

## Prohibited Practices Guidelines for EBRD Operations

The purpose of these guidelines is to clarify the meaning and interpretation of the terms “Corrupt Practices”, “Fraudulent Practices”, “Coercive Practices”, “Collusive Practices”, “Obstructive Practice”, “Theft” and “Misuse of the Bank’s Resources” (collectively, the “Prohibited Practices and each, a “Prohibited Practice”) in the context of a Bank Project, as those terms are defined in the EBRD’s Enforcement Policy and Procedures (November 2015) (the “EPPs”).

As a general principle applicable to all Prohibited Practices, a party will not be liable for actions taken by an unrelated third party unless the party has participated in the Prohibited Practice or has aided, abetted or conspired with such third party in the commission of the Prohibited Practice.

### 1. Corrupt practices

A “Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

Interpretation

(a) The conduct in question must involve the use of improper means (such as bribery or kickbacks) by someone to induce another person to act or to refrain from acting in the exercise of that person’s duties, in order to obtain or retain business, or to obtain an undue advantage. Antitrust, securities and other violations of law that are not of this nature fall outside of the definition of corrupt practices but may still be scrutinised under alternative procedures.

(b) It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These payments are not viewed as Corrupt Practices, so long as they are permitted under local law and fully disclosed in the payer's books and records. Similarly, a party will not be held liable for Corrupt Practices committed by entities that administer bona fide social development funds or charitable contributions.

(c) The offering, giving, receiving or soliciting of corporate hospitality and gifts that are reasonable and customary by internationally-accepted standards shall not constitute a Corrupt Practice unless the action violates applicable law.

(d) The payment or reimbursement of reasonable travel and entertainment expenses incurred by a third party consistent with existing practice under relevant law and international conventions will not be viewed as a Corrupt Practice.

(e) The EBRD does not condone facilitation payments regardless of whether they are criminalised or not. Such payments, which are illegal in most countries, are dealt with in accordance with relevant law and international conventions.

### 2. Fraudulent practices

A “Fraudulent Practice” means 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.

## Interpretation

(a) An act or omission, including a misrepresentation, will be regarded as made recklessly if the actor is indifferent as to whether the information or representation is true or false. Mere inaccuracy in such information or representation, committed through simple negligence, is not tantamount to a “Fraudulent Practice”.

(b) Fraudulent Practices are intended to cover acts or omissions that are directed to or against the EBRD or that are otherwise of legitimate concern to the EBRD (e.g., a misrepresentation to an EBRD member country in connection with the award or implementation of a contract or concession in a project financed by the EBRD).

### **3. Coercive practices**

A “Coercive Practice” 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.

## Interpretation

(a) A Coercive Practice is an action undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

(b) Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognisable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

### **4. Collusive practices**

A “Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

## Interpretation

Collusive Practices may take the form of actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of another Prohibited Practice.

### **5. Obstructive practice**

An “Obstructive Practice” 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.

## Interpretation

An action legally or properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action has the effect of impeding an investigation, will not constitute an Obstructive Practice.

## 6. Theft

“Theft” means misappropriation of property belonging to another party.

Interpretation

(a) A party’s appropriation of property belonging to another will not be regarded as Theft if:

the party appropriates the property in the reasonable belief that it has a legal right to deprive the other of such property, on behalf of itself or of a third person; or  
the party appropriates the property in the reasonable belief that the party would have the other’s consent if the other knew of the appropriation and the circumstances of it; or

the party appropriates the property in the reasonable belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(b) A party’s appropriation of property belonging to another may be Theft notwithstanding that the party is willing to pay for the property.

(c) Property will be regarded as belonging to a person if that person has possession or control of it, or has a proprietary right or interest to it (other than an interest arising only from an agreement to transfer or grant an interest).

(d) Where a party obtains property due to another’s mistake and is under an obligation to make restoration (in whole or in part) of the property or its proceeds or of the value thereof, then to the extent of that obligation, the property will be regarded (as against such party) as belonging to the person entitled to restoration, and an intention not to make restoration will be regarded as an intention to deprive that person of the property.

(e) Theft may be committed willingly or negligently but, unlike a Fraudulent Practice, it need not include a misrepresentation.

(f) It is immaterial whether the misappropriation is made with a view to gain or for the party’s own benefit.

## 7. Misuse of the Bank’s resources

“Misuse of the Bank’s Resources” means improper use of the Bank’s resources, committed either intentionally or through reckless disregard.

Interpretation:

(a) Misuse of the Bank’s Resources is the use of EBRD’s resources for a purpose other than the one for which such resources were provided.

(b) Unlike Theft, Misuse of the Bank’s Resources need not involve the taking of property out of another’s possession as the party may be in rightful possession of the EBRD resources in question.

(c) Unlike Fraudulent Practice, Misuse of the Bank’s Resources need not involve a misrepresentation. In fact, at the time when a representation with respect to the intended use of the EBRD’s resources is made, the party may intend to use the resources for a particular purpose, but if it later changes its mind and uses the EBRD’s resources for another purpose, without obtaining EBRD’s prior written consent (e.g., where it uses the proceeds of an EBRD loan for the repayment of debts, rather than for the development of a project for which the loan was provided), such action will constitute Misuse of the Bank’s Resources.