Title: Consultant: Considerations on the Legal and Financial Structure
Org. Unit: Outbreaks and Epidemics Division, Research & Development Department
Duty Station: Remotely based
Contract type: When Actually Employed Consultant
Duration: 45 days over 3 months’ period
Reporting to: Lead Advisor, Outbreaks and Epidemics Division

Background: Emerging infectious diseases pose an increasing threat to health and economic development in Africa. In the past few years, the international community has moved towards a robust and well-coordinated response approach towards public health emergencies. Despite this, and other improvements in the increased speed of detection and response, rapid deployment of medical countermeasures and vaccines, the presence of timely access to funding in respect to many PHE remains unpredictable. In the circumstances where funding is secured, it is largely on an ad hoc basis and after occurrence of an event of a given magnitude. Slow and unpredictable funding amplifies both the risk and impact of outbreaks. Any delays in mounting an effective response leads to escalation of outbreak with sustained transmission leading to loss of life, socio-economic disruption of the communities and negative impact on the nation’s development agenda.

The African Risk Capacity Specialized Agency of the African Union¹ (ARC) provides financial tools and infrastructure to help African Union (AU) Member States manage natural disaster risk and improve the way predictable natural disasters are responded to on the continent by reducing the time it takes for assistance to reach those affected through early, local response. ARC achieves this by bringing together three critical elements that create a powerful value proposition for its participants: early warning, contingency planning and insurance. Together this package provides governments with access to immediate funds for early and planned responses to support vulnerable populations in the event of disasters. This vehicle allows ARC to help its Members build capacity to lead their own

¹ The ARC design and establishment phase was managed by the United Nations World Food Programme (WFP), under a MoU with the African Union Commission, and WFP continues to provide administrative services support to the ARC Agency through an administrative services agreement, including procurement services for the purposes of this tender and contract.
responses and reduce their reliance on the international appeals process for assistance over time. More critically, however, reduced response times save the lives and livelihoods of those affected and protect development gains, essential for growth and building a more disaster-resilient Africa for the future.

Following the Ebola crisis that ravaged West Africa, African Ministers of Finance requested the ARC Secretariat in March 2015 to develop a product to address countries’ financing needs to contain outbreaks of viruses and diseases common to the African continent, and in the event of spread or secondary transmission. In the case of Ebola, financing was only mobilized (depending on the affected country) 4-9 months after the first cases were reported. According to ARC and its partners’ analysis, beginning the Ebola response just two months earlier could have reduced total number of deaths by 80% in Liberia and Sierra Leone. In March 2014, the WHO issued an Ebola appeal for USD 4.8 million dollars to contain the virus; by September 2014 the UN issued an appeal for nearly USD 1 billion to halt the spreading outbreak.

The design of this product is based on four distinct but related workstreams, Risk Profile, Contingency planning, Disease model with trigger definitions and a cost benefit analysis. ARC’s O&E programme is designed to address many of the problems inherent in early response for disease outbreaks and epidemic response by:

- Establishing a pool of cost-effective capital that can be rapidly deployed
- Ensuring countries acknowledge O&E by tying declaration of epidemiologic events reported through verifiable sources to immediate financial payouts
- Facilitating better health systems strengthening and preparedness (e.g. through better surveillance mechanisms and incentivized contingency planning)
- Promoting pan-African and sub-regional solidarity and coordination
- Linking the African Union’s and its partners’ investments in the strengthening of health systems, country preparedness and the African Centre for Disease Control into a full ecosystem for pandemic risk management on the continent.

To achieve this, ARC has contracted two firms (Metabiota Inc, and Health Systems Consult Limited) and one consortium (affiliated to Mailman School of Public Health, Columbia University) to support the development work through four workstreams;

- Risk profiles and preparedness/capacity assessments of in two countries (Guinea and Uganda);
- Contingency Planning Standards and Guidelines for O&E response in Africa as well as assistance in applying these guidelines to the development of operations plans for two pilot countries; and

---

2 Addis Ababa Resolution L9, 30 March 2015
• A methodology for modelling and indexing outbreak and epidemic risk that can eventually underpin parametric insurance contracts to ARC Member States.
• Economic and the Cost benefit analysis of the investment in ARC O&E product.

Problem Statement:

The African Risk Capacity is in the process of developing an additional product outbreaks and epidemics) to offer early and targeted financing to African Union Member Countries for selected disease pathogens (Ebola, Marburg, Lassa Fever and Meningitis). The O&E product is scheduled to be launched by June 2020-2021. The product’s selected diseases affect over forty countries in Africa, of which based on a purely epidemiological analysis, 20 have been identified as most suitable for the product, these are: Uganda, Senegal, Côte d’Ivoire, Kenya, Mali, Rwanda, Zambia, Ghana, Mauritania, Malawi, Gabon, Sierra Leone, Cameroon, Mozambique, Liberia, Rep. Congo, Nigeria, Tanzania and D.R. Congo.

The pilot for O&E was conducted and successfully concluded in 2019. This involved two countries Guinea and Uganda. Five workstreams were piloted around country preparedness, ARC preparedness Index, contingency planning, disease spread modelling, response cost modelling, Data index and market survey. The pilot was concluded with a basic structure of the risk transfer product. This will be a parametric product triggering for any of the covered pathogens given a pre-agreed infection levels post an outbreak as calculated by the ARC Data Index. The product targets early intervention and pay-out will go to fund outbreak response activities.

The O&E team has conducted an extensive exercise to identify the possible and best capital delivery option for O&E. Broadly the options that were explored were an insurance vehicle writing O&E parametric policies for the sovereign nations with reinsurance protection, a catastrophe bond (cat bond) or a catastrophe swap (cat swap). The capital review recommended a private placement catastrophe bond (cat bond) due to receiving the highest amount of capital market support as a result of the market consultation process. In addition, a detailed assessment of the pros and cons of each option were explored with ARC Agency management. Rockefeller Foundation, O&E’s donors expressed a stronger interest in the cat bond due to direct measurability of its performance when compared to funding capital of an insurance company. Rockefeller Foundation and ARC Agency management did not rule out considerations of O&E insurance entity set up in the longer term. The recommended option assumes cat bond issuance through ARC Agency. Private placement rather than public placement was recommended due to reduced administrative burden and to minimise the risk of undersubscription by capital market investors at issuance.

The initial preferred capital delivery option was being an insurance line as part of ARC limited. Considerations of the non-fungibility of ARC Limited’s donor funded capital and governance issues resulted in the capital review and ARC management and board advice to prefer that ARC O&E be a separate entity that is not strictly an insurance product requiring fungible capital. Considerations of issuance of a cat bond through a segregated capital cell within ARC Limited is to be looked into in
more details to assess whether governance issues can be overcome. This is to be compared with the pros and cons of cat bond or cat swap issuance through ARC Agency instead. Considerations of cat swaps issuance are also to be assessed in more detail. Cat swaps do not require collateral but considerations of their issuance through ARC agency or ARC limited are also to be assessed in the same manner from a legal prospective.

**Aim:** The aim of these TOR is to conduct a legal review of whether ARC Agency could legally sponsor an O&E Cat bond or a cat swap. Considerations of licensing issues, asset proceeds custodianship, domicile of cat bond special purpose vehicle (SPV) and regulatory requirements would be needed. In addition, an analysis on available routes for protecting O&E’s intellectual property rights will also be extremely helpful.

**Scope of work:**

1. Analyse the structural and capital delivery options for the O&E risk transfer product, the pros and cons for each option as well as the implications on the ARC Treaty (whether the Treaty will have to be amended or not). This should include a comparison between risk transfer product issuance through ARC Agency versus ARC Limited, excluding any capital options where a call on ARC Limited’s capital can be made. This work should build on findings from the market capital review. This analysis should address and include the following:
   - Recommendations of the best jurisdictions and structure/type for the special purpose vehicle (SPV) or the segregated capital cell within ARC limited
   - Understanding custodianship needs for O&E if issued through a cat bond
   - Review legal requirements of cat swap issuance through International Swaps and Derivatives Agency (ISDA) and its appropriateness for ARC Agency and the mechanics of issuance
   - Process and timeline to capital vehicle set up under each option
2. Recommend a structural and capital delivery option for the O & E risk transfer product;
3. Identify the regulatory and other hurdles that need to be crossed in chosen jurisdiction
4. Investigate routes to protecting O&E’s intellectual property rights for the modelling, financial product and capacity building process

**Deliverables:**

1: A legal review of whether ARC Agency could legally sponsor an O&E Cat bond or a cat swap. Considerations of licensing issues, asset proceeds custodianship, domicile of cat bond special purpose vehicle (SPV) and regulatory requirements to be addressed.

2. Recommendations on other options that the ARC group could adopt in sponsoring an O&E Cat bond or a cat swap under the group’s stewardship.
3: Available routes for protecting O&E’s intellectual property rights for the disease model and other tools developed during the pilot.

4. A report to be presented to the Lead Advisor on O&E and ARC Agency management addressing the full scope of work and the points outlined above.

**Qualifications & Experience Required**

**Education:**
- Advanced university degree in the discipline of Public International or Treaty law
- Advanced university degree in the discipline of Company or Business law
- Advanced university degree in International Finance

**Experience:**
- At least six to ten years of progressively responsible professional experience in Public International Law/Treaty law, Company/Business law and or International Finance
- Strong practical legal and or international finance experience, and experience working with multi-cultural teams and government counter parties and or private sector

**Technical Skills & Knowledge:**
- Experience with public private partnerships, and particularly with the establishment of market based financial affiliates to international organizations;
- Practical understanding of issues related to natural disaster insurance and response, market based-risk transfer mechanisms, and working with sovereign clients;
- Experience providing legal advice, support and coordination to boards, committees, and working groups composed of high-level government and international organization representatives;
- Understanding of principles of intellectual property law, particularly related to the protection of software;
- Capacity to work closely with government counterparties, and multi-cultural constituencies;
- Solid communication, negotiation and interpersonal skills;
- General knowledge of African Union and UN system policies, rules, regulations and procedures.

**Competencies:**
- Excellent communication skills, including the ability to write clear and concise briefing papers and external communications and consolidate the work of others into key, strategic operational documents;
- Strong interpersonal, partnership and diplomatic skills with ability to establish effective working relations with people at all levels and of different national and cultural backgrounds;
- Ability to think creatively, proactively, strategically and problem-solve with flexibility and adaptability;
- Strong organization skills with ability to plan, coordinate and monitor own work plan and those under supervision;
- Ability to prioritize multiple tasks under tight deadlines in a timely manner in a dynamic environment;
- Ability to maintain a high degree of judgment, discretion and confidentiality.

**Language:**
- Fluency in oral and written English;
- Intermediate knowledge of another AU official language – Arabic, French or Portuguese – highly desirable.

**Application process:**

Interested candidates should send their cv and cover letter to: robert.agyarko@arc.int

Qualified female applicants and nationals of African Union Member states are encouraged to apply.