



Technical Assistance Report

Project Number: 38151
November 2005

Technical Assistance Solomon Islands: Supporting Business Law Reform (Cofinanced by the Government of Australia)

CURRENCY EQUIVALENTS

(as of 14 November 2005)

Currency Unit	–	Solomon Islands dollar (SI\$)
SI\$1.00	–	\$0.1370
\$1.00	–	SI\$7.2993

ABBREVIATIONS

ADB	–	Asian Development Bank
DCIE	–	Department of Commerce, Industries, and Employment
FIAS	–	Foreign Investment Advisory Services
PSA	–	private sector assessment
TA	–	technical assistance

TECHNICAL ASSISTANCE CLASSIFICATION

Targeting Classification	–	General intervention
Sector	–	Law, economic management, and public policy
Subsector	–	Law and judiciary
Themes	–	Private sector development, sustainable economic growth
Subthemes	–	Policy/institutional/legal/regulatory reforms, promoting economic efficiency and enabling markets

NOTE

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

Vice President	J. Eichenberger, Operations Group 2
Director General	P. Erquiaga, Pacific Department (PARD)
Director	N. Chakwin, Regional Director, Pacific Liaison and Coordination Office (PLCO), PARD
Team leader	W. Wicklein, Private Sector Development Specialist, PLCO, PARD

I. INTRODUCTION

1. The postconflict economic recovery and development process, successfully supported by the Regional Assistance Mission to Solomon Islands, has improved law and order and financial discipline, and the Government has commenced a number of major reform initiatives. As a result, public confidence and the business climate have improved substantially. However, the country is facing a major challenge of providing job opportunities and basic services to a rapidly growing population. Rapid, sustainable economic growth is necessary to reduce poverty and support healing of the country's social fabric. With continued fiscal discipline supporting macroeconomic stabilization, reforms are increasingly focused on medium and long-term measures to improve the business environment in order to support investment and entrepreneurship and to facilitate economic growth led by the private sector. Thus building capable public institutions is an urgent priority.

2. The Asian Development Bank (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 Islands¹ 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 report² 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.

3. The proposed technical assistance (TA) project³ directly links to ADB's Country Strategy and Program Update for Solomon Islands and is consistent with ADB's Pacific Strategy 2005–2009. The Government concurs with the TA's objectives, scope, implementation arrangements, cost, financing arrangements, and terms of reference. The TA framework is presented in Appendix 1.

II. ISSUES

4. Economic development involves a substantial increase in the number and complexity of business transactions, along with increasing specialization and division of labor into production and service delivery, as well as increased international trade and investment. The legal framework governing business transactions is therefore central to the development of the private sector. Company law regulates the formation, operations, and closure of companies in the interests of shareholders, creditors, investors, employees, and consumers. Laws and practices should be designed so as to allow investment and contracting over long time horizons at reasonable cost, keep the costs of transactions as low as possible, and confine the risks of investment and entrepreneurship to business decisions.

5. Broader challenges facing businesses and investors in Solomon Islands include globalization and increased competition, structural changes in the course of the ongoing economic reform process, and generally weak institutional support along with the issues inherent in doing business in the context of a small, remote state. To meet these challenges, a

¹ ADB. 2005. *Private Sector Assessment for Solomon Islands*. Consultant report. Manila and Sydney.

² ADB. 2005. *Solomon Islands: Reforming Commercial Law to Advance Private Sector Development*. Manila. Consultant Report prepared under ADB. 2003. *Technical Assistance for Improving the Legal Business Environment in the Pacific Region*. Manila (TA 6162-REG).

³ The TA first appeared in *ADB Business Opportunities* (Internet edition) on 22 July 2005.

legal system capable of accommodating different business structures that can adapt to both domestic and international conditions and opportunities is required. Company law lies at the heart of an economy, because it provides the legal foundation for all companies and facilitates commercial transactions.

6. The Solomon Islands' Companies Act, based on the UK Act of 1948, and associated legislation and implementing institutions, specifically, the companies registry, are a logical starting point for broader business law reform, because deficiencies in the act inhibit business formation. As its historical context suggests, the Companies Act is not suited to modern business practices, does not reflect realities in a small island context, and provides an inadequate foundation for sustainable economic development. Virtually every aspect of doing business—start-up, operation, closure—is difficult and expensive. The World Bank's 2005 doing business survey confirms Solomon Islands' weaknesses in relation to its legal and regulatory business environment and underscores the country's low performance compared with regional and international peer countries.⁴ Legislation prescribes enforcement processes that rely on poorly functioning institutions, consequently law enforcement is a major issue that increases the transaction costs of contracting. In addition, the regulatory system is burdensome, forcing businesses to spend substantial time and money running the gauntlet of rules, taxes, and licenses that do not have any compensating public policy objective. The procedures for incorporating are time-consuming and costly, especially for small businesses, because of complicated procedures, filing requirements, slow processing of applications, and poor security of information and documentation. Discretionary authority in the areas of business licensing and company registration processes involves delays and may invite corruption. Public prosecution of misconduct is limited. The costs and inconvenience of using the legal system are especially high for populations in rural areas, that is, the majority of Solomon Islanders.

7. The ability to organize economic activity under the legal persona of a corporation is important in Solomon Islands to improve access to finance,⁵ facilitate and reduce the costs of contracting; permit corporate structures that take the often rural, community-based, and natural resource-driven context of economic activity in Solomon Islands into account; and protect owners from being made personally liable for their companies' debts (limited liability⁶). The Companies Act does not address these issues adequately.

8. Recognizing these deficiencies, the Government has decided to reform business law and related administrative barriers. It asked ADB to help reform the Companies Act, present reform recommendations for the companies registry, and establish links to relevant ongoing and planned legal reform exercises. A separate ADB TA to support collateral reform is planned for 2006 (footnote 5). The World Bank Group's Foreign Investment Advisory Services (FIAS) has supported the drafting of the new Foreign Investment Bill, which reflects a shift from an

⁴ According to the survey, starting a business in Solomon Islands takes 35 days and costs around 44% of annual average per capita income, compared with an average of 21 days and around 9% of per capita income in Pacific islands employing good business practices. Similarly, enforcing a contract in Solomon Islands takes 455 days compared with 240 days in Pacific islands employing best practices and 27 days under global best practices. The cost of enforcing a contract is roughly 141% of the debt value, compared with 35% and 4% under Pacific and global best practices, respectively. (World Bank. 2005. *Doing Business in 2005*. Washington, DC.)

⁵ ADB is conducting a diagnostic study of the collateral system in Solomon Islands. (2004. *Technical Assistance for Diagnostic Studies for Secured Transactions Reforms*. Manila. (TA 6202-REG)). Preliminary findings suggest that none of the important elements of a secured transactions framework are functioning effectively. Reform of the secured transactions framework has therefore been programmed for ADB TA assistance in 2006.

⁶ In Solomon Islands, limited liability protection is, in practice, often illusory for all but the largest businesses, as lenders typically require shareholders to provide personal guarantees for company debts.

approval-based to a registration-based system and is expected to be passed shortly.⁷ Joint FIAS and ADB efforts are already under way to set up a Business Law and Administrative Reform Steering Committee (the Steering Committee) as a mechanism for guiding the development of an effective and efficient legal and regulatory framework governing business activity. The Government is preparing to reform the taxation system with the support of the Pacific Financial Technical Assistance Center, which has reviewed the taxation system and prepared a reform strategy and implementation plan.

III. THE TECHNICAL ASSISTANCE

A. Impact and Outcome

9. The TA aims to contribute to an improved business environment that will lead to enterprise, investment, and economic growth. To this end, the TA will help the Government make significant progress in rationalizing business laws and legal institutions. Key TA outputs will be reform of the Companies Act and an agreed reform roadmap for the companies registry.

B. Methodology and Key Activities

10. The TA will entail the following key components and related activities:

- (i) **Reform of the Companies Act.** The TA will (a) review existing laws and regulations governing business activity and associated implementing and supporting institutions; (b) formulate a white paper for reform of the Companies Act, including an outline of the larger business law reform agenda; and (c) draft a modern company law and regulatory framework (the Company Act Reform Bill), which reflects the principles of international good practice and responds to specific business needs in Solomon Islands. The TA will support the Government in adopting and implementing the Company Act Reform Bill.
- (ii) **Reform roadmap for the companies registry.** The TA will include a comprehensive review of the system of lodging, processing, and storing business registration information and making it publicly available, including underlying legislation. Recommendations and details for implementing reform will be presented, including implementation components, sequencing of priorities, financial feasibility of the preferred reform option, performance indicators and targets, implementation risks, and the links between the recommended reform action and the larger business law reform agenda.
- (iii) **Medium- to long-term business law reform agenda.** The TA will reinforce and expand existing reform plans and studies aimed at a more extensive medium- to long-term agenda for business law reform that includes follow-on measures to complement the TA's outcomes. Findings and recommendations will be promoted locally and internationally with a view to linking them with the Government's larger development agenda and relevant donors assistance programs.
- (iv) **Capacity building, consultation, and awareness building.** The TA will improve the capacity of the Government in developing and implementing the reform process and of government officials, the judiciary, legal practitioners, the business community, and business development service providers in

⁷ The Foreign Investment Bill passed two readings in Parliament during the August 2005 session, but failed to achieve a quorum during the last (third) reading. Expectations are that Parliament will pass the bill in November 2005. Experience suggests that broadly based stakeholder consultations and policy dialogue with key decision makers, supported by a larger reform momentum, are key to the legal reform process.

implementing and applying the proposed Company Act Reform Bill. An extensive consultation process, including consultations and seminars, policy dialogue, and media campaigns, will be undertaken to help improve understanding and build ownership of the business law reform process among key stakeholders, including parliamentarians, and to enhance awareness of the reform of company law and its implications for businesses and other stakeholders, both before and after passage of the Company Act Reform Bill.

11. The legal reform approach will be guided by the following principles:
- (i) **Focus.** Both the law and its implementing institutions (the companies registry) should make setting up and running a business as easy as possible.
 - (ii) **Local detail.** The Company Act Reform Bill and the recommendations for reform of the companies registry should take into account that most Solomon Islands' businesses are small and that business transactions often involve rural enterprises. Special attention will be given to the challenges of doing business in rural areas.
 - (iii) **Simplicity.** The Company Law Reform Bill should be simple, unambiguous in language, cost-effective, and easily understood and used by those involved in business enterprises. Filing requirements for the companies registry should be kept as simple as feasible. The institutional design will take into account the relatively low level of local capacity to use a reformed companies act and improved companies registry.
 - (iv) **Consultation.** In support of the reform process, extensive consultations will be undertaken with stakeholders in government, the judiciary, business groups, accounting and business advisory services, legal practitioners, and the general public.

12. TA activities will initially be guided by existing analytical work by ADB and other sources, including ADB's private sector assessment (footnote 1), legal diagnostic report (footnote 2), and collateral study (footnote 5). The TA will ensure that critical linkages are drawn with and close coordination ensured among relevant donor-supported initiatives in the area of business law and administrative reform. While this TA does not cover implementation of the reform recommendations for the companies registry, ADB and FIAS will consider promoting, and possibly leveraging, follow-on TA as appropriate. The TA will require a certain degree of flexibility to take into account the interdependence and related coordination of relevant donor-supported reform activities, possible delays resulting from political processes associated with legal reform, and risks related to the operating environment in the current "fragile state" context of Solomon Islands.

C. Cost and Financing

13. The total cost of the TA is estimated to be \$750,000 equivalent, of which \$490,000 is the foreign exchange cost and \$260,000 equivalent is the local currency cost. The Government has requested ADB to finance \$600,000 equivalent, covering the entire foreign exchange cost and \$110,000 equivalent of the local currency cost. The TA will be financed on a grant basis, \$400,000 by ADB's TA funding program and \$200,000 by the Government of Australia, with the latter amount administered by ADB. The Government will finance the balance of the local currency cost, equivalent to \$150,000, through the provision of counterpart staff salaries, office accommodation and transport, support services, and the facilitation of consultations. Appendix 2 provides details of the cost estimates and financing plan.

D. Implementation Arrangements

14. The Department of Commerce, Industries, and Employment (DCIE) will be the executing agency and will be responsible for coordinating and implementing TA activities, including coordination with reform stakeholders, TA consultants, and ADB and other relevant donors. DCIE will provide office space for consultants and assign a senior counterpart staff member to lead the operational aspects of the reform process. The Department of Finance and Treasury and the Attorney General's Office will contribute to the reform process. In its role as facilitator of government-wide economic reform initiatives and processes, the Economic Reform Unit of the Department of Finance and Treasury will coordinate closely with and support DCIE throughout the TA.

15. The legislative and regulatory review and drafting process will be led by the Steering Committee, which will be formally constituted by the time of TA inception. The permanent secretary of commerce will chair the Steering Committee, whose membership will include, but not necessarily be limited to, the attorney general, the permanent secretary of finance, a representative of the judiciary, a representative of the Bar Association, a representative of each of the major business organizations, representatives from the accounting and business advisory services professions, and a small business representative. The committee will provide guidance in relation to the extent, location, and focus of public consultations on the TA's outputs. DCIE, supported by other relevant Government departments and offices, will take primarily responsibility for the public consultation process.

16. Through a consulting firm, consulting services (17 person-months international, 10 person-months domestic) will be engaged using the simplified technical proposal following quality- and cost-based selection procedures. The international consultant team will consist of a commercial law expert with legal drafting skills (team leader), a company registration expert, a private sector development expert, and two legal peer reviewers. The international consultant team will be complemented by a domestic business law expert. The outline terms of reference for the consultants are in Appendix 3. The team of consultants will be selected and engaged in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB for engaging domestic consultants.

17. The TA will begin in March 2006 and be implemented over a total of 24 months until February 2008, with intermittent inputs from the international and domestic consultants. The Company Law Reform Bill is expected to be finalized within 12 months of TA commencement. Additional time (12 months) is allocated to allow for finalizing implementing schedules, building capacity, and undertaking reform follow-up activities as required. Reporting requirements are specified in Appendix 3.

IV. THE PRESIDENT'S DECISION

18. The President, acting under the authority delegated by the Board, has approved (i) ADB administering a portion of technical assistance not exceeding the equivalent of \$200,000 to be financed on a grant basis by the Government of Australia, and (ii) ADB providing the balance not exceeding the equivalent of \$400,000 on a grant basis, to the Government of Solomon Islands for Supporting Business Law Reform, and hereby reports this action to the Board.

DESIGN AND MONITORING FRAMEWORK

Design Summary	Performance Targets/Indicators	Data Sources/Reporting Mechanisms	Assumptions and Risks
<p>Impact</p> <p>Improved business environment contributing to enterprise, investment, and economic growth</p>	<p>Reduced time (at least 30%) and cost (at least 50%) to start a business within 1 year after passing the Company Act Reform Bill and reforming the companies registry</p> <p>Stable private sector credit and investment growth rates within 2 years after passing the Company Act Reform Bill and reforming the companies registry (no baseline data are available because of the postconflict situation)</p>	<p>Annual updates of the World Bank's doing business survey</p> <p>Government economic statistics and central bank reports</p> <p>ADB economic updates</p>	<p>Assumptions</p> <ul style="list-style-type: none"> • The Government remains committed to business law reform. • A follow-up process for implementing business registration reform is introduced. • Businesses accept and respond positively to the new legal framework. <p>Risk</p> <ul style="list-style-type: none"> • The country's stabilization and development process stalls.
<p>Outcome</p> <p>The Government makes significant progress in rationalizing business laws and legal institutions (company registry)</p>	<p>Business and professional communities perceive the reformed legal framework as relevant, relatively clear, precise, complete, predictable, and transparent</p> <p>At least two high-level Government officials continue to champion the cause of business law and implementing institutions (the companies registry), and the donor community continues to support the process</p>	<p>Government gazette</p> <p>Internet (international law database updates)</p> <p>Business Law and Regulatory Reform Steering Committee reports and surveys</p> <p>ADB private sector development monitoring and programming missions (private sector surveys)</p> <p>ADB annual economic updates</p> <p>Donor programs</p>	<p>Assumptions</p> <ul style="list-style-type: none"> • Reforms continue after general elections are held in early 2006. • Reform proposals are supported by the Government and stakeholders. • The Steering Committee is operational and supportive throughout the reform process.
<p>Outputs</p> <p>1. Reformed Companies Act</p>	<p>The Companies Reform Bill is approved by the Cabinet by March 2007 and passed by Parliament during 2007</p>	<p>Government gazette</p> <p>Cabinet minutes and reports</p>	<p>Assumptions</p> <ul style="list-style-type: none"> • The Government and key stakeholders cooperate in the reform process. • The Steering Committee is operational.

Design Summary	Performance Targets/Indicators	Data Sources/Reporting Mechanisms	Assumptions and Risks
<p>2. Reform roadmap for the companies registry</p> <p>3. Medium and long-term business law reform agenda</p> <p>4. Stakeholder awareness, buy-in, and ownership of legal and economic reform issues and capacity in applying the new legal framework</p>	<p>The Steering Committee endorses the reform roadmap for business registration by December 2006</p> <p>Working paper on the agenda for business law reform is endorsed by the Steering Committee by December 2006, and updated by the time of the final TA report</p> <p>Public discussion on economic and legal reform issues has been elevated</p> <p>Stakeholder buy-in and ownership of company legislation reform has occurred</p> <p>Stakeholders have been enabled to use the reformed companies law framework</p>	<p>Steering Committee minutes and reports</p> <p>Government's and consultants' reports</p> <p>ADB monitoring missions</p> <p>ADB economic updates</p>	<p>Risks</p> <ul style="list-style-type: none"> • Parliament does not pass the Companies Act Reform Bill. • Stakeholders suffer from reform fatigue.
<p>Activities with Milestones</p> <p>1.1. Review of laws and regulations governing business activity and associated implementing and supporting institutions (by July 2006)</p> <p>1.2. Formulation of reform performance indicators and baseline data (by July 2006)</p> <p>1.3. Formulation of white paper for reform of the Companies Act (by September 2006)</p> <p>1.4. Drafting of the Company Act Reform Bill (draft bill by December 2006)</p> <p>1.5. Support of the process of passing and enacting the Company Act Reform Bill.</p> <p>2. Review of the system for lodging, processing, and storing business registration information and making it publicly available and formulation of an agreed reform roadmap (draft by July 2006)</p> <p>3. Establishment and promotion of a medium and long-term business law reform agenda (working paper by July 2006; final report by July 2007)</p> <p>4.1. Extensive stakeholder consultations throughout the reform process</p> <p>4.2. On-the-job training for Government officials in improving the business law framework</p> <p>4.3. Training for stakeholders in implementing and applying the legal framework as reformed under the TA</p>			<p>Inputs</p> <ul style="list-style-type: none"> • ADB: \$400,000 • Government: \$150,000 equivalent • Cofinancing: \$200,000 • Consulting services (17 person-months international; 10 person-months domestic)

ADB = Asian Development Bank, TA = technical assistance.

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Foreign Exchange	Local Currency	Total Cost
A. Asian Development Bank (ADB) Financing^a			
1. Consultants			
a. Remuneration and Per Diem			
i. International Consultants	370	0	370
ii. Domestic Consultants	0	60	60
b. International and Local Travel	80	7	87
c. Reports and Communications	10	3	13
2. Seminars and Workshops	0	10	10
3. Miscellaneous Administration and Support Costs	2	3	5
4. Contingencies	28	27	55
Subtotal (A)	490	110	600
B. Government Financing			
1. Office Accommodation and Transport	0	40	40
2. Remuneration and Per Diem of Counterpart Staff	0	50	50
3. Public Consultations	0	40	40
4. Others	0	20	20
Subtotal (B)	0	150	150
Total	490	260	750

^a \$400,000 financed by ADB's technical assistance funding program, and \$200,000 from the Government of Australia to be administered by ADB.

Source: Asian Development Bank estimates.

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

A. Consultants

1. Commercial Law Expert/Team Leader (international, 10 person-months)

1. The commercial law expert will be an attorney with a master's degree in law and at least 15 years of relevant professional experience. The expert should have extensive experience in practicing law in a common law jurisdiction, in legal and regulatory review, and in preparing draft laws relating to business. The expert will have managerial experience in managing legal reform processes, ideally in company and commercial law reform processes in former UK colonies transitioning from the UK Companies Act of 1948. The expert will be an excellent communicator. Experience with Pacific islands or small states would be an asset.

2. The commercial law expert will carry out the following tasks:

- (i) Review existing relevant economic and legal analysis, especially the Asian Development Bank's (ADB's) private sector assessment (PSA) and diagnostic report on the legal business environment.
- (ii) Coordinate closely with Steering Committee members and other major reform stakeholders throughout the process.
- (iii) Review and assess the Companies Act, all related legislation and regulations, and implementing and supporting institutions. Assess issues pertinent to corporate governance and the extent to which these should be incorporated into the new legislation. Review international good practice in company law reform, especially with respect to small states, and legal reform processes involving former UK colonies transitioning from the UK Companies Act of 1948. Summarize findings and recommendations in a comprehensive, concise report and present it to stakeholders.
- (iv) Give special consideration to the needs of small businesses, especially those in rural areas. Identify and assess corporate structures that take into account the traditional and often rural business environment. These could include, for instance, village- or community-based corporations that reflect the cooperative nature of Solomon Islands' social structure; associations, corporations, or simple trusts that would manage natural resources and royalty payments from resource exploitation; and corporations that could be formed to own and manage land.
- (v) Take into account the contextual issue of a relatively low base of capacity among key stakeholders.
- (vi) Identify and briefly assess related legal and regulatory reform areas that should be candidates for a wider reform agenda to be undertaken by the Government. List all business laws. Consider legal enforcement issues relevant to both Honiara and the provinces and determine linkages.
- (vii) Coordinate closely with the company registration expert's review of the companies registry. Assess whether issues related to the companies registry should be integrated into the legislation governing the reformed Companies Law.
- (viii) Contribute to the private sector development expert's task of developing reform performance indicators and collecting baseline data.
- (ix) Develop and oversee the overall law reform strategy. Engage and directly support information needs and specific relevant requests by the Steering Committee, as appropriate.
- (x) Take primary responsibility in the communication and consultation process. Initiate stakeholder discussions, engage decision makers, and raise public

awareness of the underlying problems and the need for company and commercial law reform.

- (xi) Formulate a white paper for reform of the Companies Act, including an outline of the larger business law reform agenda. Lead related consultations.
- (xii) Prepare the draft Company Law Reform Bill in close cooperation with the Government's legal drafters (Attorney General's Office). Present the draft(s) to the Steering Committee and other key stakeholders. Initiate wider public consultations.
- (xiii) Prepare and help facilitate repeal of the existing Companies Act and associated legislation made redundant by the new legislation.
- (xiv) Provide training for local government officials, legal practitioners, the business community, and business development service providers in implementing and applying the reformed Company Act and associated regulation.
- (xv) Formulate and promote a larger reform agenda aimed at improving the legal business environment that should include specific follow-on measures to complement the outcomes of this technical assistance (TA) in the medium and long term.
- (xvi) Prepare and submit inception, progress, and final reports; effectively lead the consultant team; and take overall responsibility for and ownership of the delivery of the expected TA outputs and outcomes.

2. Company Registration Expert (international, 3 person-months)

3. The company registration expert will have a master's degree in economics, business administration, law, information technology, or a similar field. The expert will have at least 15 years' relevant professional experience, including in developing countries, in analyzing company registration processes, reviewing underlying legislation, and implementing related reform processes. Relevant experience in the Pacific islands would be an asset.

4. The expert will undertake the following tasks:

- (i) Review existing relevant economic and legal analysis, especially ADB's PSA and diagnostic report on the legal business environment.
- (ii) Review good international practice with respect to lodging, processing, and storing business registration information and making it available to relevant users in the private and public sectors. This should address both upfront registration as well as ongoing registration requirements. Special consideration should be given to good practice in similar operating environments.
- (iii) Review existing business name and company legislation to identify areas and requirements that are inconsistent with good international practice in close cooperation with the commercial law expert, and provide relevant recommendations in the context of the larger Company Law Act review to feed into the drafting of the Company Act Reform Bill.
- (iv) Review current business processes of the companies registry, including strategy; organization, structure, and reporting arrangements; availability and allocation of resources, including staff capacity to implement the proposed new system; nature and quality of stakeholder relationships; and delivery of products and services.
- (v) Consult with the key users of business name and company registry information to determine information needs and consider accessibility and cost-effectiveness. Take into account the requirements of users in relatively remote areas and the potential for electronic access.

- (vi) Assess options for ownership and management arrangements, including private and public provision of services, paying special attention to the sustainability of services in the context of capacity constraints.
- (vii) Assess the needs of the companies registry with respect to the development of appropriate software and hardware for a new registry system, taking into consideration local realities in terms of information technology development and local capacities to run such a system.
- (viii) Assess the costs associated with maintaining the current system and the revenues generated by the current fee structure.
- (ix) Coordinate closely with and support the commercial law expert with the diagnostic work and provide specific recommendations with respect to harmonizing the proposed companies registry reform and the larger Companies Law reform.
- (x) Coordinate closely with the private sector development expert with respect to the economic objectives and analysis of the issues underlying the proposed companies registry reform.
- (xi) Help the private sector development expert develop reform performance indicators and collect baseline data.
- (xii) Identify and assess options for short-term improvement measures for the business name and company registration process pending implementation of the proposed new Companies Act.
- (xiii) Take into account the diagnostic review (supported by ADB under a separate TA) of the collateral system and related proposals for reforming the country's secured transactions framework and make recommendations in relation to the harmonization of business registration and secured transactions reforms.
- (xiv) Make final recommendations accordingly, closely harmonized with the reform of the companies legislation. The final report will include an assessment of all feasible options and final recommendations. The final recommendations will provide all details required for implementation (which will be undertaken separately).

3. Private Sector Development Expert (international, 2 person-months)

5. The private sector development expert will have a master's degree in economics, business administration, law, or a similar field. The expert will have at least 15 years of extensive experience in analyzing enabling conditions for private sector development and economic growth, including for rural areas; assessing the economic foundations of legal and regulatory frameworks; examining the microeconomic impact on incentives facing the private sector; and managing reform processes. Prior experience in the Pacific islands would be an asset.

6. The expert will primarily support the commercial law and companies registration experts by carrying out an economic analysis of proposed legal and regulatory reform measures. The expert will be responsible for the reform performance monitoring system. Moreover, the expert will have a supporting advocacy role in policy dialogue and awareness building with key decision makers, private sector stakeholders, and the public. Specifically, the expert will undertake the following tasks:

- (i) Review existing relevant economic and legal analysis, especially ADB's PSA and diagnostic report on the legal business environment.

- (ii) Develop relevant reform performance indicators and collect baseline data. Throughout TA implementation, monitor progress in terms of the gearing of the reform process toward achieving performance indicators.
- (iii) Advise consultant team and Government officials on the links between reform of the legal environment and the impact on various sectors of the economy.
- (iv) Assist the consultant team by analyzing the economic impact of proposed legal reform. Examine the draft Reform Bill, both overall and in drafting choices, as well as any changes that may subsequently be proposed, in relation to the microeconomic impact on incentives facing the private sector to ensure that the desired economic criteria are achieved and that transaction costs are kept to a minimum. Comment on the proposed reform roadmap for business registration. Give special consideration to the effect of proposed reform measures on small businesses in general and the rural economy in particular. Provide extensive comments on all drafts provided by the TA consultants.
- (v) Support the commercial law expert in advocacy and consultation activities. Specifically, deliver presentations on the impact of reform of the legal commercial environment on businesses and prepare short issues papers on the economic impact of legal reform for publication.
- (vi) Help establish linkages with other relevant legal and regulatory reform activities, specifically, in the areas of secured transactions, investment incentives and regulation, and taxation.

4. Legal Peer Reviewers (international, 2 person-months total)

7. The consulting firm will retain two legal peer reviewers to provide strategic advice on the reform process and to comment on the Company Law review report, draft Companies Act Reform Bill, and the larger commercial law reform agenda. The experts will have law degrees (preferably master of law or Juris Doctor) and at least 20 years of relevant professional experience in either practicing or teaching law in a common law jurisdiction and in legal and regulatory review. The legal peer reviewers will have strong academic backgrounds, work experience in the Pacific islands, and knowledge of legal reform processes in developing countries.

8. Specifically, on the basis of existing, relevant economic and legal analysis, especially ADB's PSA and diagnostic report on the legal business environment, the international legal reviewers will undertake the following:

- (i) Provide guidance on the overall law reform strategy established by the commercial law expert.
- (ii) Review and comment on the Company Law review report; the company reform white paper; and the Companies Act Reform Bill to ensure that it is in accordance with international good practice and reflects the latest practical examples of a well-functioning Companies Act, especially in the small island context.
- (iii) Provide advice and feedback on an as needed basis to help resolve drafting problems.

9. Substantial comments and suggestions by the legal reviewers will be copied to the ADB task manager and the Steering Committee secretariat and will be incorporated in the final consultant report.

5. Business Law Expert (domestic, 10 person-months)

10. The business law consultant will have a law degree and be licensed to practice law in Solomon Islands. The expert will be a locally recognized expert in business law, particularly company law. This is a senior position requiring at least 10 years' experience.
11. The expert will undertake the following tasks:
- (i) Review existing relevant economic and legal analysis, especially ADB's PSA and diagnostic report on the legal business environment.
 - (ii) Work with the international experts and liaise with the Steering Committee, the local business community, and the general public. Provide the international consultants with local perspectives on problems and options for solutions with respect to company law. Provide guidance to the international consultants with respect to local culture and perspectives, as may be required.
 - (iii) Work with the commercial law expert in identifying elements in all Solomon Islands' laws and regulations relevant to the Company Act Reform Bill.
 - (iv) Work with the international company registration expert on reviewing company registration processes, underlying legislation, and implementation of related reform processes.
 - (v) Review all reports and legal drafts submitted by the commercial law expert, comment on these drafts, and advise the international consultants and ADB on Solomon Islands' law.
 - (vi) Under the guidance of the Steering Committee and the team leader, and working closely with the Department of Commerce, Industries, and Employment, take a leading role in the consultation process, especially in rural areas.
 - (vii) Help train local government officials, legal practitioners, business community members, and business development service providers in implementing and applying the new Company Act.

B. Timing and Reporting

12. The TA will begin in March 2006 and be implemented over 24 months until February 2008, with intermittent inputs from the international and domestic consultants. The Company Law Reform Bill is expected to be finalized within 12 months of commencement of the TA. Hence consultant inputs will focus on delivery within the first 12 months of TA implementation. An additional 12 months are allocated to allow for the finalization of implementing schedules, capacity building in the application of the new legal framework, and relevant follow-up legal work as may be required.

13. The team leader will submit an inception report, including a detailed work plan and conceptual issues relevant to project delivery, 6 weeks after commencement of the TA. An interim report containing the first draft Companies Law Reform Bill; the draft reform roadmap for the company registration system; and the Company Law reform performance indicators, including baseline data, will be submitted within 6 months after the commencement of the TA. A midterm report containing the final draft Companies Law Reform Bill, the final reform roadmap for the company registration system, and the work program for continued training and additional legal follow-up work will be submitted within 12 months of commencement of the TA. The team leader will submit progress reports after each field visit. A comprehensive draft final report will be submitted within 6 weeks prior to the final tripartite meeting. A final report will be submitted 4 weeks after receipt of the comments by ADB and Government counterparts.