



**GREEN
CLIMATE
FUND**

Meeting of the Board
27 February – 1 March 2018
Songdo, Incheon, Republic of Korea
Provisional agenda item 14(h)

GCF/B.19/13
4 February 2018

Policy on restructuring

Summary

The document outlines a policy on changes to or restructuring of projects/programmes approved by the Board of the Green Climate Fund. It builds on a review of the practices of other institutions, and the relevant accreditation master agreements 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 (B.18) 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.21.¹
3. This paper sets out the Secretariat’s proposed comprehensive restructuring policy, which also covers cancellation and waivers, for consideration and adoption by the Board.
4. Matters related to further options for decision-making will be addressed under the Board’s work plan for 2018.

II. Policy on restructuring

5. As implementation ramps up, 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 matters set out below.
6. Changes to approved proposals: even though the specific language may differ, AMAs usually define 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”. AMAs also usually specify that the AE must inform GCF and seek instructions or guidance on how to proceed whenever a potential modification that would constitute a major change is to take place. GCF needs to develop a process to assess the materiality of the proposed modification, including whether the restructuring requires approval by the Board, a new no-objection letter from the national designated authority, and/or adjustments to the environmental and social safeguards documentation.
7. 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 or covenants.
8. The proposed policy, set out in annex II to this document, therefore seeks to address the authority of the Secretariat and the Board, and the procedures to be followed in respect of the matters referred to above.
9. Please note, in particular, that paragraph 10(a) of the proposed Policy supersedes decision B.14/07, paragraph (j), in which the Board “Requests the Secretariat to report to the Board at each meeting on the status of the fulfilment of all conditions decided by the board in its approval of the relevant projects or programmes, and to seek further guidance from the Board

¹ See document GCF/B.18/23, annex I.

in the event that the Secretariat determines that any such condition is technically, financially or legally unimplementable”, in respect of “legally” unimplementable conditions.

III. Recommendation

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

Annex I: Draft decision of the Board

The Board, having considered document GCF/B.19/13 titled “Policy on restructuring”:

- (a) Adopts the policy on restructuring as set out in annex II; and
- (b) Requests the Secretariat to report back to the Board as part of its regular pipeline and portfolio update on the implementation of this policy.

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;² and
- (c) A change to or restructuring of the approved funding proposal prior to or after the execution of the funded activity agreement.

2. **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** 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 legal agreements.

3. **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 paragraphs 16 and 17;
- (i) “**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;
- (j) “**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 requirements that were originally approved by the Board and/or agreed in the relevant FAA;
- (k) “**Secretariat**” means the Secretariat of the Green Climate Fund; and

² See decision B.17/09, annex IV.

- (l) “**Waiver**” means a deviation from a condition, covenant and/or other requirement set forth in an approval decision. For the avoidance of doubt, the policy does not address a waiver from an applicable GCF policy.³

I. Changes prior to FAA execution

1.1 Failure to fulfil conditions

4. **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.

1.2 Extension of the period for fulfilment of conditions

5. **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.

6. **Authority.** If an AE requests an extension pursuant to paragraph 5, 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 and be appropriate in length in 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 rejects or 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 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 established for fulfilling the conditions;
- (c) The Secretariat will assess the complete request upon receipt and determine, within 10 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(c)(ii) shall be submitted for the Board’s consideration as soon as is practicable together with the Secretariat’s assessment and recommendation. The Board may decide on such extensions through a decision taken between Board meetings;

³ A policy waiver (requested after Board approval) can also happen. This will be dealt with by a separate policy.

- (e) If the extension is approved either by the ED or by the Board, such a decision will be communicated to the AE, 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 provisions set out in paragraph 4 shall apply; 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.

1.3 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.

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 or where the waiver relates to any of the following, in which case the ED shall have the authority to grant such a waiver:

- (a) Conditions, covenants and/or other requirements set out in the approval decision that cannot be complied with as a result of them being contrary to:
 - (i) Applicable laws and regulations of the jurisdiction(s) in which the project or programme is to be implemented;
 - (ii) Laws applicable to the AE; or
 - (iii) Where applicable, laws applicable to the investment vehicle through which GCF proceeds may be invested; and
- (b) Any conditions, covenants and/or requirements agreed in the relevant term sheet.

11. If the ED declines to approve the waiver, the request for a waiver 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 a waiver.** Paragraph 8 shall apply mutatis mutandis in respect of requests for waivers.

1.4 Changes

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

14. **Information requirement.** If the AE proposes a change that is likely to constitute:

- (a) A major change; or
- (b) A change that would otherwise require the consent of GCF pursuant to:
 - (i) The terms of the relevant legal agreements with GCF; or
 - (ii) Its own policies.

15. The AE shall be required to notify the Secretariat in writing of the relevant change. The Secretariat shall not be required to wait for this information prior to initiating appropriate actions.

16. If the proposed change falls within, or may fall within, paragraph 14(a) or (b), 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 and GCF. Changes that do not fall within paragraphs 14(a) or (b) shall not require GCF consent.
17. **Determination.** The Secretariat will assess the restructuring proposal and determine whether the change falls within paragraph 14(a) or (b) and provide its assessment to the AE.
18. Without prejudice to the generality of the definition of major change in any AMA, a change will also 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) The AE proposes to assign or otherwise transfer all or part of its responsibilities in respect of the FP to another AE;
 - (c) A change in the pricing structure of the GCF portion resulting in reduced economic benefit to the project/programme or GCF, including but not limited to higher cost, lower return on investments and/or higher financial risk to GCF;
 - (d) Other triggers such as may be set forth in a Board decision, including the approval decision; and
 - (e) Changes that render the project/programme inconsistent with the GCF mandate and business model.
19. 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) Leads to a delay in the implementation of the project/programme or its major components for more than two years from the period agreed in the relevant term sheet, or if not set out in the term sheet, as established in the FP;
 - (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 environmental and social safeguards risk profile of the project/programme;
 - (e) Materially changes the financial profile of the project/programme; and/or
 - (f) Creates a material risk to GCF.
20. 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.
21. If the proposed change is determined by the Secretariat as falling within paragraph 14(b) but not paragraph 14(a), the ED shall have the authority to approve such change and the Secretariat will then require the AE to undertake appropriate actions, which may include informing the NDA. If the proposed change is determined by the Secretariat as not falling within paragraph 14(a) or (b), no consent from GCF shall be required to implement such change.
22. **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 decision taken between meetings or at the next Board meeting. The Secretariat will determine, prior to submitting the restructuring proposal to the Board, whether a no-objection letter needs to be obtained from the NDA. If a no-

objection letter is required, such a restructuring proposal will be submitted to the Board only after the no-objection letter has been obtained.

23. **Approval of major change.** If the Board approves the major change, the Secretariat will require the AE to undertake appropriate action.

24. **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.

25. **Cancellation.** Should the AE not undertake either of the actions set out in paragraph 23 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. The Secretariat shall notify the Board and adjust the Fund's commitment authority accordingly.

II. Restructuring after FAA execution

2.1 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 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. However, the Secretariat shall also not be required to seek Board approval where the request for an extension of time or a waiver relates to a provision in the FAA that was included in the term sheet and not otherwise expressly adopted by the Board or that would otherwise have the effect of a major change.

2.2 Restructuring

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

29. **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".

30. **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.

III. Reporting and effective date

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 and restructuring 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.

Annex III: Review of the practices of selected other institutions

I. Instruments of the Convention

1.1 The Global Environment Facility

1.1.1. 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; and (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; and (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; and (c) If return of GEF funds is required, partner agency to comply with financial procedures agreement with the Trustee |

1.1.2. Major amendment

1. 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.

2. 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 four-week review;
 - (b) The Council provides comments;
 - (c) The relevant GEF agency 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 the Council accordingly.
3. 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.
4. 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.

1.2 The Adaptation Fund

1.2.1. 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; and (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; and (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> |

1.2.2. Restructuring

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

II. Other funds

2.1 The Climate Investment Funds

6. The Climate Investment Funds have no adopted policy for either cancellation or restructuring. It follows the rules of the implementing multilateral development bank (MDB) for approved projects.

III. Multilateral development bank

3.1 Asian Development Bank

3.1.1. 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; and (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; (e) The sector director or country director concerned finalizes the cancellation | <p><i>ADB</i></p> <p>Vice President's approval required, based on recommendation of the regional department</p> |

3.1.2. Restructuring

7. 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.

8. 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.

3.2 World Bank

3.2.1. 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 | <i>Bank guarantee</i> If the legal agreements are not signed within 24 months following Board approval, the Bank normally withdraws the offer of the bank guarantee | <i>Bank loan and grants</i> (a) Overdue loan payments; (b) Suspension; (c) Amounts not required; (d) Fraud and corruption; (e) Misprocurement; (f) Closing date; and (g) Cancellation of guarantee (only for loan) |
| Procedure | | (a) The borrower or the Bank decides 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; and (c) The Bank does not accept requests for retroactive cancellations |
| | | <i>Exception:</i> 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 |

3.2.2. **Prior to effectiveness**

9. 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.

3.2.3. **Restructuring**

10. 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 4.01 or 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.

3.3 **Inter-American Development Bank**

3.3.1. **Sovereign borrowers – guarantees**

11. 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.
