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Investing in rural people

Review of the General Conditions for Agricultural Development Financing

Note to Executive Board representatives

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For: Approval

Recommendation for approval

In accordance with its authority under article 7, section 2(a) of the Agreement Establishing IFAD to define the terms applicable to financing provided by the Fund, the Executive Board is invited to approve and adopt the revisions to the General Conditions for Agricultural Development Financing presented in the table, for application to all financing agreements for agricultural development projects and programmes submitted to the Executive Board for approval during and subsequent to its 112th session (September 2014).

Review of the General Conditions for Agricultural Development Financing

I. Background

1. Document EB 2013/108/R.19 informed the Executive Board that Management had decided to undertake a thorough examination of the current 2009 General Conditions for Agricultural Development Financing (the "General Conditions") in order to bring that legal document up to date and reflect the experience gained during the last four years.
2. The Office of the General Counsel, in collaboration with the Programme Management Department and the Finance Operations Department, has carried out a comprehensive revision of the General Conditions. The intention in doing so was to:
 - Reflect more accurately the practice and policies of IFAD, in particular its actual billing procedures;
 - Remove references to special drawing rights as the unit in which all loans are denominated so that, if the Fund decided to offer financing in other currencies, it would not be necessary to revise the General Conditions;
 - Incorporate a number of technical legal changes, including a simplified procedure for dispute resolution;
 - Harmonize the General Conditions with other IFAD legal documents; and
 - Harmonize IFAD's legal instruments and procedures with those of other international financial institutions.
3. These revised General Conditions, once adopted by the Executive Board, will apply to all financing agreements for projects and programmes approved during and subsequent to its 112th session (September 2014). The current 2009 General Conditions will continue to apply to existing agreements according to their terms.

II. Changes to the General Conditions

4. The changes to the current General Conditions, along with explanations, are presented in the following table.

<i>Section</i>	<i>Current text</i>	<i>Proposed text</i>	<i>Explanation</i>
Section 1.01 Application of General Conditions	(a) These General Conditions apply to all Financing Agreements (as such term is defined in Section 2.01). They apply to other agreements only if an agreement expressly so provides.	These General Conditions apply to all Financing Agreements. They apply to other agreements only if the agreement expressly so provides.	Reworded for clarity.
	(b) If a particular provision of these General Conditions does not apply to an Agreement, the Agreement must provide explicitly that it does not apply.		Paragraph (b) is deleted. Experience has demonstrated that this paragraph unduly highlights the possibility of waiving provisions of the General Conditions, which has often led to misunderstandings with Borrowers/Recipients.
Section 2.01 General Definitions		“Denomination Currency” means, with respect to a Loan or Grant, the currency (which may also be the SDR) in which such Loan or Grant is denominated, as specified in the Financing Agreement.	New definition introduced to provide for the possibility of denominating Loans and Grants in specific currencies in addition to the SDR.
		“Designated account” means an account designated for advance withdrawals by the Borrower/Recipient in accordance with Section 4.04(d).	New definition introduced to clarify Section 4.04(d).
	"Euro" or " EUR" mean the currency of the European Monetary Union.	“Euro”, “€” and “EUR” each means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.	The new definition is more accurate, and is the definition used in the current IDA General Conditions for Credits and Grants.
	“SDR Equivalent” means, with respect to any amount expressed in any currency at the time of determination, the equivalent of such amount in SDR, as determined by the Fund in accordance with Article 5.2(b) of the Agreement Establishing IFAD.	Deleted	The definition of “SDR Equivalent” has been deleted to provide for the possibility of denominating Loans and Grants in specific currencies.

	<p>“Taxes” means all imposts, levies, fees, tariffs and duties of any kind imposed, levied, collected, withheld or assessed by or in the territory of the Project Member State at any time.</p>	<p>“Taxes” means all imposts, levies, fees, tariffs and duties of any kind imposed, levied, collected, withheld or assessed by the Project Member State or any political subdivision thereof at any time.</p>	<p>The reference to “political subdivision” has been added for the avoidance of doubt.</p>
<p>Section 4.01 Loan and Grant Accounts</p>	<p>Upon the entry into force of a Financing Agreement, the Fund shall open a Loan Account and/or a Grant Account in the name of the Borrower/Recipient and credit the principal amounts of the Loan and the Grant respectively thereto.</p>	<p>Upon the entry into force of a Financing Agreement, the Fund shall open a Loan Account and/or a Grant Account denominated in the Denomination Currency in the name of the Borrower/Recipient and credit the principal amount of the Loan and/or the amount of the Grant, respectively, thereto.</p>	<p>Revised to clarify the procedure for opening Loan and Grant accounts.</p>
<p>Section 4.09 Refund of Withdrawals</p>	<p>If the Fund determines that any amount withdrawn from the Loan and/or Grant Accounts was not used for the purposes indicated or will not be needed thereafter to finance Eligible Expenditures, the Borrower/Recipient shall promptly refund such amount to the Fund upon instruction by the Fund.</p>	<p>If the Fund determines that any amount withdrawn from the Loan and/or Grant Accounts was used to finance an expenditure other than an Eligible Expenditure or will not be needed thereafter to finance Eligible Expenditures, the Borrower/Recipient shall promptly refund such amount to the Fund upon instruction by the Fund.</p>	<p>Amended in order to clarify the expression “was not used for the purposes indicated”.</p>
	<p>Except as the Fund shall otherwise agree, such refund shall be made in the currency used by the Fund to disburse such withdrawal. The Fund shall credit the Loan and/or Grant Accounts by the SDR Equivalent of the amount so refunded.</p>	<p>Except as the Fund shall otherwise agree, such refund shall be made in the currency used by the Fund to disburse such withdrawal. The Fund shall credit the Loan and/or Grant Accounts with the amount so refunded.</p>	<p>Amended to provide for the possibility of denominating Loans and Grants in specific currencies.</p>
<p>Section 5.01 Lending Terms</p>	<p>Loans provided by the Fund shall be given on highly concessional, hardened, intermediate or ordinary terms, as specified in the Financing Agreement:</p> <p>(a) Highly Concessional Terms: Loans granted on highly concessional terms shall be free of interest but bear a service charge of three fourths of one per cent (0.75%) per annum payable semi-annually in the Loan Service Payment Currency, and shall have a maturity period of forty (40) years, including a grace period of ten (10) years starting from the date of approval of the Loan by the Fund’s Executive Board.</p>	<p>(a) Loans provided by the Fund shall be extended on the terms specified in the Financing Agreement and determined in accordance with the applicable lending policies of the Fund.</p> <p>Deleted</p>	<p>Borrowing Member States frequently request that the details of the lending terms be spelled out in the Financing Agreement, rather than incorporated by reference to the General Conditions. This change will also permit addition of new lending terms without the need to amend the General Conditions.</p>

(b) Hardened Terms: Loans granted on hardened terms shall be free of interest but bear a service charge of three fourths of one per cent (0.75%) per annum payable semi-annually in the Loan Service Payment Currency, and shall have a maturity period of twenty (20) years, including a grace period of ten (10) years starting from the date of approval of the Loan by the Fund's Executive Board.

Deleted

(c) Intermediate Terms: Loans granted on intermediate terms shall be subject to interest on the principal amount of the Loan outstanding at a rate of one half of the IFAD Reference Interest Rate payable semi-annually in the Loan Service Payment Currency, and shall have a maturity period of twenty (20) years, including a grace period of five (5) years starting from the date that the Fund has determined that all general conditions precedent to withdrawal have been fulfilled in accordance with Section 4.02(b).

Deleted

(d) Ordinary Terms: Loans granted on ordinary terms shall be subject to interest on the principal amount of the Loan outstanding at a rate equal to the IFAD Reference Interest Rate, payable semi-annually in the Loan Service Payment Currency, and shall have a maturity period of fifteen (15) to eighteen (18) years, including a grace period of three (3) years starting from the date that the Fund has determined that all General Conditions precedent to withdrawal have been fulfilled in accordance with Section 4.02(b).

Deleted

(e) Interest and service charge shall accrue on the outstanding principal amount of the Loan and shall be computed on the basis of a 360-day year of twelve 30-day months. The Fund shall provide the Borrower with a statement of interest and service charge due at least four (4) weeks prior to

b) Interest and service charge shall accrue on the outstanding principal amount of the Loan and shall be computed on the basis of a 360-day year of twelve (12) 30-day months. The Fund shall provide the Borrower with a statement of interest and/or service charge due generated on the billing

Revised to reflect the actual billing procedure used by the Fund.

	the date upon which payment is to be made.	due dates specified in the Financing Agreement and the Borrower shall effect payment within thirty (30) days of such date.	
	(f) The Fund shall publish the IFAD Reference Interest Rate applicable in each interest period.	(c) The Fund shall publish the IFAD Reference Interest Rate applicable in each interest period.	
	(g) During the grace period, interest and service charge shall accrue on the outstanding principal amount of the Loan and shall be payable semi-annually, but no payments of principal shall be due.	(d) During the grace period, interest and/or service charge shall accrue on the outstanding principal amount of the Loan and shall be payable semi-annually on the billing due dates but no payments of principal shall be due.	
Section 5.02 Repayments and Prepayment of Principal	(a) The Borrower shall repay the aggregate principal amount of the Loan withdrawn from the Loan Account in semi-annual instalments, calculated over the maturity period minus the grace period. The Fund shall inform the Borrower of the dates and amounts of the payments as soon as possible after the start of the period of maturity of the Loan.	(a) The Borrower shall repay the aggregate principal amount of the Loan withdrawn from the Loan Account in semi-annual instalments, calculated on the basis of the total principal amount over the maturity period minus the grace period. The Fund shall inform the Borrower of the dates and amounts of the payments as soon as possible after the start of the maturity period of the Loan. If the total principal amount of the Loan is not fully disbursed, upon cancellation of the undisbursed principal amount the schedule of repayments shall be recalculated on the basis of the amount actually disbursed minus principal repayments already received by the Fund.	Revised to clarify procedures in the event of cancellation of principal amounts, in line with current practice.
	(b) The Borrower shall have the right to prepay all or any part of the principal amount of the Loan, provided that the Borrower pays all accrued and unpaid interest and service charges on the amount to be prepaid which are due as of the prepayment date. All prepayments shall be credited first against any outstanding interest and service charge and then against the remaining Loan instalments.	(b) The Borrower shall have the right to prepay all or any part of the principal amount of the Loan provided that the Borrower pays all accrued and unpaid interest and/or service charges on the amount to be prepaid as of the prepayment date. All prepayments shall be credited against the remaining Loan instalments in such manner as the Borrower and the Fund shall agree.	Revised in accordance with current practice.
	(c) Any partial cancellation of the Loan shall be applied pro rata to any remaining payment	Deleted	

	instalments of the principal amount of the Loan. The Fund shall notify the Borrower of such application, specifying the dates and amounts of the remaining instalments after giving effect thereto.		
Section 5.04 Value Dates of Loan Service Payments	Loan Service Payments shall be deemed made as of the day on which the relevant financial institution credits the account of the Fund designated therefor.	Loan Service Payments shall be deemed made as of the day on which the account of the Fund designated therefor is properly credited with such amount. If the amount is credited within the period indicated in Section 5.01(b), the value date of payment shall be the billing due date. If the amount is credited after the period indicated in Section 5.01(b), the value date of payment shall be the day the amount is credited.	Amended to reflect the actual procedure used by the Fund to credit payments.
Section 6.01 Currencies for Withdrawals	(b) The Loan and/or Grant Accounts shall be debited by the SDR Equivalent of the amount withdrawn determined as of the value date of withdrawal. If the currency of withdrawal has been purchased by the Fund with another currency, the Loan and/or Grant Accounts shall be debited by the SDR Equivalent of the amount of such other currency.	(b) The Loan and/or Grant Accounts shall be debited by the amount withdrawn in the Denomination Currency or, if the amount so withdrawn is disbursed in another currency, its equivalent in the Denomination Currency as of the value date of withdrawal.	Amended to include the new defined term "Denomination Currency".
Section 6.02 Loan Service Payment Currency	All Loan Service Payments shall be made in the Loan Service Payment Currency specified in the Financing Agreement. The amount of any Loan Service Payment shall be the equivalent in Loan Service Payment Currency, as of the due date, of the SDR amount of such Loan Service Payment, as determined by the Fund in accordance with Article 5, Section 2(b) of the Agreement Establishing IFAD.	All Loan Service Payments shall be made in the Loan Service Payment Currency specified in the Financing Agreement. The amount of any Loan Service Payment shall be converted into the Denomination Currency, if necessary, at the rate applicable on the value date of payment in accordance with the provisions of Section 6.03.	Amended to provide for the possibility of denominating Loans in specific currencies.
Section 6.03 Valuation of Currencies	Whenever it is necessary to determine the value of one currency in terms of another, the Fund shall determine such value in accordance with Article 5, Section 2(b) of the Agreement Establishing IFAD.	The rate of conversion from one currency to another, or from a currency to Special Drawing Rights, shall be the published rate of the International Monetary Fund available to the Fund on the value date of payment or withdrawal, as the case may be, or such other rate as the Fund may notify to the Borrower/Recipient.	Revised to provide more specific guidance concerning currency exchange rates, in line with current practice.

Section 7.02 Availability of Financing Proceeds	(b) The Financing Agreement may provide that the Borrower/Recipient open and maintain one or more Project Accounts for Project operations in a bank acceptable to the Fund, and shall identify the Project Party responsible for operating such account or accounts. The operation of such accounts, unless otherwise specified in the Financing Agreement, shall be performed in accordance with the applicable rules and regulations of the Project Party responsible therefor.	(b) The Financing Agreement may provide that the Borrower/Recipient open and maintain (i) one or more Project Account(s) for Project operations in a bank acceptable to the Fund and/or (ii) one or more Designated Account(s) to receive advances in accordance with Section 4.04(d). The Borrower/Recipient shall identify the Project Party responsible for operating such account or accounts. Unless otherwise specified in the Financing Agreement, such accounts shall be operated in accordance with the applicable rules and regulations of the Project Party responsible therefor.	Amended to introduce the new defined term “Designated Account”.
Section 7.03 Availability of Additional Resources	(a) In addition to the proceeds of the Financing, the Borrower/Recipient shall make available to the Project Parties such funds, facilities, services and other resources as may be required to carry out the Project in accordance with Section 7.01.	In addition to the proceeds of the Financing, the Borrower/Recipient shall make available to the Project Parties such funds, facilities, services and other resources as may be required to carry out the Project in accordance with Section 7.01.	
	(b) In addition to the proceeds of the Financing, the Financing Agreement may provide that the Borrower/ Recipient shall make available to the Project Parties during the Project Implementation Period counterpart funds from its own resources in accordance with its customary national procedures for development assistance	Deleted	This provision has been the source of confusion and has been deleted to emphasize that the Borrower/Recipient has the obligation to provide all necessary resources needed to carry out the Project, without any limitation
Section 8.02 Monitoring of Project Implementation	The Lead Project Agency shall: (a) establish and thereafter maintain an appropriate information management system in accordance with the Fund’s Guide for Project Monitoring and Evaluation with which it shall continuously monitor the Project;	The Lead Project Agency shall: (a) establish and thereafter maintain an appropriate information management system in accordance with the Fund’s operational guidelines and Results Measurement Framework;	Revised to introduce a reference to the new Results Measurement Framework.
Section 11.02 Tax Refunds	If the Fund has determined at any time that any amount of Financing proceeds have been used to pay taxes that it has determined to be excessive, discriminatory or otherwise unreasonable, it may require the Borrower/Recipient, by written notice, to refund such amount promptly to the Fund.	Deleted	Tax refunds will be treated along with other refunds under Section 4.09 – Refund of Withdrawals.

Upon receipt thereof, the Fund shall credit the Loan/grant account in the amount of such refund.

**Section 14.04
Settlement of
Disputes**

(a) The parties to an Agreement shall endeavour to settle through amicable means any controversy between them in respect of such Agreement.

(b) Failing the settlement of a controversy through amicable means, the controversy shall be submitted to arbitration for settlement. The parties to the arbitration shall be the parties to the Agreement in controversy, except that the Guarantor may intervene or be interpleaded in any controversy that may affect its rights or obligations under the Guarantee Agreement.

(c) The Arbitral Tribunal shall consist of a single arbitrator appointed by agreement of the parties or, if they do not agree within three (3) months after proceedings are instituted under paragraph (d) below, by the President of the International Court of Justice or, failing appointment by him, by the Secretary-General of the United Nations. If the arbitrator shall resign, die or become unable to act, a successor arbitrator shall have all the powers and duties of such original arbitrator.

(d) An arbitration proceedings may be instituted under this Section upon notice by the party instituting such proceedings to the other party or parties. Such notice shall contain a statement setting forth the nature of the controversy or claim to be submitted to arbitration.

(e) The arbitration proceedings shall take place at such time and place as shall be fixed by the arbitrator.

Any dispute, controversy or claim arising out of, or in relation to, an Agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled in accordance with the Arbitration Rules (2012) of the Permanent Court of Arbitration.

(a) The number of arbitrators shall be one (1);

(b) The place of arbitration shall be Rome, Italy; and

(c) The language to be used in the arbitral proceedings shall be the language of the Agreement.

This simplified dispute settlement provision refers to the set of rules promulgated by the Permanent Court of Arbitration for disputes involving at least one State, State-controlled entity, or intergovernmental organization (the Rules). The provision is based on the Model arbitration clause for treaties and other agreements set out in the Annex to the Rules.

(f) Subject to the provisions of this Section and except if the parties shall otherwise agree, the arbitrator shall decide all questions relating to his competence and shall determine the procedure for the arbitration proceedings.

(g) The arbitrator shall afford to all parties a fair hearing and shall render his award in writing. Such award may be rendered by default. A signed counterpart of the award shall be transmitted to each party. Any such award rendered in accordance with the provisions of this Section shall be final and binding upon the parties. Each party shall abide by and comply with any such award rendered by the arbitrator in accordance with the provisions of this Section .

(h) The parties shall fix the amount of the remuneration of the arbitrator and such other persons as shall be required for the conduct of the arbitration proceedings. If the parties shall not agree on such amount before the arbitration proceedings begin, the arbitrator shall fix such amount as shall be reasonable under the circumstances. Each party shall defray its own expenses in the arbitration proceedings. The costs of the arbitrator shall be divided between and borne equally by the Fund on the one side and the other parties on the other side. Any question concerning the division of the arbitrator's costs among the parties or the procedure for payment of such costs shall be determined by the arbitrator.

(i) The provisions for arbitration set forth in this Section shall be instead of any other procedure for the settlement of controversies between the Parties and any claim by either party against the

other party arising thereunder.

(j) If the award has not been complied with within thirty (30) days after the counterparts of the award have been delivered to the parties, any party may enter judgement upon, or institute a proceeding to enforce, the award in any court of competent jurisdiction against any other party.

Such party may enforce such judgement by execution or may pursue any other appropriate remedy against such other party for the enforcement of the award.

(k) Service of any notice or process in connection with any proceeding under this Section or (to the extent that such remedy shall be available) in connection with any proceeding to enforce any award rendered pursuant to this Section may be made in the manner provided in Section 15.01. The parties may waive any and all other requirements for the service of any such notice or process.

**Section 14.05
Applicable
Law**

Any Agreement subject to these General Conditions shall be governed by, and construed in accordance with, public international law.

New provision added to confirm that the Fund's Financing Agreements are governed by public international law rather than any national laws.

**Section 15.05
Modifications
of the
Agreement**

The parties may agree from time to time to modify the terms and conditions of an Agreement (including, but not limited to, the terms and conditions of these General Conditions as applied thereto) or the application of the Agreement. Any amendment to an Agreement shall enter into force in accordance with the provisions of Section 13.01 hereof, unless the parties agree otherwise.

The parties may agree from time to time to modify the terms and conditions of an Agreement or the application of the Agreement. Any amendment to an Agreement shall enter into force in accordance with the provisions of Section 13.01 hereof, unless the parties agree otherwise.

The part of the current text in brackets has been deleted as it puts too much emphasis on the possibility of modifying the General Conditions.
