DEVELOPMENT COMMITTEE
(Joint Ministerial Committee
of the
Boards of Governors of the Bank and the Fund
On the
Transfer of Real Resources to Developing Countries)

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PRINCIPLES AND GUIDELINES FOR EFFECTIVE INSOLVENCY AND CREDITOR RIGHTS SYSTEMS

Attached for the April 30, 2001 Development Committee Meeting are the Introduction, Executive Summary and list of Principles drawn from a paper entitled "Principles and Guidelines for Effective Insolvency and Creditor Rights Systems." These items are preceded by an Explanatory Note. The paper is a collaborative product of the World Bank and many partner institutions, organizations and individuals. This paper was reviewed by World Bank Executive Directors on April 10, 2001. These guidelines are background for item II.G of the Development Committee Provisional Agenda. Ministers may wish to comment on this subject in their prepared statements.

PRINCIPLES AND GUIDELINES FOR EFFECTIVE INSOLVENCY AND CREDITOR RIGHTS SYSTEMS

Background Note

In the aftermath of the 1997-98 financial crises, reliable insolvency and creditor rights systems have been identified as one of the key elements needed both for the sound functioning of domestic real and financial markets and for reducing the risks and costs of systemic instability. Insolvency systems therefore have been included as one of the core international standards and codes that can contribute to strengthening the international financial architecture, and as one of the 11 modules of the joint Bank-Fund *Reports on Observance of Standards and Codes.* Given that there were previously no agreed principles in this area, and the need to integrate analysis and lessons that spanned different functional disciplines and institutions, the Bank assumed the lead in the formulation of the Principles, working in collaboration with the IMF, the IFC, the regional development banks, the OECD, UNCITRAL, and private international organizations concerned with insolvency reform.

The Principles have been developed over the past 18 months based on an extensive process of consultation with partner international organizations, and with insolvency experts and official and private sector representatives. While the Principles are a distillation of international best practice in the design of insolvency and creditor rights systems, the manner of their application for capacity building at a country level will be influenced by domestic policy choices and by the comparative strengths or weaknesses of domestic laws and institutions.

The Principles were discussed by Executive Directors of the Bank on April 10, 2001. Directors took note of the substantive work that had been done, and of the catalytic role of the Bank in integrating and distilling lessons on a complex issue. At the same time, Directors recognized that this was still work in progress, and Directors looked forward to a further discussion of the Principles in a year or so, based on further experience and continued dialogue with the international community on insolvency and creditor rights systems reform. Directors also suggested a more nuanced treatment of the issue of the balance between public and private rights and of the role of courts in supervising bankruptcy cases. The attached paper incorporates those changes.

The next steps will accordingly be as follows:

a) First, the Bank will seek additional feedback on the Principles, especially from developing countries and from international experts and other organizations.

b) Second, the Bank will carry out a series of experimental ROSC country assessments of insolvency and creditor rights systems, using a methodology derived from the Principles. The criteria for the selection of countries to participate in experimental assessments will include regional and legal diversity and levels of financial system development, and will build on FSAP and other

ROSC assessments and ongoing economic and sector work. As with other ROSC modules, participation by countries will be voluntary and the resulting assessments will be disclosed publicly only with the country's agreement. It is anticipated that up to six assessments will be launched by July 1, 2001 and up to ten assessments in the following 12 months. In undertaking these assessments, the Bank will explore options to collaborate with others, building on its ongoing partnerships in the area of insolvency reform with regional development banks and organizations such as the *Asia Pacific Economic Cooperation* (APEC) process. Such collaboration is also being sought for follow-up technical assistance and capacity building work

c) Third, the Bank will continue to collaborate with the IMF and other organizations on the future development of complementary principles related to bank insolvency and restructuring and systemic insolvency.

d) Fourth, the Bank will continue to collaborate with the United Nations Commission on International Trade Law in connection with its initiative for the development of legislative guidelines for insolvency laws.

e) Fifth, a report will be provided to Executive Directors on the outcome of the pilot assessments and any resulting revisions to the Principles based on those experiences and further feedback received from the international community.

The Development Committee is requested to note these *Principles and Guidelines* and encourage their further development and use.

PRINCIPLES AND GUIDELINES FOR EFFECTIVE INSOLVENCY AND CREDITOR RIGHTS SYSTEMS APRIL 2001

INTRODUCTION AND EXECUTIVE SUMMARY

1. Since the 1997-98 financial crisis in emerging markets, considerable progress has been made in identifying the components of the global financial system and in articulating and applying standards and assessment methodologies for core system elements. The *Principles and Guidelines for Effective Insolvency and Creditor Rights Systems* contributes to that effort as an important milestone in promoting international consensus on a uniform framework to assess the effectiveness of insolvency and creditor rights systems, offering guidance to policymakers on the policy choices needed to strengthen them. Ministers are requested to note these Principles and Guidelines and to encourage their further development and use.

2. The principles in *Principles and Guidelines* were developed against the backdrop of earlier and ongoing initiatives to promote cross-border cooperation on multi-jurisdictional insolvencies, modernization of national insolvency and secured transactions laws, and development of principles for out-of-court corporate workouts. The principles draw on common themes and policy choices of those initiatives and on the views of staff, insolvency experts and participants in regional workshops sponsored by the Bank and its partner organizations.[1] The consultative process on the *Principles and Guidelines* has been among the most extensive of its kind, involving more than 70 international experts as members of the Bank's Task Force and working groups, and with regional participation by more than 700 public and private sector specialists from approximately 75 mostly developing countries. The Bank also included papers and consultative drafts on its website to obtain feedback from the international community.[2]

Role of Insolvency and Creditor Rights Systems

3. There are two dimensions to the global financial system. On the one hand, national financial systems operate autonomously and respond to domestic needs. On the other, national systems are tied to and interact daily with the systems of their trading partners. Insolvency and creditor rights systems lie at the juncture of this duality.

4. *The country dimension.* National systems depend on a range of structural, institutional, social and human foundations to make a modern market economy work. There are as many combinations of these variables as there are countries, though regional similarities have created common customs and legal traditions. The principles espoused in the report embody several underlying propositions:
   - *Effective systems respond to national needs and problems*. As such, these systems must be rooted in the country's broader cultural, economic, legal and social context.
   - *Transparency, accountability and predictability are fundamental to sound credit relationships*. Capital and credit, in their myriad forms, are the lifeblood of modern commerce. Investment and

[1] The *Principles and Guidelines* was prepared by Bank staff in collaboration with the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, International Finance Corporation, International Monetary Fund, Organisation for Economic Co-operation and Development, United Nations Commission on International Trade Law, INSOL International, and International Bar Association (Committee J).

[2] The papers can be accessed in the Best Practice directory on the Global Insolvency Law Database at www.worldbank.org/gild.

availability of credit are predicated on both perceptions and the reality of risks. Competition in credit delivery is handicapped by lack of access to accurate information on credit risk and by unpredictable legal mechanisms for debt enforcement.

- *Legal and institutional mechanisms must align incentives and disincentives across a broad spectrum of market-based systems—commercial, corporate, financial and social*. This calls for an integrated approach to reform, taking into account a wide range of laws and policies in the design of insolvency and creditor rights systems.

5. *The international dimension*. New methods of commerce, communication and technology are constantly reshaping national markets and redefining notions of property rights. Businesses routinely transcend national boundaries and have access to new types of credit. Credit and investment risks are measured by complex formulas, and capital moves from one market to the next at the tap of a computer key. Capital flows are driven by public perceptions and investor confidence in local markets. Effective insolvency and creditor rights systems play an important role in creating and maintaining the confidence of both domestic and foreign investors.

The Principles

6. The *Principles and Guidelines* emphasize contextual, integrated solutions and the policy choices involved in developing those solutions.[3] The principles are a distillation of international best practice in the design of insolvency and creditor rights systems. Adapting international best practices to the realities of developing countries, however, requires an understanding of the market environments in which these systems operate. The challenges include weak or unclear social protection mechanisms, weak financial institutions and capital markets, ineffective corporate governance and uncompetitive businesses, and ineffective laws and institutions. These obstacles pose enormous challenges to the adoption of systems that address the needs of developing countries while keeping pace with global trends and international best practices. The application of the principles in this paper at the country level will be influenced by domestic policy choices and by the comparative strengths (or weaknesses) of laws and institutions.

7. The *Principles and Guidelines* highlights the relationship between the cost and flow of credit (including secured credit) and the laws and institutions that recognize and enforce credit agreements (sections 1 and 2). It also outlines key features and policy choices relating to the legal framework for corporate insolvency and the informal framework for consensual debt workouts (section 3), which must be implemented within sound institutional and regulatory frameworks (section 4). The principles have broader application beyond creditor rights and corporate insolvency regimes, as well. The ability of financial institutions to adopt effective credit practices to resolve or liquidate non-performing loans depends on having reliable and predictable legal mechanisms that provide a means for more accurately pricing recovery and enforcement costs. Where non-performing assets or other factors jeopardize the viability of a bank, or where economic conditions create systemic crises, these conditions raise issues that deserve special consideration. Annexes I and II to the *Principles and Guidelines* contain a discussion of issues relevant to bank exit and restructuring strategies and management of systemic financial crises, areas in which the Bank will continue to collaborate with the Fund and the international community to develop principles.

Following is brief summary of the key elements of the *Principles and Guidelines*:

[3] Effective systems rest on details as well as broad principles. The Bank is preparing a companion technical paper with more detailed guidelines on aspects of this paper. Other organizations, specifically UNCITRAL (in collaboration with INSOL International and Committee J of the International Bar Association), are also developing guidelines to help legislators design effective insolvency laws.

8. *Role of enforcement systems*. A modern, credit-based economy requires predictable, transparent and affordable enforcement of both unsecured and secured credit claims by efficient mechanisms outside of insolvency, as well as a sound insolvency system. These systems must be designed to work in harmony. Commerce is a system of commercial relationships predicated on express or implied contractual agreements between an enterprise and a wide range of creditors and constituencies. Although commercial transactions have become increasingly complex as more sophisticated techniques are developed for pricing and managing risks, the basic rights governing these relationships and the procedures for enforcing these rights have not changed much. These rights enable parties to rely on contractual agreements, fostering confidence that fuels investment, lending and commerce. Conversely, uncertainty about the enforceability of contractual rights increases the cost of credit to compensate for the increased risk of nonperformance or, in severe cases, leads to credit tightening.

9. *Legal framework for creditor rights.* A regularized system of credit should be supported by mechanisms that provide efficient, transparent and reliable methods for recovering debt, including seizure and sale of immovable and movable assets and sale or collection of intangible assets, such as debt owed to the debtor by third parties. An efficient system for enforcing debt claims is crucial to a functioning credit system, especially for unsecured credit. A creditor's ability to take possession of a debtor's property and to sell it to satisfy the debt is the simplest, most effective means of ensuring prompt payment. It is far more effective than the threat of an insolvency proceeding, which often requires a level of proof and a prospect of procedural delay that in all but extreme cases make it not credible to debtors as leverage for payment.

10. While much credit is unsecured and requires an effective enforcement system, an effective system for secured rights is especially important in developing countries. Secured credit plays an important role in industrial countries, notwithstanding the range of sources and types of financing available through both debt and equity markets. In some cases equity markets can provide cheaper and more attractive financing. But developing countries offer fewer options, and equity markets are typically less mature than debt markets. As a result most financing is in the form of debt. In markets with fewer options and higher risks, lenders routinely require security to reduce the risk of nonperformance and insolvency.

11. *Legal framework for secured lending.* The legal framework should provide for the creation, recognition and enforcement of security interests in all types of assets—movable and immovable, tangible and intangible, including inventories, receivables, proceeds and future property, and on a global basis, including both possessory and non-possessory interests. The law should encompass any or all of a debtor's obligations to a creditor, present or future and between all types of persons. In addition, it should provide for effective notice and registration rules to be adapted to all types of property, and clear rules of priority on competing claims or interests in the same assets.

12. *Legal framework for corporate insolvency.* Though approaches vary, effective insolvency systems should aim to:
    - Integrate with a country's broader legal and commercial systems.
    - Maximize the value of a firm's assets by providing an option to reorganize.
    - Strike a careful balance between liquidation and reorganization.
    - Provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors.
    - Provide for timely, efficient and impartial resolution of insolvencies.
    - Prevent the premature dismemberment of the debtor's assets by individual creditors.
    - Provide a transparent procedure that contains incentives for gathering and dispensing information.
    - Recognize existing creditor rights and respect the priority of claims with a predictable and established process.

- Establish a framework for cross-border insolvencies, with recognition of foreign proceedings.

13. Where an enterprise is not viable, the main thrust of the law should be swift and efficient liquidation to maximize recoveries for the benefit of creditors. Liquidations can include the preservation and sale of the business, as distinct from the legal entity. On the other hand, where an enterprise is viable, meaning it can be rehabilitated, its assets are often more valuable if retained in a rehabilitated business than if sold in a liquidation. The rescue of a business preserves jobs, provides creditors with a greater return based on higher going concern values of the enterprise, potentially produces a return for owners and obtains for the country the fruits of the rehabilitated enterprise. The rescue of a business should be promoted through formal and informal procedures. Rehabilitation should permit quick and easy access to the process, protect all those involved, permit the negotiation of a commercial plan, enable a majority of creditors in favor of a plan or other course of action to bind all other creditors (subject to appropriate protections) and provide for supervision to ensure that the process is not subject to abuse. Modern rescue procedures typically address a wide range of commercial expectations in dynamic markets. Though such laws may not be susceptible to precise formulas, modern systems generally rely on design features to achieve the objectives outlined above.

14. *Framework for informal corporate workouts.* Corporate workouts should be supported by an environment that encourages participants to restore an enterprise to financial viability. Informal workouts are negotiated in the "shadow of the law." Accordingly, the enabling environment must include clear laws and procedures that require disclosure of or access to timely and accurate financial information on the distressed enterprise; encourage lending to, investment in or recapitalization of viable distressed enterprises; support a broad range of restructuring activities, such as debt write-offs, reschedulings, restructurings and debt-equity conversions; and provide favorable or neutral tax treatment for restructurings.

15. A country's financial sector (possibly with help from the central bank or finance ministry) should promote an informal out-of-court process for dealing with cases of corporate financial difficulty in which banks and other financial institutions have a significant exposure—especially in markets where enterprise insolvency is systemic. An informal process is far more likely to be sustained where there are adequate creditor remedies and insolvency laws.

16. *Implementation of the insolvency system.* Strong institutions and regulations are crucial to an effective insolvency system. The insolvency framework has three main elements: the institutions responsible for insolvency proceedings, the operational system through which cases and decisions are processed and the requirements needed to preserve the integrity of those institutions—recognizing that the integrity of the insolvency system is the linchpin for its success. A number of fundamental principles influence the design and maintenance of the institutions and participants with authority over insolvency proceedings.

17. *Ongoing efforts.* Substantial progress has been made in identifying links between the corporate insolvency and creditor rights systems and bank insolvency (and restructuring) and financial crisis, and the policy issues affecting the treatment of the later. Over the coming months the Bank in collaboration with the Fund and others will engage the international community in a dialogue on principles pertaining to bank and systemic insolvency.

    In addition, the Bank will continue to work with its partner institutions, including UNCITRAL, on the implementation of more technical guidelines based on the principles.

18. *Next Steps.* The Bank will carry out up to six pilot country assessments in FY2001 in connection with the program to develop *Reports on the Observance of Standards and Codes* (ROSC), using a common template based on the principles. The criteria for the selection of countries will include regional and legal diversity and levels of financial system development. The assessments would be

carried out by Bank staff supported by experts from other institutions. The assessments are expected to provide valuable inputs to future *Financial Sector Assessments, Country Assistance Strategies* and other Bank economic and sector work, and to eventually help governments prioritize reform needs and build capacity. The Bank will also continue to collaborate with the International Monetary fund and other organizations on the future development of complementary principles related to bank insolvency and restructuring and systemic insolvency.

THE PRINCIPLES

LEGAL FRAMEWORK FOR CREDITOR RIGHTS	
Principle 1	**Compatible Enforcement Systems** *A modern credit-based economy requires predictable, transparent and affordable enforcement of both unsecured and secured credit claims by efficient mechanisms outside of insolvency, as well as a sound insolvency system. These systems must be designed to work in harmony.*
Principle 2	**Enforcement of Unsecured Rights** *A regularized system of credit should be supported by mechanisms that provide efficient, transparent, reliable and predictable methods for recovering debt, including seizure and sale of immovable and movable assets and sale or collection of intangible assets such as debts owed to the debtor by third parties.*
Principle 3	**Security Interest Legislation** *The legal framework should provide for the creation, recognition, and enforcement of security interests in movable and immovable (real) property, arising by agreement or operation of law. The law should provide for the following features:* ▪ *Security interests in all types of assets, movable and immovable, tangible and intangible, including inventory, receivables, and proceeds; future or after-acquired property, 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 that will sufficiently publicize the existence of security interests to creditors, purchasers, and the public generally at the lowest possible cost;* ▪ *Clear rules of priority governing competing claims or interests in the same assets, eliminating or reducing priorities over security interests as much as possible.*
Principle 4	**Recording and Registration of Secured Rights** *There should be an efficient and cost-effective means of publicizing secured interests in movable and immovable assets, with registration being the principal and strongly preferred method. Access to the registry should be inexpensive and open to all for both recording and search.*
Principle 5	**Enforcement of Secured Rights** *Enforcement systems should provide efficient, inexpensive, transparent and predictable methods for enforcing a security interest in property. Enforcement procedures should provide for prompt realization of the rights obtained in secured assets, ensuring the maximum possible recovery of asset values based on market values. Both nonjudicial and judicial enforcement methods should be considered*
LEGAL FRAMEWORK FOR CORPORATE INSOLVENCY	
Principle 6	**Key Objectives and Policies** *Though country approaches vary, effective insolvency systems should aim to:* • *Integrate with a country's broader legal and commercial systems.* • *Maximize the value of a firm's assets by providing an option to reorganize.* • *Strike a careful balance between liquidation and reorganization.* • *Provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors.* • *Provide for timely, efficient and impartial resolution of insolvencies.* • *Prevent the premature dismemberment of a debtor's assets by individual creditors seeking quick judgments.* • *Provide a transparent procedure that contains incentives for gathering and dispensing information.* • *Recognize existing creditor rights and respect the priority of claims with a predictable and established process.* • *Establish a framework for cross-border insolvencies, with recognition of foreign proceedings.*

Principle 7	**Director and Officer Liability** *Director and officer liability for decisions detrimental to creditors made when an enterprise is insolvent should promote responsible corporate behavior while fostering reasonable risk taking. At a minimum, standards should address conduct based on knowledge of or reckless disregard for the adverse consequences to creditors.*
Principle 8	**Liquidation and Rehabilitation** *An insolvency law should provide both for efficient liquidation of nonviable businesses and those where liquidation is likely to produce a greater return to creditors, and for rehabilitation of viable businesses. Where circumstances justify it, the system should allow for easy conversion of proceedings from one procedure to another.*
Principle 9	**Commencement: Applicability and Accessibility** *A. The insolvency process should apply to all enterprises or corporate entities except financial institutions and insurance corporations, which should be dealt with through a separate law or through special provisions in the insolvency law. State-owned corporations should be subject to the same insolvency law as private corporations.* *B. Debtors should have easy access to the insolvency system upon showing proof of basic criteria (insolvency or financial difficulty). A declaration to that effect may be provided by the debtor through its board of directors or management. Creditor access should be conditioned on showing proof of insolvency by presumption where there is clear evidence that the debtor failed to pay a matured debt (perhaps of a minimum amount).* *C. The preferred test for insolvency should be the debtor's inability to pay debts as they come due—known as the liquidity test. A balance sheet test may be used as an alternative secondary test, but should not replace the liquidity test. The filing of an application to commence a proceeding should automatically prohibit the debtor's transfer, sale or disposition of assets or parts of the business without court approval, except to the extent necessary to operate the business.*
Principle 10	**Commencement: Moratoriums and Suspension of Proceedings** *A. The commencement of bankruptcy 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 embracing as possible, extending to an interest in property used, occupied or in the possession of the debtor.* *B. To maximize the value of asset recoveries, a stay on enforcement actions by secured creditors should be imposed for a limited period in a liquidation proceeding to enable higher recovery of assets by sale of the entire business or its productive units, and in a rehabilitation proceeding where the collateral is needed for the rehabilitation.*
Principle 11	**Governance: Management** *A. In liquidation proceedings, management should be replaced by a qualified court-appointed official (administrator) with broad authority to administer the estate in the interest of creditors. Control of the estate should be surrendered immediately to the administrator except where management has been authorized to retain control over the company, in which case the law should impose the same duties on management as on the administrator. In creditor-initiated filings, where circumstances warrant, an interim administrator with reduced duties should be appointed to monitor the business to ensure that creditor interests are protected.* *B. There are two preferred approaches in a rehabilitation proceeding: exclusive control of the proceeding by an independent administrator or supervision of management by an impartial and independent administrator or supervisor. Under the second option complete power should be shifted to the administrator if management proves incompetent or negligent or has engaged in fraud or other misbehavior. Similarly, independent administrators or supervisors should be held to the same standard of accountability to creditors and the court and should be subject to removal for incompetence, negligence, fraud or other wrongful conduct.*

Principle 12	**Governance: Creditors and the Creditors' Committee**
	Creditor interests should be safeguarded by establishing a creditors committee that enables creditors to actively participate in the insolvency process and that allows the committee to monitor the process to ensure fairness and integrity. The committee should be consulted on non-routine matters in the case and have the ability to be heard on key decisions in the proceedings (such as matters involving dispositions of assets outside the normal course of business). The committee should serve as a conduit for processing and distributing relevant information to other creditors and for organizing creditors to decide on critical issues. The law should provide for such things as a general creditors assembly for major decisions, to appoint the creditors committee and to determine the committee's membership, quorum and voting rules, powers and the conduct of meetings. In rehabilitation proceedings, the creditors should be entitled to select an independent administrator or supervisor of their choice, provided the person meets the qualifications for serving in this capacity in the specific case.
Principle 13	**Administration: Collection, Preservation, Disposition of Property**
	The law should provide for the collection, preservation and disposition of all property belonging to the debtor, including property obtained after the commencement of the case. Immediate steps should be taken or allowed to preserve and protect the debtor's assets and business. The law should provide a flexible and transparent system for disposing of assets efficiently and at maximum values. Where necessary, the law should allow for sales free and clear of security interests, charges or other encumbrances, subject to preserving the priority of interests in the proceeds from the assets disposed.
Principle 14	**Administration: Treatment of Contractual Obligations**
	The law should allow for interference with contractual obligations that are not fully performed to the extent necessary to achieve the objectives of the insolvency process, whether to enforce, cancel or assign contracts, except where there is a compelling commercial, public or social interest in upholding the contractual rights of the counter-party to the contract (as with swap agreements).
Principle 15	**Administration: Fraudulent or Preferential Transactions**
	The law should provide for the avoidance or cancellation of pre-bankruptcy fraudulent and preferential transactions completed when the enterprise was insolvent or that resulted in its insolvency. The suspect period prior to bankruptcy, during which payments are presumed to be preferential and may be set aside, should normally be short to avoid disrupting normal commercial and credit relations. The suspect period may be longer in the case of gifts or where the person receiving the transfer is closely related to the debtor or its owners.
Principle 16	**Claims Resolution: Treatment of Stakeholder Rights and Priorities**
	A. The rights and priorities of creditors established prior to insolvency under commercial laws should be upheld in an insolvency case 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 rehabilitation or to maximize the estate's value. Rules of priority should support incentives for creditors to manage credit efficiently. *B. The bankruptcy law should recognize the priority of secured creditors in their collateral. Where the rights of secured creditors are impaired to promote a legitimate bankruptcy policy, the interests of these creditors in their collateral should be protected to avoid a loss or deterioration in the economic value of their interest at the commencement of the case. Distributions to secured creditors from the proceeds of their collateral should be made as promptly as possible after realization of proceeds from the sale. In cases where the stay applies to secured creditors, it should be of limited specified duration, strike a proper balance between creditor protection and insolvency objectives, and provide for the possibility of orders being made on the application of affected creditors or other persons for relief from the stay.* *C. Following distributions to secured creditors and payment of claims related to costs and expenses of administration, proceeds available for distribution should be distributed pari passu to remaining creditors unless there are compelling reasons to justify giving preferential status to a particular debt. Public interests generally should not be given precedence over private rights. The number of priority classes should be kept to a minimum.*

FEATURES PERTAINING TO CORPORATE REHABILITATION	
Principle 17	**Design Features of Rehabilitation Statutes** *To be commercially and economically effective, the law should establish rehabilitation procedures that permit quick and easy access to the process, provide sufficient protection for all those involved in the process, provide a structure that permits the negotiation of a commercial plan, enable a majority of creditors in favor of a plan or other course of action to bind all other creditors by the democratic exercise of voting rights (subject to appropriate minority protections and the protection of class rights) and provide for judicial or other supervision to ensure that the process is not subject to manipulation or abuse.*
Principle 18	**Administration: Stabilizing and Sustaining Business Operations** *The law should provide for a commercially sound form of priority funding for the ongoing and urgent business needs of a debtor during the rescue process, subject to appropriate safeguards.*
Principle 19	**Information: Access and Disclosure** *The law should require the provision of relevant information on the debtor. It should also provide for independent comment on and analysis of that information. Directors of a debtor corporation should be required to attend meetings of creditors. Provision should be made for the possible examination of directors and other persons with knowledge of the debtor's affairs, who may be compelled to give information to the court and administrator..*
Principle 20	**Plan: Formulation, Consideration and Voting** *The law should not prescribe the nature of a plan except in terms of fundamental requirements and to prevent commercial abuse. The law may provide for classes of creditors for voting purposes. Voting rights should be determined by amount of debt. An appropriate majority of creditors should be required to approve a plan. Special provision should be made to limit the voting rights of insiders. The effect of a majority vote should be to bind all creditors.*
Principle 21	**Plan: Approval of Plan** *The law should establish clear criteria for plan approval based on fairness to similar creditors, recognition of relative priorities and majority acceptance. The law should also provide for approval over the rejection of minority creditors if the plan complies with rules of fairness and offers the opposing creditors or classes an amount equal to or greater than would be received under a liquidation proceeding. Some provision for possible adjournment of a plan decision meeting should be made, but under strict time limits. If a plan is not approved, the debtor should automatically be liquidated.*
Principle 22	**Plan: Implementation and Amendment** *The law should provide a means for monitoring effective implementation of the plan, requiring the debtor to make periodic reports to the court on the status of implementation and progress during the plan period. A plan should be capable of amendment (by vote of the creditors) if it is in the interests of the creditors. The law should provide for the possible termination of a plan and for the debtor to be liquidated.*
Principle 23	**Discharge and Binding Effects** *To ensure that the rehabilitated enterprise has the best chance of succeeding, the law should provide for a discharge or alteration of debts and claims that have been discharged or otherwise altered under the plan. Where approval of the plan has been procured by fraud, the plan should be subject to challenge, reconsidered or set aside.*
Principle 24	**International Considerations** *Insolvency proceedings may have international aspects, and insolvency laws should provide for rules of jurisdiction, recognition of foreign judgments, cooperation and assistance among courts in different countries, and choice of law.*

	INFORMAL CORPORATE WORKOUTS AND RESTRUCTURINGS
Principle 25	**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 enabling environment includes laws and procedures that require disclosure of or ensure access to timely, reliable and accurate financial information on the distressed enterprise; encourage lending to, investment in or recapitalization of viable financially distressed enterprises; support a broad range of restructuring activities, such as debt writeoffs, reschedulings, restructurings and debt- equity conversions; and provide favorable or neutral tax treatment for restructurings.*
Principle 26	**Informal Workout Procedures** *A country's financial sector (possibly with the informal endorsement and assistance of the central bank or finance ministry) should promote the development of a code of conduct on an informal out-of-court process for dealing with cases of corporate financial difficulty in which banks and other financial institutions have a significant exposure—especially in markets where enterprise insolvency has reached systemic levels. An informal process is far more likely to be sustained where there are adequate creditor remedy and insolvency laws. The informal process may produce a formal rescue, which should be able to quickly process a packaged plan produced by the informal process. The formal process may work better if it enables creditors and debtors to use informal techniques.*
	IMPLEMENTATION OF THE INSOLVENCY SYSTEM
Principle 27	**Role of Courts** *Bankruptcy cases should be overseen and disposed of by an independent court or competent authority and assigned, where practical, to judges with specialized bankruptcy expertise. Significant benefits can be gained by creating specialized bankruptcy courts.* *The law should provide for a court or other tribunal to have a general, non-intrusive, supervisory role in the rehabilitation process. The court/tribunal or regulatory authority should be obliged to accept the decision reached by the creditors that a plan be approved or that the debtor be liquidated.*
Principle 28	**Performance Standards of the Court, Qualification and Training of Judges** *Standards should be adopted to measure the competence, performance and services of a bankruptcy court. These standards should serve as a basis for evaluating and improving courts. They should be enforced by adequate qualification criteria as well as training and continuing education for judges.*
Principle 29	**Court Organization** *The court should be organized so that all interested parties—including the administrator, the debtor and all creditors—are dealt with fairly, objectively and transparently. To the extent possible, publicly available court operating rules, case practice and case management regulations should govern the court and other participants in the process. The court's internal operations should allocate responsibility and authority to maximize resource use. To the degree feasible the court should institutionalize, streamline and standardize court practices and procedures.*
Principle 30	**Transparency and Accountability** *An insolvency systems should be based on transparency and accountability. Rules should ensure ready access to court records, court hearings, debtor and financial data and other public information.*
Principle 31	**Judicial Decision making and Enforcement** *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. The court must have clear authority and effective methods of enforcing its judgments.*

Principle 32	**Integrity of the Court** *Court operations and decisions should be based on firm rules and regulations to avoid corruption and undue influence. The court must be free of conflicts of interest, bias and lapses in judicial ethics, objectivity and impartiality.*
Principle 33	**Integrity of Participants** *Persons involved in a bankruptcy proceeding must be subject to rules and court orders designed to prevent fraud, other illegal activity or abuse of the bankruptcy system. In addition, the bankruptcy court must be vested with appropriate powers to deal with illegal activity or abusive conduct that does not constitute criminal activity.*
Principle 34	**Role of Regulatory or Supervisory Bodies** *The body or bodies responsible for regulating or supervising insolvency administrators should be independent of individual administrators and should set standards that reflect the requirements of the legislation and public expectations of fairness, impartiality, transparency and accountability.*
Principle 35	**Competence and Integrity of Insolvency Administrators** *Insolvency administrators should be competent to exercise the powers given to them and should act with integrity, impartiality and independence.*