Terms of Reference

Central Bank Reform Technical Cooperation Framework

Development of Legal and Regulatory Framework for Derivatives in Egypt

1. Background

Local Currency and Capital Markets Development ("LC2") is one of the European Bank for Reconstruction and Development (the "EBRD" or the "Bank") priorities across its Countries of Operations. The objective of LC2 is to support the EBRD’s countries of operations in building deeper and more resilient local financial markets.

A key element of money and capital market development is the creation of effective and well-regulated derivatives and repo markets. While they are not yet specifically regulated under Egyptian law, they constitute an efficient tool for managing liquidity and mitigating market risks. In particular, while derivatives are an effective way of managing foreign exchange and interest rate risks in the context of Egypt’s adoption of a floating exchange rate regime in November 2016, the soon-to-be-established eligibility of sovereign bonds for repo with the CBE will create new opportunities for securities refinancing and liquidity management in EGP. Such tools are an important aspect of sound risk management practices for both the financial sector and companies with international activities. Their use can support local market activity and liquidity, reinforcing the attractiveness of the Egyptian market for both domestic and international investors.

The Joint IFI Needs Assessment on Local Capital Market Development in the SEMED Region\(^1\) indicated that developing the appropriate legal framework for derivatives and repos "should be prioritised" across the region. The Bank’s Egypt Country Strategy has identified "diversifying the range of financial products", such as derivatives and repos, as a key element of promoting the transition of the Egyptian economy.

Accordingly, the Bank now intends to engage a consulting company or law firm (the "Consultant") to support the Bank in assisting the Central Bank of Egypt and the Egyptian Ministry of Finance (together, the "Egyptian Authorities") in the preparation of a new legal and regulatory framework for derivatives and repos in Egypt.

2. Objectives

Principal objective

The principal objective of the consultancy is to assist the Egyptian Authorities in the development of a legal and regulatory framework for derivatives and repos, thereby ensuring the enforceability of derivative and repo transactions (including such concepts like close-out netting and financial collateral) and contributing to the development of derivatives and repos markets in Egypt (the "Assignment").

Specific objectives

The principal objective will be achieved by:

2.1 Analysing the existing laws and regulations applicable to derivatives and repos, including financial collateral, in Egypt and benchmarking these against relevant international standards, while also ensuring that no provision could contradict or prevent new derivatives provisions from operating as intended (e.g. language laws that may prevent derivatives and repos contracts with foreign counterparties from being written in English).

\(^1\) Published in September 2015 by the Arab Monetary Fund and EBRD under the Deauville Partnership.
2.2 Proposing improvements to the existing legal framework for derivatives and repos that are consistent with the Assignment, including advising on legal and regulatory approaches that would ensure that international standards are incorporated into the law.

2.3 Drafting proposed legislation to implement a new legal framework for derivatives and repo instruments in consultation with the Egyptian Authorities. Such draft law should contain a set of amendments to existing legislation, including bankruptcy law and securities market law, and should also contain standalone legal provisions on netting, close-out netting and enforceability of master agreements for OTC derivatives and repo transactions (ISDA and GMRA as international reference standards).

2.4 Presenting the final draft of the legislation to the EBRD and the Egyptian Authorities and supporting its passage through the Egyptian House of Representatives.

2.5 Providing ongoing support to the Egyptian Authorities in the implementation of the new derivatives and repos legal framework.

3. Scope of services

In order to accomplish the objectives set forth in Section 2, the Consultant shall, subject to the direction of the EBRD Operation Leader (“OL”), provide the following services:

3.1. Analysis and benchmarking of the Egyptian derivatives and repos framework

- Analyse the current legislation and regulation applicable directly or indirectly to derivatives and repos in Egypt including, but not limited to, tax and accounting treatment of related contracts and any legislation or regulation that may impede the enforceability of such instruments, and identify any relevant deficiencies or missing concepts;
- Benchmark the domestic legal framework in respect of derivatives against international standards (e.g. ISDA Model Netting Act, UNIDROIT Principles for Close-out Netting, Financial Collateral Directive, MiFID, etc.); and
- Prepare an inception report describing the findings of the analysis and the benchmarking exercise (the “Inception Report”) for submission to the EBRD and the Egyptian Authorities.

3.2. Prepare a legal concept paper

- Prepare a concept paper that, on the basis of the Inception Report, describes possible areas for improvement in the existing derivatives and repos legislation and regulation, the reasons for and benefits of these suggested improvements, recommendations for how to achieve the improvements including any necessary examples, and a suggested roadmap for reform (the “Concept Paper”) that will serve as the basis for the development of a new Egyptian legal and regulatory framework for derivatives and repos (the “Derivatives and Repo Legal Framework”); and
- Present the Concept Paper to the EBRD and the Egyptian Authorities, answering all questions that may be raised, providing additional comparative information where necessary, and revising the Concept Paper on the basis of comments received from the Egyptian Authorities or the EBRD.

3.3. Draft legislation to implement the Derivatives and Repo Legal Framework

- Prepare a draft of the legislation necessary to implement the Derivatives and Repo Legal Framework in accordance with the ideas developed in the Concept Paper and the instructions of the Egyptian Authorities (the “Draft Legislation”), in preliminary form. The Draft Legislation will include a set of recommended amendments to existing legislation (e.g. bankruptcy law and securities market law) in addition to standalone legal provisions on payment netting and close-out netting, the enforceability of financial collateral arrangements and master...
agreements for OTC derivatives and repo transactions, and such other concepts as may be relevant;

- Draft the relevant secondary legislation necessary to implement or give effect to the Draft Legislation and the Derivatives and Repo Legal Framework, in cooperation with the Egyptian Authorities and the relevant regulatory body; and
- Conduct travel to meetings in Egypt, when requested by the OL, to explain the Derivatives and Repo Legal Framework and its implementation through the Draft Legislation, and revise the Draft Legislation as necessary following such meetings and on the basis of comments from the Egyptian Authorities or the EBRD.

3.4. Present the finalised draft legislation and support passage by parliament

- Prepare and present the Draft Legislation, in final form, incorporating all earlier comments, to the EBRD and the Egyptian Authorities and provide any support necessary or incidental to the passage of the Draft Legislation by the Egyptian House of Representatives; and
- Prepare, if instructed by the OL, a concise explanatory commentary document on the Derivatives and Repo Legal Framework and the Draft Legislation describing its rationale, operation and the required means of implementation, and present this explanatory commentary before relevant persons and committees involved in the parliamentary process.

3.5. Provide ongoing support for implementation of the Derivatives and Repo Legal Framework.

- Support the Egyptian Authorities in the implementation of the Derivatives Legal Framework and the Draft Legislation following its passage by the Egyptian House of Representatives, including by drafting, if required and as instructed by the OL, the necessary regulations to implement the approved Draft Legislation and the Derivatives and Repo Legal Framework;
- Prepare a detailed final report (the “Final Report”) for the EBRD and the Egyptian Authorities encompassing previous deliverables (the Inception Report, Concept Paper, and Draft Legislation in final form), a detailed roadmap describing all other implementing measures which will be necessary to fully implement the Derivatives and Repo Legal Framework, an assessment of the effectiveness of the implemented legislation and regulation, and any recommendations to improve the effectiveness of future such assignments.

The consultant will also remain available to perform such other tasks related to the Assignment – including, but not limited to, the participation in capacity building events in Egypt in relation to the Derivatives and Repo Legal Framework – as may reasonably be requested by the OL.

4. Implementation arrangements

The Consultant shall carry out the tasks described above in coordination with the OL, who will manage all aspects of the Assignment. Local EBRD staff will facilitate contacts with the Egyptian Authorities, regulators and major private banks interested into entering into derivatives and repo transactions, as appropriate. The Bank reserves the right to require the Consultant to suspend work, either temporarily or for longer period, at any point during the course of the Assignment, at the direction of the OL. The Consultant will be required to independently arrange all logistical support including, but not limited to, office space, communications equipment, interpretation/translation, and such other assignment-related support as may be necessary. All deliverables are to be provided in both English and Arabic.

The Consultant shall commence work on the Assignment immediately upon signing of the contract. The Assignment is expected to last approximately 12-18 months.
5. **Deliverables**

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<thead>
<tr>
<th>Deliverable</th>
<th>Timing</th>
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<tbody>
<tr>
<td>Inception Report</td>
<td>To be delivered within 4 weeks of project start</td>
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<tr>
<td>Concept Paper</td>
<td>To be delivered within 8 weeks of project start</td>
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<tr>
<td>Draft Legislation (preliminary form)</td>
<td>To be delivered within 20 weeks of project start (revised versions to follow as project progresses)</td>
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<tr>
<td>Draft Legislation (final form)</td>
<td>To be delivered within 12 months of project start</td>
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<tr>
<td>Final report (including implementation of the law)</td>
<td>To be delivered within 12-18 months of project start</td>
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6. **Consultant profile**

The project requires both local and international expertise. The Consultant will be an international consulting or law firm specialising in derivatives, repos and capital markets, with offices or affiliate offices in Egypt, and with extensive international experience (preferably including both developed and developing markets). The Consultant should have expertise in all areas defined in the scope of services. Experience working in capital markets transactions and capital markets development projects in emerging markets, and in Egypt in particular, would be a distinct advantage.

7. **Indicative budget**

The indicative budget for this project is EUR 250,000.

The CBE will provide in-kind support, if required, in the form of the review of documents, assistance with the organisation and logistics of meetings and the provision of a venue, catering, translation, and such other forms of assistance as may be agreed in future.