Forest Carbon Partnership Facility (FCPF)

Readiness Fund

Costs of Accountability

DRAFT October 14, 2011

This note presents a proposal of the Delivery Partners to the Participants Committee for coverage of the costs related to the use of the Delivery Partners' accountability mechanisms in application of the Common Approach under the Readiness Fund.

Background

1. The Participants Committee (PC) has adopted several Resolutions designed to initiate a pilot whereby institutions other than the World Bank would be able to provide REDD+ readiness services to REDD Country Participants as Delivery Partners under the FCPF Readiness Fund. It is expected that Delivery Partners other than the World Bank (WB) would support up to ten REDD Country Participants as part of the pilot.

2. As part of this Multiple Delivery Partner arrangement, a Common Approach was adopted at PC9, which lays out the approach to environmental and social safeguards as well as access to information and use of accountability mechanisms under the FCPF Readiness Fund. As per the Common Approach, "accountability mechanism" means the independent mechanism established by the Delivery Partner (DP) to address eligible claims that the DP's alleged failure to comply with its policies and procedures or the Common Approach has been or is likely to be the direct cause of harm to the claimant(s).[1]

3. PC9 also resolved to approve the Inter-American Development Bank (IDB) and the United Nations Development Programme (UNDP) to serve as Delivery Partners. Since then the United Nations Food and Agriculture Organization (FAO) has requested approval to become a Delivery Partner, following the PC9 resolution provisions.

4. For the Multiple Delivery Partner arrangement to become operational, each Delivery Partner has to enter into a Transfer Agreement with the WB acting as trustee of the FCPF Readiness Fund. This Transfer Agreement contains, inter alia, provisions on cost recovery by the Delivery Partners from the Readiness Fund. These costs include the cost of the Delivery Partner making its accountability mechanism available as per the Common Approach.

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[1] See the PC9 Resolution on Multiple Delivery Partners at http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2011/Resolution%201%20Common%20Approach.pdf, and the Common Approach at http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Jun2011/FCPF%20Readiness%20Fund%20Common%20Approach%20_Final_%209-June-2011.pdf. Both documents also exist in French and Spanish.

5. In the specific case of IDB, the PC9 Resolution further provided that the Transfer Agreement "shall provide for coverage by the FCPF Readiness Fund of any reasonable costs that the IDB incurs in making its accountability mechanism available to address claims associated with those specific provisions of the Common Approach in order to meet its commitment under Paragraph 36 of the Common Approach."

6. The PC9 Resolution further provided that these costs might also include the incremental costs of the consultation phase of IDB's accountability mechanism. By analogy, the incremental cost of the dialogue and mediation support function recently established by the WB would also be included.

7. In the specific case of UNDP, the PC9 Resolution further provided that the Transfer Agreement "shall provide for coverage by the FCPF Readiness Fund of reasonable costs to UNDP in making an independent safeguard expert or consultant available to receive and provide expert guidance on eligible complaints related to safeguards and the Common Approach. Such funding shall be limited to the period that UNDP serves as Delivery Partner for FCPF Readiness grant agreements with the Pilot Countries, or until such time as UNDP decides on modalities for its accountability mechanism in accordance with Paragraph 36 of the Common Approach, whichever is sooner".

8. Finally, the PC9 Resolution directed the Facility Management Team (FMT) to "work closely within the World Bank and with IDB and UNDP to assess experience regarding management response costs related to the use of accountability mechanisms similar to those costs which may be incurred under the Common Approach (…) As part of this effort the FMT should also recommend whether to set aside FCPF Readiness Funds to cover these costs and, if so, what level is needed; and an appropriate approach to allocating the resources to Delivery Partners. The FMT will engage PC Members and Observers throughout this effort, with a view toward recommending for approval by the PC, on a non-objection basis as soon as possible, an appropriate approach to these costs."

Accountability Mechanism Overview

9. *World Bank*. In the context of the WB, the accountability mechanism is called the Inspection Panel. The Inspection Panel provides a forum and process for people who believe that they may be adversely affected by WB-financed operations, and can serve to bring their concerns to the highest decision-making levels of the WB. The Inspection Panel determines whether the WB complies with its own policies and procedures, including safeguard policies. The Inspection Panel's stated aims include giving affected people a greater voice in activities carried out by the WB that affect their rights and interests. In the process, the Inspection Panel can bring greater transparency and effectiveness to WB-financed operations.[2]

10. The WB Inspection Panel process consists of two phases:

i. Eligibility: If the Panel finds a request not to be frivolous and to fall within its mandate, it registers the request, sends the request to WB management and informs the WB Board. The

[2] See, for description of the Inspection Panel and its process: http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:20173251~menuPK:64129467~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html.The following page summarizes how to file a request for inspection: http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:21911332~menuPK:566350~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html.

Panel receives the Management response within 21 working days. The Panel determines the eligibility of the requesters and the request and evaluates the Management response, if necessary by visiting the project area, and issues its eligibility report, including a recommendation whether to investigate, within 21 working days after the Management response. The WB Board authorizes or does not authorize an investigation. The Panel's eligibility report, the Management response, request and content of the Board decision are made public.

ii. Investigation: If the WB Board authorizes the investigation, the Chair of the Panel appoints a lead inspector. The Panel initiates desk work, including selection of experts, collection of information, and interviews. The Panel conducts fact-finding in the project area. The Panel deliberates and determines facts. The Panel submits its investigation report to the WB Board and President. WB Management has six weeks to submit its recommendations in response to the Panel's findings. The WB Board meets to discuss the Panel findings and Management response and decides. An action plan may have to be put in place by Management as part of this decision. The Panel's investigation report, the Management response, and content of the Board decision are made public.

11. A review of complex Inspection Panel cases over the past decade reveals that it costs Management about $250,000 to respond to the requirements of the eligibility phase and an additional $750,000 on average to respond to the requirements of the investigation phase. The costs will obviously vary depending on the scope and range of issues involved in complexity of the case.

12. *IDB*. IDB's accountability mechanism is called the Independent Consultation and Investigation Mechanism (ICIM). The ICIM provides a forum and process to address complaints from parties that allege that they are or might be adversely affected by IDB-financed operations. The ICIM applies to IDB Board-approved environmental and associated safeguards, equality in gender, and information disclosure policies relevant to the design, appraisal, approval and/or implementation of IDB-financed operations, as well as the enforcement of compliance with a borrower/recipient's obligations under the above-mentioned policies.

13. The ICIM provides for a consultation/mediation phase during which an ombudsperson tries to facilitate an agreement for the resolution of the issues, and, in sequential order, for a compliance review phase during which an independent panel reports to the Board on compliance and recommends the development of a corrective action plan if applicable.[3]

14. The ICIM has been in operation for a year and a half and a pipeline of 16 cases processed to date. Based on that experience, a case processed through the Consultation Phase has an average cost of $197,000 while processing a case for compliance has an average cost of $275,000. Management response costs for the same period are estimated at $75,000 per case in the Consultation Phase and $102,000 per case in the compliance phase.

[3] The Policy Establishing the Independent Consultation and Investigation Mechanism and all information related to the ICIM are available at http://www.iadb.org/en/mici/independent-consultation-and-investigation-mechanism-mici,1752.html.

Accountability is Normal Business

15. The use of a Delivery Partner's (DP) accountability mechanism should be considered a normal cost of doing business with a DP in the FCPF Common Approach for two main reasons. First, the PC has mandated the use of the accountability mechanism when the institution serves as a DP under the FCPF Readiness Fund. Second, the accountability mechanism has been set up by the countries governing the DP as part of the framework adopted for the institution. Third, explicitly incorporating accountability in the Readiness Fund and recognizing the associated costs would underscore the FCPF's commitment to sustainable development. As such, it is legitimate to expect that the funding source, in this case the FCPF Readiness Fund, should cover costs related to the use of the accountability mechanism.

16. Following internal consultations, the World Bank views that: (i) given the risks involved in the FCPF Readiness Fund activities, the reasonable costs associated with ensuring adequate accountability should be provided for under the Fund; and that (ii) given the high likelihood of accountability costs being incurred by the DPs, these costs should not be considered as ordinary trust fund administration costs generally associated with IBRD/IDA-managed trust funds, but rather be viewed as an explicit activity supported by the Fund***.***

17. At the same time, it should also be noted that there is no clear history of IBRD/IDA-managed trust funds covering costs related to the accountability mechanism through trust fund resources. This cost coverage is new territory, but appears appropriate for the Readiness Fund due to the nature of the Fund as well as the development of the FCPF Common Approach under the auspices of the PC. While the FCPF Readiness Fund does not finance any physical works such as large-scale infrastructure projects more likely to lead to claims of adverse impact, there are risks associated with the funded activities, e.g., with respect to the rights and livelihoods of Indigenous Peoples and local communities. These risks are difficult to assess, and the grievance and redress mechanisms in place at the country level may not always be sufficient to address the concerns of affected parties, hence making it likely that claims will be brought to the DPs' accountability mechanisms.

18. Balancing the needs for recognizing the use of a DP's accountability mechanism as a normal cost of doing business and the DP's commitment to high-quality support to and oversight of REDD+ readiness activities argues in favor of a cost-sharing arrangement between the DP and the Fund.

Proposal

19. The DPs have researched accountability cost related issues and are presenting the following proposals:

   i. Five percent of the Readiness Fund capital based on the current committed and pledged amounts[4], i.e., $11.5 million, would be provisioned to cover Management response costs and incremental costs related to the use of the DPs' accountability mechanisms as outlined above (the "Provision"). This sum would be set aside and not be available for programming other activities, to ensure that it is available for its intended purpose. This Provision would be the maximum that the Readiness Fund, based on the current committed and pledged amounts, would contribute towards cost sharing in relation to the costs of accountability mechanisms under the Common Approach. Should the Fund capital increase, the amount of

[4] $231 million as of September 15, 2011.

the Provision would need to be revised accordingly to maintain the five percent ratio, unless the PC, in consultation with the Trustee and the DPs, determines otherwise;

ii. For eligible costs, i.e., those referred to in paragraphs 5-7 of this Note, the cost sharing arrangement would be the following:

    a. The Readiness Fund would take "first loss", i.e., cover the first portion of the cost, up to a maximum amount to be approved by the PC for each case (the "Case Cap"). The PC and the DP could agree that the Case Cap could be higher for the first claim received from a single country ("First Case Cap") than for any subsequent claim received from the same country ("Subsequent Case Cap") to ensure that the DP handles the first claim as exhaustively as possible and the first claim generates lessons for the future. As an example, the PC could choose to set the First Case Cap at $500,000 and any Subsequent Case Caps at $250,000;

    b. For individual claims with costs exceeding the First Case Cap or Subsequent Case Caps, as applicable ("Excess Costs"), the Readiness Fund and DP would share the Excess Costs equally, i.e., 50% to be borne by the Fund and 50% to be borne by the DP, up to a certain maximum per country to be borne by the Fund ("Maximum"). This Maximum would be approved by the PC, e.g., at the level of $1,000,000; and

    c. For any costs to be shared by the Fund, the DP would be reimbursed by the Fund based on documented expenditures provided that the agreed allocations and expenditures do not exceed the Maximum and that the cumulative contribution of the Fund towards cost sharing in relation to the eligible costs of accountability mechanisms under the Common Approach to date does not exceed the Provision.

iii. Any expenditure related to the eligible costs of the use of the DPs' accountability mechanisms in excess of the Maximum per country or the Fund-wide Provision would be borne by the DPs.

iv. The DPs would agree on modalities and guidelines for using the Provision and inform the PC by PC11.

v. If and when the PC, in consultation with the Trustee and the DPs, assesses that the level of the Provision is greater than the likely cost to be borne by the Fund, the corresponding excess funding would be returned to the main FCPF Readiness trust fund and become available for programming. If the excess funding cannot be reprogrammed in this way, it would be returned to the Donor Participants pro rata to their share of the Readiness Fund, as per the provisions of the respective Donor Participation Agreements signed between the Trustee and the Donor Participants. The above adjustments should take into account the lead time between the DP's incurring the expenditures and the submission of documented expenditures by the DP.

Next Steps

20. This proposal will be discussed at PC10. The arrangement coming out of PC10 will be subject to agreement by the DPs before it becomes effective.