GUIDANCE NOTE

LEGAL GUIDANCE FOR PREPARING SECTIONS C.4 AND C.5 OF FUNDING PROPOSALS

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INTRODUCTION

This Guidance Note ("**Note**") aims to facilitate access to GCF funding by providing guidance on the legal aspects of funding proposal development. To that end, this Note serves as a companion for preparing and drafting the sections of the funding proposal that describe the activities and the legal and implementation arrangements for the proposed project or programme. This Note covers legal matters only and is intended to build on, and not replace, existing information relating to the GCF project and programming cycle.

This Note applies to funding proposals submitted under the proposal approval process (**PAP**), simplified approval process (**SAP**) and, except where otherwise specified, the project-specific assessment approach (**PSAA**), and therefore it is intended to be used by both institutional accredited entities and PSAA applicants. In this Note, both institutional accredited entities and PSAA applicants are referred to as "**Applicants**".

Section I provides guidance for the description of the activities to be undertaken under the proposed project/programme, with a focus on the aspects that are relevant to the legal review of the funding proposal. Section II provides guidance for the legal and implementation arrangements.

Each section is divided into further topics and includes drafting notes, which are highlighted in boxes, that anticipate common questions that arise during the funding proposal review process.

Role of Executing Entities in GCF-funded projects and programmes

The Applicant may structure the project/programme so that activities are implemented by other parties. **Executing Entities** are legally distinct entities:

- That execute, carry out or implement a project/programme or part thereof; and/or
- Through which GCF funds are channelled or used for the purposes of the project/programme or part thereof.

The Applicant itself may be an Executing Entity for all or part of a project/programme. Note that a contractor or service provider which is procured by the Applicant or an Executing Entity, in accordance with the Applicant's procurement rules, would not ordinarily be an Executing Entity, unless that contractor or service provider will channel GCF funds to other parties involved in the project/programme (for example, to intermediaries, beneficiaries or sub-borrowers).

Institutional accredited entities should also refer to the definition of "Executing Entity" and the requirements for assessing Executing Entities in their accreditation master agreement (**AMA**) or in the Standard Conditions available on GCF's website (**Standard Conditions**). PSAA applicants should refer to their PSAA Applicant Introduction Letter available through the GCF focal point for the PSAA funding proposal.

Section I. Activity Description

Overview

The guidance in this section is applicable to Section C.4 of funding proposals.

The proposed activities for the project/programme should be clearly and succinctly articulated in this section, and subject to the stated word limits for funding proposals. Clarity and specificity are particularly important, as the implementation of the described activities will form the core legal obligation of the Applicant (as opposed to achieving the expected results or impacts). A sufficiently clear description will therefore help to expedite the funding proposal review and subsequently the signing of the funded activity agreement for the project/programme.

Description of actions

For each component, sub-component, activity, etc. of the proposed project/programme, the Applicant should include a clear summary of who is doing what and, if relevant, for whose benefit. This requires identifying:

1. The parties that implement the activities, particularly the Executing Entity(ies);
2. The specific actions to be performed under the relevant component, sub-component, activity, etc., or the eligibility criteria that will be applied to determine the specific types of interventions in case these will be identified during the course of implementation; and
3. The beneficiaries of these activities (if any).

Note 1: Where there are multiple entities involved in implementation of activities, including in a chain of entities, the funding proposal should briefly describe the role of each entity. The funding proposal should distinguish between entities which are only channeling GCF funds (with no role in implementation of any activities), and those which are implementing the actions under the component, sub-component, activity, etc.

Financial instruments

For each component, sub-component, activity, etc. of the proposed project/programme, the Applicant should identify the financial instrument(s) that will be used (e.g., non-reimbursable grants, loans, equity investments, etc.). The financial instruments should be specified for both GCF funds and any other financing (which may be in-kind) that is required in order to implement the proposed project/programme. Such other financing is referred to as "**co-financing**", and the parties providing co-financing are referred to as "**co-financiers**".

The description of the financial instruments should make clear what the GCF funds and any co-financing will finance.

Eligibility and selection criteria

In cases where an Executing Entity will determine where, how, for whom, and what type of activity will be implemented, the Applicant should provide clear, specific and objective eligibility or selection criteria for the Executing Entity to use in determining or selecting (as relevant):

- Locations of activities;
- Types of activities;
- Beneficiaries, sub-projects, borrowers/sub-borrowers and/or investees; and
- Investment policy (for equity investment funds).

Alternatively, the criteria can be set out in other documents (e.g., in a feasibility study) and cross-referred to in the funding proposal, but the criteria should nonetheless be included in the term sheet annex to ensure alignment of terminology between the criteria and, later, the funded activity agreement. This alignment helps the Applicant and the GCF to mitigate risk due to lack of legal certainty.

Note 2: In keeping with the strict word limits for funding proposals, please avoid including long narrative background descriptions.

Note 3: Names and descriptions of components, sub-components, activities, etc. should be consistent across the relevant sections and annexes of the funding proposal, the budget, the implementation plan, and the activities section of the logical framework.

Section II. Implementation Arrangements

Overview

The guidance in this section is applicable to Section C.5 of funding proposals.

This section of the funding proposal should describe the proposed legal and governance arrangements for the project/programme, in particular the arrangements between the Applicant and the Executing Entities, and between Executing Entities and beneficiaries. Refer to the Introduction for guidance on identifying the Executing Entities.

Note that where the Applicant is not the Executing Entity for an activity under the project/programme, the Applicant should generally have a legal agreement with each Executing Entity. Agreements between the Applicant and the Executing Entities are referred to as **Subsidiary Agreements**. Institutional accredited entities should also refer to the definition of "Subsidiary Agreements" and the requirements for Subsidiary Agreements in their AMA or in the Standard Conditions. In certain cases, when it is not possible for the Applicant to contract directly with each Executing Entity, the relevant project/programme structure may involve a chain of Executing Entities. Refer to the "Contractual arrangements" section below for more details.

Description of each Executing Entity and its legal status

The funding proposal should provide a summary description of each Executing Entity for the project/programme, including the following information:

1. Full legal name;
2. Legal form;
3. A brief summary of the Executing Entity's legal status, including jurisdiction of incorporation and capacity of each of the Executing Entities to enter into contracts independently; and
4. Whether the Applicant will also act as the Executing Entity, or whether there will be entities other than the Applicant that will act as Executing Entities for all or part of the project/programme.

The funding proposal should summarize the above information regarding Executing Entities. More detailed information on the Executing Entities' individual legal personality and authority to act, receive and disburse GCF funds and enter into contracts independently, along with extracts of the relevant statutes or regulations, should be covered in the legal due diligence annex to the funding proposal. Refer to the template legal due diligence annex (Annex 4 to the funding proposal template) available on GCF's website.

Note 4: In some countries, the law may require international financing to flow through a specific ministry or the national treasury. In such cases, the relevant ministry/governmental body would be considered an Executing Entity. Details of the national laws or regulations applicable to the flows of GCF funds and/or co-financing should be explained in the legal due diligence annex (Annex 4 to the funding proposal), rather than in the main body of the funding proposal.

Note 5: If a governmental ministry or body is responsible for project implementation as an Executing Entity, Applicants should confirm whether the ministry or body has a separate legal personality from the government of the host country. In many cases, the ministries or bodies established under the government do not have a distinct legal personality from the government as a whole. In such situations, the Executing Entity should be described as follows: "*Government of the [insert name of the Host Country] (acting through [the Ministry of XXX]/[Ministry responsible for [XXX]]/[agency name]) shall act as the Executing Entity*".

Roles and responsibilities of each Executing Entity

The funding proposal should describe the responsibilities of each Executing Entity in respect of each component, sub-component, activity, etc. If there is more than one Executing Entity for the project/programme, consider setting out their roles and responsibilities in the following tabular format for ease of review:

Component	Sub-Component	Activity	Executing Entity
Component 1	Sub-Component 1.1	Activity 1.1.1	[insert name of the Executing Entity]
		Activity 1.1.2	
	Sub-Component 1.2	Activity 1.2.1	
		Activity 1.2.2	

Note that the table above is for illustrative purposes. The headers in the table should be tailored based on the grouping and organization of activities for the relevant project/programme.

Note 6: When an activity is implemented by more than one Executing Entity, the Executing Entities may need to be jointly and severally responsible for the implementation of the activity. If an Executing Entity cannot accept joint and several liability, one way to address this issue is to detail the specific roles and responsibilities of each Executing Entity for the relevant activity, so that the responsibilities of each Executing Entity are clearly distinct. For example, the description of Executing Entities for an activity can specify that one entity is solely responsible for managing funds, while another entity is solely responsible for activity implementation, or the activity can be divided into sub-activities.

Contractual arrangements

For each component, sub-component, activity, etc. of the project/programme, section C.5 of the funding proposal should describe the contractual arrangements to be put in place. Section C.5 of the funding proposal should provide a summary of the contractual arrangements, while lengthier details should be included in the legal due diligence annex to the funding proposal (Annex 4 to the funding proposal). The arrangements to be summarized in the funding proposal include the following:

1. **Funded Activity Agreement (FAA) between GCF and the Applicant**: State the type of financial instrument(s) that the Applicant is requesting from the GCF and the proposed legal/contractual relationship between the GCF and the Applicant under the FAA. The GCF can provide financing through both reimbursable financial instruments (e.g., loans, equity investments, reimbursable grants, guarantees and sub-participation) and non-reimbursable financial instruments (e.g., non-reimbursable grants).

   For example, if the requested GCF funding is a non-reimbursable grant, the FAA will typically be in the form of a grant agreement. If the requested GCF funding is a loan, the FAA will typically be in the form of a loan agreement.

   In some instances, the FAA may be in the form of a trust arrangement, where the Applicant is the trustee of the GCF funds. This is most commonly used in the case of equity investment programmes and for some multilateral development banks and other international organizations. As an example, a trust arrangement used for an equity investment could involve establishing a trust under the FAA, with the Applicant acting as trustee of the GCF funds and investing the funds in the Applicant's name into the entity investments being financed under the programme. Equity investments may also be structured as a direct investment by GCF (with or without a feeder SPV) and/or without a trust arrangement, based on the local law considerations and commercial needs and preferences.

   Note 7: When multiple types of financial instruments are requested, a single FAA may be able to cover all financial instruments. This should be discussed with GCF during the funding proposal review process.

2. **Subsidiary Agreements**: Describe the contractual arrangements to be put in place between the Applicant and each Executing Entity to ensure that relevant obligations under the AMA or Standard Conditions (as applicable) and/or FAA will be implemented and enforced in the project/programme. Indicate the financial instruments between the Applicant and each Executing Entity (if any), as well as the form of the Subsidiary Agreement (for example, loan agreement, grant agreement, etc.). Refer to the legal due diligence template available on GCF's website for examples of Subsidiary Agreements under different programme structures (e.g., grants, trust arrangements, equity investments, etc.). Applicants that are institutional accredited entities should also refer to the definition of "Subsidiary Agreements" and the requirements for Subsidiary Agreements under their AMA or the Standard Conditions.

   In some cases, the relevant project/programme structure may involve a chain of Executing Entities where it is not possible for each Executing Entity to contract directly with the Applicant for the purposes of ensuring that the relevant AMA or Standard Conditions (as applicable) and/or FAA obligations are directly passed down to each Executing Entity. In these cases, the Applicant would enter into a Subsidiary Agreement for this purpose with at least one Executing Entity, which would then contract with the next Executing Entity in the chain, and so on. Each contract between two Executing Entities is considered an "**EE Agreement**", and the EE Agreements together with the Subsidiary Agreements are known as "**Covered Agreements**".

   The GCF does not prescribe any particular format or template for Subsidiary Agreements or EE Agreements, since these agreements are specific to the project/programme and the Applicant.

Note 8: There may be additional agreements between Executing Entities that are not Covered Agreements, as defined above. The difference between Covered Agreements and such other agreements lies in whether the agreement will contain the legal obligations for the relevant Executing Entity to ensure compliance with the requirements under the AMA or Standard Conditions and/or FAA, as relevant. Although they are not Covered Agreements, such agreements may still contain important provisions that are relevant to GCF's rights as a financier, and accordingly there may be requirements related to such other agreements, particularly for equity investments.

3. **Project/programme-specific agreements and downstream agreements**: Describe project/programme-specific agreements, as well as agreements to be entered into between Executing Entities and other parties in the project/programme (e.g., beneficiaries, service providers, etc.). For example:

   a. For equity investments where GCF directly or indirectly invests in a fund vehicle, provide details of the structure and jurisdiction-specific agreements required for the investment structure (e.g., investment management agreement, subscription agreement, limited partnership agreement, side letters, etc.). Refer to the legal due diligence template for more details.

   b. For credit facilities where lending to beneficiaries is done by Executing Entities (e.g., local financial institutions), state the legal nature of the financing agreements between the Executing Entities and the beneficiary sub-borrowers (e.g., loan agreements, letters of credit, etc.). If GCF or a third-party financier of the credit facility will be requested to guarantee all or part of the sub-loans, provide details of the guarantee arrangements.

   c. For financing of an energy or infrastructure project through a project finance structure, state the set of expected legal agreements for the project (e.g., EPC contracts, operations and maintenance agreements, power-purchase or other off-take agreements, etc.).

4. **Co-financing agreements**: Describe the nature of the contractual arrangements between the Applicant and the co-financiers for the project/programme, or the way in which the relevant co-financing, if not flowing through the Applicant, will be legally committed to the relevant project/programme, as well as the expected timing for co-financing to be committed.

   If it is difficult to depict in the funds flow diagram (see the following section "Flow of funds and implementation arrangements"), describe the flow of funds in respect of the co-financing. For example, if the funds flow diagram does not provide sufficient space to show co-financing flows, explain in text whether the co-financing will be provided by the co-financier directly to the beneficiaries, or whether the co-financing will instead be provided to the Applicant or an Executing Entity for further disbursement to beneficiaries or for activities.

   The co-financing commitment letters provided as Annex 15 to the funding proposals would not ordinarily qualify as "co-financing agreements" or evidence of co-financing being "legally committed".

5. **Technical assistance agreements**: Describe whether the Applicant or Executing Entity will enter into any technical assistance agreements, or other arrangements, to provide technical assistance to the beneficiaries.

Note 9: The project/programme implementation arrangements and structure should be clearly described in the funding proposal. For multi-country programmes, the specific implementation structure for individual sub-projects is often not known to the Applicant at the time of preparation of the funding proposal, since there may need to be some flexibility during project implementation. In such cases, the funding proposal should describe indicative project structures in each country, as well as the implementation arrangements and Executing Entities envisaged for the projects and sub-projects in each country. Note that any change to the structure or change in Executing Entities after GCF Board approval of the project/programme will be assessed under GCF's Policy on Restructuring and Cancellation.

Note 10: It is not necessary to list procurement contracts in the funding proposal. For institutional accredited entities, the AMA and Standard Conditions specify that the accredited entity will apply its own procurement policies and procedures, which were assessed at accreditation, in the implementation of the project/programme. PSAA Applicants are also typically expected to apply their own procurement policies and procedures, subject to the assessment of the PSAA Applicant.

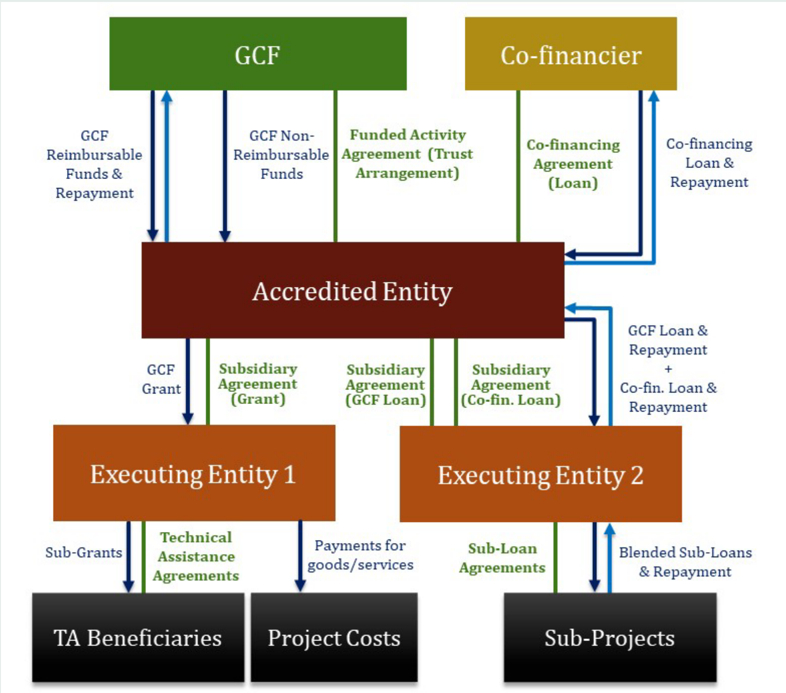
Flow of funds and implementation arrangements

Section C.5 of the funding proposal should include a diagram setting out the following:

1. **Flow of funds** from GCF and the co-financiers to the Applicant, the Executing Entities, beneficiaries and any other parties receiving funds; and
2. **Contractual arrangements** as described in this section.

The diagram should be consistent with the description of the activities, financial instruments and legal implementation arrangements. If the project/programme involves any financial reflows, the reflow of funds from the project/programme to the GCF and any co-financiers should also be included in the diagram.

The diagram below provides an example of what the funds flow and implementation arrangements diagram should show. In this example, GCF funds are requested in the form of a non-reimbursable grant and a loan, and co-financing is also provided in the form of loans.



Note 11: The detailed commercial terms and conditions pertaining to GCF's investment should be included in the term sheet rather than in the funding proposal. Projects/programmes with highly complex funds flows and/or implementation arrangements, or which have different arrangements for different components/sub-components/activities etc., may need more than one diagram.

Note 12: A separate written description of the flow of funds is not required, provided that the funds flow is sufficiently clear in the diagram and/or explained as part of the description of contractual arrangements. It is therefore important to depict the flow of funds clearly in the diagram.

Governance arrangements

The funding proposal should summarize the governance arrangements to oversee and direct the project/programme. This may include:

1. Description of any governance bodies, such as the project steering committee, technical committee, project management unit and/or limited partner advisory committee (for equity investment funds); and

2. Envisaged composition of the decision-making body and oversight structure for the project/programme. For example, in the case of equity investment funds, Applicants should include the proposed composition of any governance body, such as a limited partner advisory committee, investment committee, or other committees with decision-making authority, to the extent known.

For each governance body/committee, Applicants should identify the areas over which it is envisioned to hold authority. If the Applicant anticipates that the GCF will have a role in such bodies or committees, the role should be described in this section.

The governance arrangements may be best presented through a diagram.

In some cases, a governance body or committee may exercise a decision-making role. For instance, a committee might be responsible for approving work plans and annual budgets, selecting beneficiaries or eligible activities, or making other decisions regarding project/programme implementation. In all such cases, the Executing Entity(ies) must retain final approval authority over, or take responsibility for, the decisions made by the relevant governance body or committee. This should be clearly stated in the funding proposal.

Note 13: The funding proposal should clarify which legal entity is responsible for establishing, hosting and managing the different governance bodies and committees and is therefore accountable for its decisions and actions.

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