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Enforcement Policy and Procedures

The mechanism to combat fraud and corruption in EBRD projects



European Bank
for Reconstruction and Development

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I. INTRODUCTION

The Enforcement Policy and Procedures (the “EPPs”) of the European Bank for Reconstruction and Development (“EBRD” or the “Bank”) set out the Bank’s policy and procedures for processing allegations of fraud, corruption, collusion, coercion, misuse of the Bank’s resources, obstructive practices and theft in relation to activities and projects financed, or intended to be financed, in whole or in part, from the Bank’s ordinary capital resources (including the purchase of goods, works or services for the Bank), from Special Funds resources, or from cooperation funds or trust funds administered by the Bank.

The present EPPs also apply when, in implementation of any agreement for the mutual enforcement of debarment decisions in effect between the Bank and another international organisation, the Bank either notifies such other organisation of the Bank’s debarment decisions or enforces debarment decisions made by such other organisation.

In addition, the present EPPs apply when the Bank considers taking action against an individual or entity that has been found to have engaged in a Prohibited Practice or equivalent act by either a final judgment of a judicial process in a member country of the Bank or a finding by the enforcement (or similar) mechanism of another international organisation other than an organisation referred to in the preceding paragraph.

The present EPPs are adopted as part of the EBRD’s commitments under the Uniform Framework for Preventing and Combating Fraud and Corruption.¹

II. DEFINITIONS AND INTERPRETATION

In the present EPPs, the terms set out below shall have the following meanings:

2.1 Definitions

2.1.1 Affected Party has the meaning given to it in Section 5.6(i)(1).

2.1.2 Affiliate means, in relation to an entity (the First Entity), any entity controlled, directly or indirectly, by the First Entity, any entity that controls, directly or indirectly, the First Entity or any entity directly or indirectly under common control with the First Entity. For the purposes of this definition, the indicia of “control” include, but are not limited to, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting shares, by contract or otherwise.

2.1.3 Appeal has the meaning given to it in Section 8.1(i).

2.1.4 Appeal Record has the meaning given to it in Section 8.7(i).

2.1.5 Appeal Response means a response to the Appeal submitted pursuant to Section 8.2(i).

2.1.6 Appeal Reply means the reply to the Appeal Response submitted pursuant to Section 8.3(i).

2.1.7 Appellant has the meaning given to it in Section 8.1(iii).

2.1.8 Appellee has the meaning given to it in Section 8.2(i).

¹ As agreed by the heads of the AfDB, ADB, EBRD, EIB, laDB, IBRD and IMF on 17 September 2006.

2.1.9 Bank Counterparty means any of the following:

(i) an individual or entity that is seeking or has obtained funding for a Bank Project; or

(ii) any supplier, contractor or consultant for a Bank Project selected pursuant to Section 3 or 5 of the Bank's Procurement Policies and Rules or under alternative procurement rules applied pursuant to Section 2.4 of the Bank's Procurement Policies and Rules, or pursuant to the Bank's Corporate Procurement Policy and Procedures; or

(iii) any sub-supplier, sub-contractor or sub-consultant of a supplier, contractor, or consultant for a Bank Project selected pursuant to Section 3 or 5 of the Bank's Procurement Policies and Rules or under alternative procurement rules applied pursuant to Section 2.4 of the Bank's Procurement Policies and Rules, or pursuant to the Bank's Corporate Procurement Policy and Procedures.

2.1.10 Bank Project means any activity or project which the Bank is considering to finance² or has financed or committed to finance, in whole or in part, from its ordinary capital resources (including the purchase of the goods, works or services for the Bank) or Special Funds resources, or from cooperation funds or trust funds administered by the Bank, as well as any activity undertaken pursuant to the Bank's Project Complaint Mechanism (PCM) Rules of Procedure.

2.1.11 CCO means the Chief Compliance Officer of the Bank or successor title.

2.1.12 Debarment Decision means a debarment decision made by the decision-making authority of a Mutual Enforcement Institution that:

(i) is based, in whole or in part, on a finding of a commission of one or more Prohibited Practices defined in Section 2.1.29(i) to (iv);

(ii) has been made public by such institution;

(iii) has an initial period of debarment exceeding one (1) year;

(iv) has been made by a Mutual Enforcement Institution after the agreement for mutual enforcement between the Bank and such other institution has entered into effect;

(v) has been made within ten (10) years of the commission of the most recent Prohibited Practice to which such decision relates; and

(vi) has not been made in recognition of a decision made in a national or other international forum.

2.1.13 Disclosure Action means any of the actions that the Bank has taken or may take in accordance with Section 11.3.

2.1.14 Enforcement Action means any of the actions that the Bank has taken or may take in accordance with Section 11.2.

2.1.15 Enforcement Commissioner has the meaning given to it in Section 4.1.

2.1.16 Enforcement Commissioner's Decision means the Enforcement Commissioner's decision issued pursuant to Section 5.8(i), Section 6.6(i) or Section 6.6(ii), as the case may be.

2.1.17 Enforcement Committee means the appellate committee, acting either as a panel or as a whole, as described in more detail in Section 7.3.

2.1.18 Enforcement Proceedings means any proceedings initiated in accordance with the present EPPs.

2.1.19 Final Decision has the meaning given to it in Section 8.8(vi).

2.1.20 "More likely than not" means that, upon consideration of all of the relevant evidence and materials, the evidence and materials support the findings on a balance of probabilities.

² For purposes of this definition, the Bank will be deemed to be considering to finance a project if the project has passed Concept Review or another similar approval mechanism.

2.1.21 Mutual Enforcement means, as the context may require, the Bank's enforcement of a Debarment Decision, effective from the date of issuance of the Notice of Mutual Enforcement until the end of the period specified in, and on the same conditions as, the Debarment Decision by a Mutual Enforcement Institution.

2.1.22 Mutual Enforcement Institution means an international organisation that has entered into an agreement with the Bank, pursuant to which such institution and the Bank agree to the mutual enforcement of debarment decisions made by each other, provided that such other institution has given notice to the Bank that it has fulfilled all requirements for the implementation of such agreement and has not subsequently withdrawn from such agreement.

2.1.23 Notice means either a Notice of Prohibited Practice or a Notice of Third Party Finding, as applicable.

2.1.24 Notice of Appeal has the meaning given to it in Section 8.1(i).

2.1.25 Notice of a Debarment Decision means a notice issued by a Mutual Enforcement Institution of a Debarment Decision.

2.1.26 Notice of Mutual Enforcement means a notice issued pursuant to Section 5.3 to the individual(s) and/or entities subject to a Debarment Decision.

2.1.27 Notice of Prohibited Practice means a notice issued to one or more Respondents pursuant to Section 5.1(i), Section 5.4 or Section 8.8(iv).

2.1.28 Notice of Third Party Finding means a notice issued to one or more Respondents pursuant to Section 5.2(i), Section 5.5 or Section 8.8(iv).

2.1.29 Prohibited Practices means one or more of the following:

(i) a **coercive practice** which means 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;

(ii) a **collusive practice** which means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iii) a **corrupt practice** which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(iv) a **fraudulent practice** which means any act or omission, including a misrepresentation, that knowingly or recklessly³ misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(v) a **misuse of the Bank's resources** which means improper use of the Bank's resources, committed either intentionally or through reckless disregard;

(vi) an **obstructive practice** which means (i) destroying, falsifying, altering or concealing of evidence material to a Bank investigation, which impedes the Bank's investigation; (ii) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) 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 (v) materially impeding the exercise of the Bank's contractual rights of audit or inspection or access to information; and

(vii) a **theft** which means the misappropriation of property belonging to another party.

³ To act recklessly requires that the actor is indifferent as to whether the information or representation is true or false. Mere inaccuracy in information or representation, committed through simple negligence, is not tantamount to a fraudulent practice.

2.1.30 Record has the meaning given to it in Section 6.4(i).

2.1.31 Reply means any reply filed by the CCO in accordance with Section 6.2.

2.1.32 Respondent means an individual or entity that is the recipient of a Notice of Prohibited Practice, a Notice of Third Party Finding or a Suspension Decision, as the case may be.

2.1.33 Response means a response filed by the Respondent in respect of either a Notice of Prohibited Practice or a Notice of Third Party Finding in accordance with Section 6.1.

2.1.34 Secretariat to the Enforcement Committee means the Bank staff member(s) described in Section 7.2(iii).

2.1.35 Settlement Agreement means an agreement entered into in accordance with Section 14.1.

2.1.36 Special Funds resources has the meaning given to it in Article 19 of the Agreement Establishing the European Bank for Reconstruction and Development.

2.1.37 Subject means an individual or entity with respect to whom/which the Office of the CCO is conducting an investigation.

2.1.38 Suspension Decision has the meaning given to it in Section 10.2(i).

2.1.39 Third Party Finding means a final judgment of a judicial process in a member country of the Bank or a finding by the enforcement (or similar) mechanism of another international organisation that is not a Mutual Enforcement Institution that an individual or entity has engaged in a Prohibited Practice or equivalent act of that member country or international organisation.

2.2 Interpretation; Language of Submissions

2.2.1 Computation of Time

Unless stated otherwise, the term "days", as used in the present EPPs, means calendar days, including weekends and holidays. If the last day of any period of time prescribed by the

present EPPs falls on a weekend or on another day on which the Bank's Headquarters in London, England is not open for business, the period shall run until the end of the next day on which the Bank's Headquarters is open for business.

2.2.2 Use of Terms

Unless the context otherwise requires, any term used in the present EPPs in the singular includes the plural, and the plural includes the singular; pronouns of a particular gender include the other gender.

2.2.3 Reference and Headings

The headings of articles, sections and sub-sections of the present EPPs are for ease of reference only and do not constitute substantive parts of the present EPPs for purposes of interpretation of the text.

2.2.4 Language of Submissions

All written materials submitted to the Enforcement Commissioner or the Enforcement Committee, and all oral representations made before the Enforcement Committee shall be in one of the official languages of the Bank, except that exhibits may be in their original language with the relevant parts translated into an official language of the Bank.

III. REPORTING OF PROHIBITED PRACTICES AND INVESTIGATIONS

3.1 Reporting of Suspected Prohibited Practices

(i) Bank Personnel, Board Officials (as these terms are defined in the Bank's Codes of Conduct) and experts performing missions for the Bank must immediately report any information regarding a suspected Prohibited Practice in relation to a Bank Project to the Office of the CCO at: compliance@ebrd.com. Reports may be made anonymously.

(ii) Alternatively, Bank Personnel may choose to report a suspected Prohibited Practice in relation to a Bank Project to the Bank's Head of Internal Audit or to the Managing Director, Human Resources. The Head of Internal Audit or the Managing Director, Human Resources, as applicable, shall immediately refer the matter to the CCO to be dealt with in accordance with the present EPPs.

3.2 Investigation of a Prohibited Practice

(i) For purposes of the present EPPs, the date of a Prohibited Practice shall be the date on which the last constituent act or element of the Prohibited Practice occurred.

(ii) If, in the course of her investigation, the CCO determines that the last constituent act of the suspected Prohibited Practice took place more than ten (10) years prior to the date the suspected Prohibited Practice was reported to the Office of the CCO, no Enforcement Proceedings shall be initiated in relation to the allegations.

(iii) When investigating a suspected Prohibited Practice or information concerning a Third Party Finding, the Office of the CCO may issue a "show-cause" letter to the Subject. Such letter will set forth the basis of the CCO's allegations and request that the Subject show cause as to why the Enforcement Proceedings should not be instituted.

IV. TRANSMITTAL TO ENFORCEMENT COMMISSIONER

4.1 Enforcement Commissioner

The Enforcement Commissioner is the first-tier decision-maker of Enforcement Proceedings (the "Enforcement Commissioner"). Terms of reference for the function shall be established by the President.

4.2 Transmittal of a Draft Notice of Prohibited Practice to the Enforcement Commissioner

If, as a result of her investigation, the CCO determines that there is sufficient evidence to support a finding that, more likely than not, the suspected Prohibited Practice was committed, she shall prepare a draft Notice for consideration by the Enforcement Commissioner.

4.3 Transmittal of a Draft Notice of Third Party Finding to the Enforcement Commissioner

If, as a result of her investigation, the CCO determines that a Third Party Finding may warrant an Enforcement Action, she shall prepare a draft Notice for consideration by the Enforcement Commissioner.

4.4 Transmittal of a Notice of a Debarment Decision to the Enforcement Commissioner

Following receipt by the Office of the CCO of a Notice of a Debarment Decision, the CCO shall promptly send that Notice of a Debarment Decision to the Enforcement Commissioner.

V. COMMENCEMENT OF ENFORCEMENT PROCEEDINGS

5.1 Action Following Receipt of a Notice of Prohibited Practice

Following receipt of a draft Notice of Prohibited Practice from the CCO in accordance with Section 4.2, the Enforcement Commissioner may:

(i) Make a prima facie determination that the evidence is sufficient to support a finding that, more likely than not, the Subject committed the alleged Prohibited Practice(s). In such case, the Enforcement Commissioner shall proceed to issue a Notice of Prohibited Practice to the Subject in accordance with Section 5.4.

(ii) Ask the CCO to supplement her draft Notice in order to (1) provide additional information and/or clarification on certain matters and/or (2) consider other Prohibited Practice(s) different than the one(s) addressed in the draft Notice. After the CCO has supplemented her draft Notice such that she has provided additional information and/or clarification on the relevant matters and/or considered other Prohibited Practice(s), as the case may be, the Enforcement Commissioner may take one of the actions described in Section 5.1(i) or 5.1(iii), as applicable.

(iii) Make a prima facie determination that the evidence is not sufficient to support a finding that, more likely than not, the Subject committed the alleged Prohibited Practice(s) or determine that he does not have jurisdiction over the matter. In such event, the CCO may:

(1) if the Enforcement Commissioner agrees, submit a revised Notice, or

(2) appeal against such determination pursuant to Section 8.1.

5.2 Action Following Receipt of a Notice of Third Party Finding

Following receipt of a draft Notice of Third Party Finding in accordance with Section 4.3, the Enforcement Commissioner may:

(i) Make a prima facie determination that a Third Party Finding may warrant an Enforcement

Action. In such case, the Enforcement Commissioner shall proceed to issue a Notice of Third Party Finding to the Subject in accordance with Section 5.5.

(ii) Ask the CCO to supplement her draft Notice in order to provide additional information and/or clarification on certain matters. After the CCO has supplemented her draft Notice such that she has provided additional information and/or clarification on the relevant matters, the Enforcement Commissioner may take one of the actions described in Section 5.2(i) or 5.2(iii), as applicable.

(iii) Make a prima facie determination that the evidence is not sufficient to support a prima facie finding that a Third Party Finding may warrant an Enforcement Action. In such event, the CCO may:

(1) if the Enforcement Commissioner agrees, submit a revised Notice, or

(2) appeal against such determination pursuant to Section 8.1.

5.3 Action Following Receipt of a Notice of a Debarment Decision

Following receipt of a Notice of a Debarment Decision from the CCO in accordance with Section 4.4, if the Enforcement Commissioner satisfies himself that:

(i) the decision specified in the Notice of a Debarment Decision meets the conditions set forth in Section 2.1.12; and

(ii) Mutual Enforcement of the Debarment Decision is not inconsistent with the Bank's legal or other institutional considerations,

he shall proceed to issue a Notice of Mutual Enforcement in accordance with Section 5.6(i).

5.4 Contents of a Notice of Prohibited Practice

(i) A Notice of Prohibited Practice issued pursuant to Section 5.1 shall:

(1) identify the Respondent;

- (2) state the allegation of one or more Prohibited Practice(s) and include a summary of the facts relevant to the alleged Prohibited Practice(s);
- (3) subject to Section 5.7, attach all evidence relevant to the prima facie finding that, more likely than not, the alleged Prohibited Practice has been committed, unless such evidence is already in the possession of the Respondent;
- (4) attach all exculpatory or mitigating evidence, unless such evidence is already in the possession of the Respondent;
- (5) state the Enforcement Action(s) proposed by the CCO;
- (6) state the possible Enforcement Actions listed in Section 11.2 that might be imposed by the Enforcement Commissioner following consideration of the Record (not limited to those proposed by the CCO);
- (7) advise the Respondent that, if the Respondent desires to contest the Notice of Prohibited Practice, the Respondent must do so within the delay prescribed in the Notice, which shall be no less than thirty (30) days;
- (8) state that, if the Respondent does not respond to the Notice within the prescribed delay, the Enforcement Commissioner shall decide the matter based on the evidence submitted by the CCO;
- (9) append a copy of the EPPs in effect on the date the Notice of Prohibited Practice was issued; and
- (10) if applicable, inform the Respondent that a Suspension Decision has been made against the Respondent and the manner in which the Respondent may contest such decision pursuant to Section 10.4.

(ii) Any revisions to the Notice of Prohibited Practice by the Enforcement Commissioner shall require the CCO's written consent prior to its issuance.

5.5 Contents of a Notice of Third Party Finding

(i) A Notice of Third Party Finding issued pursuant to Section 5.2 shall:

- (1) identify the Respondent(s);
- (2) attach a copy of the Third Party Finding;
- (3) state the Enforcement Action(s) proposed by the CCO;
- (4) state the possible Enforcement Actions listed in Section 11.2 that might be imposed by the Enforcement Commissioner following consideration of the Record (not limited to those proposed by the CCO);
- (5) advise the Respondent that, if the Respondent desires to contest the Notice of Third Party Finding, the Respondent must do so within the delay prescribed in the Notice, which shall be no less than thirty (30) days;
- (6) state that, if the Respondent does not respond to the Notice within the prescribed delay, the Enforcement Commissioner shall decide the matter based on the evidence attached to the Notice;
- (7) append a copy of the EPPs in effect on the date the Notice of Third Party Finding was issued; and
- (8) if applicable, inform the Respondent that a Suspension Decision has been made against the Respondent and the manner in which the Respondent may contest such decision pursuant to Section 10.4.

(ii) Any revisions to the Notice of Third Party Finding by the Enforcement Commissioner shall require the CCO's written consent prior to its issuance.

5.6 Contents of a Notice of Mutual Enforcement; No Further Proceedings

- (i) A Notice of Mutual Enforcement shall:
- (1) identify the individual or entity subject to the Debarment Decision (the “**Affected Party**”);
 - (2) provide a summary of the Mutual Enforcement process followed by the Bank;
 - (3) state that the Bank will debar the Affected Party for the same period and on the same conditions as the Debarment Decision; and
 - (4) include any other information that the Enforcement Commissioner deems material.
- (ii) The Notice of Mutual Enforcement shall not be subject to further proceedings other than pursuant to Sections 6.7(ii) and 11.3(iii).

Action(s) from the list of Enforcement Actions set forth in Section 11.2 and shall promptly notify the Respondent and the CCO thereof. Such notification shall set forth the manner in which the Respondent or the CCO may submit an Appeal of such Enforcement Commissioner’s Decision in accordance with Section 8.1. The Enforcement Action shall be subject to disclosure in accordance with Section 11.3(i)(1).

- (ii) If, within the delay prescribed in the Notice of Prohibited Practice or the Notice of Third Party Finding, as the case may be, the Respondent submits a Response contesting the Notice, the matter shall proceed in the manner set out in Article VI.

5.7 Withholding of Sensitive Materials

Notwithstanding any other provision of the present EPPs, prior to the issuance of the Notice of Prohibited Practice or the Notice of Third Party Finding, the Enforcement Commissioner may, in his discretion and/or upon request by the CCO, agree to withhold from the Respondent particular evidence submitted to the Enforcement Commissioner, on the grounds that the particular evidence might endanger the life, safety or well-being of a person or constitute a violation of any written undertaking by the Bank. If the Enforcement Commissioner denies the CCO’s request, the CCO shall have the option to withdraw such evidence from the Record or to withdraw the Notice altogether.

5.8 Proceedings Subsequent to Issuance of Notice of Prohibited Practice or Notice of Third Party Finding

- (i) If, following receipt of either the Notice of Prohibited Practice or the Notice of Third Party Finding and within the delay set out therein, the Respondent does not submit a Response contesting the Notice, the Enforcement Commissioner shall issue a Decision against the Respondent imposing one or more Enforcement

VI. CONTESTED ENFORCEMENT PROCEEDINGS

6.1 Response

- (i) The Response must be submitted within the delay prescribed in the Notice of Prohibited Practice or the Notice of Third Party Finding, as applicable.
- (ii) The Response to the Notice of Prohibited Practice may include arguments and/or written evidence in response to the material provided in the Notice and/or include arguments and evidence of mitigating circumstances, such as the intervening implementation of programmes to detect or prevent Prohibited Practices, or other facts relevant to the proposed Enforcement Actions.
- (iii) The Response to the Notice of Third Party Finding may not challenge any element of the Third Party Finding, and should be restricted to the presentation of mitigating circumstances or other facts relevant to the proposed Enforcement Action(s) and arguments as to the relevance of the Third Party Finding to the Bank.
- (iv) The Response must be signed by each Respondent and contain a statement that the information contained therein is truthful.
- (v) Any challenge to the Enforcement Commissioner's jurisdiction to determine the matter and arguments in support thereof must be set out in the Response.
- (vi) The Response shall be deemed to have been submitted upon actual receipt thereof by the Enforcement Commissioner, who shall, without delay, forward a copy thereof to the CCO.

6.2 Reply

The CCO shall have twenty (20) days following receipt of the Response to submit to the Enforcement Commissioner a Reply presenting arguments and evidence to address the arguments and evidence set forth in the Response. The Enforcement Commissioner shall, without delay, forward a copy of the Reply to the Respondent.

6.3 Additional Submissions

(i) In the event that additional material evidence becomes available to the CCO or the Respondent after the submission of the Response or the Reply, as applicable, the Enforcement Commissioner may, as a matter of discretion, authorise such additional evidence to be submitted. If the submission of such additional evidence is authorised, the Enforcement Commissioner may, in his discretion authorise the Respondent or the CCO, as applicable, to submit arguments and/or evidence responding to the additional submissions of the other party within such delay as he may prescribe.

(ii) If, at any time during Enforcement Proceedings, but prior to the issuance of the Enforcement Commissioner's Decision, the CCO determines that an entity that is, or is seeking to become, a Bank Counterparty, is prima facie the Respondent's successor or assignee, (including through the acquisition of or merger with the Respondent), the CCO may apply to the Enforcement Commissioner to have such new entity joined as a Respondent in the Enforcement Proceedings.

6.4 Basis for Findings, Evidence and Standard of Proof Required

- (i) The consideration of the matter by Enforcement Commissioner shall be restricted to the following materials:
- (1) the Notice of Prohibited Practice or the Notice of Third Party Finding, as applicable;
 - (2) the Response;
 - (3) the Reply (if any);
 - (4) any additional submissions authorised by the Enforcement Commissioner in accordance with Section 6.3(i); and
 - (5) any other evidence expressly requested by the Enforcement Commissioner pursuant to paragraph (iv) below
- ((1) to (5) collectively, the "**Record**").
- (ii) The Record shall be confidential and shall not be released to third parties except in the event of a referral to national or international authorities pursuant to Article XIII.

(iii) Formal rules of evidence shall not apply. The Enforcement Commissioner shall, in his discretion, determine the admissibility, relevance, materiality, weight and sufficiency of all evidence offered. For the avoidance of doubt, the Enforcement Commissioner may take notice of well-known, indisputable facts and such facts need not be provided by the parties in the Record.

(iv) The Enforcement Commissioner may request clarifications of the evidence and material submitted by the CCO or the Respondent at any time before issuing the Enforcement Commissioner's Decision or determination pursuant to Section 6.6.

(v) In relation to a Notice of Prohibited Practice, the Enforcement Commissioner shall determine whether the evidence presented supports the conclusion that it is more likely than not that the Respondent engaged in the alleged Prohibited Practice(s).

(vi) In relation to a Notice of Third Party Finding, the Enforcement Commissioner shall determine whether, following the Third Party Finding, it is more likely than not that the Respondent would be an unacceptable Bank Counterparty.

(vii) Any challenge by the Respondent to the jurisdiction of the Enforcement Commissioner to decide on a particular matter shall be decided by the Enforcement Commissioner.

6.5 Factors Affecting Decisions to Take Enforcement Action

The Enforcement Commissioner's Decision to take an Enforcement Action shall take account of the following factors:

- (i) egregiousness and severity of the conduct of the Respondent;
- (ii) degree of involvement of the Respondent in the Prohibited Practice (including whether the conduct involved was active or passive);
- (iii) magnitude of any losses caused by the Respondent and/or damage caused by the Respondent to the EBRD;

(iv) past conduct of the Respondent involving a Prohibited Practice;

(v) the Respondent's attempt to become a Bank Counterparty despite the imposition of a suspension under the present EPPs;

(vi) any mitigating circumstances, including the extent to which the Respondent cooperated in the investigation and whether such cooperation was of substantial benefit to the EBRD;

(vii) if applicable, the period of suspension already imposed on the Respondent;

(viii) the implementation of programmes by the Respondent to prevent and/or detect fraud and corruption and/or introduction of other relevant remedial measures in the interim period; and

(viii) any other factor that the Enforcement Commissioner deems relevant.

6.6 Enforcement Commissioner's Decision and Determination on Jurisdiction

(i) Upon consideration of the Record on the merits relating to the Notice of Prohibited Practice, the Enforcement Commissioner shall issue a decision setting forth: a recitation of the relevant facts; his determination as to the culpability of the Respondent; any Enforcement Action to be imposed on the Respondent and any of its Affiliates and the reasons therefor and the manner in which the Respondent or the CCO may submit an Appeal of such Enforcement Commissioner's Decision in accordance with Section 8.1.

(ii) Upon consideration of the Record on the merits relating to the Notice of Third Party Finding, the Enforcement Commissioner shall issue a decision setting forth: a recitation of the relevant facts; his determination as to whether, following the Third Party Finding, it is more likely than not that the Respondent would be an unacceptable Bank Counterparty; any Enforcement Action to be imposed on the Respondent and any of its Affiliates and the reasons therefor; and the manner in which the Respondent or the CCO may submit an Appeal of such Enforcement Commissioner's Decision in accordance with Section 8.1.

(iii) If, with respect to the Respondent's challenge described in Section 6.1(v), the Enforcement Commissioner determines that he has jurisdiction, he shall proceed to issue a decision pursuant to Section 6.6(i) or Section 6.6(ii), as applicable. The Respondent may submit an Appeal of such Enforcement Commissioner's determination together with the Respondent's Appeal on the merits in accordance with Section 8.1.

(iv) If, with respect to the Respondent's challenge described in Section 6.1(v), the Enforcement Commissioner determines that he does not have jurisdiction, he shall notify in writing the Respondent and the CCO accordingly. The CCO may submit an Appeal of such Enforcement Commissioner's determination in accordance with Section 8.1.

(v) The Enforcement Commissioner shall use his best efforts to issue his Decision or determination, as applicable, within ninety (90) days from the date of receipt of the last document in the Record.

6.7 Distribution of the Enforcement Commissioner's Decision or the Notice of Mutual Enforcement

(i) The Enforcement Commissioner shall send the Enforcement Commissioner's Decision issued pursuant to Section 6.6(i) or 6.6(ii), as the case may be, to the Respondent and any of its Affiliates expressly identified in the Decision, the CCO and to the EBRD Board of Directors.

(ii) After the Enforcement Commissioner has sent the Notice of Mutual Enforcement to the Affected Party, the Enforcement Commissioner shall send the Notice of Mutual Enforcement to the EBRD Board of Directors and the Office of the CCO, so that the Office of the CCO can take the relevant Disclosure Action described in Section 11.3(iii).

6.8 Proceedings Subsequent to Issuance of the Enforcement Commissioner's Decision

(i) If the Enforcement Commissioner's Decision issued pursuant to Section 6.6(i) or Section 6.6(ii), as applicable, imposes an Enforcement Action described in Section

11.2(iv) or Section 11.2(vi), then between the date on which the Enforcement Commissioner has issued such decision and the last day of the period for the submission of an Appeal provided in Section 8.1(i), the eligibility of the Respondent and any of its Affiliates subject to the Enforcement Commissioner's Decision to become a Bank Counterparty shall be automatically suspended.

(ii) If, within the delay prescribed in Section 8.1(i) (or any extension granted pursuant to Section 15.3), neither the Respondent nor the CCO presents an Appeal, the Enforcement Commissioner shall impose the Enforcement Action set forth in the Enforcement Commissioner's Decision, which shall be subject to disclosure in accordance with Section 11.3(i)(1).

(iii) If, within the delay prescribed in Section 8.1(i) (or any extension granted pursuant to Section 15.3), either the Respondent or the CCO presents an Appeal, the matter shall proceed in the manner set forth in Article VIII and the eligibility of the Respondent and any of its Affiliates subject to the Enforcement Commissioner's Decision to become a Bank Counterparty shall be automatically suspended until the date of the final outcome of the Enforcement Proceedings.

(iv) The suspension imposed under Section 6.8(i) or (iii) above is not subject to Appeal.

VII. ENFORCEMENT COMMITTEE

7.1 Role of the Enforcement Committee

The Enforcement Committee receives and determines appeals from the Enforcement Commissioner's Decisions and/or the Enforcement Commissioner's determinations issued pursuant to Section 5.1(iii), 5.2(iii) or Section 6.6(iv).

7.2 Composition of the Enforcement Committee

(i) The Enforcement Committee shall consist of five (5) members. Of these, the President shall nominate, for appointment by the EBRD Board of Directors, three (3) external members (the "**External Members**"; each, an "**External Member**"). The President shall further appoint two (2) internal members from among senior staff members of the Bank.

(ii) The President shall designate one member of the Enforcement Committee from among the External Members as the Chairperson of the Enforcement Committee.

(iii) The President shall appoint one or more Bank staff members to serve as the Secretariat to the Enforcement Committee. The Secretariat shall report directly to the Chairperson of the Enforcement Committee in all matters relating to the activities of the Enforcement Committee.

7.3 Administrative Matters

(i) Meetings of the Enforcement Committee shall be called by the Chairperson at such times as the business of the Enforcement Committee may require.

(ii) The decision of the Enforcement Committee in a matter shall be made by either:

- (1) a panel composed of the Chairperson of the Enforcement Committee and two other members designated by the Chairperson, one of whom shall be an External Member or
- (2) exceptionally, all members of the Enforcement Committee if, in the opinion of the Chairperson, the complexity of the issues raised in the Appeal so requires.

(iii) The participation of all three members of the panel (in case of Section 7.3(ii)(1)) and all five members of the Enforcement Committee (in case of Section 7.3(ii)(2)) shall be required to constitute a quorum.

(iv) All matters shall be decided by the majority of the Enforcement Committee.

(v) Any question as to the competence of the Enforcement Committee to decide on a particular matter shall be decided by the Enforcement Committee. No appeal shall lie against such decision.

(vi) Terms of reference of the Enforcement Committee shall be established by the President.

VIII. APPEALS

8.1 Commencement of Appeal; Notice of Appeal

(i) The Enforcement Commissioner's Decisions may be appealed by either the Respondent or the CCO. The CCO may also present an appeal against the Enforcement Commissioner's determination issued pursuant to Section 5.1(iii), Section 5.2(iii) or Section 6.6(iv). In all instances, the appeal to the Enforcement Committee (the "**Appeal**") is lodged by submitting a Notice of Appeal (the "**Notice of Appeal**") to the Enforcement Committee (with a copy to the Enforcement Commissioner) within sixty (60) days of deemed receipt (as described in Section 15.2) of:

- (1) the Enforcement Commissioner's Decision; or
- (2) the Enforcement Commissioner's determination issued pursuant to Section 5.1(iii), Section 5.2(iii) or Section 6.6(iv).

(ii) Where the Respondent is appealing the Enforcement Commissioner's Decision issued pursuant to Section 5.8(i), the Enforcement Committee may, as a matter of discretion, authorise the Appeal to proceed only if the Respondent has provided satisfactory evidence of exceptional circumstances which prevented it from submitting a Response within the prescribed delay.

(iii) The Respondent or the CCO, as applicable (in such capacity, the "**Appellant**"), shall include the following in the Notice of Appeal:

- (1) the Appellant's arguments in support of why the Enforcement Commissioner's Decision or determination should be overruled;
- (2) all relevant evidence;
- (3) a copy of the Enforcement Commissioner's Decision or determination being appealed;
- (4) where the Respondent is seeking leave to appeal the Enforcement Commissioner's Decision issued pursuant to Section 5.8(i), evidence of exceptional

circumstances which prevented it from submitting a Response to the Notice of Prohibited Practice or Third Party Finding within the prescribed delay; and

(5) where applicable, an indication of the Respondent's intention to make oral representations before the Enforcement Committee.

(iv) Upon receipt of the Notice of Appeal and save where the Appeal is against the Enforcement Commissioner's determination issued pursuant to Section 5.1(iii) or Section 5.2(iii), the Enforcement Committee shall, within five (5) days following receipt of the Notice of Appeal, forward a copy thereof to (1) the Enforcement Commissioner and the CCO, if the Appellant is the Respondent or (2) the Enforcement Commissioner and the Respondent, if the Appellant is the CCO and provide instructions for the submission of the Appeal Response pursuant to Section 8.2.

(v) Upon receipt of the Notice of Appeal pursuant to Section 8.1(i), the Enforcement Commissioner shall promptly send to the Enforcement Committee the Record.

8.2 Appeal Response

(i) The Appeal Response is the response to the Notice of Appeal submitted by:

(1) the CCO, if the Respondent is appealing the Enforcement Commissioner's Decision;

or

(2) the Respondent, if the CCO is appealing the Enforcement Commissioner's Decision or the Enforcement Commissioner's determination issued pursuant to Section 6.6(iv)

(the party submitting the Appeal Response, the "**Appellee**").

(ii) There shall be no Appeal Response if the CCO is appealing the Enforcement Commissioner's determination issued pursuant to Section 5.1(iii) or Section 5.2(iii).

(iii) The Appeal Response must be submitted to the Enforcement Committee by the Appellee

within twenty (20) days following the Appellee's deemed receipt of the Notice of Appeal (as described in Section 15.2). The Appeal Response shall be limited to arguments and evidence addressing the arguments and evidence set forth in the Notice of Appeal.

(iv) Within five (5) days following receipt of the Appeal Response, the Enforcement Committee shall forward a copy thereof to the Appellant and shall provide instructions for the submission of the Appeal Reply pursuant to Section 8.3(i).

8.3 Appeal Reply

(i) The Appellant may submit additional arguments (the "**Appeal Reply**") to the Enforcement Committee, in response to the Appeal Response within twenty (20) days following the Appellant's deemed receipt of the Appeal Response (as described in Section 15.2). The Appeal Reply shall be limited to arguments addressing the arguments and evidence set forth in the Appeal Response.

(ii) The Enforcement Committee shall forward, within five (5) days following receipt of the Appeal Reply, a copy thereof to the Appellee.

8.4 Withholding of Sensitive Materials

Notwithstanding any other provision of the present EPPs, the Enforcement Committee may, in its discretion and upon request by the CCO, agree to withhold from the Respondent particular evidence submitted to the Enforcement Committee, on the grounds that the particular evidence might endanger the life, safety or well-being of a person or constitute a violation of any written undertaking by the Bank. If the Enforcement Committee denies the CCO's request, the CCO shall have the option to withdraw such evidence from the record or to withdraw the relevant Appeal submission altogether.

8.5 Additional Submissions

At any time during the course of the Appeal and in the event that additional material evidence becomes available to the CCO or to the Respondent which was not previously submitted, the Enforcement Committee may, as a matter of discretion, authorise such additional evidence to be submitted. If the submission of such

additional evidence is authorised, the Enforcement Committee may, in its discretion, authorise either the Respondent or the CCO, as applicable, to submit additional arguments and/or evidence responding to the additional submissions of the other party within such delay as prescribed by the Enforcement Committee.

8.6 Oral Representations

(i) Should the Respondent wish to make oral representations to the Enforcement Committee, the Respondent must expressly indicate this as follows:

(1) if the Respondent is the Appellant, in its Notice of Appeal; or

(2) if the CCO is the Appellant, in its Appeal Response.

(ii) No oral representations shall be allowed in connection with an Appeal of the Enforcement Commissioner's determination issued pursuant to Section 6.6(iv).

(iii) The Enforcement Committee may also request oral representations of both parties on its own volition.

(iv) In the case where oral representations are to be made, the Enforcement Committee shall provide the Respondent and the CCO no less than thirty (30) days' notice of the date, time and location of the hearing.

(v) At the hearing:

(1) The Respondent may be self-represented or represented by counsel or any other person authorised by the Respondent, at the expense of Respondent.

(2) The CCO shall be present and/or represented by counsel or by any other person appointed by the CCO.

(vi) There shall be no live witness testimony at the hearing.

(vii) Oral representations shall be informal and shall be limited to the arguments and evidence contained in the Appeal Record (as described in Section 8.7). No new evidence or

arguments may be submitted on the occasion of making oral representations unless authorised by the Enforcement Committee.

8.7 Basis for Findings; Evidence; Confidentiality and Standard of Proof Required

(i) The review of the matter by the Enforcement Committee shall be restricted to the following materials:

- (1) the Record;
- (2) the decision of the Enforcement Commissioner;
- (3) the Notice of Appeal;
- (4) the Appeal Response (if any);
- (5) the Appeal Reply (if any);
- (6) any additional submissions authorised by the Enforcement Committee in accordance with Section 8.5;
- (7) any oral representations; and
- (8) any other evidence expressly requested by the Enforcement Committee pursuant to paragraph (iii) below

((1) to (8) collectively, the “**Appeal Record**”).

(ii) Formal rules of evidence shall not apply. The Enforcement Committee shall, in its discretion, determine the admissibility, relevance, materiality, weight and sufficiency of all evidence offered. For the avoidance of doubt, the Enforcement Committee may take judicial notice of well-known, indisputable facts and such facts need not be provided for in the Appeal Record.

(iii) The Enforcement Committee may request clarification of the materials in the Appeal Record at any time before issuing its Final Decision.

(iv) The Enforcement Committee’s decision to impose an Enforcement Action shall take account of the factors listed in Section 6.5.

(v) The Enforcement Committee’s deliberations and any documents reflecting the same are confidential and not subject to disclosure.

(vi) In relation to the Appeal against:

(1) the Enforcement Commissioner’s Decision described in Section 5.8(i), where the Respondent is the Appellant and where the

Enforcement Commissioner’s Decision was based on the Notice of Prohibited Practice; or

(2) the Enforcement Commissioner’s Decision described in Section 6.6(i), where either the Respondent or the CCO is the Appellant, the Enforcement Committee shall determine whether the Appeal Record supports the conclusion that it is more likely than not that the Respondent engaged in the alleged Prohibited Practice(s).

(vii) In relation to the Appeal against the Enforcement Commissioner’s Decision described in Section 5.8(i), where the CCO is the Appellant, the Enforcement Committee shall determine whether the Enforcement Action determined by the Enforcement Commissioner is commensurate with the Prohibited Practice in question.

(viii) In relation to the Appeal against:

(1) the Enforcement Commissioner’s Decision described in Section 5.8(i), where the Respondent is the Appellant and where the Enforcement Commissioner’s Decision was based on the Notice of Third Party Finding; or

(2) the Enforcement Commissioner’s Decision described in Section 6.6(ii),

the Enforcement Committee shall determine whether, following the Third Party Finding, it is more likely than not that the Respondent would be an unacceptable Bank Counterparty.

(ix) In relation to the Appeal against the Enforcement Commissioner’s determination issued pursuant to Section 5.1(iii) or Section 5.2(iii), the Enforcement Committee shall determine whether, based on the Appeal Record, the Enforcement Commissioner has jurisdiction over the matter, or there is prima facie evidence that it is more likely than not that the alleged Prohibited Practice occurred, or that, following the Third Party Finding, the Respondent would be an unacceptable Bank Counterparty.

(x) In relation to the Appeal against the Enforcement Commissioner’s determination issued pursuant to Section 6.6(iv), the Enforcement Committee shall determine whether the Enforcement Commissioner has jurisdiction to decide on the matter in question.

8.8 Decisions by the Enforcement Committee

(i) Upon consideration of the Appeal Record relating to the Appeal described in Section 8.7(vi), the Enforcement Committee shall issue a decision setting forth a recitation of the relevant facts, its determination as to whether it is more likely than not that the Respondent engaged in the alleged Prohibited Practice, the Enforcement Action(s) to be imposed on the Respondent and any of its Affiliates and the reasons therefor.

(ii) Upon consideration of the Appeal Record relating to the Appeal described in section 8.7(vii), the Enforcement Committee shall issue a decision setting forth a recitation of the relevant facts, its determination as to the appropriate Enforcement Action (if any) to be imposed on the Respondent and any of its Affiliates and the reasons therefor.

(iii) Upon consideration of the Appeal Record relating to the Appeal described in Section 8.7(viii), the Enforcement Committee shall issue a decision setting forth: a recitation of the relevant facts; its determination as to whether, following the Third Party Finding, it is more likely than not that the Respondent would be an unacceptable Bank Counterparty; any Enforcement Action to be imposed on the Respondent and any of its Affiliates and the reasons therefor.

(iv) Upon consideration of the Appeal Record relating to the Appeal described in Section 8.7(ix), the Enforcement Committee shall issue a decision setting forth a recitation of the relevant facts, its determination as to whether the matter warrants further consideration and the reasons therefor. If the Enforcement Committee decides that there is prima facie evidence that it is more likely than not that the alleged Prohibited Practice occurred, or that, following the Third Party Finding, the Respondent would be an unacceptable Bank Counterparty, or that the Enforcement Commissioner has jurisdiction over the matter, it shall instruct the Enforcement Commissioner to issue the relevant Notice and the matter shall proceed in the manner set forth in Section 5.4 or Section 5.5, as applicable.

(v) Upon consideration of the Appeal Record relating to the Appeal described in Section 8.7(x), the Enforcement Committee shall issue a decision setting forth a recitation of the

relevant facts, its determination as to whether the Enforcement Commissioner has jurisdiction over the matter in question and the reasons therefor. If the Enforcement Committee decides that the Enforcement Commissioner has jurisdiction, it shall instruct the Enforcement Commissioner to issue the Enforcement Commissioner's Decision pursuant to Section 6.6(i) or Section 6.6(ii), as applicable, and the matter shall proceed in the manner set forth in Sections 6.7 and 6.8.

(vi) The decision rendered pursuant to Section 8.8(i), 8.8(ii), 8.8(iii), 8.8(iv) or 8.8(v), as the case may be (the "**Final Decision**"), shall be final, no appeal shall lie against it and it shall take effect immediately.

(vii) The Enforcement Committee shall use its best efforts to render its Final Decision within ninety (90) days from the date of receipt of the last document in the Appeal Record or the date of the oral representations (if any), whichever is later.

8.9 Distribution and Disclosure of Final Decision

The Enforcement Committee shall send:

(i) the Final Decision described in Section 8.8(i), Section 8.8(ii) or Section 8.8(iii), as applicable, to the Respondent and any of its Affiliates expressly identified in the Final Decision, the Enforcement Commissioner, the CCO and the EBRD Board of Directors;

(ii) the Final Decision described in Section 8.8(iv) to the Enforcement Commissioner and the CCO; and

(iii) the Final Decision described in Section 8.8(v) to the Enforcement Commissioner, the Respondent and the CCO.

The Final Decision shall also be subject to disclosure in accordance with Section 11.3.

IX. REQUEST TO REOPEN

Exceptionally, the CCO or the Respondent, as the case may be, may request that a matter be reopened for reconsideration only on the basis of material facts or other material evidence which could not have been discovered, or were otherwise not available, prior to the completion of the Enforcement Proceedings and which are relevant to the determination as to whether the Respondent engaged in the alleged Prohibited Practice(s) or to the Third Party Finding, as applicable. Such request must be submitted to:

(i) the Enforcement Commissioner, if the Enforcement Commissioner's Decision was not subject to Appeal; or

(ii) the Enforcement Committee, if the Enforcement Commissioner's Decision was subject to Appeal,

in each case no later than thirty (30) days following the discovery of such new material facts or evidence, and in any event not later than one (1) year from the issuance of the Enforcement Commissioner's Decision (if the Enforcement Commissioner's Decision was not subject to Appeal) or the Final Decision (if the Enforcement Commissioner's Decision was subject to Appeal).

Upon receipt of such request, the Enforcement Commissioner or the Enforcement Committee, as applicable, will decide, in his/its discretion, whether to reopen the matter for further proceedings as he/it determines appropriate.

X SUSPENSION

10.1 Request for Suspension

(i) If, either before the CCO concludes her investigation of the suspected Prohibited Practice, or after the end of her investigation, the CCO believes that the suspension of the Subject's continued eligibility is necessary to protect the Bank's interests or reputation, to protect other Bank Counterparties' interests, or to ensure the integrity of an ongoing Bank procurement process, the CCO may present to the Enforcement Commissioner a request for suspension (the "**Request**"), requesting that, pending the completion of the investigation or any Enforcement Proceedings:

- (1) the eligibility of the Subject and its Affiliates (if any) to become a Bank Counterparty be suspended; and/or
- (2) the eligibility of the Subject and/or its Affiliates (if any) to receive payment in respect of a Bank Project be suspended, to the extent contractually permissible.

(ii) The Request shall consist of a description of the ongoing investigation (if the investigation has not been concluded) and the basis for the request.

10.2 Issuance of Suspension Decision

(i) Following receipt of the Request, or at any time during the course of the Enforcement Proceedings, but before the issuance of the Enforcement Commissioner's Decision, the Enforcement Commissioner may (irrespective of whether such action has been requested by the CCO), issue a decision ordering that:

- (1) the eligibility of the Subject/Respondent and its Affiliates (if any) affected by such order to become a Bank Counterparty be suspended; or
- (2) the eligibility of the Subject/Respondent and its Affiliates (if any) affected by such order to receive payment in respect of a Bank Project be suspended, to the extent contractually permissible

(such decision, the "**Suspension Decision**").

(ii) A Suspension Decision may only be made where the Enforcement Commissioner has determined that such action is necessary to protect the Bank's interests or reputation, to protect other Bank Counterparties' interests, or to ensure the integrity of an ongoing Bank procurement process.

(iii) A Suspension Decision shall be without prejudice to any right or recourse of the Bank arising from its contractual relationship with the Subject/Respondent or any of its Affiliates.

(iv) The Enforcement Commissioner may, in his discretion, terminate the Suspension Decision at any time after:

- (1) the expiration of the deadline for the submission of an Objection, if the Subject/Respondent does not submit an Objection by such deadline; or
- (2) the date of the issuance of the Enforcement Commissioner's decision to uphold the Suspension Decision pursuant to Section 10.4(ii),

and shall inform the Subject/Respondent and the CCO accordingly.

10.3 Contents and Communication of a Suspension Decision; Withholding of Certain Evidence

(i) The Suspension Decision shall:

- (1) identify the Subject/Respondent and any relevant Affiliates;
- (2) inform the Subject/Respondent and its Affiliates (if applicable) of their suspension and the manner in which they may object to it pursuant to Section 10.4;
- (3) subject to Section 10.3(ii), attach all evidence relevant to the Enforcement Commissioner's determination that the Suspension Decision is warranted; and
- (4) append a copy of the EPPs in effect on the date the Suspension Decision was issued, unless already sent to the Respondent in accordance with Section 5.4.

(ii) The Enforcement Commissioner may, in his discretion and/or upon request by the CCO, withhold from the Subject/Respondent particular materials submitted in evidence if, in support of the Request, there is a reasonable basis to conclude that:

- (1) disclosure of such evidence would have a material adverse effect on the investigation; and
- (2) the Subject/Respondent would retain the ability to mount a meaningful response to the allegations against it notwithstanding the withholding of such evidence.

The Enforcement Commissioner shall inform the CCO of his decision and allow the CCO an opportunity to withdraw her Request if the Enforcement Commissioner determines that such materials should not be withheld.

(iii) Any Suspension Decision shall be communicated by the Enforcement Commissioner to the Subject/Respondent and, if applicable, to the relevant Affiliates in writing.

10.4 Subject's/Respondent's Objection to Suspension Decision

(i) The Subject/Respondent may submit an objection to the Suspension Decision (an "**Objection**") to the Enforcement Commissioner within thirty (30) days from the date of deemed receipt of the Suspension Decision (as described in Section 15.2). The Objection shall include information and arguments as to why, despite the evidence in support of the Suspension Decision, the Subject/Respondent and/or any of its Affiliates, as applicable, ought to remain eligible to become a Bank Counterparty and/or to receive payment in respect of a Bank Project, as the case may be. For the avoidance of doubt, the Objection shall not stay the CCO's investigation or the Enforcement Proceedings and the Suspension Decision shall remain in place until the Enforcement Commissioner has rendered his decision described in paragraph (ii) below.

(ii) The Enforcement Commissioner shall consider the information and arguments presented and shall render his decision on whether to terminate or uphold the Suspension Decision within thirty (30) days from the date of

his receipt of the Objection and shall promptly notify the CCO and the Subject/Respondent of such decision. There will be no appeal against such decision.

XI. ENFORCEMENT AND DISCLOSURE ACTIONS

11.1 Purpose

The Enforcement and Disclosure Actions are intended, and shall primarily seek, to assist a Respondent and any of its Affiliates to address deficiencies in control or compliance functions that may have contributed to the occurrence of a Prohibited Practice and/or to reduce the Bank's operational and reputational risks in the carrying out of Bank Projects with a Respondent or any of its Affiliates.

11.2 Enforcement Actions

Enforcement Actions shall include one or more of the following:

- (i) Rejection of a proposal for award of contract to a Respondent in respect of a procurement of goods, works or services.
 - (ii) Cancellation of a portion of Bank finance allocated to a Respondent but not yet disbursed in respect of a contract for the procurement of goods, works or services.
 - (iii) Reprimand: a formal letter of censure for a Respondent's actions, which notifies a Respondent that any subsequent violation may result in a higher penalty.
 - (iv) Debarment: a Respondent and any of its Affiliates are declared ineligible, either indefinitely or for a stated period of time, to become a Bank Counterparty in any new Bank Project.
 - (v) Conditional Non-Debarment: a Respondent and any of its Affiliates are required to comply, within stated time periods, with certain remedial, preventative or other measures as a condition to avoid debarment.
- In the event the Respondent or its Affiliates (if any) fail(s) to demonstrate its/their compliance with the prescribed conditions within the prescribed time periods, a debarment will automatically become effective for the period provided in the relevant decision.
- (vi) Debarment with Conditional Release: the Respondent and any of its Affiliates are declared ineligible for a stated period of time subject to

conditional reinstatement pursuant to which the period of debarment is reduced or terminated if the Respondent and any of its Affiliates demonstrate(s) compliance with specified conditions set forth in the relevant decision.

(vii) Restitution: the Respondent is ordered to make restitution to another party or the Bank (with respect to the Bank's funds, Special Funds resources or other cooperation funds or trust funds administered by the Bank, as the case may be) of diverted funds or the amount representing the economic benefit that the Respondent obtained as a result of having committed a Prohibited Practice.

11.3 Disclosure

(i) Where a Respondent and its Affiliates (if any) are subject to an Enforcement Action described in Section 11.2(iv) or (vi), the Office of the CCO shall post the Enforcement Action on the Bank's internet site. Such posting shall be made:

- (1) if the Enforcement Action is imposed on the basis of the Enforcement Commissioner's Decision and if such decision is not appealed pursuant to Section 8.1, promptly after the expiration of the 60-day deadline prescribed in Section 8.1 (or any extension granted pursuant to Section 15.3); or
- (2) if the Enforcement Action is imposed on the basis of the Final Decision, promptly after the Final Decision is deemed to have been received by the Respondent pursuant to Section 15.2.

The posting shall remain on the site for as long as the Enforcement Action is in effect.

(ii) Where a Respondent and its Affiliates (if any) are subject to one or more Enforcement Actions described in Section 11.2(i), (ii), (iii), (v) or (vii) (unless any such Enforcement Action is imposed together with the Enforcement Action described in Section 11.2(iv) or (vi), in which case Section 11.3(i) shall apply), the Enforcement Action shall not be posted on the Bank's internet site or otherwise published, but may be disclosed, in the form deemed appropriate by the Bank, to any Bank Counterparty and such other third parties,

including any international organisation, authority or agency of a member country of the Bank.

(iii) Once the Notice of Mutual Enforcement is deemed received by the Affected Party pursuant to Section 15.2(ii), the Office of the CCO shall post the Mutual Enforcement on the Bank's internet site. The posting shall remain on the site for as long as the Mutual Enforcement is in effect.

(iv) Except for the Final Decision rendered pursuant to Section 8.8(iv) and Section 8.8(v), the Enforcement Committee shall publish the full text of the Final Decisions on the Bank's internet site.

(v) The Enforcement Committee may, in its discretion, publish its Final Decisions in such a way so as to preserve the essential anonymity of any person or entity whose reputation might be adversely affected by such publication.

XII. TREATMENT OF AFFILIATES

12.1 Enforcement Actions on Affiliates

In determining whether to impose Enforcement Actions on Affiliates, the Enforcement Commissioner or the Enforcement Committee, as applicable, shall consider, among other things:

- (i) the management and organisational structure of the relevant entity;
- (ii) if the relevant Affiliate was involved in or influenced the commission of the Prohibited Practice, or was the intended beneficiary of such act;
- (iii) the possibility that the Respondent may circumvent an Enforcement Action through an Affiliate, taking into account the influence the Respondent has on an Affiliate and vice versa; and
- (iv) whether the Respondent may obtain benefits through the relevant Affiliate.

Such determination shall be informed by the provisions of the MDB Harmonized Principles on Treatment of Corporate Groups, adopted by the Bank on 10 September 2012, or such other policies and guidelines, as may be adopted by the Bank on the same subject matter.

12.2 Prevention of Circumvention of an Enforcement Action after the Issuance of a Non-contested Enforcement Commissioner's Decision or the Final Decision

- (i) If, after the issuance of:
 - (1) the Enforcement Commissioner's Decision and expiration of the deadline for Appeal, if no Notice of Appeal has been received; or
 - (2) the Final Decision,

the CCO determines that an entity that is, or is seeking to become, a Bank Counterparty (the "**New Entity**") is prima facie a successor or assignee of an entity that is subject to an Enforcement Action (the "**Original Enforcement Action**"), including through the acquisition of or merger with that entity, the CCO may apply to the Enforcement Commissioner to have the Original Enforcement Action applied to the New Entity and any of its relevant Affiliates. The

CCO's application to the Enforcement Commissioner (the "**Application**") shall include the relevant Enforcement Commissioner's Decision and the Enforcement Committee's decision (if any).

(ii) Upon receipt of the Application, the Enforcement Commissioner shall apply, mutatis mutandis, the process prescribed in Articles V, VI and XI of the present EPPs, save that all material and arguments advanced shall be restricted to whether or not the New Entity and any of its relevant Affiliates should be subject to the Original Enforcement Action.

(iii) If the Original Enforcement Action imposes an Enforcement Action described in Section 11.2(iv) or Section 11.2(vi), the New Entity's eligibility to become a Bank Counterparty shall be suspended during the period between the date of the Enforcement Commissioner's receipt of the Application and the final outcome of the Enforcement Proceedings with respect to the New Entity. Such suspension may not be subject to Objection.

12.3 Prevention of Circumvention of an Enforcement Action after the Issuance of a Contested Enforcement Commissioner's Decision

If, after the issuance of the Enforcement Commissioner's Decision with respect to which an Appeal before the Enforcement Committee is still pending, the CCO determines that a New Entity is prima facie a successor or assignee of an entity that is subject to the Original Enforcement Action imposed by the Enforcement Commissioner (including through the acquisition of or merger with that entity), the CCO may apply to the Enforcement Committee to have the New Entity joined in the Appeal.

XIII. REFERRAL TO GOVERNMENTAL AUTHORITIES AND DISCLOSURE TO OTHER INSTITUTIONS AND AGENCIES

13.1 Referral to Governmental Authorities

If the CCO makes a prima facie determination that criminal or regulatory laws of any country may have been violated by any party, the CCO may at any time, recommend to the President of the Bank that the matter be referred to appropriate governmental authorities (including agencies of a Bank's member country). The recommendation shall identify the information that may be disclosed to such authorities and shall include the opinion of the General Counsel regarding the legal aspects of the recommended referral and, in particular, its potential ramifications for the Bank's status, privileges and immunities. The President shall make the decision on the recommended referral and inform the CCO of his decision.

13.2 Disclosure to Co-financiers

(i) If the CCO makes a prima facie determination that there is evidence of a Prohibited Practice in connection with a project co-financed with another international or multinational organisation, including another development bank, or an agency of a Bank's member country, the CCO may make available to that organisation or agency any information the Bank may have relating to the suspected commission of such Prohibited Practice. Such disclosure shall be made in accordance with the agreement with the relevant organisation or agency covering such disclosure of information. If no such agreement exists, before disclosing such information, the CCO shall obtain an opinion of the General Counsel regarding the legal aspects of the proposed disclosure and, in particular, its potential ramifications for the Bank's status, privileges and immunities.

13.3 Reciprocal Sharing of Information with other international organisations

(i) At any time, the CCO or the Enforcement Commissioner may make available to any international organisation any information that the Bank may have relating to the suspected commission of a Prohibited Practice. Such disclosure shall be made in accordance with the

agreement with the relevant organisation covering such disclosure of information. If no such agreement exists, before such disclosure is made, the CCO or the Enforcement Commissioner, as applicable, shall obtain an opinion of the General Counsel regarding the legal aspects of the proposed disclosure and, in particular, its potential ramifications for the Bank's status, privileges and immunities.

(ii) Where an Enforcement Action meets the conditions for Mutual Enforcement, a notification of the issuance of the Bank's decision to impose such Enforcement Action shall be sent by the Enforcement Commissioner or the Enforcement Committee, as applicable, to all of the Mutual Enforcement Institutions, promptly after the issuance of notification under:

- (1) Section 6.7((i), and expiration of the deadline for Appeal, if no Notice of Appeal has been received; or
- (2) Section 8.9(i).

XIV. SETTLEMENTS

14.1 Form of a Settlement Agreement

(i) A Settlement Agreement is a signed agreement between the CCO (or a person duly appointed by or on behalf of the CCO) acting on behalf of the Bank, and an individual or entity, whether prior to or after becoming a Respondent, which contains terms that include one or more Enforcement Actions.

(ii) A Settlement Agreement shall contain an acknowledgement by all parties that are subject to it, including the CCO (or a person acting on her behalf), that the Respondent(s) entered into it freely and fully informed of its terms.

14.2 Resolution through a Settlement Agreement

A Settlement Agreement may be concluded at any time during the CCO's investigation or the Enforcement Proceedings, but prior to the issuance of an Enforcement Commissioner's Decision.

14.3 Stay of Proceedings

(i) Negotiations of a Settlement Agreement do not automatically stay the CCO's investigation or Enforcement Proceedings.

(ii) At any time during Enforcement Proceedings, but prior to the issuance of an Enforcement Commissioner's Decision, the CCO and the Respondent(s) may jointly request in writing that the Enforcement Commissioner or the Enforcement Committee, as applicable, stay the Enforcement Proceedings for the purpose of conducting settlement negotiations.

(iii) An initial stay of proceedings may be granted for no longer than sixty (60) days, but may be renewed upon request by the CCO and the Respondent(s), acting jointly, for another thirty (30) days, together with written confirmation by both parties that they continue to be actively engaged in negotiating a Settlement Agreement.

(iv) Requests for a stay of Enforcement Proceedings shall be granted as a matter of course.

14.4 Submission and Review of Settlement Agreement

(i) At any time prior to the issuance of the Enforcement Commissioner's Decision, the CCO and the Respondent may submit a Settlement Agreement to the Enforcement Commissioner for review. Such submission shall automatically stay the Enforcement Proceedings then pending with respect to any case(s) specified in the Settlement Agreement.

(ii) The Enforcement Commissioner, in consultation with the General Counsel, shall review the terms of the Settlement Agreement to ensure that they do not violate the present EPPs, any guidance issued by the Bank in respect thereof or any other Bank policy. The Enforcement Commissioner shall use his best efforts to complete such review within fourteen (14) days from the date on which he received the Settlement Agreement.

(iii) Upon confirmation that the terms of the Settlement Agreement do not violate the present EPPs, any guidance issued by the Bank in respect thereof or any other Bank policy, the Enforcement Commissioner shall provide clearance on the Settlement Agreement and shall promptly inform the parties subject to the Settlement Agreement and the EBRD Board of Directors thereof. The Settlement Agreement shall become effective immediately upon the issuance by the Enforcement Commissioner of notification of the imposition of the Enforcement Action to the Respondent or, if different under the terms of the Settlement Agreement, as of the date specified therein.

(iv) If the Enforcement Commissioner finds that the terms of the Settlement Agreement violate the present EPPs, any guidance issued by the Bank in respect thereof or any other Bank policy, or that, notwithstanding the acknowledgement specified in Section 14.1(ii), the Respondent did not enter into it freely and fully informed of its terms, the Enforcement Commissioner shall promptly inform the CCO and the Respondent thereof, whereupon the Settlement Agreement shall automatically become null and void without prejudice to the rights of either party.

14.5 Effect of Settlement Agreements

(i) Enforcement Actions imposed pursuant to a Settlement Agreement shall have the same effect as if the Enforcement Action(s) had been imposed by the Enforcement Commissioner pursuant to his decision described in Section 6.6(i) or Section 6.6(ii), as applicable, including the disclosure requirements specified in Sections 11.3(i) and (ii).

(ii) If the Settlement Agreement provides for the definitive disposition of the case whether in whole or in part, the case (or such part thereof as the Settlement Agreement may specify) shall be closed pursuant to the terms specified therein.

(iii) Unless the Settlement Agreement expressly provides otherwise, compliance by the relevant parties with the terms and conditions of the Settlement Agreement shall be deemed the condition for the release of such parties from debarment with conditional release or the condition for non-debarment, as the case may be.

14.6 Compliance with Settlement Agreements

Unless the Settlement Agreement expressly provides otherwise, a final and non-appealable determination as to the compliance by the parties with the terms and conditions of the Settlement Agreement, or any disagreement between the parties as to the interpretation or performance thereof, shall be made by the Enforcement Commissioner.

XV. ADMINISTRATIVE MATTERS

15.1 Delivery; Addresses

(i) All notices and submissions relating to the present EPPs shall, except where otherwise stated, be in writing.

(ii) The Respondent's address for delivery shall be the address designated as such by the Respondent in writing to the Enforcement Commissioner or the Enforcement Committee, as applicable, or otherwise, the latest address of the Respondent's place of business (in case of an entity) or residence (in case of an individual) that the CCO has in its possession as a result of her investigative activities.

(iii) At any time during Enforcement Proceedings, the Respondent may notify the Enforcement Commissioner or the Enforcement Committee, as applicable, that it wishes to receive all subsequent correspondence via email, in which case the Respondent shall provide the email address to which all subsequent correspondence shall be sent until further notice by the Respondent to the contrary.

(iv) The Affected Party's address for delivery of the Notice of Mutual Enforcement shall be such party's address specified in the Notice of a Debarment Decision.

15.2 Deemed Receipt

(i) The date of receipt of all notices by the Respondent shall be deemed to be either:

- (1) the fourth (4th) day following the date on which the relevant notice was sent by registered mail or equivalent system to the Respondent's address (as described in Section 15.1(ii)); or
- (2) if the Respondent has sent a notification of email address pursuant to Section 15.1(iii), the first (1st) day following the date on which the relevant notice was sent to the email address provided by the Respondent.

Such date of deemed receipt shall be used for calculating the applicable delays and the expiration thereof.

(ii) The date of deemed receipt of the Notice of Mutual Enforcement shall be the fourth (4th) day following the date on which the Notice of Mutual Enforcement was sent by registered mail or equivalent system to the Affected Party's address.

(iii) If a Respondent refuses delivery of the relevant notice, the date of such refusal shall be deemed as the date of receipt of such notice by the Respondent.

(iv) With respect to the delivery of the Notice of Prohibited Practice, the Notice of Third Party Finding and/or the Suspension Decision, if a Respondent's address is unknown or fictitious, the Enforcement Commissioner shall use his reasonable efforts to cause the Respondent to receive the relevant notice and, if applicable, shall determine the date of receipt of constructive notice by the Respondent. For purposes hereof, "constructive notice" shall refer to the presumption that the Respondent has knowledge of the issuance of the relevant notice by virtue of the efforts to notify the Respondent.

(v) The date of receipt of all notices by the CCO shall be deemed to be the first (1st) day following the date on which the relevant notice was sent to the CCO by the Enforcement Commissioner or the Enforcement Committee, as applicable.

(vi) Where a dispute arises as to the date as of which a document should be deemed received or sent, the matter shall be decided by the Enforcement Commissioner or the Enforcement Committee, as applicable. The Enforcement Commissioner's decision with respect to the date of deemed receipt is not subject to appeal.

15.3 Extensions of Time

Upon request and for good cause shown, the Enforcement Commissioner or the Enforcement Committee, as applicable, may, as a matter of discretion, grant reasonable extensions of any deadline set forth in the present EPPs or in the relevant notice. The Respondent and the CCO shall not have an automatic right to the extension of any deadline.

15.4 No Right to Discovery

Except as expressly provided for in the present EPPs, the Respondent shall not have the right to review or obtain any information or documents, either related or unrelated to any Enforcement Proceedings in which the Respondent is a party, which may be in the ownership, possession or control of the Bank. 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 be kept confidential.

XVI. GENERAL PROVISIONS

16.1 Amendments

The Bank reserves the right to revise the present EPPs, with or without notice. Any such revisions shall apply only to Enforcement Proceedings with respect to which a Notice of Prohibited Practice or a Notice of Third Party Finding, as applicable, was issued after the date on which such revisions became effective.

16.2 Reservation of the Bank's Privileges and Immunities

Nothing in the present EPPs shall be considered to alter, abrogate, or waive the Bank's immunities and privileges as set forth in the Agreement Establishing the Bank or in applicable national or international law.

16.3 Questions on Interpretation

If any question arises as to the interpretation of any provision of the present EPPs, the CCO, the Enforcement Commissioner or the Enforcement Committee, as the case may be, may consult the General Counsel for advice and the General Counsel's interpretation shall be binding.

16.4 Limitation on the Sharing of Information

Notwithstanding any other provisions of the present EPPs, the sharing of information contemplated herein shall be subject to the limitations of the Bank's policies on disclosure of and access to information of the Bank, other policies governing the Bank's use and confidentiality of information, the contractual obligations of the Bank with outside parties, and to other relevant considerations in such policies

and contracts.

16.5 Application of the Present EPPs

The present EPPs shall apply to:

- (i) acts of suspected fraudulent practice, corrupt practice, collusive practice and coercive practice that took place (a) after 27 March 2009 if the relevant act(s) occurred in the context of a Bank Project to which the provisions of Articles 3 and 5 of the Bank's Procurement Policies and Rules did not apply and (b) after 2 May 2007 if the relevant act(s) occurred in the context of a Bank Project to which the provisions of Articles 3 and 5 of the Bank's Procurement Policies and Rules applied;
- (ii) acts of suspected theft that took place after 25 April 2014; and
- (iii) acts of suspected Prohibited Practices, which do not constitute any of the fraudulent practice, corrupt practice, collusive practice, coercive practice or theft, that took place after the date on which the addition of the relevant Prohibited Practice under the EPPs became effective.

16.6 Effective Date of the Present EPPs

The present EPPs shall enter into full force and effect on the date on which the President appoints the Enforcement Commissioner (the "**Effective Date**"), which shall be posted on the Bank's website. Any Enforcement Proceedings for which a Notice of Prohibited Practice or a Notice of Third Party Finding was issued prior to the Effective Date shall be conducted in accordance with the EPPs (revised April 2014).

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