Copenhagen Green Climate Fund and the World Bank

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Introduction

1. The United Nations Framework Convention on Climate Change[1] (the "**UNFCCC**") at Article 11, provides for a financial mechanism to be implemented including the provision of financial resources on a grant or concessional basis for the transfer of technology and to address climate change.

2. The Copenhagen Accord[2] reiterated and elaborated on this commitment. In particular, paragraph 8 stated the collective commitment by developed countries to provide new and additional resources approaching USD 30 billion for the period 2010 - 2012. It was further stated that this should grow to USD 100 billion per year by 2020 and that a significant portion of such funding should flow through the Copenhagen Green Climate Fund ("**CGCF**").

3. Paragraph 10 of the Copenhagen Accord, stated that the CGCF would be established as an operating entity of the financial mechanism of the UNFCCC to support projects, programmes, policies and other activities in developing countries related to mitigation including REDD-plus, adaptation, capacity-building, technology development and transfer.

4. There has been some concern from NGOs and developing countries that developed countries might insist on using the World Bank to deliver climate finance. In the event this comes to pass, this note sets out our views on the most appropriate structure and administration of the CGCF such that the World Bank's operational role is substantially limited. In particular, we address:

   (a) the different options for structuring World Bank trust funds;

   (b) whether, for each option, the World Bank's environmental and social safeguards apply;

   (c) the best way to structure a World Bank trust fund so that it complies with the UNFCCC and what any MoU between the two should contain; and

   (d) whether the World Bank could devolve all authority over such a trust fund to the UNFCCC COP such that its own role is substantially eliminated.

5. We have also provided a brief overview of how the World Bank[3] deals with trust funds together with some relevant examples before answering the issues detailed above.

[1] FCCC/INFORMAL/84 GE.05-62220 (E) 200705 available at: http://unfccc.int/resource/docs/convkp/conveng.pdf

[2] FCCC/CP/2009/11/Add.1 available at: http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf

[3] In this note, references to the "World Bank" are primarily to the International Bank for Reconstruction and Development as this is the member of the World Bank Group that has taken the leading role in administering trust funds. It is acknowledged that the International Finance Corporation is also now making significant use of trust funds to support its activities.

World Bank administered trust funds

6. Although the World Bank's Articles of Agreement do not grant the express power for it to create and administer trust funds, these powers are understood to be implied as being necessary for it to fulfil its purposes and objectives and have been developed in practice in a manner consistent with the law of international institutions.

7. The Concessional Finance and Global Partnerships ("**CFP**") is the vice presidency of the World Bank responsible for its work in administering trust funds. Under the CFP, the Multilateral Trusteeship and Innovative Financing department is responsible for the development, implementation and management of business, financial and operational frameworks for multi-donor and multilateral trust funds and initiatives. It provides trustee, fiscal agency and financial management services to multilateral initiatives including the Global Environment Facility ("**GEF**") and the International Finance Facility for Immunization ("**IFFIm**"). The World Bank publicises the fact that it provides specific administrative and financial services to the international community through trust funds on "issues of global importance"[4].

8. Since their introduction in the 1960's, World Bank-administered trust funds have been increasingly used as tool of development finance, assisting countries in re-establishing creditworthiness and helping prepare programs that are then financed by the World Bank. Each trust fund is governed by a legal framework comprising of three main elements:

   (a) its ability to establish a trust fund;

   (b) the trust fund administration agreement, which sets out the detailed rights and obligations of the World Bank and the donors; and

   (c) the public statements of the World Bank's policies and procedures for trust funds.

9. Ultimately, the constitution and operation of World Bank administered trust funds will be moulded by the political realities of the day and specifically the objectives of the donors themselves.

Establishment of trust funds

10. The World Bank has detailed internal procedures for the establishment of trust funds[5]. BP 14.40 provides that each trust fund must meet a minimum threshold of USD 1 million and that a Trust Fund Proposal ("**TFP**") is approved setting out various matters including the proposed objectives, results, scope of work. After this approval has been given, the legal agreements based on and fully consistent with the approved TFP can be finalised.

11. Trust funds are governed by:

    (a) Administration Agreements between the World Bank and the donor(s), or, in certain cases, by a Resolution of the Board of Executive Directors; and

    (b) Financial Procedures Agreements ("**FPA**"), or their equivalent in the case of some FIFs.

12. For each trust fund, the World Bank decides whether to accept the role or responsibilities proposed, based on the following criteria:

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4 *A Management Framework For World Bank-Administered Trust Funds*, (Washington, World Bank 14 September 2007) p35

5 These are set out principally in OP14.40 and BP14.10

(a) Consistency with the World Bank's purposes and mandate - these are broad enough to encompass the proposed CGCF;

(b) Strategic relevance - the CGCF is likely to be strategically aligned with the World Bank;

(c) Risk management and controls - we would expect there to be extensive analysis of any proposal for the CGCF in the context of the World Bank's internal policies in this area;

(d) Governance (i.e. whether the World Bank has sufficient decision-making authority in the use of the funds to fulfil its roles in administering the specific type of trust fund) - if the World Bank's role is limited to one of administration and trustee, we would expect there to be sufficient authority catered for in the proposal;

(e) Absence of nationality restrictions on procurement - this may be relevant in the context of any contribution agreements; and

(f) Operational efficiency and sustainability - again, any CGCF proposal should meet this criteria.

World bank trust fund Structures

13. The World Bank's roles in administering a trust fund can vary depending on its type. The World Bank always performs some financial or administrative roles and may also perform one or more operational or partnership support roles. Based on such roles and the legal framework above, the World Bank has identified three different structures for its trust funds:

(a) Bank-Executed Trust Funds ("**BETFs**") are those for which the World Bank has spending authority. Generally, this type of trust fund supports (i) the key elements of the World Bank's own program (i.e. advisory activities); (ii) project-related activities; and (iii) some trust fund administration activities.

(b) Recipient-Executed Trust Funds ("**RETFs**") are those which the World Bank passes on to third-party recipients. RETFs enable the recipients to carry out development activities and finance the investment and recurrent needs of service delivery, capacity building and technical assistance activites. They are typically used to reinforce World Bank lending patterns and can be either explicitly linked to World Bank-financed operations or designed as stand-alone funds.

(c) Financial Intermediary Funds ("**FIFs**") are highly diverse in terms of their objective. They comprise of a mix of trust funds not covered by BETFs or RETFs, such as funds with financial engineering and complex financial schemes and represent the largest category of World Bank-administered trust funds.

14. Of the three alternative structures for World Bank-administered trust funds, it seems clear that the FIF model would be the most appropriate structure for CGCF. This model affords the flexibility to design the fund to meet the specific needs of the donor community with the appropriate level of support and assistance from the World Bank. There are a range of administrative and financial services that the World Bank can provide under these arrangements with a great deal of flexibility as to its operational role. Such arrangements include the administration of a variety of debt service trust funds, fiscal agency services funds and other more-specialised limited fund management roles.

15. For some FIFs, the World Bank's role is that of a financial trustee with limited functions, such as holding funds and disbursing them to external entities. In these cases, the World Bank can be required to ensure that funds flow to third parties who in turn may use the funds to undertake

development efforts directly or to fund the development efforts of others. Ultimately, FIFs are held and disbursed in accordance with instructions from donors.

16. FIFs do not always leverage the World Bank's operational input. For instance, while the World Bank does act as financial trustee for the Global Fund to Fight AIDS, Tuberculosis and Malaria ("**GFATM**"), the GFATM has its own operational procedures and staff. However, the World Bank's provision of limited fiduciary services through FIFs, does not necessarily preclude it from providing an operational input.

17. There are some potential weaknesses associated with FIFs that are worth noting from the outset:

    (a) FIFs are exposed to a variety of type-specific risks, particularly the associated risks to the World Bank's operational strategy and core country-based business model;

    (b) Partnership management risks are also heightened on highly complex global partnerships with governing bodies, in which the World Bank participates;

    (c) Potential conflicts of interest risks may arise when the World Bank has the authority to make or influence allocation decisions in its own favour;

    (d) Complex governance and funding arrangements on FIFs contribute to heightened reputational risks, especially for those shaping the design of such arrangements or approving the work program; and

    (e) A lack of adequate information for the long-term and comprehensive planning of the business structure and resource requirements at the start-up of each FIF can undermine is effectiveness.

18. The World Bank has tended to use the FIF structure for multi-donor environment and climate change funds, including the GEF and the Climate Investment Funds ("**CIFs**").

19. If the concern, as outlined above, is to ensure that the "the relationship between the COP and the World Bank must be structured to ensure that the COP retains appropriate policymaking and oversight authority over the CGCF", then the structure of the CIFs provide a helpful example of how this primacy can be established and are explored in more detail in paragraphs 23 and 32 below.

Global environmental fund

20. There are clearly common interests between the proposed CGCF and the GEF. Under the GEF, the World Bank is a trustee and provides administration services. Its operational staff are available to add value in the GEF dialogue with countries and in the preparation of administered GEF projects.

21. The GEF is a global partnership between 178 countries, international institutions and NGOs and the private sector to address global environmental issues, while supporting national sustainable development initiatives. It provides grants for projects related to six focal areas: biodiversity, climate change, international waters, land degradation, the ozone layer, and persistent organic pollutants.

22. The GEF Assembly is the governing body of the GEF, which is representative of all its members and countries. The World Bank is one of the ten implementing agencies.

Climate Investment Funds

23. Similarly, there are a number of lessons that can be drawn from the structure of the CIFs and it will be important to coordinate the new CGCF with the CIFs.

24. The CIFs were designed by developed and developing countries and are implemented with the multilateral development banks ("**MDBs**") to bridge the financing and learning gap between now and the next international climate change agreement.

25. The World Bank acts as a trustee of the CIFs and is subject to a "sunset clause" intended to reflect the transitional nature of the funds and to ensure that the CIFs' activities do not prejudice the outcome of the UNFCCC negotiations.

26. Under the CIFs, there are two distinct funds: the Clean Technology Fund ("**CTF**") and the Strategic Climate Fund ("**SCT**"), each of which are governed by a separate Trust Fund Committee. Examples of the SCT targeted programs include the Forest Investment Program and the Scaling-up Renewable Energy Program, both of which are governed by its own Sub-Committee.

The CTF Structure

27. The governance and organisational structure of the CTF includes a CTF Trust Fund Committee, an MDM Committee, a Partnership Forum, an Administrative Unit and a Trustee.

28. The CTF Trust Fund Committee overseas the operations and activities:

    (a) approving programming and pipeline priorities, operational criteria and financing modalities;

    (b) ensuring that the strategic orientation of the CTF is guided by the principles of the UNFCCC;

    (c) endorsing further development of activities in investment plans for CTF financing;

    (d) approving allocation of CTF resources for programs and projects;

    (e) approving allocation of CTF resources for administrative budgets;

    (f) providing guidance on the convening of the Partnership Forum;

    (g) ensuring monitoring and periodic independent evaluation of performance and financial accountability of the MDBs;

    (h) approving annual reports of the CTF;

    (i) ensuring that annual reports and evaluations, including lessons learned, are transmitted to the UNFCCC;

    (j) reviewing reports from the Trustee on the financial status of the CTF; and

    (k) exercising such other functions as the CTF Trust Fund Committee may deem appropriate to fulfil the purposes of the CTF.

29. CTF Trust Fund Committee Members include:

    (a) Eight representatives from contributor countries , identified through a consultation among such contributors. Current Contributing Countries: Australia, France, Germany, Japan, Spain, Sweden, United Kingdom, United States.

(b) Eight representatives from eligible recipient countries, identified through a consultation among interested eligible recipient countries. Current Recipient Countries Members: Brazil, China, Egypt, India, Morocco, Nigeria, South Africa, Turkey.

(c) When the CTF Trust Fund Committee considers an investment plan, program or project for a country, a representative of such recipient country, during deliberations of the Trust Fund Committee on the investment plan, program or project.

(d) A senior representative of the World Bank, recognizing the role of the World Bank as the overall coordinator of the CIF partnership.

(e) A representative of the MDBs, identified by the MDB Committee for each meeting of the CTF Trust Fund Committee on the basis of rotation among the MDBs.

30. The MDB Committee is responsible for facilitating collaboration, coordination and information exchange among the MDBs.

31. The Administrative Unit is housed in Washington DC at the World Bank offices and staffed by World Bank employees and will support the CTF Trust Fund Committee and other bodies.

32. The Trustee (IBRD) will administer the fund's assets and receipts pursuant to the terms of the Contribution Agreements from contributors.

Environmental and social safeguards

33. The policies and procedures that apply to trust funds vary, depending on the trust fund type. In the case of FIFs, the application of Operational Policies and Procedures, the Administrative Manual, financial policies, budget policies and procedures, or other procedures, is determined on the basis of the characteristics of each fund as outlined in the internal World Bank document: the Trust Fund Handbook.

34. The Bank's environmental and social safeguards policies and procedures are generally taken to constitute the following:

(a) OP/BP 4.01, *Environmental Assessment*;

(b) OP/BP 4.04, *Natural Habitats*;

(c) OP 4.09, *Pest Management*;

(d) OP/BP 4.10, *Indigenous Peoples*;

(e) OP/BP 4.11, *Physical Cultural Resources*;

(f) OP/BP 4.12, *Involuntary Resettlement*;

(g) OP 4.36, *Forests*; and

(h) OP/BP 4.37, *Safety of Dams*.

35. The environmental and social safeguard policies themselves do not require that they apply to FIFs and generally state that they are applicable to "bank-financed projects"[6].

36. Although technically the World Bank's environmental and social safeguards may not apply to FIFs, the World Bank may nevertheless require such compliance. For example, in relation to the GEF, OP 10.20 states that the World Bank's operational policies will generally apply to GEF grants. Accordingly, even if the World Bank does not contribute its own funds to the CGCF, it may seek to ensure that all CGCF grants comply with its environmental and social safeguards.

Trust Fund Structures

37. Provided that both donors and trustee are in agreement, there are no technical obstacles to structuring the fund to give full effect to the UNFCCC and this can be clearly established in the Administration Agreement, the constitutive framework of the fund and any Contribution Agreements.

38. In relation to the CTF, for example, the relevant operational elements of the constitutional arrangement lie with the CTF Trust Fund Committee and, if this model is to be used for the CGCF, it would be this element (or its equivalent) of the structure that would reflect the primacy of the COP in this regard. As mentioned, whether this would be acceptable is a political rather than legal issue and we would expect there to be required safeguards in respect of the World Bank's reputational risks and the application, under certain prescribed circumstances, of the World Bank's policies and procedures.

39. The content of any MOU will depend on the agreement that is reached firstly under the auspices of the UNFCCC and secondly in any direct discussions with the World Bank. We note that under the UNFCCC text to facilitate the Bonn negotiations (the "Facilitative Document")7, there are two options under consideration in respect of the enhanced action on the provision of financial resources and investment:

    (a) that a high-level panel will be established under the guidance of and accountable to the COP to study the contribution of the potential sources of revenue, including alternative sources of finance; or

    (b) that new multilateral funding for adaption will be delivered through effective and efficient fund arrangements, with a governance structure providing for equal representation of developed and developing countries and with a significant portion of such funding flowing through the CGCF.

40. Furthermore, the Facilitative Document outlines the potential specific purposes and governance of the CGCF that would need to be elaborated on and set out fully in any MOU, if agreed:

    (a) the CGCF will be established as an operating entity of the financial mechanism of the Convention to support projects, programmes, policies and other activities related to mitigation, including REDD-plus, adaptation, capacity-building, and technology development and transfer;

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6 See OP 4.01, paragraph 1; OP 4.04, paragraph 1; OP 4.09, paragraph 4; OP 4.10, paragraph 1; OP 4.11, paragraphs 15 and 16; OP 4.37, paragraph 1; OP 4.12, paragraph 3 refers to "Bank-assisted projects"; and OP 4.36, paragraph 3 refers to "Bank-assisted projects".

7 UNFCCC: "*Ad Hoc Working Group on Long-term Cooperative Action under the Convention"* - Tenth Session - Bonn, 1-11 June 2010 (Advanced Version)

(b) specialised funding windows may be established by the Board of the CGCF with the approval of the COP;

(c) the CGCF shall be governed by a Board of members nominated by the COP, with equitable and balanced representation of developed country Parties and developing country Parties;

(d) the CGCF shall be serviced by a trustee and a secretariat; the procedures for selecting the trustee and the secretariat shall be finalized by the seventeenth session of the COP; and

(e) the CGCF shall provide simplified, improved and effective access to financial resources in a timely manner, including direct access.

41. With respect to giving effect to the provisions of the UNFCCC, this can be transposed, as relevant, into any MOU agreed between the parties and could form part of the constitutional arrangements of the CTF Trust Fund Committee in that way. Again, how that would play out in practice would be subject to detailed negotiations.

The relationship between the COP and the World Bank

42. If the CGCF is structured as suggested, we do not see that this would be relevant. The key operational aspect from a governance perspective would be the contractual arrangements that the Trustee signs up to pursuant to the individual Contribution Agreements.

43. Subject to the required application of policies and procedures on the establishment and administration of a FIF, it is clear from the examples that the World Bank's operational role can be substantially eliminated and we see no legal obstacle to having operational aspects devolved - via the equivalent of the CTF Trust Fund Committee – to the COP.