

Submissions by members of the Transitional Committee

The Secretary to the TC received two additional submissions by TC Members as of 13 July 2011. The submissions are attached and reproduced without formal editing.¹

The submissions received from members of the Transitional Committee have been uploaded on UNFCCC (website: http://unfccc.int/cancun_agreements/green_climate_fund/items/5868.pp).

¹ These submissions have been electronically imported in order to make them available on electronic systems, including the World Wide Web. The Technical Support Unit has made every effort to ensure the correct reproduction of the texts as submitted.

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I. Submission by Ms. Bernarditas Muller (Philippines)

5 July 2011

Supplementary items to the provisional agenda and annotations

I. Supplementary items to the provisional agenda

New Agenda Item 3. Working arrangements for the Transitional Committee

- a) Election of a **Vice-chair from Asia**
- b) **Adoption of the report of the first meeting of the TC**
- (new) c) **Remaining issues and** additional elements of the working arrangements of the Transitional Committee
- d) Update on arrangements for the Technical Support Unit

New Agenda Item 4. Work Plan

- a) **Implementation of the TORs of the TC**
- b) **Timelines for working drafts on operational documents**
- c) **Role and outputs of TC workshops**

(Agenda items 5 to 8 to remain as in the provisional agenda)

New Agenda item 9. Date and venue of the next session

(Agenda item 10. « Other matters » to remain)

New Agenda item 11. Report of the session

Agenda item 12. Closure of the Meeting

Annotations to the supplementary items to the provisional agenda

1. Additional elements to Agenda item 3 « Working arrangements for the Transitional Committee »

1. **Background** : Election of a Vice-Chair from Asia : At the initial meeting of the TC, a proposal was made for the election of a Vice-Chair from Asia, and it was agreed to consider this proposal at the next TC meeting.
2. **Action** : The TC may wish to consider this proposal and elect a Vice-Chair from Asia.

2. Adoption of the Report of the first meeting of the Transitional Committee

3. **Background** : A Co-Chairs' summary report on the initial meeting of the Transitional Committee for the design of the Green Climate Fund » was issued on 12 May 2011 as document TC-1/6. Two submissions containing comments on the Co-Chairs' summary report were received and were issued as « Internal reference document-1 » dated 25 May 2011. The

submissions proposed the adoption of a formal report of the first meeting of the Transitional Committee in addition to the Co-Chairs' summary report.

4. **Action :** The TC may wish to adopt a report of the first meeting of the TC, taking into account the submissions made.

3. Remaining issues and additional elements of the working arrangements for the Transitional Committee

5. **Background :** Annex I entitled « Working arrangements : Understanding of the Co-Chairs » to document TC-1/6 « Co-Chairs' summary report on the initial meeting of the Transitional Committee for the design of the Green Climate Fund » listed remaining issues to be resolved at the second meeting of the TC.
6. **Action :** The TC may wish to consider these remaining issues and additional elements on the working arrangements.

4. Agenda item 4. Work Plan

7. **Background :** Two submissions were received and circulated at the first meeting of the Transitional Committee, containing specific elements of the Work Plan. These were the « Proposal from African Group members of the TC for the Draft Provisional Agenda for the First Meeting of the Transitional Committee », formally submitted to the secretariat for circulation at the first meeting, and an « AOSIS Non-Paper on the Work plan of the TC » containing a clustering of the TOR of the TC and proposed deliverables for the succeeding meetings of the TC. These papers were supported by some TC members during the first meeting, but, due to time constraints, these were not fully discussed.

Annex II of document TC-1/6, on « Revised Draft Workplan for the Transitional Committee, Revised Discussion note by the Co-Chairs », states in its second paragraph, first sentence, that « This revised draft is written as a basis for discussion by the Committee and is intended to be revised, refined, and evolve based on further inputs from members as the Committee undertakes its work. » In accordance with this understanding, the sub-items on new Agenda item 4 on the Workplan » are submitted as supplementary items.

8. **Action :** In addition to the setting-up of the four work streams with chosen co-facilitators as shown in Section VI « Agenda Item VI : Workplan of the Transitional Committee », paragraphs 13 to 15, of document TC-1/6, the TC may wish to consider assigning specific elements of the TOR to be worked on by the work streams, consider and agree on timelines for working drafts on the operational documents to be submitted to COP17 for its approval, including recommendations, and clarify the role and outputs of TC workshops.

5. Agenda item 9 : Date and Venue of the next session

9. **Background :** Given the indicative timeline contained in document TC-1/6, page 7, additional information on the dates and venues of the subsequent meetings of the TC, and in particular the date and venue of the next session, may be available.
10. **Action :** The TC may be informed of the date and venue of the third meeting.

6. Agenda item 11 : Report of the session

11. **Background :** As in usual procedure in all formal meetings, the secretariat, under the guidance of the Co-Chairs may wish to present a factual report of the second session, for completion before the third meeting of the TC, and for adoption at its third meeting.
12. **Action :** The TC may wish to consider the report of the session.

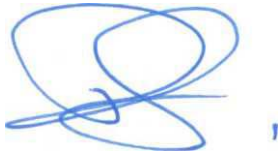
II. Submission by Mr. Paul Oquist (Nicaragua)

Tokyo, Japan
13 July 2011

Mr. Henning Wuester
Secretary, Transitional Committee
Green Climate Fund

Dear Mr. Wuester:

Attached please find a formal, written submission on the "Conflict of Interest Issue" that I will submit today 13 July from the floor on Agenda Point 4(B)"Update on Arrangements for the Technical Support Unit". I formally request that you officially distribute this document, which contains an Action for Approval. To expedite discussion, I will submit an informal copy to the TC Members after my presentation which in no way obviates the need for the formal distribution of the written submission by the Secretariat.



All the Best, Paul Oquist
Member TC (Nicaragua) Sent from Members
Email account

CONFLICT OF INTEREST IN GREEN CLIMATE FUND DESIGN

**Written Submission by TC Member Dr. Paul Oquist (Nicaragua)
Agenda Item 4 (b) "Update on Arrangements for the Technical
Support Unit"**

1 The Members of the Transitional Committee, the Co-Chairs and the Secretary of the Green Climate Fund were duly advised at the First Plenary Meeting held in Mexico City, Mexico (29-30 March, 2011) that World Bank, World Bank staff or World Bank seconded staff participation in Green Climate Fund design would constitute conflict of interest, potential conflict of interest, and the appearance of conflict of interest. This is the case because the World Bank was invited to be the future Interim Trustee of the Green Climate Fund in the Cancun Document (Numeral 107).

2 Despite having been duly advised, the Technical Secretariat proceeded to form the Technical Support Unit with World Bank participation. (TC2/3 "Update on Arrangement for the Technical Support Unit: Informational Note by the Secretary to the Transitional Committee, numerals 3, 7).

3 Despite having been duly advised, the Chairs Summary of the Mexico City Meeting ignores the ample discussion undertaken on this issue and instead includes the Secretary's position that there is no problem due to the existence of a Memorandum of Agreement with seconded staff:

"The Executive Secretary underlined that the undertaking in the Memorandum of Agreement for secondment addresses the issue of conflict of interest, impartiality and independence as it relates to members of the TSU. (TC-1/6 "Co-Chair's summary report on the initial meeting for the Transitional Committee for the design of the Green Climate Fund", numeral 12).

4 This same position is reiterated in the Secretary's document "Update on Arrangements for the Technical Support Unit: Informational Note by the Secretary to the Transitional Committee" (TC2/3, numeral 13) In that Note the Secretary also directly refers to the World Bank conflict of interest issue:

"Concerning the question about a possible conflict of interest between staff from the World Bank seconded to the TSU and the possible functions of the World Bank as the interim trustee for the GCF, further to the measures set forth in paragraph 12 above, it has been verified that the part of the World Bank that performs the trustee functions and the part which has seconded staff to the TSU are institutionally independent". (TC2/3, 14)

05. From the foregoing it is clear that the Secretariat is not fulfilling its fiduciary duty to avoid conflict of interest in the Technical Support Unit in accordance with Internationally Accepted Fiduciary Standards. The Secretariat is rather improvising its own rules that fail to meet those standards. Two examples follow:

a) A Memorandum of Agreement signed with an seconded individual cannot obviate institutional conflict of interest derived from the fact that said individual is in the employment of an entity with current or future fiduciary responsibilities in relation to the organization to which the individual has been seconded. Thus, the aforesaid Memorandum of Agreement has no bearing whatsoever on the issue of institutional conflict of interest.

b) Numeral 107 of the Cancun document invites World Bank to be Interim Trustee for a three period, referring clearly to the World Bank Group domiciled in Washington, D.C., USA, that has a single Board of Governors, a single Board of Executive Directors and a single President with full authority and responsibility over the entire organization. Conflict of interest is inherent in any employee or seconded employee, permanent or temporary, of the World Bank Group being involved in design activities of an entity for which the World Bank exercises, or will exercise, fiduciary responsibilities. The location of said individual in the organizational structure of the World Bank Group is completely irrelevant to the issue of institutional conflict of interest..

6. Internationally Accepted Fiduciary Standards are very clear. A trustee cannot participate in design, decision making, administration or evaluation of an entity for which it exercises, or will exercise, a fiduciary responsibility. At the Mexico City meeting this point was illustrated by the case, "The People of the United States of America versus Arthur Andersen Partners" which found conflict of interest between fiduciary responsibilities and consultancy functions by Arthur Andersen Partners in the firm ENRON.

7. Conflict of interest ethics and law are not a matter of opinion nor of convenience, but rather enshrined in the Ethical Codes of both the United Nations System and that of the World Bank Group, as well as in international and national corporate governance best practice. For example, the World Bank's Guidelines for personnel seconded to the World Bank do comply with Internationally Accepted Fiduciary Standards (See Annex A for a printed copy and for the URL to facilitate internet access to this document on the World Bank Group website). One rule and one principle of these Guidelines are particularly relevant to the case at hand:

Rule:

"Secondment staff should not participate in any transaction of the Bank Group that involves a project or entity in which their host employer was, is, or intends to be involved."

Principle:

"1-) A Secondment staff member cannot work on the design or implementation of any program or project in which his or her host employer may have an interest in investing directly or in

potential downstream contracts, if such work in the Bank's view could provide, or be perceived to provide, a preferential treatment or benefit to the host employer, including an opportunity to inappropriately influence the design of the program or project."

8. It would be an unethical double standard for the World Bank Group not to apply to World Bank staff seconded to other institutions the same conflict of interest rules and principles applied to personnel from other institutions seconded to the World Bank.
09. The Transitional Committee objective must be a Green Climate Fund design process characterized by transparency, accountability, probity and integrity that proactively avoids conflict of interest, potential conflict of interest and the perception of conflict of interest, at both the institutional, and individual levels. The means are Internationally Accepted Fiduciary Standards. The Transitional Committee has the ultimate collective and individual fiduciary duty to exercise due cognizance and due diligence in the pursuit of this objective by these means. The Co-Chairs have the additional fiduciary duty to ensure that meeting agenda and proceedings facilitate, and do not obstruct, the fulfillment of the Committee's fiduciary duties, a principle well established in both Common Law and Continental Law for Boards of Directors and Boards of Supervisors, respectively. The Technical Secretariat has the immediate responsibility to ensure that the Technical Support Unit complies with the above.

Action submitted for approval:

The Transitional Committee of the Green Climate Fund must apply conflict of interest rules and principles AT LEAST as stringent as those contained in United Nations System and World Bank Guidelines. The Secretary of the Transitional Committee should take due cognizance of these rules and principles and immediately apply them with due diligence to the Green Climate Fund design process in all of its dimensions, including the Technical Support Unit.

ANNEX A: WORLD BANK CONFLICT OF INTEREST GUIDELINES

The URL of the following document is:

http://web.worldbank.org/WBSITE/EXTERNAL/EXTHRJOBS/0_contentMDK:22390772~pagePK:64262408~piPK:64262191~theSitePK:1058433,00.html

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Conflict of Interest Guidelines

This Annex describes the World Bank's rules and guidelines governing conflict of interest issues and notes specific guidelines which will be applied in the case of the Global Secondment Program.

Relevant World Bank Rules and Guidelines

An individual seconded to the World Bank through the Global Secondment Program is subject to the World Bank's Principles of Staff Employment, Staff Rules, and the Code of Professional Ethics for the duration of his/her appointment. The Staff Rules include provisions regarding conflicts of interest. A key provision stipulates that a staff member or former staff member who is in possession of non-public information obtained in the course of Bank Group employment shall not use such information in furtherance of a private interest or a private interest of any other person or entity [SR 3.01, para. 5.01]. This obligation continues after a Secondment staff member's separation from the service of the Bank Group.

Further, staff members employed by the World Bank as part of the Global Secondment Program are subject to the following guidelines:

- Secondment staff should be especially attentive to the policies and rules adopted by the World Bank Group relating to situations of conflict of interest, whether real or apparent, and to the obligation to serve with probity and integrity.
- Secondment staff have a special responsibility to avoid situations and activities that might reflect adversely on the Bank Group or might compromise Bank Group operations or interests.
- Secondment staff should be particularly careful with respect to the disclosure of confidential Bank Group information. They should not use confidential information related to the business of the Bank Group or acquired in the course of employment with the Bank Group to serve the interests, or for the benefit, of their host employer.
- Secondment staff should not use their association or employment with the Bank Group to gain special favors or benefits for their host employer.
- Secondment staff should not attempt to influence Bank Group officials on behalf of their host employer.
- Secondment staff should not participate in any transaction of the Bank Group that involves a project or entity

Internal reference document- 7

- in which their host employer was, is, or intends to be involved.
- Secondment staff should not participate in business solicitation activities from entities to which the Bank Group has provided, or is considering to provide, financing.

Before assigning any activity to a Secondment staff, the Bank will review whether the activity poses any conflict of interest issues, which would make the Secondment staff member's participation in the activity inappropriate. The Bank expects Secondment staff, to the extent reasonably practicable, to disclose to the Bank any interests of their host employer within their actual knowledge which may entail a conflict of interest with their activities on behalf of the Bank. The Bank will also make sure that Secondment staff do not have access to any non-public information, which in the Bank's view would be impossible for them to maintain confidential when returning to their host employer.

Without prejudice to the Guidelines enumerated above, the following principles will guide a Secondment staff member's work at the Bank:

- 1) A Secondment staff member cannot work on the design or implementation of any program or project in which his or her host employer may have an interest in investing directly or in potential downstream contracts, if such work in the Bank's view could provide, or be perceived to provide, a preferential treatment or benefit to the host employer, including an opportunity to inappropriately influence the design of the program or project.
- 2) The Bank and the Secondment staff member will use all reasonable efforts to ensure that the Secondment staff member is not put in a position where he/she could influence the design or implementation of a program or project to serve the interests of his/her host employer.
- 3) In addition, the Bank and the Secondment staff member will use all reasonable efforts to ensure that the Secondment staff member is not put in a position where he/she would be expected to divulge to other Bank staff any information that is deemed to be confidential or company sensitive to the host employer.
- 4) If a Secondment staff member is working on an assignment involving a competitor to the host employer, the Bank will disclose to the competitor where the Secondment staff member is seconded from and that as a Secondment staff member, he/she is representing the interests of the Bank, not the host employer, and that the Secondment staff member is subject to the guidelines in this Annex. If the competitor is not satisfied with arrangements regarding conflicts of interest, and these concerns are deemed legitimate by the Bank, the Bank will remove the Secondment staff member from working on the assignment.
- 5) When a Secondment staff member returns to his/her host employer, the company will use its best efforts to post him/her in a position that makes it possible for him/her not to disclose confidential information gleaned from his/her assignments at the Bank.
- 6) All materials - written, graphic, film, magnetic tap, or otherwise - produced or acquired by Secondment staff during his/her tenure as a staff member of the World Bank shall remain the property of the World Bank. The World Bank furthermore retains the exclusive right to publish or disseminate reports arising from such materials. The rights and duties provided for in this Annex, shall continue, notwithstanding the termination of this Agreement or the execution of its provisions.

November 2009
