



**MEETING OF THE PARTIES TO THE PROTOCOL
TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS**

**FCTC/MOP/3/11
25 June 2023**

**Third session
Panama City, Panama, 27–30 November 2023
Provisional agenda item 7.4**

Investment Fund for implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products

Report by the Convention Secretariat

Purpose of the document

The present report describes arrangements made to launch the Investment Fund to support implementation of the Protocol to Eliminate Illicit Trade in Tobacco Products in accordance with decision FCTC/MOP2(8). The report proposes the establishment of a single Oversight Committee which would serve the Investment Fund to support implementation of the Protocol and the Investment Fund to support implementation of WHO Framework Convention on Tobacco Control, under the oversight of the separate governing bodies of the treaties to ensure management synergies between the two Funds.

Action by the Meeting of the Parties

The Meeting of the Parties to the Protocol is invited to note the present report, to consider the terms of reference for a single Oversight Committee contained in Annex 1 and to adopt the draft decision contained in Annex 2 of the present report.

Contribution to the Sustainable Development Goals (SDGs): All SDGs; in particular SDG 3 and Target 3.a.

Link to Workplan and Budget item: None.

Additional financial implications if not included in the Workplan and Budget: None.

Related document(s): None.

BACKGROUND

1. At the Second session of the Meeting of the Parties (MOP) to the Protocol to Eliminate Illicit Trade in Tobacco Products, the Convention Secretariat presented a proposal for the development of an Investment Fund as a voluntary financial mechanism to support the objectives of the Protocol, following a request by the Bureau of the MOP. The Convention Secretariat produced documents FCTC/MOP/2/12 and FCTC/MOP/2/INF.DOC/2, the latter providing additional information in the form of questions and answers to support the proposal for the establishment of the Investment Fund.
2. In decision FCTC/MOP2(8), the MOP decided to launch the Protocol Investment Fund (further to the policy, governance and operational arrangements contained in the annex to that decision) and requested the Convention Secretariat to make the necessary arrangements to launch the Fund in an expedient manner. The MOP also requested the Convention Secretariat to facilitate, under the guidance of the Bureau, the establishment (including the development of the terms of reference) of an Oversight Committee comprised of one Party from each World Health Organization (WHO) region and, as observer, a representative of a nongovernmental organization (NGO) accredited as observer to the MOP to provide support to the MOP and its Bureau in the governance of the Fund.
3. Further, in decision FCTC/MOP2(8), the MOP requested the Convention Secretariat to ensure management synergies with the Investment Fund to support implementation of the WHO Framework Convention on Tobacco Control (WHO FCTC), adopted in decision FCTC/COP9(13).

THE FUND

4. The Convention Secretariat, in consultation with WHO and with the World Bank as the Fund Trustee, and with the involvement of the Knowledge Hub on Article 5.3 of the WHO FCTC, worked on the finalization and implementation of policies to operationalize the Fund, including but not limited to financial policies, rules of investment, institutional arrangements and risk management provisions, as well as to provide administrative and logistical support to the Fund.
5. In relation to the investment strategy, there has been a significant strengthening of fixed-income markets in recent months: they are forecasted to generate a return higher than the Fund's projected rate of return of 4.5% into 2024, suggesting that funds could be placed at, or above, the guaranteed rate for the full five-year investment term.
6. The Convention Secretariat remains engaged in outreach efforts towards potential investors to the Fund and is undertaking a mapping of potential investors to the Fund. Investor outreach has been limited to Parties. The Convention Secretariat will provide a verbal update at the Third session of the MOP (MOP3) on the status of investment for the Fund.
7. The Convention Secretariat has undertaken a review of policies and administrative arrangements of the Protocol and the WHO FCTC Investment Funds in an effort to ensure management synergies between the two Funds as mandated by decision FCTC/MOP2(8). In that regard, discussions were held with the World Bank in respect of a potential placement of the funds into a co-mingled investment vehicle that would meet the needs of both the MOP and the COP, as well as an alignment of the reporting and administrative operations of the two Funds.

INCREASING SYNERGIES BETWEEN THE PROTOCOL AND WHO FCTC INVESTMENT FUNDS THROUGH A SINGLE OVERSIGHT COMMITTEE

8. Under the guidance of the Bureau elected by the Second session of the MOP and the Bureau elected by the Ninth session of the COP, the Convention Secretariat developed a call for expressions of interest in membership on the Oversight Committees for the Protocol and the WHO FCTC Investment Funds, which it released in July 2022. Notice of the launch was published on the WHO FCTC website as well as forwarded to Protocol and WHO FCTC focal points, Permanent Missions of Parties to the United Nations Office at Geneva, NGOs accredited to the MOP and COP, and it was disseminated through WHO and World Bank networks.

9. Despite outreach efforts, it was challenging to attract qualified candidates to serve on the Oversight Committees. As of March 2023, five qualified candidates responded to the call for expressions of interest in respect of the WHO FCTC Investment Fund, and no interest was expressed in respect of the Protocol Investment Fund. Three names have been put forth by NGO observers to the COP to participate as observers to the Oversight Committees. The applications were submitted for review to the Selection Committees for each Fund¹ and due diligence by the Convention Secretariat and the WHO FCTC Knowledge Hub on Article 5.3.

10. Having reported to the Bureaus of the MOP and of the COP on the challenge of meeting the requirements related to membership on the Oversight Committee established by decision FCTC/MOP2(8), the Convention Secretariat assessed the rationale of the establishment of a single Oversight Committee, which would serve the Protocol and the WHO FCTC Investment Funds, under the direction of the separate governing bodies of the treaties. The role of the single Oversight Committee would be limited to its terms of reference, as decided by the COP and the MOP. Respecting the principle of independent management of the Funds, the single Oversight Committee would not have influence over the allocation or use of revenues generated by the Funds, which is decided by the governing body of each treaty. Discussions were held with the World Bank, as Trustee of the Funds, which further supported the concept of a single Oversight Committee. First, creating a single Oversight Committee would generate logistical and operational efficiency. Second, it would help address the difficulty of identifying a large number of candidates for membership as would be required for two separate Oversight Committees, in particular considering the limited pool of global financial experts who would be suitable for such a function. Third, from a strategic perspective it would align with decisions FCTC/MOP2(8) and FCTC/COP9(13), which requested the Convention Secretariat to ensure management synergies between the Protocol and the WHO FCTC Investment Funds.

11. In conducting its assessment, the Convention Secretariat reviewed existing practice at WHO (in relation to the WHO Independent Expert Oversight Advisory Committee) and the United Nations (in relation to 18 oversight committees). It was found that oversight committees have a membership of five to eight members on average, that the skill set and qualifications of the applicants are considered as essential criteria and that diverse (including regional) representation is considered as desirable. It was further noted that the global pool of qualified candidates for such committees is relatively small.

12. Based on these considerations, the Bureaus requested the Convention Secretariat to seek candidates for membership of a single Oversight Committee, which would serve both Funds, to enable the launch of the Funds without delay. The Bureaus further recognized that the challenge of attracting qualified candidates, as well as the experience of similar bodies in the United Nations system, suggested

¹ The Selection Committees for the Protocol and WHO FCTC Investment Funds were comprised of the President and one Vice-President of the governing body of each treaty, as well as the Head of the Convention Secretariat.

that the number of members currently required for the Oversight Committee might be reconsidered by the governing bodies.

13. The Bureaus further requested the Convention Secretariat to prepare a draft decision to be recommended for consideration and adoption by MOP3 and Tenth session of the Conference of the Parties (COP10), combining the terms of reference of the two Oversight Committees into one set of terms of reference to be used for a single Oversight Committee serving both Funds. The terms of reference of a single Oversight Committee contained in Annex 1 of this report combine the terms of reference developed by the Convention Secretariat for the Protocol and WHO FCTC Investment Funds, approved by the Bureaus at their first joint meeting.

ACTION BY THE MEETING OF THE PARTIES

14. The MOP is invited to note the present report, to consider the terms of reference for a single Oversight Committee contained in Annex 1 and adopt the draft decision contained in Annex 2 of the present report.

ANNEX 1

SINGLE OVERSIGHT COMMITTEE FOR THE WHO FCTC AND PROTOCOL INVESTMENT FUNDS: TERMS OF REFERENCE

1. The Investment Funds for the WHO Framework Convention on Tobacco Control (WHO FCTC) and the Protocol to Eliminate Illicit Trade in Tobacco Products operate under the direction of the Conference of the Parties (COP) to the WHO FCTC and the Meeting of the Parties (MOP) to the Protocol, which have overall governance responsibilities for the establishment of the policy and operational arrangements of their respective Fund. The COP and MOP are supported by the Convention Secretariat in the implementation and monitoring of the Funds under the guidance of the COP and MOP and their Bureaus.
2. To ensure that the COP and the MOP and their Bureaus receive all necessary information to carry out their governance responsibilities in relation to the Funds, the Convention Secretariat will liaise with the World Bank as the Fund Trustee, which will administer assets of the Fund in accordance with the direction of the COP and the MOP in relation to their Funds.
3. It is in this context that the Convention Secretariat has been requested to facilitate the establishment of a single Oversight Committee (OC) to provide support to the COP and the MOP and their Bureaus in the governance of the Funds, with specific emphasis on the management of financial investments, liquidity, market exposure and inherent risk to the COP and the MOP.
4. The OC is established in accordance with terms of reference contained in the present document.
5. The OC, Convention Secretariat and the Bureaus shall take the necessary actions to ensure a periodic review of these terms of reference. Any proposed amendment shall be submitted to the COP and MOP Bureaus for their joint approval.

PURPOSE OF THE COMMITTEE

6. The OC serves in an advisory capacity, providing independent expert advice to the Convention Secretariat and the Bureaus. The OC will support the Convention Secretariat in monitoring the operations of the Funds, managed by the Fund Trustee, specifically in the areas of investment strategy and investment policy, and to ensure that the Funds operate in accordance with decisions and direction of the COP and the MOP.
7. The OC aims to add value by strengthening the accountability and governance of the WHO FCTC and the Protocol Investment Funds.
8. The OC shall advise the COP and the MOP, through their Bureaus, and the Convention Secretariat, as required, on issues within its mandate.
9. The role of the single OC shall be limited to its terms of reference. Respecting the principle of independent management of the Funds, the single OC shall not have influence over the allocation or use of revenues generated by the Funds, which is decided by the governing body of each treaty.

FUNCTIONS

10. The OC provides technical and financial knowledge, expertise and experience to inform the implementation and monitoring of the Funds. The incoming OC will receive a comprehensive induction into the WHO FCTC and the Protocol, and their Investment Funds.

11. The oversight function of the OC is to provide assurance to the COP and MOP, through their Bureaus, that the investments are being managed with care, diligence and transparency.

12. The responsibilities of the OC include reviewing the following matters for the WHO FCTC and Protocol Investment Funds, and providing advice to the COP and the MOP, through their Bureaus, and the Convention Secretariat, with reference to:

- (a) the investment policy of the Funds, including changes thereto;
- (b) asset allocation and investment strategy;
- (c) selection of benchmarks and targets for investment returns;
- (d) risk management of investments and portfolios;
- (e) diversification of investments by geographic area, instrument, currency, etc.;
- (f) performance measurement of investments;
- (g) validation and recommendations of external parties such as investment adviser to the Fund Trustee; and
- (h) other investment matters as may be relevant from time to time to reflect the changing needs of the WHO FCTC and the Protocol and the financial market environment.

13. The OC advises on investment strategy rather than on individual investments. Specifically, it will:

- (a) advise on the development and implementation of the Funds' investment strategy;
- (b) provide advice on the maintenance of adequate liquidity and appropriate risk management;
- (c) continuously review the appropriateness of the policies in relation to investments and the related cash flow requirements;
- (d) review the performance of the Funds and the Fund Trustee, as well as other external parties, as may be required to provide support in the management and performance evaluation of its investments; and
- (e) participate in the Funds' performance exercises, including meetings with the Fund Trustee together with the Convention Secretariat, under the guidance of the Bureaus.

14. An additional function of the OC is to undertake a review of specific investment policies and the selection of funds as chosen by the Fund Trustee to ensure their compliance with the principles as prescribed in Article 5.3 of the WHO FCTC and its Guidelines for implementation, the

WHO Framework of Engagement with Non-State Actors (FENSA), and measures to prevent interference by economic and commercial actors whose main part of business is related to the implementation of the Protocol.

AUTHORITY

15. The authority of the OC is derived from decisions FCTC/COP9(13) and FCTC/MOP2(8), as well as COP and MOP decisions authorizing the establishment of the OC to provide support to the COP and the MOP and their Bureaus in the governance of the Funds.
16. The COP and the MOP, their Bureaus, the Convention Secretariat and the Fund Trustee shall have unrestricted and confidential access to the OC.
17. The OC, the Convention Secretariat and the Bureaus shall take the necessary actions to ensure a periodic review of these terms of reference. Any proposed amendment shall be submitted to the COP and MOP Bureaus for joint approval.
18. The OC, as an advisory body, has no management decision-making responsibility, executive authority or other operational responsibilities.

COMPOSITION AND SELECTION

19. The composition of the OC and the qualifications of its members shall be as follows:
 - (a) The OC shall consist of up to six members, reflecting to as great an extent as possible equitable representation from the regions of the World Health Organization (WHO). Members will be appointed by a Selection Committee acting on behalf of the Bureaus.
 - (b) Members of the OC shall be selected based on qualifications and experience at a senior level in areas of financial oversight and management, with experience in global investment institutions, the United Nations system or other international organizations.
 - (c) Members of the OC should have relevant financial investment experience, specifically in areas that pertain to distribution of investments in various investment markets: fixed income, equities, emerging markets, etc.
 - (d) Membership of the OC shall be balanced, as far as is practicable, in terms of gender and the public and private sector experience of each member.
 - (e) English communication skills are required. The working language of the OC will be English, and interpretation will not be available for meetings of the OC.
 - (f) One representative from a nongovernmental organization (NGO) accredited as observer to the COP and/or the MOP will serve as observer to the OC.
 - (g) The NGO observer should have sufficient knowledge to assess compliance with Article 5.3 of the WHO FCTC and its Guidelines for implementation, the principles of WHO FENSA, and measures to prevent interference by economic and commercial actors whose main part of business is related to the implementation of the Protocol. Knowledge of the objectives and guiding

principles of the WHO FCTC and the Protocol, and of COP and MOP decisions, as well as experience in the areas of financial investment and practice with global investment institutions will be considered an asset.

(h) Members of the OC and the NGO observer will not receive any honorarium.

20. The process for selection of the members of the OC is as follows:

(a) A request for expressions of interest in serving as a member of the OC will be circulated broadly by the Convention Secretariat, with the support of the Regional Coordinators of the COP and the MOP.

(b) Following the deadline for submission of expressions of interest, the Convention Secretariat will prepare a roster of potential candidates for OC membership to be further considered by a Selection Committee, which will be composed of the President of the COP, the President of the MOP, a designated Vice-President of the COP, a designated Vice-President of the MOP and the Head of the Convention Secretariat. Parties to the WHO FCTC and to the Protocol will be informed of those candidates from their jurisdiction who have been shortlisted for consideration. The Convention Secretariat will verify with the Parties concerned to ensure that there are no concerns with the applicant's candidacy, prior to recommending that candidate to the Selection Committee.

(c) Members will be identified by the Selection Committee acting on behalf of the Bureaus.

21. The process for selection of the NGO observer to the OC is as follows:

(a) A request for expressions of interest in serving as an observer to the OC will be circulated by the Convention Secretariat to all NGO observers to the COP and the MOP.

(b) Following the deadline for nominations, the Convention Secretariat will prepare a list of potential candidates nominated by NGO observers to the COP and the MOP. Should there be more than one person nominated, the NGOs that nominated them will be invited to agree on a single nomination. The Convention Secretariat will verify the nomination to ensure that there are no concerns with the candidacy prior to recommending the candidate to the Selection Committee.

(c) The NGO observer will be confirmed by the Selection Committee acting on behalf of the Bureaus.

RECOMMENDATIONS OF THE OC

22. The OC will present its recommendations by consensus. OC Members may put on record any independent opinion they consider pertinent to the matter.

23. The Convention Secretariat and the NGO observer will not participate in the adoption of recommendations. The NGO observer may put on record any independent opinion they consider pertinent to the recommendations made by the OC Members.

24. A majority of the members of the OC shall constitute a quorum for the conduct of business and adoption of recommendations at OC meetings.

25. To facilitate the deliberations of the OC, the Convention Secretariat will provide the members of the OC with relevant background information.
26. The Finance and Administration team of the Convention Secretariat will have responsibility for ensuring that the recommendations of the OC are made in accordance with the WHO Financial Regulations and Financial Rules.
27. The minutes of each OC meeting, including all recommendations adopted at the meeting, will be considered by the Bureaus.
28. The OC may set up subcommittees to review matters that require more time than is available at the regular OC meetings, or which are urgent, and which need to be addressed before the next OC meeting.
29. Examples of the activities to be addressed by such subcommittees may include:
 - (a) meetings with the Fund Trustee, and assigned managers for presentation of fund performance reviews;
 - (b) timely reviews of the risk assessment plan and preventive risk management strategies, and recommendations on changes to the investment strategy and policies; and
 - (c) reviews of investment policies, the selection of funds and activities in compliance with Article 5.3 of the WHO FCTC and WHO FENSA, and measures to prevent interference by economic and commercial actors whose main part of business is related to the implementation of the Protocol.

CONFLICTS OF INTEREST

30. Members of the OC and the NGO observer must be free of any real, potential or perceived conflicts of interest. To this end, the Convention Secretariat will require each OC Member and the NGO observer to complete and sign an annual WHO FCTC Declaration of Interests. By completing and signing the WHO FCTC Declaration of Interests and by providing documentation confirming compliance with the provisions of Article 5.3 of the WHO FCTC, an OC Member and NGO observer declares that they:
 - (a) will commit to adhering to the provisions in the WHO FCTC Declaration of Interests and related Code of Conduct;
 - (b) will inform the Bureaus of any links with the tobacco industry and its front groups and other vested interests (including vested interests of economic and commercial actors whose main part of business is related to the implementation of the Protocol) that may give rise to an actual or perceived conflict of interest and acknowledges that information disclosed by them and contained in the form is true and complete to the best of their knowledge; and
 - (c) should there be any change to the disclosed information, the OC Member or NGO observer will promptly notify the Convention Secretariat and complete a new WHO FCTC Declaration of Interests that describes the changes.

31. The information disclosed by an OC Member or NGO observer in the WHO FCTC Declaration of Interests will be reviewed by the Convention Secretariat, under the guidance of the Bureaus, prior to the appointment of that OC Member or NGO observer to determine whether they have a conflict of interest relevant to the topics to be discussed by the OC. The Convention Secretariat may request additional information, as necessary and appropriate. Depending on the declared interests, the Convention Secretariat, under the guidance of the Bureaus, may conclude that no potential conflict exists or that the interest is irrelevant or insignificant.

TERM OF OFFICE

32. Members of the OC shall be appointed for a term of three years, renewable for a second and final term of three years. In the initial year of the launch of the Fund, arrangements will be made for one OC Member to be appointed for a term of one year, allowing for the ongoing staggered rotation of members of the OC.

33. The NGO observer will serve for a term of three years, and may be renominated by the NGO observers to the COP and the MOP for successive three-year terms.

34. The Chairperson of the OC shall be selected in agreement by the members of the OC for a period of two years. If the Chairperson is unable to attend the meeting, the members of the OC present shall elect an acting Chairperson.

35. Members of the OC and the NGO observer may resign their position by giving notice in writing to the Presidents of the COP and the MOP, and to the Head of the Convention Secretariat.

ADMINISTRATIVE ARRANGEMENTS

36. The following arrangements shall apply:

- (a) Members of the OC and the NGO observer will provide their services pro bono.
- (b) The OC shall meet at least two times per year through virtual means, with English being the working language of the meetings. Where circumstances require more frequent meetings, OC meetings will be scheduled quarterly, and the length of the meetings will ensure that there is sufficient time to discuss the agenda items fully.
- (c) In at least one meeting per year, the OC will discuss and review the Investment Fund's investment policy.
- (d) The Convention Secretariat shall provide secretariat support to the OC, as may be required and in accordance with COP and MOP decisions.
- (e) The draft agenda for meetings will be circulated for comment to members of the OC and the NGO observer at least two weeks in advance of the meeting, and the final agenda with background documentation will be made available at least one week in advance of the meeting.
- (f) Minutes of OC meetings will be circulated to all members of the OC for approval, and to the NGO observer for comments, within two to three weeks of the meeting date. The minutes will set out the recommendations made (including any independent opinions that are not in accordance

with the consensus reached) and the actions to be taken, together with target dates and timing, as applicable. The minutes will be sent to the Bureaus, in consultation and with input from the Convention Secretariat, as necessary.

(g) A majority of the members of the OC shall constitute a quorum for the conduct of business and adoption of recommendations at OC meetings. The OC will present its recommendations by consensus. Opinions that are not in accordance with the consensus views of members of the OC will be recorded in the report.

(h) The Convention Secretariat shall attend meetings of the OC. Other officials with functions relevant to the items on the agenda may likewise be invited.

(i) All confidential documents and information submitted to, or obtained by, the OC shall remain confidential unless otherwise determined by the Convention Secretariat following appropriate consultation. Members of the OC and the NGO observer shall acknowledge this obligation in writing at the time of their appointment.

(j) The Chairperson of the OC may inform the Bureaus and the Convention Secretariat at any time of any pressing issue which, in their view, requires attention.

(k) Members of the OC and the NGO observer shall be held harmless in providing independent advice and will be indemnified from actions taken against them as a result of activities performed while exercising their responsibilities in relation to the OC, if such activities are performed in good faith, with due diligence and within the scope of these terms of reference.

ANNEX 2

**DRAFT DECISION:
INVESTMENT FUND FOR IMPLEMENTATION OF THE PROTOCOL
TO ELIMINATE ILLICIT TRADE IN TOBACCO PRODUCTS**

The Meeting of the Parties (MOP),

Recalling the objective of the Protocol to Eliminate Illicit Trade in Tobacco Products, Articles 4.1(f) (General obligations) and 36 (Financial resources) of the Protocol, as well as 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 Protocol, including the establishment of a global information-sharing focal point, in accordance with Article 8 (Tracking and tracing);

Recalling decision FCTC/MOP2(8), in which the MOP decided to launch the Investment Fund to support implementation of the Protocol and requested the Convention Secretariat to make the necessary arrangements to launch the Fund in an expedient manner;

Noting decision FCTC/COP9(13), in which the Conference of the Parties (COP) to the WHO Framework Convention on Tobacco Control (WHO FCTC) decided to launch the WHO FCTC Investment Fund;

Recalling that in decisions FCTC/MOP2(8) and FCTC/COP9(13) the MOP and the COP requested the Convention Secretariat to ensure management synergies between the Investment Funds supporting implementation of the Protocol and the WHO FCTC;

Acknowledging the report of the Convention Secretariat contained in document FCTC/MOP/3/11, and the proposed terms of reference for a single Oversight Committee to serve the Protocol and the WHO FCTC Investment Funds, developed under the guidance of the Bureau of the MOP and the Bureau of the COP, contained in Annex 1 of that report,

1. DECIDES:

(a) to establish a single Oversight Committee serving the Protocol and the WHO FCTC Investment Funds, composed of:

- up to six members, reflecting to as great an extent as possible equitable representation from the regions of the World Health Organization (WHO); and
- one representative from a nongovernmental organization (NGO) accredited as observer to the MOP and/or the COP will serve as observer to the Oversight Committee;

(b) to adopt the terms of reference for the Oversight Committee, as contained in Annex 1 of document FCTC/MOP/3/11, if also adopted by the COP;

2. REQUESTS the Convention Secretariat to make the necessary arrangements to establish the Oversight Committee in an expedient manner.

(XX plenary meeting, XX November 2023)

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