

13 September 2024

Third meeting of the Board

18–20 September 2024

Baku, Azerbaijan

Provisional agenda item 9

Co-Chairs' proposal on the operationalization of the Fund as a World Bank-hosted financial intermediary fund

Expected actions by the Board

The Board will be invited to:

(a) Consider and endorse the “Agreement on the Hosting Arrangement for the Secretariat of the Fund for responding to Loss and Damage” to be entered into between the World Bank and the Board as submitted by the World Bank and circulated to Board members on a limited distribution basis;

(b) Consider and endorse the “Trustee Agreement on the terms and conditions for the administration of the Trust Fund for the Fund for responding to Loss and Damage” to be entered into between the World Bank as interim Trustee and the Board, as well as the templates of the “Trust Fund Contribution Agreement” and “Trust Fund Contribution Arrangement” to be entered into between the indicial contributors and the International Bank for Reconstruction and Development, serving as the interim trustee of the Trust Fund for the Fund for responding to Loss and Damage submitted by the World Bank and circulated to the Board on a limited distribution basis;

(c) Confirm to the Conference of the Parties (COP) and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) that the conditions set out in paragraph 20 of decisions 1/CP.28 and 5/CMA.5 can be met during the interim period;

(d) Authorise the Co-Chairs to sign the “Agreement on the Hosting Arrangement for the Secretariat of the Fund for responding to Loss and Damage”; and “Trustee Agreement on the terms and conditions for the administration of the Trust Fund for the Fund for responding to Loss and Damage”.

(e) Request the Co-Chairs to track and report to the Board and to the COP/CMA on progress towards meeting the conditions set out in paragraph 20 of decisions 1/CP.28 and 5/CMA.5 such that the conditions can be met during the interim period;

(f) Decide to launch an inclusive and transparent performance review of the interim arrangements no later than the first meeting of Board in 2027 and to report the outcomes of the review to the COP and the CMA not later than at the thirty-third and tenth sessions respectively, with a view to ensuring the business continuity of the Fund.

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 (FIF) 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 an FIF 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 FIF, 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 an FIF and submit to the Board of the Fund by no later than eight months after the conclusion of COP 28 the relevant FIF documentation, approved by the World Bank Board of Directors, including a hosting agreement between the Board of the

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

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

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 FIF 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 COP and the CMA, on a recommendation of the Board of the Fund, will 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 FIF, the Board of the Fund will provide guidance to the World Bank as it takes the necessary steps to establish the Fund as an FIF.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 FIF documentation, the 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 FIF 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 response to the invitation from the COP and the CMA referred to paragraph 1 above, 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 its 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

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).

20 of decisions 1/CP.28 and 5/CMA.5. A copy of this letter is included in annex I to this document.

13. In accordance with the invitation from the COP and the CMA referred to in paragraph 4 above, the World Bank submitted to the Co-Chairs of the Board on 12 August 2024 the draft FIF documentation, including a hosting agreement, a trustee agreement and a contribution agreement, which were circulated to the Board on a limited distribution basis. A copy of this letter is included in annex II to this document.

II. Engagement with the World Bank during the period between the second and third meetings of the Board

14. In accordance with the request from the Board to the Co-Chairs referred to in paragraphs 9–10 above, the Co-Chairs of the Board have engaged with the World Bank on matters concerning the operationalization of the FIF, including consultation on the draft FIF documentation provided by the World Bank.

15. The World Bank shared a zero draft of the FIF documents with the Co-Chairs for initial comments on 2 August 2024. The Co-Chairs submitted written comments and engaged in a virtual meeting with the World Bank on the draft documents.

16. In accordance with paragraph 19 of decisions 1/CP.28 and 5/CMA.5, the World Bank submitted the documents as required to meet this condition on 12 August 2024 (see annex II). The World Bank letter was promptly circulated to the Board on 13 August 2024, on a limited distribution basis, with a period of 10 days allowed for recipients to provide written comments.

17. The Co-Chairs convened a virtual discussion on the documentation and engagement with the World Bank on 28 August 2024. Submissions from 12 Board members were received and submitted to the World Bank.

18. From 3 to 5 September, the Co-Chairs met with the World Bank to discuss the documents and submissions from Board, with a view to revising the FIF documentation and incorporating comments received from Board members, as appropriate. The World Bank and the Co-Chairs compiled a matrix of responses to each of the comments, as contained in documents FLD./B.3/Inf.1, FLD./B.3/Inf.2 and FLD./B.3/Inf.3, circulated to the Board on a limited distribution basis. The Co-Chairs further met virtually with the World Bank to review the documents and responses, with final adjustments made on 11 September 2024. The documents were cleared by World Bank senior management on 13 September 2024 and transmitted to the Co-Chairs on the same day, as contained in documents FLD./B.3/Inf.4, FLD./B.3/Inf.5 and FLD./B.3/Inf.6, circulated to the Board on a limited distribution basis.

19. The interim secretariat supported the Co-Chairs in their engagement with the World Bank on this matter by undertaking a preliminary review of the draft FIF documentation provided by the World Bank and compiled written comments submitted by the members of the Board.

20. The FIF documents are contractual in nature and have yet to be agreed by the Board; as such they are still deliberative and have been distributed on a restricted and confidential basis. Once approved the FIF documentation will be made publicly available.

Annex I

**Letter from the World Bank to the COP 28 President in
response to paragraph 17 of decisions 1/CP.28 and 5/CMA.5**



Juergen Voegele
Vice President
Sustainable Development

January 31, 2024

His Excellency Dr. Sultan Ahmed Al Jaber
Minister of Industry and Advanced Technology
Special Envoy for Climate Change
P.O. Box 2166, Abu Dhabi
United Arab Emirates

Your Excellency

We write to you in your capacity as President for the Conference of the Parties at its twenty-eighth session, the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol at its eighteenth session and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its fifth session (COP 28/CMP 18/CMA 5).

We refer to the recent decision of the COP on the issue of the operationalization of a new funding arrangement for loss and damage (-/CP.28./CMA.5), noting the invitation to the World Bank to operationalize a fund for loss and damage as a financial intermediary fund (FIF), to host the Fund Secretariat and to provide Trustee services for an interim period of four years, subject to the conditions contained in the decision.

We would hereby like to acknowledge this invitation and to thank the COP Presidency for this opportunity to support this critical initiative. We would further affirm that we will seek to meet the timelines for the World Bank's confirmation as to the various conditions and the preparation of the relevant documentation for consideration of the Fund Board once it has been established, subject to our internal procedures for establishing a FIF and approval by our Board of Executive Directors.

We would like to assure the COP Presidency that we have already commenced internal procedures and very much look forward to the establishment of the Fund Board in order that we might receive its guidance as we take the necessary steps to establish the FIF.

Sincerely,



Annex: Sections of Decision -/CP.28 -/CMA.5 inviting the World Bank to operationalize the Fund for Responding to Loss and Damage

20. *Decide* that, as further elaborated in paragraphs 21–24 below, 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 Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;
- (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 on 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;

21. *Also decide*, notwithstanding the invitation referred to in paragraph 17 above, that if the World Bank has not confirmed that it is willing and able to meet the conditions set out in paragraph 20 above within six months after the conclusion of the twenty-eighth session of the Conference of the Parties, the Board will launch the selection process for the host country of the Fund and the Conference of the Parties at its twenty-ninth session and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its sixth session will approve the necessary amendments to the Governing Instrument of the Fund;

22. *Further decide* that, if the Board of the Fund determines that the relevant financial intermediary fund documentation referred to in paragraph 19 above, approved by the World Bank Board of Directors, does not ensure that the conditions set out in paragraph 20 above can be met during the interim period, the Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, on a recommendation of the Board of the Fund, will 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 Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement may take any other course of action deemed appropriate;

23. *Decide* that, if the conditions set out in paragraph 20 above 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 Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement will take steps at the end of the interim period referred to in paragraph 17 above 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;

24. *Also decide* that, if the conditions set out in paragraph 20 above have 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 Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement will take steps at the end of the interim period referred to in paragraph 17 above to invite the World Bank to continue operationalizing the Fund as a financial intermediary fund, with or without conditions, as appropriate

Annex II

Letter from the World Bank to the Co-Chairs of the Board in response to paragraph 19 of decisions 1/CP.28 and 5/CMA.5



Juergen Voegle
Vice President, Planet

August 12, 2024

Mr. Jean-Christophe Donnellier and Mr. Richard Shermann
Co-chairs of the Fund for Loss and Damage

Dear Co-chairs,

*Invitation to the World Bank to Operationalize a Fund for Responding to Loss and Damage: FIF
Documentation*

We write in reference to the historic decision (1/CP.28 and 5/CMA.5) to operationalize a fund for responding to loss and damage (FLD) and specifically the invitation extended to the World Bank outlined in paragraphs 17 to 21 of the decision.

As contemplated in paragraph 19 of the decision, we are very pleased to submit for discussion and finalization to the FLD Board, the relevant financial intermediary fund (FIF) documentation, including Hosting Agreement, Trustee Agreement, and Contribution Agreement

We would like to take this opportunity to thank the Board of the FLD and the interim Secretariat for their guidance and collaboration in preparing the FIF documentation.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Voegle", with a long horizontal line extending from the end of the signature.



Annex III

Summary of clarifications and adjustments made in relation to views expressed by the Board

1. Several Board members raised the importance of aligning the draft agreements with the Governing Instrument. The text was subsequently rebalanced, and the Governing Instrument included as an annex in the Hosting Arrangement, with references throughout the document recognizing the functions and authorities of the Board. The responsibilities for the World Bank as Host are now reflected as laid out in the Governing Instrument.
 2. Several Board members also called for clarity on the roles and responsibilities of the secretariat. The arrangement now has dedicated sections which define and lay out the roles and functions of the Board and the secretariat of the Fund, respectively (strictly following what is laid out in the Governing Instrument). The information explicitly refers to a “dedicated and independent secretariat which is accountable to the Board”, as referenced in the Governing Instrument. The mandate and specific responsibilities of the secretariat will be determined by the Board, with administrative systems and functions supported by the World Bank.
 3. The Co-Chairs further clarified the difference between policies developed by the Board for the secretariat and those policies applied by the World Bank, to confirm that World Bank policies would be applied to the secretariat and secretariat staff (as part of the Host responsibilities) whereas policies developed by the Board would apply to the Fund and/or members of the Board (but not secretariat staff).
 4. The Co-Chairs discussed the ongoing recruitment process of the Executive Director of the Fund, who will be hired as a World Bank employee for administrative purposes but shall be accountable to the Board, as the head of the secretariat. As a member of staff of the World Bank, the Executive Director will satisfy their duties to the World Bank by fulfilling their responsibilities under their work programmes to the Fund and the Board.
 5. Regarding cost recovery methodologies, it was noted that the World Bank has had ongoing engagement with the ad hoc subcommittee on the budget to explain the proposed cost recovery policy in detail and the World Bank shared an external review of its policy that found it to be appropriate and reasonable.
 6. In response to requests for more details on operationalization and access modalities, the Co-Chairs noted that defining these is the responsibility of the Board. These aspects will be developed over time, under the authority and guidance of the Board and reflected in an operations manual.
 7. The Co-Chairs also discussed a way forward for handling the termination of the Hosting Agreement in an orderly fashion and to ensure business continuity. It was agreed that notice of termination of the World Bank’s role as host of the secretariat prior to the agreed Termination Date can be given by either the Board or the World Bank, in writing no less than six (6) months prior to any sessions of the COP and the CMA.
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