

# **Summary of Discussions**

## **Teleconference on Donor Risk, Responsibility, and Liability**

**5 May 2010**

The teleconference on 'Donor Risk, Responsibility and Liability' was a follow up to the Berlin Workshop on Establishing the CGIAR Fund (April 13, 2010). The purpose of the teleconference was to provide a platform for donors to share their views, issues, and concerns on donor risk, responsibility and liability as it relates to the development of the draft documents<sup>1</sup> that are central to the functioning and legal underpinnings of the CGIAR Fund. This subject was not covered at the Berlin workshop due to limited time. The list of participants in the teleconference is attached (**Attachment 1**). The teleconference was chaired by Iftikhar Mostafa, Governance Adviser, CGIAR Fund Office.

## Issues/Comments

1. **Limited fiduciary responsibility of Trustee.** One of the participants suggested that, given the limited fiduciary responsibility of the World Bank as Trustee, the Consortium should be accountable for all the elements the Bank is not accountable for and that this should be reflected in the Joint Agreement.

*Comments by the Trustee: The limited fiduciary responsibility is the current established role the World Bank assumes on Financial Intermediary Funds like the CGIAR Fund. There is a historical reason for this. If the World Bank were to take a larger role, it would need to apply all of its own policies (such as on safeguards and procurement) in the use of the funds.*

*A comment was made that the Consortium Constitution signed by Centers and available at the website of the Alliance has some elaboration on fiduciary responsibility.*

2. **Information deficit on nature of Consortium.** Participants acknowledged that the limited nature of the information available on the status of the Consortium affects the design of the legal documents for the Fund. Questions that are critical for the development of the Fund documents include:

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<sup>1</sup>The draft documents for establishing the CGIAR Fund are as follows:

1. **CGIAR Fund Governance Framework.** A stand-alone document to be adopted in its final form by the Fund Council, which will be incorporated by reference into the Contribution Agreements between donors and the Trustee of the CGIAR Fund. Includes a number of operational aspects of the CGIAR Fund in the interest of clarity and transparency among all Fund Council members (not all of whom will be signatories to Contribution Agreements).
2. **Contribution Agreement Between each Donor and the Trustee** (formerly called "Administration Agreement"). A template that sets forth the specific modalities on donor contributions and Trustee services for the CGIAR Fund as they affect the respective signatories.
3. **Joint Agreement among the Consortium, the Trustee and all Fund Donors.** Designed to combine the upstream (donors) and downstream (Consortium) elements in one contractual setting. Donors would become parties to the Joint Agreement through signature of a Contribution Agreement.

- Legal status of the Consortium. Who will the donors be signing an agreement with? Does the arrangement meet the fiduciary requirements?
- Will Bioversity provide the legal umbrella for the interim Consortium? Will the Joint Agreements and Performance Agreements then be signed with Bioversity?
- Relationship between Consortium/Bioversity and the other Centers: What will be the legal relationship between Bioversity and the lead Centers for MPs?

*Participation by Tom Arnold, Consortium Board member, was greatly appreciated, who indicated that issues raised at the teleconference will be communicated to the Consortium Board.*

3. **Funds flowing through Window 3.** Some clarifications were sought regarding funds flowing through Window 3, i.e., funds directed by donors to individual Centers. Some participants asked about the longevity of Window 3, indicated concern on it not being subject to fiduciary responsibility, how will accountability and monitoring of these funds be handled, e.g. that the funds are indeed used for activities under the SRF.

*Fund Donors may designate contributions to specific Centers for SRF implementation at the discretion of the Center. These funds are not subject to allocation or approval by the Consortium or Fund Council. It was agreed at the CGIAR Business Meeting in December 2009 that Window 3 is transitional. After two years following establishment of the CGIAR Fund, the Fund Council will in consultation with the Consortium set a date for closure of Window 3.*

*Accountability of Window 3 funds:*

- *Ascertaining that Window 3 funds are used for SRF implementation could be covered through an arrangement satisfactory to the Fund Council and the Consortium, as part of the common operational framework.*
- *It may be possible to lay out the donor requirements as an annex to the Contribution Agreement.*
- *A separate agreement between the donor and the recipient Center may be considered.*

*One donor suggested that Window 3 remain open as long as necessary and let donors move to Window 1 and Window 2 at their comfort levels.*

4. **Structure of the Agreements / Donors Common Approach.** Donors asked how donor specific requirements be reflected in the agreements.

*The model where donors are signatories to all the agreements might not fit all donors. The proposal is that the Joint Agreement will be signed by the Consortium and the Bank (as agent of the Fund Council), thus, having only two parties to the agreement. The Joint Agreement will also include clauses all donors can agree upon like clauses on terrorism, corruption, environmental issues, etc. Additional donor specific requirements can be included in the cover agreement specific to each donor.*

5. **Indemnification of donors.** The issue of indemnifying donors was raised but it was agreed that without knowing the legal status of the Consortium it will be not be possible to have a meaningful discussion on the subject.
6. **Frequency of review by External Auditors.** One donor expressed concern on the frequency of external audits of the Fund as indicated in the draft documents. The donor prefers that the review be done annually rather than every 3 years.
7. **Donor Remedies.** The drafting team is also working on remedy clauses which are part of the Joint Agreement, e.g. withholding funding if there is serious problem with the use of funds.

*Comments from participants:*

- *It is important that remedies are flexible, e.g., remedy not affecting all the Centers when only one Center committed misuse of funds or did not deliver*
- *Remedy of repayment of funds if there is any misuse*
- *It is important to understand the legal status of the Consortium and the relationship between the Consortium and the Centers before remedies can be specified clearly. A robust partnership should have a good remedy provisions.*

8. **Other issues:**

- *Mechanism to resolve over and under funding of Mega Programs*
- *European Commission has the same position as was indicated in Berlin. It is still searching for imaginative solutions like possible contract with the Consortium if it is formed as a full International Organization. If no other solution is found, the Commission will continue to contribute through IFAD.*

### **Agreed Next Steps**

1. Donors to send to the Fund Office ([CGIARFund@worldbank.org](mailto:CGIARFund@worldbank.org)) donor specific requirements/language that need to be included in the clauses of the Joint Agreement and/or in the cover section of the Joint Agreement.
2. Revised versions of the documents will be shared with the Consortium Board and the donors for comments.
3. The Consortium Constitution will be shared with the donors.

Participants agreed that it was a very useful and informative teleconference.

**Attachment 1****Teleconference on Donor Risk, Responsibility and Liability****May 5, 2010****List of Participants**

No.	Name	Organization
1	Antoine, Lystra	CGIAR Fund Office
2	Arnold, Tom	Consortium Board
3	Coleman, Catherine	Canada
4	Drewnowski, Sophia	World Bank (Partnership)
5	Figueroa, Paul	USAID
6	Flower, Aline	BM Gates Foundation
7	Hearn, Simon	Australia
8	Hess, Ulrich	World Bank (Trustee)
9	Laberge, Susanne	Canada
10	Martinsen, Anne Kristin	Norway
11	Mostafa, Iftikhar	CGIAR Fund Office
12	Nass, Luciano Lourenço	Brazil
13	Ozgediz, Selcuk	CGIAR Fund Office Consultant
14	Pallas, Tomas	European Commission
15	Pehu, Tuula	Finland
16	Pisanu, Davide	Canada
17	Stangu, Darius	World Bank (Trustee)
18	Stumpf, Andrea	World Bank (Legal)
19	Swift, Alasdair	DFID
20	Wadsworth, Jonathan	DFID
21	Witte, Eric	USAID
22	Zanarelli, Guglielmo	European Commission