



REPUBLIC OF GHANA / MINISTRY OF FINANCE

GHANA DEVELOPMENT FINANCE PROJECT(GDFP)

TERMS OF REFERENCE

CONSULTANCY SERVICES FOR THE DEVELOPMENT OF STANDARDISED DOCUMENTATION FOR ADDITIONAL TIER 1 CAPITAL INSTRUMENTS UNDER THE GHANA FINANCIAL STABILITY PROJECT

REFERENCE NO: GH-GDFP-455066-CS-QCBS

A. BACKGROUND

The Government of Ghana (GoG) on the 5th of December 2022, launched a Domestic Debt Exchange Program (DDEP), as part of measures aimed at restoring debt sustainability and macro-economic stability.

The financial sector's participation in the exchange included all universal banks and some Specialized Deposit-taking Institutions (SDIs), some insurance companies (life, non-life, and reinsurance companies) and firms licensed by the Securities and Exchange Commission (SEC), including fund management companies, collective investment schemes and broker dealers. This resulted in the financial sector surrendering 73.1% of the total restructured bonds of about 85% under phase 1 of the DDEP. Banks accounted for 58.27% of the total restructured bonds. Following the closure of the first phase of the DDEP, an administrative reopening was carried out on 13th September 2023 to allow eligible bondholders who were unable to participate in phase 1, resulting in a participation rate of 90.7%.

The second phase of the DDEP covered holdings of pension funds, cocoa bills, dollar denominated domestic bonds.

The debt operation has adversely impacted the financial institutions as reflected in the 2022 audited financial statements by banks and other financial institutions. Despite the banking sector's strong profitability, some banks are yet to meet their minimum recapitalization and require support to swiftly do so.

To help mitigate the impact of the DDEP on the financial sector, the Government has established the Ghana Financial Stability Fund (GFSF or the Fund) as additional safety net to provide solvency and liquidity support in line with the Ghana Financial Sector Strengthening Strategy.

The solvency window of the GFSF consists of two distinct but complementary sub-funds: Fund A1 and Fund A2, reflecting respectively, financing support from the World Bank and from GoG directly to provide recapitalization support to financial institutions whose solvency was adversely impacted by the DDEP and to help restore them to full compliance with minimum regulatory capital requirements.

In this context, GoG has requested the World Bank contribution to the GFSF. It is expected to materialize through the pipeline Ghana Financial Stability Project (GFSP or the Project). The Project's development objective is to support the recapitalization of viable banks and SDIs to contribute to financial stability. The Project would comprise of three (3) main components:

1. Component 1: Capitalization of Fund A1 of the GFSF;
2. Component 2: Technical Assistance; and
3. Component 3: Project Management, Monitoring & Evaluation

Component 1 of the Project will provide resources to the Government to capitalize Fund A1 of the GFSF, which will support eligible institutions' capital adequacy by purchasing capital-eligible debt securities recognized by Bank of Ghana (BoG) as Additional Tier 1 (AT1) capital. BoG Capital Requirements Directive (CRD) limits the recognition of AT1 for bank capital adequacy purposes at 1.5 percent of a bank's risk-weighted assets. The CAR after Fund A1 support will not exceed the minimum required by BoG in normal times (13 percent for banks and 10 percent for SDIs). Banks and SDIs will issue AT1 instruments using the Standardized Documentation to be developed under this assignment.

Key terms of the proposed AT1 instrument for banks are as follows:

- i. Banks' minimum CET1 at issuance: 8.125 percent.
- ii. Circumstances where coupon is cancelled (with non-cumulative provision)
- iii. Trigger point or level of CET1 at which the AT1 instrument is used to absorb losses: 5.125 percent.
- iv. Loss absorption mechanism when the trigger point is reached: (partial or total) cancellation of the AT1 instrument.
- v. Conditions under which a call can be exercised and dividend/coupon payment discretion
- vi. Exit through cancellation, sale of the outstanding AT1 instrument by MoF to other investors, or buyback by the issuer bank after 5 years with approval from BoG.

- vii. Interest/coupon rate to be paid to the MoF indexed to the rate of the longest-dated exchanged government bond (consistent with banks' participation in the DDEP) plus a spread.

/Eligibility Criteria

The main eligibility criteria for banks and SDIs include:

- i. Undergo an independent due diligence by a reputable firm to ensure that all markdowns and losses have been adequately booked.
- ii. Meet but not exceed the minimum CAR of 13 percent for banks and 10 percent for SDIs after receiving support from Fund A1.
- iii. Have minimum CET1 of 8.125 percent at the time of seeking support from Fund A1. This provides an objective indication that the bank is viable and also protects the MoF against losses.
- iv. Participated fully in the DDEP.
- v. Comply with BoG capital requirements before phase 1 of the DDEP, as Fund A1 does not aim to address legacy issues.
- vi. Have minimum contribution of new capital from existing and new shareholders of at least the amount to be injected by Fund A1 (1:1 ratio).
- vii. Should not have unresolved material breaches of legal and regulatory requirements (or be likely to encounter such situation), including, but not limited to, key prudential metrics, governance, and requirements related to anti-money laundering and combating the financing of terrorism. Additionally, should not be subject or likely to be subject to other actions, jeopardizing the viability of the institution including resolution.
- viii. Comply with the project's environmental and social (E&S) requirements.

B. OBJECTIVE OF THE ASSIGNMENT

To recruit a legal firm to develop a Standardized Documentation (Prospectus) of the AT1 to be used by all eligible banks and SDIs to issue AT1 securities/bonds.

C. SCOPE OF WORK

Working with the Financial Sector Division (FSD) of the Ministry of Finance (MoF) and the GFSF's Investment Committee, the consultant will undertake the following tasks:

- Take stock of the public documentation of AT1 instruments issued in other jurisdictions as needed to inform this assignment, particularly those instruments issued in jurisdictions with legal and regulatory context similar to Ghana's (where this can be done without materially delaying this process);

- Review all legal and regulatory requirements (including those of BoG, the SEC, and tax authorities) applicable to the issuance, negotiation, recognition, events, and tax treatments of AT1 instruments in Ghana.
- Prepare standardized Documentation fully aligned with applicable legal and regulatory requirements;
- As part of the Documentation, prepare a detailed term sheet for the standardized AT1 instruments consistent with the key terms and eligibility criteria in the Project’s Appraisal Document. In particular, the term sheet should cover the following: issue price, interest rate, interest payment dates, restrictions on interest payments, solvency conditions, solvency trigger, ranking (including in liquidation), optional redemption (and purchase by issuer), regulatory and tax event (where applicable);
- Consult closely with banks and SDIs likely to issue AT1 securities, BoG, MoF, SEC, and World Bank to ensure that the Documentation is aligned with applicable laws and regulations and meets the objectives outlined in the Project’s Appraisal Document;
- Hold a workshop with BoG, SEC, MoF, and World Bank to validate the Documentation;
- Develop a detailed workflow for the issuance of AT1 securities by eligible banks and SDIs, clearly depicting all steps, required documentation and approvals (including by the SEC if any), expected duration (in days) for the completion of each step, etc.

D. DELIVERABLES AND REPORTING

The consultant will report to the Project Director of the FSD and work with the FSD and GFSF’s Investment Committee.

This assignment will be a lump sum contract and will be for a period of three months.

Delivery timeline and payment

S/N	DELIVERABLES	TIMING	PAYMENT (%)
1.	Inception Report and workplan. The report should include a detailed outline of the AT1 documentation, including the Terms Sheet.	Three (3) weeks after contract signing	20% after submission of inception report and workplan

2	Draft Documentation (including Term Sheet)	Eight weeks (8) weeks after contract signing.	40% after submission of draft Documentation
3.	Consultation workshop with select stakeholders	Ten (10) weeks after contract signing (or two weeks after submission of the draft Documentation)	
4	Submission of final Documentation incorporating stakeholders' comments	Twelve (12) weeks after contract signing (or two weeks after Consultation Workshop)	40% after submission of final report

E. SELECTION CRITERIA

The assignment will be delivered by a firm with the following qualifications:

- At least 10 years of experience in supporting clients in banking and capital markets.
- Track record in advising banks and other credit providers issue bonds in the Ghanaian market, including the preparation of prospectus and other relevant documentation.
- Solid understanding of Basel III Capital Requirements or BoG's Capital Requirements Directive as well as all of Ghana's tax, corporate, environmental, social, and other relevant laws, as evidence by related assignments.

The firm will be required to provide the following key experts:

1. Legal Expert and Team Lead

- Degree in law
- At least 10 years of professional experience in the provision of legal advice to financial sector clients, with focus on capital raising.
- Track record in preparing the documentation of public or private issuance of securities by financial institutions in Ghana or abroad (ideally securities that qualified for capital adequacy purposes, including Tier 2 subordinated debt).
- Demonstrated understanding of legal and regulatory requirements applicable to the issuance, negotiation, recognition, events, and tax treatments of AT1 instruments in Ghana.
- Understanding of Bank of Ghana's Capital Requirement Directive and all of Ghana's tax, corporate, environmental, social, and other relevant laws, as evidence by related assignments.
- Fluency in English (both spoken and written).

2. Banking/Capital Market Expert

- At least 10 years of experience in Banking or Capital Markets or a combination of both.
- Excellent understanding of the Basel III capital framework and/or Bank of Ghana's Capital Requirement Directive.
- Considerable experience in the operations of banks capital regulations, and procedures and requirements for issuing bonds in Ghana.
- Proven knowledge of corporate finance and ability to structure debt or/ and regulatory capital transactions.
- Robust knowledge of debt or/ and regulatory capital transaction processes, documentation, and stakeholder management.
- Ability to engage senior management of the selected banks and drive bank funding or capital processes.
- Fluency in English (both spoken and written).

F. RESOURCES TO BE PROVIDED

The Secretariat will actively facilitate the consultant's access to relevant Ghanaian authorities and documentation necessary to execute the Assignment.