



**GREEN
CLIMATE
FUND**

Meeting of the Board
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Livingstone, Republic of Zambia
Provisional Agenda Item 12*

GCF/B.11/Inf.09

15 October 2015

Report on the implementation of legal and formal arrangements with accredited entities

Summary

This report presents the development process of a template agreement, applicable policies as well as the status of consultations with accredited entities.

Concurrently, this report underlines key issues raised by accredited entities such as fees, compliance with the policies and practices of the Fund, confidentiality and the level of the Fund's involvement.

*The agenda item number will be determined when the final sequence of items in the provisional agenda is confirmed by the Co-Chairs.

I. Introduction

1. By its decision B.07/02, the Board decided to adopt the initial guiding framework for accreditation process of the GCF comprising three main stages, with Stage III including the conclusion of legal arrangements between accredited entities, and the GCF.
2. Decision B.09/08 called for the GCF to enter into agreements or other arrangements with entities upon their accreditation by the Board, taking into account certain considerations endorsed by the Board in relation to the form, structure and contents of such agreements or arrangements. It further authorized the Executive Director (or his/her designee), on behalf of the GCF, to negotiate and agree on the terms and conditions of such agreements with accredited entities, reflecting the scope of accreditation, and to enter into such agreements.
3. This document is a report to the Board on the status of the implementation of decision B.09/08. The Office of the General Counsel is leading this implementation with the support of all other divisions and under the guidance of the senior management team.

II. Preparation of a draft template accreditation master agreement

2.1 Development of a template agreement

4. As endorsed by the Board, a working draft of the accreditation master agreement (AMA) template was developed with input from all operational divisions of the GCF and the assistance of external counsel. In terms of its basic structure, the main text sets out the proposed general terms and conditions of services to be rendered by an accredited entity to the GCF under its accreditation.
5. Consistent with the fit-for-purpose approach of the GCF to accreditation, the draft AMA seeks to reflect the particular conditions and standards for which each entity was accredited, and in that regard, it also includes separate annexes for:
 - (a) Conditions precedent to disbursement imposed by the Board, if any, in its decision to accredit an entity;
 - (b) The interim fiduciary principles and standards of the GCF against which the entity was assessed and the fiduciary functions for which it was accredited;
 - (c) The interim environmental and social safeguards of the GCF against which the entity was assessed and the environmental and social risk categories for which it was accredited; and
 - (d) The size of an individual project or activity within a programme (i.e., micro, small, medium, or large) for which the entity was accredited.
6. Pursuant to the AMA, an accredited entity is required to submit together with a funding proposal a term sheet containing the main legal terms and conditions of a funding proposal. Upon approval by the Board of a funding proposal, this term sheet will be the basis on which the GCF and the accredited entity will enter in a specific funded activity agreement (FAA) setting out the legal terms and conditions of the approved funding proposal, including any conditions adopted by the Board.

2.2 Applicable policies

7. The following policies and practices of the GCF are referenced in the draft AMA:
- (a) Initial guiding framework for the Fund's accreditation process (annex I to decision B.07/02 and annex I to decision B.08/02);
 - (b) Initial fiduciary principles and standards of the Fund (annex II to decision B.07/02);
 - (c) Interim environmental and social safeguards of the Fund (annex III to decision B.07/02);
 - (d) Interim information disclosure practice (annex XX to decision B.05/15);
 - (e) Initial investment framework (annex XIV to decision B.07/06 and annex III to decision B.09/05);
 - (f) Initial results management framework of the Fund (annexes IX and X to decision B.07/04 and annexes VII and IX to decision B.08/07);
 - (g) Initial proposal approval process, including the criteria for programme and project funding (annexes VII and VIII to decision B.07/03);
 - (h) Initial no-objection procedure (annex XII to decision B.08/10);
 - (i) Initial best-practice options for country co-ordination and multi-stakeholder engagement (annex XIV to decision B.08/10); and
 - (j) Gender policy for the Green Climate Fund (annexes XIII and XIV to decision B.09/11).
8. Given the nascent nature of the GCF, and mindful of the fact that many of the existing policies and practices referenced in the draft AMA have been adopted or endorsed on an interim basis, the document allows that they may be updated or replaced with successor documents through future decisions of the Board. In those cases, accredited entities will be consulted in the drafting stage of the policies. Upon adoption, they will be given a reasonable period of time to consider whether or not to accept the new policies. If they cannot accept the policies, the AMA will be terminated. New policies will not have retroactive effect, that is, they will upon acceptance by the accredited entities only apply for new funding proposals and funding activities.
9. With regard to topics for which there is currently no policy or practice in place namely, the monitoring and accountability framework, including the fee structure embedded therein, accredited entities generally take the view that the AMA can only become effective once they have had the opportunity to review the framework and fee structure, and have accepted them.
10. As an exhibit to the AMA a document has been attached containing general principles on prohibited practices, which is an updated version of the same from the general principles to prevent prohibited practices used in the readiness support programme, as published on the GCF's website.¹ The general principles on prohibited practices are also attached as Annex III to the document GCF/B.11/18 titled "Policies addressing fraud, corruption and other prohibited practices, and policies addressing anti-money laundering and countering the financing of terrorism (status report)", subject to consideration by the Board at its eleventh meeting.

¹ See <http://www.gcfund.org/fileadmin/00_customer/documents/Key_documents/General_Principles_to_Prevent_Prohibited_Practices_March2015.pdf>

2.3 Status of consultations with accredited entities

11. On the occasion of the tenth meeting of the Board in Songdo, Republic of Korea, from 6 to 9 July 2015, discussions were held with all accredited entities which were attending the meeting of the Board as observers on the first draft AMA that was distributed to them on 26 June 2015. Following those discussions, a revised draft was prepared during the meetings on 10 July, and a further revised draft was circulated on 24 August.
12. Bilateral discussions during the past few weeks have been focusing on those accredited entities which are most likely to progress funding proposals to the Board at its the eleventh meeting, as having an executed AMA is to be considered a pre-condition for the GCF to execute FAAs. This group represents both national and international access entities.
13. As soon as discussions with these entities have been completed, the Secretariat will engage with all other accredited entities. Although each entity may have its own procedures and requirements, it is to be expected that once the GCF has agreed on AMAs with a first group of accredited entities, further discussions will benefit from the lessons learned from the initial discussions and should therefore be less time consuming.

2.4 Key concerns raised by accredited entities

14. The key issues raised by accredited entities during the discussions are:

- (a) Fees

In the absence of a fee policy, it is a challenge for accredited entities to fully appreciate the implications of their proposed duties, if they do not know to what extent they will be compensated for those duties. In order not to delay the process, the GCF have suggested that all AMAs be executed subject to a condition for effectiveness regarding the adoption by the Board of a fee policy acceptable by the entity. The fees are proposed in document GCF/B.11/05 titled "Initial monitoring and accountability framework for accredited entities".

- (b) Compliance with the policies and practices of the GCF

Many accredited entities have raised concerns about compliance with the policies and practices of the GCF. Accredited entities sustain that in order to do justice to the accreditation process, the general system under the AMA should be that accredited entities are required to comply with their own polices and procedures, in order to allow them to comply with those of the GCF against which they were accredited. The Secretariat concurs that this is indeed the spirit and letter of the accreditation process and framework.

- (c) Confidentiality

As also embedded in the GCF's interim information disclosure practice, the confidential treatment of confidential information is an important issue, especially for the Private Sector Facility. Many entities raised concerns that confidential information can only be accessed by the GCF staff, consultants and other persons associated with the GCF who have committed to an unqualified non-disclosure obligation. The policy on ethics and conflicts of interest for the Board provides in paragraph 26 that confidential information may be provided by members and alternate members of the Board and their advisers to the governments of the countries in their respective constituencies in the course of their official duties for their respective home country.² On this basis, confidential information

² Annex I to decision B.09/03

received from accredited entities cannot be shared with the Board, as it would expose the GCF to legal and reputational risk of non-compliance with its obligations. In additions, staff members and consultants disclosing confidential information to the Board would be in breach of their confidentiality obligations under the Human Resources administrative guidelines and consultancy contracts, respectively.

As a solution, the GCF has offered accredited entities to make confidential information available through a virtual data room function. Members of the Board, staff and advisers wishing to review the confidential information can do so by accessing the virtual data room for which they need to accept a statement of non-disclosure. Pursuant to this statement, they commit to refrain from disclosing confidential information to other persons, so the exception under the policy on ethics and conflicts of interest for the Board would not apply; and

(d) Level of GCF involvement

In accordance with Board guidance in relation to the monitoring and accountability framework, the GCF will have a more active role in the implementation and monitoring phase than many accredited entities are used to, especially the international access entities. The frequency of reporting, the right to conduct spot checks and the right to ask for additional information, join on site visits and speak to staff and consultants are a new approach to how many accredited entities are used to working with their specialized global funds. This has also raised concerns in terms of potential unforeseen additional costs that accredited entities may incur in order to comply with some of these evaluation, accountability and reporting obligations, which may go beyond the availability of their own-staff and may require third party involvement.

III. Next steps

15. Between the date of publication of this document and the eleventh meeting of the Board, discussions with the relevant accredited entities on the finalization of their AMAs shall further intensify with the aim of having these executed prior thereto. Immediately following the meeting of the Board, discussions shall continue with the other accredited entities.
