



**DRAFT**

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## **TERMS OF REFERENCE**

### **Project: Assessing the feasibility of establishing a Central Securities Depository**

**Project Owner:** Ms. Flora Musta, Head of Licensing  
Directorate, AFSA

**Project Manager:** Ms. Flora Musta, Head of Licensing  
Directorate, AFSA

**Project Co Managers:** ..... Legal Department, Bank of  
Albania  
.....Ministry of Finance

**Technical Anchor (TAN):** FSVC Expert

**Project Working Group:** Albanian Association of Banks  
Banks  
Stock exchange  
Securities market Operators  
Investors

### **I – Background - Identification of the problem.**

The central depository agency is a legal entity authorized for performing tasks related to the depository of dematerialised securities and the clearing and settlements of legal operations performed with securities.

The terms relating to the tasks of the central depository agency shall have the following meanings:

1. clearing is the comparison of information on concluded legal transactions in dematerialised securities, determination of deadlines for payments related to legal transactions and calculation of obligations to be paid,

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2. settlement is the mediation and supervision of payment and/or transfer of securities associated with legal transactions in securities,
3. depository tasks are the corresponding entries in electronic records for the purpose of acquisition, transfer or termination of ownership, lien and other rights from dematerialised securities.

*i. Legal framework*

The securities markets legislation in Albania is essentially entrusted in the Law Nr 9879, dated 21.02.2008 “On Securities”. The law regulates the types of securities, the conditions for their issuance, trading and registration procedures, requirements for brokers, the conditions for the organization of the public trading of securities, rules on protection of investors and the securities holders, the organization and functioning of securities registries and stock exchange.

The law also describes the registrar/depository’s functions, licensing requirements and reporting. According to the Law:

1. each joint stock company that fulfils the legal requirements can operate as register (this means that potentially some registrars can operate in the market), and
2. The securities registry cannot perform other activities, other than those licensed for by the Authority (this means that banks cannot undertake this activity).

The securities market is supervised by the Albanian Financial Supervisory Authority (AFSA). AFSA was established by law no. 9572 dated 3.7.2006 and it replaced the Securities Commission. According to this framework, the AFSA is mainly responsible for issuing and revoking licenses of market operators, monitoring standards of transparency in public offerings of securities, keeping records in connection with market operators, determining licensing and operating requirements for securities brokers, and issuing rules on the operation of the securities market. AFSA is responsible for issuing and revoking licenses of the securities registrar.

*ii. Actual situation on securities market*

There is no functioning stock market in Albania. There is a legal framework on the establishment and functioning of the stock exchange, but there are no dealings made in the market. There is one stock exchange licensed in Albania (the Tirana Stock Exchange). It has very limited trading activity and as a result the Albanian financial system is currently centered on banks while the equity market is remarkable underdeveloped. Nonetheless, there are active operators in the market, which create the demand and supply on securities.

The main securities supplier is Albanian Government issuing public debt securities. Companies are another important supplier issuing only ownership securities. Thus, shares of state companies are privatized to “strategic investors”, while private companies sell their shares in informal market. The demand for securities is committed generally by financial institutions such as commercial banks, brokerage houses (generally invest on government papers), insurance companies, pension funds as well as international financial institutions (i.e. IFC, EBRD, American Enterprise Fund etc. which invest in private company shares). Another important securities demander is the public, generally individuals, who invest their savings in T-Bills, and businesses who buy shares in informal market to “take-over” companies they privatized from the state.

All securities in Albania are kept in “book-entry” form. Only privatization vouchers were in a physical form. The financial instruments, which have been present in the Albanian securities market so far, are:

- T-Bills (3, 6, 12 month maturity)
- Government Bonds (2 years, 3 years, 5 years – fixed coupon and variable coupon and 7 years maturity)
- Privatization Vouchers
- Shares of Companies

### ***iii. The need for the functions of a Central Depository***

*(For review by Technical Specialist)*

In Albania, there are individual banks acting as custodians and they do keep records on the transactions effectuated by the bank, but there is not a central and/or unique depository.

For ***companies shares*** the Shares’ Registration Center operates as licensed registrar. It was created as a joint stock company in 1996, and is a state-owned entity.

***Governmental securities*** (G-Securities) are issued in book entry form and are transferable. Every transfer of property from the owner of the G-Securities to the purchaser must be registered, for the transfer to take effect.

The Bank of Albania maintains the registry of the first level, referred as the synthetic registry. Registrars licensed by the FSA (for example, Raiffeissen Bank and the INTESA SANPAOLO Bank and three other banks) maintain the registry of the second level, referred as the analytic registry. Furthermore, the new law on “Securities” foresees that the companies that plays the role of a security registrar shall have a sole purpose of registering the securities and recording the transactions data made in their connection. Having this there is no room for banks to serve as registrar as it is the practice till now and this can be considered also as being conflict of interest since the banks play the traders role and they cannot have alos the capacity of the registrar for the trade that they effectuate.

The existence of several securities registrars is not considered as having a positive impact for the development of the market. There is a need for the existence of one central depository since it would assist in:

- Stimulating an active Stock Exchange
- Increasing the number of long term debt instruments of the Albanian Government,
- Increasing the transactions with Albanian Government Securities by individuals and legal persons,
- Increasing the foreign investors’ interesting, particularly foreign banks, on buying Albanian Government Securities,
- Increasing Cross-border transactions,

The experience of many countries that have established Central Depository institutions, and consulting with several foreign experts in this area, strongly supports the necessity of having a Central Securities Depository for:

- Registering all kind of securities in the same center, including the Government Securities;
- Completing the clearing and settlement of transactions with securities,
- Processing of the identification number of securities (ISIN),
- Other services to help securities issuers, etc..

## **II. - Project Objective**

The main objective of the PWG will be to produce a feasibility study that should contain a thorough analysis of the alternatives that would guarantee the existence of the services offered by the Central Security Depository by comparing the “make” versus “buy” options of these services. In more detailed terms the feasibility study shall duly considered all possible options, by not limiting itself in only examining the alternative of establishing an Albanian tailored Central Security Depository, but also the possibility to buy these services from another already established agency abroad.

### **I. Establishing a Central Security Depository in Albania**

While examining the alternative of establishing a Central Security Depository in Albania the following factors shall be given due weight:

#### ***1.1 The establishment of e CSD nearby a state entity such as the Bank of Albanian that do currently a securities’ registrar for governmental securities.***

It is important that all relevant issues are examined in this regard such as:

- i) the legal and operational possibilities of the BoA to undertake and play this role;
- ii) other consequences that can impact current initiatives as the existence of the Central Registrar of Companies’ stocks
- iii) the amount of securities and expected amount of transactions taking into account the current development in the governmental securities market (the new legal regulations on long term maturity Bonds and corporate bonds and issuance of Eurobonds)

#### ***1.2 The establishment of CSD held by a private corporation.***

In the framework of this alternative it is important to consider the following issues:

- i) The approach of MoF as the owner/administrator of governmental in this regard i.e. if they are confident to trust a private entity to register and keep all the records in regard to governmental securities.
- ii) The amount of securities and expected amount of transactions especially in the perspective of a cost versus profit approach;

- iii) The capacities (existed and to-be developed) of the private corporation serving a CSD in order to meet the required European standards so that the records and transaction are compatible with the one held in EU countries.
- iv) The already existing Central Registrar of Companies' stocks as a joint-stock company.

## **II. Buying the services of a Central Security Depository**

The second alternative of buying the services of a CSD from abroad shall be seen in the light of a cost-benefit analysis but also from the legal perspective, if the Albanian law allows this. In this framework it is important to carefully examine and assess the approach of the following actors toward the idea of having a non-Albanian established entity in keeping records of Albanian securities and respective transactions:

- i) Ministry Of Finance;
- ii) Bank of Albania;
- iii) Any other implicated state agency.

Both options shall carefully take into account important given facts in short and long-term perspective that will influence the success and/or failure of the to-be chosen alternative. Some of the important factors are considered to be:

Albanian accession to EU – therefore European standards shall be given an appropriate thoughtfulness, so that there will be no need in conducting another harmonization process when Albania will be an EU member state.

The economical support of the project idea - the current situation of the securities market in Albania will impact the volume of the work/transactions to be carried on by the Central Security depository and as such will impact the profitability of the initiative and as a result will impact also its capability to exist in a free market economy.

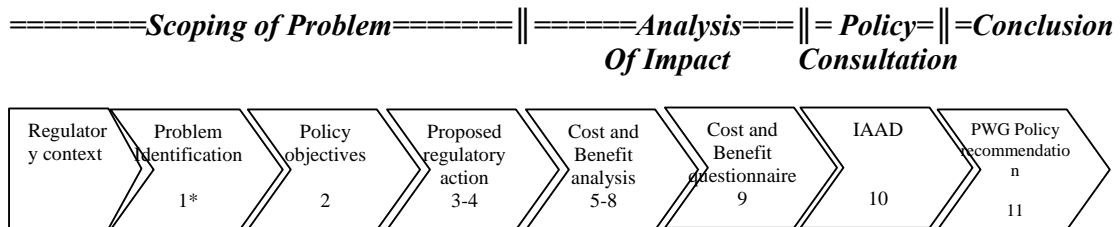
Having in mind what set above the Working Group while preparing the feasibility study shall:

- Assess the current situation and needs from all the stakeholders of the functions of a central depository taking into account both options “Make” versus “Buy”;
- Consider short and long term perspective related to the development of the securities market in Albania and the development in regard to stabilization and association process with EU and the Albania's final accession as a EU member.
- Discuss possible options with a main focus on the establishment of a Central Depository
- Assess the need (or not) for amending of the Law no 9879 dated 21.02.2008 “On securities” in regards of the establishment of the Central Depository.
- Explore/approach sources for technical assistance on establishing the Depository (round table with potential shareholders).

- Produce basic principal features and requirements to be fulfilled by the CSD

### **III.- Intended Strategy-Description of the Better Regulation**

*(Preliminary Draft pending finalization of section I.iii)*



The project management group (Project Owner, Project Manager, Project Co-Managers), supported by the SPI Secretariat, will act based on the mandate received from the SPI Committee to provide recommendations to the financial sector on establishing a central securities depository

The project working group (PWG), with the support of SPI Albania Secretariat will analyze the current background and legal framework and the perceived obstacles, as well as other countries' experience, in order to provide with clear recommendation as to the viability and steps to be undertaken for the market to be provided with the services of a central depository.

Planned steps to achieve project's objective:

1. To assess the needs of a developing security market, considering the long term prospective, and identify the current legal framework that might need amendments or revision.
2. To acquire a clear understanding on experiences in other countries with central depository/registrar, and on EU regulation concerned (if there is any).
3. To assess the potential opportunities of generating services of a central depository and evaluate feasibility of the option of building up this institution
4. Based on the analyzed documents, to formulate the recommendation to the financial sector.
5. To assess the possible impact of the proposals based on cost and benefit analysis and to run consultations on the proposed recommendations.

### **IV- Methodology: from kick off to the accomplishment of the project**

*(Preliminary Draft pending finalization of section III)*

The Project Owner will appoint PM and Co-PM. SPI Secretariat will draft the invitation letter. The project working group members will be appointed by PM and by the interested stakeholders, following the invitations sent.

#### **i. First PWG meeting**

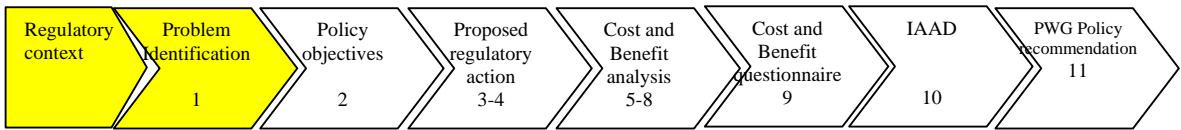
**Preparation of PWG 1<sup>st</sup> meeting (PM/CoPM and SPI Secretariat)**

PMG and SPI Secretariat to prepare a background note on current regulatory framework, definition of the problem and proposed options for solution, to be discussed by all stakeholders in order to better define the problem and the way toward the solution.

After PMG clearance and before the 1<sup>st</sup> meeting, SPI Secretariat will send to PWG members the following documents:

1. Draft TORs;
2. Draft of “Scoping of Problem” document;

**PWG 1<sup>st</sup> meeting first week of December**



**Objectives:** - To agree on the presented TORs prepared by SPI Secretariat and endorsed by PO and PM/Co-PMs;

- To understand the current context and the policy goals;

**Outputs:** - Final ToRs

- Final “Scoping of Problem” document

SPI Secretariat: will prepare the minutes of the meeting and deliver them for approval to all PWG members.

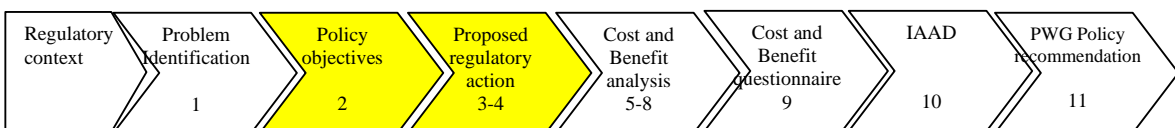
**ii. Second PWG meeting**

**Preparation of PWG 2<sup>nd</sup> meeting (PM/DPM and SPI Secretariat)**

SPI Secretariat and PMG prepare a note on the international experience with regard to the services of a central depository in the region and EU countries. *(With the input and for review by Technical Specialist)*

SPI Secretariat collects output from all stakeholders on the respective difficulties and problems faced because of the lack of a central depository, and on their suggested alternatives on how to solve the problem. PMT with the assistance will draft the PWG position paper describing the debates on the identified solutions and outlining the arguments sustaining the most acceptable solution. The document is to be sent to PWG members before the third meeting.

**PWG 2<sup>nd</sup> meeting first week of January)**



- Objectives:**
- To acquire knowledge on other countries' experience in dealing with central depository/registrar.
  - To assess the current situation and needs from all the stakeholders represented in the PWG by their members;

- Outputs:**
- Note on International Experience
  - PWG position paper on the Current Situation and identified solutions

SPI Secretariat: will prepare the minutes of the meeting and deliver them for approval to all PWG members.

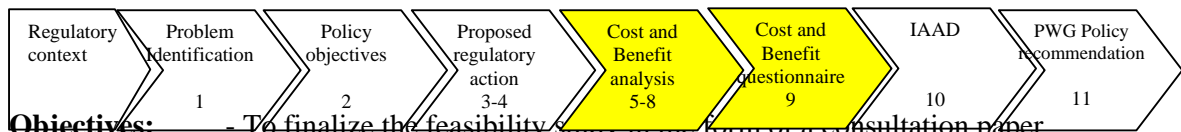
**iii. Third PWG meeting**

***Preparation of PWG 3<sup>rd</sup> meeting (PM/DPM and SPI Secretariat)***

Considering that establishing a Central Depository results to be the best solution for all stakeholders, PWG through the SPI Secretariat prepares a feasibility study where main requirements, implications and responsibilities of all parties are clearly elaborated. *(With the input and for review by Technical Specialist)*

SPI Secretariat will prepare a draft questionnaire for the qualitative and/or quantitative analysis of the potential impact assessment of the PWG solution proposal.

***PWG 3<sup>rd</sup> meeting (third week of January)***



- Objectives:**
- To finalize the feasibility study in the form of a consultation paper
  - To discuss and agree on the cost and benefit questionnaire for assessing the qualitative and/or quantitative impact of the proposed solution

- Output:**
- a) IAAD;
  - b) Final consultation paper (feasibility study).

SPI Secretariat: will prepare the minutes of the meeting and deliver them for approval to all PWG members.

**iv. Forth PWG meeting**

***Preparation of PWG 3<sup>rd</sup> meeting (PM/DPM and SPI Secretariat)***

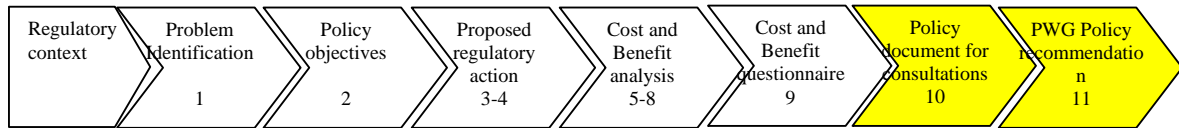
SPI Secretariat will collect individual inputs on the cost benefit questionnaire and will prepare the Assessment Analysis Document (IAAD)

The PMT with the assistance of the SPI secretariat will:



- a. Run consultations with stakeholders based on the consultation paper;
- b. Draft feedback document;
- c. Based on the above, prepare PWG recommendation paper and action plan for presenting them to the policy makers, and for informing the public on the initiative.

***PWG 4<sup>th</sup> meeting first week of February***



- Objective:**
- To endorse Impact Assessment Analysis Document (IAAD);
  - To discuss the consultation feedback document and the consultation paper/feasibility study;
  - To agree on the recommendations regarding the best alternative in regard to the services of a Central Securities Depository and steps to be followed to finalize it
  - To agree on the action plan for awareness raising among the policymakers and for informing the public on the initiative.

- Output:**
- IAAD
  - PWG recommendations document (Feasibility study)
  - Action plan for awareness rising among the policymakers and for informing the public on the initiative

SPI Secretariat: will prepare the minutes of the meeting and deliver them for approval to all PWG members.

***Following PWG 4<sup>th</sup> meeting:***

Preparation of the SPI Committee paper that will be approved by PMG.

**VI - Project Team**

The team is composed of:

- Financial Supervisory Authority
- Ministry of Justice
- Bank of Albania
- Banks (Albanian Association of Banks)
- Securities market operators
- Investors

Consulted documents:

- Law no. 9879, date 21.02.2008 "On Securities", approved by the Parliament;
- Law no. 9572, date 3.7.2006, "On the financial supervisory authority", approved by the Parliament;
- Experiences of other countries in the region.

Attachment

<b>The EU Better Regulation Approach</b>	
<b>Steps</b>	<b>Purpose</b>
<b>Scoping of problem</b>	
1. Problem identification	To understand if a market/regulatory failure creates the case for regulatory intervention.
2. Definition of policy objectives	To identify the effects of the market /regulatory failure to the regulatory objectives.
3. Development of “do nothing option”	To identify and state the status quo.
4. Alternative policy options	To identify and state alternative policies (among them the “market solution”).
<b>Analysis of impact</b>	
5. Costs to users	To identify and state the costs borne by consumers
6. Benefits to users	To identify and state the benefits yielded by consumers
7. Costs to regulated firms and regulator	To identify and state the costs borne by regulator and regulated firms
8. Benefits to regulated firms and regulator	To identify and state the benefits yielded by regulator and regulated firms
9. Data Questionnaire	To collect market structure data to perform a quantitative cost and benefit analysis
<b>Consultations</b>	
10. Policy Document	To learn market participant opinions on various policy options
<b>Conclusion</b>	
11. Final Recommendations	Final report to decision-makers, based on Cost Benefit Analysis and market feedback

Source: CESR-CEBS-CEIOPS 3L3 Guidelines, adjusted by the Convergence Program based on experience.