

JOBS NEWSLETTER

Draft Moveable Asset Financing Law Offers Opportunities for Business Growth

Money makes the world go 'round: this kind of hoary cliché sticks around for a reason. It's true, and perhaps even truer in developing countries.

And as simplistic as it is, it essentially sums up the message presented by JOBS consultant Allen Welsh in his remarks at the presentation

of the proposed new Secured Transaction Law for Moveable Asset Financing held in Dhaka, Bangladesh recently. Mr. Welsh related a conversation he had with Justice Abdul Quddus Chowdhury (Ret.).

"Justice Chowdhury was describing his extensive travels and commented on how odd and seemingly inexplicable it is to find a thriving South Korea next door to a struggling North Korea, or a poverty-stricken Myanmar neighbor to a booming Thailand.

"In fact," Mr. Welsh stated, "the difference is easily explained. It can be accounted for by three simple factors all thriving economies have in common: strong property rights, healthy institutions, especially healthy financial institutions, and effective enforcement of credit obligations."

Taken together, these factors mean all businesses, from the smallest to the largest, have access to the credit they need to finance current operations and future growth: in short, access to the money that makes the business world go 'round.

And it is precisely these factors that the proposed Act on the Use of Moveable Property to Secure Obligations addresses. The new law would provide Bangladesh with consistent, codified rules governing security in moveable property and the resolution of completing claims to such property. It would create an inexpensive, electronic public records system allowing individuals to retrieve information about all moveable property claims, and it would strengthen the enforcement system for creditors.

These provisions would create a legal environment that would promote rather than stifle the country's economic growth.

The draft law is the result of months of cooperation among financial institutions, lawyers' chambers, the Bangladesh Institute for Law and International Affairs (BILIA), and JOBS advisers.

By easing access to credit the new law would lead to more economic activity, more jobs, a stronger economy, and improved living standards. These highly desirable outcomes are hampered at present by the fact that sources of credit for Bangladeshi businesses are limited to personal guarantee, which is sufficient only to the needs of the smallest business micro enterprises; mortgage, which is limited by the paucity of land and landholders; and moveable property, which is the chief source of business credit in developed economies. Under current Bangladeshi law, however, the risks of giving credit using moveable assets as collateral are so high that lenders here simply refuse such loans.

All of this would change under the new law, providing benefits for businesses and creditors alike.

Benefits for Business

The proposed act addresses the need for credit in a variety of commercial contexts in which moveable property is crucial:

- Equipment financing would revitalize existing industry, create opportunities for new industries, and increase productivity.
- Inventory financing would improve opportunities for wholesale and retail outlets and allow businesses to start up with no land and limited capital.
- Receivables financing would permit credit based on a company's accounts, providing the working capital essential to business growth.

Draft Secured Transaction Law Is Presented to GOB

The presentation of the draft Secured Transaction Law for Moveable Asset Financing to the Government of Bangladesh (GOB) on June 21, 2001, was the culmination of three and a half years of collaborative effort on the part of GOB officials, representatives of the Bangladesh Institute for Law and International Affairs (BILIA), legal and economic advisers from the JOBS Project, and Bangladeshi leaders in banking, law, business, and finance.

The result their work is a law that is not only sensitive to the country's legal, economic, cultural, and historical environment, but meets the need for a modern law that will promote rather than hamper economic growth and development.

Among those present at the historic occasion at the Hotel Sonargaon were:

Chief Guest, Professor Ali Ashraf, Member of Parliament and Chairman of the Parliamentary Standing Committee on Finance.

Special Guest, Mary Ann Peters, U.S. Ambassador to Bangladesh. Special Guest, Dr. Akbar Ali Khan, Secretary of the Ministry of Finance.

Guests, Ambassador Waliur Rahman, Director of BILIA; Mary Ott, Acting Director of USAID; Reid Lohr, Director of JOBS; and Roger Bird, JOBS Policy Adviser.

Chief Presenter, Allen Welsh, legal consultant to JOBS/IRIS.

The law has already been translated into Bangla; the next step toward enacting it is its official vetting by the Government. If you wish to express your support, you may do so by writing to Professor Ali Ashraf, Member of Parliament and chairman of the parliamentary standing committee of Ministry of Finance (fax no. 9123066).

Common Law Tradition Eases Codifying New Law for Bangladesh

According to a recent Asian Development Bank study of the issue, “Secured transaction law reform and the accompanying institutional change requires patient and sensitive consensus building to address genuine concerns.”

Since his first visit in 1999, JOBS/IRIS Consultant **Allen Welsh** has been a major figure helping Bangladesh address these concerns and draft a law sensitive to the country’s unique historical, cultural,

economic and legal background.

Bangladesh is ahead of game in South Asia in recognizing the need for reform in this area. Already experienced in helping policy officials in Albania, Bulgaria, Macedonia, Latvia and the Ukraine develop



Allen Welsh chats with Ambassador Waliur Rahman and Ms. Tania Amir after the presentation of the draft law.

legal initiatives in this area, Mr. Welsh had little difficulty switching to the Asian context of Bangladesh.

“The United States and Bangladesh are both former British colonies,” he says. “We share the British common law tradition and have a similar legal heritage and legal facilities. This shared tradition, as well as a shared language, made talks here immediately more productive.”

In addition to his work in the developing economies of Eastern Europe, Mr. Welsh brought his experience with and knowledge of moveable asset financing in the U.S.

“Even in countries as large as the United States and Canada, there isn’t enough land to finance today’s economy. The draft law in Bangladesh has proven effective in many first world western nations, promoting security in rich, poor, large and small states.

“The economic principles underlying the law are universal and apply anywhere, no matter what the demography, the level of development, or the cultural context.”

The other individual instrumental in the success of the proposed law is Senior Policy Adviser **Roger Bird**. Mr. Bird has 25 years of varied banking experience, including 15 years of loan workout and senior management experience and 7 years of government bank and asset liquidation experience. His international work, which began in 1995, has taken him to Nigeria, Bosnia, Mongolia, and Jordan, in addition to Bangladesh.

A small business manager himself for over five years, Mr. Bird has a special interest in Small and Medium Sized Enterprises. His work in Sarajevo, Bosnia, redesigning a \$250 million USAID SME lending project resulted in a \$6 million increase in monthly lending volume, from \$4

million to \$10 million.

Discussing his work on the new law, Mr. Bird had this to say: “Bangladesh is a country with great potential, but in order to realize this potential it must remain competitive. Remaining competitive for a manufacturer might mean replacing old equipment with more modern equipment. Remaining competitive for a country means replacing outmoded, 19th century laws with modern laws that meet the demands of modern commerce.

“During my six months in Bangladesh I’ve had the opportunity to discuss the Secured Transaction Law with policy makers, bank managers, government officials, lawyers—all agree that under the current law businesses have limited access to credit in Bangladesh and that this fact directly affects the growth potential of the country.

“A variety of views about what the core problem is and how it should be resolved have been expressed to me. Some believe that more judges are needed to reduce the backlog of loan default cases. Some call for stronger enforcement of existing laws against defaulting borrowers. Others insist that the country needs to create a legal mechanism for collection agencies, or that banks need to train their lending officers to make better credit judgments.

“While all of these suggestions have some merit, in effect they address only the symptoms, not the cause. In order for lenders to be willing to lend, there must be a legal framework that promotes the benefits of borrowing for both parties to the transaction, and insures that there will be legal, enforceable consequences for those who abuse the system. The Secured Transactions Law does just this. It establishes a legal framework and outlines a clear set of rules for both lenders and borrowers in the event of default. It addresses the root cause of the problem, and ensures that Bangladesh will



Roger Bird Presents his concept paper outlining the draft law on May 30

have the legal environment it needs to achieve its great potential”.

Five Simple Concepts Sum Up New Secured Transactions Law

The draft Moveable Asset Financing Law addresses five legal concepts that, taken together, will encourage financial institutions to lend against moveable assets and provide borrowers with the credit they need to conduct and expand their businesses. These concepts are:

Clear rules for creditors’ rights in moveable property used as collateral under all forms of moveable asset financing. Currently, loans in Bangladesh are granted using only immovable assets as collateral, i.e., buildings or land. Because only the largest businesses own buildings or land, small or medium-sized enterprises (SMEs) cannot get financing. Under the new law, creditors would have the security they need to grant loans based on moveable assets such as equipment, machinery, accounts receivable, or inventory.

A collateral registry system for all moveable assets for all creditors. A modern registry system would serve two purposes. First, it would warn creditors of prior claims on assets. Second, in the absence of any prior claims, it would establish the creditor’s priority on collateral.

Rules to establish priority of claims in the event of competing creditors. In order to feel secure in accepting moveable assets as collateral, creditors must know in advance what their legal rights are and that a mechanism exists to secure these rights against competing claims.

A clear, codified law to allow taking future moveable assets as collateral. Because current laws in Bangladesh favor the debtor’s ability to stall, often for years, by the time a creditor’s case against a defaulting debtor is settled in court any value in moveable assets is gone. The new law would provide for the rapid settlement of creditors’ claims.

Upon default, the creditor will have the right to take possession of the collateral. Modern credit laws allow creditors the right to take possession of collateral upon default and dispose of it in any reasonable manner to get value from it toward repayment of the debt. If the borrower contests this right, a court order settling the issue would be speedily and inexpensively obtainable.

BPKWWA: Decentralizing Business in Bhola

by Md. Zahidul Haque, Communication Officer, JOBS Project

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- Building improvements financing would permit increases to the value of land and buildings and create jobs in sales, installation, and maintenance.
- Crop and livestock financing would increase agricultural efficiency and output, providing cash flow sensitive to growing seasons and other situations unique to farmers.
- Consumer goods financing would allow for the purchase of appliances and furnishings, increase living standards, and create jobs in sales, delivery, and maintenance.
- In the brave new world of e-commerce, **intellectual property financing**, in software programs, for example, would ease the way for new technology companies.

Benefits for Creditors

The new law would create a more positive climate for business credit in several ways.

- It would provide a single, consistent, and codified set of rules for creating security in moveable property.
- It would establish clear rules by which competing claims to moveable property are to be resolved.
- It would create a simple and inexpensive public records system to provide information on all claims to moveable property against all debtors.
- In the event of default, it would improve the creditor's ability to enforce claims against moveable property securing the debt.
- It would minimize the costs of creating and enforcing security in moveable property.

In Bangladesh at present any financing based on moveable property is subject to uncertainty and delay, and the resulting costs are paid, not by defaulters, but by every business and every borrower. They are paid in the form of less credit, higher interest rates, and greater demand for security. Under the new law, good borrowers would no longer have to pay costs imposed by defaulting debtors, borrowers will get real value for their collateral, lenders will get real security for their loans, and entrepreneurs will have the money to make the Bangladeshi business world go 'round and to allow Bangladesh to become a real actor in the global market.

Unemployment is a curse in Bangladesh, one faced by every youth as soon as he completes his high school or college education. Forced into idleness, many find themselves indulging in gossip and drugs.

The JOBS supported Bhola Pouro Kathali Women Welfare Association (BPKWWA) has established a team of 50 youths who are trying to present a different model to society. The positive nature of this difference was very much felt during my recent visit to the Bhola Handmade Footwear Cluster organized by the Bhola PKWWA.

JOBS has established a training program for the cluster in which the youngsters are being taught the skills needed to produce handmade footwear.

This training began in February, comprising a chief trainer and two assistants. The training is conducted 6 days a week from 9 AM to 5 PM for six months. Four months into the training, the participants still come with enthusiasm from distant villages,

apparently very excited and involved in their work.

In my discussion with one of the trainees I learned that he has just taken his HSC exam and is waiting for the results. In the meantime, learning to make handmade footwear has lifted his self-esteem, and he seemed eager and pleased with his newfound talents and employment. In the short time he has been involved in the training, he can already make 5 or 6 pairs of quality shoes a day with precision and speed.

All the trainees I spoke with emphasized the importance of the support for future employment the training is providing, a first in the Bhola district. They anticipate that after completing the training

course they will be able to get more orders from the market, thus creating jobs, enhancing income and improving their life style.

Their confidence appears well founded, since Mr. Abdul Matin, Project and Marketing Director of the organization, told me that this is the only footwear producer in the Bhola district. Until recently all footwear had to be brought in from Dhaka to meet local demand.

In this short span of time, the local industry has met the footwear demands of 4 townships by supplying 15 shops, including those in the district headquarters in Bhola. The organization has already earned over \$1100 (BDT 62000) by marketing its products within Bhola the district. Earnings are expected to increase as skills improve



These new trainees can produce 5 or 6 pairs of quality shoes a day.

with further training and as their products are more widely marketed.

On surveying the local market I found that everyone praised the products. Trainees are anticipating that after the monsoon is over, there will be increased demand for footwear and they are confident that they will be met.

In short, this venture has proved to be very positive, decentralizing the business, meeting the demands of the district from within the district itself, and eliminating the costs of transportation and middlemen involved in bringing shoes from Dhaka. It is also contributing to the national interest socially as educated youths are finding jobs and thus contributing to Bhola as well as the country.

Prototype Web Portal Demonstrated to JOBS Clients

Representatives of about 20 Bangladeshi leather, textile, handicraft, and software exporters were present recently when DataSoft Systems Bangladesh Ltd. and eVastra Corp., USA modeled their prototype business-to-business web portal at the JOBS Project office in Dhaka.

Anir Chowdhury, representing eVastra, pointed out in his presentation that consolidating established and successful entrepreneurs into a joint web site (termed a portal) that would reflect Bangladeshi business as a whole would have several advantages, foremost among them being its impact in the world market. An individual business' web page is akin to one needle in a very large haystack; a web portal showcasing

the best Bangladesh has to offer would dramatically enhance the country's image as a dynamic actor in the global market place.

DataSoft Systems Bangladesh, a joint Indo-Bangladesh US venture dealing in software design, development, testing, and implementation, spent the equivalent of 10 man-hour years during the past year creating the prototype portal. The web site would enable businesses to display goods and services, seek new markets, negotiate and place orders, and share production and delivery information electronically.

The portal is currently being used quite successfully by the Ready Made Garments (RMG) industry. The final model for enterprise in other industries

is targeted for implementation in early fall.

Reputable small businessmen would need only telephone lines, on-line access and a few basic computer skills to avail themselves of all these possibilities. With these few simple tools, entrepreneurs would have complete control to update all information about their companies on the web site.

Among the businesses attending the presentation were representative of Aarong, Nipon, Novel Craft, Palki International, Alltex, Kumudini, Apex weaving and finishing, Textile tradition, Corr the jute works, Dhaka handicrafts, Sonali Aansh, Apex Leather Crafts, RMM International, Surma Leather and Footwear and Crown Leather.

Credits

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