



**FCTC**

WHO FRAMEWORK CONVENTION  
ON TOBACCO CONTROL

CONFERENCE OF THE PARTIES TO THE  
WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

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## WHO Framework Convention on Tobacco Control Investment Fund: general questions and answers

### **Purpose of the document**

This document provides additional information, in the form of questions and answers, to support the proposal for the establishment of an Investment Fund as part of the Convention Secretariat's fundraising strategies in support of the WHO Framework Convention on Tobacco Control (WHO FCTC).

### **Action by the Conference of the Parties**

The Conference of the Parties is invited to note the additional information contained in this report when considering for adoption the draft decision contained in document FCTC/COP/9/15.

Contribute to the Sustainable Development Goals (SDGs): SDG 3, and Target 3.a.

Link to the workplan and budget item: Administration and management, and other arrangements and activities: 4(1)(1) US\$ 50 000.

Additional financial implications if not included in the workplan and budget: None.

Related document(s): [FCTC/COP/9/15](#).

## **BACKGROUND**

1. This document provides additional explanations in relation to the operational aspects of the Investment Fund proposed to support implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC), as presented in document FCTC/COP/9/15, following decision FCTC/COP8(5).
2. The additional information is presented in the form of questions and answers, as requested by Parties during a process of consultation, to enhance understanding of the proposal submitted to the Conference of the Parties (COP) for consideration and discussion.

## **SUMMARY OF QUESTIONS**

- (1) How will the Fund operate?
- (2) Why do we need an Investment Fund and what funding gaps currently exist?
- (3) Is the Fund economically feasible considering the global impact of COVID-19?
- (4) How is the capital protected?
- (5) Have other funding models been considered?
- (6) When will the Fund be launched?
- (7) Why US\$ 50 million?
- (8) What are the implications if the funding projection of US\$ 50 million is not met?
- (9) What if there is no revenue in the first year of the Fund?
- (10) How will the Fund be funded?
- (11) How will transparency of donations coming from investors who are not Parties to the FCTC be ensured?
- (12) How will funds be allocated to the workplan and budget of the WHO FCTC?
- (13) What is the timeline leading to COP9?
- (14) What is the projected rate of return and how was this rate established?
- (15) What are the projected costs of administering the Fund?
- (16) What happens if revenue is not sufficient to pay the administrative costs?
- (17) What is the role of the Conference of the Parties?
- (18) What is the role and function of the Oversight Committee?
- (19) What is the role of the Convention Secretariat?
- (20) What is the role of the Fund Trustee?
- (21) Does the Secretariat have any technical experience in managing this type of fund?
- (22) What is the workload involved in the administrative management of the fund?
- (23) Has a cost–benefit analysis been undertaken?
- (24) What is the exposure of the COP and what safeguards are in place to mitigate liability to the COP?
- (25) What models exist for a Dispute Resolution Mechanism and how would it operate?
- (26) How can a Funder withdraw from the Investment Fund prior to the end of their funding commitment?

- (27) What are the penalties prescribed by the Fund Trustee for early termination and how are penalties applied?
- (28) What provisions exist for the COP to terminate the Fund?
- (29) What safeguards will be established to protect the COP?
- (30) Will the WHO FCTC Rules of Procedure require amendment to accommodate for the Fund?
- (31) What specific measures are in place to ensure Article 5.3 protects the Investment Fund from the commercial and other vested interests of the tobacco industry?
- (32) How does the Secretariat plan to report to the COP on the Fund?
- (33) What risk management provisions exist?

## **(1) HOW WILL THE FUND OPERATE?**

The Fund is a financial mechanism of the WHO FCTC. Capital assets will be placed in an investment portfolio independently managed by a Trustee, proposed to be the World Bank. The assets (US\$ 50 million) are solicited from Parties and from other investors in the form of interest-free loans for a predetermined (five-year) fixed term. The invested funds are not available for distribution; only the interest revenue from the capital investment will be available to the COP.

It is proposed to commingle the Fund with other investment portfolios at the World Bank to maximize the rate of return and to reduce administrative costs. The Convention Secretariat, under the guidance of the COP and acting within the administrative, fiduciary and legal framework of the World Health Organization (WHO), will project, in consultation with the World Bank, the rate of return to be made available for use from the Fund. In years where the Fund's revenue exceeds the prescribed rate, the surplus revenue will not be used and will remain in the Fund to compensate for periods in which the prescribed interest rates were not achieved.

At the end of each two-year investment cycle, the World Bank will withdraw earned interest from the Fund at the prescribed rate, and provide the funds for allocation to the workplan and budget of the COP, through existing financial arrangements with WHO and in accordance with WHO Hosting Terms for the Convention Secretariat.

Under the direction of the COP and guidance of its Bureau, the Convention Secretariat will monitor the operation of all relevant components of the Fund. The Convention Secretariat will report regularly to the COP and the Bureau on the Fund's performance, drawing on the financial expertise of the Trustee and technical experts contracted by the Convention Secretariat, as required.

The administrative costs of managing and reporting on the Fund will be paid from the earned interests and will be calculated and deducted in advance before the revenue is released for use to support implementation of the WHO FCTC. In the event of a period of financial loss, the administrative and management costs will be extracted from the capital and replenished once the Fund is earning interest revenue.

## **(2) WHY DO WE NEED AN INVESTMENT FUND AND WHAT FUNDING GAPS CURRENTLY EXIST?**

At the Seventh Session of the Conference of the Parties (COP7), the COP emphasized a need to raise funds to support implementation of the WHO FCTC, given that more than half of the activity costs in the COP workplans and budgets depend on extra-budgetary funds. Upon reviewing a proposed investment fund during the Eighth Session of the COP (COP8), the COP requested the Convention Secretariat to report to the Ninth Session of the COP (COP9) with recommendations for the establishment and operation of the Fund.

Predictable and sustainable funding is required to complement current assessed contributions and extra budgetary funding given that:

- a significant portion (over half) of the workplan and budget of the COP relies on extrabudgetary funding;
- existing core staff expenditures are expected to increase and potentially surpass current assessed contribution funding within the next two or three bienniums; and
- increased needs for the implementation of the WHO FCTC, challenges with frequent turnover of temporary staff positions funded through extrabudgetary programmes, and the inflationary cost of hosting the COP requires the COP to explore innovative options to acquire sustainable and predictable funding to meet the increasing demands.

## **(3) IS THE FUND ECONOMICALLY FEASIBLE CONSIDERING THE GLOBAL IMPACT OF COVID-19?**

Despite the global impact of the COVID-19 pandemic, the strategy remains viable and will continue to be monitored and adjusted as needed in consultation with the World Bank and WHO Department of Finance. To support the innovative approach of the initiative, specific details of the proposed strategy to finance the Fund will be discussed by the Convention Secretariat and the World Bank during regional pre-COP discussions.

Historically, markets recover from downturns and continue to grow. Before the COVID-19 pandemic, world markets contended with influenza A(H1N1) pandemic, Middle East respiratory syndrome coronavirus (MERS-CoV), Ebola virus and Zika virus outbreaks. Each outbreak created short-term stock market volatility followed by recovery. Investment markets are now recovering from the initial impact of the COVID-19 pandemic and growth in the market remains optimistic. Market volatility will continue to be monitored leading up to the proposed launch in 2022 and guidance will be provided by the World Bank.

## **(4) HOW IS THE CAPITAL PROTECTED?**

The invested capital is not available for distribution; only the earned interest from the investment will be available to the COP. Financial policies will be designed and applied to preserve the capital through sound fiscal and investment measures that only allow the spending of earned revenue subject to the availability of funds.

While every effort will be made to preserve the capital, the risk to investors' capital will be acknowledged; no guarantees can be provided for the full return of their capital investment. This risk will be clearly articulated in the agreements between the investors and the World Bank. Investors are to acknowledge and agree, as laid out in the agreement between the World Bank and the investor, that the return of their original investment loan will be subject to market fluctuation and will be calculated at the maturity of the investment period based on market value at that time.

In the first year of the Fund, the earned revenue will be set aside as a surplus, to offset management fees in subsequent years that may have a low or negative yield. In the event that the Fund does not generate income in the first year, fees will be paid from the capital of the Fund with immediate replenishment to the capital once the Fund is generating earning income.

#### **(5) HAVE OTHER FUNDING MODELS BEEN CONSIDERED?**

In developing the proposal for the Fund, consultations were held with stakeholders and officials from other United Nations (UN) funding mechanisms to explore other funding models. Consideration was given to the Green Climate Fund established within the framework of the UN Framework Convention on Climate Change, existing WHO funding models, UN Sustainable Development Group, investment fund models at the World Bank and the UN Multi-Partner Trust Fund, among others. The Fund draws on best practices and examples of successful existing funds. The model of a capital investment fund based on time-bound loans is viewed by stakeholders as an innovative and feasible approach to attracting and engaging new investors in support of tobacco control objectives. This model will also mobilize government sectors beyond the health sector. Following discussions with WHO and the World Bank, the Fund was viewed as an efficient and effective way to move forward with a capital-based investment model, as proposed.

#### **(6) WHEN WILL THE FUND BE LAUNCHED?**

The Fund is proposed to be launched as per a decision of COP9, following a Convention Secretariat report and recommendations. Should COP9 decide to launch the Fund, it would be launched and made operational in 2022, with revenue expected to be available to the COP at the Tenth Session of the COP (COP10).

#### **(7) WHY US\$ 50 MILLION?**

A capital fund target of US\$ 50 million was established after discussion with the WHO Department of Finance. Based on a projected average return of investment of 4.5% (similar to the return seen in existing WHO investment funds), a US\$ 50 million investment fund will generate an estimated US\$ 2.25 million per year, with the potential for higher gains during periods of rapid growth. Of this, US\$ 2 million will be disbursed by the World Bank, through WHO, for the implementation of WHO FCTC. The excess revenue will be reinvested to build a surplus so as to provide for the administrative fees of the Fund Trustee during periods where the 4.5% return on investment is not realized. This source of sustainable and predictable funding will provide stability to the COP by supporting the continued implementation of the WHO FCTC priorities, as established by the *Global Strategy to Accelerate Tobacco Control: Advancing Sustainable Development through the Implementation of the WHO FCTC 2019–2025* at the direction of the COP.

**(8) WHAT ARE THE IMPLICATIONS IF THE FUNDING PROJECTION OF US\$ 50 MILLION IS NOT MET?**

The US\$ 50 million is a projected initial capital target. Nevertheless, the Fund can operate even if the initial capital amount is less than US\$ 50 million. Earned revenue from the Fund is based solely on the return on investment. If the projected funding of US\$ 50 million is not met, the earned revenue available to the COP will be less. This reduction of funds will reduce the net amount available for extrabudgetary activities supported through the Fund, but it will not affect the core activities in the COP workplan and budget, which will continue to be funded from Assessed Contributions.

**(9) WHAT IF THERE IS NO EARNED REVENUE IN THE FIRST YEAR OF THE FUND?**

If, during the initial period, there is low or negative revenue, interest will not be available for use by the COP. Funds will be available only once interest has been earned on the invested capital. If, during the initial operation of the Fund, revenue is not available to pay the management fee to the World Bank, those fees may be extracted from the capital subject to them being returned to the capital once positive revenue resumes and earned revenue is available to replenish the Fund.

**(10) HOW WILL THE FUND BE FUNDED?**

The Fund will build on unique sources of capital that will be raised in collaboration with the World Bank. The Fund may receive voluntary financial input in the form of time-bound, interest-free loans at the discretion of participating Parties to the WHO FCTC. It may also receive financial input from other public and private sources that meet the requirements of Article 5.3 of the WHO FCTC and the principles of the WHO Framework of Engagement with Non-State Actors (FENSA). Such investments will be conditional on the review and approval of the COP or according to arrangements decided by the COP.

**(11) HOW WILL TRANSPARENCY OF DONATIONS COMING FROM INVESTORS WHO ARE NOT PARTIES TO THE WHO FCTC BE ENSURED?**

The Fund's operational and financial policies will include explicit reference to Article 5.3 of the WHO FCTC to protect against commercial and other vested interests of the tobacco industry.

Non-Party investors to the Fund will be presented to the COP for review and approval before their funds are accepted. Specifically, non-Party investors to the Fund will be assessed by the Trustee and the Convention Secretariat to ensure that their investments do not conflict with the provisions of Article 5.3 of the WHO FCTC and of FENSA. If approved, they will be recommended by the Trustee and the Convention Secretariat, to the COP's Oversight Committee<sup>1</sup> for confirmation and to the Bureau and the COP for approval. Prior to investing funds, all investors will sign the agreement that includes the requirement to comply with Article 5.3 of the WHO FCTC.

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<sup>1</sup> It is proposed to the COP to establish an Oversight Committee, comprised of one Party representative from each of the six regions, which will remain abreast of activities of the Fund on behalf of the COP, flag concerns and provide interessional updates to the COP and its Bureau, as appropriate. The proposed Oversight Committee is presented in greater detail in this report under question 18.

The World Bank, as the Fund Trustee, has long been committed to tobacco control and has had an explicit global policy on tobacco since the 1990s, guided by a mandatory operational policy that precludes investing in tobacco production, processing or marketing. Adapting Article 5.3 of the WHO FCTC aligns with existing World Bank investment strategies.

The Convention Secretariat will establish a schedule to monitor the administration of the Fund and will report regularly to sessions of the COP and to its Bureau on the Fund's compliance with the provisions of Article 5.3 of the WHO FCTC and FENSA.

A detailed policy paper on the application of safeguards to ensure compliance with Article 5.3 of the WHO FCTC and related guidelines will be developed to support the launch of the Fund, as per the decision of the COP.

## **(12) HOW WILL FUNDS BE ALLOCATED TO THE WORKPLAN AND BUDGET OF THE COP?**

Available net revenue from the Fund will be disbursed, in alignment with the biennial cycle of the COP, by the World Bank to the WHO for the implementation of the WHO FCTC. Net income received by WHO will include the confirmed income from the previous year minus:

- the percentage paid to the World Bank for covering the costs of managing the fund; and
- funds used to replenish any principal loss and/or to increase the capital to compensate for downturns in the financial market.

Investment income from the Fund will be prioritized and allocated to the workplan, according to priorities established by the COP. Examples include key measures to assist in the implementation of the WHO FCTC, in line with the Global Strategy. Core activities of the Secretariat will continue to be funded by Assessed Contributions.

It is not envisioned at this stage that the Fund will be a grant-disbursing mechanism whereby countries submit applications and proposals for funding.

## **(13) WHAT IS THE TIMELINE LEADING TO COP9?**

The Convention Secretariat will develop a series of supplemental informational products to assist Parties in making an informed decision during discussions at COP9. This includes producing:

- a podcast on the financial arrangements and feasibility of the Fund, presented by financial experts within WHO and the World Bank;
- a podcast on the institutional and legal framework of the Fund, presented by legal and institutional experts within WHO and the World Bank;
- an infographic highlighting the Fund for use within domestic jurisdictions to help inform domestic leadership on the Fund;
- an informational document on investment policy provisions;

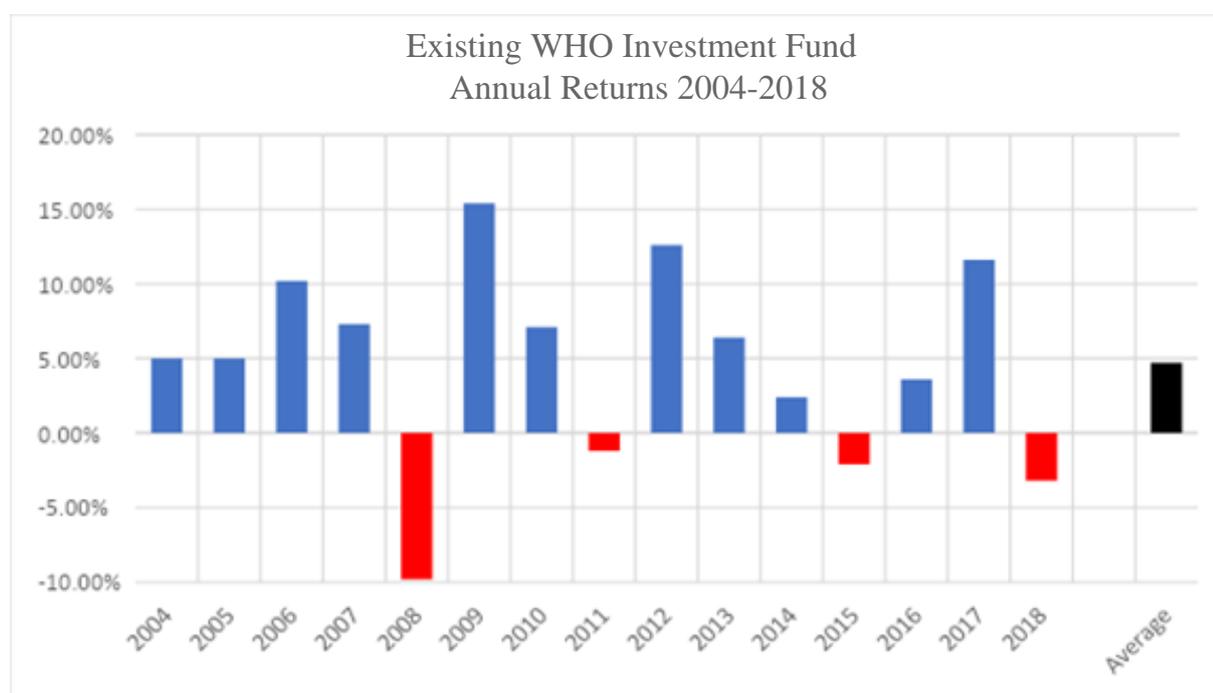
- an informational statement on measures to ensure compliance with Article 5.3 of the WHO FCTC and protection against vested commercial interests; and
- web-based informational sessions as requested.

The informational products will be available online, as it will be communicated to Parties.

**(14) WHAT IS THE PROJECTED RATE OF RETURN AND HOW WAS THIS RATE ESTABLISHED?**

The projected average rate of return of the Fund is proposed to be 4.5%, but the annual earned revenue to be allocated to the COP workplan and budget is conservatively projected at 4% to allow for the accumulation of surplus revenue for years of low or negative return. The gains made in strong years will provide surplus revenue to the Fund that is available in periods where the proposed 4% is not realized.

This projection is based on discussions with the WHO Department of Finance and the World Bank, on the basis of reviews of investment conducted by both entities. By way of example, the average return on investment of one existing WHO investment fund over 15 years is illustrated in the figure below, showing years of loss (red) compensated by years of recovery (blue).



**(15) WHAT ARE THE PROJECTED COSTS OF ADMINISTERING THE FUND?**

It is estimated that the overall projected costs are US\$ 75 000, or approximately 3.75% of the Fund’s earned revenue. The administrative costs are broken down as follows:

- **External costs** of administering the Fund represent the annual administrative and management fees of the World Bank Fund Trustee, projected at US\$ 25 000.
- **Internal Costs** of US\$ 50 000 per year are at the discretion of the COP to support project-specific contracts for periodic independent third-party evaluations of the Fund's financial performance, or other activities as approved by the COP. These activities will be funded through the revenue of the Fund, subject to the availability of funds.
- **The Convention Secretariat's** programme management activities for the Fund will be minimal once the Fund is operational, and will be absorbed within the internal resource mobilization activities of the Convention Secretariat, similarly to other funding streams for the WHO FCTC.

#### **(16) WHAT HAPPENS IF REVENUE IS NOT SUFFICIENT TO PAY THE ADMINISTRATIVE COSTS?**

The proposed revenue for allocation from the Fund (i.e., 4%) is less than the average projected yield (i.e., 4.5%). This is to allow the excess revenue during periods of stronger growth to be added to the capital as a safeguard against times where market volatility may negatively affect the Fund.

In the first year of the Fund, a portion of earned revenue will be set aside as a contingency amount to offset administrative costs in subsequent years that may have a low or negative yield. This contingency amount will be established to provide four years of administrative costs (US\$ 100 000) as a safeguard against long-term negative returns. In the event of low or negative returns in the first year, fees will be paid from the capital of the Fund with immediate replenishment to the capital once revenue is earned.

The option to exercise this provision will be included in the agreements between the World Bank and the investor.

#### **(17) WHAT IS THE ROLE OF THE CONFERENCE OF THE PARTIES?**

The COP, as the governing body of the WHO FCTC, will regularly review operations of the Fund and its contribution to WHO FCTC implementation.

In particular, the COP will:

- provide guidance to the Convention Secretariat on the implementation of the Fund, as adopted by the COP, including in matters related to the policies, structure, governance and institutional arrangements of the Fund;
- review and approve the allocation of revenue from the Fund to activities of the workplan and budget of the COP and, as necessary, provide guidance to the Convention Secretariat regarding implementation of its decisions;
- encourage Parties to explore domestic opportunities for building and replenishing the Fund and provide guidance to the Convention Secretariat to follow up on those opportunities; and
- provide direction to the proposed Oversight Committee.

## **(18) WHAT IS THE ROLE AND FUNCTION OF THE OVERSIGHT COMMITTEE?**

It is proposed that the COP consider establishing an Oversight Committee, comprised of one Party from each WHO region, to liaise with the Convention Secretariat on policy and operational elements of the Fund. The Oversight Committee will remain abreast of activities of the Fund on behalf of the COP, flag any concerns and provide intersessional updates to the COP and its Bureau, as appropriate.

The Oversight Committee will:

- meet with the Convention Secretariat and Fund Trustee, expected through virtual meeting, no less than once each calendar year, or more frequently at the request of the COP or as deemed appropriate for operational needs;
- review non-Party investors to the Fund, ensuring compliance with the provisions of Article 5.3 of the WHO FCTC and FENSA, for recommendation to the COP, through the Bureau;
- receive and assess reports from the Convention Secretariat on compliance with the investment and operational policies of the Fund; and
- review and provide guidance to the Convention Secretariat and the COP, through the Bureau, on matters of risk management or general governance of the Fund.

## **(19) WHAT IS THE ROLE OF THE CONVENTION SECRETARIAT?**

Under the direction of the COP and guidance of the Bureau, and following recommendations by the Oversight Committee as appropriate, the Convention Secretariat will support the development of, and further implement and monitor, all policy and operational arrangements of the Fund, including:

- working with WHO and the World Bank to develop and clarify the legal framework that will apply to the establishment and operation of the Fund;
- ensuring that the policy and operational arrangements and legal framework of the Fund capture the internationally accepted environmental, economic and social safeguards, and responsible investment principles in relation to fiduciary duty;
- establishing, with support from and in coordination with the World Bank, an applicable risk management framework to prevent, mitigate and address exposure of the COP to negative financial consequences and potential investor disputes;
- monitoring the development and conclusion of agreements between the World Bank and investors in relation to the Fund, in accordance with relevant financial and good governance policies of the World Bank, WHO Financial Regulations and Financial Rules, as applicable, and any adaptations as per the needs of the COP;
- establishing measures and a review mechanism to ensure that the Fund's investment portfolio adheres to Article 5.3 of the WHO FCTC and FENSA; and
- developing a framework for monitoring and evaluating the efficiency and viability of the Fund to meet the objectives of the WHO FCTC and to provide recommendations to the COP.

Once the Fund is launched, the Convention Secretariat will:

- prepare performance reports on the contribution of the Fund to activities supporting the implementation of the WHO FCTC;
- recommend, in consultation with WHO and the Fund Trustee, to the COP a proposed rate of return to be extracted from the Fund during each biennium based on the Fund's performance;
- engage with the Fund Trustee to remain informed of current and potential financial risks of the investment portfolio;
- monitor and report to the COP, through the Bureau and proposed Oversight Committee, on the annual administrative budget of the Fund, including direct costs incurred by the Convention Secretariat and the management costs of the Fund Trustee;
- monitor investor opportunities and, in consultation with the Fund Trustee, develop a strategy for replenishing the Fund under the guidance of the COP and its Bureau;
- report to the COP, and to investors and designated stakeholders, on the contribution of the Fund to implementation of the WHO FCTC; and
- perform any other functions, as directed by the COP and guided by the Bureau of the COP.

## **(20) WHAT IS THE ROLE OF THE FUND TRUSTEE?**

The World Bank will act as the Fund Trustee, with the benefits of (i) increasing efficiencies by commingling the Fund with larger investments managed by the World Bank; (ii) providing extensive experience in managing third party funds; and (iii) reducing management and administrative costs.

Serving as Trustee, the World Bank will hold and manage the assets of the Fund in accordance with the applicable legal framework of WHO and of the World Bank, and any other policy, governance and operational arrangements adopted by the COP. In line with its mandated functions, the Trustee may identify potential new investors to the Fund, which would be approved by the COP or, as decided by the COP, by the Bureau following recommendation by the proposed Oversight Committee.

Specifically, the Trustee will:

- administer assets of the Fund in accordance with the applicable legal framework and decisions of the COP;
- manage the investment portfolio;
- conduct analysis and inform the Convention Secretariat on the financial risks of the portfolio and tolerance levels established by the COP;
- maintain financial records and prepare financial/investment statements in accordance with internationally accepted fiduciary standards;

- provide input to other reports required by the Convention Secretariat in advance of Bureau of the COP, and COP meetings; and
- be accountable for the performance of its responsibilities as Fund Trustee, and report to the Convention Secretariat as agreed.

**(21) DOES THE SECRETARIAT HAVE ANY TECHNICAL EXPERIENCE IN MANAGING THIS TYPE OF FUND?**

The Fund is designed to require minimum internal technical expertise in financial and Fund management matters. The Convention Secretariat will rely on the technical and financial expertise of the World Bank and the WHO Department of Finance. The function related to programme management and coordination, as foreseen in the proposal, will be ensured by the Convention Secretariat as per its usual mandate.

Following consultation with WHO Department of Finance, it is proposed that the Fund be hosted at the World Bank. to increase efficiencies by commingling the Fund with larger investments managed by the World Bank. The Fund will also benefit from the World Bank's experience with the management of third-party funds, which will reduce administrative costs.

Serving as Trustee, the World Bank will hold and manage the assets of the Fund in accordance with the applicable legal framework of WHO and of the World Bank and any other operational and financial policies adopted by the COP.

**(22) WHAT IS THE WORKLOAD INVOLVED IN THE ADMINISTRATIVE MANAGEMENT OF THE FUND?**

Following the launch of the Fund, the total administrative management workload of the Convention Secretariat will include: coordination and monitoring of the activities conducted by the Trustee; preparation of reports to the Bureau, the proposed Oversight Committee and the COP; communication with investors and stakeholders relevant to the Fund; and other related functions, as directed by the COP.

The workload will be undertaken as part of the Convention Secretariat's existing responsibilities within its internal resource mobilization activities, similar to the administration of other funding streams relating to extrabudgetary contributions. Project-specific, short-term contracts (e.g., external assessments and audits as appropriate) may be added to the costs for administering the Fund and are to be funded from the earned revenue of the Fund, subject to approval by the COP.

**(23) HAS A COST–BENEFIT ANALYSIS BEEN UNDERTAKEN?**

Discussions on the cost–benefit and viability of the Fund were held with the WHO Department of Finance and the World Bank. It is recognized that, once operational, and based on the experience of the World Bank, the Fund would require minimal administrative or managerial engagement by the Convention Secretariat. Commingling the funds within existing World Bank portfolios further supports the financial viability of the funds, recognizing that the World Bank will have greater market access and be able to offer lower management fees, considering the volume of its funds placed in the market. The projected return on the investment of US\$ 2 million per year against a projected fixed administrative

cost of US\$ 25 000 to the Trustee and the absorption of minor administrative functions of the Convention Secretariat is deemed to be an efficient and effective means to secure sustainable and predictable funding to support implementation of the WHO FCTC.

The Fund will provide for the establishment of a separate account during its initial years to hold a reserve that may offset the annual administrative costs of the Fund for a period of up to four years of negative return.

**(24) WHAT IS THE EXPOSURE OF THE COP AND WHAT SAFEGUARDS ARE IN PLACE TO MITIGATE LIABILITY TO THE COP?**

The design of the Fund aims to provide a source of sustainable and predictable revenue while reducing the risk of liabilities resulting from unintended consequences and/or performance shortcomings of the Fund. On launching the Fund, and at the direction of the COP, the Convention Secretariat will embed comprehensive risk management strategies, operational policies, and strategic investment policies into the design and operation of the Fund, to be further developed in consultation with WHO and the World Bank.

The Convention Secretariat will monitor, under the guidance of the Bureau and following recommendations by the proposed Oversight Committee, the implementation of the measures decided under the policy and operational arrangements of the Fund and its related compliance with the objective, guiding principles and applicable frameworks of the Fund to guard it against potential legal, financial and governance issues. The COP will benefit from ongoing risk assessment and application of sound investment management strategies, including but not limited to the following safeguards:

- revenue from the Fund will be allocated for implementation of the WHO FCTC based on the actual return on investment, not on projected or anticipated revenue;
- for the initial year and during years of high interest earning, surplus revenue will be reserved to offset years of negative or low return on investment or to cover any unanticipated expenses;
- the partnership with the World Bank provides the COP with a global analysis of economic growth and political instability as it relates to any major risks to the Fund investment strategy; and
- the administrative, fiduciary and legal frameworks of the Fund will be aligned with COP decisions, agreements between WHO and the World Bank, and applicable WHO Financial Regulations and Financial Rules.

**(25) WHAT MODELS EXIST FOR A DISPUTE RESOLUTION MECHANISM AND HOW WOULD IT OPERATE?**

The Fund's administrative, fiduciary and legal framework and its operational arrangements aim to mitigate potential disputes by Parties and/or investors. Furthermore, the Fund will be managed and invested in accordance with the Fund's investment strategy, risk assessment, and as directed by the COP.

Article 27 (Settlement of disputes) of the WHO FCTC applies to disputes between Parties concerning the interpretation or application of the WHO FCTC, including the establishment and implementation of the Fund in accordance with Article 26.5 of the WHO FCTC.

Common disputes concerning the use of funds, including the selection of beneficiaries, are minimized by recognizing that all decisions concerning Fund allocations are made by the COP in accordance with workplan and budget priorities and subject to the availability of funds.

Any differences of opinion about the management of the Fund by the World Bank will be addressed according to the agreement between WHO and the World Bank in relation to the Fund arrangements, which will include standard contract language used by WHO for the settlement of potential disputes:

*Any dispute relating to the interpretation or application of the Agreement shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the rules of arbitration of the International Chamber of Commerce (or the United Nations Commission on International Trade Law Arbitration Rules).*

Disputes brought by investors will be addressed by the World Bank in accordance with standard language used by the World Bank in agreements with all investors. This includes disclaimers that invested funds can increase or decrease in value based on market performance and that information on past performance is not necessarily a guide to future performance.

## **(26) HOW CAN AN INVESTOR WITHDRAW FROM THE FUND PRIOR TO THE END OF THEIR FUNDING COMMITMENT?**

The Fund will be built on loans from multiple investors to reduce the impact of an investor who may wish to withdraw funds early. Penalties for withdrawal of funds will form part of the agreement to discourage investors from withdrawing funds in advance of the timelines established in the agreement.

At any time after two years from the date on which an investor enters into agreement with the World Bank as the Fund Trustee, the investor may request early withdrawal from the Fund by giving written notice of not less than six months to the Trustee. The Trustee will duly and promptly inform the Convention Secretariat. Any such withdrawal will be subject to penalties as prescribed by the Trustee in accordance with the agreement between the investor and the Trustee.

The original capital received from the investor will be repaid from the Fund, subject to market fluctuation at the time of withdrawal as prescribed by the agreement between the World Bank and the investor.

## **(27) WHAT ARE THE PENALTIES PRESCRIBED BY THE FUND TRUSTEE FOR EARLY TERMINATION AND HOW ARE PENALTIES APPLIED?**

Penalties and rates are established by the World Bank, in accordance with the terms and conditions of the portfolio to which the funds have been invested.

Penalties and conditions for early termination will fall to the responsibility of the World Bank and will be provided for in their standard agreements between the World Bank and investors. The Convention Secretariat will be informed of these terms and will report to the proposed Oversight Committee and the Bureau in the event that an investor invokes the option of early withdrawal.

## **(28) WHAT PROVISIONS EXIST FOR THE COP TO TERMINATE THE FUND?**

As the Fund is a financial mechanism provided for under Article 26.5 of the WHO FCTC, the COP has the authority to terminate the Fund and its associated financial activities. The COP may adopt the decision based on the recommendation of the Bureau, or as it deems appropriate, considering matters including, but not limited to, legal (including liability), financial, governance or other aspects of the Fund or if it considers that the Fund no longer serves its purpose.

Reference to the prerogative of the COP to terminate the Fund will be included in the agreement between the WHO and the World Bank, and in the respective agreements between the World Bank and the investors.

The Fund Trustee will terminate the Fund, if and as decided by the COP. Assets will be returned to investors subject to terms of agreement. Any surplus funds will be provided for allocation to the implementation of WHO FCTC, in accordance with decisions of the COP.

## **(29) WHAT SAFEGUARDS WILL BE ESTABLISHED TO PROTECT THE COP?**

On launching the Fund, the Convention Secretariat will embed comprehensive risk management strategies, operational policies and strategic investment policies into the design and operation of the Fund.

The Convention Secretariat will monitor and review compliance with the legal framework and guiding principles of the Fund to guard against potential legal, financial and governance consequences. Protection of the COP will be accomplished through ongoing risk assessment and sound investment management strategies, including but not limited to the following safeguards:

- aligning the Fund with the World Bank financial policies and strategies, recognizing their expertise in investment management and fiduciary responsibilities;
- partnership with the World Bank, which provides the COP with a global analysis of economic growth and political instability as it relates to any major risks to the Fund investment strategy;
- revenue from the Fund will be solely based on the return on investment, not on projected revenue; earned revenue will be proportional to the amount invested in the Fund;
- for the initial year and during years of high yield, surplus revenue will be reserved to offset years of negative or low return on investment or to cover any unanticipated expenses; and
- the proposed Oversight Committee of the COP will provide a review function supporting the governance of the Fund, assessing risk and ensuring safeguards are present and flexible to address the changing needs of the Fund and the COP.

**(30) WILL THE WHO FCTC RULES OF PROCEDURE REQUIRE ANY AMENDMENT IN ORDER TO ACCOMMODATE THE FUND?**

No. The Fund is proposed to be established as a financial mechanism under Article 26 of the WHO FCTC. As such, it would operate under the governance the COP, supported by the Rules of Procedure of the COP.

**(31) WHAT SPECIFIC MEASURES ARE IN PLACE TO ENSURE THAT ARTICLE 5.3 OF THE WHO FCTC PROTECTS THE FUND FROM THE COMMERCIAL AND OTHER VESTED INTERESTS OF THE TOBACCO INDUSTRY?**

The Fund policy, governance and operational arrangements will integrate the expectation of adherence to Article 5.3 of the WHO FCTC, to protect the Fund-related activities from commercial and other vested interests of the tobacco industry and those who work to further its interests. The Fund will also operate in compliance with FENSA.

The Convention Secretariat will inform the Fund Trustee of the provisions of Article 5.3 of the WHO FCTC, relevant COP decisions, and FENSA, and will monitor, on the basis of periodical reports submitted by the Trustee, the placement of funds to ensure compliance with these provisions.

The World Bank has long been committed to tobacco control and has had an explicit global policy on tobacco since the 1990s, guided by a mandatory operational policy that precludes investing in tobacco production, processing or marketing.

The Convention Secretariat, with the support of the WHO Department of Finance and, as necessary, by technical experts contracted by the Convention Secretariat, will monitor the identification and selection of the investment strategies by the Trustee, and report to the Bureau of the COP and the COP on the compliance of Fund related operations with the provisions of Article 5.3 of the WHO FCTC and FENSA.

**(32) HOW DOES THE SECRETARIAT PLAN TO REPORT TO THE COP ON THE FUND?**

The Convention Secretariat will monitor the operation of all relevant components of the Fund, with the support of the World Bank as the Fund Trustee, and will report regularly on the Fund's performance to the Bureau and to the Oversight Committee, as well as to the COP.

The Convention Secretariat, in collaboration with the Fund Trustee and WHO, will develop a set of guidelines for reporting to the COP and, as directed by the COP, to investors. with complete, consistent, and transparent information, to enable informed decision-making by the COP.

The Fund Trustee will report to the Convention Secretariat on the Fund's financial performance. The financial reports will include information on:

- investments made;
- net revenues of the Fund;

- risks assessment and analysis; and
- management and maintenance fees incurred.

Financial reports shall be governed and submitted in accordance with provisions contained in the WHO Financial Regulations and Financial Rules, and the Fund's reporting schedule as decided by the COP.

The reporting must also document compliance with applicable financial rules and policies, including Article 5.3 of the WHO FCTC and FENSA. Inherent risks must be also made known in the reports, and any changes to risks and the level of risk will be disclosed, including those associated with the assets and with any aspects of the investment strategy.

The Convention Secretariat will report on the financial performance of the Fund at intersessional meetings of the Bureau of the COP and regular sessions the COP to provide information on the status of the overall implementation of the Fund and to support reporting on, and planning for, the workplan and budget of the COP.

As decided by the COP, the Convention Secretariat will provide periodic reports to the investors on the financial performance of the Fund and its contribution to the implementation of the WHO FCTC.

### **(33) WHAT RISK MANAGEMENT PROVISIONS EXIST?**

The Convention Secretariat, under the guidance of the COP and of the Bureau, following recommendations of the proposed Oversight Committee, and in collaboration with the World Bank as the Fund Trustee, will regularly assess and analyse the factors that could negatively impact the success of the Fund. This assessment will identify and evaluate internal and external threats in relation to the application of:

- investment strategies and fund procurement, as recommended by the Trustee;
- strategic decisions related to Fund management and oversight;
- operational elements of the Fund, including those that might impact the process of allocating funds to the workplan and budget of the COP; and
- compliance with COP decisions and alignment with Article 5.3 of the WHO FCTC and FENSA.

The Convention Secretariat, in collaboration with the Fund Trustee, and supported by the WHO Department of Finance and, as relevant, technical experts contracted by the Convention Secretariat, will monitor areas of potential risk, evaluate the level of risk and potential impact of risk, and communicate mitigation strategies to the Bureau and the COP.

Comprehensive risk management strategies will be clearly articulated within operational policies, and strategic investment policies will be embedded into the design of the Fund. The role of the Convention Secretariat, under the direction of the COP and the Bureau of the COP, following recommendation by the proposed Oversight Committee, is to monitor and review compliance of the Fund implementation within the legal framework and guiding principles of the Fund, as a safeguard against potential legal, financial and governance risks.

The COP and WHO as a host agency of the Convention Secretariat will be protected through application of the WHO Financial Regulations and Financial Rules, as adopted by the COP, and the relevant financial and good governance policies of the World Bank, backed by ongoing risk assessment and sound investment management strategies.

A number of potential risk scenarios and applicable related safeguards are outlined below:

**Risk: Investment goal of US\$ 50 million is not met**

**Safeguards:** Revenue from the Fund is solely based on the return on investment. If the funding projection of US\$ 50 million is not met, earned revenue will still be available to the COP; however, it will be reduced proportional to the amount of the investment in the Fund. This reduction in earned revenue will not eliminate, but rather reduce the scope of activities supported through Fund revenue.

**Risk: Projected return on investment is below the predicted rate for any given year**

**Safeguards:** Funds will be allocated from the earned revenue of the Fund, by the World Bank to WHO, for implementation of the WHO FCTC. The COP will make decisions on the basis of actual funds received from the interests earned during the Fund's previous operating period, rather than anticipated earnings. Thus, the Convention Secretariat will be able to make recommendations to the COP, on the basis of information provided by the Fund Trustee and under the guidance of the Bureau, on the actual earned revenue available to be allocated to the workplan and budget of the COP.

**Risk: Year(s) of negative return on investment**

**Safeguards:** The projected average return on investment of the Fund is 4.5%, but the annual Fund revenue to be allocated to the COP workplan and budget is conservatively proposed at 4% to allow for the accumulation of a surplus in revenue to be used in years when return on investment has a low or negative rate.

**Risk: Investor wishes to withdraw funds early**

**Safeguards:** The Fund will be built on loans from multiple investors to reduce the impact of any one investor wishing to withdraw funds early. Penalties for withdrawal of funds will form part of the agreements between the World Bank and the investors to discourage investors from withdrawing funds in advance of the timelines established in the agreement.

**Risk: Dispute concerning allocation of revenue**

**Safeguards:** The allocation of resources earned from the Fund will remain the decision of the COP as part of the review and approval process in setting the workplan and budget of the COP. COP decisions on budgetary and financial matters are taken by consensus and in conformity with the WHO FCTC and the Rules of Procedure of the COP, and with consideration for WHO Financial Regulations and Financial Rules as adopted by the COP. A well-implemented principle of transparency and legal framework, as provided for by the WHO FCTC, will mitigate the level of risk in disputes concerning the allocation of revenue by the COP.

**Risk: Fund Trustee makes investment in tobacco shares**

**Safeguards:** The World Bank as the Fund Trustee has internal policies to prohibit engagement with the tobacco industry or their subsidiaries. The Convention Secretariat, under the guidance of the COP and its Bureau, will monitor and report to the COP and its Bureau, on the Fund’s compliance with Article 5.3 of the WHO FCTC, WHO Financial Regulations and Financial Rules and FENSA.

**Risk: Political instability jeopardizes World Bank investment mechanisms**

**Safeguards:** Economic growth and political stability are deeply interconnected and remain intertwined in 2021. Trade tensions continue to present the major risk to the global economy, while the COVID-19 pandemic is disruptive to trade and supply chains.

However, capitalizing on the opportunities to establish the Fund, as provided by the expertise of the World Bank and experience of WHO engagement with the World Bank, allows for appropriate navigation through a complex and dynamic risk environment. The Convention Secretariat will report to the COP and the Bureau of the COP on the World Bank’s analysis of the impact of economic growth and political instability as it relates to the investment strategy of the Fund.

**Risk: The COP determines that the Fund is no longer a viable financial mechanism**

**Safeguards:** The Fund is proposed as a financial mechanism under Article 26.5 of the WHO FCTC, allowing the COP to channel financial resources to support implementation of the WHO FCTC. In the event that the COP determines that the Fund is no longer a viable funding mechanism, or that ongoing risk assessments identify economic, political, legal or environment challenges, the COP may adopt a decision to close the Fund and its associated financial activities. The World Bank as the Fund Trustee will be instructed to close the investment portfolio and return the invested funds to the investors, subject to the terms of relevant agreements and market fluctuations. Remaining funds in the account would be credited to WHO for implementation of the WHO FCTC, subject to standard applicable fees of the Fund Trustee and applicable WHO recovery costs.

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