



# ASIAN INFRASTRUCTURE INVESTMENT BANK

## POLICY ON PROHIBITED PRACTICES

December 8, 2016

### I. PURPOSE; CONTENTS

- 1.1 Purpose.** Mindful of paragraph 9 of Article 13 of the Articles of Agreement, the purpose of this Policy on Prohibited Practices is to ensure that the Bank's financial support is used only for the purpose for which it was granted. It is, therefore, essential that the Bank does business with trustworthy parties who adhere to the highest integrity standards. Accordingly, this Policy establishes a regime for the sanctioning of firms and individuals that are found to have engaged in specified forms of fraud, corruption and other practices in contravention of this Policy. This regime protects the Bank's funds and serves as a deterrent to those who might otherwise engage in the misuse of the proceeds of the Bank's Financing.
- 1.2 Contents.** This Policy sets out the Prohibited Practices with respect to Bank-financed Projects and the process for enforcing these prohibitions through a sanctions process. Prohibited Practices and provisions for investigation of suspected Prohibited Practices are found in Section III. Sanctions proceedings under a Sanctions Officer are provided in Section IV, and Sanctions that can be imposed are provided in Section VII. The Bank's enforcement may also include Temporary Suspension (Section X) and Cross-Debarment (Section XII). A Sanctions Panel is established under Section V, and the process for its Review of Sanctions Officer Determinations is set out in Section VI. The remaining Sections detail Procedural Provisions (Section VIII), Disclosure (Section IX) and General Provisions (Section XI).

### II. DEFINITIONS

- 2.1. Definitions.** As used in this Policy, the following terms have the meanings set forth below.
- Affiliate** has the meaning assigned to it in Section 7.5.
  - Appeal** has the meaning assigned to it in Section 6.1.
  - Articles** means the Articles of Agreement of the Bank.
  - Bank** means the Asian Infrastructure Investment Bank.
  - Bank Personnel** means the President, Vice Presidents and any officer or employee of the Bank, and any expert or consultant performing a mission or service for the Bank.
  - Bank Staff** means Bank Personnel and Board Officials.

7. **Board** means the Bank's Board of Directors.
8. **Board Official** means any Board Official, as defined in the Code of Conduct for Board Officials.
9. **Chairperson** means the Chairperson of the Sanctions Panel, as provided for in Section 5.2.
10. **Codes of Conduct** means the Code of Conduct for Board Officials and the Code of Conduct for Bank Personnel.
11. **Decision** has the meaning assigned to it in Section 6.3.
12. **Determination** has the meaning assigned to it in Section 4.8.
13. **External Debarment Decision** has the meaning assigned to it in Section 12.1.
14. **false or malicious allegations** means allegations that are knowingly, deliberately or recklessly inaccurate or misleading.
15. **Financing** means a Sovereign-backed Financing or a Non-sovereign-backed Financing, for a Project, including financial support through modalities other than loans such as guarantees, grants, equity investments, or swaps.
16. **General Counsel** means the General Counsel of the Bank.
17. **Investigations Officer** means a Bank Personnel whose functions include investigating allegations of Prohibited Practices.
18. **Member** means a member of the Bank.
19. **Non-sovereign-backed Financing** means any Financing extended by the Bank that is not a Sovereign-backed Financing; it includes any Financing to or for the benefit of a private enterprise, or a state-owned or sub-sovereign owned commercial entity that is not backed by a guarantee or counter-guarantee and indemnity provided by the Member to the Bank.
20. **Notice of Administrative Action** has the meaning assigned to it in Sections 4.5 and 4.6.
21. **Notice of Temporary Suspension** has the meaning assigned to it in Section 10.4.
22. **Panel Member** means a member of the Sanctions Panel, as provided for in Section 5.1.
23. **Party** means any party (and its respective officers, employees and agents), who:
  - (a) in the case of a Project financed by a Sovereign-backed Financing, is involved in such Project, including, *inter alia*, recipients of Financing, beneficiaries of technical cooperation, bidders, suppliers, contractors, subcontractors, consultants, sub-consultants, service providers, applicants, concessionaires and financial intermediaries; or
  - (b) in the case of a Project financed by a Non-sovereign-backed Financing, is involved in such Project, including, *inter alia*, borrowers, sponsors, recipients of Financing, beneficiaries of technical cooperation, bidders, suppliers, contractors, subcontractors, consultants, sub-consultants, service providers, applicants, concessionaires, financial intermediaries, guaranteed parties, and investee companies; or
  - (c) contracts with the Bank for advisory services to be performed by the Bank.

- (d) contracts with the Bank in relation to the Bank's corporate procurement or any other matter not covered by the preceding three clauses, except for Bank Personnel.
24. **preponderance of the evidence** means that, upon consideration of all of the relevant evidence and materials and on a balance of probabilities, it is more likely than not that a Prohibited Practice has been committed.
25. **President** means the President of the Bank.
26. **Prohibited Practice** means any of the practices set out in Section 3.2.
27. **Project** means a specific set of activities: (a) for which the Bank is considering to provide a Financing or has committed to provide a Financing or has provided a Financing; or (b) unless excluded by the Vice President and Chief Administrative Officer, requiring the purchase or leasing of goods, works or services for the Bank (corporate procurement). For purposes of this definition, the Bank will be deemed to be considering to provide a Financing if the relevant Project has passed Concept Review stage.
28. **Reply** has the meaning assigned to it in Section 6.2.
29. **Respondent** has the meaning assigned to it in Section 3.5 (a).
30. **Response** has the meaning assigned to it in Section 4.7.
31. **Retaliation** is any detrimental act, direct or indirect, recommended, threatened or taken against a Whistleblower or Witness or person associated with a Whistleblower or Witness in a manner material to the complaint because of the reporting of a suspected Prohibited Practice or cooperation with a Bank investigation by the Whistleblower or Witness. It includes but is not limited to harassment, discriminatory treatment, assignment of work outside the corresponding job description, inappropriate and unfair performance appraisals or salary adjustments, or the withholding of an entitlement. Retaliation shall constitute misconduct for the purposes of the Codes of Conduct and may result in dismissal of Bank Personnel and Board Officials carrying out Retaliation.
32. **Sanction** means any of the sanctions set out in Section 7.2.
33. **Sanctions Officer** has the meaning assigned to it in Section 4.1.
34. **Sanctions Panel** has the meaning assigned to it in Section 5.1.
35. **Sanctions Panel Secretary** has the meaning assigned to it in Section 5.11.
36. **Settlement Agreement** has the meaning assigned to it in Section 11.4.
37. **Sovereign-backed Financing** means: (a) a Bank loan to, or guaranteed by, a Member; or (b) a Bank guarantee that: (i) covers loan debt service defaults caused by a Government's failure to meet a specific obligation in relation to the Project or by a borrower's failure to make a payment under the loan; and (ii) is accompanied by a Member Indemnity.
38. **Statement of Charges** has the meaning assigned to it in Section 3.5.
39. **Temporary Suspension** has the meaning assigned to it in Section 10.
40. **Vice President** means a Vice President of the Bank.

41. **Whistleblower** is any person who voluntarily reports, or is believed to be about to report, or is believed to have reported a suspected Prohibited Practice.
42. **Witness** means any person who is not the subject of an investigation but who provides information or evidence regarding a Prohibited Practice under investigation by the Bank.
- 2.2 **Gender.** References in this Policy to a specific gender shall be equally applicable to any gender.

### III. PROHIBITED PRACTICES, REPORTING AND INVESTIGATIONS

3.1. **Highest ethical standards.** The Bank requires all Parties to adhere to the highest ethical standards as defined in its policies and the terms and conditions of the corresponding agreements (as applicable).

3.2 **Prohibited Practices.** No Party may engage in any of the following Prohibited Practices in any Project:

**3.2.1 Coercive Practice:** impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party.

**3.2.2 Collusive Practice:** an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

**3.2.3 Corrupt Practice:** the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

**3.2.4 Fraudulent Practice:** any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

**3.2.5 Misuse of Resources:** improper use of the Bank's resources, carried out either intentionally or through reckless disregard.

**3.2.6 Obstructive Practice:** any of the following practices:

- (a) deliberately destroying, falsifying, altering or concealing of evidence material to a Bank investigation;
- (b) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice;
- (c) failing to comply with requests to provide information, documents or records in connection with a Bank investigation;
- (d) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or
- (e) materially impeding the exercise of the Bank's contractual rights of audit or inspection or access to information.

**3.2.7 Theft:** the misappropriation of property belonging to another party.

### 3.3 Reporting suspected Prohibited Practices

**3.3.1 Board Officials and Bank Personnel.** All Board Officials and Bank Personnel are required to report to the Director General Compliance, Effectiveness and Integrity any suspected Prohibited Practice of which they become aware in relation to a Project.

**3.3.2 Others.** Any individual who is not a Board Official or a Bank Personnel is encouraged to report to the Bank any suspected Prohibited Practice of which he becomes aware in relation to a Project. Reports may be made on an anonymous basis by any means available including through a specified hotline such as Integrity@aiib.org.

**3.3.3 Good faith.** All reports must be believed to be truthful, accurate and given in good faith.

**3.3.4 Whistleblower Protection.** Director General Compliance, Effectiveness and Integrity shall take steps to ensure that Board Officials, Bank Personnel and external parties including Witnesses who in good faith report to the Bank any suspected Prohibited Practice of which they become aware in relation to a Project are provided all reasonable protections, including protection against Retaliation. Whistleblowers, acting in good faith, may remain anonymous or request that their identity be kept confidential consistent with the need to conduct an adequate and thorough investigation.

**3.3.5** Persons making false or malicious allegations of suspected Prohibited Practice will not enjoy the protection under Section 3.3.4. If such allegations are made by a Bank Staff, s/he may be liable to disciplinary action including dismissal from employment of the Bank. If such allegations are made by an external party, the Bank may declare such a party to be ineligible to participate in Bank financed or supported activities.

**3.3.6** Whistleblower protection does not extend to actions that are based on the appropriate application of AIIB policies, rules, or contract terms. Therefore, Whistleblowers and Witnesses who have committed Prohibited Practices may not avoid disciplinary action (in case of Bank Staff), or sanctions or other remedial action (in case of external parties) under Section 3.3.4.

**3.4 Investigation by the Investigations Officer.** The Investigations Officer shall have the authority to investigate suspicion of a Prohibited Practice, even if he has received no internal or external report provided that the Investigations Officer has discussed the matter and obtained approval of the Director General Compliance, Effectiveness and Integrity Unit or an Officer designated by the Director General. The Investigations Officer shall possess the necessary professional experience and integrity, and shall be subject to the provisions of Sections 5.5, 5.6, 5.7 and 5.9 which shall apply to him *mutatis mutandis*; in the event of a conflict of interest and recusal, the Investigations Officer shall so advise the Director General Compliance, Effectiveness and Integrity Unit, who shall temporarily appoint an alternate Investigations Officer for the corresponding case.

When deciding to conduct an investigation, the Investigations Officer shall be mindful of the constraint provided for in Section 4.3.2.

**3.5 Statement of Charges.** If, as a result of an investigation, the Investigations Officer concludes that a preponderance of the evidence supports a finding of a Prohibited Practice by a Party, the Investigations Officer shall prepare a Statement of Charges, which shall:

- (a) identify as Respondent the Party or Parties alleged to have engaged in a Prohibited Practice;
- (b) state the alleged Prohibited Practice;

- (c) summarize the facts relevant to the basis for the allegation of the occurrence of the Prohibited Practice;
- (d) attach all evidence relevant to the determination of a Sanction;
- (e) attach all exculpatory or mitigating evidence in the possession of the Investigations Officer; and
- (f) include any other information that the Investigations Officer deems relevant to the Statement of Charges, if any.

#### IV. COMMENCEMENT OF SANCTIONS PROCEEDINGS

**4.1 Sanctions Officer.** The President shall appoint as Sanctions Officer a member of Bank Personnel, who shall not be the Investigations Officer or a member of the Sanctions Panel. The Sanctions Officer's functions shall include reviewing and processing allegations of Prohibited Practices referred to him by the Investigations Officer, as further set forth in this Section IV. The Sanctions Officer shall possess the necessary professional experience and integrity, and shall be subject to the provisions of Sections 5.5, 5.6, 5.7 and 5.9 which shall apply to him *mutatis mutandis*; in the event of a conflict of interest and recusal, the Sanctions Officer shall so advise the President, who shall temporarily appoint an alternate Sanctions Officer for the corresponding case.

**4.2 Consideration of the Statement of Charges by the Sanctions Officer.** The Investigations Officer shall submit the Statement of Charges to the Sanctions Officer who, after consideration, shall determine whether a preponderance of the evidence supports a finding of a Prohibited Practice by the Respondent. The Sanctions Officer may dismiss the case in accordance with Section 4.3 or commence proceedings in accordance with Section 4.5.

**4.3 Dismissal.** The Sanctions Officer may dismiss the case as provided in Sections 4.3.1 and 4.3.2 or partially dismiss the case as provided in Section 4.3.3. In such case, the Sanctions Officer shall prepare a notice recording his conclusions and the closure of the Sanctions proceedings and shall deliver the notice to the Investigations Officer.

**4.3.1 Insufficient Evidence.** If, in consultation with the Chairperson, the Sanctions Officer determines that the Statement of Charges does not, by a preponderance of the evidence, support a finding of a Prohibited Practice by the Respondent, the Sanctions Officer shall dismiss the case.

**4.3.2 Expiration of Statute of Limitations.** The Sanctions Officer shall dismiss the case in respect of any Prohibited Practice if the commission of the last constituent act of that practice occurred more than ten (10) years prior to the date of the Statement of Charges.

**4.3.3 Partial Dismissal.** When a Statement of Charges includes allegations in respect of more than one alleged Prohibited Practice or Respondent, the Sanctions Officer may partially dismiss the case in respect of certain alleged Prohibited Practices and/or Respondents.

**4.4 Resubmission.** In case of a partial dismissal, the Investigations Officer may amend the Statement of Charges to exclude the alleged Prohibited Practices and/or Respondents that have benefitted from such dismissal and may, within thirty (30) calendar days, resubmit the Statement of Charges to the Sanctions Officer for further consideration. Any dismissal by the Sanctions Officer shall not prejudice the resubmission by the Investigations Officer of a further Statement of Charges, including alleged Prohibited Practices and/or Respondents previously dismissed.

**4.5 Issuance of Notice.** If the Sanctions Officer concludes that the Statement of Charges does, by a preponderance of the evidence, support a finding of a Prohibited Practice by the Respondent, the Sanctions Officer shall prepare a Notice of Administrative Action, which he shall deliver to the Respondent, the Investigations Officer and the Sanctions Panel Secretary.

**4.6 Contents of Notice.** A Notice of Administrative Action shall:

- (a) include a copy of the Statement of Charges, together with its attachments;
- (b) state the conclusions of the Sanctions Officer;
- (c) if applicable, provide for a Temporary Suspension pursuant to Section X, including an explanation of the basis for the suspension;
- (d) explain that the Respondent has an opportunity to respond to the Sanctions Officer, and that failure to respond shall have the effect provided for in Section 4.8.2;
- (e) state that the Bank may impose any of the sanctions described in Section 7.2; and
- (f) append a copy of this Policy, as well as any other applicable documentation, as then in effect.

**4.7 Response.** Within sixty (60) calendar days following delivery of the Notice of Administrative Action, the Respondent may deliver a Response to the Sanctions Officer, which shall consist of written materials, including arguments and evidence. The Sanctions Officer shall submit a copy of the Response to the Investigations Officer.

**4.8 Determination.** After the expiration of the period provided for in Section 4.7, the Sanctions Officer shall consider the record consisting of:

- (a) the Notice of Administrative Action;
- (b) the Response, if any;
- (c) any additional materials pursuant to Section 8.9;

and shall make a Determination in accordance with Section 4.8.1, 4.8.2 or 4.8.3, which he shall deliver to the Respondent, the Investigations Officer and the Sanctions Panel Secretary.

**4.8.1 Dismissal.** If the Sanctions Officer concludes that a finding of a Prohibited Practice is not supported by a preponderance of the evidence, the Sanctions Officer shall prepare a Determination recording his findings and dismissing the case, thereby terminating the proceedings under this Policy, or the Sanctions Officer may partially dismiss the case in respect of certain alleged Prohibited Practices and/or Respondents.

**4.8.2 Failure to Submit a Response.** If the Respondent does not submit a Response within the time period provided for in Section 4.7, the Respondent shall be deemed to have admitted the allegations set forth in the Notice of Administrative Action and to have waived his right to appeal the Determination. The Sanctions Officer shall prepare a Determination recording his findings and imposing a Sanction on the Respondent.

**4.8.3 Finding of a Prohibited Practice.** If the Sanctions Officer concludes that a preponderance of the evidence supports a finding that the Respondent engaged in a Prohibited Practice, the Sanctions Officer shall prepare a Determination recording his findings and imposing a Sanction on the Respondent.

## V. SANCTIONS PANEL

- 5.1 Composition.** The Sanctions Panel shall be composed of three (3) Panel Members, who shall be appointed by the President. One (1) Panel Member, who shall be a member of Bank Personnel, shall serve for a term of up to three (3) years, which may be renewed once. Two (2) Panel Members, who shall not be Bank Personnel at the time of their appointment, shall not have been Bank Personnel at any time in the last three (3) years preceding their appointment, and agree not accept employment with the Bank for a period of (2) years after the end of their term on the Sanctions Panel, shall serve each for a term of up to five (5) years, which may be renewed once. In the event that a Panel Member resigns prior to the end of his term, the President may appoint a successor to complete the term. Such successor shall be eligible to be appointed for one successive term. In the event that the Panel Member who is not available is the Chairperson of the Panel, the President shall appoint a temporary Panel Member and designate the other external permanent Panel Members as Chairperson. All Panel Members shall possess the necessary professional experience and integrity.
- 5.2 Chairperson.** The President shall appoint as Chairperson one of the two Panel Members who are not Bank Personnel. The Chairperson shall:
- (a) chair all sessions of the Sanctions Panel;
  - (b) direct the work of the Sanctions Panel in consultation with the other Panel Members and schedule meetings as needed;
  - (c) carry out specific tasks as provided for under this Policy; and
  - (d) represent the Sanctions Panel in all administrative matters.
- 5.3 Venue.** The Sanctions Panel shall hold its sessions at the Bank's principal office, unless the Chairperson considers that the efficient conduct of the proceedings warrants holding sessions elsewhere. Any one or more Panel Members may participate in a meeting of the Sanctions Panel by electronic means allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence at a meeting. Notwithstanding any other provision of this Policy, Sanctions Panel proceedings, including hearings if any, shall be confidential and shall not be open to the public.
- 5.4 Vote.** Matters in the Sanctions Panel shall be decided by a majority of votes. Quorum requires the participation of all three members. Each Panel Member shall have a vote of equal authority.
- 5.5 Independence.** In the discharge of their functions under this Policy, Panel Members shall be guided solely by the merits of the case without regard to other considerations. They shall act independently and shall not answer to, or take instructions from, the Bank's President, management, Board, Board Officials, representatives of Members or any other entity or individual.
- 5.6 Conflicts of interest.** Each Panel Member shall promptly inform the other Panel Members of any conflict of interest concerning the performance of his duties for the Sanctions Panel as soon as possible upon becoming aware of the conflict, and shall recuse himself from consideration of any related matter. A conflict of interest arises, among others, if:
- (a) the Panel Member or an immediate family member (including his spouse, domestic partner, child, parent, parent-in-law or sibling) has any personal interest, including a



financial interest, position of employment or other affiliation, in any matter that is under consideration by the Sanctions Panel; or if

- (b) the proceedings relate to a Project, Financing or other transaction in which the Panel Member has directly or significantly participated in his current position, previous employment, or any other capacity.

**5.7 Cooling off.** For a period of two (2) years following the end of his term, each Panel Member:

- (a) shall be prohibited from accepting any kind of employment, consultancy or interest in any firm that has been a Respondent in proceedings in which the Panel Member has participated;
- (b) shall be disqualified from appearing as an attorney, agent or representative of any Respondent in proceedings before the Sanctions Panel.

**5.8 Employment with the Bank.** For a period of two (2) years following the end of his term, each Panel Member who is not a Bank Personnel shall not seek or accept employment with the Bank or provide the Bank with services in connection with any Project, Financing or other transaction.

**5.9 Confidentiality.** Each Panel Member shall be required to observe the confidentiality and sensitivity of all information to which he has access in this capacity, and shall not use or disclose to any third party any information obtained as a result of membership in the Sanctions Panel, except to the extent such information is also made publicly available by the Bank or otherwise used or disclosed with the prior written consent of the Bank. No Panel Member shall make any public statements with respect to any past, present or future case or investigation under this Policy without the prior written consent of the Bank.

**5.10 Closed Deliberations.** Investigation Officer, Respondent or anyone representing the Investigation Officer or the Respondent may not be present during any part of the Sanctions Panel's deliberations. Any records concerning the Sanctions Panel's deliberations shall be confidential.

**5.11 Sanctions Panel Secretary.** The President shall appoint a Sanctions Panel Secretary, who shall not be the Investigations Officer, the Sanctions Officer or a member of the Sanctions Panel. After such appointment, the Sanctions Panel Secretary shall be accountable to, and his/her work will be supervised by the Chairperson of the Sanctions Panel. Among other duties, the Sanctions Panel Secretary shall receive all submissions and communicate with the parties on behalf of the Sanctions Panel. The submission of any documents to the Sanctions Panel shall require receipt by the Sanctions Panel Secretary and delivery shall be effective as of the date of such receipt.

## **VI. REVIEW BY THE SANCTIONS PANEL**

**6.1 Appeal.** Unless the Respondent has waived his right of appeal in accordance with Section 4.8.2, he may, within forty-five (45) calendar days following the date of the delivery of the Determination made in accordance with Section 4.8.3, request the review of such Determination by the Sanctions Panel through an Appeal in writing.

**6.2 Reply.** A copy of the Appeal shall be forwarded by the Sanctions Panel Secretary to the Investigations Officer who may submit a written Reply to the Appeal within thirty (30) calendar days of receiving such copy. A copy of the Reply shall be forwarded by the Sanctions Panel Secretary to the Respondent.

**6.3 Decision.** The Sanctions Panel shall consider the record, which shall consist of:

- (a) the Notice of Administrative Action;
- (b) the Response;
- (c) the Appeal;
- (d) the Reply, if any; and
- (e) any additional materials pursuant to Section 8.9;

and shall make a Decision in accordance with Section 6.3.1, 6.3.2 or 6.3.3, which the Sanctions Panel Secretary shall promptly deliver to the Respondent, the Sanctions Officer and the Investigations Officer.

**6.3.1 Dismissal.** If the Sanctions Panel concludes that a finding of a Prohibited Practice is not supported by a preponderance of the evidence, the Sanctions Panel shall issue a Decision recording its findings and dismissing the case, thereby terminating the proceedings under this Policy.

**6.3.2 Partial Dismissal.** When a Notice of Administrative Action includes findings in respect of more than one alleged Prohibited Practice or Respondent, the Sanctions Officer may partially dismiss the case in respect of certain alleged Prohibited Practices and/or Respondents.

**6.3.3 Finding of a Prohibited Practice.** If the Sanctions Panel concludes that a preponderance of the evidence supports a finding that the Respondent engaged in a Prohibited Practice, the Sanctions Panel shall issue a Decision recording its findings and imposing a Sanction on the Respondent. The Decision shall be final and shall terminate the proceedings under this Policy.

## VII. IMPOSITION OF SANCTIONS

**7.1 Selection of Sanctions.** Upon a finding that the Respondent engaged in a Prohibited Practice, the Sanctions Officer or the Sanctions Panel, as applicable, may impose a Sanction or combination of Sanctions. In determining a Sanction, the Sanctions Panel shall not be bound by the Sanctions imposed by the Sanctions Officer.

**7.2 Possible Sanctions.** The Sanctions that may be imposed under this Policy include the following:

**7.2.1 Reprimand** is a written censure of a Respondent's behavior.

**7.2.2 Debarment** is a decision that a Respondent is ineligible, either permanently or for a stated period of time, to be awarded and/or participate in additional contracts for Projects.

**7.2.3 Conditional Non-Debarment** is a decision that a Respondent is required to comply with certain remedial, preventative or other measures as a condition to avoid debarment from additional contracts for Projects. Failure by such Respondent's to comply with such measures in the prescribed time period shall result in automatic debarment under the terms as provided in the Decision.

**7.2.4 Debarment with Conditional Release** is a decision that a Respondent is subject to debarment with a conditional release under which such debarment shall be terminated upon compliance with conditions set forth in the decision.

**7.2.5 Other Sanctions** include, but are not limited to, the restitution of funds and the imposition of fines representing reimbursement of the costs associated with investigations and proceedings contemplated in this Policy.

**7.3 Sanctions of Other Institutions.** The Sanctions imposed under this Policy shall be independent of, and without prejudice to, the recognition by the Bank of the sanctions of other institutions, the decision of other institutions to recognize Sanctions of the Bank, or the taking of any other actions including the approval of any other policies on the part of the Bank related to procurement and/or the eligibility of counterparties to participate in activities financed by the Bank.

**7.4 Parties Subject to Sanctions.** The Sanctions Officer and the Sanctions Panel may include the Affiliates of a Respondent among sanctioned parties. Any Sanctions imposed on any Affiliate may be imposed at the time Sanctions are imposed on a Respondent, or at any subsequent time within the limitation set forth in Section 4.3.2, provided that the parties subject to Sanctions under this provision receive notice of the Sanctions and such Sanctions are determined as provided in this Policy.

**7.5 Affiliate.** For the purposes of Sections 7.4 and 9.1, the term “Affiliate” includes any individual, entity or firm that directly or indirectly, owns or controls a sanctioned Respondent, is owned or controlled by a sanctioned Respondent, or is under common ownership or control with a sanctioned Respondent, and the officers, employees, affiliates or agents of a sanctioned Respondent who are also owners of a Respondent and/or exercise control over a Respondent, even when such parties are not found to have directly engaged in a Prohibited Practice. Indicia of control include, but are not limited to, the possession, direct or indirect, of the power to direct the management and policies of a business concern, organization or individual, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, or common use of employees. In the case of acquisitions, mergers, reorganizations or other corporate events subsequent to the events leading to a Sanction involving the sanctioned entity a presumption will be applied that successors and assigns are subject to any Sanction imposed on their predecessors. Such application of Sanctions shall be informed by the provisions of the MDB Harmonized Principles on Treatment of Corporate Groups, adopted unilaterally by the Bank, or such other policies or guidelines as may be adopted by the Bank on the treatment of affiliates.

**7.6 Factors Affecting Choice of Sanctions.** The Sanctions Officer and the Sanctions Panel may consider the following factors:

- (a) the egregiousness and severity of the Respondent’s actions;
- (b) the past conduct of the Respondent involving a Prohibited Practice;
- (c) the magnitude of any losses caused by the Respondent, including the extent of the harm caused to the public welfare;
- (d) the damage caused by the Respondent to a Project or Projects or to the operations of the Bank, including the credibility of the procurement process;
- (e) the nature of the involvement of the Respondent in the Prohibited Practice;
- (f) any mitigating circumstances, including the intervening implementation of programs to prevent and detect fraud or corruption or other remedial measures by the Respondent;

- (g) the Respondent's admission of culpability or cooperation in the investigation process;
- (h) any interference or obstruction committed by the Respondent in the course of the investigative process; and
- (i) any other factor that the Sanctions Officer or the Sanctions Panel deems relevant.

**7.7 Effective Date of Sanction.** A Sanction decided by the Sanctions Officer shall become effective upon the expiration of the period for an Appeal to the Sanctions Panel, provided that no such Appeal has been filed. A Sanction decided by the Sanctions Panel shall become effective upon notification to the Respondent of the Sanction by the Sanctions Panel Secretary.

**7.8 Requests to Reopen.** Either the Investigations Officer or a Respondent may request that a matter be reopened for reconsideration only on the basis of newly-discovered facts which, by due diligence, could not have been discovered prior to the issuance of a Determination or Decision, as applicable. Not later than thirty (30) days following the discovery of such new facts, and in no event later than one (1) year following the Determination or Decision, as applicable, the Investigations Officer or a Respondent may submit such request to (i) the Sanctions Officer, if the Respondent has not appealed to the Sanctions Panel, or (ii) the Sanctions Panel, if the Sanctions Panel has issued a Decision. Upon receipt of such request, the Sanctions Officer or the Sanctions Panel, as applicable, shall decide, each in their discretion, whether to reopen the matter for further proceedings as the Sanctions Officer or Sanctions Panel determines appropriate.

## **VIII. FURTHER PROCEDURAL MATTERS**

**8.1 Evidence.** The arguments presented to the Sanctions Officer and the Sanctions Panel and their conclusions may be based on any kind of admissible evidence. The Sanctions Officer and the Sanctions Panel shall have discretion to determine:

- (a) whether certain evidence is inadmissible; and
- (b) if admissible, the relevance, materiality, weight, and sufficiency of evidence.

**8.2 Hearings.** Neither the Investigations Officer nor a Respondent shall have a right to a hearing. The Sanctions Officer shall make his Determination on the basis of the written record and without a hearing. The Sanctions Panel may, in its discretion, hold such hearings as it deems appropriate, and, in such case, shall determine the nature, length and form of any such hearing. In a formal hearing, the Investigations Officer and the Respondent may be represented by counsel.

**8.3 Admissions of culpability.** At any stage in the proceedings, a Respondent may admit all or part of any allegation without prejudice to the opportunity to contest other allegations, or any part thereof.

**8.4 Mitigating Circumstances.** The Respondent may present evidence and arguments regarding mitigating circumstances, including admissions and the implementation of programs by the Respondent to detect or prevent fraud or corruption, or any agreement with the Bank regarding the allegations or otherwise relevant to the proceedings. Such evidence and arguments shall be submitted with the written submissions contemplated in this Policy and in accordance with the corresponding deadlines.

**8.5 Provision of Other Information to Respondent.** All evidence presented to the Sanctions Officer or to the Sanctions Panel by the Investigations Officer, including all relevant evidence that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability, shall be provided to the Respondent. Notwithstanding the foregoing and any other provision of this Policy, the Respondent shall not have the right to review or obtain any other information or documents in the possession of the Bank that is not made publicly available pursuant to the Bank's policies. In particular, the Respondent shall not have the right to discover the identity of any individual who has provided information to the Bank and who has specifically requested that his identity not be disclosed to the Respondent.

**8.6 Sensitive Materials.** Notwithstanding any other provision of this Policy, the Investigations Officer and the Sanctions Officer may, in the performance of their respective functions, withhold particular evidence or information from disclosure to a Respondent upon a determination that there is a reasonable basis to conclude that:

- (a) revealing the evidence or information might cause or contribute to a risk of imminent danger or serious harm to individuals or the Bank; or
- (b) withholding the evidence or information is required by the Bank's policies.

In making this judgement, the Investigations Officer and the Sanctions Officer shall consult with the Chairperson. Such evidence may be taken into account for the purposes of a Determination by the Sanctions Officer or a Decision by the Sanctions Panel.

**8.7 Privileged Materials.** Notwithstanding any other provision of this Policy, communications between an attorney (or a person acting at the direction of an attorney) and a client for the purpose of providing or receiving legal advice ("attorney-client communications") and writings reflecting the mental impressions of an attorney or other person acting in anticipation of legal proceedings ("attorney work product") shall be privileged and shall be exempt from disclosure.

**8.8 External Advisors.** The Sanctions Officer and the Sanctions Panel shall each have the authority to obtain the services of external legal and other advisors to assist in their deliberations, while fully respecting the role of the General Counsel in interpretation and provision of legal advice as noted in Section 11.7. When doing so, all communications with such other parties shall be deemed to be privileged to the Sanctions Officer or the Sanctions Panel, as applicable, and shall be exempt from disclosure.

**8.9 Additional materials.** If new evidence becomes available to either the Investigations Officer or the Respondent after the submission of written materials - but prior to a Determination or a Decision - the Investigations Officer or the Respondent, as applicable, may submit such new evidence together with a brief explanation of the significance of such evidence to the Sanctions Officer or to the Sanctions Panel, as appropriate, which the Sanctions Officer or the Sanctions Panel may, in their discretion, consider. The Sanctions Officer and the Sanctions Panel may:

- (a) request clarifications and further evidence from either the Respondent or the Investigations Officer; and
- (b) authorize the Investigations Officer or the Respondent, as applicable, to submit additional arguments and evidence responding to any submissions by the other party under this Section, in the form and time that the Sanctions Officer or Sanctions Panel may reasonably determine.

In addition, prior to making a Determination or Decision, the Sanctions Officer and the Sanctions Panel shall have access to the contents of the written record of any related or other proceedings under this Policy that involve the same Respondent.

- 8.10 Certified information.** Upon making any submission, a Respondent shall be deemed to have certified that the information contained in it is truthful and correct to the best of the Respondent's knowledge, information and belief, formed after such inquiry which is reasonable under the circumstances. A Respondent may be subject to additional investigations and Sanctions if any information so provided is not in compliance with this Section.
- 8.11 Distribution of Submissions to Others.** The Sanctions Officer and, at the direction of the Chairperson, the Sanctions Panel Secretary shall provide materials on proceedings under this Policy, as they individually deem appropriate, to other Respondents in proceedings under this Policy that involve related allegations, facts or matters. In determining whether to direct the distribution of such materials, the Sanctions Officer or Chairperson, as applicable, shall consider, among other things, the standard for disclosing exculpatory materials set forth in Section 8.5 and the standard for withholding sensitive and privileged materials set forth in Sections 8.6, 8.7 and 8.8. Any further distribution of such materials shall be in the discretion of the Sanctions Panel.
- 8.12 Language.** All written materials submitted to the Sanctions Officer and the Sanctions Panel shall be in English, except that exhibits and attachments shall be submitted in their original language with the relevant sections translated into English.
- 8.13 Extensions of Time.** Upon request and for good cause shown, the Sanctions Officer and the Chairperson may, as a matter of discretion, grant reasonable extensions of any deadline.
- 8.14 Computation of Time.** Unless stated otherwise, the term "days" as used in this Policy means calendar days, including weekends and holidays. If the last day of any period of time prescribed by this Policy falls on a weekend or on another day on which the Bank is not officially open for business in Beijing, the period shall run until the end of the next day on which the Bank is officially open for business.
- 8.15 Delivery.** The Sanctions Officer and the Sanctions Panel Secretary, as applicable, shall send all communications to a Respondent by registered mail or other means that provide evidence of delivery. If a Respondent refuses delivery of any communication, the Sanctions Officer or the Sanctions Panel Secretary, as applicable, may consider the date of such refusal by the Respondent as the date of delivery. If a Respondent's address is unknown or fictitious, the Sanctions Officer or Sanctions Panel Secretary, as applicable, shall:
- (a) use his best efforts to cause the Respondent to receive the communication;
  - (b) determine whether the Respondent has received the communication; and
  - (c) if applicable, determine the date of delivery of a "constructive notice" by the Respondent, which expression refers to the inference that the Respondent has knowledge of a communication by virtue of publication and/or other efforts to notify the Respondent, as deemed appropriate by, and in the discretion of, the Sanctions Officer or Sanctions Panel Secretary, as applicable.
- 8.16 Acceptance of Submissions.** In order for any submission to be accepted by the Sanctions Officer or Sanctions Panel Secretary, as applicable, the submission shall comply with all the requirements of this Policy and such further requirements of form, time and place as may be reasonably required by the Sanctions Officer or Sanctions Panel Secretary, as

applicable. The Sanctions Officer or Sanctions Panel Secretary, as applicable, shall have the discretion to determine whether any submission meets the relevant requirements, and may take such responsive action as deemed appropriate, consistent with this Policy, including the rejection of any such submissions.

- 8.17 Recordkeeping.** The Sanctions Officer and the Sanctions Panel Secretary shall maintain such records as may be necessary and appropriate to fulfil the purposes of this Policy.

## **IX. DISCLOSURE**

- 9.1 Publication of Sanction.** If the Sanction imposed on the Respondent is a Sanction provided for in Section 7.2.2 or 7.2.4, the name and address of any sanctioned Respondent and Affiliate, the Prohibited Practice and the Sanction imposed shall be published on the Bank's website and shall remain posted on such website as long as the Sanction is in effect.

- 9.2 Referral to Governmental Authorities.** If there is evidence that the laws of any Member country may have been violated by a Respondent, the Investigations Officer shall refer the matter to the Director General Compliance, Effectiveness and Integrity Unit who, if he determines that it is in the best interest of the Bank, may at any time recommend to the President that a matter be referred to appropriate governmental authorities. Such recommendation shall be made in consultation with the General Counsel, whose advice shall be appended to the recommendation. Such referral may include any information provided by the Respondent to the Sanctions Officer or the Sanctions Panel.

- 9.3 Disclosure to Affected International Organizations.** If there is evidence of a violation of a Prohibited Practice the Investigations Officer may at any time make such evidence available to another international or multilateral organization pursuant to the terms of any agreement that the Bank enters into with such organizations, including any information provided by the Respondent to the Sanctions Officer or the Sanctions Panel.

- 9.4 Annual Reports.** The Bank shall prepare annual reports on the implementation of the Policy, including statistical information on investigations and recommendations and issues arising therefrom. These annual reports shall be posted on the Bank's website.

## **X. TEMPORARY SUSPENSION**

- 10.1 Principle.** The Sanctions Officer may temporarily suspend a Respondent from eligibility to participate in, or be awarded additional contracts for, Projects pending the conclusion of proceedings under this Policy.

- 10.2 Recommendation.** From the initiation of an investigation by the Investigations Officer pursuant to Section 3.4 and up to a Decision (if applicable) pursuant to Section 6.3, the Investigations Officer may recommend that the Sanctions Officer impose a Temporary Suspension.

- 10.3 Basis.** In order to impose a Temporary Suspension, the Sanctions Officer must find, in consultation with the Chairperson, that the award of contracts to the Respondent concerned or its participation in additional Projects could result in significant harm to a Project or to the Bank and that the Investigations Officer has offered substantial evidence that supports an allegation of a Prohibited Practice.

- 10.4 Notice of Temporary Suspension.** In the event of a Temporary Suspension, the Sanctions Officer shall send a written Notice of Temporary Suspension to the Respondent concerned and to the Investigations Officer. The Notice of Temporary Suspension shall include the recommendation for the Temporary Suspension, as presented by the Investigations Officer pursuant to Section 10.2, and the basis for the Temporary Suspension, as determined by the Sanctions Officer pursuant to Section 10.3. The Temporary Suspension shall have immediate effect upon delivery of the Notice of the Temporary Suspension.
- 10.5 Request for reconsideration.** The Respondent concerned may, within thirty (30) days following such delivery, file with the Sanctions Officer a request for reconsideration of the Temporary Suspension including the basis and supporting evidence for such request. Within thirty (30) days following delivery of such request, the Sanctions Officer shall, in consultation with the Chairperson, issue a final determination, with written notice to the Party concerned and to the Investigations Officer. The Temporary Suspension shall remain in effect pending such final determination.
- 10.6 Effect.** The Temporary Suspension shall remain in effect until the earlier of: (a) the expiration of twelve (12) months following its imposition; or (b) as applicable: (i) a decision to dismiss the case pursuant to Section 4.3; (ii) a Determination to dismiss pursuant to Section 4.8.1; or (iii) the date of effectiveness of a Sanction pursuant to Section 7.7. Such period may be renewed pursuant to a further recommendation by the Investigations Officer and approval by the Sanctions Officer of the recommendation, in consultation with the Chairperson.
- 10.7** A Temporary Suspension shall apply in the same manner as a debarment as provided in Section 7.2.2 but will not be published on the Bank's website.

## **XI. GENERAL PROVISIONS**

- 11.1 Saving of rights.** This Policy is adopted to guide the exercise of discretion by the Bank, and does not in itself confer any rights or privileges to any party. The Bank reserves the right to alter, amend, supplement, revise, suspend or terminate this Policy, with or without notice.
- 11.2 No effect on immunities.** Nothing in this Policy shall be deemed to alter, abrogate, or waive any immunities and privileges as set forth in the Articles or in any applicable national or international law, regulation or other authority.
- 11.3 Sharing of information subject to other limitations.** Notwithstanding any other provision of this Policy, the sharing of information contemplated in it shall be subject to the limitations of the Bank's Public Information Interim Policy, the Bank's other policies concerning the use and confidentiality of information, the Bank's contractual obligations with outside parties, and to other relevant considerations in such policies and contracts.
- 11.4 Negotiated settlements.** At any time during an investigation or proceedings under this Policy, but not after the issuance of a Determination, the Investigations Officer may submit to the Sanctions Officer a fair and credible Settlement Agreement entered into between the Bank and a Respondent. Any Settlement Agreement shall:
- (a) provide for the conditions under which the proceedings under this Policy are to be terminated, in whole or in part, which may include the imposition of any measure similar to a Sanction;
  - (b) contain an acknowledgement by the Respondent and by the Investigations Officer, that the Settlement Agreement has been entered into freely, with full disclosure of its terms and without any form of duress; and



- (c) include a condition that the Settlement Agreement shall become effective only if cleared by the Sanctions Officer and shall become null and void if such clearance is not provided.

The submission of a Settlement Agreement to the Sanctions Officer shall automatically stay the proceedings, if any. The Sanctions Officer, in consultation with the General Counsel, shall clear the Settlement Agreement only if he finds that (i) the terms of the Settlement Agreement do not violate this Policy or any other Bank policy, and (ii) the Settlement Agreement was entered into freely, with full disclosure of its terms and without any form of duress. The Sanctions Officer shall promptly inform the Respondent and the Investigations Officer and the Chairperson of his decision in accordance with Section 8.15.

- 11.5 Investigations of Members.** This Policy does not apply to investigations of a Member or any political or administrative sub-division or public sector entity of a Member, and their respective officers, employees and agents, except if such sub-division or entity acts in a corporate commercial capacity in connection with the Project, e.g., as bidder, supplier, contractor, subcontractor, consultant, sub-consultant, co-financier or service provider.
- 11.6 Investigation of Bank Staff:** This Policy does not apply to investigations concerning any individual who is Bank Staff. Such investigations are governed by the Codes of Conduct and other procedures issued under Bank policies.
- 11.7 Interpretation.** Any question arising as to the proper interpretation of any provision of the present Policy or any other legal matter with potential ramifications to the Bank's status, privileges and immunities, shall be referred by the Investigations Officer, the Sanctions Officer or the Sanctions Panel, as the case may be, to the General Counsel whose advice shall be binding.

## **XII. CROSS-DEBARMENT**

- 12.1 Debarment by other international organizations.** All entities debarred under the Agreement for the Mutual Enforcement of Debarment Decisions between some Multilateral Development Banks (Comparator Institutions) shall be unilaterally debarred by the Bank as External Debarment Decision if conditions noted in Section 12.2 are met. The Bank's website shall provide a link to the Multilateral Development Bank cross-debarment website. The Bank shall not notify affected subjects of a debarment resulting from the application of cross-debarment unless the subject requests the Bank for comments or clarification.
- 12.2 Conditions for Enforcement.** The Investigations Officer has determined, and the Sanctions Officer has agreed, that such External Debarment Decision:
  - (a) is based, in whole or in part, on a finding of a commission of one or more Prohibited Practices defined in Sections 3.2.1 to 3.2.4;
  - (b) has been made public by the institution that has issued that External Debarment Decision;
  - (c) has an initial period of debarment exceeding one (1) year;
  - (d) has been made within a period not exceeding ten (10) years of the commission of the last constituent act of the most recent Prohibited Practice to which such decision relates;

- (e) has not been made in recognition of a decision made in a national or other international forum; and
- (f) is not inconsistent with the Bank's legal and other institutional considerations.

**12.3 Co-financed Projects.** Where the Bank co-finances a Project jointly with one of the Comparator Institutions, the Bank may agree to the application of the prohibited practices or similar policy and investigations and sanctions processes of that co-financier for that Project, provided that the Bank is satisfied that the policy and processes are consistent with the Bank's Articles of Agreement and materially consistent with this Policy. In such cases, the Bank may agree that the co-financier will be responsible for the investigations and sanctions processes and the Bank may agree to give full force and effect to the co-financier's sanctions decisions with respect to investigations arising from the Project subject to the application of Section 12.2

**12.4 Agreement for the Mutual Enforcement of Debarment Decisions (AMEDD).** As soon as reasonably possible, the Bank will engage with the Comparator Institutions with a view to becoming a party to AMEDD.