



GREEN
CLIMATE
FUND

Legal and Formal Arrangements with Accredited Entities

GCF/B.09/03

25 February 2015

Meeting of the Board

24–26 March 2015

Songdo, Republic of Korea

Agenda item 14

Recommended action by the Board

It is recommended that the Board:

- (a) Take note of the information presented in document GCF/B.09/03 *Legal and Formal Arrangements with Accredited Entities*; and
- (b) Adopt the draft decision presented in Annex I to this document.

Legal and Formal Arrangements with Accredited Entities

I. Introduction

1. Legal and formal arrangements with intermediaries and implementing entities were discussed at the eighth meeting of the Board. Based on guidance received from the Board, as well as on subsequent feedback from a number of potential accredited entities, the document presented to the Board as GCF/B.08/23 has been substantially revised.

2. By its decision B.07/02, the Board decided that the accreditation process for intermediaries and implementing entities will comprise three main stages. Stage III will include the conclusion of legal arrangements between the accredited entity and the Green Climate Fund (the Fund). This document describes these legal arrangements. There are various possible funding arrangements foreseen between the Fund and accredited implementing entities and/or intermediaries.

II. Parties to the legal and formal arrangements

2.1 The Green Climate Fund

3. The Fund possesses juridical personality and such legal capacity as is necessary for the exercise of its functions and the protection of its interests, in accordance with paragraph 7 of the Governing Instrument. Article 3 of the Agreement between the Republic of Korea and the Green Climate Fund concerning the Headquarters of the Green Climate Fund (Headquarters Agreement) states that the Fund shall possess such juridical personality and legal capacity as may be necessary to operate effectively internationally, to enter into the Headquarters Agreement, and for the exercise of its official functions and the fulfilment of its purposes, including the capacity to contract, to acquire and dispose of immovable and movable property, and to be party to and to institute judicial proceedings.

4. Based on the provisions referred to above and on general principles of international law, the Fund is a legal entity with the capacity to enter into legal agreements. Once the Board has approved their accreditation:

- (a) The Fund may enter into legal agreements with implementing entities and intermediaries; and
- (b) The Executive Director is deemed to be authorized to enter into such legal agreements on behalf of the Fund, although it may for the avoidance of doubt be useful to have the authority of the Executive Director confirmed by the Board.

2.2 Implementing entities

5. Although reference is made to implementing entities at various places in the Governing Instrument and in many Board decisions, there is no agreed definition of the term “implementing entity”. The role of implementing entities is described in paragraph 45 of the Governing Instrument as follows:

“Access to Fund resources will be through national, regional and international implementing entities accredited by the Board.”

Based on this description, a definition could be:

Implementing Entity means an entity that has been accredited by the Board for the purpose of making Fund resources available to recipients in accordance with the Governing Instrument and Board decisions.

2.3 Intermediaries

6. Similarly, the term “intermediary” has not been defined, although reference to “financial intermediaries” is made in paragraph 43 of the Governing Instrument. Many Board decisions also refer to “intermediaries” without giving a definition. The general understanding appears to be that intermediaries have the capacity to provide financing to projects and programme activities other than grants only, whether or not from sources other than, and in addition to, those provided by the Fund. A definition could be:

Intermediary means an Implementing Entity that has the capacity to provide financing other than by means of a grant only.

2.4 Accredited entities

7. The distinction between Implementing Entity and Intermediary appears to have been superseded by the rules applicable to accreditation as decided by the Board, primarily by decisions B.07/02, B.08/02 and B.08/03. Applicant entities can apply for certain types of accreditation. An applicant entity may, for example, choose to apply for accreditation against the basic fiduciary standard, and it may additionally apply for none, some, or all of the specialized fiduciary standards, each of which would allow the entity, once accredited for that particular standard, to operate within the bounds of that accreditation type. Accredited Entities will have been accredited for certain types, which may or may not be all the types for which the entity applied.

8. In this document, Implementing Entities and Intermediaries will from time to time be jointly referred to as Accredited Entities.

2.5 National designated authority

9. The national designated authority (NDA) or focal point plays a key role in access to Fund resources, not only by nominating competent subnational, national and regional implementing entities for accreditation,¹ but also by its role in the project and programme activity cycle.² The legal arrangements with Accredited Entities will provide that no-objection by the relevant NDA – or focal point – will be a condition for project approval and disbursing funds.

2.6 Interim Trustee

10. The Interim Trustee to the Fund will transfer funds to Accredited Entities upon the written instruction of the Fund. Neither Implementing Entities nor Intermediaries can make a request for the transfer of funds to the Interim Trustee; this can be done only by the Fund. The Interim Trustee does not make an assessment itself of the need to make a transfer, nor is it responsible for the use of the Trust Fund resources so transferred. This is consistent with the

¹ Paragraph 45 of the Governing Instrument.

² Decision B.07/03, Annex VII.

amended and restated agreement on the terms and conditions for the administration of the Green Climate Fund Trust Fund, as most recently approved by the Board by decision B.08/15.

11. The role of the Interim Trustee in the Fund's projects is fully covered in the above-mentioned legal arrangements.

III. Role and responsibility of Accredited Entities

12. All Accredited Entities have the general role of implementing and supervising all aspects of the Fund's projects and programme activities. They have the full obligation towards the Fund to develop a project/programme pipeline and be responsible for all aspects of project appraisal, structuring, implementation, supervision and evaluation, including due diligence on financial, technical, legal, environmental and social issues.³

13. Accredited Entities are to report to the Fund on all matters relating to their activities, including the implementation progress, performance, results and impacts of the projects/programme activities, so that the Fund can exercise its monitoring, supervisory and evaluation role. Implementation progress, performance and reporting should be in accordance with all the relevant requirements of the Fund, which may include, but are not limited to the requirements under the Fund's investment framework, proposal approval process, results management framework, monitoring and evaluation policy and so on. Accredited Entities will collaborate with the accountability units of the Fund.

IV. Contents of legal and formal arrangements

4.1 Form of agreement

14. The legal and formal arrangements with Accredited Entities is first and foremost a reflection of the successful accreditation by the Board and completion of the accreditation review process. This process is based on the fit-for-purpose accreditation approach, approved by the Board in decision B.08/02. The fit-for-purpose approach recognizes the role of a wide range of entities, which differ in the scope and nature of their activities, as well as their capacities. For this reason, the Fund cannot develop a "one size fits all" legal and formal arrangement. A distinction will have to be made between various types of entities and their type of accreditation.

15. Depending on the type of Accredited Entity, the relationship between the Fund and such an entity would take the form of either a legal agreement (contract governed by private law) or a legal arrangement (arrangement governed by international public law). A contract is typically entered into with a private-sector entity or state-owned enterprise, or takes the form of a legal arrangement with another international organization (e.g. United Nations organization, multilateral development banks or international financial institutions). In this document, the term agreement or contract will be used and includes for the purpose of this document any other form of legal arrangement.

16. The Fund intends to standardize the legal documents where possible and develop general conditions applicable to all grants and loans. It will take precedents of other climate funds into account, bearing in mind the different, paradigm shift, nature of the Fund, as well as lessons learned by implementing entities and those other climate funds. It is also proposed that the legal documents be developed in consultation with the Accredited Entities, so that their

³ The Fund may perform second level due diligence of the appraisal carried out by the Accredited Entity of the project/programme funding proposal within the framework of its proposal approval process approved by the Board.

concerns can be addressed at an early stage and the Fund can benefit from their experience of working with other funds.

17. In view of the fit-for-purpose accreditation, the Fund intends to develop a number of standardized templates over time in order to reflect, among other matters, the type of accreditation and the nature of the accredited entity's activities.

4.2 Structure of agreement

18. Upon accreditation, it is proposed that the Fund shall enter into an accreditation master agreement (AMA) with the Accredited Entity, which shall set out the general terms and conditions of the services to be rendered by the entity for the Fund under its accreditation.

19. Upon the Board's approval of a specific project or programme activity, it is then proposed that the Fund and the Accredited Entity shall enter into a concise project confirmation, a form of which shall be attached to the AMA, which sets out the specifics of the approved project or programme activity.

4.3 Contents of accreditation master agreement

20. The AMA containing general terms and conditions may include the following provisions, depending also on the scope of accreditation:

- (a) Definitions;
- (b) Term of contract;
- (c) Conditions precedent;
- (d) Project/programme pipeline preparation;
- (e) Use of accredited entities' standard forms of loan, grant and other agreements;
- (f) Procedures for stakeholders' input;
- (g) Involvement of NDA/focal point; condition for approving project and disbursing funds will be NDA/focal point no-objection;
- (h) Project cycle, including internal approval processes;
- (i) Procedure for project confirmations;
- (j) Adherence to guidelines from the Fund, including the fiduciary standards and the environmental and social safeguards. This is part of the accreditation process and needs to be confirmed in the AMA. Any conditions, requirements or recommendations from the Accreditation Panel and adopted by the Board would need to be reflected;
- (k) Restriction to implement only in countries that have entered into a bilateral agreement with the Fund on privileges and immunities and related matters, as per the relevant Board decision;
- (l) Disbursement of funds and fees, including reflow of funds provided but not disbursed;
- (m) Fiduciary standards, such as applicable "know your client", anti-money laundering, anti-corruption and other fraudulent practices and sanction regulations;
- (n) Conflicts of interest;
- (o) Administration, record keeping and reporting requirements, including of project/programme indicators required for the Fund's results management framework;

- (p) Periodic reviews/spot checks by the Secretariat, the Evaluation Unit and the Integrity Unit, including access to documents, data, premises and project locations, subject to applicable privileges and immunities;
- (q) Cooperation between the Integrity Unit and the integrity unit of the accredited entity;
- (r) The right of the Fund to revise or revoke accreditation or amend the applicable terms and conditions on the basis of the outcome of the periodic or ad hoc review;⁴
- (s) Events of default;
- (t) Remedies in the event of default, including suspension of payments, termination of contract, liability for costs and damages and repayment of funds;
- (u) Evaluation after termination/implementation of a project or programme activity;
- (v) Gender issues, reflecting the relevant Board decision;
- (w) Branding;
- (x) Ownership of equipment, industrial property rights;
- (y) Notices/communication;
- (z) Confidentiality/(Interim) disclosure policy;
- (aa) Cooperation with the Redress Mechanism;
- (bb) Mutual, if applicable, privileges and immunities;
- (cc) Applicable law: for contracts with private-sector entities and state-owned enterprises, the application of a specific law such as New York, English, Swiss or Hong Kong. For arrangements with international organizations, international public law is the preferred law;
- (dd) Dispute resolution: if disputes cannot be settled amicably, the dispute should be submitted to arbitration in accordance with the arbitration rules of a reputable institution, such as the United Nations Commission on International Trade Law, the International Chamber of Commerce and the Permanent Court of Arbitration; and
- (ee) As an annex, the form of project confirmation.

4.4 Contents of project confirmation

21. The project confirmation will set out specifics for a specific project or programme activity and will be executed upon Board approval of the specific project or programme activity. The project confirmation will be produced based on, and at the time of, Board approval.
22. If the proposed project involves other funding sources, additional agreements may be necessary, such as an inter-creditor agreement.

V. Other agreements

23. Depending on the structure of a specific project/programme activity, a whole range of other legal agreements may need to be entered into by the Accredited Entity. As a general rule, the Fund will not be a party to such agreements. The AMA will provide for the obligation of the

⁴ The Board is to consider “Monitoring and Accountability of Accredited Entities” in the course of 2015, the outcome of which will be part of the AMA. Reference thereto should already be made in the AMA at this stage.

Accredited Entity to ensure that all agreements it enters into in respect of a project/programme activity conform to the AMA and project confirmation.

Annex I: Decisions of the Board

The Board, having considered document GCF/B.09/03 *Legal and Formal Arrangements with Accredited Entities*:

- (a) Endorses that the Fund shall enter into agreements or other arrangements with entities upon their accreditation by the Board taking into account the considerations set out in Annex II; and
- (b) Authorizes, to the extent necessary, the Executive Director – or his/her designee – on behalf of the Fund:
 - (i) To negotiate and agree on the terms and conditions of such agreements with accredited entities reflecting the scope of the accreditation; and
 - (ii) To enter into such agreements, perform such acts and enter into such other agreements as may be required or deemed desirable in connection with the implementation of such agreements.

Annex II: Considerations for legal and formal arrangements with Accredited Entities

I. Form of agreement

1. The legal and formal arrangements with Accredited Entities is first and foremost a reflection of the successful accreditation by the Board and completion of the accreditation review process. This process is based on the fit-for-purpose accreditation approach, approved by the Board in decision B.08/02. The fit-for-purpose approach recognizes the role of a wide range of entities, which differ in the scope and nature of their activities, as well as their capacities. For this reason, the Fund cannot develop a “one size fits all” legal and formal arrangement. A distinction will have to be made between various types of entities and their type of accreditation.
2. Depending on the type of Accredited Entity, the relationship between the Fund and such an entity would take the form of either a legal agreement (contract governed by private law) or a legal arrangement (arrangement governed by international public law). A contract is typically entered into with a private-sector entity or state-owned enterprise, or takes the form of a legal arrangement with another international organization (e.g. United Nations organization, multilateral development banks or international financial institutions). In this document, the term agreement or contract will be used and includes for the purpose of this document any other form of legal arrangement.
3. The Fund intends to standardize the legal documents where possible and develop general conditions applicable to all grants and loans. It will take precedents of other climate funds into account, bearing in mind the different, paradigm shift, nature of the Fund, as well as lessons learned by implementing entities and those other climate funds. It is also proposed that the legal documents be developed in consultation with the Accredited Entities, so that their concerns can be addressed at an early stage and the Fund can benefit from their experience of working with other funds.
4. In view of the fit-for-purpose accreditation, the Fund intends to develop a number of standardized templates over time in order to reflect, among other matters, the type of accreditation and the nature of the accredited entity’s activities.

II. Structure of agreement

5. Upon accreditation, it is proposed that the Fund shall enter into an accreditation master agreement (AMA) with the Accredited Entity, which shall set out the general terms and conditions of the services to be rendered by the entity for the Fund under its accreditation.
6. Upon the Board’s approval of a specific project or programme activity, it is then proposed that the Fund and the Accredited Entity shall enter into a concise project confirmation, a form of which shall be attached to the AMA, which sets out the specifics of the approved project or programme activity.

III. Contents of accreditation master agreement

7. The AMA containing general terms and conditions may include the following provisions, depending also on the scope of accreditation:
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 - (h) Project cycle, including internal approval processes;
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 - (k) Restriction to implement only in countries that have entered into a bilateral agreement with the Fund on privileges and immunities and related matters, as per the relevant Board decision;
 - (l) Disbursement of funds and fees, including reflow of funds provided but not disbursed;
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 - (n) Conflicts of interest;
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 - (p) Periodic reviews/spot checks by the Secretariat, the Evaluation Unit and the Integrity Unit, including access to documents, data, premises and project locations, subject to applicable privileges and immunities;
 - (q) Cooperation between the Integrity Unit and the integrity unit of the accredited entity;
 - (r) The right of the Fund to revise or revoke accreditation or amend the applicable terms and conditions on the basis of the outcome of the periodic or ad hoc review;¹
 - (s) Events of default;
 - (t) Remedies in the event of default, including suspension of payments, termination of contract, liability for costs and damages and repayment of funds;
 - (u) Evaluation after termination/implementation of a project or programme activity;
 - (v) Gender issues, reflecting the relevant Board decision;
 - (w) Branding;

¹ The Board is to consider "Monitoring and Accountability of Accredited Entities" in the course of 2015, the outcome of which will be part of the AMA. Reference thereto should already be made in the AMA at this stage.

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- (x) Ownership of equipment, industrial property rights;
 - (y) Notices/communication;
 - (z) Confidentiality/(Interim) disclosure policy;
 - (aa) Cooperation with the Redress Mechanism;
 - (bb) Mutual, if applicable, privileges and immunities;
 - (cc) Applicable law: for contracts with private-sector entities and state-owned enterprises, the application of a specific law such as New York, English, Swiss or Hong Kong. For arrangements with international organizations, international public law is the preferred law;
 - (dd) Dispute resolution: if disputes cannot be settled amicably, the dispute should be submitted to arbitration in accordance with the arbitration rules of a reputable institution, such as the United Nations Commission on International Trade Law, the International Chamber of Commerce and the Permanent Court of Arbitration; and
 - (ee) As an annex, the form of project confirmation.

IV. Contents of project confirmation

8. The project confirmation will set out specifics for a specific project or programme activity and will be executed upon Board approval of the specific project or programme activity. The project confirmation will be produced based on, and at the time of, Board approval.
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