



**GREEN  
CLIMATE  
FUND**

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**GCF/B.28/Inf.03**

19 February 2021

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# Reports from committees, panels and groups of the Board of the Green Climate Fund

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## **Summary**

This document contains the reports on activities that have already conducted or are planned to be undertaken by the following committees and panels of the Board of the Green Climate Fund during the reporting period from 1 October to 31 December 2020:

- (a) Accreditation Committee;
- (b) Accreditation Panel; and
- (c) Risk Management Committee.

## I. Introduction

1. This report covers the reporting period of 1 October 2020 to 31 December 2020, and also indicates activities planned to be carried by the committees and panels of the Board of the GCF in advance of its twenty-eighth meeting (B.28).

## II. Report on activities of the Accreditation Committee

2. The report addresses the mandate given to the Accreditation Committee (AC), in annex IV to decision B.07/02, to provide policy guidance to the Board on accreditation-related matters.

### 2.1 Activities during the reporting period

3. During the twenty-seventh meeting of the Board (B.27), the AC members held one formal virtual meeting jointly with the members of the Accreditation Panel (AP) to discuss accreditation matters. Noting no agenda item on the updated accreditation framework presented to the Board at B.27, the AC members had no virtual meeting of the AC.

4. During the reporting period, the AC members held one informal virtual meeting jointly with the members of the AP to discuss the IEU's recommendations on an accreditation strategy and one informal meeting of the AC to discuss the role of the AC in the accreditation process. In addition, one virtual meeting was cancelled as referred below in the paragraph 7 of this document. Communication among AC members on accreditation matters also took place via email.

5. As at 31 January 2021, the selection of a new Chair of the AC had not been made. In accordance with paragraph 7 of the Rules of Procedure which applies *mutatis mutandis* to Board Committees, in case a committee chair is not elected by 1 January of the year, the chair from the previous year shall continue their functions until a successor has been elected. As such, Mr. Lars Roth, who was selected as Chair of the AC on a no-objection basis by AC members on 28 May 2020 for the year 2020, will continue as Chair of the AC in 2021 until a new Chair is selected.

6. Following the reporting period, on 12 January 2021, Ms. Gisella Berardi, Senior Adviser for Global Public Goods at the Ministry of the Economy and Finance of Italy, International Financial Relations, replaced Ms. Paola Pettinari as a member of the AC.

7. During the reporting period, the AC continued the work on further development of the updated accreditation framework. Following Co-Chair's request dated 29 September 2020 for the AC to resolve the outstanding area of divergence in the draft document of the updated accreditation framework, the AC held a call on 7 October 2020 where four of six AC members were present. As the objecting member was not able to join the meeting due to connectivity problems, the AC was unable to resolve the outstanding area of divergence and submitted the updated accreditation framework to the Co-Chairs on 13 October 2020 highlighting the areas of divergence for the Board's consideration. With no agenda item or document on the updated accreditation framework presented at B.27, further guidance from the Co-Chairs is being sought for the further development of this document.

8. In decisions B.23/15, the Board requested the AC, in consultation with the Head of the IIU, to consider the best way to integrate the Anti-Money Laundering and Countering the Financing of Terrorism Policy into the interim fiduciary standards of GCF. The AC was also mandated to bring a proposal for integration of these policies to the Board for consideration. An informal meeting with the IIU was conducted at B.24. No follow up meetings have taken place

since then and the AC has not been involved in consecutive work carried out by the IIU. A proposal on the update or amendment has yet to be presented to the Board for its consideration.

### **III. Report on activities of the Accreditation Panel**

9. This report addresses the mandate given to the Accreditation Panel (AP) in decision B.07/02, paragraph (g), to serve as an independent technical panel to advise the Board on matters related to the accreditation of entities to GCF. The AP is responsible for conducting the accreditation process in accordance with its terms of reference, as adopted by the Board through decision B.07/02, paragraph (h).

#### **3.1 Activities during the reporting period**

10. During the reporting period, AP members nominated Mr. Mark Alloway for Chair of the AP. On 18 January 2021, Mr. Alloway was selected on a no-objection basis as Chair of the AP; Mr Yogesh Vyas continuing to serve as a vice-Chair.

##### **3.1.1. Review of accreditation applications**

11. During the reporting period, the AP held numerous conference calls with applicant entities during the Stage II (Step 1) accreditation review to gain better knowledge of each applicant and to clarify and discuss Stage II (Step 1) questions raised by the AP. Due to the COVID-19 pandemic, site visits were postponed until further notice, however the AP continues to use online channels to advance the review of accreditation applications. After the success of the AP's first virtual site visit with one Stage II (Step 1) direct access applicant in October 2020,, the AP held a site visit with another direct access applicant. Both applicants are being recommended by the AP for the Board's consideration on accreditation at B.28.

12. The AP continued to work on its in-depth assessment of 17 applications for accreditation that have successfully completed Stage I, as conducted by the Secretariat. Of these, the AP completed the review of five new applicants and are recommending them for the Board's consideration on accreditation at B.28. The remaining applications are at different points of review in Stage II (Step 1). Further details are contained in document GCF/B.28/XX titled "Consideration of accreditation proposals" (pending publication).

13. The AP continues, in cooperation with the Secretariat to update documents and tools related to improvement of the accreditation process, including re-accreditation; and to document its best practices.

##### **3.1.2. Review of accreditation conditions for Accredited Entities**

14. The AP has also reviewed evidence provided by AEs pertaining to conditions adopted by the Board at the time of their respective accreditation. For five AEs, the AP found the evidence sufficient to close all or some of the accreditation conditions. Further information on accreditation conditions that the AP has found to be closed and fulfilled, and those that are in progress, are contained in the "Status of the fulfilment of accreditation conditions" (document GCF/B.28/XX/Add.01) (pending publication).

##### **3.1.3. Establishing a baseline of the overall portfolio of Accredited Entities**

15. In line with decision B.12/30, paragraph (d), the AP, with the support of the Secretariat, worked towards establishing a baseline methodology on the overall portfolio of AEs and the

extent it has evolved in the direction of the paradigm shift towards low-emission and climate-resilient development pathways during the accreditation period.

16. The AP, consultants supporting the AP (Factor Ideas) and the Secretariat have held five virtual meetings in the first quarter of 2020, one virtual meeting in the second quarter, and two virtual meetings during the reporting period of this report to discuss the workplan, methodological framework and overall approach to implementing the indicator tool following an internal consultation by the Secretariat. The AP, in consultation with the Secretariat, identified AEs to be invited to participate in the pilot. The sample of AEs selected for the pilot phase was based on the date of re-accreditation, access modality, geographical and sectoral representation, type of entity (e.g. public sector, private sector, non-governmental organizations, etc.) and project portfolio and pipeline with GCF. Sixteen AEs, including those that would need to apply for re-accreditation in 2020 and 2021, confirmed their participation in the pilot.

17. Implementation of the pilot phase of the baseline methodology was completed in December 2020 with 16 AEs having agreed to participate in the pilot. The consulting firm supporting the AP in this work collected and consolidated the information provided by AEs in accordance with the methodological framework and calculated the relevant indicators. A detailed analysis of the information submitted by each of the entities was carried out and follow-up meetings were held with each entity. Based on the results of the pilot phase of the study, the initially proposed methodological framework in the document titled “Matters related to the accreditation, including the framework review, and matters related to the baseline of accredited entities: Baseline on the overall portfolio of accredited entities” (document GCF/B.22/Inf.15) was revised. The AP is presenting the final methodological framework, which was finalised in January 2021, at B.28 in document GCF/B.28/XX/Add.03 (pending publication). This methodology is to be used by accredited entities in preparing its re-accreditation application to GCF in order for the AE to present its information regarding the extent to which its overall portfolio of activities beyond those funded by the GCF has evolved in the in the direction of low-emission and climate-resilient development pathways during the accreditation period.

#### 3.1.4. Re-accreditation

18. Following decision B.23/11, which states that accreditation is considered complete upon the effectiveness of the accreditation master agreement (AMA) and decision B.24/13 wherein the Board adopted the re-accreditation process, the AP, alongside the Secretariat, is undertaking implementation of the re-accreditation process, including reviewing re-accreditation applications that will start in the first quarter of 2021 on the updated online accreditation system, the Digital Accreditation Platform (DAP). It is expected that a key proportion of application reviews starting in 2021 will focus on the re-accreditation of AEs, whereas the AP’s previous review of applications include only those for new applicants and upgrade applications of AEs (since re-accreditation had not yet begun in previous years).

19. During previous reporting period, the AP, in coordination with the Secretariat, finalized various tools related to the re-accreditation of AEs in line with the re-accreditation process adopted by the Board in decision B.24/13. Such tools, including the re-accreditation application form, guidance to AEs and checklists used by the Secretariat and AP, have been used for launching re-accreditation DAP module in December 2020. The AP continues to provide inputs into the development of the DAP.

#### 3.1.5. Onboarding of incoming Accreditation Panel experts

20. Following the appointment by the Board of four new members to the Accreditation Panel for one term starting on 1 May 2021 and expiring on 30 April 2024 in decision B.BM-

2020/13, the current AP membership, together with the Secretariat, have been onboarding the newly appointed experts during the transition period leading up to their official membership on the AP. The AP have held one training workshop with a second workshop planned for the first quarter of 2021.

### 3.2 Next Steps

21. The accreditation process is ongoing, and the AP is continuing the review of accreditation, AE upgrade and re-accreditation applications that have completed Stage I, with the aim of providing recommendations on (re)accreditation at subsequent meetings of the Board. The AP also continues to review information from AEs related to accreditation conditions.
22. With the baselines methodological framework finalized as mentioned in section 1.1.3 above, the AP, with the support of the consultant and Secretariat, will hold a training workshop for all AEs to train them on how to apply the methodology as part of their re-accreditation application.
23. The AP will continue to work on reviewing evidence provided by AEs pertaining to conditions adopted by the Board at the time of their respective accreditation, with the aim of providing recommendations on accreditation conditions at subsequent meetings of the Board.
24. The AP in the first and second quarters of 2021 will also review annual self-assessment reports, as needed, and mid-term review reports submitted by AEs for calendar year 2020, in line with the AEs' institutional-level reporting requirements per their accreditation master agreement with GCF and the GCF monitoring and accountability framework.
25. The current AP membership, with support from the Secretariat, will continue to onboard the newly appointed members on the work modalities, work plan and best practices during the transition period until 30 April 2021.

## IV. Report on activities of the Risk Management Committee

26. This report covers the reporting period of 1 October 2020 to 31 December 2020 and also indicates activities planned to be carried out by the committees and panels of the Board of the GCF in advance of its twenty-eighth meeting (B.28).

### 4.1 Activities during the reporting period

27. During the reporting period from 1 October to 31 December 2020, the RMC welcomed Mr. Jock Geselschap to the RMC. Mr. Geselschap has replaced Ms. Marjolein Geusebroek, the earlier Chair of the RMC, and has volunteered to be the interim chair of the RMC. The Committee thanks Ms. Geusebroek for her contributions and looks forward to working closely with the interim chair and new members.
28. The RMC held two formal virtual meetings and conducted activities via e-mail correspondence. The RMC discussed and provided guidance to the Secretariat on the mandates related to risk and compliance given by the Board, including: (i) the review of the initial financial risk management framework; (ii) the development of the risk management framework and its underlying policies, guidelines and tools; (iii) review of Q3 Risk Dashboard; (iv) AMA consultation; (v) the review of the SEAH policy; (vi) the review of the legal risk guidance; (vii) COVID-19 impact on GCF's operations; and (viii) RMC 2021 Workplan.

29. The Secretariat provided the RMC with updates on the development of risk rating models, overview of the FX Hedging policy, and legal risk guidance.
30. Regarding the work on risk rating models, the Secretariat presented to RMC an advanced draft of Project Success Rating model. The RMC provided guidance to improve some of the factors in the model. Since then, Secretariat has revised the model and is finalizing the documentation for the model. The committee will review the updated model in February 2021.
31. In reference with the FX Hedging Policy, the RMC provided amendments and it will be presented to the Board.
32. Through its decisions at B.17/11, B.19/04, and B.23/14, the Board has adopted various components of the Risk Management Framework (“RMF”) to include policies addressing various risks, such as investment, non-financial, funding, and legal risks, as well as a compliance risk policy to allocate responsibilities and roles for ensuring compliance with policies by GCF Personnel.
33. Since B.23, early efforts focused on development of a formal legal risk policy for consideration of the RMC. Initial drafts of the legal risk policy have been socialised within the Secretariat and independent units since January 2020. An OGC assessment advised that, since the policy was principles-based, it advised against bringing the policy to the Board, and recommended updating the Risk Register instead. The ED agreed with OGC’s assessment and, with guidance from the RMC, encouraged ORMC to develop the policy into a guideline.
34. The Secretariat conducted an internal review of the RMF and submitted a revised paper with proposed changes to the RMC for its consideration in April 2020. Following its thorough review of the revised paper, the RMC determined that the proposed changes to legal risk policy were not material changes. There was consensus within the RMC that a guidance document on legal risk should suffice to discharge the duties of the Board on this matter.
35. The chair of the RMC thus reported this review outcome to the Co-Chairs in May 2020 and recommended to the Co-Chairs that the Board is updated on this matter via the Report of the Activities of the Committees. By mid-2020, the Co-Chairs, having reviewed the revised document with the proposed changes, conferred and agreed with the RMC’s determination that the changes are non-material. The Co-Chairs also agreed with the RMC’s recommendation to update the Board on this matter via the Report of the Activities of the Committees accordingly.
36. Subsequently, the legal risk policy was redeveloped, resulting in the *Risk Management Framework: Guidance on Legal Risk* (the “*Guidance*”). The *Guidance* defines what legal risk consists of and to identify some of the key sources of legal risk that the GCF may be exposed to in its operations whilst recognizing that legal risks, and their mitigants, can change and evolve over time.
37. Following several rounds of discussion and collaboration in late 2020, ORMC and OGC reached a consensus on the form, focus and content of the *Guidance*. It was then provided to the RMC for consideration and further comment. The RMC reviewed the *Guidance* and confirmed their alignment with its content, acknowledging that legal risk is a key risk type the Fund will encounter in pursuit of its mandate as documented in the RMF. The *Guidance* was subsequently packaged for final consideration by the ED and received his endorsement in late January 2021. The *Guidance* is contained in annex I to this report.
38. Regarding AMAs, the RMC was also consulted on the following AMAs during the reporting period:
- (a) AMA with Camco Management Limited (“CAMCO”).
39. During the RMC’s review of the CAMCO AMA, no objections were received from the RMC by the respective deadline and the Secretariat proceeded to issue the execution version of the AMA to the entity for signature.

40. Following the reporting period, the RMC was also consulted on the following AMAs:
- (a) AMA with Banco Nacional de Desenvolvimento Econômico e Social (“BNDES”);
  - (b) AMA with Crédit Agricole Corporate and Investment Bank (“CACIB”); and
  - (c) AMA with the Inter-American Investment Corporation (“IDB Invest”).
41. The RMC’s review of the BNDES, CACIB and IDB Invest AMAs are on-going at the time of publication of this report.

## 4.2 Next Steps

42. The RMC plans to meet virtually every month after to the twenty eighth formal meeting of the Board.



## Annex I: Risk Management Framework: Guidance on Legal Risk

### I. Purpose and Objectives

1. The purpose of this Guidance is to set out the guidelines for identification, prevention, mitigation and management of legal risks arising from the activities and operations of GCF. This Guidance elaborates on the categories of legal risk as outlined in the Risk Management Framework component I – revised risk register adopted pursuant to decision B.17/11, and further expands the scope of legal risk categories.
2. This Guidance aims to identify in a non-exhaustive manner certain key sources of legal risks to which the Fund is exposed in its day to day operations and of which all GCF Personnel should be aware. It also establishes the principles and guidance to be followed by the GCF Secretariat to address the sources of legal risks described herein.
3. This Guidance shall provide the following:
  - (a) Greater clarity on the risks inherent in individual decisions and the day-to-day functioning of GCF in order to make appropriate trade-offs; and
  - (b) Greater consistency in decisions across the organization, with due observance of any relevant Board guidance and decisions, on how much risk is acceptable and how the risks should be managed.
4. This Guidance should be read in conjunction with other risks contemplated under the GCF Risk Management Framework, such as investment risk, non-financial risk, reputational risk, funding risk and compliance risk.

### II. Definitions

5. The following defined terms are used in this Guidance:
  - (a) “**AE**” means accredited entity;
  - (b) “**AMA**” means accreditation master agreement;
  - (c) “**Board**” means the Board of the GCF;
  - (d) “**Decisions**” means decisions adopted by the Board;
  - (e) “**ED**” means the Executive Director;
  - (f) “**EE**” means ‘Executing Entity’, as that term is defined in the AMA;
  - (g) “**FAA**” means funded activity agreement;
  - (h) “**Fund**” or “**GCF**” means the Green Climate Fund;
  - (i) “**Funded Activity(ies)**” or “**GCF Funded Activities**” means a ‘GCF Project’ and/or a ‘GCF Programme’, as these terms are defined in the AMA;
  - (j) “**GCF Legal Framework**” means the body of instruments, consisting of the Governing Instrument, Decisions, Procedures, Guidance and Forms, establishing rules, regulations and guidance relating to the Fund’s operations and administration;
  - (k) “**GCF Personnel**” means any staff and any other individual contracted and/or engaged by the GCF to perform official functions for the GCF;
  - (l) “**Guidance**” means this Guidance on Legal Risk; and



- (m) **“Governing Instrument”** means the instrument entitled ‘Governing Instrument for the Green Climate Fund’, that was approved by the COP at its seventeenth session on 11 December 2011 and is annexed to Decision 3/CP.17;
- (n) **“Independent Units”** means the Independent Evaluation Unit, Independent Integrity Unit, and Independent Redress Mechanism Unit;
- (o) **“IRM”** means Independent Redress Mechanism of the GCF;
- (p) **“OGC”** means the Office of the General Counsel of the GCF; and
- (q) **“Risk Management Framework”** or **“RMF”** means the GCF risk management framework adopted by the Board by:
  - (1) Decision B.17/11, setting out the following first set of components;
    - (i) component I – revised risk register;
    - (ii) component II – risk appetite statement;
    - (iii) component III – risk dashboard; and
    - (iv) component IV – “risk guidelines for funding proposals”;
  - (2) Decision B.19/19, setting out the following second set of components:
    - (i) component V – investment risk policy;
    - (ii) component VI – non-financial risk policy; and
    - (iii) component VII – funding risk policy; and
  - (3) Decision B.23/14, setting out the following component:
    - (i) component VIII – compliance risk policy;

in the manner contained in the relevant annexes to such Decisions, as may be amended or supplemented from time to time.

### III. Legal Risk

6. Legal risk inherently exists in the Fund’s activities, whether institutional or operational. Legal risk is not always easily identifiable and therefore it is incumbent upon all GCF Personnel to not only carefully follow the policies, rules and procedures adopted by the Fund but also to consider whether any actions or inactions may increase the Fund’s exposure to legal liabilities.

7. The identification, prevention and management of legal risks is essential for the effective operation of the Fund’s activities, and the efficient and proper use of resources entrusted to the GCF, including the determination of whether or not to go forward with an investment or activity.

#### 3.1 Identification of Legal Risk

8. Legal risk refers to the potential for financial or reputational damage or loss which may arise as a result of (a) the violation of, or non-compliance with, applicable laws, rules, regulations and contractual obligations or breaches of GCF policies, rules and procedures by the GCF, the GCF Personnel or third parties; and/or (b) without prejudice to the preceding sub-paragraph (a), the manner in which a particular investment, transaction or activity has been designed or structured.

9. Failure to prevent and/or to mitigate legal risks may result in adverse legal consequences such as unenforceable contracts, litigation and financial losses due to fines, penalties and/or payments of damages and/or the Fund being exposed to other significant financial liabilities.
10. Legal risk may also lead to a diminished reputation and decreased trust, arising from an adverse perception of the Fund by present and future stakeholders, including GCF Personnel, contributors, AEs, readiness partners, and contractors. This may affect the Fund's ability to perform its functions and mandate.
11. Mitigation of legal risks necessitates the Fund and GCF Personnel to strictly adhere to and observe the GCF Legal Framework and act in conformity with the contractual agreements of the Fund and applicable laws.

### 3.2 Causes of Legal Risk

12. Legal risk is primarily caused by but not limited to the following:
  - (a) Non-adherence to the GCF Legal Framework;
  - (b) Non-existent or limited privileges and immunities in certain jurisdictions;
  - (c) Third-party liabilities, including a claim (including a defence to a claim or a counterclaim) being made or some other event occurring which results in a liability for the Fund or other loss (for example, as a result of the termination of a contract), or failing to take appropriate measures to protect assets (for example, intellectual property) owned by the Fund;
  - (d) Breach of procedures in the establishment of GCF policies and procedures;
  - (e) Entering into a defective transaction; and
  - (f) Failures by the Fund or its counterparties to fulfil their contractual obligations.

### 3.3 Further Identification of Legal Risks and Development of Risk Management Guidance

13. This Guidance contains a list of key thematic sources of legal risk and primary mitigants thereto but does not purport to be an exhaustive list. The ED, in consultation with OGC, may identify additional types of legal risks and establish relevant mitigants in accordance with the provisions of this Guidance and the GCF Legal Framework. Where the relevant legal risks arise in the context of the substantive operations of the Independent Units, the ED will also consult with relevant heads of unit, and the relevant mitigation measures and/or procedures will, in respect of those specific matters which relate to the substantive operations of the Independent Units, be jointly developed by the ED and the respective head of unit.
14. The Secretariat, together with the Independent Units as appropriate, shall be responsible for implementing this Guidance, and may issue any additional rules and procedures as necessary to prevent, mitigate, and address specific legal risks.
15. In conjunction with this Guidance, the Secretariat may develop internal rules and procedures for identifying, monitoring and tracking specific legal risks to update the risk register at such times, as appropriate.

## IV. Key Sources of Legal Risks

### 4.1 Non-adherence to the GCF Legal Framework

16. In undertaking any act, the Fund must operate in accordance with the GCF Legal Framework which will continuously evolve by the adoption of new Decisions, policies, rules and procedures or of revisions thereto. GCF Personnel shall familiarize themselves with the GCF Legal Framework and keep abreast of any updates thereof.

GCF Personnel should verify the applicability of, and follow the requirements under, the GCF Legal Framework in order to prevent legal risks from arising and/or to mitigate any legal risks that have arisen. In case of doubt, GCF Personnel should consult with the relevant GCF divisions, offices and units, as necessary.

17. In all agreements, operations, and activities of the GCF, appropriate measures shall be taken to ensure compliance with the GCF Legal Framework, and that appropriate provisions be made to recognize obligations, to ensure proper risk allocation and accountability among the parties, and to institute measures to monitor and mitigate potential risks of breaches.

### 4.2 Privileges and Immunities of the Fund

18. Pursuant to paragraph 8 of the Governing Instrument, “the Fund will enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. The officials of the Fund will similarly enjoy such privileges and immunities as are necessary for the independent exercise of their official functions in connection with the Fund”. However, in jurisdictions where the Fund (and thus GCF Personnel) do not enjoy, or have limited, privileges and immunities, the Fund may be exposed to, amongst other things, judicial, administrative or executive actions in such jurisdictions, including expropriation or litigation, as well as impairment of the ability of GCF Personnel to discharge their official functions.

19. Therefore, wherever and whenever possible, privileges and immunities should be sought and acquired with respect to GCF operations and activities within a jurisdiction. Where such privileges and immunities have been granted to the GCF, the GCF shall exercise such diligence and care to protect and maintain those privileges and immunities and should not engage in any activities which may undermine or be perceived to be an abuse of such privileges and immunities.

20. To the extent that GCF activities or operations involve or are implemented in jurisdictions in which the Fund does not benefit from privileges and immunities, the Fund shall identify the risks arising therefrom and undertake appropriate measures to mitigate exposure to those risks. These measures may include but are not limited to:

- (a) Enhancing the legal protections for its activities and operations, in order to prevent inadvertent creation of jurisdictional grounds for claims against GCF;
- (b) Performing greater due diligence in respect of specific risks arising from the lack of privileges and immunities by the Fund (or its counterparties, including AEs) when engaging in a GCF Funded Activity or any other activity in such jurisdictions, as appropriate.
- (c) Entering into memoranda of understanding setting out privileges and immunities for specific events and/or activities;
- (d) Obtaining waivers of claims from relevant counterparties, or ensuring that indemnification provisions are included within the relevant legal agreements to which the Fund and/or its counterparties will be a party to;

- (e) Obtaining relevant insurance coverage or other relevant liability protections; and
- (f) Where contracts are entered into, avoiding jurisdiction of national courts to the greatest extent possible.

### 4.3 Third Party Liabilities

21. The Fund, in all aspects of its operations, may become exposed to potential claims from third parties. This section sets out a non-exhaustive list of the sources of legal risk arising from third party liabilities.

#### 4.3.1 Privacy and Data protection

22. In the context of its activities, the Fund processes sensitive data such as personal information (e.g. contact and professional details), confidential information (e.g. information relating to legal, disciplinary or investigative matters), or information provided in confidence by third parties.

23. Special care should be given to the handling of this information in line with the relevant GCF Legal Framework as well as the applicable contractual arrangements and obligations, since non-compliance thereto may expose the GCF to claims by data owners or any other relevant third parties.

#### 4.3.2 Infringement of IP rights

24. Any use of third party produced materials, including those freely available from the internet or other public sources, should be carefully vetted with the cooperation of the relevant GCF divisions, offices and units to ensure that there is no infringement of rights so that the Fund does not infringe upon the intellectual property rights of third parties.

25. To the extent that the Fund intends to use intellectual property owned by third parties, appropriate provisions should be included into the relevant contracts to ensure that the Fund has the right to use such intellectual property in the intended manner. Limits on the use of such intellectual property as may be set out in the relevant contract should be communicated to the relevant GCF Personnel, who shall be under a duty to respect such limits.

26. Measures to protect GCF's intellectual property should also be taken, including by, subject to budgetary and resource constraints, attempting to register any Fund-wide intellectual property it develops both in any international registers and in any relevant country.

#### 4.3.3 Loss, damage, injury, death arising from third party presence in, use of, GCF premises or assets

27. The Fund has its headquarters in Songdo, Republic of Korea, and is involved in activities, including events and official missions, and multiple Funded Activities in various countries. There may be instances where a third-party claims damages arising from injury or death due to the use or management of the Fund's premises, facilities or assets.

28. It is important to prevent and mitigate such risk by requiring that relevant health and safety measures are adhered to by users referred to above and that any potential safety violations are promptly reported through the appropriate channels and remedied. Clear health and safety rules and guidance should be put in place and monitored.

29. Furthermore, appropriate insurances should be maintained and regularly reviewed to ensure that the Fund is protected against such risks and any related third party claims and,

when possible, include limitations on the Fund's liability in procurement contracts or other arrangements that will involve third parties conducting work on the Fund's premises.

#### **4.3.4 Third party claims in connection with its procurement process**

30. When the Fund engages in procurement processes to select and source goods and services for the implementation of its activities and operations, such activities can increase the Fund's legal risk by, for example, having counterparties or unrelated third parties being considered employees or agents, or exposing the Fund to the errors and omissions of its counterparties. Furthermore, third parties that are not selected for a specific procurement contract may challenge the validity of the selection process.

31. Measures which may be implemented by the Fund include:

- (a) selecting the counterparties with care after conducting a sufficient level of due diligence;
- (b) entering into robust procurement contracts with the counterparties, that limit the Fund's liabilities and/or having adequate warranty and indemnity provisions, to the extent possible; and
- (c) regular reviews of the parties from which it procures goods and services, including express provisions stating that such procured party is not an agent or employee of the GCF.

#### **4.3.5 Third party claims in relation to GCF employment process and labour relations**

32. Legal risk may arise in the recruitment process for a position at the GCF when a person is not selected for a specific position or when the person challenges the validity of the selection process.

33. GCF Personnel involved in the recruitment process should adhere to the relevant GCF policies on hiring which are based on the principals of fairness, non-discrimination and equal opportunity.

#### **4.3.6 Third party claims in connection with Funded Activities**

34. Third party claims against the Fund in relation to its Funded Activities may arise from a variety of sources, such as residents of the relevant host country that allege harm from the implementation of a Funded Activity, or other parties involved in such Funded Activity that have claims against the relevant AEs or EEs.

35. Strict adherence to the Fund's integrity policies, undertaking appropriate due diligence, and complying with operational standards, and social and environmental safeguards, as set out in the applicable GCF Legal Framework, is essential to reduce these risks.

36. When complaints are filed with the IRM by persons alleging to be adversely impacted by GCF Funded Activities, it is in the interest of the Secretariat and relevant GCF Personnel to cooperate with the IRM with a view to resolving the complaint through problem-solving, and where problem-solving is unsuccessful, through compliance review. The Secretariat shall cooperate with the IRM in the discharge of its functions under its terms of reference in accordance with the IRM's procedures and guidelines.<sup>1</sup>

## **4.4 Breach of Procedures for Establishment of GCF Policies, Rules and Procedures**

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<sup>1</sup> Pursuant to Annex II to Decision B.22/22, as amended or supplemented from time to time.

37. Non-adherence to the procedural requirements of GCF (including, but not limited to, Administrative/Human Resources Policies and Procedures) in the development of new or amended policies, rules and procedures may result in unintended consequences such as:

- (a) Policies, rules and procedures that are inconsistent with the Governing Instrument or other policies, rules and procedures;
- (b) Legally unsound policies, rules and procedures, due to procedural flaws or substantive errors; or
- (c) Breach of, or inability to fully satisfy, GCF's obligations under the GCF Legal Framework or applicable contractual agreements, which may lead to the inability to give effect to new policies, rules or procedures or amendments thereto and/or give rise to liability risks for the GCF.

38. When the Secretariat and the Independent Units, within their respective competencies, propose policies, rules and procedures for the Board's consideration, and/or approve rules and procedures as needed for the implementation of the Governing Instrument, Decisions or the activities and operations of the GCF, it is essential that the procedures for development adhere to the procedural requirements established by the Fund. It is through these established procedures that the relevant divisions, offices and units review and comment on new policies, rules and procedures, and manage the multitude of issues which may arise, including legal risks.

39. In drafting policies, rules or procedures, or amending existing ones, it is important to clearly identify the hierarchy and/or interrelation between the proposed and existing policies in order to minimize any potential conflicts between them. Accordingly, all draft policies, rules and procedures, whether they are to be approved by the Board, or issued internally, should be subject to legal review, as necessary, prior to their submission to, and approval/adoption by, the Board.

## 4.5 Entering into Defective Contracts

40. Entry into defective contracts can result in significant legal exposure to the GCF. This can ultimately impact the viability of the transaction at hand or the ability of the Fund to conduct its day to day operations. A defective transaction referred in this paragraph includes but is not limited to:

- (i) Entering into a transaction which does not allocate rights and obligations and associated risks in the manner intended;
- (ii) Entering into a transaction which is or may be determined to be void or unenforceable in whole or with respect to a material part (for whatever reason);
- (iii) Entering into a transaction on the basis of representations or investigations which are shown to be misleading or false or which fail to disclose material facts or circumstances;
- (iv) Misunderstanding the effect of one or more transactions (for example, believing that a right of set-off exists when it does not or that certain rights will be available on the insolvency of a party when they will not);
- (v) Entering into a contract which does not, or may not, have an effective or fair dispute resolution procedure (or procedures for enforcement of judgements/arbitral decisions) applicable to it;
- (vi) Entering into a contract inadvertently; or
- (vii) Security arrangements that are, or may be, defective (for whatever reason).



#### 4.5.1 Enforceability and capacity

41. Entry into, or committing to enter into, a contract that is wholly or partially unenforceable may result in unintended legal risk, such as inability to exercise relevant legal rights.

42. Accordingly, the Fund shall require AEs to provide appropriate evidence confirming that the relevant legal agreements, including but not limited to AMAs, FAAs, subsidiary agreement(s), and any other applicable agreements, are legally binding, valid and enforceable in accordance with their terms and governing laws, as well as that the respective counterparties have their own legal personality and/or have capacity or are duly empowered to contract with the Fund. Such evidence may be obtained in the form of legal opinions or certificates, or equivalent legal arrangements.

43. Specific due diligence shall be applied when entering into contracts with certain counterparties, including political sub-divisions of a sovereign entity, that may not have legal capacity to enter into binding agreements in their own name and account.

44. Changes in laws can also impact the enforceability of a contract or the ability of the Fund to exercise its rights thereunder in the manner originally intended. Relevant contractual provisions should be included that require the counterparty to comply with the applicable laws and to inform the Fund of any event (including changes in law) that materially impairs their ability to perform their obligations and/or to implement the transaction in accordance with its terms.

#### 4.5.2 Use of template agreements

45. Development of appropriate legal agreement templates (in either for specific legal instruments/arrangements or AE-specific) will minimize risk of ad hoc and/or defective contracts, and OGC shall review and update such template agreements periodically to reflect any new GCF policies and operational requirements.

46. Deviations from template agreements when finalizing relevant legal agreements increase the risk of entering into defective contracts.

47. If in the course of negotiation of a legal agreement, a counterparty requests a deviation(s) from a template, such deviations shall be considered by OGC and other relevant divisions, offices and units on a case by case basis, taking into account the risks posed by the proposed deviation.

48. Before finalizing the relevant legal agreement, the Secretariat will ultimately determine whether the proposed deviation(s) from the template is/are consistent with the GCF Legal Framework and may decide to submit to the Board, for its consideration and approval, any deviation(s) from a template which is deemed to be inconsistent with a Decision.

### 4.6 Failure by Counterparties to Fulfil their Contractual Obligations

49. The GCF expects its counterparties to fulfil all their obligations under any applicable contract, as failure to do so may result in exposure to liability for the GCF.

50. In accordance with any applicable policies and procedures, including the Monitoring and Accountability Framework, and the relevant legal agreements, GCF shall monitor its counterparties' adherence to their contractual obligations, and any potential or actual breaches should be addressed in a timely manner. Any GCF Personnel becoming aware of such breaches, or events which may lead to a breach, by the counterparties should escalate the matter to their supervisor.



51. The Fund shall at all times act in accordance with its role as an operating entity of the financial mechanism under Article 11 of the United Nations Framework Convention on Climate Change. In case the Fund, with the approval of the Board, undertakes a more active role in the financing or implementation of Funded Activities, the Secretariat shall consider certain additional mitigants, including, amongst other measures, requiring privileges and immunities, acquiring relevant liability insurance policies, doing enhanced due diligence or enhanced monitoring and reporting on Funded Activities.

## **V. Exercise of Contractual Remedies by GCF under legal agreements**

### **5.1 Contractual Remedies for Breach of AMAs and FAAs**

52. AMAs and FAAs shall provide for the contractual rights and remedies that the GCF is entitled to exercise in case the counterparty breaches its obligations or upon the occurrence of other specified risk events. Prior to exercising any specific right or remedy, the Secretariat may, at its sole discretion, based on the relevant circumstances, take certain preliminary measures such as consulting with the counterparties, providing a cure period, warnings or taking other similar preventive measures, including providing a waiver of the relevant breach or amending the relevant legal agreement.

53. The Secretariat shall assess the breach and, if deemed relevant, may consult with the relevant Independent Unit(s), before implementing any remedial actions against the relevant counterparties in order to protect the interest of the Fund. Notwithstanding the foregoing, the exercise by the Fund of the following remedial actions shall be subject to prior approval of the Board:

- (a) Termination of the relevant legal agreement;
- (b) Initiation of legal proceedings against the AE;
- (c) Exercise of its rights to assume, or appoint a third party to assume, the contractual position of the AE under the relevant legal agreements with EEs or third parties, as applicable; and
- (d) Such other remedial action that the ED deems it necessary to be decided by the Board.

54. In respect of any other rights or remedies available to the Fund, the Secretariat shall decide on their exercise, as necessary and based on the relevant circumstances, to protect the interest of the GCF.

### **5.2 Contractual Remedies for Breach of Other Board-related Legal Agreements**

55. In relation to other legal agreements entered into with counterparties that have been selected by, or that are related to matters that have been approved by, the Board (including but not limited to the agreement with the Permanent Trustee of the GCF, or procurement of services decided on by the Board or a Board committee), the Secretariat (or Independent Unit, depending on the subject matter of such agreement) may decide on the exercise of any rights and remedies the Fund has available under the relevant legal agreements to effectively ensure compliance by counterparties with their respective obligations and to protect the interest of the Fund, except that the following remedial actions that shall be subject to prior approval by Board:

- (a) Termination of the relevant legal agreement; and

(b) Initiation of legal proceedings against the relevant counterparty;

unless the Secretariat has been delegated the authority to exercise such remedies. For the avoidance of doubt, the Board, or authorized Board committee, shall remain responsible for any remedy to be exercised under the letters of appointment of the Executive Director, and the Heads of the Independent Units, as well as under the consultancy contracts for the members of the independent technical advisory panel and the accreditation panel.

### 5.3 Contractual Remedies for Breach of Other Legal Agreements

56. In relation to legal agreements entered into with counterparties that have been selected by, or that are related to matters that have been approved by, the Secretariat or the Independent Units, as the case may be (including but not limited to any funding under the Readiness Programme or the Project Preparation Facility, procurement of goods and services, or letters of appointment or consultancy contracts of GCF Personnel, other than Board-appointed officials), the respective Secretariat's division or office, or the respective Independent Unit, who was responsible for the selection and approval of the relevant counterparty and legal agreement, shall decide on the exercise of any rights and remedies available to the Fund under the relevant legal agreement, following consultation with the Office of the General Counsel and any other relevant offices (such as the procurement unit and the Office of Human Resources).

57. Without prejudice to paragraph 56 above, the ED or the head of the Independent Unit, as the case may be, based on the relevant circumstances, may where they consider it appropriate refer the relevant action to the Board for consideration and approval.

## VI. Administrative Provisions

55. This Guidance comes into effect immediately.

56. This Guidance will be reviewed and amended on a biennial basis to reflect lessons learnt from key sources of legal risks and success or failure of the mitigation measures so implemented to address the legal risks, as well as to reflect any revisions to the RMF, as appropriate.

57. Legal risk is managed within a control environment and as per the COSO framework that the Fund adopted. Ownership of legal risk will be determined with consideration of organisational structure and where the expertise to manage legal risk resides and this will be detailed in the RMF.

58. Any amendment to this Guidance will require approval by the ED.

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