



F I R M
Forum on Insolvency Risk Management
THE WORLD BANK



FORUM ON ASIAN INSOLVENCY REFORM 2004

INSOLVENCY SYSTEMS AND RISK MANAGEMENT IN ASIA

PROGRAMME

IN PARTNERSHIP WITH
THE GOVERNMENT OF JAPAN

HOSTED BY
**MINISTRY OF FINANCE,
BANKING DIVISION,
MINISTRY OF COMPANY AFFAIRS
AND
INSOL INDIA**

New Delhi, India, 3-5 November 2004
The Oberoi Hotel

OFFICIAL SPONSORS



**Asset Reconstruction Company (India)
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Kesar Dass B & Associates
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Background

Efficient, predictable and transparent insolvency procedures are of key importance for reallocation of productive resources in the corporate sector, for investor confidence and forward looking corporate restructuring. By providing a platform for sustained policy-dialogue, the Forum for Asian Insolvency Reform (FAIR) contributes to keeping insolvency at the heart of reform efforts in the region.

Weak insolvency systems have been identified as one of the key shortcomings of the investment climate in Asian markets. At the November 1999 meeting on Insolvency Systems in Asia, the OECD was urged to continue promoting policy dialogue in the region. As a result, the OECD, in co-operation with APEC, AusAID, ADB and the government of Japan established the FAIR to discuss and exchange experience on insolvency reform in the Asian Region. FAIR gathers key policy makers, members of the judiciary, academics, insolvency practitioners and other private sector participants, who meet on an annual basis.

The FAIR has become a co-operative effort between the OECD, the World Bank and the ADB. As such, the FAIR builds on synergies between the OECD Corporate Governance Principles and the World Bank Principles and Guidelines for Effective Insolvency and Creditor Right Systems, both instruments being core standards of the Financial Stability Forum. It also serves as the Asian arm of the World Bank Forum on Insolvency Risk Management.

Purpose of the FAIR

The FAIR aims at:

- Assisting the development of an Asian agenda for insolvency reform;
- Building a regional policy constituency and commitment to reforms;
- Disseminating regional experiences and comparative progress reviews, in order to increase the understanding for viable policy options;
- Monitoring progress and helping to keep insolvency, restructuring and the related legal changes at the heart of reform efforts.

In close co-operation with international and regional partners, FAIR is organised around annual meetings that facilitate and deepen the dialogue on insolvency reform in the region. In addition to a continuous in-depth dialogue on specific aspects of insolvency reform, FAIR also undertakes informal peer country reviews of reform implementation. The shared goal of FAIR is to make sound policy conclusions and recommendations and to ground them in the situation and circumstances of each country of the region. The FAIR also facilitates identification of country-specific technical-assistance needs, which could then be addressed by bilateral donors or multilateral institutions.

Each FAIR meeting is accompanied by substantive background documentation, which is subsequently published. The first FAIR meeting, was held in Indonesia in 2001 and focused on Insolvency Reforms in Asia: An Assessment of the Implementation Process and the Role of the Judiciary. The second FAIR meeting, which was held in Thailand in December 2002, focused on Informal Workouts and reviewed the reform process in Thailand. The third FAIR meeting took place on 10-11 November 2003 in Seoul to discuss Maximising Value of Non-Performing Assets.

FAIR IV

The fourth meeting of FAIR will take place on 3-5 November 2004 in New Delhi, in co-operation with the Ministry of Finance, Ministry of Company Affairs and INSOL India. Participants will examine the policy issues and techniques related to insolvency systems and risk management in Asia.

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The meeting will attempt to distill the experience with new initiatives that have emerged since the beginning of the Asian financial crisis in the area of insolvency and risk management and to assess whether they provide the right incentives for debtor and creditor discipline.

Organisation of the discussions

Presentations and discussions will take place within five sessions. In each session main speakers will make a presentation of about 15 minutes each, followed by discussants that will have a slot of maximum 10 minutes each. Speakers are invited to keep their presentations within the proposed time limitations in order to leave sufficient time for debate and general discussion.

In concluding the meeting, chair persons of the meeting sessions will briefly summarise the discussions, highlighting key priorities for reforms in Asia. Options for future work of FAIR will also be discussed.

Inaugural Session, Wednesday 3rd November 2004

18.00

- Welcome address, *Mr. Robert Ley*, Deputy Director, Directorate for Financial and Enterprise Affairs, OECD
- Special address, *Mr. Rachid Benmessaoud*, Operations Advisor, India Resident Mission, World Bank
- Special address, *Mr. T.L. de Jonghe*, Country Director, India Resident Mission, ADB
- Special address: *Mr. N.S. Sisodia*, Secretary, Financial Sector, Ministry of Finance, Government of India
- Special address, *The Honourable Mr. Justice Manmohan Sarin*, President, INSOL India
- Inaugural address, *Mr. Prem Chand Gupta*, Honourable Minister of State of Company Affairs with Independent Charge, Government of India

19:00

Welcome Reception

Day One, Thursday 4th November 2004

08:30 – 09:00 Registration

SESSION I:

Risk management systems: the framework and practices in Asia

09:00 – 10:30 Chair: *Mr. Gordon Johnson*, Lead Counsel, World Bank

Presentations:

- Bridging credit risk and credit access: insolvency systems and credit risk management, *Mr. Morgan Kelly*, Account Director, Restructuring, Deloitte Touche
- Regulatory, institutional framework and practices of risk management in Asia and the interface with insolvency systems, *Mr. Philip D. Sherman*, Senior Advisor, Risk Management Association
- Risk Management in the Chinese Banking Sector, *Mr. Shi Jiliang*, Vice Chairman, China Banking Regulatory Commission
- State Bank of India: lessons from the national and international experience with risk management, *Mr. S.K Hariharan*, Deputy Managing Director & Chief Credit Officer, State Bank of India

General Discussion

The first session will serve as an introduction to the discussion on risk management and insolvency reforms in Asia. Special attention will be paid to the interrelation between insolvency systems and credit risk management and the implications for credit cost and credit access. It will also provide a policy perspective on the main issues at hand. The discussion will revolve around the legal framework and the role of central banks and public or private sector institutions, which play a pivotal role in implementing policy with respect to risk management in Asia. Presentations will ideally focus on the new initiatives underway, the problems which they target and an assessment of the capacity to solve them. Finally, participants will attempt to identify current challenges and some measures to be put in place in

order to address them, which will be discussed in greater detail in the following sessions.

Papers:

- **Mr. Morgan Kelly**
- **Mr. Philip D. Sherman**

10:30 – 11:00 *Coffee break*

SESSION II: Trends and Developments in Risk Management and Insolvency Reforms in South East Asia

11:00 – 13:00 **Chair: Dr. Shinjiro Takagi, Chairman, Industrial Revitalisation Corporation of Japan**

Moderator: Mr. Lampros Vassiliou, Lead OECD Consultant on Asian Insolvency

- Overview of legal and institutional trends in risk management and insolvency reforms in South East Asia, **Mr. Lampros Vassiliou**, Lead OECD Consultant on Asian Insolvency
- Changing the Japanese culture to enable early revitalization of troubled companies, **Mr. Shinjiro Takagi**, Chairman, IRCJ
- China: the new draft bankruptcy law and its implications for credit access and risk management, **Mr. Li Shuguang**, Director, China University of Politics and Law
- Enforceability of close-out netting in the People's Republic of China, **Ms. Jacqueline Low**, Chair, South East Asia Legal Committee, International Swap and Derivatives Association (ISDA)
- Building successful insolvency risk management systems: lessons from Asia, **Dr. Terrence Halliday**, Senior Research Fellow, American Bar Foundation

Question and answer discussion with paper authors

General discussion

In session two participants will survey the legislative and institutional/policy changes that have taken place in South East Asia since FAIR III and will assess their potential impact on risk management and overall creditor rights and insolvency systems. Together with current reform efforts, participants will discuss factors, which shape insolvency proceedings in South East Asia and credit risk management, risk assessment management and credit information systems, as well as credit risk transfer instruments. They will examine the impact of trends and developments on insolvency policies implemented until now and will identify fundamental challenges to address. The discussion will also focus on related implementation and efficiency concerns.

Country papers and presentations

Written background on each country will offer factual information on developments since the last FAIR and will serve as a basis for the general discussion. Country paper authors will be invited by the moderator to provide specific insights in a question and answer discussion.

- China: **Prof. Wang Weiguo**, Professor and Dean, China University of Politics and Law

- Chinese Taipei: **Prof. Christina Liu**, Legislator, Legislative Yuan and **Prof. George Lin**, Managing Partner, Lin and Partners Attorneys-at-Law
- Hong Kong China: **Mr. Charles Booth**, Associate Professor and Director, Asian Institute of Financial Law, Hong Kong
- Indonesia: **Mr. Aria Suyudi**, Deputy Director, Centre for Indonesian Law and Policy, Ms. Anika Faisal, Director, Danamon Bank and **Dr. Wimboh Santoso**, Banking Research and Regulation, Central Bank
- Philippines: **Mr. Gilbert Gallos**, Abello Concepcion Regala & Cruz
- Singapore: **Mr. Sean Tan**, Partner, Tan Kok Quan Partnership and **Mr. Eng Hai Aw**, Director, Grant Thornton
- Thailand: **Prof. Paroj Vongvipanond**, Dhurakij Pundit University
- Vietnam: **Mr. Hoang Tien Loi**, Managing Director, Mecong Co. Ltd.

Comparative paper:

- **Mr. Lampros Vasiliou**

Topical papers:

- **Mr. Shinjiro Takagi**
- **Dr. Terrence Halliday**
- **Prof. Li Shuguang**
- **Ms. Jacqueline Low**
- **Professor Wang Weiguo**, Corporate governance and the draft bankruptcy law of China
- **Mr. Aria Suyudi**, Indonesian commercial court decisions on bankruptcy

13:00 – 14:30 *Lunch*

SESSION III:

Managing major Asian collapses: the importance of insolvency frameworks for investment in distressed assets and risk management in Asia

14:30 – 16:00 **Chair and Moderator:** : Ms. Clare Wee, Principal Counsel, Asian Development Bank

Presentations:

- Introduction and overview of session, **Mr. Ron Harmer**, Consultant, Asian Development Bank
- The Asian Pulp and Paper Debacle, **Mr. Michael Sloan**, Blake Dawson Waldron
- Some issues regarding corporate groups in cross-border insolvency cases, **Mr. Ron Harmer**, ADB Consultant

Panel discussion:

- The importance of sound insolvency frameworks for attracting investment in distressed assets
 - **Mr. Stanley Tai**, New York Life Insurance Company and
 - **Mr. Nagarajan Srinivasan**, Investment Principal, Actis Advisors Private Ltd
- Solutions: the adoption of a cross-border regional treaty, informal work-out and secured transactions principles and out of court processes to deal with systemic risk, **Mr. Ron Harmer**, ADB Consultant

General discussion

This session will examine the impact of inadequate insolvency systems and risk management in Asia on investment in distressed assets. Decision makers from the international finance sector will describe the effect of weak insolvency systems on their investment decisions. The Asian Pulp and Paper debacle will be discussed. Examples of cross-border insolvency administrations will be outlined to demonstrate the necessity for implementing insolvency law reforms (in particular, the implementation of a regional cross-border insolvency treaty) to manage legal risk and to attract capital inflows into the region.

Papers:

- **Mr. Ron Harmer**
- **Mr. Michael Sloan**

16:00 – 16:30 *Coffee break*

SESSION IV:

Challenges of asset reconstruction and securitisation in risk management in Asia

16:30 – 18:00 **Chair: Mr. Amitabh Verma, Joint Secretary, Ministry of Finance (Banking Division), Government of India**

Moderator: Mr. Richard Fisher, Chairman of Partners, Blake Dawson Waldron

Presentations:

- The experience of Asset Management Companies in Asia: implications for risk management and policy, **Mr. Guonan Ma**, Senior Expert, Bank of International Settlements
- Options for Structuring Asset Reconstruction Companies, **Mr. Richard Fisher**, BDW
- The ADB's role in encouraging and facilitating asset reconstruction companies **Mr. William Willms**, Principal Structured Finance Specialist, ADB

Panel discussion on structuring ARCs:

- The Indian experience – **Mr. O.P. Aggarwal**, Chief General Manager, Department of Non-Banking Supervision, Reserve Bank of India and **Mr. S. Khasnobis**, President and COO, Asset Reconstruction Company India Ltd.
- The Chinese Taipei experience, **Mr. Kishore Moorjani**, Asia Operations, Highbridge Capital, Hong Kong, China
- The Philippine experience – **Mr. Gilbert Gallos**, Angara Abello Concepcion Regala & Cruz, Philippines

General discussion

Asia has led the way in designing asset reconstruction vehicles to resolve non-performing loans. This session will focus on the options available to facilitate the resolution of non-performing loans and, in particular, on the adoption of private sector models. The reforms recently implemented in India, Chinese Taipei and the Philippines will also be discussed.

Papers:

- **Mr. Richard Fisher**
- **Mr Guonan Ma**

19:00 – 21:30 *Cultural programme and dinner*

Day Two, Friday 5th November 2004

SESSION V:

Trends and developments in risk management and insolvency reforms in Asia

09:00 – 10:30 **Moderator: Mr. Sumant Batra, Senior Partner, Kesar Dass B and Associates and Director, INSOL International**

- **Overview of legal and institutional trends in risk management and insolvency reforms in South Asia**

Panel Discussion:

- **Mr. M.R. Umarji**, Chief Advisor- Legal, Indian Banker's Association
- **Ms. Joan P T De Zilva**, Director, Central Bank of Sri Lanka
- **Mr. Feisal Naqvi**, Bhandari, Naqvi & Riaz, Pakistan
- **Mr. C.B. Ramamurthy**, Senior Executive Officer, Nabil Bank Ltd
- **Mr. Sameer Ahmad**, Treasury Advisor, Agrani Bank, Bangladesh

General Discussion

For the first time since the establishment of FAIR, participants will focus on South Asia and will discuss in the framework of its **fifth session** the main issues of risk management and insolvency reforms in this part of the continent. They will attempt to identify fundamental challenges to be addressed by policy makers and provide relevant conclusions and recommendations.

Papers and presentations:

Written background on each country will provide factual information on developments, which will serve as a basis for the general discussion.

Country papers:

- Nepal: **Mr. C. B. Ramamurthy**, Nabil Bank
- Pakistan: **Mr. Salman Shaikh**, Managing Director, Turnaround Consulting, Recovery and Reconstructing
- India: **Mr. M. R. Umarji**, Indian Banks' Association
- Sri Lanka: **Mr. Kandiah Neelakandan**, Partner, Murugesu & Neelakandan Attorneys-at-Law
- Bangladesh: **Mr. Sameer Ahmed**, Treasury Advisor, Agrani Bank, Bangladesh

Comparative paper:

- **Mr. Sumant Batra**

10:30 – 11:00 *Coffee break*

11:00 – 11:15 **Key note Speaker: Mr. Justice A.K. Sikri**, Honourable Judge, Delhi High Court, Presiding Judge, Insolvency Court and Senior Vice President, INSOL India

SESSION VI: India: Recent Insolvency Reforms

11:15 – 12:45 **Chair: Ms. Komal Anand**, Secretary, Ministry of Company Affairs, Government of India

Moderator: Mr. Sumant Batra, Kesar Dass B & Associates

Panel Discussion

- **Mr. Parag P. Tripathi**, Senior Advocate, Supreme Court of India
- **Mr. M.R. Umarji**, Indian Banks Association
- **Mr. Ashwani Puri**, PricewaterhouseCoopers, India

Session Six will focus on the host country. Speakers and participants will discuss the main characteristics of the Indian insolvency system. They will also touch upon recent legal and institutional changes in order to examine their implications in general and more specifically for risk management. An important objective of this session is to distil lessons of India's experience for the benefit of other countries. In addition, international experts are invited to actively participate in the general discussions and formulate recommendations relevant to the host country insolvency and risk management frameworks and practices..

Concluding Remarks

12:45 – 13:15 **Chair: Mr. Robert Ley**, OECD

Summary of discussions:

- Chair persons or moderators
- **Mr. Terry Bond**, INSOL International

Open discussion on risk management and insolvency reforms.

Tour de table on options for future work of the FAIR

13:15 **Lunch**