ADAPTATION FUND

AFB/EFC.24/3
27 February 2019

Adaptation Fund Board
Ethics and Finance Committee
Twenty-fourth meeting
Bonn, Germany, 12-13 March 2019

Agenda item 4

IMPLICATIONS OF THE REORGANIZATION OF AN IMPLEMENTING ENTITY

Background

1. During its 27th meeting held in February 2018, as part of the discussion on updated re-accreditation policy, the Accreditation Panel (the Panel) discussed the issue of how to address, in the context of accreditation and re-accreditation, the situation where an implementing entity (IE) ceases to exist due to legal, institutional and/or organizational changes. It concluded that if the IE ceases to exist and becomes a new entity through, inter alia, legal, institutional and/or organizational changes, the IE will need to pursue an accreditation as a new applicant rather than re-accreditation as a successor IE. The Panel was of a view that it will conduct an assessment, on a case-by-case basis, to determine whether the re-organized entity needs to pursue a re-accreditation process as a successor IE or an accreditation process as a new applicant.

2. At its 23rd meeting, the Ethics and Finance Committee (EFC) discussed the issue of implications of IE reorganizations following a proposal by a member of the EFC. Taking note of possible different forms and/or types of IE reorganization, ranging from a simple name change to a more complex change in legal status or even elimination of the National Implementing Entity (NIE), the EFC recommended that the Adaptation Fund Board (the Board) request the secretariat in collaboration with the Panel to prepare guidance on how such cases would be dealt with, to clarify the question for both the Board and the IEs.

3. At its thirty-second meeting, considering the EFC recommendation, the Board decided on the matter of implications of IE reorganization as follows:

> *Having considered the comments and recommendations of the Ethics and Finance Committee (EFC) regarding the possible implications of the reorganization of a national implementing entity for project implementation and its accreditation and/or re-accreditation, the Adaptation Fund Board decided to request the secretariat, in collaboration with the Accreditation Panel, to prepare and submit a background document reflecting specific cases to the EFC for consideration at its twenty-fourth meeting, as well as options for dealing with cases where the national implementing entity is reorganized.*
>
> *(Decision B.32/37)*

4. The present document has been prepared following the request made through decision B.32/37.

Implementing entity's reorganization and its implications

5. As at 5 February 2019 the Adaptation Fund (the Fund) had dealt with three cases where changes to accredited implementing entities had occurred. More details on how each case has been dealt with are elaborated further under the following 'case study' section prepared in collaboration with the Panel. Acknowledging that it is difficult to describe and predict all the possible situations, forms and/or types of reorganization of an implementing entity, the document

aims to provide more predictability and consistency to the process on how the Fund deals with reorganization of an IE considering its implications on project implementation and accreditation and/or re-accreditation process. Therefore, the examples related to the assessment and procedures to be involved intend to serve as an indicative list, rather than an exhaustive list.

6. IE's reorganization would affect the Fund's operation in terms of (i) project implementation and (ii) accreditation and/or re-accreditation process. When an IE does not have any project financed by the Fund as of the date of its reorganization, the Fund would only need to address the aspect of accreditation and/or re-accreditation process of the re-organized entity. However, when an IE has project(s) financed by the Fund, the Fund would need to deal with the implications of IE reorganization in terms of both accreditation and/or re-accreditation process and project implementation. It is noteworthy that the process to address the implication on project implementation will not prejudge the process to address the implications on accreditation and/or re-accreditation and vice versa and the processes can be followed simultaneously.

(a) Process to address the implications on project implementation

7. This process is triggered if the reorganized entity has a project financed by the Fund at the time of its reorganization. The secretariat, in collaboration with the trustee as appropriate and necessary, will assess the implications on the project implementation, and propose to the Board necessary action, such as preparing relevant draft decisions to authorize the reorganized entity to serve as a successor IE in terms of the ongoing Fund's project implementation, amendment to the project agreement between the Board and the IE, pending disbursement of the Fund's grants to the IE, transfer of responsibilities and liabilities related to the project financed by the Fund. The Panel will unlikely be involved unless the circumstances related to the Fund's project implementation require the Panel to conduct an assessment on whether the essential capacities, systems, and policies that the IE demonstrated to have at its accreditation have been substantially weakened in the re-organized entity due to the reorganization.

8. As further elaborated under the later section of *Case 002*, in this process, the Board decision may be needed to authorize the reorganized entity to assume the implementation role, all relevant responsibilities, obligations and liabilities of the IE, on an exceptional basis and with the goal of minimizing further delay to the completion of the ongoing Fund project, and to approve the steps required to make necessary arrangements related to project(s).

(b) Process to address implications on accreditation and re-accreditation process

9. This process will not be involved when the changes to the IE are confined to its name. After the secretariat verifies the IE's name change, the re-named IE will pursue re-accreditation. However, when it comes to the reorganization of the IE which goes beyond a name change, the Panel's assessment will be required to determine whether or not the re-organization of the IE led to a material change in terms of its legal, institutional and organizational aspects so that the essential capacities, systems, and policies that the IE demonstrated to have at its accreditation have been substantially weakened in the re-organized entity due to the reorganization. A

reorganization of an IE may occur due to, inter alia, its dissolution or division, or a merger, or affiliation with, or acquisition of or by, another entity.

10. The conclusions of the Panel's assessment could come in two types:

- R*e-organized entity is eligible to pursue re-accreditation process as it is deemed as successor IE*: When the Panel's assessment finds that the essential capacities, systems, procedures and policies that the IE demonstrated to have at its accreditation stage have not been substantially weakened in the re-organized entity, the re-organization will be considered 'non-material change' to the IE, and the re-organized entity will be recognized as a successor IE which is eligible to pursue re-accreditation;

- *Re-organized entity needs to pursue 'accreditation' as a new IE applicant*: When the Panel's assessment finds that the essential capacities, systems, procedures and policies that the IE demonstrated at its accreditation stage have been substantially weakened in the re-organized entity, the re-organization will be considered 'material-change,' and the re-organized entity will need to apply for accreditation as a new IE applicant.

Four scenarios of IE reorganization

11. For convenience of the analysis on possible implications of IE's reorganization vis-à-vis the Fund, the situation of IE reorganization can be categorized into four scenarios as in the table1 below, and possible steps to be taken for each scenario will be elaborated upon in the subsequent paragraphs.

<Table 1: Four scenarios of IE reorganization>

Type of changes to IE / Type of IE	**Name change**	**Beyond name change** (due to legal, institutional and/or organizational changes)
IE with no AF project	Scenario (A)	Scenario (C)
IE with AF project	Scenario (B)	Scenario (D)

Scenario (A): Name change of IE with no AF project

12. When the change to the IE which does not have a Fund project, involves only its name, the re-named IE is deemed a successor IE. This will be verified by the secretariat through supporting documents and as an outcome, the re-named IE is eligible to pursue re-accreditation rather than accreditation. The process to address implications on the project implementation is not required as the IE does not have received any grants from the Fund.

13. The IEs have so far communicated their (actual or possible) reorganization and/or name change to the secretariat through informal and official communication channels. Upon the receipt of an official communication from the IE or its Designated Authority (DA) on the IE's name change, the secretariat will initiate a verification process. In the verification process, the IE is expected to submit supporting documents to evidence its name change. The supporting documents to be submitted by the IE would depend on the IE's organization type, and the indicative list of examples are as follows:

- *Government entity, political subdivision, instrumentality of government*: documentation from the government unit that created the entity showing the (new) name of the re-organized entity (e.g., decree, act, ministerial order, etc.), a letter signed by a person authorized by the creating government unit, and/or any official or public material which announces the name change;
- *Incorporated organization*: a copy of the amendment to the Articles of Incorporation and/or proof of filing with the appropriate state authority;
- *Unincorporated association*: a copy of the amendment to the Articles of Association, Constitution, and/or other organizing document, showing the effective date of the change of name and signed by at least two officers, trustees or members.
- A trust: a copy of the amendment to the trust instrument, and/or a resolution to amend the trust instrument, showing the effective date of the change of name and signed by at least one trustee.

Scenario (B): Name change of IE with AF project

14. Under this scenario, as the change to the IE involves only its name, the secretariat will launch the verification process for name change as described above under scenario (A). In terms of accreditation and re-accreditation process, the re-named IE will be eligible to pursue re-accreditation rather than accreditation. In the context of the project implementation, the secretariat will address the relevant administrative impacts related to the project implementation, in collaboration with the trustee, as appropriate and necessary.

Scenario (C): Beyond name change of IE with no AF project

15. Under this scenario, the process to address the IE reorganization's impacts on project implementation is not required as the IE has not received any grants from the Fund. However, this is a situation where changes to IE go beyond a name change, due to its reorganization in terms of legal, institutional and/or organizational aspects. Accordingly, the Panel's assessment is required to map out the scope of changes and to determine whether the essential capacities, policies, systems and procedures that the IE demonstrated to have at its accreditation stage have been substantially weakened in the re-organized entity or not.

16. When the Panel finds that the reorganization entails non-material change where the essential capacities, policies, systems and procedures demonstrated at the IE's accreditation

stage still exist in the re-organized entity, the entity will be eligible to pursue re-accreditation as a successor IE. However, when the Panel's assessment concludes that the reorganization led to a material change so that the essential capacities, policies, systems and procedures demonstrated at the IE's accreditation stage have been substantially weakened in the re-organized entity, the reorganized entity will need to apply for accreditation as a new applicant entity.

Scenario (D): Beyond name change of IE with AF project

17. Under this scenario, like scenario (C), the process to address the impacts on accreditation and/or re-accreditation applies. Depending on the Panel's assessment result, the re-organized entity will need to pursue either 'accreditation' as a new IE applicant or be eligible for 're-accreditation' process as a successor IE.

18. As the IE has the Fund's project(s), the implications of IE reorganization on the project implementation need to be addressed by the secretariat in collaboration with the trustee as appropriate and necessary. This may include assessment by the secretariat and presentation to the Board for its consideration of decisions to approve the reorganized entity to serve as a successor IE in terms of the ongoing Fund project implementation, amendment to the project agreement between the Board and the IE, pending disbursement of the Fund's grants to the IE, transfer of responsibilities and liabilities related to the project financed by the Fund. The Fund has a relevant experience, which will be further elaborated on below under Case *002*.

Case study

19. The Fund has so far addressed three cases where changes to the IE occurred. For the purpose of analysis, the cases are named as case 001, case 002, and case 003. Case 001 was related to a simple name change of the entity, whereas Case 002 and Case 003 were involved in the reorganization where its scope were found to go beyond the scope of a name change and, in both cases, the originally accredited IE ceased to exist.

(a) Case 001: name change of NIE

20. *Case 001* is about an NIE whose name was changed, and the NIE had no project financed by the Fund at the time of name change. In this regard, Case 001 falls under scenario (A). No other major changes to the NIE were found, and therefore, this was not considered as reorganization of the NIE. The secretariat initiated the verification process for the name change, and received, among other supporting documents, the two legal decrees related to the NIE and re-named NIE respectively. The two Decrees demonstrated that legal foundation of the NIE stayed the same, and the legal capacity continued to exist despite its name change, and that the mandate and functions of the renamed NIE were similar to but expanded from those of the NIE.

21. As the NIE had no project financed by the Fund, the process to address the impacts on project implementation was not required. In the context of accreditation and re-accreditation, the renamed IE was considered eligible to apply for re-accreditation rather than accreditation.

(b) Case 002: reorganization of NIE being split into two ministries

22. *Case 002* is concerned with an NIE of Rwanda, the Ministry of Natural Resources of Rwanda (MINIRENA) that went through re-organization where it was split into two ministries, and one of the ministries, the Ministry of Environment (More) claimed to be a successor NIE. As of the date of its reorganization, the MINIRENA was implementing a Fund project and was undergoing the fast-track re-accreditation process.[1] As described under the aforementioned scenario (D), the two respective processes to deal with the implications of the NIE's reorganization on (i) the project implementation and (ii) accreditation and re-accreditation process respectively were undertaken in parallel.

- *Process to address the implications on Project implementation*

23. In this process, the secretariat, in collaboration with the trustee, dealt with its implications of the NIE's reorganization. The main issues concerned included: (1) verification of whether the reorganized entity could serve as a legal successor to the NIE to continue to implement the project; (2) transfer of the last tranche of the project funding; (3) necessary arrangements for the implementation of the ongoing Fund's project. More details and background information are included in document AFB/B.31-32/6.

24. In this process the reorganized entity submitted supporting documents to evidence that:

(a) The reorganized entity intended to and was capable of serving as a legal successor to the NIE to continue to implement the ongoing Fund project;
(b) The reorganized entity had the same standards and systems that the NIE had demonstrated at accreditation, to meet the criteria for accreditation and to have the necessary systems to manage the implementation of the ongoing project funded by the Adaptation Fund; and
(c) The reorganized entity was to assume all the responsibilities, obligations and liabilities assumed by the NIE in relation to the project funded by the Adaptation Fund.

25. The submitted documents included: organigrams of reorganized entity; the respective Prime Minister Orders elaborating the mission, function, organizational structure and other relevant aspects of the NIE and the reorganized entity; respective official letters from the minister of reorganized entity and from different ministries, from the National Bank (in which a bank account was held by the NIE), from the Attorney General and from the DA who was the then Permanent Secretary of the NIE and the incumbent Permanent Secretary of the re-organized

[1] For the fast-track re-accreditation, refer to the Board decision B.28/38.

entity; and an audited financial statement of the previous NIE account and a statement of a new account held by the reorganized entity for the Fund's project. In this process, the secretariat also consulted with the trustee, particularly on the transfer of the last tranche of the project funding, and the trustee conveyed that the Board decision to authorize the reorganized entity to implement the final period of project on behalf of the NIE which ceased to exist, on an exceptional basis, would satisfy the requirement that funds be transferred only to accredited entities.

26. The secretariat prepared and submitted document AFB/B.31-32/6 titled *Reorganization of the National Implementing Entity for Rwanda and the Implementation Arrangement for the Ongoing Rwanda Project* and the confidential addendum (the audited financial statement) to the Board for consideration and decision. The Board intersessionally considered these documents and decided:

(a) To authorize the MoE to assume on an exceptional basis and with the goal of minimizing further delay to the implementation of the project "Reducing vulnerability to climate change in North West Rwanda through community based adaptation", the implementation role for the project for the final period of implementation which had been held by the Ministry of Natural Resources of Rwanda (MINIRENA) that has ceased to exist, including all relevant responsibilities, obligations and liabilities;
(b) To request the Secretariat to draft a succession agreement between the Board and the MoE, to supersede the agreement previously made between the Board and MINIRENA, to reflect the changes made under subparagraph (a) above;
(c) To approve the one-time cash transfer of the outstanding funds (US$824,464) to the designated bank account under the ownership of the MoE for the continuation and completion of the project; and
(d) To request the Secretariat to inform the MoE that the ad hoc authorization to the MoE to implement the final period of the project shall not in any way prejudge the on-going re-accreditation process of the MoE.

(Decision AFB/B.31-32/20)

27. Subparagraphs (a), (c) and (d) of Decision AFB/B.31-32/20 were implemented, and subparagraph (b) is in the process of implementation as of the date of this report.

- *Process to address the implications on accreditation and re-accreditation*

28. The NIE was reorganized after it submitted its re-accreditation application to the Fund. Upon the receipt of the official communication on the reorganization, the re-accreditation process was on hold while the Panel started an assessment to determine whether the essential capacities, policies, systems and procedures demonstrated by the NIE at its accreditation stage have been substantially weakened in the re-organized entity or not. The result of the Panel's assessment decided whether the re-organized entity would be deemed as a successor IE eligible for re-accreditation process or a new applicant which needs to apply for accreditation.

29. As part of the assessment, the Panel examined, such as: the functions and mandates of the reorganized entity relevant to the objectives of the Adaptation Fund; essential policies, standards, capacities related to, such as accounting systems and procedures, internal audit, oversight function, procurement, project management, framework to deal with financial mismanagement and other forms of malpractice. The Panel's assessment concluded that the reorganized entity has inherited and maintained the essential policies, standards, capacities that the NIE demonstrated to have at its accreditation, and that the reorganized entity can be deemed a successor IE eligible for re-accreditation process, instead of full accreditation process. Since then, the re-organized entity has been under re-accreditation process.

(c) Case 003: reorganization of NIE being absorbed into the structure of its original supervising government ministry

30. *Case 003* is concerned with an NIE that was an autonomous government entity, and its reorganization led it to being absorbed into the structure within its original supervising ministry of the government. The NIE informed the secretariat of a possibility of its reorganization when the first phase of its governmental reorganization was launched in March 2018. As of the date of that communication, the NIE had been implementing one project funded by the Fund and was undergoing fast-track re-accreditation process. Accordingly, like *Case* 002, the case could fall under scenario (D) where the two processes to deal with the implications on (i) the project implementation and (ii) accreditation and re-accreditation process respectively need to be undertaken in parallel.

31. After the government reorganization was completed in September 2018, the reorganized entity submitted several documents in October 2018. The submitted documents included the organigrams, relevant Executive Orders, Decrees, Administrative resolutions and decisions, legal opinion of the supervising ministry, and technical reports related to the reorganization of the NIE. The NIE also submitted to the secretariat an official letter addressed to another fund, informing that under the Executive Order and Administrative Resolution, the NIE was reorganized, and that the functions of the NIE as regards implementation of the projects funded by that fund had been passed on to the re-organized entity.

32. The secretariat has been examining the re-organized entity's claimed status of the legal successor to the NIE, while the Panel has been conducting its assessment to determine whether the re-organized entity would be eligible for re-accreditation process as successor NIE or need to apply for accreditation as a new applicant. The secretariat and the Panel are currently waiting for the reorganized entity's response to the requested information.

- *Process to address the implications on accreditation and re-accreditation*

33. Upon the receipt of the official communication on the reorganization of the NIE, the re-accreditation process was on hold while the Panel started an assessment to determine whether the essential capacities, policies, systems and procedures that the NIE demonstrated to have at its accreditation stage have been substantially weakened in the re-organized entity or not. Based

on the submitted supporting documents, the Panel has been assessing the reorganized entity's essential systems, procedures, policies and capacity related to, such as legal personality, financial management, internal control framework, procurement, and project management. The Panel is currently waiting for the reorganized entity's submission of the pending information which will allow the Panel to determine whether the reorganized entity can be considered as a successor IE to continue re-accreditation process, or as a new IE to apply for accreditation.

- *Process to address the implications on project implementation*

34. Unlike *Case 002*, there was no pending tranche of project funds to be transferred to the NIE. The secretariat is reviewing the status of the two projects as well as the remaining obligations and responsibilities of the NIE related to the projects and assessing a need of possible steps which may be required to ensure that all the responsibilities and obligations of the NIE are fulfilled by the reorganized entity.

Conclusion

35. A summary of the proposed possible options to address impacts of IE reorganization is described in the table 2.

<Table 2: possible options to address IE reorganization>

Type of changes to IE / Type of IE	**Name change**	**Beyond name change** (due to legal, organizational, functional, and/or operational changes)
IE with no AF project	✓ *The secretariat's verification for IE's name change.* ✓ ***Re-accreditation** applies.* ***(Ex. Case 001)***	✓ *Panel's assessment on whether the essential capacities, policies, systems and procedures that the IE demonstrated to have at its accreditation stage have been substantially weakened in the re-organized entity or not.* o *If Yes, accreditation applies to re-organized entity as a new IE applicant after being endorsed by the DA; and* o *If No, re-accreditation applies to re-organized entity as successor IE.*

IE with AF project	✓ *The secretariat's verification for IE's name change.* ✓ *The secretariat addresses the impacts of IE name change on arrangement for **project implementation** (in collaboration with trustee, as appropriate and necessary).* ✓ ***Re-accreditation** applies.*	✓ *The secretariat addresses the impacts of IE reorganization on arrangement for **project implementation** (in collaboration with trustee, as appropriate and necessary)* ✓ *Panel's assessment on whether the essential capacities, policies, systems and procedures that the IE demonstrated to have at its accreditation stage have been substantially weakened in the re-organized entity or not.* o *If Yes, accreditation applies to re-organized entity as a new IE applicant after being endorsed by the DA; and* o *If No, re-accreditation applies to re-organized entity as successor IE.* ***(Ex. Case 002 and Case 003)***

Recommendation

36. The Ethics and Finance Committee may want to consider information contained in this document and recommend that the Board decides:

a) To approve the process to address implications of the implementing entity's reorganization in terms of project implementation and accreditation and/or re-accreditation, as described in document AFB/EFC.24/3;
b) To request the secretariat to communicate this decision to the implementing entities; and
c) To request the implementing entities to communicate any reorganization to the secretariat as early as possible.