

GCAP Global Foundation Registration Summary and Recommendation Note

1. Background

The GCAP Future Structure Task Group came in 2007 to the general agreement that *1) it is useful to distinguish between the “legal” hosting and “physical” hosting; and 2) after considering different options, particularly the risks, liabilities and potential conflict the legal hosting could possibly entail, it would be unavoidable and adequate to create an independent legal organization for the global secretariat, whereas the “physical” hosting (or housing) arrangements can be constructed separately. We also came to believe that, with proper structure in place, this independent legal registration could be handled with a minimum negative impact on GCAP’s strength in its diversity, spontaneity, political strength and leadership, dynamism and flexibility.*

And it resolved the following: *That GCAP form GCAP Trust, independent legal not-for-profit organization registered that takes care of administrative and financial aspects of running GCAP at the global level, including staff hiring and finance. The Governing Council elects the GCAP Trust Board of the GCAP Trust to oversee the functioning of the Global Secretariat¹.*

The Process:

Transition Committee in its first few telecalls decided to separate registration matters from the hosting questions. It was understood that for giving GCAP new structures and operational and management strength a primary registration is essential. It was, however decided, that the registered body will only look after the financial and administrative matters of GCAP while all the political matters, decisions, policy guidelines, strategic visions will be provided by GCAP global council that will remain out of such legal entity but will supervise the functioning of governing board of the registered GCAP.

While recognizing the complexity of the task in hand the committee made 2 key decisions:

1. Separating registration matters from hosting question
2. Selection of registration country should be done after a careful research of legal matters, including screening laws, regulations, and political aspects governing NGO laws, autonomy and other similar important parameters. The IFT support team was mandated to conduct the research based on the technical advice and clearly drawn criteria.

Selected Focused Countries

¹ See Annex 1

After several consultations with legal experts (ICNL), NGO leaders in different countries the search team selected 9 countries to focus its research.

1. Netherlands
2. Uruguay
3. New Zealand
4. South Africa
5. UAE
6. Philippines
7. India
8. Brazil
9. Estonia

Setting Search Criteria:

Transition Committee set four key criteria to get information from those focused countries:

1. No political interference
2. Ability to work internationally (and to have an international board)
3. Short registration timeframe/ bureaucratic ease
4. Tax exemption and light/no funding restrictions
5. Have an international board

The Support team used several channels to collect information from those focused countries. Contacts with NGO partners, GCAP coalition members, legal experts, international organizations and other reliable and credible sources were used to extract information. The information was tabulated, analysed under the continuous guidance of transition committee who at every step scanned the information and set standards.

International organization specialized in NGO laws were also consulted to authenticate the process and information gathered from different sources.

The information provided in the sections is based on the detailed survey conducted by the support team under the guidance and criteria provided by the transition committee.

The first important finding, obvious but necessary and unavoidable, is that there is nothing such as the registration of an international organisation anywhere. Any organisation which registers in any country becomes a national organisation, and as such needs physical address, and yearly audited accounts.

Recommendations:

1. After comparing the various options, the Transition Committee recommends to the International Facilitation (IFT) Team to register GCAP as a Foundation in the Netherlands. Thus, GCAP Global Foundation should be used instead of

GCAP Trust, as used by the GCAP Future Structure Team, in 2007.

2. After reviewing detailed information on registration laws, policies, fiscal environment, regulatory framework in 9 countries the committee prepared comparative analysis :

Registering GCAP					
	No Political interference	Ability to work internationally	Ability to have an international board	Short registration timeframe/ bureaucratic ease	Tax exemption and light/no funding restrictions
Brazil	Yes	Yes	Yes (but one third only)	Yes	No
Estonia	-	-	No	-	-
India	Yes	Yes	?	No	No
Netherlands	Yes	Yes	Yes	Yes	Yes
Philippines	No	Yes	Yes	No	Yes
South Africa	Yes	Yes	Yes	No	No
UAE	Yes	Yes	Yes	No	Yes
Uruguay	Yes	Yes	No	Yes	?

Additional comments:

Brazil	Excluding factor: <ul style="list-style-type: none"> only one third of the Board can be international; Article 14 of the National Tax Code stipulates that to obtain tax exemption, an educational or social assistance entity: (iii) shall limit the use of its resources to the Brazilian territory and to maintaining and developing its aims.
Estonia	Excluding factor: <ul style="list-style-type: none"> Board can only be constituted of Estonian and Swiss nationals
India	Excluding factor: <ul style="list-style-type: none"> Funding restrictions: It involves obtaining a Foreign Contribution Clearance registration from the Ministry of Home Affairs for which an organization should be in existence for 3 years. Without the FCRA it would not be possible to receive funds from abroad.
Netherlands	Including Factor: <ul style="list-style-type: none"> Dutch law permits flexible operations and structures for registered organization with minimum of administrative, political or policy influence.
Philippines	Excluding factor: <ul style="list-style-type: none"> No Short registration timeframe/ bureaucratic ease
South Africa	Excluding factor: <ul style="list-style-type: none"> No Short registration timeframe/ bureaucratic ease

	<ul style="list-style-type: none"> • Funding restrictions
UAE	Excluding factor: <ul style="list-style-type: none"> • UAE only registers branch of an NGO/ NPO who completed 2 years or more than 2 years of their activities in their origin country.
Uruguay	Excluding factor: <ul style="list-style-type: none"> • Board must be Uruguayan citizens

More information on each country can be obtained in Annex 2.

Registration Process:

Once signed off by the IFT the support team under the guidance of transition committee will draft a constitution and registration document to fulfil the minimum registration requirements (as required under the Netherlands registration laws). The constitution will govern the matters of registration body (including governing board and global secretariat).

If IFT mandates the registration in the preferred country then a provisional board can be set-up to help in the registration process. However the first board will be elected/selected by the Transitional Global Council by end of June 2008 (reference transition plan timeline document 2008).

2. GCAP Global Foundation Mandate

After carefully analyzing all the information gathered so far and the preliminary analysis Transition Committee suggests that GCAP Global Foundation should be set-up as a legal entity. Such registration status will help GCAP formalize the roles of signing contracts and reporting, audits, hiring staff and other administrative and financial functions. **GCAP Global Foundation – GGF** (pending verification of the term by legal expertise) will be an independent non-profit organization. GCAP Global Foundation will have the GCAP Global Foundation Governing Board and Global Secretariat.

The governing board of the GGF will perform its functions under the supervision and political guidance of the Global Council.

- The GCAP Global Foundation will hold executive, fiduciary and legal responsibilities of the Global Secretariat.
- It will be composed of eight members, of which five are elected from the Global Council and three are at large members with specific skills (e.g. human resources, legal, accounting, etc.), nominated by the Global Council.
- In its election and nomination, gender balance and regional considerations will be enforced.
- Its elected members must have the written support and recognition by their employers to dedicate an agreed amount of her/his time to GCAP.
- The GCAP Global Foundation will have a Global Secretariat with professional competence.

Proposal on Organisational Structure of GCAP post-2007²

1. **Annexure:** Excerpts from Proposal on Organisational Structure of GCAP post-2007, prepared by GCAP Future Structure Task Group, pages 4-6

² Amended: using the expressions “GCAP Global Foundation” and “GCAP Global Council”

1. Proposal on Organisational Structure of GCAP post-2007, prepared by GCAP Future Structure Task Group, pages 4-6

(1) Accountability system

We view the current GCAP structure as having weaknesses in its accountability system at various levels. On the global level, it revolves around the hosting question as described below but overall, we see a trade-off between upholding the open and flexible structure as presently subscribed by GCAP and strengthening transparent and accountable system where who is responsible for what is clear and the responsible parties are held to account for the outcomes of activities. Although we do not deem it necessary to drastically alter the nature of GCAP structure in defence of accountability, we see a general trend for the push for more accountability at this time of the GCAP's organizational evolution.

(2) Hosting

In essence, we came to the general agreement (if not full consensus) that 1) it is useful to distinguish between the "legal" hosting and "physical" hosting; and 2) after considering different options, particularly the risks, liabilities and potential conflict the legal hosting could possibly entail, it would be unavoidable and adequate to create an independent legal organization for the global secretariat, whereas the "physical" hosting (or housing) arrangements can be constructed separately. We also came to believe that, with proper structure in place, this independent legal registration could be handled with a minimum negative impact on GCAP's strength in its diversity, spontaneity, political strength and leadership, dynamism and flexibility.

We propose the following as the basic framework of GCAP post-2007. Please refer to Figure A, "GCAP Global Structure." We propose:

- That GCAP National Coalitions are recognized as the base of all GCAP action and cooperation.*
- That GCAP identify Global Assembly as the ultimate political decision-maker of GCAP at the global level. As in Montevideo, all GCAP constituents (including national coalitions, regional secretariats, constituency-based groups, INGOs and other civil society organisations, campaign partners and the global secretariat) will be able to participate in the Global Assembly. Each Global Assembly will produce a GCAP Declaration.*
- That Global Assembly elect Governing Council which is composed of regional and other representation. There will be a clear TOR between the Global Assembly and Governing Council, with the latter empowered to make political decisions of GCAP on behalf of the former within the broad*

Declarations of Global Assembly.

- *That GCAP form GCAP Trust, independent legal not-for-profit organization registered (most likely in the Netherlands, for the ease by which the registration can be done and the lightness of regulatory oversight – it does not mean that the office is physically based there), that takes care of administrative and financial aspects of running GCAP at the global level, including staff hiring and finance. The Governing Council elects the GCAP Trust Board of the GCAP Trust to oversee the functioning of the Global Secretariat.*
- *That GCAP Trust Board appoints Global Secretariat director, who is responsible for administering day-to-day operations of the GCAP global secretariat. Other secretariat staff members are hired by the director. One of the key tasks of the Global Secretariat will be to consolidate 3-4 year global workplan that should include elements from national coalitions, regional structures and constituency-based groups.*
- *That Global Secretariat and Regional Secretariats work in close collaboration and regional staffs are considered part of the global team while simultaneously accountable to regional councils/facilitation groups.*
- *That Monitoring and Evaluation Group be established by the Governing Council, which will be charged with the task of monitoring whether GCAP is accomplishing the goals as laid out in the Global Assembly Declaration and GCAP Trust is fulfilling its duties of running effective and efficient operations.*
- *All of these components of the GCAP structure are governed by the GCAP Charter (a written declaration of how GCAP as a whole as a non-legal entity is governed and run, as described in this proposal), whereas the legal body of GCAP – GCAP Trust – is governed by the GCAP Constitution (a written stipulation by which GCAP Trust is legally managed).*

From the Proposal on Organisational Structure of GCAP post-2007, prepared by GCAP Future Structure Task Group, pages 4-6