

EBRD/IDLO Support to the Supreme Judicial Council of Armenia with operational assistance and capacity building for the new Armenian insolvency court

Terms of Reference

This document presents the detailed description of the Terms of Reference (hereinafter “the ToR”) of the project (hereinafter “the Project”) to Support the Supreme Judicial Council (hereinafter “SJC”) of Armenia with operational assistance and capacity building for the new Armenian Insolvency court (hereinafter “the Court”). The ToR is developed based on the scope of the Contract between International Development Law Organization (hereinafter “IDLO” or “the Client”) and KPMG (Contract No. C006/2019 dated 27.06.2019).

KPMG team (hereinafter “We” or “the Consultant”) will perform the activities defined by the ToR with the assistance of the Working Group (please see **Appendix 2: Suggested Working Group structure**) and other experts and stakeholders included in the project.

Step	Purpose	Activities	Timeline	Outcome
1	Analysis of the operational structure of the Court aiming at improving efficiency and consistency of the procedures and revealing the opportunities for improving transparency.	<p>Within the scope of the study of the operational structure of the Court we will perform analysis of the Court’s staff list, which will include requesting and analyzing the job description of each position, evaluating the workload of each position, revealing the repeating activities and developing areas for optimization.</p> <p>Within the scope of the works, we will also organize meetings/discussions with the staff of the Court. The meeting schedule will be preliminarily agreed with the staff and President of the Court.</p>	Please see the Appendix 1: Work Plan – Activities A.2.1, A.2.2, A.2.4	<p>As a result of the analysis we will develop recommendations on improving the efficiency of the current structure of the Court, which will be included in the Action Plan (please see Step 6).</p> <p>The recommendations will be discussed and agreed with the Working Group. The discussions and decisions made will be included in the Report on the Working Group sessions.</p>
2	Identification of the solutions applied in the international practice of the insolvency procedures and development of similar solutions.	<p>Study of the international leading practice on improving the insolvency procedures, establishing specialized insolvency courts and the mechanisms used during insolvency process. The study will include analysis of the leading practices of up to 4 countries. In order to select the countries we will benchmark against set of criteria agreed with IDLO based on:</p> <ul style="list-style-type: none"> a) International experience b) Publicly available information <p>During the analysis, the insolvency experts will assist our team through regular discussion/brainstorming sessions.</p>	Please see Appendix 1: Work Plan – Activity A.1.5	Examples of solutions and improvements applied in the international practice to optimize the processes included in the analysis (please see Step 3 for the list of processes to be analyzed).

Step	Purpose	Activities	Timeline	Outcome
3	Current (“As-Is”) state analysis of the key processes of the Court.	<p>The analysis will include the following processes and related documentation flow:</p> <ul style="list-style-type: none"> — Insolvency case acceptance/initiation, registration and management, including: <ul style="list-style-type: none"> ✓ Insolvency application acceptance, receipt and input of other related documents to the Court office ✓ Acceptance, rejection and return of the application on recognizing insolvent ✓ Election and appointment of the Temporary Insolvency Administrator ✓ Declaration of insolvency on the basis of application <ul style="list-style-type: none"> • Notification on the Court hearing (session) • Court hearing (session) • Acceptance of the Court acts • Appealing the Court acts ✓ Signing of settlement agreement ✓ Appointment of Insolvency Administrator ✓ Notification on the creditor(s) meeting(s) ✓ Moratorium on the satisfaction of the creditors’ claims ✓ Introduction of claims by the creditors ✓ Management of the debtor’s property, including property count and valuation ✓ Submission, discussion, voting, approval of the financial recovery plan and determination of deadlines ✓ Termination of the debtor’s activities <ul style="list-style-type: none"> • Suspension or resumption of the debtor’s activities • Seizure, sale of the debtor’s property and fulfillment of creditors’ claims ✓ Closure of the insolvency case ✓ Sending notifications and making inquiries <ul style="list-style-type: none"> — Continuous education and training of judges — Document classification and maintenance of the current cases — Case archiving — Data collection and statistical reporting 	Please see Appendix 1: Work Plan – Activities A.1.6, A.2.4	<p>Based on the results of performed analysis we will develop descriptive “As-Is” state flowcharts for each process. In order to correctly draw the “As-Is” state process flow and to verify our understanding of the process, we will discuss the developed flowcharts with the Working Group and will revise the flowcharts, if necessary.</p> <p>The developed and approved flowcharts will serve a basis for revealing the key risks, inefficiencies and bottlenecks of control systems for each observed process.</p> <p>The discovered gaps will be discussed with the Working Group in order to approve the final list of gaps and to reveal possible solutions for them.</p> <p>Gaps identified will include any issues related to the standardization of insolvency forms and processes.</p> <p>As a result of the works performed we will develop a risk/inefficiency matrix.</p>

Step	Purpose	Activities	Timeline	Outcome
3	Current (“As-Is”) state analysis of the key processes of the Court.	<p>In the course of studying and analyzing the processes the following activities will be performed:</p> <p>1 Conducting interviews with the Court staff responsible for processes.</p> <p>Interviews with the staff will be conducted with the preliminarily developed questionnaires. Each interview will last 1-1.5 hours during which we will discuss the responsibilities of each employee including the role in the process, reporting, notification system used during the process, as well as, existing issues at the current state of the processes and possible solutions.</p> <p>The meeting/interview schedule will be agreed with the staff and the President of the Court.</p> <p>In addition, we will conduct interviews with external stakeholders including insolvency practitioners and creditors to gain understanding of the issues the external stakeholders face during insolvency proceedings.</p> <p>2 Study of the acting laws, regulations, the Court’s internal policies and other documents.</p> <p>During the works performed the following laws, decisions and documents will be studied:</p> <ul style="list-style-type: none"> ✓ Decision №- 23L on approving the rules of administration of the RA courts (the updated version of the document is currently being developed by the SJC of Armenia) ✓ The operational structure of the Court ✓ The staff structure of the Court ✓ Decision of the RA SJC on the staff of the SJC on the approval of the structure and Charter of the Judicial Department Office ✓ RA Insolvency law <p>3 Fieldwork:</p> <p>In order to gain profound understanding of the processes, we will perform processes walkthrough, during which we will study the documentation flow of the processes, as well as, the efficiency of the process management and engaged resources.</p>	Please see Appendix 1: Work Plan – Activities A.1.6, A.2.4	<p>The developed risk/inefficiency matrix will be discussed and approved with the Working Group. The risk/inefficiency matrix to be amended based on Working Group comments, if necessary.</p> <p>The discussions and decisions will be included in the Report on the Working Group sessions.</p>

Outcome - Example of risk/inefficiency matrix

No.	Name of the process/sub-process	Revealed risk/inefficiency	Recommendations on improvement	Expected result	Key obstacles for improvement	Responsible person(s)	Recommended deadlines
1	Notifying the Central bank of Armenia (other state authorities)	Notification is sent by post and may take up to two days	Implement electronic notification system	Notification received instantly (2-5 second)	Cost of the system	Judicial Department Office of the SJC	31 December 2019
2
3					

Step	Purpose	Activities	Timeline	Outcome
4	<p>Analysis of the RA insolvency legislation and the institutional structure of the insolvency judicial system in order to reveal the regulatory instruments and to develop recommendations on increasing the efficiency of application of those instruments in the insolvency processes.</p>	<p>The analysis of the institutional structure of the insolvency judicial system will include study of the legal and working relationships among the Court, the SJC, Judicial Department Office of the SJC and the RA Ministry of Justice and their functions defined by the legislation.</p> <p>We will also perform analysis of legal requirements towards the form of interactions between aforementioned institutions and the sequence of the defined steps.</p> <p>In order to reveal and understand the processes of application of the regulatory instruments during the insolvency proceedings, we will perform the study of the following laws and regulations;</p> <ul style="list-style-type: none"> ✓ RA Insolvency law ✓ RA Code of Civil Procedure ✓ RA Civil Code ✓ RA Judicial Code ✓ The Charter of the Judicial Department Office of SJC 	<p>Please see Appendix 1: Work Plan – Activity A.2.3</p>	<p>As a result of the analysis, we will develop recommendations/actions on increasing the efficiency of the process of application of the regulatory instruments.</p>
5	<p>Analysis and observation of the IT systems and software solutions used in the processes in order to reveal opportunities for improving integration of the systems with the processes</p>	<p>Analysis of “Court” and “Armlax” IT systems used in the Court, including</p> <ul style="list-style-type: none"> ✓ Study of the technical descriptions and user manuals of the systems (if such exists) ✓ Observation of the systems’ modules and functionality ✓ Study of the on-going maintenance process of the systems, including provision of access rights, access restrictions for users and correction of wrong records ✓ Meetings-discussions will be held with the users of the systems, as well as, with the departments responsible for ongoing service of the systems (respective employees/department in the Judicial Department Office of the SJC) <p>We will perform observation of the Court’s IT service processes, including study of the IT system structure, key responsibilities of the computer specialist, as well as, internal rules on using the IT system.</p> <p>The Working Group will assist in organizing meetings with the departments responsible for ongoing service of the IT systems.</p>	<p>Please see Appendix 1: Work Plan – Activity A.2.5</p>	<p>Recommendations on improving the Court’s IT systems from the point of the integration of the systems with the processes of the Court, automation of the processes including the indicative cost for implementing the recommendations. The recommendations will be discussed and agreed with the Working Group).</p>

Step	Purpose	Activities	Timeline	Outcome
6	Development of Action plan based on the results of the study, analysis and observations of the processes, operational structure and IT systems used by the Court.	<p>The Action Plan will include the following key points:</p> <ul style="list-style-type: none"> ✓ Descriptive “As-Is” state flow charts of the observed processes ✓ Risk/inefficiency matrix of the observed processes ✓ Recommendations on improvement of the operational structure, optimization of the staff and staff workload ✓ Gaps of the IT systems and recommendations on improvement including the indicative cost for implementing the recommendations ✓ Expected results on implementing recommendations on improvement ✓ Timeline and the responsible persons for the implementation of the recommendations on improvement ✓ Monitoring schedule and quality performance indicators (QPI) <p>Considering the developed recommendations on increasing the efficiency the Court operations, the Action Plan, if necessary, may also include recommendations on improving the current regulatory and legal acts that regulate the insolvency procedure.</p> <p>The improvement recommendations included in the Action Plan will be supported by international leading practices, in case of their existence.</p> <p>The Working Group will assist in discussing and improving the Action Plan.</p>	Please see Appendix 1: Work Plan – Activity A.2.6, A.3	Action Plan including the monitoring schedule
7	Presentation of the Action Plan to the Working Group and the SJC for approval.	<p>The Action plan including the monitoring schedule will be presented to the Working Group for discussion and approval. The Action Plan will be amended based on the comments and recommendations provided by the Working Group and the SJC.</p> <p>The Action Plan will be approved by the Working Group and the SJC.</p> <p>The Action plan including the monitoring schedule is subject to up to two rounds of discussion and amendment.</p>	Please see Appendix 1: Work Plan – Activity A.4	<p>Approved Action Plan including the monitoring schedule</p> <p>The discussions and decisions made will be included in the Report on the Working Group sessions.</p>

Step	Purpose	Activities	Timeline	Outcome
8	Monthly monitoring based on Action Plan approved by the Working Group.	<p>During this activity we will conduct three monitoring sessions: As a result of each monitoring session, a monitoring report on the implementation status of the Action Plan will be prepared. For each operation area of the Court the monitoring report will include the following information:</p> <ul style="list-style-type: none"> • Short description of the improved process/sub process • Status of the suggested improvement (implemented, partial implemented, not implemented) • Name and position of the employee responsible for the process • Main observations and areas of improvement to achieve the final result • Other relevant comments <p>After each monitoring the updated monitoring report will be issued and presented to the Working Group for improving effectiveness of implementation of the action plan.</p> <p>The Working Group will ensure implementation of the action plan, correction of the deviations taking into account the results of the monitoring.</p>	Please see Appendix 1: Work Plan – Activity A.5	Monitoring reports

Appendix 1: Work Plan

EBRD/IDLO - Support to the Supreme Judicial Council of Armenia with operational assistance and capacity building for the new Armenian insolvency court

Work plan v2

26.06.2019

No	Tasks	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Planning																									
	Kick off meeting																								
Activity 1: Development of objectives, workflows and recommendations																									
A.1.1	Analysis and identification of the major stakeholders groups																								
A.1.2	Development of preliminary performance objectives and ToR																								
A.1.3	Meetings and discussion of performance objectives and ToR with working group and stakeholders																								
A.1.4	Development of final performance objectives and ToR																								
A.1.5	Study of international best practices																								
A.1.6	Development of description of business processes (e.g. workflow of daily tasks, current state flowcharts) and recommendations on operational rules and procedures																								
A.1.7	Second round discussion with stakeholders groups and working group where necessary																								
A.1.8	Finalization of the recommendations on improvement based on discussion results																								
Activity 2: Map regulatory instruments and the operational structure, preparation of high level action plan																									
A.2.1	Meetings and discussion with the representatives of the field including staff of the court																								
A.2.2	Development of operational structure in line with the performance objectives (A.1.2)																								
A.2.3	Mapping of regulatory instruments and the operational structure																								
A.2.4	Recommendations on allocation of roles and responsibilities of staff																								
A.2.5	Analysis of the IT systems of the Ministry of Justice of the Republic of Armenia and identification of critical integration points and requirements																								
A.2.6	Development of high level action plan																								

Appendix 2: Suggested Working Group structure

No.	Name	Position
1	Garik Avagyan	The Head of the Insolvency court
2	Hayk Hovhannisyan	A member of Supreme Judicial Council
3	Tachat Voskanyan	Assistant of Hayk Hovhannisyan
4	Hermine Petrosyan	Clerk/assistant of a judge of the insolvency court
5	Tigran Sahakyan	Insolvency Administrator (suggested by Mr. Avagyan and Mr. Hovhannisyan)