

TECHNICAL ASSISTANCE COMPLETION REPORT

Division: PLCO

TA No., Country and Name TA 4700-SOL: Supporting Business Law Reform			Amount Approved: \$600,000	
			Revised Amount:	
Executing Agency: Department of Commerce, Industries and Employment		Source of Funding: TASF and Australian TA Grant	Amount Undisbursed: \$12,221.92	Amount Utilized: \$587,778.08
TA Approval Date: 25 Nov 2005	TA Signing Date: 2 Dec 2005	Fielding of First Consultants: 24 Jul 2006	TA Completion Date Original: 28 Feb 2008 Actual: 30 Jun 2009	
			Account Closing Date Original: 28 Feb 2008 Actual: 26 Aug 2009	
Description				
<p>ADB is helping the Government of Solomon Islands to formulate and implement policies and strategies geared toward achieving economic growth led by the private sector. In 2005, a private sector assessment for Solomon Islands concluded, among other key findings, that the existing legal business framework does not adequately support modern business practices and stressed the need for substantial reform. ADB subsequently prepared a diagnostic report on the legal business environment to identify and assess reform priorities for the Government's consideration. On that basis, the Government decided to initiate a comprehensive process of business law reform and requested ADB assistance. The technical assistance (TA) project directly links to ADB's Country Strategy and Program Update for Solomon Islands and is consistent with ADB's Pacific Strategy 2005–2009.</p>				
Expected Impact, Outcome and Outputs				
<p>The expected impact is an improved business environment contributing to enterprise, investment, and economic growth. The expected outcome is that the Government makes significant progress in rationalizing business laws and legal institutions (company registry). The expected TA outputs are (i) reformed Companies Act; (ii) reformed roadmap for the Companies Registry; (iii) medium and long-term business law reform agenda; and (iv) stakeholder awareness, buy-in, and ownership of legal and economic reform issues.</p>				
Delivery of Inputs and Conduct of Activities				
<p>The TA was well-formulated in general. The key objectives and deliverables have been met. The executing agency (Ministry of Commerce, Industries and Employment), in cooperation with the facilitating Economic Reform Unit of the Ministry of Finance and Treasury, was proactive in driving the reform process and managing the public-private steering committee. Additional support was also received under RETA 6353: Private Sector Development Initiative. The consultant team arrangement has been well-structured. The timing of the TA (July 2006–March 2009) was longer than planned (March 2006–February 2008) due to political turbulence outside the influence of the TA but this assisted in developing capacity and ultimately helped ensure a successful implementation.</p>				
<p>The consultant team performed well as acknowledged by both ADB and the Government. ADB provided close supervision of the TA. The TA planned for 17 person-months international as well as 10 person-months domestic consulting service. There was significant collaboration among the team to ensure that the various components of reform complemented each other. The two Company Registration Experts were legal experts in their own right and contributed well to the internal consultation process. The company registration expert resigned from the TA and was replaced in January 2008 and the Solomon Islands Attorney-General also changed in the period of the TA. These team changes did not have a negative impact on the delivery or momentum of the TA. Some successful consultation programs were delivered under the TA which generated wide interest and substantial local input into the development of the new acts.</p>				
Evaluation of Outputs and Achievement of Outcome				
<p>The following key outputs were delivered during the course of the TA: Diagnostic on Company Law and the wider business environment; Diagnostic on the Companies Registry; Company Law Review Report; White Paper on Company Law Reform and the wider business law reform; Roadmap for Companies Registration; Companies Bill; Companies (Insolvency and Receiverships) Bill; and Draft Company Forms. The Trustee Act, which was not part of the original Terms of Reference, was also drafted under this TA and subsequently finalized under RETA 6353 and passed by Parliament.</p>				
<p>At the conclusion of this TA, the Parliament of the Solomon Islands passed two new acts. These were the Companies Act 2009 and the Companies (Insolvency and Receiverships) Act 2009. The following are some of the features contained in the new Companies Act 2009 and Companies (Insolvency and Receiverships) Act 2009:</p>				

the focus is on small closely held companies and not public companies — almost all companies operating will be operating small businesses with low turnover; the incorporation process removes discretion and the need for detailed memoranda and unnecessary paperwork; the acts are designed to support an electronic (and paper) registry to encourage wide use in the provinces; the penalty regime supports self enforcement as previous criminal penalties for noncompliance have failed; discretion is kept to a bare minimum throughout the act; the Court has some discretion but is primarily reduced to a dispute forum; community companies have been introduced with the objective of supporting communities and providing greater protection of community assets; the Companies Act contains a more relevant and simpler approach to capital raising by companies; and many of the previous redundant and outdated common law rules have been removed and replaced.

A key feature of the TA was the wide degree of consultation which occurred during the life of the TA and the design of the new acts. The consultation process began with a public launch in August 2006, followed by consultations in the key provinces, and culminated with public parliamentary hearings with unanimous support from the public and private sector for the new Bills.

The wider interest generated by discussion of the Companies Bills has created a momentum and appetite for further reform. A number of recommendations have been outlined in the White Paper and some of these commenced during the term of the TA.

A diagnostic for the Companies Registry and a Roadmap for Company Registration were completed with the analysis revealing a very under resourced and poorly performing registry. The design and implementation of a new registry, which was not part of this TA, is now crucial to the success of the new acts. The introduction of a new registry is reflected and supported in the new acts (as stated above). The implementation of the new registry is underway and draft Company Forms have been developed under this TA to assist with the registry implementation.

Overall Assessment and Rating

Highly Successful. At the conclusion of the TA, the Parliament of the Solomon Islands passed two new Acts: the Companies Act 2009, and the Companies (Insolvency and Receiverships) Act 2009. These acts have been described by the Inter-Pacific Bar Association as regional best practice both on substance and in process and has already been successfully adapted for Vanuatu and Tonga.

Major Lessons

There were benefits from having the consultant inputs provided on an intermittent basis. The establishment of a private/public committee to support and champion the reform was crucial in maintaining focus, creating interest and continuity during the course of the TA. The appropriate sequencing and prioritizing of new laws was essential. It was an advantage to have similar consistent membership of TAs doing related projects in other Pacific developing member countries.

Recommendations and Follow-Up Actions

There is a need to implement a modern good practice company registry. The new Companies registry must be simple and straightforward. Time must be taken to ensure that all staff and stakeholders are well prepared before the registry goes 'live'. The electronic registry will be tendered and installed during 2010. The Government appointment of the Registrar in March 2010 is crucial to the implementation of the laws.

The implementation of the Companies Act will need to be supported with awareness campaigns and training. Staff and user manuals should be developed as well as training for all registry staff prior to commencement of the acts with ADB providing some ongoing support during the transition phase. Stakeholder training must be carried out over an extended period of time. This will include professionals (lawyers and accountants) and public officials who have to deal with the act. Also, presentations should be made to the private sector using various support networks (Chamber of Commerce and Banks). Specific community interest groups should also be targeted, for example women, rural communities, etc.

The new acts must be reviewed following the transition and any changes that may be necessary should be made. Some changes may be accommodated in regulations. A further evaluation should be undertaken following the commencement of the acts and the operation of the registry.

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