

Chapter 39:

Summary of Selected Legal Provisions in a Compact



REDUCING POVERTY THROUGH GROWTH

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Summary of Selected Legal Provisions and Prohibitions in an MCA Compact

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The Millennium Challenge Corporation (“MCC”) grants funds (“MCC Funding”) to the host country government (“Government”) for use in poverty reduction through economic growth pursuant to the terms and conditions of a Millennium Challenge Compact (“Compact”). The following is a summary of selected terms and conditions of a Compact. This summary is not intended to be comprehensive. For a review of all Compacts concluded to date, please visit <http://www.mcc.gov/countries/>

Limitations on the use of MCC Funding

- a) MCC Funding may not be used to support (i) the performance of abortions or involuntary sterilizations as a method of family planning, or any related program or research, (ii) any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production, (iii) any purchase or use of goods or services for military purposes or (iv) any activity that is likely to cause a significant environmental, health, or safety hazard, including those described in MCC’s environmental guidelines.
- b) MCC Funding, as well as its proceeds and interest, must be free from (i) all taxes (including custom duties), (ii) any impoundment, rescission, or sequestration, and (iii) the imposition of any lien.
- c) The use or treatment of MCC Funding, as well as its proceeds and interest, is subject to the requirements of the applicable law and policies of the United

States of America, including the laws relating to anti-corruption, anti-money-laundering and anti-terrorism.

- d) The Government must ensure that all persons involved in any activities in furtherance of the Compact are notified of, and agree to, the limitations on the use or treatment of MCC Funding contained in the Compact.

Procurements using MCC Funding

- a) The procurement of all goods, services and works by the Government or any other person using MCC Funding must be consistent with MCC's procurement guidelines. MCC's procurement guidelines generally include requirements to ensure that (i) internationally accepted procurement rules with open, fair and competitive procedures are used, (ii) solicitations are based on clear and accurate descriptions of the goods, services, or works to be acquired, (iii) contracts are only awarded to qualified and capable contractors, and (iv) no more than a commercially reasonable price is paid to procure goods, services and works.
- b) The Government must maintain, and ensure that any other person using MCC Funding maintains, records regarding the receipt and use of goods, services and works, the nature and extent of solicitations of prospective suppliers, and the basis of award of contracts, grants and other agreements in furtherance of the Compact.
- c) Information regarding procurement, grant and other agreements and actions funded directly or indirectly by MCC Funding must be made publicly available.

Records and audits

- a) The Government must furnish, and cause any other person receiving MCC Funding to furnish, any records and other information required to be maintained under the Compact.
- b) The Government must maintain, and cause any other person receiving MCC Funding to maintain, accounting books, records, documents and

other evidence relating to the Compact adequate to show the use of all MCC Funding.

- c) At MCC's request, the Government must permit representatives of MCC, its Inspector General, and the United States Government Accountability Office to conduct any assessment, review or evaluation of the program under the Compact.
- d) The Government must, at least annually following the Compact's entry into force, conduct financial audits of all disbursements of MCC Funding in accordance with MCC's audit guidelines and subject to oversight by MCC's Inspector General.
- e) The Government must ensure that performance reviews, data quality reviews, environmental and social audits, or evaluations of the program under the Compact are conducted during the term of the Compact.

Suspension or Termination of the Compact

MCC may terminate or suspend the Compact or MCC Funding, if it determines that:

- a) Any use of MCC Funding or its proceeds, or continued implementation of the Compact, would violate applicable law or United States Government policy;
- b) Any person receiving MCC Funding or using its proceeds is engaged in activities that are contrary to the national security interests of the United States;
- c) The Government has committed an act or omission or an event has occurred that would render the country ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;
- d) The Government has engaged in a pattern of actions or omissions inconsistent with the Millennium Challenge Act's eligibility criteria, or a significant decline has occurred in the performance of the country on one or more of the eligibility indicators contained in such criteria;

- e) The Government or any person receiving MCC Funding has materially breached any of its obligations under the Compact or any related agreement;
- f) Any evidence reveals that actual expenditures for any part of the program under the Compact were or will be greater than the projected expenditures for such activities identified in the budget for the program;
- g) The Government (i) materially reallocates or reduces the allocation in its national budget or any other Government budget of the normal resources that the Government would have otherwise received or budgeted for the activities contemplated in the Compact, (ii) fails to provide the required resources to effectively carry out the Government's responsibilities under the Compact, or (iii) fails to pay any of its obligations as required under the Compact or any related agreement;
- h) Any person receiving MCC Funding or using its proceeds, or any of their respective directors, officers, employees, affiliates, contractors, sub-contractors, grantee, sub-grantee, representatives or agents, is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking;
- i) Any MCC Funding or its proceeds is applied to support individuals or organizations associated with terrorism, sex trafficking or prostitution;
- j) An event or condition has occurred that (i) does, or is likely to, materially and adversely affect the ability of the Government or any other person to effectively implement the program under the Compact, (ii) makes it improbable that the objectives of the Compact will be achieved during the term of the Compact, (iii) materially and adversely affects the proceeds of MCC Funding, or (iv) constitutes misconduct injurious to MCC, or constitutes a fraud or a felony, by the Government or a person receiving MCC Funding, or any officer, director, employee, agent, representative, affiliate, contractor, grantee, subcontractor or sub-grantee of any of the foregoing;
- k) The Government or any person receiving MCC Funding has taken any action or omission or engaged in any activity inconsistent with the requirements of the Compact;

- l) A condition precedent or any other requirement in connection with the disbursement of MCC Funding has not been met in accordance with any agreement entered into in furtherance of the Compact; or
- m) Any MCC Funding (or its interest or proceeds) becomes subject to a lien without the prior approval of MCC.

Publicity

The Government must give appropriate publicity to the Compact as a program to which the United States, through MCC, has contributed.

Privileges and Immunities

The Government must ensure that any personnel of MCC, including individuals detailed to or contracted by MCC, and the members of the families of such personnel, while such personnel are performing duties in the host country, enjoys the privileges and immunities enjoyed by a member of the United States Foreign Service, or the family of a member of the United States Foreign Service.

No Liability

Because MCC is a United States Government corporation acting on behalf of the United States Government, MCC has no liability under the Compact, is immune from any action or proceeding arising under or relating to the Compact and the Government must waive and release all claims related to any such liability. In matters arising under or relating to the Compact, MCC will not be subject to the jurisdiction of the courts or other body of the host country.