

Policy for Accountable Entities and Implementation Structures

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1. INTRODUCTION

In connection with receiving grant funding from MCC through a Millennium Challenge Compact (“*Compact*”) or, in some cases, a Threshold Program Grant Agreement (“*Threshold Agreement*”), the government of a selected country (“*Government*”) must identify or establish a legal entity (the “*Accountable Entity*”) to which the Government will delegate the responsibility for the implementation of the projects funded by the Millennium Challenge Corporation (“*MCC*”).

The Accountable Entity will¹ have the authority and responsibility to oversee the MCC funded projects and their components and activities (“*Program*”), allocate resources, oversee and implement a financial plan, approve expenditures and procurements, continue the consultative process, and be accountable to the Government and the people of the selected country for the Program’s results, in accordance with MCC’s requirements and policies. The Accountable Entity serves, on behalf of the Government during implementation of the Program, as the central point of contact for MCC, other donors, contractors, grantees, and consultants, as well as the general citizenry. Regardless of the entities selected to implement the Program (private sector, non-governmental organization (“*NGO*”), Government Affiliate, or other organization), the Government (through the Accountable Entity) remains responsible for its commitments under the Compact or the Threshold Agreement. Thus, determining the appropriate Accountable Entity and its supporting structure is a key Government decision.

1.1. SCOPE

- A. This Policy sets forth MCC’s requirements and guidance with respect to the Accountable Entity, the legal entity designated by the Government to be responsible for the implementation of the Program on behalf of the Government.
- B. This Policy also addresses the rights and responsibilities of the Accountable Entity in relation to the other entities designated either to assist in the implementation of the Compact or the Threshold Agreement, specifically the Fiscal Agent, the Procurement Agent, and the Implementing Entities, or to provide advice to the Accountable Entity, such as the Stakeholders Committee (if established).
- C. For Threshold Agreements, this Policy will only apply for those Threshold Agreements that expressly require the use of an Accountable Entity.

1.2. DEFINITIONS.

The following compendium of capitalized terms that are used in this Policy is provided for the convenience of the reader.

- A. “*Accountable Entity*” (also referred to as “*MCA*”) means the legal entity designated by the Government to implement the Program on behalf of the Government during the term of the Compact or the Threshold Agreement.
- B. “*Accountable Entity Anti-Fraud & Corruption Action Plan*” means a plan to prevent fraud and corruption within the Accountable Entity and by its contractors and grantees.

- C. **“Advisory Committee”** means a committee established in accordance with Section 3.2(M) of this Policy to review certain matters and make recommendations to the Board.
- D. **“Board”** means the body having the final authority and responsibility for the actions of the Accountable Entity. Other names utilized by Governments include board of directors, supervisory board, supervisory council, steering committee, and governing council.
- E. **“Board Document”** means, as applicable to the corresponding Board meeting, the notice, the agenda of issues, and other documents (either public or confidential) for consideration by the Board.
- F. **“Board Document Repository”** means an online document repository for Board Documents to which members of the Board or the Designated Final Authority (as applicable) are granted access throughout the term of the Principal Program Documents.
- G. **“Compact Development Funding (CDF) Agreement”** means the agreement between MCC and the Government for providing funding under the authority of Section 609(g) of the Millennium Challenge Act of 2003.
- H. **“Compact”** has the meaning given this term in Section 1.0.
- I. **“Designated Final Authority”** has the meaning given this term in Section 3.3.
- J. **“Executive Committee”** means a committee established in accordance with Section 3.2(N) of this Policy to take certain limited actions on behalf of the Board.
- K. **“Fiscal Accountability Plan”** means a manual that specifies the fiscal management and procurement related controls, and administrative mechanisms and procedures that the Accountable Entity will use to ensure appropriate fiscal accountability for the use of MCC Assistance.
- L. **“Fiscal Agent”** means the entity selected and engaged through an international competitive process, the finance ministry or another governmental entity, or dedicated Accountable Entity staff, as agreed between the Government and MCC, responsible for performing certain financial management activities on behalf of the Accountable Entity.
- M. **“Government”** has the meaning given this term in Section 1.0.
- N. **“Government Accountability Office”** means the U.S. Government Accountability Office.
- O. **“Government Affiliate”** means an affiliate, ministry, bureau, department, agency, public authority, government corporation or any other entity chartered or established by the Government.
- P. **“Governing Documents”** means the charter, decree, agreement, bylaws, articles of incorporation, governance agreement and other documents evidencing the formation, establishment, and governance of the Accountable Entity.
- Q. **“Implementation Plan Documents”** means certain documents related to implementation of the Program as set forth in the Principal Program Documents, including the M&E Plan, the detailed financial plan, the Procurement & Grants Plan Package, and the work plans developed by the Accountable Entity and, as applicable, approved by MCC.

- R. ***“Implementing Entity”*** means any Government Affiliate engaged by the Accountable Entity in accordance with Section 4.o(C) of this Policy to play a role in achieving and sustaining the project objectives as defined in the Principal Program Documents.
- S. ***“Implementing Entity Agreement”*** has the meaning given this term in Section 4.o(C).
- T. ***“Inspector General”*** means the Inspector General of the United States Agency for International Development.
- U. ***“Key Staff”*** refers to MCA employees who, through the Principal Program Documents, have been designated as subject to specific oversight by MCC in the form of hiring, compensation, evaluation and termination.
- V. ***“MCA Human Resources Manual”*** means a manual, as may be required in the Principal Program Documents, setting forth the general conditions and terms that the Accountable Entity will use to govern the engagement or employment for MCA Persons .
- W. ***“MCA Person”*** means any member of the Board or the Operations Unit.
- X. ***“MCC”*** has the meaning given this term in Section 1.o.
- Y. ***“MCC Assistance”*** means the financial assistance provided by MCC to the Government and managed by an Accountable Entity.
- Z. ***“MCC Cost Principles”*** means MCC’s *Cost Principles for Government Affiliates*, as amended from time to time, as published on MCC’s website at <https://www.mcc.gov>.
- AA. ***“MCC Disbursement Request”*** means the written requests for periodic disbursements of MCC Assistance submitted to MCC by the Accountable Entity.
- AB. ***“MCC Environmental Guidelines”*** means MCC’s *Environmental Guidelines*, as amended from time to time, as published on MCC’s website at <https://www.mcc.gov>.
- AC. ***“MCC Guidance on MCA Human Resources Procedures and Manuals”*** means MCC’s *Guidance on MCA Human Resources Procedures and Manuals*, as amended from time to time, as published on MCC’s website at <https://www.mcc.gov>.
- AD. ***“MCC Guidance on Threshold Program Human Resources Procedures and Manuals”*** means MCC’s *Guidance on Threshold Program Human Resources Procedures and Manuals*, as amended from time to time, as published on MCC’s website at <https://www.mcc.gov>.
- AE. ***“MCC Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations”*** means MCC’s *Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations*, as amended from time to time, as published on MCC’s website at <https://www.mcc.gov>.
- AF. ***“M&E Plan”*** means the plan for monitoring and evaluating the Program that is developed and adopted by the Accountable Entity (as approved by MCC).
- AG. ***“MCC Observer”*** means MCC’s nonvoting representative to the Board.

- AH. ***“Operations Unit”*** (formerly referred to as “Management Unit”) means the employees or consultants of the Accountable Entity responsible for the day-to-day activities and assisting the Board with the implementation of the Program.
- AI. ***“Permitted Account”*** means any bank account established pursuant to the requirements of the Principal Program Documents and maintained for the purpose of receiving and re-disbursing MCC Assistance.
- AJ. ***“Policy”*** means this *Policy for Accountable Entities and Implementation Structures*.
- AK. ***“Principal Program Documents”*** refers to, as applicable, either (1) the Compact and the Program Implementation Agreement or (2) the Threshold Agreement.
- AL. ***“Procurement Agent”*** means the entity selected and engaged through an international competitive process, the procurement function of an existing Government ministry or agency, or dedicated Accountable Entity staff, as agreed between the Government and MCC, that will assist the Accountable Entity with carrying out procurement related activities to procure goods, works, and services on behalf of the Program.
- AM. ***“Procurement Guidelines”*** means MCC’s *Accountable Entity Procurement Policy & Guidelines*, as amended from time to time, as published on MCC’s website at <https://www.mcc.gov>.
- AN. ***“Procurement & Grants Plan Package”*** means a plan or plans for acquiring the goods, works, and consultant and non-consultant services needed to implement the Compact and transferring financial assistance in cash or in-kind for a public purpose in furtherance of the Compact; or as otherwise set forth in the Procurement Guidelines.
- AO. ***“Program”*** has the meaning given this term in Section 1.o.
- AP. ***“Program Assets”*** means the assets and property purchased or funded in whole or in part with MCC Assistance.
- AQ. ***“Program Grant Guidelines”*** means MCC’s *Program Grant Guidelines*, as amended from time to time, as published on MCC’s website at <https://www.mcc.gov>.
- AR. ***“Program Implementation Agreement”*** means the program implementation agreement between MCC and the Government that specifies certain terms and obligations for compact implementation.
- AS. ***“Stakeholders Committee”*** means one or more bodies of representatives from the private sector, beneficiaries, civil society, and local and regional governments, which may be formally established to provide advice and input to the Accountable Entity regarding the implementation of the Program and which may satisfy the MCC Environmental Guidelines’ requirement of stakeholder engagement.
- AT. ***“Stakeholder Engagement Plan”*** means the plan for engaging with affected communities in accordance with the MCC Environmental Guidelines that is developed and adopted by the Accountable Entity (as approved by MCC).
- AU. ***“Threshold Agreement”*** has the meaning given this term in Section 1.o.

2. MINIMUM REQUIREMENTS FOR THE ACCOUNTABLE ENTITY

2.1. LEGAL REQUIREMENTS

- A. The Accountable Entity must have the legal capacity to enter into agreements with MCC and other Government Affiliates; to enter into employment agreements with employees; to enter into contracts with contractors and consultants; to enter into grant agreements with grantees; and to comply with the legal requirements of the Principal Program Documents, including the limitations on the use of MCC Assistance and certain other U.S. law requirements.
- B. The Accountable Entity can take many legal forms, including administrative units within existing ministries, foundations, government-owned corporations, and newly established ministries. If the proposed structure of the Accountable Entity satisfies the legal requirements as well as those of accountability, independence, and transparency as specified in Section 2.2, and all others set forth in this Policy, the Government can propose a new structure for the Accountable Entity or adapt structures, which will be subject to MCC's due diligence and approval.

2.2. ACCOUNTABILITY, INDEPENDENCE AND TRANSPARENCY

- A. MCC requires the Government to utilize an Accountable Entity for the Program to ensure that there is a central point of accountability for the Program that has authority and accountability to develop and implement the Program.
- B. The Government must ensure that the Accountable Entity has the necessary operational independence and decision-making authority to effectively and efficiently implement the Program and to coordinate the fulfillment of all relevant requirements.
- C. The nature and objectives of the Program should dictate the required level of independence and the optimal structure of the Accountable Entity.
- D. The Accountable Entity will be transparent with respect to its decision-making by (i) including civil society and the private sector in the decision-making process of the Accountable Entity and the Program, as discussed in Section 2.2(E) below, and (ii) complying with the publication requirements as set forth in Section 2.2(F) below. For further discussion of the requirements for transparent decision-making, see Section 3 of this Policy.
- E. *Civil Society and Private Sector Participation.* The participation of civil society and the private sector in the decision-making of the Accountable Entity and implementation of the Program takes several forms, both formal and informal. First, the Government will institutionalize civil society and private sector participation in the decision-making process by having civil society and private sector representation on the Board. Second, the Government will ensure ongoing consultation with civil society and the private sector throughout implementation of the Program. One or more Stakeholders Committee(s) may be established to provide an opportunity for civil society and the private sector to receive regular updates on the Program from the Accountable Entity and to provide feedback and oversight for the implementation process. While Stakeholders Committees do not have formal decision-making authority, such committees serve as a mechanism for ongoing consultations between the Government and the public throughout implementation of the Program.

- F. *Information Publicly Available.* The Accountable Entity will make copies of the following documents, agreements, and information publicly available in English and, as may be applicable, at least one official local language by posting such information on the Accountable Entity's website or through other appropriate means:
- (1) The Principal Program Documents, the Compact Development Funding (CDF) Agreement, any modifications to these agreements, and all reports required by the Principal Program Documents;
 - (2) Minutes of all meetings of the Board;*
 - (3) Minutes of all meetings of the Stakeholders Committee(s) (if established);*
 - (4) The M&E Plan, along with periodic reports on performance of the Program;
 - (5) All project environmental and social impact assessments and supporting documents;*
 - (6) All audit reports by an auditor and any periodic reports or evaluations by a reviewer (each as defined in the Principal Program Documents or MCC's audit guidelines, as applicable);
 - (7) A summary of all MCC Disbursement Requests, which should include the amount of funds requested for each disbursement;
 - (8) All procurement policies and procedures (including all documents required to be made public by the Procurement Guidelines or the Program Grant Guidelines, as applicable, and bid challenge procedures);
 - (9) The Accountable Entity Anti-Fraud & Corruption Action Plan and related implementation reports;
 - (10) The Governing Documents and any amendments thereto; and
 - (11) Such other information, documents, reports, and agreements as MCC may require after notifying the Accountable Entity.
- G. Subject to the Accountable Entity's obligations under the Principal Program Documents to make information concerning implementation of the Program publicly available, the documents above marked with an asterisk* do not need to be translated into English if they are written in Spanish, French, or Portuguese.
- H. Notwithstanding the foregoing requirements regarding making certain information public, information relating to procurements prior to the award of a contract and confidential information relating to the Accountable Entity's agreements with employees, contractors, grantees, and consultants will be excluded from the information and documents made publicly available. Determinations as to what information can be excluded should be agreed with MCC.

2.3. UTILIZATION OF EXISTING IMPLEMENTATION STRUCTURES¹

- A. Existing implementation structures established by other donors in the country, such as program implementation units or administrative structures, can be utilized as the Accountable Entity for the Program to the extent such structures are consistent with MCC requirements and will be efficient for implementing the Program.
- B. Existing Government systems and structures can be utilized to the extent such structures are consistent with MCC requirements and will be efficient for implementing the Program. For example, an existing Government Affiliate can be used as the Accountable Entity and the finance ministry can be used as the Fiscal Agent under certain circumstances.

2.4. TIMING OF ESTABLISHMENT OF THE ACCOUNTABLE ENTITY

- A. Prior to negotiations for the Principal Program Documents, the Government should propose a legal and operational structure for the Accountable Entity to be discussed with and subjected to due diligence by MCC. The final form of the Accountable Entity will be recorded in the Principal Program Documents.
- B. The Accountable Entity should be legally established by the Government as early as possible to accelerate implementation of the Program. As soon as the Government and MCC reach agreement on the legal and operational structure, the Government, can proceed with establishing the Accountable Entity, even if prior to signing the Principal Program Documents.

3. STRUCTURAL COMPONENTS OF THE ACCOUNTABLE ENTITY

3.1. OVERVIEW.

The Accountable Entity will include the following structural components:

- A. a Board, or where agreed with MCC, other body or person, that will be accountable for the implementation of the Program and be the final authority for all actions of the Accountable Entity²; and
- B. an Operations Unit, which will be responsible for implementing the Program, including overseeing the day-to-day management of the Program.

3.2. BOARD STRUCTURE, COMPOSITION AND DUTIES

- A. *Role of the Board.* The Accountable Entity may include a Board composed of a small group of members that ensures civil society participation and transparency in the decision-making process for the Program.

¹ See Annex I of this Policy for further guidance on the utilization of Existing Implementation Structures.

² MCC and the Government may agree to other governance structures that do not utilize a Board but rather designate a minister or senior official to be the final authority for the Accountable Entity. In such instances, (1) the rights and obligations of a Board and its members will apply with equal effect to such Designated Final Authority as set out in Section 3.3 of this Policy, and (2) any other references in this Policy to a Board or its members will be interpreted, as applicable, as a reference to the Designated Final Authority.

The Board, if established, will be responsible for exercising oversight and taking major decisions on behalf of the Accountable Entity. Members of the Board must discharge their responsibilities by (i) staying informed and providing appropriate oversight to the Operations Unit regarding the progress of implementation of the Program, and (ii) holding regular meetings to take actions and grant approvals on behalf of the Accountable Entity, as required under the Principal Program Documents, this Policy, the Governing Documents, and other relevant supplemental agreements. Board members must adhere to the following standards, which should be reflected in the Accountable Entity's Governing Documents:

- (1) *Governing Documents.* The Board members have a duty to follow the Accountable Entity's Governing Documents, to carry out the Accountable Entity's mission to implement the Program, and to ensure that MCC Assistance is used only for permitted purposes. The Accountable Entity is required to upload the Accountable Entity's Governing Documents, and any amendments and supplements thereto, to the Board Document Repository.
- (2) *Active Participation.* Board members must (i) have the authority to make the decisions necessary to implement the Program, and (ii) actively participate in overseeing the management of the organization, including attending meetings of the Board, providing strategic direction to the Accountable Entity, evaluating reports, reading Board meeting minutes, reviewing the performance and compensation of the Operations Unit, and communicating relevant outcomes of each Board meeting to their constituents.
- (3) *Board Actions.* A Board member who is present at a meeting when an action is approved by the entire Board is presumed to have agreed to the action unless the Board member (i) objects to the meeting because the meeting was not lawfully called or convened, (ii) voted against the action, (iii) has announced that they abstain from voting, or (iv) has recused themselves from voting on the action because of a conflict of interest.
- (4) *Minutes of Meetings.* Written minutes will be taken at every Board meeting, the form and substance of which is outlined in Section 3.2(G)(1) below. The Accountable Entity is required to upload such Board meeting minutes to the Board Document Repository.
- (5) *Books and Records.* Board members will have general knowledge of the books and records of the Accountable Entity, as well as its general operations. The Accountable Entity's Governing Documents, accounting records, and Board meeting minutes will be made available to Board members who wish to inspect them.
- (6) *Accurate Record Keeping.* Board members should ensure that the organization's records and accounts are accurate and complete. The Principal Program Documents will require the Government to take steps to obtain regular audits by independent auditors and to permit MCC, the Inspector General, and the Government Accountability Office to review the books and records of the Accountable Entity. Board members will be aware of what the financial records disclose and take appropriate action to ensure there are proper internal controls, as specified in the Fiscal Accountability Plan.
- (7) *Program Assets.* Board members have the duty to protect, preserve, use, and manage the Program Assets in a reasonable manner and consistent with the Principal Program

Documents and applicable law. Board members may delegate such responsibility to members of the Operations Unit; however, the Board should require an annual accounting for all Program Assets.

- (8) *Investigations.* Board members have a duty to seek additional information about warnings or reports of Operations Unit mismanagement or poor performance. A Board member should report any concerns of potential fraud or corruption involving MCC Assistance, on the part of either MCA Persons or of Accountable Entity contractors and grantees, to MCC through the MCC resident country director or MCC's AFC Hotline (hotline@usaid.gov) and, if appropriate, the appropriate local authorities.

B. *Composition; Role of the MCC Observer.*

- (1) *Composition.* The composition of the Board should be dictated by the needs of the Program and should incorporate relevant Government ministries and departments, civil society, and private sector representation. The Government and MCC will agree upon the composition of the Board, as may be further set forth in the Principal Program Documents. The Government should be represented by senior level officials who have the authority to act on behalf of the Government, relevant ministry or department, as well as the capability to make the time commitment required of Board members. The civil society and private sector organizations to be represented on the Board will be chosen as agreed between MCC and the Government based on their representation of interested groups relating to the Program. The individual representatives from these civil society and private sector organizations that will serve on the Board will be chosen by the organizations themselves but may be subject to background screening and approval by MCC. For the avoidance of doubt, these individual representatives are not to be chosen by the Government.
- (2) *Role of the MCC Observer.* The Board will contain the MCC Observer. The MCC Observer does not owe any fiduciary duty to the Accountable Entity. The MCC Observer represents MCC's interests, not the Accountable Entity's interests, with respect to the implementation of and compliance with the Principal Program Documents. The MCC Observer will participate in all meetings of the Board in person, by telephone or by videoconference and will be provided in advance with the agenda and related documentation for each meeting of the Board, along with access to the Board Document Repository. The MCC Observer may propose topics to be discussed by the Board or present documents to the Board for consideration. The MCC Observer has the obligation to share documentation relating to the meetings of the Board with MCC and the right to participate in the discussions arising during the meetings of the Board.

The MCC Observer also serves a vital role in identifying implementation issues and encouraging transparency in the Board decision-making process. The Board should refer implementation issues to MCC in accordance with MCC policy and internal review requirements. Transparency is most effectively advanced by the MCC Observer encouraging open discussion of agenda items and ensuring participation of the non-government members of the Board.

- C. *Size.* The Board should generally be large enough to include representatives of the organizations that will be needed to achieve the objectives of the Program but small enough to operate efficiently (for example, ideally, the Board should be at the lower end of a range of 5 to 11 voting members). The number of voting members should be odd to prevent deadlock, unless otherwise agreed with MCC. Each voting member should designate one alternate with clear decision-making authority who can attend and take actions at Board meetings on behalf of the voting member who cannot attend. Such designation should be set forth in the Governing Documents. Nonvoting members as are appropriate for the Program and agreed with MCC will have the same rights of access to information relating to the Accountable Entity as voting members of the Board.
- D. *Chair.* The activities of the Board should be managed by the chair of the Board. The chair should either be appointed by the Government as a permanent position or selected by a majority of the voting members of the Board to serve a specified term, such as two years.
- E. *Review and Approval Requirements.*
- (1) The Board will be responsible on behalf of the Accountable Entity for reviewing and approving the following documents, agreements, and actions, which cannot be delegated to the Executive Committee or Operations Unit:
 - i. Fiscal Accountability Plans, M&E Plans, Accountable Entity Anti-Fraud & Corruption Action Plans, the MCA Human Resources Manual, and any material amendments or supplements thereto;
 - ii. Procurement & Grants Plan Package;
 - iii. Agreements between the Government and the Accountable Entity, and any material amendment, suspension, or termination of such agreements;
 - iv. Agreements (and any material amendment, suspension, or termination of such agreements) between the Accountable Entity and (1) any third-party auditor, (2) the Fiscal Agent, (3) the Procurement Agent, (4) any bank, (5) any Implementing Entity, (6) any outside project manager, or (7) any Board member;
 - v. The selection, performance evaluation, and termination of the chief executive officer (or equivalent) and the final employment agreement with final compensation amounts;
 - vi. A form of employment agreement to be used for the other Key Staff;
 - vii. An organizational staffing plan for at least the Key Staff and any material amendments or supplements thereto;
 - viii. A salary grid/scale with approved salary ranges and benefits for members of the Operations Unit, and any material amendments or supplements thereto;
 - ix. Accountable Entity policies as set forth in Section 3.2(I), (J), (K), and (L) below;
 - x. Any adoption of an alternative performance evaluation system and related amendments to the MCA Human Resources Manual;

- xi. Audit findings and reports of the results of audits received from the audit committee;
 - xii. Any agreement that is (a) with a party related to the Accountable Entity or any party that controls, is controlled by, or is under common control with the Accountable Entity or (b) not at arm's length (that is, the parties are not dealing from equal bargaining positions, one party is subject to the other's control or dominant influence, or the transaction is not treated with fairness, integrity, and legality);
 - xiii. Any material amendments or supplements to the Governing Documents;
 - xiv. Any decision to dispose of, liquidate, dissolve, wind up, or reorganize the Board, including any decision to add or remove any Board member.
 - xv. Any formation or acquisition of a subsidiary or other related entity of the Accountable Entity;
 - xvi. Any material changes to the components or structure of the Accountable Entity;
 - xvii. Any decision to engage, accept, or manage any funds from any donor agencies or donor organizations in addition to MCC Assistance during the term of the Principal Program Documents; and
 - xviii. Any other action that requires Board approval pursuant to the Principal Program Documents, the Procurement Guidelines, the Program Grant Guidelines, any Governing Document, or other supplemental agreement.
- (2) The Board or, if so designated in the Governing Documents or by a resolution of the Board, the Executive Committee or the chief executive officer (or equivalent) will be responsible for reviewing and approving the following documents, agreements, and actions on behalf of the Accountable Entity:
- i. Work plans and detailed financial plans, and any material amendments or supplements thereto;
 - ii. MCC Disbursement Requests;
 - iii. Audit plans submitted to MCC;
 - iv. Reports (quarterly and annual) delivered to MCC; and
 - v. Any other actions permitted under the Principal Program Documents, the Procurement Guidelines, the Program Grant Guidelines, any Governing Document, or other supplemental agreement.
- F. *Meetings*. Each meeting of the Board must satisfy certain minimum standards in order to be considered a valid meeting at which actions taken by the Board are valid and effective.
- (1) *Frequency of Meetings*. The Board will hold as many meetings as are necessary to discharge its duties and to ensure the effective implementation of the Program. In doing so, the Board should meet at least quarterly on a regular schedule determined as far in advance as possible.

The Board should consider more frequent meetings (perhaps monthly) in the initial stages of implementation of the Program.

- (2) *Notice and Agenda.* Adequate notice must be provided to all members of the Board (voting and nonvoting) setting forth the date, time, and location of the meeting, as well as an agenda of issues and documents (either public or confidential) for consideration by the Board. The specific time period for adequate notice should be set forth in the Governing Documents. Prior to the effective date of the Governing Documents, adequate notice should be determined by local law applicable to the Accountable Entity or special rules may be approved by consensus/unanimous decision of the Board members to apply until the Governing Documents become effective.

The notice will specify whether the meeting is special or regular. Special meetings are usually called on short notice basis by the designated chairman or secretary of the Board. Notice for regular meetings usually requires 7 to 10 days prior notice, while notice for special meetings can require as little as 24 hours prior notice, in each case as is specified in the Governing Documents.

In order to ensure that each member of the Board is fully informed in advance of the meeting, the Accountable Entity is required to upload the Board Documents to the Board Document Repository in accordance with the specific time period for adequate notice as set forth in the Governing Documents.

- (3) *Attendance and Quorum.* Attendance at Board meetings is important, and members should make all efforts to attend each meeting themselves. Members can attend meetings (i) in person, (ii) by sending an alternate (subject to certain limitations specified in the Principal Program Documents or Governing Documents), or (iii) by telephone or videoconference. Repeated failure by a member to attend Board meetings may be grounds for the replacement of such member in accordance with the Governing Documents or applicable law.

Quorum is the number of voting members required to be in attendance at a meeting to permit the Board to take actions that will be binding on the Accountable Entity. The governance principle behind establishing a quorum is that there should be a determinable number that is sufficient to reflect the will of the Board and the Accountable Entity itself. Quorum should be specified in the Governing Documents and require the presence in person, by an alternate or by telephone or videoconference of (i) all voting members, (ii) a majority of the voting members, including at least one non-government voting member, or (iii) a specific number of voting members (such as 2/3 or 3/4 of all voting members), including at least one non-government voting member.

If a quorum is not present at a meeting of the Board at the time appointed for holding such meeting, the members of the Board present at the meeting will proceed with the agenda and take action in accordance with Section 3.2(F)(4). For any actions or decisions voted upon by members of the Board present at such meeting, the Accountable Entity should, within 48 hours of the time appointed for such meeting, circulate a written draft resolution to members of the Board not in attendance at the meeting and upload the same to the Board Document Repository. Board members that were not in attendance at such meeting will be

required to provide their vote in writing within seven (7) days of the Accountable Entity's transmittal and upload of such written draft resolution. Quorum will be deemed to have been achieved once a sufficient number of votes (to achieve quorum as specified in the Governing Documents for an in-person Board meeting) are received from Board members that were not in attendance, provided that at least one non-government member's vote has also been recorded or received.

Prior to the effective date of the Governing Documents, quorum should be determined by local law applicable to the Accountable Entity or special rules approved by consensus/unanimous decision of the Board members to apply until the Governing Documents become effective.

- (4) *Deliberation and Actions of the Board.* All issues and documents for consideration by the Board should be presented to and discussed by the Board. It is appropriate for one member of the Board, either a voting or nonvoting member, to provide a summary of the issue or document for consideration or to invite a member of the Operations Unit to do so.

The decision-making process can be accomplished by reaching consensus among the voting members of the Board or by taking a vote. The Governing Documents should specify the number of votes in favor of an action needed for such action to become binding on the Accountable Entity. Prior to the effective date of the Governing Documents, voting requirements should be determined by local law applicable to the Accountable Entity or special rules approved by consensus/unanimous decision of the Board members to apply until the Governing Documents become effective.

The Accountable Entity is required to upload any action or decision taken by the Board (whether via meeting or written consent) to the Board Document Repository.

- (5) *Standard of Review.* It is appropriate and efficient for the Board members to review summaries of the documents, agreements, and reports being presented to it for consideration or approval. However, Board members should be made aware that reliance on such summaries does not relieve or excuse such members' responsibility for approving and taking action on the actual content of such documents, agreements, or reports. Although efficiency in the administrative processes of the Accountable Entity is desirable, it should not be sought to the detriment of deliberation by and accountability of the Board. The Board remains responsible for making decisions on behalf of the Accountable Entity and the Program.

G. *Transparency of Board Decisions.* The Board is charged with operating in a transparent manner. The most efficient way for the Board to achieve transparency is to record its decisions and discussions in the written form of meeting minutes. MCC requires that the Board evidence the discharge of its duties, including publishing the minutes of the Board meetings on the Accountable Entity's website or through other appropriate means in accordance with Section 3.2(G)(2) below, and providing evidence of certain approvals as conditions precedent to MCC Disbursements.

- (1) *Content.* The meeting minutes should be prepared by the person acting as secretary or record-keeper of the meeting and must include, at a minimum, the following information:
- (i) the agenda and information regarding when notice was delivered to the Board, (ii) the

list of attendees and absentees (for purposes of evidencing quorum), (iii) summaries of the discussion of agenda items and the actions taken by the Board, and (iv) any actions taken by an Executive Committee or the chief executive officer (or equivalent) for those items set out under Section 3.2(E)(2).

The amount of detail to be included in the minutes with respect to the discussion of agenda items should be dictated by the Board in consultation with MCC but must be sufficient to reflect that a valid meeting of the Board occurred and to evidence that the Board took valid actions consistent with the requirements of the Principal Program Documents, the Governing Documents, and any other relevant supplemental agreements. It may be appropriate to exclude references to specific statements made by members of the Board, unless such member requests statements to be attributed to them (for example, to evidence dissent with respect to a particular decision). It may also be appropriate to list the voting results but exclude the names of the voting members deciding in favor or disapproving an action.

- (2) *Publication.* MCC requires that the Accountable Entity publish the Board meeting minutes on the Accountable Entity's website or through other appropriate means. This publication requirement is intended to promote transparency and good governance. It may be appropriate, however, to exclude any confidential information relating to negotiations of contracts or procurement activities from the version of the minutes that is published. The publication of the minutes on the Accountable Entity's website must occur within one week of the approval of the minutes. In the event that the Accountable Entity is not able to publish the minutes within two weeks of the corresponding Board meeting, then prior to expiry of the two-week period, the Accountable Entity must publish a summary of the actions and decisions taken by the Board. The minutes and/or the above-mentioned summary can be drafted and certified by the chairman of the Board in one of the local languages; however, if such minutes and/or summary are taken in a language other than Spanish, French or Portuguese, they must be translated into English and published in the local language and English.

- H. *Action by Written Consent.* The Board may take actions by written consent in lieu of holding a meeting.

Governing Documents may require that actions by written consent meet a higher standard of approval by the voting members than Board actions taken by meetings. The higher standard, while not required, may be incorporated to take into account the lack of open discussion before the Board takes a decision.

- I. *Confidentiality.* MCC encourages transparency with respect to implementation of the Program; however, certain documents, reports, data, and other information relating to the Program will be treated by the Board as confidential information and handled in a reasonable and appropriate manner to avoid public disclosure. Confidential information includes information, documents, and data relating to Accountable Entity personnel matters, conflicts of interest, procurement matters prior to final contract award, and such other data, documentation, or information specified by the Accountable Entity and agreed with MCC. The Board will ensure that only those with a need to know and under similar obligations of confidentiality have access to any and all of such confidential information, documents, data, and other information. The Board will also ensure that each mem-

ber of the Board and Operations Unit complies with the confidentiality obligations set forth in this Section 3.2(I). The Board will also ensure that the Accountable Entity adopts a confidentiality policy in line with MCC's Confidential Information Policy, which is incorporated in the MCC Guidance on MCA Human Resources Procedures and Manuals or the MCC Guidance on Threshold Program Human Resources Procedures and Manuals, as applicable. Notwithstanding the foregoing requirements on confidentiality, all such confidential documents, reports, data, and other information may be provided to MCC, the Inspector General, the Government Accountability Office, or other independent auditors and investigatory bodies that may be designated by MCC.

- J. *Conflicts of Interest Policy and Code of Ethics.* Board members must discharge their professional obligations impartially. Considerations of family ties, friendships, prior affiliations with an organization, or past or current relationships must not affect their decisions in any way. They must notify the legal advisor or the Accountable Entity staff member responsible and any others as may be required by the Accountable Entity Anti-Fraud & Corruption Action Plan for answering questions and providing advice about compliance, if there are any circumstances where they think they cannot be impartial or where a third person would reasonably believe they cannot act impartially.

The Board will ensure that the Accountable Entity adopts a code of ethics and conflict of interest policy in line with MCC's guidance, as set forth in the MCC Guidance on MCA Human Resources Procedures and Manuals or the MCC Guidance on Threshold Program Human Resources Procedures and Manuals, as applicable. The Board will ensure that such code of ethics and conflict of interest policy is provided, either separately or as part of the MCA Human Resources Manual, to each MCA Person together with the name of the Accountable Entity staff member responsible for answering questions and providing advice about compliance. That code of ethics and conflict of interest policy will contain, at a minimum, provisions ensuring that MCA Persons (i) avoid the conflicts of interest identified in this section, (ii) discharge their duties impartially, (iii) refrain from misusing their position for their benefit or the benefit of relatives or friends of any MCA Person, and (iv) conduct themselves in a way that instills public confidence in the integrity of the Accountable Entity, including its Board and its staff.

- K. *Anti-Sexual Harassment Policy.* The Board will ensure that the Accountable Entity adopts an anti-sexual harassment policy in line with MCC's guidance as set out in the MCC Guidance on MCA Human Resources Procedures and Manuals or the MCC Guidance on Threshold Program Human Resources Procedures and Manual, as applicable. The Board will ensure that the policy on anti-sexual harassment is provided, either separately or as part of the MCA Human Resources Manual, to each MCA Person together with the name of the Accountable Entity staff member responsible for answering questions and providing advice about compliance. That policy will contain, at a minimum, provisions ensuring that no MCA Person will engage in, tolerate, encourage, or otherwise permit the sexual harassment of any MCA Person, anyone employed directly or indirectly with MCC Assistance or seeking such employment, or beneficiaries of the Program.
- L. *Diversity Strategy.* The Board will ensure that the Accountable Entity adopts a diversity strategy in line with MCC's guidance as set out in the MCC Guidance on MCA Human Resources Procedures and Manuals. The Board will be responsible for setting diversity objectives and regularly reviewing and discussing diversity outcomes in accordance with the diversity strategy.

- M. *Advisory Committees.* The Board may establish one or more Advisory Committees to assist with the review and analysis of reports, documents, and agreements requiring its review under the Principal Program Documents and Section 3.2(E) of this Policy. An Advisory Committee may make recommendations to the Board and may be composed of voting and nonvoting members of the Board and such other persons that may have particular expertise necessary for the committee. For example, the Board may establish an audit committee to review audit findings and to make recommendations to the Board. It would be appropriate for such audit committee to be composed of Board members and non-Board members that have expertise in audits or financial matters. The Board may rely on information, opinions or reports produced by an Advisory Committee; however, the members of the Board remain responsible for actually taking decisions based on the recommendations of such Advisory Committee.
- N. *Executive Committees.* The Board should consider establishing one or more Executive Committees to take the actions permitted under the Principal Program Documents, the Procurement Guidelines, the Program Grant Guidelines, any Governing Documents, or other supplemental agreements. All Board members will be entitled to (i) receive the documents provided to any Executive Committee and (ii) elect to participate in the meetings of any Executive Committee. In order to ensure that each member of the Board is fully informed in advance of an Executive Committee meeting, the Accountable Entity is required to upload the relevant documents to the Board Document Repository in accordance with the specific time period for adequate notice applicable to Board meetings as set forth in the Governing Documents. During regular meetings of the Board, the Board must review the actions of Executive Committees to ensure consistency with the Principal Program Documents, the Governing Documents, and overall implementation of the Program. For those items set out under Section 3.2(E)(2) that an Executive Committee reviews and approves, such Executive Committee will provide complete, written copies of each of the approved items to the Board within one business day after such approval.

The Executive Committee should include (at a minimum): (i) at least one non-government voting member of the Board or their alternate, (ii) at least one government voting member of the Board or their alternate, and (iii) the chief executive officer (or equivalent) of the Operations Unit.

Specific rules and principles governing other aspects of an Executive Committee (such as size, scope of review and approval (subject to Section 3.2(E)(2)), meetings (e.g., frequency, notice, and quorum), decision-making thresholds for actions taken in meetings or by written consent, etc.) should be set out in the Governing Documents or the resolution of the Board (as applicable) establishing such Executive Committee.

- O. *Board Workshop.* As soon as reasonably practicable following the formation of a new Board or a reconstitution of an existing Board in which more than fifty percent of the members of the Board have changed, the Accountable Entity should consider conducting a workshop with the Board. This workshop may be conducted either in a special session or as part of a regularly scheduled Board meeting. The objective of the workshop is to provide members of the Board with an overview of MCC, the Program, and key requirements underpinning successful implementation of the Program, including the critical role to be played by the Accountable Entity. Key Staff may also be invited to participate in the workshop if deemed appropriate by the chief executive officer (or equivalent) and the chair of the Board.

3.3. EXISTING OR NEW GOVERNMENT AFFILIATE AS ACCOUNTABLE ENTITY WITH A SINGLE FINAL AUTHORITY

- A. *Ministry as Accountable Entity*³. To the extent that the Government and MCC agree to utilize an existing or newly formed Government Affiliate as the Accountable Entity and a Board is not included in the governance structure, then the final authority for the Accountable Entity will rest with the relevant minister or senior most official responsible for the Government Affiliate (“*Designated Final Authority*”). MCC will support such an alternative implementation structure if such structure can capture the same level of transparency, efficacy, and efficiency that a Board structure provides in achieving the objectives of the Program.

The Designated Final Authority will be responsible for exercising oversight and taking major decisions on behalf of the Accountable Entity. In order to ensure that the Designated Final Authority is fully informed in advance of any action or decision, the Accountable Entity is required to upload the documents for consideration to the Board Document Repository in accordance with the specific time period for adequate notice as set forth in the Governing Documents. The Designated Final Authority must adhere to the same standards as set out for the Board under Section 3.2(A), as applicable.

- B. *Review and Approval Requirements; Standard of Review.*

- (1) The Designated Final Authority will be responsible for reviewing and approving the documents and agreements set forth above in Section 3.2(E).

The Accountable Entity is required to upload any action or decision taken by the Designated Final Authority to the Board Document Repository.

- (2) *Standard of Review.* It is appropriate and efficient for the Designated Final Authority to review summaries of the documents, agreements, and reports being presented to them for consideration or approval. However, the Designated Final Authority should be made aware that reliance on such summaries does not relieve or excuse such Designated Final Authority’s responsibility for approving and taking action on the actual content of such document, agreement, or report. Although efficiency in the administrative processes of the Accountable Entity is desirable, it should not be sought to the detriment of the accountability of the Designated Final Authority. As provided in the Principal Program Documents, the Designated Final Authority remains responsible for the actions of the Accountable Entity and the status of the Program.

- C. *Transparency of Decisions.* The Designated Final Authority must operate in a transparent manner. The most efficient way for the Designated Final Authority to achieve transparency is to record their decisions and discussions in the written form of meeting minutes or resolutions. The Designated Final Authority must evidence the discharge of their duties, including periodically publishing the decisions of the Designated Final Authority on the Accountable Entity’s website and providing evidence of certain approvals as conditions precedent for MCC Disbursements.

³ See Annex II of this Policy for further guidance on the utilization of the Designated Final Authority approach.

- D. *Confidentiality; Conflict of Interest and Ethics; Anti-Sexual Harassment; Diversity.* The Designated Final Authority will abide by and be responsible for carrying out the obligations set forth in Section 3.2(I), (J), (K), and (L) of this Policy.

3.4. STAKEHOLDER ENGAGEMENT: STAKEHOLDER ENGAGEMENT PLAN AND STAKEHOLDERS COMMITTEE

- A. *Stakeholder Engagement.* As part of the Government's commitment to complying with the MCC Environmental Guidelines, each Accountable Entity is expected to develop and adopt an environmental and social management system, including a Stakeholder Engagement Plan early in the life-cycle of the Program. Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, a grievance mechanism, and ongoing reporting to affected communities. The nature, frequency, and level of effort of stakeholder engagement may vary considerably and will be commensurate with the Program's risks, potential for adverse impacts, and phase of development and implementation. The Accountable Entity is expected to achieve the objectives set out in the Stakeholder Engagement Plan and to promote transparency and ongoing consultation among stakeholders throughout the term of the Principal Program Documents. The Stakeholder Engagement Plan is intended to be integrated in the core business activities of the Accountable Entity and will be updated on an annual basis to reflect performance against the indicators set forth in the plan and overall effectiveness of the engagement processes. The Government may establish a Stakeholders Committee to help achieve the objectives set out in the Stakeholder Engagement Plan.
- B. *Role of Stakeholders Committee.* If established, one or more Stakeholders Committee(s) should be used as a mechanism for representatives of the private sector, civil society, NGOs, project affected communities and persons, and local and regional governments, among others, to (i) be informed on the design and implementation of the Program, (ii) provide input and recommendations to the Accountable Entity on the same, and (iii) inform these various constituent and interest groups about the design and implementation of the Program. If established, a Stakeholders Committee will ensure that stakeholders are fully aware of relevant developments, impacts, and benefits. The Accountable Entity should create a charter to set out processes for the meetings and discussions of a Stakeholders Committee. The Stakeholders Committee does not provide stakeholders an opportunity for direct participation in the governance and decision-making of the Accountable Entity, as such actions are reserved for the Board.
- C. *Size and Composition.* If established, the size and composition of the Stakeholders Committee should be dictated by the project areas of the Program and may be larger than the Board (if established); however, the membership of the Stakeholders Committee should reflect the Program's various stakeholders from among the private sector, civil society, NGOs, project affected communities and persons, Implementing Entities, regulators, and local and regional governments (potentially including those consulted during development of the Program). All organizations or entities represented on the Stakeholders Committee will be agreed by the Government and MCC or selected through a process agreed by the Government and MCC; in either case, such organizations or entities will be chosen based on their representation of interest groups related to the Program as

well as their availability to make the required time commitment. Individual representatives from such organizations or entities must not be chosen by the Government, but, rather, chosen by the relevant organization or entity, subject to background screening and approval by MCC.

- D. *Review of Agreements, Documents and Reports.* At the request of the Board, the Stakeholders Committee, if established, may review certain reports, agreements, and documents, including the Implementation Plan Documents, and provide recommendations to the Board regarding implementation of the Program. The Board may exercise discretion in choosing which documents, agreements, and reports to disclose to the Stakeholders Committee for its review, but should generally include all documents, agreements, and reports except for those that may impede execution of the Program or violate confidentiality obligations or requirements of local law.
- E. *Transparency of Stakeholders Committee Meetings and Recommendations.* The Stakeholders Committee (if established) should document summaries of its meetings, including the following information for each meeting: names of all attendees at the meeting (if volunteered by the attendees), agenda items discussed during the meeting and recommendations made by the Stakeholders Committee at the meeting, and copies of any documents provided to the Stakeholders Committee. Feedback reflecting stakeholder advice, views, and concerns on the Program will be channeled to the Operations Unit and the Board in accordance with the Stakeholder Engagement Plan thereby promoting transparency and consideration of stakeholder input in the decision-making process.
- F. *Anti-Sexual Harassment.* The Stakeholders Committee will abide by the requirements on anti-sexual harassment as set forth in Section 3.2(K) of this Policy.

3.5. OPERATIONS UNIT STRUCTURE, COMPOSITION AND DUTIES

- A. *Role of the Operations Unit.* The Operations Unit will assist the Board in overseeing the implementation of the Program and will have the principal responsibility (subject to the direction and oversight of the Board, and subject to MCC's rights of approval as set forth in the Principal Program Documents and the related supplemental agreements) for the day-to-day management of the Program. The Operations Unit members have a duty to follow the Accountable Entity's Governing Documents, to carry out the Accountable Entity's mission to implement the Program, and to ensure that MCC Assistance is used only for permitted purposes.
- B. *Size and Composition.* The size and composition of the Operations Unit should be dictated by the project areas of the Program; however, the Operations Unit should be composed of qualified experts from the public and/or private sectors, including such officers and staff as may be necessary to carry out effectively its responsibilities.
- C. *Appointment.* Members of the Operations Unit should be recruited through an open and competitive process to select the best qualified applicants and appointed in accordance with the Governing Documents. The appointment of Key Staff is subject to MCC's no-objection. At MCC's discretion, the appointment of other Accountable Entity staff may also be subject to MCC's no-objection. The process for selecting the Key Staff should commence as soon as practicable.

Key Staff should be hired and in place prior to entry into force of a Compact with sufficient knowledge of the Program so they may satisfy their primary responsibility for implementation of such

Compact. Exceptions to the entry into force requirement are permitted upon written agreement between MCC and the Government if implementation of the Program will not be hindered by such exceptions.

- D. *Responsibilities.* Subject to Section 3.2, the Operations Unit will be responsible for the following documents, agreements, and actions on behalf of the Accountable Entity while abiding by the requirements on confidentiality, conflict of interest and ethics, anti-sexual harassment, and diversity as set forth in Section 3.2(I), (J), (K), and (L) of this Policy:
- (1) Development and administration of (i) all components of the Implementation Plan Documents, (ii) the audit plans and responses to any findings in any audit, (iii) staffing plans, and (iv) any amendments, modifications, or supplements to any of the items in (i) - (iii);
 - (2) Oversight of the implementation of the Program, including preparation and submission of MCC Disbursement Requests;
 - (3) Coordination of the overall Program, each project, and the other activities contemplated under the Principal Program Documents, including management of contracts and agreements;
 - (4) Management, implementation, and coordination of the monitoring and evaluation of the Program and the projects (including collection and analysis of data) and ensuring integration between project implementation and evaluation;
 - (5) Development, oversight, management, coordination, and implementation of such policies and procedures as may be necessary to facilitate the effective implementation of the Program and such other policies, procedures, or activities as may be required or requested by the Board in furtherance of the Program;
 - (6) Preparation and review of reports regarding the finances and accounting (including management reporting, accounts receivable, accounts payable, monthly, quarterly and annual financial statements, cash flow statements and projected cash flow requirements), performance, monitoring and evaluation, procurements, budgets, and audit reports of the Program (including each project and the other activities contemplated under or carried out in furtherance of the Program) and any other reports requested by the Board;
 - (7) Preparation and submission of all reports required by applicable local law;
 - (8) Maintenance of accounting records for the Program, including for each project;
 - (9) Acquisition and maintenance of a management information system to allow the systematic tracking of programmatic and financial implementation of and performance under the Program, including each project;
 - (10) Commission and supervision of baseline and ex-post studies for each Project as may be required by the M&E Plan; establishment of data collection, analysis, and reporting systems for the overall Program and for each project;
 - (11) Conduct and oversight of procurements and other procurement actions (including approvals thereof) as required under the Principal Program Documents and the relevant supplemental agreement and the standards set forth in the Procurement Guidelines;

- (12) Compliance with the MCC Policy on Preventing, Detecting and Remediating Fraud and Corruption in MCC Operations, including the development and publication of an Accountable Entity Anti-Fraud & Corruption Action Plan and related implementation reports;
 - (13) Administration of the Accountable Entity website to post current information about Program-related activities, M&E Plan reporting, financial reporting, and Program-related procurements;
 - (14) Provision of advice and written recommendations to the Board on matters constituting Board actions accompanied by the relevant agreements, documents, or actions to be approved, and any other documents needed to support such recommendation;
 - (15) Preparation of and submission to the Board of any report required by MCC or any other report, document, agreement, or action as may be designated or requested by the Board from time to time, along with a written recommendation to the Board on how to proceed;
 - (16) If a Stakeholders Committee is established, provision of periodic reports to the public which should include a report on any Stakeholders Committee meeting that might have occurred during the period covered by such report, and how recommendations of the Stakeholders Committee have informed the activities of the Accountable Entity;
 - (17) Preparation and submission of documentation necessary to ensure the tax exemption of MCC Assistance related to the Program; and
 - (18) Any other responsibilities within the scope of its role in implementation of the Program that may be required or requested from time to time by the Board.
- E. *Reporting.* For those items set out under Section 3.2(E)(2) that the chief executive officer (or equivalent) reviews and approves, the chief executive officer (or equivalent) will provide complete, written copies of each of the approved items to the Board within one business day after such approval. The chief executive officer (or equivalent), with the assistance of the Operations Unit, will promptly deliver and certify any reports, documents, or other submissions requested by or required to be delivered to the Board or MCC. Any documents delivered to the Board should be copied to MCC.

3.6. REMUNERATION

- A. *Overview.* Compensation will be consistent with the detailed financial plan, as defined in the Principal Program Documents.
- B. *Remuneration of the Board.* Remuneration of the Board will be subject to the guidelines set forth in the MCC Cost Principles.-
- C. *Remuneration of possible Advisory Committee or Stakeholders Committee.* Members of an Advisory Committee or Stakeholders Committee (if established) will not receive any remuneration in connection with the performance of their duties. The Accountable Entity may reimburse members of an Advisory Committee or Stakeholders Committee for reasonable expenses arising from their attendance at committee meetings or arising from the necessary performance of their duties, so

long as such reimbursements are consistent with the Principal Program Documents and the detailed budget for the Program.

- D. *Remuneration of the Accountable Entity.* Remuneration of all employees and staff of the Accountable Entity, including the Operations Unit, will be in accordance with the salary grid/scale as approved by the Board and subject to the guidelines set forth in (i) the MCC Cost Principles and (ii) the MCC Guidance on MCA Human Resources Procedures and Manuals or the MCC Guidance on Threshold Program Human Resources Procedures and Manuals, as applicable.

4. IMPLEMENTATION STRUCTURAL COMPONENTS

- A. *Fiscal Agent.* The Accountable Entity should engage a Fiscal Agent to perform certain financial management activities on behalf of the Accountable Entity. The Accountable Entity should enter into an agreement with the Fiscal Agent setting forth the roles and responsibilities of such Fiscal Agent and other appropriate terms and conditions (including the payment of the Fiscal Agent, if applicable). The Fiscal Agent is responsible for the following activities, among other things:
- (1) Assisting in preparing the Fiscal Accountability Plan;
 - (2) Ensuring and certifying that payments of MCC Assistance are properly authorized and documented in accordance with established control procedures set forth in the Principal Program Documents, the fiscal agent agreement, the Fiscal Accountability Plan, and other relevant supplemental agreements;
 - (3) Release of payments of MCC Assistance from any Permitted Accounts;
 - (4) Cash management and account reconciliation of any Permitted Accounts, including reconciling each Permitted Account to the Accountable Entity's automated accounting system and reconciling such automated accounting system to the electronic payment system accounting records and MCC's accounting records;
 - (5) Providing applicable certifications for MCC Disbursement Requests;
 - (6) Maintaining and retaining proper accounting, records, and document disaster recovery system of all MCC-funded financial transactions and certain other accounting functions;
 - (7) Producing reports on disbursements of MCC Assistance and re-disbursements thereof in accordance with established procedures set forth in the Principal Program Documents, the fiscal agent agreement, the Fiscal Accountability Plan, or any other supplemental agreements;
 - (8) Assisting in the preparation of budget development procedures; and
 - (9) Internal management of the Fiscal Agent operations.
- B. *Procurement Agent(s).* The Accountable Entity should engage a Procurement Agent(s) to carry out and certify specified procurement activities in furtherance of the Program on behalf of the Accountable Entity. Any procurement agent engaged by the Accountable Entity will be responsible for adhering to the procurement standards set forth in the Principal Program Documents, and the Procurement Guidelines and for ensuring procurements are consistent with the Procurement & Grants Plan Package adopted by the Accountable Entity. The Accountable Entity should enter into

an agreement with each Procurement Agent, setting forth the roles and responsibilities of such Procurement Agent and other appropriate terms and conditions (including the payment of the Procurement Agent, if any).

- C. *Implementing Entities.* Subject to the terms and conditions of the Principal Program Documents, the Accountable Entity should engage one or more Government Affiliates to play a role in achieving and sustaining the project objectives as defined in the Principal Program Documents. The Accountable Entity should enter into an agreement with each Implementing Entity setting forth the roles and responsibilities of such Implementing Entity and other appropriate terms and conditions (“*Implementing Entity Agreement*”).

Implementing Entity Agreements will describe the specific responsibilities of the Implementing Entity, which may cover a broad range of work, facilities access, in-kind services, permitting/licensing support, and other support necessary to advance the Program, implementation of policy and institutional reforms, and may describe agreed-upon staffing arrangements for performing the responsibilities. The Implementing Entity must perform its responsibilities and manage any Program Assets in its control in accordance with the Implementing Entity Agreement, the Principal Program Documents, the MCC Cost Principles, the Procurement Guidelines, the Program Grant Guidelines, and all Implementation Plan Documents.

As described in each Implementing Entity Agreement, Implementing Entities will also be expected to: (i) cooperate with the Accountable Entity on issues and provide information related to tax exemptions, disbursement requests, and the M&E Plan, among other things; (ii) cooperate with the Fiscal Agent and Procurement Agent; and (iii) adhere to the budget set forth in the Implementing Entity Agreement

5. AMENDMENT.

This Policy may be modified or amended at any time in writing with the approval of the Vice President of Compact Operations, the Vice President of Policy and Evaluation, and the Vice President and General Counsel.

6. WAIVER.

Any waiver to this Policy must be requested in writing that identifies the relevant section(s) of the Policy and explains why the waiver is required. A waiver does not create a permanent change to this Policy but rather functions as a one-time exception which applies only to the specific Accountable Entity in connection with the waiver.

All waiver requests under this Policy submitted in connection with Compacts will be subject to the review and approval by the Vice President of Compact Operations and the Vice President and General Counsel. All waiver requests submitted in connection with Threshold Agreements will be subject to the review and approval by the Vice President of Policy and Evaluation and the Vice President and General Counsel.

7. EFFECTIVENESS.

This Policy is effective on the date indicated above and supersedes any prior policy, guidance, and/or delegation of authority with respect to the subject matter hereof. This Policy applies to those Accountable Entities legally created and operating on or after September 29, 2022. For those Accountable Entities legally created and operating prior to September 29, 2022, such Accountable Entities may, following consultation with MCC's Office of the General Counsel, choose to adopt provisions or requirements of this Policy; otherwise, such Accountable Entities are required to comply with the prior version of this Policy.

ANNEX I: UTILIZATION OF NON-MCA STRUCTURES

I. RELEVANT POLICY PROVISION

Section 2.3 of the Policy requires that existing implementation structures established by other donors and existing government systems and structures be *consistent with MCC requirements and efficient for implementing the Program*. This Annex I seeks to provide guidance on factors to consider in determining whether to utilize an existing implementation structure.

II. KEY CONSIDERATIONS

In assessing whether the utilization of an existing implementation structure is consistent with MCC requirements and efficient for implementing the Program, the following parameters should be considered:

Category	Issue	Key Considerations
MCC statutory and policy requirements	MCC Statute- Limitations on MCC Assistance	MCC Assistance must be used in compliance with MCC's statutory requirements (i.e. can't be used for military assistance or training; result in U.S. job loss or production displacement; cause environment, health, or safety hazards; or fund abortions/involuntary sterilizations)
	MCC Statute- Taxation	MCC Assistance must be exempt from taxation.
	U.S. laws	MCC Assistance must be used in compliance with other requirements under U.S. laws (e.g. OFAC sanctions).
	MCC Policies	Generally, the policies of the existing implementation structure should be reviewed to assess compatibility with MCC policies as well as applicable IFC Performance Standards. Depending on the initial assessment, the team may decide to move forward with a gap analysis to prepare an action plan for policy harmonization so as to achieve compliance with MCC requirements while reducing administrative burden.
Governance	Board of Directors	Existing oversight body/mechanism (e.g. board, funders' committee, etc.) of the existing implementation structure must be aligned with MCC's requirements as set out in the AE Policy (<i>Section 3.2 Board Structure, Composition and Duties</i>).
	MCC Observer	MCC must be able to retain its observer status/function in the oversight body of the existing implementation structure in a manner consistent with the requirements as set out in the AE Policy (<i>Section 3.2(B)(2) Role of the MCC Observer</i>).
	Civil Society/Private Sector	Civil society and the private sector must be able to participate in the decision-making of the existing implementation structure in a manner consistent with the requirements as set out in the AE Policy (<i>Section 2.2(E) Civil Society and Private Sector Participation</i>).
	Records & Archiving	The record-keeping and archiving processes of the existing implementation structure must be aligned with MCC's requirements as set out in the AE Policy (<i>Section 3.2(A)(6) Accurate Record Keeping and Section 3.5(D)(8)</i>) as well as MCC's Program Closure Guidelines.

Category	Issue	Key Considerations
Operations	Government/Other Donors	<p>The government or other donors involved in the existing implementation structure should be aligned with MCC's policies and principles.</p> <p>The existing government structure approach may be feasible for a PIU inside existing ministries whereas ordinary ministry staff within an existing ministry would be subject to ministry governance.</p> <p>In previous experiences with existing government structures, MCC has experienced a decrease of counterpart commitment. This risk may be reduced by clearly documenting the government's commitment to the existing structure's operational continuity.</p>
	Sectoral Synergy	<p>For a single sector-compact, utilizing an existing implementation structure that shares the same focus could work well. For existing implementation structures that are focused on multiple sectors, perhaps we can identify the part of the organigram that fits the compact.</p> <p>For multi-sector compacts, we would have to look at the degree of overlap with a multi-sector existing implementation structure. Alignment may be challenging with a single-sector existing implementation structure.</p>
	Resource Allocation	<p>Where the existing implementation structure is implementing other projects apart from MCC or MCC is co-funding a project with the government or other donors involved in the existing implementation structure, it will be appropriate to develop a clear framework on sharing or separating staff, funding, and other resources.</p> <p>For existing government structures, it may be appropriate to implement a framework for crediting government contributions (e.g. for man-hours, office space, etc.) towards country contribution requirements under the Principal Program Documents. However, we will also need to put a system in place to avoid commingling of funds.</p> <p>It is worth noting that where programs under the existing implementation structure terminate before or after MCC's programs, there may be changes in MCA's cost burden for both staffing and other indirect costs (e.g. office space, utilities, etc.).</p>
	Staffing	<p>Given MCC's hard deadline for program implementation, initial performance readiness is critical. The existing implementation structure must have sufficient capacity for critical MCA functions such as procurement, financial management, project management, contract management, etc.</p> <p>To that end, it will be important to assess the performance of the existing implementation structure whereby we can review the organigram as well as individual CVs to:</p> <ul style="list-style-type: none"> • gauge performance on other projects; • consider the level of absorption and manpower allocation for existing staff; • sort out reporting lines; • figure out funding for existing staff with program resources; and • identify gaps where additional hiring or creation of an additional unit is needed to focus on MCC programs. <p>It is also worth noting that for existing staff, MCC will not have an N/O opportunity for their hiring and MCC Assistance cannot be used to fund existing staff for work they were already supposed to do.</p> <p>Existing policies of the existing implementation structure on recruitment remuneration must be harmonized with MCC Cost Principles and MCC HR Guidance.</p>
	Asset Transfer	<p>Existing policies of the existing implementation structure on the transfer and liquidation of assets must be harmonized with MCC Program Closure Guidelines.</p>

III. DISCUSSION

Other factors to consider in using existing implementation structures include: (1) re-imagining the role of the Accountable Entity to focus on coordination among Implementing Entities and support of capacity growth for Implementing Entities over time- which may mitigate the trade-off of timeline constraints and low capacities or (2) installing a board or other oversight mechanism on top of the existing implementation structure.

ANNEX II: UTILIZATION OF A DESIGNATED FINAL AUTHORITY

I. RELEVANT POLICY PROVISION

Section 3.3(A) of the Policy requires that the Designated Final Authority approach must *capture the same level of transparency, efficacy, and efficiency in achieving the Program objectives that a Board structure provides*. This Annex II seeks to provide guidance on assessing the feasibility of the Designated Final Authority approach through the SWOT⁴ analysis framework.

II. SWOT ANALYSIS

STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> • Efficiencies in Governance: The single Designated Final Authority approach reduces the administrative burden and logistical challenges encountered with the board structure (e.g. scheduling/preparation of meetings, quorum requirements, board member appointment/replacement, etc.). 	<ul style="list-style-type: none"> • Weaker Governance: The single Designated Final Authority approach may elevate the risk for corruption and conflicts of interest by foregoing the transparency built into a board structure (e.g. board meetings and minutes, MCC observer, civil society/private-sector participation, etc.). • Lack of Broader Engagement: The single Designated Final Authority approach may decrease the quality of oversight, deliberations, and guidance by reducing the opportunity for the Accountable Entity to directly engage the knowledge, expertise, and influence of non-government actors and other parts of the government.
OPPORTUNITIES	THREATS
<ul style="list-style-type: none"> • Ownership: A single Designated Final Authority may have a greater sense of ownership and commitment by the Designated Final Authority towards the program. • Influence: A single Designated Final Authority who is highly influential (e.g. close to the political leadership of the host country) may be able to provide better support for program implementation. 	<ul style="list-style-type: none"> • Lack of government-wide coordination: Compared to a board comprised of members from different areas of government, the single Designated Final Authority approach may result in diminished collaboration across different ministries/departments in Program implementation. • Lack of Durability/Political Capture: The single Designated Final Authority approach exposes the MCA's governance structure to the individual risk of the Designated Final Authority. For example, the Designated Final Authority may be closely associated with a single political party and may be vulnerable to changes in the political environment of the host country- which, in turn, may hamper the continuity of the MCA's operations. This risk is present with the board structure as well- but diluted due to the plurality of board members.

III. DISCUSSION

Given the significant risks and downsides of the single Designated Final Authority approach, it is challenging to envision a scenario where such an approach would be acceptable to MCC. Some suggestions to approximate the efficiencies of a single Designated Final Authority approach are to: (1) consider installing

⁴ Strengths, Weaknesses, Opportunities, and Threats.

a smaller board, (2) empower the Operations Unit on operational issues and trim the board's role to focus more on oversight, high-level strategic guidance, and political support (e.g. for policy reforms and permits), or (3) delegate more authority to the Implementing Entities and keep the Accountable Entity in more of an oversight/support function.

ENDNOTES

¹ This Policy uses the term “will” instead of “shall” or “should” in an effort to comply with USG policy to use plain English (see the Plain Writing Act of 2010 and Executive Order 13563 “Improving Regulation and Regulatory Review”). Also, the word “will” or “must” was selected for use in those provisions that are mandatory, while “should” is occasionally used for those provisions that contain best practice but are not mandatory.

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