

福建省卫生和计划生育委员会

闽卫规划函〔2017〕886号

福建省卫生计生委 福建省财政厅关于转发 世界银行贷款中国（福建）医疗卫生 改革促进项目反腐败指南的通知

各设区市卫生计生委、财政局，平潭综合实验区卫生计生局、财政金融局：

为履行世界银行贷款中国（福建）医疗卫生改革促进项目《贷款协议》和《项目协议》的反腐败约定，确保项目贷款资金用于既定任务，提高贷款资金使用效率。现将世界银行发出的《结果导向型规划贷款防止和打击欺诈和腐败指南》转发你们，并提出以下要求，请一并贯彻执行。

一、提高认识，恪守反腐败准则

欺诈和腐败行为导致资源浪费和发展效率降低，世界银行对腐败行为坚决制止。各项目单位要深刻认识并高度重视世行对预防和打击欺诈与腐败行为严格要求的重要性。从保证贷款资金有效、高效使用出发，严格遵守世行有关防止欺诈和腐败的要求。如有违反，世行有权根据贷款项目协定及项目评估文件等法律文

件选择终止贷款项目，并进行通报。

二、加强监管，落实管理制度

各项目单位要加大管理力度，完善并落实反腐败制度。定期对有关反腐败准则的实施情况进行督查指导，必要时委托第三方对项目采购、财务管理等环节进行专项核查。同时，各项目单位在项目实施过程中应定期通过世界银行网站检查世行发布的禁止名单和暂停名单，确保没有被禁止或暂停的公司被授予本项目边界下的合同。世行如有询问调查等要求，应积极配合审阅有关账目和记录等文件。

三、注重成效，建设廉政队伍

各级有关行政部门和项目单位应严格遵守世行反腐败的有关规定，加强项目队伍监督管理，健全完善廉政廉洁建设的长效机制。同时，采取事前防范，事中监督和事后惩处等有关措施，确保涉及项目实施的单位和个人遵守廉洁自律规定，建设清正廉洁、专业高效、勇于担当的项目实施队伍，树立风清气正的项目实施氛围，为世行贷款项目顺利推进提供保障。



(此件主动公开)

抄送：世行贷款项目省级部门联席会议成员单位。

结果导向型规划贷款

防止和打击欺诈和腐败指南

2012年2月1日版，2015年7月10日修订

目的和总则

1. 本指南用于应对国际复兴开发银行（IBRD）和国际开发协会（IDA）部分或全部资助的结果导向型贷款规划的准备和实施中可能出现的欺诈和腐败行为(如第5款定义)。它阐明了适用这类规划的总体原则、要求和制裁措施。
2. 约定贷款¹的贷款协定²就贷款资助的规划确定了借款人³和世行⁴之间的法律关系。贷款协定中规划⁵的实施，包括预防和打击欺诈和腐败的主要工作，由借款人负责。世行方面根据其协定受托责任“做出安排确保任何一笔贷款资金只能用于提供该贷款的既定目的，并充分注意资金的经济性与效率性，而不应涉及政治的或其他非经济因素的影响或考虑。”⁶本指南是上述安排的一个重要组成部分，如贷款协定所规定，它适用于规划的准备和实施。
3. 鉴于欺诈和腐败导致资源浪费和发展效率降低，世行和借款人同意参与规划的所有个人和单位都必须遵守最高的道德标准。具体而言，就是所有这些个人和单位在涉及规划时都必须采取一切适当措施预防和打击欺诈和腐败，并克制自己不得涉足欺诈和腐败。为有助于实现这些原则和目标，预防和打击涉及规划的欺诈和腐败，世行和借款人进一步同意并致力于采取本指南明确的行动措施。

欺诈和腐败行为的定义

4. 本指南就规划⁷相关的如下做法进行了定义：
 - (a) “腐败活动” 意指直接地或间接地提供、给予、收受或要求任何有价财物来不适当地影响另一方的行为；⁸

¹ 本指南提及的“贷款”（“Loan” or “Loans”）包括国际复兴开发银行（IBRD）贷款以及国际开发协会（IDA）信贷和赠款、项目准备预付资金和根据赠款和/或贷款协定适用本指南的承贷人执行的规划用信托基金赠款或贷款。本指南不适用于投资项目融资（投资项目融资另有指南），也不适用于发展政策融资。

² 本指南提及的“贷款协定”包括约定国际复兴开发银行（IBRD）贷款的任何贷款协定；约定国际开发协会（IDA）信贷或赠款的融资协定；适用本指南的约定承贷人执行信托基金赠款或贷款的信托基金赠款协定或贷款协定；以及涉及上述任何相关内容的与规划实施实体签订的规划协定。

³ 本指南提及的“借款人”包括国际开发协会（IDA）信贷或赠款或信托基金赠款或贷款的承贷人。

⁴ 本指南提及的“世行”包括国际复兴开发银行（IBRD）和国际开发协会（IDA）。

⁵ 本指南提及的“规划”指的是贷款协定定义的规划。

⁶ 国际复兴开发银行（IBRD）协定，第三款，第5节（b）；国际开发协会（IDA）协定，第五款，第1节（g）。

⁷ 除非贷款协定另有具体规定，否则在贷款协定中，包括在适用通则中，使用这些术语时，其含义与本指南第4款界定的含义相同。

⁸ 腐败活动的典型例子包括贿赂和“回扣”。

- (b) “欺诈活动” 意指任何行为或隐瞒，包括歪曲事实，任何有意或不计后果的误导，或企图误导一方以获得财物或其他方面的利益或为了逃避一项义务；⁹
- (c) “串通活动” 意指由双方或多方设计的一种为达到不当目的的安排，包括不适当地影响另一方的行为；
- (d) “施加压力” 意指直接地或间接地削弱或伤害、或威胁削弱或伤害任何一方或其财产以不适当地影响该方的行为；
- (e) “妨碍行为” 意指 (i) 故意破坏、伪造、改变或隐瞒调查¹⁰所需的证据材料或向调查官提供虚假材料严重妨碍世行对被指控的腐败、欺诈、施加压力或串通行为进行调查，和/或威胁、骚扰或胁迫任何一方使其不得透露与调查相关的所知信息或参与调查，或 (ii) 企图严重妨碍世行行使审计合同权利或获取信息。

5. 上述定义的做法在本指南中统称为“欺诈和腐败”。

为预防和打击涉及规划的欺诈和腐败借款人应采取的行动措施

6. 为有助于实现上述目标和总体原则，除非借款人和世行之间另有书面协议，否则借款人将：
- (a) 采取一切适当措施确保规划按照本指南实施；
 - (b) 采取一切适当措施预防涉及规划的欺诈和腐败行为，包括（但不限于）采取和实施受托责任和行政措施以及机构安排措施；
 - (c) 对于注意到的所有可信和重要的规划相关欺诈和腐败指控或其它迹象，在采取借款人提出要进行的有关调查等行动措施的同时，迅速将其告知世行；
 - (d) 对于具体案件，除非借款人和世行之间另有协议，否则将采取及时、适当行动措施对其指控和迹象进行调查；根据借款人和世行可能共同商定的间隔时间定期向世行报告案件调查所采取的行动措施；调查结束后迅速向世行报告其结果。
 - (e) 如果借款人或世行确定任何个人或单位从事涉及规划的欺诈和腐败，采取及时、适当的令世行满意的措施予以补救，或者另行处理，防止案件再次发生；假设本子条款（e）和上述子条款（d）要求借款人按照义务采取的行动措施与成员国的适用法律没有直接矛盾；
 - (f) 在世行对涉及规划的欺诈和腐败指控或其它迹象开展任何询问调查时，全力

⁹ 关于“有意或不计后果”行事，欺诈行为人必须知道传达的信息或印象是假的，或者不顾忌其真假。仅仅由于这类信息或印象不准确，出于单纯的疏忽，不足以构成欺诈活动。

¹⁰ 正如“妨碍行为”定义中所使用，“调查”这个术语包括本指南要求开展的任何询问调查。

配合世行代表,并按照借款人权限采取一切适当措施确保相关个人和单位在询问调查中全力配合;

- (g) 并确保世行禁止或暂时禁止的任何个人和单位在其禁止或暂时禁止期限内不被授予规划内合同或以其它方式允许参与¹¹规划。

出现欺诈和腐败时世行应采取的制裁和有关行动措施

7. 为有助于实现上述目标和总体原则,除非借款人和世行之间另有书面协议,否则世行将:

- (a) 对于注意到的所有可信和重要的规划相关欺诈和腐败指控或其它迹象,按照世行政策和程序,迅速将其告知借款人;
- (b) 在世行确定有必要的时候,为履行其受托职责,世行可以独立于借款人或与借款人协作对此类指控或其它迹象开展询问调查;
- (c) 向借款人报告任何此类询问调查的结果;并
- (d) 如果在任何时候世行确定有任何个人或单位从事涉及规划或其它世行资助活动的欺诈和腐败行为,或者他们在其它方面按照世行现行政策和程序必须予以制裁,可以对个人或单位,不包括成员国家¹²,给予制裁¹³。

其它

8. 为避免疑虑,本指南的内容没有意图限制或以其它方式影响成员国为完善落实其法律法规所开展的调查、起诉或采取任何行动措施的主权权利。世行按照本指南开展的任何询问调查属于行政性质,目的在于确保世行的政策、指导方针和程序得到遵守。询问调查包括但不限于审阅有关账目、记录等其它文件,以及相关人员进行访谈。

9. 在对指南任何规定没有偏见的情况下,万一借款人采取的本指南范围内任何行动措施与成员国的适用法律法规要求存在矛盾,世行和借款人将共同磋商,以便于找出并商定既能保证遵守本指南又能避免此矛盾的替代方案。

10. 本指南的规定不限制世行或借款人依据贷款协定或双方达成的任何其它文件所具有的任何其它权利、补救措施¹⁴或义务。

¹¹ 关于第6款(g),参与不包括贷款协定签订日期之前签约履行的工作任务或其它约定活动。

¹² 为本指南的目的,“成员国家”包括(i)国家政府或其任何政治或行政子部门的官员及雇员;以及(ii)政府拥有的非自主企业。

¹³ 制裁包括(但不限于)公开宣布永远或在规定的期限内取消这类个人或单位的如下资格:(i)被授予世行资助的合同;(ii)在财务经济上或其它方面从世行资助合同中受益,例如承担转包合同;以及(iii)以其它方式参与世行全部或部分资助的规划或任何其它项目或计划的准备和实施。世行可以对外公布根据本指南第7款(d)予以制裁的任何个人或单位的身份。

¹⁴ 贷款协定规定,如果发生本指南描述的与规划相关的欺诈和腐败,世行可以对贷款行使一定的权利和补救措施。

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

Dated February 1, 2012 and Revised July 10, 2015

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 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

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 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. 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 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.

