

STAPLE CROPS PROCESSING ZONEs (SCPZs): Promoting Sustainable Agricultural Value Chains.



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

African Development Bank

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Introduction:

The Staple Crops Processing Zone (SCPZ) programme will be executed according to AfDB's *Bank Group Strategy for The Prevention of Money Laundering And Terrorist Financing in Africa* and *Guidelines for Preventing And Combating Corruption And Fraud in Bank Group Operations*. The following key areas relevant to the SCPZ programme.

1. Prevention of Money Laundering and Terrorist Financing

The Bank Group is required to establish and maintain internal procedures to prevent its assets from being used for ML or FT purposes. Measures can be taken to tighten its fiduciary safeguards to ensure that its own lending is used for the intended purposes and is not subjected to financial abuse. These include AML/CFT internal procedures and policies, ongoing employee training, and an audit function to test the system and to ensure adequate compliance with these procedures and policies.

The AfDB also recognizes the negative impact that ML/FT can have on development. It sees a need to enhance its role in combating ML/FT in Africa as part of its mandate to promote good governance and development. It acknowledges its responsibility to work closely with its development partners to support the initiatives already undertaken in this respect at the national, regional and international levels.

The strategy adopted by the Bank involves taking action in four key areas. The Bank will:

- I. Adopt measures to tighten the Bank Group's fiduciary safeguards, its internal procedures and policies, and its audit function to ensure that its own lending is used for its intended purposes and is not subjected to financial abuse, corruption or money laundering.
- II. Facilitate the implementation of international AML/CFT standards by RMCs and participate in regional and national AML/CFT capacity building initiatives in collaboration with other international organizations and development agencies.
- III. Provide assistance to RMCs, directly and through FSRBs, in collaboration with other international organizations, in support of their efforts to develop AML/CFT laws and strategies in compliance with international standards and build an institutional capacity to implement these laws and strategies, including a capable financial investigation unit.
- IV. Support and assist the establishment of effective and operational sub-regional (FATF-Style Regional Body) FSRBs.

1.1 Measures to Limit the Bank Group's Own Exposure to ML/FT

Because borrowing countries and institutions often lack the transparency and accountability needed to prevent and detect ML/TF or corruption activities, the Bank must take measures to guard against the risk of having its funds used for purposes other than those intended. The due diligence requirements of the Bank Group agreements provide a solid legal basis for incorporating some specific due diligence activities to prevent ML/FT. In order to identify and address specific vulnerabilities that the Bank may still have in that regard, it will:

- Conduct a focused safeguards assessment in relation to lending and disbursement practices with a focus on the prevention of ML/FT activities and corruption;
- Review the language currently used in loan and grant agreements and, if required, reformulate and strengthen the representations and covenants which the Bank typically includes in its legal documentation with a view to focusing more specifically on preventing fraudulent activities possibly related to ML/FT or corruption. (In the case of loans to private banks for on-lending,

looking at contractual language that imposes a similar due diligence requirement on these private institutions);

- Strengthen internal controls and due diligence practices to safeguard bank funds, including considering the possibility of introducing an enhanced – computerized - AML/CFT due-diligence system, based on checklists or a “redflag” system;.
- Facilitate due diligence exercise in identifying transactions potentially involved in terrorist activities by ensuring broad access within the bank to an up-to-date CFT checklist (possibly by subscribing to the services of a provider such as World-Check, as business background and intelligence screening service);
- Prepare appropriate reporting guidelines for staff members to identify suspicious circumstances that may involve ML/FT; f define the roles of the Bank’s Anti-Corruption and Fraud Investigation Division and the Oversight Committee on Corruption and Fraud (OCCF) in relation to ML/FT and define clear procedures for instigating and reporting on investigations;
- Design information and training programs for Bank staff to increase its awareness of the prevalence and seriousness of ML/FT activities in RMCs, of the main ML/FT methods being used, and of the link between anti-money laundering measures and other efforts to prevent corruption;
- Upgrade Bank staff’s capacity to conduct various due diligence exercises and provide guidelines, as required, for the conduct of these exercises; and,
- Define and strengthen the role of the Bank’s AML/CFT Working Group in relation to Bank’s internal AML/CFT measures

1.2 Measures to Facilitate the Implementation of AML/CFT Standards

The Bank endorses the FATF Forty Recommendations on ML and nine Special Recommendations on FT, as well as the relevant conventions of the UN. Together, these instruments establish an internationally agreed upon framework for AML/CFT initiatives and provide the context for the ADB’s own AML/CFT strategy. The Bank recognizes that it must, as part of its role in promoting good governance, combating corruption and promoting necessary financial sector reforms, be guided by these standards.

The Bank needs to develop its own capacity to participate in the implementation of comprehensive AML/CFT strategies in Africa, incorporate AML/CFT issues in its policy dialogue with countries, provide effective support to RMCs through loan and TA activities, and coordinate its efforts with other relevant organizations. The Bank will increase its participation in regional AML/CFT initiatives and work more closely with FSRBs.

Incorporating AML/CFT issues in policy dialogue with RMCs: The Bank will incorporate issues of AML/CFT in its good governance and economic and sector work and address these issues, as appropriate, in its Country Strategy Papers (CSPs) and Public Expenditure Reviews (PERs). The Bank will incorporate AML/CFT issues in its policy dialogue with RMCs and include them in the Country Governance Profiles (CGP) that it develops. The Bank’s general approach to these issues will be based on a combination of advocacy, dialogue, research and consultation with RMCs, BWIs, and national, regional and international stakeholders. This will be achieved through participation in and organization of conferences, seminars and senior level consultative meetings and workshops. To this end also, the Bank will collaborate with the IMF on ROSCs.

Providing a focal point for AML/CFT activities: Because the Bank is expected to take a more active role in facilitating the implementation by RMCs of AML/CFT measures, it will establish a focal point for these activities within OSGE and streamline staff attendance and participation in regional and international AML/CFT meetings and activities. The role of the Bank’s Existing AML/CFT Working Group/Task Force

will be reviewed and strengthened in order to facilitate the internal, institution-wide, coordination of AML/CFT activities.

Providing support for research: The Bank will also support research, in collaboration with FSRBs and other institutions, on the nature of ML/FT activities in Africa and on their impact on financial institutions and on governance. This may include studies on: the linkages between corruption and ML; the effectiveness of specific AML/CFT measures as applied in the African context; the particular ML/FT vulnerabilities associated with cash based economies, alternative remittance systems, and informal value transfer systems as they exist in Africa; or, the means to address these vulnerabilities through suitable approaches adapted to particular circumstances of African countries.

Electronic database: To support the above activities and to provide a AML/CFT resource for RMCs, the Bank will develop and maintain an up-to-date, web-accessible, electronic database of conventions, treaties, regional plans of action and political declarations, technical assistance tools, national legislations and best practices related to AML/CFT that are relevant to Africa.

1. 3 Measures to Assist Regional Member Countries

In the medium to long term, African countries without an operational AML/CFT capacity will suffer some serious consequences for not joining the international AML/CFT regime that is being consolidated in the rest of the world. Furthermore, their efforts to combat various forms of organized crime and corruption will remain unsuccessful unless they can take effective measure to prevent the laundering of the proceeds of these crimes. This can all have a very significant effect on the future development of countries that are left out of the international AML/CFT regime.

There is considerable variation among African countries in terms of their AML/CFT capacity although, at present and in most cases, that capacity is still very limited. There are also observable differences in the strength of the countries' respective commitment to implement effective AML/CFT mechanisms in compliance with international standards. Some countries have achieved noticeable progress in implementing the main elements of an AML/CFT regime, but most of these regimes remain undeveloped, under-resourced and inefficient, if not completely inoperative. There is room for regional initiatives, through FSRBs, to support and strengthen national efforts, where they are undertaken, and encourage other countries to follow suit. Countries in regions and sub-regions often share particular problems and can benefit from the development of cooperative solutions. By joining a sub-regional FSRB, they can also take part in mutual assessments as well as in joint training and capacity development activities. Helping countries participate in the activities of FSRBs and supporting these activities is therefore important.

In operationalizing its AML/CFT activities, the Bank is guided by its existing policies and strategies with respect to good governance and the fight against corruption. Capacity building activities are the logical focus of the Bank's AML/CFT activities. The Bank's AML/CFT activities in RMCs will continue to be developed with due regard to the country's circumstances and needs, the state of its financial, legal and law enforcement institutions, and the availability of budgetary and human resources. In cooperation with relevant multilateral, regional and specialized organizations, the Bank will engage itself in lending and non-leading activities, as well as in economic sector capacity development and policy dialogue activities to help RMCs develop their own AML/CFT capacity as well as their ability to participate more fully in the global AML/CFT regime.

The Bank has not yet been involved in major AML/CFT projects, but it will seek, through dialogue with RMCs and regional organizations, to identify measures it can take to complement the efforts of other agencies. In doing so, it will be guided by the AML/CFT priorities identified by the 2006-2010 program of

action to address crime and security issues affecting development adopted at the Round Table for Africa held in Nigeria in September 2005. The Bank's principal methods of assistance will continue to be through loans, grants and technical assistance activities.

The RMCs expectations of AML/CFT assistance from the ADB are likely to grow and the Bank is preparing itself to soon deal with more requests for that kind of assistance. The Bank may have to set priorities for its own interventions. Requests for assistance are likely to focus on awareness raising and strategic planning measures, activities to establish or strengthen AML/CFT legal, regulatory, and institutional frameworks, capacity building initiatives to build capacity in responsible institutions (financial supervision and law enforcement), training and information exchange initiatives, and research. Other organizations are currently involved in all of these areas and the Bank will need to engage with them in discussions which will help the Bank set its priorities for action and avoid unnecessary duplication.

1. 4 Measures to Assist Effective Operation of Sub-regional (FATF-Style Regional Body) FSRBs

Four FSRBs have been established by RMCs to support their AML/CFT initiatives (see Appendix 3). They vary in strength, resources and overall capacity. So far, their efforts have been limited to advocacy, awareness raising and a limited amount of training. Not all African countries have joined an FSRB. At present, some sub-Saharan African countries do not yet belong to any sub-regional group. They should be encouraged to do so and be provided assistance as required.

The FSRBs have begun the process of identifying the technical assistance needs of RMCs and have developed some survey instruments to facilitate that process (e.g. the needs assessment exercise being developed by GIABA, or the TANA+ approach being suggested in Eastern and South Africa by ESAAMLG). The results of these efforts may also help the Bank understand these needs for assistance and plan its own initiatives. With proper funding the FSRBs can help develop and deliver programs that will address these needs.

The Bank will also support and assist the establishment of effective and operational FSRBs and foster coordination among them. This will include measures to:

- offer financial, project-based, support to African FSRBs;
- encourage all countries that have not yet join a FSRB to do so; also support the EGMONT Group as well as encourage African FIUs to join the group; f support, as necessary, the TA assessment exercises undertaken by FSRBs,
- promote and support the establishment of mutual evaluation processes within each of the FSRBs.

2 Basic Principles, Bank Rules & Procedures for Preventing & Combating Corruption

The Bank has placed combating corruption at the center of its mandate to promote good governance in RMCs. The legal principles underlying the Bank's commitment to good governance and combating corruption derive from the consensus articulated in the Agreements Establishing the Bank and reflected in its Strategic Plan.

The Bank's strategy and action to combat corruption is carried-out within the framework of its policy on good governance, and in close consultation with RMCs concerned. Where the environment is corrupt, then loan effectiveness is undermined. For the Bank's work in this area to be effective, two conditions must be fulfilled a-priori: RMCs must show credible commitment to address the corruption challenge and; Bank staff and operations must be beyond reproach.

The Bank anti-corruption strategy calls for effective internal measures and safeguards mechanisms coupled with a robust agenda at the country and regional levels. The strategy consists of the following four elements: i) preventing corruption in Bank operations; ii) mainstreaming corruption concerns into Bank operations; iii) helping RMCs that request assistance; and iv) participating in regional and global efforts. The four-part strategy outlined below builds on MDB best practices and is harmonized, to the extent possible, with regional and global initiatives.

2.1 Zero-Tolerance Position

The Bank Group's zero-tolerance position is fully enforced where credible evidence of corruption exists among its staff and operations. Also, steps have been taken to ensure that internal Bank processes and procedures comply with the highest standards of accountability and integrity. Under this policy, and per the Bank Code of Conduct defining acceptable standards of behavior, staff proven to have engaged in corrupt or fraudulent practice in fulfillment of Bank duties will be fully investigated and severely disciplined in accordance with Bank Staff Rules.

Zero tolerance applies equally to the terms and conditions agreed to in the Loan Agreement. If the Bank uncovers credible evidence of corruption in its operations and a breach of the conditions in the Agreement, the Bank will enforce a range of options including cancellation of a loan in full or in part. Under the zero tolerance position, corruption and/or fraudulent practices in any type or form, and under no circumstance will be tolerated in Bank operations. The Bank Group's zero tolerance position is fully harmonized with the practice and procedures adopted by the other Multilateral.

2.2 Anti-Money Laundering

In response to the call for action against money laundering following the September 11 2001 attacks, the Bank, being an institution that advances lines of credit to Regional Member Country financial institutions both in the private and public sectors, has recognized the need to safeguard against such occurrences. After a careful review of the situation through a taskforce, the Bank concluded that a multi-disciplinary, multi-institutional approach is required to address this concern. Since existing institutions such as the Financial Action Task Force (FATF), regional FATF-style bodies and specialized sub-regional anti-money laundering taskforces (ESAAMLG, GIABA) are already well placed and focused on these issues on a multilateral basis, the Bank will continue to play an active supportive role in such undertaking. Also, consistent with its mandate, the Bank will focus its work on helping countries foster development of appropriate legal and regulatory systems and regimes, with the goal of enhancing economic growth and sustainable development.

As part of its active supportive role, the Bank will closely collaborate with the AU at the regional level towards enforcement of the provision on Laundering of the Proceeds of Corruption outlined in the Convention on Combating and Preventing Corruption in Africa, and similar initiatives under NEPAD. At the global level, the Bank will continue to work with the global anti-money laundering task force under the United Nations. The Bank will also take additional and specific measures to:

- Give attention to issues of money laundering in its diagnostic work, especially the CGP and CFAA, designed to ensure financial stability and governance;
- Provide technical and capacity building assistance to RMCs, based on its diagnostic work;
- Strengthen financial systems and policy regimes through PBLs; and
- Assist RMCs to develop sound market infrastructures through legal and judicial reforms.

2.3 The Procurement Review Committee (PRC)

The PRC is a committee of senior managers appointed by the President that receives reports on corruption and fraud in procurement. Under current practice, if an incidence of mis procurement is reported to senior management and it is determined that further investigation is warranted, the Internal Audit department, or external auditors or investigators managed by it, undertakes an investigation of the alleged mis procurement. Upon completion of its investigation, Internal Audit presents its findings and recommendations to the President, as per internal sanctions or other appropriate actions, as per Bank Rules of Procedure for Procurement of Goods and Work and the Rules of Procedure for the Use of Consultants.

Through the PRC, the Bank can at all times receive and investigate complaints by bidders who are not satisfied with the way their bid was handled. The PRC is an independent body and its decisions, which can even lead to cancellation of the procurement process, are final. As a result, it is now possible for the Bank to cancel part or an entire loan or grant and sanction a firm if the procurement process is tainted by acts of fraud or corruption and the firm is found guilty.

2.4 Loan Disbursement Procedures

The Bank lends money and provides technical assistance to RMCs for the purposes of economic development under conditions stipulated in the General Conditions Applicable to Loan and Guarantee Agreement. An emphasis on loan disbursement as area of potential corruption is a problem that requires firm oversight.

A legally binding agreement signed by the borrower RMC and the Bank constitutes the principal instrument to define terms and conditions for lending operation. These agreements are called “Loan Agreements” for project lending and “Protocols of Agreement” for grants that fall under the ADF technical assistance funds. Terms of these agreements are available in the Bank’s Disbursement Handbook (1997) and the General Conditions Applicable to Loan and Guarantee Agreement.

Corruption in Bank loan disbursements falls under Article VII of the General Conditions Applicable to Loan and Guarantee Agreement. Section 7.01 stipulates: “The loan funds shall be allocated to the various categories of expenditures, coupled with percentages, of any, to be financed by the Bank for purposes of the Project and specified in the Loan Agreement.” (emphasis added)

Article VIII of the General Conditions Applicable to Loan and Guarantee Agreement sets forth the preconditions for suspension of disbursement of loans for reasons that may be interpreted to include corruption. Section 8.01 (c) states: “The Fund shall have suspended in whole or in part the right of the Borrower or the Guarantor to disbursement of Loan funds, because of a failure by the Borrower or

Guarantor to perform any of its obligations under the Loan Agreement or Guarantee Agreement with the Fund.”

Section 8.01 (f) allows for suspension when: “Any representation made by the Borrower or the Guarantor for purposes of the Loan Agreement or the Guarantee Agreement, or any statement on the basis of which the Loan was granted by the Bank, shall have been incorrect in any material respect.”

Article IX of the General Conditions Applicable to Loan and Guarantee Agreement establishes conditions for the cancellation of the loan by the Bank. Section 9.01.a (iii) states that the Bank may cancel a loan if “The Borrowers shall have modified the nature or the objectives of the Project financed from the Loan resources.

2.5 Audit

Through internal and external control functions, the Bank’s audit department safeguards its assets, certifies compliance with its policies and ensures that Bank operations are governed by the highest operational standards and ethics. The audit department assesses the control environments within the Bank. It also assesses the strength of internal controls and institutional arrangements in borrowing RMCs to ensure that progress reports and financial statements received from external auditors reflect an accurate picture of financial compliance and physical progress of its operations; including compliance with procurement related activities. It also provides training where such capacity is found to be lacking. The independence of the internal audit department is an important asset that will remain free from any type of pressure while performing its assignment. Additionally, using the threat of internal audit to extract personal favors, or obstructing the dissemination of audit findings could be viewed as a form of corrupt behavior that will be strictly resisted.

3. Conclusion

Lessons from the experience of partner institutions will continue to help enrich the Bank’s anti-corruption strategy and implementation of these guidelines. The introduction of proxy benchmarks and indicators of progress will serve as a beacon by which progress will be measured and the way forward will be guided. Management, as part of its periodic reporting procedure to the Board, will report on progress and challenges in this area. The Bank’s institutional commitment and adoption of a pro-active approach to preventing corruption is a critical and necessary step for promoting good governance in Africa.