

PARTNERSHIP FOR MARKET READINESS- Thailand

(Ref. No. CS-5) Terms of Reference (ToR) for

A study to propose the legal framework for establishing the Emissions Trading Scheme in Thailand

1. Background

The Government of Thailand, through Thailand Greenhouse Gas Management Organization (Public Organization) or TGO, with support from the World Bank, is currently exploring potential new domestic market-based instruments to support cost-effective greenhouse gas emission reduction in Thailand, with the aim to contribute to the implementation of Thailand's national climate change policies and plans, as well as to assist in the implementation of its nationally determined contribution (NDC) under the Paris Agreement.

In this connection, TGO is assessing the applicability of introducing an emissions trading scheme (ETS) at the national level. This requires taking a number of practical procedural and substantive steps, including from, *inter alia*, technical and legal aspects. Since 2010, TGO has been undertaking technical studies and initiatives to support the development of carbon markets in Thailand, including the introduction of Thailand Voluntary Emission Reduction Program (T-VER) and Thailand voluntary emissions trading system (Thailand V-ETS), which currently covers four industrial sectors.

Building on such foundation, a study on a legal framework and institutional arrangements for the ETS, including with respect to a greenhouse gas reporting system, which is a prerequisite to a transparent and effective trading system, will form an important basis for the consideration for the effective implementation of the ETS, in which experiences and lessons learned from existing practices in both developing and developed countries can substantially support the assessment of the country's gaps, barriers, challenges and opportunities, taking into account national circumstances, leading to a clear and appropriate policy recommendations on the establishment of the ETS in Thailand.

Based on the above, Thailand Greenhouse Gas Management Organization (Public Organization), as the Implementing Country Participant for the World Bank's Partnership for Market Readiness (PMR) Programme, is seeking a consultancy to undertake the assignment as defined herein.

2. Objective of Consultancy

The objective of this Assignment is to support the Government's effort in its consideration for the establishment of a sound and effective legal framework for the ETS in Thailand, in order to support national mitigation actions, as well as to assist in the implementation of the NDC. The Assignment shall aim:

- (a) To support and enable the Government to undertake necessary and appropriate preparation required for the establishment of the ETS; and
- (b) To support and enable the Government to make practical formulation of necessary and appropriate policies, legal instruments and institutional arrangements in order to allow for the effective implementation of the ETS, in line with national circumstances.

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3. Scope of Work

The Assignment has the following components:

- 3.1. A study on the legal and institutional framework, including preparation of draft laws and regulations, for the establishment of an integrated reporting system to collect information on greenhouse gas emissions from industries, factories, buildings, and entities stipulated under relevant legislation, in order to support the establishment of the ETS in Thailand
- 3.2. A study on the legal and institutional framework, including preparation of draft laws and regulations, for the establishment of the ETS in Thailand, including with respect to, *inter alia*, the design/features, process and compliance.

4. Specific Tasks to be Carried Out

4.1 Defining scope and boundary

- The consultant shall work actively with Thailand Greenhouse Gas Management Organization (TGO) and other relevant stakeholders to establish mutual understandings and synergies among them, specifically in the context of the preparatory processes prior to the establishment and implementation of the greenhouse gas reporting system and the ETS in Thailand.
- In the undertaking of its assignment, the consultant shall coordinate for discussions in the consultation meetings, organized by TGO, in order to gain information, views and opinions from focused stakeholders, and synthesize them into appropriate recommendations for the development of laws, regulations and institutional arrangements for the establishment and implementation of the greenhouse gas reporting system and the ETS in Thailand

4.2 Specific tasks under Scope 3.1: A study on the legal and institutional framework for the establishment of an integrated reporting system to support the establishment of the ETS in Thailand

- 4.2.1. Compile, review and conduct comparative analysis of legislation, regulations, policies, and institutional arrangements in relation to greenhouse gas reporting systems, which collect information on greenhouse gas emissions from the private sector, applied in all selected countries and regimes.¹

The review and analysis shall build on existing studies conducted by TGO and focus on the legal aspects of relevant issues, *inter alia*, as indicated in Annex I to this ToR.

- 4.2.2. Identify and conduct legal assessment of existing policies, legislation, regulations, and institutional arrangements in Thailand in relation to the greenhouse gas reporting systems, suggest appropriate overview legal and institutional structure of the greenhouse gas reporting systems in Thailand, based on the review and analysis from 4.2.1, and identify gaps, barriers, challenges and opportunities to accommodate the collection of necessary information needed for the ETS.

¹ The selected countries shall cover 4 developed countries (selected from the United Kingdom, Germany, the United States (California), Canada (Quebec), New Zealand); and 2 advanced/developing countries, which are the People's Republic of China and the Republic of Korea.

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- 4.2.3. Based on the findings from 4.2.1 and 4.2.2, propose recommendations on the formulation of an integrated legal framework for the greenhouse gas reporting system including:
- (a) a need for amendments to existing laws and regulations
 - (b) the process required for such amendments
 - (c) if appropriate, a need for the development of new laws and regulations and its form/hierarchy
 - (d) the process required for enacting such laws and regulations, and
 - (e) a structure of the institutional arrangements,
- and provide the recommendations to TGO for review and comment.

The recommendations shall aim to accommodate various objectives of reporting, including to accommodate the reporting of information under the UNFCCC, as well as information for the satisfaction of the relevant ISO standards, in a comprehensive and integrated manner, with a view to avoid creating undue and unnecessary burden on the private entities.

The recommendations shall cover issues, *inter alia*, as indicated in Annex I to this ToR. The consultation shall provide rationales behind the recommendations on each aforementioned issue, and make reference to how national circumstances are taken into account.

- 4.2.4. Present the recommendations, reviewed under 4.2.3, at the first consultation meeting organized by TGO.
- 4.2.5. Prepare draft laws and regulations based on the recommendations and taking into account inputs received under 4.2.4, as well as explanatory notes of the aforementioned draft, and provide the draft to TGO for review and comment.
- 4.2.6. Present the draft laws and regulations, along with explanatory notes, reviewed under 4.2.5, at the second consultation meeting organized by TGO.
- 4.2.7. Prepare the final version of the draft laws and regulations, based on the review under 4.2.5 and taking into account inputs received under 4.2.6, as well as explanatory notes of the aforementioned draft.
- 4.2.8. Identify potential possible impacts from the implementation of the draft laws and regulations, and provide recommendations and guidance on the conduct of regulatory impact assessment (RIA), in order to serve as a consideration for the decision-making regarding enacting such laws and regulations.

4.3 Specific tasks under Scope 3.2: A study on the legal and institutional framework for the establishment of the ETS in Thailand

- 4.3.1. Compile, review and conduct comparative analysis of policies, legislation, regulations, and institutional arrangements in relation to the ETS applied in all selected countries and regimes.²

² The selected countries shall cover 4 developed countries (selected from the United Kingdom, Germany, the United States (California), Canada (Quebec), New Zealand); and 2 advanced/developing countries, which are the People's Republic of China and the Republic of Korea.

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The review and analysis shall build on existing studies conducted by TGO and focus on the legal aspects of relevant issues, *inter alia*, as indicated in Annex II to this ToR.

- 4.3.2. Identify and conduct legal assessment of existing policies, legislation, regulations, and institutional arrangements in Thailand which can be of relevance to the establishment and implementation of the ETS, suggest appropriate overview legal and institutional structure of the ETS in Thailand, based on the review and analysis from 4.3.1, and identify gaps, barriers, challenges and opportunities for the establishment of the ETS in Thailand.
- 4.3.3. Based on the findings from 4.3.1 and 4.3.2, propose recommendations on the formulation of a comprehensive legal framework for the ETS, including:
 - (a) a need for the development of new laws and regulations and its form/hierarchy
 - (b) the process required for enacting such laws and regulations
 - (c) if appropriate, a need for amendments to existing laws and regulations
 - (d) the process required for such amendments, and
 - (e) a structure of the institutional arrangements for the ETS,and provide the recommendations to TGO for review and comment.

The recommendations shall cover issues, *inter alia*, as indicated in Annex II to this ToR and build on technical information and suggestions from existing studies conducted by TGO.

The consultation shall provide rationales behind the recommendations on each aforementioned issue, and make reference to how national circumstances are taken into account.

- 4.3.4. Present the recommendations, reviewed under 4.3.3, at the first consultation meeting organized by TGO.
- 4.3.5. Prepare draft laws and regulations based on the recommendations and taking into account inputs received under 4.3.4, as well as explanatory notes of the aforementioned draft, and provide the draft to TGO for review and comment.
- 4.3.6. Present the draft laws and regulations, along with explanatory notes, reviewed under 4.3.5, at the second consultation meeting organized by TGO.
- 4.3.7. Revise the draft laws and regulations based on the review under 4.3.5 and taking into account inputs received under 4.3.6, as well as explanatory notes of the aforementioned draft, and provide the draft to TGO for review and comment.
- 4.3.8. Present the revised draft laws and regulations, along with explanatory notes, reviewed under 4.3.7, at the third consultation meeting organized by TGO.
- 4.3.9. Prepare the final version of the draft laws and regulations based on the review under 4.3.7 and taking into account inputs received under 4.3.8, as well as explanatory notes of the aforementioned draft.
- 4.3.10. Identify potential possible impacts from the implementation of the draft laws and regulations, and provide recommendations and guidance on the conduct of regulatory impact assessment (RIA), in order to serve as a consideration for the decision-making regarding enacting such laws and regulations.

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5. Contract Supervision

The consultant shall work under the overall oversight of Thailand Greenhouse Gas Management Organization (TGO), and in close cooperation with the World Bank.

6. Timeline and Key Deliverables

The Consultant shall complete its work within a total of 540 days from the date of the signature of the consultancy contract. The overall timeline for the tasks, meetings and delivery of reports is shown in Annex III to this ToR.

The Consultant shall prepare the reports, with timeline, as indicated herein. The reports, with the exception of the draft final and final reports, shall be in Thai, with the executive summary in English. The draft final and final reports shall be delivered in both Thai and English.

Upon submission of the inception, interim and draft final reports, the Consultant shall present the reports to TGO for comments and suggestions, which shall be taken into account for the improvement of the subsequent reports. The summary of such comments and suggestions shall be prepared and included in the subsequent reports.

Upon submission of the final report, the Consultant shall present the report to TGO for consideration on the completion of the tasks required under this Consultancy. TGO may require further improvement of the report, if necessary, in accordance with the tasks required under this ToR.

The Consultant shall, at the progress meetings with TGO, as indicated in Annex III to this ToR, present the progress made on its work, as well as a progress report to the TGO for comments and suggestions.

6.1 Submission of reports under Scope 3.1

- 6.1.1. **Inception report** (10 hard copies and 3 CD-ROMs) within **30 days** from the date of the signature of the contract. This report shall cover the background information and understanding of the tasks, monthly work plan, and methodologies.
- 6.1.2. **Interim report** (10 hard copies and 3 CD-ROMs) within **150 days** from the date of the signature of the contract. This report shall cover the outputs of the tasks 4.2.1-4.2.4.
- 6.1.3. **Draft final report** (15 hard copies and 3 CD-ROMs) within **240 days** from the date of the signature of the contract. This report shall cover the outputs of the tasks 4.2.1-4.2.8.
- 6.1.4. **Final report** (15 hard copies and 3 CD-ROMs) within **270 days** from the date of the signature of the contract. This report shall cover the outputs of the tasks 4.2.1-4.2.8.

6.2 Submission of reports under Scope 3.2

- 6.2.1. **Inception report** (10 hard copies and 3 CD-ROMs) within **30 days** from the date of the signature of the contract. This report shall cover background information and understanding of the tasks, monthly work plan, and methodologies.
- 6.2.2. **First interim report** (10 hard copies and 3 CD-ROMs) within **330 days** from the date of the signature of the contract. This report shall cover the output of the tasks 4.3.1-4.3.6.

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- 6.2.3. **Second interim report** (10 hard copies and 3 CD-ROMs) within **420 days** from the date of the signature of the contract. This report shall cover the output of the tasks 4.3.6-4.3.7.
- 6.2.4. **Draft final report** (15 hard copies and 3 CD-ROMs) within **510 days** from the date of the signature of the contract. This report shall cover the output of the tasks 4.3.1-4.3.10.
- 6.2.5. **Final report** (15 hard copies and 3 CD-ROMs) within **540 days** from the date of the signature of the contract. This report shall cover the output of the tasks 4.3.1-4.3.10.

7. Minimum Qualification Requirements

The Consultant shall be selected through the World Bank's Quality- and Cost-based Selection (QCBS) process. In order for the Consultant to be qualified for the Assignment, the firm and its key staff, to be assigned for this work, must meet the following minimum qualifications:

7.1 The firm

- (a) Minimum of 8 years of substantive experience in law and policy development on energy, environment, industry and business in Thailand and in national and international practices on environmental and energy management
- (b) Key staff of the firm has experiences in similar projects

7.2 Key staff, which must comprise of a team leader and at least two legal specialist, one legal officer, one technical expert, one technical officer, and one coordinator. (The qualifications of the proposed key staff shall be evaluated at the proposal stage)

7.2.1 Team Leader

- (a) Advanced university degree (Master's degree or equivalent) in law
- (b) Minimum of 10 years of progressively responsible experience in environmental law, energy law, industrial law, public law or business law, and national policies and strategies in Thailand, including legal analysis, research and writing
- (c) Minimum of 8 years of substantive experience of team management

7.2.2 Legal specialist

- (a) Advanced university degree (Master's degree or equivalent) in law
- (b) Minimum of 8 years of progressively responsible experience in environmental law, industrial law, energy law or business law

7.2.3 Legal officer

- (a) Degree in law or related fields
- (b) Minimum of 4 years of progressively responsible experience in environmental law, industrial law, energy law or business law

7.2.4 Technical expert

- (a) Advanced university degree (Master's degree or equivalent) in economics, finance, environmental management, science or other related fields
- (b) Minimum of 8 years of progressively responsible experience in carbon market, energy or environment management

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7.2.5 Technical officer

- (a) Degree in political science, environmental science, industrial management or other related fields
- (b) Minimum of 4 years of progressively responsible experience in the relevant field

7.2.6 Coordinator

- (a) Degree in law or related fields
- (b) Minimum of 2 years of substantive experience in project coordination, computer literacy and administration

Annex I

List of issues on the establishment of an integrated reporting system to support the ETS

The Consultant shall explore the following issues from the legal aspects and review legal issues in relation to them, in accordance with the specific tasks to be carried out in Section 4.

Please note that the following is not an exhaustive list. The Consultant should identify further issues, if appropriate and necessary for the complete study of the legal and institutional framework.

1. Objectives of reporting/users (relevant departments and agencies) of information
2. Information required to be reported
3. Comparability with relevant standards
4. Controlled/regulated entities required for reporting
 - a. Coverage criteria (e.g. greenhouse gas coverage/sector covered)
 - b. Reporting threshold / Energy consumption
5. Means of reporting
 - a. Reporting process, including frequency and verification
 - b. Reporting platform, including consideration of electronic reporting
6. Monitoring of reports
7. Institutional arrangements
8. Information management system/database
9. Compliance/enforcement
10. Other issues to be taken into account
 - a. Readiness of the private sector
 - b. Incentives and incurred costs
 - c. Avoidance of undue burden / duplication of works on the private entities

Annex II

List of issues on the establishment of the ETS

The Consultant shall explore the following issues from the legal aspects and review legal issues in relation to them, in accordance with the specific tasks to be carried out in Section 4.

Please note that the following is not an exhaustive list. The Consultant should identify further issues, if appropriate and necessary for the complete study of the legal and institutional framework.

1. Scope/Coverage
 - a. Greenhouse gas coverage
 - b. Sector coverage
 - c. Entities to be regulated
2. Cap-setting and allocation
 - a. Cap-setting
 - b. Methods of allocation
3. Designation of regulated entities
4. Allowances/Units/Permits/Offsets
 - a. Legal nature of the eligible units of allowance
 - b. Validity periods of allowance
 - c. Setting of reference price
 - d. Adjustment/revocation of allowance
 - e. Transfer of allowances
 - f. Surrender, carry-over, banking, borrowing, termination
 - g. Use of offsets
5. Methodological issues
 - a. Methods of calculation
 - b. Baseline setting
6. Institutional arrangements
 - a. Supervisory body
 - b. Committees
 - c. Registry platform/system
 - d. Market arrangements
7. Mechanism to promote market stability
8. Linkages with the international, regional and other national/sub-national emissions trading systems and mechanisms
9. Compliance/Enforcement
10. Operational costs
 - a. Transaction costs for the regulated entities

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- b. Infrastructure costs for the government
 - c. Allowances/Units
11. Confidentiality/disclosure of information
12. Preparatory matters
- a. Readiness of the regulated entities / Capacity-building
 - b. Impacts on competitiveness

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Annex III

Figure 1: Overall timeline for the tasks, meetings and delivery of reports, as indicated in the ToR

