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INSTITUTIONAL STRUCTURE TO OPERATE THE FINANCIAL
MECHANISM UNDER THE CONVENTION

Note by the Interim Secretariat

1. INTRODUCTION

1. Article 21, paragraph 1, of the Convention establishes a financial mechanism and describes its essential elements. It also provides that "the operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting". At the same time, Article 21, paragraph 2, requires the Conference of the Parties to decide on the arrangements to give effect to paragraph 1 after consultation with the institutional structure entrusted with its operation.

2. The Committee may wish to consider the distinction between the financial mechanism as established in Article 21, paragraph 1, and an institutional structure entrusted with its operations; for example, the term "institutional structure" may imply the possibility of having one or more financial institutions jointly operating the mechanism, of having a main institution and one or more supplementary institutions, or of establishing any other arrangement that the Conference of the Parties may decide upon.

3. The present note presents some considerations which the Committee may wish to address in advising the Conference of the Parties on the determination of the institutional structure that will carry out the operations of the financial mechanism under the Convention. It also discusses the potential for involvement of other financial institutions in support of the Convention and the arrangements that may be required between the Conference of the Parties and the institutional structure entrusted with the operation of the financial mechanism.

2. SELECTION OF THE INSTITUTIONAL STRUCTURE ENTRUSTED
WITH THE OPERATION OF THE FINANCIAL MECHANISM

4. By paragraph 1 of resolution 1 of the Nairobi Final Act, Global Environment Facility (GEF) was invited to undertake the operation of the financial mechanism in accordance with Article 21 for the period between the opening of the Convention for signature and its entry into force. Article 39 of the Convention provides that, if fully restructured in accordance with the requirements of Article 21, GEF shall be the

institutional structure referred to in Article 21 on an interim basis for the period between entry into force of the Convention and the first meeting of the Conference of the Parties, or until the Conference of the Parties decides which institutional structure will be designated in accordance with Article 21.

5. On 16 March 1994, GEF concluded its restructuring process, which had started in April 1992. The Instrument for the Establishment of the Restructured Global Environment Facility accepted by the representatives of States attending that meeting will be available at the Committee's second session.

6. It is important to note that the Convention does not stipulate that the Conference of the Parties must decide at its first meeting on the institutional structure to operate the financial mechanism established by the Convention.

7. Accordingly, the Committee may wish to consider:

(a) Whether to advise the Conference of the Parties at its first meeting to defer the selection of an institutional structure to a subsequent meeting;

(b) Whether GEF has been fully restructured in accordance with the requirements of Article 21; and

(c) Whether, as a consequence, the Conference of the Parties might invite GEF to continue to be the institutional structure to operate the financial mechanism until the Conference of the Parties makes a selection at a later meeting.

8. Moreover, the Convention does not indicate the characteristics of the desired institutional structure. However, at the Committee's first session, Working Group II agreed to recommend with regard to the institutional structure operating the financial mechanism (see UNEP/CBD/IC/2/2, annex III, para. 22) that:

(a) There should be clear procedures for processing requests for funding;

(b) There was a need for a system of reporting back to the Parties;

(c) There was a need for a regular flow of information to the Conference of the Parties;

(d) There was a need for a capacity to respond quickly to funding requirements;

(e) There was a need for cost-effectiveness and efficiency in its operation.

9. The Committee may wish to review the above and make recommendations to the Conference of the Parties on characteristics of the institutional structure.

3. OTHER FINANCIAL INSTITUTIONS

10. Article 21, paragraph 4, specifies that the "Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity".

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11. At the first session of the Committee, Working Group II agreed to recommend that there should be possibilities for multiple sources of funding (UNEP/CBD/IC/2/2, annex III, para. 22 (j)) and, in accordance with the agreement in Working Group II, international financial institutions have been invited to attend the Committee's second session and to meet with the Committee (see UNEP/CBD/IC/2/2, annex III, para. 23).

12. The Committee may wish to consider how these other existing financial institutions may be relevant to the financial needs of the Convention and of Parties in implementing activities.

4. ARRANGEMENTS BETWEEN THE CONFERENCE OF THE PARTIES AND THE INSTITUTIONAL STRUCTURE

13. In accordance with Article 21, paragraph 2, of the Convention, once the Conference of the Parties has decided upon the institutional structure to operate the financial mechanism under the Convention, it will have to decide, after consultation with the structure, on the arrangements to give effect to Article 21, paragraph 1. These may include arrangements for communicating decisions of the Conference of the Parties with respect to policy, programme priorities, eligibility criteria and funding needs; arrangements for monitoring the utilization of financial resources made available under the Convention; and arrangements for reporting by the institutional structure to the Conference of the Parties. Some preliminary considerations with regard to the possible content and nature of such arrangements, and the process for establishing them, are presented below for the Committee's consideration.

14. It may be assumed that the Conference of the Parties will wish to have formal arrangements for communicating to the institutional structure its policy, strategy and programme priorities, and eligibility criteria for access to and utilization of relevant resources, as well as its decisions on resources required under the financial mechanism.

15. The Conference of the Parties may also wish to have formal arrangements for monitoring the use of financial resources for the general purpose of the Convention, in the context of its decisions on policy, strategy, programme priorities, and eligibility criteria, and in the light of the indicative list of incremental costs.

16. In addition to the above, the Conference of the Parties may also require formal procedures for reporting by the institution structure on its funding operations, consistent with the requirement for accountability set out in Article 21, paragraph 1, and in response to specific requests of the Conference of the Parties.

17. In order to facilitate communicating, monitoring, and reporting for the purposes outlined above, the Conference of the Parties may wish to arrange for reciprocal representation at meetings between organs of the Convention and those of the institutional structure. The Committee might also advise on the nature or form of arrangements that the Conference of the Parties might conclude with the institutional structure operating the financial mechanism, which could, for example, be administrative arrangements and/or legal arrangements. Administrative arrangements could have the advantage of being simple, practical and timely, but with the disadvantage their breach would not give rise to legal responsibility. On the other hand, legal arrangements could have the advantage of certainty and predictability, as well as that of anticipating and providing for

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settlement of disputes between the entities. The disadvantage of this option, however, is that establishing legal arrangements could involve a long and slow process, and their management would require more formalities.

18. For all the arrangements cited in paragraphs 14-17 above, the Committee may also wish to advise the Conference of the Parties about a process and timetable for their conclusion, including provision, if deemed necessary, for interim arrangements between the Conference of the Parties and the institutional structure; procedure for consultation with the institutional structure; the appropriate organ to engage in such consultation on behalf of the Conference of the Parties; and the approval process of conclusions reached through such consultations.
