

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

RESOLUTION NO. 99-1

AUTHORIZING ESTABLISHMENT OF THE PROTOTYPE CARBON FUND

AS AMENDED

WHEREAS the International Bank for Reconstruction and Development (the “Bank”) desires to promote project-based mechanisms that will help countries to reduce global concentrations of greenhouse gases and therefore minimize the adverse impacts of climate change on developing countries and countries with economies in transition;

WHEREAS in order to further that objective, the Bank desires to establish the Prototype Carbon Fund to be administered by the Bank to provide participants in the Prototype Carbon Fund with the opportunity to finance projects in developing countries and countries with economies in transition to generate greenhouse gas emission reductions which could be transferred to the participants, thereby assisting them in satisfying their obligations under the United Nations Framework Convention on Climate Change, related international agreements and domestic legislation;

NOW THEREFORE IT IS HEREBY RESOLVED AS FOLLOWS:

The Executive Directors hereby establish the Prototype Carbon Fund on the terms and conditions set forth in, and substantially in the form of, Annex I attached to this Resolution.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

**AMENDED AND RESTATED
INSTRUMENT
ESTABLISHING
THE PROTOTYPE CARBON FUND**

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INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

Instrument Establishing the Prototype Carbon Fund

WHEREAS:

(A) The International Bank for Reconstruction and Development desires to promote project-based mechanisms that will help countries to reduce global concentrations of greenhouse gases and therefore minimize the adverse impacts of climate change on developing countries through the establishment of a Prototype Carbon Fund to be administered by the IBRD to provide Participants in the Fund with the opportunity to provide resources to projects in developing countries and countries with economies in transition to generate greenhouse gas Emission Reductions which could be transferred to the Participants, thereby assisting them in satisfying their obligations under the United Nations Framework Convention on Climate Change and related international agreements and domestic legislation;

(B) The IBRD has three strategic objectives in establishing the Fund: first, to demonstrate how project-based Emission Reductions transactions can promote and contribute to the sustainable development of developing countries and countries with economies in transition that are members of the IBRD; second, to share with the Parties to the United Nations Framework Convention on Climate Change and other interested parties knowledge gained by the Trustee and Participants in the course of the Fund's operations during the period when the guidelines, modalities and procedures that will govern project-based Emission Reduction transactions are being negotiated; and third, to demonstrate how the IBRD can work in partnership with the public and private sectors to mobilize new resources for its borrowing member countries while addressing global environmental concerns; and

(C) The IBRD is prepared to establish and administer the Prototype Carbon Fund on the terms and conditions set forth below.

NOW THEREFORE it is hereby resolved that:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. Unless the context otherwise requires, the following terms shall have the meanings set forth below:

- 1) “Activities Implemented Jointly” means project activities undertaken under the Activities Implemented Jointly Pilot Phase of the UNFCCC;
- 2) “Additional Participants” means those Participants that enter into Participation Agreements with the Trustee after the First Closing;
- 3) “Annex I” means Annex I of the UNFCCC;
- 4) “Annex I Countries” means the countries listed in Annex I of the UNFCCC and, when appropriate, in Annex B of the Kyoto Protocol;
- 5) “Annex B” means Annex B of the Kyoto Protocol;
- 6) “Article 6” means the mechanism defined in Article 6 of the Kyoto Protocol that provides for the transfer and acquisition of Emission Reduction Units between Annex I Countries;
- 7) “Article 12” means the mechanism (known as the Clean Development Mechanism) defined in Article 12 of the Kyoto Protocol that provides for the transfer of Certified Emission Reductions from non-Annex I Countries to Annex I Countries;
- 8) “Assigned Amounts” means the quantity of GHG an Annex I Country can release during the first commitment period of the Kyoto Protocol and is equal to the percentage, specified in Annex B, of an Annex I Country’s aggregate anthropogenic carbon dioxide equivalent emissions of GHG in 1990, or in another base year as provided by the Kyoto Protocol, multiplied by five;
- 9) “Association” means the International Development Association, a member of the World Bank Group;
- 10) “Baseline” means the situation that would have occurred without the implementation of a Project, in particular with respect to Greenhouse Gas emissions or sequestration;
- 11) “Certification” means the process by which either (i) operational entities designated by the COP/MOP for the purposes of Article 12 and/or, if the UNFCCC Parties deem it appropriate, Article 6 of the Kyoto Protocol or (ii) properly qualified Independent Third Parties certify that the GHG Reductions achieved by a Project comply with a relevant set of standards or conditions;
- 12) “Certified Emission Reductions” means the GHG Reductions that are achieved by an Article 12 Project and are certified by operational entities designated by the COP/MOP for the purposes of Article 12 of the Kyoto Protocol;
- 13) “COP/MOP” means the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol;
- 14) “Developing Countries” means those countries not listed in Annex I;

- 15) “Economies in Transition” or “EIT” means the countries listed in Annex I or Annex B that are undergoing the process of transition to a market economy;
- 16) “Eligible Private Sector Participant” means any person, other than an Eligible Public Sector Participant, organized in a country Party to the UNFCCC and whose participation in the Fund has been approved by the Trustee;
- 17) “Eligible Public Sector Participant” means any government, agency, ministry or other official entity of a country Party to the UNFCCC and whose participation in the Fund has been approved by the Trustee;
- 18) “Emission Reductions” means Emission Reduction Units, Certified Emission Reductions, and, pending the adoption of the relevant guidelines, modalities and procedures under the regulatory framework of the UNFCCC and/or the Kyoto Protocol, GHG Reductions certified by Independent Third Parties as complying with a relevant set of standards or conditions;
- 19) “Emission Reduction Units” means the GHG Reductions achieved by an Article 6 Project that meet the conditions specified in Article 6 of the Kyoto Protocol including, if the Parties to the UNFCCC deem it appropriate, certification by operational entities designated by the COP/MOP;
- 20) “Euro” means the lawful currency of the European member states that have adopted the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on the European Union;
- 21) “First Closing” means the initial closing of the Fund that is expected to occur on or about February 1, 2000, or such later date as may be determined by the Trustee in consultation with the Participants;
- 22) “Fund Management Unit” means the Fund Manager and other staff selected by the Fund Manager who will perform services for the Fund on a full-time basis;
- 23) “Fund Manager” means the IBRD staff member appointed to manage the Fund;
- 24) “Fund Property” or “Property” means all property contributed to the Fund and all other assets, receipts and interests of the Fund;
- 25) “GHG Reductions” means, with respect to an Article 6 Project, the reduction of GHG emissions and the enhancement of GHG sequestration achieved by such Project and, with respect to an Article 12 Project, the reduction of GHG emissions and, if the Parties to the UNFCCC deem it appropriate, the enhancement of GHG sequestration achieved by such Project;
- 26) “Global Environment Facility” or “GEF” means the mechanism established by the 1994 Instrument for the Establishment of the Restructured Global Environment Facility;

- 27) “Greenhouse Gases” or “GHG” means the six gases listed in Annex A of the Kyoto Protocol, which are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride;
- 28) “High Quality Emission Reductions” means Emission Reductions of a sufficient quality so that, in the opinion of the Trustee at the time a Project is selected and designed, there will be a strong likelihood, to the extent it can be assessed, that Participants may be able to apply their share of Emission Reductions for the purpose of satisfying the requirements of the UNFCCC, related international agreements, or applicable national legislation;
- 29) “Host Country” means a country that is a member of the IBRD and in which a Project is located;
- 30) “Host Country Agreement” means an agreement entered into between the Trustee and the Host Country in respect of a Project;
- 31) “Host Country Committee” means the committee described in Article VII of this Instrument;
- 32) “Host Country Observer” means a member of the Host Country Committee who is elected to serve as a non-voting observer at a Participants’ meeting or a Participants’ Committee meeting;
- 33) “IFC” means the International Finance Corporation, a member of the World Bank Group;
- 34) “Independent Third Party” means an entity, such as an environmental auditing company, which is independent from the IBRD, the relevant Host Country and the relevant Project Entity;
- 35) “Initial Participants” means those Participants that entered into Participation Agreements with the Trustee on or before the First Closing;
- 36) “Instrument” means this Instrument establishing the Prototype Carbon Fund;
- 37) “Kyoto Protocol” or “Protocol” means the Protocol to the United Nations Framework Convention on Climate Change adopted at the Third Conference of the Parties to the United Nations Framework Convention on Climate Change in Kyoto, Japan on December 11, 1997;
- 38) “Letter of Endorsement” means the letter from the Host Country to the Trustee confirming that the Host Country is prepared to endorse further development of a Project;
- 39) “Monitoring” means activities pursuant to which the Project Entity or another person collects and records data which assess the GHG Reductions resulting from a Project pursuant to the terms of the Monitoring and Verification protocol for that Project;

- 40) “Participant” means any Eligible Private Sector Participant or Eligible Public Sector Participant that has signed a Participation Agreement, or any assignee thereof pursuant to the terms of this Instrument;
- 41) “Participants’ Committee” means the committee described in Article VI of this Instrument;
- 42) “Participation Agreement” means an agreement between a Participant and the Trustee with respect to the Participant’s contribution to, and participation in, the Fund;
- 43) “Person” means and includes individuals, corporations, partnerships, trusts, unincorporated associations, unincorporated organizations, joint ventures and other entities, and governments and agencies and political subdivisions thereof;
- 44) “Private Sector Participant” means a Participant that is a person, other than a Public Sector Participant, organized in a country Party to the UNFCCC;
- 45) “Project” means an activity for which the Trustee has agreed to provide financing under Project Agreements, or project resources, in the form of the purchase of Emission Reductions, to Recipients under Project Agreements ;
- 46) “Project Agreement(s)” means a Host Country Agreement, or a Host Country Agreement and a Project Entity Agreement;
- 47) “Project Concept Note” means a brief description of a Project prepared by the Fund Management Unit that is to be presented for consideration by the Participants’ Committee;
- 48) “Project Entity” means one or more persons with which the Trustee has entered into a Project Entity Agreement;
- 49) “Project Entity Agreement” means an agreement between the Trustee and a person defined as a Project Entity that provides, *inter alia*, for the implementation, operation and Monitoring of a Project;
- 50) “Project Portfolio Criteria” means the criteria specified as such in Schedule 1 to the Instrument;
- 51) “Project Selection Criteria” means the criteria specified as such in Schedule 1 to the Instrument;
- 52) “Public Sector Participant” means a Participant that is a government, agency, ministry or other official entity of a country Party to the UNFCCC;
- 53) “Quantified Emission Limitation or Reduction Commitment” or “QELRO” means the commitment by countries listed in Annex B to reduce Greenhouse Gas emissions by the percentage provided for in such Annex from a base year established pursuant to the Kyoto Protocol;
- 54) “Recipient(s)” means a Host Country, or a Host Country and a Project Entity;

- 55) “Second Closing” means the additional closing of the Fund that may occur on or about July 14, 2000, or such later date as may be determined by the Trustee in consultation with the Participants;
- 56) “Standby Contribution” means the contribution made by a Participant to cover any contractual commitment under a Project Entity Agreement which exceeds the aggregate amount of contributions (other than Standby Contributions) provided under all Participation Agreements available to purchase Emission Reductions;
- 57) “Third Party Project” means a Project that originates from outside the World Bank Group's project pipeline;
- 58) “Trustee” means the IBRD acting not in its individual or personal capacity but solely in its capacity as trustee of the Fund;
- 59) “UCF” or “Umbrella Carbon Facility” means the carbon fund of that name established by the Bank;
- 60) “UCF Emission Reductions” means Emissions Reductions as defined in the UCF Instrument;
- 61) “UCF Fee” means the fee payable to the UCF Trustee pursuant to the UCF Instrument;
- 62) “UCF Instrument” means the instrument dated December 6, 2005 that establishes the UCF;
- 63) “UCF Participation Agreement” means an agreement between the Trustee and the UCF Trustee with respect to the Trustee’s participation in a UCF Tranche;
- 64) “UCF Tranche” means a tranche of the UCF;
- 65) “UCF Trustee” means the Bank, acting not in its individual or personal capacity, but solely in its capacity as trustee of the UCF;
- 66) “Underlying Project” means a project financed by the IBRD, the IFC or a third party for which the Fund agrees to provide supplementary financing or resources through a Project;
- 67) “UNCITRAL” means the United Nations Commission on International Trade Law;
- 68) “United Nations Framework Convention on Climate Change” or “UNFCCC” means the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992;
- 69) “Validation” means the assessment by a third party of a Project design, including its Baseline, before the Project’s implementation;
- 70) “Verification” means the periodic auditing of the data recorded by the person responsible for Monitoring to verify the amount of Emission Reductions achieved by the Project in relation to its Baseline and the Project’s compliance with other relevant requirements;

- 71) “World Bank Group” means the International Bank for Reconstruction and Development, the International Finance Corporation, the International Development Association and the Multilateral Investment Guarantee Agency;
- 72) “World Bank Group Operational Policies and Procedures” means the environmental and social operational polices and procedures of the institution of the World Bank Group which conducts the environmental and social review of the Project and which are in effect at the time of such review and the operational policies and procedures of the IBRD in other areas.

ARTICLE II ESTABLISHMENT

Section 2.1. Establishment. The Prototype Carbon Fund is hereby established as a trust fund of the IBRD, constituted of the funds that shall from time to time be contributed in accordance with the provisions of this Instrument, and any other Fund Property. The IBRD shall be the Trustee of the Fund and in this capacity shall, as legal owner, hold in trust the Fund Property which constitutes the Fund, and manage and use the Fund Property only for the purposes of and in accordance with the provisions of this Instrument, keeping the Fund Property separate and apart from all other accounts and assets of, or administered by, the IBRD. Except as expressly provided in this Instrument, any amount of the Fund Property used to participate in the UCF, shall be subject to the terms of the UCF Instrument instead of the terms of this Instrument.

Section 2.2. Trust Only. It is the intention of the parties to this Instrument to create only the relationship of trustee and beneficiary between the Trustee and each Participant and not to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a trust. Nothing in this Instrument shall be construed so as to make the Participants, either by themselves or with the Trustee, partners or members of a joint stock association.

Section 2.3. Authority to Enter into Participation Agreements; Maximum Size of Fund. The Trustee may enter into Participation Agreements with Initial Participants during the period commencing on a date to be determined by the Trustee but not earlier than November 15, 1999, and ending on and including the date of the First Closing. The Trustee may, thereafter, at its discretion, enter into Participation Agreements with Additional Participants during the period commencing after the First Closing and ending on and including the date of the Second Closing; provided that the aggregate amount of the contributions (other than Standby Contributions) to be provided under all of the Participation Agreements shall not exceed U.S.\$180 million. Except as otherwise provided in this Instrument, the Trustee shall not enter into any Participation Agreements or accept any new contributions from any Participant after the Second Closing.

ARTICLE III
OPERATIONAL PRINCIPLES AND OPERATIONS OF THE FUND

Section 3.1. Operational Principles. The operational principles of the Fund are: (i) to provide resources for Projects which are intended to generate High Quality Emission Reductions and to participate in the UCF; (ii) to endeavor to effect an equitable sharing between the Participants and the Host Countries of any Emission Reductions and other benefits arising from Projects; and (iii) to disseminate broadly the knowledge gained by the Trustee in the development of the Fund and the implementation of Projects.

Section 3.2. Operations of the Fund. The Fund shall finance Projects and the participation in the UCF intended to achieve GHG Reductions in return for (i) the exclusive right as against any third party, other than a person authorized under the regulatory framework of the UNFCCC and/or the Kyoto Protocol, to have an Independent Third Party certify the quality and quantity of any GHG Reductions generated by the Projects; and (ii) the right to have transferred to Participants an agreed amount of any Emission Reductions generated. The operations of the Fund may include the provision of project resources in the form of the purchase of Emission Reductions, either directly or through intermediaries. The Trustee shall also facilitate the transfer of any agreed amount of any Emission Reductions achieved by each Project from the Recipient to the Participants and UCF Emission Reductions, on a pro rata basis, provided that any Emission Reductions and UCF Emission Reductions acquired with the proceeds of Standby Contributions shall be transferred, on a pro rata basis, exclusively to the Participants that provided Standby Contributions.”

Section 3.3. Selection of Projects. The Trustee shall select Projects and enter into a UCF Participation Agreement in accordance with the Project Selection Criteria and with the intent, over the term of the Fund, of meeting the Project Portfolio Criteria. No material changes may be made to the Project Selection Criteria without the prior consent at a Participants’ meeting of Participants holding not less than two-thirds of the votes of the Fund.

Section 3.4. Compliance with World Bank Group Operational Policies and Procedures. The operations of the Fund shall comply with the World Bank Group Operational Policies and Procedures, except to the extent that such operational policies and procedures may be inconsistent with the guidelines, modalities and procedures adopted by the Parties to the UNFCCC regarding the procurement of services by Independent Third Parties, in which case the latter shall govern.

ARTICLE IV
CONTRIBUTIONS FROM PARTICIPANTS

Section 4.1. Payment of Contributions.

- a) Each Public Sector Participant will be required to contribute U.S.\$10 million to the Fund and each Private Sector Participant will be required to contribute U.S.\$5 million to the Fund. Each Initial Participant's and Additional Participant's required contribution to the Fund will be paid at the First Closing and the Second Closing, respectively, through the issuance and delivery of a promissory note made payable to the Trustee on demand. At the First Closing and Second Closing, the Trustee will provide Participants with an anticipated schedule of demands for payment of their respective promissory notes. However, such schedule of payments will remain at the sole discretion of the Trustee, having regard to the financial requirements of the Fund including the anticipated requirements for payments to Recipients under Project Agreements, payments to the UCF Trustee in accordance with the UCF Instrument and UCF Participation Agreement for payments to recipients under project agreements for the UCF. The Trustee will make demands for payment by Participants under the promissory notes on a pro-rata basis; provided, however, that the Trustee will only make demands for payment by Participants under promissory notes for Standby Contributions once the Trustee has made demands for payment in full under all the promissory notes for other contributions to the Fund and, in such case, the Trustee will make demands for payment by Participants that have provided Standby Contributions under the promissory notes for such Standby Contributions on a pro-rata basis; provided further, that the failure of any Participant to make any such payment when due shall not relieve any other Participant of its obligation to make its respective payment.. No interest will be payable by Participants on any portion of the required contribution not yet demanded by the Trustee or by the Fund on any prepaid portion of the required contribution. The first payment from Initial Participants will be due within 30 days following the First Closing, and the first payment from Additional Participants and a further payment from Initial Participants, if any, will be due within 30 days following the Second Closing. The Trustee will provide Participants with at least 30 days' notice of all subsequent payment demands.
- b) Notwithstanding Section 4.1 (a) above, for the purpose of payment requirement under the UCF, Participants may issue a promissory note in Euros to cover the Participant's pro rata share in the Fund's participation in the UCF.

Section 4.2. Payment of Premium. All Participation Agreements entered into after the First Closing shall provide that the Additional Participants shall, in addition to their required contribution, pay a premium in an amount equal to 2.5% of the amount of such contribution.¹ The premium shall be payable on the same terms as the contribution. The premium shall not be taken into account in determining the Participant's interests in the Fund or in the calculation of the size of the Fund.

ARTICLE V
PARTICIPANTS' MEETINGS

Section 5.1. Participants' Meetings. A meeting of the Participants shall be held annually, at such date and time and in such place as shall be determined by the Trustee. At each such annual meeting, the Participants may review the operations of the Fund and existing Projects to provide the Trustee with general policy and strategic guidance on the operations of the Fund and shall have the following powers and duties:

- a) reviewing and approving the business plan and annual budget for the Fund for the next fiscal year;
- b) reviewing and approving by a two-thirds majority of the votes of the Fund any amendments to the Project Selection Criteria or the Project Portfolio Criteria, other than amendments that in the Trustee's opinion are merely technical in nature; provided, that any such amendment shall be consistent with World Bank Group Operational Policies and Procedures in the opinion of the Trustee and otherwise be acceptable to the Trustee;
- c) providing general guidance to the Trustee on the selection of Projects and participation of the Fund in the UCF;
- d) commencing with the second annual Participants' meeting, electing the members of the Participants' Committee to serve until the next annual Participants' meeting;
- e) for each of the first ten annual Participants' meetings, reviewing and, if acceptable, approving the recommendation, if any, of the Participants' Committee regarding a performance-linked payment to be paid to the Trustee for the preceding fiscal year pursuant to Section 11.3 hereof;
- f) at the first annual Participants' meeting, reviewing and authorizing the payment to the IBRD of any development costs related to the Fund's establishment not presented at the organizational Participants' meeting; and
- g) taking any other action that may be taken by the Participants under this Instrument.

Special meetings of the Participants may be called at any time by the Trustee for any purpose consistent with this Instrument, including without limitation voting on the removal of Ineligible Participants pursuant to Section 9.2 hereof. At any such special meeting, one or more Participants may, if all of the other Participants participating in the meeting consent, participate by means of such telephone or other communications facilities as permit all Participants participating in the meeting to hear each other or participate by other electronic means, and a

Participant participating in such a meeting by such means is deemed for the purposes of this Instrument to be present at that meeting.

Section 5.2. Organizational Meeting. The Trustee shall convene an organizational Participants' meeting within 14 days of the First Closing, at such date and time and in such place as shall be determined by the Trustee. At such organizational Participants' meeting, the Participants shall have the following powers and duties:

- a) reviewing and approving the business plan and budget for the Fund for the period from the First Closing to the last day of the fiscal year of the Fund in which the organizational Participants' meeting is held;
- b) electing the members of the Participants' Committee to serve for a term running from the date of the organizational Participants' meeting until the second annual Participants' meeting; and
- c) reviewing and authorizing the payment to the IBRD of the development costs related to the Fund's establishment.

Section 5.3. Notice. The Trustee shall provide each Participant and each Host Country Observer with written notice of a Participants' meeting not less than 30 days before the date of the meeting unless such notice has been waived by the intended recipient. Such notice shall state the place, date and time of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Notwithstanding this Section, written notice of the organizational Participants' meeting shall be given to the Participants and each Host Country Observer on the First Closing.

Section 5.4. Voting. Votes shall be allocated on the basis of one vote for each one percent of each Participant's percentage share of the total contribution to the Fund (exclusive of any premium, voluntary supplementary contributions or Standby Contribution paid) on each matter submitted for a vote at a meeting of the Participants. Except as otherwise provided, every matter submitted to a Participants' meeting shall be decided by the majority of the votes cast by Participants represented at such Participants' meeting. Notwithstanding the foregoing, after the Trustee has made demands for payment in full under all the promissory notes for contributions to the Fund other than Standby Contributions, the Participants that have provided Standby Contributions shall be entitled to one vote for each U.S. dollar of its Standby Contributions; provided, however, that such votes based on Standby Contributions shall be only given and exercisable only on the matters related solely to Standby Contributions.

Section 5.5. Quorum. Participants represented at a meeting of the Participants holding a majority of all the votes of the Fund shall constitute a quorum for the transaction of business at a Participants' meeting.

Section 5.6. Action Without Meeting. Action required or permitted to be taken at a Participants' meeting may be taken without a meeting if a consent in writing, setting forth the

action to be so taken, has been circulated to all of the Participants and Host Country Observers and signed in one or more counterparts by Participants holding not less than two-thirds of the votes of the Fund or, in the case of an action requiring unanimous approval, by all Participants.

Section 5.7. Proxies. Any Participant entitled to vote at a Participants' meeting may vote by proxy if a duly executed proxy has been received by the Trustee for verification prior to the meeting.

ARTICLE VI PARTICIPANTS' COMMITTEE

Section 6.1. Participants' Committee.

(a) At the organizational Participants' meeting, the Participants will establish a Participants' Committee, which shall be comprised of seven. The members of the Participants' Committee shall be officers, directors, employees or officials of Participants; provided, that not more than one member shall be a representative of the same Participant. The members of the Participants' Committee shall be elected by majority vote of the votes cast at a Participants' meeting. At the organizational Participants' meeting, the Participants shall elect members of the Participants' Committee for a term running from such meeting to the date of the second annual Participants' meeting. At the second annual Participants' meeting and at each annual Participants' meeting thereafter, the Participants shall elect members of the Participants' Committee to be members until the next succeeding annual Participants' meeting. The Participants' Committee shall elect one of its members to serve as chairperson until such time as such member has ceased to be a member of the Participants' Committee or until such member's successor as chairperson has been elected.

(b) Each member of the Participants' Committee shall serve until the member's successor shall have been elected; provided, that at the time a member of the Participants' Committee ceases to be an officer, director, employee or official of a Participant, such member's term as a member of the Participants' Committee shall cease. That Participant may appoint another officer, director, employee or official of such Participant to fill any vacancy in the Participants' Committee resulting from the resignation, death or incapacity of a member that is or was an officer, director, employee or official of such Participant, failing which, after 30 days, any vacancy in the Participants' Committee shall be filled by the affirmative vote of a majority of the remaining members of the Participants' Committee. A member elected to fill such a vacancy shall be elected for the unexpired term of the member's predecessor in office. At any time, any member of the Participants' Committee may be removed by the Participant for which such member is a representative and replaced with another representative of that Participant.

(c) The Participants' Committee elected at the organizational Participants' meeting shall be comprised of four members who are officials of Public Sector Participants and three members who are officers, directors or employees of Private Sector Participants. The Participants' Committee elected at the second annual Participants' meeting shall be comprised of three members who are officials of Public Sector Participants and four members who are

officers, directors or employees of Private Sector Participants. Thereafter, the representation of Public Sector Participants and Private Sector Participants on subsequent Participants' Committees will alternate annually between three and four members, respectively, unless the Participants shall decide unanimously to adopt an alternative procedure.

Section 6.2. Actions of the Participants' Committee. Each member of the Participants' Committee shall be entitled to cast one vote, and a majority of the members of the Participants' Committee present at a meeting shall constitute a quorum for the transaction of business. Every matter submitted to the Participants' Committee shall be decided by the majority vote of the votes cast at the meeting; provided, that the actions referred to in Section 6.4(c) and (e) hereof shall be approved unless at least two members of the Participants' Committee object within 30 days of the presentation, by the Trustee, of the relevant Project Concept Note to the Participants.

Section 6.3. Meetings of the Participants' Committee. Meetings of the Participants' Committee shall be called by the chairperson or the Trustee. Each member of the Participants' Committee, each Host Country Observer and the Trustee shall be given at least 14 days' written notice of any Participants' Committee meeting unless such notice has been waived by the intended recipient. Such notice shall specify the matters to be considered and shall designate the place, date and time of the meeting. One or more members of the Participants' Committee may, if all of the other members of the Participants' Committee participating in the meeting consent, participate in a meeting of the Participants' Committee by means of such telephone or other communications facilities as permit all members participating in the meeting to hear each other or participate by other electronic means, and a member of the Participants' Committee participating in such a meeting by such means is deemed for the purposes of this Instrument to be present at that meeting. No member of the Participants' Committee shall receive any compensation from the Fund for its services as such, nor shall any member of the Participants' Committee be entitled to payment or reimbursement from the Fund or Trustee for travel or other costs incurred in attending meetings of the Participants' Committee.

Section 6.4. Powers and Duties of Participants' Committee. The Participants' Committee shall have the following powers and duties:

- a) providing general advice to the Trustee on issues regarding the operation of the Fund;
- b) reviewing the operations of the Fund and advising the Trustee on the extent to which the Project Agreements negotiated and to be entered into by the Trustee accord with the Project Selection Criteria;
- c) reviewing Project Concept Notes for each proposed Project in order to determine whether to object to the inclusion of such Project in the Fund's portfolio;
- d) for each of the first ten years of the Fund, providing recommendations to the annual Participants' meeting regarding the making of a performance-linked payment to the Trustee pursuant to Section 11.3 of this Instrument for the preceding fiscal year of the Fund;

- e) determining whether to participate in a UCF Tranche and the amount of such participation; and
- f) for any fiscal year, authorizing expenditures, other than those incurred pursuant to Section 8.1(i) and Article XII of this Instrument, which exceed the total annual budget previously approved by the Participants for that fiscal year by more than 10%.

ARTICLE VII HOST COUNTRY COMMITTEE

Section 7.1. Host Country Committee. The Trustee shall invite each Host Country and each potential Host Country that has signed a Letter of Endorsement or a memorandum of understanding with the Trustee with respect to the Fund to appoint a representative to serve on the Host Country Committee. Such Host Country or potential Host Country may also invite one Project Entity or potential Project Entity which is expected to implement a Project in its territory to appoint a representative to attend meetings of the Host Country Committee as a non-voting observer.

Section 7.2. Powers of the Host Country Committee. The Host Country Committee shall have the following powers:

- a) providing advice to the Trustee, copied to the Participants, on proposed amendments to the Project Selection Criteria and Project Portfolio Criteria;
- b) providing advice to the Trustee, copied to the Participants, on the composition of the Project portfolio and providing views on the consistency of the Project portfolio with the regulatory framework of the UNFCCC;
- c) providing advice to the Trustee, copied to the Participants, on how to effect an equitable sharing between the Participants and the Host Countries of any Emission Reductions and other benefits arising from Projects;
- d) providing advice to the Trustee, copied to the Participants, on Project implementation, including the processes of Validation, Verification and Certification; and
- e) providing advice to the Trustee on the development and improvement of vehicles for the dissemination of the knowledge gained by it in the development of the Fund and the implementation of Projects.

Section 7.3. Election of Chairperson and Host Country Observers.

- (a) At its first meeting, the Host Country Committee shall elect one of its members as chairperson of the Host Country Committee to serve as such until the chairperson's successor

has been elected. The Host Country Committee shall also elect three of its members to serve as Host Country Observers at Participants' meetings and one of its members to serve as a Host Country Observer at Participants' Committee meetings, until each such member's successor has been elected. Such Host Country Observers shall be entitled to be present at all Participants' meetings or Participants' Committee meetings, as the case may be. The Host Country Observers shall receive no compensation from the Fund or Trustee for their services as such nor shall they be entitled to payment or reimbursement from the Fund or Trustee for travel or other costs incurred in attending the relevant meetings.

(b) Until such time as the initial Host Country Observers have been elected, the Trustee shall designate and invite specific members of the Host Country Committee to attend meetings of the Participants and meetings of the Participants' Committee.

Section 7.4. Meetings of the Host Country Committee. Meetings of the Host Country Committee shall be held at least annually, at such dates and times and in such places as shall be determined by the Trustee to permit the Host Country Committee to interact with the Participants.

Section 7.5. Notice. The Trustee shall provide each member of the Host Country Committee with written notice of a Host Country Committee meeting not less than 30 days before the date of the meeting unless such notice has been waived by the intended recipient. Such notice shall state the place, date and time of the meeting.

ARTICLE VIII ADMINISTRATION

Section 8.1. Authorization and Administration. The administration of the Fund shall be governed by the following provisions:

- a) The Trustee shall hold all Fund Property in trust for the benefit of the Participants. The Trustee shall manage and use Fund Property only for the purposes of, and in accordance with, the provisions of this Instrument, keeping it separate and apart from the assets of the IBRD, the IFC and the Association but may commingle it for investment purposes with other trust fund assets maintained by the IBRD, the IFC or the Association. At its discretion, the Trustee may at any time exchange any funds received from a Participant or any other Fund Property for one or more other currencies in order to facilitate the administration of the Fund.
- b) The Trustee shall exercise the same care in the discharge of its functions under this Instrument as the IBRD exercises with respect to its own affairs and shall not have any additional obligation in respect hereof. The privileges and immunities accorded to the IBRD shall apply to the Property, archives, operations and transactions of the Fund. The obligations of the Trustee pursuant to this Instrument are not obligations of any government.

- c) The Trustee is authorized to enter into Participation Agreements and accept contributions in the required amount from Participants at any time after a date to be determined by the Trustee, but not earlier than November 15, 1999, through the Second Closing, as provided in this Instrument. The Trustee is also authorized to enter into UCF Participation Agreement. The Trustee shall not be authorized to recognize more than one person joining together as a joint Participant. Participation Agreements shall be in form and substance satisfactory to the Trustee. The Trustee shall use the contributions to the Fund and the income earned from the investment of such contributions pending disbursement solely for the purposes set out in this Instrument.
- d) The Trustee may, at any time and with the approval of Participants holding not less than two-thirds of the votes cast at any meeting of the Participants, solicit an amount of voluntary supplementary contributions, including Standby Contributions, from Participants. No Participant will have any obligation to contribute such additional amount. Any such voluntary supplementary contribution (other than Standby Contributions) made by a Participant will be taken into account in determining the Participants' pro rata interests in the Fund, and the pro rata interest of a Participant may be reduced or increased depending upon the amount, if any, of such voluntary supplementary contributions. Once the Trustee has made demands for payment in full under all promissory notes for contributions to the Fund other than Standby Contributions, Participants' pro rata interest in Emission Reductions acquired with the proceeds of such Standby Contributions will be determined solely on the basis of the Standby Contributions of Participants. No premium (as described above) will be payable by Participants in respect of any supplementary contributions. The aggregate amount of contributions (other than Standby Contributions) to be made to the Fund, including any voluntary supplementary contributions (other than Standby Contributions) under this Section, will under no circumstances exceed U.S.\$180 million (exclusive of any premium paid by Participants).
- e) The Trustee is authorized to perform all acts and enter into all contracts as it shall deem necessary or desirable to accomplish the purposes of the Fund, including, without limitation, Project Agreements and agreements with the UCF Trustee. Subject to the terms of this Instrument, the selection of Recipients and Projects, the preparation and negotiation of Project Agreements and the monitoring and supervision of Projects shall be the responsibility solely of the Trustee.
- f) The Trustee is authorized to invest funds held by the Fund pending disbursement in such manner as it may decide. All the income from such investments shall be credited to, and used exclusively for the purposes of, the Fund. Without limiting the foregoing, the Trustee shall have the power to invest Fund Property in such securities, instruments and other obligations as are authorized investments for other trust fund assets maintained by the IBRD, the IFC or the Association or retain Fund assets in cash; from time to time to change the investments of the assets of the Fund; and to exercise any and all rights, powers and privileges of

ownership or interest in respect of any and all such investments of any kind and description, including, without limitation, the right to consent and otherwise act with respect thereto, with power to designate one or more individuals, firms, associations or corporations to exercise any of said rights, powers and privileges in respect of any of said instruments. The Trustee shall not be limited to investing in obligations maturing before the possible termination of the Fund, nor shall the Trustee be limited by any law limiting the investments which may be made by fiduciaries.

- g) To ensure the efficient operation of the Fund's cash management and investment transactions, the Trustee shall have the power to borrow from commercial banks and other financial institutions, for periods of up to thirty days, in any currency or currency unit.
- h) The Trustee shall have the power to incur and pay any costs or expenses which in its opinion are necessary or desirable to carry out any of the purposes of the Fund, and to make payments from Fund Property to itself as Trustee to the extent provided in this Instrument; provided, that without the approval of the Participants' Committee, such costs or expenses, other than those incurred pursuant to Section 8.1(i) and Article XII of this Instrument, shall not exceed the total annual budget for the Fund previously approved by the Participants by more than 10%.
- i) The Trustee shall have the power to collect all property due to the Fund and to pay all claims against Fund Property. The Trustee shall have the power to engage in and to prosecute, defend, compromise, abandon, or adjust, by arbitration, or otherwise, any actions, suits, proceedings, disputes, claims, and demands relating to the Fund, including without limitation those relating to Project Agreements, and out of the Property of the Fund to pay or to satisfy any debts, claims or expenses incurred in connection therewith, including those of litigation, and such power shall include without limitation the power of the Trustee to dismiss any action, suit, proceeding, dispute, claim, or demand, derivative or otherwise, brought by any person, including a Participant in its own name or the name of the Fund, whether or not the Fund or the Trustee may be named individually therein or the subject matter arises by reason of business for or on behalf of the Fund.
- j) The Trustee shall have the power to: (i) employ or contract with such individuals or persons as it may deem desirable to conduct the business of the Fund; (ii) enter into joint ventures, partnerships and any other combinations or associations; (iii) subject to the terms of this Instrument, elect and remove such officers and appoint and terminate such agents or employees of the Fund as it considers appropriate; (iv) purchase and pay for out of Fund Property, to the extent available on commercially reasonable terms, such insurance as the Trustee deems desirable to protect it, the IBRD, the Participants and any other individual or person entitled to indemnification by the Fund; and (v) make amendments to the Project Selection

Criteria or Project Portfolio Criteria that in its opinion are merely technical in nature.

- k) The Trustee may from time to time appoint or otherwise engage one or more banks or trust companies or other financial institutions to serve as escrow agent(s) on behalf of the Fund in respect of Fund Property that may be deposited into an escrow account pending disbursement.
- l) Except as otherwise provided in this Instrument, the Trustee shall have the exclusive power to conduct the business of the Fund and carry on its operations wheresoever the Trustee deems necessary, proper or desirable in order to promote the interests of the Fund. Any determination made by the Trustee in good faith as to what is in the interests of the Fund shall be conclusive. In construing the provisions of this Instrument, the presumption shall be in favor of a grant of power to the Trustee. The enumeration of any specific power herein shall not be construed as limiting the aforesaid power. Such powers of the Trustee may be exercised without order of or resort to any court or other authority.
- m) Nothing in this Instrument shall preclude the IBRD from acting for its own account and from entering into or being interested in any contract or transaction with any person, including, but not limited to, any Participant, Host Country or Project Entity, with the same rights as it would have had if it were not acting as the Trustee, and the IBRD need not account for any profit therefrom.
- n) Any power, duty or discretion to be exercised by the Trustee pursuant to the terms of this Instrument shall, unless otherwise provided, be exercised by the Trustee in its sole discretion.

Section 8.2. Project Validation, Verification and Certification of Greenhouse Gas Reductions. The Trustee may from time to time enter into one or more contracts with persons for such services, and on such terms and conditions, as the Trustee shall consider appropriate with respect to Project Validation, as well as for Verification and Certification of GHG Reductions. Without limiting the foregoing, such services may include:

- a) Validation of the Project's design, primarily on the basis of the Project Appraisal Document and other relevant documentation prepared during Project development;
- b) Verification of GHG Reductions and of Project compliance with relevant requirements specified in the Project Entity Agreements;
- c) Certification of GHG Reductions by operational entities designated by the Parties to the UNFCCC or, pending the adoption of the relevant guidelines, modalities and procedures, by an Independent Third Party; and

- d) Submission of periodic reports to the Trustee concerning (i) actions recommended to be taken by the Trustee or the Recipient to address problems relating to Project specifications, criteria or objectives; (ii) risks that may materialize in future Verification periods; and (iii) any suggested means of improving Project performance.

Section 8.3. Administrative Services. The Trustee may from time to time contract with one or more persons (including with related persons such as the IBRD) for goods, services, and personnel whereby such persons will provide to the Trustee or to the Fund, goods, services or administrative personnel on such terms and conditions as the Trustee may determine.

Section 8.4. Registrar, Transfer Agent and/or Custodian Services. The Trustee may from time to time engage one or more persons to act as registrar, transfer agent and/or custodian on behalf of the Fund in respect of Fund Property, instruments evidencing entitlement to Emission Reductions, or other interests of the Participants, on such terms and conditions as the Trustee may determine.

Section 8.5. Parties to Contract. Any payment, transaction or contract which is authorized under this Instrument may be made or entered into, as the case may be, with any person, and the validity of any such payment, transaction or contract shall not be affected by reason of the existence of any relationship between the Trustee and any such person; nor shall any person holding such relationship be liable merely by reason of such relationship for any loss or expense to the Fund under or by reason of said payment, transaction or contract or accountable for any profit realized directly or indirectly therefrom.

Section 8.6. Limits on Trustee's Powers. Notwithstanding any other provision of this Instrument, the Trustee shall not:

- a) incur any costs or expenses, other than those incurred pursuant to Section 8.1(i) and Article XII of this Instrument, for the account of the Fund in any fiscal year or thereafter which exceed the total annual budget previously approved by the Participants by more than 10%, excluding development costs reimbursable under Section 11.2 or any UCF Fees,² without the approval of the Participants' Committee; or
- b) commit Fund Property to the preparation of a Project unless the Trustee has presented a Project Concept Note to the Participants' Committee and less than two members of the Participants' Committee have objected to the preparation of the Project within 30 days thereafter.

Section 8.7. Fund Management Unit. A Fund Management Unit shall be established by the Trustee. The Fund Manager shall head the Fund Management Unit as the chief executive officer and shall have overall responsibility for the day-to-day operations of the Fund, including,

without limitation: (i) overseeing the operations of the Fund Management Unit, including the selection of its staff; (ii) representing the Fund's interests at international fora and maintaining contact with Participants and Recipients; (iii) overseeing the selection of Projects, reviewing Projects during their appraisal, implementation and operation, and negotiating Project Agreements and the Fund's participation in the UCF; (iv) ensuring compliance with Project Selection Criteria and Project Portfolio Criteria; (v) seeking to ensure consistency, to the extent possible, of the Fund's operations with the regulatory framework of the UNFCCC and the World Bank Group Operational Policies and Procedures; and (vi) collecting, organizing, managing and disseminating the knowledge and information obtained by the Trustee in the course of its operation of the Fund.

ARTICLE IX DEFAULT AND REMOVAL OF PARTICIPANTS

Section 9.1. Default in Paying Installment.

(a) If, after demand by the Trustee, a Participant (the "Defaulting Participant") fails to pay any installment of a contribution (or any part thereof) when due and such failure continues for 15 days, the Trustee shall notify the Defaulting Participant and the other Participants of such default. If, after 30 days from such notification, the Defaulting Participant fails to pay such amount in full, the Trustee will so notify the other Participants. Any of the other Participants may, between 15 and 30 days following such notice from the Trustee, notify the Trustee that it intends to purchase the Defaulting Participant's interest in the Fund. If only one Participant so notifies the trustee, the Trustee shall notify such Participant that it may purchase the Defaulting Participant's interest in the Fund by making payment (i) to the Defaulting Participant of an amount equal to 50% of the fair market value (as determined by an independent third party selected by the Trustee) of the Defaulting Participant's pro rata interest in the Fund (the "Purchase Price"), less any expenses incurred by the Trustee or the Fund in connection with the sale, and (ii) to the Trustee of the amount of the unpaid installment due to the Fund from the Defaulting Participant.

(b) If more than one Participant notifies the Trustee of an intention to purchase the Defaulting Participant's interest in the Fund, then the Trustee shall so notify each such Participant that elects to purchase a portion of the Defaulting Participant's interest in the Fund, and each such Participant may purchase that portion of the Defaulting Participant's interest that corresponds to the electing Participant's proportion of the interest of all the electing Participants' interests in the Fund.

(c) If no Participant notifies the Trustee of an intention to purchase the Defaulting Participant's interest in the Fund, the Trustee may arrange for a private sale of such interest to a person acceptable to the Trustee.

(d) The Defaulting Participant shall receive from the proceeds of the sale an amount equal to the lesser of the sale proceeds or the Purchase Price, less any expenses incurred by the Trustee or the Fund in connection with the sale. Upon disposition of the Defaulting Participant's interest as described above, the Defaulting Participant shall be deemed to have transferred to the purchaser(s) all of its rights and interest in the Fund, including without limitation, any further distributions of Fund Property which it is entitled to receive, and the Trustee shall consent to such transfer.

(e) If there is no sale of a Defaulting Participant's interest in the Fund within 90 days following the default of such Defaulting Participant, such Defaulting Participant shall thereupon, without any further notice or action by the Trustee, be deemed to have forfeited all of its rights and interest in the Fund, including, without limitation, the right to further distributions of Fund Property which it is entitled to receive, and such rights and interest shall thereupon, without any further notice or action by the Trustee, be cancelled.

Section 9.2. Removal of Ineligible Participants.

(a) If, following the development by the Parties to the UNFCCC and/or the Kyoto Protocol of criteria for the financing of Article 6 or Article 12 Projects or for the transfer of Emission Reductions, in the opinion of the Trustee the continued participation of any Participant (the "Ineligible Participant") will prevent the transfer to the Participants of Emission Reductions which are capable of being credited towards Annex I Countries' QELROs and/or prevents the Fund from financing Article 6 or Article 12 Projects, the Trustee, having obtained approval of a two-thirds majority of the votes of the Fund, exclusive of the Ineligible Participant, may require the removal of the Ineligible Participant from the Fund and shall notify the Participants of such decision. Any of the other Participants may, between 15 and 30 days following such notice from the Trustee, notify the Trustee that it intends to purchase the Ineligible Participant's interest in the Fund. If only one Participant so notifies the Trustee, the Trustee shall notify such Participant that it may purchase the Ineligible Participant's interest in the Fund by making payment to the Ineligible Participant of an amount equal to the fair market value (as determined by an independent third party selected by the Trustee) of the Ineligible Participant's pro rata share of the Fund (the "Purchase Price").

(b) If more than one Participant notifies the Trustee of its intention to purchase the Ineligible Participant's interest in the Fund, then the Trustee will so notify each such Participant that does elect to purchase a portion of the Ineligible Participant's interest and each such Participant may purchase that portion of the Ineligible Participant's interest that corresponds to the electing Participants' proportion of the interest of all the electing Participants' interest in the Fund.

(c) If no Participant notifies the Trustee of an intention to purchase the Ineligible Participant's interest in the Fund, the Trustee may arrange for a private sale of such interest to a purchaser acceptable to the Trustee.

(d) The Ineligible Participant shall receive from the proceeds of a sale referred to in Section 9.2(b) or (c) above an amount equal to the lesser of the Purchase Price or the amount

realized from such sale less the costs of such sale, as determined by the Trustee. The Ineligible Participant shall be deemed to have transferred to the purchaser(s) all of its rights and interest in the Fund, including any further distributions of Fund Property which it is entitled to receive, and the Trustee shall consent to such transfer.

(e) If there is no sale of an Ineligible Participant's interest in the Fund within 90 days following notice from the Trustee of the removal of the Ineligible Participant, the Trustee shall redeem the Ineligible Participant's interest in the Fund upon payment, out of then available Fund resources, of an amount equal to the Purchase Price (or a part thereof) as provided below. In the event that there are then insufficient available Fund resources to make such payment in full, the Purchase Price (or any part thereof remaining unpaid) shall be paid out of the proceeds of the next succeeding drawdown of the remaining Participants' funding obligations, in which case the Ineligible Participant shall be entitled to receive interest (at the prevailing rate as determined by the Trustee) on the Purchase Price remaining unpaid from the date of redemption of the Ineligible Participant's interest to the date payment is made. If there is no sale of a Ineligible Participant's interest as described above or if, within 120 days following notice from the Trustee of the removal of the Ineligible Participant, the Trustee determines that there are then insufficient available Fund resources and insufficient further funding obligations of the remaining Participants to pay the Purchase Price, such Ineligible Participant shall, without any further notice or action by the Trustee, be deemed to have forfeited all of its rights and interest in the Fund, including, without limitation, the right to Emission Reductions and any further distribution of Fund assets which it is entitled to receive, and such rights and interest shall be cancelled.

ARTICLE X FISCAL YEAR; RECORDS AND REPORTS

Section 10.1. Fiscal Year. The fiscal year of the Fund shall be the same as the fiscal year of the IBRD, which runs from July 1 to June 30 of the following year.

Section 10.2. Business Plan; Annual Budget. The Trustee shall prepare a business plan which shall include a proposed budget for the operation of the Fund for each fiscal year and submit such proposed business plan and budget to the Participants for their consideration at the annual Participants' meeting no later than 30 days prior to the commencement of such fiscal year, except that the business plan and budget to be submitted to the Participants at the organizational Participants' meeting shall be provided to the Participants at the First Closing.

Section 10.3. Financial Statements. The Trustee shall maintain separate record and ledger accounts in respect of the Fund. Within 90 days of each March 31, June 30, September 30 and December 31, the Trustee shall prepare financial statements with respect to the Fund and forward a copy to each of the Participants. The annual financial statements shall be audited financial statements. The Trustee shall cause such annual financial statement to be audited by the same auditors as are engaged by the IBRD from time to time and shall send a copy of the auditors' report to each of the Participants.

Section 10.4. Reports to Participants. The Trustee shall within 90 days of each June 30 and December 31 prepare a report on the operation of the Fund for the preceding six-month period and send a copy to each of the Participants. Each such report shall contain a Project status report, including a cash flow, cost analysis and disbursement schedule for the Projects, and information on any changes to the structure or operations of the Fund resulting from decisions of the Participants at the preceding annual Participants' Meeting. Each such Participants' report shall be accompanied by a statement of account for each Participant evidencing such Participant's share of Fund Property. The Trustee shall also provide the Participants promptly with any reports received from the UCF Trustee for participants in the UCF.

Section 10.5. Other Documentation. To the extent consistent with the IBRD's, the IFC's or a Third Party Project sponsor's policies, as applicable, with respect to disclosure of information, the Trustee shall provide the Participants with copies of all final documents prepared or received by the Trustee with respect to each Project (including, without limitation, Project Concept Notes, project concept documents, project appraisal documents, Validation reports and Verification reports) or a UCF project and, from time to time as warranted, in the Trustee's discretion, with information on good practices and lessons of experience learned by the Trustee from the development and operation of the Fund, including, without limitation, methodological research and procedures for Validation and Verification. The Trustee shall prepare and keep updated a specific "Project Information Document" for each Project which shall be made publicly available through IBRD's Public Information Center. The Trustee will report to the UNFCCC Secretariat on Projects in accordance with reporting requirements established by the Parties to UNFCCC as and when such requirements are established.

ARTICLE XI EXPENSES AND FEES

Section 11.1. Expenses. Fund Property shall be used by the Trustee to pay or reimburse it or any other person, including the IBRD and the IFC, for all costs and expenses incurred in the administration of the Fund, including without limitation: (i) all costs incurred in connection with the appraisal, selection and supervision of Projects; (ii) costs of office space and facilities, equipment and supplies and services, including, without limitation, the cost of utility services; (iii) communication expenses, including, without limitation, mailing, telephone and facsimile expenses; (iv) salaries, benefits, travel, accommodation and subsistence expenses of all personnel performing services in respect of the Fund, including, without limitation, those incidental to the appraisal, selection and supervision of Projects; (v) expenses for documentary and other relevant requirements, including fees relating to the UNFCCC and/or the Kyoto Protocol, Project approval and Validation, Verification and Certification processes; (vi) any payments required in connection with Article 12 Projects and, if the Parties to the UNFCCC deem it appropriate, in connection with Article 6 Projects; (vii) any compensation and expenses of any consultant, agent, adviser, contractor or subcontractor engaged by the Trustee for the Fund; (viii) costs of any insurance policies obtained in connection with, or on behalf of, the Fund, Participants or other persons; (ix) costs of legal, accounting and auditing services provided in respect of the Fund; and (x) public relations and representation costs.

Section 11.2. Fund Development Costs. Upon presentation to the Participants at the organizational meeting or a subsequent annual meeting of the Participants of an itemized statement thereof, Fund Property shall also be used by the Trustee to reimburse the IBRD for 80% of all costs and expenses incurred by the IBRD prior to the First Closing of the Fund in relation to the development of the Fund, including, without limitation: (i) the salaries and benefits of personnel of the IBRD; (ii) the travel, accommodation and subsistence expenses of personnel of the IBRD; (iii) compensation and expenses of any consultant, adviser, contractor, subcontractor, or auditor retained by the IBRD, including, without limitation, legal advisers, and (iv) costs and expenses associated with the preparation of all legal documentation in respect to the formation and operation of the Fund; provided however, that the aggregate amount of Fund Property so used for such purposes shall not exceed U.S.\$2 million, and the amount of Fund Property to be so used shall be paid to the IBRD in five equal annual installments. In addition to the foregoing, Fund Property may also be used by the Trustee to reimburse the IBRD for all costs and expenses incurred by the IBRD prior to the First Closing of the Fund in relation to the identification, preparation and appraisal of proposed Projects, provided the IBRD has obtained the express agreement of Participants therefor.

Section 11.3. Performance-linked Payment. During each of the first ten years of the Fund's operations, the IBRD may be entitled to receive a performance-linked payment of up to U.S.\$100,000, payable annually as soon as practicable after June 30 of each fiscal year, based upon the performance of the Fund during the preceding fiscal year. The amount of this payment, if any, to be paid to the Trustee for any fiscal year shall be determined by the Participants at their discretion at the annual Participants' meeting taking into account performance indicators determined by the Participants, including, without limitation, the number and quality of the Projects developed, compliance with the Project Selection Criteria and Project Portfolio Criteria, and the cost effectiveness of the Trustee's management of the Fund.

Section 11.4. UCF Fees The Fund Property shall be used for the payment of fees to the UCF Trustee in accordance with the UCF Instrument in respect of the Fund's participation in the UCF.

ARTICLE XII INDEMNIFICATION

Section 12.1. Indemnification of Trustee and IBRD. The Trustee, the IBRD, and any person who is, or has been, an officer, employee or agent of the Trustee, the IBRD or the Fund (each an "Indemnified Party") shall be indemnified out of Fund Property against any loss, liability, cost, claim, action, demand or expense (including, but not limited to, all reasonable costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) which any Indemnified Party may incur or which may be made against any of them arising out of or in connection with the Fund's activities (including, without limitation, any such claims arising from Participants' actions or failure to act pursuant to this Instrument), except as may result from the Trustee's gross negligence or willful misconduct.

Section 12.2. Indemnification of Participants. The Trustee will indemnify, out of Fund Property only, each of the Participants against any loss, liability, cost, claim, action, demand or

expense (including, but not limited to, all reasonable costs, charges and expenses paid or incurred in disputing or defending any of the foregoing) which a Participant may incur or which may be made against a Participant arising out of or in connection with the Fund's activities, except as may result from its gross negligence or willful misconduct.

Section 12.3. No Waiver of Privileges and Immunities. Nothing in this Instrument shall be considered to be a waiver of any privileges and immunities of the Trustee, the IBRD, or where applicable, the Participants or their respective officers, employees or agents, under the Articles of Agreement of the IBRD or any applicable law, all of which are expressly reserved.

Section 12.4. No Personal Liability. Neither the Trustee, the IBRD and the Participants nor any officer, employee or agent of any of the foregoing shall be subject to any personal liability whatsoever to any third party in connection with the activities of the Fund, and all such third parties shall look solely to Fund Property for satisfaction of claims of any nature arising in connection with Fund activities. Every written obligation, contract, instrument, certificate or undertaking made or issued by the Trustee shall recite that the same is executed or made by it not personally or in its individual capacity, but as Trustee of the Fund under this Instrument, and that the obligations of the Fund under any such instrument are not binding upon the Trustee or any of the Participants, personally or in their respective individual capacities, but bind only the Fund, and may contain any further recital which the Trustee may deem appropriate, but the omission of such recital shall not affect the validity of such obligation, contract, instrument, certificate or undertaking and shall not operate to bind or obligate the Trustee or the Participants personally or in their respective individual capacities.

Section 12.5. No Duty of Investigation. No individual or person dealing with the Trustee or any officer, employee or agent of the Trustee or the Fund shall be bound to make any inquiry concerning the validity of any transaction purported to be made by the Trustee or by said officer, employee or agent or be liable for the application of money or property paid, loaned to or delivered to or on the order of the Trustee or of said officer, employee or agent. Every obligation, contract, instrument, certificate or undertaking, and every other act or thing whatsoever executed in connection with the Fund, shall be conclusively presumed to have been executed or done by the executors thereof only in their capacity as officers, employees or agents of the Trustee or the Fund.

Section 12.6. Reliance on Experts. The Trustee and each officer and employee of the Trustee or the Fund shall, in the performance of its duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the books of account or other records of the Fund, upon an opinion of counsel, or upon reports made to the Trustee or the Fund by any of its officers or employees or by any accountant, auditor, appraiser or other expert or consultant selected with reasonable care by the Trustee or by any officer, employee or agent of the Trustee or the Fund.

ARTICLE XIII
INTERESTS IN AND LEGAL OWNERSHIP OF EMISSION REDUCTIONS;
DISTRIBUTIONS TO PARTICIPANTS

Section 13.1. Adaptability to the Requirements of the UNFCCC. In recognition that the regulatory framework of the UNFCCC and/or the Kyoto Protocol relating to the ownership, holding and transfer of Emission Reductions is still under development, and to maximize the likelihood that the Fund may achieve its stated objectives, the Trustee will endeavor to ensure that the contractual arrangements entered into among the Trustee, Participants, Host Countries, Project Entities and other parties will be structured flexibly so as to enable them to conform with the guidelines, modalities and procedures of the regulatory framework of the UNFCCC and/or the Kyoto Protocol if, when and as they are developed.

Section 13.2. Statements of Accounts. At the request of a Participant, the Trustee will produce a statement of account confirming the number of Emission Reductions and UCF Emissions Reductions to which a Participant is entitled. Such statement will reflect the Trustee's records indicating the total number of Emission Reductions and UCF Emissions Reductions³ to which the Participants are entitled and the Participant's pro rata share thereof. The Trustee may also send such statements of account to Participants from time to time in the absence of requests.

Section 13.3. Distributions Subject to UNFCCC Requirements. Subject to such guidelines, modalities and procedures as may be determined by the parties to the UNFCCC and/or the Kyoto Protocol, it is the intent of the parties to this Instrument that Project Agreements shall provide for Emission Reductions to be transferred from Recipients to or to the order of the Participants. Subject to such procedures as may be determined by the parties to the UNFCCC and/or the Kyoto Protocol, the Trustee shall, at the request of Participants, make all reasonable efforts to ensure that the Emission Reductions generated by the Projects will be capable of being credited towards Annex I Countries' QELROs. If, for any of the Participants, it is not possible to ensure that Emission Reductions generated by the Projects will be credited towards Annex I Countries' QELROs, the Trustee will seek to provide, or to cause others to provide, the necessary documentation to establish the Participants' entitlement to such Emission Reductions. Notwithstanding any other provision of this Instrument, none of the IBRD, the Trustee or the Fund assumes any responsibility for the right of Participants to receive Emission Reductions under the UNFCCC, any other applicable law or otherwise or for the right of Participants to use Emission Reductions to fulfill any obligation to which the Participant may be subject under the UNFCCC, any other applicable law or otherwise.

Section 13.4. Withdrawal. No Participant shall have the right to withdraw any part of its contribution to the Fund or to receive any distributions from the Fund except as provided in this Instrument.

ARTICLE XIV ASSIGNMENT OF PARTICIPANTS' INTERESTS

Section 14.1. Assignment of Participants' Interests. A Participant may assign all, but not part, of its interest in the Fund or any of its rights under the Participation Agreement or this Instrument to an Eligible Private Sector Participant or an Eligible Public Sector Participant with the prior written consent of the Trustee, such consent not to be unreasonably withheld, provided

that such assignee agrees, in form and substance acceptable to the Trustee, to be bound by the terms of this Instrument and the Participation Agreement entered into between the Trustee and the assignor Participant.

ARTICLE XV
DURATION; TERMINATION OF THE FUND; AMENDMENT

Section 15.1. Duration. Except as otherwise provided in this Article XV, the Fund shall terminate on December 31, 2012. The Participants may, by unanimous vote, decide to continue the business of the Fund after December 31, 2012 on such terms as they may determine, provided, that the Trustee will continue to serve as trustee only if the Executive Directors of the IBRD have expressly agreed to the extension and to the terms of such extension.

Section 15.2. Termination of the Fund.

(a) The Fund may be terminated before December 31, 2012 by (i) the resolution of Participants passed at a Participants' meeting by not less than a two-thirds majority of the votes cast at such meeting; or (ii) a unanimous consent in writing, setting forth the action to be taken, circulated to and signed by all of the Participants.

(b) The Fund shall terminate if, as of the First Closing, (i) the Trustee has not entered into Participation Agreements providing in the aggregate for contributions to the Fund from Participants of at least U.S.\$60 million, or (ii) the Trustee determines that the group of Participants that have entered into Participation Agreements is not sufficiently diverse to achieve one of the IBRD's strategic objectives in establishing the Fund, namely working in partnership with the public and private sectors to mobilize new resources for the IBRD's borrowing member countries while addressing global environmental concerns. Notwithstanding anything to the contrary in this Article 15.2, if the Fund is participating in the tranche of the UCF, the Fund will not be terminated prior to the termination of the tranche of the UCF in which the Fund participates.

(c) The Fund shall also terminate upon the resignation of the IBRD as Trustee of the Fund.

(d) Upon the termination of the Fund:

- i) the Trustee shall carry on no business for the Fund except for the purpose of winding up its affairs;
- ii) the Trustee shall proceed to wind up the affairs of the Fund, and all of the powers of the Trustee under this Instrument shall continue until the affairs of the Fund shall have been wound up; and
- iii) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as it

may deem necessary for its protection, the Trustee shall distribute the remaining Fund Property in cash or in kind, or partly each, among the Participants according to their respective rights; notwithstanding the foregoing, in the event the remaining Fund Property includes the right to purchase Emission Reductions to be generated after the termination date of the Fund, the Trustee shall, subject to any applicable restrictions under international law, national law or otherwise, including regulations under the UNFCCC and/or the Kyoto Protocol, endeavor to make such arrangements as are necessary to effect a transfer of such rights to or to the order of the Participants, but shall not have any liability to the Participants if it is unable to do so.

Section 15.3. Amendment Procedures. This Instrument may only be amended by the IBRD with the prior unanimous consent of Participants. Notwithstanding the foregoing, this Instrument may be amended by the Trustee without prior notice to or consent from any Participant if such amendment is (i) to supply any omission, or cure, correct or supplement any manifest error or ambiguous, defective or inconsistent provision hereof, or (ii) for any other purpose which does not adversely affect the rights of any Participant; provided, that all Participants are notified of any such amendment within 15 days after the effective date of such amendment.

Section 15.4. Further Assurances. Upon the request of the Trustee, each of the Participants shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, instruments, assignments, transfers, conveyances, powers of attorney and assurances as may be necessary or desirable to effect the purpose of this Instrument and carry out its provisions.

ARTICLE XVI

APPROVAL AND AUTHORIZATION

Section 16.1. Approval. By entering into a Participation Agreement, a Participant shall be deemed to have approved the Projects for the purposes of Article 6 and 12 of the Kyoto Protocol and any projects under the UCF in which the Fund is participating.

Section 16.2. Authorization. By entering into a Participation Agreement, a Participant that is entitled to authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition of Emission Reductions shall be deemed to have expressly authorized the Trustee to act on its behalf in this respect.

ARTICLE XVII

CONFLICTS OF INTEREST

Section 17.1. Trustee Withdrawal from Dispute or Claim. In order to avoid any potential conflict of interest between the IBRD and the Trustee, and notwithstanding any other provision

of this Instrument, the Trustee shall not have any obligation to prosecute, defend, compromise, negotiate, abandon or adjust, by arbitration, or otherwise, any action, suit, proceeding, dispute, claim or demand or any default or potential default by a Host Country or Project Entity under a Project Agreement or by the UCF Trustee under any UCF Participation Agreement (collectively a “dispute”) in any way relating to any Project Agreement. If the Trustee determines that it will refrain from taking any such action, the Trustee shall so notify the Participants and the Trustee and the Participants shall use their best efforts to endeavor to agree to satisfactory arrangements for dealing with such dispute including the assignment and transfer of all or part of the Trustee’s rights and obligations under the relevant Project Agreement or participation agreement to the Participants or to a third party acting on their behalf. The Trustee shall have no liability to the Participants as a result of the Trustee’s determination to refrain from taking any such action in respect of a dispute or as a result of the failure of the Trustee and the Participants to reach such satisfactory arrangements in a timely manner or otherwise.

Section 17.2. Participant Disclosure of Competing Interests. Prior to the Participants’ Committee’s review of the relevant Project Concept Note, a Participant which participates, or which has affiliates or employees which participate individually and/or collectively, in funds or other investment vehicles having objectives and policies similar to those of the Fund which, as a result, may compete with the Fund for investment opportunities, supplies of raw materials, government franchises, customers or otherwise (“Other Ventures”), or a Participant or its affiliate or employee which has an interest in an Underlying Project, shall fully disclose such interest in Other Ventures or in an Underlying Project to the Trustee. If the Trustee determines that such participation or interest is such that the Participant should not participate in the Participants’ Committee’s deliberations on whether or not to object to the Project subject to this conflict or potential conflict of interest, it shall advise the Participant making the disclosure to recuse itself from the Participants’ Committee’s deliberations with respect to that Project. If the Participant disagrees with the Trustee’s determination, it shall advise the Participants’ Committee of the conflict or potential conflict, and the Participants’ Committee (excluding the Participant making the disclosure) will decide whether such Participant should be permitted to participate in the Committee’s deliberations on the Project concerned. The failure of a Participant to disclose such participation or interest in an Underlying Project or Other Venture in a timely manner will constitute a breach of this Instrument by such Participant, and the Trustee shall determine what remedies to exercise after consultation with the other Participants.

ARTICLE XVIII ARBITRATION; EXERCISE OF REMEDIES

Section 18.1. Validity. The rights and obligations of the Trustee and the Participants with respect to the Fund shall be valid and enforceable in accordance with the terms of this Instrument and any agreement between the Trustee and the Participants. Neither the Trustee nor any Participant shall be entitled in any proceeding to assert any claim that any provision of this Instrument or such agreement is invalid or unenforceable because of any provision of the charter or constitutive documents of the Participant or the Articles of Agreement of the IBRD.

Section 18.2. Arbitration. Any dispute between the Trustee and a Participant arising out of or relating to this Instrument or such Participant's Participation Agreement shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The number of arbitrators shall be three. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague. In the event of a conflict between the UNCITRAL Arbitration Rules and the terms of this Instrument or of the Participation Agreement, the terms of the Instrument and Participation Agreement shall prevail.

Section 18.3. Delays. No delay in exercising, or failure to exercise, any right, power or remedy accruing to any party under this Instrument or any agreement between the Trustee and a Participant, whether or not upon any default, shall impair any such right, power or remedy or be construed to be a waiver thereof or an acquiescence in such default. No action of such party in respect of any default, or any acquiescence by it in any default, shall affect or impair any right, power or remedy of such party in respect of any other or subsequent default.

PROJECT SELECTION CRITERIA
and
PROJECT PORTFOLIO CRITERIA

Project Selection Criteria. The Trustee shall select Projects in accordance with the following Project Selection Criteria:

- a) Consistency with UNFCCC and/or the Kyoto Protocol. The Trustee shall ensure that Projects comply with all current guidelines, modalities and procedures adopted by the Parties to the UNFCCC and/or the Kyoto Protocol, as well as all future guidelines, modalities and procedures when adopted, in particular those pertaining to sustainable development and additionality.
- b) Consistency with Relevant National Criteria. The Trustee shall seek to ensure that the Projects' designs are compatible with and supportive of the national environment and development priorities of the Host Countries. In addition, the Projects and the transfer of Emission Reductions should be consistent with the rules and criteria adopted by Host Countries regarding Article 6 and Article 12 Projects.
- c) Consistency with the IBRD's Country Assistance Strategy. The Trustee will seek to ensure that Projects are designed to be consistent with, and supportive of, the then current Country Assistance Strategy of the IBRD for the Host Country and the Host Country's own development objectives.
- d) Complementarity with GEF. The Trustee shall seek to ensure that Projects are complementary to the GEF and do not compete with the GEF's long-term operational program nor with its short-term response measures. In furtherance of this criterion, potential Projects will be reviewed by the Secretariat of the GEF to determine their GEF eligibility. Only if it is determined that a potential Project will not receive GEF financing will the Fund Manager consider including it as a Fund Project.
- e) Achievement of National and Local Environmental Benefits. The Trustee shall seek to ensure that Projects provide at least the same level of national and local environmental benefits as the Underlying Projects.

- f) Consistency with the Fund's Strategic Objectives and Operating Principles. The Trustee shall seek to select Projects with a view to achieving the strategic objectives and operational principles of the Fund as set forth in the Instrument.
- g) Consistency with the General Guidance Provided by Participants. The Trustee shall seek to ensure that Projects comply with the general guidance provided by Participants at their meetings.
- h) Additional Characteristics of Projects. The Trustee shall seek to ensure that Projects are selected to mitigate various types of risk. Projects should generally entail manageable technological risk. The technology to be used in a Project should be commercially available, have been demonstrated in a commercial context, and be subject to customary commercial performance guarantees. The technical competence in the Host Country to manage this technology should be established in the course of Project appraisal. Projected Emission Reductions over the life of the Project should be predictable and should involve an acceptable level of uncertainty. GHG Reductions should also be amenable to standardized Validation and Verification processes with existing methodologies.

Notwithstanding the foregoing, projects supported by the contributions committed to the UCF will be subject solely to the project selection criteria for the UCF.

Project Portfolio Criteria. Subject to any direction from a Participants meeting, or the Participants Committee to the contrary, the Trustee will develop a Project portfolio with the intention that during the term of the Fund:

- a) a broad balance will be achieved in the number of Projects undertaken in Economies in Transition and in Developing Countries and that, notwithstanding potential Projects identified prior to the establishment of the Fund, emphasis should be directed initially to the development of Projects in Developing Countries;
- b) a major emphasis should be directed at development of Projects in the area of renewable energy technology such as, but not limited to, geothermal, wind, solar and small hydro energy;
- c) no less than approximately 2% nor more than approximately 10% of the Fund's assets should be invested in any one Project;
- d) no more than approximately 20% of the Fund's assets should be invested in Projects in the same Host Country;

- e) no more than approximately 10% of the Fund's assets should be invested in land-use sector Projects. Further, unless the Parties to the UNFCCC deem it appropriate, no such Project shall be located in a Developing Country; and
- f) no more than approximately 25% of the Fund's assets should be invested in Projects using the same technology.

Notwithstanding the foregoing, projects supported by the contributions committed to the UCF would not be subject to any of the other Project Portfolio Criteria and instead will be subject only to the project portfolio criteria of the UCF.

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