**TERMS OF REFERENCE**

**Legal Advisory Services for the Transfer of Microfinance NGO Assets and Liabilities to a Myanmar Microfinance Registered Company**

# introduction

UNCDF makes public and private finance work for the poor in the world’s 47 least developed countries. With its capital mandate and instruments, UNCDF offers “last mile” finance models that unlock public and private resources, especially at the domestic level, to reduce poverty and support local economic development. UNCDF’s financing models work through two channels: financial inclusion that expands the opportunities for individuals, households, and small businesses to participate in the local economy, providing them with the tools they need to climb out of poverty and manage their financial lives; and by showing how localized investments through fiscal decentralization, innovative municipal finance, and structured project finance can drive public and private funding that underpins local economic expansion and sustainable development.

By strengthening how finance works for poor people at the household, small enterprise, and local infrastructure levels, UNCDF contributes to SDG 1 on eradicating poverty and SDG 17 on the means of implementation. By identifying those market segments where innovative financing models can have transformational impact in helping to reach the last mile and address exclusion and inequalities of access, UNCDF contributes to a number of different SDGs.

# background

UNCDF Myanmar provides oversight and technical support for a financial sector development initiative with a central focus of completing the transformation of ten MFIs NGOs to a Myanmar registered limited liability company (LLC). This activity is in compliance with prevailing Financial Regulatory Department policy requiring NGO MFIs to institutionally and operationally transform to a limited liability company.

Each MFI is of similar size (less than US$1M of capital) and operations (one or two township service areas). All have established a counterpart company with the NGO as the full or dominant shareholder and registered on the DICA’s MyCo portal. At present nine out of the ten MFI companies have applied for and received a microfinance license and are in the process of obtaining requisite donor asset ownership transfer authorization related to loan portfolio grants over recent years. With one exception, the MFI companies are dormant with little to none transactional activity since registration.

Auditing of the NGO MFI financials is expected to commence in April 2020 leading to a subsequent business transfer contingent on donor disposition of capital grants provided over recent years. Transfers are expected to occur by Q3 or Q4 2020 followed by audit confirmations of the NGO closing positions and the Company opening positions. Once confirmed, the NAV position of the transferred assets and liabilities from the NGO to the Company will be legally converted to share capital with registration in accordance with Myanmar Company Law (MCL).

# Scope of Work

The selected legal advisory firms will work closely with UNCDF in supporting the business transfer to ensure compliance with prevailing MCL and tax law. UNCDF will be the central point of contract between the legal advisor and the MFIs.

The following legal support is requested:

1. Review the UNCDF-supplied business transfer templates to ensure complete and transparent NGO handover and Company receipt of assets, liabilities, staff, contracts, etc. between both parties.

1. Advise and support, as needed, actions required to ensure compliance with IRD regulations with regards to the handover from the NGO to the Company including:
	1. Obtaining IRD registration and a commercial tax number for each MFI Company, as needed, as well as other necessary registrations
	2. Support for Capital Gains Tax (CGT) calculations, preparation of CGT return form, and liaising with IRD for each MFI as well as resolving any tax-related matters arising from the business conversion process
2. Support each MFI Company in subscribing and registering new shares equivalent to the transferred NAV position in accordance with prevailing DICA standards
3. Training support (based on proposed hourly rates for associate staff) to inform Company Board members of their legal roles and responsibilities under the Myanmar Company Law (MCL) and other prevailing laws (such as tax) related to commercial enterprises.

Conducting semi-annual (i.e. every six months) seminar-style briefings delivered to the MFI contingent during 2021 and 2022 (four in total). Briefings will inform MFI management on recent legal and compliance matters related to businesses operating within the financial service sector, specifically microfinance.

# scheduling of work

Legal services are expected to occur over an **18-month period beginning in Q2 2020**. The service period may be extended, as needed, in response to unforeseen delays. (Expected duration of work will be 18 months starting from May 2020)

**Proposal Evaluation and Criteria**

Proposal evaluation in response to the scope of work will occur with consideration of the following factors:

1) Capability of the law firm in terms of onshore support and years of experience providing legal services within the Myanmar context as a registered law firm.

2) Experience working with DICA and IRD in financial service company incorporations

3) Experience supporting unique business startup situations requiring special expertise and government relationships within a Myanmar context; expertise related to business conversions (NGO to Company) is an advantage

1. Competitive pricing in completion of the scope of work areas per the following pricing structure:

|  |  |  |  |
| --- | --- | --- | --- |
| Ref | Activity  | Basis  | Quotation (USD) |
| 1. | Review Business Transfer Templates | One Time |  |
| 2 a | Registrations (per MFI) | Per MFI |  |
| 2 b | CGT compliance (per MFI) | Per MFI |  |
| 3. | Share subscription and registration (per MFI) | Per MFI |  |
| 4 a | Company Board Training  | One Time |  |
| 4 b | Semi-Annual Briefings | Per Briefing |  |

The evaluation will be conducted on a best value basis taking collectively into consideration all of the evaluation criteria to determine the most appropriate legal firm to undertake the scope of work.

Potential Travels: Outside of Yangon

# Response

 Interested registered Legal firms are requested to submit their signed narrative and financial proposal to the attention of Krishana Raj Adhikari, Head of Common Services & Transaction Services, UNDP Myanmar, at bids.mm@undp.org, **no later than Monday, 20 April 2020, 5:00 pm Myanmar time**.

**Description of Requirements**

- List and Description of Expected Outputs to be Delivered:

* Review of business conversion templates;
* IRD registration and related compliance
* MCL Company Director training

- Implementation Schedule indicating breakdown and timing of activities/sub activities are required.

- Currency of Proposal:

* Local currency, Myanmar Kyats for Myanmar Company
* United States Dollars for overseas Company

Value Added Tax on Price Proposal:

* Must be exclusive of VAT and other applicable indirect taxes

Validity Period of Proposals (Counting for the last day of submission of quotes):

* 120 days

Person(s) to review/inspect/ approve outputs/completed services and authorize the disbursement of payment:

* UNCDF Myanmar Country Coordinator

Contact Person for Inquiries (Written inquiries only):

* Mr. Min Min Thein

Procurement Analyst

Procurement.mm@undp.org

**Evaluation Criteria**

**Technical Evaluation:**

|  |  |  |
| --- | --- | --- |
| **Technical Evaluation Weighting**  | **Score Weight** | **Total Points**  |
| 1 | Relevant Experience and Expertise such as: Publications, Workshops, etc Demonstrating the Firms' Expertise Within the Myanmar Financial Services Sector (Section E above)  | 36% | 360  |
| 2 | Proposed Methodology (Section F above)  | 28% | 280 |
| 3 | Management Structure and Key Personnel (Section G above)  | 36% | 360 |
|  | Total | 100% | 1000 |

|  |
| --- |
| **Firm Expertise and Experience** |
|  | **Evaluation Area**  | **Score Weight**  |
| 1.1 | Reputation, Credibility, Reliability, Industry Standing  |  100 Points  |
| 1.2 | Organization Capacity/ Size to Demonstrate Ability to Provide Timely Quality Support (As Determined Through Depth of Staffing, Management, and Size of Firm)  |  100 Points |
| 1.3 | Relevance Experience: MFI NGO to Business Conversion Experience Myanmar MFI Advisory Services (Business Registration, Licensing, Legal Opinions, etc.)  |  160 Points |
|  | **Sub Total**  | 360 Points  |

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| **Proposed Methodology**  |
|  | **Evaluation Area**  | **Score Weight**  |
| 1.1 |  Reasonable Proposed Approach to Fulfilling the Scope of Work  | 90 points |
| 1.2 | ToR Relevance of Methodology is Well Presented | 100 points |
| 1.3 | Clear and Direct Presentation and Scope of Task | 90 Points |
|  | **Sub Total**  | 280 Points |

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| **Management Structure and Key Personnel**  |
|  | **Evaluation Area**  | **Score Weight**  |
| 1.1 | Partner(s) Depth and Relevance of Experience  |  120 Points |
| 1.2 | Depth of Staff Resources (e.g. Number of Staff with Relevant Experience)  |  120 Points |
| 1.3 | Number of years of demonstrated experience in supporting the Myanmar Financial Service Sector, particularly the microfinance industry  |  120 Points |
|  | **Sub Total**  |  360Points  |