

Annex 9 – Legal Due Diligence

Legal Status of Executing Entities

SPC is an international organisation founded by treaty in 1947 by the Agreement Establishing the South Pacific Commission (known as the Canberra Agreement). SPC's current membership includes 22 Pacific Island Countries and Territory (PICT) members and the five remaining founding metropolitan members, Australia, France, New Zealand, United Kingdom and the United States. It is owned and governed by its 27 country and territory members.

The Department of Water Resources (DoWR) is a Department under the Government of Vanuatu Ministry of Lands and Natural Resources with its legal functions provided for in the Water Resources Management Act No.9 of 2022 and amendment of 2016. The DoWR was established through a Council of Ministers Decision to allow merging of all water sections within the two Government Ministries of Lands and Natural Resources, and Infrastructure and Public Utilities. Previously, it was the Department of Geology, Mines and Water Resources. The Organisational Structure was approved by the Vanuatu Public Services Commission in 2016.

The Establishment of the National Water Resources Advisory Committee (NWRAC) is in accordance with a provision of the Water Resources Management Act No.9 of 2002.

Government or regulatory approvals, licences or permits required for implementing the project

Component 2 of the project involves investments in rural water infrastructure, with the intention of constructing or upgrading climate-resilient infrastructure in at least 270 communities through Department of Water Resources (DoWR) improved capacity.

Water rights in Vanuatu are governed by the Water Resources Management Act (2002) amended in December 2016. The Act requires an entity to seek the approval of the Director¹ responsible for water resources for the non-customary use of ground water, surface water and the overland flows of water. This includes DoWR operations. Obtaining approval is a 2-step process enabling applicants to (1) apply for a permit to undertake the works necessary to access water resources, and (2) obtain an annual license ensuring the judicious management of those water resources (i.e. to access, operate and maintain). Fees of the renewal of the license will be dependent on the type of license and will be specified on the license.

For the works to be approved, the Director must be satisfied that the use of the water, or the works are (amongst other factors) consistent with Vanuatu's National Water Resource Management Policy, is unlikely to damage water resources or the environment and is consistent with other regulations. Necessary regulatory approvals will be sought for any works that will be funded under this project. Due to the technical enhancements provided by the project, that will be made in alignment to national regulations, there is no indication that any approvals would not be granted.

¹ The Director is appointed by the Minister of Lands and Natural Resources.

No further specific licences or permit approvals are required for the project.

Applicable taxes and foreign exchange regulations related to the project

Vanuatu is a member of the Pacific Community (SPC) and hosts SPC's Melanesia Regional Office.

Article 6.1 of the Host Country Agreement between Vanuatu and SPC states that "within the scope of its official work: the SPC, its property, its premises and its income, including contributions made to the SPC under this Agreement, shall be exempt from all national taxes."

Article 6.3 of the abovementioned agreement states that "the Government shall not impose any foreign exchange restrictions or taxes upon any financial transfers into and out of the Republic of Vanuatu made by the SPC, staff members, experts and representatives, other than citizens of the Republic of Vanuatu."

Therefore, SPC is exempt from national taxes by the Government of Vanuatu and is not subject to any foreign exchange restrictions. In the case there are any reflowed funds paid by SPC the GCF would not be subject to payment of tax. This is not a likely scenario as the project is grant focused and reflows are not envisioned under this project.

Any tax liability that may be incurred by the Government of Vanuatu as an Executing Entity is accounted for in the project budget.

Any tax liability that may be incurred by the co-financing entities will be covered through their own resources.

Details of any insurance policies or requirements related to the project

At this stage, the project does not require specific insurance policies or requirements.

Depending on the construction and infrastructure upgrades for climate resilient water sources, distribution and storage that will be prioritised by the Capital Assistance Programme (CAP), insurance will be a condition required under the tender application process for any contractor applying for water supply construction.

The procurement of goods and services for funded activities, whether by SPC as the Accredited Entity and Executing Entity, or by a third party, shall be done in accordance with the rules, policies and procedures of SPC to the extent and scope of its accreditation.