

**Asia-Pacific Financial Forum
Interim Report to the APEC Finance Ministers**

**ANNEX G
Self-Assessment Template: Investor Rights in Insolvency**

Insolvency Regime Self-Assessment Template Outline

- Contract enforcement and dispute resolution
 - Is there an opportunity to be heard in court?
 - There is a fundamental difference between common law and civil law jurisdictions. In civil law jurisdictions, all pleading and submissions are in writing. Common law parties exchange pleadings and documentations but oral submissions are then always given to the court.
 - How quickly do cases come to Court?
 - In some economies such as India, this may take 10-20 years.
 - Options for template:
 - Less than six months
 - Six months to one year
 - One to three years
 - Three to five years network
 - More than five years
 - Availability of real property ownership and mechanisms to support its use
 - If I own a property, can I establish that fact to the outside world?
 - Who can own property? Do you have to be a local resident, can you be a company?
 - How do you evidence your ownership?
 - Is there a recognized document title which facilitates a property transfer?
 - Is it easy to create a valid mortgage encumbrance?
 - Is it clear to the lender that the lender can establish their rights to the property so long as the mortgage subsists?
 - Availability of collateral and its enforcement
 - Does the regime allow the establishment of security/collateral?
 - If there is a breach of the underlying obligations, how easy and effective is it for the holder of the security to enforce its rights against that collateral?
 - Delineated provisions for secured transactions, including security interests in intangible property
 - Is there an underlying regime and process which recognizes security as a legal instrument, such that any security rights are established to the outside world?
 - With security rights, you normally start with relatively straight forward rights. Property, real estate, tangible items, then security over things like shares. Intangibles are important but more complicated to establish security rights and register.
 - Security over receivables: You grant money, you make a loan to a company, that company manufactures goods, when it sells a good to a customer, the company has a receivable due – that's a useful source of security. I have security over the money you owe.
 - Security over intellectual property: A company that relies on patents, those patents could be the most valuable items a high

tech company has an a lender will want to take security over that.

- Effective registration systems to cover a range of assets, including real property, share and asset security and intangibles (e.g. intellectual property)
- Appropriate mechanisms for creditor and debtor self-assistance in the absence of the above
 - If none of this exists, how can creditors and debtors resolve their issues? Quite difficult to frame an option of answers.
- Rights of creditors
 - Are these acknowledged?
 - Secured v. Unsecured
 - Date of enactment of relevant legislation (attachment, execution, secured transactions)
 - Subsequent updates
 - Accessibility
 - Language
 - Official Translations
 - Form of storage
 - Registries
 - Efficacy
 - How long does it take to enforce a judgment?
 - How long does it take to get control over collateral?
 - Is it possible to get rights over future advances, after-acquired property?
 - Level of transparency
 - Level of predictability
 - Level of efficiency
- What does the established insolvency law cover?
 - E.g. Corporate insolvency regime, rescue procedures and rights of secured creditors
 - Relevant legislation
 - Date of enactment
 - Subsequent amendments
 - On what regime is it based? Examples include English law and US Bankruptcy code
 - Does the law have equal application for:
 - State-owned enterprises?
 - Large corporations?
 - Small and medium enterprises?
 - Listed companies?
 - Financial institutions?
 - Accessibility
 - Language
 - Official Translations
 - Form of storage

- Treatment of creditors
 - Is there a moratorium at the opening of proceedings providing for a stay (temporary or otherwise) on the exercise of security rights?
 - If so, does it apply to secured creditors?
 - If so, just for liquidation or also corporate rescues?
 - Is there a cramdown procedure?
- Timing of cases
 - Are the commencement criteria clear?
 - Is there an opportunity to be heard in court?
 - How quickly do cases come to Court?
- Additional Information in relation to collective insolvency proceedings
 - Detailed commencement criteria?
 - Is there framework for extra-judicial negotiations?
 - Are there anti-avoidance ("clawback") provisions?
 - Are there personal liability risks for directors of insolvent companies?
- Supporting regulations and procedures
 - Type? e.g. Liquidation versus corporate rescue
 - Date of enactment
 - Subsequent amendments
 - Accessibility
 - Language
 - Official Translations
 - Form of storage
- Local participants
 - Government
 - Is there a government agency to regulate insolvency processes and the conduct of insolvency officeholders?
 - Judges
 - Are they independent?
 - How do you become a judge? I.e. Experience/Examinations/Choice
 - How are they compensated? Are they adequately compensated?
 - Is there a list of specialist judges or the judges generalists?
 - Insolvency professionals
 - Who is responsible for applying the regime?
 - How are they trained/what is their background/qualifications?
 - Industry associations for regular training sessions?
 - How are they compensated?

Insolvency Regime Self-Assessment Template Sample Section

Contract enforcement and dispute resolution

<p>Is there an opportunity to be heard in court?</p> <p>Explanation: In most civil law jurisdictions, all pleadings and submissions are in writing. In common law jurisdictions parties exchange pleadings and documentation but then present oral submissions to the court. Hence the question.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Opportunity to provide further detail:</p>
<p>On average how quickly do cases come to court?</p> <p>Explanation: This is a key practical consideration.</p>	<p><input type="checkbox"/> Less than six months <input type="checkbox"/> Six months to one year <input type="checkbox"/> One to three years <input type="checkbox"/> Three to five years <input type="checkbox"/> More than five years</p>	<p>Opportunity to provide further detail: (Please provide data to support your answer.)</p>
<p>Availability of collateral and its enforcement</p> <p>Explanation: (a) How easy and effective is it to take collateral? and (b) if there is a breach of the underlying obligations, how easy and effective is it for the holder of the security to enforce its rights against that collateral?</p>	<p>Does the regime allow the establishment of security/collateral? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Does enforcement of collateral require a court process? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>On a scale of 1 to 10 (10 being the easiest), how easy is it to enforce collateral in a timely fashion and make a meaningful recovery? <input type="checkbox"/></p>	<p>Opportunity to provide further detail: (Please provide evidence to support the scale rating with respect to collateral enforcement)</p>
<p>Availability of real property ownership and mechanisms to support its use</p> <p>Explanation: If I own a property or as a lender have taken security over a property, can I establish that fact to the outside world?</p>	<p>Who may own property (check all that apply)? <input type="checkbox"/> Local individuals <input type="checkbox"/> Foreign individuals <input type="checkbox"/> Local companies <input type="checkbox"/> Foreign companies</p>	<p>Opportunity to provide further detail:</p>

	<p>Is ownership evidenced through a transferable title evidence of which is available to third parties?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Is it easy to create a valid mortgage encumbrance whereby a lender can establish rights to the property?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>Delineated provisions for secured transactions, including security interests in intangible property</p> <p>Explanation: Is there an underlying regime and process which recognizes security as a legal instrument such that any security rights are established to the outside world. Does this cover both tangible securities, e.g. property or real estate, and intangible items, e.g. receivables due from a customer, or intellectual property rights?</p>	<p>Is security recognized as a legal instrument?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Does it cover tangible securities?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Does it cover intangible securities?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Opportunity to provide further detail:</p>
<p>Are there effective registration systems to prove the existence of security and related rights to the following assets:</p>	<p>Real property?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Share and asset securities?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Intangibles?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Opportunity to provide further detail:</p>

In the absence of the above, are there appropriate mechanisms for creditors and debtors to resolve their issues?	<input type="checkbox"/> N/A (The above mechanisms exist) <input type="checkbox"/> Yes <input type="checkbox"/> No	Opportunity to provide further detail. Please provide further detail if the answer is yes:
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