



Fund

Fund Council

8th Meeting (FC8)—Punta del Este, Uruguay

October 31 - November 1, 2012

TOR - Independent Investigation of IITA Failed Investment

(Working Document - For Discussion Only)

*Document presented for Agenda Item 2:
Update of IITA and Governance in CGIAR*

*Submitted by:
Consortium Office*

Terms of Reference – Independent investigation of IITA failed investment (09/25/2012)

Introduction

In 2008-2009, the IITA Board made an investment of \$15 million in a U.S.-based scheme on the advice of a Board member, who was chair of the Board's Audit Committee. The investment scheme turned out to be a fraudulent Ponzi scheme and the \$15m now seems largely unrecoverable. Donors were not informed until July 2012. This work responds to some of the needs of the CGIAR Fund Council expressed at its extraordinary meeting on 30 August 2012 and communicated in a letter from the FC Chair on 13th dated 13 September.

Background

In October 2008, the IITA Board agreed to modify IITA's Investment Policy to enable longer term investments with higher yields as recommended by the Chair of the IITA Board Audit Committee. Initial returns on the investments, which are said to have been made from IITA's reserves, were positive.

When the investment ceased to yield returns after 18 months, IITA took steps to secure recovery of the \$15 million and interest owed. The IITA Board contacted the U.S. Federal Bureau of Investigation (FBI), which initiated a formal investigation in mid-2011. The FBI is continuing its investigation and IITA is cooperating fully with the FBI and the U.S. Attorney's Office.

IITA's current Director General, who was appointed in November 2011, and its current Board Chair, who joined the Board in April 2011, were not involved in any way in the investment decisions which are the subject of the FBI investigation.

Actions taken to date by IITA

In December 2011, IITA formed an Investment Recovery Task Force and hired a well-respected Washington, D.C. law firm (Dickstein Shapiro) to carry out a thorough and independent investigation.

In July 2012, IITA asked the three remaining Board members who served on the Board in 2008 – 2009 when the investment decisions were taken were asked to tender their resignations. All three resigned in late July 2012.

IITA reinstituted its original, so-called "conservative" investment policy in December, 2011.

The Board's conflict-of-interest policy was extensively revised and approved in May 2012.

An ad hoc governance sub-committee has been formed. It will become a regular Board committee in November, 2012, with the remit to review all Board processes in light of current governance standards.

Actions by CGIAR Fund Council (FC)

The FC Chair was informed of the IITA situation on 25 July and informed FC members on 27 July indicating that more information was being sought.

Based on information provided by IITA an extraordinary meeting of the FC was held on August 30 to discuss the failed IITA investment, all donors expressed a very clear need for additional information about what exactly happened, how and when. They also requested greater specificity with regard to what actions IITA and the Consortium are taking or propose to take to address the current situation and its fallout.

The FC formed a Working Group that is tasked with launching an independent investigation, generating an independent timeline of the entire affair, and uncovering all of the relevant facts in the case.

During the meeting, the Fund Council determined that it is not currently willing to approve disbursement of any funds. Disbursements were suspended at least until the FC:

1. receives satisfactory responses to outstanding queries and concerns to be provided by IITA and the Consortium;
2. the independent investigation is completed and donors are in possession of the full facts;
3. donors have the opportunity based on the facts to consult with their internal advisors; and
4. FC has received, reviewed and approved IITA's financial management plan, which should be linked to fiduciary accountability across the system.

Scope of work:

Deliverables

This assignment addresses point 2 above whereby an independent consultant will carry out an investigation that: a) generates an independent timeline of the entire affair, and b) uncovers all relevant facts in the case - so that donors are in possession of the full facts concerning the sequence of events and how decisions were made that led to the failed investment. Specifically the consultant will

1. Substantiate the information provided by IITA, including the findings of the investigation commissioned by IITA which was carried out by Dickstein Shapiro (US Law Firm)
2. Identify any omissions or gaps in the IITA investigations which merit further examination
3. Assess the decision making process with respect to a) adequacy of policies and guidelines in effect, b) Board members' and IITA officials' compliance with policies and guidelines, and c) the extent to which key individuals involved in the IITA investment decisions acted appropriately within their respective levels of authority.
4. To the extent possible determine the origin of the IITA funds lost in the failed investment, specifically to find out if donor funds were involved, and if so which donors are affected
5. Provide an assessment, based on review of most recent audited and unaudited financial statements, of the liquidity/solvency of IITA over the short and medium term, and make recommendations for procedures and contractual undertakings to provide appropriate protection for any future flows of donor funds.

Activities

The consultant will be required to thoroughly review all documentation (see Annex 1) provided by IITA and others for consistency and compliance with good governance practices, and conduct a series of key-informant interviews to generate a validated, coherent and complete record of the affair focusing on IITA governance.

At a minimum the following should be interviewed in person or by phone:

- Staff of Dickstein Shapiro based in Washington DC
- Current staff of IITA in Nigeria (Current DG, Chief Finance Officer, Board Secretary)

- Current IITA Board Members (Board Chair, Chair Investment Recovery task Force, Chair Audit Committee)
- Prior IITA Board members in post in 2008-09 (Chair, Chair Audit Committee, other Board members)
- Prior IITA Staff in post 2008-09 (Previous DG, Board Secretary, Finance staff, internal audit)
- Staff of IITA external auditors (Ernst and Young) in Nigeria and New York who worked on IITA 2011 audit
- Consortium Office: CEO, Chief Finance Officer, Head of Internal Audit Unit
- Consortium Board: Chair; Chair of Audit Committee

The consultant will review the three successive investment policies used by IITA i.e. the pre 2008 policy, the policy in place 2009 to 2011, and the policy from December 2011 to the present; assess their appropriateness under the circumstances, and ascertain if these policies were followed correctly during the periods they were in force.

The consultant will also review the investment policies the other 14 CGIAR Centers currently have in force, and provide an analysis of their adequacy to ensure prudent low risk financial management of CGIAR Center reserves if followed correctly.

Travel

Visit to Washington DC for discussions with Dickstein Shapiro
A site visit of 3-4 days to IITA HQ in Nigeria

Contracting

The work will be contracted under auspices of the World Bank for up to 15 days work including travel. All travel, accommodation costs and per-diems will be covered using World Bank standard rates, The work will be supervised by the Executive Secretary of the Fund Council.

Reporting

A draft report will be submitted by 10th October and a final report by 15th October
A verbal report to the Fund Council will be made either by teleconference in the last half of October, or at the scheduled Fund Council meeting on 31 October to be held in Uruguay.

Annex – Initial list of documents to be reviewed

IITA Documentation

Finance/investment/governance policies

Investment policies

Minutes Audit Committee – 2006 - 2012

Minutes Investment Committee 2006 – 2012 including all relevant documentation relating to investment decisions made in 2008-09

Other meetings – e.g. those of the Board of Trustees.

Internal Audit reports – 2006-2012

Audited Financial Statements – 2006 -2011

Management accounts (and narrative reports) for 2008-2009 relating to the period prior and post investment

Banking records and supporting documentation relating to the initial investment of \$15m

Management Letters and Letter of Representation issues by external auditors 2006 -2011
Correspondence between IITA Board and US Federal Bureau of Investigation
Bio's/resume's of the Board and all Senior Management in post at the date of the investment transaction.

Note: The consultant may ask IITA to release non-minuted correspondence between Board Members and IITA officials of relevance to the investigation – this may require cooperation of the IITA IT Department for data mining.

Dickstein Shapiro

Terms of reference/contract between IITA and Dickstein Shapiro
Dickstein Shapiro Report
Documentation and evidence gathered by Dickstein Shapiro to substantiate their report.

CGIAR Fund Council

Email or correspondence from IITA to FC Chair notifying FC of failed investment
Notification to FC members of IITA failed investment
Agenda, minutes and supporting documentation for extraordinary meeting (30 August 2012)

CGIAR Centres

Financial Guidelines
Investment Guidelines
Investment policies of all CGIAR Centers
Evidence of the type of investment carried in other CGIAR Centers.