

## Annex 9: Legal Due Diligence



## 10.A Legal Due Diligence

### Government Licenses and Permits

Emergency measures have been taken by every state of the semiarid stating that all infrastructure works and activities aimed at mitigating the effects of droughts are either exempt of the environmental licensing process or have a simplified licensing mechanism in place, through state rules explained in each item below. For avoidance of doubt, national legislation and the legislation applicable to the States must be observed; at time of design and implementation, the following activities considered in the project are usually exempted from environmental licensing and its necessity will be checked by BNDES and the States whenever approval is needed:

- Construction and installation of cisterns, dams and other equipment for the abstraction and retention of water of any kind, shape or model.
- Implementation of irrigated production systems using micro sprinkler or drip technology in areas of up to 1 ha (one hectare),
- Installation and recovery of wells up to 50 m deep, as well as artificial reservoirs, dams or barriers, with up to 2 ha of water surface;
- Purchase of animals with health certificates issued by the responsible bodies
- Works and services of soil correction;
- Construction of fences, corrals and machine sheds;

#### **Bahia**

According to Law 10,431/2006, undertakings and activities necessary to mitigate the environmental, social and economic effects of an emergency or public calamity resulting from drought shall follow a specific procedure for simplified environmental licensing. The application for the simplified environmental licensing should be addressed to the Institute of Environment and Water Resources – INEMA.

#### **Ceará**

The State Council for the Environment- COEMA, through resolution No. 01 of February 2018 establishes a review of the procedures for Simplified Environmental Licensing for emergency works required to cope with drought in the State of Ceará. The State Superintendence of the Environment – SEMACE will proceed to the analysis of the framework of the application of the Resolution COEMA N° 10 of June 11, 2015.

#### **Paraíba**

According to the administrative standard N° 125 of 2015 issued by SUDEMA (Paraíba's environmental authority), cisterns, small dams and public works considered goods of common use - such as desalination facilities, are exempt from environmental licensing process provided they do not involve further deforestation or environmental degradation.

## **Pernambuco**

Decree No. 38146 of 2012 establishes procedures for the Simplified Environmental Licensing of emergency works necessary to confront drought in the State of Pernambuco. The State Agency for the Environment - CPRH will analyze the framework of the application.

## **Piauí**

The Secretariat of Environment and Water Resources - SEMAR will analyze the framework of the application of Decree No. 14921 from 2012 which regulates the Simplified Environmental Licensing for the same activities mentioned above.

## **Rio Grande do Norte**

Institute of Sustainable Development and Environment of Rio Grande do Norte -IDEMA, through Ordinance No. 55 of 2013, resolves the activities and circumstances under which a Simplified Environmental Licensing applies.

## **Sergipe**

The Council of Environment of the State of Sergipe- CEMA / SE will analyze the framework of the application of Administrative Standard. 01/2009.

The activities contemplated in the project must comply with the following regulations at the federal and state levels:

- **Agroforestry and Silvo-pastoral activities:** related to the breeding of sheep and goats, pigs, chicken, quail and others; beekeeping with or without processing, cultivation of medicinal, aromatic and organic plants and extraction of oils, essential oils, latex, resin, sap, leaves, roots, fruits, flowers, seeds, vines, plants, buds and barks, must comply with Article 3 of Federal Law 11.326/2006 and Article 52 of the Brazilian Forest Code (Federal Law 12.651/2012).
- **The Cadastro Ambiental Rural (the Rural Environmental Registry – CAR)** is the main legal instrument of the new Brazilian Forest Code (Law no. 12.651) concerning the protection of native forests and in force since 2012. With the CAR, it is mandatory for all rural properties to be registered and caps have been set on the proportion of natural vegetation that can be legally cleared on any rural property.
- **Agricultural and livestock activities in dry regions.** Agricultural and livestock activities carried out in dry regions that are not subject to irrigation, will be exempt from environmental licensing according to the State Laws in the semiarid.
- **Use and management of water resources:** activities related to the use and management of water resources must comply with the National Policy on Water Resources as established by Federal Law 9.433/97.
- **Protection of native forests and biodiversity:** activities concerning land-use planning must follow the Forest Code (Law no. 12.651/2012) and the National Biodiversity Policy (Política Nacional de Biodiversidade PNB)

- **Desalinization facilities:** The request of each permit and its respective costs will be covered by the state projects.

### **Taxation**

**Exchange rate.** The exchange rate used at Project design is 3.7 R\$/US\$. It represents the current official exchange rate during the Project design<sup>1</sup>.

**Price contingencies.** During the next eight years, local inflation is expected to be below the official target of 4%<sup>2</sup>. It has been checked with other forecasts from IMF's, World Bank's and private sector estimates. Those sources also validate the international inflation that is estimated at 1,5<sup>3</sup>.

**Physical contingencies and taxes.** Physical contingencies and taxes have been defined for each expenditure category. Taxes were calculated with the current TVA rate for all the Northeast States and will not apply for the Fund for Productive Development Plans or Salaries.

They are expressed in the table *below*.

**Table 1. Parameters**

<i>Expenditure Acct</i>	<i>% Taxes</i>	<i>Physical cont.</i>
<i>A. Consultancies and Technical Assistance</i>	<i>18%</i>	<i>2%</i>
<i>B. Funds for Productive Development Plans</i>	<i>0%</i>	<i>0%</i>
<i>C. Civil works, goods, services and inputs</i>	<i>18%</i>	<i>2%</i>
<i>D. Management and Administrative Provision</i>		
<i>Salaries</i>	<i>0%</i>	<i>0%</i>
<i>Operating Costs</i>	<i>18%</i>	<i>5%</i>

### **Insurance**

It will be necessary to purchase insurance for cars and high value goods, which will be covered by the Project budget until its closure. Regarding health insurance, in Brazil all personnel are covered with universal public health insurance (Sistema Único de Saúde - SUS: <http://www.saude.gov.br/sistema-unico-de-saude>) instituted by federal law n° 8.080/90.

### **Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT)**

<sup>1</sup> Central Bank of Brazil (BCB), November 2018.

<sup>2</sup> IBGE estimates and forecast, December 2017.

<sup>3</sup> Commodity Market Outlook- World Bank- 2018.

The principal partner BNDES was created by Law No. 1,628, of June 20, 1952, as the body that formulates and executes the national economic development policy. As a public company and a member of the National Financial System, the bank is subject to the supervision and evaluation of the control bodies, such as the Federal Audit Court - TCU, and the Central Bank, which reinforces the solidity and smoothness of the BNDES 'processes.

As per BNDES Policy for Prevention of Money Laundering and Combating Terrorist Financing<sup>4</sup>, the bank participates in collective initiatives to combat fraud and preventing money-laundering and the financing of terrorist activities (AML/CFT) such as the Integrity and Anticorruption Business Pact (Ethos Institute), the National Strategy to Combat Corruption and Money Laundering (Enccla), the National Forum of Management of Ethics in State-owned Enterprises and commissions of the Brazilian Federation of Banks (Febraban) on compliance and AML/CFT, and promotes much training of its employees on how to combat fraud and prevent money-laundering and/or the financing of terrorist activities. BNDES was created by Law No. 1,628, of June 20, 1952, as the body that formulates and executes the national economic development policy. As a public company and a member of the National Financial System, BNDES is subject to the supervision and evaluation of national control bodies, such as the Federal Court of Accounts - TCU and the Central Bank of Brazil. Brazil has the Financial Activities Control Council (Coaf), which has technical and operational autonomy, operates throughout the national territory and is administratively linked to the Central Bank of Brazil. Its main function is to produce and manage financial intelligence information to prevent and combat money laundering and to promote institutional dialogue with national, foreign and international bodies and entities that have connection with its activities.

All disbursements to producer organizations are made in accordance with The Brazilian Federal Revenue Office procedures<sup>5</sup>: (i) States make an agreement with banks, which have more presence in the field near producers' organizations. All the accounts opened by producers organizations operate under this agreement between the state and the banks; (ii) In order to open the bank account (which needs to be specific and solely for the funds utilized for the project), producers organizations complete forms and need to be legally registered in the Ministry of Economy's database (National Register of Legal Entities CNPJ) so that all information is verified and checked; (iii) The state transfers the funds to the account of the producers which will only be released once compliance with the project is ensured and according to specific demands of expenditure presented by the organizations; (iv) All bank accounts for producers' organizations are directly managed by the state (project) which has access to all information in the account; (v) Producers organizations need to render accounts on all expenditure and to support them in this procedure the state will hire technical assistance (TA) teams dedicated to this task; (vi) in case the resources generate income (as they will be in the account and for example can lead to savings) they can be utilized provide it is in line with the purpose of the project; otherwise all unutilized amounts including income generated is returned to the state.

### **Currency of GCF Loan**

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

<sup>4</sup> Available at: [https://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes\\_en/Galerias/Download/BNDES\\_AML\\_policy\\_english.pdf](https://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_en/Galerias/Download/BNDES_AML_policy_english.pdf)

<sup>5</sup> Receita Federal, Ministério da Economia <https://receita.economia.gov.br/orientacao/tributaria/cadastros/consultas-cnpj>