

Passport

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The Chair's Comments



Mark S. Thomas

As it has been said, the world is not getting smaller, it is getting closer.

The news media remind us of this every day. The reports of the recent horrific attacks in Paris, Beirut and other cities, the ongoing conflicts in Syria, Iraq and Afghanistan, and the attempts of refugees to come to this and other countries, all tell us of how connected

the peoples of the globe have become.

Another aspect of that connectedness has been making itself more apparent to us in recent weeks, and that will intensify as we travel deeper into the holiday season. Whether you still buy your presents in brick-and-mortar stores or shop on-line, you, your families and your friends have already been seeing evidence of how many places our goods are made and from which they find their way to North Carolina.

As members of the International Law and Practice Section, you have a unique role in our Bar Association to raise awareness of this global connectedness and of the legal services it requires for North Carolina. Whether you are dealing with the movement of goods and services, or the drama of immigrants coming to this state, or any of the other ways in which our state engages with the world, you see firsthand how we must translate and apply our laws and legal system across borders and different cultures. Of course, we lawyers are translators, in a real sense, by the very nature of what we do. Every day we must translate the logic, perspectives and rules of our American legal system into plain English (and, we hope, plainer thinking!) for our clients, and then we must translate their needs, questions, fears and aspirations into the forms and vocabulary that our laws and legal system understand. But to bring that process into the international setting adds yet another level of complexity and the need for an additional sensitivity. In her own "cross-border" excursion, Dorothy famously said, "Toto, I've a feeling we're not in Kansas anymore", and

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Preparation for a Career in International Law: An NCBA IL&P Section Perspective

By Daniel E. Uyesato

Beginning in 2009, the International Law & Practice Section of the North Carolina Bar Association has sponsored International Law and Practice Panels at the seven North Carolina law schools: Campbell, Charlotte, Duke, Elon, NCCU, UNC and Wake Forest. The Panels are composed of three or four Section members that practice international law, and the panelists share their experiences practicing international law and advise law students interested in careers in international law. The Panels are designed to last one hour and are typically scheduled over the lunch hour or at the end of the day (4 p.m.). They often are scheduled in conjunction with other related events planned by the law schools. For example, this year the Panel at Wake Forest was made a part of its Professional Development Course, which included a variety of career panels, including ours, the Panel at UNC was part of International Education Week, and the Panel at Duke was part of its annual "International Week."

One clear observation from the many Panels sponsored by the Section is that while many law students are interested in an international legal career, few have any idea what opportunities might be available and how to maximize their chances for success. We have been fortunate to have Section members volunteer for these Panels with diverse backgrounds in international law, including (1) public service legal work in such institutions as U.S. government agencies, international tribunals,

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Development Trust Funds In Indonesia: Key Features And The Recent Development

By Hendra W. Prabandani

I. Introduction

Over the past 30 years, development trust funds have been an important instrument for channelling international donor funding to the recipient countries.¹ During this period, development trust funds have emerged as a significant pillar of the aid architecture, used as a “third way” along with bilateral and multilateral aid to meet the aid challenges.²

Development trust funds are vehicles for channelling aid funds from governmental and nongovernmental donors to be administered by a trustee organization such as the World Bank, United Nations Development Programme, or other multilateral organization.³ Donors to trust funds include sovereign countries, as well as private foundations, corporations, and intergovernmental organizations.⁴ The activities they finance range from huge global programs to fight AIDS, Tuberculosis and Malaria; post-disaster reconstruction and post war reconstruction programs; to conventional individual technical assistance⁵ such as training, identification studies, feasibility studies, capacity building.

Some countries also have been replicating the model of development trust funds under their national system. This fund is designed as a nationally owned and administered for pooling external funding resources from various development partners in a manner that could improve alignment between external assistance and national system.⁶

In Uganda, the Mgahinga Bwindi Impenetrable Forest Conservation Trust (MBIFCT) was established under the Uganda Trustees Incorporation Act by the Government of Uganda to conserve Mgahinga Gorilla and Bwindi Impenetrable National Parks, two critical forest habitats which provide a home to half of the world's remaining population of mountain gorillas in South Western Uganda.⁷ The Trust Management Board (TMB) that consists of the representatives of government agencies, local communities, local and international NGO; and research institution was assigned to oversee the management of the Fund. In Brazil, Amazon Fund was created with Presidential Decree No. 6,527 under the management of the Brazilian Development Bank (BNDES).⁸ The BNDES is authorized to allocate the amounts of donations in efforts to prevent, monitor, and combat deforestation and to foster conservation and sustainable use in the Amazon Biome.⁹

II. The Indonesian Development Trust Fund¹⁰

Development trust funds have only recently been permitted in Indonesia based on Presidential Regulation No. 80/2011 regarding Trust Fund. Under Indonesian law, a development trust fund is a grant provided by one or several donors which is managed by a trustee institution to be used for the development purposes. The management of the development trust fund shall be managed by a trustee institution. The trustee institution is an ad-hoc government

entity established by a ministerial regulation that governed by the Board of Trustee.

A. The Trustee Institution, The Board of Trustee and the Fund Manager

The trustee institution (the Trustee) is technically an “independent” institution that represents the Government of Indonesia (GoI) in the implementation of activities and manages the program that has been set-up. The Trustee acts as the primary agent to implement the targeted program and to perform the right and obligation of the GoI to oversee manage and implement the Program.

The Trustee is an organization established by ministries/agencies to manage the development trust fund with authorities that has been agreed in the grant agreement. Initiate minister/head of agency may only establish the Trustee after obtained consideration from the Head of Indonesian National Developing Agency (Bappenas) and the Minister of Finance. This is done to ensure that the Fund will be created to finance activities in accordance with the national development priorities.

In order to manage grants through a development trust fund, the initiate ministries/agencies must satisfy several criteria: (1) there is commitment from the donor to provide funds in order to achieve the thematic target of the national development priority; (2) there is a need to support the achievement of thematic targets; and/or (3) the donor and government agreed to create a trust fund to achieve certain development priorities.

Generally, the Trustee's structure shall consist of a board of trustee and a fund manager. The trustee institution will be directed by the Board of Trustees (The Board). The Board will have a conditional independent decision making authority. The Board is to be independent and the final decision maker with respect to the Fund's programs.

The member of the Board consists of government and non-government officials, including representatives of civil society and private sector. Board members who come from government agency are nominated by heads of agencies/minister. The non-government representatives are appointed based on their own election system.

The Board then will elect a fund manager to manage trust fund properties. The fund manager is not necessarily forms as financial corporation but a government agency, a multilateral agency, a non-governmental organization or a state own corporation may also serve as the fund manager. The appointment of the fund manager can be proceed by open and competitive bidding or by the appointment as stipulated in the grant agreement.

B. The Operations

Every Ministry, government agency, local government, Non-Governmental Organization, or Private Institution may pro-

pose their prospective activity to be funded by the development trust fund directly to the Board. However, the activity shall be with reference to the national Medium Term Development Plan; the objective of the grant; and the thematic targets of the Fund.

The Board will conduct assessments for all proposed activities. The Board is required to maintain the assessment record as a basis for the approval or rejection of the proposed activities. The Presidential Regulation delegates authority to the Board to develop its own assessment method.

C. Reporting, Monitoring and Evaluation

Ministry/government agency, Local Government, Non-Governmental Organization and Private Institution as implementing agents, shall submit quarterly reports which consist of implementation and financial report to the Board.

The Board then shall submit a semester progress report on the implementation of activities and management of trust fund to Head of National Development Agency, Minister of Finance and other relating minister. The Host Minister/Head of Agency who established the trust fund require to continuously oversight, monitor and evaluate the implementation and management of the trust fund institution.

III. The Existing Indonesian Development Trust Funds

The enactment of Presidential Regulation No. 80/2011 was followed by the establishment of two development trust funds by the GoI: the Millennium Challenge Account-Indonesia (MCA-I) and Indonesia Climate Change Trust Fund (ICCTF).

MCA-I is a trust fund institution designated by the GoI to implement the Compact, a US \$600 Million grants program, which is the largest commitment of the United States of America in the last three decades in Indonesia.¹¹ The goal of the Compact grants is to reduce poverty through economic growth in Indonesia.¹² The objectives will be achieved through the implementation of three group of projects¹³: Green Prosperity (US\$ 332.5 million),¹⁴ Community-Based Health (US \$131.5 million)¹⁵ and Public Procurement Modernization (US\$ 50 million). The beneficiary of these programs are local governments, national and local NGO, small business enterprises, local communities and government agency such as National Procurement Policy Agency.

The establishment of ICCTF is a part of the GoI commitment to reduce Green House Gases by 26 percent financed by its own resources and up to 41 percent with international support compared to a business-as-usual scenario by year 2020.¹⁶ ICCTF was created to harmonize and coordinate the international support for climate change activities.¹⁷ In order to achieve the GoI's objectives ICCTF has identified three high priority windows for financing responses to the risk of climate change, Land-based Mitigation, Energy and Resilience and Adaptation Window. The funds are channelled to the government agency such as Ministry

of Environment, local NGOs, and local communities.

As of December 2013, the UK Government has contributed £ 6,200,000 to the ICCTF project, the contribution was in place in 2010. This is in collaboration with Australian Aid (AusAID) who provided US\$ 1, 4 million, Swedish International Development Agency (SIDA) provided US\$ 332,000 and United Nation Development Programme (UNDP) contributed US\$ 80,000 at the start of the project in 2009.¹⁸ In June 2015 the USAID has agreed to contribute US\$ 5 million to support the ICCTF's programs.¹⁹

Both MCA-I and ICCTF has been successfully collaborated with a national bank for serving them as the fund manager. Bank Rakyat Indonesia was appointed as MCA-I's fund manager, while Bank Mandiri was appointed as ICCTF's fund manager .

Hendra W. Prabandani is an LL.M candidate at the UNC School of Law and focusing his area of study on the law of development trust funds. Hendra is currently in house counsel at Office of General Counsel of Indonesian Ministry of National Development Planning. He has been deeply involved in the establishment of Millennium Challenge Account-Indonesia and Indonesia Climate Change Trust Fund. He also has been active as a counsel for the establishment of Indonesian Science Fund, an independent science-granting institution, which created under the auspices of Indonesia Academy of Sciences. Hendra received his Bachelor Degree in Law from Sebelas Maret University and Master of Laws from Diponegoro University, all in Indonesia.

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