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INCLUSIVE GREEN FINANCE INITIATIVE

IFAD

Greening Agricultural Banks & the Financial Sector to Foster Climate Resilient, Low Emission Smallholder Agriculture in the Green Great Wall (GGW) countries - Phase I

# LEGAL DUE DILIGENCE

**Final Version October 2021**

**Multi-Country -** Burkina Faso, Cote d'Ivoire, Ghana, Mali and Senegal
**GGW Regional Support Program:** Burkina Faso, Chad, Djibouti, Eritrea, Ethiopia, Mali, Mauritania, Niger, Nigeria, Senegal, Sudan

- ***Details of any government or regulatory approvals, licenses or permits required for implementing and operating the project/programme, the relevant issuing authority, and the date of issuance or expected date of issuance.***

The programme does not require a specific permit for implementation. However, generally, regulations have been overly arduous for private investors in The 4 participating countries (Burkina Faso, Cote d'Ivoire Mali, and Senegal) except Ghana are part of West African Economic and Monetary Union. For example, seed registration can take up from 2 to six months.. Despite a number of regulations and policies facilitating commercial agribusiness and the development of agricultural value chain through international investments, agribusiness investments have been patchy, given the complexities of investing in agricultural land and limited supply of high-quality seed infrastructures. No regulatory permits are required for the selected local agricultural banks to operate. The selected banks the Agricultural Bank of Burkina Faso, the National Investment Bank of Côte d'Ivoire, the ARB Apex Bank Limited of Ghana, the Agricultural Bank of Mali, and the Agricultural Bank of Senegal) which are the National Executing Entities will have to only sign legal Agreements with the National Executing Entities (NEEs) designated as The Republic of Burkina Faso, Côte d'Ivoire, Ghana, Mali and Senegal, represented by their respective ministries of economy and finance, will be the only national EEs in their respective countries. The AE (IFAD) will pass on the relevant obligations and requirements of the Accreditation Master Agreement (AMA) and Funded Activity Agreement (FAA) to each NEE. NEEs will be recipients of the GCF financing and guarantee the repayment of the GCF loan portion. The the selected Agricultural Banks ( National Implementing Entities ( NIEs) that act as recipients would nonetheless be liable to withholding taxes on their income and have the responsibility to compute and remit these taxes accordingly General tax regulations related to the sector including the following: (i) Approaches and changes to tariffs which are sometimes inconsistent leading to apprehension from investors in cash crops destined for export such as cashew or NTFP (AGRA, 2014) in all countries; (ii) High number of policies regarding trade liberalization and application/exemption from VAT for agricultural products traded within the region which impacts investment; (iii) Inconsistency in government-applied import duties and fluctuations that impact the competitiveness of the selected countries private production of crops like rice; and (iv)) exemptions on import tariffs and VAT on agricultural machinery and spare parts. Numerous import charges that reduces access to equipment for investors in agricultural production.

For avoidance of doubt, the NEEs (i.e. the host countries) and any other Executing Entity/ies under the Programme shall not withhold any taxes or make any deductions on the amounts transferred to the Accredited Entity under the relevant Subsidiary Agreements (for both loan and grant proceeds, as applicable) or, if so required under applicable law, shall gross up the relevant amounts so the Accredited Entity receives the full net sums that are due by the Executing Entities.

In relation to Component 1, the 4 participating countries (Burkina Faso, Cote d'Ivoire Mali, Senegal) except Ghana are part of West African Economic and Monetary Union. Consequently, the risk of non-payment in a trade transaction caused by transfer issues or foreign exchange shortages have been mitigated for members of the monetary union. This is reflected in Credendo's maximum short-term political risk classification of category 5/7 for the CFA countries[1]. Moreover, the peg to the euro and the prohibition on monetizing fiscal deficits have kept inflation low (around 3%), in contrast with the rest of Sub-Saharan Africa.

In Burkina Faso, Cote d'Ivoire Mali, Senegal, Agricultural banks operate within a harmonized regulatory framework, and are organized around several community bodies, the most important being the Central Bank of West African States (BCEAO), the West African Economic and Monetary Union (WAEMU) Banking Commission and the Ministry of Economy and Finance and the Inter-African Conference on Insurance Markets (CIMA). Banks are supervised by the WAEMU Banking Commission, responsible for granting and revoking operating licenses, except to microfinance institutions whose authorizations are managed by the Ministry of Finance. CIMA assists the National Insurance Directorate of the Ministry of Economy and Finance in regulating the insurance sector.

The Bank of Ghana (BoG), the central bank, is in charge of the supervision of the banking and microfinance sectors, and the development of a financial inclusion policy. The compliance with the rules in the microfinance industry is monitored with support from the Microfinance and Small Loans Center (MASLOC) and the Ghana Microfinance Institutions Network (GHAMFIN).

The targeted agricultural banks (Banque Agricole du Burkina, Banque Agricole du Mali, Apex Bank in Ghana, Banque Nationale d'Investissement in Côte d'Ivoire, Banque Agricole du Sénégal) will improve their governance, lending products and unlock barriers to innovative climate finance. While improvement have been made, the regulatory and legal framework underpinning the energy sector is still at a nascent stage in all five countries and the project will contribute to addressing the key barriers through the Technical Assistance. The programme will work closely with communities and energy services suppliers to produce electricity for smallholder farmers and al actors across the value chains but also with the possibility to sell to the national electricity grid in case of production surplus. Modalities to build, operate and transfer (BOT) will be promoted to ensure the sustainability of the energy infrastructures.

The WAEMU has been one of the fastest-growing regions in Sub-Saharan Africa since 2011 before COVID-19. Average real GDP growth projections remain upbeat at between 6% and 7% at least for another 5 years, while most members are set to grow more than 5% per year. However, with the Corona virus pandemic, GDP growth projections will be under 3%.

Deficits have been largely financed by international donor support, concessional financing and foreign direct investments, yet non-concessional external borrowing has been on the rise, especially in Senegal. Since 2017, liquidity pressure has been eased by large Eurobond issuances by Senegal on the one hand, and better enforcement of export receipt repatriation requirements on the other. As a result, foreign exchange reserves reached 4.3 months of import cover again at the end of 2018. Essential reforms in the banking sector were implemented in 2018 to meet new solvency requirements and help banks to deal with considerable concentration, credit and liquidity risks.

The Central Bank of West African States (BCEAO) has the exclusive right to issue currency throughout the member states of the West African Monetary Union. The BCEAO issues banknotes and coins that are legal tender and redeemable throughout the member states of the Union. The creation, issuance and cancellation of banknotes and coins are decided by the Council of Ministers.

Government policies generally encourage the free flow of capital and financial resources in the West African region. The Regional Stock Exchange (BRVM) in Abidjan trades equity securities and an effective regulatory system exists to facilitate portfolio investment through the West African Central Bank (BCEAO). The French Treasury continues to hold the international reserves of WAEMU member states and supports the fixed exchange rate of CFA 655.956 to 1 Euro. There are currently no restrictions on the transfer or repatriation of capital, dividends and income earned, or on investments financed with convertible foreign currency in the West African CFA region. The various governments in the West African CFA region still regularly approve remittances of dividends and/or repatriation of capital. This is also the case for requests for other sorts of transactions (e.g. imports, licenses, and royalty fees). Funds associated with investments funded with convertible currency are freely convertible into any world currency. There are also no time limitations on remittances.

Contract alteration and expropriation risks remain low to medium in most of the five countries. The fiscal system is highly bureaucratic and tax rates are high for the region. However, the governments are offering tax breaks to attract foreign investment, particularly in the agricultural and agro-processing sectors, in a bid to consolidate the country's stability through economic prosperity.

- ***Describe applicable taxes (or exemptions thereof) and foreign exchange regulations related to the project/programme.***

**Taxes:** The loan and grant financing are exempt from tax (import taxes and duties as well as value-added taxes) in the five countries (Burkina Faso, Côte d'Ivoire, Ghana, Mali, Senegal). The financing agreement (both loan and grant) to be signed between IFAD and the National Executing Entities will be exempted from taxes on signature, issuance or registration as per all United Nations and IFAD projects. The five sovereign countries will repay the loans to IFAD in USD. IGREENFIN the Country Support Programme and I are exempt from all national taxes and consequently, there would be no obligation on the participating IFAD to withhold and remit withholding tax on the interest income earned by either IFAD or GCF. IFAD will not withhold any taxes from the reflows to be transferred to GCF.

The government financial contributions / commitments to the Programme are in form of taxes exemptions rather than cash.

**Exchange rate:** All countries, except from Ghana are part of the CFA Franc Zone, the parity of the CFA Franc is fixed in relation to the Euro (1 Euro= 655.957 CFA F), as long as a devaluation is not decided at the level of the whole area (as it was the case in 1994). Also, the evolution of the CFA F/US$ exchange rate reflects exactly that between the Euro and the US dollar.

In Ghana, the Foreign Exchange Act of 2006, of which the BoG is the licensing, regulatory and supervisory authority, provides for the exchange of foreign currency, international payment transactions and foreign exchange transfers. The monetary currency is the Ghanaian Cedi. To manage currency fluctuation, the project will hedge the currency.

- ***Details of any insurance policies or requirements related to the project/programme.***

The National Executing Entities (NEEs) shall insure all goods and buildings used in the project against such risks and in such amounts as shall be consistent with sound commercial practice.

The NEEs shall insure the goods imported for the Programme, which are financed by the financing against hazards incident to the acquisition, transportation and delivery thereof to the place of use or installation in accordance with sound commercial practice.

The NEEs shall ensure that all facilities and civil works used in connection with the Programme are at all times properly operated and maintained and that all necessary repairs of such facilities shall be made promptly as needed.