

**Forum for Asian Insolvency Reform**  
**INSOLVENCY REFORM IN ASIA:**  
**AN ASSESSMENT OF THE RECENT DEVELOPMENTS AND THE ROLE OF JUDICIARY**  
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**OPENING REMARKS**

Prepared by  
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On behalf of Asian Development Bank, welcome to this Forum for Asian Insolvency Law Reforms. I am delighted to be here, and look forward to the next two days. ADB is very pleased and honored to be a partner with OECD, the Government of Australia and the Government of Japan in sponsoring this event; and we thank the Government of Indonesia for hosting us in this beautiful location. Although ADB has been a partner with OECD in other areas of law reform, such as corporate governance, this is the first time that ADB is working in partnership with OECD in the field of insolvency law. We look forward to this event being the first of a long cooperation with OECD in this area.

Besides myself, two distinguished members of its Board of Directors represent ADB at this Forum – Dr. Jusuf Anwar, of Indonesia and Mr. John Lockhart of Australia. On the first day, Mr. Lockhart will be sharing with us his wealth of knowledge on the role of and accountability of judges. As a former Judge of the Australian Federal Court he is eminently qualified to address this subject. Dr. Anwar will participate in and moderate tomorrow's session entitled Peer Review of Judges. Given his experience as Chairman of the Capital Market Supervisory Agency (Indonesia's regulatory equivalent of the securities and exchange commission), and as a law reformer in the area of restructuring, we also look forward to his involvement. We are also represented here today by Mr. Ron Harmer, who is no stranger to these events, and to many of you. Mr. Harmer, in his capacity as Staff Consultant to the ADB for various insolvency matters, will be the main speaker during Session I, and will be focussing on major challenges for insolvency reformers in the Asian region. Absent today is my colleague Clare Wee, who was responsible on the ADB side for developing the collaboration with OECD for this Forum. She has asked me to convey her best regards to all of you, and regrets not being able to attend.

Although insolvency has recently seemed to gain in stature, ADB's Office of the General Counsel has been involved in this area for many years, even before it became an exciting topic. In fact, it seemed at times as though insolvency was the unwelcome guest that no one wanted to address or mention, or even get too close to, as though somehow there would be guilt by association. Perhaps ADB's earliest involvement came in 1993, when the PRC government approached ADB through the State Economic and Trade Commission for assistance. The SETC was, and is, the government commission with the perhaps unenviable task of reforming and restructuring insolvent state owned enterprises. SETC wanted help in improving conditions regulations that would govern the application of the PRC insolvency law of 1986. Over a four-year period the ADB worked with SETC to take a systemic approach to insolvent state owned enterprises, and boost its ability to foster reorganizations and orderly liquidations. Since then, ADB has provided assistance on insolvency law reform to for example, India, Indonesia, Korea, Malaysia, Nepal, Pakistan, Hong Kong, China, just to name a few. And so, ADB has been promoting the development of insolvency infrastructure and the understanding of insolvency laws in Asia for some time. And we are committed to carrying on with this work for as long as necessary.

Last year, ADB released a guide for the assessment of insolvency laws. It is styled as a set of "good practice standards", but do not let that fool you. It is a very useful diagnostic tool for measuring the completeness of insolvency laws, and the legislative framework. I recently used it myself to assess the new draft PRC insolvency law and found it very helpful. A number of copies are available on the table at the back. If you are unable to get one of them, please sign up on the list provided for the purpose.

ADB is of course not alone in this work, as the high turnout for this conference indicates. In the past year, ADB has collaborated with UNCITRAL and the World Bank on more globally oriented insolvency work. This type of cooperation will feature more and more in ADB's work in the insolvency

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arena in the coming years. We look forward to our collaborative projects with, for example, bar associations and INSOL International – which is a world federation of insolvency practitioners.

It may strike you as odd, at this juncture, that I mention “global” insolvency work, since insolvency laws are adopted country by country. You may also ask yourself why such things concern the Asian Development Bank. However, global changes have occurred that pose unique demands on individual insolvency regimes. “Globalization”, that term that we here so much nowadays, in part means that corporations operate in many jurisdictions. Global corporates can, and do, experience global failure. This includes names such as Barings, Peregrine, and Guangdong International Trust and Investment Corporation, just to name a few that many of you will have experienced at close range. These failures will not go away, and in fact will steadily increase as the world economy grows. These failures require cooperation of institutions and parties on a transnational basis.

The tension of course is between a national system that is acceptable locally and systems that work harmoniously together internationally. To give just one brief example, let us pose the case of a computer start up. Let us say that, founded in 1990 in Singapore, it is initially very successful, and expands rapidly. It attracts investors, and it begins to borrow. It branches out, and makes investments in seven or eight Asian countries, and borrows in all of them. It has several thousand employees by the late 1990s. A regional downturn occurs, business contracts and the company is just not prepared to weather the storm. How should a court intervene – to protect the narrow interests of the company? The employees? The banks of that jurisdiction? To auction the assets cheaply to a local competitor? Or to make quick interventions along with the other affected jurisdictions to salvage the company and let it go forward sustainably? Needless to say, as a development bank we prefer the latter solution. Significant delays, however, might lead to the company’s demise.

I hope the foregoing illustrates that the time is right for this region to embrace laws and provide institutions that can deal with cross-border insolvencies. In previous ADB surveys, ADB has noted the absence of formal laws for cooperation among bankruptcy courts and institutions. There is also a clear deficiency in procedures for cases of cross-border insolvency. Among the main reasons for providing frameworks to govern cases of cross-border insolvency is to create predictability and certainty in trade and investment transactions, increase the efficiency and fairness of cross-border insolvency administration, and to facilitate the rescue of troubled businesses. ADB encourages its member countries to seriously consider adoption of cross border insolvency provisions such as the UNCITRAL model Law on Cross-Border Insolvency. (I am pleased to report in this regard that the PRC has recently revised its new draft law to include basic cross border provisions. In India, a major report on Insolvency commissioned by the Indian government in India has apparently just recommended inclusion of the UNCITRAL provisions.) ADB intends to make this a focus of its insolvency work in the next few years. Cooperation begins with understanding. Therefore, ADB along with OECD, will provide support for forums such as this one, with the aim to facilitate exchange of ideas and experiences to develop the environment for cross-border principles to flourish. You will be hearing more on this topic over the next two days, without doubt as it relates to the role of the judiciary.

Again, I look forward to working with you during the coming days. I want to close by thanking the organizers and hosts of this event for bringing us together. Thank you.