

Sanctions Panel Procedures Relating to the Code of Conduct for Suppliers

Adopted by Global Fund executive management in January 2010,
and amended in May 2013, October 2013, 11 June 2014, 19 June 2015 and
December 2020.

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 its staff adhere to the highest ethical standards.
3. The goal of the Global Fund's Code of Conduct for Suppliers (the "Supplier Code") is to enlist suppliers' commitment to maintain the integrity of Global Fund-financed grant operations and corporate procurement activities in compliance with this core Global Fund principle.
4. The Global Fund expects 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 them (individually referred to herein as a "Supplier" and collectively as the "Suppliers")¹, to observe the highest standard of ethics. The expectations of the Global Fund regarding the conduct of Suppliers are set out in the Supplier Code.
5. The Global Fund may sanction a Supplier or its successor, including declaring it ineligible, either indefinitely or for a stated period of time, to participate in Global Fund- financing activities to protect the interests, resources and reputation of the Global Fund, including in situations where the Global Fund determines the Supplier has, directly or indirectly, including

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.

through an agent or other intermediary, breached the Supplier Code. Such breach may occur, among other actions, by engaging in a corrupt, fraudulent, collusive, anti-competitive or coercive practice or practices in competing for, or in performing under, a Global Fund-financed contract.

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 Global Fund has created a Sanctions Panel to advise the Executive Director on remedies for supplier misconduct. The purpose of this document is to outline the operating procedures for the Sanctions Panel when recommending the imposition of sanctions against Suppliers (the "Sanctions Panel Procedures").

SANCTIONS PANEL

Composition

8. A panel of senior members of the Global Fund Secretariat and independent external members ("Sanctions Panel") shall be responsible for implementing the Sanctions Panel Procedures.
9. The Sanctions Panel shall be composed of three permanent members and three independent external members:
 - (a) The permanent members of the Sanctions Panel shall include the Head of the Grant Management Division, the Chief Financial Officer and the Head of Supply Operations.
 - (b) The Ethics and Governance Committee (the "EGC") shall appoint three independent external members of the Sanctions Panel, taking into account illustrative 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 select one of the independent external members of the Sanctions Panel to act as the Chair of the Sanctions Panel.
 - (d) The appointment of independent external members shall be for a two-year period which may be extended repeatedly by the EGC for additional two-year terms.²

² The independent external Sanctions Panel members will be appointed on a staggered basis, through separation of the independent members into two classes with differing term completion dates.

10. The Inspector General, the General Counsel and the Chief Risk Officer shall advise the Sanctions Panel and shall participate in all meetings of the Sanctions Panel in an advisory role. A member of the Legal and Governance Department 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 whose conduct is being reviewed or any other consideration which may give rise to a potential or perceived conflict of interest or bias. In such cases, the Chair of the Sanctions Panel will, in consultation with the Global Fund Ethics Officer, determine the appropriate remedial action.

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 independent external 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 deciding vote.
15. The Sanctions Panel shall properly document its sessions, deliberations and recommendations, and maintain all such information as confidential. Information supplied by the Office of the Inspector General ("OIG") will be maintained by the OIG in accordance with the OIG's policies. The Sanctions Panel secretary will prepare documentation to memorialize the deliberations and recommendations of the Sanctions Panel, which must be approved by the Sanctions Panel.
16. The Sanctions Panel shall make its recommendations to the Executive Director for final decision. The Sanctions Panel shall provide regular reports to the EGC regarding its operations, including (i) a description of cases brought for its consideration; (ii) the recommendation of the Sanctions Panel and decision of the Executive Director for each of such cases; and (iii) issues and trends observed by the Sanctions Panel relating to the Global Fund's policies and processes for addressing supplier misconduct.

SANCTIONS PANEL PROCEDURE

Referral to the Sanctions Panel

17. The Sanctions Panel advises the Executive Director on remedies for specific supplier misconduct cases which may require Global Fund sanctions. The referral of such cases is at the discretion of the Executive Director. After receiving a referral from 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.
18. The Global Fund may sanction a Supplier or its successor to protect the interests, resources and reputation of the Global Fund, including situations where the Global Fund determines a Supplier has breached the Supplier Code.
19. 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, include:
 - (a) The determination by the Inspector General there is credible and substantive evidence of a breach of the Supplier Code, including, but not limited to, corrupt, fraudulent, collusive, anti-competitive or coercive practices in competing for, or performing under, a Global Fund-financed contract;
 - (b) A Supplier engaging in misconduct which results in the imposition of sanctions by any partner organization, any comparable institution or by a Global Fund grant recipient for conduct that would constitute a breach of the Supplier Code or any other unethical or unlawful behavior;
 - (c) A Supplier engaging in misconduct which results in an investigation, proceedings or findings, 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 Supplier Code;
 - (d) A significant and material breach by a Supplier of the contract between the Global Fund and the Supplier or between a grant recipient and the Supplier that in the opinion of the Global Fund places Global Fund resources at risk; 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.
20. While the Executive Director may refer any case involving supplier misconduct to the Sanctions Panel, involvement of the Sanctions Panel is expected in the following cases:
 - (a) The egregious nature of the misconduct placed a material amount of Global Fund resources at risk and/or created a significant reputational risk for the Global Fund;
 - (b) The concerned entity is a Supplier to Global Fund grant programs in several countries;
 - (c) The misconduct involves 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

- (d) The concerned entity has violated a Global Fund-led or endorsed/supported integrity pact.

Initial Report

- 21. In referring a case to the Sanctions Panel, the Executive Director shall submit to the Sanctions Panel a written report detailing:
 - (a) The sanctionable activity;
 - (b) The relevant supporting evidence and information, including any investigative findings and conclusions relating to the Supplier;
 - (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 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 that would mitigate the culpability of the Supplier; and
 - (f) Any other material information that may be relevant to the Sanctions Panel's deliberations.

Notice to Supplier

- 22. 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.
- 23. The notice shall state 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.
- 24. The Sanctions Panel is not required to communicate with the Supplier before recommending the imposition of sanctions in the following circumstances:
 - (a) Where the matter before the Sanctions Panel is connected to an investigation or audit by the OIG, if the Inspector General decides, in his or her sole discretion, to 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 General 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 or witnesses to risk; or
 - (e) In exigent circumstances where the Sanctions Panel considers the Global Fund's interests, resources or reputation, or those of its Principal Recipients, Sub-recipients and other recipients, are at immediate risk.
25. In the context of OIG audits or investigations, a matter could be referred to 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 Policy for the Disclosure of Reports Issued by the Office of the Inspector General (the "Disclosure Policy"). 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 by the Sanctions Panel with the Supplier. Unless the Inspector General explicitly consents, any OIG report of the investigation or audit shall not be provided to the Supplier, nor shall any evidence underlying the investigation or report.
26. In any event, 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 such decision being communicated publicly by the Global Fund, in accordance with paragraphs 38 and 39 below.

Supplier Response

27. The Supplier should provide to the Sanctions Panel a response to the allegations within the deadline included in the notice to the Supplier.
28. 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 recommendation. 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 recommendations.

Sanctions Recommendation

29. 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 Sanctions Panel's actions, before determining any appropriate action.
30. The Sanctions Panel shall recommend whether to impose sanctions on a Supplier or its successor and the nature, scope and duration of any proposed sanctions.

31. The Sanctions Panel shall recommend imposing sanctions if the Sanctions Panel considers such sanctions necessary or appropriate where the Global Fund determines the Supplier has breached the Supplier Code or in other instances to protect the interests, resources and reputation of the Global Fund, including under the Global Fund's grants.

32. A non-exclusive list of factors that may affect the recommendation of the Sanctions Panel include:
 - (a) The egregiousness and severity of the conduct;
 - (b) The degree of involvement of the Supplier in the sanctionable activity;
 - (c) Actual or potential damages or loss, financial or otherwise, to the Global Fund caused by the conduct;
 - (d) Past conduct of the Supplier involving a sanctionable activity (whether or not under a Global Fund-financed contract);
 - (e) Aggravating factors, including, but not limited to, whether there was any attempt to conceal the misconduct or sanctionable activity, or intimidate or retaliate against any witness;
 - (f) 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 audit or 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;
 - (g) Impact of the sanctionable activity on Global Fund operations, patients, target populations and interventions, the market, Principal Recipients, implementation of grants and the provision of essential services;
 - (h) Like penalties imposed previously in analogous circumstances;
 - (i) Period of temporary suspension the Supplier has already served for the sanctionable activity; and
 - (j) Any other factor deemed relevant by the Sanctions Panel.

Nature, Scope and Duration of Sanctions

33. The Sanctions Panel may recommend imposing any or a combination of the following sanctions upon a Supplier or its successor:
- (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;
 - (b) **Conditional Continued Engagement.** If the circumstances so warrant, taking into account the factors outlined in Section 28 above, the Sanctions Panel may recommend certain measures be undertaken by the Supplier, or its successor by a specified date as a condition to continued eligibility for Global Fund-financed contracts and activities;
 - (c) **Debarment.** The Sanctions Panel may recommend the Supplier or its successor be declared ineligible to become or continue to be involved in Global Fund-financed contracts either directly with the Global Fund and/or indirectly through a recipient of Global Fund financing.
 - (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 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, installation of an independent monitor, payment of restitution or any other remedial condition determined by the Sanctions Panel; and demonstrates cooperation with the OIG and its audit or investigation and related activities. Likewise, the Sanctions Panel may determine the Supplier or its successor shall adopt such remedial measures 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.
 - (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 in any ongoing Global Fund project.
34. Where the Sanctions Panel recommends sanctions be imposed, but the final outcome of an investigation (whether by the OIG or a national authority) is pending, the Sanctions Panel may recommend the sanctions be temporary and subject to review upon completion of the investigation.

Sanctions Panel Recommendation

35. Prior to communicating its recommendation to the Executive Director, the Sanctions Panel may, if it considers it appropriate under the circumstances, notify the Supplier about the recommendation that it will be making. The Sanctions Panel will allow the Supplier 14 days within which to respond to the notice.
36. 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.

37. 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 including under any relevant agreements.

Communication of Decision

38. If the Executive Director decides to impose sanctions, then the decision shall be communicated to the Supplier and, if the sanctionable conduct could affect a Global Fund grant, to the concerned grant recipients, with appropriate confidentiality measures as determined in consultation with the General Counsel.
39. 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.
40. 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.
41. 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 international organizations, subject to any confidentiality undertakings required by the Inspector General or the General Counsel.
42. The Executive Director shall be responsible for exercising the Global Fund's rights in paragraphs 38 through 41 above. Factors to be considered in determining whether the decision should be communicated, and if so, to whom, may include, but shall 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.
43. After the completion of a review of a matter referred to the Sanctions Panel, if the Executive Director decides 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 this decision to the Supplier where other factors make this approach inappropriate – for example, if the matter has been in the media or if the OIG has already communicated to the Supplier that the OIG determined the Supplier did not engage in misconduct.

No Appeal or External Review

44. There shall be no right to appeal a decision by the Global Fund on the imposition of sanctions.

45. These Sanctions Panel Procedures are an internal administrative decision-making process and any decision made by the Global Fund in connection with these Sanctions Procedures is not subject to judicial or administrative review by any external bodies, persons or parties.

Supplemental Sanctions Panel Review

46. The Sanctions Panel may be requested by the Executive Director to 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; or
 - (e) Submission of newly discovered relevant and material information by the Supplier.

Restitution

47. 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 to release, the sanctions shall be lifted by notice to the Supplier from the Global Fund confirming the Global Fund is satisfied the conditions have been met.
48. Reinstatement of a sanctioned Supplier or the imposition of an additional sanction period, may be considered for the following reasons:
- (a) Payment of restitution in a manner determined by the Global Fund;
 - (b) Changes in management or ownership, including permanent severance of officers and employees responsible for the sanctionable misconduct;
 - (c) Installation, by the Supplier concerned, of effective, verifiable mechanisms to improve their business governance, ethics and oversight systems;
 - (d) Adoption of ethics and anti-corruption compliance and training programs, including installing an independent monitor;
 - (e) Further cooperation with the OIG satisfactory to the OIG;

- (f) 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
- (g) Receipt by the Global Fund of any credible information the sanctioned party engaged in further sanctionable misconduct after the imposition of sanctions by the Global Fund.

Amendment of Sanctions Panel Procedures

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