November 2022

Sovereign Green Bond Framework – Putting India ahead!

Pursuant to the commitments made by the Government of India ("**GoI**") in the Glasgow Climate Change Conference, the Ministry of Finance, GoI ("**MoF**"), issued the Framework for Sovereign Green Bonds ("**Framework**"), aimed at reducing carbon intensity of the Indian economy.

One of the key features of the sovereign green bonds ("**SGBs**") is that their redemption and interest payments will not be conditional on the performance of the eligible green projects (for which proceeds of SGBs will be utilised). Thus, the investor is completely de-risked against project related issues.

Applicability

The Framework applies to all SGBs issued by GoI.

Core Components

The Framework is designed to comply with 4 (four) components and key recommendations of the International Capital Market Association ("**ICMA**") Green Bond Principles of 2021, which are as set out below.

The entire Framework revolves around the below components and lays down multiple principles under each such component.

Component 1: Use of Proceeds – Green Projects and 'Eligible' Green Projects:

The essential characteristics of a 'green project' are:

1. encouraging energy efficiency in resource utilization;
2. reducing carbon emissions and greenhouse gases;
3. promoting climate resilience and/or adaptation; and
4. valuing and improving natural ecosystems and biodiversity especially in accordance with sustainable development goals ("**SDG**") principles.

Under the Framework, GoI is permitted to use the proceeds raised from issuance of SGBs to finance and/or refinance expenditure (in parts or whole) for eligible green projects. The Framework lays down an exhaustive list of green project categories, viz. Renewable Energy, Energy Efficiency, Clean Transportation, Climate Change Adaption, Sustainable Water and Waste Management, Pollution Prevention and Control, Green Buildings, Sustainable

Management of Living Natural Resources and Land Use and Terrestrial and Aquatic Biodiversity Conservation. Each project category is also linked to an environmental objective and eligibility criteria under the Framework.

Further, the Framework also provides for eligible green expenditures, which include the following:

1. public expenditure undertaken by the government in the form of investment, subsidies, grant-in-aids, or tax foregone (or a combination of all or some of these);
2. operational expenditures and research and development expenditures in public sector projects which help in reducing the carbon intensity of the economy and enable a country to meet its SDGs.

The eligible green expenditures are limited to government expenditures that occurred within a period of 12 (twelve) months prior to issuance of SGB. The issuer will endeavour to allocate the proceeds to the project within a period of 24 (twenty-four) months from its issuance.

Any expenditure already financed and/or refinanced by a dedicated source/ other government agency is excluded to ensure suitable oversight and avoid double-counting.

The Framework also provides a list of projects which are to be excluded from the purview of green projects eligible for usage of proceeds of SGBs:

1. Projects involving new or existing extraction, production and distribution of fossil fuels, including improvements and upgrades; or where the core energy source is fossil-fuel based;
2. Nuclear power generation;
3. Direct waste incineration;
4. Alcohol, weapons, tobacco, gaming, or palm oil industries;
5. Renewable energy projects generating energy from biomass using feedstock (including sewage, manure, wastewater, bagasse, biomass, wood pellets etc.) originating from protected areas;
6. Landfill projects; and
7. Hydropower plants larger than 25 (twenty five) megawatt.

Component 2: Project Evaluation & Selection - Green Finance Working Committee ("GFWC")

The Framework also provides for a GFWC, which will comprise of members from various ministries and departments of the GoI. The GFWC will have the responsibility of evaluating and selecting green projects in consultation with the Ministry of Environment, Forests and Climate Change, Niti Aayog, Budget Division of Department of Economic Affairs and Infrastructure Finance Secretariat, Department of Economic Affairs to set out the eligible expenditure for such projects.

As a process, various ministries are required to identify and submit to the GFWC, an initial list of green projects for their evaluation. Once the GFWC receives this list, it will evaluate each green project on their merits, basis the evaluation criteria provided in the Framework. Thereafter, the GFWC will issue a final list of green projects.

Lastly, the Public Debt Management Cell ("**PDMC**") of the GoI will issue bonds for the shortlisted green projects and allocate the proceeds thereof towards development of such projects.

Component 3: Management of Proceeds – Role of the Consolidated Fund of India

The Framework provides that the bond proceeds will be deposited into the Consolidated Fund of India. Further, for ensuring transparency and usage of proceeds towards the intended purposes, the MoF will also maintain a separate account.

The PDMC will also monitor the utilisation and allocation of bond proceeds. As a policy, the Framework provides that bond proceeds will be required to be allocated towards green projects in a maximum timeline of 2 (two) years from the receipt thereof.

Further, the MoF will also issue a green register which will include details of all the green bond issuance, allocation and use of proceeds, information about eligible projects etc.

Component 4: Reporting – Role of Government and GFWC

For tracking the use of proceeds of green bonds, the Framework provides for an allocation report, which will be updated annually until the proceeds of a green bond are fully allocated.

Additionally, the Framework also provides for an annual report, which will *inter alia* cover information about issuance of green bonds, list of eligible projects, allocations made, assumptions made (if any), expected impact of the project, based on quantitative factors, etc.

Further, the allocation and utilisation of green bond proceeds will also be subject to audit by the Comptroller & Audit General of India ("**CAG**"). The reports of the CAG will be tabled before the Parliament.

Lastly, the Framework also provides that the GoI will engage third-party reviewers for conducting an annual assessment to verify that the SGB proceeds are being utilised within the 4 (four) contours of the Framework, assess the management of proceeds and unallocated proceeds.

Conclusion

India has to take a number of measures for meeting its short-term and long-term climate change commitments. While the Framework is one of the first such reform measures, it is a strong step in the right direction.

The Framework is broadly based on ICMA's internationally recognized principles and recommendations, with few customizations as per India's local requirements. Therefore, there is a hope that it will help India in achieving its intended goals of meeting its international climate change commitments by 2030 and further.

If implemented judiciously, the Framework can also help the legislators in formulating another detailed framework for green debt instruments, for private entities.

Finance Practice

JSA has a widely recognised market leading banking & finance practice in India. Our practice is partner led and is committed to providing quality professional service combining domain knowledge with a constructive, consistent, comprehensive and commercial approach to issues. Clients trust our banking lawyers to take a practical and business-oriented approach to achieving their objectives. Our lawyers have a clear understanding of the expectations and requirements of both sides to a financing transaction and provide tailored advice to each client's needs. The practice is especially praised for its accessibility and responsiveness and its ability to work well with international firms and clients. We represent a variety of clients including domestic and global banks, non-banking finance companies, institutional lenders, multi-lateral, developmental finance and export credit institutions, asset managers, funds, arrangers and corporate borrowers in different sectors on a wide range of financing transactions.

Our full spectrum of services includes advising clients on corporate debt transactions (including term and working capital debt), acquisition finance, structured finance, project finance, asset finance, real estate finance, trade finance, securitisation, debt capital markets and restructuring and insolvency assignments.

Our practice has been consistently ranked in the top-tier for several years, and several of our partners are regarded highly, by international publications such as Chambers and Partners, IFLR, Asia Law, Legal 500, Asia Legal Business, IBLJ and Leaders League.

This Prism has been prepared by:

Soumitra Majumdar
Partner

Nand Gopal Anand
Partner

Abhay Agarwal
Senior Associate

Harshit Dusad
Senior Associate

14 Practices and
23 Ranked Lawyers

15 Practices and
18 Ranked Lawyers

7 Practices and
2 Ranked Lawyers

11 Practices and
39 Ranked Partners
IFLR1000 APAC Rankings 2022

Banking & Finance Team
of the Year

Fintech Team of the Year

Restructuring & Insolvency
Team of the Year

Among Top 7 Best Overall
Law Firms in India and
10 Ranked Practices
----
13 winning Deals in
IBLJ Deals of the Year
----
6 A List Lawyers in
IBLJ Top 100 Lawyer List

Banking & Financial Services
Law Firm of the Year 2022

Dispute Resolution Law
Firm of the Year 2022

Equity Market Deal of the
Year (Premium) 2022

Energy Law Firm of the Year 2021

Ranked #1
The Vahura Best Law Firms to Work
Report, 2022

Top 10 Best Law Firms for
Women in 2022

For more details, please contact km@jsalaw.com

advocates & solicitors

Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi

