

Green Climate Fund

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# Information Disclosure, including Webcasting

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**GCF/B.04/10**

11 June 2013

**Meeting of the Board**

26-28 June 2013

Songdo, Republic of Korea

Agenda item 5 (a)

### **Recommended action by the Board**

It is recommended that the Board:

- (a) Takes note of the information contained in document GCF/B.04/10 *Information Disclosure, including webcasting*;
- (b) Adopts the draft decision presented in the Annex to this document.

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## Information Disclosure, including Webcasting

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### I. Introduction

1. At its March 2013 meeting, the Board addressed the matter of information disclosure during its deliberations under the agenda item on additional rules of procedure. Subsequently, the Board adopted decision B.01-13/01, which requested the Interim Secretariat, under the guidance of the Co-Chairs, to prepare a document on information disclosure, including webcasting, for the June 2013 Board meeting.
2. The purpose of this document is to outline the matters to be considered by the Board relating to information disclosure, including the means of disclosure, taking into consideration the information disclosure policies of other relevant entities. The document also aims at facilitating the decision-making by the Board on how to proceed in developing a Fund policy on information disclosure.
3. The Fund's policy on information disclosure will need to take into account the guidance contained in the Governing Instrument and incorporate several elements. These elements include:
  - (a) Guiding principles;
  - (b) Provisions on specific documents subject to disclosure;
  - (c) Means and timing of disclosure; and
  - (d) The relationship between the Fund's information disclosure policy and those of its implementing entities.
4. These elements are discussed below, taking into account the approaches taken by other relevant entities that have disclosure policies or established practices.

### II. Guiding principles

5. Paragraph 3 of the Governing Instrument provides that:

*"3. The Fund will be guided by the principles and provisions of the Convention. The Fund will operate in a transparent and accountable manner guided by efficiency and effectiveness [...]"*
6. Moreover, paragraphs 67 to 69 of the Governing Instrument state that:

*"67. The Fund's operations will be subject to an information disclosure policy that will be developed by the Board."*

*68. The Board will establish an independent integrity unit, to work with the secretariat and report to the Board, to investigate allegations of fraud and corruption in coordination with relevant counterpart authorities."*

*69. The Board will establish an independent redress mechanism that will report to the Board. The mechanism will receive complaints related to the operation of the Fund and will evaluate and make recommendations."*
7. Paragraph 71 of the Governing Instrument states that:

*"The Board will develop mechanisms to promote the input and participation of stakeholders, including private-sector actors, civil society organizations, vulnerable*

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*groups, women and indigenous peoples, in the design, development and implementation of the strategies and activities to be financed by the fund.”*

8. There are several other provisions in the Governing Instrument that will inform the Fund’s information disclosure policy, including the following:

*“3. [...] The Fund will pursue a country-driven approach and promote and strengthen engagement at the country level through effective involvement of relevant institutions and stakeholders...”*

*16. The Board will make arrangements, including developing and operating accreditation processes, to allow for effective participation by accredited observers in its meetings. The Board will invite, to participate as active observers: two civil society representatives, one each from developing and developed countries, and two private sector representatives, one each from developing and developed countries.”*

*45. Access to Fund resources will be through national, regional and international implementing entities accredited by the Board. Recipient countries will determine the mode of access and both modalities can be used simultaneously.”*

*49. The Board will develop, manage and oversee an accreditation process for all implementing entities based on specific accreditation criteria that reflect the Fund’s fiduciary principles and standards and environmental and social safeguards.”*

*57. The programmes and projects, as well as other activities, funded by the Fund will be regularly monitored for impact, efficiency and effectiveness in line with rules and procedures established by the Board. The use of participatory monitoring involving stakeholders will be encouraged.”*

*59. There will be periodic independent evaluations of the performance of the Fund in order to provide an objective assessment of the results of the Fund, including its funded activities and its effectiveness and efficiency. The purpose of these independent evaluations is to inform decision-making by the Board and to identify and disseminate lessons learned. The results of the periodic evaluations will be published. “*

*60. To this end, the Board will establish an operationally independent evaluation unit as part of the core structure of the Fund. The head of the unit will be selected by, and will report to, the board. The frequency and types of evaluation to be conducted will be specified by the unit in agreement with the Board.”*

9. Based on the provisions in the Governing Instrument, the Fund’s information disclosure policy should promote openness and allow for maximum disclosure of eligible documents and information, while recognizing the need to protect the confidentiality of certain documents and information.

10. Such an approach would also be consistent with the policies and practices of other relevant entities.

(a) The World Bank’s access to information policy provides that it *“endeavours to strike an appropriate balance between the need to grant the public maximum access to information in the Bank’s possession, and the Bank’s obligation to respect the confidentiality of its clients, shareholders, employees and other parties.”*

(b) Similarly, the disclosure policy of the Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund) states that the *“Global Fund will make the fullest disclosure of records possible, consistent with the rights of individuals to privacy, the property rights of persons in trade sects [sic] and confidential commercial or financial information, and the need of the Global Fund to promote frank internal deliberations.”* The policy also states that *“[i]nformation concerning the Global Fund’s decisions and operational activities will be made available to the public in the absence of a compelling reason for confidentiality.”*

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- (c) The guiding principle of disclosure practice of the Global Environment Facility (GEF) is similar to that of the World Bank and the Global Fund. The Instrument for the Establishment of the Restructured GEF provides that the GEF operational policies, with respect to GEF-financed projects, “shall provide for full disclosure of all non-confidential information.” The guiding principle of the GEF’s practice is that “there is a presumption in favour of disclosure...unless there is a compelling reason for confidentiality.”
  - (d) The United Nations Development Programme (UNDP)’s information disclosure policy states that it is committed to making information about its programmes and operations available to the public, except for limited categories of information deemed confidential.
  - (e) The International Fund for Agricultural Development (IFAD) also has a policy of presumption of full disclosure of documents produced by it, other than specific categories of information that are not subject to disclosure, primarily for confidential reasons.
  - (f) The information disclosure policies of the Asian Development Bank (ADB) and African Development Bank (AfDB) also uphold the principles of openness and maximum disclosure.

The organizations mentioned above generally developed their policies on disclosure of information in a participatory manner, in close liaison with civil society organizations (CSOs) and substantial time (often in excess of one year) and resources were allocated for that purpose.

### III. Options for the structure of the Fund’s information disclosure policy

11. There are three options for the structure of the Fund’s information disclosure policy. The structure will guide the process regarding the identification of the documentation that will be subject to disclosure. All three options are feasible, but entail different levels of complexity and have different cost implications and implementation requirements.

#### 3.1 Option 1: An interim approach

12. The first option could be for the Fund to delay the establishment of a fully-fledged information disclosure policy and put in place an interim approach that defines certain practices for the first phase. For example, when the GEF was established, it did not develop a new information disclosure policy. Instead, the GEF defined certain core practices that were consistent with a “presumption in favour of disclosure”.<sup>1</sup> A similar approach could be implemented relatively quickly for the Fund, by presenting a draft interim approach for Board consideration at the September 2013 Board meeting. This draft would outline the Fund’s core practices regarding information disclosure for Board discussion. The Fund’s interim approach could be finalized by incorporating comments from Board members and alternates and inputs from CSOs, at a Board meeting in 2014.

13. This option has several advantages, as it is cost-effective and can be implemented within a limited time frame. It would also allow the Fund to gather experience in its first years of operations before establishing a permanent information disclosure policy in a participatory manner and in close liaison with CSOs.

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<sup>1</sup> [http://www.thegef.org/gef/sites/thegef.org/files/documents/C.41.Inf\\_03\\_GEF\\_Practices\\_on%20Disclosure\\_of\\_Information.pdf](http://www.thegef.org/gef/sites/thegef.org/files/documents/C.41.Inf_03_GEF_Practices_on%20Disclosure_of_Information.pdf).

### 3.2 Option 2: A positive list

14. The second option could be for the Fund's information disclosure policy to define a positive list of documents subject to disclosure. Under this approach, the Fund would clearly spell out the types of documents that would be disclosed.

15. Prior to revisions in 2010, the respective disclosure policies of the World Bank and IFAD followed the positive list approach. In accordance with that approach, the World Bank spelt out the types of information it was able to disclose. The AfDB also followed a positive list approach prior to adopting revisions in 2012.

16. One disadvantage of the positive list approach is that it is static and would require amendments to address additional types of documentation that may arise in the future. A positive list would therefore only be relevant for a limited period of time.

17. The formulation of a positive list would involve the Board taking policy decisions on the types of documents for inclusion and therefore require a considerable amount of time to finalise.

### 3.3 Option 3: A negative list

18. The third option is to establish a negative list of exceptions by specifying the type of confidential information that will not be subject to disclosure. This approach is based on a general presumption in favour of disclosure, with specified exemptions to that presumption. It would require a process to be put in place for determining whether specific information is to be kept confidential. Moreover, as described hereunder, provisions may need to be made for certain derogations from the policy to address exceptional situations.

19. The World Bank, IFAD and AfDB decided to adopt the negative list approach to facilitate the release of substantial additional information following the reviews of their respective information disclosure policies. The negative list approach is also followed by the Global Fund, UNDP and ADB. If a negative list option is selected, the following categories of information might be considered to not be subject to disclosure:

- (a) Personal information: Personal or employment-related information of staff members;
- (b) Privileged information: Information subject to attorney-client privilege;
- (c) Third-party confidential information: Financial, business, proprietary or other non-public information provided by a third party on the understanding that it will not be disclosed and accepted on that basis;
- (d) Corporate administrative information: Information relating to internal corporate administration, such as corporate expenses and procurement;
- (e) Safety and security: Information that, if disclosed, would endanger the safety or security of staff, other individuals or property;
- (f) Deliberative information: Records (that is, e-mails, notes, letters, memoranda, reports) relating to internal deliberations;
- (g) Board member communications: Communications between Board members or between Board members and the country or countries they represent or with third parties;
- (h) Internal documents: Internal documents written by staff to colleagues. For example, the Global Fund does not disclose internal documents written by staff to colleagues unless intended for public circulation in accordance with the Global Fund's policies. UNDP does not disclose internal inter-office or intra-office documents, including e-mails and draft documents. UNDP does not have a specific exception to disclosure for deliberative

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information. The World Bank does not have a specific exception to disclosure for internal documents except for documents that are deliberative information;

- (i) Recordings of Board meetings: Recordings of Board meetings not open to the public. For example, the Global Fund does not disclose recordings of Board meetings held in restrictive sessions. World Bank Board meetings are not open to the public and the World Bank only discloses the verbatim transcripts of its Board meetings as historical information a number of years after the meetings;
- (j) Financial information: Information on borrowing and other financial transactions and information of individual lending transactions, including, for example, amounts overdue from borrowers and bank account information; and
- (k) Investigative information: Information relating to investigations of alleged fraud, corruption or sanctions (which may be addressed under separate disclosure regimes).
- (l) Sensitive policy information: UNDP does not disclose information that it determines would seriously undermine its policy dialogue with Member States or implementing partners. The World Bank and the Global Fund do not have a similar exception.

20. If the negative list option is selected, the information disclosure policy should also address whether the Fund would have the right to disclose information that would not otherwise be disclosable based on the list of exceptions and whether the Fund would have the right to restrict the disclosure of information that would otherwise be publicly available. For example, the World Bank and AfDB reserve the right to disclose corporate administrative, deliberative and financial information that would otherwise be restricted if the Bank determines that the benefits of such disclosure would outweigh the harm to the interests protected by the exception to disclosure. They also reserve the right not to disclose information that would otherwise be publicly available if they determine that the disclosure would likely cause harm that would outweigh the benefits of disclosure.

21. A negative list may be seen as an example of best international practice. However, its implementation requires a substantial period of time as it would first need to be developed in a participatory manner and take into account the views of civil society.

22. The negative list approach is subject to substantial complexity as it requires the establishment of a series of related policies and practices, such as a document classification and management system to classify the types of documents that would not be subject to disclosure. The World Bank and AfDB have a document classification system whereby documents are classified with respect to whether they are public or confidential at the time they are generated or received from third parties and filed in their document management systems. Their policies also provide for the declassification of documents after a certain time. For example, the World Bank makes available certain non-public information after five, 10 or 20 years, depending on the type of documentation involved. In addition, a negative list approach would require the establishment of a mechanism for responding to requests for non-confidential documents not routinely posted on the Fund's website and for hearing appeals against non-disclosure. As part of their transition to the negative list approach, the World Bank and the ADB have set up such an appeal mechanism.

23. Many organizations deemed it necessary in recent years to revise their information disclosure policies or to establish new policies. Most of these organizations opted for a policy along the lines of Option 3 and required a considerable length of time to develop a new policy, often in excess of one year. This was also necessary to allow for the active involvement of CSOs in the development of their policies. The introduction of the new policies entailed considerable investment in staff time and other resources, ranging from several hundred thousand dollars to over US\$ 1 million a year.

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## IV. Means and timing of disclosure

### 4.1 Means of disclosure

24. In addition to determining which types of documents will be subject to disclosure, the Fund's policy should also address how documents will be disclosed. The following categories of procedures can be distinguished:

- (a) Documents routinely disclosed: The Fund will need to decide which types of documents will be disclosed routinely through the Fund's website. The disclosure policies of other entities typically describe the types of documents that are routinely disclosed on their websites. In addition to the core documents of the entity, they normally include documents, including proposed applications for funding, submitted to the Board of the entity, and minutes or other reports of Board meetings. The timing of the disclosure of Board documents does, however, vary, as discussed below;
- (b) Requests for disclosure and appeal process; declassification: There should also be a process for the disclosure of information that is disclosable under the policy but that is not otherwise available on the Fund's website. For example, the policies of the World Bank, AfDB and IFAD provide that information that is disclosable but that is not on the website may be requested in writing. The policy sets forth the process for making and responding to such requests, including an appeal process for requests that are denied. Both the World Bank and the AfDB have established committees to consider requests for disclosure of information and appeal panels to consider requests denied by the committees; and
- (c) Redaction. The disclosure policies of other entities generally do not address the possibility of redacting the confidential portion of those documents that would not be subject to disclosure under one of the exceptions to disclosure and making the remainder of the document publicly available.

### 4.2 Timing of disclosure

25. For those documents that are to be routinely disclosed through the Fund's website, the Fund will also need to decide when such documents are to be disclosed. The principal areas that will need to be addressed concern proposals for funding and other Board documents.

26. The timing of the disclosure of proposals for funding and other Board documents is more a governance than a disclosure matter per se. The Governing Instrument provides that the Board will develop mechanisms to promote the input and participation of stakeholders, including private sector actors, CSOs, vulnerable groups, women and indigenous peoples, in the design, development and implementation of the strategies and activities to be financed by the Fund. The Governing Instrument further provides that the Board will make arrangements to allow for effective participation by accredited observers in its meetings. Those provisions would appear to indicate that there should be early disclosure of funding proposals and other Board documents in order to help ensure adequate stakeholder input into Board decisions.

27. In the GEF, Climate Investment Funds (CIFs) and IFAD, most funding proposals are publicly disclosed at the same time they are provided to the GEF Council, CIF Committee members and the IFAD Board, respectively. Proposed policy and strategy documents are similarly disclosed.

28. In the case of the World Bank, documents prepared for Board consideration are normally made publicly available only after they have been considered by the Board and finalized. However, operational policy documents and sector strategy documents prepared

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following a public consultation process are made publicly available prior to Board discussion if the Board has previously reviewed a draft version of the document. Country assistance strategy documents, project appraisal documents and programme documents are disclosed prior to Board consideration if the relevant member country consents to early disclosure.

## V. Disclosure policies of the implementing and funding entities

29. Similar to the GEF and the CIFs, the Fund will provide funding for approved activities through intermediaries and implementing entities. Each of these entities will have its own approach to disclosure of information concerning the programmes and projects in which it is involved. There may be an overlap or inconsistencies between entities' disclosure and stakeholder consultation processes, and those of the Fund. The question of the disclosure policies of intermediaries and implementing entities is outside the scope of this document. The disclosure and stakeholder consultation processes of the intermediaries and implementing entities are matters that may warrant consideration as part of the Fund's accreditation standards and process. It will also be important to ensure that the information provided by the entities to the Fund that is confidential under the policies of the entities is not subject to public disclosure under the Fund's policies.

## VI. Webcasting

30. Webcasting would be one way of providing transparency to Board proceedings. There are three options for the consideration of the Board regarding the webcasting of Board meetings:

- (a) **Option 1: Live webcast**, whereby a video and audio stream is transmitted live through the Internet;
- (b) **Option 2: On-demand webcast**, whereby a video recording of proceedings is made available through the Internet after the meeting; and
- (c) **Option 3: No webcast**. An alternative to webcasting the proceedings would be to publish verbatim transcripts of meetings after a certain period of time (for example, 10 years), and/or to rely on the meeting report as a means of providing transparency.

31. There are varied approaches to webcasting by the Boards of other funds. Some organizations webcast the proceedings of Board meetings on a regular basis, whereas other organizations choose to use webcasting to a limited extent. For example, the GEF Council and the CIF Committee meetings are webcast. Other Board meetings, such as those of the World Bank and ADB, are not webcast and transcripts of Board meetings are generally disclosed ten years after the Board meetings.

32. A decision on webcasting requires consideration of a number of issues, including an assessment of the benefits that would ensue from webcasting, the costs of webcasting and the possible impact of webcasting the proceedings of Board meetings:

33. The costs of live webcast are in the range of US\$ 20,000 to US\$ 30,000 for each three-to five-day meeting, depending on the location of the meeting. The on-demand webcast option would have little to no implications for the Fund's budget, given the current practice of projecting the Board's proceedings into a video-streaming room for accredited observers. While on-demand webcast is estimated to cost between US\$ 5,000 and US\$ 10,000 for each three- to five-day meeting, this cost is already being incurred for the purposes of the video-streaming room.

34. A benefit of webcasting may be that it might make unnecessary the travel of some of the accredited observers. This could be achieved through on-demand webcasting, except if the

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observers would want to provide immediate and direct feedback on the proceedings and, for instance, offer comments to the active observers.

35. A disadvantage of webcasting is that it generally has an impact on the nature of the discussion. It may discourage the kind of candid exchange that is often necessary in governing bodies, and this appears to be one of the reasons why most multilateral development banks do not foresee webcasting of regular Board meetings. Another disadvantage is that it is not possible to fully limit access to a webcast to accredited observers.

36. An alternative to webcasting the proceedings of every Board meeting would be to arrange an exchange between Board members and observers, which would be webcast. This, however, goes beyond the scope of this document and could be considered by the Board in the context of its consideration of mechanisms for stakeholder outreach.

## **VII. Next steps**

37. A combination of Option 1 (interim approach) and Option 3 (negative list) for the structure of the Fund's information disclosure policy, as outlined in Chapter III, would appear the most beneficial for the Fund, as it would allow the Board to put in place disclosure practices for initial operations quickly and also provide sufficient time to develop a best-practice policy, based on the negative list approach, in close cooperation with civil society.

38. In line with this approach, it is recommended that the Board requests the Interim Secretariat to prepare a draft interim information disclosure practice for consideration by the Board at its September 2013 meeting. Subsequently, in the course of 2014, the independent Secretariat would develop a comprehensive policy based on the negative list approach and conduct the consultations necessary to present to the Board a complete information disclosure policy document. This would be accompanied with an analysis of the projected costs associated with the implementation of the practice or policy. In carrying out the work, the independent Secretariat would also address the relationship between the proposed information disclosure policy of the Fund and the approaches of intermediaries and implementing entities, to ensure that there is effective participation by stakeholders in the design, development and implementation of projects and other activities to be supported by the Fund.

39. With regard to webcasting, it is recommended that the Board follows Option 3, to not foresee webcasting, but requests the Interim Secretariat to include in the draft interim information disclosure practice a provision that ensures adequate transparency of the proceedings of Board meetings.

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**Annex: Draft decision of the Board**

The Board, having reviewed document GCF/B.04/10 *Information Disclosure, including Webcasting*,

- (a) Decides to adopt a negative list approach for the long-term structure of the Fund's information disclosure policy, but to use a simplified information disclosure practice in the interim, while the negative list approach is being developed;
  - (b) Requests the Interim Secretariat to prepare a draft interim information disclosure practice for consideration by the Board at its September 2013 meeting; and
  - (c) Requests the independent Secretariat to develop in 2014 a comprehensive draft information disclosure policy based on the negative list approach.
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