

Fund for responding to loss and damage

FLD/B.2/10/Rev.1

5 July 2024

Second meeting of the Board

9 – 12 July 2024

Songdo, Republic of Korea

Provisional agenda item 10

Matters relating to the operationalization of the Fund as a World Bank-hosted financial intermediary fund

Expected actions by the Board

The Board is invited to:

- (a) Take note of the report of the Co-Chairs on their engagement with the World Bank during the period between the first and second meetings of the Board;
 - (b) Take note of the information provided by the World Bank regarding its willingness and ability to meet the conditions set out in paragraph 20 of decisions 1/CP.28 and 5/CMA.5;
 - (b) Provide guidance to the World Bank as it takes the necessary steps to establish the Fund as a financial intermediary fund as it deems necessary.
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I. Background and mandate

1. The Conference of the Parties (COP) at its twenty-eighth session and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) at its fifth session invited the World Bank to operationalize the Fund as a World Bank-hosted financial intermediary fund for an interim period of four years,¹ serviced by a new, dedicated and independent secretariat hosted by the World Bank, subject to the conditions outlined in decisions 1/CP.28 and 5/CMA.5, paragraph 20, and elaborated in paragraphs 21–24. The interim period will begin from the sessions of the COP and the CMA at which the Board of the Fund confirms that the conditions (see para. 2 below) can be met.

2. The continued operationalization of the Fund during the interim period will be conditional on the World Bank hosting the Fund as a financial intermediary fund in a manner that:

- (a) Is fully consistent with the Governing Instrument of the Fund;
- (b) Ensures the full autonomy of the Board of the Fund to select the Executive Director of the Fund at a level of seniority set by the Board, in line with relevant World Bank human resources policies;
- (c) Enables the Fund to establish and apply its own eligibility criteria, including on the basis of guidance from the COP and the CMA;
- (d) Ensures that the Governing Instrument of the Fund supersedes, where appropriate, the policies of the World Bank in instances where they differ;
- (e) Allows all developing countries to directly access resources from the Fund, including through subnational, national and regional entities and through small grant funding for communities, consistent with the policies and procedures to be established by the Board of the Fund and applicable safeguards and fiduciary standards;
- (f) Allows for the use of implementing entities other than multilateral development banks, the International Monetary Fund and United Nations agencies, consistent with the policies and procedures to be established by the Board of the Fund and applicable safeguards and fiduciary standards;
- (g) Ensures that Parties to the Convention and the Paris Agreement that are not member countries of the World Bank are able to access the Fund without requiring decisions or waivers from the World Bank Board of Directors on individual funding requests;
- (h) Permits the World Bank, in its role as trustee, to invest contributions to the Fund in the capital markets to preserve capital and general investment income, in line with due diligence considerations;
- (i) Ensures that the Fund can receive contributions from a wide variety of sources, in line with due diligence considerations;
- (j) Confirms that the Fund's assets and its secretariat have the necessary privileges and immunities;
- (k) Ensures a cost recovery methodology that is reasonable and appropriate.

3. COP 28 and CMA 5 confirmed their expectation that, as a financial intermediary fund, the Fund will operate through the legal personality and legal capacity of the World Bank, and the privileges and immunities accorded to the World Bank will apply to the officials, property, assets, archives, income, operations and transactions of the Fund.²

4. COP 28 and CMA 5 invited the World Bank to take the steps necessary to promptly operationalize the Fund as a financial intermediary fund and submit to the Board of the Fund by no later than eight months after the conclusion of COP 28 the relevant financial intermediary fund documentation, approved by the World Bank Board of Directors, including

¹ Para. 17 of decisions 1/CP.28 and 5/CMA.5.

² Para. 18 of decisions 1/CP.28 and 5/CMA.5.

a hosting agreement between the Board of the Fund and the World Bank based on consultations with and guidance from the Board of the Fund.³

5. COP 28 and CMA 5 decided that, notwithstanding the invitation referred to in decisions 1/CP.28 and 5/CMA.5, paragraph 17, if the World Bank has not confirmed that it is willing and able to meet the conditions set out in paragraph 20 of the same decisions within six months after the conclusion of COP 28, the Board will launch the selection process for the host country of the Fund and COP 29 and CMA 6 will approve the necessary amendments to the Governing Instrument of the Fund.⁴

6. COP 28 and CMA 5 also decided that, if the Board of the Fund determines that the relevant financial intermediary fund documentation approved by the World Bank Board of Directors does not ensure that the conditions (see para. 2 above) can be met during the interim period, the Board of the Fund will recommend to the COP and the CMA that they take the necessary steps to operationalize the Fund as an independent stand-alone institution, including approving the necessary amendments to the Governing Instrument of the Fund and providing guidance to the Board with respect to the selection process for the host country of the Fund, or the COP and the CMA may take any other course of action deemed appropriate.⁵

7. COP 28 and CMA 5 further decided that, if the above-mentioned conditions have not been met, as determined by the Board of the Fund following an independent assessment of the performance of the World Bank as host of the Fund's secretariat, the COP and the CMA will take steps at the end of the interim period to establish the Fund as an independent stand-alone institution, including with respect to any necessary amendments to the Governing Instrument of the Fund and providing guidance to the Board with respect to the selection process for the host country of the Fund, or take any other course of action deemed appropriate.⁶

8. COP 28 and CMA 5 decided that, prior to the establishment of the financial intermediary fund, the Board of the Fund will provide guidance to the World Bank as it takes the necessary steps to establish the Fund as a financial intermediary fund.⁷

9. At its first meeting, the Board adopted a statement and requested the interim secretariat to transmit it to the World Bank on behalf of the Board.⁸ Furthermore, the Board requested the Co-Chairs to engage with the World Bank on the scope, structure and elements of the financial intermediary fund documentation, hosting agreement and the trustee agreement between the Board and the World Bank in accordance with paragraph 19 of decisions 1/CP.28 and 5/CMA.5.

10. The Board also requested the Co-Chairs, after each engagement with the World Bank, to report to, and seek input from the Board, in a transparent and inclusive manner through appropriate means, including through virtual meetings, with a view to enabling the Board to:

(a) Confirm that the relevant financial intermediary fund documentation ensures that the conditions set out in paragraph 20 of decisions 1/CP.28 and 5/CMA.5 can be met during the interim period;

(b) Endorse the hosting agreement and the trustee agreement.⁹

11. The Board also confirmed that the Co-Chairs' engagement with the World Bank will be in full accordance with decisions 1/CP.28 and 5/CMA.5 and the Governing Instrument.¹⁰

12. In accordance with the request from the Board to the Co-Chairs referred to in paragraphs 9–11 above, the Co-Chairs of the Board have engaged with the World Bank on

³ Para. 19 of decisions 1/CP.28 and 5/CMA.5.

⁴ Para. 21 of decisions 1/CP.28 and 5/CMA.5.

⁵ Para. 22 of decisions 1/CP.28 and 5/CMA.5.

⁶ Para. 23 of decisions 1/CP.28 and 5/CMA.5.

⁷ Para. 25 of decisions 1/CP.28 and 5/CMA.5.

⁸ Decision B.1/D.7.

⁹ Decision B.1/D.8, para. (b).

¹⁰ Decision B.1/D.8, para. (c).

matters concerning the operationalization of the financial intermediary fund as outlined in document FLD/B.2/4.

13. The annex to this document provides a report from the Co-Chairs during the period between the meetings of the Board on their engagement with the World Bank.

II. Updates from the World Bank during the period between the first and second meetings of the Board

14. In response to the invitation from COP and CMA the World Bank transmitted a letter to the Board on 11 June 2024 through the COP 28 Presidency, informing the Board of the decision taken by the Board of Executive Directors of the World Bank approving their role as interim host of the secretariat and trustee of the Fund, and further confirming its willingness and ability to meet the conditions set out in paragraph 20 of decisions 1/CP.28 and 5/CMA.5.

15. Representatives of the World Bank will be invited to provide any oral or written updates to the Board at its second meeting.

Annex

Report of the Co-Chairs on their engagement with the World Bank during the period between the first and second meetings of the Board

I. Mandate

1. In its decision B.1/D.8 on matters relating to the operationalization of the Fund as a World Bank-hosted financial intermediary fund, the Board requested the Co-Chairs to engage with the World Bank on the scope, structure and elements of the financial intermediary fund documentation, hosting agreement and the trustee agreement between the Board and the World Bank in accordance with paragraph 19 of decisions 1/CP.28 and 5/CMA.5.

2. The Board further requests the Co-Chairs, after each engagement with the World Bank, to report to and seek input from the Board, in a transparent and inclusive manner through appropriate means, including through virtual meetings, with a view to enabling the Board to:

(a) Confirm that the relevant financial intermediary fund documentation ensures that the conditions set out in paragraph 20 of decisions 1/CP.28 and 5/CMA.5 can be met during the interim period;

(b) Endorse the hosting agreement and the trustee agreement;

(c) Confirm that the Co-Chairs' engagement with the World Bank will be in full accordance with decisions 1/CP.28 and 5/CMA.5 and the Governing Instrument of the Fund for responding to loss and damage.

II. Report of the meeting between the Co-Chairs of the Board and the World Bank on 9 May 2024

3. The Co-Chairs met with the World Bank team in early May to address matters relating to the World Bank staff paper to be presented to the World Bank Board in June 2024. The World Bank outlined the internal processes and the suggested approach going forward which include internal considerations in range of World Bank committees, such as its New Business Committee, and its finance, risk and operational committees. During the ensuing discussion, the Co-Chairs responded to key questions on the risks identified by the World Bank, such as:

(a) Legal risk: regarding the additional legal exposure for the World Bank, particularly in relation to potential negative impacts caused by Fund projects and concerns with the direct access;

(b) Reputational risk: operational matters in relation to Fund projects that could reflect poorly on World Bank;

(c) Operational risk: the significant administrative burden on the secretariat of the World Bank in relation to framework agreements with entities undertaking project work supported by the Fund, and the costs of such operations.

4. There was a lengthy discussion on operationalizing the direct access and small grants functions. The World Bank explained that it is flexible but that it has little experience of working with non-traditional partners, with the exception of the Adaptation Fund Board financial intermediary fund option, and the potential risks of this approach need to be comprehensively considered. The Co-Chairs also raised the matter of an interim list of entities for a blanket accreditation, on the basis of paragraph 49(a–e) of the Governing Instrument of the Fund for responding to loss and damage. Although blanket accreditation is normally included at the concept note stage, it would not be possible to apply this approach

at this point in the work of the Board, in particularly without a clear Board decision on this matter.

III. Meeting with the Dean of the Board of Executive Directors

5. Prior to the meeting with the Board of Directors of the World Bank on 10 June, the Dean of the Board of Executive Directors of the World Bank, Matteo Bugamelli, hosted a “Dean’s Tea” which was an opportunity for frank exchange between the Co-Chairs of the Board of the Fund and the Executive Directors of the World Bank. Key issues discussed included (a) a harmonized accreditation system building on past experience; (b) ensure the fulfilment by the Trustee of the pledges made at the United Nations Climate Change Conference in Dubai, United Arab Emirates (COP 28); (c) finding a solution to the issue of direct access while recognizing the risks and opportunities; and (d) utilizing the highest environmental and social safeguards and fiduciary standards.

IV. World Bank acceptance letter

6. On 10 June 2024 the Co-Chairs received written confirmation that the Board of Executive Directors of the World Bank had approved the World Bank’s role as interim secretariat, host and Trustee of a fund for responding to loss and damage caused by climate change. The Board of Directors of the World Bank approved the management’s proposed approach, including:

(a) The establishment of the proposed Financial Intermediary Fund for Responding to Loss and Damage at the World Bank, for which the World Bank will provide support to the Fund by acting as interim Trustee and host to the secretariat of the Fund, with a novel structure whereby the Trustee will enter into financing agreements with recipients of FLD funding, including direct access recipients and implementing entities other than multilateral development banks, United Nations agencies and the International Monetary Fund, on behalf of the Board of the Fund, which has independent legal personality; noting that any subsequent proposal to include direct access in a financial intermediary fund where the Bank as financial intermediary fund trustee signs the financing agreements with recipients will be brought to Executive Directors for approval;

(b) The provision of assistance from the Fund to Parties to the Convention and the Paris Agreement that are not members of the World Bank.

V. Working meeting of the Co-Chairs and the World Bank

7. The Co-Chairs attended a meeting with the World Bank from 24 to 26 June 2024. The meeting focused on discussing the next steps to meet the set of milestones and conditions in decisions 1/CP.28 and 5/CMA.5, in particular the deadline for the World Bank to submit relevant documentation to the Board by 12 August 2024.

8. **Operational policy provisions:** the meeting included discussions on the functional equivalency of financial management, procurement policies, and environmental and social frameworks, direct access and non-traditional implementing entities, and accreditation.

9. **Trustee Agreement:** the following issues were discussed:

(a) The World Bank agreed to draft Trustee Agreement that refer to and comply with the provisions of the Governing Instrument, specifically (i) a generic clause that allows for receipt of grant contributions and, subject to agreement on the specifics, loan contributions; (ii) a generic provision on transfers for outflows; (iii) contributors’ individual payment terms negotiated and specified within short-form contribution agreements; and (iv) integration of environmental, social and governance factors into the Fund’s cash portfolio, through thematic investments by “opt-in” which may involve use of strategies like the Sustainable Fixed Income Strategy of the World Bank – **by 12 August.**

(b) The United States dollar will be the default currency for holding contributions because this is the currency of most demand. If other holding currencies are to be considered, a currency conversion policy would need to be agreed with the Trustee and approved by the Board and reserves would be needed to account for any potential currency fluctuations;

(c) **Memorandum of agreement/understanding:** in this regard, a non-legally binding document on the Hosting Arrangement could be signed by the Co-Chairs with the endorsement of Board, after 12 August 2024, on the understanding that a legally binding agreement would be signed once legal personality is conferred on the Board. The Co-Chairs would also explore whether the same memorandum of understanding modality could be used in relation to the Trustee Agreement. While it is possible that some donors would not enter contribution agreements on this basis, it could help certain donors needing to disburse contributions earlier than the expected date of finalization of the legally binding agreements, to the extent that they cannot rely on available alternatives, and give assurance to the broader international community that pledges are being fulfilled;

(d) **Contribution agreement and payment instructions letter:** upon approval by the Board of **model** and standard provisions, World Bank could prepare and sign contribution agreements with donors to convert pledges to contributions ahead of donor financial year deadlines. Such a **model** would need to be agreed **by the third meeting of the Board (B.3) (with priority for contribution agreement for grants). Loan model agreements can be crafted at a later stage;**

10. **Executive Director selection:** During the meeting the Co-Chairs held a call with the co-chairs of the ad hoc subcommittee on the selection of the Executive Director for the Fund to address matters of common concern.

11. **Secretariat matters:** The World Bank agreed to share with the Co-Chairs the following information on its (i) human resources policies; (ii) conflict of interest frameworks from other financial intermediary fund and (iii) templates for workforce planning, including key functions such as programme management, monitoring and evaluation, communications/partnerships, and corporate support to the Board of the Fund.

12. Transitional secretariat options will be provided (including ensuring core functions are up and running by mid-2025). This can be done through World Bank staffing (Developmental Assignment Information Service, Short term assignments, etc).

13. Regarding distinction of roles, responsibility for the fundraising strategy will remain with the Board; the Executive Director and secretariat staff will support the communications/public relations function. (Trustee to be present to take note of pledges but not involved in fundraising.).

14. The Board of the Fund would require its own support: this would be covered in the proposed workforce planning process.

15. **Cost recovery:** the Co-Chairs agreed to instruct the interim secretariat to schedule a meeting between the World Bank team and the ad hoc subcommittee on the administrative budget of the Fund on the financial intermediary fund cost recovery framework and methodology presentation before B.2.

16. **World Bank at B.2:** The Co-Chairs and the World Bank agreed that the following issues would be discussed under the appropriate agenda item at B.2:

- (a) The outline contents for the Hosting Arrangement;
- (b) The outline of the Trustee Arrangements;
- (c) The Contribution Agreements for the COP 28 pledges.