

ANNEX

CONSTITUTION OF THE GLOBAL CROP DIVERSITY TRUST

Article 1 Status

(1) The Global Crop Diversity Trust (hereinafter referred to as the “Trust”) is an autonomous international fund established under international law.

(2) The Trust shall possess full international legal personality and enjoy such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

(3) In particular and without prejudice to the generality of the forgoing, the Trust shall have the legal capacity –

- (a) to enter into treaties and contracts;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute and respond to legal proceedings.

(4) In pursuance of its objective under Article 2, the Trust shall operate within the framework of the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the International Treaty”) as an essential element of its Funding Strategy.

(5) The Trust shall operate in accordance with the overall policy guidance to be provided by the Governing Body of the International Treaty

Article 2 Objective of the Trust

(1) The objective of the Trust is to ensure the long-term conservation and availability of plant genetic resources for food and agriculture with a view to achieving global food security and sustainable agriculture.

- (2) The Trust shall in particular, without prejudice to the generality of the foregoing,
- (a) endeavour to safeguard collections of unique and valuable plant genetic resources for food and agriculture held *ex situ*, with priority being given to those that are plant genetic resources included in Annex I to the International Treaty or referred to in Article 15.1(b) of the International Treaty ;
 - (b) promote an efficient goal-oriented, economically efficient and sustainable global system of *ex situ* conservation in accordance with the International Treaty and the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture (hereinafter referred to as “the Global Plan of Action”);

- (c) promote the regeneration, characterization, documentation and evaluation of plant genetic resources for food and agriculture and the exchange of related information;
- (d) promote the availability of plant genetic resources for food and agriculture; and
- (e) promote national and regional capacity building, including the training of key personnel, with respect to the above.

Article 3 Activities of the Trust

(1) The Trust will establish an endowment fund to provide grants to support the maintenance of eligible collections of plant genetic resources for food and agriculture that meet agreed standards of management and availability of the genetic resources, related information, knowledge and technologies, and to cover operating expenses and other expenses incidental thereto. For the purpose of this Article, the term “maintenance” shall include all activities related to Article 2.

(2) The Trust will also be entitled to receive funds other than funds intended for the endowment fund, and will provide grants to support the holders of potentially eligible collections in upgrading their collections so that they can meet agreed standards of management in order to become eligible for maintenance grants. Such funds may also be used to support all activities related to Article 2, and to cover operating expenses and other expenses incidental thereto.

(3) The Trust may also carry out such other activities as may be necessary for the fulfilment of the objectives of the Trust.

Article 4 Organs of the Trust

The organs of the Trust shall be:

- (a) the Executive Board of Trustees (hereinafter referred to as the “Executive Board”);
- (b) the Donors’ Council;
- (c) the Executive Secretary; and
- (d) such technical panel or panels of experts or other arrangements as the Executive Board may establish under Article 6(4).

Article 5 The Executive Board

(1) The Executive Board shall consist of the following members:

- (a) Four members, at least two of whom shall be from developing countries, appointed by the Governing Body of the International Treaty or, prior to the entry into force of the International Treaty, the FAO Commission on

Genetic Resources for Food and Agriculture acting as Interim Committee for the International Treaty;

- (b) Four members, at least one of whom shall be from a developing country, appointed by the Donors' Council;
- (c) One member appointed by the Director General of the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") who shall operate in a technical capacity only and shall not have the right to vote;
- (d) One member appointed by the Chair of the Consultative Group on International Agricultural Research (hereinafter referred to as the "CGIAR") who shall operate in a technical capacity only and shall not have the right to vote;
- (e) The Executive Secretary of the Trust as a member *ex officio*;
- (f) The Executive Board may appoint two additional members to ensure overall balance amongst its membership, in particular with regard to diversity in disciplinary backgrounds, geographical representation, gender, and competence in fundraising and financial management.

(2) Before making their appointments, the parties appointing members of the Executive Board shall consult with each other and with the Executive Board with a view to ensuring that the Executive Board has the balance and the range of skills necessary for it to perform its functions effectively.

(3) Subject to Article 5 paragraph (5), and with the exception of the member appointed by the Director General of FAO under Article 5(1)(c), whose term shall be decided by the Director General of FAO, the member appointed by the Chair of the CGIAR under Article 5(1)(d), whose term shall be decided by the Chair of the CGIAR, and the Executive Secretary, who shall serve during the Term of his/her office as Executive Secretary, members of the Executive Board shall serve for terms of no more than three years as determined by the Executive Board. Vacancies among members by reason of retirement, death, incapacity, or any other cause shall be filled in the same manner as the original nomination and appointments. A new member appointed to replace a member during the latter's term may be appointed for the remaining term of the member being replaced or for some other term of no more than three years.

(4) Members of the Executive Board are eligible for reappointment to a second term, but shall not serve more than two successive terms, except that the member elected as Chairperson may have her/his term extended by the Executive Board, provided that he or she shall serve for no more than eight consecutive years on the Executive Board.

(5) To ensure continuity of policies and operations, the terms of members of the Executive Board shall be staggered. Members of the initial Board shall be appointed for such terms as the Interim Panel of Eminent Experts shall determine

(6) The members of the Executive Board shall serve in a personal capacity, except for the Executive Secretary who will be a member *ex officio*, the member appointed by the Director General of FAO under Article 5(1)(c) and the member appointed by the Chair of the CGIAR under Article 5(1)(d).

Article 6 Functions and Powers of the Executive Board

(1) The Executive Board shall, subject to the overall policy guidance of the Governing Body of the International Treaty, and other relevant provisions of this Constitution, oversee the operations and activities of the Trust in pursuance of its objective. The Executive Board shall approve the budget of the Trust and exercise the other powers conferred upon it by this Constitution.

(2) The Executive Board shall, in particular, ensure that:

- (a) the policies of the Trust are in line with the International Treaty and the overall policy guidance provided by its Governing Body, and are consistent with the aims of the Global Plan of Action;
- (b) the programmes and plans of the Trust are consistent with its objective;
- (c) the Trust is managed effectively by the Executive Secretary in harmony with the agreed objectives, programmes and budgets, in accordance with legal and regulatory requirements; and
- (d) the future well-being of the Trust is not jeopardized by exposing its financial resources, its staff or its credibility to imprudent risks.

(3) To this end, the Executive Board shall have the following functions:

- (a) to define the scope and kind of operations of the Trust, set targets and approve the programmes and plans of the Trust and monitor the achievement of targets and implementation of programmes and plans;
- (b) appoint the Executive Secretary, determine his/her terms of employment, monitor his/her performance and dismiss the Executive Secretary if his/her performance is inadequate;
- (c) approve the annual Programme of Work and Budget of the Trust;
- (d) approve the Annual Report of the Trust;
- (e) adopt the Financial Regulations of the Trust;
- (f) adopt the fund disbursement strategy for the Trust, including the proposed balance between support for collections held by national institutions and support for collections held by international institutions, and the balance between regions. Before adopting such strategy, the Executive Board shall consult with the Governing Body and Donors' Council;
- (g) adopt principles and implementing criteria for the eligibility of collections, projects and activities for funding as well as procedures for applications for funding and the making of grants and approve all grants made by the Trust, except to the extent that such approval is delegated to the Executive Secretary, and monitor the exercise by the Executive Secretary of any delegated powers to approve grants. Before adopting the principles, the Executive Board shall consult with the Governing Body and Donors' Council;
- (h) adopt the fund raising policy of the Trust and oversee fundraising activities. Before adopting the fundraising policy of the Trust, the Executive Board shall consult with the Donors' Council;

- (i) approve the investment policy of the Trust and monitor its implementation. Before adopting the investment policy of the Trust, the Executive Board shall consult with the Donors' Council;
- (j) subject to Article 16(4), oversee borrowing by the Trust, major expansion including the acquisition of major equipment and facilities, and the disposal of major assets;
- (k) oversee the Trust's cost-effectiveness, financial integrity and accountability;
- (l) appoint the independent auditor and approve the auditor's annual audit plan;
- (m) make arrangements for the functioning of the Secretariat of the Trust and approve its personnel policies including staff regulations, scales of salaries and benefits;
- (n) give due consideration to the recommendations and suggestions made by External Reviews regarding the Trust's operation and activities;
- (o) adopt the rules of procedure of the Executive Board;
- (p) adopt procedures to ensure that Executive Board members have no conflict of interest;
- (q) provide regular reports on activities of the Trust to the Governing Body of the International Treaty and the Donors' Council;
- (r) facilitate the establishment of such mechanisms within national jurisdictions as may be appropriate to receive contributions to the Trust and provide contributors with tax benefits under national legislation;
- (s) seek independent advice as required; and
- (t) perform such other acts as may be considered necessary, suitable and proper for the attainment of the objective of the Trust.

(4) The Executive Board shall have the power to establish such subsidiary bodies as it may deem necessary.

(5) The Annual Report of the Trust shall be published in the most appropriate form and shall be transmitted to the Governing Body and to the Donors' Council, and shall be circulated widely to other donors and other interested parties. The Executive Board shall consider and take into account any comments made on the Annual Report by the Governing Body, the Donors' Council and other interested parties.

Article 7 Relationship of the Trust with the International Treaty

(1) The Executive Board shall, as soon as practicable after the entry into force of the International Treaty, enter into an agreement with the Governing Body of the International Treaty¹, defining the relationship of the Trust with the International Treaty.

(2) The relationship agreement shall include the following:

- (a) recognition of the Trust as an essential element of the Funding Strategy of the International Treaty;
- (b) the authority of the Governing Body of the International Treaty to provide

¹ As the Governing Body does not possess its own international legal personality, the agreement will be concluded by FAO acting on behalf of, and with the approval of, the Governing Body

- overall policy guidance to the Trust on all matters within the purview of the International Treaty;
- (c) reporting obligations of the Trust to the Governing Body of the International Treaty; and
 - (d) recognition that the Trust will be free to take its own executive decisions on disbursement of funds, within the general framework of the overall policy guidance of the Governing Body of the International Treaty.

Article 8 Voting by the Executive Board

(1) Each member, except the non-voting member appointed by the Director General of FAO under Article 5(1)(c) and the non-voting member appointed by the Chair of the CGIAR under Article 5(1)(d), shall have one vote.

(2) The Executive Board shall make every effort to reach agreement by consensus on all matters on which a decision of the Board is required. If all efforts to reach a consensus on a particular matter have been exhausted and no agreement has been reached, a decision on the matter shall as a last resort be taken by a vote in accordance with the Rules of Procedures of the Executive Board.

Article 9 Procedure of the Executive Board

(1) The Executive Board shall elect one of its members as its Chairperson. The normal term of the Chairperson shall be three years. Subject to Article 5(4), the Executive Board may re-elect its Chairperson for a second term of not more than three years.

(2) The Executive Board shall meet at least once annually.

(3) A majority of the voting members shall constitute a quorum for Executive Board meetings.

(4) The Executive Board shall adopt its own rules of procedure, which shall be consistent with this Constitution.

Article 10 Donors' Council

(1) The Executive Board shall establish a Donors' Council to advise it on fundraising and other financial matters related to the activities of the Trust, to provide a forum for the expression of the views of donors on the operation of the Trust, to provide financial oversight of the operations of the Trust, and to perform such other functions as are entrusted to it under this Constitution. The first members of the Donors' Council shall be appointed by the Interim Panel of Eminent Experts after consultation with all interested groups.

(2) The Donors' Council shall be composed of public and private donors from both developing and developed countries, who have made a significant contribution to the

Trust. The Executive Board, after consultation with all interested groups, will establish and keep under review the size of donor contribution required by the different categories of donor for eligibility for membership on the Donors' Council, with a view to ensuring a balance of representation on the Donors' Council

(3) The Donors' Council shall establish its own procedures and elect its own Chairperson.

(4) The Donors' Council shall be convened by the Chairperson, and shall meet in ordinary session at least once annually.

Article 11 Technical Advice

The Executive Board shall so far as practicable, and on a case by case basis, as appropriate, draw on the technical advice of existing organizations, networks and individuals competent in areas relevant to the objective and activities of the Trust.

Article 12 Appointment of the Executive Secretary

The appointment of the Executive Secretary of the Trust, his/her term of office, and any termination for cause shall be decided by the Executive Board. Before making the appointment, the Executive Board shall consult with the Donors' Council and the Governing Body, as appropriate.

Article 13 Functions and Powers of the Executive Secretary

(1) The Executive Secretary shall be responsible to the Executive Board for the operation and management of the Trust and for assuring that its objective, programmes and plans are properly developed and carried out. He/she shall be the chief executive officer of the Trust and, subject to the supervision of the Executive Board, shall have full power and authority to direct the work of the Trust and its Secretariat.

(2) The Executive Secretary shall implement the decisions taken and recommendations made by the Executive Board, and in particular shall, under the supervision of the Executive Board:

- (a) develop a strategic plan for the operation of the Trust and keep this plan under continual review;
- (b) develop annual programme and budget submissions and prepare the Annual Report of the Trust;
- (c) prepare other matters for decision, approval or adoption by the Executive Board;
- (d) manage the planning, direction and execution of the Trust's activities to ensure effective programming and project implementation, analysis and evaluation of on-going programmes and projects and to provide vision and comprehension in developing strategies for future programmes;

- (e) plan and implement resource mobilization;
- (f) develop and implement a strategy for public awareness and communication;
- (g) recruit and manage the staff of the Trust;
- (h) keep and have available for review by the Executive Board, financial accounts and records on a current basis;
- (i) ensure that an independent audit of the financial records takes place each year;
- (j) keep the Chairperson of the Executive Board advised on matters of consequence that relate to the Trust; and
- (k) perform such other functions as are delegated to her/him by the Executive Board.

(3) The Executive Secretary shall be the legal representative of the Trust. He/she shall sign all deeds, contracts, agreements, treaties and other legal documents that are necessary to ensure the normal operation of the Trust. The Executive Board may stipulate the extent to which these powers may be delegated by the Executive Secretary to other staff of the Trust. Contracts, agreements and treaties that affect the governance, objectives, location, expansion or dissolution of the Trust, or major issues of the relationship with the host country, are subject to approval by the Executive Board.

Article 14 Staffing

(1) The staff of the Secretariat shall be appointed by the Executive Secretary, under staff regulations approved by the Executive Board.

(2) The paramount consideration in the employment of staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of quality, efficiency, competence and integrity. There shall be no discrimination on the basis of gender, race, creed or nationality in the employment practices of the Trust.

Article 15 Headquarters Location

(1) The location of the Trust's headquarters shall be determined by the Executive Board.

(2) The Executive Board may also establish offices in other locations as required to support the Trust's programme.

Article 16 Financing

(1) The Trust shall seek to raise, from governments, corporations, foundations, trusts and others, including individuals, adequate funds, including endowment funds, for the achievement of its objective.

(2) Efforts will be made, in particular, to secure unrestricted funding for the endowment. The Executive Board will be responsible for ensuring that the Trust is able to maintain a balanced portfolio of grants in respect of particular crops, collections, regions, genebanks and activities. Earmarked funds may be accepted, as long as these are fully in line with the objective of the Trust, within the limits and under such conditions as may be set out in the fundraising policy of the Trust.

(3) The funds of the Trust shall be invested and managed in such a way as to achieve returns consistent with the risks involved, in accordance with the investment policy approved by the Executive Board. The Board shall establish policies to minimize variations in the amount of revenue available each year for grants.

(4) Major direct borrowing over a threshold or in circumstances prescribed by the Executive Board with the approval of the Donors' Council shall be subject to prior approval by the Donors' Council.

(5) An independent financial audit of the operations of the Trust shall be conducted on an annual basis by an independent international accounting firm appointed by the Executive Board. The results of such audits shall be made available by the Executive Secretary to the Executive Board and to the Donors' Council and to the Governing Body of the International Treaty.

(6) No part of the earnings of the Trust shall inure to the benefit of, or be distributable to, members of the Executive Board, officers of the Trust, or other private persons, except that the Trust shall be authorized and empowered to pay reasonable compensation for services rendered and expenses incurred, and to make payments and distributions in furtherance of the objective of the Trust.

Article 17 External Reviews

The Trust shall be subject to periodic external reviews of its programme and of its management by an independent review panel appointed by the Executive Board, after consultation with the Governing Body and the Donors' Council, as appropriate, with regard to the terms of reference of the review and composition of the Panel. Such reviews will take place every three to five years or more often if so determined by the Executive Board. The Governing Body of the International Treaty, or the Donors' Council, may call for extraordinary external reviews.

Article 18 Rights, Privileges and Immunities

(1) The Trust shall enter into a headquarters agreement with the Government of the country in which it is located to ensure that the Trust, its staff members and official visitors shall enjoy in the territory of the host country the same rights, privileges and immunities as customarily accorded to other international organizations, their officials, staff and official visitors. Such rights, privileges and immunities shall be specifically defined in a Headquarters Agreement with the host country.

(2) Similarly, the Trust may enter into agreements with other countries in which it works for the purpose of granting the Trust, its officials and staff such privileges and immunities as are required for such work.

(3) The privileges and immunities referred to in the preceding paragraphs are to be provided solely to ensure in all circumstances the unimpeded functioning of the Trust, and the complete independence of the persons to whom they are accorded.

Article 19 Amendments

(1) Amendments to this Constitution may be adopted by the Executive Board by a three-fourths majority of all voting members of the Executive Board, provided notice of such proposed amendment together with its full text has been mailed to all members of the Executive Board at least eight weeks in advance of the meeting, unless such notice has been waived by all members of the Executive Board.

(2) The Executive Board shall consult with the Governing Body of the International Treaty, as appropriate, regarding proposed amendments, before their adoption.

(3) Any amendment to this Constitution adopted by the Executive Board shall be reported to the Parties to the Agreement for the Establishment of the Global Crop Diversity Trust for their approval in accordance with Article 3.3 of the Agreement for the Establishment of the Global Crop Diversity Trust.

Article 20 Dissolution

(1) The Executive Board may, if it determines that the purposes of the Trust have been achieved to a satisfactory degree or if it determines that the Trust is no longer able to function effectively, by a three-fourths majority of all voting members of the Executive Board, adopt a resolution dissolving the Trust.

(2) The Executive Board shall consult with the Governing Body of the International Treaty and the Donors' Council prior to any decision to dissolve the Trust.

(3) A resolution for the dissolution of the Trust shall not become operative until such time as the dissolution has been agreed to by the Parties to the Agreement for the Establishment of the Global Crop Diversity Trust.

(4) In case of dissolution, the unencumbered endowment funds of the Trust, subject to conditions attached to these funds, shall be returned to the original donors, or with the original donors' agreement distributed to organizations having purposes similar to those of the Trust.

(5) Other net assets of the Trust shall be disposed of in such a way as may be determined by the Executive Board.