Key Finance Terms

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Introduction

1. One issue that is likely to be important at COP16 in Cancun relates to the creation of a new fund or a finance board (or both) to govern and distribute new finance flows.

2. In this briefing paper, we set out general background information in relation to the following issues which may be useful to delegates when discussing the proposed fund or finance board:

   (A) the meaning of ''direct access'' to funds;
   (B) the difference between "equal" and "equitable" representation on any finance board / body;
   (C) the meaning of and difference between "under the authority of" and "under the guidance of and accountable to" the Conference of the Parties ("COP"); and
   (D) the role of the finance board and the difference between "oversight", "overview" and "co-ordination" of the fund.

3. In this briefing paper we do not look at the sources of finance that could be leveraged to meet the $100bn target set out in the Copenhagen Accord. The UN Secretary General's High-level Advisory Group on Climate Change Financing released a report on this very point[1] on 5 November 2010 and the options set out in this report are likely to be discussed in Cancun.

''Direct access'' and other types of access to multilateral funds

4. If a fund states that countries can have "direct access" to finance, this means that those countries can apply for funds directly to the relevant fund rather than via a funding institution such as the World Bank. Such funding would be provided directly from the fund to the country applying for funding and not through other funding institutions. Direct access not only implies a concept of direct channels for funds but also the concept of country ownership and decentralised decision-making at a national level.

5. Examples of direct access funding can be found in varying degrees in existing funds such as the Multilateral Fund for the Implementation of the Montreal Protocol, the Adaptation Fund or the Global Fund to fight Aids, Tuberculosis and Malaria.

6. The model which direct access is traditionally opposed to is that of access via Multilateral Implementing Entities ("MIEs"). Both the GEF Trust Fund and the World Bank Climate Investment Funds are examples of traditional MIEs access. The disbursement of money is via either the GEF or the World Bank and it is to these multilateral institutions that applications for funding must be made, rather than the funds themselves. As a result, decisions relating to disbursement of money are often made by multilateral institutions which developing coun-

[1] http://www.un.org/wcm/content/site/climatechange/pages/financeadvisorygroup/pid/13300.

tries have, in the past, viewed with caution due to the perceived Western bias of the decision-making bodies

7. As such, even more important than having "direct access" to funding, is that all parties have confidence in the body which makes decisions relating to the disbursement of funds. One necessary component of this relates to the representation of states on that body.

Representation on a finance board / body

8. In instances where the state representation on a finance board / body is not explicitly specified, the UNFCCC has in the past referred to both "equal" and "equitable" representation of developed and developing parties.

9. For example, paragraph 8 of the Copenhagen Accord refers to "equal representation":

"*New multilateral funding for adaptation will be delivered through effective and efficient fund arrangements, with a governance structure providing for <u>equal representation of developed and developing countries</u>*" (emphasis added).

10. An objective interpretation of "equal representation of developed and developing countries" would suggest that developed and developing countries would have an equal number of representatives on the relevant finance board / body.

11. By contrast, article 11(2) of the UNFCCC states: "*The financial mechanism shall have an <u>equitable and balanced representation of all Parties</u>*" (emphasis added). Similarly, paragraph 3 of the Draft Conference of Parties "COP" 15 Decision on enhanced action on the provision of financial resources and investment[2] (the "Draft COP 15 Decision") states:

"A Finance Board shall have an <u>equitable</u> and balanced <u>representation</u> of all Parties within a transparent system of governance in accordance with Article 11, paragraph 2, of the Convention[3] [United Nations Framework Convention on Climate Change of 1992 ("UNFCCC" or the "Convention")." (Emphasis added.)

12. "Equitable" does not mean "equal". Equitable representation implies a measure of fairness and would take into account numerous factors, such as geographical representation on the board and the fact that there are significantly more developing countries than developed countries, for example.

13. Equitable representation of developed and developing countries on any finance board / body would suggest that there would be more developing countries sitting on the board than developed countries.

"Under the authority of" and "under the guidance of" and "accountable to" the COP

[2] FCCC/AWGLCA/2009/L.7/Add.2/Rev.1 of 16 December 2009. Available at http://unfccc.int/resource/docs/2009/awglca8/eng/l07a02r01.pdf.

[3] Article 11, paragraph 2 of the Convention states: "The financial mechanism shall have an <u>equitable</u> and balanced <u>representation</u> of all Parties within a transparent system of governance." (Emphasis added). A soft copy of the Convention is available at http://unfccc.int/resource/docs/convkp/conveng.pdf.

14. Placing a body "under the authority of" the COP means it is under the direct control of the COP. As such, the COP ultimately has the capacity to change the rules governing and purpose of that body (such as the Adaption Fund Board and the CDM Executive Board) and control its operations.

15. A body which is "under the guidance of" the COP would not be under the direct control of the COP. The COP would be able to issue guidance to it on how it ought to implement its mandate but, all else being equal, the body would be free to disregard such guidance. This is usually the arrangement when the relevant body is not a UNFCCC body over which the COP does not have governing power. This is the case with the GEF.

16. A body which is "accountable to" the COP may or may not be under the direct control of the COP depending on whether that body is also "under the authority of" or "under the guidance of" the COP. In either case, being accountable to the COP means that body would be required to report its activities to the COP on a regular basis

Role of the finance board

17. If the parties agree that a finance board is necessary, one issue they will need to address will be the competence of that board. Will it have "oversight", an "overview" or "control" of the fund?

18. There is no specific relevance attached to any of these terms in international law. As such, international law requires that these words be interpreted according to their ordinary meaning.

Co-ordination

19. Co-ordination would suggest a more intrusive power, such as to proactively influence the functions and direction of the fund. It could, depending on how it is defined, extend to exercising some kind of mandatory influence over the fund. This would most likely be the equivalent of the fund being "under the authority and guidance of and fully accountable to" the finance board.

Oversight

20. 'Oversight' would normally suggest a level of supervision over the fund, maintaining an ability to make recommendations and potentially take action in influencing the direction of the fund.

21. Having oversight of the fund would also suggest having access to, and participation in, any decisions made in relation to the fund, and also forming a view as to the preferred course of action (including possibly playing an investigatory role, similar to the concept of 'congressional oversight' in the US where Congress has a power to review, monitor and supervise government agencies and their policies). This would most likely be the equivalent of the fund being "under the guidance of and accountable to" the finance board.

Overview

22. Overview would suggest mere observatory powers, perhaps with the ability to make recommendations (but not necessarily binding recommendations). This would most likely be the equivalent of the fund being "accountable to" the finance board only.