

September 9, 2004

APEC High Level Conference on Structural Reform

# **Fair and Transparent Legal Environment for Business**

**~ Debt Collection Regime ~**

Masayuki Oku  
Deputy President



# SMBC Global Network

**Branches** 20  
**Sub-branches** 3  
**Representative offices** 14  
**Principal Subsidiaries** 26

Americas

- New York Branch
- Los Angeles Branch
- San Francisco Branch
- Cayman Branch
- Manufacturers Bank
- Sumitomo Mitsui Banking Corporation of Canada
- Banco Sumitomo Mitsui Brasileiro

Europe/Middle East

- Sumitomo Mitsui Banking Corporation Europe Limited
- Dusseldorf Branch
- Brussels Branch
- Paris Branch
- Madrid Rep Office
- Sumitomo Mitsui Finance Dublin Ltd.
- Bahrain Rep Office
- Teheran Rep Office
- Cairo Rep Office
- Johannesburg Rep Office

Asia/Oceania

- Hong Kong Branch
- Shanghai Branch
- Tianjin Branch
- Guangzhou Branch
- Suzhou Branch
- General Rep Office in China
- Dalian Rep Office
- Chongqing Rep Office
- Shenyang Rep Office

Taipei Branch

- Seoul Branch
- Singapore Branch
- Labuan Branch
- Labuan Branch Kuala Lumpur Marketing Office
- Kuala Lumpur Rep Office
- PT Bank Sumitomo Mitsui Indonesia
- Jakarta Rep Office
- Ho Chi Minh Rep Office
- Yangon Rep Office

- Bangkok Branch
- Ayudhya Branch
- Chonburi Branch
- Manila Rep Office
- Mumbai Branch
- New Delhi Branch
- Sumitomo Mitsui Finance Australia Ltd.

(Figures as of March 31, 2004)

# Our Strategy in the Asian Market

**Enhancing customer support capabilities through an operational structure tailored to the unique demands of each region.**

- **Building a business platform in China**  
Established local sales network, including corporate research unit, treasury unit and functions of CMS product planning.
- **Supporting customers business operations in Asian market**  
Established Debt Capital Markets Dept. in Singapore and Hong Kong to provide asset securitization schemes and other financial solutions.
- **Cooperation with local banks**  
BESETO agreement with Bank of China and Korea Exchange Bank

# Headings

- Legal Environment – A Crucial Building Block for Facilitating Foreign Capital Investment(P4)
- Review of Insolvency Legislation and Debt Collection Regime In Japan(P5 ~ P10)
- Legal Environment and Debt Collection Issues in the APEC Region (P11 ~ P12)
- Conclusion – Leveraging the Legal Environment to Accelerate Economic Growth of the APEC Region

# Effective Legal Environment and Corporate Reorganization and Liquidation

## ➤ **Facilitate Foreign and Domestic Investment**

- Financial institutions and corporations can deal with defaults with high predictability when there is an effective legal framework with reliable and swift proceedings for liquidation or reorganization
- Reduces risks and encourages active investment

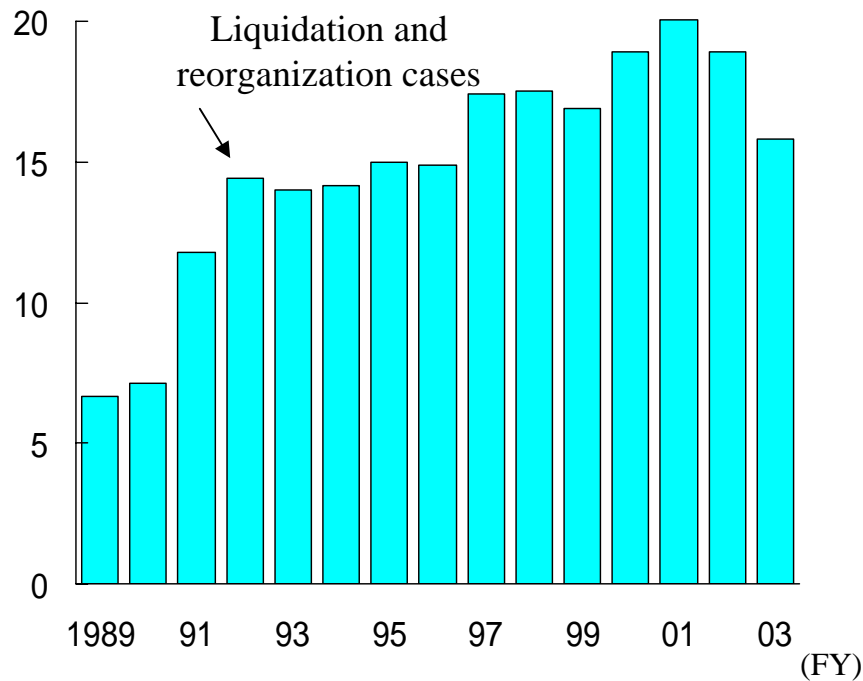
## ➤ **Efficient allocation of resources**

- Swift reorganization/liquidation facilitates efficient allocation of distressed corporation's capital and labor and this is desirable from a national economic perspective

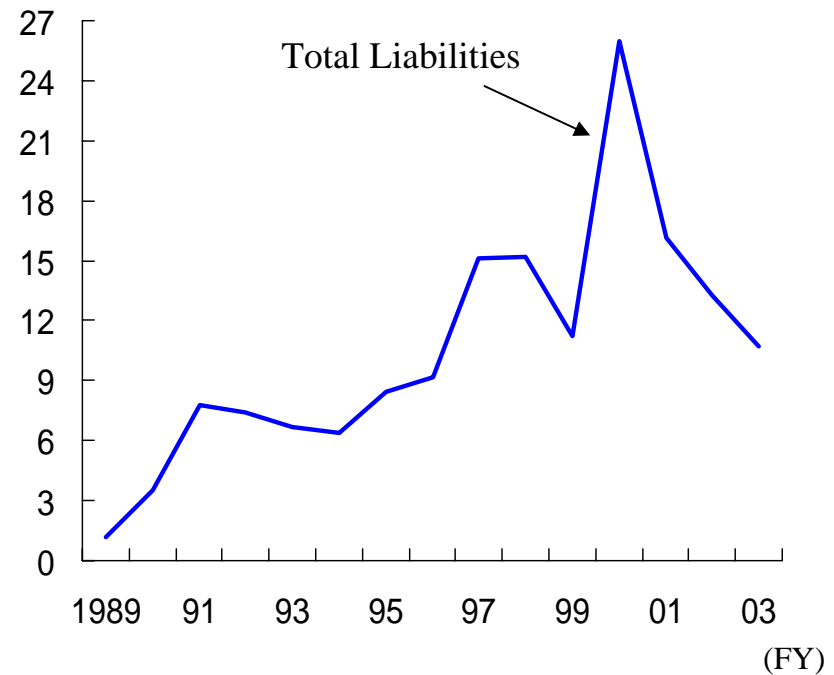
# Liquidation and Reorganization Filings in Japan

After the burst of the bubble economy in the early 90s, the Japanese economy entered a prolonged period of recession, resulting in an extremely high level of business failures in the latter half of the 90s.

(No. of cases in thousands)



(Yen in trillions)



(Source) "Bankruptcy Report" of Teikoku Data Bank

# Reinforcement of Reorganization-type Insolvency Laws

- Composition Law Replaced by Civil Rehabilitation Law in 2000
  - Relaxing of conditions enables early commencement of corporate reorganization procedures
  - Parties have leeway in when to formulate reorganization plan
  - Allows a court to restrict execution of security claims, select an administrator and supervise the implementation of the reorganization plan
- Corporate Reorganization Law procedures also streamlined in 2003

# Guidelines for Out-of-Court Workouts

## Established in 2001 and based upon “Statement of Principles for Global Approach to Multi-Creditor Workouts” of INSOL

- Achieve a common understanding between the debtor and creditors on out-of-court workouts
  - Mainly for when there are many creditors (financial institutions) and not just few banks lead by the main bank
  - Select only candidates with true potential for reconstruction based on their circumstances and reorganization plans
  - Out-of-court workout adjustment process outlined such as “standstill” of debt collection and reinforcement of security interest to allow creditors to workout issues, and examination of the reorganization plan by professionals



# Public Purchase of Bank Loans

- 1993: Cooperative Credit Purchasing Company (CCPC) established by 164 private financial institutions
  - ⇒ Purchase nonperforming loans secured with real estate
- 1998: Resolution & Collection Corporation (RCC) commences operation
  - ⇒ Purchase nonperforming loans to borrowers classified as “Potentially Bankrupt Borrowers”
- 2003: Industrial Revitalization Corporation of Japan (IRCJ) established
  - ⇒ Purchase loans to viable corporations classified as “Borrowers Requiring Caution”

# Amendment of Security Interest Laws and Bankruptcy Law

## ➤ 2004: Security Interest Laws

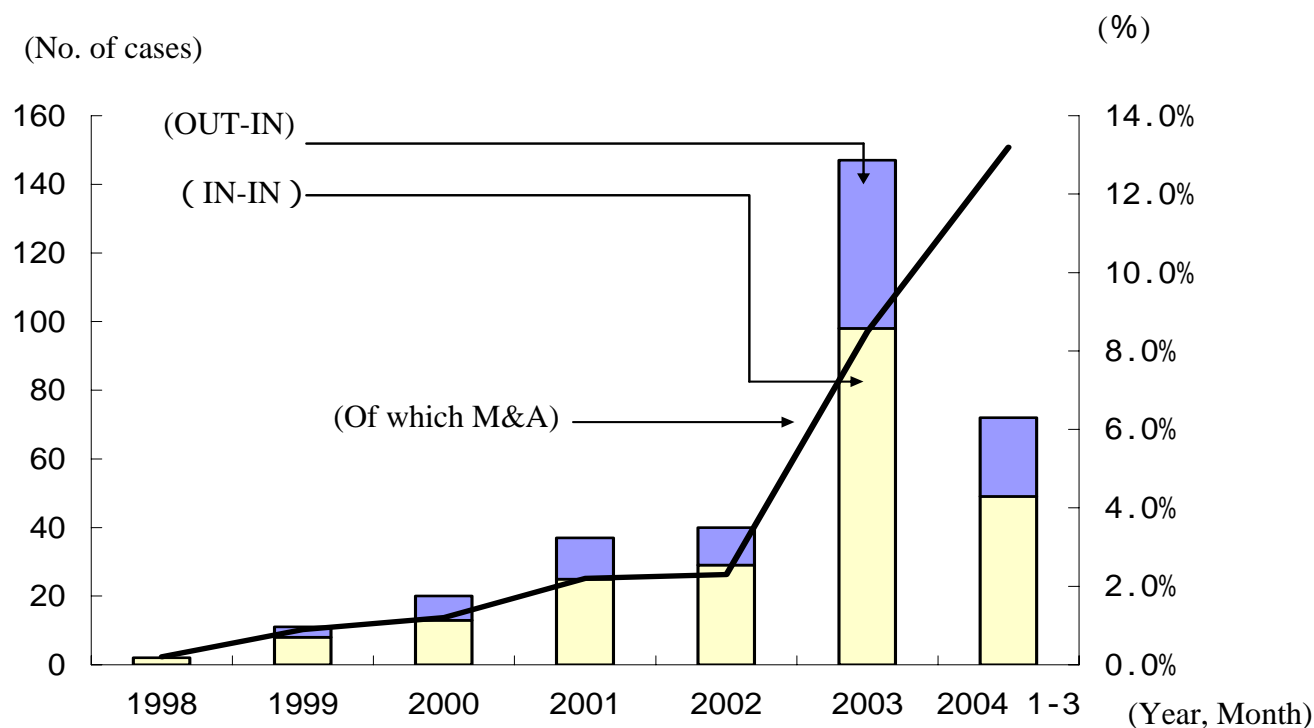
- Abolishment of priority of short-term lease over mortgage, which had encouraged squatters to occupy mortgaged properties
- Relaxing of conditions for commencement of civil procedures to remove squatters

## ➤ 2005: Bankruptcy Law

- Bankruptcy proceedings streamlined  
(the number of competent courts increased, convening of meeting of creditors made voluntary, etc.)
- Provisions on claims priority, avoidance, setoff and others revised  
(Other insolvency laws being reexamined from the same perspective)

# Business Reorganization by Investment Funds

A considerable amount of foreign capital has flowed into, and continues to flow into, Japan through business reorganization funds and this has sparked establishment of many such private domestic funds.



( Source ) RECOF

( Note ) Includes distressed corporations other than “Potentially Bankrupt Borrowers”. 10

# Progress in Creating an Effective Legal Environment by the APEC Economies

The APEC economies, particularly after the Asian financial crisis, have been making significant progress in establishing a legal framework for debt collection

- Modernizing and clarifying insolvency and security interest laws
- Introducing new reorganization-type insolvency legislation
- Implementing initiatives to encourage out-of-court workouts before filing for commencement of formal insolvency law proceedings
- Making progress in reforming judicial system

# Legal Environment Issues of the APEC Region

**APEC economies differ historically, culturally and socially and are at different levels of development in establishing an effective legal environment and there are still a number of issues that must be further addressed.**

In particular

- Remain committed to ongoing legal reform
- Establishing specific procedures and assuring the effectiveness of the execution and enforcement regime
- Ensuring all parties, both domestic and foreign, are treated in a fair and transparent manner

# **Korea's Institutional Reforms for Creating an FDI-friendly Environment**

**Presentation by Dr. Wan-soon Kim,  
Investment Ombudsman of the Republic of Korea**

**APEC High-Level Conference on Structural Reform  
September 8-9, 2004  
Tokyo, Japan**

**INVEST  
KOREA** 

# Summary

## **A. Five major institutional reform areas pertaining to FDI:**

- Enhancement of investment incentives
- Liberalization of the capital and foreign exchange market
- Corporate governance system reforms
- Rectification of bad accounting practices
- Removal of barriers to mergers and acquisitions, or M&As

## **B. Pro-FDI Institutional Reforms: Office of the Investment Ombudsman**

## **C. Benefits of FDI in Korea**

# **A. Major Institutional Reforms**



# Major Institutional Reforms

## Legislation of the Foreign Investment Promotion Act(FIPA) of 1998

### Enhancement of Investment Incentives

- Tax incentives granted to foreign direct investment under FIPA and the Special Tax Treatment Control Act (STTCA)
- Cash Grant system introduced earlier this year



# Major Institutional Reforms



## Liberalization of Capital and FOREX Markets

- After 1997, government opened Korea's capital markets to attract foreign funds
- Abolished ceilings on aggregate foreign ownership of listed Korean shares and short-term money market instruments
- Restrictions preventing hostile M&As also eased

# Major Institutional Reforms

## Corporate Governance System Reforms

- Korea's corporate restructuring since 1998 focused on improving management transparency and governance practices as well as attracting foreign investors
- The main goals of this strategy were:
  - Reducing corporate indebtedness
  - Boosting transparency of corporate governance
  - Improving responsibility of corporate managers and controlling shareholders (mainly *chaebol* owners)
  - Guaranteeing rights of minority shareholders as well as institutional investors
  - Strengthening capacity and function of boards of directors for listed companies
  - Improving intra-group relationships
  - Introducing outside directors and audit committees

# Major Institutional Reforms

## Rectifying Bad Accounting Practices

- IMF/ World Bank insisted that Korea upgrade accounting standards and disclosure rules to match international best practices after the financial crisis of 1997
- In March 1998 the Financial Supervisory Commission (FSC) organized the Special Committee to review existing accounting systems
- FSC's primary goal was to achieve transparency, credibility, and international comparability of Korean accounting standards
- In December 2003, the National Assembly ratified amendments to the Securities and Exchange Act, Act on External Audit of Stock Companies, and Certified Public Accountants Act

# Major Institutional Reforms



## Mergers & Acquisitions

- By May 2004, foreigners owned about 44 percent of the shares of the companies listed on Korea's stock exchanges
- Role of foreign capital was significant in Korea's privatization process through the issuance of depository receipts (DRs) by the New York and London Stock Exchanges

## **B. Pro-FDI institutional Reforms**

## The Ombudsman System

- Korea Investment Service Center (KISC) was founded in April 1998 within the Korea Trade-Investment Promotion Agency (KOTRA) to provide foreign investors with one-stop administrative services
- In December 2003, KISC was reorganized and rebranded as Invest KOREA in order to provide foreign investors with more efficient and integrated services
- The Office of the Investment Ombudsman was created in October 1999 to address and resolve any difficulties pertaining to business and daily living conditions experienced by foreign-invested companies in Korea through prompt aftercare services



## **C. Benefits of FDI**



# Benefits of FDI

In the case of KOREA,

FDI has enriched the economy in a number of crucial ways:

- A stable source of foreign exchange
- Creating jobs, stimulating rising consumption and investment
- Increasing sales performance
- FDI in the form of M&As has facilitated not only corporate restructuring, but also introduced global accounting standards, auditing, and information disclosure systems



# Administrative Licensing Law and Other Commercial Law Reforms

----by Du Baozhong,

Ministry of Commerce, China

September 9<sup>th</sup>, 2004

# Administrative Licensing Law and Other Commercial Law Reforms

- Administrative Licensing Law
- Foreign Trade Law
- Anti-monopoly Law
- Other Commercial Laws

# Part 1: Administrative Licensing Law

- Adopted on Aug 27<sup>th</sup>, 2003
- Coming into force as of July 1<sup>st</sup>, 2004

# Main Content

- Definition
- Basic Principles
- The Power of Setting Down a Licensing
- Implementing Procedures for Licensing
- Charges for Licensing
- Supervision and Inspection
- Legal Liabilities

# What's an administrative licensing

- 
- Application by citizens, legal persons or other organizations
- Examination by administrative organs
- Permission(approval) to engage in specific activities

# Basic Principles

- 1. Legitimacy
- 2. Publicity, fairness and impartiality
- 3. Facilitating people
- 4. Right to have remedies
- 5. Trust protection

# What may set down (create) a licensing?

- Yes
  - Laws
  - Administrative regulations
  - Decision of the State Council
  - Provincial regulations
- No
  - Ministry regulations
  - Other regulatory documents



# For what matters may a licensing be set down?

- 1. Specific activities bearing on national or public security, human health or environmental protection.
- 2. The development and utilization of limited natural resources, Market access of specific trade, public utilities such as power or water supply.
- 3. Specific vocations or trades bearing on public interest, i.e. attorney, accountant or doctor.

(continued)

- 4. Important or dangerous equipments or facilities: vehicles, boiler.
- 5. The setting-up of enterprises or other institutions
- 6. Other matters provided by laws or Administrative regulations

# Procedure for Administrative Licensing

- 1. Application and Acceptance
- 2. Examination and Decision
- 3. Time Limit
- 4. Hearing
- 5. Modification and Extension
- 6. Special Procedures

# Special Procedures

- 1. Licensing by means of tendering or auction
- 2. Licensing through national examination.
- 3. Decision-making on the basis of inspection, testing or quarantine.

# Charges for Administrative licensing

- 1. In principle: No charges for licensing
  - -----unless the laws or administrative regulations so stipulated
- 2. Application form: No charges
- 3. Expenditure: Ensured by budget

# Supervision and Inspection

- Art.62: 1.Sample inspection, 2.examination on the spot, 3. periodical examination.
- Art.65: Accusation of violation by individuals or organs.

# Supervision and inspection (continued)

- Art.69: Annulment of licensing
- ----Resulting from illegal acts.
  
- Art.70: Cancellation of licenses:
-

# Legal liabilities

- Annulling illegal documents.
- Administrative disciplinary measures.
- Criminal penalties
- Administrative compensation
- Administrative penalties



# Part 2: Foreign Trade Law

- Adopted on May 12<sup>th</sup>, 1994
- Coming into force as of July 1<sup>st</sup>, 1994
- 7 Chapters, 44 Articles.
- Revised on April 6, 2004,
- Coming into force as of July 1, 2004
- 11 chapters, 70 articles.

# Major Changes

- 1. Individuals may engage in import and export.
- 2. Licensing for engaging in import and export abolished
- 3. Foreign trade investigation established
- 4. Monitoring for import and export strengthened.
- 5. Foreign trade-related IPRs protected.
- 6. Penalties for violation perfected.

# Part 3: Anti-monopoly Law

- Purposes of the law
  - Building integrated, open and orderly market
  - Protecting and promoting fair competition
  - Preventing monopoly
  - Protecting the lawful rights of consumers and public interest.

# Contents might be included

- 1. Definition of monopoly
- 2. Competent authorities
- 3. Different types of monopoly
- 4. Anti-monopoly investigation
- 5. Legal liabilities.

# Part 4: Other Commercial Law Reforms

- 1. Law on the Supervision and Administration of Banking(adopted on Dec 27,2003)
- 2. Law on Securities Investment Funds(adopted)
- 3. Law on Commercial Bank(revised)
- 4. Insolvency Law
- 5. Electronic Signature Law
- 6. Company Law.
- 7. Security Law.