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TEMPLARS ThoughtLab

Green Bonds: Key Regulatory Considerations

Introduction

Sustainable Development Goal (**SDG**) **13** requires that ***urgent action is taken to combat climate change and its impacts***. Stemming from this, countries are taking positive steps to ensure that the set Target is achieved, and the SDG is met by the 2030 deadline. Over the years, there has been increased investments in green initiatives and Ghana has been taking concrete steps to tap into this new area and to most importantly, meet its SDG goal.

To encourage the financing and undertaking of green projects, the Ghana Fixed Income Market (**GFIM**) in April 2022, issued guidelines (**GFIM Rules**) for the issuance of sustainability bonds. These sustainability bonds include Social Bonds, Gender Bonds, Green Bonds, Sustainability Bonds, Sustainability-Linked Bonds (SLB's) and other Sustainability-themed Bonds.

This write-up seeks to highlight the key pre-issuance and post-issuance requirements under the SEC Guidelines for the issuance of Green Bonds in Ghana.

The Securities and Exchange Commission of Ghana (the "**Commission**") issued guidelines on the issuance of Green Bonds (the "**SEC Guidelines**") on 7th March 2024.[1] The SEC Guidelines have been formulated in line with the Green Bond Principles of the International Capital Market Association ("**ICMA**"). The SEC Guidelines serve as a blueprint for the issuance of Green Bonds in Ghana and sets out the aim of the guidelines, the application process, required documentation, and post-issuance requirements.

Green Bonds, like traditional bonds, are a form of loan made by an investor to a borrower at a fixed or variable interest rate and have a maturity date. The distinct nature of Green Bonds is that the proceeds derived from their issue are exclusively used to finance or re-finance sustainability-focused projects.

[1] SEC/GUI/003/03/2024

What entities can issue Green Bonds?

Public companies, external companies (incorporated as public companies in their jurisdictions), supra-national institutions, local government authorities, and statutory corporations can issue Green Bonds. Private companies are particularly exempted because, under Ghanaian law, such companies are not allowed to invite the public to deposit money with them for fixed periods for an interest.

What are the eligible green bond projects?

The SEC Guidelines prescribe projects which are eligible for green bond financing. These include projects related to renewable energy, energy efficiency, pollution prevention and control, environmentally sustainable management of living natural resources, environmentally sustainable land use, terrestrial and aquatic biodiversity conservation, clean transportation, sustainable water and wastewater management, adaptation to climate change, circular economy adapted products and green buildings.

The SEC Guidelines further specify excluded projects which cannot be financed or refinanced with the proceeds of Green Bonds.

Such excluded projects include:

a) the production or trade in any product or activity which is illegal under Ghanaian law or international conventions and agreements or is subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, Polychhlorinated Biphenyls (PCBs), wildlife or products regulated under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

b) production or trade in weapons and munitions;

c) production or trade in alcoholic beverages;

d) production or trade in tobacco, gambling, casinos and equivalent enterprises,

e) production or trade in radioactive materials. This does not however include purchase of medical equipment, quality control (measurement) equipment and any equipment where the radioactive source is considered trivial and/or adequately shielded;

f) production or trade in unbonded asbestos fibres, drift net fishing in marine environment;

g) production or activities involving harmful or exploitative forms of forced labor/harmful child labour, commercial logging operations;

h) production or trade in wood or other forestry products other than from sustainably managed forests;

i) coal, oil and gas power generation;

j) industrial processes related to fossil fuels (e.g. coal/oil/gas mining/ extraction, coal washing & processing, oil refinery, associated supply chain infrastructure) and

k) landfills.

The SEC Guidelines do not prohibit the application of proceeds from Green Bonds to other projects with positive environmental impacts. Issuers of Green Bonds can therefore operate outside the listed eligible projects provided that such activities are not excluded in the SEC Guidelines.

What are the significant requirements for issuing Green Bonds in Ghana?

To issue Green Bonds, the entity would need to submit the following to the Commission.

a) A Green Bond Framework. This framework must provide the structure under which the project would be undertaken and include the following.

   i) The adoption of the ICMA Green Bond Principles and the SEC Green Bond Guidelines.

   ii) The use of the proceeds derived from the issuance of the bond.

   iii) The process for evaluating and selecting projects including the decision process flow chart.

   iv) Management of the proceeds derived from the issuance.

   v) Reporting and disclosure requirements.

   vi) Annexes detailing an Exclusion List and an Environmental and Social Management System.

b) An independent external review of the project to be undertaken. This review must be conducted by a qualified and independent expert with the experience and skills to assess the green characteristic of the bonds to be issued. The applicant may also use other types of reviews in addition. These reviews may have only certain aspects of the issuance monitored against certain specific criteria defined by the applicant at the time of issuance.

   The report must contain the following minimum provisions.

   i) A general description of the objectives and scope of the review.

   ii) Qualifications and key references of the review.

   iii) A declaration of independence and conflict of interest management policy.

   iv) A description of the analytical approach and methodology used.

   v) The conclusions and possible limitations of the external review.

   In addition, the independent expert or third-party reviewer is required to produce a due diligence report which will include an assessment of the environmental impact of the projects to be financed or refinanced by the Green Bonds.

c) A draft information memorandum, prospectus, or applicable pricing supplement where a shelf programme has been previously approved.

Also, the issuing entity must seek the necessary approval for issuing the bonds from the relevant regulators of their specific activities, structure the issuance in cooperation with its advisor, obtain a credit rating where necessary, promote the bond, and set the price.

What are the post-issuance disclosure requirements for green bond issuers in Ghana?

The post-issuance disclosure requirements of issuers may be qualified into (a) periodic disclosure requirements and (b) disclosures which must be made immediately to the Commission and the bondholders.

Periodic Disclosures. Green Bond issuers must continuously comply with the disclosure obligations and reporting commitments made during the issuance of Green Bonds, as detailed in the Green Bond Framework as well as annual reports on their activities. The applicant is also required to make available on its website and if requested:

a) the procedures for evaluation and selection of the project;
b) the procedures for monitoring the project;
c) the information on the allocation of funds raised;
d) the external evaluation report related to these procedures; and
e) an updated list of projects financed or refinanced by the Green Bonds issued including a description of the projects, the allocated amounts to the project, the expected environmental impact and unused balances.

The applicant is similarly required to submit annual and quarterly financial statements as provided under the Securities and Exchange Commission Regulations, 2003 (L.I. 1728).

Immediate Disclosures. Bond issuers must disclose any information regarding a major event to the Commission, the bondholders and its securities exchanges (for listed bond issuers). Such information will include:

a) a delay in the timing of the use of the funds;

b) a significant negative environmental impact of the projects;

c) any changes in an external provider that conducted the independent review of the issuance;

d) any event that could have an impact on the environmental performance of the projects; and

e) any changes in the commitments that the bond issuer made.

Conclusion

In conclusion, the SEC Guidelines establishes a framework that aims to regulate Ghana's Green Bonds market in line with the ICMA Green Bond Principles. In the interest of promoting openness and credibility in the green bond market, this framework guarantees that issuers comply with strict criteria for project selection, fund management, and reporting. The successful implementation of the guidelines will help attract investors and boost investor-confidence in Ghana's Green Bonds market and presents a fresh diversion from investment in government bonds. To fully capitalize on the advantages of green financing and make a positive impact on the environment, potential issuers must have a comprehensive understanding of these rules and ensure their compliance. This will also help them achieve their corporate social responsibility objectives.