



Federal Ministry
for Economic Cooperation
and Development

Guidelines

for bilateral Financial and Technical Cooperation
with cooperation partners
of German development cooperation

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Ambit of the Guidelines

These Guidelines apply to bilateral **Financial Cooperation**¹ and to bilateral **Technical Cooperation**² with cooperation partners of German development cooperation. Cooperation partners are partner countries (developing countries and emerging economies) and their regional organisations, and also the regional economic commissions of the United Nations.

The Guidelines are administrative regulations drawn up by the German government and adopted by the ministries concerned (Federal Ministry for Economic Cooperation and Development, Federal Foreign Office, Federal Ministry of Finance, Federal Ministry for Economic Affairs and Energy). They are directed at the German government, the German implementing organisations and any other agencies involved on the German side; they are also meant to give interested third parties an idea of the goals and methods of German cooperation.

The German government may permit the Guidelines to be waived in isolated cases for reasons based on development or foreign policy.

The new version of these guidelines shall enter into force on 1 July 2021. They shall also be applicable for development measures based on earlier commitments, provided there are no contractual agreements stipulating otherwise.

¹ Departmental Budget 23, Chapter 2301, Title Group 01, Titles 866 11 and 896 11

² Departmental Budget 23, Chapter 2301, Title 896 03

PART 1: GENERAL REGULATIONS

Objectives, purpose and priority areas of German development policy

1 Objectives and tasks

The German government has set itself the task of contributing with its development policy towards fighting poverty worldwide, building peace and realising democracy, promoting justice in globalisation and protecting the environment. Its actions in this context are based on a model of globally sustainable development that expresses itself equally in economic efficiency, social justice, ecological sustainability and political stability. It is an active supporter of the initiatives to bring about a new global partnership between industrialised, developing and emerging countries. The 2030 Agenda for Sustainable Development provides the programmatic framework for German development cooperation and sets out the principles that guide it. This also includes – as an integral part of the 2030 Agenda and the Paris climate agreement – the Addis Ababa Action Agenda on financing for development and the internationally recognised principles on aid effectiveness (“Busan Principles”).

The central points of reference for the contributions to poverty reduction are the poverty reduction and development strategies elaborated by the partner countries themselves. The German government has contributed to their formulation at the international level and also through its cooperation with its partner countries and to the formulation of the partner countries’ national sustainability strategies as well.

The German government views development policy as a shared international task and structures its work in this respect as one component of global structural and peace policy. In cooperating on the design of structures for a peaceful and just world, the German government places a high value on the ownership of the partner countries and on its partnerships with them. The German government supports its partners in their efforts to improve the general enabling environment and structures in their countries. In particular, the German government is working within the framework of multilateral and European development cooperation to help change international structures, negotiating processes and rules and regulations, in which the developing countries must also be involved appropriately.

Through policy coherence for development cooperation and a joined-up, flexible approach, the German government is seeking to further hone the international and national profile of its development policy. German development policy can only do a good job if a wide range of instruments is deployed in an integrated, coordinated, flexible and effective fashion as part of the joint international efforts to implement agreements that have been made. In accordance with the effectiveness principles, which were confirmed in 2011, the German government is continuously working to further develop its range of instruments and to simplify and harmonise procedures within the framework of international arrangements with a view to supporting its partner countries more effectively.

2 Priority areas

The aim of German development cooperation is the concerted deployment of its range of bilateral governmental instruments in priority areas. Priority areas consist of issues, sectors or sub-sectors within which German development cooperation is making a significant contribution towards solving the core structural problems of the partner country through projects or joint programmes that are linked by an overarching concept or strategy.

The priority areas of German bilateral development policy are in all cases determined in consultation with the cooperation partner. The German government tailors the overall framework for establishing priorities to the latest development policy requirements in each case.

Within the priority areas, the German government generally ensures through programmes that individual development measures are implemented in a coordinated manner and geared towards the same objectives. Programmes combine the development measures in a sector that are intended to achieve joint impacts, and they are aligned with the political parameters set by the German government and the cooperation partner.

3 The purpose and contributions of Financial Cooperation

The purpose of Financial Cooperation is to promote investments in partner countries in ODA-relevant sectors by providing funding and supplementary measures.

The contributions made under Financial Cooperation consist of

- funding for capital investment, real assets and operating facilities,
- financial contributions for developing the financial sector,
- fiduciary investments in, and loans with equity features to, companies in partner countries,
- financial contributions to capital funds for the sustainable financing of priority development measures,
- financial contributions to structural transformation and for the development of functioning, efficient structures in the partner countries through participation in sectoral or macro-economic programme financing with others from the donor community (programme-oriented joint financing).

A prerequisite for Financial Cooperation contributions to programme-oriented joint financing is that

- there is suitable evidence to show the investment nature of the contribution,
- binding development goals and impact indicators are attached to the programme, which will be used by the donor community, including Germany, to help design and guide it,
- effective sanctions (such as cutting or halting the disbursement of tranches of funds) are laid down in the programme agreements to be applied in the case of misuse of funds.

These contributions include

- contributions for the preparation of Financial Cooperation measures,
- contributions for the necessary accompaniment and monitoring – provided that both clearly serve the project/programme goal – of Financial Cooperation measures (for instance studies; expert staff and planning aids and help for the executing agency, the target group and other participating institutions with project/programme implementation),
- contributions to increase the structural impact of Financial Cooperation (for example analysing project/programme lessons for sector planning, human resources support – provided that it clearly serves the project/programme goal – for the implementation of reform programmes as part of programme-oriented joint financing).

4 The purpose and contributions of Technical Cooperation

Technical Cooperation serves the purpose of upgrading the skills of people and organisations and of society as a whole in Germany's partner countries (capacity development), enabling them to realise

their own goals through the effective, efficient and sustainable use of resources. Technical Cooperation also includes developing and expanding executing agency structures (general capacity building), supporting institutions concerned with planning, implementation and management within the framework of cooperation partners' programmes and supporting the cooperation partner's efforts to coordinate development cooperation. Technical Cooperation also carries out this work within the framework of joint programmes and through accompanying measures in the case of programme-oriented joint financing.

Contributions under Technical Cooperation primarily consist of

- Advice provided via experts (including development workers) and strategic and project-related skills development,
- funding advisory services (for example through financial contributions under Technical Cooperation for programme-oriented joint financing),
- to a limited extent, supplies of equipment and materials and the construction of facilities,
- other works and services (for example, studies, appraisals and reports).

Capital investments and more substantial deliveries of goods can only be handled through financial contributions under Technical Cooperation if they are directly linked to Technical Cooperation tasks, are supplementary to them, are subsumed by them and/or are a necessary prerequisite for their implementation.

Regional and supra-regional development measures under bilateral cooperation and sector and pilot projects that are needed for the preparation, support and appraisal of the activities concerned and are not carried out in direct cooperation with a partner can also be promoted within the framework of Technical Cooperation.

5 Further contributions under Financial and Technical Cooperation

Further contributions under Financial and Technical Cooperation are

- project-related training of the cooperation partners' staff,
- the financing of licences and the purchase of patents,
- mobilising additional resources from the private sector within the framework of development partnerships with the private sector (Public-Private Partnerships – PPPs) and contributions for the preparation, structuring and implementation of PPP projects,
- contributions that are linked to the delivery of equipment and materials and the construction of facilities (for example, transport, insurance and assembly).

No support is provided for the acquisition of luxury goods, environmentally harmful or military goods, technology and facilities, or for contributions directed towards such ends. This also applies to dual purpose goods and technology if the end users of such goods or technology will be the security forces of the recipient country.

Forms of implementation

6 Development measures

By carrying out clearly defined development measures, above all within agreed priority areas relating to a particular issue or sector, the German government assists its cooperation partners in achieving concrete development goals. Such development measures must in principle be

supported, owned and managed by the partner. Important forms are projects and joint programmes (especially programme-oriented joint financing). Other forms of development measures are Study Funds and general commodity aid.

7 Projects and joint programmes

Projects are measures that cover a specific topic/sector and geographical area for a specified time, have a specified budget and consist of tasks that are aimed at achieving a specific goal. Programmes may consist of several components that are based on a uniform concept and operate at different levels of intervention.

Joint programmes are programmes that are supported jointly by Germany together with one or more other bilateral or multilateral donors (see also section 8). Joint programmes are generally based on the principle of coordinated bilateral and/or multilateral support for development programmes that have been developed and are owned at the national level.

8 Programme-oriented joint financing

Programme-oriented joint funding consists of joint support provided by several donors for sector-based or cross-sectoral or macro-economic reform programmes developed and owned by the cooperation partner at a national level. The donors reach an understanding with the partner regarding shared goals and harmonised procedures. The cooperation partner is in charge of the process of managing and financing the programme. Such programmes are carried out by bringing together support in the form of finance and human resources from various donors (basket funding, budget support). The disbursements are tied to special conditionalities, which define the shared goals and ensure the commitment of each of the partners.

Participation in programme-oriented joint financing is a good way of dovetailing German bilateral projects with the programmes of other bilateral and multilateral donors. It offers added opportunities to exert an influence over the design of measures and increases the leverage of German development cooperation. Participation in the reform programmes of cooperation partners within the framework of programme-oriented joint financing is a way to agree upon and achieve changes in the general (sectoral and/or macro-economic) conditions in the partner countries. These are changes that the German government could not achieve alone. The German government can therefore participate in the joint financing of sector-based or macro-economic programmes within the framework of the sectoral objectives which it has agreed upon with the respective partner countries or in other areas with a high priority for development.

Programme-oriented joint financing is used in connection with pertinent programmes of the World Bank, the regional development banks, the European Union and also bilateral donors. Cooperation is generally in the form of joint financing in accordance with section 68. German development cooperation can also agree upon supplementary programme components via direct contributions and/or parallel financing.

9 Study Fund

Study and Consultancy Funds (Financial Cooperation) and Study and Expert Funds (Technical Cooperation) are used to finance studies, reports and experts, including the necessary associated resources, unless – due to the scope and discrete nature of the task – this work is carried out as a separate project. The German government and the cooperation partners or the institutions commissioned by them generally consult on the individual measures to be financed from the funds, according to the requirements in each case.

Study and Consultancy Funds under Financial Cooperation are used for preparing and supporting Financial Cooperation measures. In addition, the Financial Cooperation Study and Consultancy Fund can be used for expert missions to work on overarching topics (for example, support policies

and instruments, further development of Financial Cooperation instruments) and on sector issues of relevance for Financial Cooperation (see sections 13 and 49).

Study and Expert Funds under Technical Cooperation are used for the appraisal and preparation of Technical Cooperation measures and also to finance other studies and reports (including those for promoting the private sector in the partner countries). Other small-scale Technical Cooperation measures (less than 0.50 million euros) can be implemented largely through Study and Expert Funds too.

10 PPP Funds

Bilateral PPP Funds can be set up on the basis of agreements with the cooperation partners in order to promote development partnerships with the private sector (PPP measures) in areas of bilateral cooperation that are important in development terms. These funds enable a flexible response when opportunities present themselves for cooperation with the private sector.

11 Commodity aid under Financial Cooperation

Commodity aid under Financial Cooperation (general commodity aid) may be provided on a limited scale for urgently required imports, especially to back up general economic restructuring or structural adjustment efforts. General commodity aid primarily serves the purpose of maintaining, and improving the utilisation of, production capacities and infrastructure (for example, raw materials, operating materials, semi-processed goods; spare parts and accessories; patents and production licences). The German government decides in each individual case what the commodity aid is to be used for; the general list of goods and services eligible for financing offers a wide range of possibilities but details should be specified according to requirements. General commodity aid should not be used to finance development measures that should be appraised and implemented as projects.

Direct contributions by the German government, loans and financial contributions

12 Basic principle

Responsibility for and ownership of the development measures – including their preparation and implementation – lies with the partner, who must eventually take over the tasks initially undertaken by the German side and continue them without further assistance. The German government makes funds available to the cooperation partner which are used to finance contributions; or it provides the contributions itself as direct contributions. In either case, there is consultation between the German side and the partner.

13 Contributions under Financial Cooperation

Under Financial Cooperation the German government promotes development measures – on the basis of agreements under international law when necessary – by means of loans or non-repayable financial contributions.

The elaboration of studies and secondment of experts (including the auxiliary funds thereby necessitated) are financed by the German government on the basis of proposals put forward by KfW Development Bank. A Study and Consultancy Fund is set up for this purpose (see section 9). KfW makes these contributions directly. This Fund can also be used

- to fund short-term experts for preparing and supporting Financial Cooperation measures,
- for the secondment of experts to deal with topics that are of relevance for more than one project (for example, support policies and instruments, further development of Financial Cooperation instruments) and with sectoral tasks.

The project-related training promoted by the German government under Financial Cooperation can also be carried out as a direct contribution and can be financed from a special fund at the BMZ.

14 Contributions under Technical Cooperation

Technical Cooperation, by its very nature, requires the German government to make mainly direct contributions. They are generally made on the basis of agreements under international law. The project-related training promoted by the German government is also provided as a direct contribution.

Financial contributions are provided if there is a qualified local project executing agency able to guarantee assumption of responsibility for the proper planning and implementation of the development measure.

Responsibilities

15 German government's responsibility

On the German side it is the German government that lays down the framework for cooperation. It bears the political responsibility for the promotion of the development measures and is in charge of the related development policy programming and monitoring. The responsible ministry within the German government is the Federal Ministry for Economic Cooperation and Development (BMZ); it brings in other ministries in accordance with the German government's rules of procedure and the applicable rules for the division of responsibilities and, in exceptional cases, allocates them funds to be managed on this basis in accordance with Administrative Rules (VV) No. 3 on Section 9 of the Federal Budget Code (BHO). The German government makes use of its foreign missions, in accordance with the terms of the Circulars currently in force and the Law on the Foreign Service, to coordinate cooperation in its partner countries and to maintain contact with the governments of those countries.

In particular, the German government is responsible for: country analyses; formulating and determining the objectives, priority areas, strategies, programmes and instruments of cooperation with the individual partners; selecting measures and also deciding about the aims and implementation of German support; the provision of funds; agreeing and concluding arrangements under international law with cooperation partners; checking and supervising German support also on the basis of reports from the implementing organisations and evaluations.

The auditing rights of the Federal Court of Audit remain unaffected.

16 Implementing organisations' responsibility

In principle, the German government calls upon German implementing organisations to undertake the preparation and implementation work to be carried out by the German side.

Within the framework of Financial Cooperation, where loans, financial contributions and any direct contributions, plus equity investments and loans with equity features (including fiduciary investments) are concerned, the organisations in question are KfW Development Bank and Deutsche Investitions- und Entwicklungsgesellschaft mbH (German Investment and Development Company – DEG).

In the case of Technical Cooperation, the organisation in question is Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, unless measures are implemented by the German government itself or its auxiliary agencies, in particular the Bundesanstalt für Geowissenschaften und Rohstoffe (Federal Institute for Geosciences and Natural Resources – BGR) or the Physikalisch-Technische Bundesanstalt (Federal Institute for Physics and Technology – PTB).

If there is a direct relationship between measures under Financial and Technical Cooperation and joint implementation seems expedient because of the type or scope of the measures or the specific technical knowledge required, then the implementing organisations concerned are charged by the German government to carry out joint appraisals, planning and implementation. The organisations, each implementing the part of the measure for which they are responsible, make a joint proposal for implementation to the German government and provide joint reports on the progress of the project or programme.

17 Implementing organisations' tasks

The legal relations between the German government and the implementing organisations are governed by statutory regulations and by the general and other agreements concluded between the two parties. There are specific agreed procedures governing the award of contracts to the implementing organisations.

The implementing organisations have the following tasks: participation on behalf of the German side in the drafting and implementation of programmes; selection and preparation of measures; appraisal; implementation of German support (conclusion of implementation agreements with the project executing agencies, technical management and monitoring of German support), reporting and evaluation.

The measures are implemented by the implementing organisations independently and on their own responsibility, with due regard to the imperatives of cost-effectiveness and economy and in accordance with the stipulations made by the German government regarding matters of finance and content. When important decisions are to be made, particularly in the case of deviations from the planned concept, the German government must be consulted.

In agreement with the German government and with the partner country in each case, the implementing organisations may maintain offices in the partner countries which provide services for the measures being promoted under development cooperation in the country in question (and also possibly in neighbouring countries) and for the organisations' headquarters. The various German implementing organisations share office space wherever possible.

18 Areas of responsibility in the case of training

For project-related training outside the sphere of influence of the respective project executing agency, the implementing organisations usually avail themselves of the services of the German Academic Exchange Service (Deutscher Akademischer Austauschdienst, DAAD), the Alexander von Humboldt Foundation and the DW Akademie. The Federal Employment Agency – International Placement Services (Zentralstelle für Auslands- und Fachvermittlung, ZAV) is consulted by the implementing organisations included in activities that fall within the scope of its remit.

19 Sub-contracting, agency contracts

In the case of direct contributions by the German government, the implementing organisations may award subcontracts; GIZ must employ suitable sub-contractors in the execution of its duties wherever expedient and cost-effective.

In suitable cases, particularly when relevant bilateral and/or multilateral agreements to that effect exist and taking into account each party's comparative advantages, the implementing organisations can, at the behest of the German government, involve bilateral or multilateral institutions. In cases such as these (for example, delegated cooperation, silent partnerships, bilaterally agreed participation in multilateral funds), the guidelines and procedures of the bilateral or multilateral partners may be applied after they have been checked by the implementing organisations.

The implementing organisations can conclude agency contracts with the partner country within the framework of loans and financial contributions, which are then used as a basis to carry out individual business transactions on behalf of the partner country.

Areas of intervention and selection of measures

20 Basis of cooperation

The German government engages in a partnership-based dialogue with its partners about the basis of, and current issues pertaining to, its cooperation. Suitable opportunities for this are, inter alia, government negotiations, consultations and also donor meetings.

The dialogue is conducted with the object of achieving a balance of interests; both sides express and discuss their respective concerns. The German government considers it necessary that its partners create, through their own efforts, suitable structures and basic conditions for development as a whole and for the development measures promoted by the German government.

In these meetings, development bottlenecks, development potential and the effectiveness of cooperation to date are also discussed, and the objectives, fields and instruments of future cooperation are agreed upon.

21 Selection of measures

The development measures address key areas in order to contribute as effectively as possible towards overcoming bottlenecks and solving development problems, and to truly benefit the target groups. Of the various options, the approach is chosen that best contributes to solving the problems in question. Preference is given to integrated approaches that tackle the problem from various angles. The development measures are concentrated on a sector and – where expedient – on a region and their impact is intended to have a direct or indirect ripple effect.

The German government and its partners select the measures for their cooperation in agreement. In doing so the partner country's needs, plans and proposals for support, understandings between partner countries and the donor community, and the German government's development policy objectives and proposals for support are taken into account.

Measures are promoted following the principle of minimum intervention. This means that they should be planned and implemented as far as possible by the partner country. They must be aligned with the structures of the partner. The form of support chosen should be the one that offers the most scope to Germany's partner in terms of ownership, initiative and responsibility.

Planning, prerequisites and design of the measures

22 Planning phase

Of crucial importance for the success of the measures supported is the thorough planning and preparation in conjunction with the executing agency. The problem to be solved should be clearly defined; the objectives should be set out clearly and in detail and, if appropriate, quantified to provide a yardstick for subsequently measuring the success of the support. If necessary, plans are gradually completed or adapted to changing conditions in consultation with the partner country as the measures take shape.

The planning and financing of the support should cover a period of time which is both manageable and long enough to allow realistic targets to be achieved. When projects are supported, the appraisal must assess the probable content, financial scope and timeframe needed to achieve the purpose for which support is being provided; support is provided on the assumption that the measure will

probably be sustainable or that subsequent phases (e.g. in the case of programme-oriented joint financing) can be implemented without German support.

Supplementary and follow-up activities that are essential for project success and which have to be carried out by the partner country itself should also be included in the planning phase and their prospects of being realised taken into account.

Possible contributions by the private sector for the achievement of the objective should already be taken into account in the planning phase.

The target groups and the people affected should be involved in the preparation, planning and implementation of the measures.

23 Prerequisites for implementation

As the agency responsible for the measure, the project executing agency appointed by the partner must be capable of implementing and running the project and making suitable counterpart contributions. It may receive support in the form of advisory services and training for its personnel (including, for example, from experts who are helping with the award of contracts or performing certain supervisory tasks) and should be able to permanently secure the impacts being pursued under the measure on its own as soon as possible. New agencies should only be created and developed in exceptional circumstances.

One of the preconditions for the implementation of measures is adequate security for the experts working on the projects.

24 Ensuring the success of the measures

To ensure the success of the measures it may be necessary for the German government to provide follow-up support in the form of staff and materials (for example, short-term advisers, spare parts).

The training of partner country nationals begins at an early stage – possibly even before the start of the measures – in consultation with the partner country, so that the trained local experts can get involved at an early stage, thus making it possible to limit the duration of external support.

25 Actions by the cooperation partner, conditionalities

The German government may request or recommend – generally in line with recommendations made by other bilateral or multilateral donors – that the partner take certain actions which may be necessary or expedient to ensure the success of the support. In the case of programme-oriented joint funding, the German government will participate actively in the joint design of measure- or performance-based conditionalities and adopt the conditions laid down by the donors in agreement with the partner country.

Agreed actions to be taken or contribution targets (results) to be achieved by the partner should be such that it is reasonable to expect that they will be enforced or achieved. They may relate to the creation of suitable macro-economic, sectoral, sub-sectoral and regional structures but also to project/programme matters.

26 Coordination of contributions, instruments and donors

The German contributions to support a measure are planned and implemented as one unit (for example, investment in physical assets, macro-economic support, advisory services and training) and are chosen in such a way that they bring the greatest possible benefit for the objectives of the measure.

In the individual partner countries, Financial and Technical Cooperation are planned and implemented in close consultation or – if opportune – jointly; they are also coordinated with other instruments of German cooperation and, if suitable, with private sector activities. Official cooperation should not substitute or supplant private funding, but should help to mobilise such funds.

If practicable, German cooperation is coordinated with that of other bilateral and multilateral donors. This is done, inter alia, in strategies that are jointly developed with the cooperation partner and with other donors in the country (Joint Assistance Strategies), in bilateral consultations (for example with other bilateral and multilateral donors and especially with the European Union) and at international donor conferences.

The German government will participate in the joint financing of measures with other donors provided such cooperation makes sense from a development point of view in terms of the priority areas of cooperation agreed between the German government and the partner country in each case.

Financing of measures

27 Determining financial needs

A comprehensive statement is drawn up of the contributions made by the German government, by the cooperation partner – in the case of PPP projects or projects with PPP components, by the private sector partners – and also by other donors if any based on the total expenditure necessary for the development measure (investment costs and recurrent costs).

As part of a general statement on a country's budgetary and balance of payments situation, an estimate is made of the total future cost to the partner country (including the follow-up costs) and the country's ability to provide the necessary contributions. Should the partner country be required to provide public funds, it must make a binding agreement to provide the executing agency with the funds on time and to earmark them in its annual budgets.

28 Contributions by the partner side

Depending on the type of measure and the type of instrument, the following contributions in particular, which are to be made by the partner side, are usually agreed upon either in a framework agreement or, if there is no framework agreement, separately: securing total financing; providing land and buildings; appointing experts and auxiliary personnel in good time; participating in the training of experts; providing support and protection for the consultant experts; granting the necessary permits; exempting German implementing organisations from all taxes and other public charges in the partner country in connection with their tasks; in the case of direct contributions by the German government, exemption from all taxes and other public charges in the partner country for any materials supplied, when necessary, payment of such charges by the project executing agency. If supplies are procured in the partner country, tax exemption need not be granted if it would cause an unreasonable amount of work or would be contrary to legal regulations.

29 Contribution of the German government

The type and scale of the German contribution is determined by the circumstances and requirements of the measure.

In the case of measures under Technical Cooperation, the following local costs are generally also covered by the German government and not by the cooperation partner: accommodation for seconded experts or payment of the costs of their accommodation (where no accommodation is available, housing can be financed using Technical Cooperation funds, if this can be justified in the light of the total costs and the length of time the experts will be deployed); costs for business trips by the seconded experts; transport and insurance costs for goods supplied.

30 Recurrent costs

The financing of recurrent costs that arise in connection with development measures is primarily a matter for the partner country. Recurrent costs can be financed as an exception for measures of high development priority if this is necessary in order to ensure the sustainable achievement of the objective, and if the development objective cannot be achieved in any other way. The volume and percentage depends on the requirements of the particular measure and the capacity of the partner country. The reasons for assuming responsibility for recurrent costs must be given in the appraisal report.

The German government's financing of recurrent costs is limited in principle to a reasonable period of time, since the partner country should take over the institutions created by the measure, or continue with the structural reform that is being supported, by itself within a foreseeable timeframe.

31 Counterpart funds

Any revenues that accrue in the currency of the partner country (so-called counterpart funds) during the course of the cooperation (for example from the interest differential under Financial Cooperation (see section 52) or from the sale of goods, import licences and foreign exchange by the government of the partner country) are the property of the partner country (not donor-owned counterpart funds).

If considerable amounts of counterpart funds accrue either ultimately or over the long term, the funds should be used for development objectives in the partner country (for example, certain afforestation and erosion control programmes; financing of local costs for development measures under Financial or Technical Cooperation; joint ventures between German firms and local partners; revolving funds for small loans; investment in capital funds).

Except in the case of split maturities for Financial Cooperation loans, agreement with the government of the partner country should in principle be sought regarding the use of the funds in question. The German government decides, after weighing up the effort involved and the anticipated development benefit, whether a formal agreement should be concluded regarding the use of the counterpart funds. One condition is that the laws of the partner country allow this. A further general condition for stipulating how counterpart funds are to be used is that agreement has been – or is soon to be – reached between the German government and the partner government on the priority development purpose for which the funds should be used. If a specific use for the funds is agreed upon, it should be limited to an appropriate period of time (generally until the presentation of the final follow-up report by KfW in accordance with section 43) and – with the exception of revolving funds – to the first deployment of the counterpart funds. The partner country should report on the utilisation of the counterpart funds for the agreed purpose within this agreed timeframe or, if appropriate, furnish other suitable evidence that the agreement has been fulfilled.

As a rule, the interest differential funds from Financial Cooperation loans to financial institutions are earmarked for concrete development purposes, if, that is, the financial institution itself and not the government of the cooperation country is the borrower. The blanket loans given to the financial institutions are usually used on a revolving basis, in other words: amortisation payments from the final borrowers are re-used for loans, provided that they are not needed to redeem the blanket loan.

Commitments, agreements under international law, implementation agreements

32 Commitments

The German government makes a commitment – either at government negotiations or in an official note – to the partner country to promote appropriate development measures, in each case pending a

positive appraisal of the development measures by the implementing organisations, and the conclusion of an agreement under international law when necessary (see section 33). These commitments may be made as multi-year commitments and anticipate commitments for the following years. Informing the partner country of the duration of a multi-year commitment does not constitute automatic entitlement to further commitments at the end of that period.

33 Project agreements under international law

Support for development measures under Financial Cooperation (see section 13) and Technical Cooperation (see section 14) is additionally agreed upon in intergovernmental agreements under international law, when necessary. These may be either bound agreements or arrangements in the form of an exchange of notes.

Amendments to agreements and to arrangements in the form of an exchange of notes are concluded in principle on the basis of an exchange of notes.

The RvV [Guidelines on International Treaties (1998) issued by the Federal Foreign Office] always provide the framework for drafting the agreements and arrangements and for carrying out the required necessity check.

Among other things, there are no separate agreements under international law concluded for individual measures financed from Study and Expert Funds, Study and Consultancy Funds or PPP Funds. In the case of low-cost inputs (for example, small-scale supplies of materials, appointment of short-term experts for up to six months) which are made with the agreement of the partner country, or the secondment of development cooperation advisors to support partners in the coordination of development measures, the need for a formal agreement may be waived. Furthermore, a formal agreement under international law may be dispensed with in the case of regional and supraregional development measures if no direct contracting partner is available, if the measure has been agreed in consultation with the partner countries in question and if it can be implemented without the need for counterpart contributions guaranteed in an agreement under international law (for example statutory protection for the experts). A separate agreement under international law can also be dispensed with in the case of equity investments in private companies if there is a bilateral agreement covering mutual protection and the promotion of capital investments.

The agreements cover several development measures, wherever this serves to simplify the administration involved. Based on standard texts, they concentrate on essential aspects, especially: objectives, intended use and volume of the German contribution, and the contributions by the partner country, including exemption from taxes and levies for the implementing organisations. Details are set out in the agreements concluded by the implementing organisations. These agreements are not subject to international law, but instead are usually subject to German private law.

34 Framework agreements under international law

Framework agreements covering the basic rules and general framework for Technical Cooperation are concluded with the partner country in the form of government agreements based on a standard text. These agreements lay down in particular: type and areas of cooperation; contributions to be made by each side; duties and privileges of the experts.

The framework agreements form the basis for additional agreements governing Technical Cooperation measures in accordance with section 33, when necessary.

35 Publication of agreements under international law

Framework Agreements concerning Technical Cooperation, agreements covering development measures under Financial Cooperation and any amendments thereof are published in the

Bundesgesetzblatt II (Federal Law Gazette Part II) if there are no important reasons precluding publication (Article 76, subsection 2 GGO [Joint Rules of Procedure of the Federal Ministries], Article 34, subsection 7 RvV [Guidelines on International Treaties (1998) issued by the Federal Foreign Office]). The same holds for registration in accordance with Article 102, subsection 1 UN Charter, which is arranged by either the partner side or the Federal Foreign Office (Article 36 RvV [Guidelines on International Treaties (1998)]).

In the case of agreements covering development measures under Technical Cooperation in accordance with section 33 (regardless of their form) publication is dispensed with in principle for the sake of simplifying administrative procedures.

36 Implementation agreements

Based on understandings reached between the governments and, when necessary, the agreements under international law, the implementing organisations generally conclude contracts under private law with the pertinent official bodies of the partner country covering the details of the support to be provided; if appropriate these contracts can be supplemented by special agreements. The standard wordings for these contracts and any substantial modifications in individual cases are determined in consultation with the German government.

The implementation agreements specify in more precise terms the agreements that have been concluded, detailing the support to be provided and the contributions to be made by the participating entities, the objectives and the timeframe, organisational details and technical procedures for the development measure and the promotion thereof, and also the consequences if contractual obligations are not met (if appropriate, termination of the support).

Separate implementation agreements are not usually concluded for the individual measures funded from the Study Funds.

Appraisal of projects

37 Brief assessments

The proposals for development measures to be supported, which usually come from the partner countries via the German missions, are then forwarded to the BMZ by the missions, together with their comments.

The implementing organisations can also make comments on their own initiative – especially regarding project proposals within the framework of the priority areas agreed with the partner country.

Before appraising the proposal, the BMZ usually asks the implementing organisation(s) for a brief assessment of the development measures that have been proposed for support. The brief assessment should facilitate an initial assessment of the technical and development aspects of the development measure and help clarify whether an appraisal is feasible and merited. It describes the objectives, expected impacts and the status of preparation of the measure, outlines the probable costs as well as envisaged funding, comments on sectoral and technical aspects of implementation and back-up (including problematic aspects and risks), assesses the potential for realising the measure (in part) in cooperation with the private sector (PPP) and gives guidance for the German government's assessment of its development policy value, insofar as it is possible to make such an assessment at this stage.

38 Content of the appraisal

Before the German government promotes a development measure an assessment is made as to

- whether the measure in question is eligible for promotion according to the objectives and general principles of German development policy, sector-based support criteria, the present Guidelines and the priorities of the partner country, and
- what volume of development cooperation funding is required for the measure and how the funds should be used.

The appraisal of **projects** encompasses:

- The overall national economic situation in the partner country, which includes demonstrating the need for the project, for example in the form of a sectoral and, if appropriate, regional analysis; there should also be a clear assessment by the implementing organisation(s) of the development policy value.
- The planned contribution for the implementation of the respective programmes in coordination with other development measures in the concrete priority area.
- The conceptual and if appropriate the technical outline (design, implementation, operation) including alternative designs and possibilities for cooperation with the private sector.
- The legal basis, organisation and operational management as well as the economic circumstances of the executing agency (including its ability to implement and continue the project on its own), any back-up from experts and any necessary training.
- The overall costs (foreign exchange and local costs) and their financing, contributions by the various participants in terms of human resources, materials and funds.
- The general economic, socio-economic, socio-cultural, gender-specific and ecological impacts (environmental impact assessment); business aspects; risks and prospects of success (including the feasibility of the recommended activities (see section 25)); attitude of the target group towards the project.

The appraisal also defines verifiable goals for the use of the planned contributions and capacities and their intended impacts, and develops proposals for appropriate monitoring.

The appraisal of **programme-oriented joint financing** covers in particular

- the objectives and measures of the partner country's reform programme,
- the performance and impact indicators of the programme,
- and the monitoring thereof.

It also includes an assessment of

- the political and economic situation in the particular partner country,
- the country's governance,
- the performance of state institutions,
- the effectiveness and transparency of its public financing systems and of their control bodies,
- the cooperation between the donors involved.

The appraisal can be carried out by the participating donors jointly or they can divide the work between them.

39 Appraisal procedure

If the German government deems an appraisal of a development measure that has been proposed for support to be merited and feasible, it issues instructions to the responsible implementing organisation to go ahead with the appraisal. In the case of development measures where the deployment of a combination of several development cooperation instruments is deemed appropriate, the German government calls on the implementing organisations to carry out a joint appraisal.

The implementing organisations appraise the development measures on their own responsibility. During the appraisal, account is also taken of the valid guidelines for various sectors and sub-sectors. The appraisal is adapted to take account of the prevailing conditions and the nature of the development measure in each case and focuses on the main issues. The implementing organisations decide freely after a due assessment of the circumstances what issues they will focus on in their appraisal. The German government can issue additional instructions at any time or request additional information on individual points in the appraisal report. The German government may commission an appraisal of more limited scope if the measure is manifestly eligible for promotion even without a full appraisal. If the measure can be adequately assessed on the basis of prior appraisals, the assessment can be in the form of a supplementary comment from the implementing organisations.

If an appraisal report by a competent international or national development institution already exists, the implementing organisations may form an opinion on the basis of that report. In the case of co-financing with the World Bank or with other bilateral and multilateral donors, the appraisal report usually consists of a comment on their report.

40 Appraisal findings

If the appraisal findings are positive, then the implementing organisations present a proposal to the German government (for Technical Cooperation an implementation offer, for Financial Cooperation an appraisal report) as to the scale and manner in which the development measure should be promoted. The individual economic, socio-economic and socio-cultural findings of the appraisal are considered and weighed up, and the outcome of this assessment then forms the basis for the proposal.

The appraisal report or its principal findings are communicated to the government or the executing agency of the partner country in an appropriate form. Third parties (for example other bilateral or multilateral donors) can also be informed. In special cases, the German government can restrict or rule out the forwarding of the findings of the appraisal.

41 Deciding about eligibility for support

The German government decides on the basis of the appraisal whether to promote the development measure and, if so, on what scale and in what manner. If the German government establishes that a measure is eligible for support, it notifies the government of the partner country and instructs the responsible implementing organisation(s) to take charge of the promotion henceforth. If the decision is negative, the principal reasons for the rejection of the proposal are communicated to the partner country.

Reporting and evaluation

42 Progress reports

At regular intervals the implementing organisations submit reports to the German government on the progress of development measures and their promotion, outlining in particular developments in the priority area being supported, the impacts of the programmes and measures, whether planning and financing is on target (inter alia timetables and cost schedules), any difficulties which may have arisen in connection with the implementation of the programmes and measures, any changes in the general environment and, if appropriate, proposed actions.

If there are any major changes in the overall environment, these must be reported separately, without delay. Moreover, the German government reserves the right in such circumstances to call for a report.

In the case of programme-oriented joint financing, the implementing organisations adjust their progress reports to the particular content of the programmes, adopting whatever reporting form has been agreed upon with the other donors.

The reports on the progress of the project/programme may be based, for example, on reports made by the project executing agency or by staff in the field, upon interim assessments or upon other findings made by the implementing organisations. Especially in the case of joint financing, the German reports can be based on the reports of other participating donors or can consist of joint reports by those involved.

The German government evaluates the reports and infers from them the necessary conclusions for further implementation and any possible extension of the support.

43 Final follow-up reports and final reports

Once the support has come to an end or an investment has begun operating, the implementing organisations provide the German government with a report on the development measures that have been implemented.

KfW's final follow-up reports set out the results as well as the total costs incurred and how they were financed. The reports also contain recommendations for operation and, if appropriate, make mention of any threats to the sustainable developmental impact of the measures carried out. The GIZ's final reports and KfW evaluations as described in section 44 also report on the achievement of the objectives and on the developmental impact. The final reports also contain suggestions for follow-up measures if considered necessary.

The German government informs the partner country in question about the main content of the reports.

44 Evaluations

In order to assess the lasting developmental impact of development measures and derive lessons for support activities, the implementing organisations carry out their own evaluations of a meaningful sample of completed and, if appropriate, ongoing development measures, on the basis of procedures laid down in consultation with the German government and following OECD/DAC criteria and standards for independent evaluations. The cooperation partners in the developing country are to be involved in this process and also – where it is reasonable and feasible – the target group and other stakeholders.

The reports on final and ex-post evaluations by the implementing organisations are forwarded to the German government and – provided there are no overriding reasons not to do so – the information contained therein is shared with the partner country and the public.

In addition, the German government, in the exercise of its responsibility for the support of development activities and with the aim of gaining insights for the future design of such support

and of the procedures that are entailed, carries out its own evaluations, especially of cross-cutting issues and larger-scale programmes, in accordance with OECD/DAC criteria and standards for independent evaluations, insofar as these are not covered by evaluations carried out by the German Institute for Development Evaluation (DEval). The findings of the German government's evaluations are made public – provided there are no overriding reasons not to do so.

Informing German industry, disclosure of cooperation data

45 Informing German industry

German industry should be informed about planned projects at the earliest stage possible. German industry is notified of opportunities to supply goods and services for development cooperation measures, especially forthcoming invitations to tender. The notification about tenders also specifies the way the contract for goods or services will be awarded.

Responsibility for notifying German industry rests with Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing (GTAI) mbH. It operates in close consultation with the German government and the implementing organisations. GTAI passes this information on to industry based on the documents and reports drawn up at various stages of project preparation and appraisal. GTAI receives for evaluation the documents that will allow it to provide project information and advance project information.

In the case of Financial Cooperation there are four stages to the system of informing German industry:

- when a positive brief assessment is submitted,
- when the appraisal order is issued,
- when the instruction to enter into negotiations is issued,
- when invitations to tender have been prepared.

In the case of Technical Cooperation, German industry is notified by GTAI according to the size of contract in question as follows:

- advance information is provided for contracts for the supply of goods worth more than 50,000 euros and for new consulting contracts involving the assignment of long-term experts;
- GTAI publishes all invitations to tender forwarded to it by GIZ, BGR and PTB immediately.

46 Disclosure of cooperation data

Details about development measures may be made public provided there are no grounds, such as particular confidentiality, for not doing so in individual cases. As a general principle, information may be published as follows: summaries of cooperation with each partner country listed by measures and amounts committed (including funds authorised for individual development measures); description of the measures.

Rapid response procedure for natural disasters, crises and conflicts

47 Rapid response procedure for natural disasters, crises and conflicts

If, in order to remedy damage caused by natural disasters, crises and conflicts, it is necessary to commence measures immediately and implement them swiftly, a special procedure applies. Development measures, especially reconstruction, should where appropriate follow on as

immediately – in terms of both scheduling and content – as possible from humanitarian aid (responsibility of the Federal Foreign Office) and from measures in the field of “crisis response and recovery, infrastructure” (Chapter 2301, Title 678 06); in special cases, for example crises of lengthy duration, they should also operate in parallel. The measures are closely and continuously coordinated with the Federal Foreign Office. The procedure, which is launched as and when the German government decides, consists of

- swift clarification of needs in the field,
- an appraisal report from the implementing organisations,
- a decision by the German government,
- determination/review of planning details during implementation by the implementing organisations in consultation with the German government.

The needs are clarified in the field by the implementing organisations at the request of the German government. The implementing organisations immediately elaborate an appraisal report taking into account measures in the fields of humanitarian aid, crisis response and recovery, infrastructure, and also aid from international organisations, other donors and private agencies. This report must show how immediate commencement and rapid implementation of the proposed measures is to be achieved, and give a detailed plan for their implementation. The implementing organisations forward the appraisal report to the German government. The German government makes a decision about German support based on this report in a fast-track decision-making procedure and, if the speed of the procedure requires, also decides whether to waive requirements for individual criteria outlined in section 38.

Implementation of the measures can begin before an agreement under international law has been concluded and disbursements can be made, provided the agreement between the German government and the recipient country about the measure is recorded in a written form.

In the case of political crises (war, civil war or other armed conflicts), development measures are carried out in close and continuous consultation with the Federal Foreign Office, especially as far as the security aspects of project implementation are concerned. Where there is a need for particular speed, the fast-track procedure according to paragraphs 1-3 is applied. In such cases the requirement for a prior written agreement with the recipient country can be waived if the Federal Foreign Office agrees.

In all other cases the conditions set out in these guidelines shall apply.

PART 2: SPECIAL REGULATIONS FOR FINANCIAL COOPERATION

Regulations, purpose, form of implementation, areas of responsibility

48 Additional provisions for Financial Cooperation

The regulations set forth in Part 1 of the present Guidelines as well as the supplementary provisions in sections 49-73 apply to Financial Cooperation.

See in particular sections 3 and 5 for the purpose and contributions of Financial Cooperation.

49 Human resources contributions under Financial Cooperation

Studies and experts for the preparation and back-up of projects and especially for increasing the structural impact of Financial Cooperation (for example, drawing on project/programme experience for sector planning, surveys of support policies and instruments, human resources support for implementing reform programmes in the course of programme-oriented joint financing) are financed from Study and Expert Funds (see section 9) or as a separate project, whichever is more appropriate; project-related training is financed from a special fund set up at the BMZ.

Consultancy services for the detailed planning, tendering, assessment of offers and supervision of construction work are financed in principle from the funds for the main investment, as they form an integral component of that investment. Advisory services and training, which are normally associated with the provision of supplies and are integral components thereof, are provided by the suppliers (for example instruction in the use of equipment).

Contracts for project-related preparation and back-up of Financial Cooperation measures may be awarded by the partner country or KfW to consultant engineers and other experts or to GIZ.

50 Financial Cooperation experts

Financial Cooperation experts, especially firms of consultant involved in the preparation, back-up and supervision of Financial Cooperation measures, are usually engaged by the project executing agency in the partner country and conclude contracts with it. Only in exceptional cases, for example missions within the framework of the Study and Consultancy Fund (see section 9), may firms of consultants or experts be engaged directly by KfW – once it has notified the partner country accordingly – if this will substantially facilitate the completion of the measure. The same regulations basically apply for such direct services and for contributions where experts are engaged for project-related training as apply to experts seconded under Technical Cooperation.

The duties and privileges of the experts are as stipulated in the contract with the contracting agency in each case.

51 Terms of transfer

In principle, the financial terms that apply to Financial Cooperation contributions are determined according to the economic situation of the individual partner country, in particular its stage of development, its foreign trade performance and its debt situation. The following three categories exist at the present time, unless other loan conditions have been stipulated in exceptional cases:

- The least developed countries (LDCs) and regional associations of developing countries whose members are mostly LDCs and other poor countries receive grants.
- Grants are also available to non-LDCs in the specific case of
 - measures for the purpose of promoting gender equality,

- self-help oriented poverty reduction measures,
 - credit guarantee funds for small and medium-sized enterprises,
 - measures to improve social infrastructure,
 - environmental and resource protection measures.
- Financing terms for non-LDCs are in line with the financing terms of the World Bank.

The Financial Cooperation contributions, which are provided as part of development loans, come in two forms: either as loans at IDA conditions (where the Financial Cooperation is funded through mixed financing or composite financing) or as grants (where the Financial Cooperation is funded through reduced-interest loans). As a result of the Financial Cooperation contributions, the conditions for the KfW funds provided for the development loans become so concessional that the loan is recognised as Official Development Assistance (ODA) in accordance with OECD principles.

Financing for the back-up measures described in sections 3 and 49 and, as a rule, for the preparation of projects (including studies and experts) is provided in the form of non-repayable financial contributions; in advanced partner countries, the preparation of commercially viable development measures may also be financed by means of loans. Consulting services relating to detailed planning, calls for tenders, assessment of offers and supervision of construction work are subject to the same financial terms as the main investment. No charge is made for direct contributions (including project-related training).

52 Onlending conditions

The terms and conditions under which the project executing agency receives funds may differ from those under which the Financial Cooperation contribution was transferred to the partner country (interest differential). The onlending terms are based on the nature and earning power of the development measure; they also take account of the customary credit terms in the country in question. The funds may be passed on to the executing agency as a loan, as a financial contribution, or as equity capital.

Financial Cooperation contributions transferred to the government of the partner country for the financing of financial institutions in principle take the form of a loan or an equity investment. If required (for example to support business start-ups, promote environmental measures) the funds can be passed on as grants. The interest rate charged to the financial institutions (effective interest rate) is fixed at such a level that the differential between it and the ultimate rate to be borne by the sub-borrower, which is based on the customary interest level in the country, leaves the bank with an adequate margin to cover a proportion of its costs (administrative expenses, risk cover) and to yield an appropriate return on the equity capital.

53 Exchange risk

Loans and non-repayable financial contributions are generally denominated in euros. When onlending takes place, the government of the partner country is expected to relieve the project executing agency of the currency risk. This applies especially to sub-borrowers of loans to financial institutions; in these cases the currency risk may also be covered by a special fund established with the financial institution and fed, for instance, from interest differential funds, or by special exchange risk insurance, or by encumbering part of the interest differential funds accumulated by the financial institution.

Appraisal of the measures

54 Brief assessments, eligibility for support

As a rule, the German government asks the implementing organisation to provide a brief assessment of the development measures put forward for promotion (cf. section 37).

Before a decision regarding eligibility for promotion is taken the measures are appraised according to the principles set out in sections 38-39.

The following regulations apply in addition.

55 Appraisal requirements

Suitable documents (as defined by the implementing organisation in the brief assessment) enabling an assessment to be made of the development measure (for example, preliminary studies with planning documents, feasibility studies) should in principle be procured and submitted by the cooperation partner. If the cooperation partner is unable to produce suitable documentation, the German government may give appropriate support (for example by financing reports, (feasibility) studies and other supplementary investigations) so as to create the necessary basis for an appraisal to be conducted.

In the case of small-scale development measures, the requirements relating to the documentation necessary for the appraisal may be less extensive; these requirements are to be defined on a case-by-case basis.

56 Appraisal subject matter (supplementary rules for Financial Cooperation)

If smaller partial investments are to be financed in an existing larger institution or agency which the German government has judged to be useful in development terms, the appraisal serves to determine that a need exists and that the investment will be put to proper use. Depending on the complexity of the overall project, it may also seek to determine that appropriate technical and economic arrangements are in place for the proposed partial investment and that the executing agency is capable of making proper use of and properly maintaining the partial investment.

When financial institutions are being supported, the appraisal covers the developmental and economic situation of the cooperation country, an analysis of the economic and financial sector to be promoted, the target group of sub-borrowers and the degree to which they can be reached, the institutional aspects of the financial institution, its business policy (assets and liabilities) and method of work, its business development and financial situation, its developmental significance and its funding requirements.

The German government appraises whether the conditions required for the provision of general commodity aid exist, based on the economic situation of the cooperation partner. If appropriate, KfW may be consulted to determine the purpose for which the commodity aid should be used.

57 Implementation of the appraisal

The implementing organisation usually sends an appraisal mission to conduct the appraisal and to discuss the development measure and the preliminary results of the appraisal with the responsible authorities in the partner country.

Contractual basis

58 Loan, financing and guarantee agreements

The following aspects are covered by KfW agreements (see section 36) with regard to loans (loan agreements) or financial contributions (financing agreements) and, in some cases, in agreements with the project executing agency (trilateral financing and project agreements): contractual amount and its purpose; terms of repayment and interest rate in the case of loans; the disbursement procedure; procurement; monitoring the proper use of the funds; reporting; consequences of a violation of obligations under the agreements; and other provisions necessary or expedient for the due implementation and successful operation of the development measure in question.

If the cooperation partner is not itself the borrower, KfW in principle concludes a guarantee agreement with it in which it guarantees payment of the liabilities. As far as loans are concerned, an arbitration agreement provides for any disputes to be settled by a court of arbitration.

The requirement for a statement of guarantee by the cooperation partner may be waived in individual cases if the German government agrees and

- if in the case of Financial Cooperation loans
 - the government of the partner country (or a similar authority in the case of other cooperation partners) has restricted the issuing of government guarantees on the basis of general regulations or external stipulations and does not provide them for other donors either,
 - the German government has a special interest in the continuation of the bilateral cooperation, and
 - the functions of the state guarantee can be replaced to a sufficient degree by the granting of guarantees by government entities such as federal states or state-owned banks,
- or, in the case of Financial Cooperation grants to a non-governmental organisation or a local project executing agency in a partner country, if
 - the national government refuses to issue a statement of guarantee,
 - it is not possible to obtain such a statement from a third party or the effort required is not economically justifiable, and
 - the government of the partner country states that it agrees to the development measure and makes a commitment not to place any de facto obstacles in the way of the measure and to support the German government should it make any claims for reimbursement from the recipient because of misuse of funds;

the same also applies for reduced-interest loans under Financial Cooperation, as long as they are not secured by federal guarantees;

- or, in the case of Financial Cooperation grants to regional associations of developing countries, if the regional associations themselves are the recipients as the project executing agencies.

59 Equity investments and loans with equity features

The fiduciary use of Financial Cooperation funds for equity investments may take the form of acquiring equity investments or of granting loans with equity features. An equity investment means subscription to a company's equity capital with all the rights and obligations that entails. Loans are

said to have equity features if, in terms of their purpose, their conditions and their volume, they are similar to an equity investment; interest and redemption payments are made taking account of these equity features.

With equity investments and loans with equity features, KfW or DEG monitors the running of the company concerned by sitting on its supervisory board and also by exercising their other rights of control.

These Guidelines apply *mutatis mutandis* to equity investments and to loans with equity features, unless explicitly stipulated otherwise.

60 Contracts for fiduciary investments and loans with equity features

KfW or DEG concludes an investment agreement with the other partners on fiduciary investments or join existing companies in accordance with their articles of association. The said agreements regulate among other things the purpose of the company and the size of the equity investment; the conditions of payment; the voting, control and co-determination rights connected with the position as an investor in the company; the creation of reserves; the transfer of shares; the distribution of profits and, should the case arise, of the proceeds from liquidation.

In the case of loans with equity features, KfW or DEG concludes an agreement with the partner, which should give them *inter alia* the right to convert the loan into an equity investment, regulate the distribution of profits and, if possible, ensure they have a certain influence on the company in keeping with their position as an investor in the company. Unless other securities have been obtained for the loans with equity features, KfW or DEG concludes a guarantee agreement with the government or the central bank of the partner country. In addition, KfW or DEG shall agree upon an arbitration procedure for settling any disputes arising from the said agreements.

Award of contracts

61 General rules for the award of contracts

In principle, the award of contracts for deliveries and associated services is preceded by an international public tender. The contract is awarded to the best tender in economic terms.

In the planning and preparation of a project, aspects concerning economic, ecological and social sustainability and quality are to be taken into account. In the award decision, lifecycle costs should be taken into consideration whenever possible. These requirements are to be applied in the tender guidelines, including the sample tender documents, for Financial Cooperation.

The implementing organisation reports annually to the BMZ on the contracts awarded, including consideration of sustainability and quality aspects.

62 Contracts for advisory services

Contracts with consultants are generally also awarded through a process of international competitive bidding. The assessment is made primarily on the basis of the quality of the offers, although the price should not be out of proportion to the services offered. Tenders in connection with the Study and Consultancy Funds are subject to the rules of public procurement law.

63 Transport contracts

Fair competition must be ensured for sea, air and land transport. There must be free choice of carrier. The cooperation partners may not prevent or impede German carriers from participating on equal terms.

64 Checking the award of contracts

Contracts are awarded, except in the case of direct contributions, by the project executing agency in the partner country as part of implementation. KfW ensures that the terms of the agreements are observed and that the award procedure is carried out properly and in accordance with international practice. To this end, the project executing agency submits the following to KfW for its comment:

- the tender documents before publication,
- before the contract is awarded, a recommendation (with reasons) as to whom the contract should be awarded to, together with a comparative assessment of the offers and, if appropriate, the recommendation of the consultant,
- the draft contract for supplies and services.

For smaller contracts KfW may waive the requirement for the submission of the tender documents and the award recommendation.

When contracts are awarded to consultancy firms, proof must be provided of their professional, staff, organisational and financial qualifications; KfW reserves the right to approve the conducting of competitive bidding (if appropriate including prequalification), the short-list of pre-qualified firms and the selection of applicants, and the consulting contract.

Disbursement, delays in payment

65 Disbursement procedures

In principle, loans and non-repayable financial contributions are disbursed by KfW as the development measure progresses, as and when called by the recipient. The recipient, in consultation with KfW, has the choice of the following procedures: the reimbursement procedure (reimbursement of amounts advanced by the cooperation partner); the direct disbursement procedure (KfW pays the suppliers of goods or services directly); and the letter of credit disbursement procedure (reimbursement of the payments effected by means of the letter of credit).

Particularly if the contracting party is unable to make payments in advance or if the other procedures would lead to delays, an appropriate disposition fund may be made available to the recipient. The disposition fund is stocked and replenished to meet the disbursement requirements for several months ahead. Individual measures financed from the disposition fund shall not exceed a value of 0.5 million euros. This ceiling does not apply for disposition funds in financial sector projects used to refinance credit lines and in cases of emergency relief. In the case of other project types, a different ceiling can be agreed with the BMZ's approval in exceptional and duly justified cases.

The disbursements for equity investments and loans with equity features are effected by DEG and KfW in accordance with the financial requirements of the company receiving the support.

Under joint financing arrangements, an agreement can be made that the disbursements will be made when requested by the financing partners, in the agreed proportions, in accordance with the jointly determined procedure and depending on the fulfilment of the agreed conditions; in such cases KfW draws on the support of the financing partners for the appraisal of the disbursement conditions and for monitoring the use of funds. The financing partners can rely on national accounting systems for this, provided they meet minimum international standards. Whatever the case, KfW is responsible for the chosen procedure for monitoring the use of funds.

66 Delays in payment

Demands for overdue payments from the cooperation partner are made in stages. If there are arrears of payment, the German government decides on whether to continue its Financial Cooperation according to specific regulations.

Co-financing with other donors

67 Co-financing

As far as it is possible and expedient, the promotion of development measures is planned and implemented in close cooperation with other bilateral or multilateral donors, especially in cases where the desired development impact can be best achieved through cooperation with several donors and the cooperation partner, in order to pool experience and/or share possible risks.

68 Parallel financing, joint financing

Co-financing may take the form of parallel financing (whereby each contributor promotes, in consultation with the other participants, a clearly defined part of the development measure) or joint financing (whereby each contributor takes on responsibility for a fixed share of the total costs in agreement with the other participants).

In the case of parallel financing, the German contribution is subject in principle to the usual rules applicable to German cooperation.

In the case of joint financing, the objectives, main activities and expected results of the project or programme to be financed jointly are defined by the participating donors and the partner country, with the participants agreeing on content and uniform procedures (appraisal criteria, implementation concept, financial and contract management, accounting, monitoring etc.).

In the case of joint financing, deviations from the usual rules are possible for the German contribution, in exceptional circumstances.

69 Appraisal of co-financed measures

Appraisal of co-financed measures is carried out as usual by KfW – if appropriate, based on the appraisal reports of one or more co-financiers – or jointly by KfW and other donors. If additional financing is provided, donors are expected to contribute in proportion to their prior contributions. In the case of co-financing operations, customary agreements under international law and implementation agreements for the German share are concluded with the partner side when necessary. Arrangements should be concluded among the donors about how to coordinate the tasks to be carried out by the participating partners.

70 Private lenders

In suitable cases, development measures may also be financed on a parallel basis using German Financial Cooperation funds and funds from private lenders.

Financial Cooperation development loans

71 Mixed and composite financing, reduced-interest loans

Mixed and composite financing and reduced-interest Financial Cooperation loans are variations of Financial Cooperation development loans whereby Financial Cooperation funds are combined with KfW's own funds. The present Guidelines apply here, together with the supplementary provisions set out in sections 72-73.

Together with other Financial Cooperation financing instruments, the Financial Cooperation development loans make it possible to provide financing that is tailored to the capacity of the

cooperation partner and the areas receiving support. The mobilisation of additional funds increases the scope for funding development measures which merit support from the development point of view as partner countries move up the development scale, allowing for more significant contributions towards achieving the goals of development policy to be made in such countries.

72 Loan agreements, conditions for Financial Cooperation development loans

A loan agreement is concluded for the Financial Cooperation funds and KfW's own funds. The terms and mix of funds are fixed in such a way that the overall loan qualifies as Official Development Assistance. The conditions for the Financial Cooperation funds may, in individual cases, differ from those mentioned in section 51.

73 Government guarantees for KfW funds

German government guarantees for KfW funds are subject to the German government's principles governing guarantees for the particular instrument concerned. In the case of mixed financing, the relevant inter-ministerial committee is involved at an early stage of the preparation of the development measures.

PART 3: SPECIAL REGULATIONS FOR TECHNICAL COOPERATION

Regulations, purpose, form of implementation, areas of responsibility

74 Supplementary regulations for Technical Cooperation

The regulations from Part 1 of these Guidelines as well as the supplementary regulations set out in sections 75-88 apply to Technical Cooperation. For purpose and contributions see sections 4 and 5.

75 Studies and experts, training

The contributions to a development measure are, in principle, planned and implemented as one (see section 26).

Project-related training is part of the development measure.

Studies and contributions by experts are carried out – depending upon expediency – either as an integral part of the main measure, as measures in their own right, or using the Study and Expert Funds (see section 9).

76 Award of contracts

Technical Cooperation contracts are awarded on the basis of public procurement law and the German regulations governing the utilisation of public funds, as applicable according to the agreements between the German government and the implementing organisations. They stipulate that contracts are to be awarded by the implementing organisations on a competitive basis.

77 Ownership of materials and facilities

As a rule, agreement is reached with the cooperation partner that the items supplied by the German government become the property of the partner country upon arrival there, but that they must be placed at the disposal of the experts and institutions being promoted for the fulfilment of their tasks. No transfer of ownership is agreed if equipment is only made available for a limited period of time and is subsequently to be re-used in other Technical Cooperation projects.

In principle, the Federal Republic of Germany and the implementing organisations do not acquire ownership of land or buildings in the partner country that are built or purchased with German government funds. This also applies if, because of a lack of accommodation, German government funds are used to build houses or purchase them for the experts. In such cases, the Federal Republic of Germany must be granted the unlimited right of utilisation of the houses (without owner liability) – if possible, free of charge. All encumbrances accruing from the property must in principle be borne by the cooperation partner; however, running and maintenance costs may be met by the German government.

78 Financial contributions under Technical Cooperation

The Financial Cooperation regulations (Part 2 of these Guidelines) also apply to financial contributions under Technical Cooperation. The regulations on the award of public contracts in force in the partner country may be applied, provided they are not contrary to the principle of competition.

Financial contributions under Technical Cooperation for capital investments and substantial deliveries of goods are governed by section 4, paragraph 3.

79 Terms and conditions

Technical Cooperation is provided at no cost to the partner country; there is in principle no onlending (with subsequent interest differentials) by the government of the partner country to the project executing agency. Financially strong partner countries are expected to make a visibly stronger contribution to the costs of the development measures in line with their capacity.

Experts

80 General Regulations

In line with the principle of minimum intervention, Technical Cooperation experts are deployed only where a cooperation partner is unable to provide and finance its own experts. The executing agency's own local experts may only be financed from development cooperation if this is necessary in the interest of the development measure; the remuneration of local experts should not have a disruptive impact on the labour market or salary structure of the partner country.

The work and the duration of the assignment of the experts as well as the way they are financed depend upon the requirements of the development measure concerned. The experts have a contract of employment with the institution that has technical responsibility for their work and report to it unless otherwise agreed between the implementing organisation and the project executing agency in the partner country.

81 Seconded experts:

Seconded experts are staff members of the German implementing organisations or their contractors who, in cases of direct contributions by the German government, are seconded to the partner country without being nationals of that country.

Nationals of partner countries may only work as seconded experts if there is no chance for them to find suitable work in their profession in their own country and if they can be deployed in a broad area (in both technical and in regional terms).

82 Reintegration of German experts

The German government and the implementing organisations do their best to ensure when recruiting German experts that they can go back to their jobs in Germany upon termination of their assignment in the partner country; furthermore, they endeavour to help the experts with reintegration in the Federal Republic of Germany.

83 Other experts

National or regional staff are employees of the German implementing organisations or of their contractors; they are either domiciled in the partner country or in another non-EU country or are nationals of that country and are hired based on national labour law.

German experts who are directly recruited by the partner country or a local employer to a job of immediate relevance to development may receive a salary supplement (Integrated Experts). Experts who are financed out of financial contributions are appointed by the partner country or agencies acting on its behalf. They are not required to have German nationality. The restrictions set out in sections 84 and 85 apply to experts from partner countries.

84 Experts' duties

The professional duties of the experts follow from the Terms of Reference in each case. The experts must observe the laws of the country and its customs and habits and not interfere in the internal affairs of their host country outside of the framework of their work for the development measure and they must cooperate in a spirit of mutual confidence with the authorities of that country.

85 Experts' privileges

The cooperation partners must provide protection for the person and property of the seconded experts and also of any dependants in their household. Important privileges, which are generally agreed in the Framework Agreement concerning Technical Cooperation, include exemption from liability and from arrest for activities undertaken in the course of their duties and freedom to enter and leave the country without restriction.

Furthermore, the seconded experts and family members belonging to their household should be permitted to import and export, duty-free, important articles for their personal use and, subsequently, to procure, free of custom duties, any replacement articles, and to import essential consumer goods (such as foodstuffs and medicines) for their personal use. Remunerations paid to seconded experts shall not be subject to taxes or other levies in the partner country.

The privileges of other experts are laid down in the contracts they conclude with their employers. The cooperation partner may grant them similar privileges to those enjoyed by the seconded experts.

Procedure

86 Appraisal of development measures

As a rule, the German government asks the implementing organisation to submit a brief assessment of the proposed promotion of development measures (cf. section 37).

Before a decision is taken regarding eligibility for promotion, the measures are appraised in accordance with the regulations set out in sections 38-39.

The implementing organisations or their representatives prepare the appraisal documents, especially reports and studies, on behalf of the German government; the purpose of these documents is to examine and determine the eligibility of the development measure for promotion and the type and scale of the German support. At this stage, the contributions of the German government and the partner country as well as the time schedule for their provision are determined. On this basis the implementing organisation prepares the implementation offer.

87 Joint implementation with other donors

Where possible and expedient, development measures are planned and implemented together with other bilateral or multilateral donors.

The co-financing rules of Financial Cooperation (cf. sections 67-69) apply *mutatis mutandis* to the joint implementation of measures with other donors.

88 Combined financing

Combined financing with other (government or non-governmental) donors takes place when

- a German government contract for a development measure under Technical Cooperation is topped up with additional funds from a third party,
- the grant provided by the third party donor is used to support the development measure,
- the German government awards a general contract covering the entire development measure,

- the contributions and costs with regard to the measures to be financed by the third party cannot be clearly separated from the development measure being supported by the German government, and
- GIZ has no obligation to the third party donor. GIZ's obligation in connection with the general contract is only to the BMZ.

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