



Governing Body

329th Session, Geneva, 9–24 March 2017

GB.329/PFA/11/2

Programme, Financial and Administrative Section
Personnel Segment

PFA

Date: 14 February 2017

Original: English

ELEVENTH ITEM ON THE AGENDA

Matters relating to the Administrative Tribunal of the ILO

Recognition of the Tribunal's jurisdiction by other international organizations

Purpose of the document

This paper contains a proposal regarding the approval of the recognition of the Tribunal's jurisdiction by the Green Climate Fund (GCF) and provides information about the intention of the Centre for the Development of Enterprise (CDE) to discontinue its recognition of the Tribunal's jurisdiction. The Governing Body is invited to approve the recognition of the Tribunal's jurisdiction by the GCF and take note of the intention of the CDE to terminate its membership and confirm that the CDE will no longer be subject to the Tribunal's competence as from the date of the Governing Body decision (see the draft decision in paragraph 17).

Relevant strategic objective: None.

Main relevant outcome/cross-cutting policy driver: Enabling outcome C: Efficient support services and effective use of ILO resources.

Policy implications: None.

Legal implications: Changes in the membership of the ILO Administrative Tribunal.

Financial implications: None.

Follow-up action required: None.

Author unit: Office of the Legal Adviser (JUR).

Related documents: GB.298/PFA/21/1 and GB.328/PFA/10.

Recognition of the Tribunal's jurisdiction by the Green Climate Fund

1. Since the Governing Body last approved the recognition of the jurisdiction of the Administrative Tribunal (hereinafter “the Tribunal”) of the International Labour Organization by two international organizations in November 2015,¹ the Director-General has received a declaration by one more international organization recognizing that jurisdiction.
2. According to article II, paragraph 5, of the Tribunal's Statute, in order to be eligible for approval, an international organization must either be intergovernmental in character or fulfil the following conditions, set out in the Annex to the Statute:
 - (a) it shall be clearly international in character, having regard to its membership, structure and scope of activity;
 - (b) it shall not be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
 - (c) it shall be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal's judgments.
3. By letter dated 11 January 2017 (see Appendix I), the Executive Director of the GCF (the “Fund”) informed the Director-General that the Fund's Board had decided to recognize the Tribunal's jurisdiction in accordance with article II, paragraph 5, of the Tribunal's Statute. In his letter, the Executive Director asked that the Fund's request for recognition of the Tribunal's jurisdiction be submitted to the Governing Body for its approval.
4. Under its Governing Instrument, approved by the Conference of the Parties (COP) to the 1992 United Nations Framework Convention on Climate Change (UNFCCC), the Fund was established as an operating entity of the financial mechanism under Article 11 of the Convention. In accordance with paragraph 4 of its Governing Instrument, arrangements will be concluded between the COP and the Fund to ensure that the Fund is accountable to and functions under the guidance of the COP.
5. In accordance with paragraph 1 of its Governing Instrument, the purpose of the Fund is to make a significant and ambitious contribution to the global efforts towards attaining the goals set by the international community to combat climate change.
6. Pursuant to paragraph 7 of its Governing Instrument, the Fund possesses juridical personality and such legal capacity as is necessary for the exercise of its functions and the protection of its interests.
7. The principal bodies of the Fund are the Board, the Secretariat and the Trustee. The Board, which oversees the Fund's operation, has 24 members, composed of an equal number of members from developing and developed States Parties to the Convention. According to paragraph 32 of the Governing Instrument, the Board will steer the Fund's operations in such a manner as to allow the Fund to evolve over time and become the main global fund for

¹ See [GB.325/PFA/9/2](#).

climate change finance. The Secretariat is responsible for the day-to-day operations of the Fund and is headed by an Executive Director appointed by and accountable to the Board. The Trustee manages the financial assets of the Fund and is accountable to the Board.

8. In accordance with paragraphs 29 and 30 of its Governing Instrument, the Fund receives financial inputs from developed States Parties to the Convention, as well as from other public and private sources.
9. The headquarters of the Fund is at Songdo, Incheon City, Republic of Korea. The Headquarters Agreement between the Fund and the Government of the Republic of Korea, concluded on 10 June 2013, specifically provides that the Fund has legal personality and enjoys privileges and immunities in the territory of the host country. Article 3 thereof recognizes the capacity of the Fund to contract, acquire and dispose of immovable and movable property, and to be party to, and institute judicial proceedings. Additional information about the Fund may be found at <https://www.greenclimate.fund/home>.
10. According to the information provided, the Fund's Secretariat employs at present 71 staff members. The total number of staff is expected to increase to approximately 150 by the end of 2017. Pursuant to Article 13 of the Headquarters Agreement, the Fund's staff enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity, regardless of their nationality. The Fund's Administrative Guidelines on Human Resources, adopted in October 2014, set out the general conditions and terms of employment with the Fund and the duties and obligations of the Fund and of staff members. These Guidelines provide, inter alia, for the establishment of mechanisms for employment dispute resolution and for access to a relevant Administrative Tribunal for staff members alleging non-observance of their contracts of employment or terms of appointment.
11. The Tribunal's jurisdiction under article II, paragraph 5, of its Statute currently extends to 59 organizations other than the ILO. The recognition of the Tribunal's jurisdiction by other organizations entails no additional cost to the ILO, since the organizations against which complaints are filed are required under the Statute to bear the expenses of sessions and hearings and pay any award of compensation made by the Tribunal. Those organizations also contribute, in amounts proportionate to the number of their staff, to most of the running costs of the Tribunal's registry.

Withdrawal of the recognition of the Tribunal's jurisdiction by the Centre for the Development of Enterprise

12. By letter dated 27 October 2016 (see Appendix II), the Director-Curator of the CDE informed the Director-General that at a meeting held on 29 and 30 June 2015, the CDE Executive Board approved the closure plan of the organization. She further indicated that in application of decision No. 3/2016 of the African, Caribbean and Pacific States (ACP)-EU Committee of Ambassadors of 12 July 2016 regarding the revision of Annex III to the ACP-EU Partnership Agreement under which the organization operated, the CDE would, as of 1 January 2017, no longer employ any staff members and would enter its passive phase during which it will only continue to exist for the settlement of pending disputes. In light of the foregoing, the CDE decided to discontinue its recognition of the jurisdiction of the Tribunal effective 1 January 2017. In her letter, the Director-Curator of the CDE confirmed the intention of the CDE to implement as soon as feasible and in good faith any Tribunal judgment rendered on any outstanding complaint. According to the information provided by the Tribunal's registry, there are currently five complaints against the CDE pending before the Tribunal.

13. The CDE recognized the jurisdiction of the Tribunal in 2007.²
14. This is the second time that an international organization among those which have recognized the jurisdiction of the Tribunal decides to withdraw its recognition.³
15. The Statute of the Tribunal in its article II, paragraph 5, and the Annex sets out the conditions for admission of an international organization but is silent on the conditions of withdrawal and is also silent on the possibility for the Governing Body to withdraw its approval of the recognition. This latter question is currently the subject of consultations among the member organizations and possible amendments to the Statute and the Annex could be prepared in due course.
16. Even though the recognition of the Tribunal's jurisdiction is in essence a unilateral declaration by an international organization which can be unilaterally revoked, a withdrawal from the Tribunal's membership needs to be confirmed by the Governing Body to become effective.

Draft decision

17. *The Governing Body:*

- (a) *approves the recognition of the Tribunal's jurisdiction by the Green Climate Fund (GCF), with effect from the date of such approval;*
- (b) *takes note of the intention of the Centre for the Development of Enterprise (CDE) to discontinue its recognition of the jurisdiction of the Administrative Tribunal;*
- (c) *confirms that the CDE will no longer be subject to the competence of the Tribunal with effect from the date of this decision, except as regards the five complaints (AT 5-4383, AT 5-4411, AT 5-4414, AT 5-4415 and AT 5-4492) currently pending before the Tribunal; and*
- (d) *requests the Director-General to follow up with the CDE Director-Curator regarding the payment of any outstanding costs.*

² See [GB.298/PFA/21/1](#).

³ See [GB.328/PFA/10](#).

Appendix I

Letter from the Green Climate Fund



Mr Guy Ryder
Director-General
International Labour Office
4 route des Morillons
CH-1211 Geneve 22
Switzerland

Executive Director

Date : 11 January 2017
Reference : HB/RB/tj
Page : 1 of 3

Subject: Recognizing the jurisdiction of the Administrative Tribunal of the International Labour Organization

Dear Mr Ryder,

I have the honour to present a request by the Green Climate Fund (the GCF) to the Governing Body of the International Labour Organization to extend the jurisdiction of its administrative tribunal (Tribunal) to staff members of the GCF. Having considered the Statute and Rules of Procedure of the Tribunal, the GCF undertakes to recognize the Tribunal's jurisdiction.

The GCF is an operating entity of the financial mechanism of the United Nations Framework Convention on Climate Change (Convention). The Conference of the Parties to the Convention (COP) decided to establish the GCF in 2010 pursuant to decision 1/CP.16 and the GCF's governing instrument (the Governing Instrument) was approved by the COP in 2011 pursuant to decision 3/CP.17. The Governing Instrument is attached as Annex I.

Pursuant to paragraph 11 of decision 3/CP.17, the COP decided that the GCF *"be conferred juridical personality and legal capacity and shall enjoy such privileges and immunities related to the discharge and fulfilment of its functions, in accordance with paragraphs 7 and 8 of the Governing Instrument."*

Paragraphs 7 and 8 of the Governing Instrument provide as follows:

"7. In order to operate effectively internationally, the {GCF} will possess juridical personality and will have such legal capacity as is necessary for the exercise of its functions and the protections of its interests.

8 The {GCF} will enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. The officials of the [GCF] will similarly enjoy such privileges and immunities as are necessary for the independent exercise of their official functions in connection with the [GCF]."

The headquarters of the GCF are located in Songdo, Republic of Korea. The Agreement between the Republic of Korea and the GCF concerning the headquarters of the GCF was signed on 10 June 2013 and became effective on 22 August 2013. The headquarters agreement is attached as **Annex II**. The headquarters agreement provides, amongst other things, that the GCF and its staff will be provided with functional privileges and immunities, including immunity from legal process in the Republic of Korea, and that the GCF shall not be required to apply national law in its relations with its staff.

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In addition, as recommended by the COP and authorized by the Board of the GCF, the GCF has concluded bilateral agreements on the privileges and immunities of the GCF and its staff with nine country Parties to the Convention and is negotiating further bilateral agreements with other country Parties to the Convention.

The Objectives and Guiding Principles of the GCF are set out in paragraphs 1-3 of the Governing Instrument. In particular, the purpose of the GCF is to make a significant and ambitious contribution to the global efforts towards attaining the goals set by the international community to combat climate change, including by promoting a paradigm shift towards low-emission and climate-resilient development pathways by providing support to developing countries to limit or reduce their greenhouse gas emissions and to adapt to the impacts of climate change, taking into account the needs of those developing countries particularly vulnerable to the adverse impacts of climate change.

The GCF is accountable to and functions under the guidance of the COP and is governed and supervised by a Board of 24 members, composed of an equal number from developing and developed country Parties to the Convention. The day to day operations of the GCF are executed by a Secretariat, which is headed by an Executive Director. The Executive Director is a Board-appointed official and appoints staff members of the Secretariat.

The GCF also has three independent accountability units within its governance structure: the independent evaluation unit, the independent integrity unit and the independent redress mechanism. The head of each of these units is appointed by the Board and the staff of each of the units are appointed by their respective heads.

The Board approved the Administrative Guidelines on Human Resources (HR Guidelines), attached as Annex III, pursuant to decision 8.08/17. The HR Guidelines remain in effect pursuant to subsequent decisions of the Board and are due to be revised during the course of 2017. The HR Guidelines provide that the Tribunal shall, as prescribed in its Statute, hear and pass judgment upon applications from staff members alleging non-observance of their contracts of employment or terms of appointment and that elevation of a grievance to the Tribunal is the ultimate recourse available to staff, after having requested internal administrative review and appeals procedures.

At its fifteenth meeting, held from 13 through 15 December 2016, the Board decided to recognize the jurisdiction of the administrative tribunal of the International Labour Organization in respect of disputes involving a member of staff of the Secretariat or any of the independent accountability units (see decision 8.15/15, attached as Annex IV). By the same decision, the Board also explicitly accepted that judgments handed down by the Tribunal in respect of GCF staff will be legally binding on the GCF.

As at 31 December 2016, the GCF has 71 staff members in post, which term for the avoidance of doubt includes the Executive Director, staff of the Secretariat, the heads of the independent accountability units and the staff of such units. A further 14 individuals have signed their letters of appointment but are not yet in post. The total number of staff is expected to increase to approximately 150 by the end of 2017. Furthermore, as at 31 December 2016, the GCF has signed contribution agreements or arrangements worth over US\$ 9.9 billion equivalent, of which it has received over US\$ 3 billion in cash and promissory notes. The GCF has an open-ended mandate and its Board is likely to consider the process for the GCF's first replenishment in due course.



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Accordingly, as set out above, the GCF is:

- (a) International in character;
- (b) Not required to apply any national law in its relations to its officials, and enjoys immunity from legal process as evidenced in its headquarters agreement; and
- (c) Endowed with functions of a permanent nature at the international level, and has institutional capacity to carry out its functions and comply with the Tribunal's judgments.

In addition, based on the foregoing, the GCF is also intergovernmental in character. As such, the GCF meets the requirements set out in the annex to the Statute of the Tribunal.

I would be grateful if you would transmit the GCF's decision to recognize the jurisdiction of the Tribunal to the Governing Body for its review and invite it, in accordance with article II, paragraph 5, of the Statute of the Tribunal, to approve at its next session in March 2017 the decision of the GCF Board to recognize the jurisdiction of the Tribunal.

I remain at your disposal should you need any further information, and avail myself of this opportunity to give you the assurance of my highest consideration.

A small, faint circular stamp or seal, possibly a library or archival mark, located near the signature.

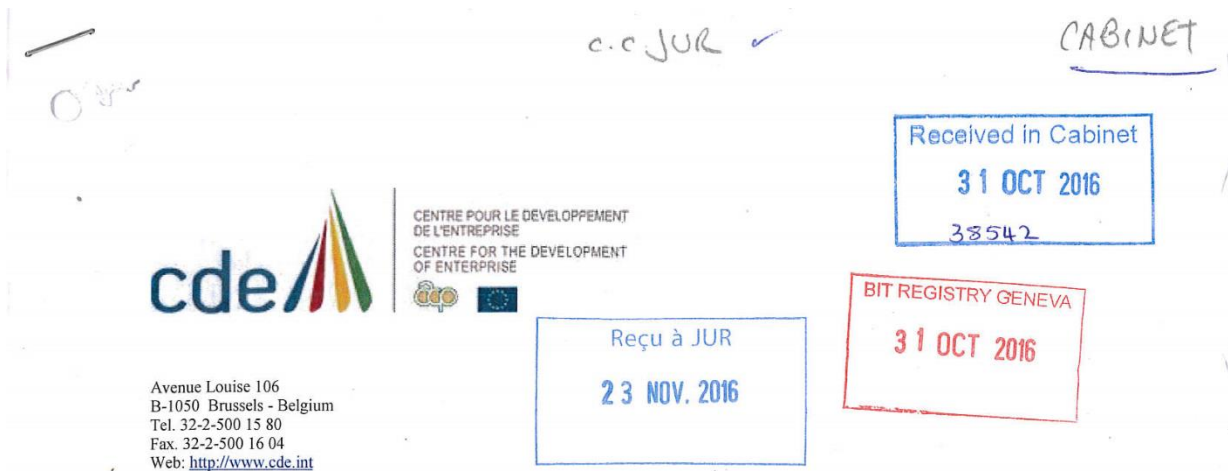
Yours sincerely,

A handwritten signature in blue ink, which appears to read "Howard Bamsey".

Howard Bamsey

Appendix II

Letter from the Centre for the Development of Enterprise



Mr. Guy Ryder
Director-General
Bureau international du Travail
Route des Morillons 4
CH-1211 Genève 22

Brussels, 27 October 2016

By registered mail

Dear Mr. Director-General,

We are writing you in our capacity of Director-Curator of the Centre for Development of Enterprise (the CDE).

At its meeting held on 29 and 30 June 2015, the CDE Executive Board approved the closure plan that was proposed by the Director-Curator. This closure plan implied that employment of most staff members was terminated with effect on 31 March 2016. A limited group of staff members continued to be employed after 31 March 2016 in order to handle the administrative aspects resulting from the end of all operational activities of the CDE. Currently, the CDE only employs one single staff member whose employment will terminate with effect on 31 December 2016. As of 1 January 2017, the CDE will in application of the Decision n° 3/2016 of the ACP-EU Committee of Ambassadors of 12 July 2016 regarding the revision of the Annex III to the ACP-EU Partnership Agreement (2016/1163) no longer employ any staff members and will enter its passive phase during which the CDE will only continue to exist for the settlement of the pending disputes.

When having regard to the conditions for being entitled to recognise the jurisdiction of the ILO Administrative Tribunal stipulated in the Annex to the Statute of the Administrative Tribunal of the International Labour Organisation, it is clear the CDE will as of 1 January 2017 no longer meet those conditions:

- The CDE shall no longer have an international structure or scope of activity. The only activities of the CDE will indeed consist of continuing the pending litigation, which will in practice be handled in Brussels only.

- The CDE will no longer have any staff members. The condition that it would not be required to apply any national law in relation to its officials will thus no longer be met.
- The CDE shall no longer be endowed with functions of a permanent nature at the international level, as the CDE will only continue to exist for the handling of its orderly closure.

As of 1 January 2017, the CDE will therefore no longer recognise the jurisdiction of the ILO Administrative Tribunal and should therefore be exempted as from 2017 to pay the annual fees.

It goes without saying that this will not have any impact on the cases currently pending before the ILO Administrative Tribunal. These cases should indeed continue their normal course and the CDE confirms its intention to implement as soon as feasible in good faith the judgments to be rendered in the framework of this residual jurisdiction.

Sincerely,



Ilse Van de Mierop
Director-curator