

Co-Chairs Note: Privileges and Immunities of the Fund

Standalone Fund

The following options apply in the context of a standalone institution (i.e. where the Fund secretariat is not hosted in an existing institution).

Option 1: Institutional Linkage with UN

1. COP/CMA could invite UNGA to establish an institutional linkage between the Fund and the UN, such that staff members of the Fund would be UN staff members. This would then require relevant Fund policies on HR, financial and procurement matters, to be aligned with the UN Staff Regulations and Rules, UN Financial Rules and Regulations and the UN Procurement manual and the ISCS recommendations, and a subsequent decision of UNGA, and an arrangement to be entered into by the Fund and the UN (similar to that between the COP and UN with respect to UNFCCC secretariat staff. This approach would also have implications for the authority to appoint the Executive Director
2. This would only apply to staff, and not to the Fund itself or its assets
3. This option would also require further consultation with UN OLA before it can be confirmed as theoretically possible.

Option 2: Confirm legal status of Fund (i.e. GCF approach plus confirmation of independent legal status)

1. COP/CMA, and Parties, would confirm the legal status of the Fund, i.e. that it is an independent intergovernmental organization, and that all Parties are deemed to be 'member states' of the Fund
2. COP/CMA (and GI) would state that:
 - a. the Fund shall possess independent juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protection of its interests, in particular the capacity to enter into contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings in defence of its interests;
 - b. The Fund will enjoy such privileges and immunities as are necessary for the fulfilment of its purposes and that the officials of the Fund will similarly enjoy such privileges and immunities as are necessary for the independent exercise of their official functions in connection with the Fund
3. COP/CMA and GI would be silent on how to obtain Ps&Is, and leave this matter to the Board resolve

Option 3: Launching multilateral process for Ps&Is (managed through the Board, not the COP/CMA)

1. As Option 2 (first two bullets)
2. COP/CMA to decide that Parties [will][should] enter into a multilateral agreement with each other (and not with the Fund) pursuant to which they would confer Ps&Is on the Fund, and that the secretarial support for this process shall be provided by the Fund secretariat (i.e. it is not required to be 'adopted' by the COP/CMA as a Protocol to the Convention or PA)
3. Alternatively, COP/CMA to decide that Parties [will][should] enter into a multilateral agreement with each other deciding that the 1946 Convention on the privileges and immunities of the United Nations becomes applicable to the Fund and its staff. This approach

has the advantage that Parties will not need to negotiate the text of the multilateral agreement.

Option 4: Simplified approach

1. As Option 2 (first two bullets)
2. COP/CMA to decide that the Fund shall benefit from the Ps&Is set out in the [Convention on the Ps&Is of the UN][Specialized Agencies Convention (standard text)] and that this shall be operationalized through Parties providing a formal written confirmation of the application of the Ps&Is set out in such agreement to the Fund, such confirmation to be provided in a form, and pursuant to a process, determined by the Board. This is an approach similar to that utilized by WTO, and is similar to the modality set out in the Specialized Agencies Convention with respect to the application of that agreement to specific entities. It effectively relies on the unilateral grant of Ps&Is by relevant countries (on the basis of the confirmation by the COP/CMA and Parties that the Fund is an independent intergovernmental organization), and avoids the lengthy bilateral Ps&Is negotiations model used by GCF.
3. Alternatively, COP/CMA to decide that the Fund shall benefit from Ps&Is and that they will enter into agreement for Ps&Is with the secretariat of the Fund.

Potential approaches to incentivize grant of Ps&Is (not mutually exclusive):

1. Co-Chairs note, that many of the options listed below, that it may be impracticable to use P&Is as a condition for access / hiring, and that the difficulties and dangers of linking disbursements / access / hiring to Ps&Is may seriously restrict access to the fund's resources.
 - a) Linking disbursements to grant of Ps&Is in the relevant country
 - b) Linking hiring of nationals of a relevant country to the grant of Ps&Is by the relevant country
 - c) Linking access to certain instruments to the grant of Ps&Is in the relevant country
 - d) Linking access to resources over a certain amount to the grant of Ps&Is by the relevant country
 - e) Linking access to resources for certain activities to the grant of Ps&Is by the relevant country
 - f) Linking access to resources after a certain period of time following operationalization to the grant of Ps&Is by the relevant country

New fund established as a World-Bank hosted FIF

1. Under this institutional arrangement, the Fund would not have its own legal personality or legal capacity. Instead, it would operate through the World Bank's legal personality and legal capacity. In this context, the Fund's assets (including resources and direct investments, if any) would be protected by the World Bank's privileges and immunities, and staff working for the Fund would, formally, be World Bank staff members, and thus benefit from the World Bank privileges and immunities, noting that in each case, privileges and immunities would only be applicable in the World Bank member states.