



OFFICE OF ANTICORRUPTION AND INTEGRITY

INTEGRITY PRINCIPLES AND GUIDELINES (2015)

OFFICE OF ANTICORRUPTION AND INTEGRITY

INTEGRITY PRINCIPLES AND GUIDELINES (2015)



Creative Commons Creative Commons
Attribution-NonCommercial-NoDerivs 3.0
IGO license (CC BY-NC-ND 3.0 IGO)

© 2015 Asian Development Bank
6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines
Tel +63 2 632 4444; Fax +63 2 636 2444
www.adb.org; openaccess.adb.org
OARsupport@adb.org; publications@adb.org

Some rights reserved. Published in 2015.
Printed in the Philippines.

ISBN 978-92-9254-929-9 (Print), 978-92-9254-930-5 (e-ISBN)
Publication Stock No. TIM157240

The views expressed in this publication are those of the authors and do not necessarily reflect the views and policies of the Asian Development Bank (ADB) or its Board of Governors or the governments they represent. By making any designation of or reference to a particular territory or geographic area, or by using the term “country” in this document, ADB does not intend to make any judgments as to the legal or other status of any territory or area.

This work is available under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 IGO license (CC BY-NC-ND 3.0 IGO) <http://creativecommons.org/licenses/by-nc-nd/3.0/igo/>. By using the content of this publication, you agree to be bound by the terms of said license as well as the Terms of Use of the ADB Open Access Repository at openaccess.adb.org/termsfuse

The CC license does not apply to non-ADB copyright materials in this publication.

Note: In this publication, “\$” refers to US dollars.



Printed on recycled paper

Contents

Integrity Principles and Guidelines (January 2015)*

I. International Financial Institutions Principles and Guidelines for Investigations	1
Preamble	1
General Principles	3
Definitions	15
Rights and Obligations	16
Procedural Guidelines	25
Investigative Findings	29
Referrals to National Authorities	31
Review and Amendment	31
Publication	31
II. Sanctions	33
Basis for Remedial Action	33
Notice to Parties Subject of an Investigation	35
Remedial Actions	38
Period of Debarment	47
Appeals	52
Reinstatement	54
Disclosure	57
Cross Debarment	58

* This supersedes the Integrity Principles and Guidelines issued in 2006, as revised in 2012.

I. International Financial Institutions Principles and Guidelines for Investigations¹

Preamble

The following Institutions have jointly endorsed the common principles and guidelines for investigations conducted by their respective investigative units

- the African Development Bank Group
- the Asian Development Bank
- the European Bank for Reconstruction and Development
- the European Investment Bank Group
- the Inter-American Development Bank Group
- the World Bank Group

¹ The International Financial Institutions Principles and Guidelines for Investigations, adopted by the enumerated institutions, are incorporated as Section I of these *Integrity Principles and Guidelines*, with paragraphs specific to the Asian Development Bank (ADB) inserted.

Integrity Principles and Guidelines

These principles and guidelines are intended to be used as guidance in the conduct of investigations in conjunction with the policies, rules, regulations, and privileges and immunities applicable in the Organization.²

For ADB: These principles and guidelines shall apply to the Office of Anticorruption and Integrity (OAI), its staff, and any party OAI authorizes or the President appoints to perform investigations that OAI would otherwise perform, and to all ADB staff as well as consultants and contractors engaged by ADB and other third parties involved in ADB-related activity³ in observance of the Anticorruption Policy.⁴

For the purpose of this document, use of the term “Organization” includes reference to all institutions that are part of or related to the abovementioned Institutions.

² These guidelines are not intended to confer, impose, or imply any duties, obligations, or rights actionable in a court of law or in administrative proceedings on the Organization carrying out the investigation. Nothing in the guidelines should be interpreted as affecting the rights and obligations of each Organization per its rules, policies, and procedures, nor the privileges and immunities afforded to each Organization by international treaty and the laws of the respective members.

³ ADB-related activity is defined in paragraph 1.C, *infra*.

⁴ Board Paper R-89-98, Anticorruption Policy, approved 2 July 1998, as clarified by Board Paper R185-04, Anticorruption Policy: Proposed Clarifications and Related Changes to Consulting and Procurement Guidelines, approved 11 November 2004, and Board Paper R179-06, Anticorruption Policy: Harmonized Definitions of Corrupt and Fraudulent Practices, approved 8 September 2006.

International Financial Institutions Principles and Guidelines for Investigations

The investigative units of each Organization are hereinafter referred to as the “Investigative Office.”

General Principles

1. Each Organization shall have an Investigative Office responsible for conducting investigations.

For ADB: 1.A. OAI is the initial point of contact and Investigative Office for allegations of integrity violations involving ADB-related activities or ADB staff.

1.B. “Integrity violation” is any act which violates ADB’s Anticorruption Policy, including corrupt, fraudulent, coercive, or collusive practice, abuse, conflict of interest,⁵ and obstructive practice, as defined herein.

1.C. “ADB-related activity” includes ADB-financed, -administered, or -supported activity, or any activity that materially affects or may affect or otherwise be relevant to ADB.

1.D. “Cross Debarment Agreement” refers to the Agreement for Mutual Enforcement of

continued on next page

⁵ A conflict of interest may not, in all cases, in and of itself, constitute an integrity violation.

Integrity Principles and Guidelines

Box continued

Debarment Decisions between ADB and other Participating Institutions which allows the Participating Institutions to enforce sanctions covering corrupt, fraudulent, coercive, and collusive practices imposed and made public by other Participating Institutions.

I.E. “Participating Institutions” refers to the signatories to the Cross Debarment Agreement and any institution that subsequently becomes party to the Cross Debarment Agreement.⁶

2. The purpose of an investigation by the Investigative Office is to examine and determine the veracity of allegations of corrupt or fraudulent practices as defined by each institution including with respect to, but not limited to, projects financed by the Organization, and allegations of misconduct on the part of the Organization’s staff members.

⁶ The initial signatories are the African Development Bank Group, ADB, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. According to the Cross Debarment Agreement, other international financial institutions may join the agreement upon the consent of all Participating Institutions.

International Financial Institutions Principles and Guidelines for Investigations

For ADB: 2.A. Integrity violations that OAI might investigate include

- i. Corrupt practice, which is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- ii. Fraudulent practice, which is 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;
- iii. Coercive practice, which 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;
- iv. Collusive practice, which is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;⁷

continued on next page

⁷ The definitions of corruption, fraud, coercion, and collusion are harmonized with other multilateral development banks and adopted by ADB under Board Paper R179-06.

Integrity Principles and Guidelines

Box continued

- v. Abuse, which is theft, waste or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
- vi. Conflict of interest, which is any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;
- vii. Obstructive practice, which includes (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) failing to comply with requests to provide information, documents, or records in connection with an OAI investigation; (d) 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 (e) materially impeding

continued on next page

International Financial Institutions Principles and Guidelines for Investigations

Box continued

- ADB's contractual rights of audit or inspection or access to information;
- viii. Violations of ADB sanctions;
- ix. Retaliation against whistleblowers or witnesses, which 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 a complaint because of the report or cooperation with an ADB investigation by the whistleblower or witness, which shall be investigated in accordance with Administrative Order (AO) 2.10;⁸ and
- x. Other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standards.
- 2.B. Investigations may include attempts to commit or suspicions of any integrity violations.
- 2.C. Allegations of misconduct by ADB staff involving integrity violations or retaliation

continued on next page

⁸ Whistleblower and Witness Protection.

Integrity Principles and Guidelines

Box continued

against whistleblowers or witnesses will be investigated by OAI in accordance with these Integrity Principles and Guidelines, Appendix 2 of AO 2.04,⁹ and AO 2.10.

2.D. OAI may investigate other misconduct, pursuant to AO 2.04, at the request of the President or Director General, Budget, Personnel, and Management Systems Department (BPMSD).

3. The Investigative Office shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity. In particular, the Investigative Office shall perform its duties independently from those responsible for or involved in operational activities and from staff members liable to be subject of investigations and shall also be free from improper influence and fear of retaliation.
4. The staff of the Investigative Office shall disclose to a supervisor in a timely fashion any actual or potential conflicts of interest he or she may have in an investigation in which he or she is participating, and the supervisor shall take appropriate action to remedy the conflict.

⁹ *Disciplinary Measures and Procedures.*

International Financial Institutions Principles and Guidelines for Investigations

For ADB: 4.A. Disclosure of conflicts of interests shall be made to the Head, OAI or his/her designee promptly upon discovery and before any investigative action is taken. Conflicts involving the Head, OAI shall be disclosed to the President. Any action to manage the conflict of interest shall be in writing. Actions to address conflicts of interest may include, but are not limited to, exclusion from an investigation, and limits on access to case records and information.

5. Appropriate procedures shall be put in place to investigate allegations of misconduct on the part of any staff member of an Investigative Office.

For ADB: 5.A. Reports of allegations of a suspected integrity violation or misconduct of managerial staff in OAI or BPMSD can be made to the Vice-President (Administration and Corporate Management), in accordance with AO 2.10, clause 4.3.

5.B. Reports of allegations of a suspected integrity violation or misconduct of any Vice-President can be made to the President, in accordance with AO 2.10, clause 4.4.

Integrity Principles and Guidelines

Box continued

5.C. Reports of allegations of integrity violations by other OAI staff, consultants or contractors may be made directly to the Head or Director of OAI.

6. Each Organization shall publish the mandate and/or terms of reference of its Investigative Office as well as an annual report highlighting the integrity and antifraud and corruption activities of its Investigative Office in accordance with its policies on the disclosure of information.

For ADB: 6.A. OAI, its staff, any party OAI authorizes, or anyone the President appoints to perform investigations that OAI would otherwise perform, shall assess allegations and conduct investigations under these principles and guidelines, and recommend administrative action for ADB to take to address such concerns.

6.B. Under its Terms of Reference, the Head, OAI is directly responsible to the President. He or she reports directly to the President, and through the President, to the Audit Committee of the Board of Directors, on the significant activities and outcomes of OAI. In carrying out OAI's

continued on next page

International Financial Institutions Principles and Guidelines for Investigations

Box continued

activities, the Head, OAI and the authorized staff members in OAI shall have full and unrestricted access to (and may have temporary possession or control of) information and records relating to all ADB activities, ADB personnel, and ADB physical property. The principal responsibilities of OAI are

- in collaboration with relevant departments/offices, to advance awareness of ADB's Anticorruption Policy;
- in consultation with relevant departments/offices, propose and review appropriate procedures under the Anticorruption Policy to ensure that all staff members and projects adhere to the highest standards to maintain integrity against corruption;
- to serve as the initial point of contact for all alleged incidents of integrity violations, as defined by ADB in paragraph 2.A. in any ADB-related activity, including its staff members;
- to conduct independent and objective investigations of integrity violations pursuant to ADB's Anticorruption Policy known to or identified by OAI;

continued on next page

Integrity Principles and Guidelines

Box continued

- to conduct project procurement-related reviews of ADB-financed activities to help prevent and detect integrity violations;
- to provide investigative findings which shall be dealt with as stipulated in these Integrity Principles and Guidelines;
- in the conduct of investigation, to coordinate with Management, Office of the General Counsel (OGC), BPMSD, and other departments/offices, as appropriate, and adopt appropriate procedures to determine whether an integrity violation has occurred; gather sufficient evidential matter thereon; design procedures to follow in attempting to identify the perpetrators, the extent, techniques used, and cause of the integrity violation; determine if controls need to be implemented or strengthened to reduce vulnerability; and design mechanisms to help disclose the existence of similar fraud, corruption or abuse;
- to investigate allegations of misconduct by staff members involving integrity violations

continued on next page

International Financial Institutions Principles and Guidelines for Investigations

Box continued

in accordance with these Integrity Principles and Guidelines and Appendix 2 of AO 2.04;

- to investigate allegations of misconduct referred to by the HR Business Partners Division in accordance with AO 2.04;
- to prepare and submit an annual report to the President summarizing its activities;
- to consult and collaborate with other multilateral development banks, international financial institutions, or other relevant parties to exchange ideas, practical experience, and insight on how best to address integrity violations, internally and externally;
- to provide independent advice to Management or concerned departments/offices on integrity or money laundering/financing of terrorism (ML/FT) concerns, including investigations to facilitate ADB's ability to assess significant integrity or ML/FT concerns; and
- to provide guidance to concerned departments/offices on integrity and ML/FT risks and on integrity due diligence, which encompasses ML/FT checks.

Integrity Principles and Guidelines

7. The Investigative Office shall take reasonable measures to protect as confidential any nonpublic information associated with an investigation, including the identity of parties that are the subject of the investigation and of parties providing testimony or evidence. The manner in which all information is held and made available to parties within each Organization or parties outside of the Organization, including national authorities, is subject to the Organization's rules, policies, and procedures.

For ADB: 7.A. OAI will retain its information and records under adequate physical, electronic and procedural controls. OAI will limit the circulation of information regarding an investigation, such as the subject matter of the investigation and identity of parties, strictly to those with a need to know. Depending on the nature of the case, OAI may disclose certain evidence to the subject of an investigation¹⁰ in a manner that considers the need to protect whistleblowers and witnesses in accordance with AO 2.10.

7.B. Only OAI and the President may access OAI files and records. OAI or the President may

continued on next page

¹⁰ "Subject" of an investigation means a party who is alleged to have engaged in an integrity violation and/or misconduct that OAI is investigating.

International Financial Institutions Principles and Guidelines for Investigations

Box continued

determine whether OAI files and records may be shared, unedited or redacted, with other parties, subject to AO 2.04, AO 2.10, the Public Communications Policy, and other relevant ADB rules.

8. Investigative findings shall be based on facts and related analysis, which may include reasonable inferences.
9. The Investigative Office shall make recommendations, as appropriate, to the Organization's management that are derived from its investigative findings.
10. All investigations conducted by the Investigative Office are administrative in nature.

Definitions

11. Misconduct is a failure by a staff member to observe the rules of conduct or the standards of behavior prescribed by the Organization.

Integrity Principles and Guidelines

For ADB: 11.A. ADB's rules of conduct and standards of behavior are provided in AO 2.02.¹¹ ADB rules covering misconduct are found in AO 2.04.¹²

12. The standard of proof that shall be used to determine whether a complaint is substantiated is defined for the purposes of an investigation as information that, as a whole, shows that something is more probable than not.

For ADB: 12.A. ADB may refer to this standard of proof as preponderance of evidence, or evidence sufficient to support a reasonable belief, taking into consideration all relevant factors and circumstances, that on the balance of probabilities, a given party has committed an integrity violation.

Rights and Obligations

Witnesses and Subjects

13. A staff member who qualifies as a “whistleblower” under the rules, policies, and procedures of the Organization

¹¹ *Personnel Policy Statement and Duties, Rights and Responsibilities of Staff Members.*

¹² Under AO 2.10, retaliation is misconduct and those engaged in retaliation are subject to the disciplinary provisions under AO 2.04.

International Financial Institutions Principles and Guidelines for Investigations

shall not be subjected to retaliation by the Organization. The Organization will treat retaliation as a separate act of misconduct.

For ADB: 13.A. Whistleblower and witness protection shall be governed by AO 2.10.

14. The Organization may require staff to report suspected acts of fraud, corruption, and other forms of misconduct.

For ADB: 14.A. ADB staff are obligated to report any suspected integrity violation to OAI. Staff are encouraged to report other suspected misconduct to BPMSD, in accordance with AO 2.10. No approvals or authorizations are needed by staff to report a suspected integrity violation or misconduct.

15. The Organization shall require staff to cooperate with an investigation and to answer questions and comply with requests for information.

Integrity Principles and Guidelines

For ADB: 15.A. ADB staff¹³ have a duty to cooperate fully in any screening or investigation when requested by OAI to do so. Such cooperation includes, but is not limited to, the following

- being available to be interviewed and replying fully and truthfully to all questions asked;
- providing OAI with any items requested that are within the staff member's control including, but not limited to, documents and other physical objects;
- cooperating in any testing requested by OAI, including but not limited to, fingerprint identification, handwriting analysis, and physical examination and analysis;¹⁴ and
- preserving and protecting confidentiality of all information discussed with OAI and BPMSD.

15.B. A staff member who is the subject of an investigation must allow his or her financial information to be provided directly to OAI if so requested. Upon OAI's request, the staff must

continued on next page

¹³ This applies to subjects and witnesses.

¹⁴ Optional for ADB staff who are witnesses.

International Financial Institutions Principles and Guidelines for Investigations

Box continued

provide written authorization addressed to his or her financial institution to this effect, waiving any privacy or confidentiality rights the staff may otherwise have related to the information to be disclosed.

15.C. A staff member who is subject of an investigation may request to be accompanied by another staff member¹⁵ during interviews conducted as part of an investigation so long as such request does not delay or impede the investigation. However, such accompanying staff members may not be from OAI, OGC, the Office of the Secretary, the Office of the Auditor General, the Office of Administrative Services, or BPMSD. Both staff and witnesses may consult, at their own expense, with outside legal counsel regarding a matter under investigation, but may not be accompanied by such legal counsel on ADB premises or during interviews conducted as part of an investigation. Such consultation shall not delay the conduct of the interview, or compliance of staff with any other obligations under these rules, unless allowed by OAI.

continued on next page

¹⁵ Names of the accompanying staff member should be provided to OAI in advance. OAI has the discretion to disallow attendance of such staff member and to request for his or her replacement.

Integrity Principles and Guidelines

Box continued

15.D. If a staff member does not comply with any obligation to cooperate, ADB may draw an adverse inference from such refusal. In such cases, OAI may refer the matter to BPMSD for appropriate disciplinary action pursuant to AO 2.04. Failure to cooperate shall include not responding in timely and complete manner to OAI inquiries, failure to provide documents or other evidence that OAI requests, destroying or concealing evidence, or misrepresenting facts during, or otherwise inhibiting, an OAI investigation.

16. Each Organization should adopt rules, policies, and procedures and, to the extent that it is legally and commercially possible, include in its contracts with third parties, provisions that parties involved in the investigative process shall cooperate with an investigation.

17. As part of the investigative process, the subject of an investigation shall be given an opportunity to explain his or her conduct and present information on his or her behalf. The determination of when such opportunity is provided to the subject is regulated by the rules, policies, and procedures of the Organization.

International Financial Institutions Principles and Guidelines for Investigations

Investigative Office

18. The investigation should be conducted expeditiously within the constraints of available resources.
19. The Investigative Office should examine both inculpatory and exculpatory information.
20. The Investigative Office shall maintain and keep secure an adequate record of the investigation and the information collected.

For ADB: 20.A. OAI will retain

- files of investigations related to ADB staff for a minimum period of 10 years after the staff member separated from ADB, subject to the staff member attaining the age of 70 or there being circumstances that ADB would not consider rehiring the staff member, whichever is later;
- files of other investigations for a minimum period of 10 years from receiving the complaint;
- files of project procurement-related reviews for 5 years after the issuance of report;

continued on next page

Integrity Principles and Guidelines

Box continued

- contracts related to retained audit and investigative consultants for a minimum period of 5 years after the termination of contract;
- correspondence, including inter-office memos and recommendations to Management, for a minimum period of 5 years; and
- OAI annual reports to the President permanently.

21. The staff of the Investigative Office shall take appropriate measures to prevent the unauthorized disclosure of investigative information.

22. The Investigative Office shall document its investigative findings and conclusions.

23. For purposes of conducting an investigation, the Investigative Office shall have full and complete access to all relevant information, records, personnel, and property of the Organization, in accordance with the rules, policies, and procedures of the Organization.

International Financial Institutions Principles and Guidelines for Investigations

For ADB: 23.A. AO 1.02,¹⁶ applicable to OAI, and OAI's Terms of Reference, provide OAI full and unrestricted access to information and records relating to all ADB activities. OAI may examine any and all ADB files, records, books, data, papers, and any other materials related to ADB's activities, as and when deemed necessary; take temporary physical possession of any material; and make copies.

23.B. OAI's requests for access to e-mails shall be provided in accordance with AO 4.05.¹⁷

24. To the extent provided by the Organization's rules, policies, procedures, and relevant contracts, the Investigative Office shall have the authority to examine and copy the relevant books and records of projects, executing agencies, individuals, or firms participating or seeking to participate in Organization-financed activities or any other entities participating in the disbursement of Organization funds.

25. The Investigative Office may consult and collaborate with other Organizations, international institutions, and other relevant parties to exchange ideas, practical experience, and insight on how best to address issues of mutual concern.

¹⁶ *Organizational Bulletin*, 12 October 2009.

¹⁷ *Information and Communication Technology Principles*, 11 September 2007.

Integrity Principles and Guidelines

26. The Investigative Office may provide assistance to and share information with other Investigative Offices.

For ADB: 26.A. OAI or the President may determine whether information, including information gained in the course of its investigations, may be shared with other international organizations, representatives or agencies of ADB member countries, or other parties that have a need to know such information in the interest of cooperation, harmonization, or other relevant considerations, subject to AO 2.04, AO 2.10, the Public Communications Policy, and other relevant ADB rules. When OAI does so, it will require recipients of such information to protect the confidentiality of such information and use it only for the purpose for which OAI disclosed the information.

26.B. OAI may cooperate in investigations with other organizations, offices, or parties in a manner that does not influence OAI's independence and objectivity or impair ADB's privileges and immunities pursuant to its Charter.

Procedural Guidelines

Sources of Complaints

27. The Investigative Office shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources.
28. Where practicable, the Investigative Office will acknowledge receipt of all complaints.

Receipt of Complaint

29. All complaints shall be registered and reviewed to determine whether they fall within the jurisdiction or authority of the Investigative Office.

Preliminary Evaluation

30. Once a complaint has been registered, it will be evaluated by the Investigative Office to determine its credibility, materiality, and verifiability. To this end, the complaint will be examined to determine whether there is a legitimate basis to warrant an investigation.

Integrity Principles and Guidelines

For ADB: 30.A. OAI evaluates, or “screens,” complaints against the following criteria to determine whether they warrant further investigation. The complaint should contain allegations or information that are

- within OAI’s mandate – relate to activities that OAI is authorized to investigate;
- credible – there is a reasonable possibility that a violation occurred;
- verifiable – practicable options exist to obtain sufficient evidence to determine the truth of the allegations on the balance of probabilities;
- material – the matter is of sufficient importance to justify the projected requirements of the investigation and any remedial action; and
- other relevant considerations, e.g., whether the matter may be effectively addressed through the options available to ADB.

30.B. At the conclusion of a screening, OAI staff shall recommend closure of the complaint or

continued on next page

International Financial Institutions Principles and Guidelines for Investigations

Box continued

further investigation to the Head, OAI or his/her designee. Decisions to close or conduct further investigation shall be documented through an approved report which presents the reasons for this decision. Information related to complaints will be retained in OAI's files in accordance with paragraph 20.A.

30.C. If a complaint involves ADB staff, OAI may coordinate succeeding investigative actions with BPMSD, considering relevant AOs including the nature of the possible misconduct. OAI shall do this at its discretion and in a manner that does not influence OAI's independence and objectivity.

Case Prioritization

31. Decisions on which investigations should be pursued are made in accordance with the rules, policies, and procedures of the Organization; decisions on which Investigative Activities are to be utilized in a particular case rest with the Investigative Office.
32. The planning and conduct of an investigation and the resources allocated to it should take into account the gravity of the allegation and the possible outcome(s).

Integrity Principles and Guidelines

Investigative Activity

33. The Investigative Office shall, wherever possible, seek corroboration of the information in its possession.

34. For purposes of these guidelines, Investigative Activity includes the collection and analysis of documentary, video, audio, photographic, and electronic information or other material, interviews of witnesses, observations of investigators, and such other investigative techniques as are required to conduct the investigation.

For ADB: 34.A. At its discretion, OAI may gather documentary, video, photographic, computer forensic, or tape-recorded evidence without notice, including to the subject of an investigation, provided such activities are consistent with ADB's rules.

35. Investigative Activity and critical decisions should be documented in writing and reviewed with managers of the Investigative Office.

36. Subject to the Organization's rules, policies, and procedures, if, at any time during the Investigation, the Investigative Office considers that it would be prudent, as a precautionary measure or to safeguard information, to temporarily exclude a staff member that is the subject of an

International Financial Institutions Principles and Guidelines for Investigations

investigation from access to his or her files or office or to recommend that he or she be suspended from duty, with or without pay and benefits, or to recommend placement of such other limits on his or her official activities, the Investigative Office shall refer the matter to the relevant authorities within the Organization for appropriate action.

37. To the extent possible, interviews conducted by the Investigative Office should be conducted by two persons.

38. Subject to the discretion of the Investigative Office, interviews may be conducted in the language of the person being interviewed, where appropriate, using interpreters.

39. The Investigative Office will not pay a witness or a subject for information. Subject to the Organization's rules, policies, and procedures, the Investigative Office may assume responsibility for reasonable expenses incurred by witnesses or other sources of information to meet with the Investigative Office.

40. The Investigative Office may engage external parties to assist it in its investigations.

Investigative Findings

41. If the Investigative Office does not find sufficient information during the investigation to substantiate

Integrity Principles and Guidelines

the complaint, it will document such findings, close the investigation, and notify the relevant parties, as appropriate.

For ADB: 41.A. The Head, OAI and the Director, OAI shall both endorse closing an investigation. In cases where it is not physically possible to obtain both endorsements within a reasonable time, a designated senior OAI staff may be authorized to endorse the decision as second endorsing authority to the Head or the Director, OAI.

42. If the Investigative Office finds sufficient information to substantiate the complaint, it will document its investigative findings and refer the findings to the relevant authorities within the Organization, consistent with the Organization's rules, policies, and procedures.

43. Where the Investigative Office's investigative findings indicate that a complaint was knowingly false, the Investigative Office shall, where appropriate, refer the matter to the relevant authorities in the Organization.

44. Where the Investigative Office's investigative findings indicate that there was a failure to comply with an obligation existing under the investigative process by a witness or subject, the Investigative Office may refer the matter to the relevant authorities in the Organization.

Referrals to National Authorities

45. The Investigative Office may consider whether it is appropriate to refer information relating to the complaint to the appropriate national authorities, and the Investigative Office will seek the necessary internal authorization to do so in cases where it finds a referral is warranted.

Review and Amendment

46. Any amendments to the Guidelines will be adopted by the Organizations by consensus.

Publication

47. Any Organization may publish these Principles and Guidelines in accordance with its policies on the disclosure of information.

II. Sanctions

Basis for Remedial Action

48. Any integrity violation may form the basis for ADB to undertake a remedial action, including sanction. This includes violations that may not involve ADB-related activity.

49. In accordance with the Cross Debarment Agreement,¹⁸ ADB may cross debar parties that have been debarred by any of the other Participating Institutions, and the other Participating Institutions may cross debar parties that ADB has publicly debarred. OAI shall be responsible for notifying the other Participating Institutions of each debarment decision made by ADB qualifying under the Cross Debarment Agreement, and any modification thereto.

50. ADB may decide that another international financial institution's or legal or regulatory body's determination that a party has failed to adhere to appropriate ethical standards, as defined by any established system of principles, rules, or duties, including the laws or regulations of a state, constitutes that party's failure to maintain the highest ethical standards

¹⁸ Signed on 9 April 2010, and as may be amended from time to time.

Integrity Principles and Guidelines

as required by ADB's Anticorruption Policy. The party may be subject to remedial action in accordance with these Integrity Principles and Guidelines.

51. A party shall be considered responsible for any act or attempted act that would serve as a basis for remedial action by another party, including employees, agents or representatives, acting in the capacity of representing the party, regardless of whether the act has been specifically authorized.¹⁹

52. ADB will ensure due process, fairness, and consistency without the exhaustive legal process that is available to parties accused of corruption or fraud under legal or judicial systems. ADB procedures are administrative in nature and neither a legal nor judicial, nor a quasilegal or quasijudicial process.

53. It is not ADB's objective to put firms²⁰ or individuals out of business through its sanctions, although the risk that this might occur shall not prevent ADB from imposing an appropriate sanction.

¹⁹ To be applicable, paragraph 51 requires (i) identification of an integrity violation committed by an employee or agent, and (ii) establishment of employer–employee or principal–agent relationship. In applying this, OAI may consider other factors, including, but not limited to, a firm's lack of internal control or sound financial practices, top management's knowledge or involvement in the integrity violation, size of a firm, and benefit obtained by the firm.

²⁰ The word "firm" is used generically and includes corporations, institutions, organizations, and other entities which may have independent legal status or otherwise may be distinguished from specific individuals within them.

Notice to Parties²¹ Subject of an Investigation

ADB Staff

54. Notice to staff who are subjects of investigation shall be governed by AO 2.04.

Other Parties

55. If the results of an investigation indicate that any party committed an integrity violation, OAI will take all reasonable steps to present its findings to the party, and allow the party an opportunity to respond. When contacting parties, OAI may rely on the accuracy of contact information the party has represented to ADB. While OAI will undertake all reasonable efforts to contact the party, failure to reach a party, despite such efforts, shall not prevent ADB from sanctioning the party.

56. When presenting its findings to any firm, OAI will notify the firm that ADB may impose a remedial action on the firm's principals and other associated or related parties. OAI will also notify and present its findings and recommendations directly to such principals and associated or related parties on which remedial action may be imposed.

57. The parties shall be given the opportunity to respond to any allegation and evidence against them. OAI may withhold particular evidence or information if there is a reasonable

²¹ A party may be a firm or individual.

Integrity Principles and Guidelines

basis to conclude that revealing the evidence or information might endanger the life, health, safety, or well-being of any party, including whistleblowers, or if the information is otherwise sensitive or confidential.

58. The parties shall be given a reasonable period, which generally shall be no less than 30 calendar days following receipt of the findings, within which to submit written materials presenting its response together with evidence, if any. Upon request and for good cause shown, OAI may grant reasonable extensions to this deadline.

59. Known, related, or associated parties, as described in paragraphs 82–83, that might be involved will be notified separately and likewise will be given an opportunity to respond.

60. The party may also request an opportunity to make oral representations to OAI, providing specific reasons for its request.

61. OAI will reevaluate a case upon receipt of any response, and may conduct further investigation and/or request additional information from the party.

62. Where a party found by OAI to have committed an integrity violation disputes OAI's investigative findings, or when there is no response to the findings, OAI shall provide the Integrity Oversight Committee (IOC) a report of its

Sanctions

investigation, supported with all relevant documentation, including the party's response to the findings, if any.

Notice of Findings with Proposed Sanctions

63. Where appropriate, OAI may send findings letters with proposed sanctions. The party shall be given a reasonable period, which generally shall be no less than 30 calendar days following the date indicated in the findings letter, within which to respond and agree to the findings and proposed sanction.

64. Where the party does not dispute and accepts the findings and proposed sanction, the party must confirm its acceptance of the findings and proposed sanction within the date indicated in the findings letter. By confirming, the party is also agreeing not to appeal the proposed sanction and sanction period. The sanction shall be effective from the date of OAI's receipt of the confirmation, as long as it is received within the indicated period.

65. Where the party disputes the findings or proposed sanction, OAI shall bring the case to the IOC in accordance with paragraph 62.

Failure to Receive Notice / Respond

66. If a party refuses to receive the notice from OAI, or receives the notice but fails to respond, OAI shall draw an adverse inference from such refusal or failure, and this refusal

Integrity Principles and Guidelines

or failure shall be considered as an aggravating circumstance. The IOC or OAI may consider the party's failure to respond as a ground for publishing any sanction, if imposed, regardless of whether it is the party's first sanction, and which may lead to cross debarment.

Remedial Actions

Governments

67. If investigative findings indicate that an official of a government committed or was engaged in an integrity violation, OAI will report its findings to Management. OAI will work with Management and operational departments to assess ways that ADB may respond pursuant to the Anticorruption Policy and other ADB rules, policies, and procedures.

ADB Staff

68. If investigative findings indicate that an ADB staff member committed an integrity violation or other misconduct, and OAI concludes that BPMUSD should consider disciplinary action under AO 2.04, OAI will report its findings to BPMUSD. BPMUSD is solely responsible for the disciplinary process under AO 2.04, although OAI may be consulted and support BPMUSD throughout any disciplinary process.

The Integrity Oversight Committee

69. The IOC consists of three voting members, one of whom shall be a reputable external non-ADB staff. The Head, OAI will nominate and the President shall appoint members among ADB's senior staff to serve for a specific period.²² The Director, OAI or such other staff as may be decided by the President, shall serve as the secretariat (non-voting) to the IOC, and shall ensure that the members selected for each of the meetings do not have a conflict of interest when participating in the discussions and decisions of the IOC. Staff, including representatives from other departments/offices where their expertise is relevant to the case under consideration, may be called upon to advise the IOC. IOC decisions will be by majority vote which, however, shall include the vote of the external member of the IOC. In cases where the external member's vote is not part of the majority decision, a new meeting shall be called by the secretariat, involving, insofar as possible, the three members that initially discussed the case, plus an additional internal member as well as an additional external member. At such second IOC meeting dealing with case, the decision shall be by majority vote.

70. Disclosure of conflicts of interests shall be made to the IOC through the secretariat. A member or advisor of the IOC will recuse himself or herself from participating in any discussion or decision concerning any matter in which he

²² Term will normally be 24 months, but the Head, OAI and/or the President may specify a different term.

Integrity Principles and Guidelines

or she has a conflict of interest. If there is any dispute on whether a conflict of interest exists, it shall be decided by the other IOC members. Recusals and decisions on conflicts of interest will be documented in writing by the secretariat.

71. The IOC shall determine if there is a basis to impose remedial action on a preponderance of evidence, based on OAI's report and any other information the IOC might request or be presented with, to demonstrate that a party violated ADB's Anticorruption Policy. The IOC²³ may make operational recommendations related to the cases it considers, and may also consider whether, in exceptional cases, to publish the name of the debarred firm or individual pursuant to paragraphs 110 to 113.

Temporary Suspension

72. At any time during the course of the investigation where OAI finds that there is sufficient evidence to support a finding of an integrity violation against a party, and that it is highly likely that the investigation will be concluded within a maximum period of 1 year, OAI may present to the IOC, on a no-objection basis, a request for a temporary suspension of the party. The request shall include a description of the current progress of the ongoing investigation, including any evidence that remains to be gathered, together with an estimate of the time required to complete the investigation.

²³ OAI shall transmit the IOC's recommendations to relevant parties.

Sanctions

73. Similarly, in the event that a party has been temporarily suspended by a Participating Institution, and if OAI determines that the party's continued eligibility may constitute a reputational risk or a risk of further integrity violations until such time that the party is debarred, and after consultations with the Participating Institution having implemented a temporary suspension, concludes that there is sufficient evidence to support a finding of an integrity violation against that party, and that it is highly likely that the investigation will be concluded within a maximum period of 1 year, OAI may likewise present to the IOC, on a no-objection basis, a request for a temporary suspension with a brief description of the basis for the decision by the Participating Institution to temporarily suspend the party.

74. For purposes of considering temporary suspensions, the IOC shall consist of three members but need not include an external member.²⁴

75. Temporary suspension shall be allowed for a period up to 180 days. This initial temporary suspension period can, if circumstances call for it and with the approval of the IOC, be extended for an additional period of 180 days. A temporary suspension cannot extend beyond 360 days.

76. The party shall be informed of the temporary suspension, and be advised to refrain from participating in any ADB-financed, -administered, or -supported activities during the

²⁴ Where necessary, an e-meeting of the IOC may also be convened.

Integrity Principles and Guidelines

temporary suspension period. Temporary suspensions are not subject to appeal.

77. A party that is temporarily suspended is ineligible to participate in any ADB-financed, -administered, or -supported activity. Any attempt to participate in an ADB-financed, -administered, or -supported activity during the temporary suspension period will automatically result in a minimum sanction of 3 years, which may be aggravated or mitigated in accordance with paragraph 88, and be published on ADB's website. Publication on ADB's website may result in cross debarment.

78. If a temporarily suspended party is subsequently sanctioned, the sanction shall retroact to include the period of temporary suspension.

Sanctions

79. The IOC or OAI may determine that a party shall be ineligible to participate in ADB-financed, -administered, or -supported activities.

- i. **Debarment:** Debarments reflect an administrative decision not to do business with a party whom ADB does not consider to live up to the highest ethical standards. Debarment may not affect existing contractual obligations, and the IOC and OAI may recommend the modification of contractual obligations.²⁵

²⁵ For contract variations, see paragraph 92.

Sanctions

Debarment, other than indefinite debarments, will have a specified minimum period.

ii. Debarment with conditional reinstatement:

The IOC or OAI may determine that a party should be debarred, but set specific conditions that would merit reduction of the period of debarment if met. Conditions may include (a) improvement of integrity and/or corporate controls, or implementation of a corporate compliance program; (b) actions taken to discipline/terminate those responsible for the integrity violation; (c) correction of the harm caused by the integrity violation, via remedy or restitution.

Parties debarred with conditional reinstatement may request reinstatement with demonstration of compliance. OAI shall verify whether the conditions have been met, and based on its findings, determine whether or not the debarment shall be lifted.

iii. Conditional non-debarment: The IOC or OAI may determine that debarment is not required provided that specific actions are taken by a party. In such cases, a sanctioned party is not debarred, but is required to comply with conditions set by the IOC or OAI within a specified time period. Should the sanctioned party fail to demonstrate compliance with the conditions within the time periods specified, a debarment will automatically become effective for the period established by the IOC or OAI when the conditional non-debarment was decided upon.

Integrity Principles and Guidelines

80. In order to prevent circumvention, sanctions will generally be applied to all entities controlling or controlled by the party, including those in which the party may in the future have a principal beneficial interest or control.²⁶

81. In cases involving an association of parties, including joint ventures, the IOC or OAI will impose sanctions on the party that committed the integrity violation.²⁷

82. The IOC or OAI may determine that sanctions should also be imposed on an associated party, or the principals (such as owners, directors, officers, or major shareholders) of a firm, and/or other related parties, if warranted, even if a related party was not directly involved in the violation. If known, associated or related parties shall be named in the sanctions and may include those that have

- i. a familial relationship;
- ii. the ability to control or significantly influence the party, directly or indirectly;
- iii. common or related ownership, management, or control, which is not necessarily related to a specific percentage of ownership or rights; and
- iv. an agreement or dependency with another party.

²⁶ In determining interest or control, OAI will consider, among other things, the degree of association, proximity of the sanctioned party and the similarity of business activities or operations with the sanctioned party.

²⁷ OAI will take into account the level of involvement and degree of accountability that can be determined for each party in the association.

Sanctions

83. In determining sanctions on associated parties, principals, or related parties, the IOC or OAI will consider, among others
- i. management and organizational structure;
 - ii. if the related party was involved in or influenced the integrity violation, or was the intended beneficiary of such acts; and
 - iii. the possibility that the subject may circumvent a sanction through the related party, taking into account the influence the subject of the investigation has on a related party, and whether the subject may obtain benefits through the related party.
84. When appropriate, the IOC or OAI may decide not to sanction parties who cooperate with OAI's investigation.
85. In order to encourage parties to promptly advise OAI of any integrity violations that they are or have been involved in, either deliberately or inadvertently, OAI may recommend waiving or mitigating of sanctions against a party which discloses, in good faith, an integrity violation and fully cooperates with ADB. This will apply if all of the following requisites are met
- i. The party has ceased from committing the integrity violations;

Integrity Principles and Guidelines

- ii. The party has provided and is expected to provide ongoing, full, and complete disclosure of any integrity violations that it is or has been involved in;
- iii. The disclosure was made in a timely manner and as soon as practicable after the party has discovered the integrity violation;
- iv. The party is not under active investigation by ADB or by another international financial institution, multilateral development bank, or bilateral organization; and
- v. The party complies with conditions set by OAI for the waiver or mitigation of sanctions.

In accordance with its established procedures, ADB retains the right to impose sanctions and other remedial actions on a party, if, at any point, ADB subsequently discovers that such party has

- a. continued or committed other integrity violations;
- b. provided incomplete information on the disclosed integrity violation;
- c. not disclosed to OAI in accordance with paragraph 85 (iii);
- d. been the subject of an active investigation by ADB or by another international financial institution at the time of disclosure; or
- e. failed to comply with the conditions set by OAI for the waiver or mitigation of sanctions.

Other Remedial Actions

86. Other remedial actions that the IOC or OAI may determine that ADB will impose are
- i. **Reprimand:** A reprimand is a censure for a party's actions and notification that subsequent violations may result in a higher penalty. A written reprimand is appropriate for an isolated incident of lack of oversight, or where the integrity violation or the party's role in it is minor.
 - ii. **Restitution and/or Remedy:** Restitution and other financial remedies may be recommended or imposed independently or jointly with other sanctions.
 - iii. **Caution:** A caution is given where a party has committed a lapse not amounting to an integrity violation (e.g., ordinary negligence).
87. A reprimand, restitution, remedy, or caution does not affect a party's eligibility to participate in ADB-financed, -administered, or -supported activities.

Period of Debarment

88. The base period of debarment, in cases where integrity violations have been established, is 3 years. The IOC or OAI may impose a greater or lesser debarment period depending on the circumstances of each case. The IOC or OAI shall

Integrity Principles and Guidelines

consider the following factors, among others, in imposing greater or lesser period

- i. Real or potential harm caused, whether to public safety and/or welfare, the project or matter in question, or ADB's interests;
- ii. The sophistication of the integrity violation, e.g., degree of planning, diversity of techniques applied, level of concealment, the number and type of people and/or organizations involved, the duration of the integrity violation, and the geographic spread of the integrity violation;
- iii. The extent of management or organizational involvement or level of oversight;
- iv. The significance of the role played in carrying out the integrity violation, i.e., whether leading, significant, or minor;
- v. Whether the party continued the integrity violation after becoming aware of OAI's investigation, or whether the party ceased the violation voluntarily;
- vi. The degree of cooperation shown during investigation or obstruction of the investigation;
- vii. Whether the party was previously sanctioned by ADB or sanctioned or debarred by another institution or body;

Sanctions

- viii. Any previous remedial action taken by ADB against the party;
- ix. The background of the party, or a firm's directors, officers, or other principals;
- x. The involvement and role of public officials or ADB staff in the integrity violation;
- xi. Any restitution and steps taken to address the concerns;
- xii. The existence, establishment, improvement, or implementation of internal governance measures to strengthen internal controls and to prevent integrity violations from recurring; and
- xiii. If another multilateral development bank or international organization has debarred the party.

89. In determining whether a greater or lesser debarment period should be imposed, the IOC and OAI will be guided by the following

- i. First debarments, including cases where a party has previously been given a reprimand
 - a. individuals: up to indefinite
 - b. firms: up to 7 years
- ii. Second debarments
 - a. individuals: up to indefinite
 - b. firms: up to 10 years

Integrity Principles and Guidelines

- iii. Subsequent debarments
 - a. individuals: up to indefinite
 - b. firms: up to 20 years

90. In recognition that ownership, organizational structure, and/or management of firms might change after a period of time, ADB will debar firms indefinitely only in the event of extraordinary circumstances (e.g., repeated integrity violations, exceptional damage to ADB's interests). As a change in character for individuals is less likely, ADB may debar an individual who has committed any integrity violation for an indefinite period of time.

91. When a party is found to have engaged in multiple integrity violations discovered at or about the same time (e.g., collusion and misrepresentation during the procurement process), either in the same project or different project, the party may be sanctioned on a cumulative or concurrent basis.

92. If the sanctioned parties have ongoing contracts financed by ADB, the sanction may not affect existing contractual obligations. Any contract variation must be endorsed by OAI to ensure that a contract variation involving a sanctioned party is not an attempt to circumvent the sanction. It is the responsibility of the operational department and the sanctioned party to ensure that OAI has no objection to the proposed variation to its existing contract. Failure of a

sanctioned party to request endorsement may result in the extension of debarment.²⁸

Sanction Violation

93. Attempting to or participating in an ADB-financed, -administered, or -supported activity while debarred, or entering into a contract variation without OAI's endorsement will be considered a violation of sanction. In such cases, ADB will extend the period of debarment, if such is still in effect, or impose an additional period of debarment. The additional sanction will be for a minimum period of 3 years, which may be aggravated or mitigated in accordance with paragraphs 88–89 and will be published on ADB's website. Publication on ADB's website may result in cross debarment.

Notice of Decision on Remedial Actions

94. OAI will communicate the IOC's or OAI's decisions on remedial actions, including the basis and terms thereof, to the subject(s) of such decision(s), executing or implementing agencies, and all relevant ADB departments. In all cases where the IOC has decided to impose a sanction, OAI will notify the relevant party of a right to appeal in accordance with the criteria outlined in these Integrity Principles and Guidelines. Where OAI finds it impossible to notify a party of an IOC

²⁸ The sanctioned party shall discuss any request for a contract variation with the concerned ADB operational department and/or the executing/implementing agency for the latter to seek OAI's endorsement.

Integrity Principles and Guidelines

decision, OAI will publish that decision on the ADB website following procedures outlined hereunder.

95. OAI, in collaboration with Management and departments/offices concerned, will ensure controls are in place to enforce remedial actions.

Appeals

96. A party debarred by ADB may appeal the IOC's decision to the Sanction Appeals Committee within 90 days from the date of OAI's notice of the IOC's decision. Any sanctioned party that could not be notified of the sanction by OAI through no fault of the party, but which later learns of the sanction, may appeal within 90 days from notification to ADB or receipt or knowledge of the sanction. Any appeal must be in writing, and clearly and concisely state the reason(s) for the requested review of the IOC's decision, and as applicable, explain the reasons why OAI had not been able to contact the party.

97. Debarments as a consequence of accepted sanctions pursuant to paragraph 64 or sanctions violations are not subject to appeal and the decision of OAI or the IOC, as applicable, shall be final.

98. The Sanction Appeals Committee will consider appeals that include new information to the extent that

Sanctions

- i. such information was not available or known, or could not reasonably have been known, to the party at the time that explanations were sought from it by OAI; and
- ii. such information is relevant to the case and may have been relevant to the decision to impose sanctions.

99. The Sanction Appeals Committee may reduce or lift sanctions ADB has imposed on the basis of the appeal. The Sanction Appeals Committee may, as an alternative measure, require OAI to reinvestigate and to resubmit the case to the IOC. The Sanction Appeals Committee shall consist of two or three vice-presidents, depending upon the nature of the case and the length of the sanction.²⁹ The President shall appoint, on a biannual basis, a secretariat to the Appeals Committee from among ADB's senior staff. The secretariat shall ensure that the members of the Sanction Appeals Committee do not have a conflict of interest when considering the appeal. The vice-president with the longest vice presidential tenure will chair the Sanction Appeals Committee. The Head, OAI shall nominate members to comprise the Committee and will be present in an advisory capacity. The General Counsel may be present in an advisory capacity. In straightforward cases, the secretariat may submit an appeal case on a no-objection basis to the Sanction Appeals Committee, which in such cases shall consist of two vice-presidents, unless one of the two members

²⁹ If the nature of the sanction calls for consideration by three vice-presidents, and the secretariat determines it is not possible to convene a meeting of three vice-presidents within a reasonable time period, the Chair may appoint a head or deputy head of department or office to serve as the third committee member.

Integrity Principles and Guidelines

of the Sanction Appeals Committee request that a third vice-president be involved in deciding the appeal.

100. The Sanction Appeals Committee will render its decision only on the basis of a consensus of all members. Should the Chair of the Sanction Appeals Committee determine that the Committee is unable to reach a consensus, the Chair will request the President's involvement. The President will help to resolve the differences and allow the Sanction Appeals Committee to reach a unanimous decision or, if that is still not possible, shall make a final decision.

101. Decisions of the Sanction Appeals Committee on any appeal, and decisions by the IOC on cases remanded to it by the Sanction Appeals Committee, shall be final, binding, and not subject to further appeal.

Reinstatement

102. A debarred party is not automatically reinstated upon the expiry of the minimum debarment period. To restore eligibility, debarred parties must seek reinstatement. Upon receipt of a request for reinstatement, ADB, through OAI, will reassess the sanction in order to determine whether to reinstate the party or extend the period (e.g., if the party is known to have engaged in any integrity violation during its sanction period), in accordance with the procedures on reinstatement outlined hereunder.

103. Requests for reinstatement shall
- i. be in writing, addressed to the Director, OAI;
 - ii. refer to the reason for the sanction; and
 - iii. provide the basis for which ADB should consider their reinstatement.
104. OAI will assess the credibility of any request for reinstatement, and will assess the merits of reinstating a party. Factors that OAI may consider include
- i. compliance with conditions imposed pursuant to paragraph 79 (ii);
 - ii. reason(s) a sanction was imposed;
 - iii. restitution;
 - iv. changes in management or ownership of a firm, and whether the firm's principals have been and remain sanctioned;
 - v. verifiable mechanisms to improve business governance;
 - vi. effective administrative, civil, or criminal action initiated by the debarred party to remedy the integrity violation;
 - vii. any other information indicating that the party engaged in integrity violations after being sanctioned

Integrity Principles and Guidelines

by ADB, including sanctions imposed by other organizations; and

viii. results of administrative or criminal investigations.

105. At the conclusion of its review or investigation, OAI shall determine whether a party shall be reinstated. If OAI determines that a party should not be reinstated, OAI will prepare a report to the IOC with a recommendation to this effect. The IOC may decide to either reinstate eligibility or extend the sanction for a specified minimum time, after which the party may again apply for reinstatement.

106. In cases where ADB debarred associated parties, a firm's principals or other related parties in conjunction with imposing a sanction on a firm that violated ADB's Anticorruption Policy, OAI's review and recommendations, and the decision on the request for reinstatement, may also address reinstatement of those parties.

107. OAI will communicate in writing the decision on the request for reinstatement, including the basis of any decision to extend a sanction for a specified additional minimum period. If the IOC decides to extend a sanction for a specified additional minimum period, the party may appeal the decision to the Sanction Appeals Committee, in accordance with the procedures on appeals.

108. In exceptional circumstances, OAI may assess the merits of reinstating or otherwise removing a party (including

Sanctions

those indefinitely debarred) from the list of parties declared ineligible by ADB. OAI may only do this to prevent a miscarriage of justice, or to prevent the obsolescence of ADB's list of debarred parties.

109. A party will be reinstated if it successfully appeals a sanction or OAI determines that there has been a miscarriage of justice.

Disclosure

110. The list of parties ADB debars for the first time is not published, except as provided in paragraphs 66, 71, 112, and 113. However, the list is not confidential as OAI makes the list of parties ADB debars available to parties with a demonstrated need to know, including, but not limited to, ADB's Board of Directors, government agencies involved in ADB activities, other multilateral development institutions, and bilateral donor agencies.

111. OAI will inform parties that ADB declares ineligible that ADB does not publish their names, but that an attempt to participate in ADB-financed, -administered, or -supported activities while ineligible will result in an extension of the sanction period and their names being published on ADB's website and a consequential debarment by other institutions pursuant to the Cross Debarment Agreement. OAI will also publish the names of parties debarred pursuant to paragraphs 89 (ii) and (iii). Publication shall not take place until the

Integrity Principles and Guidelines

expiration of the appeal period, or rejection of the appeal, if any.

112. If the subject of a debarment decision does not acknowledge receipt of the sanction notice despite receipt, refuses to accept correspondence, or has moved and cannot be located despite OAI's reasonable attempts, the IOC or OAI may approve posting the information, including the name of the subject, on ADB's website, which will then lead to cross debarment pursuant to the Cross Debarment Agreement.

113. The IOC may, in exceptional cases such as those involving very serious integrity violations, determine that a sanction should be published, even if it relates to a first violation.

Cross Debarment

114. Under the Cross Debarment Agreement, a debarment decision by a Participating Institution will qualify for cross debarment by other Participating Institutions if

- i. the decision was based, in whole or in part, on a finding of a commission of one or more of the sanctionable practices defined under the Uniform Framework for Preventing and Combating Fraud and Corruption, dated 17 September 2006, i.e., corrupt, fraudulent, coercive, and collusive practices;
- ii. the decision is published by the Sanctioning Institution;

Sanctions

- iii. the initial period of debarment exceeds 1 year;
- iv. the decision was made after the agreement has entered into force with respect to the Sanctioning Institution;
- v. the decision by the Sanctioning Institution was made within 10 years of the date of commission of the sanctionable practice; and
- vi. the decision of the Sanctioning Institution was not made in recognition of a decision made in a national or other international forum.

115. The Director of OAI will notify the other Participating Institutions of each ADB sanction qualifying under the Agreement, and any modifications thereto. The notice shall include (i) the names and contact information of the parties sanctioned, (ii) the sanctionable practice(s) found to have been committed, and (iii) the terms of the debarment or modification thereof. Consistent with the Cross Debarment Agreement and the procedure on publication of sanctions, the notice shall be limited to sanctions posted on ADB's website, and shall be sent only upon such posting. Any subsequent decision to remove a sanction from ADB's website, such as if a party which originally could not be contacted is subsequently found, shall constitute a modification that will remove the sanction from the coverage of the Agreement, even if the sanction is kept in place but not published.

Integrity Principles and Guidelines

116. Only such sanctioned parties that are identified by name by the Sanctioning Institution are subject to cross debarment pursuant to the Cross Debarment Agreement.

117. When sanctions qualifying under the Cross Debarment Agreement are imposed by other Participating Institutions, the Head, OAI and the Director, OAI will screen the sanctions to determine if ADB should cross debar. If the decision to cross debar is made, the cross debarment will be published on ADB's website and the cross debarred entities notified accordingly. As the cross debarment shall be effective immediately from the date of publication on ADB's website, the period of cross debarment may vary from the original debarment period imposed by the Participating Institutions. Any decision not to cross debar a firm or individual that would otherwise be eligible to participate in ADB-financed activities shall be recommended by the Head, OAI to the President for approval.

118. When the sanction on a cross debarred party is lifted or changed by the Sanctioning Institution, the cross debarment by ADB shall likewise be lifted or changed.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to the majority of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



ASIAN DEVELOPMENT BANK
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org