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The Second Forum for Asian Insolvency Reform (FAIR)

Bangkok, Thailand 16 – 17 December 2002

In partnership with

The Government of Japan
and

The World Bank



Hosted by the

The Ministry of Justice of the Kingdom of Thailand



Synthesis Note

SYNTHESIS NOTE

Second Forum on Asian Insolvency Reform (FAIR)

Bangkok, Thailand, 16-17 December

Following the 1st FAIR meeting held in Bali, Indonesia in February 2001, the 2nd meeting was held in Bangkok, Thailand on 16-17 December 2002. The meeting was co-organised by the OECD, the ADB and the AusAID in partnership with the Government of Japan and the World Bank. The Ministry of Justice of the Kingdom of Thailand hosted the meeting.

The meeting provided an overview of regional developments, discussed informal workouts and cross-border insolvency issues in depth, and reviewed the reform process in Thailand. The meeting gathered approximately 120 participants from 6 Member countries (Australia, Germany, Korea, Netherlands, the UK and the US), 14 non-Members (Bangladesh, China, Hong Kong China, India, Indonesia, Malaysia, Pakistan, Philippines, Nepal, Singapore, Sri Lanka, Chinese Taipei, Thailand and Viet Nam), and 3 international organisations (ADB, IMF and the World Bank). Mr. Mats Isaksson, Head of Corporate Affairs Division of DAFNE, led the OECD team and made opening remarks together with Mr. Somchai Wongswat, Permanent Secretary, Ministry of Justice of the Kingdom of Thailand, Mr. Mike Rawstron, General Manager, Corporate Governance Division, Department of Treasury, Australia, Mr. Henry Pitney, Principal Counsel & Head, Private Sector Legal Group, ADB and Mr. Gordon Johnson, Lead Counsel, World Bank.

The participants shared the view that the Asian region has made real and substantial progress in reforming insolvency regimes in light of the financial crisis of the late 1990s. Insolvency procedures have been revised in light of effective practices elsewhere, large amounts of debt have been re-scheduled, asset-management companies have been established to handle defaulted loans, and specially trained bankruptcy courts have been set up. In many cases, rules and procedures that evolved in developed markets over decades have been instituted in Asian countries within a few years.

Understandably, Asian regimes now face the considerable challenge of implementing and enforcing these new rules and procedures. Many jurisdictions have adopted rules for voluntary re-structuring, but still lack reliable and credible liquidation procedures that induce the debtor to negotiate real and rapid restructuring. Moreover, much current “restructuring” often fails to change the lending and management practices that led to the initial insolvency. Finally, rules for handling cross-border insolvency need to be implemented and respected on a regional basis. Bearing in mind private estimates of USD 2 trillion in non-performing loans in Asia, FAIR participants agreed upon the need for continued effort in implementing real change.

The second day of the Forum included a review of the insolvency regime in Thailand, with participants giving their assessments and recommendations. The summary record of the meeting is posted on the website (<http://www.oecd.org/>).

Although there was no discussion on when and where to hold the next FAIR meeting, Korean academics indicated a preliminary desire to host the next FAIR meeting. Should the next topic of FAIR focus on secured lending, structured finance and bankruptcy-remote vehicles, Singapore or Hong Kong, centres for such finance in the Asian non-member countries, might also be suitable.