



FCTC

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

**Conference of the Parties to the
WHO Framework Convention
on Tobacco Control**

Ninth session
Geneva, Switzerland, 8–13 November 2021

**(Draft) FCTC/COP/9/B/R/2
10 November 2021**

Second report of Committee B

(Draft)

Committee B held its third and fourth meetings on 10 November 2021, under the chairmanship of Mr Ferdinand Mangongo (Gabon).

Committee B recommends to the Conference of the Parties the adoption of the attached decision relating to the following agenda item:

6. Budgetary and institutional matters

6.4 Convention Secretariat's fundraising strategies: Investment fund concept

One decision as amended entitled:

– WHO FCTC Investment Fund

Agenda item 6.4

WHO FCTC Investment Fund

The Conference of the Parties (COP):

Recalling Articles 5.6 (General obligations) and 26 (Financial resources) of the WHO Framework Convention on Tobacco Control (WHO FCTC);

Recognizing the importance of financial resources to support the implementation of the WHO FCTC;

Recalling that at its Seventh Session the COP emphasized the need for the Convention Secretariat to raise funds in decision FCTC/COP7(25), and at its Eighth Session the COP requested the Convention Secretariat to further expand upon, and make recommendations for the establishment and operation of a WHO FCTC Investment Fund in decision FCTC/COP8(5);

Acknowledging the report of the Convention Secretariat contained in document FCTC/COP/9/15, and the related document FCTC/COP/9/INF.DOC./2, as referenced in that report, and thankful to Parties that have participated in the consultations leading to the report,

1. DECIDES:

- (a) to launch the WHO FCTC Investment Fund as per the policy, governance and operational arrangements contained in the Annex to this decision; and
- (b) to designate the World Bank as the Trustee to the WHO FCTC Investment Fund;

2. REQUESTS the Convention Secretariat:

- (a) to make the necessary arrangements to launch the Fund in an expedient manner;
- (b) to work with the World Health Organization (WHO) to establish the necessary legal and administrative arrangements between the WHO and the World Bank to serve as Trustee to the Fund;
- (c) to make the necessary arrangements, in consultation with WHO and the World Bank as the Fund Trustee, under the guidance of the Bureau, for the finalization and implementation of specific policies, as relevant, to operationalize the Fund, including but not limited to financial policies, rules of investment, institutional arrangements, risk management provisions, and administrative and logistical support to the Fund;
- (d) to facilitate, under the guidance of the Bureau, the establishment, including the development of the terms of reference, of an Oversight Committee comprised of two Parties from each WHO region, and, as observers, two representatives of nongovernmental organizations accredited as observers to the COP, to provide support to the COP and its Bureau in the governance of the Fund;

- (e) to work towards securing investors to the Fund, in accordance with Article 5.3 of the Convention and its Guidelines for implementation, WHO Framework of Engagement with Non-State Actors, and the objective and guiding principles of the Fund;
- (f) to submit a report to the Tenth Session, and subsequent regular sessions, of the COP, on the operations of the WHO FCTC Investment Fund; and
- (g) to ensure management synergies with the Investment Fund to support implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products, if adopted by the Meeting of the Parties to the Protocol.

ANNEX

PROPOSED WHO FCTC INVESTMENT FUND: POLICY, GOVERNANCE AND OPERATIONAL ARRANGEMENTS

1. In decision FCTC/COP8(5), the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) tasked the Convention Secretariat, in consultation with expert advisers from the World Bank and the World Health Organization (WHO), to further expand on and make recommendations for the establishment and operation of a WHO FCTC Investment Fund and to report to the Ninth Session of the Conference of the Parties (COP9). This annex expands on specific points required by the COP to be reported in order for a decision to be reached on whether to launch the Fund.

2. The Fund will be complementary to existing sources of funding. Contributions to the Fund shall be voluntary. It will provide simplified and predictable funding for allocation to activities in the COP workplan and budget. The Fund will not be intended to serve as a substitute to Assessed Contributions or to replace existing or future extra-budgetary funds provided bilaterally by Parties or other entities.

A. OBJECTIVES AND GUIDING PRINCIPLES OF THE FUND

3. **Objective:** To establish an Investment Fund (with projected initial capital of US\$ 50 million and an estimated annual return of investment of US\$ 2 million) to provide sustainable funding to the COP to implement the WHO FCTC in alignment with COP-adopted decisions, workplans and budgets.

4. **Guiding principles:** Guided by the objective and guiding principles of the WHO FCTC, the Fund will operate in a transparent and accountable manner, according to best practices of the WHO Corporate Risk Management Policy,¹ the WHO Accountability Framework,² the WHO Framework of Engagement with Non-State Actors (FENSA),³ and the United Nations-supported Principles for Responsible Investment.⁴ Fund-specific principles include:

- **Preservation of capital:** Policies will only allow the spending of earned revenue subject to the availability of funds. While every effort will be made to preserve the capital, there is an acknowledged risk to the investor's capital, subject to prevailing market conditions; therefore, no guarantees exist for the full return of their capital investment.
- **Transparency:** Information about decision-making and activities at all levels will be accessible to the COP.
- **Active and responsible management:** The management of the Fund will be flexible to adapt to shifting market conditions and to COP priorities and respective decisions.

¹ <https://www.who.int/about/finances-accountability/accountability/corporate-risk-management-policy.pdf?ua=1>.

² https://www.who.int/about/who_reform/managerial/accountability-framework.pdf.

³ https://apps.who.int/gb/ebwha/pdf_files/wha69/a69_r10-en.pdf.

⁴ <https://www.unpri.org/>.

- **Leveraging funds:** The Fund will leverage financial investments in the form of interest-free loans from multiple sources, guided by Article 5.3 of the WHO FCTC, WHO FENSA, and in compliance with the WHO Financial Regulations and Financial Rules.
- **Commitment to do no harm:** The Fund shall adhere to Article 5.3 of the WHO FCTC and WHO FENSA, while avoiding and, as necessary, mitigating and addressing other possible economic, social and environmental adverse impacts of investment decisions.
- **Gender-sensitive investing:** The Fund will integrate gender-specific considerations by placing funds into investments that promote gender equality and create positive, gender-sensitive social and financial outcomes.
- **Independent management of the Fund:** Fund investors will not have influence over the investment policies, the allocation of revenues or any decisions of the COP in relation to the Fund.

B. GOVERNANCE AND INSTITUTIONAL ARRANGEMENTS FOR THE FUND, INCLUDING THE RELATIONSHIP TO THE COP, THE BUREAU AND THE CONVENTION SECRETARIAT

5. The Fund is designated to operate as a financial mechanism under Article 26 of the Convention. As such, it functions under the direction of the COP and is supported by the Rules of Procedure of the COP.

- **The COP** will guide the Convention Secretariat in establishing the policy, governance and operational arrangements of the Fund, including all matters related to policies, structure and institutional measures. Additionally, the COP will decide on the allocation of the Fund's revenue to activities in the COP workplan and budget, subject to availability of funds.
- **The COP Bureau** will provide guidance to the Convention Secretariat on implementing the policy, governance and operational arrangements of the Fund, and the allocation of revenue to the workplan and budget as decided by the COP. The Bureau will submit reports, recommendations and, as necessary, draft decisions in relation to the Fund for consideration of the COP.
- **The Convention Secretariat** will establish, implement and monitor all policy and operational arrangements of the Fund, in accordance with decided governance arrangements, under the guidance of the COP and the Bureau, by liaising with the World Bank as the Fund Trustee to provide all necessary information for the COP to carry out its governance responsibilities in relation to the Fund. The Convention Secretariat will report on the performance of the Fund to the COP, to investors and to designated stakeholders.
- **An Oversight Committee** comprised of two Party representatives from each of the six regions and, as observers, two representatives of nongovernmental organizations accredited as observers to the COP, will remain abreast of activities of the Fund on behalf of the COP and will flag concerns and provide intersessional updates to the COP and its Bureau, as appropriate.

C. LEGAL STATUS OF THE FUND AND ITS RULES OF PROCEDURES

6. The Fund will not be a legal entity. It will be a financial mechanism as provided for under Article 26(5) of the WHO FCTC, which will allow the COP to channel financial resources to implement the approved WHO FCTC workplan and budget, subject to availability of funds. The Fund will be an administrative arrangement between the WHO, lending its administrative, fiduciary and legal capacity to the Convention Secretariat to support implementation of COP decisions and the Fund Trustee. To that end, an agreement will be concluded between WHO and the World Bank, similar to existing arrangements between WHO and the World Bank. Fund procedures will adhere to World Bank operational guidelines and agreements with investors.

7. In consultation with, and on the advice of WHO Department of Finance, it is proposed that the Fund will be hosted by the World Bank, recognizing: (a) the efficiencies in commingling the Fund with larger investments managed by the World Bank; (b) the World Bank's experience with the management of third-party funds; and the (c) reduced management and administrative costs. The legal framework will reflect the 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.

D. RULES FOR AND FUNCTIONS OF THE FUND HOSTING AGENCY

8. The Fund will be hosted at the World Bank as the Fund Trustee and will abide by WHO rules, the World Bank financial and good governance rules, and by specific policies deriving from provisions of the WHO FCTC, such the Article 5.3, WHO FENSA and decisions of the COP.

9. The Fund Trustee will administer assets of the Fund in accordance with the applicable legal framework and decisions of the COP. This will include:

- managing trading activities in compliance with the Fund's objectives, guiding principles and specific investment strategy;
- conducting analyses on the financial risks of the portfolio according to the risk and tolerance levels established by the COP;
- maintaining financial records and preparing financial/investment statements; and
- reporting to the Convention Secretariat, as scheduled.

E. DEFINITION OF EXPECTED ADMINISTRATIVE COSTS

10. The goal of the Fund is to preserve the capital through sound fiscal and investment policies with low administrative costs. It is estimated that the overall administrative expenses will be approximately 3.75% of the earned revenue. Based on an estimated annual Fund revenue of US\$ 2 million, the projected annual administrative costs are US\$ 75 000.

11. The breakdown of the administrative costs are as follows:

- **External costs** of administering the Fund, including the annual administrative and management fees of the World Bank as the Fund Trustee, projected at US\$ 25 000.

- **The Convention Secretariat's** administrative cost for managing the Fund is estimated at US\$ 50 000 to support short-term contracts for periodic independent third-party evaluations of the Fund's financial performance, or other related activities as approved by the COP.
- **Administrative costs** associated with managing the Fund will be financed by the earned interest from the Fund. In the first year of the Fund, the earned revenue will be set aside as surplus to offset administrative costs in subsequent years that may have low or negative income from the Fund. 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.

F. DESCRIPTION OF POSSIBLE OPERATIONAL MODALITIES

- **Financial input:** The Fund will build on unique sources of funding capital 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 Convention. It may also receive financial inputs from other public and private sources that meet the requirements of Article 5.3 of the WHO FCTC and principles of WHO FENSA, as decided by the COP, or, in the intersessional period between meeting of the COP, by the Bureau following recommendations by the Oversight Committee. While the optimal value of the Fund is projected at US\$ 50 million, it may be initiated in advance of reaching its goal value, with operations and financial outputs adjusted accordingly.
- **Fund management:** The World Bank as the Fund Trustee will manage the investment funds on behalf of the COP according to prescribed strategies for investment and fund procurement, complying with COP decisions related to the Fund, and applying the provisions of Article 5.3 of the WHO FCTC and FENSA.
- **Fund allocation:** Aligning with the biennial cycle of the COP, revenue from the Fund will be dispensed by the World Bank to WHO for the implementation of the WHO FCTC as directed and decided by the COP. Allocation priorities are set by the COP according to the approved activities in its workplan and budget. The Fund is expected to provide sustainable and predictable funding to supplement existing extra-budgetary funds and Assessed Contributions.
- **Fund oversight:** The Convention Secretariat will monitor the Fund operations, which are managed by the World Bank as the Fund Trustee, to ensure that the Fund operates in accordance with decisions and direction of the COP. The Convention Secretariat will ensure that the COP receives sufficient information (including from the Fund Trustee) to make informed decisions, under the guidance of the Bureau, following recommendations of the Oversight Committee.

G. ENSURING COHERENCE WITH ARTICLE 5.3 OF THE CONVENTION, DECISION FCTC/COP7(25)

12. The Fund's operational and financial policies will explicitly include an expectation of compliance with Article 5.3 of the WHO FCTC to protect it against commercial and other vested interests of the tobacco industry or those who work to further its interests. The Convention Secretariat will establish a schedule to monitor that the administration of the Fund is compliant with these provisions, and report on a regular basis to the COP and its Bureau on the Fund's compliance with the provisions. Furthermore, the provisions of WHO FENSA shall also be applicable.

13. 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. Incorporating the principles of Article 5.3 of the WHO FCTC will ensure alignment with the World Bank investment strategies.

14. Non-Party investors to the Fund will be assessed by the World Bank as the Fund Trustee to ensure that their investment does not conflict with Article 5.3 of the WHO FCTC or WHO FENSA. If approved, they will be recommended by the World Bank to the Convention Secretariat. After review by the Convention Secretariat, potential non-Party funders would be approved by the COP, or, as decided by the COP, by the Bureau following recommendation by the Oversight Committee. Prior to providing funds, investors will sign the agreement that includes compliance with Article 5.3 of the WHO FCTC.

H. RULES FOR FINANCIAL REPORTING AND FOR CONFLICT RESOLUTION

Financial reporting

15. Financial reports shall be 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. Drawing on reports from the World Bank as the Fund Trustee, the Convention Secretariat will report on the Fund's activity to the Bureau and to the Oversight Committee, as well as to the COP, to provide information required for implementation and further planning of the COP workplan and budget.

16. Financial statements will include:

- investments made;
- net revenues of the Fund;
- risk assessment and analysis; and
- management and maintenance fees incurred.

17. Additionally, scheduled reporting will include:

- compliance with applicable financial rules and policies, including Article 5.3 of the WHO FCTC and WHO FENSA;
- inherent risks and any changes to risks or the level of risk;
- prevailing market trends, investments diversification and projections on the Fund's performance; and
- review of the Fund's financial performance relative to other World Bank managed funds.

18. The Convention Secretariat will provide periodic reports to Fund investors on its financial performance and the resulting policy and programme activities supported by the Fund.

Conflict resolution

19. The Fund’s administrative, fiduciary and legal framework, as well as operational arrangements, aim to prevent and 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 direction as established by the COP.

20. For 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, Article 27 on the Settlement of Disputes applies. Common disputes between Parties concerning the use of funds are minimized by recognizing that the use of the funds is decided by the COP in its adoption of the workplan and budget.

21. 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 (the “UNCITRAL Arbitration Rules”).

22. 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 prediction of future performance.

I. MONITORING AND EVALUATION

23. The implementation of activities in the COP workplan and budget that are supported by the Fund will be monitored by the COP and its Bureau on the basis of regular reports by the Convention Secretariat. The reports will include analysis of impact, efficiency and effectiveness of the operations of the Fund.

24. The Convention Secretariat will contract periodic independent, third-party evaluations in relation to the functioning of the Fund, funded from the Fund’s revenue and subject to the availability of funds. The evaluations will review the Fund’s financial performance, including the use of funds in alignment with the WHO FCTC workplan and budget, to provide an objective estimate of its effectiveness and efficiency to support implementation of the WHO FCTC. The independent evaluations will be provided to the Bureau and to the Oversight Committee, and they will be reported to sessions of the COP to inform decision-making and identify lessons learnt.

25. The frequency and types of evaluation will be dictated by the needs of the COP.

J. APPLICABLE FIDUCIARY STANDARDS AND ACCOUNTABILITY MECHANISMS

26. Fiduciary standards of the Fund investment mechanism are assured by having the World Bank serve as the Fund Trustee due to its comparative strengths in financial and risk management. The World Bank as the Fund Trustee will administer the Fund and manage the placement and stewardship of the Fund in the marketplace, with a fiduciary duty to act both legally and ethically in the best interest of WHO, in line with COP decisions, the objectives and guiding principles of the WHO FCTC, and specifically Article 5.3 of the WHO FCTC. Considering that WHO lends its administrative, fiduciary and legal frameworks to the Convention Secretariat, the WHO Regulations and Rules equally apply as relevant, and as agreed with by the World Bank.

27. In relation to allocation and use of revenue, COP decisions apply. The Fund will provide financial resources to respond to priorities identified and approved by the COP, in a process that is transparent to all Parties.

28. The Convention Secretariat will monitor the development and implementation of best practices and fiduciary standards of the Fund, in consultation with WHO and based on the expertise and reports by the World Bank as the Fund Trustee, and report to the COP and its Bureau, as well as the Oversight Committee, as relevant.

K. MECHANISMS FOR WITHDRAWAL FROM OR THE TERMINATION OF THE INVESTMENT FUND

Withdrawal of investor funds

29. The Fund will be built on loans from multiple investors to reduce the impact of an investor who wishes to withdraw funds early. Rates and penalties for withdrawal of funds will form part of the agreement between the World Bank as the Fund Trustee and investors in an effort to discourage investors from withdrawing funds in advance of the timelines established in the agreement.

30. 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 Fund Trustee in accordance with the agreement between the World Bank as the Fund Trustee and the investor.

31. 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 as the Fund Trustee and the investor.

Termination of the Fund

32. As the Fund is a financial mechanism provided for under Article 26(5) of the WHO FCTC, the COP may decide to terminate the Fund and its associated financial activities, following a recommendation by the Bureau, or as it considers appropriate.

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

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

L. LEGAL, FINANCIAL, GOVERNANCE OR ANY OTHER POTENTIAL SAFEGUARDS FOR THE COP, INCLUDING MATTERS ON LIABILITY

35. 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.

36. The Convention Secretariat will monitor, under the guidance of the Bureau and following recommendations by the Oversight Committee, the implementation of 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.

37. The COP will benefit from regular reporting on the implementation of ongoing risk assessment and sound investment management strategies, as approved for the Fund, and the application of the following safeguards:

(i) Allocation of revenue from the Fund will be based on the actual interest earned and provided to the WHO FCTC, not on projected or anticipated future earned revenue.

(ii) 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.

(iii) The experience of the World Bank as the Fund Trustee 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.

(iv) Finally, the administrative, fiduciary and legal frameworks applicable to the Fund will be applicable in accordance with COP decisions, and with respect to arrangements concluded between WHO and the World Bank, preserving the application of WHO Regulations and Rules as applicable to the Convention Secretariat and adopted by the COP.

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