

TERMS OF REFERENCE
FOR
PARTNER COMPANY - LEGAL SERVICES: DUE DILIGENCE

Background

The International Bank for Reconstruction and Development has granted a USD 30 million loan to the Republic of Serbia (hereinafter: RoS) to support the reform of capital markets through the implementation of the Catalyzing long term finance through capital market project (hereinafter: The Project).

The Financial System Department of the Ministry of Finance (hereinafter: MoFFS) is the entity responsible for all technical aspects of the Project implementation. The Project will be built upon the MoFFS's successful experience in implementing previous World Bank Group projects.

Given the specific nature of the Project, the MoFFS will be closely working with the Republic of Serbia Securities Commission (hereinafter: SSC), Central Security Depository and Clearing House (hereinafter: CSD), Belgrade Stock Exchange (hereinafter: BELEX), and other relevant institutions on the implementation of this Project in order to properly align it with regulatory requirements prescribed by the law.

The Project will be governed by a Stakeholder Committee with the operational activities performed by a dedicated Taskforce appointed by the MoFFS.

In order to efficiently implement all planned activities additional professional support will be required and engaged throughout the Project lifecycle.

Objectives of the Project

The Project's overall objectives are the development of the legal, regulatory and economic environment under which the capital markets operate, and to deepen the corporate bond market, including green and other thematic bond issuances. The Project is structured around two main components: Component 1 - Institutional, Legal and Regulatory Reforms and Component 2 - Corporate Bond Issuance.

Strengthening the capital market institutions, particularly the SSC, CSD, and BELEX by aligning them with the relevant international standards is the focus of Component 1.

Component 2 will be focused on expanding the supply side and the corporate bond issuer base (issuing more corporate bonds and/or other non-government securities instruments) starting from the identification of potential issuers and supporting the process that will lead to the final issuance. Specific focus will be on green and other thematic issuances (with an explicit emphasis on climate financing). Additionally, deepening the demand side (attracting more investors) by simplifying the taxation regime for capital markets will also be an important part of the Component 2 activities.

MoFFS, will select a group of companies, such as law firms, audit firms, financial advisory firms, brokerage firms, EMSA-registered credit rating agencies, and other critical service providers, that will provide full support and guidance to companies participating in the Project.

Objective of the Assignment

The Taskforce will identify domestic companies that are potential corporate bond issuers (hereinafter: CBIs), and will engage Partner Companies to provide full support of the issuance process from a legal and regulatory standpoint. In the Primary procurement stage, MoFFS will enter into a Framework agreement (hereinafter: FA) with several Partner Companies, setting out terms and conditions under which specific Services (call-off contracts) will be provided directly or competitively throughout the term of the agreement. Once the particular CBI is determined, a Partner Company shall be selected from the panel using the secondary procurement process, which shall be described in the FA in details. Finally, the Partner Company will enter into a three-party contract with the CBI Candidate and the Ministry of Finance in accordance with Call-Off contract template that will be provided in respective Framework Agreement.

Scope of Work

Support of the first stage of the bond issuance process, from a legal and regulatory standpoint, by conducting Legal Due Diligence of the corporate bond issuance candidates (hereinafter: CBI Candidate) which should include but is not limited to the legal review:

- a) of corporate documents, contracts and agreements, to determine compliance with law and regulations,
- b) of existing and threatened litigation and disputes, with a view to determine the likelihood of success on the merits and their potential impact upon the operating and financial results of the CBI, and with a view to determine if these matters should be listed as risk factors in the registration statement / prospectus for the bond offering
- c) of agreements with key creditors of the CBI Candidate with the aim of identifying whether such agreements contain limitations in relation to incurrence of additional indebtedness by CBI Candidate and/or its Affiliates and assistance with drafting of necessary documentation which relates to the obtainment of required creditors consents
- d) of the mandatory and prohibitive covenants of other bond or bank indebtedness to determine which should or must be contained in the planned bond issuance
- e) of key licenses and permits of CBI Candidate and/or its Affiliates which are of relevance in the context of the proposed bond issuance
- f) of material deemed to constitute trade secrets or other confidential matters which should be exempt from inclusion in the registration statement for the bonds, subject to the SSC's rules for processing such a request

Deliverables

The Partner Law Firm will provide the Taskforce and the CBI with a report summarizing the results of the inquiries regarding all topics listed above, highlighting the:

- a) The scope of the legal work conducted
- b) The conclusions reached
- c) potential legal challenges facing the contemplated bond offering
- d) other matters of interest related to the bond issuance process (from legal and regulatory perspective)

The report required above shall, in summary fashion, indicate the nature of any matters excluded due to the claim of attorney-client privilege arising from legal work performed by previous counsel for the CBI.

Reporting requirements and other provisions

- Upon request the Partner Company shall submit progress reports on the implementation of the assignment to the Taskforce
- The mandatory provision necessary for the progression to the Project Issuance phase is the conclusion of a legally binding document between the Issuer (“CBI Candidate”) and the Service Providers (arrangers, legal advisors, and financial advisor) defining rights and obligations in relation to the bond issuance success fee. The Issuer and the Service Providers, under full criminal and material liability, confirm that the bilateral binding document signed between these two parties will not, in any event, have any negative impact on the implementation of the agreement concluded on the basis of this Terms of Reference, with the Ministry of Finance of the Republic of Serbia

High level profile of the Partner Company

The Partner Law Firm shall be:

- A reputable law firm with significant experience in:
 - a) relevant financial regulations, corporate governance, contract law, company law, and commercial litigations locally or internationally
 - b) helping companies to navigate the legal framework of the Republic of Serbia and support companies resolving legal issues or disputes or enable their transformation through corporate strategy and transactions, M&A and divestments
 - c) Have a sufficient number of professionally experienced lawyers for this type of engagement- minimum 3 employees with University degree in law with bar exam certificate
- A law firm based in the Republic of Serbia
- A law firm with experience in supporting issuances of securities - will be considered as an advantage
- A law firm with experience and knowledge in working within the framework of the Belgrade Stock Exchange, and with alternative investment funds, investment funds, banks and other participants in the capital and financial market - will be considered as an advantage
- A law firm possessing experience in providing work or advisory services to the Government of Serbia, its line ministries, or other public agencies - will be considered as an advantage

Key experts:

- Legal expert 1:
 - a) University degree in law with bar exam certificate. Any postgraduate degree (master degree or doctoral studies) will be considered as an advantage
 - b) Minimum 7 years of relevant work experience
 - c) Advanced knowledge of business landscape in Serbia
 - d) Advanced experience in financial, regulatory and/or corporate law
 - e) Advanced experience in providing legal services in relation to the capital markets and securities issuance - will be considered as an advantage
 - f) Skilled in identifying potential legal risks associated with the bond issuance and proposing risk management solutions
 - g) Advanced knowledge of corporate governance
 - h) Advanced user of MS Office
 - i) Strong presentation and communication skills, and excellent knowledge of written and spoken English
- Legal expert 2:

- a) University degree in law with bar exam certificate. Any postgraduate degree (master degree or doctoral studies) will be considered an advantage
 - b) Minimum 5 years of relevant work experience
 - c) Advanced knowledge of business landscape in Serbia
 - d) Advanced experience in financial, regulatory and/or corporate law
 - e) Advanced experience in providing legal services in relation to the capital markets and securities issuance
 - f) Skilled in identifying potential legal risks associated with the bond issuance and proposing risk management solutions
 - g) Advanced user of MS Office
 - j) Strong presentation and communication skills, and excellent knowledge of written and spoken English
- Project Team:
 - a) Additional project team members will be defined in line with specific needs of each corporate bond issuance candidate

The bidder shall include CVs for all proposed team members, together with a commitment letter executed by each proposed team member certifying their availability to work on this assignment during the period estimated, committing to remain available, and committing to travel and work within Serbia as needed during the project

Length of assignment

The assignment will be for a period ending with March 2027 conclusively and subject to extension based on Project needs and satisfactory performance verified by the Taskforce

Confidentiality

The Partner Company undertakes to maintain confidentiality on all information that is not in the public domain and shall not be involved in another assignment that represents a conflict of interest to the prevailing assignment

Selection of Partner Company

The Taskforce, intends to shortlist up to 10 eligible firms to whom a subsequent Request for Proposals (RFP), shall be sent.

A Partner Company will be selected under Quality - based selection method procedures, in accordance with the World Bank's "Procurement Regulations for IPF Borrowers" (July 2016, revised November 2017, August 2018 and November 2020) ("Procurement Regulations"), which can be found at the following website: www.worldbank.org. The Framework Agreement to be concluded will be "Single-User." A Framework Agreement will be concluded with several Partner Companies ("Multi-Consultant Framework Agreement").

The selection of a Legal Advisor Partner Company to be awarded a Call-off Contract will be done through a Secondary Procurement as defined in the Framework Agreement. However, the conclusion of a Framework Agreement shall not impose any obligation on the Procuring Agency, including participating Clients, to procure the consulting services under a Call-off Contract. The conclusion of Framework Agreement does not guarantee that a Partner Company in the Framework Agreement will be awarded a Call-off Contract.