Fund for responding to loss and damage

FLD/B.1/5

22 April 2024

First meeting of the Board
30 April to 2 May 2024
Abu Dhabi, United Arab Emirates
Provisional agenda item 7

Background paper on matters relating to the operationalization of the Fund as a World Bank-hosted financial intermediary fund

Expected actions by the Board

The Board will be invited to:

(a) Consider any oral or written information provided by the World Bank on its response to the invitation from the Conference of the Parties and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement to operationalize the Fund as a World Bank-hosted financial intermediary fund;

(b) Decide on the modalities for consultations with and provision of guidance to the World Bank as it takes the necessary steps to operationalize the Fund as a financial intermediary fund in accordance with decisions 1/CP.28 and 5/CMA.5.

I. Background and mandate

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

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

(a) Is fully consistent with the Governing Instrument[2] of the Fund;

(b) Ensures the full autonomy of the Board of the Fund to select the Executive Director of the Fund at a level of seniority set by the Board, in line with relevant World Bank human resources policies;

(c) Enables the Fund to establish and apply its own eligibility criteria, including on the basis of guidance from the COP and the CMA;

(d) Ensures that the Governing Instrument of the Fund supersedes, where appropriate, the policies of the World Bank in instances where they differ;

(e) Allows all developing countries to directly access resources from the Fund, including through subnational, national and regional entities and through small grant funding for communities, consistent with the policies and procedures to be established by the Board of the Fund and applicable safeguards and fiduciary standards;

(f) Allows for the use of implementing entities other than multilateral development banks, the International Monetary Fund and United Nations agencies, consistent with the policies and procedures to be established by the Board of the Fund and applicable safeguards and fiduciary standards;

(g) Ensures that Parties to the Convention and the Paris Agreement that are not member countries of the World Bank are able to access the Fund without requiring decisions or waivers from the World Bank Board of Directors on individual funding requests;

(h) Permits the World Bank, in its role as trustee, to invest contributions to the Fund on the capital markets to preserve capital and general investment income, in line with due diligence considerations;

(i) Ensures that the Fund can receive contributions from a wide variety of sources, in line with due diligence considerations;

(j) Confirms that the Fund's assets and its secretariat have the necessary privileges and immunities;

(k) Ensures a cost recovery methodology that is reasonable and appropriate.

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

4. Further, COP 28 and CMA 5 invited the World Bank to take the steps necessary to promptly operationalize the Fund as a financial intermediary fund and submit to the Board

[1] Decisions 1/CP.28, para. 17, and 5/CMA.5, para. 17.
[2] Decisions 1/CP.28, annex I, and 5/CMA.5, annex I.
[3] Decisions 1/CP.28, para. 18, and 5/CMA.5, para. 18.

of the Fund by no later than eight months after the conclusion of COP 28 the relevant financial intermediary fund documentation, approved by the World Bank Board of Directors,[4] including a hosting agreement between the Board of the Fund and the World Bank based on consultations with and guidance from the Board of the Fund.[5]

5. COP 28 and CMA 5[6] decided that, notwithstanding the invitation referred to in paragraph 17 of decisions 1/CP.28 and 5/CMA.5, if the World Bank has not confirmed that it is willing and able to meet the conditions set out in paragraph 2 above within six months after the conclusion of COP 28, the Board will launch the selection process for the host country of the Fund and COP 29 and CMA 6 will approve the necessary amendments to the Governing Instrument of the Fund.

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

II. Board engagement with the World Bank prior to its first meeting

7. The nominated members of the Board engaged in informal exchanges with representatives of the World Bank during the months preceding the first Board meeting. The first informal exchanges took place on 26 March 2024. During these exchanges, representatives of the World Bank shared information on the steps it was taking to meet the deadlines stipulated in the invitation from the COP and the CMA, and presented an overview of the structure of the proposed financial intermediary fund. The World Bank also presented its views on the main documents that would need to be prepared for operationalization of the financial intermediary fund, namely:

(a) The hosting agreement between the World Bank and the Board of the Fund;

(b) The trustee agreement between the World Bank and the Board of the Fund;

(c) A contribution agreement template to be signed between the World Bank as Trustee and the contributors to the Fund;

(d) An operations manual to be developed by the World Bank and the interim secretariat and approved by the Board of the Fund;

(e) A financing agreement template.

8. Further consultation was required in order to reach a common understanding, including with regard to the interpretation of paragraph 18 of decisions 1/CP.28 and 5/CMA.5, as the World Bank takes the steps to prepare for the operationalization of the Fund as a World Bank-hosted financial intermediary fund.

9. Subsequently, nominated members of the Board of the Fund clarified their understanding on this matter by issuing, on 5 April 2024, a statement that was transmitted by the interim secretariat of the Fund to the World Bank Board of Directors prior to its meeting on 8 April 2024. In response, the interim secretariat of the Fund received a letter from the Senior Managing Director of the World Bank, on 9 April 2024, addressed to the nominees to the Board of the Fund, providing updates from the above-mentioned meeting and requesting a further discussion with nominees to the Board of the Fund, on the operationalization of the Fund.

10. In response, an in-depth discussion was held on 12 April 2024 between the nominated members of the Board of the Fund and World Bank representatives on, inter alia, the steps the World Bank has taken regarding the conditions outlined in paragraph 20, and the expectations of the Board of the Fund with respect to paragraph 18, of decisions 1/CP.28 and

[4] Decisions 1/CP.28, para. 19, and 5/CMA.5, para. 19.
[5] Decisions 1/CP.28, para. 25, and 5/CMA.5, para. 25.
[6] Decisions 1/CP.28, para. 21, and 5/CMA.5, para. 21.
[7] As footnote 4 above.

5/CMA.5. It was noted in the discussion that further consultations will be necessary in order to achieve a common understanding prior to and during the first meeting of the Board of the Fund.

III. Milestones and indicative timelines

11. The Board may wish to consider the table below, which shows the milestones and timelines towards establishing the financial intermediary fund, when deciding on its next steps regarding the modality of provision of guidance to the World Bank on matters concerning the preparation of the financial intermediary fund documentation, including a hosting agreement between the Board of the Fund and the World Bank.

Milestones and timelines

Milestone	*Q1*	*Q2*	*Q3*	*Q4*
Confirmation from the World Bank of its willingness and ability to meet conditions		X		
Conferral of legal personality and legal capacity to the Board of the Fund (to be provided by host country)			X	
Submission of financial intermediary fund documentation approved by the World Bank Board of Directors, including a hosting agreement			X	
Determination by the Board of the Fund of whether conditions can be met by the World Bank during the interim period				X
Conclusion of the hosting agreement between the Board of the Fund and the World Bank				X

IV. Modalities for engagement with the World Bank

12. The Board may wish to consider, inter alia, one or several of the modalities outlined below in its interactions with the World Bank on matters concerning the financial intermediary fund referred to in paragraph 4 above:

(a) Written updates from the World Bank, including on the development of information documents for the financial intermediary fund;

(b) Oral updates by World Bank representatives and question and answer sessions with the Board in plenary, exchange sessions or other formats that the Board may determine necessary to undertake its work on this matter during the meetings of the Board;

(c) Agreement by the Board on specific guidance to be provided to the World Bank as necessary, for transmission to the World Bank thereafter;

(d) Information sessions held in virtual format between meetings of the Board, as necessary.