

## TERMS OF REFERENCE

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### LEGAL AND REGULATORY ADVISORY SERVICES

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#### FOR PRIVATE SECTOR PARTICIPATION IN THE DEVELOPMENT OF NEW GENERATION CAPACITY, RELATED TRANSMISSION AND THE DEVELOPMENT OF A [LIGNITE FIELD]

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##### I. INTRODUCTION

1. The purpose of this document is to invite the submission of proposals to provide legal and regulatory advisory services to the Project Steering Committee of the Lignite Power Technical Assistance Project (the Project Steering Committee). The work to be undertaken by the advisors (the Consultant) will focus on providing legal and regulatory support to facilitate the successful completion of a proposed new mine within the [ ] Lignite Field near [LOCATION], and an associated new large-capacity lignite-fired thermal power plant ([ ] MW or above), which would sell energy and capacity to serve both domestic and regional demand, in a manner consistent with international best practices in regard to the management of the social, economic, and environmental impacts of such developments.
2. The new mine and new power plant are collectively referred to herein as the “New Mine/Plant.”
3. The work of the Consultant will be divided into two related and parallel activities, namely ‘Framework Development’ and ‘Transaction Support.’
4. As part of the Framework Development activity, the Consultant will provide:
  - (a) advice on the appropriateness of the existing legal and regulatory framework, in terms of [COUNTRY]’s ability to attract private investment in the New Mine/Plant, and similar infrastructure transactions, and in terms of [COUNTRY]’s ability to manage the social, economic, and environmental impacts of such transactions; and
  - (b) the drafting of any new primary or secondary legislation, or legislative amendments, necessary to facilitate the New Mine/Plant and similar infrastructure transactions, and manage the social, economic, and environmental impacts of such transactions.

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5. As part of the Transaction Support activity, the Consultant will provide:
- (a) the drafting of regulatory instruments, such as mining and power plant generation licenses, necessary to facilitate the New Mine/Plant and manage the social, economic, and environmental impacts of the New Mine/Plant;
  - (b) the drafting of agreements to be entered into by [ ] with private investors, lenders, or other parties, necessary to effect the New Mine/Plant and manage the social, economic, and environmental impacts of the New Mine/Plant; and
  - (c) assistance, given in consultation with the Transaction Advisor, to the Project Steering Committee (“PSC”) during the negotiations with the private investors for the New Mine/Plant.

## **II. BACKGROUND**

6. With the assistance of the World Bank and other international donors, [ ] is working on the completion of the legal and regulatory frameworks in all sectors of the economy.
7. In the area of energy and mining, the MEM has recently published the *Energy Strategy and Policy of [COUNTRY]* (White Paper). The White Paper sets expectations for the energy sector and identifies important development directions.
8. There is also a report prepared for [ ] authored by [ ] (the Report), which was produced with the financial assistance of the World Bank’s Energy Sector Technical Assistance Project [ ].
9. The Report provides an overview of the legal and regulatory framework in [COUNTRY] as it existed in 2004. It contains a number of recommendations for legislative initiatives and amendments designed to attract private sector participation in the electricity industry of [COUNTRY] and, specifically, in a hypothetical lignite-fueled IPP. Some of these recommendations have since been adopted by [ ].
10. Accordingly, in undertaking the Framework Development aspect of the present assignment, the Consultant should begin by examining the Report and identifying those recommendations that have already been adopted. Additional recommendations, or modifications to the Report recommendations, should then be proposed in light of the present circumstances. The Report will also be of use in terms of the wording of new and amended draft primary and secondary legislation. Consistent with the instructions given for that assignment, the Report does not contain the actual text of proposed new legislation or legislative amendments, but it does offer “drafting instructions.”

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11. [COUNTRY] has one of the most favorable and large lignite deposits in [REGION], and [ ] has a strong desire to exploit this major natural resource for economic development. [COUNTRY] does not, however, have the financial resources necessary to develop the proposed new lignite mine and power plant at present, nor in the foreseeable future, and [ ] therefore wishes to attract private capital for this purpose. The initial macro-economic analysis suggests that the power provided by such a facility could be sold both to the [COUNTRY] domestic market and to export customers. The domestic sales would likely be pursuant to a Power Purchase Agreement with [UTILITY], but there is also the possibility of other domestic sales, as contemplated under the electricity sector legislation currently in force in [COUNTRY]. The legislation also contemplates the possibility of sales into the export market, where there is forecast to be a significant long-term demand for additional capacity.

### **III. OBJECTIVES OF THE ASSIGNMENT**

12. A key objective of the assignment is to provide the Project Steering Committee with the legal and regulatory advisory services necessary to complete the proposed New Mine/Plant. As an additional objective, the assignment is also designed to facilitate similar infrastructure transactions in the future, primarily by strengthening the [COUNTRY] legal and regulatory framework and, secondarily, by improving the capacity of both the relevant [COUNTRY] legal authorities and the local members of the Consultant's team to handle such future transactions. As indicated above, the work will be divided into two related activities, with the following respective objectives.

#### **Framework Development**

13. Consistent with Paragraph 4, above, the objectives of the Framework Development aspect of the assignment are to:

- (a) build upon the work undertaken by the authors of the Report, so as to strengthen the legal and institutional framework in [COUNTRY], for the purpose of attracting private investment in the New Mine/Plant and similar infrastructure transactions, and for the purpose of managing the social, economic, and environmental impacts of such transactions; and
- (b) provide (through the Project Steering Committee) [ ] complete drafts of any new primary or secondary legislation, or legislative amendments, necessary to facilitate the New Mine/Plant and similar infrastructure transactions, and manage the social, economic, and environmental impacts of such transactions.

#### **Transaction Support**

14. Consistent with Paragraph 5, above, the objectives of the Transaction Support aspect of the New Mine/Plant are to:

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- (a) provide (through the Project Steering Committee) the Energy Regulatory Office (ERO) and the Independent Commission for Mines and Minerals (ICMM), or their successors, complete drafts of any regulatory instruments, such as mining and power plant generation licenses, necessary to facilitate the New Mine/Plant and manage the social, economic, and environmental impacts of the New Mine/Plant;
- (b) provide the Project Steering Committee with complete drafts of all contractual agreements to be entered into by [ ], with private investors, lenders, or other parties, necessary to facilitate the proposed New Mine/Plant transaction and manage the social, economic, and environmental impacts of that specific transaction;
- (c) provide the Project Steering Committee, and the Transaction Advisor to the Project Steering Committee, all required legal assistance prior to and during the course of negotiations with private investors as may be required by the PSC through Financial Close.

#### **IV. DETAILED DESCRIPTION OF THE SCOPE OF WORK**

15. The Consultant will be expected to undertake certain key tasks, described below, in order to meet the objectives outlined above in Part III of these Terms of Reference. The Consultant will be expected to draw on all relevant primary and secondary documentation (reports, policy documents, laws, regulations, licenses, etc.), and to conduct discussions with relevant stakeholders. The Consultant will be expected to propose, in their Technical Proposal, a methodology for providing the advisory services and, specifically, for undertaking the tasks described below.

##### **Framework Development**

16. The key tasks in regard to Framework Development will include, but not be limited to, the following:

- (a) providing a diagnostic survey (building upon the work undertaken by the authors of the Report) of the legal issues likely to be raised by potential private investors in the proposed New Mine/Plant, and similar infrastructure transactions, including, amongst other matters:
  - constitutional or other general legal restrictions on this type of investment;
  - foreign investment regulation;
  - financial sector regulation;
  - anti-trust regulation;
  - general taxation, accounting, and valuation issues;
  - labor regulation and related issues;
  - land law and environmental law; and

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- dispute resolution arrangements;
- (b) providing a diagnostic survey of the legal issues associated with the management of the social, economic, and environmental impacts of such transactions in a manner consistent with international best practices, including, amongst other matters:
- issues in regard to the resettlement of persons whose residences, or sources of livelihood, are directly affected by the such transactions, including legal issues associated with land acquisition, expropriation, and resettlement;
  - issues in regard to the management and disposition of the revenues obtained by [ ] arising from the such transactions; and
  - issues in regard to the environmental consequences of such transactions; and
- (c) preparing drafts, consistent with the findings set out in the above-noted diagnostic surveys, of any new primary or secondary legislation, or legislative amendments, necessary to facilitate the New Mine/Plant and similar infrastructure transactions, and manage the social, economic, and environmental impacts of such transactions (and working with the legislative drafting authorities of [ ] to finalize those drafts), which drafts shall include, without limitation:
- drafts of new and amended environmental legislation to effectively regulate activities and investments in the lignite mining and power sector, on the basis that, as a priority element of this assignment, the Consultant shall complete, as soon as possible, the preparation of draft secondary legislation for the regulation of the customized Strategic Environmental and Social Assessment (SESA); and
  - drafts of new legislation on land acquisition, expropriation, and resettlement, consistent with international best practice, and a draft of a Resettlement Policy Framework, consistent with the World Bank’s Involuntary Resettlement Policy (OP/BP 4.12).<sup>1</sup>

## Transaction Support

17. The key tasks in regard to Transaction Support will include, but not be limited to, the following:

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<sup>1</sup> In undertaking the land acquisition legislative drafting assignments, and the drafting of the Resettlement Policy Framework, the Consultant shall work closely with the consultant working on Component 1(B) in regard to the resettlement aspects of [ ].

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- (a) preparing drafts, consistent with the findings set out in the above-noted diagnostic surveys, of any regulatory instruments, such as mining and power plant generation licenses, necessary to facilitate the New Mine/Plant and manage the social, economic, and environmental impacts of New Mine/Plant (and working with the legal departments of the [ ] to finalize those drafts), which drafts shall include, without limitation:
- a draft of the mining license, to be issued by the [ ];
  - a draft of the permit to construct the power plant, to be issued by the [ ];
  - and
  - drafts of any required power plant operational or market licenses, to be issued by the [ ];
- (b) preparing drafts, in consultation with the Transaction Advisor to the Project Steering Committee, of all contractual agreements and related materials necessary to facilitate the New Mine/Plant and manage the social, economic, and environmental impacts of the New Mine/Plant, including, without limitation:
- as an initial task, prior to the preparation of draft agreements, the preparation of a detailed risk matrix, itemizing all relevant risks of the New Mine/Plant, and identifying the proposed allocation of risks as between the public sector and the private investors;
  - to co-develop with the Transaction Advisor the legal and the business terms of project contracts, including but not limited to power purchase agreements, a lignite supply agreement, a limestone supply agreement, a common facilities agreement, an ash disposal agreement, government guarantees and undertakings agreements, consents and acknowledgements, land lease agreement, interconnection agreements and defining necessary permits and assist in the development of conforming licenses and such drafts of other agreements to be entered into by [ ] with private investors, lenders, or other parties; and
  - drafts of any agreements or related materials pertaining to [ ] support for the New Mine/Plant or pertaining to revenue management issues; and
- (c) assisting the Project Steering Committee, and the Transaction Advisor to the Project Steering Committee, during the course of negotiations with the private investors, including, without limitation:
- assistance in providing legal input into the pre-bid documentation, including requests for statements of qualification;
  - assistance in providing legal input into the process for identifying ‘short-listed’ bidders;
  - assistance in providing legal input into the bid documentation provided to ‘short-listed’ bidders;

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- coordination and management of all physical or electronic data rooms made available to ‘short-listed’ bidders;
- assistance in providing legal input into the process for identifying a successful bidder;
- active participation in all negotiation sessions with the successful bidder; and
- preparation of legal opinions necessary for final closing.

## V. DELIVERABLES

### Inception Report

18. The Consultant shall provide the following deliverables in regard to the inception of this assignment:

- (a) within one month following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee with ten copies of an **INCEPTION REPORT**, which shall
  - outline in detail the activities that the Consultant will undertake to provide the required advisory services;
  - provide a detailed timetable for the delivery of the required advisory services, in MS Project format; and
  - identify and explain any proposed modifications to the Consultant’s initial methodology as set out in the Consultant’s Technical Proposal;
- (b) within two weeks following the delivery of the Inception Report, the Consultant will give a presentation to the Project Steering Committee in respect of the Inception Report and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of a **REVISED INCEPTION REPORT**, reflecting any amendments to the initial Inception Report agreed to by the Consultant and [ ].

### Framework Development

19. The Consultant shall provide the following deliverables in regard to the Framework Development aspect of this assignment:

- (a) within two months following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee with ten copies of an **INTERIM DIAGNOSTIC REPORT**, which shall
  - outline the progress made to date in completing the diagnostic surveys described in Subparagraph 16(a) and (b), above; and

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- outline the steps to be taken by the Consultant to complete the diagnostic surveys;
- (b) within two weeks following the delivery of the Interim Diagnostic Report, the Consultant will give a presentation to the Project Steering Committee in respect of the Interim Diagnostic Report and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of a **REVISED INTERIM DIAGNOSTIC REPORT**, reflecting any amendments to the initial Interim Diagnostic Report agreed to by the Consultant and the Project Steering Committee;
- (c) within three months following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee with ten copies of the **DRAFT SECONDARY LEGISLATION** which shall provide the text, with explanatory notes, of the proposed secondary legislation described in Subparagraph 16(c), above;
- (d) within two weeks following the delivery of the Draft SESA Secondary Legislation, the Consultant will give a presentation to the Project Steering Committee in respect of the Draft SESA Secondary Legislation and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of the **REVISED DRAFT SECONDARY LEGISLATION**, reflecting any amendments to the initial Draft Secondary Legislation agreed to by the Consultant and the Project Steering Committee;
- (e) within three months following the inception of the contract for advisory services, the Consultant will also provide the Project Steering Committee with ten copies of the **DRAFT LAND ACQUISITION LEGISLATION** which shall provide the text, with explanatory notes, of the proposed legislation relating to land acquisition, expropriation, and resettlement described in Subparagraph 16(c), above, including any recommendations on appropriate institutional arrangements, and the Consultant will, in addition, provide the Project Steering Committee with ten copies of the **DRAFT RESETTLEMENT POLICY FRAMEWORK** which shall set out, with explanatory notes, the recommended measures and procedures necessary for compliance with World Bank OP/BP 4.12;
- (f) within two weeks following the delivery of the Draft Land Acquisition Legislation and the Draft Resettlement Policy Framework, the Consultant will give a presentation to the Project Steering Committee in respect of the Draft Land Acquisition Legislation and the Draft Resettlement Policy Framework and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of the **REVISED DRAFT LAND ACQUISITION LEGISLATION** and the **REVISED DRAFT RESETTLEMENT POLICY FRAMEWORK**, reflecting any amendments to



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the initial Draft Land Acquisition Legislation and Draft Resettlement Policy Framework agreed to by the Consultant and the Project Steering Committee;

- (g) within six months following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee with ten copies of a **FINAL DIAGNOSTIC REPORT**, which shall
- present the final results of the diagnostic surveys described in Subparagraphs 16(a) and (b), above; and
  - outline the steps to be taken by the Consultant to prepare the draft legislative material described in Subparagraph 16(c), above;
- (h) within two weeks following the delivery of the Final Diagnostic Report, the Consultant will give a presentation to the Project Steering Committee in respect of the Final Diagnostic Report and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of a **REVISED FINAL DIAGNOSTIC REPORT**, reflecting any amendments to the initial Final Diagnostic Report agreed to by the Consultant and the Project Steering Committee;
- (i) within six months following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee with ten copies of the **REPORT ON PROPOSED LEGISLATION**, which shall provide the text, with explanatory notes, of all proposed new and amended primary and secondary legislation (other than the secondary legislation and the land acquisition legislation); and
- (j) within two weeks following the delivery of the Report on Proposed Legislation, the Consultant will give a presentation to the Project Steering Committee in respect of the Report on Proposed Legislation and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of a **REVISED REPORT ON PROPOSED LEGISLATION**, reflecting any amendments to the initial Report on Proposed Legislation agreed to by the Consultant and the Project Steering Committee.

### **Transaction Support**

20. The Consultant shall provide the following deliverables in regard to the Transaction Support aspect of this assignment:

- (a) within three months following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee with ten copies of the **REPORT ON PROPOSED REGULATORY INSTRUMENTS**, which shall provide the text, with explanatory notes, of all proposed regulatory instruments described in Subparagraph 17(a), above;

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- (b) within two weeks following the delivery of the Report on Proposed Regulatory Instruments, the Consultant will give a presentation to the Project Steering Committee in respect of the Report on Proposed Regulatory Instruments and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of a **REVISED REPORT ON PROPOSED REGULATORY INSTRUMENTS**, reflecting any amendments to the initial Report on Proposed Regulatory Instruments agreed to by the Consultant and the Project Steering Committee;
- (c) within three months following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee and the Transaction Advisor with ten copies of the **RISK MATRIX**, with explanatory notes, as described in Subparagraph 17(b), above;
- (d) within two weeks following the delivery of the Risk Matrix, the Consultant will give a presentation to the Project Steering Committee and the Transaction Advisor in respect of the Risk Matrix and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of a **REVISED RISK MATRIX**, reflecting any amendments to the initial Risk Matrix agreed to by the Consultant, the Transaction Advisor, and the Project Steering Committee;
- (e) within five months following the inception of the contract for advisory services, the Consultant will provide the Project Steering Committee and the Transaction Advisor with ten copies of the **REPORT ON PROPOSED AGREEMENTS**, which shall provide the text, with explanatory notes, of all contractual agreements to be entered into by [ ], with private investors, lenders, or other parties, as described in Subparagraph 17(b), above;
- (f) within two weeks following the delivery of the Report on Proposed Agreements, the Consultant will give a presentation to the Project Steering Committee and the Transaction Advisor in respect of the Report on Proposed Agreements and, within two weeks following this presentation, the Consultant will provide the Project Steering Committee with ten copies of a **REVISED REPORT ON PROPOSED AGREEMENTS**, reflecting any amendments to the initial Report on Proposed Agreements agreed to by the Consultant, the Transaction Advisor, and the Project Steering Committee; and
- (g) over the course of the contract for advisory services, the Consultant will provide such other deliverables, including **INPUTS INTO THE PRE-BID AND BID DOCUMENTATION** made available to prospective investors, and any **REQUIRED LEGAL OPINIONS**, as may be necessary in the context of providing assistance during the course of negotiations with prospective investors, as described in Subparagraph 17(c), above.

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21. In addition to providing copies of the above-noted deliverables to the Project Steering Committee, the Consultant shall also e-mail a copy of each written deliverable, including copies of any presentation materials, to the World Bank Task Team Leader associated with this assignment, [ ], and to the World Bank Legal Department, at [projectlaw@worldbank.org](mailto:projectlaw@worldbank.org).

**VI. SKILLS REQUIRED ON THE CONSULTANT’S TEAM**

22. The Consultant’s team should include legal and regulatory specialists with:

- (a) recent project experience in the development of EC energy sector legal and regulatory frameworks, including recent project experience in the development of environmental legislation and in the development of legislation, frameworks, and guidelines for managing land acquisition, expropriation, and resettlement;
- (b) recent project experience in structuring, negotiating and closing large, complex public private partnerships of significant mining operations;
- (c) recent project experience in structuring, negotiating and closing complex public private partnerships of new, large capacity, thermal power plants; and
- (d) knowledge of (and preferably direct experience with) the principles applicable to the drafting of legal and regulatory instruments in [COUNTRY].

**VII. CAPACITY BUILDING**

23. Consistent with Paragraphs 12, 13, and 14, above, the Consultant should outline, in their Technical Proposal, a plan for improving, through the transfer of skills, the capacity of both the relevant [COUNTRY] legal authorities, and the local members of the Consultant’s team, to handle similar infrastructure transactions in the future.

**VIII. ANTICIPATED DURATION**

24. The assignment is to be completed within [ ] months following the inception of the contract for advisory services.

Attachments: TORs for Technical Analysis  
TORs for Transaction Adviser  
TORs for Safeguards Advisers

[SCHEDULE]

THIS DOCUMENT HAS BEEN PREPARED FOR THE PURPOSES OF THE  
**PPP IN INFRASTRUCTURE RESOURCE CENTER FOR CONTRACTS, LAWS AND REGULATIONS.**  
IT IS FOR GENERAL GUIDANCE PURPOSES ONLY AND SHOULD NOT BE USED AS A SUBSTITUTE  
FOR SPECIFIC LEGAL ADVICE FOR A PROJECT.

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## **IX. CONFLICTS OF INTEREST**

25. The Consultant is required to comment on any potential conflicts of interest arising out of other assignments or a conflicting involvement in other assignments.

## **X. CONFIDENTIALITY**

The Consultant agrees to keep confidential all information that they receive, directly or indirectly, from the Project Steering Committee, the Transaction Advisor, or any other stakeholder, as well as all copies or analyses that they make, or have been made by third parties, on the basis of such information (collectively, the Material). The Consultant shall use the Material exclusively for the purpose of preparing deliverables relevant to this assignment. The confidentiality obligations shall not apply to information in the public domain. The Consultant shall only permit access to the Material to persons within their organizations on a need-to-know basis. The Consultant shall explicitly inform such persons of the confidential nature of the Material and, prior to providing them the Material, subject them to the confidential obligations contained in this Terms of Reference.