

TECHNICAL ASSISTANCE COMPLETION REPORT

Division: PARD/PLCO

TA No., Country and Name:			Amount Approved: US\$800,000.00	
TA 4457-VAN: Secured Transactions Reforms			Revised Amount:	
Executing Agency: Ministry of Finance and Economic Management		Source of Funding: TASF Australian TA Grant	Amount Undisbursed: \$103,518.85	Amount Utilized: \$696,481.15
TA Approval Date:	TA Signing Date:	Fielding of First Consultant:	TA Completion Date Original: 29 February 2008 Account Closing Date Original: 29 February 2008	Actual: 9 October 2009 Actual: 15 December 2009
2 December 2004	4 August 2005	23 September 2005		
<p>Description</p> <p>One of the main factors identified to be hindering the growth of Vanuatu's private sector was the country's underdeveloped financial system resulting in limited access to affordable credit domestically. The Asian Development Bank's (ADB's) Private Sector Assessment of Vanuatu (2002) suggested that a contributing factor was the lack of a legal framework governing the use of collateral for its loans, i.e., a Secured Transactions Framework. Due to customary laws governing land ownership, land cannot serve as collateral for secured transactions. In order to use moveable assets as collateral, legislative reforms were required. In response to this, ADB approved TA 4457-VAN on 2 December 2004 to assist the Government of Vanuatu in establishing a well-functioning Secured Transactions Framework, thereby helping increase and broaden access to credit in Vanuatu.</p> <p>Expected Impact, Outcome and Outputs</p> <p>The primary goal of the TA was to increase and broaden access to credit in Vanuatu. The TA outputs comprised of (i) the establishment of a legal and regulatory framework for Secured Transactions; (ii) implementing an operational internet-based notice filing registry for Secured Transactions; and (iii) supplemental capacity building in relation to the economic and legal application as well as public awareness on the expanded use of collateral.</p> <p>Delivery of Inputs and Conduct of Activities</p> <p>The TA was adequately formulated and designed in terms of budget, provision of consulting services, and implementation arrangements to establish a well-functioning secured transactions framework. The consulting services estimated under the TA included 28 person-months for an international secured transactions expert (7 person-months), an international private sector development expert (4 person-months), an international legal expert (7 person-months), an international technical filing archive expert (6 person-months) and national lawyers (4 person-months). The TA commenced positively, with the Government and key stakeholders, especially commercial banks showing strong support for the initiative. Suitable Government counterpart staff was assigned to the TA and adequate office space was provided. A key stakeholder awareness seminar was held on 18 October 2005. However, the TA experienced delays due to Parliamentary schedules. Overall, Government inputs and participation were rated satisfactory.</p> <p>The consultants' performance was unsatisfactory in delivering their main outputs. Their contract was terminated in June 2007.</p> <p>The Secured Transactions Act was finalized through consultant inputs engaged under RETA 6202: Diagnostic Studies for Secured Transactions Reforms in the Pacific Region. Under RETA 6353: Private Sector Development Initiative (PSDI), a companies and secured transactions registry expert was engaged to design and implement registry reforms across the region, which included the Vanuatu Secured Transactions Registry. Following the enactment of the Secured Transactions Act by Parliament in April 2008, the registry design was undertaken by an IT consulting firm from 20 May 2008 whose team consisted of a senior solutions architect/team leader, senior design and usability expert and a senior business analyst, who were engaged under TA 4457-VAN. A total of 18.06 person-months of consultant inputs were provided under the TA. An IT company was also contracted over a period of 8 months to provide the license for and customize off-the-shelf software for the Secured Transactions Registry under TA 4457-VAN. However, the supplemental consultant inputs from PSDI and RETA 6202 were instrumental in turning around and successfully finalizing the TA. The delays that arose in the Parliamentary schedule's enactment of the Secured Transactions Act and the underperforming consultants required an extension of the TA closing date from 29 February 2008 to 9 October 2009. ADB performed well in implementing the TA, through conducting regular review missions, close engagement with Government and other project stakeholders, particularly in the financial</p>				

sector and making use of related TAs in order to achieve the expected outputs and outcomes.

Evaluation of Outputs and Achievement of Outcome

The three TA outputs:

(i) Legal and Regulatory Framework for Secured Transactions. The original consultants proposed a Secured Transactions law and registry design that followed an inappropriate European model of Secured Transactions legal design, without consideration of local conditions and common law approaches in Vanuatu. This was rectified through direct intervention by ADB, and the succeeding consultants under RETA 6202. The draft Secured Transactions Act was completed in late 2006. However, while the Bill was submitted to Parliament in February and December 2007, it was not enacted on either occasion due to constraints in the Parliamentary schedule. The Bill was finally passed in April 2008 during an extraordinary session of Parliament and was gazetted in July 2008.

(ii) Operational Internet-Based Notice Filing Registry. Two main design options were considered in developing the Secured Transactions Registry. These were (a) the application in Vanuatu of the archiving system used by the New Zealand Companies Office, and (b) purchase of customized, off-the-shelf software (COTS). The latter was deemed the preferred option as assessed against the criteria of conformity with best practice, costs and value for money, time for implementation, and control and portability. The COTS software was modified to include (a) the creation of public web screens in local Bislama and French languages, (b) changes necessary to conform to the Vanuatu Secured Transaction Act, and (c) to provide means for Vanuatu Financial Services Commission (VFSC) to fulfill its administrative responsibilities. The Secured Transactions Registry was launched at the VFSC in April 2009. Technical and administrative regulations governing the registry were finalized and are operational. As of 30 September 2009, over 1,200 notices had been filed (these included all transitional notices).

(iii) Supplemental capacity building in relation to the economic and legal application as well as public awareness on the expanded use of collateral. A comprehensive training program for key stakeholders was implemented accompanying the launch of the Secured Transactions Registry, and continued until TA completion. The initial operation and maintenance of the Secured Transactions Registry for the first 12 months of operations was contracted to the IT company who provided the COTS from April 2009 to April 2010. The Vanuatu Government has successfully taken over the operation and maintenance of the registry.

Overall Assessment and Rating

The TA is rated successful as the outputs and outcomes were achieved. Secured transactions reform has been embraced by the Government and key stakeholders with a high degree of enthusiasm and commitment. The Secured Transactions Registry has been launched and is operational. The TA was also critical in establishing experience and networks for Secured Transactions reform in the Pacific region, thereby paving the way for similar reform in other countries in the region, which have since established, or are in the process of establishing, Secured Transactions regimes following the Vanuatu model and financed under PSDI.

Major Lessons

When selecting legal consultants, it is essential that the local legal environment is considered. A significant problem with the original consultants was the inability of civil lawyers to adapt to a common law jurisdiction.

In order to detect the quality of consultant inputs as early as possible, close supervision of TAs through regular reviews and consistent engagement is critical.

To ensure smooth passing of legal reform, very close engagement with the Government and Parliament is critical, particularly in weak capacity countries. When developing laws, intermittent inputs are often beneficial to ensure ongoing engagement with the Government. Legal reform efforts should be accompanied by ongoing political economy analysis, to seize reform opportunities as they arise from the political environment.

Recommendations and Follow-Up Actions

The initial operation and maintenance of the Secured Transactions Registry as well as increased public awareness on the expanded use of collateral continues to be monitored closely under PSDI. This should continue in order to sustain the successfully established Secured Transactions system in Vanuatu.

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