



ADAPTATION FUND

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Adaptation Fund Board
Ethics and Finance Committee
Seventh Meeting
Durban, 12 December, 2011

INVESTIGATIVE PROCEDURES TO ADDRESS MISUSE OF FUNDS

Background

1. At its 15th meeting the Board decided to *request the secretariat to present to the next EFC meeting a document on how to trigger a review or an investigation, including to address cases of financial mismanagement. The document should present examples of the experience of other funds and proposals on how to deal with the results of such a review or an investigation*¹.

2. In fulfilling this request, the secretariat asked for information from the Climate Investment Funds (CIF), the Global Environment Facility (GEF), the Multilateral Fund for the implementation of the Montreal Protocol (MLF), the Global Fund to fight AIDS, Tuberculosis and Malaria (the Global Fund), and the Global Alliance for Vaccines and Immunization (GAVI). It also reviewed the Adaptation Fund's applicable existing rules, policies and procedures.

3. The first section of this document summarizes the information received from the above mentioned funds; the second section presents an overview of relevant provisions and rules approved by the Board which are contained in the operational policies and guidelines for parties to access resources from the Adaptation Fund (OPG), the standard legal agreement between the Board and the implementing entities, and the accreditation process. The final section presents a proposal on how to move forward.

4. The secretariat would like to draw the Board's attention to the fact that it has limited the scope of this work to investigation, which is considered the appropriate measure to tackle cases of financial mismanagement and any other forms of malpractice, among those mentioned in paragraph one above. A review, as it is more extensively explained in the third section of this document, addresses performance or technical issues, which are covered by the evaluation framework.

The investigative experience of other funds

5. For the purpose of this study, we can distinguish between:

- (a) Funds that rely on the investigative rules and procedures of their implementing entities (CIF, GEF, MLF); and
- (b) Funds that have established some sort of investigative function at the secretariat or governing body level (GAVI Alliance, the Global Fund).

6. The first type of fund has not (or has not yet begun) funding projects/programmes using the direct access modality; the funds of the second type are already providing direct access to their resources to eligible countries.

¹ Decision B.15/23, paragraph (e).

Climate Investment Funds (CIF)

7. The Climate Investment Funds' (CIF) projects and programmes are implemented through the Multilateral Development Banks (MDBs), which include the Asian Development Bank (ADB), Inter-American Development Bank (IADB) Group, African Development Bank (AfDB), European Bank for Reconstruction and Development (EBRD), and the International Bank for Reconstruction and Development (IBRD)/International Development Association (the World Bank) and International Finance Corporation (IFC). As such, MDBs rely on their own policies and procedures in developing and managing activities financed under the CIF and there are no CIF-specific investigative rules and procedures. For the World Bank, for example, IBRD policies that would trigger the launch of an investigation include, but are not limited to, procurement guidelines and anti-corruption guidelines. The associated possible resulting outcomes for CIF Projects implemented through the World Bank range from suspension and cancellation of projects in accordance with IBRD's policies, or other appropriate outcomes following the sanctions procedures. The reference to such guidelines and procedures is reflected within each agreement with an IBRD borrower/recipient.

The Global Environment Facility (GEF)

8. As of the date of issuance of this document, the GEF also disburses its grants through multilateral agencies which bear the fiduciary responsibility to investigate any mismanagement of funds. In order to facilitate the process to address complaints, the GEF has established the function of a Conflict Resolution Commissioner within the secretariat. In case the Commissioner receives any complaints related to financial mismanagement, corruption or other forms of malpractice in the context of the implementation of a project, the Commissioner consults with the GEF CEO, shares the information with the relevant GEF agency and works with the agency to activate its own internal mechanisms. There is full collaboration between the agencies and the GEF Secretariat. Investigative procedures of the agencies are those that are activated in cases of operational complaints. Those raising issues are encouraged to contact a agency representatives in the field.

Multilateral Fund for the implementation of the Montreal Protocol (MLF)

9. The MLF disburses its grants through its multilateral and bilateral implementing agencies², which bear fiduciary responsibility. There is no investigative procedure neither at the level of the Executive Committee nor at the secretariat level. The extent of the agencies responsibility is outlined in the agreement they sign with the MLF and refers to each agency's rules and procedures. In case of mismanagement of funds, the implementing agencies rules apply and they should undertake the related investigation. If the secretariat has information about a possible case of mismanagement, it notifies the implementing agencies concerned and they should take the appropriate action according to their own rules and procedures.

² UNDP, UNEP, UNIDO, the World Bank and bilateral cooperation agencies.

Global Alliance for Vaccines and Immunization (GAVI)

10. The GAVI Alliance was established in 2001. It supports countries largely through funding for vaccines and related supplies which are centrally procured and delivered by UNICEF. Approximately 85% of GAVI support is provided in this way. GAVI cash-based programmes represent about 15% of its disbursements, and consist of programmes to support immunization services, health systems strengthening, and civil society organizations. It is in the cash-based programmes where the organization considers that risk of misuse is the highest.

11. In 2008 GAVI established the **Transparency and Accountability Policy (TAP)**³, which came into effect in 2009 and governs the management of all cash-based support to GAVI eligible countries. Further, the **Internal Audit (IA)** function was created and commenced at the end of 2009.

12. The scope of the IA's work extends not only to the Secretariat but also to the programs and activities carried out by GAVI's grant recipients and partners.

13. IA staff govern themselves by adherence to The Institute of Internal Auditors' *Code of Ethics*. The Institute's *International Standards for the Professional Practice of Internal Auditing* constitute the operating procedures for the department. The Institute of Internal Auditors' *Practice Advisories* are adhered to as applicable. In addition, IA adheres to GAVI's policies and procedures.

14. The Director of IA reports to the Chief Executive Officer as well as to the Board, who appoints and terminates the Director upon recommendation of the Board's Audit and Finance Committee. The Director of IA has free and unrestricted access to the Chair and Vice-Chair of the Board and to the Chair of the Audit and Finance Committee.

15. IA's scope encompasses the examination and evaluation of the adequacy and effectiveness of the organization's governance, risk management process, system of internal control, and the quality of performance in carrying out assigned responsibilities to achieve GAVI's stated goals and objectives. It includes, among other functions, reviewing the adequacy, implementation and operation of TAP and other anti-corruption, fraud and related misuse policies and procedures; and acting as the Compliance Officer for GAVI's Whistleblower Policy and investigating whistleblower complaints and allegations of misconduct or fraud.

16. GAVI considers the following as fraud or misuse of funds: if funds have been used for purposes other than the object of the programmes, either as a result of a mistake, a misinterpretation of the eligibility of activities, insufficient justification of expenses, or violation of transparency rules.

³ <http://www.gavialliance.org/about/governance/programme-policies/tap/>

17. When GAVI suspects misuse of its funds, all cash disbursements to the programme are halted and GAVI funds in-country are frozen pending investigation. If misuse is confirmed, GAVI's funding agreement with a partner government requires it to repay any misused funds.

18. There are broadly speaking two mechanisms which can trigger an investigation: the most important one being GAVI's own, in-country audits, carried out by the TAP Unit on a regular basis, and secondly issues that the secretariat picks up from programme reporting, external audit reports, tips from in-country development partners (the GAVI Alliance consists also of bilateral cooperation agencies and organizations like UNICEF, the World Bank and WHO, which have in-country presence), and referrals from the Secretariat's own programmatic staff who travel to countries on a regular basis to monitor progress. Employees can also report a potential violation to their superiors or to the Director of IA or the Chair of the Audit and Finance Committee. The step to perform an investigation is taken when any source of information leads to 'a credible concern about possible misuse'. That can be the result of a TAP visit, a whistleblower, an in-country partner, an external auditor etc.

19. There is no formal investigative procedure that GAVI applies per se, other than maintaining compliance with the laws of the country where the investigation takes place. GAVI applies generally accepted principles that are applied by investigators globally, such as due process, obtaining sufficient evidence, etc.

20. The Internal Audit Director is end-responsible for all audits and investigations that are carried out by the TAP unit. The GAVI Board recently approved an expansion of the headcount of this team to 7 officers.

The Global Fund to fight AIDS, Tuberculosis and Malaria (the Global Fund)

21. The experience of the Global Fund with investigative procedures and functions is relevant to the Adaptation Fund due to its Country Coordinating Mechanism (CCM), which, despite many deviations, is similar to the direct access modality compared to other Funds that primarily fund projects that are implemented by MDBs or international organizations. The Global Fund disburses more than US\$2 billion annually, thereby necessitating commensurate measures and procedures to monitor funds as well as to prevent and respond to cases of financial mismanagement.

22. The unit or the department which manages and supervises issues of financial misappropriation is the **Office of the Inspector General (OIG)**⁴, which became operational in 2005. The OIG operates as an independent unit of the Fund reporting directly to its Board, charged with audit, inspection, counter-fraud and promotion of ethical conduct, investigations, assurance validation, and functional reviews. The Inspector General has authority to access all books and records and seek any information required as it deems necessary.

⁴ <http://www.theglobalfund.org/en/about/structures/oig/>

23. The OIG has a practice of closely monitoring disbursed funds by conducting comprehensive risk-based audits, encouraging the reporting of fraud and abuse directly or through a third party, undertaking comprehensive investigations, collaborating with national authorities to ensure that cases are criminally prosecuted where appropriate, and sharing information insofar as possible with the public if fraud or corruption is exposed.

24. Allegations and reports of misuse are reviewed by OIG staff. If the issue falls within the mandate of the OIG, according to its *Charter and Terms of Reference*, an assessment is made to determine the most relevant course of action, including whether an audit or an investigation is appropriate, referral of the matter to other areas of the GF, or referral to national authorities. The Global Fund has instituted comprehensive arrangements to protect whistleblowers, delineated in its *Whistleblower guidelines*. The Global Fund also has *Corporate Sanctions Procedures relating to the Code of Conduct for Suppliers*.

25. In addition to the controls and policies that allow for the monitoring of funds, the Global Fund established the High-Level Independent Review Panel on Fiduciary Controls and Oversight Mechanism to review the Global Fund's current practices on financial oversight and implementation. Recognizing that the OIG has uncovered cases of financial misappropriation in some countries, the Panel's report introduces recommendations to improve financial and Board oversight, simplifying processes, and the implementation of risk management measures.

Applicable provisions approved by the Board

26. The various sets of rules approved by the Board contain some provisions that refer to the Board's right to carry out an investigation:

Operational policies and guidelines

27. Paragraph 59 of the OPG states:

*The Board reserves the right to carry out **independent reviews, evaluations or investigations** of the projects and programmes as and when deemed necessary. The costs for such activities will be covered by the Fund. Lessons from evaluations will be considered by the PPRC when reviewing project/programme proposals.*

In order to facilitate the discussion, it is useful to establish a common understanding of the terms mentioned in the paragraph above. The literature on the subject defines:

- **Review:** An assessment of the performance of an intervention, periodically or on an ad-hoc basis. Note: Frequently "evaluation" is used for a more comprehensive and/or more in-depth assessment than "review". Reviews tend to

emphasize operational aspects. Sometimes the terms “review” and “evaluation” are used as synonymous.⁵

- **Evaluation:** The systematic and objective assessment of an on-going or completed project, programme or policy, its design, implementation and results. The aim is to determine the relevance and fulfillment of objectives, development efficiency, effectiveness, impact and sustainability.⁶
- **Investigation:** A legally based and analytical process designed to gather information in order to determine whether wrongdoing occurred and, if so, the persons or entities responsible.⁷

Thus the OPG refer to different tools aimed to tackle two categories of issues that may arise during project/programme implementation:

- (a) If issues of performance, effectiveness, or technical problems come up, a **review** or an **evaluation** can provide answers;
- (b) If issues of corruption, misuse of funds, or neglect of duty come up, an **investigation** may be the appropriate action to take.

Issues related to bullet a) have been addressed by the evaluation framework approved by the Board at its 15th meeting. This document refers only to issues related to bullet b) and is therefore restricted to investigation.

28. The Board has not established any specific investigation procedures yet. However, on the section about the accreditation process the OPG also state:

*37. The Board reserves the right to review or evaluate the performance of implementing entities at any time during an implementing entity's accreditation period. It also reserves the **right to investigate the use of the Fund resources, if there is any indication of misappropriate allocations**. An investigation could include an independent audit of the use of the Fund resources. A minimum notification of 3 months will be given to an implementing entity if they have been identified by the Board as being the object of a review or evaluation.*

*38. The Board may also consider **suspending or cancelling the accreditation** of an implementing entity if it made false statements or provided intentionally false information to the Board both at the time of accreditation to the Board or in submitting a project or programme proposal.*

⁵ OECD/DAC 2010, Glossary of key terms in evaluation and results-based management.
<http://www.oecd.org/dataoecd/29/21/2754804.pdf>

⁶ Id.

⁷ UN Office of Internal Oversight Services, 2009. Investigations Manual, p.7.
http://www.un.org/Depts/oios/pages/id_manual_mar2009.pdf

39. *Before the Board makes its final decision on whether to suspend or cancel the accreditation of an implementing entity, the entity concerned will be given a fair chance to present its views to the Board.*

29. Further, on the section related to transfer of funds, the OPG state:

53. *The Board will instruct the Trustee to transfer funds in tranches, based on the disbursement schedule with time bound milestones submitted with the fully developed project/programme document. The Board may require a progress review from the Implementing Entity prior to each tranche transfer. The Board may also **suspend the transfer of funds** if there is evidence that funds have been misappropriated.*

Standard legal agreement between the Board and the implementing entities

30. In addition to the provisions of the OPG, the standard legal agreement between the Board and the implementing entities provides for the suspension of a project for reasons that include, but are not limited to:

- Financial irregularities in the implementation of the project, or
- A material breach of the agreement and/or poor implementation performance leading the Board to conclude that the project can no longer achieve its objectives⁸

31. Furthermore, the standard legal agreement establishes certain reporting obligations for the implementing entities with regard to the projects under implementation:

7.01. *The Implementing Entity shall provide to the Board, through the Secretariat, the following reports and financial statements:*

a) *annual progress reports on the status of the Project implementation, including the disbursements made during the relevant period or more frequent progress reports if requested by the Board;*

b) *a Project completion report, including any specific Project implementation information, as reasonably requested by the Board through the Secretariat, within six (6) months after Project completion;*

c) *a mid-term⁹ and a final evaluation report, prepared by an independent evaluator selected by the Implementing Entity. The final evaluation report shall be submitted within nine (9) months after Project completion. Copies of these reports shall be*

⁸ Standard legal agreement between the Board and implementing entities. [http://www.adaptation-fund.org/sites/default/files/Model%20Legal%20Agreement%20\(Board%20Approved\).pdf](http://www.adaptation-fund.org/sites/default/files/Model%20Legal%20Agreement%20(Board%20Approved).pdf)

⁹ The evaluation framework approved by decision B.15/23 states that *projects and programmes that have more than four years of implementation will conduct a mid-term evaluation after completing the second year of implementation.*

*forwarded by the Implementing Entity to the Designated Authority for information;
and*

d) a final audited financial statement of the Implementing Entity Grant Account, prepared by an independent auditor or evaluation body, within six (6) months of the end of the Implementing Entity's financial year during which the Project is completed.

32. In particular, the annual progress reports and the mid-term evaluation reports are tools that the Board/secretariats should use to detect any irregularities or red flags during project implementation, eventually leading to an investigation.

Accreditation process

33. The accreditation process comprises the review by the Accreditation Panel of three types of fiduciary standards that the applicant entities need to meet so that they can be recommended for accreditation as NIE, RIE or MIE. The fiduciary standards related to transparency, self-investigative powers and anti-corruption measures¹⁰ include the policies and frameworks to deal with financial mismanagement or other forms of malpractice, namely:

- Evidence/tone/statement from the top emphasizing a policy of zero tolerance for fraud, financial mismanagement and other forms of malpractice by implementing entity staff or from any external sources associated directly or indirectly with the projects;
- Demonstration of capacity and procedures to deal with financial mismanagement and other forms of malpractice; and
- Evidence of an objective investigation function for allegations of fraud and corruption.

34. The accreditation application form approved by the Board provides examples of the supporting documentation/information that may be provided to demonstrate compliance with this category of fiduciary standards. This includes the documentation establishing avenues for reporting non-compliance/violation/misconduct and business-conduct concerns; and also the structure and process/procedures within the organization to handle cases of fraud and mismanagement and undertake necessary investigative activities.

35. Thus, all the accredited implementing entities have policies and procedures in place to address mismanagement or corruption cases and to undertake investigative activities. Moreover, the Accreditation Panel has followed a practice of requesting the applicant entities to post information on their websites to channel complaints, when that information was not previously available. In some cases, the applicant entities have made public those channels following the Accreditation Panel recommendation during the process.

¹⁰ Accreditation application, section IV. <http://www.adaptation-fund.org/node/192>

Investigative procedure for the Adaptation Fund

36. According to the applicable rules and procedures outlined above,
- The Board can investigate the use of funds resources if there is any indication of misappropriate allocations;
 - Through reviews of annual progress reports and mid-term evaluations, the Board/secretariat may detect potential issues of corruption/mismanagement.¹¹ Other reporting requirements such as project completion reports, final evaluation reports or audited financial statements can also provide useful information. Since in these cases the information is only required upon completion of the project, it may be available too late for implementing any corrective measures but can be used to prevent future project approvals or investigation into other projects under implementation by an implementing entity.
 - The possibilities for the Board to apply sanctions to implementing entities are to suspend or cancel the accreditation application in case of false statements or submission of false information at the time of accreditation or in submitting a project/programme proposal; or to suspend the transfer of funds if there is evidence that funds have been misappropriated;
 - Finally, all accredited implementing entities have demonstrated rules and procedures in place to deal with financial mismanagement, fraud and other forms of malpractice. The Board could eventually recourse to those mechanisms to address the findings of the investigation.
37. Given the above, the following gaps in the applicable rules have been identified:
- Lack of specific rules and procedures related to how to carry out an investigation, including the distribution of roles between the Board and the implementing entities to avoid duplication of functions;
 - Lack of an investigative function at the Board/secretariat level.
38. The secretariat presents the following suggestions for addressing the gaps in the applicable rules for consideration by the EFC:
- (a) The EFC may want to consider initiating an investigative mechanism to carry out investigation activities in case of suspicion arising from review of annual progress reports, mid-term evaluations, project completion reports, terminal evaluations or audited financial statements; or from any other sources of information. In this regard, the EFC may wish to request the secretariat to present a proposal at its next meeting. Further,

¹¹ See footnote 4 above.

the Board may wish to consider discussing this issue in the context of a broader risk management framework encompassing the accreditation process as well.

(b) A suggested outline of the process is presented below:

- i. The procedure should include the establishment of a specific function to carry out investigations. In that regard, the EFC may want to consider the following options: a) an independent officer/unit accountable to the Board; or b) a dedicated staff position/unit within the secretariat;
- ii. Adequate mandate to initiate, undertake and complete an investigation to address cases of corruption/mismanagement of funds that may have occurred in the context of project/programme implementation;
- iii. The outcome of an investigation will be shared with the relevant Party so that the process at the domestic level is initiated. The process will establish the nature of the communications related to the case under investigation;
- iv. The EFC will consider the outcome of the investigation and eventually forward a recommendation to the Board for decision making;
- v. The procedure shall clearly establish the steps to take pending the outcome of an investigation and in case the case of corruption/mismanagement is proven.

(c) Pending the establishment of an investigative procedure, request the secretariat to include information on the Fund's website about the mechanisms for handling complaints of accredited implementing entities.

Recommendation

39. The EFC may want to consider document AFB/EFC.7/5 and recommend to the Board to request the secretariat to develop an investigative procedure for the Fund as outlined in paragraph 38 of document AFB/EFC.7/5 with any amendments introduced by the EFC, and present it for consideration by the EFC at its next meeting.