



Central Asia Regional Economic Cooperation Program

Reference Document  
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# **Progress Report on the Establishment of the CAREC Institute**

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## **PROGRESS REPORT ON THE ESTABLISHMENT OF THE CAREC INSTITUTE**

1. Following the Meeting of the National Focal Points (NFP) on the Physical Establishment of the Central Asia Regional Economic Cooperation (CAREC) Institute (CI) held on 9–10 April, 2014 in Kuala Lumpur, Malaysia, and based on the discussions during that Meeting, the People's Republic of China (PRC) continued to take the necessary steps to move ahead on the preparations for the physical establishment of the CI in Urumqi, Xinjiang Uygur Autonomous Region, the PRC in November 2014.

2. The PRC has apprised the Asian Development Bank (ADB) Mission that visited Beijing on 4 June 2014 about the progress made so far and the work that needs to be done jointly between the PRC and the CAREC Secretariat in the lead-up to the CAREC Ministerial Meeting in November, 2014.

### **I. Response to the Requests and Issues Raised at the NFP Meeting**

3. In response to the request of the CAREC countries, the Ministry of Finance of the PRC has prepared a letter addressed to the CAREC Ministers, proposing the CI to have the status of an Intergovernmental Organization (IGO). This letter is intended to pave the way for the CAREC countries to initiate the process of internal consultations on the domestic processes and approvals required for them to eventually sign an Intergovernmental Agreement (IGA) for the CI.

4. An IGA will be required to establish the CI as an IGO. The PRC has requested assistance from the ADB to assist in preparing the draft IGA by late July/early August for initial discussion with the PRC, and subsequently for circulation to the CAREC countries.

5. The PRC recognizes that the process of approving and signing the IGA could take time and would differ across the CAREC countries. In view of this, to make the IGA effective at an earlier date, the PRC suggests to include a provision in the IGA to the effect that the IGA could come into effect once four countries have signed and ratified the Agreement. Other countries may sign and ratify later. This notwithstanding, and based on the principle of fairness, all CAREC countries will be accorded equal rights to participate in the governance, decision-making processes, and activities of the CI.

6. As a transition arrangement, the CI will be registered as a limited liability company under the PRC law under the name "CAREC International Institute Management Corporation", subject to concurrence by the CAREC countries, and after checking for possible duplication with other registered business names.

7. Based on the authorization received at the NFP Meeting in Kuala Lumpur, the PRC will designate a legal representative to register the CI. After registration, the PRC will recommend a candidate for the Deputy Director 1 for Strategic Planning, Administration and Finance, and Human Resources (DD1) who will start preparing the operational requirements of the CI for it to be functional by November 2014. Furthermore, a special assistant (equivalent to Unit Head level) will be recruited for a period of 3 years with possible extension to assist DD1 in supervising the CI's office construction and coordinating with other agencies.

8. Once the CI signs the Host Country Agreement (HCA) with the PRC, the PRC can extend to the CI the treatment accorded to IGOs with respect to tax and other privileges and immunities. The concurrence of the CAREC countries on the IGO status of the CI and the

signing of the HCA afterwards would therefore be crucial in determining the financial package of the international staff to be recruited, and influencing the quality of the applicants.

## **II. Information on the CI's Transitional Arrangement**

9. In response to the queries raised by the CAREC countries at the NFP Meeting in Kuala Lumpur, the PRC has provided relevant information with regard to the legal aspects of CI's transitional arrangement under the PRC law (See Appendix 1).

10. Once the IGA is signed and comes into effect, subject to the provisions of the HCA, the PRC can extend tax exemptions and other privileges and immunities to the international staff, including visa facilitation, and the CI can also set its own internal rules on social security benefits, pensions, and other employment matters.

11. The PRC has signed a lease contract for the CI offices in Urumqi, and a renovation contract will be signed in due course, possibly around August, after completion of the bidding and procurement processes.

## **III. Next Steps**

12. According to the timetable endorsed at the NFP Meeting in Kuala Lumpur, the CAREC Secretariat will prepare the draft recruitment and selection plan including terms of reference for the managerial positions. These documents are expected to be submitted at the special NFP meeting in September for endorsement.

13. The PRC requests the CAREC member countries to authorize the CAREC Secretariat and the PRC to start preparation of the draft IGA immediately after the upcoming Senior Officials' Meeting (SOM) in Manila, the Philippines.

14. The ADB CAREC Secretariat and the PRC will submit a proposal on the topic of the first training program in the CI's physical base to the CAREC member countries for consideration by September. The PRC suggested the following topics for consideration: including economic corridor development, Silk Road Economic Belt, global supply chain, etc.

15. The PRC and the CAREC Secretariat will meet in late July/early August to further discuss the preparatory works and relevant issues on the physical establishment of the CI.

## **IV. SOM Action Requested**

16. The SOM's views and further guidance are requested on the progress of preparations for the CI, in particular, on its legal status and the next steps forward.

## **Legal issues related to incorporation of the CAREC Institute**

### **1. What options are available and appropriate considering the primary purpose/objectives of the CI?**

We have taken into consideration the various possible forms of entities that might be suitable for the CI, and have reached the conclusion that the most appropriate entity would be an international intergovernmental organization formed by a constituent agreement (a multilateral treaty) among CAREC nations. However, such a treaty, including the privileges and immunities, would require ratification, acceptance or approval of CAREC nations, which under their internal domestic procedures would normally require legislative approval. As legislative approval can take two or three years or longer, and the CI must commence operations in November 2014, it is our view that the CI should first be established as a corporation under PRC national law. This can be achieved on time for the November 2014 commencement of operations of CI.

### **2. What are the registration requirements for a corporation?**

CI can easily register as a corporation, which must meet the following criteria:

- (i) The number of shareholders must meet a quorum (the quorum must be less than 50 people);
- (ii) The subscribed capital contributions by shareholders must comply with the terms of the corporation's charter;
- (iii) The shareholders must participate in the preparation of the corporation's charter;
- (iv) The corporation must have a name and organizational structure consistent with that of a corporation;
- (v) The corporation must have an office.

We will provide further information on requirements prior to registration of CAREC as a corporation.

### **3. Is there a minimum capitalization requirement for a corporation?**

There is no minimum capitalization requirement for a corporation under PRC law.

### **4. How are the board members and key officers of a corporation elected?**

A corporation's charter determines how the chairperson and vice chairperson of the Board of Directors and the CEO and other senior management are chosen.

### **5. What are the requirements for composition of a corporation's board? Can board members be corporations and individuals? Can foreign governments be board members?**

A corporation's charter provides for how the composition of a board will be determined. Board members must be individuals and not corporations or foreign governments. In addition, the PRC Company Act provides that the following cannot be board chairperson or vice-chairperson, or management:

- (i) Persons who are incompetent or have a limited capacity for civil conduct;

- (ii) Persons who have been convicted of corruption, bribery, embezzlement, misappropriation of property, damaging the socialist economic order, or have been deprived of political rights because of a crime that they have committed.
- (iii) Persons who have a high amount of outstanding personal debt.

**6. Can a corporation establish branches in other countries?**

Under Article 14 of the PRC Company Act, a corporation may establish branches in other countries.

**7. What are the duties and liabilities of board members of corporations?**

The duties and liabilities of board members of corporations are set out in the PRC Company Act.

**8. Does incorporation under the PRC Company Act provide any tax benefits for the corporation itself and for its staff?**

Both a corporation and its staff are subject to income tax under PRC tax law.

**9. What types of employment contracts are available for staff of corporations? What are the visa and work permit application requirements for foreign employees of corporations?**

A corporation would be able to engage staff under employment contracts appropriate for staff of an international organization. Expatriate staff of a corporation are eligible for work visas pursuant to the requirements of PRC law.

**10. What are the regulatory requirements for financial reporting by corporations?**

Corporations must establish their finance and accounting systems in accordance with the PRC Company Act.

**11. What are the social security requirements for corporations?**

Staff of corporations are required to participate in national medical, unemployment maternity and workers' accident insurance schemes. The contributions for such insurance are paid for jointly by the corporation and by its employees in proportions established under national law. Corporations can also establish their own pension fund systems.

**12. Can there be different categories of shareholders of a corporation and if so, can some shareholders be denied voting rights?**

The terms for categories of shareholder and voting rights are established under a corporation's charter.

**13. Would a corporation be required to meet regulatory requirements for receiving or remitting foreign currency?**

A corporation would be subject to national law applicable to receiving and remitting foreign currencies.