



ADAPTATION FUND

AFB/B.35.b/6
22 October 2020

Adaptation Fund Board
Second session of the thirty-fifth meeting
Bonn, Germany (Virtually held), 26-28 October 2020

Agenda item 8 a)

**UPDATE ON STRATEGIC DISCUSSION ON OBJECTIVES AND
FURTHER STEPS OF THE FUND: POTENTIAL LINKAGES BETWEEN
THE FUND AND THE GREEN CLIMATE FUND**

Background

1. The Adaptation Fund Board (the Board) continues to engage in discussions on the topic of the potential linkages between the Adaptation Fund (the Fund) and the Green Climate Fund (GCF).¹ These discussions have been taking place at two levels: through dialogue between the Chair and Vice Chair of the Adaptation Fund Board with the Co-chairs of the GCF Board, both exclusively and in the context of the annual dialogue among the various climate funds, and through ongoing discussions between the secretariats of the Fund and the GCF.

2. At the thirty-fourth meeting of the Board, through document AFB/B.34/8, the secretariat presented updates on its ongoing discussions with the GCF to advance the collaborative activities and explore options for fund-to-fund arrangements as described in document GCF/B.22/09² and its Annex 1 and in line with Board decision B.32/41:

(a) To request the Chair and Vice-Chair, assisted by the secretariat, to continue ongoing efforts of enhancing complementarity with the Green Climate Fund (GCF), including attending ‘an annual dialogue’ to be organized by the Green Climate Fund (GCF) in the margins of the twenty-fourth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, and to actively engage in a structured conversation with the GCF Board, with a view to exploring concrete steps to enhance complementarity, including options for fund-to-fund arrangements and accreditation;

(b) To request the secretariat:

(i) To continue discussions with the GCF secretariat to advance the collaborative activities identified at the Annual Dialogue in November 2017, the Technical Workshop in February 2018 and the informal meetings between the Chair and Vice-Chair of the AFB and the Co-Chairs of the GCF in May and September 2018; and

(ii) To continue to explore the options for fund-to-fund arrangements, including the process toward accreditation with the GCF, as described in pillar 1 in the GCF operational framework for complementarity and coherence, as contained in document GCF/B.17/08; and

(c) To request the Chair and secretariat to report to the Board at its thirty-third meeting on the progress made in the activities described in subparagraphs (a) and (b).

¹ For further details, see Annex 2 to this document

² Identified options are found in the Annex I to GCF Board document GCF/B.22/09 “Report of Activities of the GCF Co-Chairs”: Available at https://www.greenclimate.fund/documents/20182/1424894/GCF_B.22_09_Report_on_the_activities_of_the_Co-Chairs.pdf/f37b3154-00af-4b99-3c79-6c023421c4db.

(Decision B.32/41)

During the discussion, Board members raised a number of potential issues and concerns, including the possible need for further analysis of the legal and practical implications of the options for fund-to-fund arrangements; the need for further clarification on liability issues, since the two funds have different legal structures; and the consequences of the proposed plans on the Fund's Rules of Procedure and its overall environment. Members emphasized that some of the proposed options would require a memorandum of understanding and noted that some of the proposed work was already underway, such as on accreditation and readiness.

3. After considering the secretariat's ongoing efforts to enhance complementarity between the GCF and the Adaptation Fund, the Board decided to:

- a) *Continue consideration of the four options for fund-to-fund arrangements, as described in document GCF/B.22/09 and its Annex 1, from the perspective of whether they are comprehensive of all potentially feasible options of operation linkages between the GCF and the Adaptation Fund;*
- b) *Take note of the information that an independent legal analysis is being undertaken by the GCF with a view to producing, as its expected outcome, the independent legal opinion for the GCF to determine whether any potential legal arrangements between the GCF and the Fund are implementable;*
- c) *Request the secretariat to report to the Board at its thirty-fifth meeting, on any available information related to the legal analysis referred to in subparagraph b) to be received from the GCF secretariat;*
- d) *Defer its consideration on the four options referred to in subparagraph a), pending the GCF's issuance of the legal opinion referred to in subparagraph b);*
- e) *Request the Chair and Vice-Chair to continue to actively engage, assisted by the secretariat, in a structured conversation with the GCF Board, with a view to exploring and taking concrete steps to advance the options for fund-to-fund arrangements described in document GCF/B.22/09 and its Annex 1;*
- f) *Request the secretariat to continue discussions with the GCF secretariat to advance the collaborative activities identified at the Annual Dialogue in November 2017, the Technical Workshop in February 2018 and the informal meetings between the Chair and Vice-Chair of the AFB and the Co-Chairs of the GCF in May and September 2018 and at the margins of the of the twenty-fourth session of the Conference of Parties to the United Nations Framework Convention on Climate Change (COP 24) held in Katowice, Poland; and*
- g) *Request the Chair and the secretariat to report to the Board at its thirty-fifth meeting on the progress made in the activities described in subparagraphs e) and f).*

(Decision B.34/47)

4. Four potential options for collaboration between the two funds were indicated in the informal background note which was prepared by the GCF Secretariat in collaboration with the Adaptation Fund Board Secretariat and shared with the GCF Co-chairs and Adaptation Fund Board Chair and Vice-Chair and the secretariat for the informal board-level meeting of the two funds held on 12 December 2018 on the margins of COP 24:

- (a) Adaptation Fund providing GCF readiness-type assistance;
- (b) Adaptation Fund management of a GCF funding envelope;
- (c) Accreditation of the Adaptation Fund to the GCF; and
- (d) Formalization and expansion of current cooperation between the secretariats.

Updates on the independent legal analysis conducted by the GCF

5. Information related to the issue of ‘Legal Arrangements with the Adaptation Fund’ was included in GCF document GCF/B.24/Inf.08, Report on the activities of the Secretariat³, in the Annex III (Annual update on complementarity and coherence) to the document. At its 24th meeting, the GCF Board took note of the document and did not take any decision related to this. Further detailed information is contained in Annex 1 to this document.

6. Information related to the issue of ‘cooperation between financing mechanisms is included in GCF document GCF/B.25/09, Updated Strategic Plan for the Green Climate Fund: 2020-23 Draft by Co-Chairs⁴, to be discussed at the 25th meeting of the GCF Board. The specific synergy identified by the GCF with regard to the AF is reported in Section II, paragraph 12 of GCF/B.25/09:

“Through its operational framework on complementarity and coherence, the GCF will seek to drive cooperation between financing mechanisms to help countries navigate the climate finance landscape. Key pillars of this effort will include (i) complementing actors supporting the NDC update process (such as NDC Partnership) through translating national priorities into investment programmes; (ii) working to scale up successes and advance programming synergies with other climate funds (such as the Global Environment Facility and Adaptation Fund); (iii) utilizing opportunities for blending, parallel and sequenced finance to improve predictability of finance and impact; (iv) defining through guidance how GCF programming in specific sectors and geographies will complement other climate finance in a country-driven manner (including the Climate Investment Funds, private investors and NAMA Facility); and (v) advancing knowledge collaboration to synthesize and broaden knowledge dissemination.”

³ Annex III of GCF document GCF/B.24/Inf.08, available at <https://www.greenclimate.fund/sites/default/files/document/gcf-b24-inf08.pdf>.

⁴ GCF document GCF/B.25/09, available at <https://www.greenclimate.fund/sites/default/files/document/gcf-b25-09.pdf>

Update on collaboration between the Fund and GCF

(i) Continuing collaboration between the Fund and GCF under the complementarity and coherence framework

7. In December 2019, the Fund participated in the 3rd Annual Dialogue on climate finance delivery channels held in the margins of the twenty-fifth session of the Conference of Parties to the United Nations Framework Convention on Climate Change (COP 25) in Madrid, Spain. The Adaptation Fund Board Chair underscored the importance of a platform for enhancing complementarity and coherence between the climate funds and expressed the commitment of the Fund to advance collaboration. A meeting between the managers of both the Fund and the GCF was also held on the margins of COP 25 to discuss opportunities for collaboration, including the possibility of creating a small team composed of staff from the two secretariats to work together on issues of mutual importance.

8. As reported in document GCF/B.25/Inf.07 and pursuant to the goal of enhancing complementarity and coherence with other climate funds, the GCF, together with the Adaptation Fund, GEF and the Climate Investment Funds (CIF), expect to carry out a joint study to be published in 2020 on best means to promote programming synergies across funds.

9. Given the challenges created by the COVID-19 pandemic and the postponement of the COP 26 until November 2021, the 4th annual dialogue of climate finance delivery channels is proposed to take place virtually on November 23rd, 2020 with participation of all funds including AF, GCF, GEF and CIFs.

(ii) Pilot of Scaling-Up Approach between the Fund and the GCF

10. In line with both funds' effort to promote complementarity and coherence including actions to maximise climate action benefits for recipient countries, both secretariats have started working on a structured approach to further operationalize the potential for scaling up and replications in their portfolio of projects and programmes. The proposed approach sets out a structured modality for collaboration between the AF and the GCF on project and programme scale-up, in the context of a broader set of efforts to ensure complementarity and coherence between the two funds. This approach builds on successful collaboration between the two funds on number of areas including the scaling up of AF funded projects by GCF.

11. Since its establishment, the GCF has been scaling up AF projects in a range of sectors including in climate resilient water management and multi-hazard early warning systems. Building on the success of AF projects in many countries and to maximize the climate impact for recipient countries, both funds agreed to develop a structured approach to facilitate the systematic scale-up of successful projects as an important way to enhance complementarity and coherence.

12. The primary goal of this structured approach is to provide countries access to incentives and benefits to scale-up successful smaller projects funded by one fund with resources from the other fund, such as scaling up AF projects with GCF resources. The complementary objectives

are to: (i) Introduce the basic concept of what scaling-up means in alignment with the GCF programming and project approval processes (including the Project Approval Process and Simplified Approval Process) and help set the principle for an approach of reference, including synergy with the AF and other climate funds, as appropriate, within the GCF operational framework; (ii) Establish an approach for identifying eligible projects for potential scaling-up with additional resources; (iii) Determine the incentives and outline the benefits for countries and their Designated Authorities (DAs) and Nationally Designated Authorities (NDAs) as well as AF Implementing Entities (IEs) and GCF Accredited Entities (AEs) , to pursue scaling-up of successful AF projects through the GCF; and (iv) Define the process and steps to operationalize the development of projects to be scaled-up under this approach.

13. The scaling up approach document which is still under discussion between the two secretariats seeks to outline basic criteria for projects' eligibility for scaling up as well as to introduce four main steps and actions as part of the process necessary for scaling up projects between the two funds.

14. In addition, both secretariats envisage to set up a coordination mechanism including focal points to follow the operationalization of the approach. In this mechanism, the secretariats would engage in regular coordination and exchange on potential and existing project scale ups. Both funds would also capture and share lessons learned on enabling and impeding factors for successful project scale up between funds.

(iii) Jointly supporting the community of practice for direct access entities (CPDAE)

15. The AFB secretariat and GCF Secretariat have been jointly supporting the Community of Practice for Direct Access Entities (CPDAE). The CPDAE is an autonomous community made up of accredited National Implementing Entities (NIEs) of the AF and accredited Direct Access Entities (DAEs) of the GCF. The purpose of the CPDAE is to provide an avenue for knowledge exchange, learning and experience sharing, collaboration and peer support within the community of NIEs and DAEs involved in the programming of climate change adaptation and mitigation finance, so as to increase the effectiveness of entities in accessing resources and implementing adaptation and mitigation projects and programs through direct access. The secretariats of both funds are active observers to the CPDAE and have committed to supporting the community's action plan and the activities of the established CPDAE Committee.

16. From 5-7 June 2019, the AFB secretariat and GCF Secretariat in partnership with the African Development Bank facilitated a meeting of the CPDAE in Durban, South Africa, where the community developed an action plan and established a committee. From 2-3 August 2019, the AFB Secretariat hosted the first meeting of the CPDAE Committee on the margins of the Fund's sixth annual climate finance readiness seminar for accredited NIEs of the Fund, with GCF Secretariat in attendance. At this meeting, the committee developed guidelines for its operations and advanced work to finalize the community's action plan. At COP 25 in Madrid, Spain the AFB Secretariat and GCF Secretariat supported a side event of the CPDAE to raise awareness of the activities of the Community.

17. The AFB and GCF secretariats held meetings in June and October 2020 together with the CPDAE Committee to discuss funding the CPDAE action plan. Discussions are on-going to explore options for providing financial and non-financial resources to support implementation of the CPDAE action plan and the activities of the CPDAE Committee. It should be noted however, that the AF has already started supporting elements of the action plan, including hiring a part time support person for the CPDAE Chair and Committee, creating a webpage on the AF website to temporarily host CPDAE content and online materials, and is exploring providing support for development of the CPDAE communication strategy and other communications materials. The bulk of the funding required, which would cover the action plan aspects mostly involving support for project development, entity reaccreditation and entity accreditation status upgrade is still being explored by the two secretariats and the CPDAE Committee.

Recommendation

18. Having considered the ongoing efforts to enhance complementarity between the Adaptation Fund and the Green Climate Fund and document AFB/B.35.b/6 and its annexes, the Board may want:

- a) To take note of the report included in document AFB/B.35.b/6 and its Annex I which provides an update on the recent cooperation between the Adaptation Fund and the Green Climate Fund;
- b) To request the Chair and Vice-Chair to continue their active engagement , assisted by the secretariat, in a structured conversation with the GCF Board, with a view to exploring and taking concrete steps to advance the options for fund-to-fund arrangements described in document GCF/B.22/09 and its Annex I;
- c) To request the secretariat to continue discussions with the GCF to advance the collaborative activities identified at the Annual Dialogue in November 2017, the Technical Workshop in February 2018 and the informal meetings between the Chair and Vice-Chair of the AFB and the Co-Chairs of the GCF in May and September 2018 and at the margins of the twenty-fourth session of the Conference of Parties to the United Nations Framework Convention on Climate Change (COP 24) held in Katowice, Poland; and
- d) To request the Chair and the secretariat to report to the Board at its thirty-sixth meeting on the progress made in the activities described in subparagraphs b) i) and c) i) above.

ANNEX 1: Update on the independent legal analysis undertaken by the GCF, as per decision B.34/47, subparagraph 7

1. At the 22nd meeting, the GCF Co-Chairs reported to the GCF Board on the engagement with the Adaptation Fund that the two boards' discussion at the informal meeting in Poland centered on two overarching considerations that could impact any potential arrangement options⁵:

(a) The degree to which the Adaptation Fund is prepared to accept liability for programming GCF funding; and

(b) If and how the Adaptation Fund Board will apply GCF policies for projects and programmes approved using GCF funds.

2. With regard to the issue of (b) *"If and how the Adaptation Fund Board will apply GCF policies for projects and programmes approved using GCF funds,"* the GCF Board document GCF/B.22/09 indicates:

"The GCF and AF boards have developed a number of policies related to the development and implementation of funded activities, including fiduciary standards and environment, social and gender safeguards. Both Funds also have processes for assessing organizations that receive funding from them, and requirements for Fund policies and standards to be applied through and passed down to executing entities by such organizations in their management and administration of funds. Ultimately, both Funds are evolving, and each Fund may be in the process of or has a plan to develop or update core policies. It will be important to consider how these policies are imperative for or at least relevant to enabling the existing and future cooperation between the two Funds. Reaching an agreement between the boards as to how instances of policy non-alignment (or lack of relevant policies) will be handled, and where responsibility lies for the application of each policy, will facilitate the envisaged cooperation."⁶

3. With regard to the issue of the aforementioned (a) *"the degree to which the Fund is prepared to accept liability for programming GCF funding,"* the GCF Board document GCF/B.22/09 states as follows:

"Depending on the type of option(s) pursued, the acceptance of GCF funding by the AFB would carry with it a number of legal, fiduciary and administrative obligations, and related liabilities, considering the necessary requirements for each option and the unique structure of the AF. Further clarity may also be necessary as to whom liability attaches given that only the AFB has legal capacity (but not legal personality)."⁷

⁵ GCF Board document B.22/09 and its Annex 1.

⁶ Table 2.2. in paragraph 7 of the Annex 1 to GCF Board document GCF/B.22/09.

⁷ table 2.1 in paragraph 6 of the Annex 1 to GCF Board document GCF/B.22/09.

4. The same document also mentions about the legal capacity of the Adaptation Fund to enter into any legal arrangement with the GCF, as follows:

“An independent legal opinion from a third-party organization could provide clarity to legal capacity, personality and structure of the AF (AFB, AFB Secretariat and AF trust fund).”⁸

5. In May 2019, the secretariat was informed by the GCF secretariat that the GCF decided to seek the provision of external legal services in relation to the matter aforementioned in paragraph 4. The latest Information related to the issue of ‘Legal Arrangements with the Adaptation Fund’ was included in GCF document GCF/B.24/Inf.08, *Report on the activities of the Secretariat*⁹, in its Annex III (*Annual update on complementarity and coherence*). At the 24th meeting, the GCF Board took note of this document and did not take any decision related to this.

6. This GCF document indicates “the Secretariat, with the support of independent external counsel, has undertaken an analysis of two initial legal questions in order to inform the Board’s further consideration of possible modalities for future collaboration.”¹⁰ The legal questions were as follows:

- (b) Do paragraphs 33 and 34 of the Governing Instrument for the GCF allow:
 - (i) Other existing funds under the United Nations Framework Convention on Climate Change (UNFCCC); or
 - (ii) Other funds, entities and channels of climate change financing outside the GCF, to access resources of the GCF; or
 - (iii) Are financial transfers of GCF resources only permitted under Section V.D and V.C. of the Governing Instrument?
- (c) Can the GCF enter into legal arrangements with the AF and, if so, what are the potential liability consequences, and related mitigation measures, for a breach by the AF of such legal agreements (e.g., because of non-compliance with a policy requirement of the GCF)?

7. The same GCF document emphasized that “the summary opinion to these questions therein is limited to matters of law and does not address either the specific policy questions set out in, or take a view on the options identified in, the GCF B.22 Report, while there are matters to be considered by the GCF Board as part of its further consideration on how to strengthen collaboration with the AF, taking into account the summary opinions.”¹¹

8. The summary opinion excerpted from the GCF document GCF/B.24/Inf.08 is as follows:

[. . .]

⁸ Paragraph 10 of Annex 1 to GCF Board document GCF/B.22/09.

⁹ Annex III of GCF document GCF/B.24/Inf.08, available at <https://www.greenclimate.fund/sites/default/files/document/gcf-b24-inf08.pdf>.

¹⁰ Paragraph 9, Annex III (*Annual update on complementarity and coherence*) to GCF document GCF/B.24/Inf.08.

¹¹ Paragraph 11, Annex III (*Annual update on complementarity and coherence*) to GCF document GCF/B.24/Inf.08.

Paragraphs 33¹² and 34¹³ of the Governing Instrument for the GCF

13. *In the opinion of the (GCF) Secretariat:*

- a) *Paragraphs 33 and 34 of the Governing Instrument do not in themselves provide a route for financial transfer of GCF resources to other funds, entities and channels of climate change financing outside the GCF;*
- b) *Section V.D (Access modalities and accreditation) of the Governing Instrument sets out the main modalities through which resources can be accessed from the GCF;*
- c) *Section V.C (Operational modalities: Funding windows and fund structure) of the Governing Instrument also permits access to GCF resources for the purposes of readiness, preparatory support, capacity-building, technology development and transfer, and private sector financing.*

14. *Taken together, the above-mentioned provisions of the Governing Instrument allow other existing funds under the UNFCCC and other funds, entities and channels of climate change financing outside the GCF, to access GCF resources under Sections V.D and V.C of the Governing Instrument. In the opinion of the (GCF) Secretariat, alternative modalities could be established under Sections V.D and V.C of the Governing Instrument, specifically for entities referred to in paragraphs 33 and 34 of the Governing Instrument.*

Legal Arrangements with the Adaptation Fund

15. *In the opinion of the (GCF) Secretariat:*

- a) *The World Bank, in its capacity as trustee of the AF, (and not the AF, or AF Board) is the legal owner of the funds contributed to the AF;*
- b) *The AF Board, as the entity within the AF governance structure with legal capacity to enter into contracts, would be the natural contract counterparty for any contractual arrangement with GCF;*
- c) *The AF Board is also the entity which concludes legal arrangements for the implementation of its own projects;*
- d) *In the event of a breach by the AF of legal arrangements concluded between the GCF and the AF Board, the legal liability of the AF Board can be addressed*

¹² Paragraph 33 of the Governing Instrument of GCF: “The Fund shall operate in the context of appropriate arrangements between itself and other existing funds under the Convention, and between itself and other funds, entities, and channels of climate change financing outside the Fund”

¹³ Paragraph 34 of the Governing Instrument of GCF: “The Board will develop methods to enhance complementarity between the activities of the Fund and the activities of other relevant bilateral, regional and global funding mechanisms and institutions, to better mobilize the full range of financial and technical capacities. The Fund will promote coherence in programming at the national level through appropriate mechanisms. The Fund will also initiate discussions on coherence in climate finance delivery with other relevant multilateral entities.”

- in the relevant legal arrangements; and*
- (e) The GCF would need to ensure that it had appropriate dispute resolution procedures in its contractual arrangements in order to obtain suitable enforcement against the AF, if necessary.*

16. In light of paragraph 13 (a) above, appropriate legal arrangements will need to be entered into ex ante with the World Bank, in its capacity as trustee of the AF, in the event that GCF wishes to ensure that, from a legal perspective, the liability of the AF board (for breach of contract, or other applicable claim) is enforceable against the funds contributed to the AF and held by the World Bank as follows:

(a) While various theoretical legal instruments could be deployed to implement the foregoing matter, the practicality of such instruments will be subject to discussions with both the AF board and the World Bank;

(b) The members of the AF board benefit from personal immunity in Germany in respect of acts performed in their official capacity as members of the AF board; and

(c) The AF board will be responsible for the acts of its committees, secretariat, accreditation panel, members and employees, if such acts were undertaken in performance of relevant AF functions and within the official capacity of the relevant body or individual.

Next Steps

17. In line with the updated work plan adopted by the Board at its twenty-third meeting (B.23), the mandate pursuant to paragraphs 33 and 34 of the Governing Instrument and subsequent decisions, including decision B.20/05, is to be considered by the Board within the context of the update of the 2020–2023 Strategic Plan for the GCF. In this context, the Board may wish to provide further strategic direction on the pursuit of fund-to-fund arrangements, in particular with the Adaptation Fund, considering the opinion provided in paragraphs 12-15 on legal arrangements. The Board could do this in parallel with also providing further strategic direction on the pursuit of complementarity in programming. As noted in the 2018 Annual Update on Complementarity and Coherence and inputs shared at B.22, areas of overlap between the GCF and AF could be considered for more targeted synergies (e.g. areas such as micro-scale adaptation projects) while ensuring that no additional layers are created (e.g. entities having to access GCF resources through AF and having to comply with different policies).