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As the world struggles with the notion of reforming legal infrastructure, such reforms will have to be translated through the culture, values and history of each country. The United States, which cannot dictate one code or form of law, can lead the way and focus the debate.

I. What Is Legal Infrastructure?

The Administration, working closely with the Congress, leaders in major financial centers and emerging market economies, and the public, is seeking to build a consensus around a "new international financial architecture." Secretary Robert Rubin has taken the lead within the Administration in the effort to develop a global economic framework where free movement of resources across national borders would bring better living conditions to more people, but not at the cost of painful and destabilizing cycles of boom and bust. The economic crisis that began in Asia in the summer of 1997, is but the most recent example of such cycles. The work of global economic reform started long before Thailand "floated" its currency in July 1997, and long before columns on the global financial situation by eminent economists, officials and market participants became a regular feature not only in the *Financial Times* but also in local papers around the United States.

The emergence of market-friendly governments in Eastern Europe roughly coincided with the end of "the lost decade" of the Latin American debt crisis, where sovereign borrowers and commercial banks appeared to emerge for good from their co-dependent financing spiral. The European Bank for Reconstruction and Development was formed; its explicit mission was to foster the transition of countries once and for all to open markets and democracy.

The market reform efforts that accompanied the apparent resolution of the Latin American debt crisis and the emergence of "transition economies" in Eastern Europe appeared somewhat more optimistic and less self-reflective than those we witness today. Of course, today's policy makers are informed by the intervening traumas of Mexico, Thailand, Korea,

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Indonesia, Russia, and now Brazil, which have shown that transitions and exit strategies are rarely straight-line or one-way. However, amid changing theories about proper regimes for exchange rates, capital flows and debt restructuring, one thread remains fairly constant: the rule of law and the importance of a stable, transparent, and equitably enforced system of norms and rules to the functioning of local and global markets alike, whatever economic theory they follow.

Thus, the goals of law reform initiatives set up under the auspices of multilateral development institutions and bilateral agencies over the past decade, echoed in the reports issued last fall by three working groups formed by Finance Ministers and Central Bank Governors from twenty-two systemically significant economies in response to the crisis in Asia. The reports stress transparency, regulation, and the importance of effective, equitably enforced, domestic insolvency and debtor-creditor regimes.

Legal infrastructure is broader than a foreclosure law in Thailand, a commercial code in South Africa, a corporate law in Russia or land registration in Costa Rica. Legal infrastructure is the entire system of rules, procedures and institutions that undergirds global financial activity.

It encompasses national laws in major financial jurisdictions such as the United States, the United Kingdom, Japan, and Germany, as well as in the emerging markets worldwide.

It covers international law and institutions, from bilateral and multilateral debt restructuring initiatives to new financing mechanisms, including efforts to refocus the role and work of the International Monetary Fund, the World Bank, the regional development banks, their private sector financing windows and regional fora for economic cooperation.

It affects bank regulators and the courts, executive agencies and legislatures, and is deeply implicated in the political process, social institutions and cultural heritage of diverse populations around the world.

The very best legal infrastructure cannot prevent all crises, neither can it resolve them all. However, an inadequate legal infrastructure can make a crisis wider, deeper, longer and more likely. It can increase the chances of an isolated failure spreading through different sectors of the economy, and of one country's liquidity crunch triggering a regional crisis or worldwide contagion.

This is where clients would likely accuse lawyers of overstating our importance. After all, for all the talk of a global economic integration, the need for a parallel process in the legal sphere has not been palpable, at least not until recently. Why then, aside from pure missionary zeal, should a Washington policymaker, a Kansas farmer or a Wall Street banker care about the title system in Vietnam or the listing requirements of the Cayman Island Stock Exchange? The answer comes in part from historical changes in the composition of capital flows.

Through much of the nineteenth and early twentieth century, governments financed themselves externally by issuing bonds first in the United Kingdom and continental Europe, and later also in the United States. Governments frequently defaulted on those bonds, or unilaterally rescheduled them, cloaked in the broad sovereign immunity doctrine of old that protected a range of their commercial activities. The wave of defaults that coincided with the Great Depression was followed by several decades of lost market access for many sovereign borrowers.

Lending resumed in the 1960s and accelerated in the 1970s, when commercial banks in major industrial countries, awash with petrodollars, all but discarded risk analysis in a race for yields on loans to developing country governments, which in turn were eager to finance state-run infrastructure projects with the blessing and encouragement of international development agencies and in accordance with the economic theory of the day. The lending boom ended abruptly Friday, the 13th of August 1982, when Mexico informed its creditors it could no longer service its debts. Other borrowers soon followed suit.

The securitized financing patterns born of the resolution of the 1980s debt crisis, and the privatization and liberalization trend that swept the industrialized and developing worlds alike at about the same time, contributed to the unprecedented pattern of flows that characterize today's capital markets.

First, foreign equity investment in emerging markets, both direct and portfolio, has risen dramatically. This trend coincided with a wave of privatizations, which broke up and transferred to domestic and foreign private owners many of the large state-owned enterprises financed with the loans of the 60s and 70s. Reflecting this trend was the increasing popularity of country funds and depositary receipts, which allowed foreign investors to hold shares in companies otherwise inaccessible to them.

The same private companies, as well as states and municipalities benefitting from decentralization policies, also borrowed directly from foreign creditors, with minimal regulatory restrictions and often without central government guarantees. The international community has encouraged such direct cross-border financing as part of a sound development strategy. Multilateral development institutions expanded their private sector and subsovereign activities in an effort to catalyze private capital flows.

Complementing these trends is an increasing flow of private savings into the markets, where investment funds, much like the investment trusts of the 1920s, compete for investor dollars by seeking high yields abroad as interest rates remain low in major industrialized economies.

Finally, the growing ease with which even bank debt is traded and, more importantly, the shift to bond financing among sovereign and other emerging markets borrowers in the wake of the 1980s debt crisis are in stark contrast to the relatively insulated environment of commercial bank lending among a limited number of institutions and their sovereign clients that prevailed before the crisis.

These factors combine in a picture where radically diverse kinds of borrowers, many with no prior borrowing history or familiarity with the work of the capital markets raise funds from a diverse group of creditors, ranging from mammoth investment banks to the proverbial Belgian doctors, in the form of obligations that are increasingly easy to trade and even harder to trace, with the help of a diverse group of intermediaries and advisors. To complete the picture, the role of governments has become ever more complex—they are borrowers, external creditors, restructuring agents, insurers, lenders of last resort and facilitators of private investment, not to mention regulators and economic policy makers.

Law and its institutions frame the relationships among this vastly diverse group of market participants. Their diversity echoes in the diversity of legal regimes that impact these relationships: a Belgian doctor's secure retirement may well depend on the ease with which a British bank can recover its investment in a Thai power project, which may turn on the way in which a Thai court will enforce liens and priorities, on the way local regulators oversee Thai banks, and the way in which a U.K. administrator will view the bankruptcy of a special purpose vehicle established under the laws of a small island nation far away from Bangkok, Bristol and Brussels.

In other words, in the 1930s, most international financial relationships relied upon a relatively limited set of legal underpinnings. Today the legal underpinnings are complex and diverse, and touch upon almost every aspect of the law.

II. The Legal Infrastructure Agenda

What then should be the legal infrastructure agenda for the emerging financial architecture of the future? First, as indicated earlier, it is not a uniform set of rules to be imposed on all countries regardless of their legal, political and cultural circumstance. Economists may legitimately argue over what constitutes the most efficient bankruptcy regime under standard temperature and pressure. However, the markets and their lawyers prize three things above all: equity, transparency, and predictability. A bankruptcy regime that is debtor-friendly but transparent and predictably enforced is infinitely more valuable to the creditors than the one that favors creditors on paper, but consistently produces unforeseen results in application. The former allows predictable valuation and informed negotiation, which may well keep a case out of the court system, saving the parties and the government the high transaction costs of judicial dispute resolution. The latter often leads to gaps in expectations, stalled negotiations, and value deterioration detrimental to all.

In today's environment, the goals of a legal infrastructure effort should be (i) to enhance transparency and predictability in financial transactions, (ii) to limit the spread and mitigate the impact of financial crises on different sectors within the affected economy and on other economies, and (iii) to encourage the speedy and orderly resolution of financial crises.

The first goal—transparency—involves improvements both in the making of necessary information available to market participants, and in the functioning of institutions on which the markets rely. Key among such institutions are regulatory authorities and the courts.

The second goal—containing failures to prevent a broader crisis—addresses legal mechanisms, such as insolvency regimes and debt restructuring frameworks. These laws contain adverse financial developments at their source, and prevent them from affecting entire financial systems, a broad range of debt instruments, or other markets through contagion.

The third goal—encouraging the speedy resolution of financial crises—focuses on facilitating voluntary, contractual solutions negotiated between debtors and creditors. For all involved, such solutions are usually preferable to costly individual enforcement measures.

We want to focus first on transparency and predictability. Here it is most appropriate to closely examine institution-building, on the international level at institutions like the International Monetary Fund, and at the local and national level at the courts of law.

Transparency has been the focus of recent reform efforts at the international financial institutions. For example, in conjunction with the IMF funding package last fall, the Administration worked with the Congress to advance the goals of transparency, and secured the commitment of major IMF shareholders to act to implement significant new information disclosure policies. Our efforts have already resulted in releases of public information notices on key policy discussions in the IMF Executive Board and on key staff papers (such as the recent paper on the IMF's programs in Asia), in increased publication of letters of intent, including that with Brazil, and in the posting of information on IMF liquidity, accounts, and loans on its website.

Reform at the international financial institutions is critical not only to make these institutions respond better to the needs of their members and clients, but also because their economic programs, increasingly and appropriately, focus on institutional reform among their client countries. Thus IMF staff have developed a Code of Good Practices on Fiscal Transparency that has been endorsed by the institution's Executive Board, and has been posted on the IMF's website. The code stresses that budgets should incorporate all fiscal information, including extra-budgetary operations, contingent liabilities, tax expenditures, subsidies, and quasi-fiscal activities. Staff is also developing a Code of Good Practices on Transparency in Monetary and Financial Policies that will reinforce the fiscal code by promoting clear and transparent criteria for the work of central banks. Fund staff are already beginning to examine countries' fiscal practices in light of the fiscal transparency code; program documents are now focusing more closely on fiscal transparency issues; and staff are prepared to offer technical assistance to help countries conform to the code.

Over the past year, crisis-affected countries in Asia have enacted literally hundreds of laws and regulations in very difficult political circumstances to improve transparency and corporate governance, rationalize tax and accounting rules, bar non-arms-length transactions, remove impediments to foreign investment, overhaul bank and securities regulation, establish new bankruptcy and secured transactions regimes, and many, many others. At least on paper, we are in a radically changed world. The fact that investors may not feel the magnitude of the change overnight owes in part to the very real difficulty of living by a new commercial regime in an existing institutional structure, which is a product of decades, even centuries of different practices.

Much of the recent financial crisis has been blamed on poor governance and corruption in the emerging market economies. Genuine transparency cannot coexist with corruption. However, the term "corruption" may stand for a wide range of economic, cultural and legal phenomena, and calls for sophisticated measures to combat it. Effective measures must take into account the complex institutional and cultural frameworks in which financial transactions are enmeshed.

For example, it must be recognized that in many countries judges, like other civil servants, are paid less than half the wage they are expected to live on, and for many decades, if not centuries, have been expected to supplement their income through "gifts" from litigants. It also must be recognized that until recently, some major industrial countries made such "gifts" tax-deductible for their companies investing abroad.

Working for transparency and predictability in financial markets thus may require a close look at the composition and function of the local bar in emerging markets economies: what is the lawyers' relationship to the judges? To their clients? Are they formally bound by ethical standards? Who monitors and enforces such standards? What is the social status of a lawyer in the community? What is expected of a local practitioner in a financial transaction (this varies quite drastically even between the United States and Europe)? What is the value of a legal opinion? What is the role of the government lawyer, such as the public prosecutor or attorney general? When does the government have a formal role in a commercial case? What is the role of foreign lawyers in the local business community?

Independent, knowledgeable regulators are an integral part of today's financial markets. Yet the role, authority, and training of regulators vary widely among different countries. For example, even where bank regulators may be well established, stock exchanges, securities regulators, and bank resolution agencies may be quite new, suffering from confused mandates and inadequate authorities.

Systems for training lawyers and judges are critical to the overall reform effort, yet many law schools and bar associations in emerging market countries have no resources to prepare their constituents for the world of complex cross-border finance.

Government institutions are not the only ones in need of reform to achieve transparency and predictability in the financial markets. Corporate governance, shareholder rights and creditor rights are also high on the reform agenda. Corporate organization in different countries is driven not only or even primarily by the laws on the books today, but reflects peculiarities of cultural heritage, economic history and decades of government economic policies.

Thus, in some countries, a prominent family with a nominal stake in a holding company may effectively control a web of enormous conglomerates tied together with a complex pattern of cross-holdings, subsidies, guarantees and supply contracts. Outside shareholders or creditors may never know the complexity of the real organizational structure and are unlikely to be able to voice their concerns effectively in this setting. Even after the investment regime is liberalized, such problems persist and require deep, tedious, and expensive reforms in accounting, taxation, share registration, and secured transactions law, among others, to achieve effective reform.

Finally, equity must be a part of the transparency and predictability agenda. For example, similarly situated creditors should be presumptively treated alike. Neither foreign nor domestic creditors should benefit from "special deals" unless agreed to in a binding, transparent and bargained-for arrangement.

In retrospect, it is puzzling that vast amounts of capital flowed into environments that appeared so lacking in transparency and predictability. This suggests that legal, regulatory and institutional reform in this area should be of concern to capital exporting as well as capital importing countries.

That is why regulators, policymakers, international organizations and market participants in major financial centers, including the Federal Reserve, the Basle Committee on Banking Supervision, and the International Monetary Fund, as well as the President's Working Group on Financial Markets, are reviewing risk management and supervision practices, as well as capital and disclosure standards that affect the behavior of investors in the international markets. Highly leveraged institutions and offshore financial centers have been the focus of particular attention.

Furthermore, official and private self-regulatory international organizations are developing model codes and standards on corporate governance, securities regulation and accounting, among others, and are working to develop a consensus among market participants to abide by such standards.

As one commentator noted [Thomas Carothers in *Foreign Affairs*, March/April 1998], deep institutional reform of the sort discussed here is difficult and thankless, and takes many decades to yield results. It is expensive and takes much longer than drafting a constitution or even a commercial code, and does not bring quick glory or leverage to providers of foreign assistance. However, without institutional reform, new laws will not have the support of the legal community whose mandate it is to enforce them. Much as they might support a free market, local lawyers and business people will not rally behind laws and regulations they do not understand or believe in. Thus, a new legal infrastructure must be comprehensive and inclusive.

We now want to turn to the second goal: developing legal mechanisms to act as safeguards, to stop isolated failures from triggering full-blown crises, as well as to help speed crisis resolution.

Of course, corporate governance, creditor rights and disclosure measures already discussed earlier act as important checks and balances for a company facing crisis.

Here we focus on the importance of bankruptcy and foreclosure laws, which received much attention in the wake of the recent financial crisis in Asia. This subject is also particularly appropriate because it illustrates the importance of institutional reform discussed earlier.

III. Indonesia—A Case Study

The profile of Indonesia's financial crisis reflects dramatically the recent change in the composition of capital flows. Fully half of Indonesia's external debt to private creditors at the end of 1997, approximately $65 billion, represented direct, largely unhedged cross-border borrowing by private non-bank corporations, mostly from banks offshore. Much of that borrowing, according to some reports as high as forty percent, was backed in various forms by export credit agencies in industrial countries. The International Finance Corporation, the private sector financing arm of the World Bank Group, also had considerable exposure to the Indonesian private sector.

The weaknesses of Indonesia's legal system, particularly in the judiciary, had been well known before the crisis. In fact, the country had been the beneficiary of legal technical assistance efforts funded by the World Bank, the Asian Development Bank and the U.S. Agency for International Development.

In view of the significant portion of the country's indebtedness attributable to private corporations, corporate workouts clearly had to be a major part of Indonesia's crisis response strategy. However, it was widely believed that Indonesian debtors were not constrained by fear of bankruptcy liquidation in their dealings with creditors, and that creditors stood no chance of predictable or equitable treatment in such liquidation if it were ever to happen.

In the United States and many other major financial centers, a well-functioning insolvency regime is recognized as critical to limiting the effects of corporate failure on the financial system, to mitigating resulting unemployment, and to resuming economic activity. Therefore, insolvency reform was viewed by many in the international community as critical to Indonesia's recovery.

An internationally-supported bankruptcy reform effort was underway in Indonesia when the crisis struck. It envisioned a new bankruptcy code to replace the Dutch colonial bankruptcy code of 1906 vintage, and a new, independent tribunal. All agreed that such radical change was necessary and desirable in the long run; however, some expressed concerns about making wholesale revisions of the insolvency system in the midst of a severe economic crisis.

Under the April 30, 1998, IMF program, the Indonesian authorities committed to make a series of amendments to the existing bankruptcy law. Many of these were modeled after similar amendments made in the course of this century to a similar Dutch law still largely in effect in Holland. The amendments tightened deadlines, rationalized the treatment of secured debt, provided for the appointment of ad hoc judges and receivers from the private sector, gave the government the power to bring insolvency proceedings "in the public interest," and provided for the establishment of a new commercial chamber in the Jakarta court system, staffed with selected judges who would be specially trained in commercial matters and compensated at a rate considerably higher than their counterparts in other courts. Their decisions must be in written form and publicly available.

The court opened for business on August 20, 1998. Some, but not all, of the aspects of the original plan were implemented. The judges underwent many hours of training; however, their compensation was not raised. The court decisions have been issued in writing and on schedule, and, we understand, have been posted on a generally accessible website. On the other hand, participation of well-respected private practitioners in certain commercial panels has been slow to occur. In the meantime, some parts of the bar have expressed considerable opposition to the new regime.

From the creditors' perspective, the court's record has been mixed at best. Twenty-two cases had been filed as of early December 1998, on behalf of both foreign and Indonesian creditors, against both large and small companies, as well as several personal bankruptcy petitions. Four debtors have been declared bankrupt, out-of-court settlements resulted in several cases, while several other claims have been dismissed. At least two of the dismissed cases were appealed to the Indonesian Supreme Court. Both have been decided against the creditors. The latest decision, issued recently, rejected an appeal by the IFC, among other creditors.

Foreign and Indonesian creditors alike, as well as many in Jakarta's legal community, have suggested that the commercial court's decisions betray inadequate command of corporate finance. Allegations of corruption have been voiced as well. The first Supreme Court decision on appeal from the commercial court added to the confusion: on the one hand, it corrected what many thought was an ill-founded interpretation of the bankruptcy law in the lower court's opinion; on the other hand, it proceeded to rule against the creditors on different grounds in a decision that has been criticized by many in the Indonesian legal and business community.

Again, the problem is not that the courts are ruling against creditors, but that they are doing so on what appear to be suspect legal grounds, in a manner that lacks predictability in the conventional legal sense, and raises concerns about transparency.

In the meantime, the government, with help from the IMF and the World Bank, took certain measures to facilitate out-of-court workouts. Specifically, the Government of Indonesia established the Indonesian Debt Restructuring Agency (INDRA) and implemented the so-called "Jakarta Initiative." INDRA offered a measure of protection from further depreciation of the exchange rate to companies that restructure their debts to fit a specified profile. The second initiative, based loosely on the "London Approach" established by the Bank of England in the 1980s, was a voluntary negotiation framework, including standards for disclosure, combined with initiatives to remove legal, tax, and regulatory impediments to common restructuring techniques (such as asset sales and debt-equity swaps), a streamlined process for obtaining regulatory approvals, facilitation services, and power to bring insolvency cases before the new tribunal on behalf of the government to further the public interest.

Creditors have been skeptical, and justly so. However, we are seeing the first signs of movement. Although the commercial court's record continues to be disconcerting, new cases continue to be brought. Press reports have begun to trickle in of tentative agreements to restructure in high-profile cases with the help of the Jakarta Initiative.

IV. What Are the Lessons of This Experience?

First, institutional reform must accompany substantive law reform in such vital areas as bankruptcy. No matter what the contents of the regime and its bias toward debtors or creditors, it is worthless if not enforced predictably, transparently and equitably. Creditors are apt to put a steep discount on the uncertainty of enforcement. This in turn lowers asset prices, impairs a market in distressed assets, hurts recovery rates for domestic financial institutions, and may potentially represent a fiscal liability for the government. Note that although their core mission is financial sector rehabilitation, central banks and entities such as the Indonesian Bank Restructuring Agency (IBRA) play a key role in corporate workouts. As they take on the bad assets of financial institutions, they become the country's predominant corporate creditors.

The limited success of recent asset auctions in Indonesia and Thailand has been attributed, at least in part, to the continuing weakness of the insolvency and debtor-creditor regimes in these countries. In Thailand, in particular, the Parliament's failure to pass a foreclosure law has been cited by market participants as harmful to asset prices.

Second, institutional reform is slow and requires the building of trust and legitimacy in the legal and business community. The local judiciary and the bar must be a part of the process. Seemingly mundane issues like judges' salaries and resources to publish opinions may turn out to be critical to its success.

Third, in an uncertain environment, law and judicial reform are best complemented by a strong, government-driven, out-of-court workout scheme that provides a ready alternative to costly and uncertain litigation. Law reform and government policy should support and legitimize such out-of-court efforts, hence the importance of allowing for quick government approval of a workout negotiated between debtors and creditors without recourse to judicial proceedings.

Fourth, laws and regulations are often impediments to restructuring and at times unwittingly exacerbate crises and slow workouts. While enacting new commercial laws may be critical, it is equally important to examine thoroughly existing legal, regulatory, and tax measures that may act as obstacles to restructuring. For example, a number of countries bar or penalize debt-equity swaps. Such measures may need to be removed, supplemented or clarified, perhaps temporarily, to facilitate workouts in crisis.

Fifth, there is a trade-off between executive/administrative and legislatively approved measures taken in crisis. There is a long history of governments fighting crises by executive decree. On the other hand, unilateral executive action may prompt a backlash against reform on the part of the legislature. This is a political calculation that only the national government can make, but the international community should take note of the risks involved.

This last section focuses on legal measures that the private and official creditor community may take to combat crises. Rather than examine the pros and cons of international liquidity packages, which all have interesting legal implications, we want to focus on measures that governments and others in creditor countries can take to facilitate speedy and orderly debt restructuring when crisis hits. Three areas should be explored: contract clauses, cross-border insolvency reform, and reviewing legal impediments to restructuring in creditor countries.

A. Contract Clauses

External debt documentation for sovereign borrowers is relatively standardized. There are a number of provisions in debt contracts that could facilitate collective action among a diverse group of creditors in a workout, which for the sovereign borrower could fulfill some of the same functions that insolvency law provisions fulfill for the private borrower. Among these are provisions that allow a specified majority of bondholders to amend key terms of their instruments in a restructuring—already common in English law bonds but rare in the U.S. market. Such clauses are not a panacea—they cannot inflict a restructuring on an unwilling majority of creditors, nor can they ensure the success of a comprehensive workout. However, they can help facilitate market-based solutions where default cannot otherwise be avoided, and should be used more broadly.

In 1996, and again in 1998, the international official community publicly supported broadening the range of documentation that includes such clauses (in the so-called G-10 and G-22 reports on financial crises), although the private sector has been somewhat slow to act in this area.

The reluctance is understandable, particularly in today's volatile market. However, in the absence of a sovereign bankruptcy regime, it is in the interest of all—creditors, debtors, and the international community—to improve the likelihood of a consensual out-of-court restructuring, to avoid maverick action by a small minority of creditors, and to minimize recourse to costly, time-consuming judicial enforcement measures.

B. Cross-Border Insolvency Reform

The United Nations Committee on International Trade Law (UNCITRAL) has proposed the adoption of a Model Law on Cross-Border Insolvency by member states of the United Nations. The purpose of the law is not to standardize substantive bankruptcy regimes around the world. Rather, it is to facilitate resolution of increasingly frequent cases of complex cross-border insolvency, where companies have assets in several jurisdictions at once. The Model Law would enable the foreign representative (receiver) in a foreign insolvency proceeding to apply to be recognized by a domestic court. If a showing of certain procedural and due process protections is made, the court could impose a stay on creditor action against the assets of a foreign company.

Thus, for example, if a U.S. company with mines in an Asian country filed for insolvency protection in the United States, and the Asian country has adopted the UNCITRAL Model Law, the company's U.S. creditors would be protected against asset stripping in that country. Similarly, if a Latin American debtor with assets and creditors in the United States filed for bankruptcy in its home country, a U.S. court would freeze such assets under the UNCITRAL Model Law on a showing that the foreign court has observed the parties' due process rights in its proceedings.

Facilitation and harmonization of cross-border workout regimes thus necessarily go together with national insolvency reform in the emerging market economies. The Model Law was introduced in both Houses in the last Congress, and has enjoyed considerable bipartisan support. However, as part of broader, more controversial legislation, it failed to pass the Senate last fall.

C. Removing Impediments to Restructuring in Creditor Countries

The debt restructuring experience of the 1980s and early 1990s has taught us that regulatory, tax and accounting regimes governing creditors are all-important in motivating creditor decisions in debt negotiations.

Some industrialized countries have laws, regulations, tax, and accounting rules that make it difficult for their financial institutions to participate in workouts on commercial terms. For example, certain regulatory impediments and disincentives appear to influence the ability of Japanese banks to engage in corporate workouts abroad on commercial terms. Since Japanese financial institutions are major creditors to corporations in crisis-affected countries in Asia, these disincentives have delayed workouts, resulted in valuation discrepancies, ruled out certain common restructuring options, and exacerbated discord on multinational creditor committees. As part of the multilateral Asian Growth and Recovery Initiative jointly announced last November by President Clinton and Prime Minister Obuchi, creditor countries have pledged to examine and address impediments to restructuring that may constrain their financial institutions abroad.

V. Conclusion

The ever-increasing volume and diversity of today's capital flows make the rule of law and legal reform central to the effort of building a new global financial architecture.

Developing a legal infrastructure for the global markets is complex and time-consuming. It demands much respect, patience, and learning about diverse national legal systems and the way they interact with one another and today's financial markets. In pursuing the reform agenda we must look inward as well as outward, and judge the others' progress against our practice rather than our theory. It has taken this country over two hundred years to build the laws and institutions that have made it a major financial center and that continue to inspire confidence in domestic and foreign investors.

A key feature of our legal system is its ability to change while remaining thoroughly grounded in the principles of transparency, predictability and equity. Now, more than ever, capacity to change and to respond to change without compromising these fundamental principles is a critical element of legal infrastructure.