



**GREEN  
CLIMATE  
FUND**

**Meeting of the Board**  
26 – 28 February 2019  
Songdo, Incheon, Republic of Korea  
Provisional agenda item 17

**GCF/B.22/04**

1 February 2019

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# Cancellation and restructuring policy

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## **Summary**

The document outlines a policy on cancellation and restructuring of approved projects of the Green Climate Fund. It builds on a review of the practices of other institutions, and the relevant accreditation master agreement text and other relevant policies and procedures of the Green Climate Fund.

## **I. Introduction**

1. In decision B.17/09, paragraph (p), the Board requested the Secretariat “to develop an interim restructuring and cancellation policy, including further options for decision-making, for consideration by the Board no later than its eighteenth session, and a comprehensive restructuring and cancellation policy no later than April 2018”. The interim policy was presented at the eighteenth meeting of the Board but not adopted.
2. By decision B.18/01, the Board approved the work plan of the Board for 2018, which requires the Secretariat to develop a comprehensive restructuring and cancellation policy by B.21.
3. Having followed the guidance from the Board, at the nineteenth meeting of the Board (B.19), the Secretariat presented the document GCF/B.19/13 titled “Policy on restructuring”. While the agenda item was opened for discussion, no decision was taken at that meeting due to time constraints.
4. Taking into account the discussion made during B.19 and discussions, the policy was updated and submitted to the twenty-first meeting of the Board in document GCF/B.21/32. The agenda item was not opened due to the time constraints, and the Secretariat, therefore, resubmits the draft policy to the Board as set out in annex II.

## **II. Recommended action by the Board**

5. It is recommended that the Board adopt the draft decision set out in annex I to this document.

## Annex I: Draft decision by the Board

The Board, having considered document GCF/B.22/04 titled “Policy on restructuring and cancellation”:

- (a) Adopts the policy on restructuring as set out in annex II;
- (b) Requests the Secretariat to implement the policy for an initial period of three years and to provide a report on the implementation of the policy for the Board’s consideration and further guidance prior to the end of such period;
- (c) Requests the Secretariat to report back to the Board, as part of its regular pipeline and portfolio update, on the implementation of this policy; and
- (d) Further requests the Secretariat to inform national designated authorities and focal points of the policy on restructuring as set out in annex II.

## Annex II: Policy on restructuring

### I. Introduction: Scope and application

1. **Scope.** This policy on restructuring (hereafter “the Policy”) sets out the mechanism for decision-making in respect of an approved funding proposal in situations where there has been one or a combination of the circumstances set out below:

- (a) Failure to fulfil the conditions to be met prior to the execution of the funded activity agreement within the time frame established by the accreditation master agreement or the Approval Decision (as defined below), as appropriate;
- (b) A request for a waiver of a condition imposed at approval;<sup>1</sup> and
- (c) A change to or restructuring of the approved funding proposal prior to or after the execution of the funded activity agreement.

2. **Country Ownership:** This Policy shall be implemented in accordance with the GCF’s policies on country ownership, including the Guidelines for Enhanced Country Ownership and Country Drivenness<sup>2</sup> or any successor guidelines.

3. **Application.** The Policy applies to all funding proposals approved by the Board of the Green Climate Fund, including the funding proposals approved prior to the date of effectiveness of the policy. This Policy **does not apply** to activities financed under the Readiness and Preparatory Support Programme and the Project Preparation Facility. This Policy does not address the GCF decision-making process in connection with breaches of legal agreements.

4. **Definitions.** Defined terms used in the policy have the meanings set out below, unless the context requires otherwise:

- (a) “**AE**” means accredited entity;
- (b) “**AMA**” means accreditation master agreement;
- (c) “**Approval Decision**” means a Board decision approving a funding proposal, and the relevant annexes to and documents referred to in such a decision, such as the related term sheet;
- (d) “**Board**” means the Board of the Green Climate Fund;
- (e) “**ED**” means the Executive Director of the Secretariat of the Green Climate Fund;
- (f) “**FAA**” means funded activity agreement;
- (g) “**FP**” means funding proposal;
- (h) “**Major Change**” has the meaning given to it in the relevant AMA as further elaborated in the policy pursuant to paragraph 14;
- (i) “**NDA/FP**” means national designated authority or focal point
- (j) “**Period**” means the period within which a certain action or event shall occur, as established in the AMA, the Approval Decision, or any extension as specified in the Policy, as applicable;
- (k) “**Restructuring**” means any modification to a FP after the execution of the FAA, where the modification leads to a substantial deviation from the terms, conditions and/or

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<sup>1</sup> See decision B.17/09, annex IV.

<sup>2</sup> Decision B. 17/21, annex XX

requirements that were originally approved by the Board and/or agreed in the relevant FAA;

- (l) “**Secretariat**” means the Secretariat of the Green Climate Fund; and
- (m) “**Waiver**” means a relinquishment of or deviation from a condition, covenant and/or other requirement set forth in an Approval Decision.

## II. Changes prior to FAA execution

### 2.1 Failure to fulfil conditions

5. **Consequence.** If an AE fails to fulfil a condition that is required to be fulfilled before the execution of the relevant FAA adopted in an Approval Decision within the required Period, upon the expiration of such Period the approval of the relevant FP shall no longer be valid. The Secretariat shall notify the Board and adjust the Fund’s commitment authority accordingly.

### 2.2 Extension of the Period for fulfilment of conditions

6. **Extension request.** An AE may request an extension of the Period to fulfil the conditions required to be met prior to the execution of the FAA. If approved, this would result in an extension of the relevant deadline to enter into the FAA.

7. **Authority.** If an AE requests an extension pursuant to paragraph 6, the ED shall be entitled to approve such an extension except in circumstances where the Board has explicitly reserved the right to grant such extension in the relevant Approval Decision. The extension period shall be determined by the Secretariat, be appropriate in length in light of the context in which it was requested, and in no circumstances shall the extension period exceed the initial timeline approved by the Board when the Funding Proposal was considered. The ED may grant only one extension; any subsequent extensions, if requested, shall be considered for approval by the Board.

8. If the ED rejects or declines to approve the extension, the extension request may, at the request of the AE be submitted to the Board for consideration alongside the Secretariat’s assessment, setting out the reason(s) for the decision of the ED.

9. **Procedure for an extension:**

- (a) The AE must submit a written request to the Secretariat utilizing the relevant template together with evidence supporting the reasons for requesting the extension, and its assessment of the potential for changes (or not) in circumstances, market conditions and/or underlying rationale for the project before the proposed deadline;
- (b) The AE should submit the complete request no less than 30 calendar days prior to the expiry of the existing Period established for fulfilling the conditions, unless there is a clear reason for a later submission;
- (c) The Secretariat will assess the complete request upon receipt and, within 10 business days:
  - (i) If within the authority of the ED, determine whether or not to grant such an extension; or
  - (ii) If within the authority of the Board, refer the request for extension to the Board.
- (d) Extension requests referred to the Board in accordance with paragraph 9(c)(ii) shall aim to be ready for submission for the Board’s consideration in line with the Board Rules of

Procedure for Decisions between Board Meetings, together with the Secretariat's assessment and recommendation. The Board may decide on such extensions through a decision taken between Board meetings, or at a Board meeting;

- (e) If the extension is approved either by the ED or by the Board, such a decision will be communicated to the AE and the NDA/FP, where possible, prior to the expiry of the relevant Period for fulfilling the condition;
- (f) If the request for extension is rejected either by the ED or by the Board, the Secretariat shall notify the AE and the NDA/FP; and
- (g) If the relevant deadline expires prior to the decision of the ED or the Board, as appropriate, the relevant deadline will be deemed to have been extended until the date of such a decision of the ED or the Board.

## 2.3 Changes

10. **Timing.** A change can occur after the approval of an FP by the Board but before execution of the FAA.

11. **Information requirement.** If the AE, in consultation with the NDA/FP, proposes a change that is likely to constitute:

- (a) A Major Change; or
- (b) A change that would otherwise require:
  - (i) The consent of GCF pursuant to the terms of the relevant accreditation master agreement, funded activity agreement or other relevant agreement to which the GCF is a party;
  - (ii) The consent of the GCF under the AE's own policies; or
  - (iii) The approval of the AE's board, governing body, or equivalent under its own policies;

the AE shall be required to notify the Secretariat in writing of the relevant change, and such notification shall include written evidence of the consultation with the NDA/FP.

12. If the proposed change falls within, or may fall within, paragraph 11(a) or (b)(i) or (ii), the Secretariat shall request the AE to provide a restructuring paper, in a form and substance satisfactory to GCF, and supporting documentation describing the rationale of the proposed change and the analysis of associated benefits and risks to the implementation of the FP as approved. Changes that do not fall within paragraphs 11(a) or (b)(i) or (ii) shall not require GCF consent.

13. **Determination.** The Secretariat will in consultation with the AE assess the restructuring proposal and determine whether the change falls within paragraph 11(a) or (b)(i) or (ii). The Secretariat will determine within 14 calendar days, or such longer period as maybe required to gather additional information and engage with the AE and other stakeholders as appropriate, whether the proposed change fulfils the requirements to be considered a major change within the scope of this policy, as set out below.

14. Without limiting the definitions in the relevant legal agreements, a change will be deemed to be a Major Change if any of the following are proposed:

- (a) Any changes that would render the project/programme inconsistent with the GCF mandate and business model;

- (b) A change in the scope of the project/programme which would result in a material and adverse deviation from the intended objectives or outcomes that the AE seeks to achieve from the implementation of the relevant project/programme, in particular its climate and/or environmental outcomes as set out in the funding proposal or FAA;
- (c) The assignment or transfer of all or a material part of its responsibilities to another AE;
- (d) A change of an of the executing entity, unless such executing entity is replaced by an alternative executing entity with at least equivalent capacity;
- (e) Any change that would have a material and adverse impact on the ability of the executing entity to operate the relevant project/programme as a going concern, including a material and adverse change in the legal status of an executing entity which has a material and adverse impact on the implementation of the project/programme;
- (f) Any change to the pricing of the GCF proceeds for the project/programme that deviates from the Board-approved parameters;
- (g) Any material and adverse change in the pricing and financial structure of the project/programme;
- (h) Any change in the environmental and social safeguards category from a lower to a higher category, or changes within a category that would trigger additional safeguards standards to be applied or require additional due diligence;
- (i) A delay in the completion of the project/programme or its major components that materially and adversely affect the achievement of the intended outcomes; and
- (j) Other triggers such as may be expressly set out as a Major Change in the Approval Decision.

15. The determination of whether a change shall be deemed to be a Major Change shall be made by the Secretariat, taking into account the relevant circumstances and the nature of the project/programme.

16. As illustrated in Table 1 below, if the proposed change is determined by the Secretariat as falling within paragraph 11(b)(i) or (ii) but not paragraph 11(a), the ED shall have the authority to approve such change and the Secretariat will then require the AE to undertake appropriate actions.

**Table 1: Approval authority for changes**

<b>Changes requiring Board approval</b>	<b>Changes that can be approved by the ED</b>	<b>Changes that do not require consent from GCF</b>
11(a) Major Changes	<p>11(b) A change that would otherwise require:</p> <ul style="list-style-type: none"> <li>(i) The consent of GCF pursuant to the terms of the relevant accreditation master agreement, funded activity agreement or other relevant agreement to which the GCF is a party; or</li> <li>(ii) The consent of the GCF under the AE's own policies</li> </ul>	Changes that are determined not to meet the criteria for Board or ED approval under 11(a) or 11(b)(i) or (ii)

17. **Procedure for approval of Major Change.**
18. Upon determination by the Secretariat of a change as a Major Change:
- (a) The AE shall consult with the NDA/FP and seek written confirmation from the NDA/FP whether the restructuring proposal affects the status of the funding proposal no-objection letter;
  - (b) If the NDA/FP confirms that the restructuring proposal affects the status of the funding proposal no-objection letter, the AE shall seek a new no-objection letter from the NDA/FP in respect of the restructuring proposal and submit a copy of the new no-objection letter to the Secretariat;
  - (c) If the NDA/FP confirms that the restructuring proposal does not affect the status of the funding proposal no-objection letter, the AE shall submit a copy of such confirmation to the Secretariat;
  - (d) If the NDA/FP does not confirm whether the restructuring proposal affects the status of the funding proposal no-objection letter within 30 calendar days of the date on which the AE first presented the restructuring proposal to the NDA/FP, the NDA/FP shall be deemed to have confirmed that the restructuring proposal does not affect the status of the funding proposal no-objection letter, and the AE shall confirm the same to the Secretariat in writing; and
  - (e) Following receipt of a new no-objection letter or a confirmation pursuant to paragraph 18(b), (c) or (d), the Secretariat shall within 30 calendar days prepare a Board document, annexing the restructuring proposal that may include any updates of the environmental and social due diligence pursuant to the GCF Environmental and Social Policy, the new no-objection letter or relevant confirmation, together with its assessment and recommendation for the Board's action either through a decision taken between meetings or at the next Board meeting.
19. **Approval of Major Change.** If the Board approves the Major Change, the Secretariat will require the AE to implement the changes as approved by the Board and inform the NDA/FP.
20. **Non-approval of Major Change.** If the Board does not approve a Major Change, the AE will either:
- (a) (Re)commence within 120 calendar days the implementation of the project or programme as approved; or
  - (b) Withdraw the FP, after informing the NDA.
21. **Cancellation.** Should the AE not undertake either of the actions set out in paragraph 20 within 120 calendar days following the date of notification to the AE by the Secretariat on the outcome of the Board deliberation, the project or programme will be cancelled as a consequence of the Board's decision not to approve the Major Change. The Secretariat shall notify the AE, the NDA/FP and the Board and adjust the Fund's commitment authority accordingly.

## 2.4 Waiver of conditions or covenants

22. **Waiver request.** An AE, in consultation with the NDA/FP, may request a Waiver of a condition, covenant and/or requirement in the relevant term sheet or the Approval Decision.
23. **Authority.** If an AE requests a Waiver, such Waiver shall require Board approval except in circumstances where:
- (a) Such waiver authority has been delegated to the ED; or

(b) The change resulting from the granting of such a waiver would not constitute a Major Change.

24. If the ED declines to approve a Waiver referred to in paragraph 23, the request for a Waiver may, at the request of the AE, be submitted to the Board for its consideration alongside the Secretariat's assessment, setting out the reason(s) for the decision of the ED.

25. **Procedure for a Waiver.** Paragraph 9 shall apply *mutatis mutandis* in respect of requests for Waivers, provided also that the AE submits written evidence of its consultation with the NDA/FP.

### III. Restructuring after FAA execution

#### 3.1 Waiver and extension of Board-approved conditions

26. **Documentation.** All Board-approved conditions that are required to be fulfilled after the execution of the FAA will be reflected in the relevant signed FAA.

27. **Alignment.** Section II, 2.2 (Extension of the Period for fulfilment of conditions) and 2.4 (Waiver of board-approved conditions or covenants), shall apply *mutatis mutandis* to any requests by the AE for an extension of time to fulfil an obligation set out in the FAA or a Waiver of a provision in the FAA.

#### 3.2 Restructuring

28. **Timing.** A Restructuring can occur after the execution of the FAA.

29. **Treatment.** Section II, 2.3 (Changes), shall apply *mutatis mutandis* to any Restructuring proposed after the execution of the relevant FAA, and references to "change" shall be deemed to be references to "Restructuring".

30. **Consequences of Restructuring.** If the ED or the Board, as appropriate, approves a Restructuring, the Secretariat and the AE may enter into appropriate legal arrangements to give effect to such approval, if necessary.

### IV. Reporting, effective date, and review

31. **Reporting.** The Secretariat will report to the Board as part of the post-approval update on any actions taken in respect of a Waiver, change, Restructuring or extension as well as any cancellations that occur under the Policy.

32. **Effective date.** The Policy is effective from the date of the Board decision adopting the Policy.

33. **Review:** The Board shall review the implementation of this Policy after 3 years of implementation.