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The Shareholder Settlement Program: A Pragmatic Resolution to confront a Systemic Banking Crises in view of the Dysfunctional Legal System and Tradition of the Republic of Indonesia

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THE SHAREHOLDER SETTLEMENT PROGRAM

Taufik Mappaenre Maroef

The Shareholder Settlement Program:

*A Pragmatic Resolution to confront a Systemic Banking Crises
in view of the Dysfunctional Legal System and Tradition
of the Republic of Indonesia,*

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THE SHAREHOLDER SETTLEMENT PROGRAM:
A Pragmatic Resolution to confront a Systemic Banking Crises
in view of the Dysfunctional Legal System and Tradition
of the Republic of Indonesia

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PREFACE

Bismillahir Rahmaanir Rahiim,

I am grateful to be given the opportunity to take part in the unprecedented historical moment, during which the Indonesian Banking Restructuring Agency (“IBRA”) and the Shareholder Settlement Program were established and introduced to confront and overcome the systemic banking crisis and economic meltdown as occurred in Indonesia during 1997-2004. I am mostly delighted to be given the chance to share the priceless experience scientifically, and for that very reason I would like to express my highest appreciation to the wonderful people and institution at Leiden University, in particular the Faculty of Law, who have been very supportive and encouraging with my endeavoring to undertake the Ph.D research-study program. I am also grateful to be one of the contributing factors in the legal phenomenon as studied, and to avail the personal experience as recorded to become reference for future decision making, both in public and private sector. All in all, I am grateful for what I have become.

I would like to thank my family, in particular my wife and my mother, who have been the most important women in my entire life. To my two lovely daughters, whom I have been sharing my ups and downs in life for years: I appreciate your understanding and patience that has become the light of my life. I would like to dedicate this book to Professor H. Ahmad Maroef Md., my deceased father, who has been the main inspiration and commitment behind my undertaking of the Ph.D research-study program. I hope I could help preserve the scientific values as introduced and carried-out by him, and to ascertain that the benefit would be for the greater good.

Alhamdu lillahi Rabbil ‘aalamin, I would like to praise *Allah*, full of compassion, ever compassionate, for the opportunity, guidance and protection in my undertaking of the Ph.D research-study program, which for all of the eternity, superseding any physical reality. I would like to seek *Allah’s* blessing upon the scholastic endeavor as undertaken, and I am grateful to acknowledge that this work may contribute positively as an important scholastic archive in the legal system and tradition in Indonesia.

Leiden, 2010

Taufik Mappaenre Maroef

”There are seven sins in the world: wealth without work, pleasure without conscience, knowledge without character, commerce without morality, science without humanity, worship without sacrifice and politics without principle”

Mahatma Gandhi (1869-1948)

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Annex IV : Unofficial translation of working paper: “The Release & Discharge (R&D) Clause/Letter in Light of the Recovery of State Funds by means of the Settlement of Shareholders’ Obligations (PKPS)”, as prepared by the Steering Committee for legal-Aid, the Financial Sector Policy Committee (FSPC).

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ABBREVIATIONS and ACCRONYMS

APU	: <i>Akta Pengakuan Utang</i> , or the Acknowledgement of Indebtedness, which was basically a cash shareholder settlement agreement as signed by IBRA and IBRA banks' shareholders.
Bank Indonesia	: The Central Bank of the Republic of Indonesia (a.k.a. "BI"), which possesses the power both as the comptroller of the national monetary system and the banking supervisory agency.
BLBI	: <i>Bantuan Likuiditas Bank Indonesia</i> , or the Bank Indonesia's Liquidity Support, which was the liquidity funds of the central bank in its' capacity as the lender of last resort.
DPR	: <i>Dewan Perwakilan Rakyat</i> , or the Parliament, or the Legislature.
FSPC	: The Financial Sector Policy Committee, or <i>Komite Kebijakan Sektor Keuangan</i> , or KKS.
IBRA	: The Indonesian Bank Restructuring Agency, or <i>Badan Penyehatan Perbankan Nasional</i> , or BPPN.
IBRA Banks	: The commercial banks that were handed over by Bank Indonesia to IBRA, under the auspices of 1998 Banking Law and PP-17, which consisted of nursed banks and frozen banks.
INPRES No. 8	: <i>Intruksi Presiden No. 8 Tahun 2002</i> , or the President Instruction No. 8 of 2002, concerning the Warranty of Legal Certainty for Debtor Who Has Fulfilled the Obligations or Legal Action against Debtor Who Fails to Perform the Obligation as Stipulated in the Shareholder Settlement Agreements.
MEFP	: Memorandum of Economic and Financial Policies, a.k.a "Letter of Intent", which were series of commitments of the Government of Indonesia to undertake certain economic and financial system structural adjustment measures under the IMF framework of supervision and financial supports.
MPR	: <i>Majelis Permusyawaratan Rakyat</i> , or the People's Consultative Assembly, which consisted of elected members of the Parliament and the Regional Representative Council (DPD).
MRNIA	: The Master Refinancing and Notes Issuance Agreement, which was basically a refinancing shareholder settlement agreement as signed by IBRA and certain IBRA banks' shareholders.
MSAA	: The Master Settlement and Acquisition Agreement, which was basically an asset shareholder settlement agreement as signed by IBRA and certain IBRA banks' shareholders.
OC-IBRA	: Oversight Committee of IBRA.
PP-17	: <i>Peraturan Pemerintah No. 17 Tahun 1999</i> , or the Government Regulation No. 17 of 1999, concerning the Indonesian Bank Restructuring Agency/IBRA, which had been amended several times and was the ultimate operational legal ground to undertake IBRA's tasks and functions.

Release and Discharge	: The sovereign warranty of legal certainty and policy consistency in relation to the out-of-court method and mechanism of “the Program”.
The IMF	: The International Monetary Fund.
The Program	: The Shareholder Settlement Program, as carried out by IBRA, in which IBRA banks’ shareholders and the Government of Indonesia agreed to settle their differences by means of out-of-court method and mechanism, by signing, executing and completing shareholder settlement agreements.
The Supreme Court	: The Supreme Court of Justice of the Republic of Indonesia, or <i>Mahkamah Agung Republik Indonesia</i> , which is the constitutional body in charge of the judiciary and judicial power.
The World Bank	: The International Bank for Reconstruction and Development.
1998 Banking Law	: Law No. 7 of 1992 on Banking, as amended by Law No. 10 of 1998.