

2nd Asian Forum of Legislative Information Affairs

Toward Co-existence and Co-prosperity in Asia through Advanced Legislation

27~29 June 2012
KINTEX, Korea

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제2회 아시아법제포럼

법제선진화를 통한 아시아의 공존과 번영

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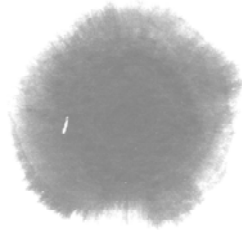


Opening Ceremony

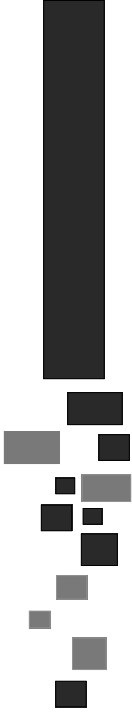
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Opening Ceremony



Opening Address

Sun Tae JEONG

Minister of Government Legislation

Opening Address



Honorable Excellencies,
Distinguished guests,
Dear ladies and gentlemen,

With great pleasure I welcome you all to the 2nd Asian Forum of Legislative Information Affairs. I would like to extend my deep appreciation to Prime Minister Kim Hwang-sik who graced the occasion despite his busy schedule and legislative representatives from participating countries. I am also very pleased to be joined by ambassadors and distinguished guests representing governments, corporations, industry, and academia.

The 1st Asian Forum of Legislative Information Affairs that was held in Song-do, Incheon last year and attended by more than 2,500 participants from over 30 different countries marked an historic moment, exploring ways to facilitate co-existence and co-prosperity across Asia through legislative advancement.

It is delightful to see the vision of the 1st Asian Forum of Legislative Information Affairs materialize in increasingly sharing legislative expertise and experiences and strengthening legislative exchanges and cooperation between participating countries.

In this regard, I am honored to once again host the 2nd Asian Forum of Legislative Information Affairs in KINTEX, Goyang city, Korea, under the theme of “Toward Co-existence and Co-prosperity across Asia through Legislative Advancement” with honorable guests who share the same vision.

The 2nd Asian Forum, divided into two parts, main and thematic session, particularly highlights the 4 main sessions such as economic development and legislation, corporate legislation, legislative participation, legislative exchanges and cooperation for foreign residents. And it features 11 thematic sessions such as agricultural modernization, legislative



assessment, promoting small and medium-sized enterprises, land and construction related legislation, disaster prevention and reduction, inter-Korean legislation, green growth legislation, municipal ordinance and rule, legislative advancement, international taxation, the Korean Public Law Association. We have pragmatically helpful and informative programs planned for state and government agencies, public organizations, academia, industry, legal profession, and expert organizations.

The thematic sessions agendas have been carefully selected through close consultation with experts and international and domestic institutions and agencies concerned. They also include varying and practical agendas such as agricultural sector which is required to respond to the influence of FTA and climate change and small and medium-sized enterprise sector which is integral for the collective growth of industry.

Hence, we confidently expect that practical discussions and vibrant legislative dialogues that offer viable solutions for legislative advancement will continue throughout the Forum.

Evidently, Asia is stepping into the limelight in the 21st century in many aspects of economic, social, and cultural life. In order to play a pivotal role in shaping our global society, extensive sharing of experiences of legislative advancement and knowledge in various fields is essential. Further, to mount the horizon on the global trend, intensive exchanges and cooperation in the field of legislation which serves as the crux of policy decision-making are of utmost importance.

This is accounted for by the facts that legislation lays the legal framework of economic and social systems, and as an invisible social infrastructure which concretizes government policy for citizens and corporations, advanced legislation is part and parcel of a national development strategy.

Asian Forum of Legislative Information Affairs is a de facto cooperative entity that has the goals of transcending political, economic, social and legal particularities and historical, cultural, and lingual differences and being committed to exchanging ideas and practices on advanced legislations.



Along the path, we strive to synthesize and harmonize such differences, while strategically crafting an optimal legislative model which successfully embodies the shared values and common good of humanity.

Ultimately, we should apply such legislative models to bolster our development aspirations with the extended goal of building up a cooperative community among Asian nations.

I believe that the significance of the Forum lies in the fact that it entails in-depth discussions and leads to cogent results.

With the aim of inheriting and consolidating the vision of the 1st Asian Forum of Legislative Information Affairs, “Toward Co-existence and Co-prosperity across Asian through Legislative Advancement,” the Ministry of Government Legislation has organized the 2nd Asian Forum of Legislative Information Affairs in cooperation with the National Research Council for Economics, Humanities and Social Sciences and the Korean Public Law Association.

Specifically, the AFOLIA task force was setup early this year to lay the ground work for the 2nd AFOLIA. In February of this year, a liaison meeting was held with the staff of foreign diplomatic missions in Korea during which the salience and principal agendas of the Forum was agreed.

Thanks to fruitful exchanges with China, Australia, New Zealand, Cambodia, Myanmar, Uzbekistan, and Vietnam, legislative dialogue and cooperation are steadily being concretized.

Particularly, we have also strengthened academic exchanges and cooperation by concluding a series of Memorandum of Understanding (MOU) with China University of Political Science and Law and Renmin University of China as well as relevant Chinese legislative agencies, celebrating the 10th anniversary of Korea-China legislative exchanges.

Likewise, since the 1st Asian Forum of Legislative Information Affairs, we have continued to establish cooperative relationships by building extensive network with a wide range of international and domestic legislative institutions, legal professions, academia, research institutes, and industry. The hosting of the 2nd Asian Forum of Legislative



Information Affairs is credited to the international and domestic legislative institutions and organizations and experts that provided wholehearted support for the AFOLIA.

Despite being in its infancy, in view of the focused interest and passion, there is very strong faith in it evolving into a vibrant hub for legislative exchanges and cooperation among Asian nations and serving as an indispensable platform for academic research and its practical implications.

I also strongly hope that it will grow into an internationally recognized forum, just as the Asian Development Bank (ADB) and the Association of Southeast Asian Nations (ASEAN) did.

Hopefully, in a spirit of good faith and mutual partnerships, China, Japan, and sister East Asian countries would actively contribute to making AFOLIA come to stay.

Above all, I wish that the Asian Forum of Legislative Information Affairs will serve to entrench the rule of law, provide a powerful source of inspiration for peace and reconciliation, and fertile soil for co-existence and co-prosperity across Asia.

It is indeed my hope that through constant interactive dialogue, beyond state-to-state commodity-oriented support of the past years, the spirit of fluid exchanges of advanced legislation will be ignited, through which each country achieves fundamental sustainable developmental support.

In this regard, I wish all the participants fruitful discussions and a productive forum.

I take this opportunity to express my sincere gratitude to the international and domestic institutions and organizations and the honorable guests for supporting the 2nd Asian Forum of Legislative Information Affairs materially and spiritually with keen interest.

Going forward, it is my sincerest hope that the vision and commitment of the AFOLIA will continue to be embodied and the AFOLIA will serve as a catalyst for co-development and co-prosperity across Asia.





In closing, I humbly request your continued interest and participation in the Asian Forum of Legislative Information Affairs, and wish you every success and happiness in all your future endeavors.

Thank you very much.





개회사



친애하고 존경하는 내외귀빈 여러분! 안녕하십니까? 반갑습니다.

바쁘신 가운데서도 작년에 이어 올해에도 아시아법제포럼에 참석하여 자리를 빛내주신 김황식 국무총리님, 아시아의 법제를 책임지고 있는 각국의 법제기관 대표자 여러분, 그리고 이 자리를 함께 해 주신 각국의 대사, 정부기관과 기업 등 산업계와 학계 관계자 등 국내외 귀빈 여러분들께 감사드리며 진심으로 환영합니다.

작년 30여개국의 정부 대표와 각계 2,500여명이 참석한 가운데, 대한민국 인천 송도에서 개최된 제1회 아시아법제포럼은 ‘법제선진화를 통한 아시아의 공생과 공영의 길을 모색’하는 역사적인 첫 모임이었습니다.

아시아 각국의 법제 경험과 노하우를 공유하고 선진법제를 중심으로 아시아 각국 간에 법제 교류·협력이 실질적으로 강화되는 등 제1회 아시아법제포럼의 성과가 구체적이고 현실적으로 나타나고 있습니다.

이런 시점에서 오늘 대한민국 경기도 고양 킨텍스에서, 뜻을 함께하는 내외 귀빈 여러분들을 모시고, ‘법제선진화를 통한 아시아의 공존과 번영’(부제: 경제·사회 발전을 위한 아시아 국가의 법제적 대응)이라는 주제로, 제2회 아시아법제포럼(AFOLIA, The 2nd Asian Forum of Legislative Information Affairs)을 개최하게 된 것을 매우 뜻깊게 생각합니다.

특히 제2회 포럼에서는 분과회의를 강화하면서, 주요 분과(경제발전, 기업, 입법 참여, 외국인 교류·협력 법제)와 주제별 분과[농촌근대화, 입법평가, 중소기업 육성, 토지·건설, 재난방지, 남북, 녹색성장, 자치법규 법제, 입법선진화 포럼, 국제조세, 한국공법학회 분과 법제(정당 법제, 에너지 법제, 지방자치 법제, 행정소송법, 토지공법)]로 나누어 총 15개 분과회의를 운영할 예정이고, 국가·정부 기관은 물론, 공공기관, 학계, 산업계, 법조계, 전문가 단체 등에 실질적으로 도움이 되는 유익한 프로그램을 준비하고 있습니다.

그동안 국내외 기관·단체 및 전문가들과 긴밀히 협의하여 결정한 분과별 주제는 자유무역 협정과 기후변화 등에 대응하기 위한 농업 분야와 동반성장을 위해 산업계가 필요로 하는 중



소기업 분야 등에서 발굴한 다양하고 실용적인 것들입니다.

따라서 분과회의에서는 분야별 주요 법제의 발전 방향에 대해 실제로 도움이 되는 실용적인 논의가 이루어지고 법제정보의 활발한 교류가 있게 될 것입니다.

21세기 아시아는 경제, 사회, 문화 등 모든 분야에서 세계에서 가장 주목받는 지역으로 떠오르고 있습니다. 이러한 아시아가 세계의 메가트렌드(Mega Trend)를 주도하면서 의미있는 역할을 하기 위해서는, 아시아 국가 간에 선진법제의 구축 경험과 다양한 분야의 지식을 함께 나눌 필요가 있고, 특히 정책의 결정체인 법제 분야에서의 교류·협력이 무엇보다도 중요하다고 봅니다.

법제는 경제·사회 제도의 기본적인 틀을 만들고, 국민과 기업이 체감할 수 있는 정부 정책을 구체화하는 ‘보이지 않는 사회적 인프라(invisible social infra)’로서, 국가발전을 위해서는 선진화된 법제가 필수불가결한 요소이기 때문입니다.

아시아법제포럼은 아시아 국가의 다양한 정치체제, 법체계, 정치·경제·사회 법제도와 역사·문화·언어 등의 차이를 극복하면서 한 자리에 모여, 각국에서 구축한 선진법제를 비교하고 논의하는 실질적인 협력체입니다.

그런 가운데 한 단계 높은 차원에서 다양한 차이를 융합하고 조화시키면서 아시아 각국의 공동 발전과 공존·공영, 나아가 인류의 공통 선(善)과 공통의 가치가 충분히 반영된 최적의 입법모델을 만들어 나갈 것입니다.

궁극적으로는 각국에서 그러한 분야별 입법모델의 적용을 확대해 나가면서 아시아권의 경제·사회 발전을 도모하고, ‘아시아 국가 간 협력 공동체’를 이루어야 할 것입니다.

아시아법제포럼은 이러한 방안들을 심도 있게 논의하여 생산적인 결과를 만들어 내는 장(場)이라고 생각하고 그런 점에서 의미가 크다고 생각합니다.

‘법제선진화를 통한 아시아의 공생과 공영의 길 모색’이라는 제1회 아시아법제포럼의 비전을 계승·발전·정착시키기 위해, 대한민국 법제처는 약 7개월간의 짧은 기간에 경제인문사회연구회 및 한국공법학회와 함께 제2회 아시아법제포럼을 준비하게 되었습니다.

법제처는 올해 1월 초에 ‘제2회 아시아법제포럼 준비기획단’을 출범시켜, 제2회 포럼의 개최 계획을 수립하고 필요한 준비를 본격적으로 시작해 왔습니다. 지난 2월에는 주한 대사관



연락관 회의를 개최하여 제2회 아시아법제포럼의 필요성과 논의할 주요 의제에 대해 아시아 각국과 공감대를 넓혀 왔습니다.

또 중국, 호주, 뉴질랜드, 캄보디아, 미얀마, 우즈베키스탄, 베트남 등 여러 나라의 법제기구와는 상호 방문과 개별 법제에 대한 지원 등을 통해서 법제를 통한 교류와 협력이 구체화되어 나가고 있습니다.

특히, 법제 교류 10년째를 맞이하는 중국과는 법제기관 간은 물론, 정법대·인민대 등과는 협정(MOU)을 체결하는 등 학계와의 교류·협력도 강화해 왔습니다.

이와 같이 제1회 아시아법제포럼 이후 국내외 법제기관, 법조계, 학계, 연구계, 산업계 등 다양한 기관·단체와의 폭넓은 네트워크와 채널의 구축을 통해 긴밀한 협력 관계를 구축해 왔습니다. 이러한 과정에서 국내외 각계의 기관·단체와 전문가들의 전폭적인 지원과 도움을 받아 오늘 이렇게 제2회 아시아법제포럼을 개최할 수 있게 된 것입니다.

아시아법제포럼은 아직 제2회에 불과하지만, 이 포럼에 대한 뜨거운 관심과 열정을 토대로, 아시아 국가 간 법제 교류·협력의 허브, 즉 실무적으로나 학문적으로 꼭 필요한 플랫폼(Platform)을 제공하는 역할을 할 것입니다.

또한, 아시아개발은행(ADB)과 동남아국가연합(ASEAN) 등은 물론, 세계가 인정하는 법제 분야 국제회의체로 당당히 자리잡아 나갈 수 있을 것이라고 확신합니다.

그리고 대한민국에서의 두 번의 포럼으로 구축된 협력 체계와 공감대를 바탕으로 향후 중국과 일본, 동남아시아 등 주요 국가가 중심이 되어 아시아법제포럼을 더욱 더 발전적으로 계승해 주실 것으로 기대합니다.

무엇보다도 아시아법제포럼이 경제·사회 발전을 위한 법제적 협력을 넘어, 아시아 선진 법치주의 발전과 이를 통한 아시아의 화합과 평화, 공존과 번영을 위한 소중한 밑거름이 되었으면 합니다.

또한, 과거와 같이 국가 간 물자(物資) 위주의 지원이 아니라, 상호 소통하는 가운데, ‘선진화된 법제도’의 수출과 수입 등의 교류가 활성화되어 각국이 지속적이고 근본적인 도움을 받을 수 있게 되었으면 하는 바람입니다.

이런 점에서 이번에 참석하신 모든 분들에게 아시아법제포럼이 매우 생산적이고 유익한 회



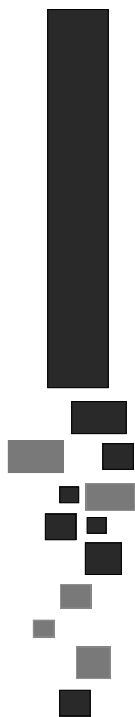
의가 되었으면 합니다.

그동안 제2회 아시아법제포럼이 개최되기까지 많은 관심을 가져 주시고 물심양면으로 도움을 주신 국내외 기관·단체와 참석해 주신 귀빈 여러분들께 이 자리를 빌려 진심으로 감사의 말씀을 드립니다.

앞으로도 아시아 각국의 든든한 지원속에 아시아법제포럼이 출범한 의미가 현실화되고 아시아법제포럼이 아시아 각국의 공동 발전과 번영의 중요한 촉매제가 되기를 바랍니다.

아울러 이 자리에 계신 국내외 귀빈 여러분들께서도 아시아법제포럼에 대한 지속적인 관심과 참여를 부탁드립니다, 여러분들이 하시는 일에 큰 발전 있고 내내 행복하시기를 기원합니다.

감사합니다.

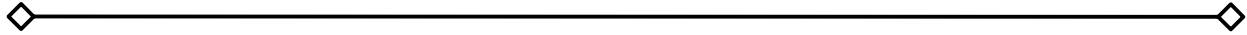


Welcoming Remarks

Chin Keun PARK

Chairperson of NRCS

Welcoming Remarks



I. Greeting introduction:

Honorable Excellencies,
Distinguished guests,
Dear participants,

I am very pleased to welcome you to the 2nd Asian Forum of Legislative Information Affairs. I also appreciate you taking time from your busy working schedule to participate in this Forum.

I would like to extend my heartfelt felicitations to you on the occasion of the 2nd Asian Forum of Legislative Information Affairs, and my gratitude to co-hosts, Korean Public Law Association, National Research Council for Economics, Humanities and Social Science, and other co-sponsoring organizations.

As you are already aware, a new era of global evolution increasingly requires all Asian countries to assume ever more important roles and responsibilities.

In particular, with social structural diversification and economic expansion, laws and legal systems are becoming more and more important.

In this crucial transitional phase, I reckon that, this Forum that addresses co-prosperity and co-existence through legislative advancement across Asia will be of great primacy in charting the glamorous future of Asia.



II. Legislative dialogue and advancement across Asia :

Distinguished participants of the Forum,

In the midst of history's whirlwind and a comparatively short period of time, the Republic of Korea has achieved economic empowerment and legislative advancement, acting with dynamism and diligence, which set the stage for the consolidation of the rule of law in Korea.

Duly responding to the rapidly changing social and environmental conditions such as financial crises and climate change, we endeavour to refine legislations that are tailored to the unique characteristics of Asian countries and incorporate global standards for harmonious co-existence in the global community.

Indeed, rather than striving to emulate developed countries' legislations and policies, today, we commit ourselves to advancing legislations which embody our expectations and entrench our aspirations.

If such efforts are synthesized with cooperative dialogue among Asian countries and shared expertise and experiences of economic growth, democratization, and legislative advancement of the Republic of Korea, I am confident that they will ultimately crystallize into closing the existing gulf between developed countries and developing countries for the good of co-prosperity and co-existence across Asia. This is also the target vision of the 2nd Asian Forum of Legislative Information Affairs.

Furthermore, I expect that the plenary and main session of the Forum such as "economic and social development and legislation," "corporate legislation," "legislative participation." and "legislative support for foreign residents" will help to deepen the scope of our understanding of other countries' legislations, seek out possibilities for dialogue, and explore cooperative partnerships.



III. In closing

Distinguished guests from legislative organizations from over 30 Asian countries,

Once again, I welcome you all to the Forum. I am certainly grateful to Law Information Service, Korea Legislation Research Institute, Korea Development Institute, Korea Transport Institute, Global Green Growth Institute as well as sponsoring organizations.

I hope that today's Forum will lay a new cornerstone for facilitating co-existence and co-prosperity across Asia.

In closing, I wish you good health and happiness and may you all have a productive and fruitful forum.

Thank you very much.

June 2012
NRCS Chairperson/CEO
Park Chin-keun



환영사



1. 인사 말씀

이 자리에 참석해주신 내외 귀빈 여러분!

먼저 오늘 바쁘신 가운데도 금일포럼에 참석해 주신 모든 분들을 진심으로 환영합니다.

더불어

제2회 아시아법제포럼 개최를 축하드리며

오늘 포럼을 저희 경제·인문사회연구회와

공동으로 주최하는 법제처와 경제·인문사회연구회,

한국공법학회 그리고 공동주관기관 및 후원기관에도

감사의 말씀을 드립니다.

여러분들도 아시다시피,

발전하는 세계무대 속에서 아시아의 모든 국가들은

점점 더 중요한 역할과 책임을 부여받고 있습니다.

특히, 사회구조의 다변화 및 경제규모의 확대로 인하여

법과 제도의 중요성이 더욱 강조되고 있습니다.

이러한 변화의 시점에서

법제선진화를 통한 아시아의 공존과

번영에 대해 논의하는 금번 포럼은

공동의 미래를 위해 매우 중요한 가치를 지닐 것이라 생각합니다.



2. 아시아 각국의 법제정보 교류와 법제선진화

존경하는 내외 귀빈 여러분!

대한민국은 깊은 역사의 소용돌이 속에서도
특유의 역동성과 성실함을 바탕으로
비교적 단기간 동안 경제발전과 법제선진화를 이뤄내어
탄탄한 법치주의의 전통을 새롭게 형성하였습니다.

금융위기나 기후변화와 같이
급변하는 시대 상황에 발맞추어
아시아적 특성에 적합하고,
세계와 함께 공존할 수 있는,
글로벌 스탠다드를 반영한
법제 또한 마련하고 있습니다.

이제는 선진국의 법제와 정책을 따라가는 것이 아니라,
우리의 기대와 열린 미래의 가능성을 담은 법제도
선진화를 추구하고 있습니다.

그리고 이러한 노력은
아시아 각국과의 교류를 통하여
대한민국의 경제발전과 민주화 과정,
법제 선진화의 경험을 공유함으로써
선진국과 개도국간의 가교 역할을 수행하고
궁극적으로는 아시아의 공존과 번영을 도모하는데
기여할 것으로 기대하고 있습니다.
이는 이번 아시아법제포럼이 목적하는 바이기도 합니다.

나아가
포럼의 본회의 및 분과회의에서 테마로 다루고 있는
‘경제발전과 법제’, ‘기업법제’,
‘입법참여법제’, ‘외국인 협력법제’ 등의
세부부문에 있어서도



아시아 각국의 법제에 대한 이해의 폭을 넓히고,
상호교류 가능성을 타진하여,
협력방안을 모색할 수 있을 것으로 기대합니다.

3. 맺음 말씀

이 자리에 함께하신
아시아 30여 개국의
법제관련 기관에서 오신 **귀빈 여러분!**
다시 한 번 환영의 말씀을 드립니다.

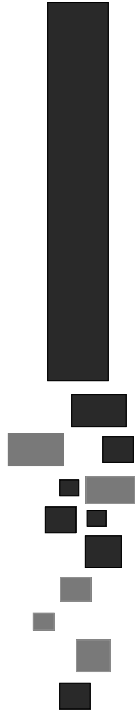
이번 포럼을 위하여
많은 기관에서 참여하여 주셨습니다.
공동주관을 맡아주신
법령정보관리원, 한국법제연구원, KDI, 한국교통연구원,
Global Green Growth Institute에 깊은 감사를 드립니다.
후원해주신 관계기관에도 감사를 드립니다.

오늘 포럼이
아시아의 공존과 번영을 위한 시금석이 되길 기대합니다.

아무쪼록 알차고 유익한 성과를 거두기 바라며
여러분 모두의 건강과 행복을 기원합니다.

감사합니다.



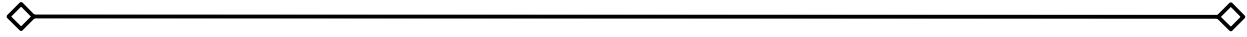


Welcoming Remarks

Joon Hyung HONG

President of the Korean Public Law Association

Welcoming Remarks



It is my great pleasure to extend congratulations for hosting the 2nd Asian Forum of Legislative Information Affairs, under the theme of "Legislative Initiative for Economic and Social Development across Asia." I also warmly welcome all the distinguished guests and participants, especially government leaders, legislative representatives and experts, domestic and international scholars of legislation and public law, representatives of relevant institutions and international organizations, and members of the Korean Public Law Association.

As President of the Korean Public Law Association, which represents the Republic of Korea in the field of public law, it is such an honor and privilege to serve as co-host of the Asian Forum of Legislative Information Affairs.

I take this opportunity to express my sincere gratitude to Minister of Government Legislation, JeongSun-tae, executive officials, and staff of the Ministry who have been spearheading this Forum with zealous and critical mindset to launch a new Asian era toward co-prosperity and betterment of Asia through legislative dialogue and cooperation.

The 2nd Asian Forum of Legislative Information Affairs focuses on exploring how legislative systems are indispensable in facilitating socio-economic development and its specific functions in the process. As you see in the program booklet, the Forum highlights a wide range of agenda such as socio-economic development and legislation, agricultural modernization, promoting small and medium-sized enterprises, green growth, disaster prevention and reduction. Through various presentations and vibrant discussions, we will explore and lay out practical alternatives tailored to reflect the peculiarities of respective countries' conditions and developmental directions.

Legislation has historically been the cradle of the state's capacity to entrench itself in all forms of solution for the purpose of maintaining social order and resolving many challenges and pending issues. Needless to say, there are no universal and absolute standards when talking about legislations. However, when we earnestly examine the diverse pool national legislations, evaluate their strengths and weakness, and collaborate to find better alternatives, indeed, in an open-minded progressive way, I am confident that we stand a good chance of understanding the nature of each country's challenges and pending issues,



consequently enabling us to identify possible solutions to them. Also, it will help to pave a new collaborative Silk Road, which expedites a constant and seamless dialogue across Asia.

The Republic of Korea, coming out of the ruins of war just 6 decades ago, has empowered its economy, initiated state-of-the-art industrial and technological developments, and achieved democratic renaissance. In today's sense, our resolve is to consolidate the gains attained over the years, in conscientiously transforming into a world-class nation. Along this path, legislation played a substantial role in institutionally supporting such efforts. As result of many relentless trial-and-error endeavors, we learned and achieved a great deal.

The Asian Forum of Legislative Information Affairs will provide a venue where knowledge, lessons, and experiences learned in such process are shared and better initiatives and visions are discovered.

We are well aware that despite historical, cultural, religious, and socio-economic differences, solutions to the challenges facing Asian countries share many things in common. When we put our heads together and keep an open mind, I am confident that we will have innovative solutions and alternatives.

Once again, congratulations on hosting the Asian Forum of Legislative Information Affairs. Now we take the first step together toward open dialogue, inspirational learning, and constructive collaboration. I would like to express my deep appreciation once again to all the guests and participants who graced the occasion with your presence.

I wish you all happiness, success, and well-being.

Thank you.

June 27, 2012

Hong Joon-hyung

President of the Korean Public Law Association

Professor at Seoul National University



환영사

제2차 아시아법제포럼 환영사

오늘 “경제·사회발전을 위한 아시아의 법제적 대응”이란 주제로 제2회 아시아법제포럼이 개최됨을 축하드립니다. 아울러 이 자리를 빛내주신 내외 귀빈 여러분, 특히 아시아 각국을 대표하여 이 자리에 참석해 주신 정부 각료, 법제 분야 대표자와 전문가 여러분, 법제와 공법 분야 국내외 학자와 공직자, 관련 기관과 국제기구의 대표자, 한국공법학회 회원 여러분을 진심으로 환영합니다. 공법 분야에 있어 한국을 대표해온 한국공법학회의 입장에서, 그리고 학회를 책임 맡은 회장으로서 이번에 법제처, 경제인문사회연구회와 더불어 아시아법제포럼을 공동 주최하게 된 것은 크나큰 영광이자 보람된 기회입니다. 법제 분야에서의 교류와 협력을 통해 공동발전과 선진화를 향한, 새로운 아시아 시대를 열어가겠다는 실천적 문제의식과 열정으로 이 포럼을 주도적으로 준비해 주신 법제처의 정선태 처장님과 간부, 직원 여러분께도 진심으로 축하와 감사의 마음을 전하고자 합니다.

제2회 아시아법제포럼은 경제와 사회의 공영발전을 위해 법제가 어떻게 기여할 수 있으며 그 과정에서 법제가 어떠한 역할을 수행해 나가야 하는가라는 문제를 함께 풀어보고자 합니다. 이미 프로그램에서 볼 수 있는 바와 같이 경제·사회발전과 법제, 농촌근대화, 중소기업 육성, 녹색성장, 재난방지 등 다양한 의제들에 대한 발표와 토론을 통해 각국의 여건과 발전방향에 맞는 실천적 대안을 모색할 예정입니다.

법제는 각국이 국가와 사회의 구조와 질서를 유지하고 다양한 과제와 현안들을 해결하기 위하여 발전시켜 온 해법이라 할 수 있습니다. 법제에 관한 한, 보편적이고 절대적인 지선지고의 기준이 있는 것은 아니지만, 우리가 열린 마음, 진취적인 의지로 마주 앉아 각국의 법제를 서로 비교하고 장단점을 평가하여 더 나은 방법이 있는지 함께 궁리한다면 각국이 안고 있는 과제나 현안의 성격을 이해할 수 있고 또 함께 그 해결방법을 찾아 낼 수 있는 계기가 열릴 수 있습니다. 그리고 이를 통해 아시아 국가 상호간에 훨씬 더 심화된 새로운 협력의 실크로드를 놓고 자유롭게 오갈 수 있을 것입니다.

대한민국은 60여 년 전 전쟁의 폐허에서 경제를 일으켜 첨단 산업과 과학기술, 민주주의의 르네상스를 선도하며 선진국을 지향하여 발전하기 위해 노력하고 있습니다. 그러한 과정에서



대한민국의 법제는 이 모든 노력을 법제도적 측면에서 확고히 뒷받침해왔고 또 새로운 발전의 틀로서 본연의 소임을 다해 왔습니다. 실패와 시행착오도 없지 않았지만 성과와 교훈도 적지 않았습니다.

아시아법제포럼은 이러한 과정에서 얻은 지혜와 교훈, ‘노하우’(Know How)를 함께 공유하고 또 서로 비교하여 배우고 더 나은 방안, 더 나은 비전을 찾아 나서는 기회의 장이 될 것입니다.

우리는 잘 알고 있습니다. 아시아 각국이 직면해온 문제와 그 문제에 대한 해결책은, 각국의 역사적, 문화·종교적, 정치경제적 특성과 차이에도 불구하고, 많은 부분에서 공통점을 가지고 있다는 것을. 우리가 함께 가슴을 열고 머리를 맞대면 훌륭한 해결책과 새로운 대안을 찾아 낼 수 있을 것입니다.

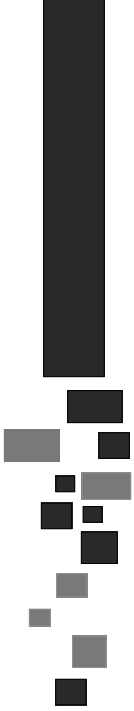
다시 한 번 아시아법제포럼의 개최를 축하드리면서, 포럼에 참가해 주신 모든 분들과 함께 열린 마음으로 상호 교류와 학습, 공동작업을 시작하고자 합니다. 아시아법제포럼의 성공적 개최를 위해 이 자리를 빛내 주신 모든 분들에게 다시 한 번 충심으로 감사드립니다.

여러분의 건강과 행복, 그리고 성공을 기원합니다. 감사합니다.

2012.6.27.

홍 준 형
한국공법학회 회장·서울대학교 교수



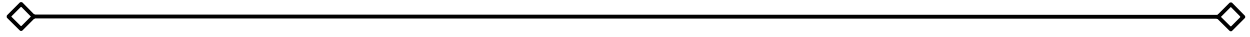


Congratulatory Remark

Hwang-sik KIM

Prime Minister

치사



여러분, 안녕하십니까.

올해로 두 번째를 맞은
「아시아법제포럼」 개막을 축하합니다.

포럼 참석을 위해 먼 길을 오신
아시아 각국의 법제기관 대표 여러분을
진심으로 환영합니다.

아울러, 아시아 국가들의 법제 교류와 발전을 위해
자리를 함께하신 법제 전문가와 주한 외교사절들께도
감사 말씀을 드립니다.

「아시아법제포럼」은
작년 11월 첫 회의 이후 짧은 기간 동안
아시아의 공동 발전을 위한 중요한 협력체로
자리 잡아 가고 있습니다.

이러한 진척 속에
오늘 각국 법제기관과 전문가들이
각국의 다양한 법제적 경험과 노하우를 공유하기 위해

다시 한 자리에 모이게 된 것은
매우 뜻 깊은 일입니다.

내외 귀빈 여러분!

지금 아시아는 다른 어느 지역보다도
역동적으로 변화하고 있으며,
세계 정치경제의 중심무대로 빠르게 이동하고 있습니다.



역내국들 간 상호작용도
어느 때보다 활발하게 이뤄지고 있습니다.

그러나 이러한 추세들이
당연히 ‘아시아의 시대’를 보장하는 것은
아닙니다.
진정으로 ‘아시아의 시대’가 도래하려면,
역내국들의 제도가
보다 안정적인 기초 위에서 이뤄질 필요가 있습니다.

그래야만 국제사회의 신뢰가 생기고
국제사회로부터의 투자와 같은 것들도
보다 안정적인 기초 위에서 이뤄질 수 있습니다.

역내 국가들끼리의 관계 역시 마찬가지입니다.

이런 것들을 가능하게 하는 것이
바로 법제도입니다.
세계은행이 ‘법치주의(Rule of Law) 지수가 높을수록
경제·사회 발전의 수준이 높다’고 한 것도
이러한 까닭입니다.

그러나 아시아 국가들은,
유럽과는 달리 발전단계도 다르고
고유의 법제를 유지해온 나라들이 많기 때문에,

각기 다른 법제나 선진 법제에 대한 이해를 넓히고
토론을 통해 발전을 도모해 나가는 것은
아시아의 공존과 번영을 위한
선결과제가 아닐 수 없습니다.
아울러 기후변화와 녹색성장, 다문화사회와 같은
새로운 도전들에 대해서도
이를 공동으로 대응하기 위한



법제적 노력이 필요하다고 할 것입니다.

그런 점에서 이번 제2차 포럼이 이러한 주제들까지 포함하고 있는 것은 매우 시의적절한 일입니다.

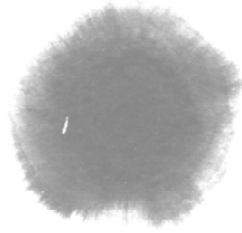
아무쪼록, 자유무역협정으로 국가들 간 교역이 크게 늘어나고 있고, 또 세계적인 경제위기를 함께 고민해야 하는 시점에서, 이번 제2차 포럼이 각국의 법제 선진화와 법치주의 발전에 크게 기여하는 계기가 되길 바랍니다.

나아가 「아시아 법제포럼」이 아시아 국가들의 실질적인 교류·협력을 뒷받침하는 허브로서 더욱 성장해 나가길 기원합니다.

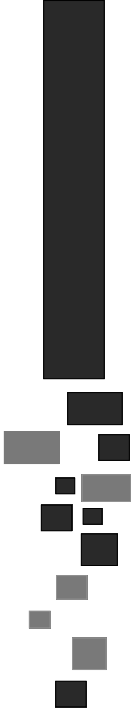
다시 한 번 각국의 법제기관 대표 및 전문가 여러분의 방한을 환영합니다.

감사합니다.

국무총리 김 황 식



Opening Plenary Session



Greeting Remarks



Bangladesh

- ▶ Shafique AHMED
- ▶ Minister of Law, Justice and Parliamentary Affairs



Name : SHAFIQUE AHMED

Current Position : MINISTER

Department / Organization : MINISTRY OF LAW, JUSTICE &
PARLIAMENTARY AFFAIRS
GOVERNMENT OF BANGLADESH

Education

- BA (honours) MA (1st class)
- LL. B. LL. M. (King College, London)
- Bar at law, Lincon's Inn, London.

Employment

- Barrister
- Advocate, Supreme Court of Bangladesh
- Visiting Professor, Department of Law, University of Dhaka.
- Principal, Dhaka City Law College (1973-2005)

Awards

- Secretary General, Law Teachers Association of Bangladesh

Barrister Shafique Ahmed

Minister, Ministry of Law, Justice & Parliamentary Affairs
Government of the Peoples Republic of Bangladesh.

A technocrat minister of the government actively engaged in the constitutional reform and other legal reforms of Bangladesh having extensive experience in Law practice in the Supreme Court of Bangladesh. A robust intellectual in the maze of legal philosophy and policy formulation having core experience in Constitutional and commercial law issues. An active law researcher with a phenomenal aptitude in teaching law throughout the whole career. Mandated to carry through Vision 2021 encompassed by the government to meet the target of Millennium Development Goal. Core technical skills in adjudicating procedure and hurdles coupled with communications, research and management skills with solid experience of building cross sectoral networks.

Proven ability to develop stakeholder consensus.

Career and Academics

Barrister Shafique Ahmed passed his secondary and higher secondary level with brilliant results and did his graduation in geography with honours from the University of Dhaka in 1958 and Masters from the same department in 1959. He obtained LL.B degree from the same university and did LLM from the King's College, London. He was called to the Bar from Lincoln's Inn, London in 1967.

He started practice as a lawyer in erstwhile East Pakistan High Court in 1967. He was enrolled as an Advocate of the Supreme Court of Bangladesh. Throughout the career till date, Barrister Shafique was elected the President of the Supreme Court Bar Association in 1999-2000 and 2008-2009. He was also elected as the Chairman of Executive Committee of Bangladesh Bar Council and Vice Chairman of Bangladesh bar Council.

Apart from his main course of career he also has the following experiences

- Visiting lecturer in the Department of law in the University of Dhaka
- Principal of Dhaka City Law College for more than three decades (1973-2005).
- Syndicate member of the University of Dhaka from 1989-1991
- President of the Democratic Lawyers Association affiliated to international Association



of Democratic Lawyers.

- President of Dustha Shaystho Kendra (Destitute Health Centre), a reputed NGO in Bangladesh.
- Secretary General of Law Teacher's Association of Bangladesh.



Excellencies

Distinguished Representatives and Participants

Ladies and Gentleman

Good Morning

It is a great honour for me to share our views and experiences with this august assembly.

Bangladesh emerged as an independent and sovereign State through a historic war of liberation on 16 of December, 1971. Within nine months of independence, a Constitution was adopted in the Constituent Assembly on 4th of November, 1972, and the same came into operation on 16 December, 1972. Bangladesh is a unitary, independent, sovereign Republic known as the People's Republic of Bangladesh. The Constitution as the solemn expression of the will of the People was adopted as the Supreme law of the land. If any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency be void.

Bangladesh is a new state in an ancient land with a long political and legal history. Being a part of the British India and 200 years of British role before independence legal and administrative system have predominantly been influenced by British Legal and Administrative system.

THE SYSTEM OF GOVERNMENT IN BANGLADESH

The Constitution of the People's Republic of Bangladesh provides for a Westminster type of democratic and parliamentary system of government.

Constitutionally State manages its affairs through its three organs, namely: the executive, whose role is the implementation of laws and the administration of public affairs; the legislative, which is responsible for the making of laws; and judiciary-which administers justice. Thus each organ of the state has its define power and functions.

Judiciary is independent and completely separate from the executive.



LEGISLATIVE AUTHORITY

I. The President

The President is the Head of the State and in exercise of all his functions save only that of appointment of the Prime Minister and the Chief Justice the President shall act in accordance with the advice of the Prime Minister.

Ordinance making power of the President

At any time when parliament stands dissolved or is not in session, if the President is satisfied that circumstance exists which render immediate action necessary, he may make and promulgate such ordinances as the circumstances appear to require, and any ordinance so made, shall, as from its promulgation shall have the like force of law as an Act of Parliament.

An ordinance is a temporary legislative arrangement. The president cannot make and promulgate an ordinance that could not lawfully have been made under the Constitution by an Act of parliament. Nor can the president make and promulgate an ordinance that alters or repeals any provision of the Constitution, or introduce one that continues in force any provision of an ordinance previously made.



II. The Parliament (House of the Nation)

According to Article 65 (1) of the Bangladesh Constitution Parliament is the sovereign law-making body, and the legislative powers of the Republic are vested in it. Parliament can make any law that is not inconsistent with the Constitution or any provision thereof.

Article 65 of the Constitution provides for the establishment of the unicameral Jatiya Sangsad (Parliament) consisting of 300 directly elected members from single territorial constituencies based upon the principle of universal adult suffrage and additional 50 seats have also been allocated exclusively for the women, who shall be elected by other members of the Parliament in accordance with law on the basis of procedure of proportional representation in the Parliament through single transferable vote.

The Speaker of the House is the Head of the Parliament and elected by the members of Parliament at the first sitting after a general election. There is also an elected deputy speaker of the Parliament.

At least 60 members of Parliament are needed to form a quorum of the House. The language of the House is Bangla, but the speaker may permit any member to address the House in English.

Any citizen of Bangladesh over the age of 25 is qualified to stand for Parliament, but candidates cannot be of unsound mind, insolvent, a foreign citizen or convicted of a serious criminal offence. In addition to these disqualifications, the Representation of the People Order, 1972 (Order CLV of 1972), have specified several other disqualifications for election to Parliament. The tenure of the Parliament is five years, unless dissolved earlier. The prime minister and cabinet as a whole are accountable to the Parliament.



THE MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS- LEGISLATIVE PROCEDURE

According to Rules of Business 1996, The Prime Minister may, whenever necessary, constitute a Ministry consisting of one or more Divisions. The business of the Government shall be distributed among the Ministries/Divisions in the manner as indicated in the Allocation of Business.

The Ministry of Law, Justice and Parliamentary Affairs comprised with the two Divisions, namely:

- (a) Law & Justice Division and
- (b) Legislative and Parliamentary Affairs Division (LAPD).

Functions of Law and Justice Division

1. Advice to all Ministries, Divisions and offices on all legal and Constitutional questions arising out of any case, and on the interpretation of the Constitution and any law including international law.
2. Conventions with other countries on judicial matters
3. Dealings and agreements with other countries and International Organization in judicial matters.
4. Administration of justice.
5. Organization, Jurisdiction and powers of all courts, except revenue courts, tribunals under any law; prize courts and contempt of courts.
6. Appointment and terms and conditions of service of chairman and members of courts and tribunals.
7. Matters relating to the Supreme Court, appointments and terms and conditions of service of the Chief Justice and other Judges.
8. All matters relating to Bangladesh Judicial Service Commission.
9. All matters relating to Judicial Administration Training Institute (JATI).
10. Fees taken in courts and tribunals; judicial stamps; court-fees and stamp duties.
11. Matters relating to Government law officers; appointment and terms and conditions of



service of attorney-general, additional attorney-general, deputy attorney-general, assistant attorney-general, Government pleaders, public prosecutors, special prosecutors and legal advisers to all statutory corporations and bodies.

12. Conduct of cases on behalf of the Government in all courts and tribunals.
13. Will, intestacy and succession.
14. Reciprocal agreements with foreign countries for the services of summons in civil suits and for the execution of decrees of civil courts, for the enforcement of maintenance orders and for the administration of the estates of foreigners dying in Bangladesh.
15. Authorization of officers to sign and verify claims or written statements in suits by or against the Government.
16. Administration of Bangladesh judicial Service including posting, transfer, etc. of judicial officers.
17. Administration and control of subordinate offices and organizations under this Division.
18. Liaison with International Organizations and matters relating to treaties and agreements with other countries and world bodies relating to subjects allotted to this Division.
19. Appointment and terms and conditions of service of administrator-General and Official Trustee; Official Receiver.
20. Inquiries and statistics on any of the subjects allotted to this Division.
21. Fees in respect of any of subjects allotted to this Division except fees taken in courts.
22. Marriage and divorce, infants and minors, adoption, joint family and partition.
23. Legal proceedings and advice thereon.
24. Civil procedure.
25. Criminal law and criminal procedure.
26. Evidence and oath.
27. Trusts and trustees.
28. Arbitration and Limitation.
29. Bankruptcy and insolvency.
30. Transfer of property.
31. Registration
32. Money-lending and money-lenders.
33. Legal aid to the poor, defence of paupers and undefended accused.
34. Secretariat administration including financial matters.



Functions of Legislative and Parliamentary Affairs Division

1. Advice to all Ministries, Divisions and offices on all legal and Constitutional questions arising out of any legislative proposal and on the interpretation of the Constitution and any law including international law related to such proposal.
2. Drafting, scrutiny and opinion on all kinds of Bills, Ordinances, Constitutional Orders, statutory order, rules, regulations, by-laws, resolutions, notifications, any custom or usage having the force of law and any other legal instruments.
3. Drafting, scrutiny and opinion on all contracts and agreements including international contracts, agreements, covenants, memorandum of understanding and all other legal instruments.
4. Interpretation of international treaties, conventions and international legal affairs and matters relating to international arbitration arising out of international treaties contracts, etc.
5. Translations of laws and other statutory rules and orders.
6. Copyrights in Government law publications.
7. Publication of Acts, Ordinances and Constitutional Orders and others Statutory Orders, rules, regulations and other legal instruments.
8. Publication of authorized translation in Bengali of Acts, Ordinances and Constitutional Orders and statutory Orders, rules and regulations.
9. Compilation and publication of unrepealed Acts and Ordinances and Constitutional and President's Orders and other Statutory Orders and regulations.
10. Codification, consolidation, adaption and technical amendment of laws.
11. Posting, transfer, deputation etc. of Legislative Drafting and Translation Officials.
12. Administration and training of Legislative Drafting Officials and other Officials and Staffs employed in the Division.
13. Administration and control of subordinate offices and organizations under this Division.
14. Liaison with International Organization and matters relating to treaties and agreements with other countries and world bodies relating to subjects allotted to this Division.
15. Affairs relating to the Parliament, if required.
16. Inquiries and statistics on any of the subjects allotted to this Division.
17. Fees in respect of any of the subjects allotted to this Division except fees taken in courts.



18. Matters relating to Human Rights and the Human Rights Commission.
19. Office of Ombudsman.
20. All legislative matters relating to Election Commission.
21. Law Commission and Commission on legal matters.
22. Matters relating to Law Reforms.
23. Administration of Information and Communication technology cell.
24. Secretariat Administration including financial matters.
25. Administration of Copyright of all laws of the government.
26. Laws on subjects allotted to this Divisions]

LEGISLATION

Legislative Process

- I. Policy initiated by administrative Ministry: The administrative/requiring Ministry develops the policy underlying a legislative proposal as well as the preliminary draft Bill. In the process of preparation of draft Bill the Ministry consults experts and sometimes even discuss with the stake-holder or relevant Ministry or Divisions.
- ii. Approval by the Cabinet: Draft Bill along with the statement of the policy and principle is brought before the Cabinet for approval.
- iii. Cabinet approval on Principle: After thorough discussion and scrutiny made by the members of the Cabinet may approve the Bill on principle and send the same to legislative and Parliamentary Affairs Division for vetting or the Cabinet may send back the draft Bill for further scrutiny to the concern ministry or for examination by a committee. After completing the necessary scrutiny or examination the Bill will be again placed before the Cabinet and if the Cabinet approves the same, it will be send to the Legislative and Parliamentary Affairs Division, of the Ministry of Law, Justice and Parliamentary Affairs for vetting.
- iv. Preparation of drafting of a Bill: Upon a reference to it of a legislative proposal, the

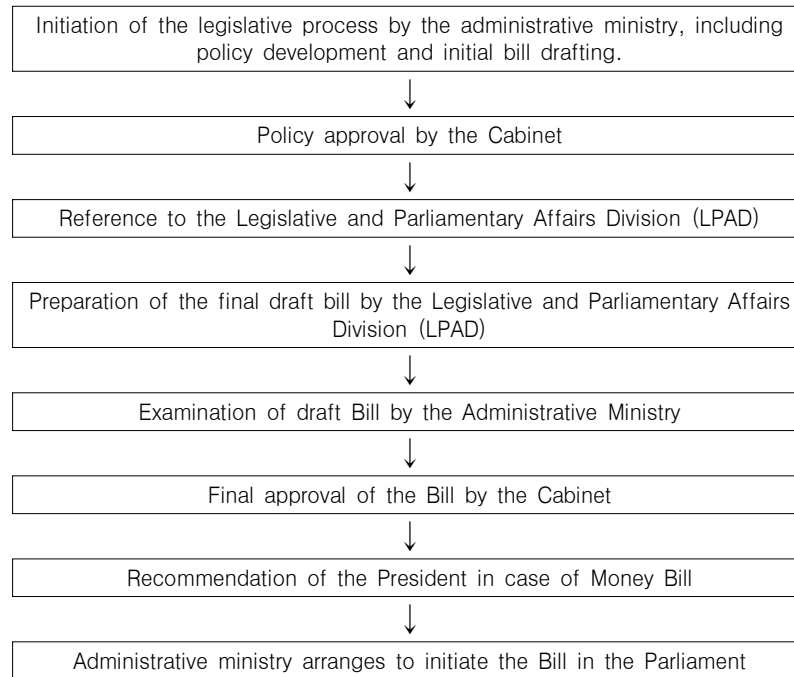


Legislative and Parliamentary Affairs Division (LPAD) will examine it and if finds that the proposal contains no provisions which is ultra vires of the Constitution or inconsistent with the Fundamental Principles of State Policy, it will prepare a draft to fully reflect the proposal. Otherwise it will return the Bill to the administrative Ministry/Division fully recording its opinion.

- v. Final Approval of the Bill by the Cabinet for introduction in the Parliament-When the draft Bill as settled by the Legislative and Parliamentary Affairs Division (LPAD) has been finally approved by the administrative Ministry/Division concerned; it will be submitted to the Council of Ministers for consideration as an official Bill of the government. Once Cabinet gives the Bill its final endorsement, the requiring ministry arranges with Parliament Secretariat to initiate the parliamentary phase if it does not require the recommendation of the President.
- vi. Recommendation of the President-If any Bill requires the recommendation of the president under Article 82 of the Constitution, being a Money-Bill the administrative Ministry/Division concerned shall through the Ministry of Finance, obtain the recommendation of the President for the introduction of the Bill or, as the case may be, the moving of the amendment in the Parliament.
- vii. Notice to the Parliament: After the recommendation of the President has been obtained it will be communicated to the Parliament in the form of notice of the motion for leave to introduce the Bill.



From Legislative Proposal to a Bill



PARLIAMENT PROCEDURE

1. Introduction of Public (Government) Bills:

- (a) A Minister may move for leave to introduce a Bill after giving to the Secretary to the Parliament seven days written notice of his intention to do so., the Speaker for sufficient reasons suspends this rule and allows the motion to be made at a shorter notice.
- (b) The notice shall be accompanied by two copies of the Bill together with a Statement of Objects and Reasons, and if the Bill is one that under Article 82 of the Constitution requires the previous recommendation of the President for its introduction, the notice shall contain a certificate by the Minister that the Bill has been recommended by the President for introduction.



- (c) The motion for leave to introduce the Bill shall be entered in the Orders of the Day of the Parliament.
- (d) When the item is called, the Member-in-Charge shall move for leave to introduce the Bill. A member may object to the initial introduction of a Bill, but this privilege is seldom used.
- (e) After introduction of the Bill the Speaker request the concern Minister who introduced the Bill to pray for sending the Bill for Standing Committee for further scrutiny.

2. Private member's Bill

Private member's Bill is legislative Bills proposed not by government ministers but by private members of Parliament, who may belong to either the government or opposition benches. Any member, other than a Minister, desiring to move for leave, to introduce a Bill, shall give to the Secretary (to the Parliament) fifteen days written notice of his intention to do so and along with an explanatory statement of objects and reasons which shall not contain arguments.

3. Motion of Private member's Bill

Motions for leave to introduce Private Member's Bills shall be set down in the Orders of the Day, meant for Private Members' business. Once leave is granted, the member, when called, formally introduces the bill. On the motion being carried, the bill stands introduced. After a private member's bill has been introduced into the House, all subsequent procedure is similar to that followed for government bills. Nevertheless, the House rarely considers private member's bill.

4. Motions after Introduction and time for Consideration of Bills:

When a Bill is introduced, or on some subsequent occasion, the Member-in-Charge may make anyone of the following motions in regard to his Bill, namely-

- (i) that it be taken into consideration by the House either at once or on some future day to be specified in the motion; or



- (ii) that it be referred to a Standing Committee; or
- (iii) that it be referred to a Select Committee; or
- (iv) that it be circulated for the purpose of eliciting opinion of expert or public thereon.

5. Procedure after presentation of report of Select/Standing committee:

- (1) When a Bill has been referred to a Select Committee or a Standing Committee; the Member-in-Charge may after presentation of the final report by the Committee, move—
 - (i) that the Bill, as reported by the Select Committee or Standing Committee, as the case may be, be taken into consideration at once; or
 - (ii) that the Bill, as reported by the Select Committee or Standing Committee, as the case may be, be recommitted to same committee or, to a new Select Committee either—
 - (a) as a whole, or
 - (b) with respect to particular clauses or amendments only, or
 - (c) with instructions to the Committee to make some particular or additional provisions in the Bill, or
 - (iii) that the Bill, as reported by the Select Committee or Standing Committee be circulated or recalculated, as the case may be, for the purpose of eliciting opinion or further opinion thereon:

6. Scope of debate on report of Select/Standing committee:

The debate on a motion that the Bill as reported by the Select Committee or Standing Committee be taken into consideration shall be confined to consideration of the report of the Committee and matters referred to therein or any alternative suggestions consistent with the principle of the Bill.



7. Submission of Bill Clause by Clause:

The Speaker shall, when a motion that the Bill be taken into consideration has been carried, submit the Bill or any part of the Bill, to the House clause by clause or Schedule by Schedule, as the case may be.

8. Enacting formula, preamble, title of Bill: Clause one, the Enacting formula, the Preamble, if any, the Title of a Bill shall stand postponed until the other clauses and Schedules (including new clauses and new Schedules) have been disposed of and the Speaker shall then put the question; “that clause one, or the Enacting formula, or the Preamble or the Title (or that clause one, the Enacting formula or the Preamble or the Title as amended, as the case may be) do stand part of the Bill.”

9. Passing of Bills:

- (1) When a motion that Bill be taken into consideration has been carried, and no amendment of the Bill is made the Member-in-Charge may at once move that the Bill be passed.
- (2) Where a Bill has undergone amendments, any member may object to a motion being made, on the same day that the Bill as amended be passed, and such objection shall prevail, unless the Speaker suspends this and allows the motion to be made.
- (3) Where such objection as aforesaid prevails, a motion that the Bill as amended be passed may be made on a subsequent day.
- (4) At this stage no amendment to the Bill may be moved except verbal amendments which are merely of a formal or consequential in nature.

10. Voting:

Subject to the provisions of clause (2) of Article 75 of the Constitution regarding quorum, each clause or Schedule of a Bill shall form part of the Bill if it is passed by a majority of the votes of the members present and voting.



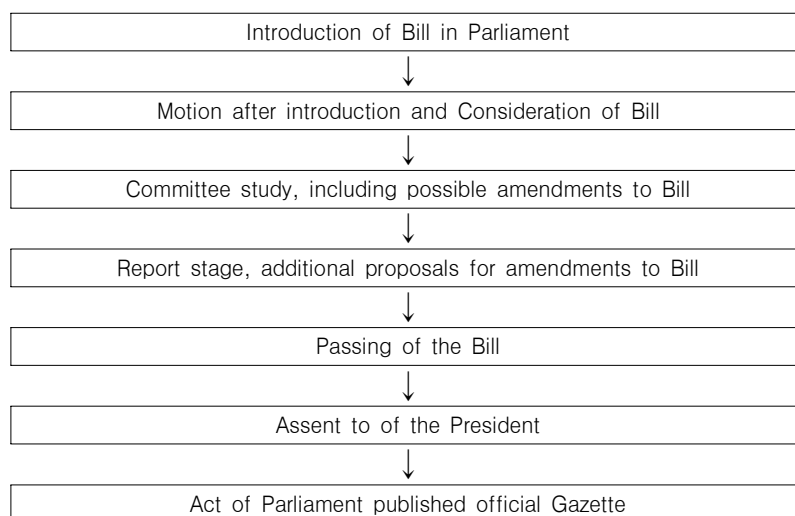
11. Authentication of Bills:

- When a Bill is passed by the House, the Bill shall be signed in triplicate by the Speaker and presented to the President for assent.
- The President, within fifteen days after a Bill is presented to him, shall assent to the Bill or, in the case of a Bill other than a Money Bill may return it to the Parliament with a message requesting that the Bill or any particular provisions thereof be reconsidered and that any amendments specified by him in the message be considered; and if he fails to do so he shall be deemed to have assented to the Bill at the expiration of that period.
- When the President has assented or is deemed to have assented to a Bill passed by Parliament it shall become law and shall be called an Act of Parliament.

12. Publication of Bills assented to by the President:

When a Bill passed by the House is assented to, or is deemed to have been assented to by the President under clause (3) or clause (4), as the case may be, of Article 80 of the Constitution, the Secretary of Parliament shall immediately publish the Bill in the Gazette as an Act of Parliament.

From a Bill to an Act





The legislative drafting is a continuous process. Good legislation are not easy to design or formulate even in the best circumstances. Passing any good law is not enough if the purpose and effectiveness are not ensure through clear and consistent drafting skill of the persons and institutions as a whole. The Ministry of Law, Justice and Parliamentary Affairs, Government of Bangladesh will continue to review, refine and update the drafting conventions and styles so as to ensure that our laws remain relevant and accessible to the general people and are consistent with the demand of international trends. The rapid changes on the socio-economic and geo-political fronts have made it necessary to exchange knowledge & information's, experiences, good practices with the other nations to achieve sustainable economic growth, to uphold the democratic cultures and the rule of law.

I believe this 2nd Asian Forum of the Legislative Information Affairs (AFOLIA) will able to achieve peace & prosperity, stability & unity for the mass people of this region.

I like to thank on behalf of the Government of Bangladesh to the Ministry of Government Legislation of the Republic of Korea for their sincere effort and warm hospitality.

Thank you again for giving me patience hearing.





Cambodia

- ▶ Vathana ANG VONG
- ▶ Minister of Justice



Name : VATHANA ANG VONG

Current Position : MINISTER OF JUSTICE

Department / Organization : MINISTRY OF JUSTICE OF THE
KINGDOM OF CAMBODIA

Education

- 1976~1978 : University of Paris (France) Diplome du 3eme cycle
- 1978~1980 : I. C. G of Paris (France) M B A
- 1967~1973 : Faculty of Law (Cambodia) Bachelor Law (Law Economic)

Employment

- 1999~2001 : Director of Cabinet of Deputy Prime Minister Sar Kheng of Royal Government
- 2001~2004 : - Secretary of State of Ministry of Justice
 - Member of the Supreme Council of Magistracy
 - Vice President of Permanent Coordinating Body of Council for Legal and Judicial Reform
- 2004~Present : - Minister of Justice
 - Member of National Committee for Reform on Management of Arms and Explosive
 - Member of National Committee Commandment for Preventing and Fighting against Terrorist
 - Member of National Authority of Land Dispute Resolution.

THE 2ND ASIAN FORUM ON LEGISLATIVE
INFORMATION AFFAIRES, 27-28 JUNE 2012, KOREA

CAMBODIA'S
LEGISLATIVE SYSTEM
AND MINISTRY OF JUSTICE

BY H.E. ANG VONG VATHNA
MINISTER OF JUSTICE OF THE KINGDOM OF
CAMBODIA

Excellency, ladies and gentlemen,

First of all, let me take this opportunity to warmly welcome you all gathering here today for the 2nd ASIAN FORUM ON LEGISLATIVE INFORMATION AFFAIRES. I would also like express our sincere gratitude to the Government of Republic of Korea, especially the Ministry of Government Legislation for their warm hospitality and excellent arrangements.

Today I am very pleased to make a short overview on Cambodia's Legislative System and the role of Ministry of Justice.

Under the 1993 constitution, legislative power is vested in a bicameral parliament which is composed of Senate and National Assembly. So, National Assembly and Senate (Parliament) are organs that have a legislative power and perform its duties as provided for in the Constitution and laws in force.

Like others countries with a continental legal system, legislation is the primary source of law in Cambodia. Other sources of law include the Constitution, government decrees and regulations and human rights conventions ratified by Cambodia.



To implement Legal and Judicial Reform Policy launched in 1998, Cambodia is now reforming and building a legal and justice system to improve access to justice and rule of law as well as insure confidence of public and foreign investors and contribute to the economic development. Since its accession to ASEAN and WTO, Cambodia has been working on improving and building an appropriate legal framework to govern daily business of individuals, commercial transaction and promote foreign investments.

In this regards, there are important achievements in some areas as follow:

- Laws governing civil and criminal justice matter which are pillar of good governance, democracy and rule of laws are adopted and promulgated : Civil Code, Criminal Code, Code of criminal procedure, code of civil procedure, Anti-corruption law;
- Building legal framework and reforming public administration to increase quality and efficiency of public services, in this purpose, the Government in process of establishing an Administrative code and administrative;
- Laws governing commercial activities and investment: Investment Law, IPs Laws, Law on commercial Enterprise, Secured transaction Law, Bankruptcy Law. Cambodia Government is also preparing laws establishing Commercial Court...
- Laws and institutions dealing with management and preservation of natural resource, green growth, construction and land are in place and in process of improvement,
- Laws and institutions relating to prevention and management of disasters are putting in place...

1) Cambodia's legislative structure

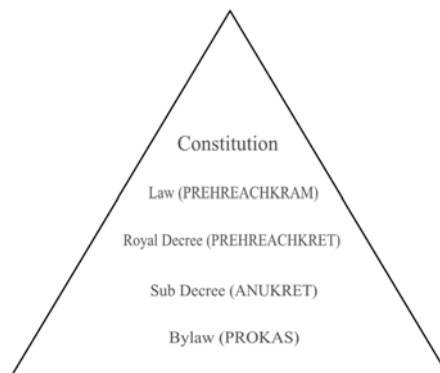
Regarding structure of legal norms of Cambodia, and according to principles set out in the Constitution and the law on organization and functioning of the council of minister, we can have structure as follow: The Constitution is the supreme law of Cambodia, all laws and regulations issued by government as well as it's agencies must respect and comply with the constitution. All regulations issued by government agencies shall comply with the law.

The competence of adopting the law is provided in the constitution and the competence of adopting regulations is stated in the law on the organization and functioning of the council of minister.

Like many others countries, there is hierarchy of Legal norms of Cambodia as follow:



- a. Constitution,
- b. laws passed by Parliament,
- c. Regulations issued by executive branch:
 - Royal decree signed by the King,
 - Sub-decree or circular signed by Prime Minister,
 - Prokas or Sarachar issued by different government ministries / agencies.



For scope of law and law passage process, I would like to bring to your attention procedure and practical aspect of law making in Cambodia.

A. Law /PREHREACHKRAM

1st paragraph of article 28-new of the constitution stated that the King shall sign Royal Proclamation (Royal KRAM) to promulgate the constitution and laws passed by parliament (the National Assembly and Senate).

This means that PREHREACHKRAM is just an act (letter) signed by the King to promulgate the law (Attach to that law). The law passed by Parliament cannot be used without PREHREACHKRAM. General speaking, PREHREACHKRAM and Law are inseparable and constitute a legislative Act. After a draft of law was passed by the Parliament, it has to be sent to Royal Palace for the King to sign the PREHREACHKRAM to promulgate the law.

The Law, in stricto sensu, refers to legal text adopted by Parliament according to constitutional and domestic procedure. There are 2 forms of Bills (text laws) that could be reviewed and adopted by the Parliament.

The first one, it is not frequent way, called: Proposition of law introduced by a certain



number of National Assembly Members or by certain number of Senators to be submitted to the Parliament for review and adoption. If the Proposition of Law is adopted, it will be promulgated by the King and then published in Official Gazette.

The second one is very frequent and a usual way, called draft of law made by the Government, especially by relevant ministries and submitted to the Parliament for review and adoption. If the Draft of Law is adopted, it will be promulgated by the King and then published in Official Gazette.

In Cambodia, beside the Constitution, we have a law on the organization and functioning of the council of ministers which set the competence of government agencies. This law provides some principles relating to power of government to produce legal norms in form of sub-decree/decision/Sarachor as well as power of government ministries/ agencies to issue Prokas/ Sarachor to implement / interpret laws and higher regulations (royal decree, sub-decree...). The government can create any rule/ organ to fit its own demand for administering general affairs of the nation or to deal with urgent situation by referring to the law on organization and functioning of the council of ministers.

B. Royal Decree (PREHREACHKRET)

PREHREACHKRET is also a legal act signed by the king, but PREHREACHKRET is not law passed by National Assembly. The King shall sign any Royal Decrees (Royal KRET) Proposed by the Council of Ministers. PREHREACHKRET usually created in respected to the provision of the law that tells the government to issue enforcement order in the form of PREHREACHKRET. It means that when law said the matter/ issue shall be determined in detail by PREHREACHKRET, the government shall prepare the draft of PREHREACH KRET for the King to sign. PREHREACHKRET is royal act that the King (the head of state) uses in the form of executive power.

C. Sub-Decree (ANUKRET)

According to the law on the organization and functioning of the council of ministers, Royal Government is an executive organ which has the duty to administer all the general state's affairs and assure the application of the laws, except those affairs which come within the competence of the Legislature or of the Judiciary. So the government has power to produce general rules/orders in application of laws and other issues which are not



provided/governed by law but necessary to deal with general state's affairs. The more common form of norms that the government usually adopts is sub-decree (ANUKRET). Prime minister shall sign on ANUKRET that have been adopted by the Council of Ministers or by using his own decision.

However, the above law does not state what matter / issue should adopted in the form of Royal Decree or Sub-decree.

D. Bylaw (PROKAS)

The member of the Government who is the head of ministry/agency has power to issue bylaw (PROKAS) pertaining to perform its duties or to set pit rules and guidelines to run smoothly It's current businesses. But PROKAS can neither stipulate on any issues that are not within the framework and competence of the ministry, nor contradict with other norms and standards of the royal government, such as PREHREACHKRET, ANUKRET. Sometime, law requires a Prokas to be issued by relevant ministry/agency to set out in detail implementation rules or guidelines. Prokas can be also used by minister/ministers to create a committee/ commission/ working group necessary to perform some missions of the concerned ministry/ ministries.

E. Circulation (SARACHOR)

SARACHOR is texts for enlightening the works or affairs and for giving instruction/ guideline to relevant agencies or officers to properly implement law or higher regulation. It means that if any affairs dealing in LAW, PREHREACHKRET, ANUKRET or PRAKAS are not clear or not easy for enforcement officers to understand and implement, Prime minister or concerned minister (head of ministry) can issue SARACHOR to explain the scope and purpose of that legal act and tell the detail way to do. Sarachor signed by prime minister is higher than which issued by minister.

II. MINISTRY OF JUSTICE AND LEGISLATION PROCESS.

Ministry of Justice is created by a law (PREHREACHKRAM) in 1996 and its organization and functioning is stated in a sub-decree (ANUKRET).

Before creation of Council of Jurists of the Council Ministers Office, Ministry of Justice controlled all legal norms making process. All drafts laws in all matters shall be sent to the MoJ for review and comments before submitting to the Government. So currently, the



Council of Jurists of the Council Ministers Office reviews and recommends all any draft of law or regulation before approval by Council of Ministers.

But after 1996, roles of Ministry of Justice in law making process, mainly consists of drafting codes (i.e. Civil code, Criminal code, code of civil procedure, code of criminal procedure...) and laws relating to judicial and justice matters. Furthermore, MoJ still play an important role in participation to law making process of the government. Any law dealing with criminal sanction and fines shall be submitted to the Ministry of Justice for review and comments before its submission to Government for approval.

Beside this legislative function, the MoJ is a Justice Administration Authority. According to Law 1996 establishing the MoJ, the MoJ is delegated authority by the Royal Government to perform the mission of guidance and administration of Justice in the Kingdom of Cambodia.

As Justice Administration Authority, The Ministry of Justice has the following functions and duties:

- To protect the independence of judges in the court in their duties;
- To assure justice for every one under the laws;
- To organize and monitor all level of administrative processes of tribunals and prosecution services;
- To ensure the functioning of all sectors and levels of tribunals and prosecution institutions,
- To ensure the functioning of the courts and all prosecution services and prepare various laws governing these institutions;
- To follow up the execution of laws, judgments of all courts and prosecutor rulings.
- To inspect in case of there is a complaint from natural person or legal entity which happened at all level of courts and prosecution institutions;
- To supervise the detention centre and prison for the purpose of law enforcement
- To draft laws in the field of justice;
- To review and give opinion on draft law of ministries and other institutions;
- To manage and make circulars for the purpose of law enforcement in the field of justice;
- To search, educate and disseminate laws concerning judicial affairs;
- To administer and cooperate with the Royal Academy for Judicial Affairs for the purpose of training bailiffs and officials of court assistants;



- To cooperate with the Royal Academy for Judicial Affairs for the purpose of training judges, prosecutors and court clerks;
- To supervise the education and dissemination of laws concerning to the judicial affairs;
- To conduct international relationships associated with justice and relevant laws;
- To form, manage and issue extracts of criminal records;
- To accept, prepare and manage amnesties or pardons as determined by law;
- To manage civil servants serving at the Ministry of Justice;
- To control budget of the Ministry of Justice, all level of courts and prosecutors;
- To perform other duties as assigned by the Royal Government.

I hope that my short presentation could you all a overview of Cambodia Legislative System and the roles of the Ministry of Justice.

Thank you for your attention!



Ukraine

- ▶ Oleksandr LAVRYNOVYCH
- ▶ Minister of Justice



Name : OLEKSANDR LAVRYNOVYCH

Current Position : MINISTER OF JUSTICE

Department / Organization : MINISTRY OF JUSTICE OF UKRAINE

Education

- 1978 - Graduated from the Taras Shevchenko State University of Kyiv, speciality Optical devices and spectroscopy.
- 1998 - Graduated from the Yaroslav Mudryy Law Academy of Kharkiv, speciality jurisprudence.
- 1988 - Doctor of physical sciences
- 2001 - Doctor of legal sciences

Employment

- 1990-1994 - Vice-President, Acting Chairman of the Central Electoral Commission of Ukraine
- 1994-2001 - Member of the Verkhovna Rada of Ukraine (Parliament) Deputy-Head of the Commission on Legal and Judicial Reform Secretary of the Permanent Parliamentary Committee on Legal Policy and the Committee on Legal Reform
- 2002-2005 - Minister of Justice of Ukraine
- August, 2006 - First Deputy Minister of the Cabinet of Ministries of Ukraine
- November, 2006 - Minister of Justice of Ukraine
- November, 2007 - People's Deputy of Ukraine, Party Regions Fraction
- September, 2008 - First Deputy Head of the Verkhovna Rada of Ukraine
- Since March 11, 2010 to present - Minister of Justice of Ukraine

Dear Forum participants, dear colleagues,

“Freedom is dependence upon laws only.”

Voltaire

One of the elements of effective development of legal systems in each state is the mutual sharing of ideas and acquaintance with the most recent legal tendencies. Within this report, I would like to offer for your attention a general overview of the legal system of Ukraine.

In view of the fact that Ukraine is a republic with the presidential-parliamentary form of government, I would like to describe the specifics of the allocation of powers within the Ukrainian legal system. Each branch of power in Ukraine – legislative, executive, or judicial – is equal with the two others; all three are independent from one another.

The head of the state is the President of Ukraine who acts on its behalf. The President does not belong to any branch of power; he is the guarantor of the state sovereignty, Ukraine’s territorial integrity, adherence to individual and civic rights and freedoms; he is entitled to legislative initiative and possesses the right of veto with respect to legislative acts.

The President, upon consent of the Verkhovna Rada of Ukraine (the Parliament), appoints the Prime-Minister, terminates his power and makes a decision regarding his resignation; based on the Prime-Minister’s proposal, he appoints government members, the heads of other central executive bodies, as well as the heads of local state administrations, and terminates their powers in these positions. Upon further approval from Parliament, the President appoints the General Prosecutor and dismisses him or her. Moreover, the President appoints a third of the members of the Constitutional Court of Ukraine and has the right to cancel the decisions of the Cabinet of Ministers (the Government). The first appointment of a professional judge for the first five-year period is made by the President.



In addition, it is worth mentioning the bodies of power which enjoy essential freedom while their activities. Such bodies include, among others, (1) the National Bank of Ukraine, with the main function to secure the stability of the national currency; (2) the Central Election Commission, which is a permanent collective state body with the powers to arrange and conduct the elections; (3) the Antimonopoly Committee of Ukraine, the primary task of which is development and implementation of the competition policies.

It should be specifically mentioned that the Constitutional Court of Ukraine guarantees the supremacy of the Constitution of Ukraine as the fundamental law of the state and serves as the sole body of constitutional jurisdiction in Ukraine. The activities of this body are based upon the principles of the supremacy of law, independence, collective nature, equality of judges, publicity, complete and comprehensive consideration of cases and justified decisions. The independence of the Constitutional Court, which is achieved due to the specifics of formation of this body and the guarantees of its activities, serves as important base for the proper performance of its functions. The President, Parliament, and the Assembly of Judges appoint six judges to the Constitutional Court each.

When speaking about the judiciary power, it is important to note that the highest judicial body in the system of general jurisdiction courts, as well as the body guaranteeing the unity of the judicial power by virtue of identical implementation of the legislation provisions by all courts, is the Supreme Court of Ukraine.

The Supreme Court reviews the decisions of cassation courts under a special procedure, for example in the cases when courts apply the same rules of substantive law differently.

Considering the law-making procedure in Ukraine one should know that the right of legislative initiative in Ukraine is entitled, in addition to the President, to each parliament members, the Cabinet of Ministers, and the National Bank as a special body of central state governance. Bills are ordinarily considered by Parliament, in conformity with the three readings procedure.

Obligatory legislative acts which constitute the system of legislation are the laws of Ukraine, the decrees of the President, resolution of the Cabinet of Ministers. Such legal acts are entered in the Unified State Register of Legislation Acts which is maintained by the



Ministry of Justice of Ukraine. The legal acts of ministries and other central executive authorities are entered in the above Register only upon obligatory verification and registration by the Ministry of Justice. Acts of the National Bank are also subject to the compulsory state registration by the Ministry of Justice. It should be said that the official website of Parliament contains the database of Ukrainian legislation.

The drafts of the legal acts of the Cabinet of Ministers are submitted to the Ministry of Justice for legal examination and preparing a legal conclusion. Furthermore, the Ministry of Justice develops proposals regarding the improvement of legislation, prepares drafts of the legal acts, as well as performs other functions commissioned to it, namely: carries out gender-based legal expertise and anti-corruption examination of the legal acts; conducts the expert examination of the draft of international agreements of Ukraine; concludes legal cooperation agreements with respective bodies of foreign states and international organizations, builds up effective cooperation with them; involves the public in the discussion of drafts of the legal acts.

Definitely, the Ministry of Justice of Ukraine plays an important role in formation of Ukraine's legal policy; international cooperation; adherence to and compliance with the liabilities undertaken under Ukraine's international agreements concerning legal matters.

Along with the above-mentioned bodies functioning independently in Ukraine, there are local self-government authorities: village, town, and city councils which represent respective territorial communities. The executive committee of the respective council is headed by the village, settlement, town or city chairman (mayor), who also presides over its meetings; the mayor is elected by the territorial community on the basis of secret ballot.

Local state administrations are the local executive bodies established in the regions, districts and the cities of Kyiv and Sevastopol. The local state administrations are led by the heads who are appointed by the President based on the Prime-Minister's proposal for the period equaling to the term of the President's powers.

Legal acts passed by the local state administrations are subject to the state registration with the respective Ministry of Justice local authority. Simultaneously, the acts of the local self-government authority do not require such registration.



In conclusion, I would like to note that Ukraine defines its primary goal in development toward an independent, democratic, social and lawful state, conducts the state legal policy by way of legislation unification and compliance of the legislation with the international law. In the framework of international integration, the legal information sharing is important to secure a more efficient cooperation and expansion of international partnership.





China

- ▶ An JIAN
- ▶ Vice Minister of Legislative Affairs Office of the State Council



Name : AN JIAN

Current Position : VICE MINISTER

Department / Organization : LEGISLATIVE AFFAIRS OFFICE OF
STATE COUNCIL

Education

- Renmin University of China

Employment

- 1. Legislative Affairs Commission of the Standing Committee of the National People's Congress
- 2. Legislative Affairs Office of the State Council

Congratulatory Remarks for the 2nd Asian Forum of Legislative Information Affairs

Deputy director of Legislative Affairs Office, under the State
Council of the People's Republic of China

(June 27, 2012, Seoul, Korea)

It is a great honor for me and my colleagues to attend this 2nd Asian Forum of Legislative Information Affairs in Korea, so that we could learn about the various legislative systems of Asian countries, and to exchange opinions and studies about the important issue of developing our economies and societies through modification of legislative systems.

On behalf of the Legislative Affairs Office of China, which is an affiliate under the State Council of China, I would like to take this opportunity to extend my sincerest congratulations to Korea for holding this forum, and I truly respect and appreciate Korea's such deepest passion and preparations for the event.

Ladies and gentlemen, we are living in an age where economic and social development is made at a rapid pace. Furthermore, it is an age where mutual relations between nations have become closer than ever. Trade and exchange in cultural and legislative areas due to the development of economies and societies have also become very important. Although every Asian country has different backgrounds, the geographical proximity and similarity in our cultures is becoming an advantage in exchanges between us.

Today, Asian countries are faced with the problem of difference in laws occurred according to their development processes, and the legal problems occurred during communication and exchanges of economy and trade. Thus, we need to strengthen legislative exchanges and communication among nations, and discuss and deliberate on the legal problems and their relevant issues.



Regarding establishing a legislative system, China is much interested in the legislations, relevant knowledge and experience, and research data from other countries. Thus, the Asian Forum of Legislative Information Affairs is a very meaningful place for legislative officials of Asian countries to join together and share the legal problems, and their experiences in the establishment of legislative orders and systems of each country.

Ladies and gentlemen, rule of law is an ideal that the human society has in common.

The current government of China pursues the development of economy and society, and at the same time, it is well aware of the importance of establishing a legislative system. In 60 years since the establishment of the People's Republic of China, and especially, after 30 years since its opening and reform, Chinese government created unique a socialist legislative system of its own.

The Constitution of China rules the nation based on law, and has established the basic measures for a socialist constitutional-state. Based on the Constitution, It created China's unique socialist legislative system in 7 legislative areas: Constitution, Constitution-related law, Civil & Commercial Law, Administrative Law, Economic Law, Social Law, Criminal Law, Legal Proceedings Law and Non-Proceedings Law, forming a unique socialist legislative system for China, the framework for the national economy, society, culture, and people's lives.

The Chinese government enacted numerous laws including regulations, administrative regulations, local government regulations and ordinances, based on the Constitution. As of the end of 2011, China currently has 240 provisions in the Constitution, 714 administrative regulations, 8900 local government regulations, and 1,000 regulations in the departments of the central government and local governments.

Furthermore, China is trying to modernize, democratize, and enhance the quality of its laws and regulations, improving the implementation effects of the laws and regulations. China is also continuing its efforts for the protection of market economy and development of the economy and society, fair social justice, guarantee of national rights, administration of state based on law, and precise exercise of state power.



China's socialist legislative system continues to be a great help in sustaining its unique socialist system. I myself witnessed all the historical processes of China, which is a great honor for me.

The main theme of this forum is coexistence and prosperity of Asian countries through modernized legislation, having its main focus on sustainable development of economy and society such as development of small and medium sized corporations through legislation, modernization of agriculture industries, legislation of green economy, and legislation against natural disasters, also including participation in legislation and development of legislative technology as a theme.

I believe that the sessions of today and tomorrow will be a good opportunity for each country to speak freely and have practical exchanges on the themes I mentioned above, and learn from one another. And I hope we could have a deep understanding on one another based on the common knowledge on various problems. I am confident that much progress could be made from this forum.

I hope the 2nd Asian Forum of Legislative Information Affairs will end successfully, and I once again thank you for inviting us and greeting us warmly.

Thank you.



Japan

- ▶ Yusuke YOKOBATAKE
- ▶ Deputy Commissioner
General of Cabinet
Legislation Bureau



Name : YUSUKE YOKOBATAKE

Current Position : DEPUTY COMMISSIONER GENERAL

Department / Organization : CABINET LEGISLATION BUREAU

Education

- University of Tokyo, Faculty of Law (1974)

Employment

- 1976-1993 – Public Prosecutor, District Public Prosecutors Office (Tokyo, Nagano, Shizuoka and Sapporo)
- 1993-1998 – Counselor, the Second Department, Cabinet Legislation Bureau
- 1998-1999 – Director, Legislative Affairs Division, Criminal Affairs Bureau, Ministry of Justice
- 1999-2001 – Director, Legislative Office of Administrative Reform of the Central Government, Cabinet Legislation Bureau
- 2001-2004 – Director, Legislative Office of Judicial System Reform, Cabinet Legislation Bureau
- 2004-2010 – Director-General, the Second Department, Cabinet Legislation Bureau
- 2010-2011 – Director-General, the First Department, Cabinet Legislation Bureau
- 2011-present – Deputy Commissioner-General, Cabinet Legislation Bureau

Greeting Remarks for 2nd Asian Forum of Legislative Information Affairs

Distinguished Delegates,
Ladies and Gentlemen,

I would like to express my deep appreciation for the invitation to the 2nd Asian Forum of Legislation Information Affairs. I am Yusuke Yokotabake, Deputy Commissioner-General of the Cabinet Legislation Bureau of Japan. It is my honor to extend greetings on this important occasion.

The 1st Asian Forum of Legislation Information Affairs held last year was significant in creating the basis for a network among government agencies engaged with legal systems across Asia.

Following that, the Republic of Korea took the initiative to host the 2nd Asian Forum of Legislation Information Affairs. We anticipate great results from a forum that enables sharing information on legislation affairs across Asia and one that strengthens existing network.

The Cabinet Legislation Bureau of Japan is a governmental organization that supports the Cabinet in legislation and law interpretation. The bureau offers advice by request from respective ministries. The bureau also examines the draft bill submitted by the Cabinet to the Diet.

With respect to international activities, a diverse range of initiatives are carried out by responsible ministries such as the Ministry of Justice, or outside the government such as academia.

Fifteen months have elapsed since the East Japan Great Earthquake on March 11th, 2011. Aided by generous international support, Japan has expended efforts to rebuild the disaster areas. On the legislative side, 38 laws proposed by the government and 124 cabinet orders



were enacted for disaster relief. In this process, we have referred to related foreign legislation as much as possible.

On behalf of the government and the people of Japan, I wish to extend my heartfelt gratitude to the international community for all the warm support and encouragement.

I am aware that delegates to this forum represent a variety of countries and regions. I am also aware that Korean delegates to this forum come from diverse backgrounds including judicial, industrial, and academic circles in Korea. Broad expertise will enhance the importance of this forum through discussions and information sharing.

In closing, I wish this 2nd Asian Forum of Legislation Information Affairs great success, for the legal framework in Asia to develop further, and once again I commend the initiatives of the Republic of Korea.

YOKOBATAKE
Deputy Commissioner-General
Cabinet Legislation Bureau





Uzbekistan

- ▶ Kuchkar TOGAYEV
- ▶ Deputy Minister of Justice



Name : KUCHKAR TOGAYEV

Current Position : DEPUTY MINISTER

Department / Organization : MINISTRY OF JUSTICE OF REPUBLIC OF UZBEKISTAN

Education

- 1979 – Samarkand State University / Law Faculty

Employment

- 2011 – present Deputy Minister / Ministry of Justice of Republic of Uzbekistan;
- 2006 - 2011 Deputy Head / Central Electoral Committee;
- 2002 - 2006 Chairman / Court on Criminal Cases of Kashkadarya Region;
- 1997 - 2002 Head / Samarkand Department of Justice

Report by Deputy Minister of Justice of the Republic of Uzbekistan K.Togaev on "Rule-making process in the Republic of Uzbekistan"

Dear participants of the Asian Forum!

Dear Colleagues,

Considerable work for creation of independent democratic state and free civil society was done during a historically short period of time in the Republic of Uzbekistan under the direct supervision of the President.

The system of government of Uzbekistan is based on the principle of separation of powers into legislative, executive and judicial branches.

Legislative power is exercised by Parliament consisting of two chambers - the Legislative Chamber (lower house) and Senate (upper house).

In accordance with the Constitution, laws and other legal acts are adopted in the interests of the people, in order to ensure and protect the political, economic, social and cultural rights and freedoms of citizens.

Over the years, Parliament adopted 15 codes, more than 700 laws, ratified by more than 70 international human rights instruments.

The formation of the Parliament of the country helped to create an efficient state structure and to promote the preparation of laws which meet all the requirements of our day.

Thus, the (lower) the Legislative Chamber considers bills and pass laws. Laws passed by the lower house, not later than ten days from the date of their adoption, sent to the Senate (upper house) of Parliament, which will make a decision on its approval or rejection. The approved bill is sent to the President for signature. Once signed by the President, the laws will be published in official publications. Publication of laws and other regulations is a prerequisite for their use.

The authority of the President, Government and public authorities in the field on the rulemaking is enshrined by Constitution. In particular, the President issues decrees, resolutions and orders, which are binding on the entire territory of the republic.

The Government issue resolutions and orders, which also have a mandatory effect.

Local authorities have the right to make legal acts, which are obligatory on the territory of the administrative-territorial units.



Thus, more than 1,500 acts of the President, 4700 and 3000 departmental regulations accepted at the present time in all spheres of society, including economic development.

Today small business and private enterprise have a special place in the development of state and society.

More than 400 laws adopted in the field of economic reforms over the past few years and they became stable legal foundation for further liberalization and modernization of the economy, as well as guarantee of the irreversibility of market reforms.

Achievements in the field of macroeconomic stability and high economic growth of Uzbekistan – is the result of improvement of legislation, the liberalization of business activities, providing a range of tax and customs privileges and preferences.

But we never stop at what has been accomplished. A number of laws directed on creation of favorable conditions and legal environment for sustained economic development adopted in recent years.

In this context, I want to note that in accordance with the Memorandum on cooperation signed between the Government of Uzbekistan and the International Finance Corporation on 18 August, 2008, a system of legislative act impact assessment (SLAIA) in the activities of state authority in the field of the development, adoption and monitoring of implementation of legal acts, based on internationally accepted principles, methods and approaches was introduced.

Resolution of the Government established a special working group whose task is to define functions of SLAIA: data collection, analysis and consultation on particular bills, which are aimed at further development of the private sector, improving the business environment and investment climate and the use of elements of the SLAIA for monitoring of implementation of particular legal regulations, regulating the organization and conduct of business.

However, "The concept of further intensification of democratic reforms and the formation of civil society in the country", which was stated by President of Uzbekistan on the joint sitting of both Houses of Parliament in 2010, marks the beginning of new stage in the reform and democratization of the country.

The concept deal with all problems of the modern understanding of civil society. Identified six key areas for further democratization and development for the coming period. In particular, the democratization of state power and administration, reforming the judicial system, the information sphere, the development of electoral law, the formation and development of civil society, the intensification of democratic market reforms and economic liberalization.



For the development of this concept, the Parliament amended the Law "On licensing of certain activities" aimed at further liberalization of this sector, the "Law on Family Entrepreneurship" (26.04.2012.).

A number of decrees of the President and the Government on measures for elimination of bureaucratic barriers and further enhancement of freedom of business activity, reduction of state management functions in the implementation of licensing procedures, further improvement of the organization and order of state registration of enterprises was adopted.

Bill "On guarantees of freedom of entrepreneurship" in the new edition, "On licensing procedures in the field of entrepreneurship," "On State Control of businesses" in the new edition and a number of other legislative acts was worked out.

It should be noted that Information Services were created in public bodies in accordance with the decision of the Government. One of their main tasks is to ensure the publication of legal regulations in the sphere of department's activity in the national media.

In order to discuss the bills to the public, the practice of publishing bills on the websites of government agencies also was introduced(for example the publication of the bill "On the transparency of public authorities and government")

The implementation of intentions of the President will lead the state to new level of development, will help to join the list of the most modern, developed democratic countries.

Ladies and Gentlemen,

Policy on improvement of legal framework of the Ministry of Justice and giving them effective powers in the sphere of control of law compliance in rule - making and law enforcement pursued from the first years of independence the country's consistent. The implementation of this policy improved the efficiency of mechanisms of ensuring the lawfulness and supremacy of law.

In this context it should be noted that the Ministry of Justice since its establishment played an active role in the formation of national legislation, the enforcement of the Constitution, laws and international treaties. None of bills can't be submitted for consideration to the Government and the Parliament without proper conclusions about legal examination conducted by the Ministry of Justice.

However, in view of ongoing reforms, in the above-mentioned concepts it was noted the necessity of improvement of the efficiency of activity of institution of justice in the implementation of a unified state policy in rulemaking and enforcement, the establishment of legal mechanisms that determine the specific role of the judiciary in overseeing compliance



with legal requirements, supremacy of law.

The Presidential Decree "On measures to further enhancement of role of the judiciary in safeguarding the supremacy of law in government" played a great role in the determination of the functions and tasks of the Ministry of Justice. A fundamental revision of the organizational structure, legal basis of activity, tasks, functions and powers in monitoring law compliance in activity of public bodies was made.

Such large-scale transformations necessitated the revision of the Regulations of the Ministry of Justice and the new version is approved by Decree of the President in 2011.

The Regulations set out new tasks, functions and powers of the Ministry of Justice, which are designed to improve the efficiency of its activity directed to ensure strict observance of lawfulness in the rulemaking and law enforcement, to strengthen its role in law enforcement system.

The Ministry entrusted with the implementation of one of the main tasks in the mechanism of the state - to identify «white spots» in the current legislation, as well as regulations and standards, creating conditions for corruption, non-compliance of legal requirements, and develop proposals for further improvement of legislative base of the democratic, social, economic, social and political reforms.

Ministry protect human rights and freedoms. Measures for ensuring law enforcement, aimed at encouraging business entities, including enterprises with foreign investment, at restoration of their violated rights and protection from various illegal activities are being taken.

Legal assistance are granted to business entities in drafting contracts in order to ensure the supremacy of law in the implementation of economic reforms in agriculture. Special attention is given to improving the contractual relations between economic entities and strengthening contract discipline.

I want to note that the Ministry realize its activity in several other ways:

carry out state registration of legal entities, ensure the observance of the supremacy of law in the process of creation of legal entities;

carry out state registration of NGOs, including foreign ones. In particular, was registered 30 NGOs at present time and 3 of them are subsidiaries of Korean NGOs ("Institute of Asian Culture and Development" (IAKR), «Save the Children (Save the Children)," Korea International Foundation of Health (K-FIN) »;

provide effective legal protection of the interests of the republic in the field of international legal relations;



takes measures to improve legal services for the population and legal entities on the part of registrar and notary.

The Ministry also provides unconditional execution of judicial acts and the acts of other bodies.

The Centre of promotion of lawyer's level of proficiency, National Center of forensic enquiry, Tashkent State Law Institute, the Academic High School, the Tashkent College of Law, the newspaper "Man and Law" ,publishing "Justice" are included in the structure of the Ministry.

Ministry set up and maintain a national database of legislation, which includes the texts of more than 24 thousand acts of legislation and other legal information. Every day, the services are used by more than 2.5 thousand people. Access to this database is provided free of charge via the Internet for all interested parties on the site lex.uz.

To get acquainted and to get relevant information on this basis you can in the lobby of the building, going up to the advertising stand. Our experts are demonstrate trailer, and you'll be provided with promotional materials.

Comparative analysis shows that activities of the Ministry of Justice significantly distinguish from activities of the Ministries of Justice in a number of foreign countries.

Ladies and Gentlemen,

In conclusion, I want to say that the rule-making is an important component in the implementation of public administration.

Because only legal regulations are necessary elements for the regulation of relations in all spheres of public life.

I want to wish you success in your future career and once again thank you for giving me the opportunity to participate in this forum.

Thank you for your attention!



Viet Nam

- ▶ Thanh Long LE
- ▶ Deputy Minister of Justice



Name : THANH LONG LE

Current Position : DEPUTY MINISTER

Department / Organization : MINISTRY OF JUSTICE OF VIET NAM

Education

- September 1982-July 1987
LL.B. with distinction (first honor), Faculty of Law, Azerbaijan State University, Soviet Union
- April 1993-August 1995
LL.M., Faculty of Law, the University of Calgary, Canada
- April 2000-March 2003
Ph.D. in Law, Graduate School of Law, Nagoya University, Japan

Employment

- November 1997-November 1990:
Department for International Law & Cooperation, Ministry of Justice
- December 1990-November 1991:
Member of Legal Team, Mekong Secretariat, Bangkok, Thailand
- December 1991-March 1993:
Department for International Law & Cooperation, Ministry of Justice
- April 1993-August 1995:
Study leave for Master of Law Degree in Canada
- September 1995-December 1997:
Department for International Law & Cooperation, Ministry of Justice
- January 1997-September 1999:
Secretary to Vietnam Minister of Justice
- October 1999-March 2000:
Japanese Course, Nagoya University Language Center, Nagoya, Japan
- April 2000-March 2003:
Study leave for Ph.D. in Law, Graduate School of Law, Nagoya University, Japan
- April 2003 – November 2008:
Department for International Cooperation, Ministry of Justice; since



- June 2004, Deputy Director.
- December 2008 - September 2011:
Department of General Affairs in Legal Development, Ministry of
Justice, Director General.
- October 2011 - Date:
Vice Minister of Justice



AN OUTLINE OF LEGAL REFORM IN VIET NAM

Le Thanh Long
LL.B., LL.M., Ph.D.
Deputy Minister of Justice
Vietnam

1. Major Achievements in Legislative Development

Since 1986, when Vietnam embarked upon its reform policy, the followings major achievements in legal development have been made:

(i) Forms and regime of ownership are clearly defined; private ownership is protected; property rights on shares, securities and right to do business are clearly recognized by laws.

(ii) Legal system has its important share in creating a good environment for business.

(iii) Intervention by State through administrative measures in commercial and civil matters is minimized; the State mainly holds supervisory role in these areas.

(iv) Key institutions of a market economy have been established. These inter alia include financial and banking systems; estate, labor, technology and securities markets.

(v) Laws and regulations have been passed to fulfill Vietnam's obligations in the WTO, and in other international legal instruments it has become a member.

(vi) Organizational structure of certain state agencies, including the courts, has been revisited to be up to the requirements of economic reform; measures to better protect human rights have been taken.

To date, the National Assembly and its Standing Committee have adopted 368 laws and



ordinances to, among other things, address the afore-listed matters.

2. Present Needs and Orientations for Legal Reform

Although successes have been scored, much has remained to be done. Following are further needs and orientations for reform:

(i) Further legal reform is needed to be up to the pace, and to ensure and sustain the outcomes, of socio-economic development. Legislative drafting/making procedures should be revisited to ensure that laws passed quantitatively and qualitatively meet the changing and practical needs of market economy.

(ii) Harmonization of Vietnamese laws and institutions with widely recognized “rules of play” of the international community should be better ensured. Accession to additional international legal instruments is considered; and national laws are continued to be reviewed, revised, and newly adopted to place them in better harmony with Vietnam’s international legal instruments.

(iii) Quality and feasibility/implementability of laws passed should be upgraded; and laws and regulations in force should be more transparent and easily accessible. It is Vietnam’s goal of having in place a complete functioning legal system by 2016.

(iv) State institutions, including executive organs and the courts, should be further reorganized to ensure that they are up to the requirements of administering the law. Capacity of public servants, including legal professionals, and judges should be further strengthened.

3. Ministry of Justice and Legal Reform

Vietnam Ministry of Justice, among other things:

(i) Proposes to the National Assembly and Government theoretical and practical solutions



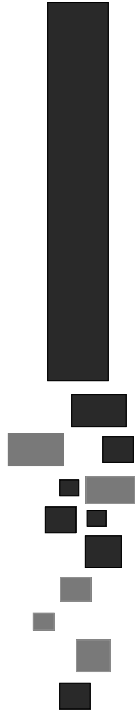
in legal reform and institutional improvement.

(ii) Promotes and facilitates the improvement of legal system; drafts important pieces of legislation; and generally monitors implementation of law nationwide.

(iii) Assists the Government in the auxiliary judicial, and judicial-administrative activities.

(iv) Trains legal professionals.

The Ministry of Justice currently focuses on assisting the Government in revision of the 1992 Constitution; renovating ways of developing legislation to timely respond the ongoing needs; developing an effective mechanism to mobilize human resources for legal development; and developing institutions for enforcement of laws and monitoring law implementation.



Keynote Speech

Dai-Kwon CHOI

Professor Emeritus of
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SHARING OF LEGISLATIVE EXPERIENCES

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Professor Emeritus,
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I suppose that the few words from the Preamble of the Constitution of the Republic of Korea "contribut(ing) to lasting world peace and the common prosperity of mankind" may well be cited to set the tone for the 2nd Asian Forum of Legislation Information Affairs(AFOLIA) appropriately. We are here to exchange our ideas and knowledge of law making experiences and practices acquired in their various developmental stages and in their disparate politico-social conditions during the last several decades and today. We believe that doing so will help to promote each country's betterment and eventually to contribute to the lasting peace and common prosperity not only of Asian regions but of the whole mankind also.

Perhaps every country has its own stories about law. Normatively speaking, moreover, a legal system is supposed to be autonomous from its surrounding environments, especially its politics, religion, established interest and/or corruptions. In this globalizing world, mutual aid, cooperation, instruction from each other, and joint projects among nations in the form of ASEAN, APEC, UNDP, etc., are increasingly becoming commonplace, out of which a converging trend is occurring in many areas of human activities, ideas, institutions and systems obviously including law. Definitely, AFOLIA is a forum in which many ideas and experiences of legislation are to be exchanged to enhance our common wellbeing in politics, economy, society and culture.



In previous times when social change was slow, with agriculture as the major form of economic activities, unwritten customary law and conventions played a significant role in regulating human activities. In this rapidly globalizing world today in which society changes rapidly, especially through industrialization, however, legislation as a form of the source of law plays a bigger and bigger role. Equally, because of the effect of globalization, the need for harmony among laws is of growing importance. Now, learning from each other and cooperation in legislation is increasingly a necessity today. I am glad that AFOLIA is designed exactly to meet such needs for exchanges of ideas and experiences with legislation among Asian countries, a forum for a timely common project.

Korean legislative experience has ranged widely during the turbulent last half century since the end of the World War II. Economically, the Korean legislature has faced both a war-devastated, poverty stricken agricultural society with per capita income less than \$100 in the 1960s and the world's 15th economic power having attained the status of G20/OECD member state today. Politically it has legislated for a semi-democratic, authoritarian dictatorial regime and a liberal democracy today. Korea whose economy was once sustained with foreign aid has now become a (DAC) country providing aid to other countries for the same period of time. As compared with the Korean experiences, however, the experience with industrialization and democratization of the advanced Western countries was acquired with a leisurely pace during the longer period of time stretching at least several centuries. Consequently, I believe that Korean knowledge and experiences with legislation are far more pertinent to many of Asian countries in terms of varieties and timeliness. Korean people and government are ready to share their knowledge and experiences with legislation ranging from industrialization and democracy to various current issues facing the contemporary world today, as the Korean Constitution clearly provides for.

With open-minded exchange and sharing of ideas, knowledge and experience with legislation, I hope that this AFOLIA conference will be fruitful.

