



Office of the Inspector General

**Investigation of the Misappropriation of Funds by the
Republican Center for Prophylactics and Control of AIDS of
the Republic of Kazakhstan**

**GF-OIG-13-051
13 December 2013**

A. Table of Contents

A.	Table of Contents.....	1
B.	Executive Summary.....	2
B.1.	Attempt to Transfer Funds to a Third Party Bank Account Abroad.....	2
B.2.	Concealment and Unauthorized Use of the Funds Received.....	2
B.3.	Collusive Procurement.....	3
B.4.	Conclusion.....	3
C.	Message from the Executive Director of the Global Fund	4
D.	Background.....	6
D.1.	Global Fund Grants to Kazakhstan.....	6
D.2.	Republican Center for Prophylactics and Control of AIDS.....	6
D.3.	Local Fund Agent	6
E.	Methodology.....	7
E.1.	Origin and Scope of the Investigation.....	7
E.2.	Due Process	7
E.3.	Exchange Rate.....	7
F.	Investigation Findings.....	8
F.1.	Concealment from the Global Fund and Attempt to Transfer Funds to a Third Party Bank Account Abroad	8
F.2.	Concealment of the refunds from the Global Fund	11
F.3.	Ineligible Use of the Funds Received through Collusive Practices in Procurement of Services for the Information Campaign	15
G.	Conclusions	19
H.	Recommendations.....	21
I.	Acronyms.....	22

B. Executive Summary

1. The Office of the Inspector General's (OIG) Investigations Unit completed an investigation into allegations of an attempt of misappropriation and ultimate misuse of Global Fund monies amounting to USD 105,227 by the Republican Center for Prophylactics and Control of AIDS (RCAIDS), one of the Principal Recipients (PR) of Global Fund grants in Kazakhstan. This investigation report presents the OIG's findings and conclusions pertaining to this specific matter, and is one of a series of reports on five separate subcases following the investigation in Kazakhstan.

2. By way of background, in 2006, RCAIDS procured antiretroviral drugs (ARV) drugs of the *Viracept* brand from the local distributor in Kazakhstan of Hoffmann La-Roche at the time, Interfarma-K. This purchase was formalized through two contracts for a total value of USD 149,172, funded under Global Fund grant KAZ-202-G01-H-00. On 6 June 2007, Hoffmann La-Roche issued a global recall notice for *Viracept* drugs due to alleged contamination. RCAIDS was informed on 11 June 2007 about the recall notice by the LFA. A majority of the drugs was returned, following which Hoffmann La-Roche entered into negotiations with RCAIDS regarding reimbursement of the corresponding amount.

B.1. Attempt to Transfer Funds to a Third Party Bank Account Abroad

3. In 2009, Hoffmann-La Roche agreed to reimburse the cost of drugs (initially estimated at USD 101,957) to RCAIDS. The Financial Manager of RCAIDS, following instructions from the ex-Director General of RCAIDS, and without informing the Global Fund, requested that the reimbursement be made through a transfer to the bank account of a third party entity in New Zealand. This company had no apparent relation to Global Fund-financed activities.

4. The investigation revealed that the Financial Manager of RCAIDS provided false information to Hoffmann La-Roche regarding the said company. The Financial Manager later conceded in an interview with the OIG that she was aware of the irregular nature of her request, but was directed to do it by the ex-Director General of RCAIDS.

B.2. Concealment and Unauthorized Use of the Funds Received

5. The reimbursement transaction ultimately took place much later in 2012, through the transfer of a revised amount of USD 105,227 back to the bank account of RCAIDS. By that time, the ex-Director General had been replaced by the current Director General, who had concluded an agreement between Hoffmann La-Roche and RCAIDS in March 2012 allowing for the return of the funds to the PR.

6. Later in June 2012, an addendum was signed between RCAIDS and Hoffmann La-Roche, where the current Director General reclassified the funds reimbursed as a "grant" to RCAIDS, and then earmarked them for an "anti-HIV/AIDS information campaign" – which was not part of the activities authorized under the Global Fund grant.

7. The Global Fund was neither informed of the existence of the above agreement and addendum, nor of the subsequent payment by Hoffmann La-Roche to RCAIDS, despite the PIU Manager and Financial Manager of RCAIDS being also aware of these matters.

8. Finally, the current Director General, during his interviews with the OIG initially feigned his ignorance of the issue and attempted to mislead the OIG into a representation that the payment from Hoffmann La-Roche consisted in a "grant" rather than a reimbursement for recalled drugs.

B.3. Collusive Procurement

9. RCAIDS completed three procurement procedures for the different phases of the “anti-HIV/AIDS information campaign”, following which companies *LLC MGS Group* and *LLC Pilot Communication* were awarded contracts totaling USD 105,227. The procurement procedures appeared to be non-competitive, since evidence of *collusive practices* was identified by the OIG between the bidders and RCAIDS. It was also found that *LLC Pilot Communication* was operated by a friend of the Director General of RCAIDS.

B.4. Conclusion

10. The OIG concluded that the above actions were not compliant with the letter and the spirit of the terms of the Program Grant Agreement between the Global Fund and RCAIDS. These actions can be qualified as *attempted misappropriation* and, ultimately, *misuse* of grant funds, *misrepresentation*, and *anti-competitive* and *collusive practices*.

11. The OIG provided the Global Fund Secretariat, the CCM and the PR (RCAIDS) an opportunity to review and comment on the OIG’s findings prior to the finalization of this report. The Global Fund Secretariat provided its comments on 24 June 2013 and RCAIDS on 4 October 2013, respectively. Their comments have been considered and incorporated where deemed appropriate. RCAIDS comments and the OIG’s response to them are set forth in Annex 2 of this report. Separate to these comments, on 19 September 2013 RCAIDS committed to the Global Fund Secretariat to reimburse the full amount of funds (USD 105,227) received from Hoffmann La-Roche.

12. On the basis of its findings, established by the preponderance of evidence, the OIG makes recommendations to the Global Fund Secretariat as set out in section H below.

C. Message from the Executive Director of the Global Fund



Mark Dybul, Executive Director

Mark Dybul@theglobalfund.org
www.theglobalfund.org

T +41 58 791 1115
F +41 58 791 1701

Chemin de Blandonnet 8
1214 Vernier, Geneva
Switzerland

Ref: OED/MD/SF/CK/DM/2013.11.21-Kazakhstan

21st November 2013

MESSAGE FROM THE EXECUTIVE DIRECTOR

Investigation Report - Kazakhstan

I would like to thank the Office of the Inspector General for its thorough and insightful work on the investigation of misappropriation of funds by the Republican Center for Prophylactics and Control of AIDS (RCAIDS) of the Republic of Kazakhstan.

The OIG concluded that RCAIDS, one of the Principal Recipients of Global Fund grants in Kazakhstan, carried out actions that were not compliant with the letter and the spirit of the terms of the grant agreement between the Global Fund and RCAIDS.

In 2006, RCAIDS procured Viracept antiretroviral drugs from the local distributor in Kazakhstan at the time of Hoffmann La-Roche. The purchase was formalized through two contracts for a total value of US\$ 149,172, funded under a Global Fund grant.

Hoffmann La-Roche subsequently issued a global recall of Viracept drugs in June 2007 as a result of alleged contamination. Most of the drugs in Kazakhstan were returned.

In 2009, Hoffmann-La Roche agreed to reimburse the cost of drugs, initially estimated at US\$ 101,957, to RCAIDS.

The Financial Manager of RCAIDS, following instructions from the Director General of the Principal Recipient at the time and without informing the Global Fund, asked for the reimbursement to be paid into the bank account of a third party entity in New Zealand with no apparent link to Global Fund-financed activities.

The reimbursement was eventually paid in 2012, with the transfer of a revised amount of US\$ 105,227 back to the bank account of RCAIDS. By that time, the former Director General had been replaced and a new agreement concluded by his successor allowing for the funds to be returned.

Later in June 2012, an addendum was signed between RCAIDS and Hoffmann La-Roche, in which the new Director General reclassified the reimbursed funds as a grant to RCAIDS, earmarking them for an HIV/AIDS information campaign which was not part of the activities authorized under the Global Fund grant.

The Global Fund was neither informed of the existence of the above agreement and addendum, nor of the subsequent payment by Hoffmann La-Roche to RCAIDS.

RCAIDS later awarded two companies, LLC MGS Group and LLC Pilot Communication, contracts totalling USD 105,227 to conduct the information campaign. The Inspector General found evidence of collusive practices between the bidders and RCAIDS. It was also found that LLC Pilot Communication was operated by a friend of the Director General of RCAIDS.

The Office of the Inspector General qualified these actions as “attempted misappropriation and, ultimately, misuse of grant funds, misrepresentation, and anti-competitive and collusive practices.”

It also recommended that the Global Fund Secretariat should ensure all reimbursements received from Hoffmann La-Roche, following the revoked procurement of drugs funded from the Global Fund grant, should be treated and accounted for as grant funds and considered for reimbursement to the Global Fund.

The Secretariat has taken strong remedial actions in response to these findings. These encompass significantly tightened controls over procurement, including oversight by the Global Fund country team and the local fund agent; a demand for reimbursement of the amounts returned by Hoffmann La-Roche; and barring implicated individuals from Global Fund funded programs.

Investigations by the Office of the Inspector General are an essential form of quality control for the Global Fund. The Office of the Inspector General plays an indispensable role in helping us all achieve our mission of effectively investing the world’s money to save lives.

Yours sincerely,



D. Background

D.1. Global Fund Grants to Kazakhstan

13. The Global Fund grants in Kazakhstan are implemented by two PRs: the Republican Center for Prophylactics and Control of AIDS (RCAIDS) and the National Center of Tuberculosis Problems (NCTP).¹ During the period between the establishment of the first grant in December 2003 and the OIG's mission to Kazakhstan in October 2012, the total funds committed and disbursed by the Global Fund were as follows:

Round	Grant No.	Principal Recipient	Amount committed, USD	Amount disbursed, USD
2	KAZ-202-G01-H-00	Republican Center for Prophylactics and Control of AIDS (RCAIDS)	20,288,667	20,288,667
7	KAZ-708-G03-H		17,714,963	17,714,963
10	KAZ-H-RAC		7,947,761	6,601,124
Total			45,951,391	44,604,754
6	KAZ-607-G02-T	National Center of Tuberculosis Problems (NCTP)	9,114,981	8,634,245
8	KAZ-809-G04-T		40,755,079	36,257,718
Total			49,870,060	44,891,963
Grand Total			95,821,451	89,496,717

Table 1 - Global Fund grants to Kazakhstan, as at 15 October 2012 ²

D.2. Republican Center for Prophylactics and Control of AIDS

14. RCAIDS was established in 2001 and is a state institution reporting to the Ministry of Public Health of the Republic of Kazakhstan. RCAIDS was created to coordinate and facilitate the multi-sector response to HIV/AIDS and oversee the implementation of strategic plans and frameworks at the national level.³

15. RCAIDS has been the PR of three Global Fund grants to date. The initial HIV/AIDS grant KAZ-202-G01-H-00 (launched on 1 December 2003) was intended for "Promotion of and support to safer behaviour choices among target population groups (injecting drug users, commercial sex workers, youth); and provision of care and support to people with HIV/AIDS", while the subsequent HIV/AIDS grants KAZ-708-G03-H (launched on 1 January 2009) and KAZ-H-RAC (launched on 1 January 2012) aimed at "Scaling-up access to HIV prevention treatment, care and support services for vulnerable groups, through enhanced and expanded governmental, NGO and private partnerships".⁴

D.3. Local Fund Agent

16. The Global Fund engaged three entities as its LFA at different times throughout the duration of the grants. In October 2003, KPMG was selected as the first LFA⁵, replaced by PricewaterhouseCoopers in February 2007⁶, and then by Crown Agents in October 2009.⁷ PricewaterhouseCoopers was again selected as the LFA in August 2012.⁸

¹ <http://portfolio.theglobalfund.org/en/Country/Index/KAZ>

² http://www.theglobalfund.org/documents/core/grants/Core_DisbursementDetails_Report_en (as at 15 October 2012)

³ <http://www.rcaids.kz> ;

http://www.theglobalfund.org/documents/oig/OIG_GFOIG11004AuditKazakhstan_Report_en

⁴ Program grant agreements for Global Fund grants KAZ-202-G01-H-00, KAZ-708-G03-H and KAZ-H-RAC

⁵ Global Fund correspondence of 21 October 2003 to the Chairperson of CCM

⁶ Global Fund correspondence of 14 February 2007 to RCAIDS

⁷ Global Fund correspondence of 9 October 2009 to Crown Agents

⁸ Global Fund correspondence of 17 August 2012 to PRs

E. Methodology

17. The methodology of OIG investigations is set forth in Annex 1 of this report.

E.1. Origin and Scope of the Investigation

18. Following allegations of procurement fraud relating to the Global Fund grant funds disbursed to Kazakhstan, the OIG launched a comprehensive investigation of grants to Kazakhstan. Concurrently, the OIG learned that Kazakh law enforcement authorities (e.g. Almaty City Prosecutor's Office) had launched criminal investigations into similar matters.

19. In the course of its investigation, the OIG identified a separate issue of potential misappropriation by RCAIDS of funds received from Hoffmann La-Roche as reimbursement, in the amount of USD 105,227. This investigation report presents the OIG's findings and conclusions pertaining to this specific matter, and is the first of a series of reports on five separate subcases resulting from the inquiries conducted by the OIG further to the above allegations.

E.2. Due Process

20. The OIG provided the Global Fund Secretariat, the CCM and the PR (RCAIDS) an opportunity to review and comment on the OIG's findings prior to the finalization of this report. The Global Fund Secretariat provided its comments on 24 June 2013 and RCAIDS on 4 October 2013, respectively. Their comments have been considered and incorporated where deemed appropriate. RCAIDS comments and the OIG's response to them are set forth in Annex 2 of this report.

E.3. Exchange Rate

21. This report describes the amounts in USD, with Kazakhstan Tenge (KZT) noted where appropriate, for ease of reading. For the purposes of currency conversion, the OIG applied the official exchange rates prevailing on the actual transaction dates as established by the National Bank of the Republic of Kazakhstan.⁹

⁹ <http://www.nationalbank.kz/?docid=748>

F. Investigation Findings

F.1. Concealment from the Global Fund and Attempt to Transfer Funds to a Third Party Bank Account Abroad

22. In 2006, RCAIDS procured ARV drugs of the *Viracept* brand, manufactured by Hoffmann La-Roche, Switzerland, from its local distributor in Kazakhstan at the time, Interfarma-K. That purchase was formalized through two contracts (contract N^o 06/09 for USD 127,716¹⁰ [609 packages of Viracept] and contract N^o 06/14 for USD 21,456¹¹ [108 packages of Viracept]) funded under Global Fund grant KAZ-202-G01-H-00.

23. On 6 June 2007, Hoffmann La-Roche issued a global recall notice for *Viracept* drugs due to contamination with methane sulfonic acid ethylester.¹² RCAIDS was informed of this recall notice on 11 June 2007 by the then LFA.¹³ The then FPM was also advised of the same.¹⁴

24. According to the Head of the Representative Office of Hoffmann La-Roche in Kazakhstan, the majority of drugs delivered under the above contracts and unused by final recipients were returned to the Representative Office of Hoffmann La-Roche. As stated by this representative, Hoffmann La-Roche transferred funds to Interfarma-K in compensation for the drugs recalled. Interfarma-K, in turn, was to make a reimbursement payment to RCAIDS. According to this witness, Interfarma-K failed to actually make this reimbursement to RCAIDS. Consequently, a dispute arose between Hoffmann La-Roche and Interfarma-K, which led to the termination of their business relationship in 2008.¹⁵

25. Later in 2009, Hoffmann La-Roche agreed to reimburse RCAIDS directly for the drugs recalled.¹⁶ On 6 November 2009, the Representative Office of Hoffmann La-Roche in its e-mail communication informed the then Director General of RCAIDS that *“negotiations had taken place with Interfarma-K about the reimbursement of funds for the recalled portion of Viracept drugs. Preliminary verbal agreement had been made with Interfarma-K about the reimbursement. In this respect and for further settlement of this issue and legal aspects, we request you to let us know the contact details of the Representative of the Global Fund.”*¹⁷

26. In early 2010, a draft agreement was prepared between Hoffmann La-Roche and RCAIDS, whereby Hoffmann La-Roche committed to reimburse RCAIDS for the amount of USD 101,957¹⁸ within 30 working days¹⁹.

27. Subsequently on 15 April 2010, the Financial Manager of RCAIDS, in an e-mail communication to Hoffmann la-Roche, suggested that the funds be transferred to a third party bank account in New Zealand, as demonstrated in Annex 3, Figure 1.²⁰

28. Subsequent e-mail communications between Hoffmann La-Roche and this individual identified that the bank account intended to receive the funds, the details of which were

¹⁰ KZT 15,225,000, according to the exchange rate on contract date (29 June 2006)

¹¹ KZT 2,700,000, according to the exchange rate on contract date (11 September 2006)

¹² http://www.roche.com/media/media_releases/med-cor-2007-06-06b.htm

¹³ LFA e-mail communication to RCAIDS (11 June 2007)

¹⁴ E-mail communication from the then Global Fund PIU Manager of RCAIDS to the then FPM (18 June 2007)

¹⁵ ROC with the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February 2013)

¹⁶ ROC with the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February 2013)

¹⁷ E-mail communication from the Representative Office of Hoffmann La-Roche in Kazakhstan to the ex-Director General of RCAIDS (6 November 2009)

¹⁸ KZT 14,950,000, according to the exchange rate on 15 April 2010

¹⁹ Draft agreement between Hoffmann-La Roche and RCAIDS prepared in early 2010

²⁰ E-mail communication of the Financial Manager of RCAIDS, to Hoffmann La-Roche (15 April 2010)

included in the 15 April 2010 e-mail set forth above, was in the name of a certain “Warehouse Logistics Investment Group Trust”, incorporated in New Zealand.²¹

29. When questioned by the Representative Office of Hoffmann La-Roche regarding the identity of this company in New Zealand and its relationship to RCAIDS²², the Financial Manager of RCAIDS responded: *“this company delivers ARV drugs and test systems to RCAIDS in 2010”*²³ (see the e-mail communication in Annex 3, Figure 2). This appeared to be false information, as identified by the OIG further below.

30. In response to the explanation of the Financial Manager of RCAIDS, the local representative of Hoffmann La-Roche suggested to RCAIDS: *“in order to ensure that no questions arise from Roche Compliance ... please include [in the agreement] the number and date of the contract between RCAIDS and Warehouse Logistics Investment Group Trust”*.²⁴ The same person also submitted to RCAIDS an amended draft agreement between Hoffmann La-Roche and RCAIDS (referred to in the document as “AIDS Center”) including the following additional clauses:

- *“AIDS Center is not allowed according to local legislation to accept direct compensation to bank account.”*
- *“Roche ... took a decision to compensate the cost of the withdrawn goods ... to the bank account of BENEFICIARY of monetary resources on behalf of AIDS Center and as defined by AIDS Center.”*
- *“AIDS Center defines Warehouse Logistics Investment Group Trust, being goods’ supplier to AIDS Center for 2010 according to contract XXXX dd XXXX, as BENEFICIARY of monetary resources on behalf of AIDS Center.”*
- Bank account details of Warehouse Logistics Investment Group Trust.²⁵

31. At the same time, the then Head of Finance Operations for Central Asia of Hoffmann La-Roche, in his e-mail communication to the Representative Office of Hoffmann La-Roche in Kazakhstan, questioned this reimbursement modality. He wrote: *“it is a rather unusual situation that we compensate this amount to AIDS Center, but approved due to business reasons. However, this new proposal to compensate AIDS Center through some other (probably private?) company brings additional complexity in the idea to compensate the AIDS Center for Viracept. First, we need to have some clarity over this obstacle that AIDS Center cannot receive money from abroad. ... In addition, main reason for their request to compensate Viracept is request from the Global Fund (with whom Roche cooperates). Can we maybe compensate this amount to the Global Fund directly and eliminate every risk?”*²⁶. The local representative of Hoffmann La-Roche requested that RCAIDS and its Financial Manager provide answers to the above questions.²⁷ No response was made by RCAIDS to this request, to the OIG’s knowledge.

32. When questioned by the OIG as to why she had suggested transferring funds to a corporate bank account in New Zealand, the Financial Manager of RCAIDS stated that *“at the time, funds could not have been received in RCAIDS’ Treasury account”* because *“only grant money could have been received in that account”*. She further stated that *“therefore the then Director General suggested this to be done in this fashion”*. When asked how she

²¹ E-mail communications of Hoffmann La-Roche to RCAIDS (27 and 28 April 2010)

²² E-mail communication of Hoffmann La-Roche to RCAIDS (27 April 2010)

²³ E-mail communication of the Financial Manager of RCAIDS, to Hoffmann La-Roche (27 April 2010)

²⁴ E-mail communication of Hoffmann La-Roche to RCAIDS (28 April 2010)

²⁵ E-mail communication of Hoffmann La-Roche to RCAIDS (28 April 2010)

²⁶ E-mail communication of the former Head of Finance Operations for Central Asia of Hoffmann La-Roche, to the Representative Office of Hoffmann La-Roche in Kazakhstan (28 April 2010)

²⁷ E-mail communications of the Representative Office of Hoffmann La-Roche in Kazakhstan to RCAIDS (28 April and 5 May 2010)

obtained the bank account details, the Financial Manager stated that those had been provided to her by the then Director General of RCAIDS.²⁸

33. The Financial Manager of RCAIDS conceded to the OIG that the proposed transfer was irregular and that the funds should have ideally been transferred directly to the Global Fund's account. She highlighted that in any case, *"Hoffmann La-Roche and the Director General of RCAIDS decided not to sign the agreement,"* and that as a result *"the reimbursement was halted."*²⁹

34. She further emphasized that she was unaware of who the *"Warehouse Logistics Investment Group Trust"* company belonged to, *"since its details were provided by the then Director General."* According to the Financial Manager, the then Director General of RCAIDS had explained to her that this company was providing services, but, in fact, she knew at the time from available records that no services were provided by this company³⁰. When presented by the OIG with the e-mail communication where she wrote to Hoffmann La-Roche that *"this company delivers ARV drugs and test systems to RCAIDS in 2010"*,³¹ she responded that it was the then Director General of RCAIDS who had instructed her to write this message.³²

35. In her interview with the OIG, the Financial Manager conceded that the instructions from the then Director General that she had received and followed were improper, but she stated in her defense that *"this was not the case, since finally they did not make the transaction"*.³³

36. During her interview with the OIG, the Head of the Representative Office of Hoffmann La-Roche in Kazakhstan confirmed the assertion of the Financial Manager of RCAIDS that it was the then Director General of RCAIDS who provided to Hoffmann La-Roche the details of the New Zealand bank account. The representative of Hoffmann La-Roche further stated that *"the Compliance Department of Hoffmann La-Roche considered this as a strange proposition, to which it did not agree, and that the transfer should be made either to the Global Fund or RCAIDS."*³⁴

37. The OIG was not able to interview the former Director General of RCAIDS. At the time of the investigation, the OIG team learnt from the Almaty City Prosecutor's Office that he was under investigation by national authorities and could not be found.³⁵

38. The OIG established that *Warehouse Logistics Investment Group* was indeed a company incorporated in New Zealand, with a third party individual with no association with Global Fund grant programs named as its Director and sole proprietor³⁶. In this regard, no further information was found regarding this individual and, in particular, no link between this individual and RCAIDS or its former Director General could be established.

39. The OIG observed that none of the exchanges between Hoffmann La-Roche and RCAIDS were shared at this stage with the Global Fund Secretariat or the LFA. When questioned on this matter, the Head of the Representative Office of Hoffmann La-Roche in Kazakhstan indicated that one of her colleagues from Hoffmann La-Roche headquarters had contacted the Global Fund Secretariat when this issue was raised. She stated that she would

²⁸ ROC with the Financial Manager of RCAIDS (29 January 2013)

²⁹ ROC with the Financial Manager of RCAIDS (29 January 2013)

³⁰ ROC with the Financial Manager of RCAIDS (29 January 2013)

³¹ E-mail communication of the Financial Manager of RCAIDS, to Hoffmann La-Roche (27 April 2010)

³² ROC with the Financial Manager of RCAIDS (29 January 2013)

³³ ROC with the Financial Manager of RCAIDS (29 January 2013)

³⁴ ROC with the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February 2013)

³⁵ ROC with the Head of Economic Crimes Division, Almaty City Prosecutor's Office, and the Deputy Head of Economic Crimes Division, Almaty City Prosecutor's Office (8 November 2012)

³⁶ <http://www.business.govt.nz/companies/app/ui/pages/companies/2080776/detail>

try to provide the OIG with more details regarding this communication.³⁷ The OIG, however, did not receive any such information, and the representative of Hoffmann La-Roche did not respond to two subsequent queries by the OIG in this respect.³⁸

Conclusion

40. Given the circumstances above, the OIG finds that there was a concerted effort by the then Director General and the Financial Manager of RCAIDS to divert and misappropriate Global Fund resources and to deceive the Global Fund, both by actively misleading and through withholding of information, both during routine grant management and during the investigation.

F.2. Concealment of the refunds from the Global Fund

41. According to the Head of the Representative Office of Hoffmann La-Roche in Kazakhstan, after the current Director General of RCAIDS took office in 2010, he and his staff raised again the issue of the expected reimbursement from Hoffmann-La Roche for the recalled drugs. She further stated: *“with an aim of re-establishing a good relationship with RCAIDS and the Global Fund, effort was made by Hoffmann La-Roche to reimburse the outstanding funds and, at this time, to a proper bank account of RCAIDS.”*³⁹

42. On 12 March 2012 an agreement was signed between Hoffmann La-Roche and the new Director General of RCAIDS, whereby the amount of USD 105,227 was to be paid by Hoffmann La-Roche to RCAIDS.⁴⁰

43. The funds were subsequently deposited by Hoffmann La-Roche on 17 April 2012 in the Treasury account of RCAIDS – which is a pool account for donor contributions, including transfers from the Global Fund.⁴¹

44. On 27 June 2012, an addendum to this agreement was made⁴², stipulating that:

- *“The amount of the ... reimbursement ... cannot be allocated by RCAIDS [as]... the amount received was not budgeted for 2012 and the source of the money is other than state funds”*. The addendum also states that *“RCAIDS internal regulations and restrictions as a state institution allow further allocation of the monetary reimbursement only as a grant”*.
- The addendum continues: *“The parties consider the monetary reimbursement made by Hoffmann La-Roche ... as a grant to RCAIDS ... for the project “Kazakhstan Information Campaign: HIV Infection Prevention and Control” and that “RCAIDS shall use the funds provided in accordance with the project until the funds are exhausted.”*

45. RCAIDS’ progress update and disbursement request (PUDR) for the Global Fund grant KAZ-H-RAC for the period from January to June 2012 did not disclose the reimbursement from Hoffmann La-Roche. As a result, the cash balance shown on the PUDR did not take into account the reimbursement received.⁴³

46. This PUDR was prepared by the Financial Manager of RCAIDS, reviewed by the PIU Manager of RCAIDS and approved on 10 August 2012 by the Director General of RCAIDS.⁴⁴

³⁷ ROC with the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February 2013)

³⁸ OIG’s e-mail communications to the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February and 5 March 2013)

³⁹ ROC with the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February 2013)

⁴⁰ Agreement between Hoffmann La-Roche and RCAIDS (12 March 2012)

⁴¹ Bank statement of RCAIDS (17 April 2012)

⁴² Addendum to agreement between Hoffmann La-Roche and RCAIDS (27 June 2012)

⁴³ PUDR submitted by RCAIDS for Global Fund grant KAZ-H-RAC (January to June 2012)

⁴⁴ PUDR submitted by RCAIDS for Global Fund grant KAZ-H-RAC (January to June 2012)

47. The report on the PUDR by the LFA⁴⁵ at that time, PricewaterhouseCoopers, stated that RCAIDS' bank balance was greater than that reported and that *"the difference [was] due to a grant received from Hoffmann-La Roche in the amount of USD 101,832."*⁴⁶ The following disbursement request (DR, dated 14 November 2012, and also prepared by the Financial Manager, reviewed by the PIU Manager and approved by the Director General of RCAIDS) also showed a cash balance that did not include the reimbursement received.⁴⁷

48. When questioned by the OIG as to whether the Global Fund had been informed of the reimbursement, the Financial Manager of RCAIDS stated that she was uncertain. She added that *"maybe the PIU Manager informed the Global Fund Secretariat about it"*.⁴⁸ When the OIG questioned the PIU Manager as to whether he had informed the Global Fund of the reimbursement, he stated that he had not.⁴⁹

49. In response to the OIG's inquiries, the FPM (in office since October 2012) asserted that he was unaware of any direct communication from the PR about any such reimbursement. He also consulted with the previous FPM (who was in office at the time of the reimbursement) who stated she was also unaware of the matter.⁵⁰

50. Initially the Director General of RCAIDS claimed that "it was Hoffmann La-Roche's initiative to donate this amount to RCAIDS for preventive and program activities. The Head of [Hoffman La-Roche's] Representative Office in Kazakhstan first discussed this matter with [him] personally. She then contacted the company headquarters and received approval for the donation." Noting that "RCAIDS had some issues with Hoffmann La-Roche in the past", he further stated that "the donation was a goodwill act of Hoffmann La-Roche since the company was going to register a number of ARV drugs in Kazakhstan and would need RCAIDS' assistance [in doing so]".⁵¹

51. When presented by the OIG with additional information indicating that the transaction in question could have been a refund, the Director General suggested that the issue be clarified with the PIU Manager and the Financial Manager of RCAIDS *"since they had known the case from the very beginning"*.⁵²

52. The Director General also added that Hoffmann La-Roche's Representative in Kazakhstan told him that "all past issues between RCAIDS and Hoffmann La-Roche had been settled, and there was no outstanding debt to RCAIDS" and specifically that "the agreement signed with Hoffmann La-Roche regarded the transfer as a donation."⁵³ Moreover, the Director General pointed out that "this amount referred to the Round 2 grant, which was closed with no debts or outstanding payments as confirmed by the FPM, the PIU Manager and the Financial Manager of RCAIDS."⁵⁴

53. The OIG showed to the Director General the initial agreement signed between RCAIDS and Hoffmann La-Roche on 12 March 2012, whereby the transfer was to be made as a refund.⁵⁵ He responded that he *"did not remember signing this version of the agreement"* and added that *"he would need to see its original version available at the PIU, as it could be different from the copy presented [by the OIG]."* The Director General expressed his belief of

⁴⁵ PUDR submitted by RCAIDS for Global Fund grant KAZ-H-RAC (January to June 2012)

⁴⁶ The difference between the amount deposited by Hoffmann La-Roche (USD 105,227) and the LFA observation (USD 101,832) is due to conversion of received funds in KZT.

⁴⁷ DR submitted by RCAIDS for Global Fund grant KAZ-H-RAC (14 November 2012)

⁴⁸ ROC with the Financial Manager of RCAIDS (29 January 2013)

⁴⁹ ROC (telephone conversation) with the PIU Manager of RCAIDS (31 January 2013)

⁵⁰ FPM's e-mail communications to OIG (29 and 30 January 2013)

⁵¹ ROC with the Director General of RCAIDS (1 February 2013)

⁵² ROC with the Director General of RCAIDS (1 February 2013)

⁵³ ROC with the Director General of RCAIDS (1 February 2013)

⁵⁴ ROC with the Director General of RCAIDS (1 February 2013)

⁵⁵ The initial agreement between RCAIDS and Hoffmann La-Roche (12 March 2012) cites: *"Roche decided to compensate the cost of withdrawn goods to AIDS Center directly"*.

having “signed a different version of the agreement, because he could not remember ever seeing the clause referring to a refund”, and since the “other managers’ initials, customarily placed on all pages of the agreement prior to his signing off on it, were not visible on the copy he was presented with”.⁵⁶

54. The Director General further expressed his opinion that RCAIDS’ Finance Manager “might have been pushed to [suggest that the funds be transferred to the third party bank account in New Zealand] by the ex-Director General of RCAIDS” and added that “neither the Financial Manager nor anyone else ever mentioned this matter to him”.⁵⁷

55. Subsequently, after RCAIDS shared with the OIG the addendum of the agreement it entered into with Hoffman La-Roche on 27 June 2012⁵⁸, the Director General remembered having signed both the addendum and the version of the initial agreement the OIG presented him with.⁵⁹

56. While the initial agreement entered into between RCAIDS and Hoffmann La-Roche referred solely to “reimbursement for the recalled drugs”,⁶⁰ the addendum explained why this reimbursement had to be re-classified as “a grant to RCAIDS”.⁶¹

57. Notwithstanding his own testimony and the provisions of both the initial agreement and its addendum, the Director General reiterated that “Hoffmann La-Roche’s Representative in Kazakhstan informed [him] that this was a goodwill donation, which [he] was happy to accept. Moreover, no one in RCAIDS had alerted [him] that Hoffmann La-Roche needed to refund money to RCAIDS due to a recall of drugs.”⁶²

58. In response, the OIG showed to the Director General the e-mail communication of 18 May 2011 from the representative of Hoffmann La-Roche to him stating that “the issue of refunding money for the recalled Viracept has been reanimated. We are working on this.” The Director General claimed that he had not read this e-mail.⁶³

59. On the contrary, when interviewed by the OIG, the Head of the Representative Office of Hoffmann La-Roche in Kazakhstan spoke about the reimbursement from Hoffmann La-Roche and did not refer to a grant. In attempt to explain what may have happened, she stated that “RCAIDS, as any Government institution, could have used the received funds to fill budgetary holes that, given the circumstances of state funding of the healthcare in Kazakhstan, may be understandable. ... The issue would be whether the Global Fund would be in agreement with such use of funds.”⁶⁴

60. The OIG further asked the representative of Hoffmann La-Roche whether anyone in RCAIDS requested to have the funds transferred to the Global Fund. She responded that “The Director General of RCAIDS stated that the grant was already closed and also produced a document confirming the grant closure. For Hoffmann La-Roche, it was important to have this debt settled and [therefore] ... the funds were transferred to RCAIDS directly.”⁶⁵ The OIG requested that the representative of Hoffmann La-Roche forward the

⁵⁶ ROC with the Director General of RCAIDS (1 February 2013)

⁵⁷ ROC with the Director General of RCAIDS (1 February 2013)

⁵⁸ Addendum to the agreement between Hoffmann La-Roche and RCAIDS (27 June 2012)

⁵⁹ Agreement between Hoffmann La-Roche and RCAIDS (12 March 2012); addendum to the agreement between Hoffman La-Roche and RCAIDS (27 June 2012)

⁶⁰ The initial agreement between RCAIDS and Hoffmann La-Roche (12 March 2012) cites: “Roche decided to compensate the cost of withdrawn goods to AIDS Center directly”.

⁶¹ Addendum to the agreement between Hoffmann La-Roche and RCAIDS (27 June 2012) cites: “The amount of the ... reimbursement ... cannot be allocated by RCAIDS [as] ... the amount received was not budgeted for 2012 and the source of the money is other than state funds. ... RCAIDS internal regulations and restrictions as a state institution allow further allocation of the monetary reimbursement only as a grant.”

⁶² ROC with the Director General of RCAIDS (1 February 2013)

⁶³ ROC with the Director General of RCAIDS (1 February 2013)

⁶⁴ ROC with the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February 2013)

⁶⁵ ROC with the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February 2013)

document produced by the Director General of RCAIDS. Nevertheless, the OIG did not receive that document, despite the OIG's two follow-up queries to the representative of Hoffmann La-Roche.⁶⁶

61. The Secretariat informed the OIG that, during a subsequent visit to Kazakhstan, they followed up on the reimbursement issue with the Director General of RCAIDS. According to the Secretariat, when they discussed the issue with the Director General on 28 February 2013, the latter first tried to convince them that the arrangement made by RCAIDS was legal, and that the funds constituted a grant and not a refund, since the corresponding Global Fund grant was closed. The Secretariat stated that they did not want to discuss the issue from a legal perspective and asked the Director General if he agreed, in principle, that the funds belonged to the Global Fund. The Director General agreed to this. He also eventually admitted that he should have informed the Global Fund about this refund.⁶⁷

62. The Director General of RCAIDS further informed the Secretariat that he had already used the reimbursement funds for a mass media campaign during the summer of 2012. The Director General therefore proposed to reduce future expenses in the current grant budget in order to balance this amount. The Secretariat refused this proposal, responding that this would mean that the Director General had decided about this reprogramming without the Global Fund's approval and also that, if the approval had been requested, the Secretariat would not have agreed to re-direct this amount to a mass media campaign.⁶⁸

63. The Secretariat also followed up on the issue of the reimbursed funds with the Chair of the Committee of the Public Sanitary-Epidemiological Surveillance of the Republic of Kazakhstan (serving at the Ministry of Public Health) on 28 February 2013. The Director General of RCAIDS was present at the meeting, during which he explained the facts and stated that he had "*made a mistake*". When provided with more background by the Secretariat and the Director General, the Chair of the Committee stated that the responsible individuals should be penalized, and that the issue merited further discussion by the Ministry of Public Health. It was further agreed in the meeting that RCAIDS would send to the Global Fund a proposal to remedy the matter of the improper use of the reimbursed funds for a media campaign.⁶⁹

64. On 15 March 2013, the PIU Manager of RCAIDS informed the Secretariat that "the PR suggests ... a mechanism for the refund of funds received from Hoffmann la-Roche ... by proposing to the winner(s) of the upcoming tenders [funded from the Global Fund grant] to compensate a part of their contract in the value of USD 105,227 from procurement funds provided by other donors."⁷⁰ The Secretariat did not agree to this proposed settlement arrangement.⁷¹

65. On 3 May 2013, the PIU Manager of RCAIDS informed the Secretariat about two possible indirect reimbursement modalities involving NGOs, Hoffmann La-Roche and RCAIDS, the latter of which would finally reimburse the Global Fund.⁷² The proposals were unclear to the Secretariat and, since sufficient clarifications were not provided by RCAIDS, the Secretariat did not agree to this arrangement either.⁷³

⁶⁶ OIG's e-mail communications to the Head of Representative Office of Hoffmann La-Roche in Kazakhstan (20 February and 5 March 2013)

⁶⁷ FPM's e-mail communication to OIG (2 March 2013)

⁶⁸ FPM's e-mail communication to OIG (2 March 2013)

⁶⁹ FPM's e-mail communication to OIG (2 March 2013); minutes of the FPM's meeting at the Ministry of Public Health (28 February 2013)

⁷⁰ E-mail communication of the PIU Manager of RCAIDS, to the FPM (15 March 2013)

⁷¹ FPM's e-mail communication to OIG (26 March 2013)

⁷² E-mail communication of the PIU Manager of RCAIDS, to the FPM (3 May 2013)

⁷³ FPM's e-mail communication to RCAIDS (7 May 2013); FPM's explanations to the OIG

66. On 19 September 2013, the PIU Manager of RCAIDS informed the Secretariat that RCAIDS undertook negotiations with companies *LLC MGS Group* and *LLC Pilot Communication*, which were awarded contracts by RCAIDS (see section F.3) from the funds reimbursed by Hoffmann La-Roche. He informed the Secretariat that the two companies had agreed to reimburse the funds to RCAIDS, and that RCAIDS would transfer the reimbursed funds to the Global Fund.⁷⁴ In upcoming communications, the RCAIDS also informed the Secretariat that any funds not reimbursed by the two companies would be reimbursed by the Director General of RCAIDS in person.⁷⁵ On 27 September 2013, the Secretariat agreed to these reimbursement modalities.⁷⁶

F.3. Ineligible Use of the Funds Received through Collusive Practices in Procurement of Services for the Information Campaign

67. When questioned by the OIG on the use of reimbursement funds received from Hoffmann La-Roche, the RCAIDS provided details of three procurement procedures that it undertook for the “anti-HIV/AIDS information campaign”:

- *creative and design services for outdoor social advertisements;*
- *production and placement of outdoor social advertisements; and*
- *organization of mass media campaign.*⁷⁷

68. With respect to each of the procurement procedures, the RCAIDS provided to the OIG: bids from three vendors, the Tender Committee minutes, the contract, the invoice from the winning vendor, and the proof of deliverables. RCAIDS did not communicate any tender documentation or requests for quotations to the potential bidders.

69. The Tender Committee (the Deputy Chair of which was the PIU Manager of RCAIDS) met on 16 and 20 July 2012 and selected the following vendors based on the following bids⁷⁸:

Vendor	Creative and design services for outdoor social advertisements	Production and placement of outdoor social advertisements	Organization of mass media campaign
<i>IE</i> ██████ ⁷⁹	USD 24,364 (KZT 3,600,000)	USD 41,012 (KZT 6,060,000)	-
<i>LLC MGS Group</i>	USD 23,955 (KZT 3,539,547.91)	-	USD 40,656 (KZT 6,007,400)
<i>LLC Outdoor Technology</i>	USD 24,863 (KZT 3,673,730)	USD 43,036 (KZT 6,359,020)	USD 42,332 (KZT 6,254,925)
<i>LLC Pilot Communication</i>	-	USD 40,616 (KZT 6,001,500)	USD 41,283 (KZT 6,100,000)
Winning vendor	<i>LLC MGS Group</i>	<i>LLC Pilot Communication</i>	<i>LLC MGS Group</i>
Contract value	USD 23,955 (KZT 3,539,547.91)	USD 40,616 (KZT 6,001,500)	USD 40,656 (KZT 6,007,400)
Total value of contracts	USD 105,227 (KZT 15,548,447.91)		

Table 2 Vendor bids for the “anti-HIV/AIDS information campaign”⁸⁰

⁷⁴ E-mail communication of the PIU Manager of RCAIDS, to the FPM (19 September 2013)

⁷⁵ E-mail communication of the PIU Manager of RCAIDS, to the FPM (23 September 2013); FPM’s explanations to the OIG

⁷⁶ FPM’s e-mail communication to RCAIDS (27 September 2013)

⁷⁷ RCAIDS Tender Committee minutes (16 and 20 July 2012)

⁷⁸ RCAIDS Tender Committee minutes (16 and 20 July 2012)

⁷⁹ The OIG cannot disclose the names of individual entrepreneurs (IEs).

⁸⁰ RCAIDS Tender Committee minutes (16 and 20 July 2012); vendor bids. The OIG applied the exchange rate of 147.76 KZT/USD for conversion of the above bid and contract values, which corresponds to the exchange rate applied by the Treasury for conversion of reimbursement funds received from Hoffmann La-Roche (USD 105,227.72 to KZT 15,548,447.91).

70. The OIG observed that the total value of the lowest bids for each of the procurement procedures (that was, respectively, the total value of contracts made with vendors), or USD 105,227 (KZT 15,548,447.91), was identical up to one cent (in KZT) with the amount received by RCAIDS from Hoffmann La-Roche, after its conversion from USD to KZT by the Treasury. Moreover, the winning bid of *LLC MGS Group* for the first of the procurements was not arithmetically precise, and several amounts in it had been adjusted to rectify the total value of the bid from KZT 3,538,500 to KZT 3,539,547.91, in order for it to fit with the total value of funds available for the three procurements (see Annex 3, Figure 4 for details).⁸¹

71. The OIG finds that it is not reasonably possible for the vendors to competitively bid under three procurement procedures, so that their winning bids exactly fit the total budget for the three procurements, without them being informed by RCAIDS how much their bid prices should be, or what the total maximum budgeted amount is.

72. The OIG further observed that the bids submitted by all vendors, in each of the three procurements, included identical elements (see Annex 3, Figure 5 for details) that went materially beyond that could have been explained by the use of common templates provided by RCAIDS. Moreover, RCAIDS did not communicate any requests for quotations to the potential bidders. The identical elements therefore suggest that the bids were prepared either in co-operation between the vendors or with the involvement of RCAIDS. The OIG did not identify the parties who prepared the bids. The elements were entirely or partially identical text in table headings and other elements of similar presentation.⁸²

73. To illustrate their informality, none of the bids for the three procurements were dated. The bids of *LLC MGS Group* and *LLC Outdoor Technology* showed no phone numbers, and the bids of IE [REDACTED] – no address.⁸³

74. The winning vendor for “creative and design services” for outdoor social advertisements (*LLC MGS Group*) was selected by the Tender Committee on 16 July and awarded a contract on 18 July 2012. The winning vendor for “production and placement” of the same outdoor social advertisements (*LLC Pilot Communication*) was selected on 20 July 2012 and awarded a contract on the same date. This further suggests that *LLC MGS Group* and *LLC Pilot Communication* must have worked together, because *LLC Pilot Communication* needed to take over the task from *LLC MGS Group* in a short time frame.

75. In another report arising from this OIG investigation of the Global Fund grant funds disbursed to Kazakhstan (see report with case numbers 238-3/2011; 238-4/2011), the OIG made other findings regarding *LLC MGS Group*, *LLC Outdoor Technology* and *LLC Pilot Communication*, which participated in RCAIDS’ tenders funded from Global Fund grants in 2011 and 2012. The findings which are also of relevance to this report are as follows:

- At least two addresses declared in various bids and correspondences of *LLC Outdoor Technology* and *LLC Pilot Communication* were the same.⁸⁴
- Various bids of *LLC Outdoor Technology* and *LLC Pilot Communication* showed obviously identical elements in preparation.⁸⁵
- Various correspondences from *LLC MGS Group*, *LLC Outdoor Technology* and *LLC Pilot Communication* to RCAIDS (such as requests to provide tender documentation and authorizations to withdraw the latter) included significant parts of obviously identical text.⁸⁶

⁸¹ RCAIDS Tender Committee minutes (16 and 20 July 2012); vendor bids; bank statement of RCAIDS (17 and 20 April 2012)

⁸² Vendor bids

⁸³ Vendor bids

⁸⁴ Vendor bids and correspondences

⁸⁵ Vendor bids

⁸⁶ Vendor correspondences

- When the OIG attempted to interview a representative of *LLC Outdoor Technology*, he agreed to the meeting but finally did not show up for it. He avoided responding to the OIG's phone calls afterwards.⁸⁷
- When the OIG interviewed the Director of *LLC Pilot Communication*, he admitted that the bids and correspondences of his company and of *LLC Outdoor Technology* were highly similar but stated that he does not know the latter company. He stated the same about *LLC MGS Group*. When informed that the OIG could not find *LLC Pilot Communication* at the address indicated in its bids during 2012, he explained that his company did not have an office at the time and was searching for one. He also mentioned during his interview that he knows the Director General of RCAIDS well.⁸⁸
- Later, after his interview, the Director of *LLC Pilot Communication* called the OIG team and stated that he had made inquiries with his team in charge of bids preparation and, with regard to similarity of bids of his company and of *LLC Outdoor Technology*, it was most probable that one of his staff had passed information to his company's competitors.⁸⁹ The OIG observes that, if this is true, it just confirms that the bids of *LLC Outdoor Technology* were submitted only to ensure the quorum.

76. When the OIG interviewed the Director General of RCAIDS and informed him that *LLC Pilot Communication* did not have a standing office and the representatives of its competitor *LLC Outdoor Technology* could not be met, he responded that “it is more important that vendors duly fulfill their contractual obligations, and that it was normal in Kazakhstan that vendors did not have an office, as there were many examples when a company consisted of only 2-3 people doing business and would not need an office”. He said that “the representatives of *LLC Pilot Communication* once came to his office and made an impressive presentation of their concept of AIDS prevention campaign”. He stated that “he surveyed the company's background and experience and received positive feedback about it from Almaty city hall”. He stated that “later *LLC Pilot Communication* was awarded several contracts on a competitive, open-tender basis”. When asked what happened to another printing company, which was winning in RCAIDS' tenders prior to 2011, he responded that “it no longer succeeded because the quality and prices of *LLC Pilot Communication* were much better”. He added that “he was not satisfied with the quality of products of the previous printing company, and he was happy with the current vendor *LLC Pilot Communication*”. When asked why the tenders advertised by RCAIDS did not attract more printing companies, he could not explain the fact and said that “RCAIDS advertised the tenders openly but did not receive many bids”.⁹⁰

77. The OIG also observed that the Director General of RCAIDS and the Director of *LLC Pilot Communication* were personal friends from an e-mail communication between the two on 27 October 2010 (one month after the appointment of the Director General of RCAIDS), where the Director of *LLC Pilot Communication* congratulated the Director General on his appointment, and the two exchanged their current phone numbers and agreed to get in touch (see the e-mail communication in Annex 3, Figure 3).⁹¹

78. It should be noted that *LLC Pilot Communication* and *LLC Outdoor Technology* started bidding in RCAIDS tenders (that were funded from Global Fund grants) in April 2011 and *LLC MGS Group* in February 2012.

Conclusion

⁸⁷ Vendor verification report (27 November 2012)

⁸⁸ ROC with the Director and another representative of *LLC Pilot Communication* (24 November 2012)

⁸⁹ ROC with the Director of *LLC Pilot Communication* (8 December 2012)

⁹⁰ ROC with the Director General of RCAIDS (1 February 2013)

⁹¹ E-mail communication between the Director of *LLC Pilot Communication* and the Director General of RCAIDS (27 October 2010)

79. IE [REDACTED], LLC MGS Group, LLC Outdoor Technology and LLC Pilot Communication and/or the Director General of RCAIDS appear to have engaged in *collusive practices* when submitting bids and/or entering into contracts with RCAIDS. Furthermore, considering that the total value of three winning bids was identical to the amount received by RCAIDS from Hoffmann La-Roche, considering the adjustments made in LLC MGS Group's bid for this purpose, and the friendship of the Director General of RCAIDS and the Director of LLC Pilot Communication, the OIG finds that the preponderance of evidence indicates that one or several RCAIDS officials co-operated with the above vendors for the set-up of the three procurement procedures totaling USD 105,227.

80. Given the circumstances above, the OIG finds that there was intentional misuse or misdirection by the Director General of RCAIDS of Global Fund resources away from their intended purposes, along with a concerted effort to deceive the Global Fund, both by actively misleading and through withholding of information, both during routine grant management and during the investigation.

81. Furthermore, the above acts and omissions of the current Director General of RCAIDS and/or of the purported suppliers related to procurement likely constitute *collusive* and *anti-competitive practices*. In any event, given that these expenses were not part of the approved activities and budget for the program, these expenditures are not compliant with the program grant agreement.

G. Conclusions

82. As a result of its investigation, the OIG concludes by the preponderance of evidence that:

- The ex-Director General of RCAIDS and the Financial Manager of RCAIDS concealed from the Global Fund a projected reimbursement of USD 101,957⁹² from Hoffmann La-Roche, to be made following a revoked procurement of drugs funded by Global Fund grant KAZ-202-G01-H-00.
- The above individuals requested that Hoffmann La-Roche have these funds transferred to a third party bank account in the name of *Warehouse Logistics Investment Group Trust* in New Zealand, instead of any Global Fund-related account.
- To justify the transfer, the Financial Manager of RCAIDS provided a false statement to Hoffmann La-Roche, asserting that *Warehouse Logistics Investment Group Trust* delivered ARV drugs and test systems to RCAIDS in 2010.

83. The above actions of the ex-Director General of RCAIDS and the Financial Manager of RCAIDS can be qualified as an *attempted misappropriation* to convert to their own use or the use of others Global Fund grant funds through a concerted effort to divert and misappropriate Global Fund resources and to deceive the Global Fund, both by actively misleading and through withholding of information, both during routine grant management and during the investigation.

84. The OIG further concludes by the preponderance of evidence that:

- The current Director General of RCAIDS, the PIU Manager of RCAIDS, and the Financial Manager of RCAIDS concealed from the Global Fund that RCAIDS had received a reimbursement from Hoffmann-La Roche as described above, for the revised amount of USD 105,227.
- The current Director General of RCAIDS instructed that those funds be used for purposes not authorized under the program grant agreement.
- The current Director General of RCAIDS also provided false statements to OIG during his interview. He attempted to mislead OIG about the nature of the transfer of funds from Hoffmann-La Roche, and feigned his ignorance of the issue which the said transfer originated from. The details of his statements and evidence from additional sources proved to the contrary.
- *IE █████*, *LLC MGS Group*, *LLC Outdoor Technology* and *LLC Pilot Communication* have engaged in collusive practices when submitting bids and/or entering into contracts with RCAIDS. Furthermore, considering that the total value of three winning bids was identical with the amount received by RCAIDS from Hoffmann La-Roche, considering the adjustments made in *LLC MGS Group's* bid for this purpose, and the friendship of the Director General of RCAIDS and the Director of *LLC Pilot Communication*, the OIG finds by the preponderance of evidence that one or several RCAIDS officials co-operated with the above vendors for the set-up of the three procurement procedures totaling USD 105,227.

85. The facts outlined above with regard to the conduct of the current Director General of RCAIDS can be considered intentional *misuse* or misdirection of Global Fund resources away from their intended purposes, as well as *misrepresentation* with a concerted effort to deceive the Global Fund, both by actively misleading and through withholding of information, both during routine grant management and during the investigation. Similarly, the actions of the current Director General of RCAIDS and/or of the purported suppliers,

⁹² KZT 14,950,000, according to the exchange rate on 15 April 2010 (the date when the Financial Manager of RCAIDS suggested to Hoffmann La-Roche to transfer funds to the third party bank account)

related to procurement may be qualified as constituting *collusive* and *anti-competitive practices*.

86. Overall, the OIG concludes that the PR's actions were not in compliance with the following provisions of the Standard Terms and Conditions (STC) in the "amended and restated" program grant agreement for Global Fund grant KAZ-202-G01-H-00, signed on 24 May 2005 between the Global Fund and RCAIDS:

- *Article 9. The PR shall ensure that all Grant funds are prudently managed and shall take all necessary action to ensure that Grant funds are used solely for Program purposes and consistent with the terms of this Agreement.*
- *Article 11 (c). Any revenues earned by the PR ... from program activities ... shall be accounted for and used solely for Program purposes.*⁹³

87. According to Article 27 (iv) of the STC in the above program grant agreement: "Notwithstanding the availability or exercise of any other remedies under this Agreement, the Global Fund may require the PR to immediately refund to the Global Fund any disbursement of the Grant funds ... [if] the PR has made a material misrepresentation with respect to any matter related to this Agreement".⁹⁴

88. Also, according to Article 39 of the STC in the above program grant agreement: "the provisions of ... Article 27 (Refunds) ... shall survive and remain in full force and effect regardless of the expiry of the Program Term".⁹⁵

⁹³ "Amended and restated" program grant agreement for Global Fund grant KAZ-202-G01-H-00

⁹⁴ "Amended and restated" program grant agreement for Global Fund grant KAZ-202-G01-H-00

⁹⁵ "Amended and restated" program grant agreement for Global Fund grant KAZ-202-G01-H-00

H. Recommendations

89. The OIG makes the following recommendations, as a result of the findings of this investigation:

1. The Global Fund Secretariat should ensure all revenues or reimbursements received from Hoffmann La-Roche following the revoked procurement of drugs funded from Global Fund grant KAZ-202-G01-H-00 are treated and accounted for as grant funds and be considered for reimbursement to the Global Fund.
2. The Global Fund Secretariat should reconsider any further association with the Director General of RCAIDS, the Global Fund PIU Manager of RCAIDS, and the Financial Manager of RCAIDS.⁹⁶
3. The Global Fund Secretariat should clarify the periodic reporting procedures applicable to PRs to more clearly identify income, refunds or outstanding payments. For instance, the cash reconciliation template in the PUDR could be more specific and require clear indication of refunds from suppliers.

⁹⁶ The OIG has been informed that the Financial Manager of RCAIDS had resigned from her position.

I. Acronyms

ARV drugs	Antiretroviral drugs
CCM	Country Coordinating Mechanism
DR	Disbursement request
FPM	Fund Portfolio Manager
HIV/AIDS	Human immunodeficiency virus / Acquired immunodeficiency syndrome
IE	Individual entrepreneur
JSC	Joint Stock Company
KZT	Kazakhstan Tenge
LFA	Local Fund Agent
LLC	Limited Liability Company
NCTP	National Center of Tuberculosis Problems
NGO	Non-governmental organization
OIG	Office of the Inspector General
PIU	Global Fund Project Implementation Unit
PR	Principal Recipient
PUDR	Progress update and disbursement request
RCAIDS	Republican Center for Prophylactics and Control of AIDS
ROC	Record of conversation
SR	Sub-Recipient
STC	Standard Terms and Conditions
USD	United States dollars