

Operational Policy Note

Supplier Misconduct

Issued on: 11 June 2014

Purpose: Guidance to the Secretariat in Responding to Supplier Misconduct

Overall Objectives

1. The major area in which Global Fund grant resources are expended is procurement. Consequently, it is essential for the Global Fund to enforce the accountability of suppliers and grant recipients in maintaining the integrity of Global Fund-supported grant operations.
2. The Global Fund's Code of Conduct for Suppliers (the "Supplier Code of Conduct") describes supplier obligations in this regard and requires Suppliers to inform the Global Fund of any integrity concerns involving or affecting Global Fund resources of which they have knowledge. It also emphasizes the critical role of grant recipients in communicating and ensuring that all suppliers of goods and services to the Global Fund or to the activities it finances, including bidders, suppliers, agents, intermediaries, consultants and contractors and representatives of each of the above (each referred to herein as a "Supplier" and collectively as the "Suppliers")¹ comply with their obligations and in implementing immediate actions where there are cases of non-compliance. Principal Recipients must also inform the Global Fund about cases of procurement irregularities or other corruption in accordance with their grant agreements.
3. This Operational Policy Note guides the Secretariat in responding, in connection with grant implementation, to instances of non-compliance with the Supplier Code of Conduct and other events concerning suppliers that may place the resources and reputation of the Global Fund at risk. Through the application of a consistent set of procedures, the Global Fund can fairly, consistently and appropriately address any corrupt, fraudulent, collusive, anti-competitive or coercive practices involving Suppliers under Global Fund programs.

Policy and Principles

Sanctionable Activities

¹ Suppliers include suppliers of goods and services to Principal Recipients, Sub recipients, other recipients, Country Coordinating Mechanisms, procurement agents and first-line buyers. Supplier representatives include affiliates, employees, subcontractors, agents and intermediaries of Suppliers.

4. The Global Fund may sanction a Supplier or its successor in order to protect the interests, resources and reputation of the Global Fund, including in situations where the Global Fund determines that the Supplier has breached the Supplier Code of Conduct.
5. Activities which constitute supplier misconduct can take many different forms. Potential circumstances that may lead to the Global Fund initiating its sanctions process, which may then result in the imposition of sanctions upon a Supplier or its successor (each a “Sanctionable Activity” or “Sanctionable Event” and collectively referred to herein as “Sanctionable Activities”), include:
 - i. **Procurement Irregularities:** When the Inspector General has determined that there is credible and substantive evidence² that a Supplier may have directly or indirectly breached the Global Fund Supplier Code of Conduct, including by engaging in corrupt, fraudulent, collusive, anti-competitive or coercive practices in competing for, or performing under, a Global Fund-financed contract (“Procurement Irregularities”);
 - ii. **Sanctions by a Partner or Grant Recipient:** When a Supplier has engaged in misconduct which results in a sanction being imposed on a Supplier (and/or its successors) by any Global Fund partner organization, any comparable institution or by a Global Fund grant recipient for conduct which would constitute a breach of the Global Fund Supplier Code of Conduct or any other unethical or unlawful behavior;
 - iii. **Sanctions by a National or an International Authority:** When a Supplier has engaged in misconduct which results in an investigation, proceeding or finding, either civil, criminal or administrative, or the imposition of sanctions, by another national or international authority for conduct which would constitute a breach of the Global Fund Supplier Code of Conduct;
 - iv. **Breach of Contract:** When there is a significant and material breach by a Supplier of a contract between the Global Fund and a Supplier or between a grant recipient and a Supplier that in the opinion of the Global Fund places Global Fund resources at risk; and
 - v. **Assets at Risk:** When credible and substantive information has been received by the Global Fund from any source, including local fund agents, partner organizations and comparable institutions, which indicates that Global Fund resources have been placed at risk by a Supplier’s conduct.

Reporting and Responding to Sanctionable Activities

6. The Executive Director decides on the Global Fund’s response to a Sanctionable Activity based on the recommendations of the Executive Grant Management Committee (EGMC) and/or the Sanctions Panel.
7. Upon becoming aware of potential supplier misconduct in connection with Global Fund financed activities, the Country Team shall notify the Office of the Inspector General (OIG) through the relevant Grant Management Department Head.
8. If the OIG notifies the Secretariat of substantive and credible findings of supplier misconduct or in the event that another Sanctionable Activity (such as a supplier engaging in misconduct which results in a sanction being imposed on such Supplier by a partner organization or a comparable institution) has occurred, the EGMC shall be notified, through the appropriate Country Team. As part of the notification to the EGMC, the Legal and Compliance Department will confirm whether the relevant Supplier has breached the Supplier Code of Conduct or any other provision of a contract with the Global Fund or a Principal Recipient. The Country Team will also develop operational remedial measures to propose to the EGMC for approval to safeguard Global Fund resources.

² This includes early notification of red flags although such evidence would only be expected to result in the imposition of operational remedial measures pending the finalization of the OIG’s finding through a published report.

9. In cases where there is an ongoing OIG investigation, operational remedial measures may be submitted to the relevant Grant Management Department Head for interim approval, as needed, or to the EGMC for approval prior to the issuance of a final OIG report.³ Potential operational remedial measures will vary based on the nature of the irregularities and other contextual factors, but could include procurement through the Pooled Procurement Mechanism or the institution of a Procurement and/or Fiduciary Agent.
10. The EGMC will consider the OIG's conclusions and/or the nature of the Sanctionable Activity and, taking into account the criteria listed in paragraph 12 below for when the involvement of the Sanctions Panel is expected, determine whether to recommend to the Executive Director that the case be referred to the Sanctions Panel. The Executive Director will then decide whether to refer the matter to the Sanctions Panel.

Sanctions Panel

11. The Sanctions Panel advises the Executive Director on remedies for Sanctionable Activities with respect to specific cases referred by the Executive Director to the Panel. The operation of the Sanctions Panel is described in the [Sanctions Panel Procedures Relating to the Code of Conduct for Suppliers](#) (the "Sanctions Panel Procedures"), as may be amended by Global Fund executive management from time to time.
12. Based upon a recommendation of the EGMC, the Executive Director may decide to refer a case to the Sanctions Panel in any circumstance where a Supplier has, directly or indirectly, engaged in Sanctionable Activities. In particular, involvement of the Sanctions Panel is expected in the following cases:
 - i. the egregious nature of the Sanctionable Activities placed a material amount of Global Fund resources at risk and/or created a significant reputational risk for the Global Fund;
 - ii. the concerned entity has engaged in Sanctionable Activities and is a Supplier to Global Fund grant programs in several countries;
 - iii. the Sanctionable Activities involve an entity which has previously been reviewed by the Sanctions Panel or which has previously been the subject of OIG findings of credible and substantive evidence of fraud or misconduct; and/or
 - iv. the concerned entity has violated a Global Fund-led or endorsed/supported integrity pact, such as the integrity pact for long-lasting insecticide treated net suppliers.

Types of Sanctions

13. Sanctions are used for ensuring the accountability of Suppliers. Sanctions protect the integrity of the procurement process through (i) exclusion of specific actors from access to Global Fund financing (i.e., permanent or temporary/conditional debarment), and (ii) deterrence.
14. There are four principal types of sanctions available: (i) Reprimand, (ii) Conditional Continued Engagement, (iii) Debarment with Conditional Release, and (iv) Indefinite Debarment. The Executive

³ In cases where the OIG has informed the Secretariat that it has identified credible and substantive evidence of fraud, abuse, misappropriation or corruption by a Principle Recipient or a Sub-Recipient, the Country Team shall also comply with the requirements contained in GF/B18/DP23 (Nov 2008) and GF/B19/DP25 (May 2009) regarding the restrictions to be promptly implemented to address the applicable risks to the Global Fund and its resources.

Director will decide whether to impose a sanction on a Supplier after receiving a recommendation from the Sanctions Panel.

15. When considering the appropriate sanction to be applied, relevant considerations include: (i) the severity of the misconduct; (ii) harm caused by the misconduct; (iii) the Supplier's level of cooperation with the investigation and sanctions process; (iv) the Supplier's past history of misconduct; and (v) the risk of continued engagement with the Supplier. Annex 1 provides a list of factors for assessing these considerations.

Reprimand

16. A reprimand, in general, shall be used to sanction a Supplier guilty only of a relatively minor or isolated incident of insufficient oversight.

Conditional Continued Engagement

17. This sanction is generally appropriate for:

- i. Individuals/entities that were not directly involved in the misconduct, but which bear some responsibility through, for example, a systemic lack of oversight; or
- ii. Individuals/entities that have demonstrated that they have taken comprehensive corrective measures and/or that there are other mitigating factors, as outlined below, so as to justify not debarring such individuals/entities.

18. The conditions imposed may be similar to those imposed under debarment with conditional release. The Executive Director may decide that if the Supplier fails to demonstrate compliance with the conditions within an established time period, an indefinite debarment or a debarment with conditional release would automatically become effective. The EGMC will verify whether the conditions to continued engagement have been met or if circumstances suggest that a revision to the original decision regarding the sanction may be warranted.

Debarment with Conditional Release

19. Debarment with conditional release is targeted towards Suppliers, rather than individuals. The purpose of the conditional release is to mitigate further risk to Global Fund resources and eventually allow the Supplier to again have an opportunity to act as a Global Fund Supplier once appropriate remedial measures have been implemented. Accordingly, the Supplier will only be released from debarment after the Supplier has demonstrated that it has met the conditions set by the Executive Director.

20. Conditions for lifting the debarment may include, but are not limited to:

- i. implementation or improvement of a compliance and ethics program, anti-corruption training, and/or the engagement of an independent monitor;
- ii. remedial measures to address the misconduct for which the Supplier was sanctioned, including disciplinary action or termination of employee(s)/officer(s) responsible for the misconduct; and
- iii. payment of a monetary sanction commensurate with any financial harm caused by the misconduct.

21. The Executive Director decides on the conditions for release based on the recommendations from the Sanctions Panel. The EGMC will verify whether the conditions for lifting debarment have been met or if circumstances suggest that a revision to the original decision regarding the sanction may be warranted.

Indefinite Debarment

22. Indefinite debarment is generally appropriate in cases of severe misconduct where it is believed that it is unreasonable to expect that the Supplier can use remedial measures to address the cause of the

misconduct and to protect against future misconduct, or when the supplier has not meaningfully cooperated with the investigation or sanctioning process.

Communicating Sanctions

23. If the Executive Director decides to impose sanctions, the decision will be communicated, with appropriate confidentiality measures, to the concerned Supplier and, if the sanctionable conduct affects a Global Fund grant program(s), to the Principal Recipient(s) of the concerned grant(s) and, where needed to give effect to the decision, to the Country Coordinating Mechanism and other Principal Recipients in the relevant market. If the decision 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 Policy for the Disclosure of Reports Issued by the Office of the Inspector General, the Inspector General shall be consulted on the decision being communicated and will retain sole discretion over any factual details which will be included in the communication with the Supplier.
24. For cases referred to the Sanctions Panel by the Executive Director, the Sanctions Panel may, in accordance with the Sanctions Panel Procedures, notify the concerned Supplier of the sanctions under considerations prior to making a recommendation to the Executive Director. Whether or not the Sanctions Panel has sent a previous communication to the concerned Supplier, the Supplier shall be notified of any decision to sanction such Supplier prior to the decision being communicated publicly by the Global Fund.
25. The confidentiality of sanctions decisions is important owing to the legal risks to the Global Fund associated with public disclosure of these decisions. Consequently, all communications on sanctions shall be undertaken in collaboration with the Legal and Compliance Department and, where relevant, the Inspector General.
26. The Global Fund may share the decision on sanctions imposed, as well as information and evidence underlying the decision, with national authorities, partners and other comparable institutions. In order to protect the confidentiality of sanctions decisions, these shall only be communicated to a third party after execution of a confidentiality agreement as required by the Inspector General or the Legal and Compliance Department.

Monitoring Sanctions

27. Within the Secretariat, the Grant Management Division and the Legal and Compliance Department will monitor a Supplier's compliance with conditions related to sanctions imposed by the Global Fund.
28. The Executive Director, with guidance from the EGMC, will decide whether the applicable conditions have been met and whether the sanctioned Supplier can be reinstated. In some cases, the Executive Director may also determine that additional sanctions may be necessary.
29. Reinstatement of a sanctioned Supplier or the imposition of an additional sanction period, may be considered for the following reasons:
 - i. Payment of restitution in a manner determined by the Global Fund;
 - ii. Changes in management or ownership, including permanent severance of officers and employees responsible for the sanctionable misconduct;
 - iii. Installation, by the Supplier concerned, of effective, verifiable mechanisms to improve their business governance, ethics and oversight systems;
 - iv. Adoption of ethics and anti-corruption compliance and training programs, including installing an independent monitor;
 - v. Further cooperation with the OIG satisfactory to the OIG;

- vi. Initiation of administrative, civil or criminal action by the sanctioned party against the individuals responsible for the sanctionable misconduct, which is commensurate with the severity of the sanctions imposed by the Global Fund; or
- vii. Receipt by the Global Fund of any credible information that the sanctioned party engaged in further sanctionable misconduct after the imposition of sanctions by the Global Fund.

Process, Responsibilities

Process

30. Annex 2 defines the general process for identifying, reporting and reviewing supplier misconduct.

Responsibilities

31. **Country Team** notifies the OIG and Senior Management of supplier misconduct in connection with Global Fund financed activities and other types of Sanctionable Activities and recommends remedial measures.
32. **Executive Grant Management Committee** determines, based on the OIG findings and/or the Sanctionable Activities, whether to recommend to the Executive Director that he/she refer the case to the Sanctions Panel and whether any operational remedial measure is advisable.
33. **Sanctions Panel** advises the Executive Director on referred sanctions cases concerning supplier misconduct pursuant to the Sanction Panel Procedures.
34. **Executive Director** refers cases to the Sanctions Panel and makes a final determination as to whether to impose a sanction on a Supplier. These decisions are informed by the recommendations of the EGMC and the Sanctions Panel.

Annex 1. List of Considerations for Determining Sanctions

Severity of Misconduct

35. Severity may be measured through considerations including the following:

- i. Did the misconduct place a material amount of Global Fund resources at risk?
- ii. Is it a repeated pattern of conduct?
- iii. How sophisticated was the scheme? This includes the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); whether the scheme was developed or lasted over a long period of time; and if the misconduct spanned grant programs in more than one country.
- iv. Did management have a role in the misconduct? Have individuals within high-level personnel of the organization participated in, condoned, or willfully ignored the misconduct?
- v. Did the misconduct involve a Global Fund or government official?

Harm Caused by the Misconduct

36. Harm may be measured through considerations including the following:

- i. Did the misconduct create a danger to public health/welfare?
- ii. Did the misconduct result in the waste/inefficient use of grant funds?
- iii. Did the misconduct involve corruption?
- iv. Did the misconduct cause harm to any third parties?
- vi. Did the misconduct create a significant reputational risk for the Global Fund?

Voluntary Corrective Actions

37. In evaluating corrective actions, the timing of the action may indicate the degree to which it reflects genuine intention to reform, or a calculated step to reduce the severity of the sentence. Considerations may include:

- i. Did the Supplier voluntarily disclose the misconduct to the Global Fund?
- ii. Did the Supplier initiate any reforms voluntarily upon becoming aware of the misconduct?
- iii. Did the Supplier initiate an internal action against responsible individual(s)?
- iv. Did the Supplier voluntarily establish or improve a corporate compliance program?

Cooperation with the Investigation

38. Cooperation may be measured through considerations including the following:

- i. Has the OIG concluded that the Supplier provided substantial assistance in the investigation, including voluntary disclosure, truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance?
- ii. Did the Supplier's actions indicate intent to interfere with the investigation, including through destroying or concealing evidence; making false statements to investigators or reviewers; threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation; or attempting to corrupt individuals in exchange for non-cooperation with the investigation?

Prior History of Misconduct

39. Prior history can include debarments or other sanctions applied by the Global Fund and/or other development partners.

Annex 2. Sanctions Process

Scenario 1: Procurement Irregularities

Seq. No	Actors	Process Description	Output
Report on Procurement Irregularities/Supplier Misconduct			
1	CT	<p>As soon as informed of potential misconduct involving a Supplier, the Country Team notifies the OIG and, if needed, recommends operational remedial measures to the relevant Grant Management Department Head or to the EGMC.</p> <p>Control Point: Notification to OIG shall be through the relevant Department Head, Grant Management.</p>	<p>Notification to OIG</p> <p>Recommendation for Operational Remedial Measures to the relevant Grant Management Department Head or the EGMC</p>
Check on Reported Cases			
2	OIG	Inspector General decides on actions to take on reported supplier misconduct and informs Country Team accordingly.	
3	OIG	If investigation is decided, OIG proceeds and informs the Country Team of results.	
Report to EGMC			
4	CT	<p>If the OIG notifies the Secretariat of substantive and credible findings of supplier misconduct, the issue shall be reported to the EGMC, through the Country Team. The Country Team shall also ensure that it complies with GF/B18/DP23 (Nov 2008) and GF/B19/DP 25 (May 2009) regarding placing restrictions on activities with PRs and SRs for which the OIG has identified credible and substantive evidence of fraud, abuse, misappropriation or corruption. In certain cases where implementation arrangements must be continued with the entity being investigated despite the OIG notification, compliance with these decision points includes seeking the approval of the Executive Director.</p> <p>The Country Team shall draft a memo, in consultation with the OIG, containing the following information:</p> <ol style="list-style-type: none"> i. the Supplier and the nature of the misconduct; ii. the relevant supporting evidence and information, including any investigative findings and conclusions relating to the Supplier; iii. actual or potential damages or loss to the Global Fund or the Global Fund's grant recipients (whether financial or otherwise); 	<p>Memorandum to EGMC</p>

		<ul style="list-style-type: none"> iv. any aggravating or mitigating factors, including, for example, whether the Supplier 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; v. any relevant information that would reasonably tend to mitigate the culpability of the Supplier; and vi. the Country Team's recommendation on the appropriate remedial measures, taking into consideration the factors described above. <p>Control Point: Memo shall be reviewed and approved by Grant Management Division Head (through channels).</p>	
EGMC and/or Sanctions Panel Review			
5	EGMC	<p>Review and discuss supplier misconduct and may decide to:</p> <ul style="list-style-type: none"> i. impose operational remedial measures; and/or ii. recommend to the Executive Director that he/she refer the case to the Sanctions Panel. 	Decision regarding operational remedial measures and Sanctions Panel Referral
6	Executive Director	Based on the EGMC recommendation, may refer case to the Sanctions Panel.	Referral to Sanctions Panel
7	Sanctions Panel	Based on request from the Executive Director, reviews the Sanctionable Activities case, including the report from the Executive Director, and formulates a recommendation to the Executive Director regarding possible sanctions.	Recommendation to the Executive Director
8	Executive Director	Decides on the sanctions, if any, to be imposed on the Supplier.	Sanction Decisions
Communicate Sanctions			
9	Sanctions Panel, Legal and Compliance Department, and Inspector General	Where appropriate, the Sanctions Panel, in consultation with the Legal and Compliance Department and, where relevant, the Inspector General, may notify the Supplier of the sanctions under consideration.	Notification to Supplier
10	CT, Legal and Compliance Department, and	<p>Drafts communications to the Supplier and relevant PR (if a grant is affected).</p> <p>The notice to the Supplier shall include:</p>	Draft Notification to Supplier and, if applicable, the Principal Recipient for Executive Director Approval

	Inspector General	<ul style="list-style-type: none"> i. a description of the sanctions imposed; ii. the period of any applicable sanctions; and iii. a summary of the reasons for the decisions. <p>Control Point: Head, GMD and Head, Legal and Compliance Department and, where relevant, the Inspector General review and approve the communication.</p>	
11	Executive Director	Signs the official communication to the Supplier and PR (if relevant)	Final Notification to Supplier and PR (if relevant)
Monitoring of Sanctions			
12	CT and Legal and Compliance Department	The relevant internal departments will monitor the Supplier's compliance, in consultation with the Legal and Compliance Department, with conditions to continued engagement or conditions for lifting a debarment and periodically advise executive management on the Supplier's progress.	Updates to Executive Management on Sanctions Monitoring
13	EGMC	<p>EGMC will verify whether conditions to continued engagement or for lifting a debarment have been met by a Supplier.</p> <p>If sanctions have been imposed for a specific period of time, with no additional conditions, the sanctions shall be lifted automatically upon the expiry of such period.</p> <p>EGMC will also advise the Executive Director in circumstances where an additional sanction period or a change to a decision regarding sanctions may be warranted.</p>	Verification of Condition Completion or Recommendation of Additional or Revised Sanctions
14	Executive Director	Once EGMC has verified that any applicable conditions have been met, the Executive Director will confirm to the Supplier, and if applicable, the relevant PR, that the Global Fund is satisfied that the conditions have been met.	Notification to Supplier and PR (if relevant)

Scenario 2: Other Sanctionable Activities (*Sanctions by Partners, International Organizations, National or International Authorities and Breach of Contract*)

Seq. No	Actors	Process Description	Output
Country Team reports on Sanctionable Activity			
1	CT	<p>As soon as informed of a potential Sanctionable Activity, the Country Team shall inform the Executive Grant Management Committee.</p> <p>The Country Team shall draft a memo containing the following information:</p> <ul style="list-style-type: none"> i. the Supplier and the nature of the misconduct; 	Memorandum to EGMC

	<ul style="list-style-type: none"> ii. the relevant supporting evidence and information, including any known investigative findings and conclusions relating to the Supplier; iii. potential impact on the Global Fund or the Global Fund's grant recipients (whether financial or otherwise); iv. any aggravating or mitigating factors known; v. any relevant information that would reasonably tend to mitigate the culpability of the Supplier; and vi. the Country Team's recommendation on the appropriate remedial measures, if any, taking into consideration the factors described above. <p>Control Point: Memo shall be reviewed and approved by Grant Management Division Head (through channels).</p>	
EGMC and/or Sanctions Panel Review		
The EGMC and/or Sanction Panel Review follows steps 5-8 under Scenario 1 above.		
Communicate Sanctions		
The process for communicating the decision regarding sanctions follows steps 9-11 under Scenario 1 above.		
Monitoring of Sanctions		
The process for monitoring the implementation of the sanction decision and where applicable, lifting the sanctions, follows steps 12-14 under Scenario 1 above.		

