

ASIAN DEVELOPMENT BANK

TAR: RMI 34210

TECHNICAL ASSISTANCE

TO THE

REPUBLIC OF THE MARSHALL ISLANDS

FOR

IMPROVING THE ENVIRONMENT FOR PRIVATE SECTOR DEVELOPMENT

November 2004

CURRENCY EQUIVALENTS

The United States dollar (\$) is the unit of currency in the Republic of the Marshall Islands

ABBREVIATIONS

| | | |
|------|---|---------------------------------------|
| ABWG | – | Administrative Barriers Working Group |
| ADB | – | Asian Development Bank |
| CRA | – | commercial registration authority |
| LRA | – | Land Registration Authority |
| RMI | – | Republic of the Marshall Islands |
| TA | – | technical assistance |

TA CLASSIFICATION

| | |
|---------------------------------|---|
| Targeting Classification | General intervention |
| Sector | Finance |
| Subsector | Finance sector development and reforms |
| Thematic | Sustainable economic growth, governance, and private sector development |

NOTES

- (i) The fiscal year (FY) of the Government ends on 30 September.
- (ii) In this report, "\$" refers to US dollars.

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| This report was prepared by G. Settle, Regional and Sustainable Development Department, and S. Pollard, Pacific Department. |
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I. INTRODUCTION

1. Since 1996, the Asian Development Bank has been providing continuing assistance to the Government of the Republic of the Marshall Islands (RMI) to help reform the public sector and the economy.¹ This assistance has included increasing attention to improving the environment for private sector development. At the request of the Government, a private sector assessment was completed,² and technical assistance (TA) supporting legal and regulatory reform³ has been initiated within a regional framework. The private sector development component of the country strategy and program update for the RMI has been substantially guided by these efforts. Two ongoing TAs are also having a significant impact on the business environment, i.e., the Land Registration Authority (LRA) TA and the joint ADB/Foreign Investment Advisory Service regional TA to address administrative barriers to private sector development (footnote 2). An ADB mission was fielded from 25 March to 6 April 2004 to undertake TA fact-finding.⁴ The Government and ADB reached an understanding on the goals, purpose, scope, implementation arrangements, cost, and financing arrangements during TA preparation. The TA framework is in Appendix 1.⁵

II. ISSUES

2. Increasingly, Pacific developing member countries are utilizing private resources to satisfy the considerable demand for social, financial, and physical infrastructure, which cannot be met by the public sector alone. Central to good governance and responsible fiscal management are measures to shift performance risk away from the general public to private parties, where these parties, be they small or large, foreign or domestic, are better able to manage risk and deliver service.

3. Policy dialogue on developing the private sector has been carried out during private sector assessments, TA reviews, and the country strategy and program update process. As a result of these consultations, the RMI Government and ADB agree on the importance of private sector development in the context of overall development strategies and priorities, resulting in a strengthened role for private sector development in the country strategy.

4. The Government and ADB concur that the key to private sector development is an enabling environment that provides for competition, productivity, and the efficient delivery of goods and services that meet the needs of the population. Under these conditions the private sector is able to generate broad-based growth, broaden consumer choice, and generate opportunities for all people, especially the disadvantaged. Accessible and transparent property rights systems—comprising laws, institutions, and information systems harmonized with local

¹ ADB. 1996. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan and Technical Assistance Grants to the Republic of the Marshall Islands for the Public Sector Reform Program*. Manila; ADB. 2001. *Report and Recommendation of the President to the Board of Directors on Proposed Loans and Technical Assistance Grant to the Republic of the Marshall Islands for the Fiscal and Financial Management Program*. Manila; ADB. 2001. *Technical Assistance to the Republic of the Marshall Islands for Fiscal, Financial, and Economy Advisory Services*. Manila.

² ADB. 2002. *Regional Technical Assistance on Private Sector Development Strategy for the Pacific*. Manila.

³ ADB. 2004. *Technical Assistance for Diagnostic Studies for Secure Transactions Reforms in the Pacific Region*. Manila (TA 37658-1-REG for approval December 2004).

⁴ The Mission comprised Steve Pollard, principal economist and RMI desk officer, Pacific Department, and Graham Settle, senior corporate governance specialist, Regional and Sustainable Development Department.

⁵ The TA first appeared in *ADB Business Opportunities* (Internet edition) on 22 February 2002.

practice and custom—are a hidden infrastructure that enables actions leading to the achievement of sustainable development goals.⁶

5. The Government can play a key role in setting clear and unequivocal rules and allowing the private sector to manage the best way to meet demand as well as bear the risk of failure. The most salient elements underpinning the enabling environment are (i) sound rules for the market, (ii) the expectation that the rules will be adhered to by both market participants and the state, and (iii) private property rights.

6. Progress has been made in recent years in simplifying the regulatory environment for business in the RMI under ADB regional TA.⁷ Foreign business license registration has improved, business registration has been simplified, and a land registration agency has been established to allow investors easier access to land for investment. Procedures for employing foreign workers still require simplification and improvement. The administrative barriers working group set up under the TA is collaborating with the Government to streamline these procedures. Thus far the Government is evaluating this TA as a success.

7. The lack of secure real estate property rights is a hindrance to (i) establishment of efficient property markets and productive use of land, (ii) timely implementation of public projects that require land acquisition, (iii) sound environmental stewardship of resources,⁸ and (iv) provision of finance and establishment of an evolving capital market. Enhancing the environment for private sector investment, job creation, growth, development, and reduction of hardship are central to ADB's country strategy for the RMI.

8. LRA is now established⁹ and requisite legislation has been approved. LRA has the capacity to record ownership, leases, and mortgage instruments. A mission statement, management infrastructure, operational procedures, and an outreach program have been delivered. While this TA has been successful thus far,¹⁰ further assistance is needed to ensure the implementation and give promise to the long-term benefits of land reform.¹¹

⁶ United States Agency for International Development. 2002. *Promoting Effective Property Rights Systems for Sustainable Development*. Washington, DC.

⁷ ADB. 2000. *Regional Technical Assistance on Private Sector Development in the Pacific*. Manila.

⁸ Recent studies have shown that effective property rights can yield improvement in the natural environment. Efforts to conserve natural and cultural sites and to develop tourism around such sites are often at odds with the activities of local residents. The same can be said of projects to extend roads and pipelines or to foster sustainable extractive industries. To lessen the potential for conflict caused by such activities—and to promote economic growth with environmental stewardship that will safeguard the world's biodiversity—the property rights of indigenous and other community groups must be clarified and strengthened so that they can manage their resources in a sustainable way. United States Agency for International Development. 2002. *Promoting Effective Property Rights Systems for Sustainable Development*. Washington, DC.

⁹ The RMI Parliament has enacted the Marshall Islands Development Land Recording and Registration Act. This legislation was a component of the Public Sector Reform Program policy matrix. The act provides for LRA establishment, operation, and procedures, and establishes legal requirements for valid land leases in the RMI. The Government appointed the LRA board and approved a budget for operations in FY2004. A new Real Property Mortgage Act 2004 was prepared and has been passed by Parliament; the 1987 Real Property Mortgage Act was repealed.

¹⁰ According to the 9 January 2004 International Monetary Fund Staff Report for the Article IV Consultation, "On private sector development, a welcome measure was the recent passage of legislation to address land tenure issues, including establishing the [LRA], ...improving laws relating to real property mortgages...These measures should help to lower intermediation costs and facilitate the reorientation of commercial bank lending activities toward the private commercial sector."

¹¹ For example, the existing land tenure system in the RMI remains complex and entrenched in traditional and customary rights that are protected by the Constitution (Article X).

9. The need to resolve land conflicts and to facilitate the gradual and sensitive securitization of real estate property rights to foster private investment is a key concern of the region. Solutions can only be country-specific, but the results of further RMI TA will nevertheless be of interest to all other countries in the region. This is an issue that has unfortunately been previously overlooked as too sensitive, too political, and too difficult. It has therefore not received the attention that it deserves.

10. The issue of collateral is one of significant economic importance. When borrowers cannot use their assets as collateral for loans and cannot purchase goods on credit using the goods themselves as collateral, interest rates on loans tend to be higher to reflect the risk to lenders. In many developing countries where legal and regulatory constraints make using movable property as loan collateral difficult, the cost of loans makes capital equipment more expensive for entrepreneurs relative to their counterparts in industrial countries; and businesses either postpone buying new equipment or finance it more slowly out of their own limited savings. Small businesses, in particular, are hit hard by the scarcity of low-cost financing, but the whole economy suffers because the lack of new investment dampens productivity and keeps incomes down.

11. An important and often overlooked benefit of a property registry is the fundamental value added in any transfer of ownership. This is important in real estate as well as in goods and services because the transfers facilitate more productive uses by both buyer and seller, even if credit is not involved. For example, a landowner may not have the expertise to develop a particular property, but would find productive use for the proceeds of a sale to a person with the requisite knowledge and initiative. The buyer's plans anticipate greater value in the productive use of the land than the monies paid to the seller. Both buyer and seller benefit in the exchange. Trade between individuals in their pursuit of productive goals under the rule of law is the essence of private sector contribution to improved conditions for people. When the transfer of ownership is clear and efficient, the parties are free to concentrate on entrepreneurial planning and implementation.

III. THE TECHNICAL ASSISTANCE

A. Purpose and Output

12. The primary long-term goal is to foster an enabling environment for productive opportunities, transactions, and capital formation for private sector development leading to broad-based growth and an increase in the standard of living. The private sector development social impact will eventually (i) provide greater means for people to access quality physical and social infrastructure, (ii) improve capital formation, (iii) provide environmental stewardship, and (iv) support the overall reduction of poverty. A summary initial poverty and social analysis is included in Appendix 2. The TA will also eventually help to stabilize the economic outlook by reducing uncertainty and risks associated with asset ownership and transfer, facilitate lower cost credit, and improve private sector development by lengthening investment and business planning horizons.

13. The TA will help create an environment conducive to private investment and productive employment by freeing up assets that are currently underutilized due to lack of a movable property registry. The TA is expected to simplify public sector land transactions, increase administrative efficiency, and therefore reduce the burden and potential for poor investment of public and private resources. The TA will also provide assessments and guidance for the Government for efficient land use, including consideration of land reclamation.

14. The TA will augment and support existing organizations and institutions. The TA consists of three complementary components:

- (i) **Land Registration Authority.** The continued success of LRA will be supported as implementation and capacity building aspects have reached a critical stage in development. The component will simplify private and public sector land ownership, transactions, and the use of secure titles as security for finance.¹² This component will include a sensitive study of status and trends of land tenure.
- (ii) **Commercial Registration Authority.** This complementary component will establish movable asset ownership registration, simplify ownership transfer, and allow the private sector to use secure titles as security for finance.
- (iii) **Administrative Barriers Working Group.** The initial success of the regional TA (footnote 7) will be supported as implementation needs to be continued. This component will help RMI stakeholders further reduce legal and regulatory impediments to private sector development and allow for innovative solutions to be presented in an effective and inclusive manner.

B. Methodology and Key Activities

15. Methods of institutional analysis and formulation of mission statement, organizational structure, management infrastructure, operational procedures, and progress monitoring and reporting will be based on internationally proven techniques. Methods of land titling, land registration, and land lease databases can also be based on established practice. However, no perfect models exist for further development of real estate property rights. The next stages must be based on a gradual, sensitive, and well-informed process. Awareness raising and consensus building are important components that require the continued assistance of the TA. The precise actions and inputs to facilitate this process will also have to be developed over time. With the exception of the land study, all components of the TA will be implemented on an intermittent, periodic basis following a work program and over 4 years.

16. The TA is expected to result in successful testing and adjustments to the legal, regulatory, and institutional efficacy of land reform laws; testing and adjustments to organizational and human resource requirements of LRA; establishment of the legal, regulatory, and institutional system of movable property laws and the commercial registration authority (CRA); and commencement of a program to increase public awareness of the value of registration and securitization of property rights to the future of the RMI. In addition, the TA will establish a forum to disseminate solutions to challenges faced by the private sector, and guidance for further development and use of real estate and movable property rights. With the approval of Government, the TA results will be presented to and discussed in a variety of forums including the Cabinet, National Coordination Committee, and special land workshops.

¹² Some of the critical aspects of land registry sustainability are addressed in Hernando de Soto: 2000 *The Mystery of Capital—Why Capitalism Prevails in the West and Fails Everywhere Else*, New York, Basic Books. Hernando de Soto argues that the most successful property systems are those modeled on informal systems—systems that people understand and that work. One of his key tools is to document the processes to undertake tasks both in the formal and informal sectors. In all these activities he believes the starting point is gathering data about the inefficiencies in the formal sector and the operation of the informal sector.

17. Assumptions and risks include traditional, customary, sociopolitical commitment to private property rights and administrative reforms, and adequate budgetary contributions from the Government, including provision of suitable staff. These concerns were addressed during TA preparation through extensive consultations at all levels of government and society, including the piloting of participatory processes.

C. Cost and Financing

18. The total cost of the TA is estimated at \$950,000 equivalent, including \$678,000 in foreign exchange cost and \$272,000 equivalent in local currency cost. ADB will provide \$760,000 equivalent to finance the entire foreign exchange cost and the local currency cost of \$82,000 equivalent. The TA will be financed on a grant basis by ADB's TA funding program. The Government will finance the remaining local currency cost corresponding to \$190,000 equivalent. The cost estimate and financing plan is attached as Appendix 3.

D. Implementation Arrangements

19. The Ministry of Justice, the Executing Agency for the TA, will be responsible for coordinating, monitoring, and supervising all TA activities; providing administrative and counterpart support to the consultants and coordinating the Government's response to the findings and recommendations of the TA. The implementing agencies will be (i) LRA for the LRA and CRA components; (ii) Ministry of Resources and Development for the Administrative Barriers Working Group; and (iii) the Economic Policy, Planning, and Statistics Office of the Office of the President for the land study.

20. The TA will commence in or around March 2005 and be implemented on an intermittent basis over 48 months. A team of five international consultants and two domestic consultants will be recruited under the management of a consulting firm in accordance with ADB's *Guidelines on the Use of Consultants* using the simplified technical proposal and quality- and cost-based selection method. A total of 25 person-months will be required for this TA (19 international and 6 domestic). The consulting team will include an international team leader and private sector development expert (7 person-months), an international technical filing archives expert (3 person-months), an international secured transactions expert (4 person-months), an international administrative barriers facilitation specialist (3 person-months), international social development analyst (2 person-months), a domestic social development analyst (3 person-months), and a domestic legal expert (3 person-months). The consultants will produce inception, annual, draft final, and final reports on their assignments and will submit these reports to the CRA, LRA, Ministry of Justice, Administrative Barriers Working Group, Economic Policy, Planning, and Statistics Office, and ADB, as relevant. The team leader will be responsible for coordinating an annual survey of business activity in the RMI, and for reporting on the same in the annual report, to help monitor TA progress. The outline terms of reference for the consultant team for each phase are in Appendix 4.

IV. THE PRESIDENT'S DECISION

21. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance not exceeding the equivalent of \$760,000 on a grant basis to the Government of the Marshall Islands for Improving the Environment for Private Sector Development, and hereby reports this action to the Board.

TECHNICAL ASSISTANCE FRAMEWORK

| Design Summary | Performance Indicators/Targets | Monitoring Mechanisms | Assumptions and Risks |
|--|---|---|--|
| <p>Goal Establish an environment conducive to productive use of resources, efficient transactions, productive allocation of capital, and credit formation for higher and better uses of land and movable property, and more competitive business environment.</p> | <p>Broad indications of greater private sector activity including an increase in business licenses, land and movable asset registrations, capital formation, private sector employment, and private sector contribution to gross domestic product</p> | <p>Annual business survey report by team leader including telecommunication and Internet connections, job advertisements, national statistics on business start-ups and asset registrations, labor survey data, capital formation, and private sector and financial assessments</p> | |
| <p>Purpose Augment and support successful ongoing reform efforts and additional secured transactions capacity to enhance private sector development.</p> | | | <p>Government's continued commitment to reform of the Land Registration Authority (LRA), commercial registration authority (CRA), and Administrative Barriers Working Group reform package and increased performance measurement</p> |
| <p>Outputs (A) Land Registration Authority Simplified land ownership, mortgage, lease, and other land transactions; and facilitate use of secure titles as basis for transactions and security for finance.</p> | <p>Increased number of recordings, registrations, titles, mortgages, and other formal filings related to real estate</p> <p>Reduction in time required to register property and perfect liens on real estate</p> | <p>LRA databases for land registration, and recording of registrations lodged, documents recorded Financial institution records</p> <p>The Economic Policy, Planning, and Statistics Office and Asian Development Bank (ADB) review</p> | <p>Creditor and private sector support and acceptance of LRA, CRA, and reform package Sustainable formula for operation of LRA and CRA</p> <p>Sociopolitical support, including overcoming entrenched traditional and customary rights and acceptance of new methods of recording and registering land transactions, the use of land as security for borrowing, and confidence in the operation of the LRA</p> <p>Resilience of the land and personal property title and recording system to stress testing in actual transactions and</p> |

| Design Summary | Performance Indicators/Targets | Monitoring Mechanisms | Assumptions and Risks |
|--|---|--|---|
| <p>Provide guidance to the Government on the best means to support the development of land rights, including land reclamation.</p> <p>(B) Commercial Registration Authority</p> <p>Simplified private personal property ownership, transactions, and use of secure titles for financial transactions.</p> <p>(C) Administrative Barrier Working Group (ABWG)</p> <p>Reduced legal and regulatory impediments for private sector development.</p> | <p>Study report with recommendations for public hearing.</p> <p>Number of recordings, registrations, liens, and other formal filings related to movable property</p> <p>Baseline established for time to record a secured interest (World Bank Group Doing Business Indicators methodology)</p> <p>Reduction and/or elimination barriers identified by the Administrative Barrier Working Group</p> | <p>and conduct of public hearing</p> <p>CRA databases for movable property registration, title, and leases</p> <p>Commercial bank interviews</p> <p>Administrative Barrier Working Group reports</p> | <p>consequent dispute resolution</p> <p>Public and political understanding and support for land survey and continued investigation of land rights</p> <p>Political and commercial support and trust in the integrity of the CRA system</p> <p>Government's continued commitment to reform</p> |
| <p>Activities</p> <p>(A) Land Registry Authority</p> <p>A.1 Implement LRA system to register ownership and record related documents.</p> <p>A.2 Implement LRA system to perfect security.</p> <p>A.3 Plan and implement the LRA-CRA merger.</p> <p>A.4 Review status and trends of traditional and modern, formal and informal land ownership and use, including transfers and potential for further utilization of land rights</p> | <p>Improvement of LRA forms, policies, and procedures</p> <p>Approved budget and organizational merger of LRA and CRA</p> <p>Business plan for the commercialization of LRA and CRA</p> <p>Conclusions and recommendations giving clear guidance to the Government for future land policy, strategy, and assistance</p> | <p>Technical assistance (TA) reports TA review missions</p> <p>TA reports TA review missions</p> <p>LRA/CRA review and implementation report</p> <p>Final report Public hearing</p> | <p>Adequate budget and maintenance of local staff skills</p> <p>LRA, banking, and judicial system capacity</p> <p>Compatibility of systems, laws, and personnel</p> <p>Political and stakeholder support for the process</p> |

| Design Summary | Performance Indicators/Targets | Monitoring Mechanisms | Assumptions and Risks |
|---|---|---|---|
| <p>(B) Commercial Registration Authority</p> <p>B.1 Draft and gain approval of CRA legislation, as required.</p> <p>B.2 Establish a CRA mission statement.</p> <p>B.3 Establish operational computer-based personal property chattel/movable asset databases and systems for property titling and registration (compatible with LRA system).</p> <p>B.4 Design operating manual for CRA.</p> <p>B.5 Establish consolidated business plan and budget for CRA under merged LRA-CRA operations scenario.</p> <p>B.6 Implement in-service capacity building in CRA and combined LRA-CRA structure.</p> | <p>Drafted and passed CRA law/regulations, as required</p> <p>CRA mission statement approved</p> <p>Archive/management information system computer system installed and operational</p> <p>Operating manual approved</p> <p>System tested and functional</p> <p>LRA/CRA business plan</p> <p>Awareness survey to ascertain receipt and understanding of news media program</p> <p>Priority list and solutions</p> | <p>TA review missions Legislative report</p> <p>TA reports TA review missions</p> <p>TA reports TA review missions</p> <p>Commercial bank interviews</p> <p>TA reports TA review missions</p> <p>TA reports TA review missions</p> <p>TA report on awareness survey</p> | <p>Political and regulatory understanding and support of the Government</p> <p>Stakeholder agreement</p> <p>Management information system compatibility, local staff capacity</p> <p>Staff capacity</p> <p>Practical design</p> <p>Budget, personnel, and organizational structure established and approved</p> <p>Government and private news media support for publicity campaign</p> |
| <p>(C) Administrative Barriers Working Group</p> <p>C.1 Develop consensus of priority administrative barriers with detailed explanations and recommended solutions (including benefit-cost analysis)</p> <p>C.2 Review and report potential scope for a self regulatory approach to private sector development.</p> <p>C.3 Prepare national investment policy statement.</p> | <p>Minimum of three workshops</p> <p>Investment policy approval Publication of policy</p> <p>Conclusions and recommendations giving clear guidance to the Government for future land policy,</p> | <p>Administrative Barriers Working Group reports</p> <p>TA reports TA review missions</p> <p>TA review missions Legislative report</p> | <p>Stakeholder consensus</p> <p>Stakeholder consensus</p> <p>Stakeholder consensus</p> |

SUMMARY INITIAL POVERTY AND SOCIAL ANALYSIS

A. Linkages to the Country Poverty Analysis

| | |
|--|--|
| Sector identified as a national priority in country poverty analysis? Yes | Sector identified as a national priority in country poverty partnership agreement? Yes |
| Contribution of the sector/subsector to reduce poverty in the Republic of the Marshall Islands (RMI) | |
| Developing real estate property rights and a commercial registry, and reducing administrative barriers will facilitate increased land use, development of secure property, improved productivity and production, increased collateral, and commercial capital market development, and thereby support investment and job creation, pro-poor growth, and poverty reduction. | |

B. Poverty Analysis

Targeting Classification: General intervention

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|---|
| What type of poverty analysis is needed? |
| A participatory poverty analysis was conducted as a component of regional technical assistance in the RMI from September to November 2002. Preliminary quantitative analyses of poverty were also made under this same regional TA. Further analyses of the interests of the poor will be included in the land study. |

C. Participation Process

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| Stakeholder analysis: Earlier consultations with all stakeholders were held during the preparation of "Meto 2000", ¹ the economic report for the RMI, which supported the design of this technical assistance (TA). A participatory poverty assessment was conducted in late 2002. Extensive participatory processes were a strong feature of the country strategy and program update prepared in 2004 including the conduct of the National Coordinating Committee meeting on 29 March 2004. |
| Participation strategy required: A series of consultations are planned and participatory processes will be an essential component of the TA. Further participatory processes may be recommended as a component of future assistance. |

D. Potential Issues

| Subject | Significant, Not Significant, Uncertain, None | Strategy to Address Issues | Plan Required |
|---|---|--|-------------------------------|
| Resettlement | None immediately | This will be individually addressed under each subsequent public and private land transaction. | None |
| Gender | Uncertain | The TA consultants will address this issue, especially under land study component. | To be designed by consultants |
| Affordability | None | | None |
| Labor | None | | None |
| Indigenous People | Uncertain | To be assessed by the TA consultants | To be assessed by consultants |
| Other Risks/ Vulnerabilities | Sociopolitical Significant | To be assessed by the TA consultants | To be designed by consultants |

¹ Asian Development Bank. 2001. *Republic of the Marshall Islands Meto2000: Economic Report and Statement of Development Strategies*. Manila.

COST ESTIMATES AND FINANCING PLAN
(\$'000)

| Item | Foreign Exchange | Local Currency | Total Cost |
|--|---------------------|-------------------|---------------|
| A. Asian Development Bank Financing^a | | | |
| 1. Consultants | | | |
| a. Remuneration and Per Diem | | | |
| i. International Consultants | 454.0 | 0.0 | 454.0 |
| ii. Domestic Consultants | 0.0 | 36.0 | 36.0 |
| b. International and Local Travel | 90.0 | 16.0 | 106.0 |
| c. Reports, Media, and Communications | 10.0 | 20.0 | 30.0 |
| 2. Equipment ^b | 30.0 | 0.0 | 30.0 |
| 3. Contract Negotiations | 10.0 | 0.0 | 10.0 |
| 4. Contingencies | 84.0 | 10.0 | 94.0 |
| Subtotal (A) | 678.00 | 82.0 | 760.0 |
| B. Government Financing | | | |
| 1. Office Accommodation and Transport | 0.0 | 45.0 | 45.0 |
| 2. Remuneration and Per Diem of Counterpart Staff | 0.0 | 90.0 | 90.0 |
| 3. Others | 0.0 | 55.0 | 55.0 |
| Subtotal (B) | 0.0 | 190.0 | 190.0 |
| Total | 678.0 | 272.0 | 950.0 |

^a Financed on a grant basis by the Asian Development Bank's technical assistance funding program.

^b Computer hardware and software, surge protectors, and photographic and photocopy equipment.

Source: Asian Development Bank estimates.

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

A. Team Leader and Private Sector Development Expert (7 person-months)

1. A private sector development and property rights and management specialist who has detailed knowledge of the land tenure and land management systems, as well as secured transactions for movable property in the Pacific islands; and experience in analyzing the broad institutional requirements for securitization of real estate and movable property will be hired for 7 person-months on an intermittent basis over 36 months. The specialist will be primarily responsible for broad institutional analysis and implementation of two components of the technical assistance (TA), as well as the following:

- (i) Provide mentoring, support, and capacity building training for the Land Registration Authority (LRA) and commercial registration authority (CRA), and at all times and on all issues work very closely with the land registrar and other LRA staff to impart knowledge.
- (ii) Work with the LRA executive officer and CRA; clarify the objectives, expected results, and outputs of both components of the TA; and produce a concise vision and mission statement for the combined CRA-LRA.
- (iii) Identify, review, and document all laws, ordinances, rules, manuals of practice, and other legal and instruments that impact on and regulate land and movable property rights in the Republic of the Marshall Islands (RMI).
- (iv) Review the lessons and experience of similar Asian Development Bank (ADB) TA conducted in other developing member countries including relevant regional TA and work in the Federated States of Micronesia.¹
- (v) Assess the degree of impact of further land development in the RMI and the degree of difficulty in making changes to legal and other instruments.
- (vi) Review with LRA, CRA, commercial banks, and the Ministry of Justice any possible risk of conflict of interest between land registration and property registry, and the guarantee of ownership certificates.
- (vii) Consider all governance issues and ensure that they are incorporated in CRA-LRA functions as appropriate.
- (viii) Identify, review, and document traditional, customary, and formal institutional interrelationships of all people and agencies involved in movable property and land administration and further development and exercise of these private property rights (specifically the Office of the Attorney General, the Council of Iroij, Ministry of Resources and Development, Ministry of Internal Affairs, Ministry of Justice, Department of the Environment, and Economic Policy, Planning, and Statistics Office).
- (ix) Assess the degree of influence of each institution identified in (vii) and the possibility of amending the institutional mandate to further develop movable property and land rights in the RMI.
- (x) Assess the gender impact (positive or negative) of improved movable property and utilization of land rights, and recommend a plan of action to ameliorate any negative impact and accentuate positive impacts.

¹ ADB. 1997. *Technical Assistance to the Federated States of Micronesia for the Improved Economic Use of Land*. Manila; ADB. 1999. *Technical Assistance to the Federated States of Micronesia for the Private Sector Development Program*. Manila.

- (xi) Review the work of the land and movable property registration and commercial bank cooperation, and design a plan for increased efficacy and media promotion.
- (xii) Assess the effective use of movable property as collateral for lending, including commercial banks' views of the same.
- (xiii) Specifically review and comment on the need for and viability of introducing a property tax and fee-based registration for sustainability of CRA-LRA.
- (xiv) Undertake further institutional analysis (by strengths, weaknesses, opportunities, and threats analysis or other approach) and report on reform measures required for efficient and effective CRA-LRA operations.
- (xv) Clearly summarize and present all issues and options in an interactive series of consultations and workshops with government, nongovernment, and ADB representatives.
- (xvi) Consider and formulate the need for further assistance to enhance movable property and land utilization, considering the development strategies and programs of the Government and funding agencies, including ADB.
- (xvii) If relevant, identify and design a program of further assistance as appropriate.
- (xviii) Coordinate an annual business survey and report on the same to the Government and ADB.
- (xix) Coordinate other consulting inputs, including required reporting.

B. Technical Filing Archive Expert (3 person-months)

2. The international technical expert will have master's degree in computer sciences or 5 years or more experience in Internet-based databases; expertise in SQL server, MySQL, Oracle, or equivalent databases; knowledge of ASP or XML and experience in linking databases to online input systems; experience setting up public registrars or Internet-based notice filing systems for security interests, as appropriate; experience in property registration in Pacific islands; and experience with internal institutional analysis. This consultant will be recruited for intermittent periods, totaling to 2 person-months to help the CRA and LRA executive officers fully establish the combined LRA-CRA system. The management information specialist will be responsible for institutional and functional analysis of the CRA. Terms of reference include the following:

- (i) Provide mentoring, support, and capacity building training for LRA and CRA, and at all times and on all issues work very closely with the land registrar and other staff of LRA to impart knowledge.
- (ii) Advise the team leader and secured transactions expert on all points of linkage between the law and technical options for the filing archive, including which legal drafting options present technical problems and which technical options require changes in the law.
- (iii) Assess the existing state of information technology in the LRA registry related to CRA secured transactions.
- (iv) Write the program for the online archive, including adapting existing work and linking it to RMI systems, according to international best practice and taking into consideration aspects of data integrity, confidentiality, security, and potential commercial bank and LRA interface.
- (v) Set up the model notice filing system at the outset of the TA.
- (vi) Contribute to inception, annual, draft final, and final reports.
- (vii) Maintain all draft reports and laws on a web page accessible to the public and for receiving questions concerning the reform and posting the answers. The

information technology expert will maintain these question and answer pages throughout the TA.

- (viii) Read and review the LRA systems software and hardware configuration and any other relevant information related to compatibility.
- (ix) Review with commercial banks and responsible RMI officials the current LRA operations and potential utilization and compatibility of CRA systems.
- (x) Outline the functions of CRA and LRA systems, and consult with commercial banks to develop the required software and information technology architecture, operations and procedures, and other resources required to fully establish a compatible management information system for CRA-LRA operations.
- (xi) Prepare the management information system for the CRA-LRA; including detailed operational policies, procedures, operational guidelines, monitoring, other reporting and auditing systems, and norms for assessing performance compatible with commercial bank and legal requirements.
- (xii) Establish property registration, management, and property lien databases.
- (xiii) Finalize the design and procurement of the computer-based system for the CRA-LRA combined databases.
- (xiv) Analyze and recommend the level and implementation of a range of service user fees from a technical perspective.
- (xv) Conduct in-service training of CRA-LRA staff on management information system computerized systems, and recommend and detail training required.
- (xvi) Help government officials establish CRA and implement LRA-CRA mission statement(s).

C. Secured Transactions Expert (4 person-months)

3. A legal specialist with knowledge and experience of secured transaction frameworks, and property issues in the Pacific in general and RMI in particular will be recruited for intermittent periods over 24 months, totaling 4 person-months, to advise on the application of CRA-related laws and regulations and the management information system interface. This specialist will assist the team leader, technical filing archive expert, LRA executive officer, and CRA as follows:

- (i) Provide mentoring, support, and capacity building training for LRA and CRA, and at all times and on all issues work very closely with the land registrar and other staff of LRA to impart knowledge.
- (ii) Interpret and review the CRA and LRA related laws, regulations, and customs and all other relevant legislation and other documentation.
- (iii) Ensure that all governance issues are considered and incorporated as appropriate.
- (iv) Review the current status of establishing the CRA, including commercial bank interest and design preferences for CRA use.
- (v) Prepare filing documentation and related documentation as required.
- (vi) Investigate and report on laws and regulations pertaining to collateral perfection, existing and potential commercial bank modalities, foreclosure, and bankruptcy.
- (vii) Provide a description of what is meant by pledging security to allay concerns of potential abuse of the system.
- (viii) Recommend policies, procedures, and operational guidelines for the new CRA and combined CRA-LRA.
- (ix) Otherwise help establish CRA-LRA.

- (x) Organize and conduct a series of public forums and other consultations in Majuro and the outer islands on the nature and operations of CRA-LRA.
- (xi) Draft laws and regulations as requested by the Administrative Barriers Working Group (ABWG).
- (xii) Assess the need for further assistance.
- (xiii) Contribute to the inception and midterm reports.
- (xiv) Help Government officials establish the CRA and implement LRA-CRA mission statement(s).

D. Administrative Barriers Facilitation Specialist (3 person-months)

4. An administrative barriers facilitation specialist with knowledge and experience of media, group participation, and development issues in Micronesia and the Pacific will be hired for 3 person-months. This specialist will have the following responsibilities:

- (i) Assist secretariat and members of the ABWG in scheduling and facilitating meetings and presentations.
- (ii) Help the ABWG prepare a national investment policy statement, and prepare booklets and other relevant publications on the ABWG, its operations, and activities.
- (iii) Help the ABWG make presentations to stakeholders and prepare other relevant material to promote the solutions recommended by the ABWG.
- (iv) Draft newspaper articles, and prepare radio programs on the ABWG, its activities and operations, and the value of public registries to the future of the RMI.
- (v) Help commence a consensus building process within the ABWG.

E. Social Development Analysts (total 5 person-months)

5. One international social development analyst (2 person-months) and one domestic social development analyst (3 person-months) will be recruited to work as a team to study traditional and current land practices, land use, transfers, transactions, and status and trends in Majuro and Ebeye. Both members of the team should have an intimate knowledge of land tenure in the Pacific, preferably land tenure in Micronesia. The team will carry out the following:

- (i) Study and report on current land tenure practices, customs, and traditions in the islands of Majuro and Ebeye, both as they exist and as they are developing over time.
- (ii) Conduct a sample survey of landowners and users in selected areas of the islands of Majuro and Ebeye, their relationships, and land ownership and use patterns.
- (iii) Assess various means to enhance utilization of land rights set against current practices.
- (iv) Identify possible viable options, and otherwise assess the potential for land reclamation.
- (v) Assess the impact of traditional and developing land tenure on gender and indigenous peoples.
- (vi) Produce a full report on all aspects of the consultancy with an executive summary summarizing findings and recommendations to help mobilize land in the RMI.
- (vii) Otherwise help to enhance the understanding of land tenure practices in Majuro and Ebeye, summarize and present the same to Cabinet, others in Government,

and to the relevant communities; and provide guidance to the Government and society for future utilization of land rights in the RMI.

F. Domestic Legal Expert(s) (3 person-months)

6. The domestic legal expert(s) will have a law degree and be licensed to practice law in the RMI. They will have experience in commercial and civil practice and in debt collection. This is a senior position requiring at least 7 years experience. Because of the need to get different perspectives on these issues from local legal experts, the international consulting firm should be prepared to clear at least two additional curriculum vitae with ADB to ensure the necessary depth.

7. The domestic lawyer(s) will undertake the following tasks:

- (i) Provide the international consultants with local perspective on problems and options for solution in the RMI legal framework.
- (ii) Work with the secured transactions and private sector development experts in liaison with local companies, commercial banks, and private sector institutions that would be able to identify economic problems arising from the problems in the RMI's secured transactions framework.
- (iii) Work with the international secured transactions expert on identifying elements in all RMI laws relevant to the draft law of secured transactions.
- (iv) Work with the international legal expert on the draft law/regulations as required for the CRA and secured transactions.
- (v) Master relevant legal and economic issues to become an effective trainer, presenter, and promoter of the issues in the RMI.
- (vi) Help Government officials establish the CRA and implement LRA-CRA mission statement(s).

8. All specialists should have a minimum of 7 years' experience in their professional field. All should have experience working in these areas in the Pacific islands, preferably in Micronesia. All specialists should be able to communicate in a sensitive manner.