

## Annex VI: Policy on restructuring and cancellation

### I. Introduction: Scope and application

1. **Scope.** This policy on restructuring and cancellation (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 appropriate;
- (b) A request for an extension of the time frame established by the accreditation master agreement or the Approval Decision (as defined below) to fulfil the conditions to be met prior to the execution of the FAA;
- (c) A request for a waiver of a condition imposed in the Approval Decision;<sup>1</sup> and
- (d) A request for a change to an approved funding proposal or restructuring of a funded activity.

2. **Country Ownership:** This Policy shall be implemented in accordance with the GCF’s policies on country ownership, including the Guidelines for Enhanced Country Ownership and Country Drivenness<sup>2</sup> or any successor guidelines.

3. **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 activities financed under the Readiness and Preparatory Support Programme and the Project Preparation Facility. This Policy does not address the GCF decision-making process in connection with breaches of legal agreements. The application of this Policy shall be without prejudice to the continued application of the relevant standards and policies of the Fund, including, without limitation, in relation to disclosure and environmental, social, gender and indigenous peoples safeguards, recognizing that where applicable, provisions that apply to “funding proposals” in such standards and policies are interpreted to apply to proposed Major Changes (as defined below) as well.

4. **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;

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<sup>1</sup> See decision B.17/09, annex IV.

<sup>2</sup> Decision B.17/21, annex XX

- (h) **“Major Change”** has the meaning given to it in paragraph 16;
- (i) **“NDA/FP”** means national designated authority or focal point, as applicable;
- (j) **“Period”** means the period within which a certain action or event shall occur, as established in the AMA, the Approval Decision, or any extension decision as specified in the Policy, as applicable;
- (k) **“Restructuring”** means any modification to a funded activity after the execution of the FAA;
- (l) **“Secretariat”** means the Secretariat of the Green Climate Fund; and
- (m) **“Waiver”** means:
  - (i) a relinquishment of a condition set forth in the Approval Decision,
  - (ii) a material deviation from a condition set out in the relevant funding proposal or the term sheet, or
  - (iii) a deviation from any other condition (other than those described in paragraph (m)(ii) above) set forth in the Approval Decision.

## II. Changes prior to FAA execution

### 2.1 Failure to fulfil conditions

5. **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 AE, the NDA/FP and the Board and adjust the Fund’s commitment authority accordingly.

### 2.2 Extension of the Period for fulfilment of conditions

6. **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 results in an extension of the relevant deadline to enter into the FAA.

7. **Authority.** If an AE requests an extension pursuant to paragraph 6, 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.

8. The duration of the extension period shall be determined by the Secretariat; provided that the duration of any extension period approved by the ED shall not be longer than the duration of the period originally established by the Board for the fulfilment of the relevant condition(s).

9. The ED may grant only one extension; any subsequent extensions, if requested by the AE, shall be considered for approval by the Board. If such a subsequent request is made, the extension approved by the ED shall be deemed extended to one day after the last day of the next occurring Board meeting.

10. If the ED does not approve the initial request for an extension, the extension request may, at the request of the AE, be submitted to the Board for consideration alongside the Secretariat’s assessment, setting out the reason(s) for the decision of the ED, and the Period

shall be deemed to be extended to one day after the last day of the next occurring Board meeting.

11. **Procedure for an extension:**

- (a) The AE must submit a written request to the Secretariat, and as appropriate in consultation with the NDA/FP, utilizing the relevant template, together with evidence supporting the reasons for requesting the extension, and its assessment of the potential for changes (or not) in circumstances, market conditions and/or underlying rationale for the project before the proposed deadline;
- (b) The AE should submit the complete request no less than 30 calendar days prior to the expiry of the existing Period established for fulfilling the conditions, unless there is a clear reason for a later submission and shall inform the NDA/FP at the time of submitting such request. An AE shall not be entitled to request an extension to the ED or the Board if such request is submitted after the expiry of such Period;
- (c) Subject to paragraph (b) above, the Secretariat will assess the complete request upon receipt and, within 10 business days:
  - (i) If within the authority of the ED, determine whether or not to grant such an extension; or
  - (ii) If within the authority of the Board, refer the request for extension to the Board.
- (d) If the extension is approved either by the ED or by the Board, such a decision will be communicated to the AE and the NDA/FP, where possible prior to the expiry of the relevant Period for fulfilling the condition; and
- (e) If the request for extension is rejected either by the ED or by the Board, the Secretariat shall notify the AE and the NDA/FP.

## 2.3 Changes

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

13. **Information requirement.** If the AE, in consultation with the NDA/FP, proposes a change that is likely to constitute:

- (a) A Major Change; or
- (b) A change (other than a Major Change) that would otherwise require:
  - (i) The consent of GCF pursuant to the terms of the relevant accreditation master agreement, funded activity agreement or other relevant agreement to which the GCF is a party; or
  - (ii) The consent of the GCF under the AE's own policies,

the AE shall be required to notify the Secretariat in writing of the relevant change, and such notification shall include written evidence of the consultation with the NDA/FP.

14. If the proposed change falls within, or may fall within, paragraph 13 above, 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 as approved.

15. **Determination.** The Secretariat will in consultation with the AE assess the restructuring proposal and determine whether the change falls within paragraph 13 above. The Secretariat will determine within 14 calendar days, or such longer period as maybe required to gather additional information and engage with the AE and other stakeholders as appropriate, whether the proposed change fulfils the requirements to be considered a Major Change within the scope of this Policy, as set out below.
16. Without limiting the relevant provisions in the relevant legal agreements, a change will be deemed to be a Major Change if any of the following are proposed:
- (a) Any changes that would render the project/programme inconsistent with the GCF mandate and business model;
  - (b) A change in the scope of the project/programme which would result in a material and adverse deviation from the intended objectives or outcomes that the AE seeks to achieve from the implementation of the relevant project/programme, in particular its climate and/or environmental outcomes as set out in the funding proposal or FAA;
  - (c) The assignment or transfer of all or a material part of its responsibilities to another AE;
  - (d) A change of an executing entity that would have a material effect on the implementation of the project/programme;
  - (e) Any change that would have a material and adverse impact on the ability of the executing entity to operate the relevant project/programme, including a material and adverse change in the legal status of an executing entity which has a material and adverse impact on the implementation of the project/programme;
  - (f) Any change to the pricing of the GCF proceeds for the project/programme that deviates from the Board-approved parameters;
  - (g) Any material and adverse change in the pricing and financial structure of the project/programme;
  - (h) Any change in a project/programme that results in a change in the environmental and social safeguards category from a lower to a higher category, or changes within a category that would trigger additional safeguards standards to be applied or require additional due diligence;
  - (i) A delay in the completion of the project/programme or its major components that materially and adversely affect the achievement of the intended outcomes;
  - (j) Other changes such as may be expressly set out as a Major Change in the Approval Decision; and
  - (k) Any other event or proposed modification that constitutes a 'major change' in the relevant legal agreements.
17. The determination of whether a 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.
18. If the proposed change is determined by the Secretariat not to be a Major Change, the ED shall have the authority to approve such change and the Secretariat will then require the AE to undertake appropriate actions.
19. **Procedure for approval of Major Change.** Upon determination by the Secretariat of a change as a Major Change:

- (a) The AE shall consult with the NDA/FP and seek written confirmation from the NDA/FP whether the restructuring proposal affects the status of the funding proposal no-objection letter;
  - (b) If the NDA/FP confirms that the restructuring proposal affects the status of the funding proposal no-objection letter, the AE shall seek a new no-objection letter from the NDA/FP in respect of the restructuring proposal and submit a copy of the new no-objection letter to the Secretariat;
  - (c) If the NDA/FP confirms that the restructuring proposal does not affect the status of the funding proposal no-objection letter, the AE shall submit a copy of such confirmation to the Secretariat;
  - (d) If the NDA/FP does not confirm whether the restructuring proposal affects the status of the funding proposal no-objection letter within 30 calendar days of the date on which the AE presented the restructuring proposal to the NDA/FP, the NDA/FP shall be deemed to have confirmed that the restructuring proposal does not affect the status of the funding proposal no-objection letter (unless, prior to the end of such 30 day period, the NDA/FP has informed the AE of the need for additional time, in which case such period shall be extended by up to an additional 30 calendar days), and the AE shall confirm the same to the Secretariat in writing; and
  - (e) Following receipt of a new no-objection letter or a confirmation pursuant to paragraph 19(b), (c) or (d), the Secretariat shall within 30 calendar days prepare a Board document, annexing the restructuring proposal that may include any updates of the environmental and social due diligence pursuant to the GCF Environmental and Social Policy, the new no-objection letter or relevant confirmation, together with its assessment and recommendation for the Board's action either through a decision taken at the next Board meeting, or through a decision between meetings in accordance with the Rules of Procedure of the Board.
20. **Approval of Major Change.** If the Board approves the Major Change, the FAA will reflect the changes as approved by the Board and, the Secretariat will inform the NDA/FP.
21. **Non-approval of Major Change.** If the Board does not approve a Major Change, the AE will either:
- (a) Proceed on the basis of the existing Approval Decision; or
  - (b) Withdraw the FP, after informing the NDA/FP.
22. **Cancellation.** Should the AE not undertake either of the actions set out in paragraph 21 within 120 calendar 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 AE, the NDA/FP and the Board and adjust the Fund's commitment authority accordingly.

## 2.4 Waiver of conditions

23. **Waiver request.** An AE, in consultation with the NDA/FP, may request a Waiver.
24. **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.
25. If the ED declines to approve a Waiver referred to in paragraph 24, the request for a Waiver may, at the request of the AE, be submitted to the Board for its consideration alongside the Secretariat's assessment, setting out the reason(s) for the decision of the ED.

26. **Procedure for a Waiver.** Paragraph 11 shall apply *mutatis mutandis* in respect of requests for Waivers, provided also that the AE submits written evidence of its consultation with the NDA/FP.

### III. Restructuring after FAA execution

#### 3.1 Waiver and extension of Board-approved conditions

27. **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.

28. **Alignment.** Section II, 2.2 (Extension of the Period for fulfilment of conditions) and 2.4 (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.

#### 3.2 Restructuring

29. **Timing.** A Restructuring can occur after the execution of the FAA.

30. **Treatment.** If the AE, in consultation with the NDA/FP, proposes a Restructuring, paragraphs 13-19 of Section II, 2.3 (Changes) shall apply *mutatis mutandis*.

31. **Approval of Restructuring.** If the proposed Restructuring is approved by the ED or the Board, as appropriate, the Secretariat will take the necessary measures to enter into appropriate legal arrangements with the AE to give effect to such approval.

32. **Non-approval of Restructuring.** If the proposed Restructuring is not approved by the ED or the Board, as appropriate, the Secretariat will take the necessary measures under the relevant legal agreement with the AE.

33. The Secretariat shall promptly inform the relevant NDA/FP of an approval or non-approval of a Restructuring.

### IV. Reporting, effective date, and review

34. **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, Restructuring or extension as well as any cancellations that occur under the Policy.

35. **Effective date.** The Policy is effective from the date of the Board decision adopting the Policy.

36. **Review:** The Board shall review the implementation of this Policy after 3 years of implementation.