

55th Commission

TAC Insolvency Panel

Session 2: Matching needs with the available support

15 July 2022, 10:00-12:00 (New York time)

Thank you, Benjamin. Greetings to all expert speakers, distinguished delegates and observers.

The year 2022, in addition to marking MLCBI's 25th anniversary, also marks the 10th anniversary of the UNCITRAL Regional Centre for Asia and the Pacific or RCAP. Since RCAP's establishment in 2012, UNCITRAL has expanded accessibility by delivering technical assistance activities in multiple United Nations and regional languages, with the majority of Asia-Pacific jurisdictions having adopted at least one UNCITRAL instrument, ranging from electronic commerce to dispute resolution and insolvency, furthering legal harmonization and enhancing trade.

UNCITRAL's insolvency instruments including the MLCBI are a popular topic for assistance in the region, particularly in the wake of the pandemic. The Regional Centre matches this need with available support on several fronts but for brevity I will highlight three categories.

First, partnerships. Many actors are involved in insolvency law reform in the region such as the World Bank Group, the Asian Development Bank (ADB), the European Bank for Reconstruction and Development, and the International Insolvency Institute – Asian Business Law Institute. As such, building partnerships is essential, particularly where the limited resources of UNCITRAL and our partners are leveraged and UNCITRAL insolvency texts promoted by our partners using our guidance materials. For example, this spring Viet Nam officials

invited the secretariat to co-organize a capacity-building workshop on UNCITRAL cross-border insolvency following recommendations on the matter from ADB. UNCITRAL thus put together a half-day workshop for interested agencies with some preliminary comparisons of Viet Nam's current regime to the UNCITRAL framework.

The Regional Centre also collaborates with partners to co-host regional conferences to promote UNCITRAL insolvency instruments to a broader audience. For example, last November the Regional Centre co-organized with Hong Kong SAR Department of Justice, and supported by the ADB, the 4th UNCITRAL Asia Pacific Judicial Summit – a biennial flagship event providing capacity building on UNCITRAL insolvency and other instruments to over 800 judges, officials, practitioners and academics ranging from Armenia and Bangladesh to Nepal and Papua New Guinea, among others. Last year's edition was particularly interesting as it discussed the new cooperation mechanism on corporate insolvency and debt restructuring put in place by Hong Kong SAR Department of Justice and the Supreme People's Court of China allowing liquidators from Hong Kong to apply to Mainland courts for recognition of insolvency proceedings in Hong Kong SAR, and vice versa. According to official sources the mechanism references certain principles in the MLCBI , and actually goes beyond the Model Law to accommodate specific jurisdictional needs. That the MLCBI can be utilized as a basis to accommodate these needs is precisely what it is designed to accomplish and attests to its versatility and flexibility.

Last September the Regional Centre also co-hosted the Incheon Law & Business Forum with the Korean Ministry of Justice. One panel, titled “MSE Insolvency: A Simplified Regime” focused on the new UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises. The event garnered over 430 stakeholders from government, business and legal sectors, from 72 jurisdictions across the Asia-Pacific and beyond.

The second way by which the Regional Centre matches needs with available support is by reflecting in the programs sub-regional integration dynamics and the location of major restructuring and insolvency hubs in the region. The role of those factors in domestic and cross-border insolvency law reform across the region cannot be underestimated. In our experience, the enactment of an UNCITRAL text in one country in the group of countries sharing the same cultural and historical roots, legal traditions, similar language and level and model of economic development produces the domino effect on other countries in the same group.

The third and final way I will highlight is how the Regional Centre works with jurisdictions to address individual needs and requests. For example, in India RCAP has been working with experts and institutions such the UNCITRAL National Coordination Committee of India, the Insolvency and Bankruptcy Board of India, and law faculties such as Gujarat National Law University and National Law University Delhi for several years now to promote UNCITRAL insolvency instruments. Key activities include co-organizing regional conferences for public stakeholders and insolvency moots and lectures under the UNCITRAL Asia Pacific Day flagship academic series, helping to educate law students and practitioners on the benefits of legal harmonization and UNCITRAL insolvency texts. We believe this has helped foster awareness of instruments such as the MLCBI, which in a recent case appeared to be read into the insolvency code framework by the National Company Law Appellate Tribunal, and is also part of India's most recent package of measures for insolvency law reform.

My two last examples are Thailand and Mongolia. Upon request of Thailand, the Regional Centre initiated a series of meetings with Thai agencies to discuss comprehensive developments on their use of UNCITRAL instruments, including insolvency. This provided line agencies the opportunity to update the secretariat on how recommendations of the UNCITRAL Legislative Guide on

Insolvency Law, including the recently added part five on Insolvency of Micro- and Small Enterprises, were applied in recent domestic reforms. In response to the outlined concerns in particular as regards cross-border insolvency aspects, the UNCITRAL secretariat brainstormed the way forward with interested agencies, including further support needed to raise the understanding among local policy makers, judges and other practitioners, of UNCITRAL model laws in the area of insolvency, the experience with their use across the globe, and benefits of their enactment in Thailand.

Mongolia, as other landlocked developing countries in the region, face specific needs in legal reform. Last December the UNCITRAL secretariat was invited to present on the UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises at a conference hosted by the Ministry of Justice and Home Affairs of Mongolia. The conference addressed practical challenges and obstacles to implementing private law reform in that jurisdiction and was the occasion to present best practices from different jurisdictions and international organizations. The observations made during the conference were to be included in the package of law reform recommendations made to the government.

With that I end my presentation. To save time we will put the contact information of the Regional Centre in the chat for those interested in learning more. Thank you for your attention.