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## Observations in Exams at FEBM

As an advisor, I observed several final examinations in FEBM implemented from July 4 to 15. Please find below my observations. Please recall that I had demanded FEBM to take serious measures against the cheatings in the exams. Unfortunately, my observations cast doubts to the operation of exam in FEBM. I need to include these observations in my report to JICA.

- 1) While supervising an exam, a lecturer talked over the mobile-phone out of the room. When I entered the room, there was no proctor there. This is an act of default of the main responsibilities of lecturers. This kind of act would be severely disciplined in any international-standard universities.
- 2) Some lecturers concentrated on checking attendance sheet, and paid little attention to the classroom. In one exam, when I entered the room, there were two lecturers. Both of them were, however, just checking the attendance sheets for each of the students. Several students walked around the classroom without getting any permission, and picking up something from their baggage in front of the blackboard. This was the most unthinkable scene I saw in the exams in FEBM. How can students walk around the room and pick up something without getting any permission from proctors?
- 3) While supervising an exam, a lecturer wrote a mail with the mobile-phone (or played some game?) at the back of the room. He/she did not pay any attention to the students. Although I stared him/her, he/she did not notice me for (about) 5 minutes. This is an act of default of the main responsibilities of lecturers.
- 4) I saw three occasions that there was only one proctor in the exams in the lecture hall. In exams in such a large room, there should be at least two proctors constantly.
- 5) Throughout the exam period, I saw many (more than 20) occasions that students looked into the answer-sheet of those who sat behind him/her. Some of these students repeated this kind of cheating, but no lecturers of FEBM noticed. Why?
- 6) Throughout the exam period, I saw many (more than 20) occasions that students talked to other students. Some of these students repeated this kind of cheating, but no lecturers of FEBM noticed. Why?

Output 9 Questionnaire for Business Establishments in Attapeu Province

**ແບບສອບຖາມຫົວໜ່ວຍທຸລະກິດຄັ້ງທີ I**

ພວກຂ້າພະເຈົ້າເປັນອາຈານສອນຂອງ ຄະນະເສດຖະສາດ ແລະການຄຸ້ມຄອງ, ມະຫາວິທະຍາໄລແຫ່ງຊາດ ມີຈຸດປະສົງຂໍເກັບກຳຂໍ້ມູນກ່ຽວກັບສະພາບ ແລະບັນຫາທຸລະກິດຂອງທ່ານ ເພື່ອໃຊ້ໃນການຄົ້ນຄວ້າ. ດັ່ງນັ້ນ, ພວກຂ້າພະເຈົ້າຈຶ່ງຂໍຄວາມຮ່ວມມືຈາກທ່ານ ໃນການໃຫ້ຂໍ້ມູນ ແລະປະກອບຄຳຄິດຄຳເຫັນ ໃຫ້ແກ່ພວກຂ້າພະເຈົ້າດວ້ຍ.

(ຂໍ້ມູນຂ້າງລຸ່ມນີ້ຈະໃຊ້ເຂົ້າໃນການສຶກສາຄົ້ນຄວ້າເທົ່ານັ້ນຈະເກັບເປັນຄວາມລັບ ແລະບໍ່ມີການເຜີຍແຜ່ອອກສູ່ພາຍນອກ)

( ຖ້າທ່ານຫາກບໍ່ເຂົ້າໃຈຄຳຖາມໃດ ກະລຸນາຕິດຕໍ່: ອາ ໂພສີ ຈັນມິງ Tel: 020-2404102 ແລະ ດຣ. ພູເພັດ ກຽວພິລາວິງ Tel: 020-5527321).

ຊື່ ແລະນາມສະກຸນຂອງຜູ້ເກັບກຳຂໍ້ມູນ.....ປີຮຽນ/ທ້ອງ.....1)ພາກຄຳ 2)ພາກປົກກະຕິ

**I. ລາຍລະອຽດກ່ຽວກັບທຸລະກິດ ຫຼື ຫ້າງຮ້ານຂອງທ່ານ**

1) ຊື່ບໍລິສັດ 2) ຫ້າງຮ້ານ 3) ໂຮງງານ 4) ອື່ນໆ.....ເບີໂທລະສັບ:.....

ໜ້າທີ່ ແລະ ຕຳແໜ່ງຂອງຜູ້ໃຫ້ຂໍ້ມູນ:.....

ເມືອງ.....ບ້ານ .....ວັນທີ່ເດືອນປີສຳຫຼວດ...../...../2004

1. ທຸລະກິດຂອງທ່ານສ້າງຂຶ້ນໃນປີໃດ ? ປີ.....

2. ທຸລະກິດຂອງທ່ານໄດ້ຂຶ້ນທະບຽນ ຫຼື ບໍ່ ?

- 1) ຂຶ້ນ 2) ບໍ່ໄດ້ຂຶ້ນ 3) ກຳລັງດຳເນີນງານ 4) ຢ່າງອື່ນ

3. ຖ້າຂຶ້ນ ທະບຽນ, ທ່ານໃຊ້ເວລາຂໍອະຍຸຍາດຂຶ້ນທະບຽນຈັກເດືອນ ?.....ເດືອນ

4A. ຖ້າຂຶ້ນ ທະບຽນ, ເວລາສ້າງຕັ້ງທຳອິດທ່ານໄດ້ໃຊ້ທຶນຈິດທະບຽນເທົ່າໃດ?.....ກີບ

4B. ເວລາສ້າງຕັ້ງທຳອິດທ່ານໄດ້ໃຊ້ທຶນຕົວຈິງຫຼາຍປານໃດ ? .....ກີບ

5. ປະຈຸບັນ ທ່ານມີທຶນໝູນວຽນເທົ່າໃດ ? .....ກີບ

6. ທ່ານໄດ້ເງິນມາຈາກໃສໃນການເລີ່ມເຮັດທຸລະກິດນີ້ ?

- |                        |   |                     |   |
|------------------------|---|---------------------|---|
| 1) ເງິນຕົນເອງ .....    | % | 2) ຍາດພີ່ນ້ອງ ..... | % |
| 3) ໝູ່ເພື່ອນ.....      | % | 4) ທະນາຄານ.....     | % |
| 5) ຜູ້ປ່ອຍເງິນກູ້..... | % | 6) ຢ່າງອື່ນ.....    | % |

7. ຮູບແບບເສດຖະກິດຂອງທ່ານແມ່ນ :

- 1) ສ່ວນບຸກຄົນ 2) ລັດວິສາຫະກິດ 3) ຫຸ້ນສ່ວນ 4) ບໍລິສັດຈຳກັດ 5) ອື່ນໆ.....

8A. ປະເພດທຸລະກິດຂອງທ່ານແມ່ນ :

- 1) ໂຮງງານຜະລິດ 2) ການບໍລິການ 3) ກະສິກຳ 4) ຫັດຖະກຳ 5) ການຄ້າ 6) ກໍ່ສ້າງ  
7) ຂົນສົ່ງ 6) ອື່ນໆ.....

8B. ທຸລະກິດຂອງທ່ານຜະລິດສິນຄ້າ ຫຼື ໃຫ້ບໍລິການປະເພດໃດເປັນສ່ວນໃຫຍ່?

9A. ມີພະນັກງານ (ລວມທັງຄອບຄົວແລະຕົນເອງ) ຈັກຄົນ ? .....ຄົນ

9B. ມີພະນັກງານ (ທີ່ບໍ່ແມ່ນສະມາຊິກ ແລະຄອບຄົວຕົນເອງ) ຈັກຄົນ ? .....ຄົນ

9C. ເງິນເດືອນສະເລ່ຍຂອງພະນັກງານ ຜູ້ໜຶ່ງເທົ່າໃດ ? .....ກີບ/ເດືອນ.

10. ປະຈຸບັນ ທ່ານເສຍພາສີ-ອາກອນເດືອນລະປະມານເທົ່າໃດ?.....ກີບ

11. ປະຈຸບັນທຸລະກິດຂອງທ່ານເປັນແນວໃດ ?

- 1) ດີ 2) ທຳມະດາ 3) ຮ້າຍລົງ 4) ບໍ່ຮູ້

12.ອີກ 6 ເດືອນຂ້າງໜ້າຄາດວ່າສະພາບ ທຸລະກິດຂອງທ່ານຈະມີແນວໂນ້ມເປັນແນວໃດ ?

1) ດີຂຶ້ນ 2) ທຳມະດາ 3) ຮ້າຍລົງ 4) ບໍ່ຮູ້  
Annex 8 Questionnaire for Business Establishments in Attapeu Province

II. ອັນໃດເປັນອຸປະສັກຕໍ່ທຸລະກິດຂອງທ່ານໃນປະຈຸບັນນີ້ ( 1 = ບໍ່ເປັນອຸປະສັກ ; 2 = ເປັນອຸປະສັກ ; 3= ບໍ່ຮູ້ )

ລ/ດ	ລາຍການ	1	2	3	ລາຍການ	1	2	3
1	ວັດຖຸດິບທີ່ໃຊ້ເຂົ້າໃນການຜະລິດບໍ່ພຽງພໍ				9. ສິນຄ້າທົດແທນກັນ			
2	ລາຄາຂອງວັດຖຸດິບໃນການຜະລິດແພງ				10. ຜູ້ສະໜອງປັດໄຈການຜະລິດ			
3	ພາສີ-ອາກອນ ແພງ				11. ຄູ່ແຂ່ງທີ່ເຂົ້າມາໃໝ່			
4	ກົດລະບຽບເຂັ້ມງວດເກີນໄປ				12. ອຳນາດການຕໍ່ລອງຂອງລູກຄ້າ			
5	ບັນຫາເງິນເຟີ້ສູງ (ລາຄາສິນຄ້າສູງຂຶ້ນ)				13. ການແຂ່ງຂັນພາຍໃນທຸລະກິດ ປະເພດ ດຽວກັນ			
6	ອັດຕາແລກປ່ຽນບໍ່ແນ່ນອນ				14. ຂາດແຮງງານມີສີມື			
7	ການຂາດແຄນເງິນທຶນ				15. ຂາດຕະຫລາດຈຳໜ່າຍ			
8	ຂາດແຄນແຮງງານ				16. ອື່ນໆ...			

III. ປະຈຸບັນ ທ່ານໄດ້ຢືມເງິນມານຳໃຊ້ເຂົ້າໃນການດຳເນີນທຸລະກິດບໍ່ ? (ຖ້າຢືມ ກະລຸນາຂຽນລາຍລະອຽດ)

	ໂດລາ	ບາດ	ກີບ	ສິ່ງມັດຈຳ	ອັດຕາດອກເບ້ຍ/ເດືອນ
1. ຈາກເພື່ອນ					
2. ຈາກພີ່ນ້ອງ					
3. ຈາກທະນາຄານ					
4. ຈາກຜູ້ປ່ອຍເງິນກູ້					

IV. ທ່ານຢາກໃຫ້ລັດຖະບານເຂົ້າມາຊ່ວຍເຫຼືອແລະສະໜັບສະໜູນການດຳເນີນທຸລະກິດຂອງທ່ານທາງດ້ານໃດແດ່ ?

.....  
 .....

V. ຂໍ້ມູນກ່ຽວກັບຜູ້ປະກອບການ.

1. ເພດ: 1) ຍິງ 2) ຊາຍ ອາຍຸ:..... ປີ

2. ເຊື້ອຊາດ :

1) ຄົນລາວ(100%) 2) ຄົນຈີນ 3) ຄົນວຽດນາມ 4) ຄົນໄທ 5) ຊອດຈີນ 6) ຊອດວຽດນາມ 7) ອື່ນໆ

3. ລະດັບການສຶກສາ:

3A. ສາມັນ : 1) ບໍ່ຈົບປະຖົມ 2) ຈົບປະຖົມ 3) ຈົບມັດທະຍົມ 4) ຈົບມໍ່ປາຍ

3B. ວິຊາຊີບ : 1) ຊັ້ນຕົ້ນ 2) ຊັ້ນກາງ 3) ຊັ້ນສູງ 4) ປະລິນຍາຕີ 5) ປະລິຍາໂທ 6) ອື່ນໆ.

3C. ຂະແໜງ ທີ່ທ່ານຮຽນຈົບ.....

4. ທ່ານໄດ້ຮຽນຮູ້ວິທີການຜະລິດ ຫລືເຮັດທຸລະກິດນີ້ມາຈາກໃສ ?

1) ໂຮງຮຽນ 2) ການຊອກຮູ້ດ້ວຍຕົນເອງ 3) ພໍ່ແມ່, ຍາດພີ່ນ້ອງ 4) ໝູ່ເພື່ອນ 5) ອື່ນໆ.....

( ຂໍຂອບໃຈທຸກທ່ານເປັນຢ່າງສູງທີ່ໃຫ້ການຊ່ວຍເຫລືອໃນການຕອບແບບສອບຖາມຄັ້ງນີ້ )

***Output 10 List of Contents, Money and Banking***

**Chapter 1  
Introduction**

- I. The Role, Function and Forms of Money
- II. System of Monetary Standards
- III. Brief history of Lao kips

**Chapter 2  
Financial System**

- I. Money Flow Table
- II. Characteristics of Credit and Debt
- III. The Classification of Debt in Economy
- IV. Credit Instruments
- V. Condition of Credit
- VI. Credit Market
- VII. Lao Banking System

**Chapter 3  
Commercial Bank**

- I. Function of Commercial Bank
- II. Commercial Bank System
- III. Capital Mobilization of Commercial Bank
- IV. Mechanism of Money Creation

**Chapter 4  
Money Market I**

- I. Demand for Money
- II. Function of Money Market and Interest Rate
- III. Financial Market Structure

**Chapter 5  
Central Bank**

- I. History of Central Bank
- II. The Role, and Function of Central Bank

**Chapter 6  
Monetary Policy**

- I. Monetary and credit Policy
- II. Lao's Implementation of Monetary Policy

- III. Monetary Policy and Fiscal Policy
- IV. Lao's monetary Policy

### Chapter 7 Monetary Theory

- I. Quantity Theory of Money: Classical View
- II. Liquidity Preference Theory of Keynesian View
- III. Quantity Theory of Monetarist View

### Chapter 8 Specific Issues for Recent Monetary Theory

- I. Inflation, Money and Fiscal Deficit
  - I-I. Aggregate Demand, Supply Analysis
  - I-II. Budget Deficits and Inflation: Inflation Tax
- II. Asymmetric Information and Financial Market
  - II-I. Moral Hazard and Adverse Selection
  - II-II. The Role of Financial Institution
- III. Banking Management and Regulation
  - III-I. Regulation on Banking Practice
  - III-II. Capital Adequacy Rate
  - III-III. Risk Management of Banks

### Chapter 9 Specific Issues for Developing Economies

- I. Financial Repression
  - I-I. Definition of Financial Repression
  - I-II. MaKinnon – Shaw Model
  - I-III Segmented Financial Market in Financial Repression
- II. Rural Finance and Microfinance
  - II-I. Entity of Informal Finance
  - II-II. Practice of Microfinance
  - II-III. Sustainability and Outreach

***Output 11 List of Contents and Reference Materials, Money and Banking***

**Chapter 8 Specific Issues on Recent Monetary Theory**

**I. Inflation, Money Market and Fiscal Deficit**

**I-I. Aggregate Demand, Supply Analysis: Keynesian and Monetarist View**

- Views of Inflation: Mishkin ch.24, Mishkin ch.26, p.668,  
Sachs and Larrain ch.3 for more detailed explanation

**I-II. Budget Deficit and Inflation: Inflation Tax**

- Government Deficits and Inflation: 11-1,
- Seigniorage, Inflation Tax: Sachs and Larrain 11-2, Fry 17-5.
- Others: World Bank 1989 p.61-53 and Box 4.5

**Basic Reference:**

Sachs and Larrain ch.11

Mishkin ch.26

**Further Reference:**

Fry ch.17

World Bank 1989 Ch.4

**II. Asymmetric Information and Financial Market**

**II-I. Moral Hazard and Adverse Selection**

Mishkin ch.2, p.34-37, Mishkin ch.8, p.186-202

**II-II. The Role of Financial Institution**

TBA

**II-III. Failure of Financial Market: Credit Rationing (Graduate Level?)**

TBA

**Basic Reference:**

Mishkin ch.2 & ch.8

### **III. Banking Management and Regulation**

III-I. Regulation on Banking Practice: Mishkin ch.11, p.279-293

III-II. Capital Adequacy Rate: Mishkin ch.9, p.219-p.225

III-III. Risk Management: Mishkin ch.9 p.228-237

#### Basic Reference:

Mishkin ch.9 & ch.11

### **Chapter 9 Specific Issues on Developing Economies**

#### **I. Financial Repression**

I-I. Definition of Financial Repression, Fry ch.2-1, 2-2

I-II. MaKinnon - Shaw Model Fry ch.2-3, 2-4, World Bank 1989, p. \*\*

I-III. Segmented Financial Market in Financial Repression: Fry 2-5

#### Basic Reference:

Fry ch.2

World Bank 1989 p. \*\*

#### **II. Rural Finance and Microfinance**

##### **II-I. Entity of Informal Finance**

- World Bank 1989, ch.8.

- Hoff and Stiglitz Sec. \*\*

##### **II-II. Practice of Microfinance**

- General Explanation: Morduch, sec. 1, sec. 2

- Methods and Mechanisms: Murdoch sec. 3

##### **II-III. Sustainability and Outreach**

- Yaron \*\*

#### Basic Reference:

Hoff and Stiglitz 1996

Morduch 1999

Yaroon \*\*

Further Reference:

Ledgerwood 1998

D.Hulme and P.Moseley 1996

World Bank 1989, ch.8.



## ***Output 12 List of Contents and Reference Materials, Comparative Economic 2***

### **Comparative Economic Systems II**

#### **1. How the Asian countries developed**

##### **1.1 Asian Miracle**

East Asia has a remarkable record of high and sustained economic growth.

High-performing Asian countries: Japan, Four Tigers(Hong Kong, the Republic of Korea (South Korea), Singapore, and Taiwan), China and the three newly industrializing economies (NIEs) of Southeast Asia (Indonesia, Malaysia and Thailand)

Fig 1 of Asian Miracle, p.2.

HPAEs have also been usually successful at sharing the fruits of growth.

Fig 2 and 3 of Asian Miracle, pp.3-4.

##### **1.2 The Flying Geese Pattern**

East Asian development pattern looks like a catch-up process in which all four groups have been moving up the Market.

- 1) Japan
- 2) Four Tigers
- 3) Asian NIEs
- 4) Socialist Economies

Four Tigers try to catch up with Japan. Asian NIEs try to catch up with the Four Tigers. Former Socialist economies in East Asia try to catch up with Asian NIEs.

Fig 3.1 and Table 2 of Ichimura, pp.26-27.

Although East Asian countries could catch-up Japanese economic growth process, their industrialization patterns are a little bit different.

##### **1) Resource-poor country type of industrialization**

- /development of light industries,
- /export of light industrial products – foreign exchange earnings,
- /import of capital goods,
- /domestic investment in infrastructure and export industries,
- /export expansion – foreign exchange earnings,
- /import of capital goods and intermediate products,
- /development of intermediate stage of heavy-chemical industries.

## 2) Resource-rich country type of industrialization

- /resource exploration of development of agriculture and other primary industries,
- /export of natural resources, primary products or processed raw materials – foreign exchange earnings,
- /import of capital goods,
- /domestic investment in infrastructure, resource exploration, agro-industry, resource-related industries or light industry,
- /investment in human resources,
- /gradual shift to higher degree of industrialization,

## 3) Large country type of economic development

- /resources exploration and agricultural development,
- /forced domestic savings and less reliance on foreign loans,
- /gradual development of consumption goods industries,
- /export of primary and light industrial products – earning of foreign exchange,
- /import of minimum essentials for industrialization,
- /simultaneous development of capital goods industry with restriction on the import of capital goods.

## 1.3 Factors for fast Asian development

- /the high rate of capital accumulation,
- /the high saving ratio,
- /transfer to technology in agriculture and industrialization,
- /highly qualified human resources with declining fertility rate,
- /virtuous circles of export-led growth in the open economies,
- /the locomotive roles of the United States and Japan,
- /relatively sound fiscal and monetary policies,
- /tolerable distribution of income,
- /fairly reliable public and private institutions,
- /infrequency of social unrest and political instability.

(Ichimura, pp.33-45)

## 2. Views to Asian miracle

### 2.1 neoclassical view

They argue that the successful Asian economies have been better than others at providing a stable macroeconomic environment and a reliable framework to promote domestic and international competition.

They also stress that the orientation of the HAPes toward international trade and the absence of price controls and other distortionary policies have led to low relative price distortions.

Investments in people, education and health are legitimate roles for government in the

neoclassical framework.

## 2.2 revisionalist view

East Asia does not wholly conform to the neoclassical view.

Industrial policy and intervention in financial markets as well as state-led development policies are used.

Markets consistently fail to guide investment to industries that would generate the highest growth for the overall economy.

## 2.3 market-friendly view

World Bank Development Report 1991

The appropriate role of government is to ensure adequate investments in people, provide a competitive climate for private enterprise, keep the economy open to international trade, and maintain a stable macroeconomy.

(Asian miracle, pp.9-10)

## 2.4 market-enhancing view

The government's role is to facilitate the development of private-sector institutions that can overcome the coordination problems.

/information asymmetry and cooperation within private-order organizations

(Role of Government, pp.8-9)

## 3. Role of Government

### 3.1 Stable macroeconomy

Macroeconomic stability means that inflation is kept under control, international and external debt remains manageable, and macroeconomic crises that emerges are resolved quickly.

(Asian miracle, p.105)

Adhering to macroeconomic fundamentals

-keeping budget deficits manageable

Table 3.1 of Asian miracle, p.109

<== macroeconomic consequences of public sector deficits depend on ho how they are financed.

-maintaining moderate to low inflation

inflation below 20 percent, a level not breached by any of the HPAEs during their rapid growth periods, can be maintained for long periods without generating macroeconomic instability.

Fig 3.1 of Asian miracle, p.111

-keeping external debt under control

Table 3.3 of Asian miracle, p.113

-keeping the exchange rate in line

Table 3.4 of Asian miracle, p.114

-responding quickly to macroeconomic shocks

How macroeconomic stability contributed to growth

- economies that are not fully adjusted to a given rate of inflation usually suffer from relative price distortions caused by inflation.

-real tax collections lag inflation, because collections are based on nominal incomes of an earlier year (the Tanzi effect)

-uncertainty about future rates of inflation reduces the efficiency of investment and discourages it.

-high and variable inflation imposes substantial institutional costs, and scarce managerial resources in the economy with price volatility are drawn into financial sector.

(Asian miracle, pp.105-13)

### 3.2 Export-oriented policy

The governments of the HAPEs have encouraged exports by fostering a supportive macroeconomic climate and by providing suitable microeconomic incentives.

The former was facilitated by easing the liberalization of restraints on trade and by realistic or undervalued exchange rates. The latter was put into effect by various methods.

(Asian Miracle, pp.123-127)

### 3.3 Other governmental policies

-industrial policy

-R&D

(Role of Government)

## 4. Japanese Economic Development

### 4.1 Attainments before the modernization

-education

In 1868, 43% of men and about 10% of women could read and write in Japan.

-development of agriculture

productivity of rice cultivation in Japan around the end of Edo period was twice as those of South-Eastern Asian countries in the second half of 20th century.

-production of merchandisable agricultural products already began (cotton, cole seed, indigo, tobacco, tea, sweet potato and so on).

-in-house manufacturing was popular.

-trade system was established.

#### 4.2 Modernization after Meiji Revolution

In 1867 Edo Shogun government ended, and Meiji restoration began in 1868.

-democratization

/status system was abolished in 1869

/selling agricultural fields became permitted in 1872

/feudal lord system was abolished in 1869

/conscription (draft) began in 1873

...

-establishment of modern government

/land tax system in 1877

/banking system in 1872

/corporation system in 1881

/convertible currency system in 1886

-Shokusan-Kogyo policy

/New Meiji government tried to start many industries

mining, ship building, filature, cement, and so on

/In 1881 the government changed the policy and began to sell these enterprises.

/Yahata steel making factory was established in 1897

#### 4.3 Japanese economic development after WW2

-three D's: Demilitarization, Democratization, De-monopolization

-impressive economic recovery as the German reconstruction

-rapid economic growth period: 1960-70

-the shock period: 1970-80

-the internationalization period: 1980-90

(Ichimura, pp.1-9)

#### 4.4 Japanese Economic System

-Long-term, repeated and bilateral transactions

(Tsuru, p.140)

/corporate governance

/main banks

/employment

/keiretsu

/government

industrial policy

(Role of Government, pp.74-100)

#### 5 Economic Developments of the Four Dragons

##### 5.1 South Korea

South Korea had been devastated by the Korean War (1950-53). Over one million civilians and 320,000 soldiers in the South lost their lives. Of the twenty million people in South Korea, about a fourth were refugees with no home, almost no assets, and little hope of finding secure employment.

When the country was divided, all the facilities built up under the Japanese occupation went to North Korea. South Korea had little electric power and little industry aside from textiles.

After the Korean War, economic aids by the United States contributed a lot to her economic recovery. Aids provided between 1953 and 1961 summed up to 2.28 billion dollars. These aids enabled South Korea to construct such light industries as spinning, milling and sugar refining, and such social capitals as education and medical treatment.

In its efforts to industrialize, South Korea possessed several advantages: a highly disciplined

population, a sharper national consciousness, and a stronger national vitality. During South Korea's rapid growth, the work week approached 60 hours a week, and in the late 1980s it continued to average about 55 hours, 10 hours more per week than in any other country.

The Korean push toward industrialization began in 1961, when Park Chung Hee seized power. He launched export-oriented industrial development when import substitution was still in its early stages. The government used single and lower exchange rate system, export subsidies, cutting interest rates for export and so on. Share of industrial products to total export rose from 27.7% in 1961 to 88.9% in 1971.

South Korea adopted organizations strikingly similar to Japan's. The Korean Finance Ministry and Ministry of Trade and Industry looked very much like Japan's Ministry of Finance and MITI. To promote foreign trade South Korea established KOTRA (JETRO in Japan), and to manage technology it established KIST (AIST in Japan). South Korea had a Reconstruction Bank that was later renamed the Korean Development Bank (Japan Development Bank). South Korean industrial policy was tightly centralized.

As soon as it was able to borrow the necessary capital in the late 1960s, South Korea decided to expand into heavy and chemical industries. It pursued the program throughout the 1970s.

Record of economic development and industrialization of South Korea

	policy targets	main economic performance
1962-71 (1st and 2nd Economic Development 5 years Plans	<ul style="list-style-type: none"> <li>-redress the absolute poverty vicious circles</li> <li>-shift from import substitution to export-oriented industrialization</li> <li>-const basci industries and social indirect capitals</li> <li>-self-feeding of crop</li> </ul>	<ul style="list-style-type: none"> <li>-per capita GNP 82USD(1961) -&gt;289USD(1972)</li> <li>-export of 1billion USD (1971)</li> <li>-share of manufacturing industries to GDP: 17.0% (1966)</li> <li>-CPI 7.0%(1968)</li> </ul>
1972-81 2nd and 3rd plans	<ul style="list-style-type: none"> <li>-export orientation of heavy and chemical industries</li> <li>-advance the industrial structure</li> <li>-construct basis for self-development</li> <li>-attain equilibrium of balance of payments</li> <li>-develop agricultural villages</li> </ul>	<ul style="list-style-type: none"> <li>-per capita GNP 1000USD(1977)</li> <li>-export of 10billion USD (1977)</li> <li>-share of manufacturing industries to GDP 27.6% (1976)</li> <li>-share of heavy and chemical industries 51.2% (1980)</li> </ul>
1982-91 5th and 6th plans	<ul style="list-style-type: none"> <li>-construct basis for economic stability</li> <li>-facilitate private self-support and competition</li> <li>-national welfare and equal distribution</li> <li>-open to outside and internationalization</li> </ul>	<ul style="list-style-type: none"> <li>-per capita GNP 5000USD(1990)</li> <li>-trade volume: 150 billion USD(1991)</li> <li>-saving ratio 38.1%(1988)</li> <li>-import liberalization ratio (manufacturing products 99.9% (1991)</li> </ul>

## 5.2 Taiwan

### 5.2.1 Economic history of Taiwan

Taiwan was the first dragon to achieve an industrial breakthrough. But in 1949, when Chian

Kai-shek retreated to Taiwan along with over one million mainlanders, the economic prospects did not seem bright. Its GNP was approaching pre-war levels, but its average per capita income was still below 100 USD a year. Except for some small textile factories, a few modern sugar refineries and other food-processing plants, Taiwan had no industrial base.

In 1949, the Kuomintang (Nationalist Party) leaders established import restrictions, and pursued an import substitution policy, the production locally of goods formerly imported, to make Taiwan a more self-sufficient economy. Of the consumer goods in short supply in Taiwan, textiles were most critical. Economic planners concentrated on textile production.

Also in 1949, land reform was conducted. Rents were reduced, followed by the division of public land and the purchase of land owned by large landlords, and then division to the tillers, all completed by 1953. The land reform gave farmers incentives to increase production, leading to stable foods supply and contributing to industrialization through foreign exchange earnings by exports of processed agricultural products.

By mid-1950s the building blocks were in place and industry had made a good start in producing for local consumption. By 1958 voices for more industrial investment and export promotion policies began to prevail. Early in 1960, a Nineteen Point Program for Economic and Financial Reform was announced. It included and expanded four-year economic plan for 1961-1964 and a program of incentives for private businesses that produced and marketed for export.

The policy instruments used to increase export were:

-reform of foreign exchange system

Six exchange rates to US dollar were used in 1950s, but they were unified in July 1960. The unified exchange rate of 40 New Taiwan dollars to US dollar was used for a long time, contributing to export promotion.

-refund of custom duties

In 1954 refunding system of custom duties for raw materials used for export purposes began. The system enabled exporters to acquire raw materials for export processing at the international market prices.

-export processing zones

Three export processing zones, including the first one in the World, Kaohsiung in 1966, were established (the total area was 192 ha). Enterprises located in the zones were admitted to import equipments and tools, and raw materials without custom duties, with a restriction that all the products should be exported.

-investment promotion incentives

Law promulgating investment promotion incentives was passed in 1960. Especially for certain manufacturing industries, exemption of corporate income tax, and exemption or progressive payment of import duties to production machines were widely used.



-promotion for inviting foreign direct investment

Along with world economy's high economic growth, Taiwan economy could develop, with an average annual economic growth of 9.5% in 1960s. Despite of two oil crisis in 1970s, the economic growth rate exceed 10%. Economic growth in Taiwan was led by export. Share of export to GDP was more than 20% in 1966, more than 30% in 1970, more than 40% in 1972, and more than 50% in 1978, reaching a peck of 58% in 1986.

To level up the economic structure, various methods were used. Import restrictions were lifted step by step in the end of 1980s, import duty rates were reduced, FDI was liberalized, and so on. In order to maintain export potentials, R&D is definitely important. To promote high-tech development Taiwan developed the Hsinchu Science and Industry Park in the 1970s. However, the major government activities were directed toward facilitating the growth of private companies, providing the infrastructure, technology, low-cost capital, and export incentives that private enterprise could take advantage of.

### 5.3 Hong Kong

### 5.4 Singapore

#### 5.4.1 Economic history of Singapore

Singapore is a small town country with the population of 3 million (1990 census), but income per capita is 13,058 USD (1992), the second highest level in Asia after Japan.

Initial conditions of Singapore were inadequate to industrialization, because Singapore developed as a port for transit trade. The industrial structure was concentrated on trade and service, with manufacturing being infant.

Industrialization in Singapore began as the import-substitution strategy. For promoting industrialization, Economic Development Bureau was established, and infrastructures such as Jalan industrial district, were constructed. Despite of these efforts, average economic growth rate between 1960 and 1965 was only 5.7%.

Singapore became independent in August 1965, and started struggles to survive as an independent country. The development strategy adopted at that time was export-oriented industrialization. The government totally reformed the governmental organization to promote smooth development, and revised laws related with labor problems and with promoting investment.

In 1960s many foreign companies such as electric and electronic parts industry invested in Singapore and take-off of industrialization started. An average economic growth rate in 1968-88 was 10.2%. Leading industries were heavy industries, such as ship building, oil refinery, electric and electronic parts, and not light industries. Owing to industrialization led by foreign capitals, Singapore became an international processing base from a port for transit trade.

In the end of 1970s, Singapore's labor market became tight, and neighbor countries caught up with using cheaper labors. Singapore tried to change its industrial structure from labor intensive one to capital and technical intensive one. In 1980s financial and service sectors grew to be leading industries along with manufacturing industries.

#### 5.4.2 Reasons of high economic growth

Reasons of high economic growth in Singapore were:

- Government invested industrial infrastructures, such as ports, electricity, manufacturing areas and so on, and, using political and social stability, established a framework for development.
- Foreign capitals brought capitals, technologies and export market that were short in Singapore.
- Products were sold to overseas markets.

Singapore could not have grown without an active role of the government. Government played a big role in drawing up economic development plans, implementing industrial policies, establishing governmental development organizations, investing infrastructures, and so on. However, only one Five Years Economic Plan was drawn up for 1960-64. After that, short term targets were set in annual budgets, or long term targets for several decades were set. For promoting foreign investments Economic Development Bureau (EDB) established in 1961 played a big role. Also, in financial sector Development Bank of Singapore (DBS) and in providing manufacturing areas Jurong Town Corporation (JTC) played important roles.

#### 5.5 Common factors of the Four Dragons

Among East Asia's situational advantages for industrializing after World War II were following:

- U.S. aid,
- Destruction of the old order, and new leaders' freer policy making without considering their interests,
- Sense of political and economic urgency,
- Eager and plentiful labor force,
- The Japanese model.

Furthermore, Four Dragons had their own social capabilities that made advantages of followers realized:

- Meritocratic elite,

- Hard entrance exam system,
- The importance of the group,
- Self-cultivation.

## **6 Economic Developments of the countries in transition**

### **6.1 China**

**/Town Village Enterprises**

**/Foreign Direct Investment**

### **6.2 Vietnam**

**/Doi Moi**

## *Output 13 List of Contents, International Monetary Economics*

### International Monetary Economics

#### I. External Payments and Foreign Exchange

##### 1. Domestic Payments System

(1) Means of Payments : data percent of cash payments and non-cash payments  
cash (legal tender),

banknotes : issued by central bank Central Banking Act

coins : mint by MOF but no coins in Lao

bank deposit (private money)

##### (2) Inter-bank Settlements System

We need well-equipped inter-bank settlements system so that deposit can be means of payments through check or credit card.

##### (3) Roles of Central Bank

Lender of last resort: central bank can lend to the commercial bank short or over-night in order for the inter-bank settlements system to work well.

##### 2. Foreign Exchange as a Means of External Payments

(1) Foreign Exchange: means of payments for cross-border payments

(2) two way of paying

Demand draft : advanced payment :

Bill of collection : The example of the Bill is to be mailed from Japan.

(3) Export Draft with Letter of Credit (L/C)

See attached figure

The example of the L/C is to be mailed from Japan.

It is to note that issuing banks deal with the documents, not the product, so even if importer can't get the proper products it must pay. In this sense the importer can't be guaranteed about the products by L/C.

##### 3. Difference between Domestic Payments and External Payments

(1) Foreign Exchange Market

We have two different moneys so we need to exchange them at forex market

(2) Correspondence Account

We have no central bank between two countries so the settlement is done through crediting(+) or debiting(-) bank account holding at the bank of other countries.

#### II. Foreign Exchange Markets

##### 1. Structures of Foreign Exchange Markets

(1) Customers' Market : retail market

(2) Inter-bank Market : wholesale market

(3) Interrelationship of both markets: inter-bank rate is the basic rate in determining the list of customer's rates. About the list of customer's rates see the table mailed from Japan.

## 2. Actors of Foreign Exchange Markets Cross' Book Chap.4

(1) Dealers(banks) : sell or buy the dollar

(2) Brokers : don't hold their own account

(3) Direct Dealing and electronic broking

In case of direct dealing bank must offer both selling price and buying price such as 10,010-10,000

In case of dealing through broker bank can offer only sell or buy

## 3. Foreign Exchange Transactions Cross' Book Chap.5

(1) Spot transaction

(2) Forward transaction (outright forward)

Contract of buying or selling the dollar in the future at the pre-determined price

Exporter can hedge the exchange risk by selling dollar in forward market

Importer can hedge the exchange risk by buying dollar in forward market

(3) Foreign exchange swap Cross' Book pp.40-44

Buy dollar at spot and at the same time sell them at forward or

Sell dollar at spot and at the same time buy them at forward

(4) Covered interest parity

Interest difference is to be equal to the spread of forward and spot rate

$f < s$  : forward discount of the dollar

$f > s$  : forward premium of the dollar

(5) Foreign exchange operation

exchange position

long position: buy more dollars than sell

short position: sell more dollars than buy

square position: sell is equal to buy

Dealers try to make the over-all position (spot + forward) into square.

In inter-bank market outright transactions are very rare and banks can't make the position into square even if they have the long or short position in forward transaction, then they must sell or buy dollar in spot market, which will change the liquidity positions of banks and need to deal with foreign exchange swap.

liquidity position: shortage or overage of dollar fund

About position and liquidity operation see the attached figure

Foreign exchange swap is very useful because banks can adjust their shortage or overage of dollar fund without changing the over-all exchange position.

#### 4. Intervention by Central Bank

##### (1) exchange equalization policy (intervention)

Central Banks intervene in the forex market to keep the fixed exchange rate or to stabilize the movements of exchange rate

##### (2) foreign reserves and base money

In case of buying dollar foreign reserve and base money increase

In case of selling dollar foreign reserve and base money decrease

##### (3) sterilization

In order to hold base money unchanged the central bank buy or sell domestic securities at open market

#### 5. Global Foreign Exchange Market and the Roles of the dollar

##### (1) BIS Survey of Foreign Exchange Market

Every three years the data are available see BIS website

##### (2) Role of the dollar: vehicle currency

Most of the forex transactions in inter-bank market is with the dollar so in case Kip is exchanged into the yen the transaction is done through the dollar that is by selling kip to the dollar and then selling the dollar to the yen. In this transaction the dollar is the vehicle currency.

### III. International Currency

#### 1. Roles of International Currency

##### (1) Bank deposit as international currency

International currency is the means of payment between the banks, and as in the domestic transaction functions as a unit of account, means of payment and a store of value in international dimension.

##### (2) Private use

invoice, : cross-border transactions need some unit of account

payment, : payments will be done by invoicing currency

vehicle, : dollar is the vehicle in inter-bank forex market

: dollar is the vehicle also in case two non-US countries trade in dollar

About these data see attached file about yen by MOF Japan

investment : private sector (bank or financial institution) hold foreign balance by investing in securities invoiced in the currency

##### (3) Official use

peg : in case a country peg its currency to the dollar, dollar is peg currency

intervention : central bank intervene in the forex market by buying or selling dollar

reserve : monetary authorities hold dollar or euro as foreign reserves

About the data of each international currency roles see IMF or BIS website.

## 2. Choice of International currency

### (1) Tradable I and tradable II : choice of invoicing currency

Tradable I industrial products such as cars

mainly invoiced in currency of the exporter because exporter has stronger bargaining power than the importer

Tradable II raw materials such as oil or crops

mainly invoiced in the dollar because such prices is determined in world markets and invoiced in the dollar, both exporter and importer can not hedge exchange risks by using its currency

About this discussion see the book by McKinnon to be mailed from Japan

### (2) Interaction of private and official roles

The government has an incentive to peg to the currency in which many parts of trade or financial flow is invoiced.

If the government peg its currency to any single foreign currency the government must hold foreign reserves in that currency, and private sector is going to invoice in that currency because they can avoid exchange risk.

## IV. Economics of Exchange Rate

### 1. Exchange Rate

#### (1) Nominal Exchange Rate

Usually the exchange rate means the nominal bilateral exchange rate.

\$1=10,000kips \$1=¥122

#### (2) Real Exchange Rate

Real exchange rate is the rate adjusted by inflation rate of both countries.  
useful in calculating the real competitiveness.

#### (3) Effective Exchange Rate

Effective exchange rate shows the trade weighted movements of the currency  
useful in understanding the movement of the currency in global perspective

About the weight of effective exchange rate of the dollar and the euro see the attached website information.

About the data of effective exchange rate see IFS of IMF

## 2. Exchange Rate under Restricted Capital Movements

### (1) Flow approach of exchange rate

Fundamentally exchange rate is determined as the demand for dollar is equal to the supply of dollar. In the flow approach the demand and supply for dollar comes from current account transactions.

### (2) Purchasing power parity (PPP) Krugman-Obstfeld Textbook, Levi Textnook

In equilibrium current account balance should be equal to zero, and PPP shows

an example of equilibrium exchange rate.

PPP says that one good can be bought at the same price all around the world.

This is Law of One Price. If  $eP^* < P$ , then home country will import from abroad which make exchange rate depreciate until the level of PPP.

PPP exchange rate  $= P/P^*$      $P$  : domestic price     $P^*$  : foreign price

(3) BigMac index

BigMac index shows very simple example of PPP.

See attached data. The Economist shows the index every year.

(4) Relative PPP

Absolute PPP holds for general price level only when the basket of goods for price index is the same for both countries.

Even when the basket of goods are different for countries, if the basket of goods in each countries is the same for long and relative prices between them don't change, we can use the relative version of PPP.

Rate of change in relative PPP  $= \pi - \pi^*$

$\pi$  : rate of inflation of home country

$\pi^*$  : rate inflation of foreign country

Relative version of PPP differs depending on the price index (CPI, WPI, Export Price) See attached figure.

3. Exchange Rate under Free Capital Movements Krugman Obstfeld Textbook.

(1) Asset approach of exchange rate

Demand for and supply of dollar comes mainly from financial transaction. If the domestic interest rate, foreign interest rate or expectation of future exchange rate change the investors will their portfolio between domestic bond and foreign bond. This will change demand and supply of dollar and moves exchange rate.

(2) Uncovered interest parity

If most of the investors are risk neutral that means they care only about the expected earnings of both assets and don't care about the difference of risk (domestic asset has no risk, while foreign asset has exchange rate risk). In this case both assets are perfect substitute.

The exchange rate is determined by the following equation

$$i = i^* + (Ee - e)/e \quad Ee : \text{expected future exchange rate}$$

(3) Overshooting of exchange rate (This part can be omitted)

In case domestic money supply increases,

In the short run domestic interest rate decreases and expected exchange rate depreciate so the exchange rate depreciate rapidly.

In the long run price level moves upward and make the real money supply



decrease and interest rate increases gradually, and exchange rate starts to appreciate toward the level of PPP.

(4) Roles of risk premium (This part can be omitted)

If the most investors are risk averter and request higher expected earnings to risky asset (foreign asset with exchange risk), this difference in expected earnings is called risk premium. Risk premium depends on, net international asset levels of both countries, government bond balance of both countries.

$$i = i^* + (Ee - e)/e - rp \quad \text{or} \quad rp = i^* + (E - e)/e - i$$

V. Economics of Balance of Payments

1. Balance of Payments

(1) Principles of balance of payments See Balance of Payments Manual

Balance of payments statistics have the principle of Double Entry (both in credit and debit) and make the sum of credit is to be equal to the sum of debit.

$$\text{Current account balance} + \text{Capital account balance} = 0$$

(2) Current account

- Goods and service balance
- Income balance
- Current transfer

(3) Capital account

- Financial balance
- Foreign direct investment
- Portfolio balance
- Bank account balance
- Increase of official reserves
- Capital transfer

(4) International investment position

International investment position (stock) is the cumulative balance of balance of payments (flow). If a country has current account deficit (surplus) its investment position becomes worse (better) by the same amount (theoretically).

International Investment position has a close relationship with current account. If a country's investment position is plus (minus) the income balance is

2. Theories of Current Account Imbalance

$$M(eP^*/P, Y) - X(eP^*/P, Y^*)$$

Elasticity approach

$$= (C + I + G) - Y$$

$$= A - Y$$

Absorption Approach

$$= (I - S) + (G - T)$$

$$= \Delta R = M - kY (= L)$$

Monetary Approach  $k$ : Marshallian  $k$

(1) Elasticity approach

Overvaluation of exchange rate causes deficit so the recommended policy is devaluation. In case Marshall-Lerner condition is met, the devaluation can improve deficit into equilibrium.

Marshall-Lerner condition

$$\text{price elasticity of export} + \text{price elasticity} > 1$$

(2) Absorption approach

Over consumption, over investment or government deficits can make absorption to be greater than production (Y), and make the current account deficit. In order to improve the deficit we need to cut absorption.

(3) Monetary approach See Polak's paper

If the central bank supply too much money over money demand, the excess money will be used in importing goods from abroad and have current account deficit under the fixed exchange rate system. In order to improve the deficit we need to contract money supply.

(4) IMF conditionality

Usually IMF conditionality contains devaluation, government spending cut and monetary contraction. these conditionality comes theoretically from the above approaches.

## VI. International Capital Market and Capital Movements

### 1. Roles of International Capital Flow

(1) Current account as IS balance

Current account reflects its domestic IS balance.

$S > I$  Current account surplus

$S < I$  Current account deficit

(2) Capital movements and utility maximization

Capital movements can link these imbalances of domestic shortage and overage of funds through capital account surplus and deficit. Without capital movement deficit country must cut spending and surplus country must spend more domestically, this is no optimum choice.

### 2. Categories of Capital Movements See Okina et al article

(1) ODA and official flow

Borrower can borrow fund at a concessional basis or no cost (in case of AID)

(2) Foreign direct investment

Borrower need not refund, FDI is non-liability fund and also it transfer technological and management skill.

(3) International bank loan

Long-term bank loan and short-term bank loan. Short-term loan sometimes can

be extended through roll-over.

#### (4) Portfolio investments

Portfolio investments (bond equity) have been growing since 1980's. These funds are liquid and fast to flow in but fast to flow out.

### 3. International Money and Capital Markets

#### (1) International money market See Dufey-Giddy Book

##### Traditional market

The short-term fund is traded at cross-border basis. For example Lao company can borrow dollar from the bank in NY.

##### Euro currency market

The currency traded outside its home countries is called euro-currency market and the largest market is euro-dollar market in London. Euro-currency market is fundamentally inter-bank market and its interest rate LIBOR (London Inter-Bank Offered Rate) is the basis for international finance. A bank in Lao can borrow dollar from the bank in London, but maybe at the rate of LIBOR + premium.

#### (2) International bond market See BIS QR

##### Traditional bond market

Bond can be issued cross-border basis. For example Lao company can issue dollar denominated bond in NY.

##### Euro bond market

The bond issued outside the country denominated in its currency is called euro-bond. The international bond consists of euro-bond and bond issued by non-residents. Lao company can issue dollar denominated bond in London.

## VII. Foreign Exchange Rate Policy

### 1. Categories of Foreign Exchange Rate System See categories by IMF

- (1) Exchange rate system without legal tender
- (2) Currency board arrangement
- (3) Peg to a single currency
- (4) Peg to a composite of currencies
- (5) Peg system within horizontal bands
- (6) Crawling peg
- (7) Crawling bands
- (8) Managed floating
- (9) Independently floating

### 2. Impossible Trinity

#### (1) Mundell-Fleming model See Pentecost Textbook

If we assume perfect capital mobility

Monetary policy is ineffective under fixed exchange rate.

Monetary policy is effective under floating exchange rate

(2) Impossible trinity

We cannot have the following three goals at the same time

To have a stable or fixed exchange rate

To have free capital movements

To have an independent monetary policy

Option1 Freely floating system

Option2 Monetary union, full dollarization currency board

Option3 Capital control

(3) Two-corner solutions

Under free capital movements we have only two extreme solutions,

Freely floating exchange rate system

Full dollarization, Monetary union

(4) More flexible system

For small open developing countries free floating system is not a proper solution.

They need to have stable exchange rate but the peg system has the risk of speculation. They need to have more flexible exchange rate system such as BBC approach.

BBC approach

Basket peg : peg not to single currency but to basket of currency  
effective in stabilizing effective exchange rate

Band : wider band allows the rate move relatively large

Crawl : adjust the parity periodically alongside with inflation difference  
effective in stabilizing real exchange rate

### 3. Economics of Dollarization

(1) Concept of dollarization

Dollar circulate exclusively or alongside with domestic currency.

(2) Official dollarization

Monetary authority abolishes its own currency and accept dollars

In this case dollar is legal tender

Official dollarization is effective in curbing domestic inflation or in avoiding currency mismatch.

(3) Unofficial dollarization

Private sector hold dollar cash or dollar deposit alongside with domestic cash and deposit.

Private sector prefer dollar than domestic currency because of high inflation in home country or lack of confidence in monetary authority.

(4) Dollarization and monetary policy See IMF Occasional Papers

- Loss of Seigniorage
- Low level of foreign reserves
- Loss of effective monetary policy
- Loss of effective foreign exchange rate policy

## VII. Lessons of Asian Currency and Financial Crisis

### 1. Asian Currency and Financial Crisis See attached Economist's table

Stylized facts (In case of Thailand compared with Mexico before crisis)

- Large current account deficit
- Government sector had surplus
- Large amount of reserves
- De fact dollar peg system

### 2. Financial Factors of the Crisis See Reports of World Bank and ADB

De facto dollar peg exchange rate system and over-borrowing

The borrowers mainly the banks feel little exchange risk in borrowing in dollar

Over-lending and boom and burst

Huge inflow of capital can't be sterilized and flow into domestic market, mainly asset market or property market and make it booming.

Bad-loan of banks and sudden capital outflow

### 3. Relationship between Currency Crisis and Financial Crisis

Banks had two mismatches

Currency mismatch : borrow in dollar and lend in domestic currency

Maturity mismatch : borrow short and lend long

The depreciation of domestic currency worsens balance-sheet of banks

### 4. Lessons from Asian Crisis

- More flexible exchange rate system
- Sequences of financial liberalization
- Sound domestic banking system and supervision

## ***Output 14 List of Contents, International Marketing***

### **Proposed Contents of *International Marketing***

#### **Chapter 1. Introduction**

- 1.1 Progress of Globalization in Marketing Activities
- 1.2 Difference between International Marketing and Marketing
- 1.3 Problems for Discussion

#### **Chapter 2. International Marketing Process**

- 2.1 Choice to Globalize or not to
- 2.2 Selection Problem in Entry Market
- 2.3 Determination of Entry Mode
- 2.4 Problems for Discussion

#### **Chapter 3. Entry by Japanese Firms to Chinese Market: Case Studies**

- 3.1 Case of House Food Manufacturing Company
- 3.2 Case of Wacor
- 3.3 Problems for Discussion

#### **Chapter 4. Entry of Foreign Firms to Japanese Market: Case Studies**

- 4.1 Case of Hall Mark, Japan
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#### **Chapter 5. Coming up of Born Global Company**

#### **Chapter 6. The Future of International Marketing**

*Output 15 List of Contents, Business Law*

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(Revised Proposal as of August 15, 2005 prepared by Yuka KANEKO)

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### 9.1 Decree on Competition (adopted in May 2005 but not yet *promulgated...we need to get it!!*)

### 9.2 International Trend

## 10. International Commercial Transactions

### 5.7.1 UNCITRAL Models: UNCCISG/ Model Arbitration Law/...

### 5.7.2 ICC Models: UCP/ INCOTERMS/...

End.

## Basic Structure of Law and Judicial System

## Sources of Law and the Priority

1. Constitution: ultimate source of legitimacy in the constitutional democracy.
2. Law/Statutes: legislations in the democratic process among people's representatives (National Assembly). (Art.39)
  - 2'. Orders of Council?
  - 2". Local Ordinances? (Chapter-VII: No local assemblies?)
  - 2'''. Social Custom?
3. Administrative Regulations: Presidential Decrees (Art.53 No.2); Government Decrees (Art.57 No.4); Government Decisions (ditto); various implementing regulations.
4. Court Precedence? (established interpretation of law/custom developed in the cumulated cases) ⇔ Law interpretation authority of NASC (Art.48 No.2)? (Comparison: Civil Law/Common Law/Socialist)

## 1991 Constitution: Basic Strategy of Transition

- Shock Therapy? vs. Gradualism?
- Dualistic Reform Strategy:
  - Politics: Socialist System Preserved  
(1991 Constitution Art.2,3,5,7)
  - Economy: Ownership, Freedom of Trade  
Guaranteed (1991 Constitution Art.13,14,15), but  
under state adjustment (Art.16)
    - more need of clear and detailed Economic Laws to  
protect predictability in the market transactions!

## Different Policy Goals of Transition

China	Vietnam	Russia
2 stage Gradualism toward Liberalism	Gradual Liberalism vs. ASEAN-style Intervention	Civil Law School vs. Economic Law School
1978~SOE Management Reform 1986 Basic Civil Principles 1993 Company Law (state- solely owned LLC)	1991 Constitution 1993 Land Law 1995 Civil Code	1991 Constitution 1991 Competition Law 1995 Civil Code 1995 Joint Stock Co. Law
1998 Uniform Contract Law 1999~Company Law Reform 2003 Constitution Change 2005 draft Competition Law 2005~draft Civil Code	1994 Procedural Rules for Economic Disputes 1997 Commercial Law 1998 Enterprise Law 2003 amended SOE Law 2004 Competition Law	1995 Arbitration Court Law 1998 Limited Liability Co. Law 1998 Administrative System Reform including Competition Policies

## Classification of Law by Regulated Subjects/Area

- Public Law/ Private Law
- Public Law/Civil & Commercial Law/  
Criminal Law/Social Law/Industrial Law/Treaties
- Substantial Law/ Procedural Law
- Domestic Law/ International Law

## Classification of Law by Implementation Approaches

Targets Means	Market Entry Rules	Transaction Rules	Market Conditions	Institutional Bases
<b>Administrative Law Process</b>	Interventionist Company Law + Insolvency Law	Interventionist Consumer Law; Economic Contract	Interventionist Competition Law	<b>Governance Reform</b> -Transparency -Disciplines -Monitoring
<b>Criminal Law Process</b>	-Economic Crimes Law -enforcement of admin. laws	-Economic Crimes Law -enforcement of admin. laws	-Economic Crimes Law -enforcement of admin. laws	<b>-Judicial reform</b> <b>-Prosecution</b> <b>-Criminal Procedure Law</b>
<b>Civil Law Process</b>	Transparent Company Law, + Insolvency Law	Civil & Commercial Law	Competition Law enforced by civil process	<b>-Judicial reform</b> <b>-Civil Procedure</b> <b>-trainings</b>

## Law Development Process

- Pre colonial period:
- French Colonial Period: law as basis of control  
(1908 Penal Code, Procedure Code, and Civil Code;  
1922 Code Reform, Law on Court)
- Internal War Period (1953-75): less progress (customary law for civil disputes; French codes continued for commercial disputes??)
- Transition Period (late 1980s~): Legal Assistance Programs
  - UNDP →WB succeeded leadership + ADB/Australia  
(basic law reform: transplantation of international standards)
  - France (aiming at Re-transplantation of French Law)
  - SiDA; Japan (technical assistances)

## Problems of Legal Assistance

- Short term reform (48 laws during 1989~2000)
  - Compulsory nature → passive attitudes of counterparts
  - Less respect on local legal order (French Code/ customs)/ Promotion of US model
  - Random line-up of single statutes/ orderly design of law system disregarded
    - ← common law tradition
    - ← limited Federal jurisdiction
  - Less concern on judicial trainings ← non-career system
- Difficulty of systematic law applications by the Court
- Difficulty of coordination among Donors

## List of Major Economic Law

Laos (since 1986)	VN (since 1986)	Meiji-JPN (since 1868)
Property Law (1990)	Civil Code (1995)	Civil Code (1898)
Contract Law (1990)	ditto	ditto
Law on Torts (1990)	ditto	ditto
Civil Procedure Law (90)	expected in 2005	Civil P. Code (1890)
Constitution (1991)	Constitution (1992)	Constitution (1890)
Foreign Investment (94)	FIL (1987→1996)	-
Labor Law (1994)	Labor Code (1993)	labor laws (1910s~)
Business Law (1994)	Enterprise Law (98)	Commercial Code (1893)
Bankruptcy Law (1994)	Bankruptcy Law (04)	Bankruptcy Law (1893)
Forestry Law (1996)	Land Code (1993)	Civil Code
Land Law (1997)	Ditto	Civil Code
Law on Agriculture (98)	-	-
Manufacturing Law (99)	-	-

## Outlines of Legal Assistance

- **Background:**
  - 1960s: Law & Development Movement during cold war
  - Criticism: Transplantation of single model without studying local conditions (see Trubek & Galanter, 1974)
  - 1990s: Transition Economies; Asian Crisis.
  - Criticism: Repeated mistake? (see Rose 1998)
- **Donors:** WB-IMF; EBRD; ADB; bilateral donors.
- **Recipients:** Transition economies; ASEAN countries...
- **Major Target Area:** Law and Institutional buildings for:
  - Human Right promotion (though smaller budget)
  - Economic Law (especially Financial Law) (see ADB 04)

## Problem-1: Compelled Law Models

- Major Law Models:
- European Bank for Reconstruction and Development (1994), EBRD Model Law on Secured Transactions
- OECD (1998), OECD Principles of Corporate Governance
- World Bank - OECD (1999), A Framework for the Design and Implementation of Competition Law and Policy
- World Bank (1999), Draft World Bank Principles and Guidelines for Effective Insolvency Systems
- IMF (1999), Orderly & Effective Insolvency Procedures: Key Issues
- World Bank (1999), Draft World Bank Principles and Guidelines for Effective Insolvency Systems
- ADB (2000), 'Good Practice Standard', in ADB (2000) "Report No.5795:Insolvency Law Reforms in the Asian and Pacific Region"
- ADB(2000), 'Base Model' and 'Alternative Approach' in ADB (2000)"Secured Transaction Reform in Asia: Unleashing the Potential of Collateral,"

## Problem-2: Justification given by 'Law and Economics'

- Controversies of Econometrical Method in Economic Studies on Financial Laws  
= De Facto Standards promotion?
- e.g. -EBRD New Legal Indicator Survey (Insolvency; Secured Transaction; CG)
- WB ROSC (Report on the Observation of Standards and Codes)
- WB Legal and Judicial Indicators (LJI)
- La Porta, et al. 1997; Shleifer et al. 2003  
(Law Group → economic advantage of Common Law)



### Problem-3: Miss-matches in Judicial Reform

\* WB/ADB:

- Independence of Judicial Administration
- Promotion of ADR/ Special Courts for commercial disputes (←int'l standards)  
(see World Bank Legal Presidency 2002, etc.)

\* Japan:

- unified Civil Procedure Law
- systematic knowledge and application skill

### Problem-4: Limitations of Planning & Evaluation Method

- Method on Logical Framework for 'Project Evaluation' :

e.g. WB 'Annual Review of Development Effectiveness';

ADB 2000 'Guidelines for the Preparation of Project Performance Audit Reports' →applied also to 'Program' Performance Audits

- =evaluation of 'Project' for Model Transplantation.  
unable to assess the 'Programs' and/or 'Project Objectives' →Need of 'Program Assessment'
- Method of 'Program Assessment': not yet developed.

## Judicial System and other Dispute Resolution Mechanisms

- **Role of Judiciary**
- Law Implementation:
  - (a) literal application of law (Socialist model)
  - (b) +flexible interpretation of law (Civil Law model)
  - (c) +creation of law (Common Law model)
- Judicial Review on Constitutionality of Statute Laws/Administration (US Model)
  - in Laos by NA (Art.40), NASC (Art.48) and by Prosecutors (Art.72)
- **Structure of Judiciary** (1989 Law on Court)
- **Independence of Judiciary** ??(Art.40 No.7)
- **Independence of Judges** (guaranteed salary; protection from removal)??
- **Monitoring over Judgments** (Art.66: Scrutiny by SC; Art.70 by social organizations) ⇔ (cf. Japan: disclosure and social critiques)
- **Litigation** (formal law; by career judges)/ **Arbitration** (quickness, secrecy)/ **Mediation** (flexible settlement based on informal law)

## Laws of Dispute Resolution

	Civil Procedure	Criminal Procedure	Administrative Procedure
<b>Government</b>	Arbitration (local/ international/ trade agreements) Litigation (local/int'l)		Local Administrative Complaints or Suites
<b>J/V Partner</b>	Arbitration (local/ international) Litigation (local/int'l)	Local Police/ Prosecution	Administrative Action by law-implementing agency
<b>Local Transaction Counterparts</b>	Local Litigation Local Arbitration	Local Police/ Prosecution	Administrative Action by law-implementing agency

- Implication: ◆Institutional Reform (court/police/government)  
◆Substantial Law Reform

## References on Law & Development

- ADB (1997ed.-2004ed.), *The Law and Development Bulletin*
- Amartya, Sen (1999), What is the Role of Legal and Judicial Reform in the Development Process, presented at the World Bank Global Conference on Comprehensive Law and Judicial Development, June 2000
- Davis, K. & Trebilcock, M.J. (1999), What Role Do Institutions Play in Development, presented to the IMF Conference on Second Generation Reforms, November 8-9, 1999
- La Porta, R., Lopez-De-Silanes, F., Shleifer, A. & Vishny, R. W. (1996) "Law and Finance," NBER Working Paper 5661;
- Rose, C. (1998), The 'New' Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study, *Law & Society Review*, 32(1), 93-140
- Shleifer, A., Glaeser, E., La Porta, A., Lopez-De-Silanes & Djankov, S. (2003) "The New Comparative Economics," Institute for Economic Research, Harvard University, Institute Research Discussion Paper No.2002
- Trubek, D. M. (1996), Law and Development Then and Now, presented to the conference of American Society of International Law
- Trubek, D. M. & Galanter, M. (1974) "Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States," *Wisconsin Law Review* 1062
- World Bank Legal Presidency (2002) "Law and Judicial Reform Assessment Manual"

## Response to the Global Standards

Interaction between International  
Rules and Domestic Legal Policy

## Policy Dilemma of Law Makers

- **Domestic Policy Issues**
  - Economic Development (technology transfer/export promotion...)
  - Social Welfare (redistribution/employment/taxation...)
- **International Pressures (WTO/FTA/WB-IMF...)**
  - Pro Globalization: developed countries (pro investors' interests?)
  - Anti Globalization: developing countries (pro domestic policy)
- **Interests of Investors**
  - Portfolio Investors (Libertarian=integration to international standard)
  - FDI (Liberalists =fair and stable domestic law system)

## Diversity of Policy Stance in International Rule-makings

- (a) Pro-Liberalization but with less Rules (Libertarian)
  - promotion of deregulation-type De Facto Standards (e.g. US-led FTAs; WB ROSC)
- (b) Pro-Liberalization and Pro-Rules (Liberalist)
  - Pro-WTO: multilateral efforts for global consensus (e.g. EU, Japan, Korea)
- (c) Anti-Globalization & Anti-Rules (Interventionist)
  - (e.g. ASEAN core countries)

⇒typical picture at WTO: (a)+(c) against (b)

## Recent Rule-making Progress at WTO

- **Rules to promote Liberalization: in progress.**  
e.g. Trade in Services (GATS); Intellectual Properties (TRIPS); E-Commerce, etc...
- **Rules to ensure fair competition bases for Liberalization: in delay (see 2001 Doha Agenda; 2004 July Package)**  
e.g. Non Trade-Related Matters...

## Non Trade-Related Matters

- **Investment Rules** ...coordination of among FILs
- **Competition Rules** ...basis of the global market
- **Environmental Issues** ...otherwise eco-dumping
- **Labor Issues** ...otherwise social-dumping
  - Since 1993 WTO Singapore conference
  - Postponed in 2001 Doha Agenda
  - Failed in 2003 Cancun
  - Omitted from Doha Round in 2004 'July Package'
  - De Facto Standards Makings: FTA/ Legal Models

## Battle of De Facto Standard Makings --- FTA (Free Trade Agreement)

- US:
  - NAFTA (base model) → FTAA?
  - US-Jordan FTA (amended US-led global model for developing countries)
- EU:
  - EU expansion strategy through FTA
  - EU-Mexico FTA etc. (EU-led American model)
- Asian Integration Plan:
  - East Asian FTA (China's initiative)?
  - EAI: Enterprise for ASEAN Initiative (US-led FTA)?

## Politics of East Asian Integration

- East Asian FTA
  - Since 2000 ASEAN plus Three (APT) Summit
  - China's leadership towards integrated FTA by 2010
- Enterprise for ASEAN Initiative (EAI)
  - 2002 US leadership towards bilateral FTA network
- Economic Community of East Asia (ECEA)
  - 2003 Proposal by Japan's Business Circle.
  - Japan-Korea-Singapore initiative for integrated FTA by 2007; Economic integration (fiscally and monetary) by 2025.
- ASEAN Economic Community (AEC)
  - 2003 Proposal by ASEAN on ASEAN+2 First initiative for economic integration by 2025.

## Laws in Economic Integration

	Harmonization among Individual domestic laws	→	Integration of domestic laws
Harmonization among individual markets	ASEAN-AEC?		US-EAI?
↓			
Economic Integration (unified market)	China-East Asian FTA →?		ECEA?

## Battle of De Facto Standard Makings ---Legal Assistance Programs

### =Promotion of Libertarian Model Laws

- Secured Transaction Law:
  - European Bank for Reconstruction and Development (1994), EBRD Model Law on Secured Transactions
  - World Bank (1999), Draft World Bank Principles and Guidelines for Effective Insolvency Systems
  - ADB(2000), 'Base Model' and 'Alternative Approach' in ADB (2000) "Secured Transaction Reform in Asia: Unleashing the Potential of Collateral"
- Insolvency Law:
  - IMF (1999), Orderly & Effective Insolvency Procedures: Key Issues
  - World Bank (1999), Draft World Bank Principles and Guidelines for Effective Insolvency Systems
  - ADB (2000), 'Good Practice Standard', in ADB (2000) "Report No.5795: Insolvency Law Reforms in the Asian and Pacific Region"
- Corporate Governance:
  - OECD (1998), OECD Principles of Corporate Governance
- Competition Law:
  - World Bank - OECD (1999), A Framework for the Design and Implementation of Competition Law and Policy

## Interaction between International Investment Rules and Domestic Investment Laws

### Policy Choices of FIL

**(a) FIL to Restrict Foreign Investments**

e.g. Pre-1970 Central/South American countries  
(investment area restriction; foreign share restriction)

**(b) FIL to promote Foreign Investments**

e.g. 1960s ASEAN FILs on Import Substitution Policy  
(restrictions + monopolistic privileges)

e.g. 1980s ASEAN FILs on Export Promotion Policy  
(Incentives + Performance Requirements)

**(c) FIL to guarantee Freedom of Investments**

e.g. 1990s new FILs under Globalization pressures



## Sources of Investment Rules

	Binding rules	Non-binding rules
<b>Multi-lateral</b>	-1961 OECD Code of Liberalization -1976 OECD Guidelines for Multinational Enterprises (2000) -1995 WTO-TRIM (Trade Related Investment Measures) -1995 WTO-GATS (Trade in Services)	-1990 draft UNCCTC -1992 WB Guidelines on the Treatment of Foreign Investors -1998 OECD Draft-Multilateral Agreement on Investment (MAI)
<b>Regional Bilateral</b>	-1994 Energy Charter Treaty -Bilateral Investment Treaties (BIT) -Free Trade Agreements (FTA) (e.g. NAFTA; US-Jordan; d-FTAA)	-1994 APEC Non-binding Investment Principles -1998 Framework Agreement on ASEAN Investment Area (AIA)

### Harmonizing Policy Conflicts:

## Investment Rules vs. FDI Law

- Debated Issues:
  - Definitions
  - Treatment of Foreign Investors
  - Performance Requirements (PRs)
  - Investment Incentives
  - Dispute Resolution

## Policy Choices on 'Treatment' in Major Investment Rules

- (1) National Treatment (NT)  
(e.g. WTO-TRIM)
- (2) Most Favored Nation Treatment (MFN) Only  
(e.g. BITs in Asia)
- (3) MFN + Positive-List Approach for NT  
(e.g. GATS)
- (4) The Better of NT and MFN + discretions  
(e.g. NAFTA; OECD-MAI; 1994 Energy Charter)

### Policy Choice Picture: Treatment

	Less equality in MFN	→	Stricter equality in MFN
Less equality in NT ↓ Stricter equality in NT	<interventionist> Asian BITs		NAFTA GATS? MAI main-text <libertarian>  TRIM MAI minority <liberalist>

## Policy Choices on 'PRs' in Major Investment Rules

- (1) Limited liberalization only for FDI promotion  
(e.g. WTO-TRIM)
  - limited target (FDI only; GATT 3 & 11)
  - strict prohibition (including Incentives)
- (2) Liberalization + discretionary exceptions  
(e.g. NAFTA; OECD-MAI main text)
  - comprehensive target (definition; items of PRs)
  - various exceptions (Incentives; etc.)
- (3) Liberalization under clear rules  
(e.g. MAI Incentive clause Alt.-2)

## Policy Choice Picture: PRs

	Less PRs Regulation	→	Stricter PRs Regulation
Less Incentives Regulation ↓	<interventionist>		NAFTA MAI maintext <libertarian>
Stricter Incentives Regulation		TRIM	MAI minority <liberalist>

Asian Context:  
**Choice of Investment Rules**

- Forecasting US-EAI by US-Singapore FTA
- Forecasting Japan's approach by Japan-Singapore EPA
- Forecasting AEC by ASEAN Investment Area (AIA)
- Forecasting East Asian FTA by China's recent law-makings

**Choices of Investment Rules**

	US-Singapore FTA	Jpn-Singapore EPA	AIA
Definition	=NAFTA/MAI (wide)	=NAFTA/MAI (wide)	=TRIM(FDI only)
Treatment	Better of NT+MFN. →Various exceptions: negative list; Local G; Aid; Environment.	NT only. →Limited exceptions: Minimum negative list; GATT-XX.	Immediate MFN + NT on unilateral Negative List till 2010/2020.
PRs	TRIM+2 (narrow) →Various exceptions: 'TRIM Minus' on Incentives, GATT-XX, Export & Aid, Positive List, and Local G.	=MAI (wide) →Limited exceptions: Incentive on non-TRIM, Minimum negative list; GATT-XX.	No obligation (uncompelled endeavor only)
Dispute Resolution	Strict legality: Special arbitration procedure.	Free option: litigation, others, special process.	Less legality: G to G process only.

## Policy Choice Forecast

- US-EAI: Libertarian interests of MNC
- Jpn-ECEA: Liberalism as cooperation base
- ASEAN-AEC: continued Interventionism?

←Lessons from Development Economics:

- 1960s-style Import Substitution: failure
- 1980s-style FDI Utilization Policy: another failure? (preconditions for graduation: social ability to accept technology transfer)

## China's Recent Law-makings

- FDI Law: planed consolidation in 2005 substantially equal to company law.
- Company Law: on-going reform as general base including FDI and SOE.
- SOE Law: decreasing importance.
- Civil and Commercial Law: consolidated by 1998 Contract Law. Draft Civil Code.
- Competition Law: Pro-competitive draft.
- Dispute Resolution: on-going judicial reform.

## Foreign Investment Law in Laos

- 1989 FIL: Interventionist
- 1994 FIL: more liberal (equal treatment; uniform advantages without discretion; less PRs)
- 2004 FIL: Interventionist again? (Promoted area to be set by administrative discretion; Zoning to be changed occasional discretion)

Company Law  
as Market Entry Rule

## Basic Policy of Company Law

- Concession System (=Interventionist)
- Rule System (=Liberalist)
- Laissez Faire/ Freedom of Contract (=Libertarian)

→1994 Business Law of Laos = Interventionist

- (a) large and vague coverage (no substantial definition of Businessmen/Business in Art.9; no clarification of unlawful acts which are mandated to subsidiary regulations according to Art.12...)
- (b) strict & discretionary control at Enterprise Registration (Art.16: preconditions are to be discretionary decided by competent sector offices) =almost a concession.
- (c) variety of state control sectors, and unclear extent of 'control' (Art.13).
- (d) Limited number of provisions: 97 articles  
→see. Japan's company law in the Commercial Code (more than 500 provisions including additionally inserted ones)

## Types of Enterprises in 1994 Business Law

-Private Enterprises:

- Sole Trader (unlimited responsibility)
- Partnership (unlimited responsibility)
- Limited Company (limited responsibility)
- Public Company (limited responsibility)

-SOE:

- 100% SOE
  - Corporatized SOE (LC/PC? Art.77)
  - Joint Venture
- Cooperatives  
-Joint Venture

<Some Characteristics in Comparative View>

- Limited Company: smaller closed circle of less than 20 persons (cf. Jpn 50 persons); Abuse risk of the One-person Limited Company (=meant for SOE Corporatization?)
- SOE Policy: meaningful difference and policy of classification between 100% SOE and Corporatized SOEs.
- Application of Business Law on Foreign Investors? (equal level playing field?)

## Business Registration in 1994 Business Law

<two different implications>

-named Registration, but a discretionary 'Permission of License' in actual (Art.16):

→Risk of intervention, less predictability...

-Chance of a rigorous and comprehensive Disclosure System (Art.17: All corporate information; 18:Financial Registration System)

→Actuality in corporate practice...

## Corporate Governance

A Comparative View



## Basics of Corporate Governance

- What is CG?: Mechanism to oversight the corporate management
- Types of CG:
  - (1) Security Market-based CG
  - (2) CG by the Company Organs
    - General Meetings of Shareholders
    - Auditors/ Executive Council/ Audit Committees
    - Minority Shareholders in GMS
    - Stakeholders: Creditors/ Workers/ Consumers...
- Variation by Countries:
  - US Model: Market-based CG centered + Self-check by BOD  
(Outside Directors)
  - German Model (Two-tier): GMS → Executive Council → BOD  
(Workers' Participation)
  - Japan Model: GMS → BOD  
↓ ↑  
Auditor

## Law Models on Corporate Governance

- (1) Reference Base for individual reform:
  - OECD 'Principles of Corporate Governance' in 1998  
(revised in 2004)
  - OECD 'White Paper on Corporate Governance in Asia' in  
2003: special concern on 'non-listed companies'
- (2) Base Model meant for Transplantation:
  - EBRD 'Corporate Governance Checklist' in 2000  
(consolidated into 2003 New Legal Indicator Survey)
  - World Bank 'Template for Country Assessment of  
Corporate Governance' 2003 (ROSK= Report on the  
Observance of Standards and Codes)

## Essence of Base Model

<For Listed Companies>

- CG in the Security Market (Market for Corporate Control):  
int'l accounting standard; external auditor; disclosure...
  - useless in the premature Security Market
  - deregulation (e.g. anti-takeover devices)

<For Non-listed Companies>

- Internal Monitoring depend on US Model= Independent Directors/ Audit Committee...
  - nominated by BOD =hardly independent
- Less concern on Monitoring by Stakeholders

## Non Market-type CG Compared: Transition Economies

	Basic system of Management	Internal Monitoring	Monitoring by Stakeholders
1995 JSC Law of Russia	GAS has basic decision making authority (ex. large scale transaction)	-GAS nominates Auditor Committee -Monitoring by BOD	-Minority Shareholders: 2% Proposal of Agenda; 1% Derivative Suits etc. -Creditors: Disclosure; Director's duty on Insolvency
1997 LLC Law of Russia	Separation of Ownership and Control	Auditor not compulsory BOD no compulsory	-less provision on Minority Shareholders other than 10% Call for GAS -limitation of Creditors' access to information
1993 Company Law of China	GAS has basic decision making authority	-GAS nominates Board of Auditors (legality+substance) -Monitoring by BOD	-less on Minority Shareholders -Creditors: Disclosure; Director's duty on Insolvency -Workers: participation to BOD, BOA -Administrative Control

## Continued (Vietnam)

	Basic system of Management	Internal Monitoring	Monitoring by Stakeholders
Joint Stock Co. in Vietnam	Separation of Ownership/ Control + Preferential Voting Right Shares	-BOD nominated by GAS under PVRs -limited authority of BOA	-Minority Shareholders: 10% for participate to BOD/BOA -less provision on Creditors -no Workers' Participation -Administrative Control
Limited Liability Co. in Vietnam	GAS (Owner= State controlling share) has basic decision making authority	-BOD nominated by Owner -less provisions on BOA	-Minority Shareholders: 35% Call for GAS only -less provision on Creditors -no Workers' Participation -Administrative Control
2004 Law on SOE	State (=Owner) has basic decision making authority	-BOD nominated by Owner -BOA only for large SOE	-Creditors: Director's duty on Insolvency -Workers: representation by one person to BOA -Administrative Control

## Non Market-type CG Compared: ASEAN Countries

	Basic system of Management	Internal Monitoring	Monitoring by Stakeholders
Thailand: 1992 Public Company Act	Freedom of Contract	-Audit Committee in BOD (on Listed Co.) -Auditor: Accounting check on B/S only.	-Minority Shareholders' right: 20% -less provision on Creditors -no Workers' Participation -limited Administrative Control
Thailand: Limited Company (Civil & Com. Code)	Freedom of Contract	-Auditor: Accounting check on B/S only.	-less provision on Creditors
Indonesia 1995 Company Law	-GAS Almighty -Two-tier Management System (GAS → Commissioner → Directors)	-Commissioner - BOD monitored and removed by Commissioner	-Minority Shareholders' right: 10% -Creditors: Director's duty on Insolvency -No workers representation -Administrative Control (permission by MOJ)

## Continued (Laos)

	Basic system of Management	Internal Monitoring	Monitoring by Stakeholders
Public Company	Two-tier System centering the Executive Council (GAS →EC→Directors)	-Self Monitoring in actual: Directors nominated by EC; but EC members can be Directors -Auditor: Accounting check on B/S only	-Almost no Minority Shareholders' rights :2/3 veto only. -less provision for Creditors -1 or 2 Workers' participation to EC only. -Administrative Control
Limited Company	-Less provisions; Freedom of Contract -GAS remove Directors by simple majority	-Auditor: Accounting check on B/S only	-Minority Shareholders: 50% call for GAS only -no provision on Creditors/Workers -Administrative Control
100% SOE	-Public Company-like Two-tier System featuring Executive Council, but less Separation of Power (MOF withholds authority)	-NO mention to Auditor	-Creditors: subordinates to Wages/public credits upon Insolvency -Almost no Workers' participation

## Bankruptcy Law

## Basics of Bankruptcy Law

- **Liquidation vs. Rehabilitation**
- **Role of Bankruptcy Law**
  - (1) **Market Disciplines/ Corporate Governance**
    - Creditors' Initiative
    - Strict Equality among Creditors (e.g. pro rata distribution...)
    - Strict Asset Recovery (e.g. Annulment of Unfair/Insider Transactions; Damage Claims against Directors, etc...)
  - (2) **Debtor's Rescue in Economic Crisis**
    - Debtor's Initiative (e.g. Automatic Stay; Debtor-in-Possession)
    - Denial of Equal Treatment (e.g. Classification of Creditors; Decision-making by Cram-Down; Super Priority)
    - Overwriting of substantial law (e.g. Suspension of Secured Credits and/or Preferential Rights; Super Priority)

## Legal Aspects of Asian Crisis

- <Causes> Foreign Capital Overflow → Risky Investment → Financial Crisis → Currency Crisis → Economic Crisis
- <Why Capital Overflow?>
- External Cause?: Herding Effect of International Capital
  - Internal Cause?: Excessive Promotion of Capital Inflow  
(Macro economic management ← Current Account Deficit)
  - Laws to deregulate investments in Security Market/Real Estate
- <Why Risky Investment?>
- External Cause?
  - Internal Cause?: Closed and Protected Oligopoly of Bankers
    - inefficient Financial Intermediation
    - insufficient Financial Law (Secured Transaction/Bankruptcy)
- <Cures>
- Foreign Capital Control?
  - Financial Reform?: -Prudential Regulation (re: escape by financial companies)
    - Financial Law Reform (re-establishing Market Disciplines)

## Essence of Law Models

### <Materials>

- World Bank (1999) "Principles and Guidelines for Effective Insolvency Systems"
- IMF (1999) "Orderly & Effective Insolvency Procedures"
- ADB (2000) 'Good Practice Standards' in "Report on RETA 5795: Insolvency Law Reforms in the Asia and Pacific Region"

### <Essence of Law Models>

1. Integration of Insolvency Procedures
2. Design for Debtor's Rescue
3. Negative on Recovering of Escaped Assets

## Integration of Legal Procedures

1. Integrated 'One-law, Two-systems' approach recommended:
    - =Rational: market-base negotiation (autonomy) is most efficient
    - unified autonomy procedure: Yes (German 1994 Insolvency Law)
    - several procedures for autonomous choice: Yes (Japan; Korea)
    - unified compelled procedure: No (US-FBC Chapter-7 < Chapter-11)
  2. Rehabilitation process given priority over Liquidation:
    - eased burden of proof at the filing of Rehabilitation
    - Automatic Stay (Liquidation stopped)
    - shift from Liquidation to Rehabilitation guaranteed
    - Liquidation only meant for an 'Anchor role'
- Weak rational.  
(No empirical proof that Rehabilitation always maximizes Assets)

## Design for Debtor's Rescue

1. Debtor-in possession
  2. Secured Creditors treated with disadvantages (Zero-Sum Game among creditors)
    - (a) Automatic Stay (Long-term) of Secured Credit recommended
    - (b) Disadvantages in approval process of Rehabilitation Plan
      - 'Class' of creditors; Simple Majority vote in each Class
      - 'Cram-down' clause
    - (c) Rule by Law/Court denied
      - Rational: 'benefit of creditors as a whole'?
      - no mention even to Best Interest Rule (US-FBC Chap.-11 Sec.1129 (a)-7(ii)) and/or 'Cram-down' conditions (cf. US-FBC Chap.-11 Sec.1129 (b)(2) Absolute Priority Rule)
  3. Preferential Rights to be Minimized
    - Rational: Equal treatment of all creditors?
  4. 'Super Priority' to New Money
- Erosion of Substantial Law system. No predictability.

## Negative Stance on Recovering Escaped Assets

1. Annulment of Preceding Transactions: discouraged
  - (a) all transactions to be annulled within limited short period (denying preferential treatment and achieving equality)
  - (b) fraudulent act/ unduly cheap bargain to be annulled retroactive for longer time (recovering against unfair escape)
2. Stricter Annulment of Insider's Transaction (longer period; shift of burden of proof) : discouraged
3. 'Equitable Subordination' of Insider's Loans in Under-Capital situation: discouraged

## Laos 1994 Bankruptcy Law

- Integrated process by Creditors' initiative (Art.24~25)  
⇔ Model Law=Debtor's initiative
- Reorganization within 2 years (rehabilitation in early stage)  
⇔ Model Law (Rescue even in serious insolvency)
- Priority of Labor Rights/Public Rights to Secured/Unsecured Credits (Art.44) ⇔ Model Law  
=Super Priority/Creditors Priority
- Limited chances of Assets Recovery: Annulment of fraudulence transactions without time-limit (Art.40) rigorously implemented? →cf. Model Law's negative stance.

## Application of Model Law: A Case of Law Thailand

### 1. Integration of Procedures

=Before Law Reform: Autonomy of creditors to select Liquidation/Composition

=After 1998 Amendment of "Bankruptcy Law":

- Rehabilitation given chance of earlier filing than Liquidation (Art.90/3)
- Automatic Stay to stop already filed Liquidation (Art.90/12, No.4); only already started Receivership cannot be stopped (90/5).
- Compulsory Liquidation as Final sanction at major procedural deadlock (90/48, 90/54;90/58;90/68, etc.)
- Creditors' filing of Liquidation admitted only after expiration of Plan (90/70)

### 2. nature of Business Rehabilitation: Rescue of Management.

#### (1) Debtor-in-Possession (almost)

- filing by Debtor (90/4) + Automatic Stay
- Management resigns in principle, but continues actual control (90/20);
- Debtor's proposal at selection of Plan Preparer (90/17);
- Debtor's right for Move to adjust Plan (90/45, 90/49, etc.)



## Continued...

- (2) eased approval procedure of the Rehabilitation of Plan  
=in 1998 Amendment: special resolution as a whole  
=in 1999 Amendment:  
-Class distortion: small secured creditors compelled to form one Class (90/42-2);  
-Simple Majority compelled as approval condition at each Class, which binds all descending creditors  
-limited Cram-Down conditions (90/46-2): approval by more than one Class + simple majority as a whole.  
(cf. US-FBC, Sec. : Approval by more than one adversely affected class + "Cram-Down Conditions")
- (3) Limited supervisory role of Court  
= in 1998 Amendment: substantial check of fairness (90/58)  
=in 1999 Amendment:  
-Best Interest Rule (amended 90/58 Sec.3)  
-Absolute Priority Rule (amended 90/58 Sec.2) for unsecured creditors only.  
-protection of Secured Property Value only for large secured creditors (90/42-2)
- (4) eased treatment for New Money  
=before Reform: New Money Providers with knowledge subordinate to general creditors (Art.94 Sec.2)  
=after 1999 Amendment: no subordination for Rescue purposes (even room of 'Super Priority' as a result of negotiation)

## Continued...

### 3. Recovery of Escaped Assets

#### (1) Eased Annulment

##### =Before Reform:

-Annulment of Preferential Acts: 3 months period (Art.115); but 3rd Party in good faith and consideration prevails (Art.116)

-Annulment of Fraudulent Acts/ Cheap Transactions: no time limit on Creditors' Civil Cancellation Right of Fraudulent Acts (Art.113); 3 Years limitation for Eased Annulment with Burden Shift on both Parties' good faith and consideration (Art.114); But 3rd Party in good faith and consideration prevails (Art.116)

##### =After 1999 Amendment:

-for Annulment of Fraudulent Acts/Cheap Transactions: Deletion of former 3 Years' Burden Shift; Instead only One Year Burden Shift but without 3rd Party exemptions (new Art.114, 116).

#### (2) Treatment of Insiders' Transaction

-Annulment of Insiders' Transaction (new):

However: new definition of 'Insiders' with large room for evasion

#### (3) Equitable Subordination Clause abandoned (Art.94, Sec.2 above)

#### (4) Insufficient basis of Management Liability

-Insolvency Law: no basis of special liability

-Company Law:

-Directors' Liability against 3rd Party (94: Misrepresentation only. limited Disclosure)

-No procedural basis of Creditors' Derivative Suite.

## Consequences

- Against the need of tightening Insolvency Law as a Market Discipline
- Introduction of Integrated Rescue Package:

**Public Money Injection to Banks (=Bank Rescue)**



**Structured Informal Process (=Corporate Sector Rescue)**



**Reorganization Law to give a legal sanction for the Pre-packaged informal rehabilitation plan**



**Liquidation procedure merely as a final resort**

## Labor Law and Environmental Law

Social Policy Considerations in  
the Commercial Transaction

# Labor Law

- Laos 1994 Labor Law:
  - (a) Basic Labor Standards:
    - fairly high protection on wages/hours/holidays
    - fairly strict restriction of dismissal (Art.15~18)
    - unclear image of social insurance system (Art.48;Art.54)
  - (b) Industrial Relations
    - Procedures for Legal Rights (Art.57: Litigation) and Further Interests (Art.58: ADR)
    - Strikes admitted in principle (Art.59)
- NIES:
  - (a) Diversified (Singapore: easy dismissal+ Social security protection) ( Korea: higher protection)
  - (b) Diversified (Singapore: government control) (Korea: wider bested rights including Strikes)
- ASEAN core countries:
  - (a) Less Protections: Easier dismissal; unimplemented social security systems...
  - (b) Restrained Labor Relations

# Environmental Law

- 1999 Environmental Protection Law
  - unclear Quality Standards set by discretion in the locality (Art.23)
  - unclear administrative control measures/procedures (e.g. Art.8:EIA; Art.36~40: monitoring by various levels but without direct authority to control.)
  - budgetary limitation? (Art.31-32)
  
- against the 'Predictability' in the Market transaction: Need of clear and detailed Statute Laws rather than discretionary Implementing Regulations...

## International Standards for Labor and Environmental Issues

### Issues of Environmental Rules

Issues	International Rules	NGO
(a) Domestic Environmental Law vs. Free Trade -Protectionist trade barrier? -domestic policy choice?	→WTO-CTE: flexible application of current GATT rules (Art.3; Art.11; Art.20 etc.)	←Unsatisfied. Call for further WTO rules (Liberalist NGO)
(b) Domestic Environmental Law as Political Tool -disguised unilateral sanction? -Civil Society activism?	→WTO-CTE: ditto  ←proposed new clause by U.S.	← Libertarian
(c) Eco-Dumping to induce foreign investment -hypothetical fiction? -actuality in place?	→WTO talk suspended  ←proposed clauses	←Anti-Globalization ←Liberalist

## Flexible Application of Current GATT Clauses

- WTO Dispute Resolution Panel (e.g. US import prohibition of shrimps case - DS58)
  - application of Art.3 (National Treatment)
  - application of Art.20 (general exceptions)
    - =interpretation of chapeau clause:
      - arbitrary/unjustifiable discrimination
      - disguised restriction on trade

→U.S. proposal of new clause: NAFTA :Investment Rule Art.1114 (1), OECD-MAI footnote 129

## Choice of Environmental Rule

	OECD MAI Alt-1	NAFTA= MAI Alt.- 2, 3, 4	US-Jordan FTA	OECD Guidelines of MNEs
Basis of Regulation	International Minimum Standard	Domestic Standard	Domestic Standard	Corporate Standard
Legality and En- forcement	Dispute resolution panel (shall) →sanction	Non – binding (should)	Binding effort (shall strive to...)	Legally non- binding but social pressure
	Liberalist NGO	Libertarian NGO	Compromise of Libertarian & Anti-GNGO	Liberalist NGO on CSR

## Environmental/ Social Clauses in Asian Economic Agreements

	Japan- Singapore EPA	US- Singapore FTA	AIA	China
<b>Basis of Regulation</b>	No clause: respecting multi- rule negotiation? (cf. Jpn-Vietnam BIT: 'Standard')	E: Domestic Standard L: narrowed 'International Labor Standard'	No clause	?
<b>Legality and En- forcement</b>	(cf. Jpn-Vietnam BIT: free choice among three options)	'shall strive to...' binding under own dispute resolution procedure	No clause	?

## Competition Law and Trend of International Models

## Policy Objectives of Competition Law

• **Mother Laws:**

- 1890 US Sherman Act; Clayton Act amended in 1950
- 1947 Japan's Anti Monopoly Act
- 1957 German Competition Law
- 1957 EC Convention

• **Purpose:**

- (a) Equal Opportunity for Competition (Harvard school, Germany, Japan?)
- (b) Economic Efficiency (EU, US-Chicago school)
- (c) National Development (Asia)
- (d) Barrier against Foreign Economic Evasion (Asia?)

• **Trend of domestic competition laws in Asia**

- Negative Group: Malaysia; Philippines...
- Compromise: Indonesia; Thailand; VN; China?; Singapore?
- Positive Group: Korea since 1990s.

## General Comparison of Competition Law Design

	<b>Substantial Provisions</b>	<b>Application of Law</b>	<b>Level of Sanctions</b>	<b>Choice of Remedies</b>
<b>EU US</b>	Abstract law + guidelines/ cases	Economic analysis on 'Efficiency'	severe	Administrative; Criminal (US); Civil (US)
<b>Japan ↓ Asia</b>	Detailed law (e.g. unfair competition)	Exception by laws (decreasing in Japan)	Less severe; More depend on Administrative directives	Administrative procedures centered: weak Civil cases

## Substance of Restrictions

	Anti-competitive agreements	Monopoly	Concentration	Unfair competition
US	-Horizontal: Per se illegal/ <b>Rule of Reason.</b> -Vertical /Price: Per se illegal -Vertical /non-price: <b>Rule of Reason</b>	<b>Monopolization</b> (=Market Power +Willful conducts) (S2)	-Safe Harbor -Index on the concentration (not the share) →exception on Efficiency	applied in deregulated economic base
EU	Illegal in general → <b>exceptions</b> according to policy considerations of EC	Market Dominant Position + Abuse (EC86)	General assess on Market Power +effect	General assess on Market Power +effect (EC86)
Japan	-Horizontal: core cartels Implemented as Per se → <b>exception laws</b> (decreasing) -Vertical: see Unfair Competition clauses	Monopoly (3) (=Market Power+ positive acts)	Market Structural Restriction (11)	-Detailed categories; -Severe base: Potentiality of anti-competition

## Indonesian 1999 Competition Law: A Case of Post-Asian Crisis Reform

- MITI 1993 Draft ←USAID
- MITI 1<sup>st</sup> Bill of 'Competition Law'(1998.9):  
(Monopoly is only illegal when abused =Monopolization).
- Parliament 1<sup>st</sup> Bill of 'Anti-Monopoly Law' (1998.10)  
←German/ OECD: (detailed definitions; structural regulations on market shares...)
- MITI 2<sup>nd</sup> Bill (1999.2): (deregulated substance in the structural regulation-like frameworks)
- Final Law titled 'Anti-Monopoly and Unfair Competition Law'(1999.3)



## Characteristics of the Indonesian 1999 Competition Law

- Horizontal anti-competitive agreements: **Loose**.
    - per se illegal: price fixing (Art.5); boycott (Art.10)
    - rule of reason: market division(7); re-sail price restriction (8), production control(11)...
  - Vertical anti-competitive agreements (Inter-Brand Competition): **Strict but wide exceptions**.
    - vertical tying sales/ exclusive sales with rebate (15): per se illegal
  - General exceptions (Art.50; 51)
    - exception by laws (50-a)
    - technology transfer agreements/ franchising agreements (50-b)
    - concessions (50-f)
    - SMEs (50-h)
    - products for National/social interests (51)
  - Monopoly (17) + Market Dominant Position (25): **Strict share base but with large discretion**
  - Concentration:(26-29): **Loose**
  - Unfair Competition: dealt in anti-competitive agreements & Market Dominant Position
  - Independence of Competition Committee?
  - Efficiency of Administrative Implementation?
- Doubt on discretionary implementation (strict on FDIs; protection of domestic large businesses; discriminating local SMEs considering new entry...?)

## Trend of recent Model Laws

- WTO/ draft MAI: compromise between negative US and positive EU (minimum Core Cartels; Monopoly is admitted unless abused...)
- Regional FTAs: deregulation
- World Bank/OECD (1999) "A Framework for the Design and Implementation of Competition Law and Policy," WB

### <Characteristics>

- (a) narrowed target (explicit listing of 'Black' area; enlarging 'White' area by safe-harboring)
- (b) eased "rule of reason" for 'Gray' area (balancing between anti-competitive effect vs competitive effect)
- (c) enlarged chances of exception based on "Efficiency":
  - Consumer surplus
  - Social surplus (consumer merits + corporate profits)

## International Comparison

	Indonesia	WB Guidelines
<b>Anti-competitive contracts</b>	-per se: vertical non price transactions (15). -exceptions (50)	-6 per se illegal -20% Safe-harbor -exception on efficiency: social welfare
<b>Market Controlling Position</b>	-uniform Market Share standards (25 etc.) -large exceptions (50;51)	-no definition of 'market control' nor 'abuse' -35% Safe-harbor -exception on efficiency: social welfare
<b>Company Concentration?</b>	-after notice -unclear basis of exception by discretion (26/29)	-prior notice -exception on efficiency: social welfare
<b>Administration</b>	-independence? -integration with industrial policies?	-Independence -integration with industrial policy implied





