



Profonampe

# Guidelines for the Prevention and Fight Against Corrruption, terrorism and others.

December 2018

## **GUIDELINES FOR THE PREVENTION AND FIGHT AGAINST CORRUPTION, TERRORISM AND OTHERS**

### **I. Guidelines for the prevention and fight against corruption:**

#### **Goals and main principles**

1. These guidelines seek to prevent and combat fraud and corruption that might occur in the use of funds during a project's preparation and/or execution stages. These guidelines establish the general principles, requirements and sanctions that apply to the individuals and executing entities that receive these funds, are responsible for their safe keeping or transfer, or make decisions for their use or have an influence upon those decisions.

2. All individuals and entities described in the above paragraph should act guided by the strictest ethical principles. In particular, all individuals and entities shall adopt all the measures required to prevent and combat fraud and corruption and refrain from becoming involved in such fraud and corruptive acts in relation with the use of financing provided for Profonanpe's projects through inter-institutional cooperation agreements or contracts.

#### **Juridical considerations**

3. A Grant Agreement<sup>1</sup> establishing a grant regulates the juridical relationships between Profonanpe and the donor for a specific Project for which the grant is awarded. The general responsibility for executing the Project in the framework of the grant agreement vis-à-vis the donor or cooperation source, including the use of the grant funds, pertains to Profonanpe who must "take measures to ensure the grant is only used for the authorized objectives, taking into account economic and efficiency factors and rejecting all political or non-economic influence or motivation". These policies are an important component of such dispositions and apply to the design and execution of projects in the manner established in the grant agreement.

#### **Scope**

4. The following rules in these guidelines address the possibility of fraud and corruption in using a grant's fund during the design and execution of a totally or partly financed project. They include fraud and corruption, misappropriating grant funds for unacceptable expenses, as well as fraud and corruption through exercising influence in decisions relating to the use of the grant's funds. For purposes of this regulation, such fraud and corruption occur "in relation to the use of the grant's fund". Additionally, when this section refers to the grant's funds and resources, it also includes other resources from cooperation sources provided under different arrangements.

5. These policies apply to the recipients of funds and all people or entities accepting grant funds for their use (for instance, "end users"), either individuals or agencies that are responsible for safe keeping or transferring grant funds, regardless of being or not fund beneficiaries, and individuals or executing units that make decisions about the executing of grant funds or may

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<sup>1</sup> Financing agreement awarding a grant to Profonanpe to prepare/ execute a project.

influence such decisions. In these policies all these individuals and entities are called “grant fund recipients”, regardless of whether they physically possess or not such funds<sup>2</sup>.

6. Given that Profonanpe was established using GEF resources provided through the World Bank, it operates guided by World Bank guidelines and those set forth by donors or cooperation sources which provide funding for a specific Project. The specific regulations about fraud and corruption in relation with the procurement or execution of contracted goods, works or services financed with grant funds and channeled by Profonanpe are detailed in the World Bank or the donor or cooperation source’s guidelines, when so specified.

### **Definition of fraud and corrupt practices**

7. These policies address the following practices when undertaken by grant funds’ recipients or project implementers as related to the use of such funds:

- a) “Corrupt practice” is the offer, supply, acceptance or request, either direct or indirect, of any valuable object with the purpose of inappropriately influencing the acts of the other party<sup>3</sup>.
- b) “Fraudulent practice” is any action or omission including a misrepresentation which knowingly or intentionally induces or attempts to induce a party to error with the purpose of obtaining a financial or other benefit or avoiding an obligation<sup>4</sup>.
- c) “Collusion practice” is an arrangement between two or more parties to accomplish an irregular objective, such as inappropriately influencing the acts of a third party.
- d) “Coercive practice” is the impediment or damage or threat to cause impediment or damage, either directly or indirectly, to a party or his/her goods, with the purpose of inappropriately influencing the behavior of such party.
- e) “Obstructive practice” is i) the deliberate destruction, forgery, alteration or hiding of important evidence for an investigation, or a misrepresentation before investigators with the purpose of materially impeding an investigation by the donor concerning accusations of corrupt, dishonest, coercive, or corruption practices and the threat, harassment or intimidation by one party against another with the purpose of preventing the latter to reveal information about issues pertaining to the investigation, or to prevent it from carrying out such investigation; or ii) actions aimed at materially preventing the exercise of the donors contract-based right to carry out audits or access information.

8. These practices so defined, may occasionally be referred to in these policies collectively as “fraud and corruption”.

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<sup>2</sup> Some individuals or entities may be included in one or more of the categories detailed in paragraph 5. For instance, a financial intermediary may receive a payment for its services, transfer funds to end users and make decisions about the use of grant funds or have influence in such decisions.

<sup>3</sup> Bribes and illicit fees are typical examples of corrupt practices.

<sup>4</sup> To act “knowingly or intentionally”, the individual engaged in a dishonest act must know the information or representation he/ she convey is false or is indifferent as to its trustworthiness. Mere inaccuracy of such information or representation, resulting from mere negligence does not suffice to constitute a fraudulent practice.

### **Actions to prevent and combat fraud and corruption in using grant funds**

9. Pursuant to the objective and general principles outlined above, the recipient of funds, or grantee, will:

- a) Adopt all pertinent measures to prevent corrupt, dishonest, collusion and obstructive practices concerning the use of grant funds in particular (but not limited to) the following: i) adopting fiduciary and administrative practices and institutional regulations that are appropriate to ensure grant funds are only used for the objectives of the grant and ii) ensure that all its representatives<sup>5</sup> related to the project and all project fund recipients with whom agreements are signed concerning the project are aware of these policies;
- b) Immediately report to the donor all accusations of fraud and corruption relating to the use of funds that he/she may become aware of;
- c) If the donor determines that any of the individuals or entities described in paragraph a) above has engaged in corrupt, fraudulent, collusive, coercive, or obstruction practices regarding the use of grant funds, he/she will undertake timely and appropriate measures, which are satisfactory to the donor, to correct such practices as they may occur;
- d) Include in its agreements with each of the grantees the dispositions that donors may request to properly enforce these policies, in particular (but not limited to) dispositions that i) request the grantee to comply with the provisions under paragraph 10 herein, ii) request the grantee to allow the donor and Profonanpe to inspect all its accounts and records and other documents as relating to the Project that must be prepared by virtue of the Grant agreement, and which may be audited by Profonanpe or the donor; iii) establish the early termination or suspension of the agreement with the grantee if the donor declares such grantee is no longer eligible, pursuant to paragraph 11 below; and iv) request the reimbursement by such grantee of all grant funds in connection with such fraud and corrupt act;
- e) Fully assist the donor's representatives in all investigations concerning the fraud and investigation claims in connection with the use of grant funds; and
- f) If the donor determines a grantee is no longer eligible pursuant to paragraph 11 below, he/she shall adopt all the necessary and appropriate steps to enforce such ineligibility, including the following procedures: i) exercise its right to early termination or suspension of the agreement between Profonanpe and the grantee/implementer and/or ii) request reimbursement of funds.

### **Other Grantees**

10. Pursuant to Profonanpe's objectives and general principles described above, all Project grantees signing a covenant or interinstitutional agreement with Profonanpe concerning a specific Project will:

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<sup>5</sup> An entity's representatives include its officials, employees and consultants.



- a) Undertake Project activities in compliance with the general principles outlined above and the specific provisions of the corresponding covenant or agreement with Profonanpe as described in section d) of paragraph 9) above, and include similar provisions in all the agreements relating to the project that they may sign with other grantees;
- b) Immediately report to Profonanpe all accusations of fraud and corruption relating to the use of grant funds they may become aware of;
- c) Cooperate with Profonanpe representatives in all investigations concerning the fraud and corruption accusations related to the use of grant funds;
- d) Adopt all appropriate measures to prevent corrupt, fraudulent, collusion and obstructive practices of their representatives (as applicable) relating to the use of grant funds and other cooperation resources provided under any other arrangement, in particular (but not limited to) i) the adoption of administrative and financial practices and institutional provisions appropriate to ensure that grant funds are used only for the purposes of the grant, and ii) assuring all the institutions' members receive a copy of these policies and are aware of their contents;
- e) If a grantee's representative(s) is declared ineligible pursuant to dispositions under paragraph 11, such grantee will take all the necessary and appropriate steps to enforce such ineligibility provisions through, among others, the following procedures: removing such representative from all duties and responsibilities relating to the Project and, if requested by the donor/cooperation source or Profonanpe or as appropriate for any other reason, terminate the contract relationship with such representative(s); and
- f) If an agreement has been entered in relation with the Project with an individual or entity found ineligible pursuant to provisions in paragraph 11, all necessary and appropriate steps will be taken to ensure that the policies are is enforced through the following procedures, among others: i) exercise Profonanpe's right to the early termination or suspension of the agreement between Profonanpe and such grantee/ implementer(s), and/ or ii) request the reimbursement of funds.

### **Sanctions and related measures by the donor in cases of fraud and corruption**

11. To comply with the objectives and general principles described above, the donor<sup>6</sup> will have the right to adopt the following measures:

- a) Sanction any grantee<sup>7</sup> through actions that include, but are not limited to, declaring such person or entity ineligible to receive loans or grant funds provided by the donor/cooperation source, pursuant to its provisions, or to engage in preparing or executing the Project, or any other Project, funded whether full or partially by the involved donor/cooperation source, if at any time the donor finds<sup>8</sup> that the person or entity has been involved in corrupt, fraudulent, collusion, coercive or obstructive practices in regards of the use of the grant funds;

<sup>6</sup> Specifically mentioned in the World Bank guidelines.

<sup>7</sup> In case of tenders, the World Bank may also sanction individuals and entities engaged in fraudulent and corruption practices that occur during the bidding processes, regardless if they win or not.

<sup>8</sup> The World Bank has established a Sanctions Board and the respective procedures to perform such inspections. The Sanctions Board's procedures include a full list of sanctions available to the Bank.

- b) If in the case of the World Bank, it finds that the grantee is also a supplier of goods, works or services, it will declare him/her ineligible pursuant to its own procurement and hiring policies; and
- c) Declare such company, consultant or individual ineligible, pursuant to paragraph 11 a) if such company, consultant or individual has been declared ineligible pursuant to its own procurement and hiring policies.

## II. Other special obligations<sup>9</sup>

**The implementer of a Project financed with resources managed by Profonanpe shall abide by the special obligations defined below:**

Provide the donor/cooperation source and Profonanpe, at their sole request and immediately, all information and documents the donor/cooperation source and Profonanpe require to comply with their obligation to prevent money laundering and financing of terrorism as well as for the ongoing monitoring of the relationship with the implementer, as required for this purpose.

For executing the covenants, the implementer shall act on its own name and behalf. Consequently, the following must be strictly observed:

- a) The implementer's funds or those funds invested in financing the Project shall not come from an illicit source, and particularly, but not limited to, they shall not be related to drug trafficking, corruption, organized crime or terrorism;
- b) The implementer's equity or share capital shall not be of illicit origin, and particularly, but not limited to, it shall not be related to drug trafficking, corruption, organized crime or terrorism;
- c) The implementer shall not be involved in the acquisition, possession or use of assets of illicit origin, and particularly, but not limited to, be connected with drug trafficking, corruption, organized crime or terrorism; and
- d) The implementer shall not be involved in terrorism financing.

**The receptor of resources from a Project administrated or funded by Profonanpe declares that it will not held commercial relationships or any other activity:**

- a) With or in favor of persons, organizations or institutions enumerated in the sanction list from the United Nations Safety Council, the European Union or the German Federal Republic ("List of sanctions"), or
- b) That transgress the external commerce control embargos or the so-called financial sanctions from the previously mentioned organisms (the embargos or financial sanctions are called "Sanctions").

**The recipient of resources administrated or funded by Profonanpe will not have or take on commercial relations with persons, organizations or institutions that are mentioned in the List of Sanctions, and will not perform any other activity that may cause a violation to the Sanctions.**

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<sup>9</sup> KfW procedures.

**The recipient of resources administrated or funded by Profonanpe** will inform Profonanpe immediately and by personal initiative, about any actions that may cause a Sanction to his or her entity, a member of his or her board or his or her corporative annexes, or to any of his or her partners.

**The recipient of resources administrated or funded by Profonanpe** will not perform any transaction related to the Project or any other activity that may cause a violation to the Sanctions.