

Document: EB 2018/125/R.39
Agenda: 5(i)
Date: 14 November 2018
Distribution: Public
Original: English

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Review of the General Conditions for Agricultural Development Financing

Note to Executive Board representatives

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Executive Board — 125th Session
Rome, 12-14 December 2018

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 the 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 financing agreements in accordance with their terms and conditions. The Executive Board is also invited to delegate the authority to the President to approve deviations from the General Conditions for specific project purposes.

Review of the General Conditions for Agricultural Development Financing

1. The Office of the General Counsel led a corporate effort, in collaboration with the Office of Audit and Oversight, the Financial Operations Department and the Programme Management Department, aimed at updating IFAD's General Conditions for Agricultural Development Financing (the "General Conditions"). The review objectives were to:
 - (a) Remove all references to special commitments as an acceptable withdrawal/disbursement method;
 - (b) Harmonize the General Conditions with other IFAD documents, some of which will be submitted for approval during the 125th session of the Executive Board;¹ and
 - (c) Harmonize IFAD's legal instruments and procedures with those of other international financial institutions.
2. As a result of the review, a revised version of the General Conditions adopted in 2009 and subsequently amended in 2010, 2013 and 2014 is submitted for the Executive Board's approval. These revised General Conditions, should they be approved by the Executive Board, will amend and replace the current General Conditions and will apply to all financing agreements for projects and programmes in accordance with their terms and conditions.
3. It is proposed that the President shall be delegated the authority to approve deviations from the General Conditions for specific project purposes.
4. The amendments to the current General Conditions, along with explanations, are presented in the table below.

¹ IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations, and IFAD Policy on Project Restructuring.

Amendments to the General Conditions for Agricultural Development Financing

Note: new text is show in italics.

<i>Amendment number</i>	<i>Reference</i>	<i>Current text</i>	<i>Proposed text</i>	<i>Explanation</i>
1	Section 2.01 General Definitions	"Designated Account" means an account designated for advance withdrawals by the Borrower/Recipient in accordance with Section 4.04(d).	"Designated Account" means an account designated for advance withdrawals by the Borrower/Recipient in accordance with <i>Section 4.03(d)</i> .	To reflect revised section numbering under article IV imposed by the deletion of section 4.03 thereof.
2	-	"Eligible Expenditure" means an expenditure that complies with Section 4.08.	"Eligible Expenditure" means an expenditure that complies with <i>Section 4.07</i> .	To reflect revised section numbering under article IV imposed by the deletion of section 4.03 thereof.
3	-	NA	<i>"Obstructive practice" means: (i) deliberately destroying, falsifying, altering or concealing evidence that may be material to an investigation by the Fund, or making false statements to investigators in order to materially impede an investigation by the Fund into allegations of corrupt, fraudulent, coercive or collusive practices; and/or (ii) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an investigation by the Fund or from pursuing such investigation; and/or (iii) the commission of any acts intended to materially impede the exercise of the Fund's contractual rights of audit, inspection and access to information.</i>	Amendment proposal subject to the Executive Board's approval of the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations (the "Anticorruption Policy"). Additional definition reflecting the newly introduced prohibited practice set forth in the Anticorruption Policy.
4	-	NA	<i>"Prohibited Practice" means any corrupt, fraudulent, collusive, coercive or obstructive practice engaged in connection with an IFAD-financed and/or managed operation or activity.</i>	Amendment proposal subject to the Executive Board's approval of the Anticorruption Policy – additional definition encompassing previous and new prohibited practices as per the Anticorruption Policy.
5	-	"Value Date" means, in respect of any withdrawal from the Loan Account, the date on which such withdrawal is deemed made in accordance with Section 4.06 and, in respect of any Loan Service Payment, the date on which such Loan Service Payment is deemed made in accordance with Section 5.04.	"Value Date" means, in respect of any withdrawal from the Loan Account, the date on which such withdrawal is deemed made in accordance with <i>Section 4.05</i> and, in respect of any Loan Service Payment, the date on which such Loan Service Payment is deemed made in accordance with Section 5.04.	To reflect revised section numbering under article IV imposed by the deletion of section 4.03 thereof.
6	Section 4.03 Special Commitments	Upon the Borrower/Recipient's request, the Fund may agree to make an irrevocable commitment to pay amounts necessary to guarantee a Letter of Credit used to finance Eligible Expenditures (a "Special Commitment") on such terms and conditions as the Borrower/Recipient and the Fund may agree.	Deleted.	"Special Commitments" were abolished as an acceptable method of withdrawal/disbursement further to the decision of the Associate Vice-President, Financial Operations Department approved in 2015.

<i>Amendment number</i>	<i>Reference</i>	<i>Current text</i>	<i>Proposed text</i>	<i>Explanation</i>
7	Section 4.04 Applications for Withdrawal or Special Commitment	(a) When the Borrower/Recipient wishes to request a withdrawal from the Loan and/or Grant Accounts or a Special Commitment, the Borrower/Recipient shall deliver to the Fund an application in the form specified therefor by the Fund, together with such documents and other evidence in support of such application as the Fund shall reasonably request.	(a) When the Borrower/Recipient wishes to request a withdrawal from the Loan and/or Grant Accounts, the Borrower/Recipient shall deliver to the Fund an application in the form specified therefor by the Fund, together with such documents and other evidence in support of such application as the Fund shall reasonably request.	Deleted reference to "Special Commitment". See explanation to amendment number 6.
8	4.04(c)	(c) Each such application, and the accompanying documents and other evidence, must be sufficient to satisfy the Fund that the Borrower/Recipient is entitled to such withdrawal or Special Commitment.	(c) Each such application, and the accompanying documents and other evidence, must be sufficient to satisfy the Fund that the Borrower/Recipient is entitled to such withdrawal.	Deleted reference to "Special Commitment". See explanation to amendment number 6.
9	4.04(d)	(d) If the Borrower/Recipient requests a withdrawal from the Loan and/or Grant Accounts for amounts to be paid thereafter for Eligible Expenditures, the Fund may, before transferring such amount to the Borrower/Recipient, require that the Borrower/Recipient provide evidence satisfactory to the Fund showing that previous withdrawals have been properly spent for Eligible Expenditures. The Fund may place reasonable limits on the amount that the Borrower/Recipient may withdraw in advance or the overall balance of such advance withdrawals, and may require that such amounts be held in a freely convertible currency and/or be held in an account designated for that purpose in a bank acceptable to the Fund.	(d) If the Borrower/Recipient requests a withdrawal from the Loan and/or Grant Accounts for amounts to be paid thereafter for Eligible Expenditures, the Fund may, before transferring such amount to the Borrower/Recipient, require that the Borrower/Recipient provide evidence satisfactory to the Fund showing that previous withdrawals have been properly spent for Eligible Expenditures. The Fund may place reasonable limits on the amount that the Borrower/Recipient may withdraw in advance or the overall balance of such advance withdrawals, and may require that such amounts be held in a freely convertible currency and/or be held in an account designated for that purpose in a bank acceptable to the Fund. <i>Nothing stated in these General Conditions concerning acceptability of a bank shall be construed as a waiver of any right, power or remedy available to the Fund otherwise.</i>	To clarify which Party ultimately bears risks arising from the choice of bank in which to open designated accounts.
10	Section 4.08(d) Eligible Expenditures	(d) Any payments to a person or an entity, or for any goods, works or services, if making or receiving such payment constitutes a coercive, collusive, corrupt or fraudulent practice by any representative of the Borrower/Recipient or any Project Party, shall not be eligible for financing by the Financing.	(d) Any payments to a person or an entity, or for any goods, works or services, if making or receiving such payment constitutes a Prohibited Practice by any representative of the Borrower/Recipient or any Project Party, shall not be eligible for financing by the Financing.	Amendment proposal subject to the Executive Board's approval of the Anticorruption Policy. To replace list of practices with single term "Prohibited Practices" as defined in proposed amendment to section 2.01.
11	Section 7.02(b) Availability of Financing Proceeds	(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.	(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 <i>Section 4.03(d)</i> . The Borrower/Recipient shall identify the Project Party responsible for operating such account or accounts.	To reflect revised section numbering under article IV imposed by the deletion of section 4.03 thereof and to clarify which party ultimately bears risks arising from the choice of bank in which to open project accounts.

<i>Amendment number</i>	<i>Reference</i>	<i>Current text</i>	<i>Proposed text</i>	<i>Explanation</i>
		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.	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. <i>Nothing stated in these General Conditions concerning acceptability of a bank shall be construed as a waiver of any right, power or remedy available to the Fund otherwise.</i>	
12	Section 7.05(b) Procurement	(b) By notice to the Borrower/Recipient, the Fund may require that all bidding documents and contracts for procurement of goods, works and services financed by the Financing include provisions requiring bidders, suppliers, contractors, sub-contractors and consultants to: (i) allow full inspection by the Fund of all bid documentation and related records; (ii) maintain all documents and records related to the bid or contract for three years after completion of the bid or contract; and (iii) cooperate with agents or representatives of the Fund carrying out an audit or investigation.	(b) By notice to the Borrower/Recipient, the Fund may require that all bidding documents and contracts for procurement of goods, works and services financed by the Financing include provisions requiring bidders, suppliers, contractors, sub-contractors and consultants to: (i) allow full inspection by the Fund of all bid documentation and related records; (ii) maintain all documents and records (<i>including electronic records</i>) related to a bid or contract for <i>at least three years after completion of the procurement process or contract execution</i> ; and (iii) <i>fully</i> cooperate with agents or representatives of the Fund carrying out an audit or investigation.	Amendment proposal subject to the Executive Board's approval of the Anticorruption Policy. To reflect revised procurement obligations set forth in the Anticorruption Policy.
13	Proposed: Section 7.06 Fraud and Corruption	NA	<i>The Borrower/Recipient and the Project Parties shall ensure that the Project is carried out in accordance with the provisions of the IFAD Policy on Preventing Fraud and Corruption in its Activities and Operations, as may be amended from time to time. The Fund may take appropriate measures in line with such Policy.</i>	Amendment proposal subject to the Executive Board's approval of the Anticorruption Policy. Additional section to ensure compliance with the Anticorruption Policy.
14	Proposed: Section 7.07 Sexual Harassment, Sexual Exploitation and Abuse	NA	<i>The Borrower/Recipient and the Project Parties shall ensure that the Project is carried out in accordance with the provisions of the IFAD Policy on Preventing and Responding to Sexual Harassment, Sexual Exploitation and Abuse, as may be amended from time to time. The Fund may take appropriate measures in line with such Policy.</i>	Additional section to ensure compliance with the IFAD Policy on Preventing and Responding to Sexual Harassment, Sexual Exploitation and Abuse (the "SEA Policy").
15	Proposed: Subsection 8.06(c) Other Implementation Reports and	NA	<i>(c) The Borrower/Recipient and the Project Parties shall promptly inform the Fund of any non-compliance with the IFAD Policy on Preventing and Responding to Sexual Harassment, Sexual Exploitation and Abuse.</i>	Additional subsection to ensure compliance with SEA Policy.

<i>Amendment number</i>	<i>Reference</i>	<i>Current text</i>	<i>Proposed text</i>	<i>Explanation</i>
		Information		
16	Section 9.03(a) Audit of Accounts	(a) each Fiscal Year, have the accounts relating to the Project audited in accordance with auditing standards acceptable to the Fund and the IFAD Guidelines on Project Audits by independent auditors acceptable to the Fund;	(a) each Fiscal Year, have the accounts relating to the Project audited <i>by independent auditors acceptable to the Fund</i> in accordance with auditing standards acceptable to the Fund and the <i>Conceptual Framework for Financial Reporting and Auditing of IFAD-financed Projects and Related Handbook</i> ;	To update Section with the currently applicable reference document on financial reporting and auditing.
17	Section 12.01 Suspension by the Fund	(a)(xxiv) The Fund has given notice to the Borrower/Recipient that credible allegations of coercive, collusive, corrupt or fraudulent practices in connection with the Project have come to the attention of the Fund, and the Borrower/Recipient has failed to take timely and appropriate action to address the matters to the satisfaction of the Fund.	<i>(a)(xxiv) At any time that the Fund determines, with respect to any amount of the Financing, that Prohibited Practices were engaged in by representatives of the Borrower/Recipient or a Project Party or by any other recipients of the proceeds of the Financing without the Borrower/Recipient having taken timely and appropriate action, satisfactory to the Fund, to address such practices when they occurred.</i>	Amendment proposal subject to the Executive Board's approval of the Anticorruption Policy Revised Subsection to ensure compliance with Anticorruption Policy.
18	-	NA	<i>(xxvii) The Fund, after consultation with the Borrower/Recipient, has determined that acts of sexual harassment, sexual exploitation and abuse were engaged in by representatives of the Borrower/Recipient or a Project Party or by any other recipients of the proceeds of the Financing without the Borrower/Recipient having taken timely and appropriate action, satisfactory to the Fund, to address such acts when they occur.</i>	Additional Subsection to ensure compliance with IFAD's SEA Policy.
19	12.01(b)	(b) If the audit report required by Section 9.03 has not been submitted to the Fund within six (6) months of the date on which it is due, the right of the Borrower/Recipient to request withdrawals from the Loan and/or Grant Accounts shall be suspended.	(b) If the audit report required by Section 9.03 has not been submitted to the Fund within six (6) months of the date on which it is due, the right of the Borrower/Recipient to request withdrawals from the Loan and/or Grant Accounts shall be suspended, <i>unless the Fund determines otherwise upon reasonable cause shown.</i>	To introduce a reasonable level of flexibility that may be necessary considering IFAD's mandate and operations in fragile situations, while maintaining rigour vis-à-vis the Borrower/Recipient.
20	Section 12.02 Cancellation by the Fund	(a)(iii) After consultation with the Borrower/Recipient, the Fund determines that coercive, collusive, corrupt or fraudulent practices were engaged in by representatives of the Borrower/Recipient or any Project Party in respect of any expenditures incurred during the procurement or the carrying out of any contract financed by the Financing, and that the Borrower/Recipient has failed to take timely and appropriate action to remedy the situation.	(a)(iii) After consultation with the Borrower/Recipient, the Fund determines, <i>with respect to any amount of the Financing</i> , that <i>Prohibited Practices</i> were engaged in by representatives of the Borrower/Recipient or any Project Party <i>or any other recipient of the proceeds of the Financing without the Borrower/Recipient having taken timely and appropriate action, satisfactory to the Fund</i> , to remedy the situation.	Amendment proposal subject to the Executive Board's approval of the Anticorruption Policy. Edits to ensure compliance with Anticorruption Policy.

<i>Amendment number</i>	<i>Reference</i>	<i>Current text</i>	<i>Proposed text</i>	<i>Explanation</i>
21	-	NA	<i>(a)(viii) The Financing has not started disbursing within eighteen (18) months from the entry into force of the Financing Agreement.</i>	Amendment proposal subject to the Executive Board's approval of the IFAD Policy on Project Restructuring (the "Restructuring Policy"). Additional subsection to ensure speedier implementation and a more efficient use of IFAD's resources as per the recommendations of the Restructuring Policy.
22	12.02(b)	(b) Any amounts remaining in the Loan and/or Grant Accounts shall be cancelled on the Financing Closing Date, except for any unwithdrawn balances of applications for withdrawal received by the Financing Closing Date and any amounts subject to undischarged Special Commitments, which shall be cancelled upon the full discharge of such Special Commitments.	(b) Any amounts remaining in the Loan and/or Grant Accounts shall be cancelled on the Financing Closing Date, except for any unwithdrawn balances of applications for withdrawal received by the Financing Closing Date.	Deleted reference to "Special Commitment". See explanation to amendment number 6.
23	Section 12.03 Cancellation by the Borrower/Recipient	After consultation with the Fund and with the concurrence of the Guarantor, the Borrower/Recipient may by notice to the Fund cancel any unwithdrawn amount of the Financing, except for amounts subject to Special Commitment. Such cancellation shall become effective upon acknowledgement thereof by the Fund.	After consultation with the Fund and with the concurrence of the Guarantor, the Borrower/Recipient may by notice to the Fund cancel any unwithdrawn amount of the Financing. Such cancellation shall become effective upon acknowledgement thereof by the Fund.	Deleted reference to "Special Commitment". See explanation to amendment number 6.
24	Section 12.04(a) Applicability of Cancellation or Suspension	(a) No cancellation or suspension shall apply to amounts subject to any Special Commitment made by the Fund, unless such Special Commitment expressly provides otherwise.	Deleted	Deleted entire subsection (a) as it refers to "Special Commitment". See explanation to amendment number 6.