



**Asia-Pacific  
Economic Cooperation**

**Advancing** Free Trade  
for Asia-Pacific **Prosperity**

# **Workshop on Modernizing Secured Transactions Legal Regimes in APEC Economies through International Instruments and Effective Dispute Resolution Mechanisms**

**APEC Economic Committee**

September 2022





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Economic Cooperation**

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Economies through International Instruments  
and Effective Dispute Resolution Mechanisms**

**APEC Economic Committee**

**September 2022**

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This report consists of two parts: A summary of the dialogue and two appendices, which contain the agenda and biographies of the speakers.

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## I. EXECUTIVE SUMMARY

### 1.1 Overview

A hybrid Workshop Modernizing Secured Transactions Legal Regimes in APEC Economies through International Instruments and Effective Dispute Resolution Mechanisms was held on 25-27 May 2022 in Tokyo, Japan. The hybrid format allowed broad participation by speakers and other attendees from APEC economies.

The goals of the workshop were to:

1. Promote international standards and best practices regarding access to credit and demonstrate how the modernization of secured lending and related laws spurs economic growth by making commercial credit more accessible at reasonable rates.
2. Encourage the development and strengthening of micro, small, and medium-sized enterprises (MSMEs), including those led by women, by improving access to affordable credit and placing these borrowers in a stronger position to expand to international markets.
3. Provide the opportunity for participants to design a strategy to implement secured transaction reform, considering the emergency measures imposed during the COVID-19 pandemic.
4. Review effective dispute resolution mechanisms in APEC, especially online dispute resolution and the APEC Online Dispute Resolution (ODR) Collaborative Framework.

The workshop was designed to help APEC member economies—particularly developing economies—assess how to implement the international standards adopted by UNCITRAL, UNIDROIT, and APEC. The workshop highlighted other features that complement a modern credit infrastructure intended to serve MSMEs, including addressing women entrepreneurs' needs and extending the availability of ODR mechanisms. Economies learned how to improve their legal and regulatory infrastructure, taking into account the Ease of Doing Business (EoDB) and Strengthening the Economic and Legal Infrastructure (SELI) Economic Committee Friends of the Chair groups frameworks in the area of access to credit.

Private international law consultants Marek Dubovec and Mike Dennis opened the workshop by presenting a Study on Issues Affecting the Implementation of Secured Lending Reform and Access to Credit as a Result of the COVID-19 Pandemic in APEC Economies. The findings of the study provided the background for discussions during the workshop.

The study provided an overview of the fiscal/budgetary, legal, and regulatory measures implemented by APEC economies during the pandemic in relation to MSMEs and access to credit. While these measures enabled MSMEs to continue to operate, many of the measures have been scaled down or are expected to be withdrawn soon. It was highlighted that the pandemic disproportionately affected women-ran enterprises. Following the withdrawal of



government support and the subsequent transition to market-based lending, only financial institutions operating in modern legal infrastructure have an incentive to provide credit to MSMEs. It was noted that the implementation of international standards must be properly coordinated with related legislation, such as regarding warehouse receipts, digital assets, and factoring.

The study also considered the use of technology to effectively resolve disputes, particularly ODR. The pandemic caused a seismic shift in how justice is delivered in APEC. At the pandemic's start, many APEC courts closed, and economies were forced to reconsider their approach to resolving disputes, particularly through courts and in-person hearings. Measures were implemented to digitize proceedings and support the use of alternative disputes resolution mechanisms, such as ODR, including:

- Launching the APEC ODR Collaborative Framework for Cross-Border Disputes Involving MSMEs.
- Use of elements of ODR – particularly virtual hearings – in numerous APEC courts and arbitration centers.
- Use of arbitration and ODR for financial disputes, including factoring disputes.
- Use of ODR to facilitate the reorganization of MSMEs through informal workouts.

Each of these topics was addressed on the last day of the Workshop.

Day one of the Workshop included a discussion that allowed economies and experts on implementing secured transactions reform to share their experiences. The discussion reviewed recent reforms completed in China, Colombia, and Viet Nam as well as ongoing initiatives in Japan, Malaysia, and the United States. The participants learned about the different approaches taken by the economies and the reform process. The presentations highlighted the difference between common-law and civil-law systems and how each system implements international standards. It was noted that implementing these standards in civil-law systems can be more challenging as it requires changes to foundational laws, such as civil codes. New provisions governing secured lending may be hard for users to find as they may be scattered across different sources of law, including codes, regulations, case law, and measures promulgated by the courts.

Workshop participants also heard about the difference in scope of the reforms, which varies between comprehensive reform—such as currently applied to the U.S. Uniform Commercial Code (Article 9)—and incremental approaches—such as in Japan concerning anti-assignment clauses. Some economies, such as Viet Nam, are in their second or third reform phase. Many economies are following new approaches to include digitalization and provide new mechanisms, especially “control,” to enable financial institutions to extend secured credit and gain protection against third parties.

On the second day of the Workshop, a panel discussion considered “Coordinating Reform through Related Instruments such as the Assignment of Receivables Convention, UNIDROIT Instruments, and Ongoing Initiatives (Factoring).” This panel focused on receivables finance under both existing and emerging international standards. A first presentation explained

how these standards interact and what steps economies should take to create a coherent legal framework for receivables finance. It was noted that reforming the legal framework for such credit products might be a stepping stone to broader reform. Coordination must be achieved concerning formulating international standards, their promotion, and implementation. Another presentation highlighted the coordination challenges faced by APEC economies drawing on the experiences shared by economies on Day 1. Finally, the panel discussed the role of various APEC bodies in ensuring the joint promotion and implementation of international standards.

A second panel considered “Addressing Legal Gaps – Building an Improved Legal Environment for MSMEs, including Digitalization and Warehouse Receipts.” The role of regulation was discussed, including the need to coordinate with the relevant private law provisions. International standards have not sufficiently addressed this emerging area of interest. It was noted that different working groups are often established in an economy to modernize other parts of the commercial law framework, resulting in contradictory approaches, such as for secured transactions and leasing. Secured lending frameworks need to be coordinated and consider the developments in other areas, particularly emerging standards for digital assets and warehouse receipts. Effective implementation of all these elements would create a framework conducive to secured lending, assisting MSMEs in gaining access to credit. The ongoing initiative at UNCITRAL’s Working Group I on MSMEs brings together these elements.

On the third day, the Workshop considered the issue of effective dispute resolution mechanisms, including using ODR under the APEC ODR Collaborative Framework. SELI Conveyor Yoshi Hayakawa and Mike Dennis opened the discussion with an overview of the APEC ODR Collaborative Framework. They noted that the challenges that surfaced during the COVID-19 pandemic highlighted the need for effective systems to resolve disputes involving MSMEs, such as that provided under the APEC ODR Collaborative Framework. Under the Collaborative Framework, APEC partners with ODR providers to offer ODR to APEC businesses, especially MSMEs, to help them resolve their cross-border commercial disputes. ODR providers supply their platforms to provide online negotiation, mediation, and arbitration. They must also comply with the Collaborative Framework and Model Procedural Rules. The APEC Economic Committee (EC) promotes partnering ODR providers on its website and encourages MSMEs to use them to resolve cross-border commercial disputes. The ODR Collaborative Framework began partnering with ODR Providers in April 2022.

The Website was launched in September 2021 at <https://www.apec.org/SELI> (also accessible through the webpage of the APEC EC at <https://www.apec.org/groups/economic-committee>). The website hosts in-depth information on the Framework to enable the APEC EC to partner with and oversee ODR providers, help MSMEs use ODR, and collaborate with the international community—including the public and private sectors and the academic community.

Five economies have opted into the Collaborative Framework – China, Hong Kong China, Japan, Singapore, and the United States. Under the SELI Administrative Implementation Work Plan for the Collaborative Framework, Lead Academics from economies have opted into the Framework to assist with local capacity building, particularly for MSMEs and platform providers. The Lead Academics from the five APEC economies that have opted into the

Framework participated in the Workshop. All stressed the importance of the APEC EC under the Collaborative Framework in promoting ODR to MSMEs, governments, and the legal community. The speakers noted that widespread adoption of ODR would promote a contract culture. In turn, ODR would make transactions more efficient, drive down risk, and increase MSMEs' competitiveness by lowering costs. The Lead Academics stand ready to assist in promoting and developing ODR in APEC economies.

The Workshop also heard from speakers from several ODR platform and service providers that have partnered with APEC under the Collaborative Framework. These providers have developed platforms compliant with the APEC ODR Collaborative Framework and Procedural Rules. They are already seeing positive preliminary results regarding time and cost savings for users.

The final panel discussion considered innovative uses of ODR, including for pre-insolvency informal workouts and lending dispute resolution, for example, disputes about factoring transactions. Additionally, UNIDROIT highlighted a guidance instrument it is developing on effective enforcement of rights. A final speaker from UNCITRAL highlighted ongoing work being considered on online dispute resolution.

## **1.2 Event Details<sup>1</sup>**

The event followed this format:

- 1) Opening Remarks**
- 2) Session One: Study on Issues Affecting the Implementation of Secured Lending Reform and Access to Credit as a result of the COVID-19 pandemic in APEC economies**
- 3) Session Two: Experience Sharing on Implementing Secured Transaction Reform**
- 4) Session Three: Coordinating Reform through Related Instruments such as the Assignment of Receivables Convention, UNIDROIT Instruments, and Ongoing Initiatives (Factoring)**
- 5) Session Four: Addressing Legal Gaps – Building an Improved Legal Environment for MSMEs, including Digitalization and Warehouse Receipts**
- 6) Session Five: Use of Technology and ODR for Resolution of Commercial Disputes Based on The APEC ODR Collaborative Framework.**  
Part I—Why Economies Should Consider Opting into The Collaborative Framework.  
Part II—Energizing MSMEs (with Assistance from Lead Academic Institutions)  
Part III—Partnering ODR Providers
- 7) Session Six: Use of ODR and Advanced Technology to Enforce Security Interests, Pre-Insolvency Workouts, and Insolvencies**
- 8) Net Steps/Conclusions and Recommendation**

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<sup>1</sup> Appendix I is the agenda for the Workshop.

Over 80 participants across APEC economies participated in the workshop over the three-day event, including 38 moderators and speakers from China; Hong Kong, China; Colombia; Japan; Malaysia; Singapore; Spain; the United States; and Viet Nam as well as UNCITRAL, UNIDROIT, and the World Bank.<sup>2</sup> The speakers were:

- Yoshihisa Hayakawa, SELI Convenor, Japan
- James Ding, APEC Economic Committee (EC) Chair, Hong Kong China
- Sakuma, President, Japan International Dispute Resolution Center
- Yusuke Lino, Director of Digital Economy Division, Commerce and Information Policy Bureau, Ministry of Economy, Trade, and Industry (METI)
- Raymond Green, Deputy Chief of Mission, U.S. Embassy, Japan
- Ignacio Tirado, Secretary General UNIDROIT Spain
- Anna Joubin-Bret, Secretary of UNCITRAL
- Joseph Donahue, Project Overseer, U.S. Department of State
- Marek Dubovec, International Consultant (United States)
- Mike Dennis, International Consultant (United States) (project contractor)
- Elaine MacEachern, Senior Financial Sector Specialist, World Bank Group
- Jae Sung Lee, Legal Officer, UNCITRAL
- William Brydie-Watson, Senior Legal Officer, UNIDROIT
- Diana Talero, International Consultant, Colombia
- Khairon Niza Md Akhir, Regulatory Review & Legal Development Section, Companies Commission (Malaysia)
- Megumi Hara, Chuo University School of Law (Japan)
- Saibo Jin, Beijing Jincheng Tongda Law Offices (China)
- Huyen Thi Pham, Operations Officer, International Finance Corporation), (Viet Nam)
- Neil Cohen, Brooklyn Law School (United States)
- Chris Wohler, APEC Asia Pacific Financial Forum (Hong Kong, China)
- Giuliano Castellano, University of Hong Kong, Faculty of Law (Hong Kong, China)
- Teresa Rodríguez de las Heras Ballell, Senior Legal Adviser, UNIDROIT
- Dora Neo, Director, National University of Singapore (Singapore)
- Kee Bun SOH, Senior State Counsel, Attorney-General's Chambers (Singapore)
- Kazushige Ogawa, Rikkyo University (Japan)
- Nadja Alexander, Singapore Management University
- Jiang Han, a law student at Singapore Management University
- Alvin Leu Jun Kang, a law student at Singapore Management University
- Mayu Watanabe, Rikkyo University (Japan)
- Angie Raymond, University of Indiana (United States)
- Yun Zhao, University of Hong Kong (Hong Kong, China)
- Youmin Bian, University of International Business and Economics, China (China)
- Shunsuki Mori, Deloitte Tohmatsu (Japan)
- Colin Rule, CEO of ODR.com (United States)
- Emmanuelle Ta, CEO, eBRAM International Online Dispute Resolution Centre (Hong Kong, China)
- Chen Chen, Department of Business Development, Guangzhou Arbitration Commission (GZAC) (China)

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<sup>2</sup> Appendix II provides brief biographies of the main speakers.

- Nina Mocheva, Senior Financial Sector Specialist, World Bank Group

## II. BACKGROUND

Micro-, small and medium-sized enterprises (MSMEs) account for 97 percent of APEC businesses and employ over half of the global workforce. Yet, the lack of affordable credit is a significant constraint to the development of MSMEs. According to the World Bank, 50 percent of the 400 million MSMEs operating globally in developing economies have little or no access to credit, and only 14 percent have a loan or line of credit. In developing economies, three-fourths of *acceptable* collateral for loans is land, while three-fourths of assets *available* as collateral owned by MSMEs are movable property. This mismatch creates a financing gap in developing economies of over \$5.2 trillion annually. The WTO reports that *over half* of the trade finance requests by MSMEs are rejected. Women entrepreneurs face additional barriers in accessing finance. It is estimated that 70 percent of women-owned businesses are underserved by financial institutions. Although women own a third of the world's formal small and medium-sized firms, they receive only 10 percent of the world's commercial loans, leaving a financing gap for women-owned businesses of roughly \$2 trillion.

Economies – and especially developing economies – need to establish a conducive legal and regulatory framework where movable assets can be used as collateral while at the same time providing adequate credit protection. The UNCITRAL Model Law on Secured Transactions and the UN Convention on the Assignment of Receivables reflect international best practices and provide a legal framework that steers the loan process away from exclusively land-based collateral. The Practice Guide to the UNCITRAL Model Law also coordinates the relevant regulatory rules with a modern secured transactions law.

The coronavirus pandemic has further disrupted the activity of enterprises across APEC and increased their need for credit. A Bank for International Settlements report estimated that 50 percent of firms would not have enough cash to service their debts. Economies worldwide seek to support firms through emergency liquidity programs, including public credit guarantee programs and others that may create an unintended obstacle to developing market-based credit products based on collateral. Economies are exploring support for modern technologies that, for instance, enable the issuance of virtual currencies and facilitate various lenders' processes. Successful recovery after the pandemic is predicated on the existence of a credit infrastructure with modern secured transactions and insolvency frameworks.

Courts closed or scaled back operations at the outset of the pandemic, and economies were forced to consider using online dispute resolution (ODR) mechanisms. The UNCITRAL Technical Notes on ODR provide good practices on the use of ODR. During the pandemic, APEC implemented the APEC ODR Collaborative Framework for Cross-Border B2B Disputes. Under the Collaborative Framework, APEC partners with ODR providers to offer ODR to APEC businesses, especially MSMEs, to help them resolve their cross-border commercial disputes. Additionally, measures were implemented by APEC economies to digitize judicial proceedings and support the use of alternative dispute resolution mechanisms, such as ODR.

The Workshop took forward the recommendations of the 2015 Boracay Action Agenda to Globalize MSMEs, including “measures to widen options on financing for MSMEs and further develop the infrastructure to facilitate lending to them [through] . . . secured transactions/movable collateral systems ....” Additionally, consistent with one of the key action areas in the La Serena Roadmap on Women and Inclusive Growth (2019-2030), the workshop sought to promote and facilitate cooperation in the public and private sector to help ensure that women-led MSMEs can access capital and assets in both local and international markets.

The workshop built on the Workshop on Supply Chain Finance and Implementation of Secured Transactions in a Cross-Border Context (EC 03 2016S), the Workshop on Improving Access to Credit according to International Best Practice (EC 05 2017A), as well as the Policy Dialogue on Secured Transactions and ODR held at EC 2 in 2019. The Workshop also built on the earlier APEC workshops and webinars on developing the ODR Collaborative Framework and Policy Dialogues on ODR held at EC 2 in 2018, EC 1 in 2019, EC 1 in 2020, EC 1 in 2021, and EC2 in 2022.

The SELI Work Plan under the Enhanced APEC Agenda for Structural Reform (EAASR) (endorsed by the EC in November 2021) recognizes the vital contribution that secured transactions reform and ODR makes to all four pillars of APEC EC work on EAASR, including creating an enabling environment for open, transparent, and competitive markets; boosting business recovery and resilience against future shocks; ensuring that all groups in society have equal access to opportunities for more inclusive, sustainable growth, and greater well-being; and harnessing innovation, new technology, and skills development to boost productivity and digitalization. The SELI Work Plan states:

The benefits of systematic adoption of private international legal instruments for business include greater legal certainty on cross-border transactions, harmonization of finance, and dispute resolution systems... Using international legal instruments helps APEC economies improve their legal infrastructure to provide access to credit and secured transactions, boosting business recovery and restructuring for a resilient industry.

The Workshop also directly contributed to the APEC EoDB Initiative under the Economic Committee, including its five priority areas: getting credit, enforcing contracts, and resolving insolvency.

### **III. EVENT SUMMARY**

#### **3.1 Opening Remarks**

Several speakers delivered opening remarks providing a background for the Workshop, including:

Yoshi Hayakawa, APEC SELI Convenor

Soichiro Sakuma, President, Japan International Dispute Resolution Center  
Yusuke Iino, Director of Digital Economy Division, Commerce and Information Policy Bureau,  
Ministry of Economy, Trade, and Industry (METI)  
Raymond Green, Deputy Chief of Mission, U.S. Embassy, Japan  
James Ding, EC Chair  
Elaine MacEachern, Senior Financial Sector Specialist, World Bank Group  
Anna Joibin-Bret, Secretary of UNCITRAL  
Ignacio Tirado, Secretary General of UNIDROIT

### 3.2 Day One Sessions

#### 1) 3.2.1. Session One: Study on Issues Affecting the Implementation of Secured Lending Reform and Access to Credit as a result of the COVID-19 pandemic in APEC economies

Professor Yoshi Hayakawa, the SELI Convenor, moderated the session. The session considered the Study on Issues Affecting the Implementation of Secured Lending Reform and Access to Credit as a result of the COVID-19 pandemic in APEC economies written by Marek Dubovec and Mike Dennis, both international law consultants.

Marek Dubovec provided an overview of the study concerning the measures implemented by APEC economies that the Study categorized into i) fiscal/budgetary; ii) regulatory, and iii) legal. He provided examples of the three categories: credit guarantees, relaxation of loan loss provisioning requirements, and suspension of duties to file for insolvency. Mr Dubovec explained that several of these measures have expired or been withdrawn, putting pressure on financial systems and MSMEs. He noted that some of the new measures are permanent, such as enacting new insolvency laws to facilitate the restructuring of businesses.

Mr Dubovec also provided a high-level overview of the relevant international standards, including the UNCITRAL Model Law on Secured Transactions and the UNIDROIT Cape Town Convention on International Interests in Mobile Equipment. He highlighted that several standards complement these main instruments and should be considered for adoption to create a comprehensive and coherent legal framework. Finally, he explained that several initiatives to produce model laws on factoring and warehouse receipts are expected to be completed in the next year or two.

Mr Dubovec illustrated key measures to digitize financing processes and enable electronic records, such as in trade finance transactions. He explained the role of the Model Law on Electronic Transferable Records and the emergence of platforms, including for receivables finance. He noted that further digitalization of lending processes requires a conducive legal framework and interoperable digital systems.

Mr Dubovec also provided an overview of the recent reform activity in the APEC region. Leaving the details to the ensuing panels, Mr Dubovec noted the enactment of the Chinese Civil Code that includes new rules on factoring. He said the Philippines had enacted a modern secured transactions law implementing the UNCITRAL standards. This framework was only

recently operationalized through the establishment of a collateral registry. Mr Dubovec also noted that Viet Nam took steps to modernize its regulations governing the collateral registry operation and provide capacity building to its financial community on factoring, with the support of the World Bank Group. Finally, Mr Dubovec noted that recent reform efforts undertaken in Japan had yielded positive results, such as concerning anti-assignment clauses facilitating transfers of receivables. Broader reforms are being considered in Japan.

Mr Dubovec provided general guidance on how APEC economies should proceed to prepare their frameworks to support MSMEs once the emergency measures are withdrawn. He explained that several measures, particularly credit guarantees, should be retooled to incentivize commercial lending, such as by providing partial coverage against the credit risks faced by financial institutions. The frameworks should not only enable access to low-cost credit but also be inclusive and facilitate digitalization. These measures would enhance the competitiveness of MSMEs and improve their prospect of integration within global supply chains.

The Study on The Effect of the Covid-19 Pandemic on Secured Lending Reform and Access to Credit in APEC Economies also considered the “Use of Technology to Effectively Resolve Disputes: Focus on ODR.” Mr Dennis provided an overview of that discussion in the Study.

Mr Dennis explained that, at the start of the pandemic, many APEC courts closed. APEC economies were forced to reconsider their approach to resolving disputes, particularly concerning the use of courts and in-person hearings. Measures were implemented to digitize judicial proceedings and support the use of alternative dispute resolution mechanisms, such as ODR.

The UNCITRAL ODR technical notes define “ODR as a mechanism for resolving disputes through electronic communications and other information technology.” Mr Dennis noted that ODR goes beyond online ADR today and uses advanced facilitative technologies and adjudicative algorithms. Mr Dennis commented that we have only begun to tap into the potential of computer-led processes to resolve disputes.

Before the pandemic, several key secured transactions texts noted the importance of ADR and ODR. The UNCITRAL Model Law on Secured Transactions and the World Bank Knowledge Guide recommend self-help measures and ADR/ODR as an alternative to judicial relief, particularly in developing economies. The Guide to Enactment for the UNCITRAL Model Law on Secured Transactions (para. 75) states that the emphasis on ADR/ODR “is based on the understanding that the use of [alternative dispute resolution and ODR] to resolve such disputes is important, particularly for economies with inefficient judicial enforcement mechanisms to attract investment since the lack of efficient judicial enforcement mechanisms is likely to reduce the availability and the cost of credit.”

The World Bank’s revised Principles for Effective Insolvency and Creditor/Debtor Regimes also recognize that workout insolvency negotiations will typically be enhanced when they leverage informal techniques, such as negotiation, mediation, or arbitration. The World Bank has more recently recognized the importance of ODR to prevent insolvencies of MSMEs.



During the pandemic, APEC became the first region to implement ODR based on the work of UNCITRAL. Under the Framework, APEC partners with ODR providers to offer ODR to businesses, especially MSMEs, to help them resolve their cross-border commercial disputes. Several ODR providers within the APEC region have implemented platforms that follow the APEC ODR Collaborative Framework and Procedural Rules aimed at MSMEs. The ODR providers are seeing positive initial results.

At the outset of the pandemic, large ADR centers across APEC were also quick to implement elements of ODR into their platforms, particularly virtual hearings. Most providers are focused on significant business disputes and not lower value disputes involving MSMEs.

The pandemic also caused a seismic shift in how justice is delivered in APEC courts. Elements of ODR—primarily virtual hearings—were implemented in many courts across APEC. Mr Dennis stressed the need to document what works and doesn't work. For example, online judging may not be appropriate for all cases but is well-suited to resolving low-value disputes where a decision must be made as quickly as possible. Furthermore, a user-friendly system is paramount for parties involved in the dispute resolution process and not represented by lawyers, including MSMEs.

Mr Dennis concluded that using ODR in arbitration and APEC courts will hopefully become the new normal, especially for low-value disputes.

On the last day, the Workshop considered these issues in more detail.

### **3.2.2. Session Two:** Experience Sharing on Implementing Secured Transactions Reform

**Jae Sung Lee**, Legal Adviser, UNCITRAL, moderated the session.

Part I

**Mr Saibo Jin** of Beijing Jincheng Tongda Law Offices (China) provided an overview of the Chinese framework governing secured lending, remarking that the relevant rules are “hidden.” He explained that the framework does not provide an integrated set of rules. Instead, the rules are scattered across the Civil Code and supplemented by case law and measures issued by the People’s Supreme Court. He explained that different parts of the Code govern ordinary pledges, transfers of receivables such as in factoring transactions, and pledges of warehouse receipts covering goods deposited in warehouses. At the same time, negotiable instruments and companies laws continue to govern some aspects of security rights. He presented several articles from the Civil Code on pledges and assignments of contracts, explaining their substance and practical application. He then provided several examples of court cases and explained the new (Feb. 1, 2022) measures concerning the registration of security rights, which establish a unified registration system with standardized registration processes.

**Ms Huyen Pham**, Operations Officer, International Finance Corporation (Viet Nam), provided an overview of several reforms undertaken in Viet Nam over the past two decades. These reforms seek to align the Vietnamese framework more closely with international standards.

Ms Huyen also gave an example of the IFC approach supporting secured transactions reforms and the deployment of credit products in the financial market. She outlined steps that may be necessary when conducting reform, such as clarifying regulatory uncertainty or developing warehouse receipts finance if it lags behind receivables finance. She also noted that uptake of credit products requires promotion and capacity building.

**Mr Marek Dubovec**, International Consultant (United States), explained the reasons, processes, and status of the revision to the Uniform Commercial Code. He noted that a new Article 12 governing transfers of digital assets would be added to the Code. As a result, changes to UCC Article 9 (Secured Transactions) will be made, including adding a perfection mechanism of “control.” He then explained some control parameters and the abilities the secured creditor must possess. He illustrated how control might be achieved over electronic money, such as the Central Bank Digital Currency (CBDC) issued as tokens or held in accounts. These rules are added to address the situation that distributed ledger technology has electronic records on multiple nodes, rendering the notion of a single authoritative copy unworkable.

## Part II

**Ms Megumi Hara**, Chuo University School of Law (Japan), opened her presentation with an overview of the Japanese financing market. She noted that MSMEs benefit from low-interest rates on loans but that those loans are not secured with movable property collateral. The predominant type of financing in Japan, alongside mortgage finance, is through public guarantees, where the borrower's credit risk is born by a public institution. She then explained the fragmented and outdated nature of the Japanese legal framework for secured transactions. She noted that the gaps in legislation had been filled with case law that developed a particular non-possessory security device (*joto-tanpo*). Finally, she described the reform process, its phases, and the focus of the ongoing reform initiatives, which may result in recognition of a new type of a security device rather than recognition of a unitary concept of security, as recommended by the international standards.

**Ms Diana Talero**, International Consultant (Colombia), described the process of modernizing the secured transactions framework in Colombia and the resulting enactment of a standalone law and subsequent implementation of a law on the factoring of invoices. At the outset, she highlighted the need for a closer connection between the experts who develop international standards and those tasked with their implementation on the ground. The Colombian legal framework provides a unique regime for the extrajudicial enforcement of security rights through chambers of commerce and ODR systems. She noted that the invoice finance system created some confusion, particularly concerning the perfection and priorities, as the invoices represent accounts receivable that might have been made subject to security right earlier. She illustrated the process of issuing and transferring invoices. She noted that deploying credit products requires a comprehensive and coherent framework, including insolvency, regulation and licensing, valuation of assets, and reliable accounting practices.

**Khairon Niza Md Akhir**, Regulatory Development & Services Division, Companies Commission of Malaysia, described the ongoing reform process in Malaysia initiated in 2015 and inspired by the Saskatchewan Personal Property Security Act (PPSA). She outlined the approaches

taken on several issues, including the scope (e.g., the draft legislation does not apply to security rights in consumer goods) and the process of going through various committees that resulted in the approval of a bill by the cabinet in 2021. The process also involved a survey conducted by the central bank on using movable assets as collateral. Ms Akhir provided an overview of the current secured transactions framework dispersed among several pieces of legislation, especially the Companies Act, which provides for the registration of charges, but only those created by companies. The Road Transport Ministry manages asset-specific registries, such as those for motor vehicles and equipment. The bill seeks to provide an integrated legal and registration regime for security rights created by any type of borrower. Ms Akhir summarized some aspects of the bill, such as the exclusion of security rights in consumer goods, which was later clarified to be confined to “household items.” The bill is expected to be enacted into law in 2023, when a new registration system should also be launched.

### **3.2.3. Session Three: Coordinating Reform through Related Instruments such as the Assignment of Receivables Convention, UNIDROIT Instruments, and Ongoing Initiatives (Factoring)**

William Brydie-Watson, Senior Legal Officer, UNIDROIT, and Jae Sung Lee, Legal Officer, UNCITRAL, moderated the session.

**Mr Neil Cohen, Brooklyn Law School (United States)**, discussed the coordination of receivables finance rules for which several international standards have already been produced. A model law on factoring is expected to be adopted by UNIDROIT in 2023. Mr Cohen explained how the scope of the receivables finance regimes has expanded to cover various transfers and receivables arising from more than the traditional sale of goods and provision of services to include, for instance, receivables arising from the sale and license of intellectual property rights. He explained that receivables regimes might be a steppingstone toward a broader secured transactions reform. In the second part of his presentation, Mr Cohen explained the UNIDROIT’s project on efficient enforcement and how it impacts creditors' rights. This project was further explored in a dedicated presentation on Day 3.

**Mr Marek Dubovec, International Consultant (United States)**, divided his presentation into two parts. The first part illustrated some of the challenges facing APEC economies. The second part provided an overview of a coordination network formed by international organizations in December 2021 to implement secured transactions reform. Mr Dubovec explained that APEC economies face various coordination challenges. For instance, the legal framework is scattered throughout the Civil Code (China), receivables pledged or transferred outright are subject to two different laws (Viet Nam), attempts are made to coordinate the existing registries and integrate their functions of registering encumbrances into a single collateral registry (Malaysia), and the electronic system was established for the registration of transfer of receivables but not for other assets (Japan). Coordination challenges exist within the codes and across different related legislations regarding insolvency and international regimes. There are no international standards to guide these challenges. Mr Dubovec explained that this is one of the reasons for establishing a coordination network between UNCITRAL, UNIDROIT,

World Bank Group, and other organizations involved in promoting and implementing secured transaction reforms.

**Mr Chris Wohlert, APEC Asia Pacific Financial Form (Hong Kong, China)**, provided an overview of the APEC Business Advisory Council (ABAC) framework that provides high-level advice to APEC leaders on secured transaction reform and access to credit. He described the advisory process and the steps that need to be followed. He then focused on the APEC Cebu Action Plan, explaining its four pillars: i) financial integration; ii) fiscal transparency; iii) financial resilience, and iv) infrastructure. He highlighted several functions that enhance access to credit, including diagnostics and capacity building for regulators. ABAC's secured transactions work supports the implementation of UNCITRAL's instruments and forms an enabling ecosystem that includes predictable valuation standards and collateral management. Its activities also support digitalization and globalization.

### **3.3.2. Session Four: Addressing Legal Gaps – Building an Improved Legal Environment for MSMEs, including Digitalization and Warehouse Receipts**

**Jae Sung Lee**, Legal Officer, UNCITRAL, and **William Brydie-Watson**, Senior Legal Officer, UNIDROIT, moderated the session.

**Ms Elaine MacEachern**, Senior Financial Sector Specialist, World Bank Group, focused her presentation on the need for a coordinated approach to legislative reform. She observed that coordination is often lacking at different levels, including between international financial institutions and at the economy-wide level. She cited the example of a project supported by one institution (e.g., on secured transactions law) and undermined by another project (e.g., on leasing). The relevant stakeholders need to identify any potentially overlapping projects and coordinate with them. She provided a concrete example where coordination was necessary so that parties' expectations are not undermined and their priority against preferential claims is taken into account, both within and outside of insolvency. Successful reform requires a champion to drive the reform process forward, including facilitating committee meetings, coordinating with related legislation, and establishing a new registration infrastructure. Upon establishing a collateral registry, the company's registry that had been registering charges under the companies act should no longer provide such services. Ms MacEachern concluded her presentation by reinforcing the importance of capacity building and knowledge sharing.

**Mr Giuliano Castellano**, University of Hong Kong, Faculty of Law (Hong Kong, China), presented "Regulatory Governance, Access to Credit, and Digital Transformation: Towards a New Phase for Law and Development." He introduced the concept of "pragmatic law and development" to frame the current efforts to achieve coordination in secured transactions law reform and access to credit. He identified three pillars of the pragmatic law and development approach: (i) focus on products (such as receivable finance) and entities (such as M/SMEs); (ii) increasing the role of regulation; and (iii) focus on the role of technology, ranging from distributed ledgers, artificial intelligence, and digitalization of financial services. The presentation elaborated on these three pillars, providing examples from the works of

UNCITRAL and UNIDROIT and domestic reform led by the World Bank Group and other multilateral development organizations.

Mr Castellano noted that COVID-19 accelerated the urgency to meet local firms' and individuals' immediate financing needs. The result is the need for strengthened coordination between legal and regulatory frameworks. Secured lending, supply chain finance, and receivables-based lending fall concurrently within the purview of two or more commercial law branches, generating an overlap defined as “Commercial Law Intersection” (or CLI). He suggested that the challenges created by the overlap between different rules should be addressed.

**Ms Teresa Rodríguez de las Heras Ballell**, Senior Legal Adviser, UNIDROIT, presented UNIDROIT’s project to develop principles of private law for digital assets. She first explained the composition of the project, which includes a drafting committee, a working group, and a steering committee. The project does not intend to develop a legislative guide with concrete recommendations that could be enacted into domestic legislation and does not touch on regulatory issues. The project focuses primarily on transactions with digital assets that have proprietary effects, including their use as collateral. Ms Ballell then summarized the structure of the draft Principles currently divided into eight sections. She explained how the project uses “control” to delineate its scope, referring to an electronic record over which a holder may exercise specific abilities. She also examined the draft principles covering conflict of laws and custody of digital assets, concluding her presentation with remarks about how these principles are likely to affect market participants that operate on platforms in particular.

**Ms Dora Neo**, National University of Singapore (Singapore), described the fundamental principles underpinning modern secured transactions laws, including i) a broad scope; ii) informal creation of security rights; iii) public notice for effectiveness against third parties; iv) notice-based registration; v) priorities based primarily on the time of registration, and vi) efficient extra-judicial enforcement. She provided examples from APEC economies where some aspects may be lacking (e.g., limited reform in Japan). Ms Neo then examined how those principles apply to security rights in warehouse receipts. Finally, she provided an overview of the model law on warehouse receipts being jointly developed by UNIDROIT and UNCITRAL.

**Mr Kee Bun SOH**, Senior State Counsel, Attorney-General’s Chambers (Singapore), summarized the work of UNCITRAL’s Working Group I on MSMEs. The working group was established in 2013 and initially focused on developing simplified business registration and incorporation standards. UNCITRAL produced the Legislative Guide on Key Principles of a Business Registry in 2018 and a Legislative Guide on Limited Liability Enterprises in 2021. The goal of both instruments is to facilitate the formalization of business and simplify the necessary procedures. Mr SOH then explained the ongoing initiative to ease access to credit. While the focus is primarily on micro and small businesses, the recommendations should apply to medium-sized companies equally. The Working Group’s considerations have not been limited to secured credit but are also looking at equity and fintech tools. The challenges lie in the legal system and practical and administrative aspects, such as the steps necessary to enforce the security right upon default.

### **3.4.1 SESSION FIVE—Use of Technology and ODR for Resolution of Commercial Disputes Based on The APEC ODR Collaborative Framework.**

APEC SELI Convenor Yoshi Hayakawa and Mike Dennis served as moderators for the session.

#### **Part I—Why Economies Should Consider Opting into The Collaborative Framework.**

At the outset, Mr Hayakawa explained that the lack of access to cost-effective and timely commercial justice for cross-border transactions is a key reason why APEC implemented the APEC ODR Collaborative Framework. Those barriers have increased during COVID-19 due to travel restrictions and court closures, with cross-border trade particularly affected. Cross-border ODR under the Collaborative Framework provides MSMEs with a much-needed means to recover debts and settle disputes for speedy business recovery.

Under the Framework, APEC partners with ODR providers in APEC economies that have opted into the Framework. Platform hosts and ODR providers supply their own platforms to offer online negotiation, mediation, and arbitration. They must also comply with the Framework and Model Procedural Rules. The APEC EC promotes partnering ODR providers on its website and encourages MSMEs to use them to resolve cross-border commercial disputes.

Mr Hayakawa explained that, as stated on the APEC ODR Website, opting into the Framework does not involve any binding legal obligations:

Any APEC economy may opt-in to the APEC ODR Collaborative Framework by contacting the EC Chair in writing or making a statement at an EC meeting.

**Opting into the APEC ODR Collaborative Framework does not create binding obligations for an economy.**

**It allows the economy’s ODR providers to participate in the Framework and be listed as a partnering ODR providers.** (Emphasis added)

Economies that have already opted-in include:

- China
- Hong Kong, China
- Japan
- Singapore
- The United States

ODR providers self-certify their compliance with the Collaborative Framework and the APEC Model Procedural Rules.

Professor Hayakawa explained that under the Framework, APEC member economies should encourage businesses, especially MSMEs, to use the partnering ODR providers.

The APEC EC launched the Collaborative Framework after EC 1 in March. Three ODR Providers have already self-certified their compliance with the Collaborative Framework. All three of the providers participated in the Workshop.

**Mike Dennis** explained that the APEC EC has also endorsed an Administrative Implementation Workplan and proposal for a Satellite Website in 2021. The Workplan provides the structure to enable collaboration between the EC and academic institutions from economies that have opted into the Collaborative Framework. The Work Plan specifies that academics may assist with local capacity building for economies in participating economies. The APEC EC can also call on its academic experts to help review ODR Providers' compliance with the Framework and Rules and help bring them into compliance where appropriate.<sup>3</sup>

**Mr Kazushige Ogawa, a professor of law at** Rikkyo University, Japan, and the APEC ODR Collaborative Framework Website Administrator, explained that the APEC ODR Website <https://www.apec.org/SELI> hosts in-depth information on the Framework to enable the APEC EC to partner with and oversee ODR providers, help MSMEs use ODR, and collaborate with the international community—including the public and the private sectors, and the academic community. As the Website Administrator, Professor Ogawa manages the ODR Website, troubleshoots problems, and updates the website content. The lead academics from participating APEC economies assist him by reviewing any new content.

**Ms Nadia Alexander** is the Director of the Singapore International Dispute Resolution Academy (SIDRA) at the Singapore Management University and a representative of the University as a Lead Academic Institution in its collaboration with the APEC EC and SELI in the implementation of the APEC ODR Collaborative Framework. She introduced a video to promote the APEC ODR Collaborative Framework. The video was produced by her team of student experts: Tan Jiong Han, Helena Binies Serra, Alvin Leu Jun Kang, and Yeo Yu Kheng. The Workshop recommended that the video be included on the APEC ODR website. See <https://www.apec.org/seli/overview>.

## **Part II—Energizing MSMEs (with Assistance from Lead Academic Institutions)**

The Workshop heard from the four additional representatives of the Lead Academic Institutions concerning implementing the Framework and energizing MSMEs.

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<sup>3</sup> As provided in the SELI Administrative Implementation Workplan (Section II), the following Lead Academic Institutions have agreed to coordinate collaboration with other academic institutions:

- University of Hong Kong (Hong Kong, China) (Dr Yun Zhao)
- Indiana University (United States) (Dr Angie Raymond)
- Rikkyo University (Japan) (Dr Mayu Watanabe)
- Singapore International Dispute Resolution Academy (Singapore) (Academic Director Nadja Alexander)
- University of International Business and Economics, School of Law (Beijing, China) (Dr Yongmin Bian)

**Ms Mayu Watanabe**, Rikkyo University (Japan), noted that participation of the private sector in each economy is crucial to developing the Collaborative Framework and sustainable business development. An increasing number of companies are experiencing a downturn in business performance. Research demonstrates that unmet legal needs carry a high cost. Payments on time are essential to business survival, especially for MSMEs with unstable finances. ODR can provide a safety net by helping solve payment disputes quickly and cost-effectively. Beyond a mere solution for disputes, ODR provides expanded access to justice, and the Collaborative Framework supports the delivery of timely legal services that benefit businesses and economies across APEC.

Japan opted into the Collaborative Framework to further promote the implementation of ODR in Japan. Japanese courts have difficulty resolving disputes swiftly and predictably, especially during the pandemic, and particularly for cross-border disputes. From a Japanese perspective moving to ODR requires developing trust from users. Japan is actively reviewing its policies concerning ODR, and the Japanese Ministry of Justice has issued an “Action Plan for Making ODR More Accessible to the Public.”

Professor Watanabe stressed that, as economies move into the social implementation phase of ODR, what is meant by ODR should be shared among stakeholders. The purpose of ODR is to resolve disputes, and the system should be developed to expand access to justice. ODR should not result from existing ADR processes being converted into IT-enabled ADR but instead should be designed as a new system. If a single platform can seamlessly connect the phases from obtaining legal information to reaching a settlement, the convenience of the dispute resolution system is greatly enhanced for users. On the other hand, simply adding communication technology to dispute resolution will result in the fragmentation of each process.

**Ms Yongmin Bian** is the Deputy Dean of the School of Law, University of Business and Economics (Beijing, China). She commented that for many MSMEs, ODR is more than an alternative; it is the only viable way to settle disputes, especially for small transboundary commercial transactions. The restrictions on travel and in-person meetings following the COVID-19 pandemic made offline dispute settlement particularly difficult, especially in cases requiring international travel.

China opted into the Collaborative Framework because the widespread implementation of the Framework will provide certainty and predictability to Chinese small businesses engaged in cross-border trade. Since the Pandemic, it has been easier to persuade parties in China to use ODR to resolve disputes. China has focused on promoting ODR to lawyers and mediators because they are better placed to convince their clients to use ODR. China has also promoted ODR through Alibaba’s example of providing timely and cost-effective online dispute resolution with trading partners. ODR has also been widely implemented in Chinese courts and arbitration centers across China since the pandemic.

**Mr Yun Zhao, University of Hong Kong (Hong Kong, China)**, noted that ODR applies to all kinds of disputes, including financial disputes such as secured lending. During the pandemic,



ODR has been used widely in all arbitration institutions in mainland China and Hong Kong, China for all kinds of disputes, including financial disputes.

Prof. Zhao noted that several Chinese arbitration institutions, including the CIETAC, Shanghai Arbitration Commission, and Guangzhou Arbitration Commission, have developed their own set of arbitration rules tailored for resolving financial disputes. The Hong Kong International Arbitration Centre also has had its separate Panel of Arbitrators for Financial Services Disputes since 2018.

Professor Zhao observed that the primary difference between the arbitration rules for financial services (like those provided by HKIAC and CIETAC arbitration centers) and the APEC Collaborative Framework is that the Collaborative Framework is designed to handle more straightforward types of disputes (including goods and services). In contrast, the financial services processes are designed for more complex claims. But of course, this is not absolute.

Arbitration is often used to resolve financial disputes in the greater China area. Data released by the Ministry of Justice of China reports that 255 Chinese arbitration institutions accepted 544,535 arbitration cases in 2018, and of these, roughly 22.1 % were financial disputes. The total amount of these financial disputes reached some 233.4 billion RMB (approximately 33.6%). The HKIAC 2021 case statistics show that banking and financial dispute cases comprise 16.2% of its 514 cases.

One unique feature in mainland China and Hong Kong, China is the strong support for arbitration from the Government and the Courts, including arbitration of financial disputes. Mainland China and Hong Kong, China signed the Arrangement concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong SAR, which took effect in October 2019. Before the Arrangement, a mainland court would not provide any assistance or grant any interim measures to parties to an arbitral proceeding in Hong Kong, China. So, respondents might attempt to evade claims by transferring mainland assets before the arbitral proceedings started in Hong Kong, China. This Mutual Arrangement rectified the loophole. As of 8 November 2021, according to the HKIAC statistics, the institution has assisted in 53 applications for the preservation of assets. In 2021 alone, the HKIAC dealt with 25 applications totaling 3.5 billion RMB. In China, 40 decisions were made by mainland courts, of which 37 granted interim relief, totaling RMB 12.4 billion (approximately USD 1.9 billion).

He concluded by observing that adopting the APEC Collaborative Framework and strong support from the Government and the Courts will make ODR for financial disputes in mainland China and Hong Kong, China more popular and successful.

**Ms Angie Raymond, University of Indiana (United States)**, noted that the APEC ODR Collaborative Framework is well suited for U.S. MSMEs engaged in cross-border trade since they need to resolve their disputes quickly and inexpensively. Education will be essential since surveys show that micro enterprises tend to work without clear contracts and dispute resolution clauses, leaving them vulnerable in case of disputes.

Academic institutions have a crucial role in assisting with MSME capacity building under the Collaborative Framework. Dr Raymond noted that educational institutions are uniquely placed to help in this work because it is already part of their mission. They have access to

multidisciplinary scholars and industry connections with substantial experience in technology, justice, and community building. In addition, they have the infrastructure necessary to organize local conferences and meetings. Academic institutions also are frequently expected to find resources to support these undertakings.

### **Part III—Partnering ODR Providers**

The Workshop also heard from several ODR providers that partner with APEC under the Collaborative Framework and ODR platform providers (that offer their platforms to ADR providers).

Mr Shunsuke Mori is the Vice President of the Deloitte Tohmatsu Financial Advisory (DFTA) and oversees the planning and development of its ODR platform and other digital services. In 2020 Deloitte launched its Smart Judgment ODR platform. Deloitte makes the ODR platform available to ODR service providers. The platform is highly secure and compliant with the APEC ODR Collaborative Framework and Model Procedural Rules.

Deloitte has introduced its Smart Judgment ODR platform to many e-commerce service providers and is slowly gaining traction. ODR is not yet well known by Japanese people, who are more familiar with using Japanese courts for dispute resolution. Therefore, government leadership is needed to assist with implementing ODR, including sponsoring ODR providers, providing subsidies to support the implementation of ODR, and actively promoting ODR in public institutions.

**Mr Colin Rule** is the CEO of ODR.com, located in the U.S.A. ODR.com has launched a multilingual ODR platform for cross-border resolution of SME disputes. The platform is compliant with the APEC ODR Collaborative Framework and optimizes the needs of cross-border SMEs to resolve disputes quickly and fairly. The ODR.com platform software has several key components:

- the solution explorer module helps parties diagnose their situation and envision acceptable resolution options. It also assists users with filing cases.
- the caseload manager module tracks every case, calendar event, and completed activity to ensure cases stay on track and reports are accurate.
- the meeting room module enables disputants and neutrals to interact in an online collaborative workspace specifically designed for their case type.
- the reporting engine offers real-time visibility into data on customized dashboards that can be shared internally or externally.

ODR.com doesn't have any arbitrators or mediators. It offers its platform to any ADR provider looking to deliver ODR services in line with the APEC ODR Collaborative Framework. ODR.com hopes to find partners to help it localize its services across APEC in different cultural contexts.

**Ms Pui-Ki Emmanuelle Ta** is the CEO of eBRAM International Online Dispute Resolution Centre ("eBRAM") in Hong Kong, China. As a not-for-profit organization specializing in LawTech, eBRAM aims to provide all businesses, especially MSMEs, with state-of-the-art

technology and a high level of security for online cross-border deal making, dispute avoidance, and dispute resolution. In 2020, eBRAM developed its own ODR platform for resolving disputes stemming from COVID-19, where one of the parties is a Hong Kong resident or company.

There are challenges to implementing ODR in Hong Kong, China, as the general public and businesses do not have enough confidence in using ODR to resolve disputes due to the lack of understanding of what ODR is and its advantages. The use of the COVID-19 platform has also been hindered by psychological barriers concerning the impact of ODR on the dispute, including for data protection and cybersecurity.

In light of this, Hong Kong China has taken initiatives to encourage and support the development of ODR, eBRAM committed itself as the forerunner in promoting ODR and LawTech and engaged in various advertising campaigns, social media promotions, and events, and collaborated with regional and international organizations to raise awareness of the use of ODR.

In June 2021, eBRAM launched its APEC ODR Rules based on the APEC ODR Collaborative Framework and Model Procedural Rules. It has since been developing an APEC ODR Framework-compliant platform for resolving disputes under APEC ODR Rules. eBRAM APEC Rules and platform comply with the APEC ODR Framework in terms of process, time limits, costs, and conditions of application of the APEC Rules.

eBRAM's APEC ODR platform has the advantages of efficiency, transparency, and security, providing online negotiation, mediation, and arbitration with the strong support of advanced technologies such as blockchain, AI machine translation, and highly secured cloud storage, e-Signature using e-KYC technology, and a video-conferencing system.

Data protection and cybersecurity are also eBRAM's priorities. To address users' concerns about confidentiality, cybersecurity, and data privacy, eBRAM has implemented various safeguards, including multi-factor authentication, e-KYC, and blockchain. External, certified security experts conduct cyber security assessment and total system audit on eBRAM's ODR platform.

**Mr Chen Chen** is a Guangzhou Arbitration Commission (GZAC) representative. The GZAC is one of China's largest alternative dispute resolution providers. GZAC has partnered with APEC under the ODR Collaborative Framework. The GZAC APEC-ODR platform features include online negotiation, mediation, and arbitration; multilingual translation; use of artificial intelligence to answer questions throughout the process; online amendment of the settlement agreement and online signing; and issuance of legal documents for the international enforcement of settlement agreements.

GZAC's APEC-ODR platform has dealt with 218 domestic and international disputes totaling over 3.8 billion yuan (approximately 570 million USD), including cases in emerging industries such as e-commerce, live streaming, and intelligent vehicle manufacturing. The average time to resolve a dispute is 33 days, with 60.62% of the disputes resolved during mediation. GZAC

held 63 seminars and press conferences to collect opinions and suggestions from scholars, e-commerce traders, and parties on its APEC-ODR platform.

The GZAC also has a platform and procedural rules for arbitration of more complex financial disputes, including factoring. The GZAC has resolved 5269 disputes using the platform and rules, including 55 factoring disputes. The GZAC has dealt with interim requests to protect assets in most financial cases.

### **3.4.2 SESSION Six— Use of ODR and Advanced Technology to Enforce Security Interests, Pre-Insolvency Workouts, and Insolvencies**

APEC SELI Convenor Yoshi Hayakawa and Mike Dennis served as moderators for the session.

**Ms Nina Mocheva** is a Senior Financial Sector Specialist with the Debt Resolution & Insolvency team of the World Bank Group. Ms Mocheva explained that, although it is traditionally used for contractual disputes as its name suggests, ODR can facilitate multi-party, negotiation-based processes, such as pre-insolvency restructuring plans.

ODR systems can efficiently address enterprises' financial distress due to the pandemic's economic impacts. ODR platforms are well-suited to resolving disputes during the pandemic since they comply with social distancing directives. ODR can alleviate judicial backlogs likely to occur when courts fully reopen by diverting some traffic away from traditional in-person dispute resolution systems.

The economic fallout of COVID-19 has deeply impacted MSMEs by reducing their business activities, interrupting supply chains, and resulting in closures and job losses. As COVID-19's economic effects continue to evolve worldwide, pre-pandemic insolvency systems are unlikely to be well-positioned to address new realities. Even where old insolvency systems are usable in a post-pandemic world, reverting to these systems may not be desirable. To succeed in the long-term, reform efforts must draw on past experiences and expertise and adapt to the changing contexts in which they operate. Economies that adopt ODR may enjoy a lasting competitive advantage in the post-pandemic global economy.

**Ms Diana Talero**, a private international law expert, provided an analysis of Colombian law concerning the use of ODR for secured transactions and informal pre-insolvency workouts. According to Colombian Secured Transaction Law, any dispute concerning the creation, interpretation, priority, enforcement, and liquidation of a movable security interest can be submitted by the parties for settlement, arbitration, or any other alternative dispute resolution mechanism, including ODR. The Colombian legal framework also permits insolvency proceedings before a chamber of commerce, allowing the debtor to negotiate directly with creditors for three months with the assistance of a mediator. It also enables any objections from creditors to be resolved through any ADR method permitted under Colombian law, including arbitration and ODR. In an expedited confirmation, the arbitrator can validate an agreement reached through mediation.

**Ms Teresa Rodríguez de las Heras Ballell from UNIDROIT** provided an overview of a guidance document UNIDROIT is developing on effective enforcement of rights. The project aims to help legislators overcome enforcement challenges and ensure well-functioning financial and lending markets. The Project identifies best practices for the judicial and extrajudicial enforcement of secured claims that follow accepted international standards, such as the UNCITRAL Model Law on Secured Transactions. The instrument will detail procedures and mechanisms for enforcing creditors' claims effectively in transnational and domestic civil proceedings. The instrument will also address how technology:

- Enhances collateral monitoring by identifying a change in location, value, or unauthorized asset use.
- Generates digital assets that may be subject to a security right that may need to be enforced against a custodian.
- Generates digital assets for which the holder (and thus the person against whom a claim may need to be enforced) may be challenging to identify.
- Streamlines enforcement procedures via automated notices.
- Enables digital auctions and irreversible automated enforcement through complaint handling mechanisms and ODR platforms.

**Mr Jae Sung Lee** is the Secretary of UNCITRAL's Working Groups on Dispute Settlement (II) and Investor-State Dispute Settlement. He noted that work is currently underway in UNCITRAL to compile, analyze and share information about developments in dispute resolution in the digital economy, including the use of online platforms for dispute resolution. The use of technology in dispute resolution has significantly increased, especially during the pandemic, and will likely continue to grow. Fundamental changes have occurred (online hearings being the tip of the iceberg. AI is now used for decision making, case management, online mediation, e-evidence, and so forth) and extended the reach of dispute resolution to new sectors and actors. Technology is applied to all stages of the dispute resolution, from preparation and pre-dispute proceedings to proceedings management.

The UNCITRAL Secretariat is participating in the Inclusive Global Legal Innovation Platform on Online Dispute Resolution (iGLIP on ODR) to develop "legal standards that would apply to online platforms with in-built dispute resolution mechanisms and those dedicated mainly to dispute resolution." Two different platforms have emerged: (i) platforms with built-in mechanisms to handle disputes between users or between users and the operator, and (ii) platforms dedicated to dispute resolution services. Issues for further consideration include internal platform policies, valid user consent, recognition and enforceability of decisions outside the platform, applicable law, redress, and appeal mechanisms. Ethical standards and guidance on best practices should ensure that online dispute resolution platforms expand and not restrict access to justice.

## IV. NEXT STEPS, CONCLUSIONS, AND RECOMMENDATIONS

### Next Steps:

Several participants stressed the importance of enabling economies to get together to discuss what projects they are pursuing, especially reforms to their secured transactions frameworks. In private international rulemaking, a substantial difference exists in how civil and common law jurisdictions treat an issue. Economies need to share information on the different ways in which international standards may be implemented in civil law and common law jurisdictions. Many civil law jurisdictions are now undergoing reform, but there is still hesitancy to adopt international standards. In Japan, for example, there are concerns about whether a notice-based registration system (as provided under international standards) would work because the current registration system follows the land registry system, where ensuring the truthfulness of the registration content is paramount. Another reform issue in Japan concerns enforcing security rights where it has been recommended that an administrator be appointed to resolve the issues in an expedited manner. In this respect, it was observed that ODR might also provide a solution.

It was also pointed out that it is not only a question of how civil law and common law jurisdictions implement the UNCITRAL Model Law on Secured Transactions or the Cape Town Convention but also how they implement emerging standards such as those on warehouse receipts and digital assets and the use of “control” for the perfection of security rights. Legislators need to ensure that a secured transactions law provides a comprehensive and coherent framework for lending in the future and that the law enacted today does not limit future transactions.

### Workshop Conclusions:

- ✓ Implementing international standards through secured transaction reforms makes credit more available at a lower cost for MSMEs, including women-led businesses.
- ✓ Implemented standards must be coordinated with related legislation and regulation.
- ✓ Implementing the international standards for secured transactions requires tailored approaches that vary between common-law and civil-law systems.
- ✓ An enabling credit environment opens the door to greater participation in supply chains.
- ✓ During the pandemic, lending to MSMEs in most economies in APEC was propped by measures now being scaled down.
- ✓ As APEC economies roll back these measures, the number of non-performing loans is expected to rise, and the accumulated risks to resurface. APEC economies need a sound and effective strategy to bolster economic growth.
- ✓ Without sufficient support, viable MSMEs could become engulfed in a wave of insolvencies.

- ✓ The approach and mechanisms for swift resolution of non-performing loans must continue to balance the needs of the banking sector with the requirements of borrowers to resume the entire operation once the crisis abates.
- ✓ Making a distinction between viable MSMEs and “zombie companies” and managing the transition from the COVID-19 pandemic will depend on the quality of the legal system, including secured transactions and insolvency.
- ✓ ODR became essential during the COVID-19 pandemic and its associated travel bans and court closings.
- ✓ ODR can substantially reduce timelines and costs for MSME dispute resolution compared to courts. The use of ODR by arbitration centers and APEC courts has the potential to become the new normal.
- ✓ Using cross-border ODR under the APEC ODR Collaborative Framework will assist MSMEs in recovering debts and settling disputes swiftly.
- ✓ The use of ODR platforms that provide online negotiation, mediation, and arbitration is ideally situated to help distressed MSMEs restructure and settle their debts.
- ✓ The international standards for secured transactions and the APEC ODR Collaborative Framework promote inclusivity and entrepreneurship, foster regional business relationships, and facilitate gender finance.

#### **Workshop Recommendations:**

- ✓ APEC economies should consider the following measures to reinforce secured transactions, insolvency, and alternative dispute resolution systems and to maintain a reliable supply of financing to MSMEs:
  - Implement UNCITRAL and UNIDROIT standards on secured transactions to enhance access to credit at affordable rates.
  - Ensure that these standards create a coherent framework that can be easily applied in practice and appropriately coordinated with the related legislation and regulation.
  - Implement international standards and mechanisms to expedite the resolution of disputes, and enforcement of claims, through ODR systems, mainly by opting into the APEC ODR Collaborative Framework.
  - Ensure that implemented international standards support the framework to facilitate market-based financing.
  - Harness innovation, new technology, and digitalization to further strengthen the practical impact of the implemented international standards.

- Share information with other economies within APEC on best practices for implementing standards, deploying credit products, etc.
  - Provide the framework for implementing out-of-court restructuring systems for MSMEs utilizing ODR that play a valuable role in providing the means for MSMEs to restructure their debt.
- ✓ SELI should consider assisting economies with their recovery strategy as part of its work plan under SELI Workplan on Structural Reform under EAASR by:
- Continuing to promote international standards and support capacity building for secured transaction reforms through workshops, policy dialogues and direct assistance to economies.
  - Continuing to work in close collaboration with international partners such as UNIDROIT, UNCITRAL and the World Bank.
  - Continuing to engage in cross-fora collaboration with other APEC entities including the Finance Ministers' Financial Infrastructure Development Network (FIDN)
  - Continuing to engage in collaboration with the lead academics and the APEC Business Advisory Council (ABAC) to promote the APEC ODR Collaborative Framework and identify businesses willing to participate.
  - Expanding the work of SELI on ODR to include promoting ODR for out of court restructuring to help prevent insolvencies of MSMEs, consistent with the recommendations of the World Bank.



## APPENDIX I

### AGENDA



**APEC Workshop on  
Modernising Secured  
Transactions Legal Regimes  
in APEC Economies through  
International Instruments  
and Effective Dispute  
Resolution Mechanisms**



25-27 May 2022



#### Day 1: 25 May 2022

8:30-9:00	<b>Registration</b>
9:00-9:20	<p><b>Opening Remarks</b>  Yoshi Hayakawa, APEC SELI Convenor  Soichiro Sakuma, President, Japan International Dispute Resolution Center  Yusuke Iino, Director of Digital Economy Division, Commerce and Information Policy Bureau, Ministry of Economy, Trade and Industry (METI)  Raymond Green, Deputy Chief of Mission, U.S. Embassy Japan  Dr James Ding, EC Chair, Hong Kong, China  Elaine MacEachern, Senior Financial Sector Specialist, World Bank Group  Ignacio Tirado, Secretary General of UNIDROIT  Anna Joubin-Bret, Secretary of UNCITRAL</p>
9:20-9:25	Photo-taking Session
9:25-10:05	<p><b>SESSION ONE—Study on Issues Affecting Implementation of Secured Lending Reform and Access to Credit as a Result of the COVID-19 Pandemic in APEC economies</b>  <b>Moderator/Commentator:</b>  Yoshi Hayakawa, APEC SELI Convenor  <b>Speakers:</b>  Marek Dubovec, International Consultant (United States)  Mike Dennis, International Consultant (United States)</p>
10:05-10:20	<b>Open Discussion – Questions and Answers</b>
10:20-10:35	<b>Coffee Break</b>
10:35-11:35	<p><b>SESSION TWO—Experience Sharing on Implementing Secured Transactions Reform – Part I</b>  Moderator: Jae Sung Lee, Legal Officer, UNCITRAL  <b>Speakers:</b>  Saibo Jin, Beijing Jincheng Tongda Law Offices (China)</p>

	Huyen Pham, Operations Officer, International Finance Corporation), (Viet Nam) Marek Dubovec, International Consultant
11:35-11:45	<b>Open Discussion – Questions and Answers</b>
11:45-12:45	<b>SESSION TWO—Experience Sharing on Implementing Secured Transactions Reform – Part II</b> <b>Moderator:</b> Jae Sung Lee, Legal Officer, UNCITRAL <b>Speakers:</b> Megumi Hara, Chuo University School of Law (Japan) Diana Talero, International Consultant (Colombia) Khairon Niza Md Akhir, Regulatory Development & Services Division Companies Commission of Malaysia
12:45-14:00	<b>Lunch</b>
14:00-15:00	<b>Open Discussion: Questions and Answers (from Day One)</b>

**Day 2: 26 May 2022**

8:30-9:00	<b>Registration</b>
9:00-9:15	<b>Introduction and Summary of Day 1</b> Joseph Donahue, Project Overseer, U.S. Department of State
9:15-10:00	<b>SESSION THREE—Coordinating Reform through Related Instruments such as the Assignment of Receivables Convention, UNIDROIT Instruments, and Ongoing Initiatives (Factoring)</b> <b>Moderators:</b> William Brydie-Watson, Senior Legal Officer, UNIDROIT Jae Sung Lee, Legal Officer, UNCITRAL <b>Speakers:</b> Neil Cohen, Brooklyn Law School (United States) Marek Dubovec, International Consultant (United States) Chris Wohlert, APEC Asia Pacific Financial Form (Hong Kong, China)
10:00-10:15	<b>Open Discussion: Questions and Answers</b>
10:15-10:30	<b>Coffee Break</b>
10:30-12:00	<b>SESSION FOUR—Addressing Legal Gaps – Building an Improved Legal Environment for MSMEs, including Digitalization and Warehouse Receipts</b> <b>Moderator:</b> William Brydie-Watson, Senior Legal Officer, UNIDROIT Jae Sung Lee, Legal Officer, UNCITRAL <b>Speakers:</b> Elaine MacEachern, Senior Financial Sector Specialist, World Bank Group Kee Bun SOH, Senior State Counsel, Attorney-General’s Chambers (Singapore)

	Giuliano Castellano, University of Hong Kong, Faculty of Law (Hong Kong, China) Teresa Rodríguez de las Heras Ballell, Senior Legal Adviser, UNIDROIT Dora Neo, National University of Singapore (Singapore)
12:00-12:30	<b>Open Discussion: Questions and Answers</b>
12:30-14:00	Lunch
14:00-16:00	<b>Open Discussion: Questions and Answers</b>

**Day 3: 27 May 2022**

8:30-9:00	<b>Registration</b>
9:00-9:10	<b>Introduction and Summary of Day 2</b> Joseph Donahue, Project Overseer, U.S. Department of State
9:10-10:20	<p><b>SESSION FIVE—Use of Technology and ODR for Resolution of Commercial Disputes Based on The APEC ODR Collaborative Framework.</b></p> <p><b>Moderators:</b> Yoshi Hayakawa, APEC SELI Convenor Mike Dennis, International ODR Consultant (United States)</p> <p><b>Part I—Why Economies Should Consider Opting into The Collaborative Framework.</b></p> <p><b>Speakers:</b> Kazushige Ogawa, ODR Collaborative Framework Website Administrator, Rikkyo University (Japan) Nadja Alexander with Tan Jiong Han, Helena Binies Serra, Alvin Leu Jun Kang, and Yeo Yu Kheng, Singapore Management University (Singapore)</p> <p><b>Part II—Energizing MSMEs (with Assistance from Lead Academic Institutions)</b></p> <p><b>Speakers:</b> Mayu Wantanabe, Rikkyo University (Japan) Angie Raymond, University of Indiana (United States) Yongmin Bian, University of Business and Economics (China) Yun Zhao, University of Hong Kong (Hong Kong, China)</p> <p><b>Part III—Partnering ODR Providers</b> Shunsuke Mori, Deloitte Tohmatsu Financial Advisory (Japan) Colin Rule, CEO of ODR.com (United States) Ms Emmanuelle Ta, CEO of eBRAM International Online Dispute Resolution Centre (Hong Kong, China) Chen Chen, Guangzhou Arbitration Commission (GZAC).</p>

10:20-10:40	<b>Questions and Answers</b>
10:40-10:50	<b>Coffee Break</b>
10:50-12:10	<p><b>Session Six: Use of ODR and Technology in Enforcing Security Interests, Reorganizations, and Insolvencies</b></p> <p><b>Moderators:</b>  Yoshi Hayakawa, APEC SELI Convenor  Mike Dennis, International ODR Consultant (United States)</p> <p><b>Speakers:</b>  Nina Mocheva, Senior Financial Sector Specialist, World Bank Group  Diana Talero, International Consultant (Colombia)  Teresa Rodríguez de las Heras Ballell, Senior Legal Adviser, UNIDROIT  Jae Sung Lee, Legal Officer, UNCITRAL</p>
12:10-12:30	<b>Questions and Answers/Open Discussion</b>
12:30-12:45	<p><b>Next Steps, Conclusions and Recommendations</b></p> <p>Marek Dubovec, International Consultant (United States)  Mike Dennis, International Consultant (United States)</p>
12:45-12:50	<p><b>Closing Remarks</b></p> <p>Elaine MacEachern, Senior Financial Sector Specialist, World Bank Group  Joseph Donahue, Project Overseer, U.S. Department of State  Yoshi Hayakawa, APEC SELI Conveyor</p>

## **APPENDIX II SPEAKERS**

### **Joseph Donahue, Project Overseer**

Joseph Donahue is a Financial Economist in the Bureau of Economic and Business Affairs at the U.S. Department of State, where he covers investment policy issues for the East Asia and Pacific region, and represents the United States at the Organization for Economic Cooperation and Development's Working Party on Responsible Business Conduct, supports the U.S. National Contact Point, works with the U.S. International Development Finance Corporation (DFC) to negotiate investment incentive agreements, and other various work streams. Before coming to the State Department as a Presidential Management Fellow, Joe worked across multiple roles in the public and private sectors. Joe received his master of science from the London School of Economics in Development Economics and International Development.

### **Marek Dubovec, Panelist Sessions 1, 2, and 3**

Marek Dubovec is the Director of Law Reform Programs at the International Law Institute (ILI). He has taught Secured Transactions and International Commercial Transactions at the University of Arizona, James E. Rogers College of Law. He is a member of working groups and drafting committees for several UNIDROIT projects, including the Model Law on Factoring, Model Law on Warehouse Receipts and Principles for Digital Assets, and Private Law. Has been a delegate to UNCITRAL Working Group VI that produced the Model Law on Secured Transactions. He has published several books, including Secured Transactions Law Reform in Africa (co-authored with Prof. Louise Gullifer). He has assisted many economies with implementing their secured transactions laws, including in APEC (e.g., the Philippines).

### **Mike Dennis, Panelist Session 1, Moderator Sessions 5 and 6**

Mike Dennis is a private international law consultant. He served as a legal consultant to the EC for the APEC ODR Collaborative Framework and Model Procedural Rules. He developed the Administrative Implementation Work Plan and the related Proposal for an APEC ODR Satellite Website for the Collaborative Framework. He is a U.S. expert in the ISO working group on developing standards for transaction assurance in e-commerce, including dispute resolution. He is also a member of the Inclusive Global Legal Innovation Platform on Online Dispute Resolution (GLIP on ODR) (in collaboration with the United Nations Commission on International Trade Law (UNCITRAL)). He was the Executive Director of the Department of State Advisory Committee on Private International Law from 2007 to 2018. He also served as the Representative of the United States to UNCITRAL, where he headed U.S. delegations on many private international law matters, including the UNCITRAL Arbitration Rules, the UNCITRAL Technical Notes on ODR, the UNCITRAL Model Law and Legislative Guide on Secured Transactions, the UNIDROIT Model Law on Leasing, and the OAS Model Registry Regulations. He has published widely on human rights and various private international law topics, including Online Dispute Resolution.

### **Yoshi Hayakawa, SELI Convenor, Moderator Sessions 1, 5 and 6**

Professor Hayakawa serves as a law professor at Rikkyo University, Tokyo, and is the Convenor of the APEC Economic Committee Strengthening the Economic and Legal Infrastructure FoTC. He has taught and conducted research at various foreign universities, including Columbia University, Cornell University, QM College of the University of London, and the Australian

National University. As a partner at Uryu & Itoga, Tokyo, Professor Hayakawa serves as Counsel or Arbitrator in transnational litigation and international commercial arbitration cases. He has represented Japan in inter-governmental organizations, including UNCITRAL, APEC, and The Hague Conference on private international law matters. Professor Hayakawa also serves as President of the Japan National Committee of UIA, a Japanese Member of the Commission on Arbitration and ADR of the ICC, and a Japanese Member of the Users Council of SIAC. He further serves as Secretary General of the Japan International Dispute Resolution Center.

**Jae Sung Lee, Moderator, Sessions 2, 3, and 4, Panelist Session 6**

Jae Sung Lee is a legal officer at the International Trade Law Division (ITLD) of the United Nations Office of Legal Affairs, which functions as the substantive secretariat for UNCITRAL. He acts as the Secretary of Working Group II on Dispute Settlement and further serves the Working Group III on Investor-State Dispute Settlement Reform. Previously he has worked as the Secretary of the Working Groups on Secured Transactions preparing the Model Law on Secured Transactions and Electronic Commerce and drafting the Model Law on Electronic Transferable Records. Before joining the United Nations in 2007, Jae Sung served in the Korean Ministry of Foreign Affairs. A Korean national, Jae Sung is a graduate of Seoul National University College of Law, holds LL.M. degrees from Seoul National University Graduate School of International Studies and NYU School of Law, and a Ph.D. in Law from Seoul National University.

**William Brydie-Watson, Moderator Sessions 3 and 4**

William Brydie-Watson is a Senior Legal Officer at UNIDROIT. He is an Australian lawyer working for UNIDROIT in the fields of international commercial law and private international law. He has primary responsibility for the UNIDROIT Mining, Agricultural and Construction (MAC) Protocol to the Cape Town Convention and the preparation of the UNIDROIT Model Law on Factoring. He also manages the UNIDROIT Foundation, a Dutch not-for-profit organization that supports UNIDROIT through promotion, fundraising, and complementary projects. He also serves as a visiting lecturer for the European and International Business Law LLM program at the Eötvös Loránd University Faculty of Law in Budapest, Hungary. Previously, he was a Legal Officer of the Australian Attorney-General's Department in the Private International Law section. He worked primarily on treaty negotiation and implementing private international law treaties in Australia.

**Teresa Rodríguez de las Heras Ballell, Panelist Sessions 4 and 6**

Teresa Rodríguez de las Heras Ballell has been the Sir Roy Goode Scholar at UNIDROIT, Rome, since 2021 and a Professor of Commercial Law at Carlos III University of Madrid. She was Chair of Excellence in 2017-2018 at Harris Manchester College, University of Oxford (Uc3m-Santander Program). Previously, she was the James J. Coleman Distinguished Visiting Professor of Law at Tulane Law School; a Visiting Professor at Harris Manchester College, University of Oxford; a Stanford Law School Fellow, TTLF, and Marie Curie Fellow at the ZERP of the University of Bremen. She also held visiting professor positions and fellowships at Columbia Law School, University of Washington, University of Tokyo, and University College London. She is an Arbitrator of the Madrid Court of Arbitration and a member of the ELI (European Law Institute) Council and Executive Committee.

She's also a member of the Expert Group of the European Commission on Liability and New Technologies, a member of the Expert Group of the European Observatory of Platform Economy, a member of the International Academy of Commercial and Consumer Law, a member of the expert group of the Inclusive Global Legal Innovation Platform for Online Dispute Resolution - UNCITRAL and the Hong Kong Department of Justice, an expert of the UNIDROIT Study Group on the MAC Protocol of the Cape Town Convention on International Interests, a delegate of Spain to UNIDROIT for the adoption of the Protocol, a delegate of Spain in Working Group VI of UNCITRAL on secured transactions and Working Group IV on Electronic Commerce, a member of UNIDROIT Working Groups on Enforcement and Warehouse Receipts.

### **Diana Lucia Talero Castro, Panelist Sessions 2 and 6**

**Diana Lucia Talero Castro** is an International Consultant in insolvency and secured transactions. She is an expert lawyer in company law, insolvency law, and fast transactions Law. She has served as a consultant for the International Finance Corporation of the World Bank Group initiatives on insolvency and secure transaction reforms in several Latin American economies. Mrs. Talero is a Senior Associate at Urdaneta, Vélez, Pearl, and Abdallah- UVP&A Abogados and is currently the Technical Secretary of the Colombian Secured Transactions Committee for the implementation of Law 1676 of 2013. She teaches bankruptcy law and secured transactions law at postgraduate programs at Universidad de Los Andes and Universidad Nacional de Colombia. She has represented Colombia at UNCITRAL Working Group V on Insolvency, Working Group VI on Secured Transactions, and led Colombian efforts to establish a new Working Group I on micro-, small-and medium-sized enterprises.

## **Session 2**

### **Part I**

### **Saibo Jin, Panelist**

Saibo Jin is a senior partner with the Jingcheng Tongda Law Offices in Beijing, China. He is an invited expert by the PRC Supreme People's Court for the drafting of the judicial interpretation of Provisions of the Supreme People's Court on Some Issues Concerning the Trial of Cases of Disputes over Letters of Credit. He was the first drafter of the PRC Supreme People's project to develop the judicial interpretation of a Demand Guarantee. He has also been one of the leading promoters of including a factoring contract chapter in the PRC Civil Code. He also helped draft the Civil Code judicial interpretation by Supreme People's Court.

Saibo Jin is the Vice director of the Financial and Securities Special Committee of the All-China Lawyers Association. He is also the Vice director and arbitrator of the Financial Dispute Arbitration Special Committee of CIETAC, assisting the commission in drafting and revising the Financial Dispute Arbitration Rules. He was a member of the Chinese delegation to UNCITRAL Working Group VI on the Model Law on Secured Transactions and Working Group V on the Model Law on Cross Border Insolvency. He is also a member of the Legal Committee (LC) of the Factors Chain International (FCI). He participates as an observer in the drafting of the UNIDROIT Model Law on Factoring.

Saibo Jin has over 20 years of experience in complicated litigations and arbitration cases involving cross-border commercial and financial transactions. Saibo Jin is an expert in bank

Guarantee dispute resolution. ICC China recommended him to the Banking Committee of the International Chamber of Commerce (ICC) as an expert in guaranteed dispute resolution. Saibo Jin acted for and advised clients in numerous bulk cargo international trade litigation and arbitration cases involving the sale of iron ore, steel, alumina, bauxite, soybean, and palm oil. During the financial crisis, Saibo Jin dealt with many disputes arising from ship sales, abandonment of ships by buyers, and claims under the refund guarantees, including where the shipyard was either bankrupt or in financial difficulty. The proceedings were conducted in diverse jurisdictions, such as Chinese courts and arbitration institutions, the London International Arbitration Court (LCIA), Hong Kong International Arbitration Center (HKIAC), and the Korean Commercial Arbitration Board (KCAB), as well as some foreign courts. Saibo Jin also has considerable experience as an arbitrator and mediator in CIETAC. He has published over 20 books in Chinese or English.

### **Huyen Pham, Panelist**

HUYEN PHAM is an Operations Officer of the Financial Institutions Group Advisory Services, Asia Pacific, IFC (based in Viet Nam). She has worked with the public and private sectors in Asia, including Viet Nam, Lao PDR, Cambodia, Myanmar, and India, and joined the International Finance Corporation as a member of the World Bank Group in 2005. Huyen Pham has worked extensively on financial infrastructure regulations and policy. She has participated in several law drafting committees and technical working groups. She has strong knowledge of Credit Reporting, Secured Transactions, Alternative Dispute Resolutions, Insolvency and Bankruptcy, Payments System, Capital Market, and Microfinance. Huyen Pham is a frequent speaker at various international and domestic conferences.

Before joining WBG, she worked for UNDP and DANIDA for eight years on Viet Nam's legal and regulatory reform projects, providing legislative, judicial, and procuratorial capacity building for the National Assembly, the Supreme People's Court, the Supreme People's Procuracy, and the Ministry of Justice.

## **Part II.**

### **Megumi Hara, Panelist**

Megumi Hara is a professor at the Law School of Chuo University, Tokyo. She teaches property law, contract law, secured transaction law, and trust law. She has published numerous articles on secure transaction law, property law, and other topics concerning civil law. Before joining Chuo University, she was appointed an associate professor at Kyushu University and then a professor at Gakushuin University. She has taught courses at The University of Tokyo and Keio University.

She was involved in Japan's recent property law reform as a researcher/consultant appointed by the Ministry of Justice. She was also a committee member for Torihiki Hōsei Kenkyūkai (Research Group on Business Law), which involves the Small and Medium Enterprise Agency under the Ministry of Economy, Trade, and Industry (METI), in preparation for the reform of secured transaction law in Japan.

She served as a delegate of Japan for the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters



specific to Agricultural, Construction, and Mining Equipment (MAC Protocol). She has also participated as either a delegate for Japan or as an observer for UNCITRAL Working Group VI on Secured Transactions Reform. She represents Japan in the UNCITRAL Working Group I deliberations on access to credit for MSMEs. She is also a member of the factoring model law working group for UNIDROIT.

**Ms Khairon Niza, Panelist**

Khairon Niza is a Manager under the Regulatory Development & Services Division, Companies Commission, Malaysia. She oversees international affairs, law reform, and policy matters. Currently, she is in charge of the introduction of a secured transaction legal framework for Malaysia and the amendments to the Companies Act 2016 (introduction of new provisions to cater to companies affected by the COVID pandemic). Before joining the Companies Commission of Malaysia, she practiced as an Advocate and Solicitor for more than ten (10) years in the areas of Banking, Commercial, Probate, and General Litigation. Khairon Niza graduated with an LL.B (Hons) in 1997 from the University of Wales, Cardiff, United Kingdom, and obtained her LL.M in 2010, majoring in Commercial Law from the Queensland University of Technology Brisbane, Australia.

**Session 3**

**Neil Cohen, Panelist**

Neil B. Cohen is the Jeffrey D. Forchelli Professor of Law at Brooklyn Law School and teaches courses in domestic and international commercial law, contracts, and conflict of laws. For over two decades, Professor Cohen has been a key participant in major domestic and international law reform projects concerning commercial transactions. In recognition of his accomplishments, in 2014, Professor Cohen received the American Law Institute's John Minor Wisdom Award and the Homer Kripke Lifetime Achievement Award from the American College of Commercial Finance Lawyers. He was the Reporter for Revised Article 1 of the Uniform Commercial Code and the American Law Institute's Restatement of the Law of Suretyship and Guaranty; in honor of his accomplishments as Reporter for the Restatement, he was named the Institute's R. Ammi Cutter Reporter. Professor Cohen currently serves as the Director of Research of the Permanent Editorial Board for the Uniform Commercial Code. In addition, he has been a member of several drafting committees for revising various articles of the Uniform Commercial Code, including the two most recent revisions of Article 9 (Secured Transactions). He has served as an adviser for several projects of the American Law Institute, including Principles of Software Contracts and the Restatement of the Law of Conflict of Laws.

Professor Cohen has been active since 1995 in the modernization, harmonization, and internationalization of international commercial law. He has served as a member of the United States delegation to the United Nations Commission on International Trade Law for its work on harmonizing and modernizing the law of secured credit, as a member of the Working Group at the Hague Conference on Private International Law that prepared the Hague Principles on Choice of Law in International Commercial Contracts, and as an observer and working group member for the work of the International Institute for the Unification of Private Law (Unidroit) in its development of principles for international contracts. Since 2009,

he has been a member of the United States Department of State's Advisory Committee on Private International Law.

Professor Cohen is a co-author of Farnsworth, Sanger, Cohen, Brooks, and Garvin, *Contracts: Cases and Materials*, and dozens of other books and articles concerning domestic and international commercial law. In addition to his expertise in contract and commercial law, Professor Cohen has written numerous law review articles in areas as diverse as bankruptcy, medical malpractice, probability and statistics, and baseball and the law. Professor Cohen received an S.B. from the Massachusetts Institute of Technology and a J.D. from New York University School of Law, where he was a Root-Tilden Scholar.

#### **Chris Wohlert, Panelist**

Chris Wohlert is the Business Leader for the Commercial Distribution Finance platform in Asia for Wells Fargo. In this role, he leads the Asia inventory financing and cross-border factoring business serving multinational manufacturers across various industries in coordination with the Commercial Distribution Finance platforms at Wells Fargo. Chris has over twenty years of experience in commercial lending, inventory finance, and factoring. He has structured, launched, and grown global financing programs across North America, South America, Europe, the Middle East/Africa, and the Asia Pacific. He has spent twenty years at Wells Fargo's Commercial Distribution Finance business (and its predecessor companies) in roles of increasing responsibility in portfolio management, special assets, business development, and leadership. In July 2021, Chris was appointed the Chief Executive for the Hong Kong Branch of Wells Fargo Bank N.A., in addition to his line of business responsibilities. Chris is also an active member of the Asia Pacific Financial Forum, part of the APEC Finance Minister's Process, where he serves as the leader for secured transaction reform for the Financial Infrastructure Development Network, launched in November 2015 as part of the Cebu Action Plan.

### **Session 4**

#### **Elaine MacEachern, Panelist Session 4**

Elaine is currently a Global Specialist on the Secured Transactions and Asset Based Lending (ST/ABL) team for the World Bank Group's (WBG) financial infrastructure secured lending product based in Washington, DC. Elaine works with WBG clients in the Asia and Africa regions extensively. She regularly contributes to the ongoing Financial Inclusion development agenda of ASEAN and APEC Financial Infrastructure Development Network (FIDN) working groups and UNCITRAL (Asia Chapter). Elaine has over twenty years of public and private sector experience in legislative reform projects, specifically in secured transactions/public policy development, movable property registry implementation, and the development of movable asset-based lending markets in emerging market economies.

#### **Giuliano Castellano, Panelist**

Dr Giuliano G. Castellano is an Associate Professor of Law at the University of Hong Kong, a Fellow at the Asian Institute of International Financial Law (AIIFL), where he serves as a Deputy Director, and a Fellow at the Higher Education Academy (FHEA). Since 2010, Dr Castellano has been appointed as a Legal Expert for the Italian delegation to the UN

Commission on International Trade Law (UNCITRAL), Working Group VI (security interests). In this capacity, he contributed to drafting international soft-law instruments designed to promote access to credit, including the UNCITRAL Model Law on Secured Transactions – adopted by the General Assembly of the United Nations in 2016 – and the UNCITRAL Practice Guide to the Model Law (2019).

Giuliano has been working with international organizations and domestic governments on several projects focusing on the coordination between prudential regulation and secured transactions law in different regions, including Asia-Pacific, Europe, and Central Asia, Latin America and the Caribbean, Middle East and Northern Africa, and Sub-Saharan Africa. Most recently, his research and policy works have been featured in the Knowledge Guide of the World Bank on “Secured Transactions, Collateral Registries, and Movable Asset-Based Financing” (2019).

Giuliano holds a Law Degree from Bocconi University (Milan, Italy), a Ph.D. in Economics and Social Sciences from the Ecole Polytechnique of Paris (with Highest Honours), and a Ph.D. in Law from the Inter-University Centre for Law, Economics and Institutions and awarded by the University of Turin (with ‘no corrections’). His doctoral research was fully supported by the Vinci Doctoral Scholarship of the French-Italian University, an intergovernmental body promoting international cooperation between France and Italy in all scientific domains. Before joining HKU, he was based at the University of Warwick School of Law. At Warwick, he was part of the Central Banking and Financial Regulation Qualification Programme, a postgraduate degree delivered by the Warwick Business School and the Bank of England. Before that, he was an LSE Fellow at the London School of Economics and Political Science (LSE), Law Department. Giuliano is regularly invited to speak at international academic conferences and training programs for the industry or the public sector. He delivered speeches for non-academic audiences, such as TEDx. He has been holding various visiting positions in different institutions, including the Centre for Socio-Legal Studies of the University of Oxford, the Ecole Polytechnique (Paris), Chicago-Kent College of Law, the Governance and Policy Department of the Moscow Higher School of Economics, the Faculty of Law of Paris-Dauphine University, and the Central European University.

### **Dora Neo, Panelist**

Dora Neo is Director of the Centre for Banking & Finance Law at the Faculty of Law, National University of Singapore, where she is an Associate Professor. Her recent publications include Gullifer & Neo (eds) *Secured Transactions Law in Asia: Principles, Perspectives and Reform* (Hart Publishing, 2021); Hare & Neo (eds), *Trade Finance: Technology, Innovation and Documentary Credits* (Oxford University Press, 2021); and Neo, Sauve & Strehö, *Services Trade in ASEAN* (Cambridge University Press, 2019). She is a member of the UNIDROIT Working Group on A Model Law on Warehouse Receipts. She has taught at institutions such as the University of Aix Marseille III in France, the Center for Transnational Legal Studies in London, and the East China University of Political Science and Law in Shanghai. She graduated from Oxford University and Harvard Law School and is a non-practicing member of the Bar in England and Wales (Gray's Inn) and Singapore.

### **Kee Bun SOH, Panelist**

Kee-Bun Soh is a Senior State Counsel in the Singapore Attorney-General's office. He has experience in academia and government, including law reform, policy making, and legislative drafting. His past appointments include Vice-Dean of the Law Faculty of the National University of Singapore; and Director (Legal Policy) and Director (Alternative Dispute Resolution) in the Singapore Ministry of Law. He represents Singapore at UNCITRAL and participates in the work of several UNCITRAL working groups, including Working Group I on MSMEs.

## **Session 5**

### **Part I**

#### **Professor Kazushige Ogawa, Panelist**

Professor Ogawa serves as Associate Professor at Rikkyo University Faculty of Law and Politics (Tokyo). He serves as the Administrator of the APEC ODR Satellite Website. He is an expert for the Japan Sports Arbitration Agency and a member of its Research Committee and Working Group for the Anti-Doping Disputes Arbitration, as well as its Research Committee for the Anti-Doping Law. Professor Ogawa is also the Deputy Secretary General of the Japan International Dispute Resolution Center and a member of the Japan Society of Private International Law, the Japan Association of International Economic Law, and the Japan Association of the Law of Arbitration and Alternative Dispute Resolution.

#### **Professor Nadja Alexander, Panelist**

Dr Nadja Alexander has been engaged in diverse dispute resolution settings in more than 40 economies. An award-winning author and educator, she is consistently recognized as a global thought leader in the field of mediation (*Who's Who Legal*). Nadja is a Professor of Law and Director of the Singapore International Dispute Resolution Academy (SIDRA) at the Singapore Management University. She holds honorary academic appointments in Australia and the United States. Nadja leads an ODR project with the University's Centre for Artificial Intelligence and Data Governance. She has presented at APEC's Economic Committee 1 workshop, attended the SELI meeting and EC policy dialogue meeting (March 2021), and participated in the APEC EC ODR webinar series in 2021. Nadja serves as the Singapore Lead Academic Institution representative for implementing the APEC ODR Collaborative Framework.

Nadja is a foundation member of the International Advisory Board of the United Nations Global Mediation Panel established by the UN Office of the Ombudsman and sits on the Singapore International Mediation Institute board. Previously, she joined the Singapore delegation to the UNCITRAL Working Group II to draft what became the Singapore Convention on Mediation. For more information, see <https://faculty.smu.edu.sg/profile/nadja-alexander-2321>

Her books include *International and Comparative Mediation*, *The Singapore Convention on Mediation: A Commentary*, the *EU Mediation Law Handbook*, *The Hong Kong Mediation Manual*, and *The Singapore Mediation Handbook*.

## **Part II**

### **Professor Mayu Watanabe, Panelist**

Professor Watanabe is a specially appointed associate professor at Rikkyo University in Tokyo, where she teaches alternative dispute resolution (ADR), dispute system design, and Online Dispute Resolution (ODR). She has been a presenter at various ODR workshops. She also serves as the representative of Lead Academic Institution Rikkyo in its collaboration with the APEC EC and SELI for the implementation of the APEC ODR Collaborative Framework. She holds a doctorate in business law from Hitotsubashi University. While working as a research associate at Hitotsubashi, she planned and organized the first international symposium on ODR in Japan in Sept. 2018.

Professor Watanabe is a founding board member of the Japan Association for Online Dispute Resolution (JODR). She is currently serving as a member of the ODR committee of the Ministry of Justice (OCT. 2020-). She was a visiting fellow at the Gould Negotiation and Dispute Resolution Center at Stanford Law School (2014-2016), an International Fellow at the Weinstein JAMS International Fellowship program (2015), a senior fellow at Weinstein International Foundation (2017-), and a fellow at the National Center for Technology & Dispute Resolution (NCTDR) at the University of Massachusetts (2020-).

### **Professor Anjanette (Angie) Raymond, Panelist**

Professor Raymond is the Director of the Program on Data Management and Information Governance at the Ostrom Workshop, an Associate Professor in the Department of Business Law and Ethics at the Kelley School of Business, Indiana University, and an Adjunct Associate Professor of Law at Maurer Law School (Indiana). She recently completed her Ph.D. at the Centre for Commercial Law Studies, Queen Mary, the University of London. She researched policy creation to assist in Managing Bias, Partiality, and Dependence in Online Justice Environments. She has widely written in areas of online dispute resolution, data governance, artificial intelligence governance, privacy, international finance, and commercial dispute resolution in such publications as the *Harvard Negotiation Law Review*, *Cardozo Journal of Conflict Resolution*, *Journal of Dispute Resolution*, *Wisconsin Law Review*, *Northwestern Journal of Technology and Intellectual Property*, and the *American Review of International Arbitration*. She is one of the U.S. Consultant delegates to UNCITRAL reporting on Electronic Commerce related issues. She attended the United Nations Commission on International Trade Law Online Dispute Resolution Working Group, Non-Governmental Organization (Institute of International Commercial Law (IICL)). She also serves as the representative of Indiana University as a Lead Academic Institution in its collaboration with the APEC EC and SELI in implementing the APEC ODR Collaborative Framework, where she leads a pilot project on cross-border ODR. She has spoken at the APEC EC policy dialogues on ODR at EC 1 2020 (Putrajaya, Malaysia) and EC 1 2021 (Virtual Meeting). She also was a speaker at the first APEC Workshop on Developing a Collaborative Framework for ODR (Osaka, November 2018).

**Professor Yongmin Bian, Panelist**

Yongmin Bian is a Professor and the Deputy Dean of the Law School, University of International Business and Economics in Beijing. She has been a speaker at several APEC EC events on ODR. She serves as the representative of the University as a Lead Academic Institution in its collaboration with the APEC EC and SELI in the implementation of the APEC ODR Collaborative Framework. She is a member of the Chinese Society of International Law, a panelist of the Online Dispute Resolution Center of China International Economic and Trade Arbitration Commission, and an arbitrator of the Guangzhou Arbitration Commission and the Nanning Arbitration Commission in China. Professor Bian received a Bachelor of Law in 1991 and a Master of Law in 1994 from the China University of Political Science and Law. She also received a Postgraduate Diploma of International Law and Organizations for Development from the Institute of Social Studies, the Netherlands, in 1998 and a Ph.D. in Law from the University of International Business and Economics, China, in 2002. Her research interests include Public International Law, International Trade Law, Dispute Resolution, and Arbitration Law.

**Professor Yun Zhao, Panelist**

Professor Zhao is Henry Cheng, Professor in International Law and Head of the Department of Law at the University of Hong Kong (HKU); Ph.D. (Erasmus University Rotterdam); LLM (Leiden University); LLM & LLB (the China University of Political Science and Law). Professor Zhao has participated and spoken at the APEC Economic Committee (EC) policy dialogue on ODR at EC 1 in 2018 (Port Moresby, Papua New Guinea), EC1 in 2019 (Santiago, Chile), and 2020 (Putrajaya, Malaysia), and 2021 (Virtual Meeting). He also spoke at the first APEC Workshop on Developing a Collaborative Framework for ODR (Osaka, November 2018).

Professor Zhao serves as the representative of HKU as a Lead Academic Institution in its collaboration with the APEC EC and SELI in implementing the APEC ODR Collaborative Framework. Prof. Zhao is currently a Representative of the Regional Office for Asia and the Pacific (ROAP) of the Hague Conference on Private International Law (HCCH); Standing Council Member of the Chinese Society of International Law; Council Member of Chinese Law Society; Council Member of Zhuhai International Court of Arbitration and Chair Professor at Xiamen University (2020-2023). He is listed as an arbitrator in several international arbitration commissions. He has published widely on various topics, including Dispute Resolution and Space Law.

**Part III****Shunsuke Mori, Panelist**

Shunsuke Mori is the Vice President of the Deloitte Tohmatsu Financial Advisory (DFTA) and oversees the planning and development of its ODR platform and other digital services. Before joining DFTA, he worked at an advertising agency and was responsible for planning and implementing marketing communications strategies, including digital media promotions. He also formed his own company working on internal and external development projects.

**Colin Rule, Panelist**

A world-renowned innovator and expert in ODR, Colin is the CEO of Resourceful Internet Solutions, Inc. ("RIS"), home of Mediate.com, MediateUniversity.com, Arbitrate.com, CaseloadManager.com, and several additional leading online dispute resolution initiatives. From 2017 to 2020, Colin was Vice President for Online Dispute Resolution at Tyler Technologies. Tyler acquired Modria.com, an ODR provider that Colin co-founded, in 2017. From 2003 to 2011, Colin was Director of Online Dispute Resolution for eBay and PayPal. Prior, Colin co-founded Online Resolution in 1999, one of the first online dispute resolution (ODR) providers, and served as its CEO and President. Colin also worked with the National Institute for Dispute Resolution in Washington, D.C., and the Consensus Building Institute in Cambridge, MA, for several years. You can read Colin's articles and see some of his talks at [colinrule.com/writing](http://colinrule.com/writing).

**Chen Chen, Panelist**

Chen Chen works for the Department of Business Development at GZAC, China's largest alternative dispute resolution provider, established in 1995.

Chen Chen helped draft GZAC's guideline on implementing the APEC ODR Collaborative Framework in 2020. Chen Chen also serves as the executive editor of Arbitration Study, a journal published by GZAC. Chen Chen received a J.D. and J.S.D. Degrees from Washington University in St. Louis (United States).

**Ms Emmanuelle Pui-ki Ta, Panelist**

Emmanuelle Pui-ki Ta is the Chief Executive Officer of eBRAM. She has over 15 years of experience in international arbitration and case management and has supervised hundreds of international arbitration cases in a wide range of jurisdictions and economic sectors. Before joining eBRAM, Ms Pui-ki Ta served as Counsel of the Secretariat of the International Court of Arbitration of the ICC Asia Office in Hong Kong, where she was responsible for managing the Hong Kong team, including the administration of Asia-related arbitration cases. In addition, she was appointed Vice-President of the Asia Pacific Regional Arbitration Group (APRAG) from 2016 to 2019. Before that, she worked as Deputy Counsel of the Secretariat of the ICC Court in Paris and was one of the founding members of the ICC Court Secretariat's first overseas case management team based in Hong Kong (2008). She holds a master's degree in international business law from the University Paris I Panthéon-Sorbonne and a postgraduate degree in International Relations from the University of Marne-la-Vallee (France). She is qualified to practice at the Paris bar.

**Session 6****Nina P. Mocheva, Panelist**

Nina P. Mocheva is a Senior Financial Sector Specialist with the Debt Resolution & Insolvency team of the WBG and is based in Washington DC. Nina Mocheva is a dual-trained lawyer in civil and common law jurisdictions and focuses on assisting World Bank members in improving their insolvency and debt resolution regimes, as well as in implementing alternative dispute resolution (ADR) mechanisms, such as commercial arbitration and commercial mediation (private and court-connected). Nina Mocheva was involved in the recent insolvency and debt resolution legislative reforms in Viet Nam, Lao PDR, Egypt, and Liberia, among others. She is

particularly interested in the intersection between insolvency, debt enforcement, and alternative dispute resolution and has published extensively on these topics.

Before joining the World Bank Group, Nina worked in international arbitration and litigation with a major law firm in Washington DC. She advised sovereign states and private parties on international dispute resolution relating to foreign investment. She is a CEDR-accredited mediator and has delivered numerous workshops on commercial mediation for practitioners and policymakers. She holds an LL.M. degree in International Legal Studies from Georgetown University Law School as a Fulbright scholar and a master's in law degree from Sofia University, Bulgaria. She speaks English, Spanish, and Bulgarian and has a working knowledge of Russian.