

## **Annex 9**

### **Legal Due Diligence**

## Environmental Legal Framework

Two laws in Tajikistan that stipulate all aspects of how to conduct an Environmental Impact Assessment (EIA) on a proposed investment will mainly govern CASP+ activities:

1. The **Law on Environmental Protection (No. 760 as of August 2, 2011)** that replaced the previous Framework Environmental Law “Law on Nature Protection” (No. 905 as of December 27, 1993). The “Law on Environmental Protection” stipulates that Tajikistan's environmental policy should give priority to environmental actions based on scientifically proven principles that combine economic and other activities having a potential negative impact on the environment, with nature preservation and the sustainable use of resources. This law will be the overarching framework for all the activities implemented by CASP+.
2. The **Law on Ecological Expertise (No. 818 as of April 16, 2012)**.
3. The **Law on Environmental Impact Assessment (No.1448 as of July 18, 2017)**.

Articles 35-39 of Chapter V of the Law on Environment Protection, introduces the concept of state environmental review (the State Ecological Expertise – SEE), which seeks to examine the compliance of proposed activities and/or projects with the requirements of the current environmental legislation and the standards and ecological safety of the society. Financing of programs and projects are allowed only after a positive SEE review has been issued.

This process applies to all infrastructure activities and civil works, including rehabilitation ones, should be assessed for their environmental impacts and the proposed mitigation measures should be reviewed and monitored by the Committee for Environmental Protection under the Government of the Republic of Tajikistan (CEP). If these requirements are violated, construction will be stopped until the necessary improvements are made. These provisions are enforced by the Government of Tajikistan duly authorized control bodies, including sanitary, geological, and public safety agencies. The required Environmental Impact Assessment studies analysing the short-term and long-term environmental, economic, and social impacts and their consequences will be prepared by CASP+ and the process will be strictly followed after consulting the following procedures:

- Procedure of Environmental Impact Assessment (adopted by the Resolution of the Government of the Republic of Tajikistan No. 509 as of 01.08.2014).
- Procedure to implement State Ecological Expertise (approved by the Resolution of the Government of the Republic of Tajikistan No. 697 as of December 3, 2012).
- Guidelines on the composition and order of development of content and structure of the documentation to be submitted for review (SEE), as well as coordination and approval of all projected budget or investment estimations, design drawings or documentation that must be developed in coordination with the SEE5, buildings and structures and EIA chapters, Strategic Environmental Assessment SEA and feasibility documents;
- List of objects and types of activity for which preparation of documentation on Environment Impact Assessment is mandatory (adopted by the Resolution of the Government of the Republic of Tajikistan No. 253 as of June 3, 2013).

*In addition, potential CASP+ activities in the Climate-sensitive Community Action Plans, Pasture Management Plans and Forest Management Plans developed by the project must comply with the following codes and laws:*

- **The Water Code (No. 34 as of November 29, 2000 last revised №1688 as of April 2, 2020):** stipulates the policies on water management, issuance of water use permits, dispute

resolution, usage planning and cadastre. It promotes rational use and protection of water resources and defines the types of water use rights, authority and roles of regional and local governments for water allocations among various users, collection of fees, water use planning, water use rights and dispute resolution.

- **The Forest Code (No. 761 as of August 2, 2011):** Stipulates that forest resources are managed and protected with the consideration of multifunctional value of forests as well as their recognition as the main means of production in the forestry sector.
- **The Land Code (No. 327 as of December 19, 1996 last revised №1902 as of July 19, 2022):** Regulates land relations and is aimed at the creation of conditions for rational use and protection of land, reproduction of soil fertility, conservation and improvement of environment and equal development of all forms of land tenure.
- **The Law on Hydro-meteorological Activity (No. 86 as of December 2, 2002):** establishes the legal basis for hydro-meteorological data gathering and analysis activities on Hydrometeorology and aims to meet the needs of the State, individuals and legal entities in the hydro-meteorological information, as well as information about the state of the environment.
- **The Law on Production and Safe Handling of Pesticides (No. 1 as of April 22, 2003):** establishes the legal basis of the production and safe handling of pesticides, including the exposure to substances and agrochemicals to protect human health and the environment.
- **The Law on Protection and Use of Flora (No. 31 as of May 17, 2004):** establishes the principles of State policy of the Republic of Tajikistan in the field of protection and rational use of the country's flora, including the legal, economic and social framework in this subject matter, with the aim of preservation and reproduction of flora resources.
- **The Law on Pastures (No. 951 as of March 19, 2013):** regulates the use of pasture lands in the Republic of Tajikistan.
- **The Law on Biological Safety (No. 88 as of March 1, 2005):** regulates the development, testing, production, import, export and placing on the market of Genetically Modified Organisms (GMOs), aimed at reducing the risk of GMOs adverse effects on human health, on the country's biodiversity, on the ecological balance and more generally on the environment.
- **The Law on Food Safety (No. 1158 as of November 27, 2014 ):** regulates the food production in the Republic of Tajikistan, which should be done a way to protect human life and health, the interests of consumers, the protection of flora and fauna and the overall environment in the Republic of Tajikistan.
- **The Law on Soils Conservation (No. 555 as of October 16, 2009):** defines the basic principles of State policy in soil conservation, as well as the legal framework in which public authorities, individuals and legal entities should operate for the rational and careful use of soil conservation quality, fertility and soil protection against negative phenomena.
- **The Law on Specially Protected Natural Areas (No. 786 as of December 26, 2011):** defines the legal, institutional and economic framework for protected areas. The law also establishes the main responsibilities pertaining to the mode of operation and zoning in the protected areas.
- **The Law on Environmental Monitoring (No. 707 as of March 25, 2011):** defines the organizational, legal, economic and social framework for environmental monitoring in the Republic of Tajikistan and governs the relationships between public authorities, local governments of towns and villages, public organizations and citizens in this subject matter.
- **The Law on Environmental Information (No. 705 as of March 25, 2011):** defines the legal, institutional, economic and social framework for ensuring the production of environmental

information in the Republic of Tajikistan. The law also promotes the rights of natural and legal persons to receive complete, accurate and timely environmental information and regulates the relations in this area among all interested or concerned individuals, communities or legal entities.

- **The Law on Environmental Education (No. 673 as of December 29, 2010):** regulates the legal, organizational, financial and economic principles of the State policy in the field of environmental education.

The presence of CEP as an executing agency for some of the project's activities and the close coordination between the Project Management Unit (PMU), FAO and CEP for the rest of the activities will guarantee full compliance of all the activities to the above-mentioned laws and regulations.

## Licensing and Permits

CASP+ will follow the 2012 "Regulations on the Peculiarities of Licensing Certain Types of Activities"<sup>1</sup> pursuant to the Law of the Republic of Tajikistan "On Licensing Certain Types of Activities". These regulations govern relations pertaining to the implementation of activities (actions) subject to licensing by relevant central or territorial structures of the licensing bodies. CASP+ will therefore pursue the following licenses as per the regulations:

- *Construction Activities*<sup>2</sup>
  - This license is for the design and exploration work, construction of buildings and structures, including expansion, reconstruction, repairs and rehabilitation of existing facilities. The implementation of CASP+'s Climate-sensitive Community Action Plans (CsCAPs) will include construction works (e.g. design improvements including wider and reinforced ford crossings; concrete-lined drainage channels; and reinforcement of the surrounding earth road structure with gabions to prevent bank failure).
  - Licensing body: The Committee for Architecture and Construction under the Government of the Republic of Tajikistan.
- *Geodesy and Mapping Activities*<sup>3</sup>
  - This license is for geodesy and mapping including the production of open mapping products. CASP+ will be producing maps as part of the diagnostics and CsCAPs (e.g. pasture maps).
  - Licensing body: The State Committee on Land Management and Geodesy, the Government of the Republic of Tajikistan.
- *Hydrometeorology and Related Areas including Active Exploration in Hydrometeorology and Geophysical Processes and Phenomena*<sup>4</sup>
  - This license is for hydrometeorology activities including determination of meteorology, climatic, aerological, hydrological and agro meteorological characteristics. CASP+ will be producing climate data trends as part of the District Climate Resilience Diagnostic (DCRD).
  - Licensing body: the Committee for Environmental Protection under the Government of the Republic of Tajikistan.
- *Area of Land Transport*<sup>5</sup>

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<sup>1</sup> [https://www.wto.org/english/thewto\\_e/acc\\_e/tjk\\_e/WTACCTJK15A2\\_LEG\\_14.pdf](https://www.wto.org/english/thewto_e/acc_e/tjk_e/WTACCTJK15A2_LEG_14.pdf)

<sup>2</sup> Chapter 27 of the "Regulations on the Peculiarities of Licensing Certain Types of Activities".

<sup>3</sup> Chapter 28 of the "Regulations on the Peculiarities of Licensing Certain Types of Activities".

<sup>4</sup> Chapter 30 of the "Regulations on the Peculiarities of Licensing Certain Types of Activities".

<sup>5</sup> Chapter 38 of the "Regulations on the Peculiarities of Licensing Certain Types of Activities".

- This license includes design testing, construction, repairs, and reconstruction of highways, railroads, and road structures. CASP+ will invest in the climate proofing of roads and construction of new roads. The project will do so in alignment with the “Procedure of assigning accountability level in issuing license for road related activities”.
- Licensing body: State Service for Supervision and Regulation in the sphere of Transport under the Ministry of Transport of the Republic of Tajikistan.

CASP+ will therefore pursue the following licenses as per the “Regulations on the Peculiarities of Licensing Certain Types of Activities”: Construction Activities; Geodesy and Mapping Activities; Hydrometeorology and Related Areas including Active Exploration in Hydrometeorology and Geophysical Processes and Phenomena; and Area of Land Transport. These licences will be applied for/obtained from the 4 relevant bodies during the start-up phase of the project in 2025.

Permits are meant to ensure the sustainable use of natural resources. There are two types of permits: (i) permits to take natural resources and (ii) permits for emissions or discharges.

### **Resource permit**

By law, permits are needed for any commercial use of any resource. Permits to take nature resources allow their holders to take a certain number or amount of a particular natural resource within a defined territory and time period. They are issued both to individuals (e.g. to hunt a particular species of animal) and to organizations (e.g. permits to extract ground or surface water for a particular use). The authority that issues the permit depends on the resource (e.g. permits for the use of water for irrigation are issued by the Ministry of Energy and Water Resources of the Republic of Tajikistan). CASP+ will pursue such permits as needed with the Ministry of Energy and Water Resources of the Republic of Tajikistan, Ministry of Agriculture of the Republic of Tajikistan and Forestry Agency under the Government of the Republic of Tajikistan for interventions related to water resources, pastures and forests.

### **Permits to discharge polluted matter**

This type of permit is issued by the relevant inspectorate (e.g. Special State Inspectorate for the Protection of Water Resources or Special State Inspection in the field of atmospheric air) of the State Committee’s local environmental protection committees to industrial or agricultural enterprises and municipal utilities that release by-products into the environment. The permits allow releasing a certain amount of polluted matter (gases, liquids, solid waste) into the environment. The permits are normally granted for one year and indicate the maximum allowed concentration of the pollutants in the released matter, the maximum volume of the polluted matter and the pollutants allowed. This type of permit might be pursued by CASP+ related to construction of roads waste.

### **Transfer of funds and unspent funds**

IFAD transfers funds to Designated Bank Accounts for its ongoing projects opened by the Government of Tajikistan and receive any remaining unspent funds from closed projects in USD without any additional approval.

### **Executing Entities**

As reflected in the Full Proposal and the Term Sheet (Annex 14), the Executing Entities for this Project are the Republic of Tajikistan, acting through MoF and MoA; the Committee for Environmental Protection (CEP) via its Center for Implementation of Investment Projects (CIIP); and the Food and

Agriculture Organization of the UN (FAO). All three Executing Entities do have a legal personality and possess the ability to enter into contracts in their own names.

## **Taxation**

The taxes are not part of the Project budget. The Executing Entities under the Project 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) 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. The Government will provide counterpart financing in the form of VAT exemption of civil works, goods, equipment and services as well as custom fees, subject to the Borrower/Recipient's relevant regulations in place. The Government of Tajikistan will cover/exempt the indirect taxes, such as sales tax, VAT, etc., imposed on the goods and materials to be procured by the Project Implementation Unit from GCF resources.

## **Insurance**

The Executing Entities 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 Executing Entities shall insure the goods imported for the Project, 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. These insurances will be in line and meet the requirements set forth in the AMA. As per Clause 10.01.b), (i) adequate provision against hazards will be made for the insurance of any Goods in accordance with prudent industry practice, (ii) cost of such insurance shall be clearly identified, and (iii) any indemnity for such insurance shall be payable in a freely usable currency to replace or repair such Goods.

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

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

CASP+ will be executed mainly through the Tajik government with Ministry of Agriculture as the leading agency and all its financial transactions are subject to the **Law on Anti-Money Laundering and Anti-Terrorism Financing (No. 684 as of March 25, 2011)**<sup>6</sup>. The law regulates the relations among the citizens of the Republic of Tajikistan, foreign citizens, and stateless persons residing in the Republic of Tajikistan, and organizations conducting transactions with cash or other property as well as government bodies performing the control on the territory of the Republic of Tajikistan over transactions with cash or other property, with the purpose of preventing, identifying, and precluding the acts related to money laundering and financing of terrorism. This Law applies to the citizens of the Republic of Tajikistan, foreigners, and stateless persons as well as legal entities, their branches, representative offices, and other separate units, which ensure the implementation of transactions with cash or other property in, and outside of, the Republic of Tajikistan in accordance with international legal instruments recognized by Tajikistan.

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<sup>6</sup> [https://www.legislationline.org/download/id/8576/file/Tajikistan\\_law\\_anti-money\\_laundering\\_anti-terrorism\\_financing\\_2011\\_en.pdf](https://www.legislationline.org/download/id/8576/file/Tajikistan_law_anti-money_laundering_anti-terrorism_financing_2011_en.pdf)

As per the law, organizations, conducting transactions with cash or other property, shall execute the following customer due diligence procedures:

1. Identify and verify the client personality, that is engaged in the number of activities to establish the client's personality both in case of individual: (surname, name, and middle name, if not defined otherwise by the law or traditional customs), citizenship, ID details, migration card data, document attesting the right for the foreign citizen or stateless person to stay (live) in the Republic of Tajikistan, residential (registration) or location address, TIN, and account number (if any); and in case of legal entity: (name, TIN or code of foreign organization, state registration number, place of state registration, and location address);
2. Identify and verify the personality of beneficial owner;
3. Obtain information on purpose and assumed nature of business relations;
4. Continuously inspect business relations and carefully study transactions with cash or other property conducted over the period thereof to ensure the compliance of implemented operations with the data, available in the organization about this client, client's activities and nature of risks, including information available at the time of transaction about the source of client's funds;
5. At least once every three years, update the data received about the client in accordance with Items 1-3.
6. The organizations, conducting transactions with cash or other property, shall have no right to rely on intermediaries or other third parties in implementing the provisions of Items 1-3 and 5 in customer due diligence process or when acting on behalf of the organization.

All transactions made by the executing agencies implementing CASP+ activities and their partners (entities or individuals) will be governed by this law and its monitoring mechanisms.

### **Currency of GCF Loan**

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