

ASIAN DEVELOPMENT BANK

TAR: VIE 34346

TECHNICAL ASSISTANCE

TO THE

SOCIALIST REPUBLIC OF VIET NAM

FOR

LEGAL SYSTEM DEVELOPMENT UP TO YEAR 2010

AND

CAPACITY BUILDING FOR

SECURED TRANSACTIONS REGISTRATION

December 2002

CURRENCY EQUIVALENTS

(as of 15 November 2002)

Currency Unit	–	dong (D)
D1,000	=	\$0.0650
\$1.00	=	D15,378

ABBREVIATIONS

ADB	–	Asian Development Bank
HCMC	–	Ho Chi Minh City
IT	–	information technology
JFM	–	Joint Formulation Mission
LNA	–	legal system development needs assessment
MOJ	–	Ministry of Justice
NRAST	–	National Registration Agency of Secured Transactions
PA Project	–	preparatory assistance project
POS	–	point of service
SLSD	–	Strategy for Viet Nam's Legal System Development up to year 2010
SVB	–	State Bank of Viet Nam
TA	–	technical assistance

NOTE

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

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I. INTRODUCTION

1. A modern and market-friendly legal system, which clearly defines and effectively reinforces legal rights for citizens and enterprises and is easily accessible to the poor, is fundamental in the transition from a centrally planned to a market economy. To support its transition from a centrally planned to a socialist-oriented market economy, Viet Nam has been engaged in the momentous task of constructing a new legal system. The 1992 Constitution, with the National Assembly's resolution of 2001, reflects this effort by underlining that Viet Nam is a socialist state governed by the rule of law.

2. The legal system development needs assessment (LNA), initiated by the Ministry of Justice (MOJ) under a multiagency - funded preparatory assistance (PA) project, aims at developing a strategy and subsequently an action plan for developing a comprehensive legal system in Viet Nam. After successfully completing the LNA study and submitting its report to the Prime Minister in July 2002, MOJ received a go-ahead from the Prime Minister's Office for further work on the strategy for developing a comprehensive legal system up to year 2010. Since 2000, aid agencies including the Asian Development Bank (ADB), have been supporting this initiative. In 1997, at the request of the Government, ADB provided technical assistance (TA) to MOJ for developing a national registry system for secured transactions (TA-2823 VIE).¹ Its final report contains a design for further developing and expanding the secured transactions registration system, including a national database and nation wide computerized network for the registry.² Further expansion of registry services for secured transactions, including drafting of appropriate ordinances, is included in the measures and actions set out in the Financial Sector Program Loan II.³

3. The Government of Viet Nam has requested ADB to grant an advisory technical assistance (TA) to help (i) prepare implementation mechanisms for a Strategy for developing the Viet Nam legal system up to year 2010 (SLSD) and (ii) build the capacity of the National Registration Agency of Secured Transactions (NRAST). A Fact-Finding Mission⁴ from ADB visited Hanoi during 4-28 October 2002 to discuss with the Government the TA's objectives, scope, and implementation arrangements.⁵ A wrap up meeting held on 25 October 2002 at MOJ to discussed the Mission's findings and finalized the proposed TA, and a memorandum of understanding was signed on 29 October 2002.

II. ISSUES

4. **Legal System Development.** Both the Party and the Government recognize that the establishment and improvement of the legal system are essential parts of the Government's continuing policy reform to meet the aspirations of the people. Experience shows that to reach the targets of the socio-economic development strategy for 2001-2010, it is necessary to have a

¹ ADB. 2000. Revised Final Report. Viet Nam National Registry for Secured Transactions. A tripartite meeting was held in Hanoi on 5 April 2001 to conclude the TA project.

² It is understood that for establishing the centralized, computerized national registration system for secured transactions together with the national database of secured transactions, the MOJ would seek funding from the Financial Sector Program Loan II during 2001-2002, or from the State-owned Enterprises and Corporate Governance Program Loan proceeds or appropriate Government resources.

³ ADB. 2002. Report and Recommendation of the President to the Board of Directors on a Proposed Financial Sector Program Loan II.

⁴ R. B. Adhikari, Principal Governance Specialist, VRM; E. Araneta, Counsel, OGC (supported from HQ); and D. V. Dung, Governance and Public Sector Reforms Specialist, VRM.

⁵ The TA appeared in ADB Business Opportunities on 16 September 2002

corresponding legal system. For Viet Nam, for developing the strategy is new, difficult, and challenging work that will require enormous efforts from all relevant state agencies, coordination of the entire political system, as well as assistance from the international community.

5. Building on the success of the LNA, a multiagency-funded Joint Formulation Mission (JFM) was held for 4 weeks starting from 4 November 2002 to map out priority areas and external support,⁶ and to prepare a comprehensive project document on mechanism for implementing SLSD. The LNA report indicates 5 program areas⁷ with 27 subprograms and 268 activities. Of the activities, 130 are categorized as priority projects, which the Government wishes to implement first with external support. The SLSD cuts across many sectors; it is also an important area embracing the Public Administration Reform – Master Program, 2001-2010.

6. **Secured Transaction Registry.** A system of securing assets, both movable and immovable, is fundamental in creating an effective credit market. Credit is essential for economic and industrial development for it allows credit providers and entrepreneurs to pursue projects, including purchase of property and development of infrastructure, in anticipation of investment returns or future earnings. If there is a legal regime for secured transactions that is perceived to give the providers of credit adequate protection from and remedies for failures of debtors to pay, then security on property can become a major element of the investment decision of both domestic and international investors. Security measures and an adequate legal framework therefore play an important role in mobilizing capital to meet investors' needs. Borrowers also benefit from increased availability of credit, improved credit terms, and relatively reduced costs. Building the capacity for a secured transactions registry complements financial sector reform, particularly in developing an effective credit market.

7. Following the Prime Minister's decision, a dedicated department for the purpose (NRAST) was established in 2001. MOJ has established pilot branches (i.e., points of service, POS) in Hanoi and Ho Chi Minh City (HCMC). In Hanoi, over a period of about 7 months, the total number of registrations of security reached 10,000. Since the Ho Chi Minh City branch began operation in August 2002, about 2,000 transactions have been registered. Although very encouraging, these numbers are only a small fraction of the potential. The lack of adequate technical capacity and public awareness, and also the scope of the current legal framework for this purpose constrain progress.

III. THE TECHNICAL ASSISTANCE

A. Purpose and Output

8. The TA is designed to address the noted issues in a two-pronged approach. It will assist MOJ in (i) preparing implementation mechanisms for SLSD and (ii) building capacity of NRAST. The first component, technical support in preparing implementation mechanisms for a comprehensive legal system leading up to 2010, will have special focus on priority projects selected by MOJ. The second component will entail drafting an ordinance for registering secured transactions, improving the organization and operation of the registration system, increasing POS, legal training, and public education and publicity programs.

⁶ VRM staff took part in the JFM.

⁷ The five areas are (i) legislative and law-making reform; (ii) judicial reforms; (iii) effective implementation of laws and regulations; (iv) legal information system and legal dissemination; and (v) legal education, and judicial and legal professional training.

9. The SLSD-related work will support the systematic reform of legal systems and improve governance in general, and at the same time provide a better legal environment for businesses as well as citizens. An improved and easily accessible registry of secured transactions will help to achieve improved transparency, accountability, and predictability. The improvement, in turn, will attract investors and help small as well as big businesses, households as well as enterprises, with improved credit terms and facilities.

10. The expected major deliverables and outcomes are (i) implementation mechanisms for SLSD, including project document and implementation plan for selected priority projects; (ii) enhanced capacity of NRAFT to provide registration services for secured transactions; (iii) four more POS leading to increased registration facility and access to information on secured transactions; (iv) increased public awareness of legal system reforms and development; and (v) increased credit facilities and improved credit terms in the long run.

B. Methodology and Key Activities

11. **Support to SLSD.** Through international and domestic legal experts, the TA will assist the PA project of MOJ in formulating implementation mechanisms for SLSD, with special focus on selected priority projects in legal reform. The work will, among others, entail (i) identifying and developing projects in priority areas to be agreed upon with MOJ and (ii) conducting workshops and seminars for consensus building and discussing the proposed project concept and implementation plans. The work will take into account JFM findings and recommendations, and formulate implementation mechanisms, as appropriate, in consultation with the LNA-Inter Agency Steering Committee and in close coordination with other aid agencies.

12. **Drafting Ordinance.** The TA will help prepare a draft ordinance or a higher level legal instrument as necessary for the registration of secured transactions and broaden its scope to include immovable assets and other property. International experts will make recommendations on the content of the draft ordinance, and they will coordinate with Vietnamese experts to prepare and complete the draft ordinance in close consultation with MOJ and the State Bank of Viet Nam (SBV). MOJ will submit the draft ordinance to the Government for eventual approval by the National Assembly Steering Committee. MOJ and SBV will coordinate the implementation of the ordinance.

13. **Capacity Building and Training.** The capacity building and training support under the TA covers four main areas: improving the organization and operation of the registration system of secured transactions; technical support to new registry offices; training in registering secured transactions; and assisting in the public education and publicity program. First, the TA, with the help of international experts, will study the organization and process of registering secured transactions in the Hanoi and HCMC offices and identify areas for improvement. Drawing on study findings and international good practices, the experts will make recommendations for better organization of registry operations for both movable and immovable assets, including and information and technology (IT) system for registration and also for public information. The recommended modality will be used to improve registration work in existing as well as new registry offices. The IT system in each registry will also be a step to achieving a centralized system by eventual linking each POS with the nation-wide computerized system.⁸ Second, the TA will assist NRAFT in establishing pilot registry offices at four new sites in the country by

⁸ The computerization program is expected to be implemented in early 2003, almost in parallel with the implementation of the proposed TA.

providing technical support in putting in place a registry system and an IT system, and in training the required staff.

14. Third, the TA will assess the training needs of NRAST and its customers, and then design training curricula that cover both the concept and operation of secured transactions registration. The training activities will be directed to trainers; NRAST staff, existing and new; potential institutional customers, including officials and experts from SBV, commercial banks, credit organizations, finance companies, and government ministries and agencies. Users training will be confined to the cities where registry offices are established. International experts jointly with trained NRAST trainers will conduct the training workshops. They will also prepare training materials such as handbooks in hard copy as well as in CD-ROMs for self-learning through the web site. The NRAST trainers and experts will conduct similar training workshops in the future, using these training materials to meet the future training requirements in all cities with POS.

15. Fourth, international and domestic experts and NRAST staff in consultation with SBV staff, will, among others, design public education and publicity (information package) at local levels; develop a web site for NRAST for wider publicity and public education, and implement the publicity programs.

C. Cost and Financing

16. The total cost of the TA is estimated at \$940,000 equivalent, of which \$ 380,000 is the foreign exchange cost, and \$560,000 equivalent is the local currency cost. The Government has requested that the ADB finance \$750,000 equivalent, covering the entire foreign currency cost and \$370,000 equivalent of the local currency cost (Appendix 1). The TA will be financed on a grant basis by ADB's TA funding program. The Government will finance the balance of the local currency cost equivalent to \$190,000 by providing counterpart support, office accommodation, basic office equipment and supplies, local communication and transport, local information and documents required by the consultants.

D. Implementation Arrangements

17. MOJ will be the Executing Agency. MOJ will appoint Project Directors, who will manage day-to-day activities related to SLSD and NRAST, and coordinate with other agencies and concerned parties, particularly SBV.

18. To support legal system development up to year 2010, four individual experts for a total of 21 person-months will be engaged: one international consultant for legal system development, six person-months and three domestic consultants (a finance legal specialist; legal specialist on transition, trade and integration and a legal education and training specialist), each with 5 person-months. To build capacity for secured transactions registration, international and domestic experts to provide 38 person-months services will be engaged through a firm using the quality and cost-based selection method and simplified technical proposal. There will be three international and ten domestic consultants; terms of reference are in Appendix 2. One third of the TA resources (i.e \$250,000) will be devoted to assisting MOJ in SLSD-related work; and the rest (i.e \$500,000) to capacity building for secured transactions registration. The TA will be implemented over 30 months. The ADB will engage consultants in accordance with its *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB for engaging domestic consultants in consultation with MOJ. The consultants and implementing agencies (i.e

NRAST) will procure equipment required under the TA following ADB's *Guidelines for Procurement*. Viet Nam Resident Mission working closely with OGC will implement the TA.

19. To effectively conclude the TA and to address the complex nature of the legal reform issues and the need for a forward-looking approach, both the Government and ADB have agreed to maintain some flexibility during implementation. MOJ will ensure timely provision and release of the necessary financial and human resources for setting up of registry offices in four new locations in the country and provide necessary logistics and coordination for implementation. MOJ and ADB will regularly monitor and review the progress of implementation. Appendix 3 gives the TA framework.

IV. THE PRESIDENT'S DECISION

20. The President, acting under the authority delegated by the Board, has approved the provision of technical assistance not exceeding the equivalent of \$750,000 on a grant basis to the Government of Viet Nam for Legal System Development up to Year 2010 and Capacity Building for Secured Transactions Registration, and hereby reports this action to the Board.

COST ESTIMATES AND FINANCING PLAN
(\$'000)

Item	Foreign Exchange	Local Currency	Total Cost
A. Asian Development Bank Financing			
1. Consultants			
a. Remuneration and Per Diem			
i. International Consultants: (14 person-months)	270.0	0.0	270.0
ii. Domestic Consultants (45 person-months)	0.0	130.0	130.0
b. International and Local Travel	30.0	20.0	50.0
c. Reports and Communications ^a	0.0	35.0	35.0
2. Equipment ^b	50.0	0.0	50.0
3. Training, Seminars, and Workshops	0.0	150.0	150.0
4. Miscellaneous Administration and Support Costs	0.0	15.0	15.0
5. Contingencies	30.0	20.0	50.0
Subtotal (A)	380.0	370.0	750.0
B. Government Financing			
1. Office Accommodation and Utilities	0.0	80.0	80.0
2. Remuneration of Counterpart Staff	0.0	80.0	80.0
3. Others including Local Travel	0.0	30.0	30.0
Subtotal (B)	0.0	190.0	190.0
Total	380.0	560.0	940.0

^a Includes translating, printing handbooks, manuals, and CD-ROM, etc.

^b Includes training equipment, hardware and software for office information and technology system and a web site.

Souces: Asian Development Bank estimates.

OUTLINE TERMS OF REFERENCE FOR CONSULTANTS

A. Support to Legal System Development up to Year 2010

1. International Expert in Legal System Development

1. This component of the technical assistance (TA) will require 6 person-months inputs of an international expert in legal system development intermittently during the implementation period.

2. The expertise required is developing a legal system in the transition economies in general and Viet Nam in particular, encompassing finance, regional and international integration, and human resource development, including skills in developing and identifying project. Knowledge of Vietnamese legal reform issues and work experience in this regard will be an advantage.

3. The key tasks of the international expert are to (i) assist the preparatory assistance project of the Ministry of Justice (MOJ) in formulating Strategy for Viet Nam's Legal Development up to year 2010 (SLSD) and its implementation mechanisms, with special focus on priority projects in legal reform, by reviewing the legal system development needs assessment (LNA) report, Inter-Agency Steering Committee (IASC) report and Joint Formulation Mission (JFM) findings; and by undertaking additional work as appropriate; (ii) identify and develop projects in priority areas in consultation with MOJ and key aid agencies; and (iii) conduct workshops and seminars to build consensus and discuss the proposed project concept and implementation plans.

2. Domestic Consultants

4. In addition, the TA will require 15 person-months inputs of domestic legal experts who will work closely with the international expert in legal system development to accomplish the tasks in paragraph 3. The domestic consultants (3, each with 5 person-months inputs, covering finance and integration areas, and legal education and training) will have in-depth knowledge of the Vietnamese legal systems, and legal and judicial reform issues, and will be well versed in applying such knowledge in developing a legal system. They should have at least a university degree in law, work experience of at least 10 years, and English language proficiency.

5. The consultants will be selected as individuals.

B. Capacity Building for Secured Transactions Registration

1. International Experts

6. This component of the TA will require 8 person-month inputs of international experts during implementation. The required expertise comprises legal drafting skills, concept and operation of registering secured transactions, training, and public awareness programs. The consultants will have knowledge of the Vietnamese legal system and financial sector reform initiatives and work experience in this regard in Viet Nam or in other countries. Expertise in more than one area will be an advantage. The key tasks and areas of responsibility of the international experts (with person-month in paranthesis) are summarized here.

a. Drafting (Ordinance) Specialist (1)

- (i) Assist the National Registry Agency of Secured Transactions (NRAST) in drafting an ordinance on registration of secured transactions, which will also broaden the scope of registration to include, immovable assets and other property.
- (ii) Drawing on international good practices and taking into account Vietnamese realities, make recommendations on the content of the draft law.
- (iii) Coordinate with Vietnamese experts in drafting the laws.
- (iv) Draft an ordinance on registration of secured transactions for MOJ to submit to the Government.

b. Operation Management Specialist (2)

- (i) Assist NRAST in improving the organization and operation of the registration system for secured transactions.
- (ii) Study the organization and operation of registration of secured transactions in Hanoi and Ho Chi Minh offices and identify areas for improvement.
- (iii) Drawing on the study findings and international good practices, make recommendations for better organizing the registry operations for both movable and immovable assets, including an information and technology (IT) system for registration and also for public information.
- (iv) Assist in applying the recommended organizational modality to improve registration work in existing as well as new registry offices.
- (v) Assist in ensuring security, integrity, and consistency in IT system applications in NRAST and its point of service (POS)
- (vi) Assist NRAST in establishing pilot registry offices in four locations in the country as determined by MOJ, by providing technical support, and IT system, and training the required staff.

c. Team Leader and Training Specialist (5)

- (i) Assess the training needs of NRAST and its customers.
- (ii) Based on the assessment, design and develop training curricula/content and delivery.
- (iii) Prepare training materials such as handbooks in hard copy as well as in CD-ROMs for self-learning through web site and as reference at work.
- (iv) Undertake training of trainers.
- (v) Conduct training for NRAST staff, existing and new; for potential institutional customers, including officials and experts from the State Bank of Viet nam (SBV), commercial banks, credit organizations, finance companies, and government ministries and agencies.
- (vi) Design and develop a public education and publicity information package.
- (vii) design and implement a web site for NRAST for wider publicity and public education.
- (viii) Pilot-test the publicity programs and train NRAST staff.

7. It is envisaged that the international expert inputs (person-month) will be allocated as follows: 1 person-month for the specialist in drafting ordinance for registering secured

transactions; 2 person-months for the operation management specialist and 5 for the team leader and training specialist to accomplish the tasks as outlined above.

8. The experts should have at least a university degree in law and/or business administration, with 15 years experience in secured transactions registration and public information; familiarity/experience with the legal and financial sectors of transition economies; good drafting skills; and proven track record in capacity building and training. Possession of more than one specialization and familiarity with legal systems of transition economies will be an advantage.

2. Domestic Consultants

9. In addition, up to 10 domestic consultants, will provide 30 person-month inputs intermittently during the TA implementation.

10. Domestic experts will assist NRAFT and the international experts to achieve the TA objectives and outputs. Their expertise positions (number of experts and person-month in parenthesis and main tasks will be as follows:

- a. **Legal drafting experts** (2 persons, 2 months each) will assist in drafting the ordinance, comment on the draft prepared by international experts, and participate in the consultation process to finalize the draft.
- b. **Organization and management experts** (2 persons, 2 months each) will assist in improving the organization and operation of the registry system.
- c. **Legal and public awareness training experts** (1 person for registration operations training for 5 person-months and 1 for public awareness for 5 person-months) will assist in the design and conduct of training and public awareness activities.
- d. **Banking and financial sector expert** (1 person for 4 months) will assist in analytical work related to the banking and financial sectors as they relate to secured transactions and also support legal experts in these areas.
- e. **IT experts** (2 persons for 4 months each) will design and implement information and communication technology application for registry offices, NRAFT, and a web site for NRAFT.

11. The domestic experts should have a law or business degree and at least 10 years experience in the Vietnamese legal system, and banking and financial sectors. They should have a good knowledge of the Vietnamese legal sector, excellent legal drafting skill, training experience, good team spirit, and proficiency in English. The IT expert should have an IT degree and related professional training in IT applications, system design and maintenance, and web site design and implementation for public information campaign. Domestic experts with more than one skill will be preferred.

12. A team of international and domestic experts will be selected through a consulting firm following the simplified technical proposal and quality and cost-based basis.

TECHNICAL ASSISTANCE FRAMEWORK

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions/Risks
<p>Goal Ensure successful development and implementation of legal system and contribute to achieving a rule-based socialist-oriented market economy in Viet Nam</p>	<p>Successful implementation of a strategy for developing legal system</p>	<p>Annual progress reports Biannual review reports Midterm evaluation report at mid-2004</p>	<p>Ministry of Justice (MOJ) and key government agencies will continue to provide high priority to legal system development and further development of secured transaction registration system.</p>
<p>Objectives</p> <p>Prepare implementation mechanisms including project development for legal system development</p> <p>Build capacity of the National Registration Agency of Secured Transactions (NRAST) for registration and public information service.</p>	<p>A carefully drawn out implementation mechanism with details on resources, timetable, funding, and potential</p> <p>Capacity-building activities</p>	<p>Progress report</p> <p>Implementation strategy and mechanisms</p> <p>Consensus-building workshops</p> <p>Training materials, workshops, and publicity programs</p>	<p>Support from MOJ in developing implementation mechanisms for Strategy for Viet Nam's Legal System Development up to 2010 (SLSD).</p> <p>Key officials may not participate actively in SLSD and capacity-building activities.</p> <p>Key officials may be too busy with other substantive activities of their agencies.</p>

Design Summary	Performance Indicators/Targets	Monitoring Mechanisms	Assumptions/Risks
<p>Outputs</p> <p>Implementation mechanisms for SLSD, including project formulation for selected priority projects</p> <p>Enhanced capacity of NRAST in registering secured transactions</p> <p>More points of service leading to increased registration facility and access to information on secured transactions</p> <p>Increased public awareness of legal system reforms and development</p> <p>Enhanced capacity for secured transactions registration</p> <p>Increased credit facilities and improved credit terms in the long run</p>	<p>Draft papers on implementation mechanisms</p> <p>Project documents</p> <p>Workshops</p> <p>Training programs for trainers, NRAST staff, NRAST customers</p> <p>Four more registry offices</p> <p>Information packages</p> <p>Web site service</p> <p>Customer survey report</p> <p>Review report</p>	<p>Internal evaluation report</p> <p>TNA report</p> <p>ToT materials available</p> <p>Internal evaluation report</p> <p>Handbook available</p> <p>Training modules available</p> <p>Number of registrations</p>	<p>Financial and human resources required for the expansion of registry activities are delayed.</p>
<p>Inputs</p> <p>Financial inputs: \$940, 000</p> <p>Consulting services 14 person-months of international experts and 45 person-months of domestic consultants</p> <p>Workshops/seminars</p>	<p>TA inception report</p> <p>Review report</p> <p>Status report</p>		