Fund for responding to loss and damage

FLD/B.2/5

7 July 2024

Second meeting of the Board
9 – 12 July 2024
Songdo, Republic of Korea
Provisional agenda item 5(b)

Background paper on the proposals from the Co-Chairs of the Board

Expected actions by the Board

The Board is invited to consider the proposals by the Co-Chairs on the following matters:

(a) Interim statement on conflict of interest and ethics of the Board;

(b) Interim methodology for decisions without a Board meeting;

(c) Interim methodology for decision-making when all efforts at reaching consensus have been exhausted.

I. Background and mandate

1. The Board at its first meeting requested the Co-Chairs to present a workplan for 2024 with a clear sequence and specific milestones, for adoption by the Board at the second meeting of the Board, taking into account the views of the Board members expressed during the first meeting of the Board and the work of the ad hoc subcommittees, including via open, inclusive and transparent consultations.[1] In adopting its workplan, the Board decided to work on a prioritized set of issues during its second meeting in 2024, which includes issues under consultation by the Co-Chairs. These issues were further elaborated as travel policy, name of the Fund, and other items under consultation by the Co-Chairs.[2]

2. The Co-Chairs of the Board have further discussed moving forward with several mandates included in the Governing Instrument, in particular the need for an interim policy on ethics.

3. The Co-Chairs have issued a background paper on proposals including approaches to the work and a way forward on the matters referred to in paras 1- 2 above.

II. Proposals from the Co-Chairs

4. Annex I to this document outlines proposals from the Co-Chairs on interim statement on conflict of interest and ethics.

5. Annex II outlines the Co-Chairs' proposal on Matters regarding Board decisions without a meeting

6. Annex III provides the proposal from the Co-Chairs on interim procedures for decision-making when all efforts at reaching consensus have been exhausted: selection of the host country of the Board and selection of the Executive Director.

III. Next steps

7. The Board is invited to consider the proposals from the Co-Chairs on the matters outlined in paras 4- 6 above.

[1] Decision B.1/D.3, para. (b).
[2] Decision B.1/D.3, para. (a)(ix).

Annex I

Interim statement on conflict of interest and ethics

The Board:

(a) *Underscores* the need for an interim statement on conflict of interest and ethics to guide the conduct of members and alternate members of the Board and advisers in connection with the Fund;

(b) *Endorses* the interim statement on conflict of interest and ethics for Board and alternate members and advisers, as contained in appendix I.

Appendix

I. Basic standard of conduct

1. Board members, alternate members and advisers shall carry out their responsibilities in connection with the Fund, to the best of their ability and judgment and shall maintain the highest standards of integrity and ethics in their personal and professional conduct, and observe principles of good governance.

2. Board members, alternate members and advisers shall observe the laws of each jurisdiction in which they are present pursuant to their official duties and responsibilities, associated with the Fund, noting that this principle does not abrogate or waive any privileges and immunities which they may enjoy by virtue of their role in their respective governments.

3. Board members, alternate members and advisers shall, in their interactions with others, act with tolerance, sensitivity and respect for cultural differences. Any form of discrimination based on any ground, such as gender, race, colour, national, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be against this statement.

4. Board members, alternate members and advisers shall abide by the following standards of conduct:

(a) must not act in any manner that will undermine public confidence and trust in the Fund's governance;

(b) must not encourage anyone to take any actions listed under paragraph (a) above; and

(c) must disassociate from any suspected misconduct, including those actions listed under paragraph [4] (a) above.

II. Conflicts of interest

5. A conflict of interest arises when a member or alternate member of the Board or an adviser has an interest that may include, but is not limited to, a financial interest that could, or reasonably could be deemed to, improperly influence the performance of their official duties or responsibilities as a member or alternate member of the Board or an adviser, as the case may be.

6. In general, and without limitation, conflicts of interest may be deemed to exist in the following situations:

(a) Where the interests of a Board or alternate member or an adviser, or the interests of an immediate family member[3] (subject to the limitation referred to in paragraph [7] below), could affect the conduct of their duties and responsibilities with respect to the Fund or result in a reasonable perception that a conflict of interest exists;

(b) Where the actions of a Board or alternate member or an adviser create the perception that they are using their position at the Fund for the benefit of an immediate family member (subject to the limitation referred to in paragraph [7] below).

7. It is acknowledged that Board and alternate members and advisers may be serving a government which in itself does not constitute a conflict of interest, provided that the relationship with the relevant government is disclosed.

[3] Immediate family members means a Board members, alternate members and advisers spouse, partner under domestic legislation, child, mother, father, brother or sister and persons primarily dependent on such an individual for financial support.

Annex II

Matters regarding Board decisions without a meeting

I. Legal basis

1. Paragraph 26 of the Governing Instrument of the Fund permits the Board to take decisions between meetings and provides that the Board will adopt procedures for this.

2. No such procedures have yet been adopted, and the additional rules of procedure are still under development. The Co-Chairs, in consultation with the co-chairs of the ad hoc subcommittee on the additional rules of procedure, have discussed the options for this matter to be placed on the draft workplan of the Board to be adopted at the second meeting of the Board (B.2). If the draft workplan is adopted, the Co-Chairs would undertake consultations with a view to the formal adoption of the procedures to take decisions without a Board meeting.

3. In the absence of adopted procedures, the Co-Chairs have jointly determined the need to utilize a tool for decisions without a Board meeting on a case-by-case basis based on an ad hoc procedure agreed by the Board for such purpose, where a decision should not be postponed to the forthcoming Board meeting.

4. Given that decisions between meetings are foreseen as a possibility in the Governing Instrument, if the Board agrees that:

(a) There may be a need to adopt a decision in respect of certain matters between meetings;

(b) An ad hoc procedure proposed by the Co-Chairs can be used for this purpose, and that future decisions between meetings would be done on a case-by-case basis, with a clear justification as to why the relevant decision cannot be deferred;

(c) This ad hoc procedure does not prejudge the procedures for taking decisions between meetings that the Board will adopt pursuant to paragraph 26 of the Governing Instrument. Then, and subject to the agreement of the Board, Co-Chairs would use such an ad-hoc procedure for the purpose set out in paragraph 3.

5. The Co-Chairs are therefore seeking the views of the Board on the use of an ad hoc procedure, for the reasons set out in paragraph 3 above, and its substance as set out in paragraphs 6–13 below, in advance of sending out the draft decision for adoption.

II. Potential ad hoc procedure

6. Following consultation on the ad hoc procedure, and if appropriate, the Co-Chairs will instruct the interim secretariat to transmit to members and alternate members of the Board a proposal for s decision with the invitation to Board members to approve the decision on a no-objection basis, within 10 days from and including the date of transmittal of the draft decision.

7. At the expiration of the 10-day period prescribed for replies, the decision shall be deemed approved unless there is a written request to:

(a) Defer the matter to the next Board meeting with specific reasons as to why a decision cannot be approved; and/or

(b) Make changes to the proposed decision.

(in either case, a “Written Request”).

8. No communication from a Board member in respect of the draft decision shall not be considered as an objection unless it constitutes a written request, as set out in paragraph 7 above.

9. If a written request is received during the period prescribed for replies, the Co-Chairs will work through such written request with the relevant Board member directly.

10. If the relevant Board member upholds their written request following discussion with the Co-Chairs, or if the matter cannot otherwise be resolved prior to the start of the next Board meeting, the draft decision will be considered by the Board at that meeting.

11. If the relevant Board member withdraws their written request, the proposed decision shall be deemed approved.

12. The interim secretariat shall, on behalf of the Co-Chairs, update Board and alternate members on the status of the draft decision.

13. If the decision is adopted between meetings, the decision should be expressly acknowledged at the beginning of the subsequent Board meeting and recorded in the report of that meeting.

Annex III

Proposal from the Co-Chairs on interim procedures for decision-making when all efforts at reaching consensus have been exhausted: selection of the host country of the Board and selection of the Executive Director

I. Background

1. According to paragraph 26 of the Governing Instrument of the Fund for responding to loss and damage "decisions of the Board will be taken by consensus. If all efforts at reaching consensus have been exhausted, and no consensus is reached, decisions will be taken by a <u>four-fifths majority</u> of the members present and voting" and the "Board will develop procedures for determining when all efforts at reaching consensus have been exhausted".

2. In the absence of agreed procedures, and noting the need for the Board to take decisions on the selection of the host country of the Board at the second meeting of the Board (B.2) and on the selection of the Executive Director at B.3, the Co-Chairs are proposing interim procedures for decision-making when all efforts at reaching consensus have been exhausted.

II. Scope and applicability

3. These interim procedures do not prejudge the final procedures for determining when all efforts at reaching consensus have been exhausted that the Board will adopt pursuant to paragraph 26 of the Governing Instrument.

4. The Co-Chairs will consult with the Board on these interim procedures and the Board will be asked to endorse these procedures for decision-making when all efforts at reaching consensus, for the interim period and specifically regarding the selection of host country for the Board and the selection of the Executive Director have been exhausted.

III. Process

5. The interim procedures comprise the following steps:

(a) The Co-Chairs will consult with all members of the Board present at the meeting on a confidential basis to determine whether a consensus can be reached;

(b) If the Co-Chairs, acting jointly and in good faith, determine that consensus cannot be reached, they will propose that a formal vote, in the form of confidential balloting, will take place and announce the start of the formal voting process, including the suspension of webcasting;

(c) Each Board member shall be entitled to one vote. Co-Chairs retain their right to vote. All Board members present in the Boardroom shall participate in the vote and be entitled to one ballot in each round of balloting;

(d) For Board seats where the Board member is absent, pursuant to paragraph 18 of the Governing Instrument, the alternate member shall be entitled to exercise the vote;

(e) Voting will take place on the basis of a series of written confidential ballots to determine the successful candidate;

(f) Only voting members will be present in the Boardroom;

(g) For each round of balloting, the Co-Chairs will apply the following formula:

i. If a candidate has received a four-fifths majority of the ballots cast in a single round of balloting, that candidate will be deemed as the selected candidate;

ii. If no candidate has received a four-fifths majority, the candidate that received the least number of ballots will be dropped from the ballot and a subsequent round of balloting will commence. If more than one candidate has received the same least number of ballots, all such candidates will be dropped from the ballot, unless they are the last two candidates in which case paragraph 5(g)(iii) below will apply;

iii. In the event of a tie between the last two candidates, the balloting process is repeated until a candidate has received the support of at least a four-fifths majority of the ballots cast;

(h) The ballots cast will be counted by a member of the interim secretariat designated jointly by the Co-Chairs;

(i) The Co-Chairs will then announce the result of each round of the balloting;

(j) After the results of the confidential balloting have been announced, Board members may make a brief statement to explain their vote should they wish to;

(k) The final outcome of the ballot will be confirmed in a Board decision adopted by consensus.

A. Management of the agenda item: host country

6. The Co-Chairs will open the agenda item and will invite the co-chairs of the ad hoc subcommittee on the selection of the host country of the Board to present their report.

7. Following the presentation of the report of the ad hoc subcommittee, the Co-Chairs will invite comments and questions from Board members.

8. The Co-Chairs will suspend the item and hold one-to-one consultations with each Board member to determine if there is a consensus on the selection of the host country as set out in paragraph 5(a) above. The Co-Chairs will then re-open the agenda item and report to the Board on the outcome of their consultations. If the Co-Chairs determine that consensus cannot be reached, they will propose that a formal vote will take place and announce the start of the formal voting process, as set out in paragraph 5(b–k), including the suspension of webcasting.

Draft decision

Co-Chairs' proposal: Interim procedures for decision-making when all efforts at reaching consensus have been exhausted

The Board, having considered document FLD/B.2/5 titled "Background paper on proposals from the Co-Chairs of the Board":

(a) *Adopts* the interim procedures for decision-making when all efforts at reaching consensus have been exhausted as set out in annex III to document FLD/B.2/5;

(b) *Decides* that, without prejudice to the procedures for determining when all efforts at reaching consensus have been exhausted the Board will adopt, pursuant to paragraph 26 of the Governing Instrument and without setting a precedent, these interim procedures and will apply them during the process for the selection of the host country of the Board;

(c) *Further decides* that, without prejudice to the procedures for determining when all efforts at reaching consensus have been exhausted the Board will adopt, pursuant to paragraph 26 of the Governing Instrument and without setting a precedent, these interim procedures and will apply them during the process for the selection of the first Executive Director of the Fund.