

## TECHNICAL ASSISTANCE COMPLETION REPORT

Division: PARD/PLCO

TA No., Country and Name			Amount Approved: \$870,000.00	
TA 6202-REG: Diagnostic Studies for Secured Transactions Reforms in the Pacific Region			Revised Amount: \$818,000.00	
Executing Agency: ADB		Source of Funding: JSF	Amount Undisbursed: \$22,965.40	Amount Utilized: \$795,034.60
TA Approval Date: 3 Dec 2004	TA Signing Date: 3 Dec 2004	Fielding of First Consultants: 1 Jun 2005	TA Completion Date Original: 30 Nov 2006 Actual: 31 May 2009	Account Closing Date Original: 30 Nov 2006 Actual: 17 Mar 2010
<b>Description</b> <p>The financial systems in the Pacific developing member countries (PDMC) are underdeveloped and fail to effectively finance lending to the private entrepreneurs and enterprises, with small businesses and women being especially disadvantaged. The systems for using property as collateral, especially movable assets, in the Pacific are cumbersome, expensive, and often unavailable.<sup>1</sup> Even using land and building is difficult; land rights constitute a particularly contentious issue with deep-seated cultural implications that requires time and resources to resolve. To deepen financial market and improve financial intermediation, the ability to effectively use moveable property as collateral is crucial to facilitate lending. The TA's main objective was to analyze impediments to a well functioning secured transactions framework in each participating PDMC, and discuss with stakeholders and Government the implications and benefits of reform. In the event that Governments agreed on the desirability of reform, the TA would prepare Terms of Reference for a follow on technical assistance and prepare them for implementation with the ultimate goal of improving the access of the private sector to affordable credit.</p>				
<b>Expected Impact, Outcome and Outputs</b> <p>The expected impact of the TA was to improve access of the private sector to affordable credit in PDMCs. The outcomes focus on (i) formulating sound, secured transactions reform packages in participating PDMCs; and (ii) assessing selected financial sector issues in the Pacific islands. The outputs include two components. The first component aims to produce a sound road map for establishing a legal and regulatory framework for secured transactions in each of the four participating PDMCs. It would have the following outputs: (i) diagnostic review of the existing legal, regulatory, and institutional framework for security interests; (ii) recommendations for establishing a registration system or filing archive for security interests, including its design, establishment, location, and operation; and (iii) discussion and confidence building among stakeholders. The second component included diagnostic reports on selected financial sector issues in the region.</p>				
<b>Delivery of Inputs and Conduct of Activities</b> <p>The TA purpose, terms of reference, and implementation arrangements were appropriate. The TA was designed to provide private sector development (PSD) support and draw on lessons learned and apply international best practice for four originally invited participating PDMCs, namely Fiji Islands, Marshall Islands, Papua New Guinea and Solomon Islands. ADB performed satisfactorily in implementing the TA through close engagement with government agencies and other project stakeholders. There was support in government line agencies for the TA approach and foreseen reform activities. A cumulative extension of 2 years and 6 months was approved for the TA's completion date due to recommendations of additional TA outputs and activities including additional private sector assessments (PSAs), a paper on financial market development in the region, and extended support to PDMC Governments (Marshall Islands, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga and Vanuatu). Fiji Islands' reform was delayed by political upheaval.</p> <p>The performance of the consultants was satisfactory. A total of 24 person months of international consulting time and 6 person months of local consulting time were fully used as planned. The consultants timely delivered the agreed outputs and deliverable in good quality. However, consultant recruitment took longer than anticipated. At initial stages, the main consulting firm, Enterprise Research Institute (ERI) and its original associated firm, Centre for the Economic Analysis of Law (CEAL), had disagreement on expert candidature qualifications. As a result, ERI's agreement with CEAL was terminated. There were also changes in the consultant team composition; two PSD experts later replaced two domestic legal experts.</p>				

<sup>1</sup> The vast majority, averaging over 90%, of land in the Pacific is customary land, meaning owned by persons entitled to hold it under their respective customs. Normally, a kinship group who are descendents of the original owner(s) jointly holds land.

**Evaluation of Outputs and Achievement of Outcome**

The TA has produced important diagnostic work, which has led to (i) an increased awareness in the study countries and the region more generally about collateral issues and the need to strengthen the collateral framework for movable property; (ii) strengthened information base for country strategies and programs; and (iii) secured transactions reform in 3 of the 4 countries included in the TA, with only Fiji Islands not implementing a secured transactions reform because of political upheaval. The demonstration effect translated into a number of related reform initiatives launched in several PDMCs. The TA was extended in October 2008 to provide secured transactions reform expertise especially to support secured transactions law reform in Tonga (where the law is being drafted) and registry design and implementation support in Solomon Islands and Vanuatu. The registries are now in place and are operational.

The TA was originally focused on analyzing the secured transactions frameworks in four PDMCs. By the completion of the TA, its scope had been widened substantially. In the process, the PSD agenda has been achieved and advanced. Generally, governments largely and positively recognized the original aim of the TA and embraced most of its conclusions and recommendations. Extensive discussions and consultations were carried on with stakeholders, which resulted further initiatives in the region.

**Overall Assessment and Rating**

The TA was rated successful. The planned outputs were achieved, albeit some adjustments to cover more countries and changing needs of PDMCs. The diagnostic studies produced under the TA have been used as the road map for secured transaction reforms in the selected PDMCs. From the perspective of the implementation of the reform initiatives prepared in the TA, it has had a strong positive impact. Marshall Islands and Solomon Islands have operational secured transactions frameworks, which have recently begun to operate. PNG is currently undertaking reform, while reform initiatives are on hold in Fiji Islands for political reasons. Although it is too soon to evaluate the impact on credit growth and lending, early indications are promising. Lenders have re-registered their existing security interests, are using the registries for searching, and are recording new security interests. The costs of registration of security interests have declined substantially. Implementation is still underway in these countries, and as lenders and other stakeholders become accustomed to the new system, lending is expected to rise further.

**Major Lessons**

Setting up operational and effective secured transaction systems take time. Successful reform in this area requires sound analysis, extensive consultation with lenders and other stakeholders at every stage. Well-sequenced policy reforms that are coupled with government's commitment, ownership, and resource allocation are essential components of the process. Secured transaction reforms involve many stakeholders from various government agencies (including the attorney general's office, the ministry of commerce, and the ministry of finance), commercial banks, and private sector participants. The impact of the reforms will not be fully realized until behavior changes to take advantage of the new lending framework. Therefore, extensive implementation is an essential component of this process, as it is with other legal reform initiatives. Extensive public awareness raising campaign is also important to ensure that commercial banks and private entrepreneurs take the most advantage of the reforms. Adequate resources are important in ensuring that these goals are achieved.

**Recommendations and Follow-Up Actions**

In order to achieve the expected goal of improved access of the private sector to affordable credit in PDMCs, the PDMC governments still need to take further additional measures in implementing reforms, including law amendments, issuance of new laws and regulations, conducting extensive awareness campaigns targeting both private entrepreneurs and financial institutions, and the establishment and operationalization of the registry. In addition, registry software could be programmed to provide additional information on such issues as the gender distribution of asset registration. Based on policy dialogue and consultation with stakeholders, ADB should continue providing technical support to assist governments of PDMCs in implementing secured transaction reforms, to ensure that the momentum achieved under this TA will not be lost. However, given limited resources, additional assistance should be prioritized based on government's commitment and capacity.

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