



**GREEN
CLIMATE
FUND**

Meeting of the Board
30 September – 2 October 2017
Cairo, Arab Republic of Egypt
Provisional agenda item 14(c)

GCF/B.18/11
18 September 2017

Interim policy on cancellation and restructuring

Summary

The document outlines an interim 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. The Board in decision B.17/09, paragraph (p), 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”. This paper sets out the Secretariat’s proposed interim restructuring and cancellation policy for consideration and adoption by the Board. Matters related to further options for decision making will be addressed under the Board’s work plan for 2018.

II. Interim policy on cancellation and restructuring

2. As the GCF moves towards project implementation it is important to anticipate certain policies that need to be developed. As implementation ramps up, the GCF will soon be expected to respond to requests from accredited entities (AEs) regarding several matters that are covered by the accreditation master agreements (AMAs) but that still lack more detailed policy and procedural guidance, such as those set out in paragraphs 2 and 3 below.

3. Changes to approved proposals: even though the specific language may differ, the AMA usually defines major change as a “restructuring that involves a major change in Funded Activity scope, structure or design, a major change in the Funded Activity’s objectives, a reallocation of GCF Proceeds affecting the Funded Activity’s scope or objectives, or any other change that substantially alters the purpose or benefit of the Funded Activity”. It also usually specifies that the AE must inform the GCF and seek instructions or guidance on how to proceed whenever a potential modification that would constitute a major change is to take place. The GCF needs to develop a process to assess the materiality of the proposed modification, including whether or not the restructuring requires approval by the Board, a new no-objection letter from the national designated authority (NDA), and/or adjustments to the environmental and social safeguards documentation.

4. Waiving of conditions or covenants: for many funding proposals, the Board provides an approval, which is conditional on modifications to the project or programme design. Such conditional approvals usually require the satisfaction of various conditions over different time periods or the inclusion of specific covenants in the relevant funded activity agreement. There is currently no process for waiving, or extending the time frame for the fulfilment of, such conditions.

Annex I: Draft decision of the Board

The Board, having considered document GCF/B.18/11 titled “Interim policy on cancellation and restructuring”:

- (a) Adopts the proposed interim policy on cancellation and restructuring as set out in annex II; and
- (b) Requests the Secretariat to report back to the Board at its nineteenth meeting on the implementation of this policy.

Annex II: Interim policy on cancellation and restructuring

I. Introduction: Scope and application

1. **Scope.** This interim policy on cancellation and restructuring (the policy) sets out the mechanism for decision-making in respect of an approved funding proposal (FP) in situations where there has been one or a combination of the events set out below:

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

2. **Application.** This policy is an interim policy. The policy applies to the GCF and to all FPs approved by the Board, including the FPs approved prior to the date of effectiveness of the policy. This Policy does not apply to readiness proposals and Project Preparation Facility financed projects. This policy is not intended to address the GCF decision-making process in connection with breaches of an FAA and/or AMA.

3. **Definitions:**

- (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;
- (f) “**FAA**” means funded activity agreement;
- (g) “**FP**” means funding proposal;
- (h) “**Change**” means any modification to a funding proposal after the date of the approval decision but before the execution of the funded activity agreement, where the modification leads to a deviation from the terms, conditions and requirements which were originally approved by the Board;
- (i) “**Major change**” has the meaning given to it in the relevant accreditation master agreement as further elaborated in this policy pursuant to paragraphs 17 and 18 below.
- (j) “**Minor change**” means changes to an approved funding proposal which do not constitute a major change but nevertheless require approval from the GCF under the policies of the AE and/or the relevant accreditation master agreement or funded activity agreement;
- (k) “**Restructuring**” means any modification to a funded activity after the execution of the funded activity agreement, where the modification leads to a deviation from the terms, conditions and requirements which were originally approved by the Board;

¹ See decision B.17/09, annex IV.

- (l) “**Secretariat**” means the Secretariat of the Green Climate Fund;
- (m) “**Waiver**” means a deviation from a condition or covenant set forth in an approval decision. For the avoidance of doubt, this policy does not address a waiver from an applicable GCF policy.²

SECTION I. Changes prior to funded activity agreement execution

A. Failure to fulfil conditions

4. **Consequence.** If an AE fails to fulfil a pre-FAA execution condition adopted in an approval decision within the period established in the AMA, the approval decision, or any extension as specified in this policy, as applicable, upon the expiration of such period the approval of the relevant FP shall no longer be valid, and the Secretariat shall notify the Board and adjust the Fund’s commitment authority accordingly.

B. Extension of the period for fulfilment of conditions

5. **Extension request.** An AE may request an extension of the period to fulfil approval conditions required to be met prior to the execution of the FAA resulting in an extension of the relevant deadline to enter into the FAA.

6. **Authority.** If an AE requests an extension pursuant to paragraph 5 above, the ED shall be entitled to approve such extension except for specific cases in which the Board explicitly reserved the right to grant such extension in the relevant Approval Decision. The extension period shall be determined by the Secretariat and be appropriate in length in the light of the context in which it was requested. The ED may grant only one extension; any subsequent extensions, if requested, shall be considered for approval by the Board.

7. If the ED declines to approve the extension, the extension request may, at the request of the AE or the national designated authority (NDA), be submitted to the Board for its consideration alongside the Secretariat’s assessment, setting out the reason(s) for the decision of the ED.

8. **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;
- (b) The AE must submit the complete request no less than 30 days prior to the expiry of the existing period granted for fulfilling the conditions;
- (c) The Secretariat will assess the complete request upon receipt and determine, within five (5) working days:
 - (i) If within the authority of the ED, whether such an extension will be granted; or
 - (ii) If within the authority of the Board, whether to recommend the request for extension to the Board;
- (d) Extension requests referred to in paragraph 8(iii)(b) above shall be submitted for the Board’s consideration as soon as is practicable together with the Secretariat’s

² A policy waiver (requested after Board approval) can also happen. This will be dealt with by a separate policy.

assessment and recommendation. The Board may decide on such extensions through between-meetings decisions;

- (e) If the extension is approved either by the ED or by the Board, such decision will be communicated to the AE, where possible, prior to the expiry of the relevant period for fulfilling the conditions;
- (f) If the request for extension is rejected either by the ED or by the Board, the Secretariat shall notify the AE and the provisions set out in paragraph 4 above shall apply;
- (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 decision of the ED or the Board.

C. Waiver of Board-approved conditions or covenants

9. **Waiver request.** An AE may request a waiver in accordance with the provisions set out in paragraphs 10–12 below.

10. **Authority.** If an AE requests a waiver, such waiver shall require Board approval except in circumstances where such waiver authority has been delegated to the ED. In addition, the ED may grant a waiver in respect of:

- (a) Conditions or covenants which do not comply with relevant laws and regulations of the jurisdiction(s) in which the project or programme is to be implemented; and
- (b) Conditions or covenants agreed in the term sheet.

11. If the ED declines to approve the waiver, the waiver request may, at the request of the AE or the NDA, be submitted to the Board for its consideration alongside the Secretariat's assessment, setting out the reason(s) for the decision of the ED.

12. **Procedure for requesting a waiver.** Paragraph 8 above shall apply *mutatis mutandis* in respect of requests for waivers.

D. Changes

13. **Timing.** A change can occur after the approval of an FP by the Board, and before execution of the FAA.

14. **Definitions.** A change may be a minor or a major change.

15. **Information requirement.** The AE shall notify the Secretariat in writing when a change is being proposed.³ The Secretariat shall not be bound by having to wait for this information prior to initiating appropriate actions. If the AE proposes such a change after the approval decision but prior to the execution of the FAA, the Secretariat shall request the AE to provide a restructuring paper and supporting documentation, describing the rationale of the proposed restructuring and the analysis of associated benefits and risks to the implementation of the FP and the GCF.

16. **Determination.** The Secretariat will assess the restructuring proposal and determine whether the change is a minor change or a major change, and provide its assessment to the AE.

³ An AE may propose a change in advance of an event occurring that would affect the FP, or in reaction to an event that has already occurred.

17. A change will be deemed to be a major change if any of the following are proposed:
 - (a) A change in the environmental and social safeguards category from a lower to a higher category;
 - (b) A change in the AE;
 - (c) A change in the pricing structure of the GCF portion resulting in reduced economic benefit to the project/programme or the GCF, including but not limited to higher cost, lower return on investments and/or higher risk;
 - (d) A delay in the implementation of the project/programme, or its major components for more than two (2) years from the period agreed in the term sheet, or if not set out in the term sheet, as established in the FP; and
 - (e) Other triggers such as may be set forth in a Board decision, including the approval decision.
18. In addition, a change may be deemed a major change if it alters the project/programme from that which was originally approved by the Board in a way that:
 - (a) Renders the project/programme inconsistent with the GCF mandate and business model;
 - (b) Materially (significantly) changes the objective(s) of the project/programme;
 - (c) Materially reduces the magnitude of the core indicators or impacts of the project/programme;
 - (d) Materially changes the financial profile of the project/programme from the one presented in the approved FP; and/or
 - (e) Creates a material operational risk to the GCF.
19. The determination of whether such 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.
20. **Procedure for approval of minor change.** The ED shall have the authority to approve a minor change. The Secretariat will then require the AE to undertake appropriate actions, which may include informing the NDA.
21. **Procedure for approval of major change.** Upon determination of a change as a major change, the Secretariat will prepare a Board document together with its assessment and recommendation for the Board's action either through a between-meetings decision or at the next Board meeting.
22. **Approval of major change.** If the Board approves the major change, the Secretariat will require the AE to undertake appropriate action, which may include informing the NDA and requesting a revised no-objection letter, as appropriate.
23. **Non-approval of major change.** If the Board does not approve a major change, the AE will either:
 - (a) Implement the project or programme as approved; or
 - (b) Withdraw the FP and inform the NDA accordingly.
24. **Cancellation.** Should the AE not undertake either of the actions set out in paragraph 23 above within 120 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.

SECTION II. Restructuring after funded activity agreement execution

A. Waiver of Board-approved conditions

25. **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.
26. **Alignment.** Section I, parts B (Extension of the period for fulfilment of conditions) and C (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, save that the Secretariat shall also not be required to seek Board approval where the request for an extension of time or a waiver does not relate to a provision in the FAA which was expressly adopted by the Board or which would otherwise have the effect of a minor change.

B. Restructuring

27. **Timing.** A restructuring can occur after the execution of the FAA.
28. **Treatment.** Section I, part D (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”.
29. **Consequences of restructuring.** If the ED or the Board, as appropriate, approves a restructuring, the Secretariat and the AE shall enter into appropriate legal arrangements to give effect to such approval.

SECTION III. Reporting and effective date

30. **Reporting.** The Secretariat will report to the Board as part of the post-approval update on any actions taken in respect of waiver, change and restructuring as well as any cancellations occurred under this policy.
31. **Effective date.** The policy is effective from the date of the Board decision adopting this policy until the comprehensive policy on restructuring is adopted by the Board.

Annex III: Review of the practices of selected other institutions

1. A high-level review of the practices of some other institutions has taken place. This will be deepened in the process of developing the full policy.

A. Instruments of the Convention

THE GLOBAL ENVIRONMENT FACILITY

Cancellation

Stage	Prior to CEO endorsement	After CEO endorsement
Responsible body	Global Environment Facility (GEF) Chief Executive Officer (CEO), partner agency or country	Partner agency
Scenarios of cancellation	<ul style="list-style-type: none"> (a) No submission of project document after 18 months since project identification form approval; (b) Possibility of 12-month extension upon request by national designated authority (country operational focal point); (c) Full project document can be resubmitted within a year directly to CEO endorsement, with Council four-week review; (d) CEO, if the submitted full proposal is not of sufficient quality; (e) Partner agency, in consultation with country and GEF CEO concurrence 	<p>Based on partner agency policies and procedures, in consultation with recipient country, all relevant government agencies, and other partners (co-financers)</p> <p>It is unclear whether the GEF secretariat has any role in practice. General cancellation scenarios are not defined</p>
Procedure	<ul style="list-style-type: none"> (a) Remove proposal from pipeline; (b) Inform recipient country and partner agency; (c) Inform Trustee of any project development funding approved; (d) If return of GEF funds is required, partner agency has to comply with financial procedures agreement with the Trustee (e) For programmes, 40% of fees for each child project are committed upon Council approval. If child project is not presented, fees are cancelled and returned 	<ul style="list-style-type: none"> (a) Written notification from the partner agency to the recipient country government; (b) Written notification to the GEF secretariat and the Trustee; (c) If return of GEF funds is required, partner agency to comply with financial procedures agreement with the Trustee

Major amendment

2. A major amendment is defined as a change in project design or implementation that has a significant impact on the project's objectives or scope, or an increase of the Global Environment Facility (GEF) project financing of more than 5 per cent.

3. When the full project document is submitted, if the GEF Chief Executive Officer (CEO) determines that there have been major changes to the project's scope and/or objectives since project identification form approval, instead of the regular direct CEO endorsement:
 - (a) The CEO circulates the full project document and CEO endorsement request to the Council for 4-week review;
 - (b) The Council provides comments;
 - (c) The accredited entity responds to any comments received from Council members and revises the documents; and
 - (d) The CEO endorses the project once comments have been adequately addressed and informs Council accordingly.
4. If, during the review, at least four Council members request that a project be reviewed at a Council meeting because the project is not consistent with the GEF Instrument or GEF policies and procedures, the CEO:
 - (a) Submits the project document to the next Council meeting; and
 - (b) Endorses the project for final approval by the agency only if the Council finds that the project is consistent with the GEF Instrument and GEF policies and procedures.
5. For any major amendments, whether before or after CEO endorsement, the Secretariat circulates the amended CEO endorsement request and the project document to the Council for four weeks for its approval before CEO endorsement or re-endorsement.

THE ADAPTATION FUND

Cancellation

Stage	Any stage of project/programme cycle
Responsible body	Ethics and Finance Committee (EFC) makes a recommendation to the Board
Scenarios	At its discretion or following independent review, evaluation or investigation, for several reasons, notably: <ol style="list-style-type: none"> (a) Financial irregularities in implementation; (b) Material breach of legal agreement; (c) Poor implementation performance leading to the conclusion that it can no longer meet objectives
Procedure	<ol style="list-style-type: none"> (a) EFC makes recommendation to suspend/cancel; (b) Implementing entity and the country designated authority (DA) are given fair chance to present views to the Board; (c) Board makes decision to suspend/cancel <p>Implementing entities suspending or cancelling projects must send detailed justification to the Board after consulting with the DA</p> <p>Secretariat reports annually on all approved projects suspended or cancelled in the previous year</p>

Restructuring

6. No guidelines or policy on restructuring exist at the time of this review.

B. Other funds

THE CLIMATE INVESTMENT FUNDS

7. No adopted policy for either cancellation or restructuring. Follows rules of implementing multilateral development bank (MDB) for approved projects.

C. Multilateral development bank

ASIAN DEVELOPMENT BANK

Cancellation

Stage		
Responsible body	The borrower or Asian Development Bank (ADB), with agreement of guarantor in the case of loans	
Scenarios of cancellation	<p>ADB may, by notice to the borrower, terminate the borrower's right to withdraw the loan proceeds, if any of the following apply:</p> <ul style="list-style-type: none"> (a) Continuous 30-day suspension of loan; (b) ADB determines, at any time and after consultation with the borrower, that any amount of the loan will not be required for purposes of the project; (c) ADB determines corrupt or fraudulent practices; (d) Cases of noncompliance with prescribed procurement procedures; (e) Closing date has been reached 	
Procedure	<p><i>Borrower</i></p> <ul style="list-style-type: none"> (a) Notify ADB after prior consultation with ADB; (b) Commitment letters issued by ADB cannot be cancelled except as expressly provided in such commitment letters; (c) Once the borrower requests cancellation of all or part of a loan, ADB cannot delay or deny that request; (d) If the ADB loan has associated co-financing, each co-financier must be consulted on a cancellation request. All communications with co-financiers are through the Office of Co-financing Operations (OCO), and incorporate OCO advice when finalizing the cancellation; 	<p><i>ADB</i></p> <p>Vice president's approval required, based on recommendation of the regional department</p>

	(e) The sector director or country director concerned finalizes the cancellation	
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Restructuring

8. Changes in cost, financing plan, counterpart funding, disbursement percentages, disbursement arrangements and changes in expenditures originally approved for ADB financing should be approved by the relevant Director General or authorized Director, after the matter is consulted upon and agreed with the Controller's department and other relevant offices and departments.
9. Changes in disbursement arrangements include, but are not limited to, the following:
- (a) The use of the statement of expenditure procedure;
 - (b) A change, establishment, or removal of the ceiling of the statement of expenditure;
 - (c) Procedure;
 - (d) The use of the advance fund procedure; and
 - (e) Extension of the winding-up period.

WORLD BANK

Cancellation

Stage	After the conditions have been met to begin disbursements	
Responsible body	Can be initiated by the World Bank or the client	
Scenarios of cancellation	<p><i>Bank guarantee</i></p> <p>If the legal agreements are not signed within 24 months following Board approval, the Bank normally withdraws the offer of the bank guarantee</p>	<p><i>Bank loan and grants</i></p> <ul style="list-style-type: none"> (a) Overdue loan payments; (b) Suspension; (c) Amounts not required; (d) Fraud and corruption; (e) Misprocurement; (f) Closing date; (g) Cancellation of guarantee (only for loan)
Procedure		<ul style="list-style-type: none"> (a) The borrower or the Bank decide to cancel an unwithdrawn amount of a bank loan; (b) When the borrower decides to cancel an amount of the bank loan and gives notice to the Bank, the cancellation is effective as of the date of receipt of the borrower's notice; (c) The Bank does not accept requests for retroactive cancellations
		<p><i>Exception: no cancellation or suspension by the Bank shall apply to amounts of the loan subject to any special commitment except as expressly provided in the special commitment</i></p>

Prior to effectiveness

10. The exception to the cancellation would be an extension of the deadline in the case where the new conditions are substantially different from the original conditions under which the loan was approved and a restructuring is necessary.

Restructuring

11. During implementation the World Bank, the borrower, and the member country, as appropriate, may agree to restructure the project to strengthen its development effectiveness, modify its development objectives improve project performance, modify indicators, address risks and problems that have arisen during implementation, make appropriate use of undisbursed proceeds of a bank loan, cancel unwithdrawn amounts of a bank loan prior to the loan closing date, extend the closing date, or otherwise respond to changed circumstances. A restructuring involving a modification of the original project's development objectives, an extension of the bank guarantee expiration date, or a change in safeguard category – from a lesser category to a category A (as defined in operational policy (OP) 4.01 or OP 4.03 as applicable) or the trigger of a safeguard policy not triggered originally by the project – is referred to as a level one restructuring and is submitted for consideration by the Executive Directors (or by management, in cases where the original investment project financing was approved by management). A restructuring involving any other modification of the project is referred to as a level two restructuring. Management has the delegated authority to approve level two restructurings. Management periodically informs the Executive Directors of the level two restructurings.

INTER-AMERICAN DEVELOPMENT BANK

Sovereign borrowers – guarantees

12. If a guaranteed party chooses to cancel part or the entire guarantee amount approved under the policy for a Flexible Guarantee Instrument, the Inter-American Development Bank will pass on to the guaranteed party or counter-guarantor any costs incurred to cancel such guarantee.
