

Annex 9: Legal Due Diligence



1.A Legal Due Diligence

Government Licenses and Permits

In order to promote an efficient use of ODA finance, the Government of Vietnam updated the ODA management policy in 2021 (Decree 114/2021/ND-CP). The Decree requires that less concessional loans such as the IFAD ordinary loan should be used for public infrastructure investments, while additional grant finance (GCF) should be mobilised for additional investments such as capacity building and technical assistance, matching grants, lines of credit, and public/private infrastructure and facility investments. All of RECAF investments are in small scale focusing on climate change mitigation and adaptation. They are exempt of the environmental licensing process or have a simplified licensing mechanism in place. The following infrastructure schemes are considered exempted from environmental licensing but required to be checked by the provincial agencies (Department of Natural Resource and Environment, Department of Agriculture and Rural Development) whenever approval is needed:

- ❖ Small-scaled irrigation reservoirs for water storage and supply for crop cultivation;
- ❖ Small-scaled lined irrigation canals and/or piped irrigation systems (upgraded from earth irrigation canals); Small-scaled irrigation weirs/dams; Irrigation pumping stations for crop cultivation;
- ❖ Small-scaled rural roads (upgraded from earth roads) to production areas or linkages between collecting points/ warehouses and production areas;
- ❖ Micro weather stations for early-warning of extreme weather conditions (draught, storm, frost...); Pest monitoring systems for agricultural production;
- ❖ Ecotourism infrastructures and facilities;
- ❖ Forest Monitoring System¹;
- ❖ Public seed and seedling nurseries;
- ❖ Fire watch towers, water points for forest fire fighting, forest protection stations, forest patrol paths, forest feeder roads; facilities/equipment for forest management and protection;
- ❖ Other public infrastructure for forest protection and management (to be determined during project implementation).

The following activities contemplated in the RECAF should comply with the following regulations both at national and provincial levels:

- ❖ Design of infrastructure schemes must comply with **The Law on Construction** (No. 50/2014/QH13, dated 18 June 2014) and consult with the New Rural Development

¹Applications and facilities of remote sensing and A.I technologies using satellite images to serve the management and monitoring of forest resources changes for warning on deforestation plots, forest fire, chainsaw sounds, and for forest inventory.

Program regarding the standards for infrastructure investment in rural and mountainous areas.

- ❖ Irrigation schemes must be conformed to **The Law on Irrigation** (No. 08/2017/QH14 dated 19 June 19 2017).
- ❖ Activities relating to climate change mitigation in forested areas must be conformed to the National **Action Plan on REDD+ (NRAP)** and **Provincial Action Plan on REDD+ (PRAP)**. Further efforts to invest in forest protection and development (agroforestry, community forest management) must comply with the **Forestry Law in 2017**.
- ❖ The efforts to promote the **Payment for Forest Services** must comply with the **Decree 147 in 2016 and Decree 156 in 2018** on Payment for Ecosystem Services.
- ❖ The project investment in line of credit (micro finance) must be conformed to the **Decree 55 in 2015** on rural finance development.

Guidance for project implementation with required legal framework will be concretized in the **Project Implementation Manual (PIM)**, **Financial Management Manual (FMM)**, and **Procurement Plan (PP)**.

Taxation

The IFAD and GCF financing proceeds must not be used to pay taxes. All taxes are to be borne by the Government. The grant financing and the IFAD loan are exempt from taxes as per ODA regulations.

Insurance

Using project funds, the project will purchase insurance policies for cars and high value goods. . In addition, the project will use project proceeds to purchase health insurance for all project staff, in line with the provisions of the 2008 **Law on Health Insurance** and the 2014 **Law on Social Insurance**. In Vietnam, several insurance service providers offer their services. The project will use applicable procurement rules to select the right provider.

Immoveable assets

The project will hand over immovable assets financed by the project to local authorities/project beneficiaries. The project will apply local regulations for the final acceptance and handover of these assets. A local PPC order will be required for the final transfer of these assets to beneficiaries.

Anti-corruption and Transparency

As a result of strong efforts by the Vietnamese Government and political system, the country has made concrete advances against corruption. The Corruption Perception Index (CPI) for 2019 by Transparency International ranked Vietnam 96th out of 180 countries, dropping by 21 places and four points compared to 2018. A new Anti-Corruption Law was approved and took effect in 2018. It prescribes the prevention and detection of corruption; and handling of corruption and acts of violation of the anti-corruption law. On 15 August 2019, decree 59 came into effect and provides specific guidance on the implementation of the Anti-Corruption Law, *inter alia* on enterprise obligations in relation to conflict of interest and transparency requirements for public companies and non-state organisations.

The IFAD Policy on Anti-Corruption and Fraud requires that the staff of IFAD, (including beneficiaries of IFAD loans) as well as all bidders, suppliers, contractors and consultants under IFAD-financed contracts observe the highest standard of ethics and integrity during the procurement and execution of such contracts. Mechanisms for whistle-blowers to access IFAD systems can be accessed under <http://www.ifad.org/governance/anticorruption/how.htm>. In line with IFAD policies on anticorruption, sexual harassment, sexual exploitation and abuse, all bidders and contractors/service providers/suppliers are required to sign self-certification forms as a part of bids and contract documents.

The central and provincial PMUs will ensure that all RECAF activities are implemented within a framework of transparency. This framework will include measures to ensure that procurement and project implementation are carried out in accordance with the GoV, IFAD, and GCF rules and project's design specifications. Other measures under the framework for transparency include:

- ❖ Publication of sourcing, tendering and contracting processes at central, district and provincial offices;
- ❖ Participation of representatives of end-users in bid assessments;
- ❖ Prompt communication to bidders of bid evaluation outcomes;
- ❖ An internal code of conduct to be signed by all Project staff;
- ❖ A code of business ethics to be included in agreements/contracts signed with partners and beneficiaries. The code of conduct and the code of business ethics will be included in the PIM after review by implementation partners;
- ❖ Annual project audits, that will include a routine assessment to companies and farmer-groups;
- ❖ IFAD's direct supervision which *inter alia* will address fiduciary compliance;

- ❖ Involvement of stakeholders (especially farmers and their organisations) in programming, implementation and M&E of RECAF activities;
- ❖ Evaluation and impact assessment outsourced to independent institutions.

Currency of IFAD - GCF grant

The IFAD loan and GCF-funded will be disbursed in USD (in respect of any amount of principal, interest and fees). Reflowed Funds paid by GoV to IFAD will be free and clear of any withholding taxes or other deductions.