

**Third South Pacific International Arbitration Conference:
De-Risking Investment in the South Pacific Region through a World Class
International Arbitration Disputes Regime
Sydney Opera House and via Zoom, 17 March 2021**

**Opening Remarks of Thomas Clark
General Counsel, Asian Development Bank**

Good morning Honorable Ministers, Honorable Members of the Judiciary, Dignitaries, Distinguished Guests, Ladies and Gentlemen.

Mabuhay! Good morning from Manila! My name is Thomas Clark, the General Counsel of the Asian Development Bank. Thank you very much for that kind introduction. I am delighted to be here with all of you – gathered at the Sydney Opera House and via Zoom from over 30 locations from around the region and beyond.

ADB is honored to be partnering with the Australian Government, the United Nations Commission on International Trade Law (or UNCITRAL), the International Chamber of Commerce, the Australian Centre for International Commercial Arbitration and the Singapore International Arbitration Centre to bring all of you together for this Third South Pacific International Arbitration Conference.

Indeed, this is truly a remarkable important gathering of key government officials, policy makers, judges, lawyers, private sector and development partners, and indeed all the world's foremost experts on international arbitration, to engage in a dialogue to help lift barriers to foreign direct investment and regional and international trade in the South Pacific region and Timor-Leste.

As Pacific developing member countries and Timor-Leste chart a course toward a post-pandemic recovery, efforts to increase foreign direct investment and cross-border trade and improve the overall business climate for private sector development have become even more critical.

Now since 1966, the ADB has been committed to the South Pacific region and Timor-Leste, and the region comprises indeed almost one-third of ADB's developing member countries.

ADB has more than 64 ongoing financed sovereign projects across our Pacific developing member countries, with financing exceeding \$2.9 billion. This is more than a six-fold increase over the \$448 million portfolio that we have just as recently as 2005. I'm also pleased to note that ADB is now the Pacific's largest single source of renewable energy financing. And in Timor-Leste, ADB has more than 70 ongoing projects with financing exceeding \$430 million.

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Moreover, to assist ADB member countries and to help them respond to the COVID-19 pandemic, ADB has provided numerous indeed many very significant support including (i) the immediate grant support to purchase much-need PPEs, medical supplies and quarantine facilities; (ii) budget support to finance crisis-related fiscal matters; and (iii) policy-based support to strengthen macroeconomic resilience along with contingent disaster financing funds; and (iv) active management and engagement with the private sector including reaching out to financial institutions and companies such as agribusiness infrastructure companies to discuss COVID-19 impacts and requirements for potential ADB financing.

And as mentioned, private sector investment is really critical for economic growth and job creation. We all know the importance of the private sector and the importance of mobilizing and crowding in private capital. And in this regard, I note that ADB is working to improve the business environment, including ways to attract more foreign direct investment and cross-border trade, which has become even more vital with COVID-19 recovery efforts.

For example, this work is supported by ADB's Private Sector Development Initiative (or PSDI), a regional technical assistance program undertaken in partnership with the Government of Australia and the Government of New Zealand. Since 2007, PSDI has been working to reduce constraints to doing business and to promote private sector growth in the Pacific region, such as helping to streamline business registration processes, enable movable assets financing and to promote entrepreneurship and foreign direct investment.

Alongside ADB's operations, the Office of the General Counsel manages a Law and Policy Reform Program, in which we design and implement technical assistance projects to work with our developing member country partner governments. Now, these technical assistance projects are aimed at modernizing the legal systems to encourage investment and trade, and facilitate commercial activity, and to build the capacity for judicial and legal institutions. This is a very important medium to long-term strategy that complements our investments in the financial area and with financing resources. This knowledge component is really critical for ADB.

Now as you know a major barrier in attracting foreign direct investment and stimulating cross-border trade is the lack of investor confidence in available effective and efficient ways to resolve and enforce commercial disputes between people from different countries.

In recent decades, international arbitration has become the preferred means of resolving international commercial disputes all over the world. However, the South Pacific is still one of the last global regional blocks without a cohesive legal framework to resolve these cross-border commercial disputes through international arbitration. This form of cross-border dispute resolution and enforcement regime I would argue is fundamental absolutely critical to foreign investment and dispute resolution and the enforcement regime is going to be key. The absence of this international arbitration framework indeed increases the risks and the costs of doing business and stifles economic growth potential across the region.

To assist our Pacific developing member countries and Timor-Leste to put in place an international arbitration legal framework, we've been very busy and very involved across the last many years. In 2017, ADB launched a technical assistance project under our Law and Policy Reform Program (i) to help accede to the New York Convention and to put in place the implementing arbitration law; and (ii) to provide capacity building to judges, lawyers, and private sector as implementing parties.

Since 2017, there have been many positive developments, starting with (i) Fiji's enactment of the International Arbitration Act in September of 2017, followed by accession to the New York Convention by Papua New Guinea in July of 2019; (ii) accession to the New York Convention by Palau in March 2020; (iii) accession to New York Convention by Tonga in June of 2020;

and (iv) the enactment of Tonga's International Arbitration Act just this February of 2021! So as you can see this is a path that we are continuing to follow and walk side by side among our developing member countries and Timor-Leste in the region.

Now we also hoped here to convene the first-of-its-kind First South Pacific International Arbitration Conference and we helped convened that first-of-its-kind conference in Fiji hosted by the Fiji Government and then the Second South Pacific International Arbitration Conference hosted by the PNG Government, all of these to raise awareness about the importance of this reform to the South Pacific region, as we have also developed and delivered numerous capacity building programs to judges, lawyers, and the private sector over the last 3 years.

Of course, I hope you understand that all of these wonderful results would not have been possible without the support of our development partners, including our long-standing partner UNCITRAL, as well as the international arbitration community. We are extremely grateful for that partnership and for the great teamwork I think that all of these groups have shown together with ADB to deliver these programs of vital importance to the region.

I will just conclude by saying that – today, we will hear from key business leaders and some of the foremost experts in the world on international arbitration and legal reform, and we will discuss the issues and challenges, and share knowledge on best practices.

I'm very grateful also to our own Christina Pak heading up Law and Policy Reform office and to all of the many people who have contributed to this program.

Let's please use this incredible opportunity to work together towards a common objective that can produce substantial benefits to the people and the countries of this region.

On behalf of the Asian Development Bank, I would like to thank all of you for coming to this conference and for your strong commitment to this region. I wish you a tremendous and very successful conference. Thank you very much.