

ASIAN DEVELOPMENT BANK

TAR:TRA 31389

TECHNICAL ASSISTANCE

FOR

SECURED TRANSACTIONS LAW REFORM

January 1998

ABBREVIATIONS

ASEAN	-	Association of Southeast Asian Nations
AUSAID	-	Australian Agency for International Development
DMC	-	Developing Member Country
EBRD	-	European Bank for Reconstruction and Development

NOTE

In this Report, "\$" refers to US dollars.

I. INTRODUCTION

1. The Bank's medium-term operating objectives include the promotion of law reforms to facilitate the creation of a policy, legal and regulatory environment which is supportive of economic growth. A key area of law reform given its central role in the banking and financial sectors and its impact on foreign as well as domestic investment, is that pertaining to secured transactions.¹

2. In recent years, there has been increasing recognition of the importance of the creation, perfection and enforcement of security interests in collateral to the legal and regulatory framework for meeting the credit demands of a market economy.² As Asian economies become more market-driven, lenders and borrowers need market-oriented legal and regulatory frameworks and methods of operation to reduce risks. Secured lending is one such technique. A recent study for the Bank revealed both this trend and opportunities to improve further the security interest regimes in six major economies of Asia.³

II. BACKGROUND AND RATIONALE

3. Despite the large body of literature about secured transactions law reform, there has been no recent and comprehensive survey of emerging trends in secured transactions law reform in the region and no comparative empirical analysis of the ways in which secured transaction regimes affect key stakeholder groups in terms of the economic efficiency of secured transactions. Actual and potential lenders and borrowers are key stakeholders because they have an interest in secured credit. The government is also a stakeholder because of its interest in the level of credit and credit risk in the economy, not least because in a crisis the government itself may be called upon to rescue financial institutions with troubled loans. Lenders, borrowers and the government have an interest in the economic efficiency of secured transactions in terms of better management of credit risk, better access to credit and the lowering of transaction costs. An economically efficient secured transactions regime lowers transaction costs, encourages lending and enhances investment through comprehensive availability of collateral as a basis for secured lending and by a national computerized registration system providing public notice of security interests in property as well as easy, certain determination of priority among creditors with reduced reliance on the court system.

¹ For the purpose of this RETA "secured transactions" or a security interest in a transaction means a legal interest held by a creditor in property owned by a debtor or a third party, which entitles the creditor upon failure of a debtor to pay or perform an obligation to take possession of the property and sell it in order to satisfy the obligation.

² See the Bank's 1993 Symposium on Legal Aspects of Debt Recovery and Credit in Asia and the Pacific; TA No. 2823-VIE: Secured Transactions Registration System Technical Assistance in Viet Nam; see also *Law and Development Bulletin*, Vol. III, No. 1, April 1997.

³ RETA No. 5665 "Symposium on the Role of Law and Legal Institutions in Asian Economic Development 1960-1995" which examined the People's Republic of China, Japan, India, Republic of Korea, Malaysia and Taipei, China.

4. The experience of the selected ASEAN, South Asian and transition economy DMCs is of great potential value in enhancing our understanding of current trends in secured transactions law reform and of the economic efficiency of secured transaction regimes. Certain aspects of their experience may provide important models for improved access to credit and reduction of risk to all stakeholders (including governments).⁴ These need to be examined for purposes of broader application in the Asia-Pacific region.

5. This regional technical assistance (RETA) seeks to examine systematically the relationship between the legal framework for secured transactions and the actual use and enforcement of security interests by lenders and borrowers in India, Indonesia, Pakistan, the People's Republic of China and Thailand. In evaluating the economic efficiency of secured transactions in these DMCs, the RETA will seek to illuminate the role of secured transactions in decisions to lend and borrow, and the role of the efficient secured transaction regimes in lowering transaction costs, encouraging lending and enhancing investment. The RETA thereby intends to help shape future secured transaction law reform in the countries of the region and future Bank programming.

III. THE TECHNICAL ASSISTANCE

A. Objective

6. The objectives of the RETA will be to
- (i) analyze the secured transaction laws and their implementation in each of the DMCs selected for the RETA study, including the legal regimes for the creation, perfection and enforcement of security interests; the types of collateral over which such security interests can be created; the impact of stamp duties, valuation practices and costs (such as notarial fees and registration costs); procedural impediments to effective enforcement of such security interests, including the impact of court congestion; and the availability of legal substitutes for formal security interests;
 - (ii) analyze the actual practice of lenders and borrowers in the use of security interests in each of the RETA DMCs by considering the data from interviews, questionnaires and aggregate sources, including the circumstances in which lenders engage in secured lending rather than unsecured lending, the types of collateral actually in use, the comparative role of substitutes for collateral (such as guarantees, sureties, post-dated checks, etc.) relative loan pricing for secured and unsecured credit, levels of credit availability related to the prevalence of secured lending, and costs of enforcement; and

⁴ See World Bank/AUSAID Land Titling Project in Thailand undertaken by the Department of Land Administration of Australia (DOLA).

- (iii) develop a comparative report, a broad strategy for secured transactions law reform for the RETA DMCs and recommendations on actions required for implementing such reform and overcoming obstacles taking into consideration:
- the findings of the RETA DMC studies above;
 - secured transaction law reform models created by international bodies such as EBRD; and
 - experience with secured transactions regime reforms in the Bank's developed and developing member countries.

B. Scope

7. The countries that are to be the focus of the RETA's study are India, Indonesia, Pakistan, the People's Republic of China and Thailand. These countries have been selected because they represent a cross section of ASEAN, South Asian and transition economies as a basis for a comparative study of the Asia-Pacific region.

8. The components of the RETA will consist of:

- (i) five individual country studies in the selected DMCs which will present and analyze the current secured transactions law regime, recent reforms to such regime and the actual operations of such regime based upon legal and banking research and empirical data and analysis drawn from statistical sources and interviews;
- (ii) a preliminary comparative report based upon an analysis of the country studies, on the experience of other countries (as drawn from the international literature on the subject) and model laws, and which will draw a broad strategy for secured transaction law reform;
- (iii) a symposium to discuss the country studies, the preliminary comparative report, individual country law reform strategies and future assistance. The symposium will bring together key policy makers, senior government officials, lenders, borrowers and the RETA research team; and
- (iv) preparation of the final comparative report for publication.

C. Cost Estimates and Financing Plan

9. The total cost of the RETA is estimated at \$300,000 as more fully set out in Appendix 1. The TA will be provided on a grant basis under the Bank-funded TA program. Funding will cover remuneration for the international consultants and the domestic consultants; airfare and per diems for the international consultants and domestic consultants; airfare and per diems for other participants in the symposium; the costs of the symposium; and the costs of report preparation and publication.

D. Implementation Arrangements

10. The RETA will require the services of about 6 person-months of a firm of consultants which will be internationally recruited in accordance with the Simplified Technical Proposal procedure and the Bank's *Guidelines on the Use of Consultants*. The RETA will also require about 24 person-months of domestic consultants who will be nominated by the international consultants. The domestic consultants will be recruited in accordance with arrangements for the engagement of domestic consultants. The international consultants will have expertise in secured transactions law reform and design, and implementation and operation of computerized registration systems for secured transactions. The international consultants will provide the team leader as well as at least one other international expert. The domestic consultant will have expertise in domestic secured transactions law and empirical analysis involving the key stakeholder groups. A minimum of two domestic consultants for each RETA DMC will be employed by the international consultants.

11. The regional symposium, to be held in Manila, will be organized by the international consultants with the assistance of Bank staff. The Office of the General Counsel will administer the RETA.

12. The terms of reference for the consultants are in Appendix 2.

13. The RETA is to be carried out over a period of approximately 9 months. It is expected to commence in March 1998 and be completed in November 1998.

IV. THE PRESIDENT'S DECISION

14. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance, on a grant basis, in an amount not exceeding the equivalent of \$300,000 for Secured Transactions Law Reform, and hereby reports such action to the Board.

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	
A. International Consultants	
1. Remuneration	100,000
2. Travel	18,500
3. Per Diem	11,500
B. Domestic Consultants	
1. Remuneration	92,000
2. Travel	12,500
3. Per Diem	7,000
C. Symposium (20 people other than international consultants and domestic consultants)	
1. Participants	
a. Travel	17,500
b. Per Diem	3,000
2. Administrative Expenses	1,000
D. Communications, Documentation and Printing	8,000
E. Contingency	29,000
TOTAL	300,000

(Reference in text: page 4, para. 9)

TERMS OF REFERENCE

A. International Consultants

1. The international consultants will perform the following tasks:
 - (i) define working outlines for the country studies in each of the selected RETA DMCs covering analysis of secured transaction laws and the actual practice of lenders and borrowers in the use of security interests;
 - (ii) work with domestic consultants in each of selected RETA DMCs to revise working outlines on the basis of in-country discussions with lawyers, bankers, borrowers, economists, central bankers and government officials;
 - (iii) work with domestic consultants to establish in each of the selected RETA DMCs a working group consisting of lawyers, bankers, borrowers, economists, central bankers and government officials;
 - (iv) supervise and coordinate the preparation of the country studies;
 - (v) produce a preliminary comparative report based upon drafts of such country studies, secured transaction law reform models and experience of secured transactions regime reforms in the Bank's developed member countries;
 - (vi) organize a Symposium in Manila for representatives of the RETA DMC countries with the assistance of domestic consultants. In particular, the international consultants will be responsible (a) for identifying participants among policy makers, lawyers, economists, bankers, central bankers, government officials, scholars; and (b) for structuring an agenda for the Symposium to discuss the country studies, the preliminary comparative report, a broad strategy for secured transactions law reform, and recommendations on actions to implement such reforms in the concerned DMCs;
 - (vii) prepare summaries of the Symposium discussions, supervise revisions to country studies and revise the comparative report for secured transaction law reform based on Symposium discussions; and
 - (viii) be responsible for preparation of RETA reports.

(Reference in text, page 4, para. 12)

B. Domestic Consultants

2. The domestic consultants (either individuals or institutions) must have significant law and economics research background, preferably in the area of secured transactions reform.

3. The domestic consultants will be selected on the basis of the submissions of the international consultants, subject to the right of the Bank, during the international consultant selection process or during the initial consultations at the Bank with the international consultant, to make such changes in the proposal for country specialists as the Bank may consider necessary or appropriate.

4. The domestic consultants will perform the following tasks:

- (i) meet with the international consultants and revise, as necessary, the working outlines for the country studies;
- (ii) work with the international consultants on relevant in-country working group meetings with lawyers, economists, bankers, borrowers, central bankers, scholars, and government officials to discuss country studies;
- (iii) prepare country studies in accordance with working outlines and subject to supervision of the international consultants;
- (iv) participate in the Symposium and assist international consultants in identifying participants and in structuring the agenda; and
- (v) revise the country studies on the basis of Symposium discussions and under the supervision of the international consultants.