

## **Annex 1: Dimensions of success and conditions of success**

### **Dimensions of success**

#### **A. Dynamic view on success**

##### *a. Process/performance-oriented effects*

- i. Mere official promulgation
- ii. Initiate discourse
- iii. Initiate any behavior (even unexpected one)
- iv. Initiate behavior contemplated by the donor or recipient
- v. Change the current behavior
- vi. Use in a specific way

##### *b. Result-oriented effects*

- i. Benefit to the society or persons responsible
- ii. Motivation
- iii. Goal
- iv. Efficiency

#### **B. Static view on success**

##### *a. Fit with local culture and political economy*

##### *b. Fit with the pre-existing legal infrastructure*

### **Conditions of success**

- Fit with local context or domestic conditions
- Area of law
- Receptiveness of recipient jurisdiction to foreign law in general
- Similarities between donor and recipient jurisdictions
- Political relationship between donor and recipient jurisdictions
- Degree of economic development of donor and recipient jurisdictions
- Availability of substitutes
- Motivation

**Annex 2: Benchmarks of success and fit in case studies**

Area of Law	Transplanted Law	Benchmarks of Success	Factors influencing Success	Benchmarks of Fit
Contract law	Good faith to common law	<p>What is being analyzed: Application of the rule by courts</p> <p>When is it successful: when applied</p>	<p>Presumed fit of the doctrine with common law</p> <p>Functional substitutes present in common law</p>	<p>Fit with the relational nature of contracts</p> <p>Congruence with ordinary commercial practices</p> <p>Fulfillment of reasonable expectations of the parties</p>
Private international law	Convention on Contracts for the International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts to Australian contract law	<p>What is being analyzed:</p> <ul style="list-style-type: none"> <li>- Application of the rule by courts</li> <li>- Motivation for transplanting the law</li> </ul> <p>When it is successful: brings benefits to the recipient society</p>	<p>Fit</p> <p>Appropriate interpretation (including separation from domestic context where necessary)</p> <p>Supportive societal environment</p> <p>Internally driven motivation for the law</p>	<p>Fit within legal infrastructure (including relevancy of the rule for legal professionals)</p>
International arbitration law	International arbitration court to Singapore	<p>What is being analyzed:</p> <ul style="list-style-type: none"> <li>- Motivation for transplanting the law</li> </ul>	<p>Fit</p> <p>Supportive cultural features (incl. stable</p>	<p>Fit with domestic socio-legal cultural environment</p>

		<p>- Actual usage</p> <p>When it is successful: when used by the parties in congruence with the motivation for the adoption (i.e. the law contributes to the overarching strategies and goals of the recipient jurisdiction)</p>	<p>institutional and legal structures, reformist culture in international business matters)</p> <p>Institutional adaptiveness</p>	<p>Fit with developmental strategy (i.e. congruence of the overarching strategic interests with the idea standing behind the transplant)</p>
Company law	Independent director system to China	Function of the transplanted law in the recipient jurisdiction, i.e. how the law addresses the pain points of the recipient jurisdiction	<p>Formal aspects of the law (its wording and interpretation)</p> <p>Interaction with other institutions in the corporate governance system (accompanying infrastructure, adequate enforcement)</p> <p>Broader cultural, societal and policy considerations</p>	<p>Fit with the wider regulatory framework</p> <p>Fit with related institutions and cultural background</p>
Company law	Corporate governance standards through stock	Delivery of benefit to the country	Cultural, political, economic and institutional	Fit with the legal infrastructure (supportive

	exchange listing to Brazil	Achievement of motivation that was sought to be achieved by the transplant (legal change)	elements that permeate the entire market  + deficiencies of the law itself (incompleteness, inadequate interpretation, lack of enforcement)	enforcement institutions, adequate interpretation)
<b>Constitutional law</b>	Proportionality principle to the Czech Republic	Contribution to the resolution of the legal problem for which it was intended in the country of origin  Uniform application of the principle by judiciary	Congruence with the encompassing constitutional, political and extra-legal context	Fit with related institutions and cultural background
<b>Constitutional law</b>	Proportionality principle to Australia	Application of the rule by courts in the same way as in the country of origin	Existence of legal context in which the transplanted law crystallized in the domestic jurisdiction  Willingness of legal professionals to embrace the law	Fit with legal concepts and related institutions
<b>Constitutional law</b>	Independent lawyer association in Myanmar	Replicating the institution from the jurisdiction of origin, including the transfer of the ideas that	Fit	Supportive context and existence of accompanying institutions and regulatory

		surround it		concepts
<b>Administrative / regulatory law</b>	Shark sanctuaries to Pacific islands region	Achievement of the ultimate aims of the regulation	Effective implementation (effectiveness and enforcement of the law)  Fit	Congruence with the cultural mores and perceptions  Fit with other realities
<b>International law</b>	Anti-impunity norm to Japan	Achievement of the transcendental moral standards that underpin the norm	Fit  Conductive political climate that approves of the idea behind the norm	Acceptance of the idea by the society, culture, legal culture (including the role of law in general)
<b>Migration law</b>	Legal regime for temporary migration to Asia-Pacific region	Legal solution is able to fulfil the need	Fit  Absence of obstacles to transplantation	Legal solution fits the situation that needs to be addressed  Fit with the overarching regulatory strategy of the state
<b>Criminal law</b>	Criminal procedure code to Afghanistan	Acceptance by the local population (including meaningfulness and appropriateness in application) + the achievement of the law's objectives (reasons for the demand for the law and the motivations for relying on legal	Fit  Local interpretation and enforcement capacities  Social, political and economic concerns	Compatibility with legal tradition (proxy is "sensitiveness")

		transplanting to prepare it)		
<b>Competition law</b>	Article 102 TFEU to Israel	Ability to achieve goals in the recipient country (or bring benefits to the recipient country)	<p>Factors from the recipient society (socio-economic conditions, position of local population and legal practitioners, familiarity with related regulatory concepts, receptiveness to foreign law in general)</p> <p>Factors of the law itself: suitability of the model law for transplantation, “nature” of the transplanted law</p>	The law responds to the needs of the jurisdiction