

# TECHNICAL ASSISTANCE COMPLETION REPORT<sup>1</sup>

Department: **Office of the General Counsel**

TA No., Country and Name		Amount Approved: \$750,000	
TA 4060-VIE: Legal System Development up to Year 2010 and Capacity Building for Secured Transactions Registration		Revised Amount: N/A	
Executing Agency: The Ministry of Justice of Socialist Republic of Viet Nam	Source of Funding: TASF	Amount Undisbursed:  \$184,851.53	Amount Utilized:  \$565,148.47
TA Approval Date: 19 Dec 2002	TA Signing Date: 5 May 2003	Fielding of First Consultant: 4 Jul 2003	TA Completion Date Original: 30 Jul 2005      Actual: 30 Sep 2008  Account Closing Date Original: 30 Jul 2005      Actual: 30 Jun 2009
<b>Description</b>			
<p>To support its transition from a centrally planned to a socialist-oriented market economy, Viet Nam has been engaged in the momentous task of constructing a new legal system. The 1992 Constitution, with its amendment of 2001, reflects this effort by underlining that Viet Nam is a socialist state governed by the rule of law.</p> <p>To implement such momentous task, the Ministry of Justice (MOJ) initiated the legal system development needs assessment (LNA) aimed at developing a strategy and subsequently an action plan for developing a comprehensive legal system in Viet Nam. After successfully completing the LNA study and submitting its report to the Prime Minister in July 2002, MOJ received a go-ahead from the Prime Minister's Office for further work on the strategy for developing a comprehensive legal system up to year 2010. Since 2000, aid agencies including the Asian Development Bank (ADB), have been supporting this initiative.</p> <p>For the transition towards a socialist-oriented market economy, particular focus was put on developing an effective credit market. ADB provided technical assistance (TA) to MOJ for developing a national registry system for secured transactions (TA 2823-VIE) in 1997. Its final report contains a design for further developing and expanding the secured transactions registration system, including a national database and nation wide computerized network for the registry.</p> <p>As a result, MOJ established the National Registration Agency for Secured Transactions (NRAST) in 2001 with pilot branches (i.e., points of service, POS) in Hanoi and Ho Chi Minh City (HCMC). Since their establishment, the registration of secured transactions has been facilitated. However, it was pointed out that the lack of adequate technical capacity and public awareness, and the scope of the legal framework for secured transactions remained as particular concerns.</p>			
<b>Expected Impact, Outcome and Outputs</b>			
<p>The expected impact of the TA was to ensure successful development and implementation of legal system and contribute to achieving a rule-based socialist-oriented market economy in Viet Nam. It would assist MOJ in (i) preparing implementation mechanisms for the Legal System Development Strategy (LSDS); and (ii) building the capacity of NRAST. The expected outcomes for the first component were effective implementation mechanisms for LSDS by carrying out priority projects selected by MOJ. The expected outcomes for the second subcomponent were: (i) enhanced capacity of NRAST in registering secured transactions through training courses and developing an operations manual, (ii) increased public awareness of legal system reforms and development through developing the NRAST's website, and (iii) enhanced capacity for secured transactions registration by refining the legal framework for the secured transactions.</p>			
<b>Delivery of Inputs and Conduct of Activities</b>			
<p>For the first component, after a series of discussions of the concerned MOJ officials, it was agreed that TA's support was provided for (i) drafting E-transactions Law, and (ii) streamlining Viet Nam's review process of international treaties/laws to avoid conflicts/inconsistency in their domestic application and capacity building of the concerned</p>			

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legal officers.

Drafting support for E-Transactions Law was chosen for the following reasons. The Law was expected to regulate (i) contents and legal validity of electronic documents, including official letters, decisions and directives, official certificates and commercial bills exchanged via internet; (ii) electronic data/signature and secret codes; (iii) electronic public notary and certification; (iv) network safety and security; (v) protection of confidential information; (vi) protection of intellectual property; and so forth. The Law serves as a legal base of all electronic data transactions/dissemination among public agencies and private parties. Since laws/regulations database and court decisions database were being developed, the Law provides their legal validity and how to disseminate them. Thus, the Law was highly relevant with LSDS implementation. The TA engaged two international experts who effectively provided their comments on the draft Law and its implementing decree, both of which have already been promulgated.

The second subcomponent: streamlining Viet Nam's review process of international treaties/laws to avoid conflicts/inconsistency in their domestic application and capacity building of the concerned legal officers comprised the following two parts: Part 1 - Diagnostic study on review process and Part 2 – training courses for that purpose.

This subcomponent was chosen because considering its globalization effort and adherence to WTO rules, it was highly necessary to strengthen its institutional and human capacity to review international treaties for which Viet Nam is to be a party, so that it could remove any inconsistencies between its agreed treaties and relevant domestic legislations.

While a series of training courses were carried out in Hanoi and Thanh Hoa by MOJ with assistance of a national consultant, four national consultants were mobilized for Part 1 and based on their researches together with the outcomes of training courses under Part 2, the final report with high quality was submitted.

The second component was a continuation of previous TA (TA 2823). More specifically, with support from 3 international and 2 national consultants, the following activities have been carried out: (i) drafting of the Ordinance on Registration of Secured Transactions (the National Assembly has decided to upgrade this as a law and promulgate it in 2009, while the substance is the same.); (ii) development of an operations manual for staff in the National Registration Agency for Secured Transactions (NRAST) under MOJ; and (iii) development of NRAST's homepage to facilitate secured transactions registrations.

Although there was an unexpected delay in implementing the first component, both EAs and ADB's performance is satisfactory, since all the expected outcomes were achieved as shown above.

Also the performance of the consultants is satisfactory to achieve the effective outcomes, except, however, for two consultants (one national and one international). One national consultant was rated "generally satisfactory", as initially, there were several complaints raised both from client and international experts, in that his following up of correspondence between them was not appropriately carried out, which eventually was improved by the discussion meeting among concerned parties. One international consultant was rated "unsatisfactory", since the consultant did not perform any under its consulting contract with ADB and thus did not deliver any intended outputs.

### **Evaluation of Outputs and Achievement of Outcome**

For drafting support for E-Transactions Law, two international consultants (both Singaporean) were mobilized. While they held a series of seminars/workshops with drafting committee members, they also submitted their written comments after such seminars/workshops. Especially, since Singapore just adopted a similar law, their inputs to the drafting process were highly appreciated and some comments were incorporated in the Law and its implementing decree.

Exercise for streamlining Viet Nam's review process of international treaties/laws also has a tangible outcome. The four national consultants produced a report which properly addressed the current shortcomings of Viet Nam's review system for international treaties and laws. The report also provided recommendations to overcome the shortcomings, which are expected to be incorporated into some form of legal documents. Two (2) training courses each for four days were carried out in Hanoi and Thanh Hoa with 110 participants in total (mainly from provincial governments). The Government of Viet Nam is now under the process of decentralization. Thus, such training courses targeting local legal officials were highly relevant with the process in terms of awareness raising, and removing any obstacles for Viet Nam's global integration. It was reported from MOJ that participants highly evaluated such training courses.

For the second component, the first output was an operations manual for NRAST's staff. The manual was prepared by two international consultants, who first analyzed the current practice of NRAST and, with the consultation with

NRAST staff, developed an optimum business process. The manual was highly appreciated and is still being used in NRAST and its branches.

Second output was a draft ordinance on Registration of Secured Transactions prepared by international legal experts. Unfortunately, due to the National Assembly's decision to upgrade the ordinance to a law, it has not yet been promulgated. However, the advice of the international legal experts was well taken and incorporated in (i) the draft ordinance itself, and (ii) amended provisions of the Civil Code related to secured transactions. Especially, their advice regarding clearly distinguishing substantive law (Civil Code) and procedural law (the ordinance) was directly taken and all the substantive issues in the early draft ordinance were removed and incorporated into the amended Civil Code and its implementing decree.

The final output was to develop a website for NRAST which was highly relevant to the development of the secured transaction system. First, it serves as one of the most important portals for information dissemination and public awareness. Thanks to the website, the number of secured transactions registered in NRAST is continuously growing. Second and more importantly, the website is further being upgraded to enable users to search and register secured transactions on an online basis. The E-Transactions Law (see above) provides a legal basis for developing online registration so that such transactions will be more transparent, user-friendly and quickly carried out.

### **Overall Assessment and Rating**

As mentioned above, all the outputs of the TA were highly relevant and useful to the development of (i) Viet Nam's legal system in general and (ii) its secured transactions system in particular. However, the TA is rated "successful" (not highly successful) for the following reasons.

First, the TA suffered substantial delay in carrying out the first component. The first activity under the component had not been initiated until two years have passed after the approval of the TA. Eventually, it called for five times extensions of TA closing dates (cumulative extended period of three years and two months). This was due to the TA design itself and delay in the Government's approval (or publicizing) of LSDS. The TA design did not clearly specify concrete activities under the first component, since it was envisaged that the TA would support prioritized activities under LSDS. Hence, it could not specify such prioritized activities before the approval of LSDS.

Second, a comprehensive report on ADB's support for Viet Nam's secured transactions system was not produced as envisaged. Since ADB has been supporting the development of Viet Nam's secured transactions system for many years under two consecutive TAs, it was deemed worth evaluating the impact of the ADB's support, specifically for using experience obtained under these TAs for other countries with similar circumstances. To this end, one international legal expert was engaged. However, due to non-performance of the expert, the consulting contract was cancelled and the envisaged report has never come out as described earlier.

### **Major Lessons**

The TA suffered substantial delay (three years and two months). While it is useful that the TA may flexibly respond to the Government's prioritized activities during its implementation, eventually such flexible approach prolonged the implementation period. Considering that the TA's first component and second component were, to large extent, independent with each other, there could have been two separate TAs covering the relevant components, and the TA for the first component could have been processed at a later time, when the Government indeed prioritized certain activities. These arrangements could have avoided unexpected delays in the overall TA implementation.

### **Recommendations and Follow-Up Actions**

Most of the activities carried out under the TA were followed up in ADB's other interventions to the country including SME Development Programs and Financial Sector Programs, so they are sustainable and to a large extent, monitored.

Regarding the report on overall assessment of ADB's support (mentioned earlier), although it did not materialize under the TA, it is still worth doing in other occasions and if budget allows. Since the ADB's support to development of Viet Nam's secured transaction system was consistent and very much comprehensive, it may become one of the standards of support in this area.