



ARIAS SOCIETY

Assam Rural Infrastructure and Agricultural Services Society

(An Autonomous Body of the Govt. of Assam)

Project Coordination Unit (PCU) of the World Bank financed

Assam Agribusiness & Rural Transformation Project (APART)

Agriculture complex, Khanapara, G.S. Road, Guwahati-781022 (Assam, India)

Tel: +91 361-2332125; Fax: +91 361-2332564; email: spd@arias.in ; www.arias.in

Draft Terms of Reference (ToR) for hiring the Consultancy Services of a Corporate Law Firm as Legal Counsel for an Agribusiness Investment Fund under the World Bank financed Assam Agribusiness and Rural Transformation Project (APART)

(A) BACKGROUND AND OBJECTIVES OF THE PROJECT

1. The Government of Assam (GoA) through Government of India (GoI) has received a loan from the World Bank for the Assam Agribusiness and Rural Transformation Project (APART). The Assam Rural Infrastructure and Agricultural Services Society (ARIASS) now intends to apply a portion of this loan for engagement of a **Counsel** on contractual basis. The project interventions would be taken up in 16 Districts¹ (undivided as on 1st April, 2016).
2. The Project Development Objective (PDO) of APART is to “add value and improve resilience of selected agri value chains, focusing on smallholder farmers and agro-entrepreneurs in targeted districts of Assam”.
3. There are four components of APART. **The first component-A is Enabling Agri Enterprise Development**, with sub components being (i) Enhancing state capacity to attract private investments, (ii) Setting up an Agribusiness Enterprise Development and Promotion Facility (EDPF) (iii) Agribusiness Investment Fund (AIF or the “Fund”) support (iv) Establishing sector stewardship councils. **The second component-B is Facilitating Agro Cluster Development** with subcomponents being- (i) Support establishment of cluster level Industry Associations (IAs), (ii) Supply chain support. **The third component-C is Fostering Market Led Production and Resilience Enhancement** with sub components being (i) Promoting climate resilient technologies and their adoption (ii) Facilitating market linkages through market intelligence and product aggregation (iii) Facilitating access to and responsible use of financial services. **The fourth component-D is project Management, Monitoring and Learning.**
4. APART will achieve the PDO by: (i) promoting investments in agri-enterprises, reducing business and transaction costs, facilitating access to finance for agribusiness entrepreneurs & where appropriate, push for process, regulatory and/or policy change; (ii) supporting the development of a modern agri supply chain; improved information communication technologies based farm information & intelligence services, and alternative marketing channels; and (iii) improving producers’ access to knowledge, technologies & infrastructure so that they are better able to respond to market opportunities & climate variability.
5. Subcomponent A3 of APART aims to provide risk capital and technical assistance to Agribusiness SMEs with scalable business models in Assam. The Fund is expected to be domiciled in India, and will provide risk capital to 10 to 15 agribusiness SMEs with high growth potential and with a locus of activity in Assam, through investments ranging from an estimated \$100K - \$2 million. The objectives of the fund include mobilizing capital primarily from domestic investors but potentially also from offshore investors, with the GoA expected to be an anchor investor. Key features of the Fund are expected to be:

¹Nagaon, Sonitpur, Barpeta, KarbiAnglong, Kamrup, Dhubri, Golaghat, Kokrajhar, Lakhimpur, Darrang, Cachar, Sivasagar, Jorhat, Goalpara, Morigaon and Nalbari

(i) managed by an experienced private fund manager; (ii) co investment by other investors including private investors; (iii) have no government participation on the investment committee or on Board of Directors of fund manager; (iv) fund life of 10 years extendable to 12 or 15 years; (v) allow for a broad definition of agribusiness, including sub sectors like agri warehousing/logistics etc.; and (vi) provide technical assistance to SMEs to relieve capacity constraints. In addition, the fund manager and the Fund will need to commit to using the project funds in a manner that complies with the World Bank's fiduciary as well as environmental and social safeguards.

6. ARIAS Society now seeks to hire the consulting services of a reputed corporate law firm as Legal Counsel for the said Agribusiness Investment Fund or "Fund" during the setting up phase and implementation phase of the Fund, on **retainer basis**, for the Project duration i.e. upto 2024. The contract agreement with the Legal Counsel may be extended beyond 2024 upon mutual consent as the fund life is around 10 years, extendable to 12-15 years. After the Project GoA, shall bear the responsibility of continuing the activities related to Fund. The Project is in the process of procurement of a qualified Fund Manager² (firm) through an open competitive process. The Fund Manager is likely to be onboard by mid 2019. The Legal Counsel shall have to work closely with the Fund Manager.

(B) OBJECTIVES & SCOPE OF THE CONSULTING ASSIGNMENT

7. The Legal Counsel (LC) firm will advise the GoA on the terms& conditions for setting up the Fund, and its participation as an anchor investor in the Fund. *Key job responsibilities of the Legal Counsel(LC) include, inter alia:*
- a. The LC will advise the GoA on the procurement of an experienced AIF fund manager following World Bank Procurement Guidelines, including on the preparation/review signing of a contract with the selected fund manager on terms and conditions acceptable to the World Bank. The procurement process for hiring the Fund Manager has already been initiated. LC after on-boarding shall advise on the remaining steps of Procurement of Fund Manager.
 - b. The LC will advise the GoA in its role as an anchor investor in the Fund. This shall also include advising the GoA during the establishment and operationalization of the Fund, including on the ambit of Laws and Guidelines under AIF Regulations, 2012 of the Securities and Exchange Board of India (SEBI) and tax laws/regulations (as needed). The LC will consider key factors, including (i) the aim of the project to mobilize commercial capital to co-invest in the fund; (ii) the need for strong governance arrangements in alignment with industry standards; (iii) that the GoA cannot participate in the investment committee or in investment related decision making in any form; and (iv) that the Fund will provide technical assistance to SMEs pre- or post-investment to relieve targeted capacity constraints.
 - c. The LC will advise the GoA on the governance structure of the Fund in alignment with private equity/venture capital industry standards, and in line with the applicable terms and conditions of the World Bank.
 - d. The LC will assist the GOA with the legal due diligence, and the review, negotiations and signing of the key fund documentation, side letter, and World Bank policy requirements (including integrity, tax and ESG), and would be expected to coordinate and communicate with the World Bank as adviser to GOA.
 - e. The LC will be required to liaise, as needed, with other stakeholders of the Fund, including the Fund Manager and co investors, including potential co-investors and investee companies.
 - f. The Counsel will work closely with the PCU/CIC³ by providing advice and support.
 - g. The Counsel will advise GOA on the preparation-/review of the AIF Operational Manual for the implementation of Sub Component A3 in alignment with both World Bank regulations and private equity/venture capital industry standards. A draft AIF Operational Manual shall be prepared in parallel to the recruitment of the AIF fund manager, and a final version of the AIF Operational Manual

²The Fund Manager shall be responsible for structuring and formation of the Fund within the scope of the RFP, and in alignment with appropriate SEBI (or equivalent authorities) legal/regulatory guidelines, the Project Implementation Guidelines, the relevant terms and conditions of the World Bank Project Legal Agreement and Procurement guidelines, and World Bank policy requirements (e.g integrity, tax, ESG). The Fund Manager will obtain its own legal counsel to assist with the Fund formation and preparation of Fund documents such as the subscription agreement, fund documentation, side letter etc. The Fund Manager and potential investors will be evaluated before participating in the Fund using processes that mirror the IFC's integrity due diligence approach

³CIC : Commissionerate of Industries and Commerce

will need to be prepared following the selection of the fund manager to allow for the incorporation of the fund manager's inputs

(C) DELIVERABLES:

8. (i) Legal opinion on the operations manual, legal advisory on contribution to an existing fund meeting all of the requirements of AIF operational manual; and (ii) legal opinion on legal documents establishing AIF/making fund contributions to existing fund(s)

(D) DURATION OF THE CONTRACT:

9. The expected duration of the contract is for 20 months. The LC service is for the initial phase of preparation of the Operations Manual and legal documents involving the establishment of the AIF or contributions to existing fund(s). The duration may be extended based on the requirement and availability of fund on mutual agreement between the Legal Counsel and PCU

(E) REPORTING AND PERFORMANCE REVIEW:

10. The reporting and performance review of the LC shall be done by a committee designated by the SPD, ARIAS Society. SPD ARIAS Society may invite external experts on the Committee as deemed fit.

(F) FACILITIES TO BE PROVIDED TO THE LC:

11. Access to the required documents, correspondence, contact details and any other information associated with the project and as deemed necessary. The Project shall facilitate liaison with the Department of Govt. of Assam, Fund Manager, co-investors, investee companies etc.

(G) EXPERTISE AND EXPERIENCE EXPECTED:

12. The technical proposals received will be evaluated against the following criteria:
- Expertise and experience in providing legal advice to Private Equity / Venture Capital (PEVC) funds operating in India.
 - Demonstrated expertise in working PEVC funds on compliance with Securities and Exchange Board of India's (SEBI) AIF Regulations, 2012 and other relevant laws/regulations, as needed.
 - Experience in advising Government or Public Sector Undertakings will be desirable
 - Experience in working on World Bank funded projects will be desirable.

(H) KEY PROFESSIONALS WHOSE CVs WILL BE EVALUATED:

13. The CVs of key professionals at Sl. K-1 to K-4 shall be evaluated for the purpose of determining the merit of the proposal. Consultant can bring in additional non-key experts to complete the assignment satisfactorily.

Sl.	Designation	Qualification &Exp	Role in the assignment
1	Team Leader	Advanced qualification in Law with at least 10 years of professional experience dealing with investment funds/ risk capital financing etc	Overall management of the assignment and be the first touch point for communication from ARIAS Society. To ensure that all reports etc are submitted timely.
2	Company Secretary	Company Secretary qualification from the designated institute and at least seven year professional experience in company management	Advising on the financial aspects of Fund establishment and management for Fund Manager, co-investors as well as investee companies
3	Expert- Investment Funds/ Risk capital funding	MBA in Finance / equivalent qualification with at least five years of professional experience in dealing with investment funds/ risk capital financing etc	Support the Team Leader and CS with advising on the financial aspects of Fund establishment and management for Fund Manager, co-investors as well as investee companies
4	Expert- Corporate Law	Degree in Law with five years professional experience in corporate law	Support with respect to the legal aspects of fund registration, investee companies, co-investors etc.

Note: This is a draft ToR and SPD, ARIAS Society reserves the right to change, update or modify this ToR at any stage till the issuance of RFP document.