

MEMORANDUM

TO: Dr. Anne-Marie Izac
Chief Alliance Officer
Future Harvest Alliance Office

FROM: Celia Roady

DATE: August 25, 2006

SUBJECT: Pooling Center Reserves

I. Introduction

This memorandum responds to your request for advice, on behalf of the Future Harvest Alliance, on the following questions:

- (1) whether the 15 International Agricultural Research Centers (the “Centers”)¹ that comprise the Future Harvest Alliance have authority to pool their reserves for purposes of sharing financial risk;
- (2) if there are impediments to such pooling, whether they might be removed; and
- (3) whether there are opportunities for the pooling of reserves for other purposes, such as to achieve better and more cost-effective investment management services.

To facilitate review of this memorandum we begin with an executive summary of our conclusions.²

¹ The Centers are: Africa Rice Center (WARDA); Centro Internacional de Agricultura Tropical (CIAT); Center for International Forestry Research (CIFOR); Centro Internacional de Mejoramiento de Maiz y Trigo (CIMMYT); Centro Internacional de la Papa (CIP); International Center for Agricultural Research in the Dry Areas (ICARDA); International Crops Research Institute for the Semi-Arid Tropics (ICRISAT); International Food Policy Research Institute (IFPRI); International Institute of Tropical Agriculture (IITA); International Livestock Research Institute (ILRI); International Plant Genetic Resources Institute (IPGRI); International Rice Research Institute (IRRI); International Water Management Institute (IWMI); World Agroforestry Centre (ICRAF); and WorldFish Center.

² We note that the Centers are headquartered in some 14 different countries and understand that they have the status of international organizations under the laws of their host countries. The legal discussion set forth in this memorandum is based solely on our review of the Centers’ governing documents, funding mechanisms, the requirements for participation in the Consultative Group for International Agricultural Research (“CGIAR”) system and certain general principles of law governing U.S. charitable organizations. We are not admitted to practice in, and have not examined the laws of, the other countries where the Centers are headquartered and do not express an opinion on the implications of the questions presented under such laws.

II. Executive Summary

A. Do the Centers have authority to pool their reserves for purposes of sharing financial risk?

Based on our review of the ir governing documents and the manner in which they receive their funding, we do not believe that the Centers have authority to pool their reserves for purposes of sharing financial risk. We reach this conclusion for several reasons. First, each Center is a legally independent organization that is formed for separate and distinct purposes. Each Center's governing document sets forth that Center's purposes and only empowers the Center to engage in activities that further such purposes. While the governing documents of some Centers are broader than others, none of those we reviewed³ is broad enough to encompass the use of the organization's reserves to support other Centers with different purposes.

Second, governance of each Center is entrusted to a governing body that is tasked with the power and responsibility to apply the assets of the Center to the accomplishment of its specific purposes. None of the governing documents we reviewed gives the governing body control and discretion over the use of the organization's reserves for purposes unrelated to the Center's mission. Absent such discretion, the governing bodies of the Centers lack the authority to put the reserves of their Centers at financial risk for the benefit of other Centers with different purposes. Instead, the governing bodies have a responsibility to ensure that the Centers' resources are applied to support their particular missions.

Third, the Centers were (and are) funded by different donors. Each year these donors designate how much funding they wish to provide to specific Centers, as restricted (project-specific) or core (unrestricted) support, or both. Organizations are obligated to use donated funds for the specific purposes for which they were contributed in accordance with donor intent. In the case of unrestricted donations, there is an implicit donor expectation that funds will be used to carry out the purposes for which the organization was established.

B. Might it be possible to remove the impediments to such pooling of reserves?

We believe it would be extremely difficult to remove the impediments that exist to the pooling of reserves for purposes of sharing financial risk. At a minimum, this would require amending the governing documents of the Centers to permit the application of the reserves by one Center for

³ We have reviewed the following governing documents for the Centers, which were available to us from the CGIAR website: Constitution of the West Africa Rice Development Association; Constitution of The Centro Internacional De Agricultura Tropical; Constitution for The Center for International Forestry Research; CIMMYT, AC By-Laws; Amended Statutes of the International Potato Center; Diplomatic Immunities and Privileges (International Crops Research Institute for the Semi-Arid Tropics) Order 1988; Articles of Incorporation of The International Food Policy Research Institute; Constitution and Agreement on the Establishment of the International Livestock Research Institute and Host Country Agreement between ILRI and The Government of the Republic of Kenya; Agreement on the Establishment of the International Plant Genetic Resources Institute; Charter of the International Irrigation Management Institute; and the Charter of the International Council for Research in Agroforestry and Agreement between the Government of the Republic of Kenya and the International Development Research Centre acting as Executing Agency on behalf of a Group of Countries and Agencies Cooperating for the Establishment of the International Council for Research in Agroforestry.

the benefit of another. The amendment process varies from Center to Center; it typically requires approval of the governing body and in some cases approval of the CGIAR and/or the parties to the agreement establishing the Center. Making such amendments would be a complex and time-consuming process, and may not be in the best interests of individual Centers or consistent with the wishes of the donors to those Centers. Moreover, even if the governing documents were amended to permit the pooling or sharing of reserves, any such amendment might be viewed as applicable only to additions to reserves that accrue after the date of such amendment.

C. Are there opportunities for the Centers to pool reserves for other purposes, such as to achieve better and more cost-effective investment management services?

It would be possible for the Centers to pool some or all of their reserves for investment purposes. Indeed, the pooling of funds for investment purposes is quite common, and such arrangements do not involve the sharing of financial risk (beyond that inherent in the investment vehicle itself). Such pooling often enables the organizations to obtain higher quality and more cost-effective investment management, as well as greater opportunities for asset diversification. It would be possible, for example, to establish an investment partnership vehicle that could be used to manage pooled investments of the Centers. Under this arrangement, each Center that wished to participate would contribute a portion of its reserves to the partnership in return for a proportionate equity interest that would be shown as an asset on its financial statements.

Should the Alliance wish to pursue this opportunity, the next steps would include (i) determining which Centers might be interested in participating in an investment pool and the approximate amount of funds to be invested; (ii) preparing a “request for proposal” to be used to identify potential investment managers; (iii) development of appropriate investment guidelines for the pooled investment vehicle; (iv) selection of the jurisdiction where the investment vehicle will be created; and (v) preparation of legal documents that will govern the investment vehicle under the laws of the applicable jurisdiction.