

GUIDELINES ON PREVENTING AND COMBATING FRAUD AND CORRUPTION IN PROGRAM-FOR-RESULTS FINANCING

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Purpose and General Principles

1. These Guidelines address Fraud and Corruption (as defined in paragraph 5) that may occur in connection with the preparation and implementation of programs financed, in whole or in part, by the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA) through Program-for-Results Financing. They set out the general principles, requirements, and sanctions applicable to such programs.

2. The Loan Agreement¹ providing for the Loan² governs the legal relationships between the Borrower³ and the Bank⁴ with respect to the Program⁵ for which the Loan is made. The responsibility for the implementation of the Program under the Loan Agreement, including the primary responsibility for preventing and combating Fraud and Corruption, rests with the Borrower. The Bank, for its part, has a fiduciary duty under its Articles of Agreement to “make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.”⁶ These Guidelines constitute an important element of those arrangements and are made applicable to the preparation and implementation of the Program as provided in the Loan Agreement.

3. Recognizing that Fraud and Corruption leads to wasted resources and undermines development effectiveness, the Bank and the Borrower agree that all individuals and entities participating in the Program must observe the highest standard of ethics and, specifically, that all such persons and entities must take all appropriate measures to prevent and combat Fraud and Corruption, and refrain from engaging in Fraud and Corruption, in connection with the Program. In furtherance of these principles and purposes, the Bank and the Borrower further agree and commit to undertaking the actions set out in these Guidelines for the purpose of preventing and combating Fraud and Corruption in connection with the Program.

¹ References in these Guidelines to “Loan Agreement” include any Loan Agreement providing for an IBRD loan; Financing Agreement providing for an IDA credit or IDA grant; Trust Fund Grant Agreement or Loan Agreement providing for a recipient-executed trust fund grant or loan in cases where these Guidelines are made applicable to such agreement; and the Program Agreement with a Program Implementing Entity related to any of the above.

² References to “Loan” or “Loans” include IBRD loans as well as IDA credits and grants, project preparation advances, and recipient-executed trust fund grants or loans for programs to which these Guidelines are made applicable under the agreement providing for such grant and/or loan. These Guidelines do not apply to investment project financing (to which separate guidelines apply) or to development policy financing.

³ References in these Guidelines to “Borrower” include the recipient of an IDA credit or grant or of a trust fund grant or loan.

⁴ References in these Guidelines to the “Bank” include both IBRD and IDA.

⁵ Reference in these Guidelines to the “Program” means the Program as defined in the Loan Agreement.

⁶ IBRD Articles of Agreement, Article III, Section 5(b); IDA Articles of Agreement, Article V, Section 1(g).

Definitions of Practices Constituting Fraud and Corruption

4. These Guidelines address the following defined practices in connection with the Program:⁷

- (a) A “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.⁸
- (b) A “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly⁹ misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- (c) A “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
- (d) A “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- (e) An “obstructive practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation¹⁰ into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.

5. The above practices, as so defined, are referred to collectively in these Guidelines as “Fraud and Corruption.”

Borrower Actions to Prevent and Combat Fraud and Corruption in Connection with the Program

6. In furtherance of the above-stated purpose and general principles, except as otherwise agreed in writing by the Borrower and the Bank, the Borrower:

⁷ Unless otherwise specified in the Loan Agreement, whenever these terms are used in the Loan Agreement, including in the applicable General Conditions, they have the meanings set out in paragraph 4 of these Guidelines.

⁸ Typical examples of corrupt practice include bribery and “kickbacks.”

⁹ To act “knowingly or recklessly,” the fraudulent actor must either know that the information or impression being conveyed is false, or be recklessly indifferent as to whether it is true or false. Mere inaccuracy in such information or impression, committed through simple negligence, is not enough to constitute fraudulent practice.

¹⁰ As used in the definition of “obstructive practice”, the term “investigation” includes any inquiry undertaken under these Guidelines.

- (a) takes all appropriate measures to ensure that the Program is carried out in accordance with these Guidelines;
- (b) takes all appropriate measures to prevent Fraud and Corruption in connection with the Program, including (but not limited to) adopting and implementing appropriate fiduciary and administrative practices and institutional arrangements;
- (c) promptly informs the Bank of all credible and material allegations or other indications of Fraud and Corruption in connection with the Program that come to its attention, together with the investigative and other actions that the Borrower proposes to take with respect thereto;
- (d) unless otherwise agreed by the Borrower and the Bank with respect to a particular case, takes timely and appropriate action to investigate such allegations and indications; reports to the Bank on the actions taken in any such investigation, at such intervals as may be agreed between the Borrower and the Bank; and, promptly upon the completion of any such investigation, reports to the Bank the findings thereof;
- (e) if the Borrower or the Bank determines that any person or entity has engaged in Fraud and Corruption in connection with the Program, takes timely and appropriate action, satisfactory to the Bank, to remedy or otherwise address the situation and prevent its recurrence; provided that nothing in this sub-paragraph (e) or in sub-paragraph (d) above obligates the Borrower to take action in direct contradiction of the applicable law of the Member Country;
- (f) cooperates fully with representatives of the Bank in any inquiry conducted by the Bank into allegations or other indications of Fraud and Corruption in connection with the Program, and takes all appropriate measures to ensure the full cooperation of relevant persons and entities subject to the Borrower's jurisdiction in such inquiry; and
- (g) ensures that any person or entity debarred or suspended by the Bank is not awarded a contract under or otherwise allowed to participate¹¹ in the Program during the period of such debarment or suspension.

Sanctions and Related Actions by the Bank in Cases of Fraud and Corruption

7. In furtherance of the above-stated purpose and general principles, except as otherwise agreed in writing by the Borrower and the Bank, the Bank:

¹¹ For purposes of paragraph 6(g), participation does not include the performance under contracts entered into or other engagements began prior to the date of the Loan Agreement

- (a) promptly informs the Borrower of all credible and material allegations or other indications of Fraud and Corruption in connection with the Program that come to its attention, consistent with Bank policies and procedures;
- (b) in cases where the Bank determines it necessary to do so to fulfill its fiduciary duty, may conduct an inquiry into such allegations or other indications, independently of or in collaboration with the Borrower;
- (c) reports to the Borrower on the outcome of any such inquiry; and
- (d) may sanction¹² any individual or entity other than the Member Country¹³ if at any time the Bank determines that such individual or entity has engaged in Fraud and Corruption in connection with the Program or any other Bank-financed activity, or is otherwise subject to sanction pursuant to its prevailing policies and procedures.

Miscellaneous

8. For avoidance of doubt, nothing in these Guidelines is intended to restrict or otherwise affect the Member Country's sovereign right to investigate, prosecute or take any other action in furtherance of its own laws and regulations. Any inquiries conducted by the Bank pursuant to these Guidelines are administrative in nature, for the purpose of determining compliance with the Bank's policies, directives and procedures. Inquiries include, but are not limited to, the review of relevant accounts, records and other documents, and interviews with relevant persons.

9. Without prejudice to any provision hereof, in the event that any action to be taken by the Borrower under these Guidelines may conflict with requirements of the applicable laws and regulations of the Member Country, the Bank and the Borrower will consult with a view to identifying and agreeing on alternative actions that will avoid such conflict while ensuring compliance herewith.

10. The provisions of these Guidelines do not limit any other rights, remedies¹⁴ or obligations of the Bank or the Borrower under the Loan Agreement or any other document to which the Bank and the Borrower are both parties.

¹² Sanctions include (but are not limited to) publicly declaring such individual or entity ineligible, either indefinitely or for a stated period of time, to: (i) be awarded a Bank-financed contract; (ii) benefit from a Bank-financed contract, financially or otherwise, for example as a subcontractor; and (iii) otherwise participate in the preparation or implementation of the Program or any other project or program financed, in whole or in part, by the Bank. The Bank may publish the identity of any individual or entity sanctioned under subparagraph 7(d).

¹³ For purposes of these Guidelines, "Member Country" includes (i) officials and employees of the national government or of any of its political or administrative subdivisions, and (ii) non-autonomous government-owned enterprises.

¹⁴ The Loan Agreement provides the Bank with certain rights and remedies that it may exercise with respect to the Loan in the event of Fraud and Corruption in connection with the Program, in the circumstances described therein.