



Investing in our future

# The Global Fund

To Fight AIDS, Tuberculosis and Malaria

## SANCTIONS PROCEDURES RELATING TO THE CODE OF CONDUCT FOR SUPPLIERS\*

### Introduction

1. As a major financing institution in the fight against AIDS, tuberculosis and malaria, the Global Fund recognizes the importance of accountability for suppliers and transparency and predictability in its operations.
2. As stated in its Framework Document, a core principle of the Global Fund is to operate in an open, transparent and accountable manner. Consistent with this core principle, the Global Fund will work to ensure all its financing activities, including its corporate procurement and grant operations, and staff adhere to the highest ethical standards.
3. The goal of the Global Fund's Code of Conduct for Suppliers ("Code") is to enlist suppliers' commitment to maintain integrity of the Global Fund-funded grant operations and corporate procurement activities in compliance with this core Global Fund principle.
4. The Global Fund expects all bidders, suppliers, agents, intermediaries, consultants and contractors ("Suppliers") including all affiliates, employees, subcontractors, agents and intermediaries of Suppliers (each a "Supplier Representative"), to observe the highest standard of ethics in Global Fund-funded activities regarding supply of goods and/or services to the Global Fund or any recipient of Global Fund financing, including principal recipients, sub recipients, other recipients, country coordinating mechanisms, procurement agents and first-line buyers. The expectations of the Global Fund regarding the conduct of Suppliers are set out in the Code.
5. The Global Fund may sanction a Supplier or its successor or a Supplier Representative, including declaring ineligible, either indefinitely or for a stated period of time, to participate in Global Fund-financing activities if at any time the Global Fund determines that the Supplier or a Supplier Representative has, directly or indirectly, including through an agent or other intermediary, breached the Code of Conduct, including by engaging in corrupt, fraudulent, collusive, anti-competitive or coercive practice in competing for, or in executing, a Global Fund-financed contract.

---

\*Approved 21 January 2010 at the Executive Management Team Meeting of the Global Fund to Fight AIDS, Tuberculosis and Malaria

6. Sanctions are intended to protect the interests, resources and reputation of the Global Fund, including under the Global Fund's grants, and to ensure broad public trust and confidence in the Global Fund's decision-making and grant-making activities.
7. The purpose of this document is to outline the Global Fund's procedure for imposing sanctions against Suppliers (the "Sanctions Procedures").

## **SANCTIONS PANEL**

### **Composition**

8. A panel of senior members of the Global Fund Secretariat and independent external parties ("Sanctions Panel") shall be responsible for implementing the Sanctions Procedures.
9. The Sanctions Panel shall be comprised of three permanent members and three supplemental members:
  - (a) The permanent members of the Sanctions Panel shall include the Directors of the Corporate Services Cluster, Country Programs Cluster and Finance Cluster.
  - (b) The Executive Director shall invite three external individuals to act as supplemental members of the Sanctions Panel, taking into account criteria such as (i) credibility and independence, (ii) relevant expertise and experience, (iii) knowledge of the Global Fund and its activities, (iv) commitment and availability to participate in meetings, and (v) gender balance.
  - (c) The Executive Director shall invite one of the external individuals meeting the criteria set out above to act as chair of the Sanctions Panel.
  - (d) The appointment of external members shall be for a two-year period which may be extended by the Executive Director for a further two years.
10. The Inspector General, the Legal Counsel and a senior representative of the Corporate Procurement Unit or Pharmaceutical Management Unit (as appropriate) shall advise the Sanctions Panel and shall participate in all meetings of the Sanctions Panel in an advisory role. A member of the Legal Services Unit shall act as secretary of the Sanctions Panel.
11. The Chair of the Sanctions Panel may invite input from other members of the Secretariat or external experts as the Chair deems necessary or appropriate to assist in the deliberations of the Sanctions Panel.
12. The members of the Sanctions Panel and the advisors and experts to the Sanctions Panel shall be subject to the Policy on Ethics and Conflicts of Interest for Global Fund Institutions. Prior to any meeting of the Sanctions Panel, all participants at the meeting shall declare whether they have any interest in the matter under consideration, any association with the Supplier or Supplier Representative whose conduct is being reviewed or any other consideration which may give rise to a potential or perceived conflict of interest or bias.

## Process

13. The Sanctions Panel shall deliberate during in-person meetings or, if this impracticable, by conference call.
14. For any meeting of the Sanctions Panel, the quorum shall be two permanent members and two supplemental members (including the Chair). The Sanctions Panel shall strive to reach decisions by consensus, but in the absence of consensus will make decisions based on a majority of votes of those present. All members of the Sanctions Panel shall be entitled to one vote each. In case of equality of votes, the Chair's vote shall be the casting vote.
15. The Sanctions Panel shall properly document its sessions and determinations, and maintain all information as confidential. Information supplied by the OIG will be maintained by the OIG in accordance with OIG's policies. The Sanctions Panel secretary will prepare documentation, which must be approved by the Sanctions Panel, and shall memorialize the deliberations, determinations and recommendations of the Sanctions Panel.
16. The Sanctions Panel shall make its recommendations to the Executive Director for final decision.

## SANCTIONS PROCEDURE

### Referral to the Sanctions Panel

17. Subject to the determination of the Executive Director, the Sanctions Panel shall meet to consider whether to recommend that the Global Fund impose sanctions upon a Supplier or its successor, or any Supplier Representative in any of the following circumstances:
  - (a) Following the determination by the Inspector General that there is credible and substantive evidence that creates a reasonable suspicion of a breach of the Code of Conduct, including, but not limited to, corrupt, fraudulent, collusive, anti-competitive or coercive practices in competing for, or performing, a Global Fund-financed contract;
  - (b) Notice of sanctions imposed on a Supplier or any Supplier Representative by any other partner organization or by a Global Fund grant recipient for any conduct that would constitute a breach of the Code of Conduct or any other unethical or unlawful behaviour;
  - (c) Notice of an investigation, proceedings or finding, either civil, criminal or administrative, or the imposition of sanctions, by another national or international authority for conduct that would constitute a breach of the Code of Conduct;
  - (d) A significant and material breach of the contract between the Global Fund and the Supplier or between a grant recipient and the Supplier; or
  - (e) Any credible and substantive information from any source that the Global Fund's funds, assets or resources have been placed at risk by the Supplier's conduct or the conduct of any Supplier Representative.

## **Initial Report**

18. Following referral to the Sanctions Panel of any matter under Section 17(a) through (e) above, the Office of the Inspector General, in consultation with the Secretariat, shall submit to the Sanctions Panel a written report detailing:
  - (a) the sanctionable conduct;
  - (b) the relevant supporting evidence and information, including any investigative findings and conclusions relating to the Supplier or a Supplier Representative;
  - (c) actual or potential damages or loss to the Global Fund or the Global Fund's grant recipients (whether financial or otherwise);
  - (d) any aggravating or mitigating factors, including, for example, whether the Supplier or a Supplier Representative has cooperated with the audit or investigation, or with any other matter under review by the Inspector General, and the extent to which the cooperation has been material and useful to the Inspector General;
  - (e) any relevant information that would reasonably tend to exculpate the Supplier or a Supplier Representative or that would mitigate the culpability of the Supplier or of a Supplier Representative; and
  - (f) any other material information that may be relevant to the Sanctions Panel's deliberations.

## **Notice to Supplier**

19. Subject to the exceptions to communication with the Supplier described below, the Sanctions Panel shall send a written notice to the Supplier before recommending the imposition of sanctions, and allow the Supplier a reasonable time within which to respond to the allegations.
20. The notice shall state that sanctionable conduct by the Supplier has been referred to the Sanctions Panel for consideration, provide a summary description of the sanctionable conduct, request clarification and response from the Supplier and include a reasonable deadline for receipt of a response from the Supplier. The Sanctions Panel is not required to specify the evidence and witnesses supporting the allegations of sanctionable conduct or to provide a copy of any documents presented to the Sanctions Panel.
21. The Sanctions Panel is not required to communicate with the Supplier before recommending the imposition of sanctions in the following circumstances:
  - (a) If the matter before the Sanctions Panel is connected to an investigation or audit by the OIG, the Inspector General may, in his sole discretion, restrict any communication with the Supplier regarding the investigation or audit, including whether to notify the Supplier of the fact of the investigation;
  - (b) If the Legal Counsel advises against communication due to legal considerations;
  - (c) If national authorities have requested the Global Fund to limit disclosure;

- (d) If communication with the Supplier may expose whistleblowers and witnesses to risk; or
  - (e) In exigent circumstances where the Sanctions Panel considers that the Global Fund's interests, resources or reputation, or those of its recipients and PRs, are at immediate risk.
22. A matter may be referred to the Executive Director to decide whether to call a meeting of the Sanctions Panel either during the course of an investigation or audit by the OIG or following submission of a final report by the OIG. Disclosure of a final OIG Report is governed by the Disclosure Policy for OIG Reports. If the matter before the Sanctions Panel is connected to an on-going investigation or audit by the OIG or public disclosure of the final OIG Report is restricted in accordance with the Disclosure Policy, the Inspector General shall retain absolute and sole discretion over communication with the Supplier. Unless explicit consent is provided by the Inspector General, any OIG report of the investigation or audit shall not be provided to the Supplier, nor shall any evidence underlying the investigation or report.

### **Supplier Response**

23. The Supplier should provide to the Sanctions Panel a response to the allegations within the deadline included in the notice to the Supplier.
24. The Sanctions Panel may rely on the written submission by the Supplier as the Supplier's response to the allegations in connection with any sanctions determination. In exceptional circumstances and at the Sanctions Panel's sole discretion, the Sanctions Panel may permit an in-person meeting or other form of direct communication by the Supplier with the Sanctions Panel. The Sanctions Panel is not required to grant any such in-person meeting or direct communication prior to making its determinations and recommendations.

### **Sanctions Recommendation**

25. The Sanctions Panel shall meet to review the evidence against a Supplier including (where applicable) the OIG's report and the Supplier's response as well as any other relevant and material information. The Sanctions Panel shall also consider advice or input from relevant units of the Secretariat that might be affected by the Panel's actions, before determining any appropriate action.
26. The Sanctions Panel shall make a determination on whether or not to recommend imposing sanctions on a Supplier or its successor, or any Supplier Representative and the nature, scope and duration of any proposed sanctions.
27. The Sanctions Panel shall make a recommendation to impose sanctions if the Sanctions Panel considers that such sanctions are necessary or appropriate to protect the interests, resources and reputation of the Global Fund, including under the Global Fund's grants.
28. A non-exclusive list of factors that may affect the determination and recommendation of the Sanctions Panel include:

- (a) The egregiousness and severity of the conduct;
- (b) The degree of involvement of the Supplier or a Supplier Representative in the sanctionable practice;
- (c) The quality of evidence presented;
- (d) Actual or potential damages or loss, financial or otherwise, to the Global Fund caused by the conduct;
- (e) Past conduct of the Supplier, or a Supplier Representative, involving a sanctionable practice (whether or not under a Global Fund-financed contract);
- (f) Aggravating factors, including, but not limited to, whether there was any attempt to conceal the misconduct or sanctionable practices, or intimidate or retaliate against any witness;
- (g) Mitigating factors, including, but not limited to, the extent to which the Supplier brought the matter to the attention of the Global Fund; the extraordinary cooperation of the Supplier with the OIG investigation; whether such cooperation was of substantial benefit to the Global Fund; whether the Supplier's actions, including cooperation, saved Global Fund resources, assets or funds; and any restitution made;
- (h) Impact of conduct on Global Fund operations, patients, target populations and interventions, the market, PRs, implementation of grants and the provision of essential services;
- (i) Like penalties imposed previously in analogous circumstances;
- (j) Period of temporary suspension the Supplier, or a Supplier Representative, has already served for the conduct that is the subject of the sanctions process;
- (k) Any other factor deemed relevant by the Sanctions Panel.

#### **Nature, Scope and Duration of Sanctions**

29. The Sanctions Panel may recommend imposing any or a combination of the following sanctions upon a Supplier or its successor, or a Supplier Representative:

- (a) **Reprimand.** The Sanctions Panel may recommend issuing a reprimand in the form of a formal letter of censure of the behavior of the Supplier or its successor, or a Supplier Representative;
- (b) **Conditions on Continued Engagement.** If the circumstances warrant it, taking into account the factors outlined in Section 25 above, the Sanctions Panel may recommend that certain measures are undertaken by the Supplier, or its successor, or a Supplier Representative, by a specified date as a condition to continued eligibility for Global Fund-financed contracts and activities;
- (c) **Debarment.** The Sanctions Panel may recommend that the Supplier, or its successor, or a Supplier Representative, be declared ineligible to become or continue to be, a Supplier to the Global Fund, any of the Principal Recipients, a recipient of Global Fund funds, or involved in any Global Fund-financed contract.
  - (i) Such debarment may be indefinite or for a stated period of time.

- (ii) In addition, the debarment period may be reduced if the Supplier or its successor, or a Supplier Representative, complies with conditions of release set by the Sanctions Panel, including, but not limited to, implementation of corporate compliance and ethics programs, ethics and anti-corruption training, an independent monitor, any other remedial condition determined by the Sanctions Panel; and demonstrates cooperation with the OIG and its investigation and related activities. Likewise, the Sanctions Panel may determine that the Supplier or its successor, or a Supplier Representative, in order to continue any commercial relationship with the Global Fund, remain eligible to receive grant funds, or participate further in any Global Fund funded project or activity, shall adopt such remedial measures.
  - (d) **Other.** Any other sanction deemed appropriate by the Sanctions Panel, including, but not limited to, the immediate termination of the participation of the Supplier or its successor, or a Supplier Representative, in any ongoing project.
30. Where the Sanctions Panel recommends that sanctions be imposed but the outcome of an investigation (whether by the OIG or a national authority) is pending, the Sanctions Panel may recommend that the sanctions are temporary and subject to review upon completion of the investigation.

#### **Sanctions Decision**

31. Prior to communicating its determination and recommendation to the Executive Director, the Sanctions Panel may, if it considers it appropriate in all of the circumstances, notify the Supplier and indicate the recommendation that it is minded to make. The Sanctions Panel will allow the Supplier 14 days within which to respond to the notice.
32. The Sanctions Panel shall communicate its recommendation to the Executive Director who will make a final decision. The Executive Director may return the matter to the Sanctions Panel for further deliberation if new information about the case emerges that may have impact on the outcome of the Sanctions Panel's deliberations, or if the Executive Director is of the opinion that the case merits further consideration and deliberation.
33. A decision to impose sanctions is without prejudice to any other rights the Global Fund may have with respect to the Supplier or its successor, or a Supplier Representative, including under the relevant contract agreements.

#### **Communication of Decision**

34. If the Executive Director decides to impose sanctions, then the decision shall be communicated to the Supplier and, if the sanctionable conduct could affect Global Fund grant, to all grant recipients, with a copy to the Chair of the relevant Country Coordinating Mechanism and Local Fund Agent.

35. The notice to the Supplier shall state:
- (a) a description of the sanctions imposed;
  - (b) the period of any applicable sanctions; and
  - (c) a summary of the reasons for the decision.
36. The Global Fund reserves the right to determine the manner and scope of publication of its decision, including whether to publicize the decision through its website or otherwise.
37. The Global Fund may share the decision on sanctions imposed, as well as information and evidence underlying the decision, with partners and other international organizations, subject to any confidentiality undertakings required by the Inspector General or advised by the Legal Counsel.
38. The Executive Director shall be responsible for exercising the Global Fund's rights in paragraphs 33 and 34 above. Factors to be considered in determining whether the decision should be communicated, and if so, to whom, may include, but not be limited to, (i) jeopardizing an OIG investigation, (ii) a request by national authorities to limit disclosure, (iii) legal considerations, and (iv) protection of whistleblowers and witnesses.
39. Upon a review of a matter referred to the Sanctions Panel, if the Sanctions Panel recommends that no sanction is necessary or appropriate, in the usual circumstances the Global Fund will communicate this fact to the Supplier, however the Global Fund need not communicate with the Supplier where other factors make this inappropriate - for example, if the matter has been in the media or if the OIG has communicated with the Supplier as part of the process.

#### **No Appeal or External Review**

40. There shall be no right of an appeal from a decision by the Global Fund.
41. These Sanctions Procedures are an internal administrative decision making process and any decision made by the Global Fund under these Sanctions Procedures is not subject to judicial or administrative review by any external bodies, persons or parties.

#### **Supplemental Internal Review**

42. The Sanctions Panel may, in its sole discretion, review a previous recommendation, including any decision not to impose sanctions in any of the following circumstances:
- (a) Upon notification by the Inspector General of new relevant and material information in any audit or investigation previously submitted to, or considered by, the Panel;
  - (b) The conclusion of any investigation by national authorities or partner organizations;
  - (c) A final report of the OIG following the conclusion of an OIG audit or investigation;

- (d) A supplemental or final report by the OIG and Secretariat;
- (e) Submission of newly discovered relevant and material information by the Supplier.

### **Restitution**

- 43. If the Global Fund has imposed sanctions for a specified period, the sanctions shall be lifted automatically upon expiry of such period. If the sanctions include conditions, the sanctions shall be lifted by notice to the Supplier from the Global Fund confirming that the Sanctions Panel is satisfied that the conditions have been met.
- 44. Reinstatement of a sanctioned Supplier or the imposition of an additional sanction period, may be considered only for the following reasons :
  - (a) Payment of restitution;
  - (b) Changes in management or ownership, including severance of officers and employees responsible for the sanctionable misconduct;
  - (c) Verifiable mechanisms to improve business governance, ethics and oversight;
  - (d) Adoption of ethics and anti corruption compliance and training programs, including an independent monitor;
  - (e) Further cooperation with the OIG;
  - (f) Effective administrative, civil or criminal action initiated by the sanctioned party as a result of sanctions imposed by the Global Fund; or
  - (g) Any information that the sanctioned party engaged in further sanctionable misconduct after the imposition of sanctions by the Global Fund.

### **Amendment of these Sanctions Procedures**

- 45. These Sanctions Procedures are the internal administrative procedures of the Global Fund. They do not in themselves confer any rights or privileges.
- 46. The Global Fund may amend, supplement or revise these Sanctions Procedures at any time, with or without notice.
- 47. Nothing in these Sanctions Procedures or in the implementation of these Sanctions Procedures shall be considered to alter, abrogate or waive the privileges and immunities of the Global Fund.