

Annex 9: Legal Due Diligence



10.A Legal Due Diligence

Government Licenses and Permits

The activities contemplated in the project must comply with the following national regulations:

Infrastructure

The national Environmental and Social Impact Assessment legislation (MECIE decrees 99-954 and 04-167), which is in place for infrastructure-related works, controls all adverse impacts related to infrastructure rehabilitation and development.

With reference to the MECIE decree, the national environment office, which is the one-stop shop in Madagascar for sorting out projects, dictates whether the project should be subject to an Environmental and Social Impact Assessment (ESIA) or an Environmental Commitment Programme (ECP), depending on the scale of the impact on the environment and the scale of the works.

The MECIE Decree applies in particular to irrigated tracks and perimeters.

If the project is subject to an ESIA, it is the ONE (National Office for the Environment) that issues the environmental permit and monitors the specifications in the field (including the ESMP).

If the project is subject to an ECP, the relevant Ministry issues the environmental permit. For instance, if it is for irrigated perimeters, it is the Ministry of Agriculture, whilst the Ministry's Environmental Department monitors implementation of the specifications.

The same applies to tracks. The Ministry of Public Works issues the environmental authorisation, and its Environmental Department monitors the implementation of the specifications (ESMP).

In general, for the construction activities, the following are required: Approved Annual Work Plan and Budget (AWPB), Approved Procurement Plan, Contracts and Environmental Permits.

The law on the maintenance of infrastructure NO. 2014-042 that governs the rehabilitation, management, maintenance, preservation and policing of the hydro-agricultural networks. The law states that recovery of costs corresponding to transferred or transferable infrastructure shall be the responsibility of the operating structure. The operating structure shall ensure the financing of the management of maintenance, repair and maintenance of the infrastructure. The preservation and policing of the hydro-agricultural networks under its responsibility.

External funds

The administration of the external funds of any public institution (such as IFAD-funded project implemented through Ministry in charge of Agriculture) is regulated by decree N°2015-1457 and decree N°2016-1160 which stipulate that the funds must be deposited in an account opened in the Central Bank of the Republic of Madagascar. Then, upon request by the project, the funds will be transferred from the dedicated account in the central bank to a dedicated account opened in a commercial bank. A Financing Agreement is required for the transfer of funds to and from the EE in Madagascar.

The Law 2016-055 on the Public Procurement Code of 25 January 2017 will be applied for national competitive bidding while the international competitive procurement will follow the rules defined in the IFAD Procurement Guidelines.

Land rights

The specific requirements and procedures for obtaining licenses, permits, or authorizations may vary depending on the location and nature of the land. In DEFIS+, there are a number of authorities responsible because the “nature” of the land differs. In general, authorizations are required from the State to access land rights.

In the case of protected areas, forests and conservation areas, the competent authority is the Ministry of Environment, Ecology, and Forests (MEEF).

As for agricultural land, the Ministry of Agriculture (MA) is involved in providing licenses or permits for agricultural activities, such as land use, restoration, irrigation, and construction in rural areas. In some cases, local authorities, such as municipalities, have jurisdiction over land-related matters, particularly concerning land use, road construction, planning, zoning, and development projects. In the case of private property, access to land rights requires either a land title issued by the Ministry of Land Management and Land Services (MATSF), or a land certificate issued by decentralized authorities (communes) in areas where there are Land Offices. In the case of State-owned private land, access to land rights is the responsibility of the MATSF through an allocation. For the latter, once assigned, authorization from the relevant Ministry is required to access usage rights, but not property rights.

DEFIS+ has already arranged and discussed this issue with all stakeholders and will provide, on a case-by-case basis, the necessary licenses, authorizations and permits.

Taxation

Exchange rate. The exchange rate used during project design is 3200 Ariary for US\$ 1, which represents the official exchange rate at the time of the main design mission of DEFIS in July 2017.

Price contingencies. During the period of project implementation, inflation is anticipated to be 10% (based on average rate during the period 2000-2012 using World Bank data).

Physical contingencies and taxes. Physical contingencies and taxes have been defined for each expenditure category, as 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>17%</i>	
<i>B. Civil works, goods, services and inputs</i>	<i>17%</i>	<i>5%</i>
<i>C. Management and Administrative Provision</i>		
<i>Salaries</i>	<i>0%</i>	
<i>Operating Costs</i>	<i>10%</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. In Madagascar, the Law n° 2003-44 establishing the Labor Code defines the arrangements to be made for the treatment of staff with specific requirements for female workers. Law n° 94-26 and Law n° 94-27 which relate more particularly to social protection and welfare and social security apply to all projects implemented by IFAD and the Ministry

in charge of agriculture. The Law details the hygiene, safety and working environment conditions to follow and the obligation to employer to take out health and retirement insurance for employees with specialized affiliated organizations.

Anti-Money Laundering/Combating the Financing of Terrorism

Since 2018, Madagascar has had a law on anti-money laundering and combating the financing of terrorism. (Law n° 2018-043). Under this law, IFAD projects are required to ensure transparency for all transactions and to set up vigilance mechanisms for payment in cash or by check, taking into account the associated risks. The national regulation will be applied through the Administrative and Financial Manual and the application will be monitored through internal and external audits.