

## SECURED TRANSACTIONS REFORM PROGRAM

(TC-95-05-44)

### EXECUTIVE SUMMARY

**EXECUTING AGENCY:** Commission Presidentielle pour la Croissance et la Modernisation Economique (Presidential Commision for Economic Modernization and Growth)

**OBJECTIVES:** The objective of this component is to assist the Government of Haiti in establishing a legal and institutional framework for secured transactions and lien registration that allows for efficient creation, perfection and enforcement of security interests.

**DESCRIPTION:** The Haitian legal code does not provide an adequate framework for the creation, perfection and execution of security interests in loan contracts. The most significant weakness is the lack of a legal framework for the use of moveable property and intangible assets as collateral. Perfection of security interests is severely hampered by the lack of a unified registry of liens and an antiquated system of collateral perfection and registration that is controlled by uncoordinated notaries. In addition, public registries are difficult to access and unreliable. Enforcement of security interests suffers from an inefficient judicial system. As a response to limited options for establishing security interests on property and an unpredictable judicial system, Haitian banks rely on assessments of the borrowers character, with the result that only established members of the community and entrepreneurs related to the banks have access to loans. Commercial lending, usually more agile than bank loans, is similarly constrained. Reform of the legal framework for secured transactions and the public lien registries has been identified by the Presidential Commission and the Professional Banker Association as the first priority in the financial sector.

Program resources will be used to contract a Principal Advisor and short term experts to carry out the following activities, under the supervision of the Presidential Commision: (1) draft a comprehensive secured transactions law, (2) design an efficient

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system and institutional framework for the registration of liens, and (3) training the banking and legal communities as well as the judicial authorities in the use of the new system.

<b>FINANCING:</b>	Modality:	Grant
	Recipient:	US\$ 35,000
	MIF:	US\$650,000
	Total:	US\$685,000

<b>IMPLEMENTATION SCHEDULE:</b>	Program implementation will begin with the contracting of the Program Supervisor in January of 1996. Program execution will be completed within 20 months, and final disbursement within 24 of the effective date of the contract.
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<b>SPECIAL CONDITIONS:</b>	The executing agency will provide work space, communication equipment, and secretarial and logistic support to the Program Coordinator and the short term experts (paragraph 3.15).
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Subsequent to the hiring of the Program Supervisor and prior to the disbursement of program resources for any other activity, the Program Supervisor will assist the executing agency in establishing the task force, preparing a revised action plan and terms of reference and identifying a candidate for the position of the Program Coordinator, to be submitted for the approval of the Bank (par. 3.16).

The Bank will approve all candidates and terms of reference for consultancies to be financed with program resources (par. 3.17).

<b>ENVIRONMENTAL CLASSIFICATION:</b>	The Environmental Management Committee, at its meeting of November 7, 1995, classified this as a Category II operation.
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## I. COUNTRY ELIGIBILITY

- 1.1 The Donors Committee declared Haiti eligible for all modalities of Multilateral Investment Fund financing on August, 1995.

## II. BACKGROUND

- 2.1 The Haitian banking sector is structurally weak and extremely shallow due to a range of factors, historically present and exacerbated by the economic and political situation since 1991. The historic concentration of bank portfolios in parties known or linked to the banks is a result of an extremely risky business environment, lack of operational capacity and autonomy of the Central Bank, interest rate limits, the lack of an adequate legal and institutional framework for security interests, an inefficient judicial system, legal prohibition against publication of debtor information and a weak prudential and supervisory framework.
- 2.2 The modernization of the Haitian financial sector will require profound legal and structural reforms oriented towards the creation or reform of the key laws and institutions that provide a framework for soundness and deepening of the financial sector. Among these, reform of the legal framework for secured transactions and the institutional structure of public lien registries is required to provide the banking industry with mechanisms for risk management and the collateral instruments to extend financing to a broader range of borrowers.
- 2.3 The Haitian legal code does not provide an adequate framework for the creation of security interests in loan contracts. The most significant weakness is the lack of a legal framework for the use of moveable property as collateral (chattel mortgage without conveyance), but the civil and commercial codes are also unclear regarding the pledge of intangible assets such as accounts receivable and revolving inventory.
- 2.4 Perfection of security interests is severely hampered by the lack of a unified registry of liens in the case of chattel mortgages and, for real estate mortgages, an antiquated system of collateral perfection and registration that is controlled by uncoordinated notaries. In addition, public registries are difficult to access and unreliable, title insurance is not available, and Haiti lacks a cadastral system for the identification of real estate.
- 2.5 Enforcement of security interests suffers from a judicial process strongly biased towards protection of debtor rights, excessively long delays, process that allows delays due to the filing of numerous and frivolous demurrers by debtors, and general ignorance of the law. Finally, actual repossession is again subject to numerous delays and oppositions.

- 2.6 As a response to limited options for establishing security interests on property and an unpredictable judicial system, Haitian banks rely on assessments of the borrowers character, with the result that only established members of the community and entrepreneurs related to the banks have access to loans. Commercial lending, usually more agile than bank loans, is similarly constrained.
- 2.7 The Presidential Commission for Economic Modernization and Growth, comprised of private sector representatives and members of the Prime Minister's Ministerial Cabinet, was created upon the return of President Aristide with the mandate to make policy recommendations to the Haitian Government regarding economic policy. The Commission was specifically charged with defining the measures required to modernize the legal and regulatory framework in favor of trade and investment. Reform of the legal framework for secured transactions and the public lien registries has been identified by the Presidential Commission and the Professional Banker Association as the first priority in the financial sector.
- 2.8 The Bank hired a consultant in March of 1995 who conducted a preliminary assessment of the legal framework for secured transactions and, in consultation with the Presidential Commission, the Professional Banker Association and the Ministry of Finance, identified the course of action presented in the proposed program.

### III. PROJECT DESCRIPTION

#### A. Objectives

- 3.1 The objective of this component is to assist the Government of Haiti in establishing a legal and institutional framework for secured transactions and lien registration that allows for efficient creation, perfection and enforcement of security interests.
- 3.2 The specific objectives are to:
1. draft a comprehensive secured transactions law;
  2. create an efficient system for the registration of liens; and,
  3. inform the banking and legal communities as well as the judicial authorities in the use of the new system.

#### B. Sequence of activities

##### 1. Hiring of Program Supervisor

- 3.3 At the request of the executing agency, the Bank will hire an expert in security interest law reform as Program Supervisor to assist the Bank and the executing agency in the technical supervision of the operation. The Supervisor will provide advice

to the Bank and assistance to the executing agency in drafting and/or reviewing terms of reference, identification and selection of consultants, preparation of the action plan and technical supervision of the program. The Supervisor will have extensive experience in the management of security interest law reform.

## 2. Establishment of the task force

- 3.4 The Presidential Commission will establish a task force to serve in an advisory capacity to the Program Coordinator and program consultants. The task force will be comprised of members of the public sector, banking and commercial sectors, and other important constituents of the reform process.

## 3. Hiring of Program Coordinator

- 3.5 A long term Coordinator will be hired to coordinate the execution of the action plan, under the supervision of the Presidential Commission. The Program Coordinator will be responsible for technical execution of key program components as well as for assisting the executing agency in coordinating the timing of short term consultancies.

## 4. Drafting of a secured transactions law

- 3.6 An international expert in security interest law will be hired to draft a comprehensive secured transactions law. Local legal experts will be hired to assist with a review of the Haitian legal code in light of similar reforms that have been conducted in civil law countries. The international legal expert will have extensive experience in the drafting of security interest law.

## 5. Reform of the public lien registry system

- 3.7 An international expert in public lien registry systems will conduct an assessment of the lien registry within the Direction General des Impots and make recommendations for an institutional framework appropriate for the facilities and procedures contemplated under the reformed legal framework. The design of the new lien perfection system (the registry) must be carefully coordinated with the legal framework for security interest creation. In addition, existing liens, currently registered both in the central registry and in the offices of the private notaries, must be transferred to the new system. Therefore, three months of the registry expert's time is programmed to ensure coordination of this component.

6. Development of operational systems in the public registry

- 3.8 The registry expert and the Information Systems Specialist will provide technical support in the development of the operational systems required within the new institutional framework, including a mechanisms for the transfer of information from the existing lien registry to the new. The new system will function as a multi-user database system. Therefore, the design of software and installation of hardware will complete the process of implementing the new registry system. Project funds will finance the acquisition of computers and other related equipment for this purpose. In addition, up to US\$5,000 of program resources may be used to purchase computer and related equipment for the office of the Program Coordinator.

7. Dissemination workshops for the banking and legal communities

- 3.9 To insure that the banking and legal communities can take full advantage of the proposed reforms, the Program Coordinator and consultants will conduct dissemination workshops to inform bankers, lawyers, notaries and judges in the facilities and procedures contained in the reformed institutional and legal framework.

C. Organization and Execution

- 3.10 The Presidential Commission will be the executing agency of the proposed program. As a mixed commission, it is well suited to coordinate the proposed activity in both the private and public sectors.
- 3.11 At the request of the executing agency, the Bank will hire an international expert in security interest law reform as the Program Supervisor. The Supervisor will advise the Bank and assist the executing agency in establishing the task force, defining the action plan, drafting terms of reference, and identification and selection of the Program Coordinator, in completion of conditions prior to disbursement of program resources. Subsequently, the Supervisor will assist in the Bank and the executing agency in the identification and technical review of the work of all consultants. The Supervisor will be contracted to provide services during the entire executing period of the program.
- 3.12 The Program Supervisor will function, on behalf of the Bank, as a mechanism of technical supervision throughout the execution of the program. The Supervisor will be more effective as a Bank consultant in guiding a reform process that involves a broad range of actors and institution. The independence of the Supervisor will provide an additional measure of stability in an otherwise highly unstable institutional environment. Finally, there are very few legal experts with experience in security interest law reform and they are more likely to participate in the program when hired by an international organization.

- 3.13 The Program Supervisor will assist the executing agency in the identification and selection of the Program Coordinator and preparation of a detailed action plan for the execution of program activities, including the definition of the terms of reference and timing of the short term consultancies proposed under the program. The Program Coordinator will be responsible for coordination and execution of the action plan, together with short term international consultants with expertise in security interest law, lien registries, and information systems for lien registry operating systems. Short term, legal advisors hired to assist with all aspects of the program.
- 3.14 The final stage of the program will commence once the Government of Haiti has determined the final institutional structure for the public lien registry. Program activities related to the development of operating systems for the registries will be implemented within that institution.

D. Special Conditions

- 3.15 The executing agency will provide work space, communication equipment, and secretarial and logistic support to the Program Coordinator and the short term experts.
- 3.16 Subsequent to the hiring of the Program Supervisor and prior to the disbursement of program resources for any other activity, the Program Supervisor will assist the executing agency in establishing the task force, preparing a revised action plan and terms of reference and identifying a candidate for the position of the Program Coordinator, to be submitted for the approval of the Bank.
- 3.17 The Bank will approve all candidates and terms of reference for consultancies to be financed with program resources.

E. Reporting, monitoring and supervision

- 3.18 The Program Supervisor will submit to the Bank quarterly progress reports as well as specific technical opinions regarding the terms of reference, candidates and execution of specific project activities.
- 3.19 The executing agency, with the assistance of the Program Coordinator, will submit to the Bank quarterly progress reports, in addition to summary reports of each of the short term experts. The quarterly reports will include, minimally (1) a summary of activities completed during the quarter, (2) degree of progress in achieving program objectives, (3) difficulties encountered in program execution, and actions taken to resolve the problem, (4) recommendations for redistribution of program resources, and (5) action plan for the subsequent quarter.

- 3.20 Any change to the distribution of program resources among budget categories will require the prior approval of the Multilateral Investment Fund.
- 3.21 Project completion will be measured by the following indicators: 1) the formalization of a comprehensive law for secured transactions, 2) the establishment of a functioning public lien registry, and 3) the existence of financing contracts backed by the collateral mechanisms contemplated in the new law.
- 3.22 The Bank will supervise the operation through the Country Office in Haiti and with the technical support of RE2/FI2. RE2/FI2 will comment on all terms of reference and candidates for consultancies prior to final approval by the Bank.

F. Cost, terms and financial conditions

- 3.23 The total cost of the operation will be US\$685,000, consisting of US\$650,000 of MIF financing, budgeted according to the table below, and US\$35,000 in counterpart funding for logistic support to consultants and the start-up costs involved in the establishment of the Public Lien Registry. The program will be financed on a non-reimbursable basis from the Window I Facility of the Multilateral Investment Fund.



CATEGORY		COUNTERPART	MIF
<b>2.1</b>	<b>Private consulting services</b>		
	Program Coordinator 18 mos @ US\$10,000		US\$180,000
	International expert in public registry operations 3 mos @ US\$10,000		US\$30,000
	International expert in security interest law 3 mos @ US\$15,000		US\$45,000
	Information systems specialist 3 mos @ US\$10,000		US\$30,000
	Local legal experts 12 mos @ US\$5,000		US\$60,000
<b>2.2</b>	<b>Appointment and Repatriation</b>		
	Travel, appointment and repat of Principal Advisor 1 @ US\$40,000		US\$40,000
	Travel and per diems for specialists		US\$46,000
<b>6.0</b>	<b>General Support</b>	US\$35,000	
<b>6.3</b>	<b>Equipment</b>		
	Computer system, software and line security		US\$90,000
<b>8.0</b>	<b>Program Supervisor</b> 4 mos @ US\$10,000		US\$40,000
	travel and per diems for supervisor		US\$19,000
<b>98.</b>	<b>Contingency</b>		US\$70,000
TOTAL		US\$35,000	US\$650,000

3.24 The program execution period will extend to 20 months beyond the effective date of the contract, and the final disbursement will be made no more than 24 months beyond the same date.

**G. Procurement and advance of funds**

3.25 Procurement of goods and services with program resources will be conducted according to the normal procedures of the Bank. All goods and services, including consultants and consulting firms, procured with program resources must originate from donor country members of the Multilateral Investment Fund or developing country members of the Bank. An advance equal to 10% of program resources will be disbursed to the executing agency in order to facilitate efficient disbursement of program resources.

#### IV. BENEFITS AND RISKS

- 4.1 Successful completion of program objectives will result in the creation of collateral instruments that will provide banks with means to provide credit services to a broader range of clients. The principal beneficiaries of this innovation will be the small and micro scale entrepreneurs who cannot provide the level of guarantee currently required by the banks.
- 4.2 The operation is subject to the risks inherent in the current political situation in Haiti. In addition, although the proposed reforms benefit a wide range of actors and have been vigorously supported by the private sector in other countries, the notaries who currently control the lien system constitute a potential risk to efficient implementation of the reforms. The task force will be created to mobilize the necessary support for the reform.

#### V. COMPLIANCE WITH PROJECT ELIGIBILITY CRITERIA

- 5.1 General Eligibility Criteria - The project to be financed by the MIF is fully consistent with the general purpose of the MIF which are to increase private investment and expand private sector activity.
- 5.2 Facility Criteria for Project Eligibility - The project is compatible with the criteria for grant financing under the Technical Cooperation Facility, Article III, Section 2 of the MIF Agreement which establishes, that under the Technical Cooperation Facility, grants shall be provided for technical cooperation as appropriate, to governments to finance the development of national country plans for comprehensive reform of the policy and legal environment for investment, in conjunction with, and complementary to, Bank country programs, and advisory services to implement these plans, which may involve advice on reforming investment laws, as well as advice on implementing those laws, and regulatory agencies.

#### VI. CONSISTENCY WITH THE BANK'S COUNTRY PROGRAM

- 6.1 The project is fully consistent with the Bank's strategy of strengthening or reforming the legal and institutional framework to support the development of private sector investment.

#### VII. AVAILABILITY OF MIF RESOURCES

- 7.1 **Funding Modality.** The project is expected to be financed through a grant based on the following points: i) Haiti was declared eligible for all modalities of financing under the MIF by the Donors Committee on August, 1995; ii) the compliance of Haiti with the criteria of eligibility for obtaining grant resources at the

country level (Article 3, Section 5b of the MIF Agreement) is detailed in section III paragraphs 3.1, 3.2 and 3.3 of the Eligibility Memorandum of the country (MIF/GN 8); and iii) the proposed project will have an important catalytic impact as required by Article 3 Section 5 (a) of the MIF Agreement.

ANNEX II**INDICATIVE ACTION PLAN FOR REFORM OF SECURED TRANSACTIONS PROGRAM**

ACTIVITY	RESPONSIBILITY	MONTH	BENCHMARK
1. Selection of Program Supervisor	Bank, in coordination with executing agency	Jan 96	Supervisor Contracted
2. Establishment of task force	Executing agency	Mar 96	Task Force functioning
3. Preparation of terms of reference, action plan and selection of Program Coordinator	Executing agency, with support of Program Supervisor	Mar 96	Action plan and terms of reference approved by Bank; Program Coordinator installed in executing agency
4. Drafting of secured transactions law	International Expert in security interest law	Nov 96	final draft of law
5. Presentation of draft law to Parliament	Prime Minister's Office	Jan 97	law presented
6. Assessment of public lien registries and recommendation for institutional structure	expert in public lien registries	Jan 97	recommendations for lien framework presented to Ministry of Finance
7. Establishment of institutional framework for public liens	Ministry of Finance/GOH	Mar 97	legal establishment of public lien registry; corresponding reform of DGI
8. Development and supervision of operational systems for public registry	expert in public lien registries, information system specialist	Mar - Aug 97	Operational systems installed in the Public Registry
9. Dissemination workshops	executing agency and experts	Mar - Aug 97	public informed of new policies and procedures

\* NOTE:           Timing of the contracting of short term consultants will be determined in the context of a comprehensive action plan to be developed with the assistance of the Program Supervisor.

PROPOSED RESOLUTION

HAITI. NONREIMBURSABLE TECHNICAL COOPERATION FOR  
A SECURED TRANSACTIONS REFORM PROGRAM

The Donors Committee of the Multilateral Investment Fund

RESOLVES:

1. That the President of the Inter-American Development Bank, or such representative as he shall designate, is authorized, in the name and on behalf of the Multilateral Investment Fund, to enter into such agreements as may be necessary with the République d'Haïti, and to take such additional measures as may be pertinent for the execution of the memorandum of proposal referred to in Document MIF/AT- with respect to technical cooperation for a secured transactions reform program.

2. That up to the amount of US\$650,000, or its equivalent, is authorized for the purpose of this resolution, chargeable to the resources of the Technical Cooperation Facility of the Multilateral Investment Fund.

3. That the above-mentioned sum is to be provided on a nonreimbursable basis.