

Options for establishing the institutional arrangements for the new fund

TSU Working Paper relating to paragraph 5(a)

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I. INTRODUCTION

A. Mandate

1. By decision 2/CP.27, and decision 2/CMA.4, the COP and CMA established new funding arrangements and a fund for assisting developing countries that are particularly vulnerable to the adverse effects of climate change, in responding to loss and damage. The fund includes a focus on addressing loss and damage.
2. The above-mentioned decisions also established a Transitional Committee (“TC”) to make recommendations for consideration and adoption at COP28 and CMA5, and decided that the recommendations of the TC shall consider, inter alia, “establishing institutional arrangements, modalities, structure, governance and terms of reference for the new fund”.¹
3. During the second meeting of the TC (“TC2”), TC members identified three different options for establishing and operationalizing the institutional arrangements for the fund: (a) a standalone fund (i.e. with separate legal personality and its own institutional and administrative arrangements), (b) a fund hosted² by an existing fund under the United Nations Framework Convention on Climate Change (“**Convention**”), and (c) a fund hosted by an existing institution outside the Convention.

B. Scope

4. This paper has been prepared by the Technical Support Unit (“TSU”) to support the TC’s consideration of the appropriate institutional arrangements for the new fund and sets out how the various options could be operationalized, and their key implications.³
5. Specifically, the paper looks into the following options for establishing the new fund:
 - (a) A new standalone fund (Option 1, see Section III); and
 - (b) A new fund:
 - (i) hosted by an existing operating entity of the financial mechanism of the Convention:
 - (A) Green Climate Fund (“GCF”) (Option 2, see Section IV);
 - (B) Global Environment Facility (“GEF”) (Option 3, see Section V);
 - (ii) hosted by the Adaptation Fund (“AF”) / Adaptation Fund Board (“AFB”) (Option 4, see Section VI); and

¹ Decision 2/CP.27, paragraph 5(a); decision 2/CMA.4, paragraph 5(a).

² In this paper, references to the new fund being ‘hosted’ by an existing institution (whether under or outside the Convention) refer to the secretariat functions (including potential independent grievance, integrity and evaluation functions) being so hosted or administered. In this context, it is noted that while this paper may colloquially refer to the new fund being hosted by existing institutions, in some cases, the hosting institution does not itself have its own legal status and in such case, the relevant ‘legal’ host would be the relevant institution that provides juridical personality to the relevant fund and/or hosts the fund’s secretariat. This point is drawn out further in this paper in the relevant Sections.

³ This paper should be read in conjunction with the separate paper prepared by the TSU relating to paragraph 5(a) of decision 2/CP.27 and decision 2/CMA.4, which focuses on access, triggers and gaps.

- (iii) hosted by an existing institution outside the Convention:
 - (A) World Bank, as a financial intermediary fund (“FIF”) (Option 5, see Section VII)⁴; and
 - (B) United Nations, as a multi-partner trust fund (“MPTF”) (Option 6, see Section VIII).
- 6. For each option, this paper sets out (i) a brief description of the option, (ii) the steps needed to be taken by the COP (or COP and CMA)⁵ to establish the relevant institutional arrangements, (iii) the steps to be taken by the relevant institution (and/or other parties) to operationalize the relevant option, (iv) potential interim arrangements that may be available to ensure the prompt start of the relevant option, (v) key legal, governance and operational implications of the relevant option, and (vi) other relevant observations. Annex I to this paper seeks to summarize the implications of each option in table format.
- 7. This Paper does not attempt to be an exhaustive as to the possible options available, nor detail each and every step required in the relevant establishment process. Instead it seeks to present the key steps and the implications of the different options. Upon narrowing down the potential options, formal consultation with potential hosts, if hosting remains an option, is advisable to obtain further clarity on the necessary steps and implications, as well as any limits which may be applicable with respect to the hosting by a specific institution.⁶

C. Methodology

- 8. This paper has been prepared on the basis of a desk review of relevant publicly available information, informal interviews with personnel from relevant institutions where this was possible, and technical inputs from members of the TSU.
- 9. Accordingly, this paper has not undergone full management review of the relevant institutions referred to herein, and their likely necessary steps and relevant considerations as set out in this paper remain subject to the further consideration of those institutions, and their policies and procedures.
- 10. The proposed options described in this paper do not constitute a recommendation by TSU nor reflect any particular views expressed by the TSU. The options are proposed for consideration by the TC and do not prejudice the final recommendations of the TC on the institutional arrangements for the new fund.

⁴ The World Bank may also be able to establish multi-donor trust funds to support activities addressing loss and damage. These vehicles may be more appropriate as part of the new funding arrangements, rather than the arrangements for the new fund given the strong oversight role that the World Bank would have to play, which role may not be easily compatible with COP/CMA guidance.

⁵ In the context of the AF/AFB, decisions from the CMP will also be required.

⁶ This paper should also be read in conjunction with the note from the World Bank: “*Financial Intermediary Fund (FIF) Options for a New Global Loss and Damage Fund as called for by COP27*”, 27 July 2023, (shared with TC members on 27 July 2023) (the “**WB Note**”). The WB Note refers to 4 different options. The first three of those options can be mapped to the options in this paper as follows: FIF1 is equivalent to Option 1; FIF2 refers to Options 2, 3 and 4; and FIF3 is equivalent to Option 5. FIF4 refers to another option, establishing a new fund under the Climate Investment Funds Family of Funds, which is not addressed in this paper.

II. KEY REFLECTIONS

11. The choice of option for the institutional arrangements for the new fund should not be made in a vacuum. Form should follow function, and the eventual decision on the appropriate institutional arrangements should be guided by the intended vision for the new fund and, in particular, the new fund's scope (in terms of intended activities and funding modalities), scale (in terms of expected financial resources), and size (in terms of intended staffing).
12. Nevertheless, when discussing matters relating to scope, scale and size, the TC should bear in mind the interlinkages with the flexibilities and limitations of each of the options for the eventual institutional arrangements. A particular decision in relation to the scope of the new fund, for example, may lead to the conclusion that one (or more) of the options is more suitable than the others.
13. This is particularly relevant if an existing institution is invited to act as the host of the new fund (Options 2-6). Under these options, due regard will need to be paid to the host institution's existing policy frameworks and whether the TC's expectations with regards to the new fund can be delivered under a particular hosting option. For example, certain options may preclude, or limit, the ability of the governing body to select the executive head of the new fund, while others may limit the number and types of entities that can directly access resources from the new fund.
14. Moreover, and while the COP and/or CMA has greater authority with respect to hosting the new fund under or within existing climate funds under the Convention process (Options 2, 3 and 4), the potential host will also need to consider whether it is willing and able to host the new fund. In the case of existing institutions whose secretariat is also hosted by another institution (i.e. Options 3 and 4), the approval of the relevant host of the secretariat would also be required.
15. In this context, a balance may also need to be struck between the functions given to the new fund and the risk appetite of the potential host institution (and not just its policy frameworks). The broader the scope, the greater the institutional risk, and this may affect whether a potential host is willing and able to act in that capacity. Additionally, even if the new fund fits within potential hosts' current risk tolerance, if there is a possibility that the new fund's scope, scale and size will be modified or increased over time, this uncertainty may result in potential host institutions not being able to take on that role now, or require the relevant host institution's concurrence with respect to future changes to the new fund.
16. Depending on the potential scale and size of the new fund, TC members should also consider whether the potential host institutions have the necessary absorptive capacity to accommodate the new fund.
17. With a new standalone fund (Option 1), the TC will effectively be starting with a blank slate. There would be, generally, greater flexibility with respect to the types of activities it can undertake, the types of entities that can directly access resources from it, and financial instruments that it could theoretically deploy directly. Moreover, the potential scale and size of the new fund would be constrained only by the new fund's ability to raise resources, and decisions of its governing body.
18. However, fully operationalizing a new standalone fund will likely take longer than the other hosting options. While the governing body may be able to start meeting promptly after the approval of terms of reference or a governing instrument for the new fund ("**ToR**"), as was the case with GCF, significant Board efforts will be required to select a

host country, formally establish the new fund's secretariat and adopt the necessary administrative and operations policy frameworks, in order for it to start approving activities and disbursing funds.

19. The new fund would also have to expend significant efforts in obtaining privileges and immunities for the fund and its staff, and these efforts could detract time and resources away from the new fund's core business.
20. By contrast, if the new fund is hosted by an existing institution, certain institutional infrastructure, and (differing degrees of) privileges and immunities, will already be in place, making full operationalization of the new fund quicker. However, the new fund's governing body may only be able to start meeting once the host has also taken the necessary steps to set up the relevant institutional arrangements, and thus there may be a time-lag between a decision at COP28, and the first meeting of the new fund's governing body.
21. The choice of institutional arrangements may also have a bearing on the content of the TC recommendations with regards to the new fund's design. In the context of a standalone fund, a full ToR would be wholly appropriate. However, if the new fund is hosted, it would be more normal for the final design to be undertaken by the host institution to ensure its consistency with that institution's policy framework. In this context, it may be more appropriate for the TC to recommend the adoption or approval at COP28 of key parameters, or goals, for the new fund, together with a request to the relevant host to establish the detailed design based on the main parameters, or goals, in consultation with relevant stakeholders (as was the case with, for example, the Global Biodiversity Framework Fund).
22. The success of the new fund will, in part, be a function of its design. Given the potential role for third parties in the core governance of the new fund – i.e. the potential trustee, and potential host of the new fund's secretariat – early formal engagement between the TC and such entities is highly advisable to ensure that key considerations from the relevant entities are taken into account in the eventual design of the new fund prior to a decision at COP28.

III. OPTION 1: NEW STANDALONE FUND

A. Description

23. Under Option 1, the new fund would be established as a standalone institution with its own juridical personality and legal capacity, similar to GCF⁷. It would have its own governing body and secretariat and would not be reliant on a third party (except, potentially in relation to trustee functions)⁸ in order to start operations.
24. However, as an entirely new institution, it would need to undertake various institutional and administrative activities in order to be able to function effectively. While these could occur in parallel to the development of operational policies, this is an ongoing additional workload for the governing body and the secretariat which could detract focus from the new fund's core mandate.

B. Necessary COP (or COP and CMA) Decisions

25. In order to establish the new fund as a standalone fund at COP28, the COP (or COP and CMA) should:
- (a) Approve the ToR of the new fund (which would specify that it has an independent (i.e. not hosted) secretariat);
 - (b) Decide to confer the fund with its own juridical personality and legal capacity;⁹
 - (c) Confirm that it is a free-standing international organization;¹⁰
 - (d) Decide that the fund, its assets, and staff, shall enjoy privileges and immunities related to the discharge and fulfilment of its functions;¹¹
 - (e) Start the process for the selection of the new fund's headquarters country;¹²
 - (f) Put in place interim arrangements to ensure the prompt start of the fund pending full operationalization;¹³ and
 - (g) If Parties wish the new fund to have an external trustee, invite the relevant institution to serve as the fund's trustee (which institution should have (near) universal privileges and immunities in its own right).¹⁴

C. Necessary steps of the fund's governing body

26. Following the establishment by the COP (or COP and CMA), the fund's governing body will need to take various steps to operationalize the institutional arrangements and

⁷ See decision 3/CP.17, paragraph 11.

⁸ See Section III.E.xii below.

⁹ See Section III.E.i for further details.

¹⁰ See Section III.E.i for further details.

¹¹ See Section III.E.ii for further details.

¹² To maximize efficiencies, the COP (or COP and CMA) may also wish to make clear that the fund's governing body has the ability to select the headquarters country so that such decision does not need to wait for a subsequent COP decision before it can be formalized.

¹³ See Section III.D for further details.

¹⁴ At TC2, there was an emerging, though not necessarily consensus, view that the World Bank should be invited to be the trustee. Alternatively, the terms of reference, of governing instrument, for the new fund to delegate the matter of deciding a trustee (or keeping the relevant functions in-house) to the new fund's governing body. Postponing a decision in this manner, however, may have the effect of delaying the operationalization of the new fund.

establish the fund's independent secretariat. In particular, the governing body would need to:

- (a) Manage the selection process of the fund's headquarters country and conclude a headquarters agreement with the selected country which would confirm the legal status of the new fund;
 - (b) Adopt the necessary core administrative frameworks (e.g. in respect of human resources, procurement, ICT, banking, accounting), in order for it to start hiring staff and purchasing necessary goods and services;
 - (c) Hire the executive head of the fund/its secretariat, and provide the necessary resources for the head to hire the initial staff necessary to put in place the necessary infrastructure for the fund (including matters relating to office space, safety and security, banking services etc.);
 - (d) Concluding arrangements with the trustee, if any, and start receiving contributions directly; and
 - (e) Adopt policies governing the operations of the fund so that contributions received can be deployed as promptly as possible.
27. If there is to be a trustee, that entity would also need to take the necessary internal steps to set up the trust fund.

D. Interim arrangements pending full operationalization of the fund

28. Notwithstanding the steps to be taken by the governing body to operationalize the fund, interim arrangements could be put in place to support the fund's prompt operationalization. For example, pending the establishment of the fund's own secretariat, the COP (or COP and CMA) could invite or request existing institutions to set up an interim secretariat for new fund as an autonomous unit within the relevant institution (and invite contributions to support the interim secretariat). For GCF, the COP requested the UNFCCC secretariat jointly with the GEF secretariat to take the necessary administrative steps to set up an interim secretariat for GCF as an autonomous unit within the UNFCCC secretariat premises, with such interim secretariat being fully accountable to the GCF Board.¹⁵ The GCF interim secretariat supported the GCF Board for its first five meetings.

E. Key legal, governance and operational implications

- i. Legal status (including juridical personality and legal capacity)
29. Under this option, the new fund would have its own juridical personality and legal capacity. This will allow it to enter into agreements with third parties in its own name.
30. Unless the ToR for the new fund is adopted by way of a treaty, and based on the lessons learned from GCF¹⁶, it is important that the COP (or COP and CMA) makes clear the new fund's status as an international organization. The TC may also wish to seek advice from

¹⁵ See decision 3/CP.17, paragraphs 18-26, which relate to the interim arrangements for GCF.

¹⁶ See [Report on the activities of the Secretariat, Addendum V, GCF/B.35/Inf.15/Add.05, 7 March 2023](#), paragraphs 8-14, which details some of the challenges GCF has faced with regards to its legal status, and its inability to formally register in its own name at high-level events relating to its core mandate.

the United Nations Office of Legal Affairs on other ways to ensure that the new fund is considered a free-standing international organization.

ii. Privileges and Immunities

31. Privileges and immunities are necessary for international organizations to ensure their operations are effective, efficient, independent, and to enable the organization to achieve its objectives.
32. As a new organization, the new fund, its assets, staff, and members of its governing body, would not automatically enjoy the necessary functional privileges and immunities in any country (though it is noted that these should be provided with respect to the fund's headquarters country pursuant to its headquarters agreement). Operating without privileges and immunities can entail significant risks for the new fund, its assets, its staff, and members of its governing body.
33. Accordingly, privileges and immunities would either have to be negotiated on a bilateral basis, similar to the approach currently being taken, with limited success, by GCF, or alternative modalities pursued. These could include (i) the adoption of a multilateral treaty on the privileges and immunities of the new fund, (ii) a requirement for countries to grant privileges and immunities on the new fund in order to receive resources¹⁷, or (iii) seeking an institutional linkage between the new fund and the United Nations so as to benefit from the privileges and immunities of the United Nations. With respect to the latter option, the design of the administrative framework of the new fund will be key determiner of whether or not such option is even theoretically viable.

iii. Relationship with COP/CMA

34. As a new standalone fund established by the COP and CMA, there are no material issues with the fund operating under the guidance of and being accountable to the COP and CMA. This can be reflected in the decision adopting the fund's ToR, the ToR itself, and, if the fund is designated as an operating entity of the financial mechanism of the Convention (an "OE"), in the arrangements that would be entered into by the fund and the COP.

iv. Composition of Governing Body

35. As a new standalone institution, there would be no specific constraints on the composition of the new fund's governing body, which may include non-Parties as members of the governing body. If the COP decides to designate the new fund as an OE, the composition of the governing body would need to be consistent with Article 11, paragraph 2, of the Convention.

v. Authority of Governing Body

36. As a new standalone institution, there would be no specific constraints on the governing body's authority to establish its own operational and administrative policies. Due regard, however, should be paid by the governing body when establishing policies which impact on the way in which relevant interventions must be implemented; if the new fund wishes to work with a wide range of partners in an efficient manner, it may wish to avoid adopting its own implementation-related policies which must be complied with by its

¹⁷ As a variation on this option, privileges and immunities could be made a requirement for the receipt of certain types of financial instrument from the fund, e.g. non-grant instruments, or in respect of certain activities.

partners in addition to the partners' own policies, as such modalities, as has been seen with GCF, can delay implementation of relevant interventions.¹⁸

37. Notwithstanding the foregoing, if the COP (or COP and CMA) and/or the governing body of the new fund wishes to seek an institutional linkage with the UN in order to benefit from some of its privileges and immunities, the administrative framework of the new fund will need to align (or at the relevant time, be brought into alignment) with the relevant UN frameworks.

vi. Selection of the executive head of the new fund

38. As a new standalone institution, the governing body could be given full authority with respect to the selection and appointment of the executive head of the new fund.
39. Notwithstanding the foregoing, if the COP (or COP and CMA) and/or the governing body of the new fund wishes to seek an institutional linkage with the UN in order to benefit from some of its privileges and immunities, some flexibility in the appointment process may need to be accommodated to reflect the requirements of the UN with respect to such linkage. This may include, subject to further detailed discussions with the UN Office of Legal Affairs, the right of the Secretary-General to formally appoint the executive head (after a selection process run by the governing body).

vii. Delegation of funding approvals

40. Delegation of funding approvals to the fund's management would be possible. The ToR should provide for this possibility (or at least not prohibit it), and the governing body could subsequently develop the parameters for such delegation to maximize the fund's efficiency.¹⁹ Any such delegation should be consistent with Article 11, paragraph 3(b), of the Convention if the new fund is designated as an OE.

viii. Sources of finances

41. It would be possible for the new fund to receive resources from a wide variety of sources. This should be made clear in the ToR, and the governing body will need to establish the necessary policy framework to give effect to this (e.g. through setting out the necessary due diligence requirements for non-sovereign funding sources, consistent with best practice in other organizations and consistent with the policies and procedures of the trustee (if external)).
42. Whilst a theoretical possibility, the new fund may struggle to raise funds from the capital markets directly if it does not possess a credit rating. However, the new fund may be able to indirectly access capital markets through the use of innovative structures such as those used by Gavi, whereby a special purpose vehicle could be incorporated by the new fund to issue securities based on binding sovereign contributions (see for example, the International Finance Facility for Immunization ("**IFFIm**").²⁰

¹⁸ Independent Evaluation Unit (2023), [Second Performance Review of the Green Climate Fund](#), Evaluation report No. 13 (February), Songdo, South Korea: Green Climate Fund, paragraph 204.

¹⁹ See, as an example, the Asian Infrastructure Investment Bank's [Regulation on the Accountability Framework](#).

²⁰ See [Synthesis report on existing funding arrangements and innovative sources relevant to addressing loss and damage associated with the adverse effects of climate change](#), TC2/2023/3, paragraphs 84-87 for further details. Under such structures, additional services from a treasury manager may be required.

ix. Network of partners

43. As a new standalone institution, the new fund will be able to define its own network of partners, and how such partnerships should be established. It would also be prudent to discuss the potential extent of the network of partners with the trustee to ensure that these can all be accommodated in the context of the trustee being responsible for the transfer of funds held in trust to the relevant partner.

x. Choice of financial instruments to be deployed

44. As a new standalone institution, the new fund will be able to define the types of financial instruments that it will deploy to finance its activities.
45. Notwithstanding this, the new fund's ability to deploy certain financial instruments, such as guarantees, standby letters of credit, and unfunded risk participations (without having to set aside or provide cash collateral), may be limited in circumstances where the new fund does not possess a credit rating.
46. Consequently, the governing body of the new fund will, in due course, have to decide how to accommodate such instruments in its toolkit in a way that does not disproportionately affect its commitment authority.

xi. Liability considerations

47. As a standalone institution with its own juridical personality, there would be no cross-liability issues as there would be no separate host institution who maybe directly affected by the activities of the new fund. However, the new fund would be exposed to litigation and related liability risks arising from third party claims in the absence of universal privileges and immunities.

xii. Matters relating to the trustee

48. The COP (or COP and CMA) would need to decide whether a separate trustee is required, or whether the new fund should manage such functions in-house. If an external trustee is preferred, based on experience with GCF and issues it has faced with respect to 'procuring' a trustee²¹, it may be more efficient to select the trustee now, and require the governing body to review the performance of the trustee periodically. Engaging formally with any potential trustee at this stage may be beneficial; selecting the trustee after the design of the new fund is final may limit the choice of potential entities that are in a position to undertake the proposed functions.

F. Other relevant considerations

49. Establishing the new fund as a standalone fund with its own juridical personality has the benefit that such establishment is not dependent on any other institution. There is no further design required, no minimum requirements to be met, and no approval required from another organization, unlike in cases where the fund is hosted. In turn, this means that this option would allow the governing body of the new fund to meet sooner than the other options and to start operationalizing the new fund. It also gives the new fund greater freedom in relation to its mandate to receive alternative source of funding, unlike the situation in which it is hosted by a third party and as such subject to some of the governance of the third party.

²¹ [Report on the activities of the ad hoc Trustee Selection Committee](#), paragraphs 9-17.

50. However, over the longer term, this option may encounter challenges that may not be as extensive (if at all) as with the other options. In addition to deciding on strategic and programming matters, as would be necessary for all the options, the governing body of a standalone fund would also need to take on, develop and address institutional and administrative matters. This includes selecting a host country, obtaining privileges and immunities, setting up the secretariat (including adopting administrative policies relating to human resources and procurement, amongst others; hiring staff), and meeting the infrastructure needs for the fund (e.g. ICT, offices, safety and security for the fund and staff). All of these, and in particular, recruiting staff, especially prior to the selection of the headquarters of the fund, can be challenging.
51. On the programming side, as a new institution, it would also need to develop relevant templates and procedures, and this could detract focus from consideration of funding approvals and/or their implementation. However, the option of the COP requesting the UNFCCC secretariat jointly with an established fund such as the GCF or GEF secretariat to assist initially with some administrative duties could help mitigate this.
52. To address some of the initial start-up challenges, including relating to recruitment, one possible approach which may be worthy of further consideration is adopting the approach taken by the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “**Global Fund**”). When the Global Fund was first established with its own juridical personality, there was significant pressure to become operational immediately. In this context, the board of the Global Fund, at its second meeting, approved the entry into of an administrative services agreement with the World Health Organization which, in effect, outsourced the Global Fund’s secretariat function until the Global Fund became fully autonomous in 2009.²²

²² <https://www.theglobalfund.org/en/news/2008/2008-12-19-the-global-fund-becomes-an-administratively-autonomous-institution-as-of-2009/>.

IV. OPTION 2: NEW FUND HOSTED BY GCF

A. Description

53. GCF was established in 2010 and the Governing Instrument for the Green Climate Fund (the “GI”)²³ was approved by the COP in decision 3/CP.17. GCF has its own juridical personality and legal capacity, and its own independent secretariat. It is headquartered in the Republic of Korea, and currently has no regional presence.
54. The World Bank serves as its trustee, responsible for receiving, holding and investing financial contributions from contributors, transferring such resources to GCF accredited entities (of which the World Bank itself is one) for the implementation of projects and programmes funded by GCF upon receipt of instructions from GCF, and preparing financial reports for the consideration of the GCF Board. In order to fulfil its role as trustee, the World Bank has established a separate FIF to administer the GCF resources as trustee.
55. Subject to resolving certain threshold questions (see Section IV.F below), the COP (or COP and CMA) could establish the new fund without juridical personality or legal capacity and request the GCF to host, or support administratively, the new fund.²⁴ Under this option, the new fund would operate through GCF’s juridical personality and legal capacity, with the staff of the new fund, GCF staff members.

B. Necessary COP (or COP and CMA) Decisions

56. In order to operationalize the new fund being hosted by GCF at COP28, the COP (or COP and CMA) should:
- (a) Approve the ToR,²⁵ of the new fund (which could specify that it will be supported administratively, or hosted, by the GCF);²⁶
 - (b) Invite or request GCF to support administratively, or host, the new fund as an autonomous operational unit with its own governing body, executive head, and secretariat;
 - (c) Request the governing body of the new fund and GCF to enter into appropriate hosting arrangements, including arrangements to ensure the privileges and immunities, operational and financial independence and autonomy of the new fund;
 - (d) If Parties wish the new fund to have an external trustee, invite the relevant institution to serve as the fund’s trustee, or delegate that decision to GCF (as the host of the new fund) and the new fund’s governing body;²⁷

²³ [Governing Instrument for the Green Climate Fund](#).

²⁴ This would be similar to the way in which the GEF is “supported administratively” by the World Bank, see [Instrument for the Establishment of the Restructured Global Environment Facility](#), as amended (the “GEF Instrument”), paragraph 21.

²⁵ But see Section IV.F below

²⁶ Alternatively, the ToR, could be silent on the hosting element, with this being addressed as a separate decision point in the relevant COP (or COP and CMA) decision, in order to provide flexibility in future for the host institution to either be changed, or to facilitate the fund being spun out as a standalone institution in its own right. Although the fact patterns and legal issues concerned are different, the Global Fund and Gavi, the vaccine alliance, could be useful examples of this.

²⁷ See Section IV.E.xii for further details.

- (e) Put in place interim arrangements to ensure the prompt start of the fund pending full operationalization;²⁸ and
- (f) Confirm that GCF has the authority to host the new fund;²⁹ and
- (g) Confirm that the hosting of the new fund by GCF is not inconsistent with the ordinary operations of GCF which continue to be governed by the GI, including its objectives and guiding principles as set out in the GI.³⁰

C. Necessary steps of GCF and the fund's governing body

57. Subsequent to any such COP (and/or COP and CMA) decisions, the GCF Board, supported by the GCF secretariat, would also need to consider how best to give effect to such decisions. Relevant considerations³¹ will include:

- (a) How to provide 'host' secretariat services in an autonomous manner, and ensure full-cost recovery with respect to such services, in particular in relation to relevant shared secretariat functions (e.g. human resources, procurement, legal etc.);
- (b) How to set up a separate trust fund to receive contributions for the new fund (which may involve discussions with the World Bank as the GCF trustee);
- (c) How to apply existing GCF administrative policies to the new fund, such as those relating to human resources, procurement, ICT, contributions etc., in particular to ensure the operational independence and autonomy of the new fund;³²
- (d) Whether changes to existing GCF policies affecting implementation may be required to clarify their application to GCF as GCF, rather than GCF as the host of the new fund's secretariat;
- (e) Whether any amendments to its Headquarters Agreements would be necessary to ensure that it would also apply to the new fund;
- (f) Reputational risks associated with providing juridical personality and legal capacity to the new fund, and specific matters where the no-objection of GCF (as GCF) may be required with respect to activities undertaken by the new fund, or systems changes that may be required as a consequence of new policies and/or procedures adopted by the new fund;
- (g) Negotiation and conclusion of a hosting arrangement to address the above and other relevant matters.³³

²⁸ See Section IV.D for further details.

²⁹ See Section IV.F for further details. This part of the decision is relevant to the COP decision only, as the GI was approved by the COP.

³⁰ See Section IV.F for further details. This part of the decision is relevant to the COP decision only, as the GI was approved by the COP.

³¹ See also Section IV.F for further details.

³² Relevant matters will include arrangements for the formal appointment of the executive head of the new fund in light of such person formally being a GCF staff member (see Section IV.E.vi for further details), and the role of GCF (as GCF) in connection with procurements for the new fund.

³³ Such hosting arrangement could be similar to the ones concluded by the World Bank and certain FIFs (such as the Climate Investment Funds, and the Global Partnership for Education). For efficiency purposes, the relevant COP decision should be clear that such hosting arrangement is to be concluded between GCF and the new fund and is not subject to subsequent COP (or COP and CMA) endorsement.

58. In addition, the governing body of the new fund would have to take decisions in relation to the following matters:
- (a) Negotiating and concluding relevant hosting arrangements with GCF;
 - (b) Hiring the executive head of the fund, and provide the necessary resources for the head to hire the initial staff;
 - (c) Participating in negotiation of any relevant arrangements with the trustee, in order to start receiving contributions directly; and
 - (d) Adopting policies governing the operations of the fund so that contributions received can be deployed as promptly as possible.
59. Finally, if applicable, the World Bank, or other relevant entity, would also need to take the necessary internal steps to establish the new FIF (in the case of World Bank) or trust fund (in the case of another trustee), as applicable, for which it would be trustee.

D. Interim arrangements

60. Notwithstanding the steps that need to be taken by GCF and the governing body of the new fund to operationalize the fund, interim arrangements may be able to be put in place to support the fund's prompt operationalization. For example, pending the operationalization of the new fund being hosted by GCF, the COP (or COP and CMA) could invite or request GCF and other relevant existing institutions (e.g. the UNFCCC secretariat) to set up an interim secretariat for new fund as an autonomous unit within the GCF secretariat (and invite contributions to support the interim secretariat).
61. In light of the GCF's existing governance structure, giving effect to such a request is likely to first require a GCF Board decision to this effect, as well as new and additional resources, together with a one-off exception to the GCF's policy on contributions which does not permit earmarking. These requirements may delay setting up such interim secretariat.

E. Key legal, governance and operational implications

- i. Legal status (including juridical personality and legal capacity)
62. Under Option 2, the new fund would not have its own juridical personality and legal capacity. Instead, it would operate (and incur liabilities³⁴) in the name of GCF on the basis of GCF's juridical personality and legal capacity. In practical terms, this means that signing authority would need to be granted to the relevant persons in the new fund, with legal agreements subject to legal clearances from GCF's Office of the General Counsel.
63. All staff of the new fund would be staff members of GCF, and the applicable GCF policies and procedures would apply to them.
- ii. Privileges and Immunities
64. As the new fund, its assets and its staff would use GCF's juridical personality and legal capacity, subject to a review of the specific terms of the relevant bilateral agreements between GCF and each country, the new fund, its assets and staff should benefit from GCF's privileges and immunities. It should be noted, however, that members of the new

³⁴ See Section IV.E.xi for further details.

fund's governing body would not be automatically be protected by GCF's privileges and immunities.

65. It is noted, however, that GCF has signed³⁵ bilateral privileges and immunities agreements with only 30 countries at present³⁶, and therefore the new fund may face many of the challenges experienced by GCF in this regard.³⁷
66. Close consultation between the new fund and GCF will be required to ensure that none of the activities undertaken by the new fund or its staff affect the privileges and immunities of GCF and mechanisms for addressing any such issues should be clearly articulated in the relevant hosting arrangements.

iii. Relationship with COP/CMA

67. As a new fund established by the COP and CMA, and hosted by an existing OE there are no material issues envisaged with the fund operating under the guidance of and being accountable to the COP and CMA. This can be reflected in the decision adopting the fund's ToR, the ToR itself, and, if the fund is designated by the COP (by way of decision) as an OE in its own right, in the arrangements that would be entered into by the fund and the COP pursuant to Article 11, paragraph 3, of the Convention.

iv. Composition of Governing Body

68. In principle, there are no legal restrictions stemming from the Convention or Paris Agreement which dictate the composition of the new fund's governing body (including in relation to the role of non-Parties). However, it should be noted that if the new fund is designated as an OE, the composition of the governing body will need to be consistent with Article 11, paragraph 2, of the Convention.

v. Authority of Governing Body

69. In principle, the governing body should be able to adopt its own operational policies provided that they do not give rise to disproportionate liability risk for GCF (as the legal entity) and do not affect GCF's privileges and immunities.
70. The governing body will not, however, have any direct authority over GCF's administrative policies, save to the extent that the GCF Board grants the new fund's governing body the authority to make changes to such policies in so far as they would apply to the new fund. In practice, this may be difficult to achieve because GCF would be responsible for administering any relevant changes.
71. Accordingly, both in connection with operational and administrative policies, the hosting arrangements will need to include relevant consultation and resolution provisions for cases where proposed operational policies of the new fund may give rise to risks to the GCF, or where accommodations may be necessary in relation to administrative policies. Such requirements may, however, impact on the speed with which the new fund can operate and undertake novel activities or arrangements.

³⁵ In some countries, even though the relevant bilateral agreement has been signed, the country still needs to complete its internal requirements in order for the relevant privileges and immunities to be effective.

³⁶ This includes the Headquarters Agreement. As of the date of this document, 28 of the bilateral agreements have entered into force.

³⁷ See the Second, Third and Fourth Biennial Reports on privileges and immunities of GCF for further details on these challenges ([FCCC/CP/2017/5](#), Annex III; [FCCC/CP/2019/3](#), Annex III; [FCCC/CP/2022/4](#), Annex X).

vi. Selection of the executive head of the new fund

72. As the executive head (and the staff) of the new fund would be GCF staff members, based on the existing GCF policies, such selection would be managed by the GCF Executive Director, and they would hold a letter of appointment signed by the GCF Executive Director.
73. However, should the intention be that the executive head of the new fund is selected by the governing body, and the staff of the new fund are selected by the executive head, this should be made clear in the new fund's ToR, and guidance given to GCF to give effect to such arrangement.
74. This would necessitate amendments to GCF's policies on human resources, and require the GCF Board to make clear that the selection of the executive head of the fund shall be the sole responsibility of the new fund's governing body, and that the executive head of the new fund shall be responsible for the selection of the staff of the new fund, and that the letters of appointment with respect to such persons shall be signed by representatives of the new fund's governing body, or the executive head, as appropriate.

vii. Delegation of funding approvals

75. In principle, the governing body of the new fund could delegate all or some of its authority for funding approvals to the executive head of the new fund. Enabling provisions to this effect could be included in the new fund's ToR with the parameters for the exercise of such delegation being defined in more detail by the new fund's governing body. Any such delegation should be consistent with Article 11, paragraph 3(b), of the Convention if the new fund is designated as an OE.

viii. Sources of finances

76. If hosted by GCF, the new fund will be able to receive funding from any entities that GCF can legally receive funding from. However, in order for the new fund to receive contributions from non-sovereign and other alternative and innovative sources, the new fund would need to put in place appropriate due diligence and know-your-customer procedures, which procedures would need to be satisfactory to the trustee, as the relevant funding would be transferred directly to the trustee.
77. The ability of the new fund to raise funds from the capital markets, e.g. by issuing bonds, will depend on GCF's appetite to do so. This is because the legal entity through which the new fund acts is GCF, and the issuance of securities would create a balance sheet liability for GCF. Moreover, the issuance of bonds for the benefit of the new fund would also impact on GCF's ability to access the capital markets for its own funding needs, and thus would need to be critically considered by GCF's Board first.
78. As a practical matter, given that GCF does not have a credit rating or a fixed capital base, any issuance of securities by GCF (if possible) may be considered risky by the market, leading to a high coupon rate which cannot effectively be passed on to potential recipients of the funding.
79. As an alternative, the special purpose vehicle structure referred to in Section III.E.viii above could be a way to raise funds from the capital market notwithstanding GCF's lack of credit rating.

ix. Network of partners

80. In principle, the new fund's governing body could determine the range of partners it wishes to work with and through to deliver its mandate.
81. However, as the contracting with such partners will need to be done in GCF's name, the limits of the governing body's discretion with respect to choice of partner may need to be established in the hosting arrangements, to ensure that GCF, as the legal entity, is not taking on risks that cannot be adequately mitigated or managed.
82. It would also be prudent to discuss the potential extent of the network of partners with the trustee to ensure that these can all be accommodated in the context of the trustees being responsible for the transfer of funds held in trust to the relevant partner.

x. Choice of financial instruments to be deployed

83. In principle, the new fund should be able to deploy the same instruments as those which can be deployed by GCF. However, given that the relevant financial instrument will be extended in GCF's name, the risk appetite of GCF may need to be further considered by the GCF Board, and addressed in the hosting arrangements for the new fund.
84. The new fund's ability to deploy certain financial instruments, such as guarantees, standby letters of credit, and unfunded risk participations (without having to set aside or provide cash collateral), may be limited in circumstances where GCF does not possess a credit rating.
85. Additionally, the new fund will not, without GCF's approval, be able to deploy new financial instruments that do not exist at the relevant time in GCF's toolkit.

xi. Liability considerations

86. A significant factor in GCF's consideration of whether it is able and willing to host the new fund relates to the potential liability it may be exposed to as a result of the new fund operating through GCF's legal personality.
87. While the new fund may be able to limit some of the liabilities through its contractual arrangements, GCF may still be exposed to third party claims resulting from the operations of the new fund (e.g. if an intervention financed by the new fund causes harm to communities). This risk is significantly higher than with respect to FIFs hosted by the World Bank as GCF's network of privileges and immunities is much smaller, and thus the GCF is exposed to litigation risk in more than 100 developing countries and all developed countries.

xii. Matters relating to the trustee

88. It is likely that GCF will need to establish a new trust fund to accommodate the new fund's resources, and to ensure full segregation from GCF's own resources. In this connection, it would be logical to invite the World Bank (as GCF's existing trustee) to establish a new FIF for the purposes of managing the resources of the new fund.
89. FIFs are not established lightly by the World Bank, and there always remains a risk that the World Bank decides that acting in such capacity is not appropriate for it. As such, early engagement with the World Bank is essential to understand its appetite to perform the function of trustee for the new fund.

F. Other relevant considerations

90. The GI: While the GCF Board has the express power to establish new funding windows under paragraph 39 of the GI, the GI is silent on the Board's authority to establish new trust funds and/or host the secretariat of a new fund. Moreover, the GI does not refer to 'addressing loss and damage' as being part of its objectives or guiding principles; instead it refers to GCF, in the context of sustainable development, "*promot[ing] the paradigm shift towards low- emission and climate-resilient development pathways by providing support to developing countries to limit or reduce their greenhouse gas emissions and to adapt to the impacts of climate change, taking into account the needs of those developing countries particularly vulnerable to the adverse effects of climate change*"³⁸ (emphasis added), and "*striv[ing] to maximize the impact of its funding for adaptation and mitigation, and seek[ing] a balance between the two*"³⁹.
91. Accordingly, guidance from the COP would be necessary to ensure that GCF has the competence to both host the new fund as an autonomous unit, and for GCF (as the relevant legal entity) to engage in activities to address loss and damage, albeit in the context of the new fund. As an alternative, the COP could amend the GI to accommodate these matters.⁴⁰
92. GCF Board consideration: The matters noted in Section IV.C are not insignificant. Considerations of hosting the secretariat of a new fund give rise to real and potentially significant legal, financial and reputational risks, particularly in cases where new fund's board is 'independent' of the host institution. Any host institution would need to give due consideration to these issues. In the context of GCF, this would be the first time it would consider something of this nature. This coupled with the GCF Board's already heavy agenda, should be borne in mind by the TC when considering the timelines associated with both establishing the new fund under the GCF, and making such fund operational, in particular if this would require amendments to GCF's existing policies and procedures, as well as consideration of how the activities of the new fund would impact on GCF's Strategic Plan for 2024-2027 and its related allocation parameters and portfolio results targets. In the longer term, the GCF Board may also wish to consider the impact of hosting the new fund on any possible attempt to obtain a credit rating in the future.
93. Resourcing: The operationalization of the new fund, even if hosted by GCF, would require new and additional resources, both in terms of new staff, and administrative budget. Hiring sufficient new staff can be a lengthy process and, moreover, GCF currently has a hard staffing cap. Staffing the new fund would thus require an exception to the staffing cap in the context of the new fund, or for the GCF Board to increase (or remove) the staffing cap, based on the needs of GCF and the new fund.
94. Designing the new fund: If the intention is for the new fund to be hosted, whether by GCF, GEF, the World Bank or a UN organization, early formal engagement with the prospective host is advisable. This way, relevant constraints can be fully understood in advance, and accommodated or worked round during the design of the terms of reference or governing instrument of the new fund. Without such formal engagement

³⁸ GI, Paragraph 2.

³⁹ GI, Paragraph 3.

⁴⁰ It is noted that the GI is silent on the process for amendments to the GI. However, paragraph 72 states that termination of GCF requires COP approval, based on a recommendation of the Board, and the GCF Board's rules of procedure state that the Board can amend its rules of procedure except for those rules which reproduce provisions from the GI. In view of these provisions, it is suggested that amendments to the GI require COP approval. In practice, it would be prudent for any such amendments to be consulted with the GCF Board and management in advance so as to ensure their implementability.

prior to COP28, there is a risk that the final outcome from COP may, in circumstances where the desire is for the new fund to be hosted, not be practical or acceptable for the intended host. This would delay the establishment of the new fund by at least another year (i.e. until the next COP), after which there will still be further steps that need to be taken to operationalize the new fund.

V. OPTION 3: NEW FUND HOSTED BY GEF

A. Description

95. The GEF was established in 1991 as a partnership between the World Bank, the United Nations Development Programme (“UNDP”) and the United Nations Environment Programme (“UNEP”). It was restructured at the Rio Earth Summit in 1992 to be a separate institution⁴¹, and currently serves as an operating entity of the financial mechanism of five multilateral environmental agreements, including the Convention.
96. Notably, the GEF is not technically a standalone institution. It does not possess its own separate juridical personality or legal capacity. The World Bank is the trustee of the GEF Trust Fund, which was established by the World Bank as a FIF.
97. Pursuant to paragraph 21 of the GEF Instrument, which was adopted by the World Bank (along with UNDP and UNEP), the GEF secretariat “*shall be supported administratively by the World Bank and shall operate in a functionally independent and effective manner*”. In practice, this means that the World Bank hosts the GEF secretariat and that the GEF operates through the World Bank’s juridical personality and legal capacity, and its staff members, although functionally independent, are staff members of the World Bank.
98. The GEF has experience hosting new funds.⁴² Since its establishment, it has hosted the Least Developed Countries Fund, the Special Climate Change Fund (both under the Convention), and the trust fund for the capacity-building initiative on transparency (under the Paris Agreement), as well as two funds under the Convention on Biological Diversity: the Nagoya Protocol Implementation Fund and, most recently, the Global Biodiversity Framework Fund⁴³. These funds together are known as the GEF Family of Funds. The GEF secretariat also provides secretariat services to the AFB through a dedicated and functionally independent AFB secretariat.⁴⁴
99. Hosting the new fund under the GEF could be done in one of two ways: (i) establishing the new fund outside of the GEF Family of Funds (similar to the AF), or (ii) establishing the new fund as a new fund within the GEF Family of Funds.
100. If established outside of the GEF Family of Funds (like the AF), in principle this would involve the creation by the World Bank of a new FIF, with the GEF requested to provide secretariat services in respect of the new fund, rather than the request being made to the World Bank directly. Although the GEF is supported administratively by the World Bank, the hosting arrangements for the GEF are different from other FIFs where the World Bank hosts the secretariat, in light of the GEF’s functional independence as set out in the GEF Instrument (noting that although this means independence of, for example, the GEF CEO and programmatic decisions, the World Bank’s administrative and other policies still apply). For this structure, the principles and findings set out in Section VII would apply.

⁴¹ See the GEF Instrument above in footnote 24.

⁴² Technically, while the GEF Council approves the establishment of new trust funds within the GEF Family of Funds, all such funds are hosted by the World Bank, similar to the GEF itself.

⁴³ The Global Biodiversity Framework Fund FIF is not yet established; at its meeting in June 2023, the GEF Council approved the plan to establish the fund.

⁴⁴ Decision 1/CMP.3, paragraph 18; Decision 4/CMP.8, paragraph 5; Decision 2/CMP.10, paragraph 8; Decision 2/CMP.12, paragraph 2.

101. The rest of this Section V focuses on the option of hosting the new fund within the GEF Family of Funds. Under this structure, the new fund would adopt the governance, trustee and secretariat structure of the GEF.

B. Necessary COP (or COP and CMA) Decisions

102. In order to operationalize the new fund being hosted by GEF at COP28, the COP (or COP and CMA) should:
- (a) Approve the ToR, of the new fund⁴⁵ (which could specify that it will be administratively supported, or hosted, by the GEF);⁴⁶
 - (b) Invite or request GEF to administratively support, or host, the new fund and make the necessary arrangements for the trustee;
 - (c) Request the governing body of the new fund and GEF to enter into appropriate hosting arrangements, including arrangements to ensure the operational independence and autonomy of the new fund;
 - (d) Put in place interim arrangements to ensure the prompt start of the fund pending full operationalization;⁴⁷

C. Necessary steps of GEF and the fund's governing body

103. Subsequent to any such COP (and/or COP and CMA) decisions, the GEF Council, supported by the GEF secretariat, would need to:
- (a) Finalize the design of the new fund, based on the ToR set by the COP (or COP and CMA)⁴⁸;
 - (b) Approve the final design of the new fund, and initiate the necessary steps for the World Bank to establish the new fund as a new FIF within the GEF Family of Funds; and
 - (c) Negotiate and conclude the relevant hosting arrangements for the new fund.⁴⁹
104. In addition, the governing body of the new fund would have to take decisions in relation to the following matters:
- (a) Negotiating and concluding relevant hosting arrangements with GEF / World Bank;
 - (b) Participating in negotiation of any relevant arrangements with the trustee, in order to start receiving contributions directly; and
 - (c) Adopting necessary policies governing the operations of the fund so that contributions received can be deployed as promptly as possible.

⁴⁵ But see Section V.F below.

⁴⁶ See footnote 26 above.

⁴⁷ See Section V.D for further details.

⁴⁸ But see Section V.F below.

⁴⁹ In the context of the GEF Family of Funds, this step may not be essential as the funds under Family of Funds share common governance and secretariat functions in any event.

105. The World Bank, as host of the GEF, would need to be consulted throughout the process following COP28, and then invited to take the necessary steps after the GEF Council decision to approve the new fund to establish a new FIF under the GEF Family of Funds.

D. Interim arrangements

106. Notwithstanding the steps that need to be taken by GEF, World Bank and the governing body of the new fund to operationalize the fund, interim arrangements may be able to be put in place to support the fund's prompt operationalization. For example, pending the operationalization of the new fund being hosted by GCF, the COP (or COP and CMA) could invite or request GEF and other relevant existing institutions (e.g. the UNFCCC secretariat) to set up an interim secretariat for new fund as an autonomous unit within the GEF secretariat (and invite contributions to support the interim secretariat). The practical modalities for this would likely need to be consulted with the World Bank as well.

E. Key legal, governance and operational implications

i. Legal status (including juridical personality and legal capacity)

107. Under this option, the new fund would not have its own juridical personality or legal capacity and would instead operate through that of the World Bank (which provides juridical personality to GEF). In practical terms, this means that all legal agreements entered into by the new fund would be signed off by the World Bank, and subject to the legal clearance processes established by the Bank for FIFs for which it provides the juridical personality.

108. All staff members of the new fund would be staff members of the World Bank, and the applicable World Bank policies and procedures would apply to them.

ii. Privileges and Immunities

109. The GEF, its assets, and its staff, benefit from the privileges and immunities of the World Bank, and therefore the new fund, its assets, and its staff would likewise benefit from the privileges and immunities granted to the World Bank under IBRD's Articles of Agreement. It is also the TSU's understanding that GEF Council members are not protected by the World Bank's privileges and immunities, and thus if they were to sit as the governing body of the new fund, they would similarly not benefit from privileges and immunities.

iii. Relationship with COP/CMA

110. As a new fund established by the COP and CMA, and hosted by an existing OE there should be no material issues with the fund operating under the guidance of and being accountable to the COP and CMA. This can be reflected in the decision adopting the fund's ToR, the ToR itself, and, if the fund is designated by the COP (by way of decision) as an OE in its own right, in the arrangements that would be entered into by the fund and the COP pursuant to Article 11, paragraph 3, of the Convention.
111. It should be noted that the Least Developed Countries Fund and the Special Climate Change Fund, both of which were established by the COP receive guidance from the COP through the GEF despite not being OEs themselves.

iv. Composition of Governing Body

112. If the new fund is established within the GEF Family of Funds, due to the GEF Instrument, the governing body would need to have the same composition as the GEF Council (similar to the Least Developed Countries Fund, the Special Climate Change Fund and the Global Biodiversity Framework Fund). No issues relating to Article 11, paragraph 2, would arise in the event the new fund is also designated as an OE, as the GEF Council as currently composed fulfils that requirement.

v. Authority of Governing Body

113. In principle, the governing body should be able to adopt its own operational policies but will not, however, have any authority over the World Bank's administrative policies. Such operational policies should not interfere with the principle that project implementation is undertaken in accordance with the policies and procedures of the relevant implementing partner (or 'GEF agencies').

vi. Selection of the executive head of the new fund

114. If the new fund is established within the GEF Family of Funds, while the fund would be managed by the GEF Secretariat, it would not have its own executive head. The GEF CEO would ultimately have responsibility for the delivery of the new fund, but would they appointed in accordance with the GEF Instrument (i.e. by the GEF Council, sitting as the GEF Council).

vii. Delegation of funding approvals

115. In principle, the governing body of the new fund would be able to delegate funding approvals in the same manner as the GEF Council is able to. Any such delegation should be consistent with Article 11, paragraph 3(b), of the Convention if the new fund is designated as an OE.

viii. Sources of finances

116. The World Bank, as trustee of the new fund, would be able to receive contributions from a wide range of sources, public and, subject to appropriate due diligence, private. This was explicitly recognized in the GEF Council's recent establishment of the Global Biodiversity Framework Fund.

ix. Network of partners

117. If the new fund is established within the GEF Family of Funds, it would have to operate through the existing 18 GEF agencies. In the event that new partners are considered necessary, the GEF would have to (re)establish some form of accreditation system, to assess capacities of potential new partners.

x. Choice of financial instruments to be deployed

118. It should be noted that although GEF resources are used by GEF agencies to provide both non-reimbursable grants, as well as reimbursable funds (e.g., in the form of loans, guarantees and equity), transfers from the GEF Trust Fund to GEF agencies are in the form of grants to relevant GEF agencies under the terms of the applicable legal agreements.

xi. Liability considerations

119. On the basis that the new fund would require its own trust fund at the World Bank (whether established as a new FIF, or a new fund within the GEF family of funds), the assets of the new fund should be ring-fenced from the assets of the other GEF trust funds.
120. Moreover, as the GEF operates through the World Bank's juridical personality, third party claims in respect of GEF operations should be substantially shielded by the World Bank's privileges and immunities. Accordingly, to the extent that the new fund adequately limits its liabilities under the relevant financing agreements, the risk of undue liability through lawsuits should be relatively low.

xii. Matters relating to the trustee

121. As noted previously, FIFs are not established lightly by the World Bank, and there always remains a risk that the World Bank decides that acting in such capacity is not appropriate for it. As such, early engagement with the World Bank is essential to understand its appetite to perform the function of trustee for the new fund.

F. Other relevant considerations

122. Designing the new fund: If the new fund were to be established as part of the GEF Family of Funds, it would be unusual for the COP (or COP and CMA) to adopt the full ToR for the fund. In the past, when this route has been followed, e.g. for the Least Developed Countries Fund, the Special Climate Change Fund and, more recently, the Global Biodiversity Framework Fund, the relevant COP has simply decided to establish a new fund, set out in broad terms the fund's purpose, and then requested the new fund to make the necessary arrangements for its operations.⁵⁰
123. If the intention, however, is for the ToRs for the fund to be approved at COP28, then early formal engagement with the GEF is advisable for the reasons set out previously in Section IV.F above.
124. Resourcing: The operationalization of the new fund, even if hosted by GEF, would require new and additional resources, both in terms of new staff, and administrative budget. Hiring sufficient new staff can be a lengthy process, and this would affect the prompt operationalization of the new fund.

⁵⁰ Decision 7/CP.7, with respect to the Least Developed Countries Fund and the Special Climate Change Fund; and CBD/COP/DEC/15/15, with respect to the Global Biodiversity Framework Fund.

VI. OPTION 4: NEW FUND HOSTED BY THE ADAPTATION FUND / ADAPTATION FUND BOARD

A. Description

125. Adaptation Fund (“AF”) was established in November 2001 as the financial mechanism under UNFCCC with overall responsibility for financing concrete adaptation projects and programmes, by the COP and CMP.⁵¹
126. The CMP invited the World Bank to serve as interim trustee of the AF and proposed to enter into certain legal arrangements with the World Bank. These legal arrangements provide, inter alia, that the trustee would establish a trust fund for the AF that would hold in trust, as a legal owner, and administer the funds, assets and receipts which constitute the trust fund, on behalf of the AF and supervised and managed by the Adaptation Fund Board (“AFB”).
127. The AFB was established as an operating entity of the AF, serviced by a secretariat and a trustee.⁵² Parties invited the GEF (and indirectly, the World Bank) to provide interim secretariat services to the AFB through a dedicated and functionally independent AFB secretariat, and the World Bank to provide an interim trustee services to the AFB. The AFB supervises and manages the AF, under the authority and guidance of the CMP, and accountable to the CMP. Since 1 January 2019, the AF has been serving the Paris Agreement, under the guidance of, and accountable to the CMA, with respect to all matters relating to the Paris Agreement.⁵³ The AF will exclusively serve the Paris Agreement once the share of proceeds under Article 6.4 of the Paris Agreement becomes available.
128. Legal capacity of AFB: The AFB was conferred legal capacity by (i) Decision 1/CMP.4^{54,55}; (ii) the memorandum of understanding between the German Government and the AFB (2010) – for a mutual understanding of the German Act establishing the legal capacity of the AFB in Germany; (iii) 2011 German Act of Parliament to establish the legal capacity of the AFB in Germany which conferred the legal capacity to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings^{56,57}
129. Similar to GEF, the AF is not a standalone institution. It does not possess its own separate juridical personality or legal capacity. The World Bank is the trustee of the AF trust fund, which was established by the World Bank as a FIF, under the terms and conditions of services to be provided by the World Bank as trustee for the AF signed between the CMP and the World Bank as trustee.⁵⁸

⁵¹ Decision 10/CP.7, and decision 28/CMP.1.

⁵² Decision 5/CMP.2, and decision 1/CMP.3.

⁵³ Decision 13/CMA.1, and decision 1/CMP.14.

⁵⁴ “The Board be conferred with such legal capacity as necessary for the discharge of its functions . . . , in particular legal capacity to enter into contractual agreements and to receive and process project, activity and programme proposals directly and to process them in accordance with paragraph 7 (a) and (b) above, as appropriate, consistent with decisions 5/CMP.2 and 1/CMP.3.”

⁵⁵ Through Decision 4/CMP.5, the CMP invited the German Government to take the necessary measures to confer legal capacity to the AFB.

⁵⁶ *Gesetz zur Verleihung der Rechtsfähigkeit an den Rat des Anpassungsfonds in Deutschland* (1 February 2011).

⁵⁷ The Board selected Germany among other countries as its host country (Board Decision B.7-8/1) in November 2009. Initially two options were considered for Germany to confer legal capacity on the Board: (i) law passed by the German Parliament; and (ii) Headquarter agreement between Germany and the Board. Considering that option (i) is faster as option (ii) will take longer time (as it requires the involvement of the UN), that the Board needed to start operating as soon as possible, and that the substance between the two options was considered no different for the Board to fulfil its functions and deliver the tasks, option (i) was pursued.

⁵⁸ https://www.adaptation-fund.org/wp-content/uploads/2020/11/TC_amended-in-Nov-2019.pdf

130. Regarding the secretariat services which are governed by the memorandum of understanding between the GEF Council and the CMP⁵⁹, GEF secretariat provides secretariat services, under the guidance and instructions of the AFB, to the AFB. Therefore, the AFB secretariat consist of a dedicated team of officials which functions independently from GEF Secretariat to provide secretariat services for the AFB. This means, like GEF secretariat staff, the AFB secretariat staff are administratively World Bank staff, although functionally independent.
131. Hosting the new fund under AF could be done through establishing the new fund as a new trust fund in addition to the existing single AF trust fund (similar to the Special Climate Change Fund or the Least Developed Countries Fund hosted by GEF/World Bank). This means that it would require the creation by the World Bank of a new trust fund, and early consultation with the World Bank is advisable as the World Bank policies and procedures would apply in relation to the its decision to take on the trustee role.

B. Necessary CMA (or CMA and COP) and CMP Decisions

132. In order to operationalize the new fund being hosted by AF/AFB at COP28, the CMA (or CMA and COP) and CMP should:
- (a) Approve the ToR of the new fund (which could specify that it will be administratively supported, or hosted, by the AF/AFB through institutional arrangements for secretariat service and trustee service)⁶⁰;
 - (b) Invite or request AFB to administratively support, or host, the new fund and make the necessary arrangements for the trustee and secretariat services in consultation with the trustee and GEF respectively (CMA or CMA and COP could invite the World Bank and GEF Council to work with the AFB on the necessary arrangements for the trustee and secretariat services for the new fund, respectively);
 - (c) Request the governing body of the new fund and AFB to enter into appropriate hosting arrangements, including arrangements to ensure the operational independence and autonomy of the new fund or request the AFB to serve as the governing body of the new fund with a distinct decision-making process for AF and the new fund, and enter into appropriate hosting arrangements for the new fund; and
 - (d) Put in place interim arrangements to ensure the prompt start of the fund pending full operationalization;⁶¹

C. Necessary steps of the AFB and fund's governing body

133. Subsequent to any such CMA (or CMA and COP) and CMP decisions, AFB, supported by its secretariat, would need to:
- (a) Finalize the design of the new fund, based on the terms of reference set by the CMA (or COP and CMA)⁶²;

⁵⁹ https://www.adaptation-fund.org/wp-content/uploads/2020/11/MOU-with-GEF_amended-in-Nov-2019-1.pdf

⁶⁰ See footnote 26 above.

⁶¹ See Section VI.D for further details.

⁶² But see Section VI.F below.

- (b) Approve the final design of the new fund, and initiate the necessary steps for the World Bank to establish the new fund as a FIF under the AF Family of Funds (either by the Board decision or CMP and/or CMA decision); and
 - (c) Negotiate and conclude the relevant hosting arrangements for the new fund.⁶³
134. In addition, the governing body of the new fund would have to take decisions in relation to the following matters:
- (a) Negotiating and concluding relevant hosting arrangements with AFB (possibly involving the GEF and the World Bank which would provide secretariat services and trustee services for the new fund, respectively);
 - (b) Participating in negotiation of any relevant arrangements with the trustee, in order to start receiving contributions directly; and
 - (c) Adopting necessary policies governing the operations of the fund so that contributions received can be deployed as promptly as possible.
135. The World Bank, as the trustee of the AF, would need to be consulted throughout the process following COP28, and would need to take the necessary steps after the Board decision or CMA and CMP decisions to invite the World Bank to establish a new fund under the AF Family of Funds. As host of the GEF, the World Bank should also be consulted on the hosting of the new fund's secretariat.

D. Interim arrangements pending full operationalization of the fund

136. Notwithstanding the steps that need to be taken by CMP, AFB, World Bank, and the governing body of the new fund to operationalize the fund, interim arrangements may be able to be put in place to support the fund's prompt operationalization. For example, pending the operationalization of the new fund being hosted by AF/AFB, the COP (or COP and CMA) could invite or request GEF (which provides secretariat services to AFB) and other relevant existing institutions (e.g. the UNFCCC secretariat) to set up an interim secretariat for new fund as an autonomous unit within the AFB secretariat (and invite contributions to support the interim secretariat). The practical modalities for this would likely need to be consulted with the World Bank as well.

E. Key legal, governance and operational implications

- i. Legal status (including juridical personality and legal capacity)
137. Under this option, the new fund would not have its own juridical personality or legal capacity and would instead operate through that of the AFB (which is an operational entity of the AF with legal capacity conferred by German Government, but not juridical personality). In practical terms, this means that all legal agreements entered into by the new fund would be signed off by the AFB, while World Bank's agreement is needed to create a new trust fund under AF Family of Funds.
138. All staff members of the new fund would be staff members of the World Bank, and the applicable World Bank policies and procedures would apply to them.

⁶³ In the context of the AF Family of Funds, this step may not be essential as the funds under Family of Funds share common governance and secretariat functions in any event.

ii. Privileges and Immunities

139. The AFB funds, assets, and other property enjoys, according to the German Act, immunity, wherever hosted and by whomsoever held, from every form of legal process and exempt from restrictions, regulations, controls and moratoria of any nature. The AFB enjoys immunity while AFB secretariat staff benefits, as World Bank staff, from privileges and immunities of the World Bank. Therefore, the new fund, its assets, and its staff would likewise similarly benefit from the privileges and immunities granted in the context of the AF, its assets and its staff. If AFB serves as governing body for the new fund (wearing a different hat as new governing body of the new fund, not for AF, with a separate decision-making process etc), the members of the governing body would enjoy the same immunity in Germany as the members of AFB.

iii. Relationship with COP/CMA/CMP

140. As a new fund established by the CMA (or CMA and COP), there should be no material issues with the new fund operating under the guidance of and being accountable to CMA. This can be reflected in the decision adopting the fund's terms of reference or governing instrument, the terms of reference or governing instrument itself.
141. It should be noted that AF is in a transitional period, now serving both the Kyoto Protocol and Paris Agreement, but once AF exclusively serves the Paris Agreement, AF and AFB will operate under the authority and guidance of CMA only and accountable to CMA only. During the transitional period, AF/AFB is receiving guidance from both CMP and CMA, and regarding matters related to the authority of CMP over the AF/AFB, the relevant CMA decision invites the CMP to take a decision to directly request the AF/AFB to take the necessary action.

iv. Composition of Governing Body

142. If the new fund is established as the AF Family of Funds,⁶⁴ due to the rules of procedure of the AFB, the new governing body may need to have the same composition as the AFB (similar to GEF Council for GEF family funds). However, the AFB membership matter is still being considered by the Parties and not yet concluded. The rules of procedure and other AF key instruments (such as AF operational policies and guidelines and strategic priorities and policies and guidelines etc.) would be amended for the AF transition to the Paris Agreement.

v. Authority of Governing Body

143. In principle, the governing body should be able to adopt its own operational policies but will not, however, have any authority over the World Bank's administrative policies. The new fund's operational policies should not interfere with the principle that project implementation is undertaken in accordance with AF policies and the policies of its implementing entities.

vi. Selection of the executive head of the new fund

144. If the new fund is established under the AF Family of Funds and the governing body of the new fund decides that the new fund be managed by the AFB secretariat, it would not

⁶⁴ This refers to a similar concept to GEF Family of Funds. AF doesn't have yet multiple trust funds under AF. If the new fund is established under the AF, this would involve requesting the World Bank to create a new trust fund as part of a new AF family of funds – meaning there will be AF trust fund and the new fund's trust fund as AF family of funds.

have its own head, but the head of the AFB secretariat would serve as the executive head of the new fund.

vii. Delegation of funding approvals

145. In principle, the governing body of the new fund would be able to delegate funding approvals in the same manner as the AFB is able to decide as per the rules of procedure of the AFB and AF operational policies and guidelines and the strategic priorities, policies and guidelines. The ToR should provide for this possibility (or at least not prohibit it), and the governing body could subsequently develop the parameters for such delegation.

viii. Sources of finances

146. The World Bank, as trustee of the new fund, would be able to receive contributions from a wide range of sources, public and, subject to appropriate due diligence, private. AF has received resources originating from the share of proceeds under the clean development mechanism and will receive a new share of proceeds under the Article 6.4 mechanism. The AF's ability to receive innovative sources of funding would be applicable to the new fund.

ix. Network of partners

147. If the new fund is established within the AF Family of Funds, it would have to operate through the implementing entities accredited with AF. There are three types of implementing entities, and countries with no national implementing entity could submit funding proposal through other types of implementing entities (regional or multilateral).

x. Choice of financial instruments to be deployed

148. It should be noted that all AF funding is provided in the form of grant only and transfers from the AF Trust Fund to AF implementing entities ("IEs") are in the form of grants and used under the terms of the concerned project agreement between AFB and the relevant IE. Should the new fund decide to deploy non-grant funding, it may require CMP/CMA decisions to expand the mandate of the AF. In addition, as the relevant financial instrument will be extended in the AF/AFB's name, the risk appetite of AF may need to be further considered by the AFB, and addressed in the hosting arrangements for the new fund.

xi. Liability considerations (if new fund is 'hosted')

149. On the basis that the new fund would require its own trust fund at the World Bank (a new fund as the AF family of funds), the assets of the new fund should be ring-fenced from the assets of the other AF trust funds.
150. Third party claims against the AFB (e.g. in relation to harm caused by a project funded by the new fund operating through the AFB's legal capacity) would be shielded from litigation only in Germany due to the AFB's privileges and immunities there.

xii. Matters relating to the trustee

151. Early engagement with the World Bank is essential to understand its appetite to perform the function of trustee for the new fund if hosted by the AF/AFB.

F. Other relevant considerations

152. Designing the new fund: If the new fund were to be established as part of the AF Family of Funds, it would be unusual for the CMA (or CMA and COP) and CMP to adopt the full ToR for the fund.
153. If the intention, however, is for the full ToR for the fund to be approved at COP28, then early formal engagement with the AF and the World Bank is advisable for the reasons set out previously in Section IV.F above.
154. Resourcing: The operationalization of the new fund, even if hosted by AF, would require new and additional resources, both in terms of new staff, and administrative budget. Hiring sufficient new staff can be a lengthy process, and this would effect the prompt operationalization of the new fund.

VII. OPTION 5: NEW FUND HOSTED BY THE WORLD BANK AS A FIF

A. Description

155. FIFs are an important tool in the development finance toolbox, offering customized financing platforms for partnership programs and special financing mechanisms. FIFs are a type of trust fund for which the World Bank provides tailored administrative, operational, legal and financial services. Typically focused on vertical themes and launched at high-level, multilateral forums, FIFs provide the global development community with independently governed multi-contributor collaboration platforms, often in support of global public goods.⁶⁵
156. In FIFs, the World Bank is the trustee. It can (but is not required to) also host the FIF's secretariat, and act as one of the FIF's implementing entities. Examples of high-profile FIFs for which the World Bank acts as trustee and hosts the secretariat are the Climate Investment Funds ("CIF"), the Global Partnership for Education ("GPE"), and the Pandemic Fund.⁶⁶
157. The specific design of World Bank-hosted FIFs is managed internally in discussion with key stakeholders and in line with the World Bank's applicable policies and procedures. After an initial review by World Bank senior management based on the selectivity criteria⁶⁷ (and other factors, including a requirement for donor commitments of at least US\$200 million in grants and at least three participating donors at initiation, and the absence of a reasonable and simpler alternative to a new FIF)⁶⁸, the World Bank would provide an information note to the World Bank's Board of Directors ("WB Board") of a potential new FIF under discussion for early feedback.
158. Thereafter, the concept note and program document are prepared which set out in more detail information on the proposed initiative, including the roles the World Bank is expected to play, and the financing modalities for contributions and deployment of resources. Donors who are ready to make firm commitments toward meeting the criteria for FIF establishment and key stakeholders are also consulted on the elements of the program document. Once the program document is finalized, and after relevant committee approvals, it is submitted for approval to the either World Bank management or the WB Board, following a risk-based approach. Additionally, any FIF which involves a commitment of World Bank resources, impact the IBRD or IDA balance sheets, or a deviation from existing policies must be submitted to the WB Board. A FIF such as the one that may be considered for the new fund would most likely require approval by the WB Board.

B. Necessary COP (or COP and CMA) Decisions

159. In order to operationalize the new fund being hosted by the World Bank as a FIF, at COP28 the COP (or COP and CMA) should:

⁶⁵ [Financial Intermediary Fund Management Framework, 4 June 2019](#) ("FIF Framework"), paragraph i.

⁶⁶ <https://www.cif.org>, <https://www.globalpartnership.org>, <https://www.worldbank.org/en/programs/financial-intermediary-fund-for-pandemic-prevention-preparedness-and-response-ppr-fif>. The GEF and Adaptation Fund are also FIFs and situated in the World Bank. However, their hosting arrangement are bespoke, and can be distinguished from the other FIFs. The exceptional treatment of GEF and the Adaptation Fund, and the extent of their autonomy, has been grandfathered, notwithstanding the 2019 reforms to the World Bank trust funds.

⁶⁷ TF Policy, paragraph 5.

⁶⁸ [Bank Directive, Financial Intermediary Funds, 26 February 2022](#) ("FIF Directive"), Section III, paragraph 1(a)-(c).

- (a) Approve the main parameters or goals⁶⁹ of the new fund;⁷⁰ and
- (b) Invite the World Bank to establish the new fund as a FIF, with the World Bank as trustee and host of the secretariat, based on the main parameters or goals of the new fund, and report back to the COP (or COP and CMA) accordingly.

C. Necessary steps of the World Bank and the fund's governing body

160. Subsequent to any such COP (and/or COP and CMA) decisions, the World Bank would decide whether to accept the relevant roles and responsibilities based on the criteria set out in its TF Policy, the FIF Framework and other relevant World Bank rules.
161. If the proposed FIF meets the selectivity criteria set out above, and the World Bank finds that there is no reasonable alternative to the creation of a new FIF to carry out the relevant activities, in order for the FIF to be operationalized:
- (a) The design of FIF would need to be settled, based on the main parameters approved by the COP (or COP and CMA)⁷¹, and in accordance with the World Bank rules;⁷² and
 - (b) The FIF would require approval by either management or the WB Board depending on the relevant risks to the World Bank.⁷³
162. In addition, the governing body of the new fund would be involved in or have to take decisions in relation to the following matters:
- (a) The hiring the executive head of the fund, and provide the necessary resources for the head to hire the initial staff (this is a consultation role, as the hiring will be done by the World Bank, though the selection could be done jointly with the governing body);⁷⁴
 - (b) Adopting relevant rules and processes governing the operations of the fund so that contributions received can be deployed as promptly as possible.

D. Interim arrangements

163. Prior to the new fund's formal establishment as a FIF, interim arrangements to start the operationalization of the new fund would not be possible.

⁶⁹ See Section VII.F below.

⁷⁰ See footnote 26 above.

⁷¹ See Section VII.F below.

⁷² The relevant rules include: the TF Policy; FIF Framework; FIF Directive; [Bank Procedure, Financial Intermediary Funds](#), 26 February 2023 ("**FIF Procedure**"); [Bank Guidance, Bank Hosting of Financial Intermediary Fund Secretariats](#), 22 February 2022 ("**FIF Hosting Guidance**"); [Bank Guidance, Risk Assessments for Financial Intermediary Funds](#), 22 February 2022; [Bank Guidance, Initiation of Financial Intermediary Funds](#), 9 February 2015.

⁷³ While there is no requirement for a hosting arrangement to be put in place between the World Bank and the new fund, the governing body of the new fund may wish to request the World Bank to enter into one depending on the terms of the governance document that is approved by the World Bank for the new fund. In this regard, it should be noted that most FIFs do not have any formal hosting arrangements (beyond those set out in the FIF's governance documents), and those that exist, e.g. the hosting arrangement put in place for the Climate Investment Funds ("**CIF Hosting Arrangement**"), and the earlier one for the [Global Partnership for Education](#) ("**GPE Hosting Arrangement**"), relate to FIFs established prior to the 2019 trust fund reforms, and should not be viewed as a precedent for new FIFs.

⁷⁴ See Section VII.E.vi below.

E. Key legal, governance and operational implications

i. Legal status (including juridical personality and legal capacity)

164. Under this option, the new fund would not have its own juridical personality and legal capacity. Instead, as host of the secretariat, the World Bank provides the new fund (established as a FIF) with the World Bank's own juridical personality and legal capacity. Contracts are entered into by the World Bank as trustee of the FIF and the relevant recipient / implementing partner.
165. The staff of the new fund would hold World Bank staff appointments and are therefore subject to the World Bank's policies and procedures.

ii. Privileges and Immunities

166. As the World Bank would provide the new fund with the World Bank's juridical personality and legal capacity, the new fund, its assets, and its staff would likewise benefit from the privileges and immunities granted to the World Bank under IBRD's Articles of Agreement. Governing body members would not benefit from the World Bank's privileges and immunities solely by virtue of being a governing body member.

iii. Relationship with COP/CMA

167. In principle, it should be possible for the COP (or COP and CMA) to designate the new fund established as a FIF as an OE, provide guidance to the governing body, and for the governing body to be accountable to the COP (or COP and CMA). However, the arrangements between the new fund (established as a FIF) and the COP will need to be consulted with the World Bank (as host of the new fund's secretariat) as any guidance provided would be subject to the limitations of the World Bank's policies and procedures, and those of the new fund's partners.

iv. Composition of Governing Body

168. The COP (or COP and CMA) have flexibility to propose the composition of the new fund's governing body; however, any governance structure will be reviewed by the World Bank in determining whether to accept its proposed roles, bearing in mind its experiences with other FIFs.
169. If the new fund is designated as an OE, the composition of the governing body will have to be consistent with Article 11, paragraph 2, of the Convention.

v. Authority of Governing Body

170. Under the FIF model, the governing body is responsible for determining the FIF's strategic direction, and for the selection and approval of implementing entities, including their assessment against minimum standards, if applicable.⁷⁵ The governing body could therefore establish its own operations manual applicable to the FIF processes for allocation to and use of its resources by implementing entities (and other parties involved in project implementation) provided in all cases that they are not inconsistent with World Bank policies. It should be noted, however, that under the 2019 trust fund reforms, the World Bank has updated its policies to clarify that, among other things, the World Bank's policies and procedures apply to the World Bank's performance of its role as trustee, secretariat and implementing entity.⁷⁶ Accordingly, the new fund

⁷⁵ FIF Directive, Section III, paragraph 4(a).

⁷⁶ TF Policy, paragraph 9.

will need to take care when developing any operational policies to avoid a situation where a policy adopted by the governing body would have the effect of precluding potential implementing entities from acting as a partner to the new fund.

171. The governing body would not have any authority over the World Bank's administrative policies (e.g. human resources, procurement and ICT).

172. The governing body is responsible for funding decisions and would instruct the World Bank to make transfers from funds held in trust to the relevant implementing entities.⁷⁷

vi. Selection of the executive head of the new fund

173. The executive head of the new fund would be recruited through a competitive process, using a process for recruitment consistent with the World Bank's applicable HR policies and procedures. The governing body of the new fund may be consulted in such process.⁷⁸ Further clarity may need to be sought from the World Bank as to whether, following the 2019 trust fund reforms, it would be possible for the head of a new FIF to be selected solely by the governing body of the new fund (rather than through the normal World Bank processes, with governing body consultation).

vii. Delegation of funding approvals

174. As the new fund's secretariat is part of the World Bank, the governing body would not be able to delegate funding approvals to the secretariat if the World Bank is also one of the implementing entities for the new fund.⁷⁹

viii. Sources of finances

175. The World Bank, as trustee of FIFs, can receive contributions from a wide range of sources, public and, subject to appropriate due diligence, private. For existing FIFs, FIF sources of funding have included grants, loans, capital, bonds (in the case of the Pandemic Emergency Financing Facility) and other innovative sources (such as the sale of certified emissions reductions in the case of the Adaptation Fund, and swaps in the case of the Pandemic Emergency Financing Facility).

176. With respect of bond issuances, as these would be done by the World Bank, and sit on the World Bank balance sheet, such a decision would rest in the hands of the WB Board, and not in the hands of the governing body.⁸⁰ This is because leveraging IBRD's balance sheet to raise funds for a FIF could affect IBRD lending volumes in future.

ix. Network of partners

177. Following the 2019 reforms, for FIFs which use the World Bank's juridical personality, the only eligible implementing entities are MDBs, the IMF and UN organizations. The consideration of the utilization of implementing entities is considered as part of the World Bank's risk assessment during the FIF establishment process.⁸¹

⁷⁷ FIF Directive, Section III, paragraph 4(b).

⁷⁸ FIF Hosting Guidance, Section III, paragraph 4.

⁷⁹ FIF Directive, Section III, paragraph 8(e); and FIF Hosting Guidance, Section III, paragraph 2(c). A small number of FIFs do provide for some very limited delegated authority with respect to small-value allocations; however, such FIFs predate the 2019 trust fund reforms and are not a precedent for new FIFs.

⁸⁰ See FIF Framework, paragraph 22 and footnote 24.

⁸¹ FIF Directive, Section III, paragraph 6(a) and (b).

178. Additionally, the World Bank as trustee would have to provide its no-objection to the accreditation framework put in place by the new fund, as well as to the governing body's accreditation of implementing entities.⁸²

x. Choice of financial instruments to be deployed

179. While FIF resources held in trust (for FIFs whose secretariat is hosted by the Bank) are sometimes used by implementing entities to deploy non-grant instruments, transfers to the relevant FIF implementing entity are typically in the form of grants. Further consultation would be necessary with the World Bank if there is a desire for the new fund to be able to deploy non-grant instruments directly to its network of partners.⁸³

xi. Liability considerations (if new fund is 'administered')

180. As the new fund would not have separate juridical personality, the liability risk to the new fund and its resources held in trust should be relatively limited. Third party claims in this regard should be shielded by the World Bank's privileges and immunities.

xii. Matters relating to the trustee

181. The World Bank would be the trustee of the new fund (established as a FIF). See also sections above relating to the roles of the trustee under FIFs, particularly with respect to accreditation of implementing entities and, in some cases, policy matters relating to finance, risk or conflicts of interest.

F. Other relevant considerations

182. Designing the new fund: As noted in Section VII.A above, FIFs are generally, but not always, established in response to calls for new funds to address pressing challenges, with the concept usually launched at high-level, multilateral forums. The launch typically does not get into the details, and instead the task of designing and making operational the concept is often passed on to the World Bank.

183. The World Bank would then consider how best to deliver the concept, and follow its internal rules and processes to design a financing vehicle, sometimes a FIF, that serves the purpose. This process ensures that the FIF design is within the World Bank's risk appetite, and can be effectively operationalized by the World Bank.

184. In the present context, it may prove challenging to ask the World Bank to establish a FIF based on fully negotiated ToR, and there is a risk that the World Bank could decline to take on the initiative as falling outside its risk appetite.

185. As such, if there is a desire on the part of the TC for the new fund to be established as a FIF, it may be more practical to adopt an approach similar to that followed for the previous GEF Family of Funds – i.e. set out the broad purposes of the new fund, and then ask the World Bank to make the necessary arrangements to operationalize it as a FIF.

186. If the intention, however, is indeed for the full ToR to be approved at COP28, then early formal engagement with the World Bank is advisable for the reasons set out previously in Section IV.F above.

⁸² FIF Directive, Section III, paragraph 5(a)(ii).

⁸³ Note, however, that with new FIFs, the range of partners is limited as set out above.

VIII. OPTION 6: NEW FUND HOSTED BY A UN ENTITY AS A MPTF**A. Description**

187. A MPTF is a pooled-fund vehicle which is UN-led. They are established by 2 or more UN organizations, and based on three distinct roles according to UNSDG-approved standards: (i) the administrative agent role providing design and administration services (which includes the holding and managing of contributions); (ii) the governance role, which is comprised of a steering committee, and supported by a fund secretariat hosted by one of the establishing organization; and (iii) the implementation role, which is entrusted to UN organizations that assume the programmatic and financial accountability for resources received. In the UNSDG pass-through arrangement, each relevant organization receiving funding to implement approved activities assumes full programmatic and financial accountability for the funds disbursed to them by the administrative agent and applies their own policies and procedures to implementation. The administrative agent will make disbursements from the MPTF account in accordance with decisions from the steering committee (see below), in line with the approved programmatic documents.
188. MPTFs do not have their own juridical personality or legal capacity, and fund secretariat staff are staff of the relevant UN organization.
189. Examples of some MPTFs include the Joint SDG Fund⁸⁴, the Migration MPTF⁸⁵, and the UN-REDD Programme Fund⁸⁶.

B. Necessary COP (or COP and CMA) Decisions

190. In order for the new fund to be established as a MPTF, at COP28 the COP (or COP and CMA) should:
- (a) Approve the main parameters, or goals, of the new fund;⁸⁷ and
 - (b) Invite at least two UN organizations to lead on establishing the new fund as a MPTF in coordination with all necessary stakeholders, based on the main parameters or goals, and report back to the COP (or COP and CMA accordingly); and

C. Necessary steps of the relevant UN organizations

191. Subsequent to any such COP (and/or COP and CMA) decisions, the relevant UN organizations and the UN multi-partner trust fund office would work together to design the relevant MPTF, based on the approved parameters or goals for the new fund. In order for the MPTF to be operationalized:
- (a) The design of MPTF would need to be co-led by the relevant UN organizations, together with key partners / stakeholders (including donors and beneficiary countries), based on the main parameters or goals approved by the COP (or COP and CMA)⁸⁸ and the wider MPTF framework; and

⁸⁴ <https://mptf.undp.org/fund/ips00>.

⁸⁵ <https://mptf.undp.org/fund/mig00>.

⁸⁶ <https://mptf.undp.org/fund/ccf00>.

⁸⁷ If the COP (or COP and CMA) were to adopt full ToR for the new fund, the design of the ToR would need to aligned to the requirements of the wider MPTF framework (key requirements of which are set out in Section VIII.E below). See also Section VIII.F below.

⁸⁸ See also Section VIII.F below

- (b) The MPTF would require approval by the management of the relevant UN organizations in accordance with their policies and procedures and appointment of an administrative agent (e.g. UNDP MPTFO) to serve as the trustee / administrative agent.

192. No specific steps would be required on the part of the governing body (i.e. the steering committee) to further operationalize the MPTF.

D. Interim arrangements pending full operationalization of the fund

193. As a consequence of the way in which MPTFs are designed and established, the fund's steering committee would only be able to meet once the new fund is established as a MPTF. Operationalization of the new fund may thus be delayed pending the conclusion of the above steps.

E. Key legal, governance and operational implications

i. Legal status (including juridical personality and legal capacity)

194. Under this option, the new fund (established as an MPTF) would not have its own juridical personality and legal capacity. Instead, agreements would be entered into in the name of the administrative agent, and the staff of the fund secretariat would be staff members of the relevant UN organization hosting the fund secretariat.

ii. Privileges and Immunities

195. The resources of the new fund are held on trust by the administrative agent, and would be protected by that entity's privileges and immunities, while the staff would be protected by the privileges and immunities of the relevant host UN organization. The members of the steering committee would not benefit from the relevant UN organization's privileges and immunities solely by virtue of being a steering committee member.

iii. Relationship with COP/CMA

196. In principle, it would be possible for the COP (or COP and CMA) to designate the new fund established as a MPTF as an OE, provide advice/guidance to the MPTF's steering committee, and for the steering committee to be accountable to the COP (or COP and CMA), subject to the policies and procedures of the administrative agent and the relevant UN organization. The mechanics of this would need to be fleshed out during the design phase of the MPTF arrangements post COP28. In this regard, the COP (or COP and CMA) may need to designate a representative to work with the relevant UN organizations during the design phase (e.g. a representative of the COP presidency, or co-chairs of the standing committee on finance etc.).

iv. Composition of Governing Body

197. There is some freedom for the ToR to provide different models for the steering committee of an MPTF. For example, non-sovereign representatives can be included as members of the steering committee. A two-tier governance model is also possible, e.g. at the political/strategic and operational levels, as is the case of the Joint SDG Fund.

198. However, it should be noted that the UN must be represented (as a voting member) on any governance body that has authority to take decisions, and, in keeping with the principle that MPTFs are UN-led, at least one of the co-chairs must be a UN representative.

v. Authority of Governing Body

199. The steering committee sets the fund's strategic direction, makes resource allocation decisions, and monitors progress towards achieving transformative change. They would not typically adopt new operational policies applicable to the implementation of activities (as implementation is in accordance with the policies and procedures of the relevant implementing partner). The steering committee may, in accordance with its results framework (which would typically be included in the detailed terms of reference approved by the relevant UN organizations), adopt requirements that must be met in the context of reviewing funding proposals (i.e. to ensure alignment between funding proposals and the results framework).
200. The steering committee would have no authority to set or modify the administrative policies (e.g. on human resources, procurement etc.) of the organizations establishing the MPTF as they apply to the fund secretariat.

vi. Selection of the executive head of the new fund

201. Under a MPTF structure, it is not expected that the executive head of the new fund would be selected directly by the steering committee. Instead, they would be recruited by organization hosting the fund secretariat, and would be formally appointed by that organization. However, usually the chair or co-chair (i.e. a UN staff member) will be the hiring manager or play an active role in the recruitment process. Further discussions would need to take place during the design phase (both pre- and post-COP28), to determine the specific role of the steering committee in the recruitment process.

vii. Delegation of funding approvals

202. Funding allocation decisions are made by the steering committee, but it could delegate such approval authority to the fund secretariat. Where this has been done previously, thresholds are typically established for approvals by the secretariat.

viii. Sources of finances

203. MPTFs are able to receive funding from a wide variety of sources, public, private, and philanthropic, subject to due diligence being undertaken on contributions from non-member states.
204. Receiving funds from the capital market is generally not possible in light of the usual administrative agent's (UNDP) financial rules and regulations.

ix. Network of partners

205. The vast majority of MPTF funding is channeled to implementing partners (i.e. the entities that implement or deliver the activities) that are UN organizations. While it is possible for international financial institutions, MDBs, government entities, and NGOs to also be implementing partners, those organizations would need to assess whether they would be able to act as an implementing partner based on their own policies and procedures. Any implementation of relevant activities would be in accordance with the respective policies and procedures of the implementing partner.

x. Choice of financial instruments to be deployed

206. At present, MPTFs only deploy grant instruments. Other types of instruments may be possible, but it will depend on the instruments that can be deployed by the implementing partners according to their own rules and regulations. In case of

instruments with reflows, the design phase for the MPTF would need to further consider how to ensure the relevant reflows are provided back to the MPTF account.

xi. Liability considerations (if new fund is 'administered')

207. As the new fund would not have separate juridical personality, the liability risk to the new fund and its resources held in trust should be relatively limited. Third party claims in this regard should be shielded by the relevant UN organization's privileges and immunities.

xii. Matters relating to the trustee

208. The administrative agent would act as the trustee of the MPTF.

F. Other relevant considerations

209. Designing the new fund: As noted in Section VIII.A above, MPTFs, as a form of UN inter-agency pooled fund instruments, are UN-led. The design of MPTF is therefore the responsibility of the relevant UN organizations and the MPTFO, in consultation with relevant stakeholders. For this reason, it may prove challenging to ask UN organizations to establish a MPTF based on fully negotiated ToR in respect of which they were not involved. Consequently, if the new fund is to be established as a MPTF, it would be better for the COP (or COP and CMA) to approve the main parameters or goals for the new fund, and based on those then ask the relevant UN organizations to make the necessary arrangements to operationalize it as a MPTF.
210. If the intention, however, is for the full ToR for the fund to be approved at COP28, then early formal engagement with the relevant UN organizations is advisable for the reasons set out previously in Section IV.F above.

Annex I: Comparison of Implications of Options

Implications for new fund	Standalone fund	Hosted by GCF	Hosted by GEF	Hosted by AF/AFB	Hosted as FIF (WB)	Hosted as MPTF (UN)
Legal personality and capacity	Own juridical personality and legal capacity	Relies on GCF's juridical personality and legal capacity	Relies on World Bank's juridical personality and legal capacity	Relies on AFB's legal capacity	Relies on World Bank's juridical personality and legal capacity	Relies on relevant UN entity's juridical personality and legal capacity
Privileges and Immunities	To be negotiated with each country	Relies on GCF Ps&Is (currently signed with 30 countries) – new fund, assets and staff likely covered. Members of new governing body not likely covered by GCF privileges and immunities	Relies on World Bank (assets and staff) – 189 member countries. Governing body members not covered by World Bank privileges and immunities.	Relies on AFB (currently only in Germany) Governing body members not covered by AFB privileges and immunities (unless the AFB sits as the governing body)	Relies on World Bank (assets and staff) – 189 member countries Governing body members not covered by World Bank privileges and immunities.	Relies on relevant UN entity Bank (assets and staff) Governing body members not covered by relevant UN privileges and immunities.
COP/CMA relationship	Can be under guidance and accountable to COP / CMA	Can be under guidance and accountable to COP / CMA	Can be under guidance and accountable to COP / CMA	Can be under guidance and accountable to CMA	Can be under guidance and accountable to COP / CMA, but subject to policies and procedures of the World Bank and implementing partners	Can be under guidance and accountable to COP / CMA, but subject to policies and procedures of the administrative agent and the relevant UN entity
Governing body composition	Can be determined by COP/CMA	Can be determined by COP/CMA	Same as existing GEF Council	Same as existing AFB	Can be proposed by COP/CMA; however, will be reviewed by the World Bank in determining whether to accept its proposed roles	Can be determined by COP/CMA, but requires a UN representative as Chair.

Implications for new fund	Standalone fund	Hosted by GCF	Hosted by GEF	Hosted by AF/AFB	Hosted as FIF (WB)	Hosted as MPTF (UN)
Governing body authority	Full authority over policies. However, limitations to such authority may apply if the new seeks an institutional linkage with the United Nations.	No authority over GCF administrative policies. Full authority over operational policies, but consideration to be given to policies of implementing partners.	No authority over World Bank administrative policies. Some authority over operational policies, but consideration to be given to policies of implementing partners.	No authority over World Bank administrative policies. Some authority over operational policies, but consideration to be given to policies of implementing partners.	No authority over World Bank administrative policies. Any rules and processes put in place must be consistent with policies of World Bank and implementing partners.	No authority over World Bank administrative policies. Any. new operational policies to be consistent with policies of relevant UN organizations and implementing partners.
Selection of Head	Full authority	Full authority if COP/CMA requests GCF to accommodate this; otherwise selected by GCF Executive Director	No separate head; GCF CEO responsible for new fund	No separate head; AFB secretariat head responsible for new fund	Head of new FIF selected by World Bank, in consultation with FIF governing body	Head of MPTF selected by relevant UN organization, with chair of the steering committee (i.e. from the relevant UN organization) as hiring manager
Delegation of approvals	Possible, if permitted by terms of reference or governing body	Possible, if permitted by governing body	Possible, if permitted by governing body	Possible, if permitted by governing body	Possible, but only if World Bank is not one of the implementing partners	Possible, if permitted by steering committee
Sources of finance	Public, private and alternative / innovative sources possible, subject to due diligence by trustee (if an external trustee is part of new fund structure) and, in case of leveraging assets of the fund, with approval of trustee	Public, private and alternative / innovative sources possible, subject to due diligence by trustee and, in case of leveraging assets of the fund, with approval of trustee	Public, private and alternative / innovative sources possible, subject to due diligence by trustee and, in case of leveraging assets of the fund, with approval of trustee	Public, private and alternative / innovative sources possible, subject to due diligence by trustee and, in case of leveraging assets of the fund, with approval of trustee	Public, private and alternative / innovative sources possible, subject to due diligence by trustee and, in case of leveraging assets of the fund, with approval of trustee	Public, private and alternative / innovative sources possible, leveraging assets of the fund (e.g. on capital markets) unlikely to be possible.

Implications for new fund	Standalone fund	Hosted by GCF	Hosted by GEF	Hosted by AF/AFB	Hosted as FIF (WB)	Hosted as MPTF (UN)
Potential Partners	Subject to rules established by new fund	Subject to rules established by GCF – currently utilizes an accreditation system	Subject to rules established by GEF – there are 18 GEF agencies at present. New procedures would need to be adopted by GEF to expand the number of GEF agencies	Subject to rules established by AF – currently utilizes an accreditation system	Accredited implementing entities: MDBs, IMF and UN agencies only	Typically, and mainly, UN organizations; some implementation by IFIs, MDBs, government agencies and NGOs also permitted
Financial instruments	Directly by new fund: those approved by the governing body By implementing partners: subject to the instruments they are permitted to use	Directly by GCF: those approved by the governing body and GCF Board By implementing partners: subject to the instruments they are permitted to use	Directly by GEF: grants / transfers to implementing entities (with reflows, where applicable) By implementing partners: subject to the instruments they are permitted to use	Directly by AF: currently only grants By implementing partners: subject to the instruments they are permitted to use	Directly by FIF: Typically grants to implementing entities (with reflows, where applicable) By implementing partners: subject to the instruments they are permitted to use	Directly by MPTF: grants By implementing partners: subject to the instruments they are permitted to use
Liability	Third party litigation and liability risk linked to extent of privileges and immunities	GCF as legal host exposed to liabilities of new fund Third party litigation and liability risk linked to extent of privileges and immunities	World Bank, as legal host of the new fund exposed to liabilities of new fund Third party litigation and liability risk linked to extent of privileges and immunities	AFB as legal host exposed to liabilities of new fund Third party litigation and liability risk linked to extent of privileges and immunities	World Bank, as legal host of the new fund exposed to liabilities of new fund Third party litigation and liability risk linked to extent of privileges and immunities	Relevant UN organization, as legal host of the new fund exposed to liabilities of new fund Third party litigation and liability risk linked to extent of privileges and immunities
Trustee	In-house function, or external (e.g. World Bank)	World Bank	World Bank	World Bank	World Bank	MPTFO