

October 24, 2010

Summary Report by the Chair of the Working Group on Legal Issues

1. With decision PC.3/DC.7 on 'Governance of the Administrative Committee and Working Groups in 2010' the Working Group on Legal Issues was established amongst other Working Groups, to work, inter alia, on the draft legal documents relating to financial rules and regulations; staff rules and regulations; regulations on the secondment of staff; and the staff provident fund.
2. The Working Group had a fruitful exchange of views between the third and fourth sessions of the Preparatory Commission, via conference calls, written procedures and two physical meetings: One meeting prior to the fifth meeting of the Administrative Committee on 23-24 June, 2010, and another meeting on 21 October, 2010, prior to both the sixth meeting of the Administrative Committee and the fourth meeting of the Preparatory Commission.
3. In detail, the Working Group discussed:
 - a. Amendments to the Principles of the Staff Provident Fund: The Working Group reviewed the amendments to the Principles of the Staff Provident Fund as proposed by its Management Board. After careful consideration of this proposal, the Working Group agreed to recommend to the Preparatory Commission the adoption of the amendments contained in the Annex to the present document.
 - b. Resignation and Succession of the Interim Director-General:
 - i. Resignation: A draft resolution on the acceptance of the resignation of the Interim Director-General as well as a draft Agreement between the Preparatory Commission and the Interim Director-General were reviewed and amended in light with the considerations made by Members of the Working Group and the outcome of consultations conducted among interested parties. The Working Group developed alternative documents which were aimed at accommodating the consultations resulting from the resignation of the Interim Director-General. Those documents were submitted to the Chair of the fourth session of the Preparatory Commission for action thereon.
 - ii. Succession: Without elaborating this issue, two possible scenarios were outlined on the succession of the Interim Director-General: Either the appointment of a care-taker Interim Director-General until the conclusion of the first session of the Assembly and the election of the Council in accordance with the Statute or, the highest ranking officer of the Secretariat to act in the capacity of Interim Director-General at interim.

- iii. Appointment process of the Director-General: It was considered that the procedure currently is under discussion in the Working Group on Budget and Transition and hence a discussion in the Legal Working Group was not necessary.
 - c. Draft Transfer Protocol: Members had an exchange of views on the exact legal nature of the dissolution of the Commission and the subsequent transfer of assets and liabilities to the Agency. As a consequence, it was highlighted that staff should be informed in due time of the upcoming necessary changes in the contractual relationship and on its implications. Considering the nature of the document, i.e. that it addresses issues of transition rather than solely legal issues, it was considered that the transfer protocol should be discussed within the Working Group on Budget and Transition.
 - d. Draft Financial Regulations: The Working Group had the opportunity to exchange views on a range of issues such as the Working Capital Fund, internal controls and audit, due diligence, and the current system of staff assessment. It was agreed that these issues would need further consideration.
 - e. External audit: Members of the Working Group expressed differing views on the interpretation of the applicable Financial Regulations for the external audit, but in general agreed on the urgency of conducting such an audit, especially bearing in mind the recommendations made by the Financial and Organisational Review Committee. One possibility discussed was to undertake two parallel audits, one carried out by a public audit institution with another being carried out by a private auditor. As a consequence of the differing views, the Chair considers that this issue should be brought before the policy making organ for further exchange of views and possible decision.
- 4. The Working Group notes that a number of questions need to be resolved in respect of the above mentioned documents, and additionally with regard to the draft Staff Regulations, the Ethics and Whistleblower policies and financial disclosure. Therefore, the Working Group will further consult in the upcoming months towards the last session of the Preparatory Commission in order to facilitate a smooth transition process.
 - 5. The Working Group, having considered the proposal made by Germany to establish a procedure for the adoption of the Host Country Agreement for the Bonn Center, recommended this issue be referred to the Chair of the Administrative Committee and the Chair of the Preparatory Commission for further consultation.
 - 6. The Chair of the Working Group on Legal Issues noted that he would facilitate consultations leading to identifying a possible successor. The members of the Working Group of Legal Issues expressed their sincere gratitude for the contributions of the Chair to the Working Group.

Action requested:

7. The Working Group requests the Preparatory Commission to take note of this report and to approve the amendments to the Principles to the Staff Provident Fund as contained in the Annex hereto.

St John Hoskyns, Doug Cook

United Kingdom Chairs of the Working Group on Legal Issues

ANNEX

Provisions in strikethrough are deleted

Underlined provisions are newly added

Amendments to the Principles for the Staff Provident Fund**Article 1 Objectives and Status of the Staff Provident Fund**

- 1.1. A Staff Provident Fund (hereinafter the "Provident Fund") is established for the exclusive purpose of providing:—(a) all staff members Employees of the Preparatory Commission (hereinafter "staff members~~Employees~~") for the International Renewable Energy Agency (hereinafter "the Commission") participating in the Provident Fund, upon separation from their service ~~in case of retirement or for other reasons~~, with a benefit in the form of a lump sum ~~as well as:~~ (b) with death and disability benefits for them or their qualifying dependants and beneficiaries.

- 1.6. The membership of the Provident Fund, ~~Employer and Employee~~ obligations of the staff members and of the Commission, and benefits under the Provident Fund shall be governed by these Principles and such supplementary Rules which the Management Board will establish.

[...]

Article 2 Benefits provided by the Provident Fund

- 2.1 The Provident Fund shall provide lump sum benefits for eligible staff members Employees of the Commission.

- 2.2 The Provident Fund shall maintain an account for each staff Mmember which shall be credited with contributions and an investment return as specified in the investment policy.

- 2.3 The entire balance of a staff member's Employee's account shall be paid upon separation from service with retirement or upon leaving the employment at the Commission.
- 2.4 The Provident Fund shall provide death and disability benefits for eligible Employees or their qualifying dependants and beneficiaries.

Article 3 Funding of the Provident Fund

- 3.1 The Provident Fund shall be funded by contributions from both the Commission as Employer and staff members the Employees.
- 3.2 Contributions to the Provident Fund shall include Basic Contributions by the Commission as Employer and contributions by staff members the Employees. In addition, the Management Board may establish Rules to permit staff members Employees to make voluntary contributions.
- 3.3 Basic Contributions shall be allocated to Fund Retirement Savings, Survivor and Disability Benefits and Administrative Costs of the Provident Fund. The method of such allocation shall be determined by the Management Board and be set out in the Rules.

[...]

Article 4 Management Board and Operations

[...]

- 4.6 The Executive Management representatives shall be two Members of the Senior Executive Management Team as appointed by the Interim Director-General.
- 4.11 The Management Board shall appoint an independent actuary to report periodically on the Provident Fund's actuarial position.
- 4.12 The Management Board has a fiduciary responsibility to manage the Provident Fund in the best interests of all the staff members Employees.

[...]

Article 5 Contributions and Allocations

5.1 ~~Both, The Commission Employer and staff members the Employees shall make Contributions to the Provident Fund. The Management Board is responsible to determine the level of these Contributions and the subsequent Allocations. The initial Contributions are as follows:~~

~~(a) each Employee's Basic Contribution is 7.9% of applicable Pensionable Remuneration. The Employer's Basic Contribution is 15.8% of applicable Pensionable Remuneration;~~

~~(b) each Employee's Basic Contribution shall be deducted by the Employer from salary or salary replacement and shall be transmitted by the Employer to the Provident Fund together with the Employer's Basic contribution on a monthly basis.~~

5.2 For each ~~Employee staff member~~, Pensionable Remuneration is determined by rule 101.2 lit. (c) of the draft Staff Rules of the Commission.

5.3 The Provident Fund shall allocate Contributions to credit the relevant Employees Retirement Account and to fund survivor and disability benefits, Administrative Costs and the Investment Fluctuation Reserve in accordance with the following table:

	Employer	Employee	Total
End of service savings	13.0%	7.0%	20.0%
Survivor and disability benefits and administrative costs	2.8%	0.9%	3.7%
Total	15.8%	7.9%	23.7%

5.4 The above levels of Contribution and Allocation shall be subject to periodic review and adjustment by the Management Board in consultation with appropriate external actuarial advice.

Article 6 Amendment / Termination

6.1 The Commission intends to maintain the Provident Fund in operation in accordance with these Principles. However, the Commission reserves the right to amend these Principles or otherwise alter the mechanism for providing benefits to staff members ~~its Employees~~, if it determines that it is in the best interests of the Commission and of its staff members ~~Employees~~ to do so. The Commission shall consult with the Management Board prior to any decision to alter the mechanism for providing benefits to its staff members ~~Employees~~, which may involve amending the structure of the Provident Fund or terminating the Provident Fund.