joint foreword, similar to that contained in Annex B, explaining the relevant background and relationship of the two documents. The Unified Standard will promote more effective and consistent outcomes by offering users an integrated and contextual understanding for undertaking reforms in connection with these inter-related systems. The Principles cover a wider range of commercial law systems relevant to the

[13] Upon its completion, staffs of the Bank, Fund and UNCITRAL will consider the UNCITRAL *Secured Transactions Law Guide* for inclusion in the Unified Standard.

debtor-creditor relationship, including institutional and regulatory aspects of those systems, and set out fundamental principles intended to have flexible application to diverse country systems. The Legislative Guide focuses in more detail on the key elements of an effective insolvency law, and proposes, with extensive discussion of various options and approaches, a series of specific legislative recommendations that provide guidance on the content of the insolvency law. The complementary perspectives of these products serve as important reference points for countries to evaluate and strengthen their insolvency and creditor rights systems in line with generally recognized standards of good practice.

New assessment methodology based on the Unified Standard

30. **A new assessment methodology is being developed in collaboration with UNCITRAL and the Fund based on the Unified Standard.** The Principles and the Legislative Guide, taken together, will form the basis for developing a revised assessment methodology for ICR ROSCs, within the parameters of the joint Bank/Fund initiative on standards and codes. Drawing on the Legislative Guide's more detailed recommendations enables the methodology to be sharpened with respect to its criteria, thereby further reducing subjectivity.

III. CONCLUSIONS

31. In accordance with the foregoing analysis, Management will proceed with the revisions to the World Bank Principles for Effective Insolvency and Creditor Rights Systems, as set forth in Annex A, and will use the Unified Standard on Insolvency and Creditor Rights Systems in connection with the ICR ROSC assessments, for ICR ROSC assessments begun after September 1, 2005.

Annex A

WORLD BANK PRINCIPLES FOR EFFECTIVE INSOLVENCY AND CREDITOR RIGHTS SYSTEMS *(Revised)*

1. The World Bank Principles and Guidelines for Effective Insolvency and Creditor Rights Systems were developed specifically to assess country systems under the joint Fund-Bank program to develop Reports on Standards and Codes (ROSC) and have proven useful as tool for technical assistance. Following a series of pilot assessments and further dialogue on the Principles, a number of changes have been introduced. The following paragraphs describe in more detail some of the specific and technical changes made to the Principles. *These changes are provisional subject to comments from the Bank's Executive Directors and final editing of the Principles. It is also noted that any further changes to the Principles would strive for consistency with the UNCITRAL Legislative Guide on Insolvency Law.*

2. *Creditor Rights Framework.* There are two primary changes in this area. First, former principle 2 (enforcement of unsecured claims) was moved and consolidated with the last principle on enforcement of security. The primary change has been the splitting out of principles to allow independent evaluation of the effectiveness of laws and systems governing security in immovable property. Previously, security for movable and immovable was evaluated under a single principle making it difficult to distinguish or isolate weaknesses. As most countries assessed had fundamentally sound mortgage systems, but lacked a modern secured transaction law and registries, the assessor was often forced to downgrade compliance overall due to the specific shortcomings in the area of movable assets. The new principle will enable a more precise and targeted evaluation of the collateral systems for immovable and movable property. In addition, Bank staff has continued to collaborate closely with UNCITRAL staff and its working group to ensure consistency in the principles on secured transactions for movables and UNCITRAL's work in progress to develop a set of legislative recommendations. Finally, the registry principle has been separated into sub-parts to facilitate an evaluation and separate discussion of the functioning of registries for immovable property (A4.1), movable property (A4.2) and specialized registries (A4.3), the latter covering items such as vessels, aircraft, automobiles, etc.

3. *Credit Information Systems.* A modern credit-based economy requires access to complete, accurate and reliable information concerning borrowers' payment histories. This process should take place in a legal environment that provides the framework for the creation and operation of effective credit information systems. Accordingly, based on the experience in the assessment program, it was found that a new principle (B1) on this topic was needed to maintain proper checks and balances in debtor-creditor relationships. The new principle on credit information systems addresses the following points:

- Permissible uses of information from credit information systems should be clearly circumscribed, especially regarding information about individuals.

- Legal controls on the type of information collected and distributed by credit information systems may often be used to advance public policies, including anti-discrimination laws.

- Privacy concerns should be addressed through notice of the existence of such systems, notice of when information from such systems is used to made adverse decisions, and access by data subjects to stored credit information with the ability to dispute and have corrected inaccurate or incomplete information.

- An effective enforcement and supervision mechanism should be in place that provides efficient, inexpensive, transparent and predictable methods for resolving disputes concerning the operation of credit information systems along with proportionate sanctions which encourage compliance but that are not so stringent as to discourage operations of such systems.

4. *Risk Management and Informal Workouts.* Principles in this area were found to be sufficient to enable an evaluation of relevant country systems. Previously there were two principles dealing largely with corporate workouts and the broader enabling environment that created incentives or disincentives to informal or out-of-court restructuring of debt and businesses. In addition to the new principle on credit information, the earlier principle on director and officer liability has been moved to this section (B2), as it addresses matters that arise prior to a formal insolvency proceeding and that relate to increased risks in the management of the business during a period when restructuring is often required. The principle on the enabling environment (B3) remains largely the same as before, but with some clarifications and elaborations in the concepts covered. The principle on informal workouts (B4) adds a new sub-principle (B4.3) addressing framework enhancement measures in the context of systemic crises. This area was previously covered in Annex I to the Principles, and has not been reduced to a more concise discussion in the main text of the Principles report. The final addition in the corporate workout cluster is the addition of a principle concerning regulatory intervention to encourage effective risk management practices for debt recovery and restructuring through appropriate norms and measures. These areas are routinely reviewed under the current ICR ROSC methodology to provide the authorities with a more complete integrated look at debtor-creditor systems; the new principle facilitates the review and provides for a more complete contextual discussion.

5. *Commercial Insolvency Systems.* The principles on commercial insolvency are essentially the same, with the primary changes being to refine the wording to improve clarity. Several principles have been deleted to avoid duplication: (e.g., earlier principle 8 on maintaining a balance of rehabilitation and liquidation). Principle 7 (director and officer liability) was shifted into the risk management section (B2). Several new principles have been added in gap areas, including:

- (i) Principle C2.1 on due process, which is now grouped with the principles on information access and disclosure previously situated under rehabilitation;
- (ii) Principle C5.1 providing for provisional relief in the gap period between filing and commencement of a proceeding;
- (iii) Principle C8.1 identifies the insolvency estate, which was found in preliminary drafts of the principles leading to the 2001 version;
- (iv) C10.4(i) and (ii) identifying important exceptions to the conventional treatment of contracts in bankruptcy for matters of setoff and financial contracts and netting (also found in the 2001 version) and C10.4(iv) governing exceptions for employee contracts;
- (v) C12.4 and C12.5 addressing the distributional priorities to employees and equity interests;
- (vi) C13 addressing the claims resolution process; and
- (vii) C14.5 addressing closure of the case.

6. *Implementation and Capacity – Institutional and Regulatory Frameworks.* Several refinements have been introduced to the Institutional Principles. A general introductory principle on judicial independence, impartiality and effectiveness is needed to evaluate judiciary soundness with respect to these basic criteria. Thus, new explicit wording on this subject is introduced in the revised Institutional Principles as a result of several ROSC exercises. The work of the Global Judges Forums provided valuable international experience, following which the language of a number of Institutional Principles has been reformulated to make them more flexible and further encompassing of varied judicial organization in diverse countries. Additionally, a few Institutional Principles had to be clarified, making explicit reference in the wording of the principle to specific factors that are to be evaluated in order to rate the level of compliance with the standard (e.g., factors that determine as to whether integrity of the court is ensured by the system). Finally, the Principles have been modified to ensure sufficient scope to evaluate institutional capacity with respect to commercial courts and proceedings covered by other areas of the principles (e.g., enforcement).

7. The refinement of the Regulatory Principles also responds to lessons learned from the ROSCs and to recommendations provided by IAIR --the International Association of Insolvency Regulators, with whom World Bank staff has been working to develop a paper on the regulatory framework for insolvency. Modifications in this area are mostly fine-tuning in the language of the original Regulatory Principles. For better evaluation of this aspect of the insolvency law implementation, the revised Regulatory Principles now specifically request that the system should ensure that criteria as to who may be an insolvency administrator should be objective, clearly established and publicly available.

Principles

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	PART A. LEGAL FRAMEWORK FOR CREDITOR RIGHTS
A1	**Compatible Enforcement Systems** A modern credit-based economy should facilitate broad access to credit at affordable rates through the widest possible range of credit products (secured and unsecured) inspired by a complete, integrated and harmonized commercial law system designed to promote: ▪ reliable and affordable means for protecting credit and minimizing the risks of non-performance and default; ▪ reliable procedures that enable credit providers and investors to more effectively assess, manage and resolve default risks and to promptly respond to a state of financial distress of an enterprise borrower; ▪ affordable, transparent and reasonably predictable mechanisms to enforce unsecured and secured credit claims by means of individual action (e.g., enforcement and execution) or through collective action and proceedings (e.g., insolvency); ▪ a unified policy vision governing credit access, credit protection, credit risk management and recovery, and insolvency through laws and regulations that are compatible procedurally and substantively.
A2	**Security (Immovable Property)** One of the pillars of a modern credit economy is the ability to own and freely transfer ownership interests in land and land use rights, and to grant a security interest (such as a mortgage or charge) to credit providers with respect to such interests and rights as a means of gaining access to credit at more affordable prices. The typical hallmarks of a modern mortgage system include the following features: ▪ Clearly defined rules and procedures for granting, by agreement or operation of law, security interests (mortgages, charges, etc) in all types of interests in immovable assets, including their proceeds, offspring, rents, and other derivatives; ▪ Security interests related to any or all of a debtor's obligations to a creditor, present or future, and between all types of persons; ▪ Clear rules of ownership and priority governing competing claims or interests in the same assets, eliminating or reducing priorities over security interests as much as possible; ▪ Methods of notice, including a system of registry, which will sufficiently publicize the existence of security interests to creditors, purchasers, and the public generally at the lowest possible cost.
A3	**Credit Protection and Security (Movable Property)** A modern credit economy should broadly support all manner of modern forms of lending and credit transactions and structures, with respect to utilizing movable assets as a means of providing credit protection to reduce the costs of credit. A mature secured transactions system enables parties to grant a security interest in movable property, with the primary features that include: ▪ Clearly defined rules and procedures to create, recognize, and enforce security interests over movable assets, arising by agreement or operation of law; ▪ Allowance of security interests in all types of movable assets, whether tangible or intangible (e.g., equipment, inventory, accounts receivables, goods in transit; intellectual property, and their proceeds, offspring and mutations); including with respect to present, after-acquired or future assets (including goods to be manufactured or acquired); wherever located and on a global basis; and based on both possessory and non-

	possessory interests; ▪ Security interests related to any or all of a debtor's obligations to a creditor, present or future, and between all types of persons; ▪ Methods of notice (including a system of registration) that will sufficiently publicize the existence of security interests to creditors, purchasers, and the public generally at the lowest possible cost; and ▪ Clear rules of priority governing competing claims or interests in the same assets, eliminating or reducing priorities over security interests as much as possible.
A4	**Registry Systems** There should be an efficient, transparent, and cost-effective means of publicizing security interests (mortgages, charges, pledges and other encumbrances) in regard to the borrower's assets, including with respect to property rights and secured interests in movable and immovable assets, with registration being the principal and strongly preferred method. The registration system should be reasonably integrated, easily accessible and inexpensive with respect to recording requirements and searches of the registry, and should be secure. **A4.1** *Land and mortgage registries.* Registries pertaining to land (or land use rights) and mortgages are typically established solely for recording of interests of this nature, although permanent fixtures and attachments to the land may be treated as being subject to recordation in the place of the underlying real property. Land and mortgage registries are typically established by jurisdiction, region or locale where the property is situated, and ideally should provide for integrated, computerized search features. **A4.2** *Charge registries.* Registries pertaining to movable assets of enterprises should be integrated and established nationally with filings made on the basis of the enterprise or business name, ideally in a centralized, computerized registry situated in the jurisdiction or location where the enterprise or business entity has been incorporated or has its main place of registration. While there is merit to an independent, specialized registry for publishing security interests in movable assets, in some systems, enterprise pledges or floating charges and other forms of security are registered with the company registry. **A4.3** *Specialized registries.* Special registries are beneficial in the case of certain kinds of assets, such as aircraft, vessels, vehicles, and certain types of intellectual property (e.g., trademarks, copyrights, etc.).
A5	**Commercial Enforcement Systems** **A5.1** *Enforcement of unsecured debt.* A functional credit system should be supported by mechanisms and procedures that provide for efficient, transparent, and reliable methods for satisfying creditors' rights by means of court proceedings or non-judicial dispute resolution procedures. To the extent possible, a country's legal system should provide for executive or abbreviated procedures for debt collection.[14] **A5.2** *Enforcement of secured debt.* Enforcement systems should provide efficient, inexpensive, transparent and reliable methods (including both non-judicial and judicial) for enforcing a security interest over assets. Enforcement proceedings should provide for prompt realization of the rights obtained in secured assets, designed to enable maximum recovery according to market-based asset values.

[14] Enforcement in this principle aims primarily at the treatment with respect to proceedings to recover against corporate debtors. Where enforcement proceedings involve individuals or persons, reasonable exemptions may need to be of adopted to allow individuals or persons to retain those assets indispensable to the subsistence of the debtor and his/her family. Any such exemptions should be clearly defined and narrowly tailored.

	Part B. Risk Management and Corporate Workout
B1	**Credit Information Systems** A modern credit-based economy requires access to complete, accurate and reliable information concerning borrowers' payment histories. Key features of a credit information system should address the following: **B1.1 Legal framework**. The legal environment should not impede and, ideally should provide the framework for, the creation and operation of effective credit information systems. Libel and similar laws have the potential of constraining good faith reporting by credit information systems. While the accuracy of information reported is an important value, credit information systems should be afforded legal protection sufficient to encourage their activities without eliminating incentives to maintain high levels of accuracy. **B1.2 Operations**. Permissible uses of information from credit information systems should be clearly circumscribed, especially regarding information about individuals. Measures should be employed to safeguard information contained in the credit information system. Incentives should exist to maintain the integrity of the database. The legal system should create incentives for credit information services to collect and maintain a broad range of information on a significant part of the population. **B1.3 Public policy**. Legal controls on the type of information collected and distributed by credit information systems can be used to advance public policies. Legal controls on the type of information collected and distributed by credit information systems may be used to combat certain types of societal discrimination, such as discrimination based on race, gender, national origin, marital status, political affiliation, or union membership. There may be public policy reasons to restrict the ability of credit information services to report negative information beyond a certain period of time, e.g., five or seven years. **B1.4 Privacy**. Subjects of information in credit information systems should be made aware of the existence of such systems and, in particular, should be notified when information from such systems is used to make adverse decisions about them. Subjects of information in credit information systems should be able to access information maintained in the credit information service about them. Subjects of information in credit information systems should be able to dispute inaccurate or incomplete information and mechanisms should exist to have such disputes investigated and have errors corrected. **B1.5 Enforcement/Supervision**. One benefit of the establishment of a credit information system is to permit regulators to assess an institution's risk exposure, thus giving the institution the tools and incentives to do it itself. Enforcement systems should provide efficient, inexpensive, transparent and predictable methods for resolving disputes concerning the operation of credit information systems. Both non-judicial and judicial enforcement methods should be considered. Sanctions for violations of laws regulating credit information systems should be sufficiently stringent to encourage compliance but not so stringent as to discourage operations of such systems.
B2	**Director and Officer Accountability** Laws governing director and officer liability for decisions detrimental to creditors made when an enterprise is in financial distress or insolvent should promote responsible corporate behavior while fostering reasonable risk taking. At a minimum, standards should hold management accountable for harm to creditors resulting from willful, reckless or grossly negligent conduct.[15]

[15] This principle addresses only accountabilities of directors and officers in the period when a company is facing an imminent risk of insolvency. General principles for corporate governance and officer and director liability to its shareholders are dealt with under the OECD Principles for Corporate Governance.

B3	**Enabling Legislative Framework** Corporate workouts and restructurings should be supported by an enabling environment that encourages participants to engage in consensual arrangements designed to restore an enterprise to financial viability. An environment that enables debt and enterprise restructuring includes laws and procedures that: **B3.1** Require disclosure of or ensure access to timely, reliable and accurate financial information on the distressed enterprise; **B3.2** Encourage lending to, investment in or recapitalization of viable financially distressed enterprises; **B3.3** Flexibly accommodate a broad range of restructuring activities, involving asset sales, discounted debt sales, debt write-offs, debt reschedulings, debt and enterprise restructurings, and exchange offerings (debt-to-debt and debt-to-equity exchanges); **B3.4** Provide favorable or neutral tax treatment with respect to losses or write-offs that are necessary to achieve a debt restructuring based on the real market value of the assets subject to the transaction; **B3.5** Address regulatory impediments that may affect enterprise reorganizations. **B3.6** Give creditors reliable recourse to enforcement as outlined in Section A and to liquidation and/or reorganization proceedings as outlined in Section C of these Principles.
B4	**Informal workout procedures** **B4.1** An informal workout process may work better if it enables creditors and debtors to use informal techniques, such as voluntary negotiation or mediation or informal dispute resolution. While a reliable method for timely resolution of inter-creditor differences is important, the financial supervisor should play a facilitating role consistent with its regulatory duties as opposed to actively participating in the resolution of inter-creditor differences. **B4.2** Where the informal procedure relies on a formal reorganization, the formal proceeding should be able to quickly process the informal, pre-negotiated agreement. **B4.3** In the context of a systemic crisis, or where levels of corporate insolvency have reached systemic levels, informal rules and procedures may need to be supplemented by interim framework enhancement measures to address the special needs and circumstances encountered with a view to encouraging restructuring. Such measures are typically of an interim nature designed to cover the crisis and resolution period, without undermining the conventional proceedings and systems.
B5	**Regulation of Workout and Risk Management Practices** **B5.1** A country's financial sector (possibly with the informal endorsement and assistance of the central bank, finance ministry or bankers' association) should promote the development of a code of conduct on a voluntary, consensual procedure for dealing with cases of corporate financial difficulty in which banks and other financial institutions have a significant exposure, especially in markets where corporate insolvency has reached systemic levels. **B5.2** In addition, good risk management practices should be encouraged by regulators of financial institutions and supported by norms that facilitate effective internal procedures and practices that support prompt and efficient recovery and resolution of non-performing loans and distressed assets.

	PART C. LEGAL FRAMEWORK FOR INSOLVENCY
C1	Key Objectives and Policies Though country approaches vary, effective insolvency systems should aim to: (i) Integrate with a country's broader legal and commercial systems. (ii) Maximize the value of a firm's assets and recoveries by creditors. (iii) Provide for both the efficient liquidation of nonviable businesses and those where liquidation is likely to produce a greater return to creditors, and the reorganization of viable businesses. (iv) Strike a careful balance between liquidation and reorganization, allowing for easy conversion of proceedings from one procedure to another. (v) Provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors. (vi) Provide for timely, efficient and impartial resolution of insolvencies. (vii) Prevent the improper use of the insolvency system. (viii) Prevent the premature dismemberment of a debtor's assets by individual creditors seeking quick judgments. (ix) Provide a transparent procedure that contains, and consistently applies, clear risk allocation rules and incentives for gathering and dispensing information. (x) Recognize existing creditor rights and respect the priority of claims with a predictable and established process. (xi) Establish a framework for cross-border insolvencies, with recognition of foreign proceedings.
C2	**Due Process: Notification and Information** Effectively protecting the rights of parties in interest in a proceeding requires that such parties have a right to be heard on and receive proper notice of matters that affect their rights, and that such parties be afforded access to information relevant to protecting their rights or interests and to efficiently resolving disputes. To achieve these objectives, the insolvency system should: **C2.1** Afford timely and proper notice to interested parties in a proceeding concerning matters that affect their rights. In insolvency proceedings there should be procedures for appellate review that support timely, efficient and impartial resolution of disputed matters. As a general rule, appeals do not stay insolvency proceedings, although the court may have power to do so in specific cases. **C2.2** Require the debtor to disclose relevant information pertaining to its business and financial affairs in detail sufficient to enable the court, creditors and affected parties to reasonably evaluate the prospects for reorganization. It should also provide for independent comment on and analysis of that information. Provision should be made for the possible examination of directors, officers and other persons with knowledge of the debtor's financial position and business affairs, who may be compelled to give information to the court and insolvency representative and creditors' committee. **C2.3** Provide for the retention of professional experts to investigate, evaluate or develop information that is essential to key decision-making. Professional experts should act with integrity, impartiality and independence.
	Commencement
C3	**Eligibility** The insolvency proceeding should apply to all enterprises or corporate entities, including state-owned enterprises.[16] Exceptions should be limited, clearly defined, and based upon compelling state policy and support; and should be dealt with through a separate law or through special

[16] Ideally, the insolvency process should apply to SOEs, or alternatively, exceptions of SOEs should be clearly defined and based upon compelling state policy.

	provisions in the insolvency law.
C4	**Applicability and accessibility**
	C4.1 Access to the system should be efficient and cost-effective. Both debtors and creditors should be entitled to apply for insolvency proceedings.
	C4.2 Commencement criteria and presumptions about insolvency should be clearly defined in the law. The preferred test to commence an insolvency proceeding should be the debtor's inability to pay debts as they mature, although insolvency may also exist where the debtor's liabilities exceed the value of its assets, provided that the value of assets and liabilities are measured on the basis of fair market values.[17]
	C4.3 Debtors should have easy access to the insolvency system upon showing proof of basic criteria (insolvency or financial difficulty).
	C4.4 Where the application for commencement of a proceeding is made by a creditor, the debtor should be entitled to prompt notice of the application, an opportunity to defend against the application, and a prompt decision by the court on the commencement of the case or the dismissal of the creditor's application.
C5	**Provisional measures and effects of Commencement**
	C5.1 When an application has been filed, but before the court has rendered a decision, provisional relief or measures should be granted when necessary to protect the debtor's assets and the interests of stakeholders, subject to affording appropriate notice to affected parties.
	C5.2 The commencement of insolvency proceedings should prohibit the unauthorized disposition of the debtor's assets and suspend actions by creditors to enforce their rights or remedies against the debtor or the debtor's assets. The injunctive relief (stay) should be as wide and all encompassing as possible, extending to an interest in assets used, occupied or in the possession of the debtor.
	C5.3 A stay of actions by secured creditors should be imposed in liquidation proceedings to enable higher recovery of assets by sale of the entire business or its productive units, and in reorganization proceedings where the collateral is needed for the reorganization. The stay should be of limited, specified duration, strike a proper balance between creditor protection and insolvency objectives, and provide for relief from the stay by application to the court based on clearly established grounds when the insolvency objectives or the protection of the secured creditor's interests in its collateral are not achieved. Exceptions to the general rule on a stay of enforcement actions should be limited, clearly defined and based on compelling state interests or policies.
	Governance
C6	**Management**
	C6.1 In liquidation proceedings, management should be replaced by an insolvency representative with authority to administer the estate in the interest of creditors. Control of the estate should be surrendered immediately to the insolvency representative. In creditor-initiated filings, where circumstances warrant, an interim administrator with limited functions should be appointed to monitor the business to ensure that creditor interests are protected.
	C6.2 There are typically three preferred approaches in reorganization proceedings: (i) exclusive control of the proceeding is entrusted to an independent insolvency representative; or (ii) governance responsibilities remain invested in management; or (iii) supervision of

[17] A single or dual approach may be adopted, although where only a single test is adopted it should be based on the liquidity approach for determining insolvency – that is, the debtor's inability to pay due debts.

	management is undertaken by an impartial and independent insolvency representative or supervisor. Under the second and third approaches, complete power should be shifted to the insolvency representative if management proves incompetent, negligent or has engaged in fraud or other misbehavior.
C7	**Creditors and the Creditors' Committee** **C7.1** The role, rights and governance of creditors in proceedings should be clearly defined. Creditor interests should be safeguarded by appropriate means that enable creditors to effectively monitor and participate in insolvency proceedings to ensure fairness and integrity, including by creation of a creditors' committee as a preferred mechanism, especially in cases involving numerous creditors. **C7.2** Where a committee is established, its duties and functions, and the rules for the committee's membership, quorum and voting, and the conduct of meetings should be specified by the law. It should be consulted on non-routine matters in the case and have the ability to be heard on key decisions in the proceeding. The committee should have the right to request relevant and necessary information from the debtor. It should serve as a conduit for processing and distributing that information to other creditors and for organizing creditors to decide on critical issues. In reorganization proceedings, where creditors should be entitled to participate in the selection of the insolvency representative.
	Administration
C8	**Collection, Preservation, Administration and Disposition of Assets** **C8.1** The insolvency estate should include all the debtor's assets, including encumbered assets and assets obtained after the commencement of the case. Assets excluded from the insolvency estate should be strictly limited and clearly defined by the law. **C8.2** After the commencement of the insolvency proceedings, the court or the insolvency representative should be allowed to take prompt measures to preserve and protect the insolvency estate and the debtor's business. The system for administering the insolvency estate should be flexible and transparent and enable disposal of assets efficiently and at the maximum values reasonably attainable. Where necessary, the system should allow assets to be sold free and clear of security interests, charges or other encumbrances, subject to preserving the priority of interests in the proceeds from the assets disposed. **C8.3** The rights and interests of a third party owner of assets should be protected where its assets are used during the insolvency proceedings by the insolvency representative and/or the debtor in possession.
C9	**Stabilizing and Sustaining Business Operations.** **C9.1** The business should be permitted to operate in the ordinary course. Transactions that are not part of the debtor's ordinary business activities should be subject to court review. **C9.2** Subject to appropriate safeguards, the business should have access to commercially sound forms of financing, including on terms that afford a repayment priority under exceptional circumstances, to enable the debtor to meet its ongoing business needs.
C10	**Treatment of Contractual Obligations**[18] **C10.1** To achieve the objectives of insolvency proceedings, the system should allow interference with the performance of contracts where both parties have not fully performed their obligations. Interference may imply continuation, rejection or assignment of contracts.

[18] Treatment of contracts typically also includes leases.

	C10.2 To gain the benefit of contracts that have value, the insolvency representative should have the option of performing and assuming the obligations under those contracts. Contract provisions that provide for termination of a contract upon either an application for commencement, or the commencement of insolvency proceedings, should be unenforceable subject to special exceptions. **C10.3** Where the contract constitutes a net burden to the estate, the insolvency representative should be entitled to reject or cancel the contract, subject to any consequences that may arise from rejection. **C10.4** Exceptions to the general rule of contract treatment in insolvency proceedings should be limited, clearly defined and allowed only for compelling commercial, public or social interests, such as in the following cases: (i) upholding general setoff rights, subject to rules on avoidance; (ii) upholding automatic termination, netting and close out provisions contained in financial contracts; (iii) preventing continuation and assignment of contracts for irreplaceable and personal services where the law would not require acceptance of performance by another party; and (iv) establishing special rules for treating employment contracts and collective bargaining agreements.
C11	**Avoidable Transactions** **C11.1** After the commencement of an insolvency proceeding, transactions by the debtor that are not consistent with the debtor's ordinary course of business or engaged in as part of an approved administration should be avoided (cancelled), with narrow exceptions protecting parties who lacked notice. **C11.2** Certain transactions prior to the application for or the date of commencement of the insolvency proceeding should be avoidable (cancelable), including fraudulent and preferential transfers made when the enterprise was insolvent or that rendered the enterprise insolvent. **C11.3** The suspect period, during which payments are presumed to be preferential and may be set aside, should be reasonably short in respect to general creditors to avoid disrupting normal commercial and credit relations, but may be longer in the case of gifts or where the person receiving the transfer is closely related to the debtor or its owners.
	Claims and Claims Resolution Procedures
C12	**Treatment of Stakeholder Rights and Priorities** **C12.1** The rights of creditors and priorities of claims established prior to insolvency proceeding under commercial or other applicable laws should be upheld in an insolvency proceeding to preserve the legitimate expectations of creditors and encourage greater predictability in commercial relationships. Deviations from this general rule should occur only where necessary to promote other compelling policies, such as the policy supporting reorganization or to maximize the insolvency estate's value. Rules of priority should enable creditors to manage credit efficiently consistent with the following additional principles: **C12.2** The priority of secured creditors in their collateral should be upheld and, absent the secured creditor's consent, its interest in the collateral should not be subordinated to other priorities granted in the course of the insolvency proceeding. Distributions to secured creditors should be made as promptly as possible. **C12.3** Following distributions to secured creditors from their collateral and payment of claims related to costs and expenses of administration, proceeds available for distribution should be distributed *pari passu* to the remaining general unsecured creditors,[19] unless there are

[19] Subject to any intercreditor agreements and contractual subordination provisions or where equitable subordination of a creditors claim may be appropriate.

	compelling reasons to justify giving priority status to a particular class of claims. Public interests generally should not be given precedence over private rights. The number of priority classes should be kept to a minimum. **C12.4** Workers are a vital part of an enterprise, and careful consideration should be given to balancing the rights of employees with those of other creditors. **C12.5** In liquidation, equity interests or the owners of the business are not entitled to a distribution of the proceeds of assets until the creditors have been fully repaid. The same rule should apply in reorganization, although limited exceptions may be made under carefully stated circumstances that respect rules of fairness that entitle equity interests to retain a stake in the enterprise.
C13	**Claims resolution procedures** Procedures for notifying creditors and permitting them to file claims should be cost effective, efficient and timely. While there must be a rigorous system of examining claims to ensure validity and resolve disputes, the delays inherent in resolving disputed claims should not be permitted to delay reorganization proceedings.
C14	**Reorganization proceedings** **C14.1** The system should promote quick and easy access to the proceeding, assure timely and efficient administration of the proceeding; afford sufficient protection for all those involved in the proceeding, provide a structure that encourages fair negotiation of a commercial plan, and provide for approval of the plan by an appropriate majority of creditors. Key features and principles of a modern reorganization proceeding include the following: **C14.2** *Plan Formulation and Consideration.* A flexible approach for developing a plan consistent with fundamental requirements designed to promote fairness and prevent commercial abuse. **C14.3** *Plan Voting and Approval.* For voting purposes, classes of creditors may be provided with voting rights weighted according to the amount of a creditor's claim. Claims and voting rights of insiders should be subject to special scrutiny and treated in a manner that will ensure fairness. Plan approval should be based on clear criteria aimed at achieving fairness among similar creditors, recognition of relative priorities and majority acceptance, while offering opposing creditors or classes a dividend equal to or greater than they would likely receive in a liquidation proceeding. Where court confirmation is required, the court should normally defer to the decision of the creditors based on a majority vote. Failure to approve a plan within the stated time period, or any extended periods, is typically grounds for placing the debtor into a liquidation proceeding. **C14.4** *Plan Implementation and Amendment.* Effective implementation of the plan should be independently supervised. A plan should be capable of amendment (by vote of the creditors) if it is in the interests of the creditors. Where a debtor fails or is incapable of implementing the plan, this should be grounds for terminating the plan and liquidating the insolvency estate. **C14.5** *Discharge and Binding Effects.* The system should provide for plan effects to be binding with respect to forgiveness, cancellation or alteration of debts. The effect of approval of the plan by a majority vote should bind all creditors, including dissenting minorities. **C14.6** *Plan revocation and closure.* Where approval of the plan has been procured by fraud, the plan should be reconsidered or set aside. Upon consummation and completion of the plan, provision should be made to swiftly close the proceedings and enable the enterprise to carry on its business under normal conditions and governance.
C15	**International Considerations** Insolvency proceedings may have international aspects, and a country's legal system should

	establish clear rules pertaining to jurisdiction, recognition of foreign judgments, cooperation among courts in different countries and choice of law. Key factors to effective handling of cross-border matters typically include: (i) A clear and speedy process for obtaining recognition of foreign insolvency proceedings; (ii) Relief to be granted upon recognition of foreign insolvency proceedings; (iii) Foreign insolvency representatives to have access to courts and other relevant authorities; (iv) Courts and insolvency representatives to cooperate in international insolvency proceedings; (v) Nondiscrimination between foreign and domestic creditors.
	Part D. Implementation: Institutional & Regulatory Frameworks
D1	**Role of Courts** **D1.1** *Independence, Impartiality and Effectiveness.* The system should guarantee the independence of the judiciary. Judicial decisions should be impartial. Courts should act in a competent manner and effectively. **D1.2** *Role of Courts in Insolvency Proceedings.* Insolvency proceedings should be overseen and impartially disposed of by an independent court and assigned, where practical, to judges with specialized insolvency expertise. Non-judicial institutions playing judicial roles in insolvency proceedings should be subject to the same principles and standards applied to the judiciary. **D1.3** *Jurisdiction of the Insolvency Court.* The court's jurisdiction should be defined and clear with respect to insolvency proceedings and matters arising in the conduct of these proceedings. **D1.4** *Exercise of Judgment by the Court in Insolvency Proceedings.* The court should have sufficient supervisory powers to efficiently render decisions in proceedings in line with the legislation without inappropriately assuming a governance or business management role for the debtor, which would typically be assigned to management or an insolvency representative. **D1.5** *Role of Courts in Commercial Enforcement Proceedings.* The general court system must include components that effectively enforce the rights of both secured and unsecured creditors outside of insolvency proceedings. If possible, these components should be staffed by specialists in commercial matters. Alternatively, specialized administrative agencies with that expertise may be established.
D2	**Judicial Selection, Qualification, Training and Performance** **D2.1** *Judicial Selection and Appointment.* Adequate and objective criteria should govern the process for selection and appointment of judges. **D2.2** *Judicial Training.* Judicial education and training should be provided to judges. **D2.3** *Judicial Performance.* Procedures should be adopted to ensure the competence of the judiciary and efficiency in the performance of court proceedings. These procedures serve as a basis for evaluating court efficiency and for improving the administration of the process.

D3	**Court Organization** The court should be organized so that all interested parties—including the attorneys, insolvency representative, debtor, creditors, public and media—are dealt with fairly, timely, objectively and as part of an efficient, transparent system. Implicit in that structure are firm and recognized lines of authority, clear allocation of tasks and responsibilities, and orderly operations in the courtroom and case management.
D4	**Transparency and Accountability** An insolvency and creditor rights system should be based upon transparency and accountability. Rules should ensure ready access to relevant court records, court hearings, debtor and financial data and other public information.
D5	**Judicial decision making and enforcement of orders** **D5.1** *Judicial Decision Making.* Judicial decision making should encourage consensual resolution among parties where possible and otherwise undertake timely adjudication of issues with a view to reinforcing predictability in the system through consistent application of the law. **D5.2** *Enforcement of Orders.* The court must have clear authority and effective methods of enforcing its judgments. **D5.3** *Creating a Body of Jurisprudence.* A body of jurisprudence should be developed by means of consistent publication of important, controlling, and novel judicial decisions, especially by higher courts, using publication methods that are conventional and electronic (where possible).
D6	**Integrity of the System** **D6.1** *Integrity of the court.* The system should guarantee security of tenure and adequate remuneration of judges, and personal security for judicial officers and court buildings. Court operations and decisions should be based on firm rules and regulations to avoid corruption and undue influence. **D6.2** *Conflict of interest and bias.* The court must be free of conflicts of interest, bias and lapses in judicial ethics, objectivity and impartiality. **D6.3** *Integrity of participants.* Persons involved in a proceeding must be subject to rules and court orders designed to prevent fraud, other illegal activity and abuse of the insolvency and creditor rights system. In addition, the court must be vested with appropriate powers to enforce its orders and address matters of improper or illegal activity by parties or persons appearing before the court with respect to court proceedings.
D7	**Role of regulatory or supervisory bodies** The bodies responsible for regulating or supervising insolvency representatives should: - Be independent of individual representatives; - Set standards that reflect the requirements of the legislation and public expectations of fairness, impartiality, transparency and accountability; and, - Have appropriate powers and resources to enable them to discharge their functions, duties and responsibilities effectively.

D8	**Competence and Integrity of Insolvency Administrators** The system should ensure that: - Criteria as to who may be an insolvency representative should be objective, clearly established and publicly available; - Insolvency representatives be competent to undertake the work to which they are appointed and to exercise the powers given to them; - Insolvency representatives act with integrity, impartiality and independence; and - Insolvency representatives, where acting as managers, be held to director and officer standards of accountability, and be subject to removal for incompetence, negligence, fraud or other wrongful conduct.[20]

[20] See Principle B2.

Annex B

Unified Standard on Insolvency and Creditor Rights Systems

for preparing Reports on the Observance of Standards and Codes

Effective and efficient insolvency and creditor rights systems are widely recognized as important elements of financial system stability. These systems help to ensure efficient access to credit and allocation of resources, enhancing productivity and growth. They also enable commercial stakeholders to better manage financial risk and difficulties in enterprise sectors in a timely way, so as to minimize systemic risk, particularly in the banking system.

In the context of the joint Bank-Fund initiative on standards and codes, insolvency and creditor rights constitute one of the twelve areas that have been identified as useful for the operational work of the Bank and the Fund, and for which standard assessments are to be undertaken.[21] Work towards defining an international standard on insolvency and creditor rights systems has been undertaken on two complementary fronts led by the Bank and the UN Commission for International Trade Law (UNCITRAL).

The Bank-Fund initiative on standards and codes was developed in the wake of the financial crises of the late 1990s as part of a series of measures to strengthen the international financial architecture. The international financial community considered that the implementation of internationally recognized standards and codes would provide a framework to strengthen domestic institutions, identify potential vulnerabilities, and improve transparency.

In 1999, the World Bank's initiative to develop benchmarking principles for core commercial law systems was launched, leading to the development of the *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems ("Principles").* The *Principles* are designed as a broad-spectrum assessment tool to assist countries in their efforts to evaluate and improve core aspects of their commercial law systems that are fundamental to a sound investment climate and commerce, including credit access and protection mechanisms, risk management and restructuring practices and procedures, formal commercial insolvency procedures, and related institutional and regulatory frameworks. The *Principles* were elaborated in collaboration with partner organizations and experts serving on the Bank's *Task Force* and working groups. Advisory partners included: African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, International

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[21] These twelve areas are grouped into three categories: transparency (data dissemination, fiscal, and monetary and financial policy), financial stability (banking supervision, insurance supervision, securities regulation, payments systems, anti money laundering/combating the financing of terrorism), and market integrity (accounting, auditing, corporate governance, insolvency and creditor rights). See *Summing Up by the Acting Chairman--Assessing the Implementation of Standards—A review of Experience and Next Steps*, SUR/01/13; *Summing Up by the Acting Chair—Anti-Money Laundering and Combating the Financing of Terrorism—Proposals to Assess a Global Standard and to Prepare ROSCs*, BUFF/02/122; and *Assessing the Implementation of Standards: A Review of Experience and Next Steps* (SecM2001-0032)

Finance Corporation, International Monetary Fund, Organization for Economic Cooperation and Development, UNCITRAL, INSOL International, and the International Bar Association (Committee J). The Task Force and working groups comprised more than 70 international experts. The *Principles* were vetted in a series of regional roundtables involving more than 700 participants from 75 countries (mostly middle income and developing nations), involving high level officials and designated experts from the private sector. The *Principles* were also posted on the Bank's website for international comment and discussed and approved by the Bank's Executive Directors in 2001 for use in a series of pilot country assessments under the ROSC program, subject to a review and updating of the *Principles* based on that experience.[22] In 2003, the Bank began a review of the ROSC experience on insolvency and creditor rights systems, and recently concluded a revision of the *Principles* to take stock of the lessons learned from that experience and to reflect feedback from the international community in connection with the Global Forum on Insolvency Risk Management, the Forum on Asian Insolvency Reform, the Forum on Insolvency in Latin America and the Global Judges Forum, and based on the Bank's collaboration with its original partners, the European Commission, Group of Twenty, Asia-Pacific Economic Cooperation, International Association of Insolvency Regulators, and others.

In 1999, UNCITRAL approved a proposal to develop its *Legislative Guide on Insolvency Law ("Insolvency Guide")* to encourage the adoption of effective national corporate insolvency regimes. A total of 87 States, 14 inter-governmental organizations and 13 non-governmental organizations participated in the work, which began in 2001 and was completed in 2004 with endorsement by the United Nations General Assembly on 2 December 2004. The *Legislative Guide* discusses issues central to the design of an effective and efficient insolvency law, based on policies and practices recognized in many legal systems, and contains a number of detailed legislative recommendations that incorporate flexibility, as appropriate, to accommodate different policy choices and contexts. In addition, UNCITRAL is currently working on its *Legislative Guide on Secured Transactions ("Secured Transactions Guide")* addressing security interests in movable property including inventory, equipment, receivables, bank accounts, letters of credit, negotiable documents, negotiable instruments and acquisition financing devices. The *Secured Transactions Guide*, which is expected to be completed in 2006, recommends a modern legal framework for the development of a comprehensive secured transactions regime that rises above differences among legal regimes and that is efficient and effective in facilitating low-cost secured financing.

While the Bank's *Principles* and the UNCITRAL *Legislative Guide* have been devised according to their respective governance process and structures, the Bank and UNCITRAL have collaborated to ensure consistency in these complementary products. The *Principles* cover a wider range of commercial law systems, including institutional and regulatory aspects of those systems, and elaborate fundamental principles intended to have flexible application to diverse country systems. The *Legislative Guide* focuses more

[22] World Bank 2001 (SecM2001-0192). Subsequently, the *Principles* were distributed to the Development Committee, which also acknowledged its support of the Bank's work in this area. Development Committee 2001 (DC/2001-0008/1).

deeply on the key elements of an effective insolvency law, and substantiates, with extensive discussion of various options and approaches, a detailed series of legislative recommendations that provide specific guidance on the content of the insolvency law. The complementary perspectives of these products serve as important reference points for countries to evaluate and strengthen their insolvency and creditor rights systems in line with generally recognized standards of good practice. Given the broad official and private sector participation in these processes that culminated in an international consensus on generally accepted principles and practices reflected in the Bank's *Principles* and UNCITRAL's *Legislative Guide*, Bank and Fund staffs recommend that the Bank and Fund Executive Boards recognize these documents as constituting the unified standard for insolvency and creditor rights systems for use in the two institutions' operational work.[23]

Such recognition would allow for ROSC assessments to be conducted on the basis of the unified standard on insolvency and creditor rights systems. ROSCs are designed to assess a country's institutional practices against an internationally recognized standard, and, if needed, provide recommendations for improvement. The process of participation and the production of the report, it is hoped, will help to spur reform and foster strengthened economic institutions in member countries. The *Principles* and the *Legislative Guide*, taken together, will form the basis for developing a methodology document for ROSC assessments of insolvency and creditor rights systems, within the parameters of the joint Bank/Fund initiative on standards and codes.

[23] Upon its completion, the UNCITRAL *Secured Transactions Law Guide* is also expected to be incorporated in the unified standard. Any evolution in the unified standard would be presented to the Bank and Fund Executive Boards in order for the updated standard to be used in Bank and Fund assessments.

Annex C

Outreach and Partnerships

(a) Collaboration with International Organizations -- G20 and APEC

1. *G20.* The Bank has been coordinating with the G20 to obtain feedback from this group of countries to update them on progress regarding the work on insolvency and creditor rights and to get feedback on the Principles, and the approach and methodology of the ICR ROSC assessments. The G20 have welcomed the Bank's initiative and have indicated their support for the Bank's flexible approach that provides for an international standard that is accommodative of differences in legal heritage and traditions. The G20 have also welcomed and encouraged efforts to develop unified standards that take account of other leading products in this field.

2. *APEC.* In recent years, APEC has invited the Bank to share its experience and has indicated its support for the work of the Bank, seeking closer collaboration. In its most recent meeting, APEC again reiterated support for the Bank's work and also took note of efforts to develop a unified framework of standards on which a uniform methodology for assessments should be developed. .

(b) Collaboration with OECD and Regional Development Banks

3. OECD and the Regional Banks have been partners in the Bank initiative to develop the Principles. Some of these organizations have also had programs to promote awareness of insolvency and technical assistance within their respective regions.

4. In Asia, the Bank has been collaborating with OECD, ADB, Government of Japan, AusAID and APEC on the various regional fora and roundtables to discuss insolvency and related topics through the Forum for Asian Insolvency Reform (FAIR). This included the initial regional conference co-sponsored by the Bank and OECD as part of the Bank's efforts to vet the Principles, and subsequently to share experience and promote greater awareness and understanding of these areas within the region. It has also been a forum for sharing the Bank's and ADB's experience on these topics in the region. OECD has been the primary organizer and administrator of the event. The Bank has collaborated with ADB in connection with a ROSC assessment and technical assistance to judges in the Philippines, and on ad hoc occasions, such as conference in China on the draft proposed insolvency law. The collaboration in Asia has recently encompassed countries in South Asia, the venue of the last FAIR.

5. In Europe, the Bank has collaborated closely with the EBRD and the European Commission on various projects. The EBRD was among the first organizations to develop a model law on secured transactions, and has had an active technical assistance program to member countries on these issues. The Bank has collaborated with experts from EBRD in several countries where secured transactions reforms have been part of the operational program (e.g., Slovakia) with excellent result. In addition, the Bank has collaborated with EBRD in the area of insolvency in coordinating some of the initial roundtable discussions that vetted the Principles, and in conjunction with a technical assistance project on the insolvency law in the Czech Republic. .As mentioned above, Bank staff also collaborated closely with a special working group

of the European Commission Enterprises Directorate to study insolvency laws throughout the EU with a view to promoting policy dialogue and awareness of the importance of developing a corporate rescue culture and entrepreneurialism. The Bank's Principles were used as the cornerstone for benchmarking systems in the EU.

6. In Latin America, the Bank has collaborated with the Inter-American Development Bank (IADB) in connection with a survey of insolvency and a roundtable in Mexico to vet the Principles. More recently, the Bank and OECD launched in 2004 the Forum on Insolvency in Latin America (FILA) to promote a similar outreach and awareness among Latin American countries. Although invited to participate as a co-sponsors, IADB was not in a position to do so. One of the constraints in working more closely with IADB on projects has been a difference in priorities and its lack of internal expertise on insolvency and related matters.

7. In Africa, the Bank has collaborated with the African Development Bank (AfDB), which served as a member of the Bank's advisory panel on the preparation of the Principles. More recently, the Bank has been collaborating with OHADA as part of the review of the model commercial law framework, encompassing several key commercial laws, applicable to 16 francophone countries in sub-Saharan Africa. Notably, a great deal of work needs to be done in this region on a regional scale to elevate awareness of the importance of creditor rights and insolvency systems as a component of building attractive investment climates. In the view of Bank staff, the initial emphasis should be on credit access and related systems, where the strongest need exists. Such outreach programs are dependent on the availability of resources.

(c) Collaboration with UNCITRAL on Technical Guidelines

8. Other organizations have also made progress in developing more detailed guidelines and methodologies for use in reforming laws. Since the initial consideration of the Principles in 2001, the Bank has participated in working group meetings of UNCITRAL to develop legislative guides in the field of commercial insolvency and secured transactions (movable assets). The Bank has liaised closely with UNCITRAL staff and experts as these initiatives have progressed to ensure uniformity and consistency between the Bank's principles and recommendations developed for more detailed technical reforms. This also ensures that a harmonized framework of standards develops at different levels – principles, methodologies and good practices. Recently, the Organization for American States (OAS) also completed a model law on secured transactions, which has already served as a model for reforms in several Latin American countries. The OAS model law is a more detailed framework than the model law developed by the EBRD, which has been the basis for a number of reform efforts in Central and Eastern Europe, in some instances in collaboration with World Bank operations. As other efforts evolve, Bank staff will have a wider range of tools to assist in their advisory work and technical assistance to countries.

9. **Collaboration between the Bank and UNCITRAL.** UNCITRAL has undertaken several initiatives in areas overlapping with the Bank's work in the area of insolvency and creditor rights systems. In particular, this includes the development of two legislative guides containing recommendations for an insolvency law and for a secured transactions law (movable property). In each of these areas, Bank staff has continued to participate in the UNCITRAL Working Group sessions and expert groups in an effort to help inform the discussions based on the Bank's work and efforts, and has engaged separate discussions with UNCTRAL staff and designated experts to

ensure consistency between the Bank's Principles and the UNCITRAL legislative recommendations.

10. *Insolvency Law Guide.* The EDs encouraged Bank staff to continue their efforts to develop more technical guidelines in areas covered by the Principles, and to coordinate with UNCITRAL its own project, which was to begin in July 2001 to develop a legislative guide for an insolvency law. The guide was intended to offer policymakers a more detailed and prescriptive roadmap for reforming their insolvency law. The Bank's Principles helped to set the parameters for UNCITRAL's work on the guide, which naturally evolved according to its own consensus process in elaborating specific choices and options for the guide. While the guide opts for certain choices that are considered to be consistent with international best practice, it also notes that specific design choices may be influenced by other factors and considerations that are not covered by the guide, such as the institutional framework, legal and cultural heritage, and others. This approach is also consistent with the Bank's Principles, where the principles themselves would accommodate a broader set of options and approaches. Bank staffs have participated in the bi-annual working group meetings and have continued to review and engage in discussions with the UNCITRAL Secretariat and experts group to ensure consistency between the Bank's Principles and the recommendations contained in the legislative guide. The guide, approved in June 2004 and subsequently December 2004 by the UN General Assembly, was published in January 2005.

11. *Secured Transactions Law Guide (movable property).* UNCITRAL decided in 2001 to undertake work in the area of secured transactions, considering that a flexible and effective legal framework for security rights could serve as a useful tool to increase economic growth. As to the form of that work, the Commission considered that a model law would be too rigid and noted the suggestions made for a set of principles with a legislative guide that would include legislative recommendations. The first session of UNCITRAL Working Group VI (Legislative Guide on Secured Transactions) was held in May 2002. Since then, World Bank staff is liaising with UNCITRAL working group and staff to ensure no conflicting points will exist between the World Bank Principles and this Legislative Guide on Secured Transactions. This Legislative Guide is expected to be completed in 2006 or 2007. Once this Legislative Guide is finished, the World Bank Principles on Security Rights will be revisited and –if necessary- adjusted to achieve full consistency with the former.

(d) Global Judges Forum - Court Practices Guidelines

12. **The Bank has coordinated a study of comparative commercial court experience in more than 50 countries and is developing a set of practices and guidelines to assist countries in strengthening institutional frameworks.** In 2003, the World Bank launched the Global Judges Forum in 2003 to promote the sharing of experience among insolvency and commercial law judges from around the world. This effort brings together more than 100 judges from over 70 countries to assist the Bank in identifying comparative experience and to develop general guidelines that can assist courts in their efforts to strengthen institutional capacity and implement court practices in the areas of insolvency and enforcement procedures. In 2004, the Global Judges Forum reconvened in June and November to continue its work on a court practices guide aimed at providing guidance to strengthen courts and institutions responsible for implementing insolvency and commercial enforcement systems. The November Forum also was a unique opportunity to provide feedback to the World Bank in its efforts to develop effective strategies for promoting development of strong courts in member countries.

(e) International Association of Insolvency Regulators (IAIR) – Regulatory Framework Guidelines

13. Bank staff are also coordinating with the International Association of Insolvency Regulators (IAIR), whose members are public officials serving as official insolvency regulators, to develop guidelines for strengthening regulatory frameworks for insolvency. The work on the recommendations for courts and regulation, similar to the UNCITRAL legislative guide, are designed to provide a deeper level of understanding and dialogue on ways to strengthen institutional parts of these systems.

(f) Other Outreach, Partnerships and Knowledge Products

14. *Global Forums*. In addition to the regional outreach initiatives discussed above, the Bank launched the Global Forum on Insolvency Risk Management (FIRM) in 2003 as part of the process of reviewing the experience of the ROSC assessment program and taking further feedback on the Principles from the international community. The FIRM is also intended to serve as a hub for other activities in this area, and Bank staff and OECD have been in discussions on a collaboration to have FIRM serve as the anchor for the regional initiatives and other global initiatives like the Global Judges Forum. The idea would be for FIRM to have a function and structure similar to the Global Corporate Governance Forum, albeit with a slightly different governance structure. This vehicle would continue to serve as a vehicle for discussing and raising awareness of the importance of standards in the areas of creditor rights, risk management and insolvency.

15. *Global Insolvency Law Database*. In 1999, the Bank began work on the Global Insolvency Law Database. The database is now in a second generation developed in collaboration with the Bank's Information Systems Group (ISG). The database is intended to serve as a seminal database for tracking national and international developments on creditor rights and insolvency systems, and for accessing relevant legislation. The database currently has approximately 100 countries online, and coordinates with country partners in each country that are responsible for preparing an initial comparative report on local systems and to work with the Bank in gathering relevant information to build out the country site and monitor developments. The GILD serves as an important tool for the international community in examining comparative experience and undertaking reform efforts.

16. *Other activities*. Bank staffs also have coordinated with the World Bank Institute and the Global Distance Learning Network in supporting presentations and multi-country dialogues on the importance of commercial law systems in these areas. Bank staff also have participated in various international and local seminars and workshops and contributed to academic publications to update the international community on the work of the Bank in this area. Bank staff is also evaluating how it can produce more effective knowledge products based on the substantial information that has been gathered and developed through the initiative and ROSC assessment programs.