

## **RETA 5975: Promoting Regional Cooperation in Insolvency Law Reforms**

### **Opening Remarks by**

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Good morning, ladies and gentlemen. In honor of you as our distinguished guests, may I say welcome all you from Indonesia, Korea, the Philippines and Thailand, as well as our consultants, other experts, and friends and colleagues from the United Nations Center for International Trade law (UNCITRAL), INSOL International and ADB.

I am Gerald A. Sumida, The General Counsel of ADB, and it is my pleasure and privilege to welcome you as you begin your important work over the next two days.

History is made in different ways. Some events are heralded by elaborate ceremony, fanfare and joyous celebration, such as when but two years ago we greeted the New Millennium. Other events are seared into our collective memories by sudden, brutal force, such as what happened on September 11. Still others begin with quiet processes whose historic significance emerges only after the passage of time, such as the signing of the treaty that gave rise to the European Coal and Steel Community, the foundation of today's European Union, or the signing of the ASEAN Treaty.

I believe that the work that you will shortly commence, and the process that you have already initiated will, one day in our Asia-Pacific Region's future, be recognized to be of such historic significance.

Your efforts and creative imagination will help to build the foundation for regional cooperation in insolvency arrangements within this region. And the need for this foundation itself arises from two historically important forces that are transforming this region.

The first is the financial and economic tsunami that swept over this region some five years ago in the form of the Asian financial crisis. This wrenching regional crisis exposed structural vulnerabilities and weaknesses in national banking and financial systems, and threatened the very integrity and stability of those systems.

In the immediate aftermath of this crisis, several countries faced burgeoning portfolios of non-performing loans. Three countries represented here responded with strong Government intervention and established agencies to promote the environment to facilitate the informal resolution of debts owed to banks. These are Thailand's CDRAC process, Korea's KAMCO, and Indonesia's IBRA and The Jakarta Initiative. These reform efforts are continuing.

The Philippines, which was less drastically affected, has also been moving along similar lines. Just this month, the Philippine Central Bank issued new regulations on the treatment of non-performing loans. The Philippine Congress is currently considering proposed legislation – known as the SPAV bill – to foster the establishment of special purpose vehicles to acquire non-performing loans, real estate, and other assets of financial institutions.

All of your countries have demonstrated a firm commitment to reform. Each of your countries has, since the crisis, revised or updated national laws, established new procedures or processes, and developed mechanisms for the informal resolution of debtor-creditor disputes.

In the aggregate, these initiatives are watershed events – a turning point, if you will – for this region. Never before did this region have to confront such massive defaults and large-scale restructurings. We hope, through this Technical Assistance, to ensure that the core lessons from these experiences are not lost, but are used to create an environment where borrowers in financial difficulties and their creditors can resort with confidence to established arrangements to resolve these issues without overwhelming national court systems.

The second is the fundamental need to create a better environment that will attract and promote needed and desired investment, which in turn will contribute greater economic benefit to individual countries and to our region itself. This highlights the relationship between insolvency laws and secured transactions law. This focuses on the protections to be accorded to corporate debtors, but also to institutional creditors – not always banks – that can provide substantial financing and credit that are essential to growing businesses and a dynamic economy. How this diverse array of creditors can be appropriately and adequately protected when borrowers and debtors encounter financial difficulties is an important public policy issue in the pursuit of effective sustainable growth.

A secured transaction regime also makes possible the provision of credit and financing to small, medium and large businesses far beyond what is available only from banks. These additional sources of credit and financing can spur the economic and entrepreneurial dynamism that is essential in growing economies. Secured transactions regimes have now become popularly known through Hernando de Soto's seminal writings on using secured transactions law to expand the bounds of productive economic activity. His *Mystery of Capital* makes a powerful case for this approach. However, this approach itself rests on a system of rights and the certainty that comes from an orderly set of procedures. This is the other side of what insolvency law reforms also seek to attain.

However one might view "globalization", it is a fact of every day life that our economies are becoming increasingly inter-penetrated as well as increasingly interdependent. The Asian financial crisis showed us some of the more troublesome aspects of globalization. The agendas being pursued by the United Nations, through its articulation of the Millennium Development Goals and its recent Monterrey meeting on the financing of development and the Johannesburg meeting on sustainable development reflect these growing interdependencies. So does the evolving agenda of the World Trade Organization.

Within our own region, the continuing work of ASEAN, including its Asian Free Trade Agreement to promote regional trade and investment, are clear examples of regional interfaces with these global efforts. The ASEAN + 3 initiatives also attest to long-term plans and aspirations to promote regional trade, commerce and investment, and thus to enhance economic and financial interdependencies within this region.

It is within this broader perspective that your work must be viewed. The world – and our region – is not yet "borderless", as Kennichi Ohmae postulated in his book of this title. Nonetheless, the trends and forces toward increasing financial and economic interpenetration and interdependencies are continuing, and will intensify in the future.

This sharpens the focus on regional issues as well as the opportunities for regional cooperation. Regional cooperation can enhance and strengthen national development by creating and expanding the options available to countries, including through growing markets and access to key flows of goods, services, investment funds.

For ADB, regional cooperation is one of its two purposes, the other is to promote the economic and social development of its developing member countries. For some 35 years ADB has worked in partnership with its DMCs in this pursuit. ADB, through our loan projects, sector studies and technical assistance, has helped to provide foundations to link national sector development programs with crossborder or transnational regional projects.

Within this perspective of regional cooperation, your efforts are fostering regional cooperation in an area of law that traditionally has been the preserve of national laws. But the imperatives of globalization transcend national boundaries and push toward regional frameworks of cooperation.

You will therefore be exploring the regional bases of cross-border insolvency, informal workout practices, and the intersection between insolvency and secured transactions legal regimes. And in doing so, we must keep in mind how international business daily takes place. Asia's international financial centers – Tokyo, Hong Kong, Singapore, Bangkok, Seoul – both see and are part of the growing use of complex and interlinked corporate structures and processes. We see holding companies in Hong Kong, Bermuda or the British Virgin Islands. We see finance raised in one jurisdiction, business operations carried in different jurisdictions, and parent companies operating in Asia through Asian subsidiaries as well as joint ventures and strategic alliances.

When financial difficulties arise – as they will inevitably will – the question becomes how to find ways to realize value for creditors from assets and income streams in multiple jurisdictions. The restructuring and recovery process in Asia is time-consuming, not always successful and definitely expensive for all countries involved.

From today on, the challenge is how to strengthen the implementation of our laws by finding ways to assist each other when insolvencies involve debtors with assets in countries other than where the debtor is located. Other regions have moved in this direction. This year the European Union (EU) issued the European Insolvency Regulation, which applies to insolvency proceedings commenced in EU member states. This regime promises to ensure that EU insolvencies are better coordinated and more predictable, thus making possible the elimination of duplication and the saving of effort and costs. The net result: The EU will have a better and more attractive business environment.

Your agenda is a weighty set of tasks over the next two days. You will, as I mentioned earlier, be helping to shape an important historic force.

We are pleased that you accepted the challenges in undertaking this important venture, and are proud to be engaged with you in this effort. We know that the consequences of your work will be vital for the economic development and progress of our region.

I convey to you our sincerest best wishes for a productive session. Thank you and best wishes.