



د افغانستان د بانکونو ټولنه
Afghanistan Banks Association



CLDP
COMMERCIAL LAW DEVELOPMENT PROGRAM

November 9-11, 2015

Finance Law Workshop & debt recovery

Shangri-La's Eros Hotel Connaught Place
New Delhi India



Photo by: Afghanistan Banks Association (ABA)

Afghanistan Banks Association
House No.188, St.6, Taimani, Kabul, Afghanistan

Background

The United States Department of Commerce Commercial Law Development Program (CLDP) with close coordination of Afghanistan Banks Association (ABA) conducted Finance Law Workshop. The workshop took place in New Delhi, India from November 9-11, 2015.

Goal of the Program:

The goal of the workshop was to discuss the importance of Finance law to the banking and financial sector as well as various mechanisms that can expedite the foreclosure and debt recovery processes in Afghanistan. In addition, the establishment of special court for debt recovery was also one of the main discussion points during workshop.

Accordingly, based on recent movement indicates that, Afghan banks are decreasing lending to private sector due to the lack of weak and powerless legal recovery mechanisms for secured collateral. The workshop had critical importance for Afghanistan's private sector development. The workshop content included Afghanistan-specific case studies examining discrepancies during adjudication in contradiction to the existing Banking Law, discussion on the formation of a special recovery court for non-performance loans, best practices in international banking governance, as well as potential debt recovery mechanisms to be applied in banking sector of Afghanistan.



Event: Finance Law workshop

Venue: Shangri-La's Eros Hotel, New Delhi India

Date: Nov 9 & 10, 2015

Photo by: Afghanistan Banks Association

Feedback from, Mr.Ahmed Siar Khorieshi, Chairman ABA:

First of all on behalf of Afghanistan Banking Association I would like to thank and appreciate from Commercial Law Development Program (CLDP) U.S. Department of Commerce superb and magnificent 3 days' workshop in New Delhi, India. It was very informative, very well presented speakers of CLD Experts plus thought-provoking. I have to express that participants from Afghanistan government delegation namely, Supreme Court of Afghanistan, Da Afghanistan Bank, Ministry of Finance, Ministry of Economics, Ministry of Commerce and Industry, Ministry of Justice and Afghanistan Disputes Resolution Commission, learned so much from CLDP Finance Law consultation and workshop in regards to challenges that Afghanistan Banking Sector facing in cases of commercial lending on secure charges, mortgages and collateral those customers not able to fulfill their obligations as per loan agreement which as a result will affect banking Non-Performance loans and banks will not have confidence for lending due to enforcement of charges, mortgages and collateral.

I felt extremely well equipped by the end of 3 days' workshop. Can I say how impressive the handouts were. They will be an excellent reference material for other government officials in order to start the process of establishment of Bad Debt Commission for expedition of Non-Performance loans and quick recovery for sale of immovable registered mortgages.

Laws protecting creditor rights are critical to Afghan Banking Sector lending to private sector. Judicial efficiency and substantive law that define Afghan Banking Sector as creditor rights are shown to have positively correlated with bank lending. However bank lending to private sector in Afghanistan increasing since 2004 year by year without much improvements in substantive law and judicial efficiency which as a result increasing the percentage of Non Performance Loans due to lengthy recovery process and unnecessary bureaucracy is the root of the problem which violation and non-implementation of Immoveable Mortgage Law Section 2 and Clause 27 and Banking Law Article 38 which Banking Sector facing such challenges overall in Afghanistan. Therefore I will suggest and recommend by using an exogenous variation in the introduction of special courts such as Debt Recovery Tribunals (DRT) and Debt Recovery Appellate (DRA) courts, quasi-judicial body that bypasses the over-burdened civil courts in adjudicating financial disputes involving banks in Afghanistan and makes the process efficiently and quicker recovery from defaulted borrowers as well as provides confidence to Banking sector for further lending and creates positive alarm for those borrowers trying to misuse financial system in their favor and reducing bureaucracy which results in Corruption in the legal system. Furthermore by introduction of DRT and DRA will provide swift redress of financial disputes as they are mandated for faster summon, fact finding, adjudication and are given enough to enforce the decree. As a result if enforced effectively both special courts, would enhance the investor and creditor confidence in the system, which result in larger volume of credit dispend and ultimately economic growth.

If lenders cannot seize collateral in the event of default, borrowers cannot credibly commit to repay their loans. This increases lending risk and results in higher interest rates and reduced access to credit. As a result inadequate enforcement due to court delay and excess formalism were cited to be the reasons for low level of lending to private sector which banks are not feeling secure. At present Debt default widespread as the procedure to recover the bad debt is difficult process due to possibility of numerous appeals under mis-interpretation of Immoveable Mortgage Law Section 2 and Clause 27 and Banking Law Article 38 plus bureaucracy and lack of proper recovery mechanism. As a result escalated time and cost of recovery and consequently Afghanistan Banking sector has invested more than stipulated proportion of their assets in risk free overnight placements with DAB.

Feedback from Mr. Mukish Verma, Vice Chairman ABA

It was a wonderful experience. Such an exercise was long overdue and coming together of all stakeholders in expeditious recovery of bad debts of banks and the structured as well as impromptu discussions that took place not only enlightened us all about the perspective of others but also brought us closer to each other.

This exercise can be leveraged for closer cooperation amongst the different agencies in formulation of necessary guidelines as also effective implementation thereof.

I am confident that this event would prove to be the turning point for addressing the concerns of the banking sector as regards the bad debts.



Event: Finance Law workshop

Venue: Shangri-La's Eros Hotel, New Delhi India

Date: Nov 11, 2015