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Meeting of the Board
21 – 24 October 2024
Songdo, Incheon, Republic of Korea
Provisional agenda item 6(b)

GCF/B.40/Inf.15
23 October 2024

Policy coherence and compliance

Summary

Since B.38, the Co-Chairs have been working with the Secretariat to respond to concerns raised under the heading of Policy coherence and compliance, in particular on the interpretation and application of the deemed extension provision under paragraph 9 of the Policy on Restructuring and Cancellation (PRC) and the related authorities governing the use of decisions between Board meetings (BBMs). This document provides further information on the outcome of this work.

I. Introduction

1. At the thirty-eighth meeting of the Board (B.38) Board members raised concerns under the agenda sub-item “Policy coherence and compliance” regarding:
 - (a) the use of the “deemed extension” provision in the Policy on Restructuring and Cancellation (PRC)¹ in respect of the request for a third extension of a relevant deadline; and
 - (b) the use of a decision without a Board meeting (BBM) close to the time of a Board meeting.
2. Following the Board’s discussion of these issues at B.38, the Co-Chairs agreed to consider the matters and potential gaps in related policies with a view to finding a practical path forward. Since B.38 the Co-Chairs have been working with the Secretariat to review the issues raised and to propose an approach to tackling them going forward.

II. Use of the “deemed extension” provision

3. Paragraph 9 of the PRC states:

The ED [Executive Director] may grant only one extension; any subsequent extensions, if requested by the AE, shall be considered for approval by the Board. If such a subsequent request is made, the extension approved by the ED shall be deemed extended to one day after the last day of the next occurring Board meeting
4. The “deemed extension” provision from paragraph 9 has been applied over the last several years to protect the prerogative of the Board to review and take decisions on accredited entities’ (AE) requests to extend the deadline originally set by the Board for the fulfillment of certain conditions.
5. Shortly before B.38, the Secretariat received an objection to an extension request in respect of FP153 which was sent for a BBM. The extension request submitted by the Secretariat to the Board noted that the relevant deadline was deemed to have been extended until the last day of the next Board meeting, which preserved the Board’s ability to consider the matter prior to the project’s approval passively lapsing.
6. The BBM was objected to for a number of reasons, the first of which was the use of the deemed extension based on the Board members’ interpretation of paragraph 9 of the PRC. In the view of the objecting Board members, the Secretariat had used the provision inappropriately in applying it after the Board had already granted a second extension. They reiterated that the deemed extension provision should only apply in the context of the first extension which has been requested by the AE after the extension granted by the ED, and should not apply to subsequent extensions.
7. To avoid the use of deemed extensions for requests after the second extension, the objecting Board members proposed that the expiration of future extension requests should be timed to coincide with future Board meetings. They also expressed concern about the possible future use of the “deemed extension” in cases in which the Board may grant a **final** extension on a project requirement.
8. As part of the discussions in the run-up to and at B.38, the Secretariat explained its interpretation and the fact that the provision had been used in similar cases in the past. However, the objecting Board members maintained their objections until B.38. It should be noted that in this case, if the deemed extension provision had not been applied, the objection to

¹ Policy on restructuring and cancellation, adopted by decision B.22/14.

the BBM would have resulted in the project's approval lapsing without the Board having actively considered the request for a further extension.

9. Following discussions at B.38, in consultation with the Co-Chairs, the Secretariat has conducted internal reviews and is:

- (a) Continuing to review and to recommend extension dates that are aligned to future meetings to avoid the need to use the deemed extension provision;
- (b) Clear that there have been **no** uses of the deemed extension provision to extend a project after the Board had granted a final extension, and that going forward this would continue, and the automatic deemed extension would not apply in these cases; and
- (c) Closely monitoring extensions that were previously granted and is proactively contacting relevant AEs to recommend that if they may be considering making a third or further extension request, they consider sending it early so that it can be considered at the Board meeting before the project approval would otherwise lapse.

10. While these mechanisms lack absolute certainty due to possible changes in Board meeting dates and/or AEs not acting upon the Secretariat's recommendation, they can be expected to significantly minimize the instances in which a deemed extension after the second extension should be necessary to preserve the Board's review prerogative.

11. Having taken these actions, it is the view of the Co-Chairs that the Secretariat is already implementing measures to strictly limit the use of the deemed extension for requests subsequent to the second extension to those very rare cases where the methods noted above would not otherwise preserve the Board's prerogative to actively consider such requests. From an assessment by the Secretariat, it is the understanding of the Co-Chairs that there is only 1 project where the deemed extension provision beyond the second extension may need to be used.

12. The Co-Chairs consider that in the light of the fact that a full review of the PRC is programmed for 2025, that mitigating measures the Secretariat have already been implemented, and the small number of programmes this could apply to, no additional steps would be required at this stage to amend the PRC. However, the Co-Chairs strongly recommend that when the full review of the PRC is undertaken, this issue be considered fully, and that a clear understanding is reached between the Secretariat and the Board on any use of deemed extensions going forward.

III. Decisions Between Meetings

13. In addition to the interpretation of the PRC, the objecting Board members also raised an issue regarding the application of the BBM procedures. In particular, given that the expiration of the period prescribed for replies to the BBM was only days before B.38, issues were raised about the BBM's consistency with the provision of the Rules of Procedure of the Board which call for BBMs to be used "on an extraordinary basis when in the judgement of both Co-Chairs, a decision must be taken by the Board that should not be postponed until the next meeting." By its terms, that language leaves it to the Co-Chairs to decide if these criteria have been met. In this instance, given the proximity to the Board, both the Co-Chairs and the Secretariat agree that this was not an efficient use of a BBM and the decision could have waited until B.38 in Kigali.

14. To guide future cases where the Co-Chairs need to make decisions on the issuance of proposed BBMs, the Co-Chairs and the Secretariat will ensure consistency with (i) the provisions of the Rules of Procedure of the Board and (ii) annex x to Decision 32/11, which call for BBMs to be used "on an extraordinary basis when in the judgement of both Co-Chairs, a decision must be taken by the Board that should not be postponed until the next meeting".

IV. Conclusion

15. The Co-Chairs believe that the memorialization of these steps in the report of the B.40 meeting and consideration of related matters in the context of the PRC review can serve as a practical way to address the issues raised under the "Policy coherence and compliance" agenda sub-item from B.38.
