



FIFTY-FIRST SESSION
16 – 21 November 2015
Kuala Lumpur, Malaysia

DECISION 4(LI)

ITTO INVESTMENTS AND FINANCIAL MANAGEMENT

The International Tropical Timber Council,

Recalling Decision 6(XLVIII), which establishes the Financial Rules governing the Organization under the ITTA, 2006;

Further recalling the reports of the CFA during its Thirteenth session (Thirty-fourth session of the Council) and Twenty-fourth session (Forty-fifth session of the Council), expanding the scope of financial investment options provided that such investments carried no “credit risk”;

Recognizing that the liquidation of the LM Managed Performance Fund led to the write-off of US\$6 million of ITTO investments as reported in the 2013 audited financial statements and that this investment was possibly in contravention of ITTO’s Financial Rules and/or the provisions laid out by the CFA;

Further recognizing that additional investments of approximately US\$12million may also have contravened ITTO’s Financial Rules and/or the provisions laid out by the CFA;

Recognizing that this had escaped the attention of both the CFA and the Council which had not been made explicitly aware of the loss of the funds by the auditors;

Noting that the issues related to the above-mentioned investments must be fully investigated as soon as possible and the results made transparent;

Further noting that corrective and preventative measures must be taken promptly with regard to ensuring the credibility of the Organization and the uninterrupted funding of its projects/activities;

Decides to:

1. Establish an Oversight Committee made up of 5 experts from producer members and 5 experts from consumer members (EU, Japan, Republic of Korea, Switzerland and USA), working in their personal capacity, to oversee the implementation of this decision. The Oversight Committee is to be co-chaired by the 2016 Chair and Vice-chair of CFA;
2. Take measures as deemed appropriate to amend the ITTO Whistleblower policy to encourage staff members to alert the Council regarding any serious irregularities that may occur within the Secretariat;
3. Request the Executive Director in liaison with the Oversight Committee to commission an independent investigation, to be carried out under the attached terms of reference. The consultant(s) retained to carry out the independent investigation should have appropriate legal/accounting/auditing expertise including IPSAS;
4. Request the Executive Director to take immediate steps to liquidate any investments which are not in line with the Financial Rules of the Organization and to refrain from making any further such investments;

5. Request the Executive Director to take all available steps to minimize any losses to the Organization, including taking any relevant immediate measures in line with the applicable Staff Rules of the Organization and the contract with the provident fund, and other measures in the light of the investigation;
6. Request the Executive Director to immediately take all necessary measures deemed appropriate in accordance with ITTO Staff Rules, such as suspension of involved staff members to allow the efficient and independent conduct of the investigation. The Executive Director should also take necessary measures to ensure the continuity of the work of the Secretariat;
7. Request the Oversight Committee to submit a preliminary report on the investigation to the chairperson of the Council as soon as possible and no later than 31 January 2016, and a final report no later than 15 April 2016. The final report and its recommendations will be considered by the CFA either meeting electronically or in person and the recommendations of the CFA will be submitted for decision by the Council; and
8. Authorize the Executive Director to utilize an amount not exceeding US\$250,000 from the Working Capital Account to meet the expenses related to the above activities. The required resources could be reviewed by the chair and vice-chair of the Council as necessary.

ANNEX

Terms of Reference for Investigative Panel

Introduction

The ITTC through the financial regulations and its decisions has instructed the Secretariat of the Organization to make all investments at no credit risk. However, in 2012 an amount of US\$6million was invested in LM Managed Performance Fund. This company went into liquidation in 2013 and the amount was written off in the Financial Statements 2013 and noted in a description of the accounting practices. No other explicit mention of the write-off was made in the audit report.

In 2013 two sums of US\$6million each were invested in Ardent 365 fund at a rate of interest of 9%. Some insurance was provided with this investment to cover loss of capital.

The Officer-in-Charge of the ITTO Secretariat made a report on this situation to the Chair of the ITTC on 6 November 2015, his first day in office. The Council was informed during its 51st session on 16 November 2015 and took action through this decision.

Scope of work

Deliverables

This assignment addresses operative paragraph 3 of this decision whereby an independent investigation is to be undertaken to:

1. Generate an independent timeline of the entire affair.
2. Uncover all relevant facts in the case so that ITTO members are in possession of the full facts concerning the sequence of events and how decisions were made that led to the failed investment in LM Managed Performance Fund and the Ardent 365 fund placement.

Specifically the consultant(s) will:

1. Substantiate the information contained in relevant documents to be provided by ITTO and any other documents the investigation wishes to use and write a clear history of what happened.
2. Assess whether the investments made in LM Managed Performance Fund and Ardent 365 fund were compatible with a no credit risk policy and whether they breached ITTO rules.
3. Assess the decision-making process within the Secretariat with respect to:
 - a) adequacy of policies and guidelines in effect;
 - b) ITTO officials' compliance with policies and guidelines; and
 - c) the extent to which key individuals involved in the investment decisions acted appropriately within their respective levels of authority.
4. Determine the amounts and recipients of any commissions paid to the investment advisor and any subsequent flow of funds.
5. Assess whether the audit procedure and Terms of Reference for the last 4 years were sufficient to allow the Council to understand whether the financial statements presented a true and fair view of the financial position and performance as well as the cash flows of all ITTO accounts.
6. Assess whether the current procedure by which the Council reviews and takes decisions on the budget as well as the financial statements and audit opinion are in line with best practices of international organizations with similar membership and staffing levels.
7. Provide an assessment, based on review of most recent audited and unaudited financial statements, of the liquidity/solvency of ITTO over the short and medium term, and make recommendations for procedures and contractual undertakings to provide appropriate protection for any future flows of assessed contributions and donor funds.
8. To the extent possible determine the origin of the ITTO funds lost in the investments, and specifically to examine if assessed contributions or donor funds were involved, and if so which donors are affected.
9. Make recommendations as appropriate on:
 - a) strengthening ITTO's Financial Rules, internal control and auditing procedures;
 - b) possible changes in management procedures, staff training and qualifications as well as staff conduct guidelines which could have averted the difficulties;
 - c) possible need for involvement of the Council or its representatives in individual investment decisions;
 - d) further measures (including legal) to be taken by the Executive Director, the Council, the host country authorities, or other authorities;
 - e) corrective measures to offset the existing and potential shortfalls arising from the loss of investments; and
 - f) any other matters the investigation and its Oversight Committee consider pertinent.

Activities

The investigators will be required to:

1. Thoroughly review all relevant documentation provided by ITTO and others for consistency and compliance with good governance practices.
2. Conduct a series of key-informant interviews to generate a validated, coherent and complete record of the affair focusing on ITTO governance. At a minimum the following should be interviewed in person or by phone:
 - a) current staff of ITTO in Yokohama (Executive Director/Officer in Charge, Assistant Director of Operations, Finance Officer and any others involved in the investment decisions)
 - b) former ITTO Executive Director and relevant previous staff in post in 2011-15
 - c) all other relevant parties including the investment advisor (Pinnacle Wealth Management), the receivers of the LM Managed Performance Fund (KordaMentha) and
 - d) staff of ITTO external auditors (Ernst and Young in Tokyo and BDO Toyo who worked on the ITTO 2011 - 2014 audits)
3. Maintain regular contact with the Oversight Committee through the secretariat.
4. Undertake any other duties or task relevant to this assignment under the direction of the Executive Director or Oversight Committee.

Travel

A site visit of 2 weeks to the secretariat and participation in any face to face meetings of the Oversight Committee and the governing bodies of ITTO.

Contracting

The work will be contracted by ITTO for up to one work month including travel. All travel, accommodation costs and per-diems will be covered using ITTO standard rates. The work will be supervised by the Oversight Committee.

Reporting

A preliminary report will be submitted to the Oversight Committee by 15 January 2016 and a final report by 1 April 2016.

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