

**DOCUMENT OF THE EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

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**ENFORCEMENT
POLICY AND
PROCEDURES**

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ENFORCEMENT POLICY AND PROCEDURES

(The Mechanism to Combat Fraud and Corruption in EBRD Projects)

I. INTRODUCTION

The Enforcement Policy and Procedures (“EPP”) 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 or coercion in relation to activities and projects financed from the Bank’s ordinary capital resources (including the purchase of the goods, works or services for the Bank) or from Special Funds resources, or from cooperation funds administered by the Bank.

The present policy and procedures 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 requests such other organisation to enforce its debarment decisions or enforces debarment decisions made by such other organisation.

Furthermore, the present policy and procedures also apply when the Bank considers taking action against an individual or entity who has been found to have engaged in a Prohibited Practice by either a final judgment of a judicial process in a Member 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 policy and procedures is adopted as part of the EBRD’s commitments under the Uniform Framework for Preventing and Combating Fraud and Corruption.¹

II. DEFINITIONS

In the present policy and procedures, the terms set out below shall have the following meanings:

- 2.1 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.
- 2.2 Bank Counterparty** means, an individual or entity who is seeking or has obtained funding for a Bank Project, or any supplier, contractor or consultant for a Bank Project who is selected in accordance with Section 3 or 5 of the Bank’s Procurement Policies and Rules or pursuant to the Bank’s Corporate Procurement Policy, and any Affiliate thereof, or any sub-supplier, sub-contractor or sub-consultant of a supplier, contractor, or consultant for a Bank Project selected in accordance with Section 3 or 5 of the Bank’s Procurement Policies and Rules or pursuant to the Bank’s Corporate Procurement Policy, and any Affiliate thereof.

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

- 2.3 Bank Project** means any activity or project which the Bank has financed or committed to finance 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 administered by the Bank.
- 2.4 CCO** means the Chief Compliance Officer of the Bank.
- 2.5 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 2.16(i) to (iv) hereof;
 - (ii) has been made public by such institution;
 - (iii) has an initial period of debarment exceeding one 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 years of the commission of the most recent Prohibited Practice defined in Section 2.16(i) to (iv) hereof to which such decision relates; and
 - (vi) has not been made in recognition of a decision made in a national or other international forum.
- 2.6 Disclosure Action** means any of the actions that the Bank has taken or may take in accordance with Subsection 7.3.
- 2.7 Enforcement Action** means any of the actions that the Bank has taken or may take in accordance with Subsection 7.2.
- 2.8 Enforcement Proceedings** means any proceedings initiated in accordance with the present policy and procedures.
- 2.9 Mutual Enforcement** means, as the context may require, the Bank's enforcement of a Debarment Decision for the same term and on the same conditions as the Debarment Decision or enforcement of an Enforcement Action by a Mutual Enforcement Institution.
- 2.10 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.

- 2.11 Notice of a Debarment Decision** means a notice issued by a Mutual Enforcement Institution of a Debarment Decision.
- 2.12 Notice of Mutual Enforcement** means a notice issued by the Enforcement Committee in accordance with Subsection 5.6 to the individual(s) and or entity(ies) subject to a Debarment Decision.
- 2.13 Notice of Prohibited Practice** means a notice issued by the Enforcement Committee to one or more Respondents in accordance with Section 5.1(iii)
- 2.14 Notice of Third Party Finding** means a notice issued by the Enforcement Committee to one or more Respondents in accordance with Section 5.1(iv).
- 2.15 OCCO** means the Office of the CCO.
- 2.16 Prohibited Practices** are 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 recklessly² misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation; and
 - (v) **theft** which means the misappropriation of property belonging to another party.
- 2.17 Proposed Action** means any Enforcement or Disclosure Action proposed to be taken in accordance with Section 6.7(i), and **Proposed Actions** means any Enforcement Action together with the corresponding Disclosure Action.
- 2.18 Record** means the written materials as further described in Section 6.1(i).
- 2.19 Reply** means any reply filed by the CCO in accordance with Section 6.3.

² To act knowingly or recklessly requires that the information or representation being conveyed is false or 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.

- 2.20 Respondent** means an individual or entity who is the recipient of either a Notice of Prohibited Practice or a Notice of Third Party Finding issued in accordance with Section 5.1 (iii) or 5.1(iv).
- 2.21 Response** means a response filed by Respondent in respect of either a Notice of Prohibited Practice or a Notice of Third Party Finding in accordance with Section 6.2.
- 2.22 Secretary** means the Secretary of the Enforcement Committee, as provided under Section 4.1(iii).
- 2.23 Suspension Decision** means a decision that the Bank has taken or may take in accordance with Section 5.2.
- 2.24 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 defined in Section 2.16(i) to (iv) hereof.

III. REPORTING AND INVESTIGATION OF SUSPECTED PROHIBITED PRACTICES

3.1 Reporting of suspected Prohibited Practice

- (i) Any suspicion that a Bank staff member, officer, or expert performing a mission for the Bank has, or is informed of, regarding the use of a Prohibited Practice in relation to a Bank Project shall immediately be reported to OCCO. Parties other than staff members, officers or experts performing a mission for the Bank may report to the Bank any suspected Prohibited Practice in relation to a Bank Project consistent with this paragraph. Any report of a suspected Prohibited Practice in relation to a Bank Project can also be made to OCCO via the Compliance Hotline³ or the Compliance inbox at compliance@ebrd.com. Any person may choose to anonymously report suspected Prohibited Practice to the Bank to the Compliance inbox address mentioned in the immediately preceding sentence.
- (ii) Bank staff members, officers or experts performing missions for the Bank may report any suspected Prohibited Practice in relation to a Bank Project to the Bank's Head of Internal Audit or to the Managing Director for Human Resources; the Head of Internal Audit or Managing Director for Human Resources (as applicable) shall, subject to applicable Bank policies and procedures, immediately refer the matter to the Chief Compliance Officer to be dealt with in accordance with this policy and other relevant Bank policies and procedures.

³ For country-specific phone numbers please see www.ebrd.com/about/integrity/compl/hotline.htm

3.2 Receipt of Reports of Prohibited Practices Unrelated to Bank Projects

- (i) OCCO may come into possession of information concerning a Third Party Finding.
- (ii) OCCO may come into possession of a Notice of a Debarment Decision.

3.3 Preliminary Assessment

- (i) Upon receipt of an allegation of a suspected Prohibited Practice or information concerning a Third Party Finding, or receipt of a Notice of a Debarment Decision, the CCO shall carry out a preliminary assessment to determine the applicability of the present policy and procedures and the reliability of the information received.
- (ii) If the CCO determines that, based on his/her preliminary assessment, the matter does not warrant further investigation, he/she shall close the matter and record the decision in the case file.
- (iii) If the allegation pertains to a Prohibited Practice that took, or would have taken, place more than ten (10) years⁴ prior to the date on which OCCO received the report, the CCO shall dismiss the report and shall close the matter and record the decision in the case file.
- (iv) If the information pertains to a Third Party Finding in respect of a Prohibited Practice defined in Section 2.16(i) to (iv) hereof that took place more than ten (10) years⁵ prior to the date on which OCCO received information of such finding, the CCO shall dismiss the information and record the decision in the case file.
- (v) If the CCO determines that the decision specified in a Notice of a Debarment Decision does not meet the conditions of Subsection 2.5, the CCO shall dismiss the notice, advise the relevant Mutual Enforcement Institution and record the decision in the case file.

3.4 Further investigation

- (i) If the CCO determines, as a result of his/her preliminary assessment, that the present policy and procedures apply and that the allegations are sufficiently reliable, the CCO shall undertake a more detailed and comprehensive investigation into the alleged Prohibited Practice having regard to the

⁴ For cases arising out of Bank Projects, the date of a Prohibited Practice shall be deemed to be the date on which the last constituent act or element of the Prohibited Practice occurred.

⁵ The date of a Prohibited Practice shall be the date on which the last constituent act or element of the Prohibited Practice occurred as cited in the Third Party Finding.

International Financial Institutions Principles and Guidelines for Investigations⁶. The CCO may appoint one or more investigation officers, internal and/or external to the Bank, to assist with this further investigation.

- (ii) A further investigation of a Third Party Finding by the CCO shall be limited to verifying the authenticity of the Third Party Finding, establishing the connection, if any, between the individual or entity subject to the Third Party Finding and the Bank, and determining the relevance and seriousness of the Third Party Finding to the Bank. In determining the seriousness of the Third Party Finding, CCO shall consider whether the Third Party Finding was rendered in a jurisdiction or forum which afforded appropriate due process rights to the Respondent and the gravity of Respondent's conduct having regard to international conventions and standards.
- (iii) A further investigation following receipt of a Notice of a Debarment Decision shall be limited to assessing the completeness of the information provided, confirming the identity of the individuals and/or entities subject to the Debarment Decision (where required), and assessing whether Mutual Enforcement would be inconsistent with the Bank's legal or other institutional considerations.
- (iv) If, following his/her further investigation, the CCO determines that there is insufficient evidence to support a finding of a Prohibited Practice or that the Third Party Finding is not sufficiently serious and/or relevant to the Bank, he/she shall close the matter and record the decision in the case file.

3.5 Transmittal to Enforcement Committee

- (i) If, as a result of his/her further investigation, the CCO determines that there is sufficient evidence to support a finding of a Prohibited Practice or that a Third Party Finding may warrant Enforcement and Disclosure Actions, he/she shall prepare a report (including either a draft Notice of Prohibited Practice or a Notice of Third Party Finding) and proposed Enforcement and Disclosure Actions for consideration by the Enforcement Committee.
- (ii) A report to the Enforcement Committee following OCCO's receipt of a Notice of a Debarment Decision shall not include a draft Notice of a Prohibited Practice or Notice of a Third Party Finding and shall be limited to:
 - (1) The Notice of a Debarment Decision;
 - (2) An assessment of eligibility in accordance with Subsection 2.5;
 - (3) Where required, further confirmation of the entities and/or individuals subject to the Debarment Decision;

⁶ As attached to the Uniform Framework for Preventing and Combating Fraud and Corruption.

- (4) An assessment by the CCO that Mutual Enforcement is or is not inconsistent with the Bank's legal or other institutional considerations; and
 - (5) A recommendation of the CCO that a Notice of Mutual Enforcement be issued pursuant to Subsection 5.6.
- (iii) The report of the CCO to the Enforcement Committee (other than the report issued pursuant to Subsection 3.3(ii) above) shall include the opinion of the CCO on whether a Suspension Decision should be made in accordance with Section 5.2.

3.6 Referral to National or International Enforcement Authorities

- (i) If the CCO determines, as a result of his/her preliminary assessment or further investigation or at any time during the course of any Enforcement Proceedings, that:
 - (1) the alleged Prohibited Practice may have been committed in violation of the laws of any country, and
 - (2) further processing by the Bank can be expected to be seriously hindered by factors such as the complexity of the scheme, the Respondent's and/or its Affiliate's unwillingness to cooperate, and/or the limitations in the Bank's investigation and enforcement means,

he/she shall prepare a report for consideration by the Enforcement Committee as to whether the matter should be referred to the relevant national or international enforcement authorities.

- (ii) At any time during the course of the Enforcement Proceedings, the Enforcement Committee may instruct the CCO to prepare such a report for its consideration.
- (iii) Any report to the Enforcement Committee recommending that an alleged Prohibited Practice should be referred to national or international enforcement authorities shall include the opinion of the General Counsel regarding the legal aspects of the proposed referral and, in particular, its potential ramifications for the Bank's status, privileges and immunities and shall be submitted to the President for decision in accordance with Section 5.3.
- (iv) Debarment Decisions are not subject to referral to national or international enforcement authorities.

IV. ENFORCEMENT COMMITTEE

4.1 Composition of the Enforcement Committee

- (i) The President of the Bank shall appoint the members of the Enforcement Committee. The Enforcement Committee shall consist of at least five senior

Bank staff members, one from each of the four Vice Presidencies and the Office of the General Counsel. Each member shall serve for a term of three years (with the possibility of reappointment), or until the member's earlier resignation or removal.

- (ii) The President shall designate one member of the Enforcement Committee as the Chairperson of the Enforcement Committee.
- (iii) On the recommendation of the Chairperson, the President shall appoint a Bank staff member to serve as the Secretary to the Committee. In performing his or her functions, the Secretary shall report directly to the Chairperson and the Committee.

4.2 Administrative matters

- (i) The Enforcement Committee, can, as needed, on an ad hoc basis, obtain the advice of an external advisor.
- (ii) Any and all costs incurred by the Enforcement Committee in the course of carrying out its responsibilities, including without limitation, translation costs, costs of an external advisor, or costs of transcription, shall be borne exclusively by the Bank.
- (iii) Meetings of the Enforcement Committee shall be called by the Chairperson at such times as the business of the Committee may require. Except in exceptional circumstances when notice of a meeting shall be given as soon as possible, the Secretary shall notify the members of the Enforcement Committee and provide them with the relevant reports and recommendations at least three (3) working days in advance of each meeting. A majority of the members including the Chairperson shall constitute a quorum for any meeting of the Enforcement Committee.
- (iv) All matters before the Enforcement Committee shall be decided by a majority of three (3) members. Unless the decision of the Enforcement Committee was made unanimously, should the CCO disagree with a decision made by the Enforcement Committee under Section 5.1(ii), 5.2, 5.3 and/or 6.7, he/she may refer the matter for decision of the President in consultation with the Executive Committee.

V. COMMENCEMENT OF ENFORCEMENT PROCEEDINGS

5.1 Action following receipt of a report from the CCO

Following receipt of a report from the CCO in accordance with Subsection 3.5(i) or 3.5(ii), the Enforcement Committee shall:

- (i) ask the CCO to supplement his/her report in order to provide clarification on certain matters and/or to investigate suspected Prohibited Practices by any other individual and/or entity; or

- (ii) determine that the matter does not warrant further consideration; in such case, and subject to the rights of the CCO pursuant to Section 4.2(iv), the Enforcement Committee shall communicate this decision, and the reasons therefor, to the CCO and direct the CCO to close the matter and record the decision in the case file and to inform the President and the other members of the Executive Committee of its decision; or
- (iii) make a prima facie determination that the evidence is sufficient to support a finding that the Respondent(s) did commit the alleged Prohibited Practice(s) and shall proceed to issue the Notice of Prohibited Practice to the Respondent(s);
- (iv) make a prima facie determination that the Third Party Finding warrants Enforcement and Disclosure Actions and shall proceed to issue the Notice of Third Party Finding to the Respondent(s); or
- (v) determine that Mutual Enforcement is warranted and, in the affirmative, proceed to issue a Notice of Mutual Enforcement.

5.2 Suspension

- (i) Following receipt of a report from the CCO in accordance with Section 3.5 (other than a report issued pursuant to Subsection 3.5(ii)) or at any time during the course of the Enforcement Proceedings, the Enforcement Committee may (irrespective of whether such action has been recommended by the CCO) order that:
 - (1) the eligibility of the Respondent and any of its Affiliates to become a Bank Counterparty be suspended; or
 - (2) the eligibility of the Respondent to receive payment in respect of a Bank Project be suspended.
- (ii) Suspension may be for a specified period of time or for so long as the Enforcement Proceedings are ongoing.
- (iii) The fact that the eligibility of the Respondent and any of its Affiliates may be suspended in relation to a particular procurement process shall not prevent or delay the completion of that procurement process.
- (iv) A Suspension Decision may only be made when the Enforcement Committee has determined that such action is necessary to protect the Bank's interests or reputation, to protect other Bank Counterparties' interests, or to ensure that the integrity of the procurement process is maintained.
- (v) A Suspension Decision shall be without prejudice to any rights or recourses of the Bank arising from its contractual relationships with Respondent or Respondent's Affiliates.

- (vi) Any Suspension Decision shall be communicated by the Secretary of the Enforcement Committee to the Respondent and, if applicable, to the relevant Affiliate(s) in writing and shall be subject to disclosure in accordance with Section 7.3(iii).
- (vii) The Suspension Decision may not be contested in accordance with Chapter VI of the present policy and procedures.

5.3 Referral to National Enforcement Authorities

Except in matters involving Debarment Decisions, following receipt of a report from the CCO in accordance with Section 3.5 and at any time during the course of the Enforcement Proceedings, the Enforcement Committee may (irrespective of whether such action has been recommended by the CCO), recommend to the President that the matter be referred to the appropriate national or international enforcement authorities. 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, privilege and immunities. The President, in consultation with the Executive Committee, shall make the decision to refer or not, and, in the affirmative, the decision shall identify the information that may be disclosed to the authorities and shall direct the CCO to liaise with the relevant authorities as and when appropriate. Any such referral shall be without prejudice to any action available to the Bank under the present policy and procedures or contractually.

5.4 Contents of a Notice of Prohibited Practice

A Notice of Prohibited Practice given in accordance with Section 5.1(iii) shall:

- (i) identify the Respondent or Respondents;
- (ii) state the allegation of one or more Prohibited Practice(s) and include a summary of the facts relevant to the alleged Prohibited Practice(s);
- (iii) attach all evidence relevant to the finding of the alleged Prohibited Practice(s) unless such evidence is already in the possession of the Respondent;
- (iv) attach all exculpatory or mitigating evidence unless such evidence is already in the possession of the Respondent;
- (v) state any Enforcement Action and Disclosure Action (collectively referred to as the Proposed Actions) that will be taken in the absence of contestation by the Respondent;
- (vi) advise the Respondent that if the Respondent desires to contest the allegations and/or the Proposed Actions, the Respondent must so notify the Secretary of the Enforcement Committee within the delay prescribed in the Notice of Prohibited Practice. The delay prescribed must be no less than 30 days;

- (vii) append a copy of the EPP, then in effect; and
- (viii) incorporate any other information that the Enforcement Committee deems material, if any.

5.5 Contents of a Notice of Third Party Finding

A Notice of Third Party Finding given in accordance with Section 5.1(iv) shall:

- (i) identify the Respondent or Respondents;
- (ii) attach a copy of the Third Party Finding;
- (iii) state any Enforcement Action and Disclosure Action (collectively referred to as the Proposed Actions) that will be taken in the absence of contestation by the Respondent;
- (iv) advise the Respondent that if the Respondent desires to contest the Proposed Actions, the Respondent must so notify the Secretary of the Enforcement Committee within the delay prescribed in the Notice of Third Party Finding. The delay prescribed must be no less than 30 days;
- (v) append a copy of the EPP then in effect; and
- (vi) incorporate any other information that the Enforcement Committee deems material, if any.

5.6 Contents of a Notice of Mutual Enforcement

A Notice of Mutual Enforcement issued in accordance with Subsection 5.1(v) shall:

- (i) identify the individuals or entities subject to the Debarment Decision;
- (ii) attach a copy of the Debarment Decision;
- (iii) provide for a summary of the Mutual Enforcement process followed by the Bank;
- (iv) state that the Bank will debar the individuals or entities subject to the Debarment Decision for the same term and on the same conditions as the Debarment Decision; and
- (v) incorporate any other information that the Enforcement Committee deems material, if any.

5.7 Delivery of Notice of Prohibited Practice or Notice of Third Party Finding or Notice of Mutual Enforcement

- (i) The Secretary shall maintain records establishing the date of delivery of the

Notice of Prohibited Practice or the Notice of Third Party Finding or Notice of Mutual Enforcement and any and all subsequent transmissions to each of the CCO and Respondent as applicable. If the Respondent is an entity, the address for delivery shall be the address nominated by the Respondent in writing to the Secretary or otherwise the Respondent's Registered Office. If the Respondent is an individual, the address shall be the Respondent's last known permanent address. The date of delivery shall be deemed to be the fourth day after the date on which the Notice of Prohibited Practice or the Notice of Third Party Finding was sent by registered mail to the Respondent's address and shall be used for calculating the applicable delays and the expiration thereof.

- (ii) The Notice of Mutual Enforcement shall be effective as from the date of delivery or deemed delivery and shall not be subject to further proceedings other than pursuant to Section 7.

5.8 Proceedings Subsequent to Issue 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(s) do(es) not inform the Secretary of his/its/their intention to contest the allegations or the Proposed Actions, the Enforcement Committee, without need for further notice to the Respondent(s) or delay, shall instruct the CCO to implement the Proposed Actions.
- (ii) If, within the delay prescribed in the Notice of Prohibited Practice or the Notice of Third Party Finding, the Respondent(s) inform(s) the Secretary in writing that he/it/they intend(s) to contest the allegations and/or the Proposed Actions, the matter shall proceed in the manner set out below.

5.9 Extensions of Time

Upon request and for good cause shown, the Enforcement Committee may, as a matter of discretion, grant reasonable extensions of any deadline set forth in the present policy and procedures or in the Notice of Prohibited Practice or the Notice of a Third Party Finding. The Respondent and CCO shall have no automatic right to the extension of any deadline.

VI. CONTESTED ENFORCEMENT PROCEEDINGS

6.1 Submissions to the Enforcement Committee

- (i) The submissions to the Enforcement Committee shall consist of the Notice of Prohibited Practice or the Notice of Third Party Finding; the Response, if any; the Reply, if any; and any additional materials authorized by the Enforcement Committee in accordance with Section 6.4. Together these documents shall constitute the Record of the Enforcement Proceedings. The Record shall be confidential and shall not be subject to public disclosure other than in the event of a referral to national or international authorities.

- (ii) All written materials and oral representations submitted or made to the Enforcement Committee shall be in English, except that exhibits may be in the original language with the relevant parts translated into English.

6.2 Response

- (i) Each Respondent may submit a Response within the delay prescribed in the Notice of Prohibited Practice or the Notice of Third Party Finding.
- (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 programs to detect or prevent Prohibited Practices, or other facts relevant to the Proposed 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 subsequent to the date of the Third Party Finding or the underlying events or circumstances, and arguments as to the relevance or seriousness of the Third Party Finding to the Bank.
- (iv) The Response shall also specify whether the Respondent wishes to make oral representations in accordance with Section 6.9
- (v) The Response shall contain a certification, signed by each individual Respondent or an authorized officer of each Respondent entity, that the information contained therein is truthful and correct to the best of the signer's knowledge, information and belief, formed after such enquiry which is reasonable in the circumstances. The Response shall be deemed to have been submitted upon actual receipt by the Secretary.

6.3 Reply

A copy of the Response shall be forwarded by the Secretary to the CCO. The CCO may, within 20 days following receipt of the Response, submit to the Enforcement Committee a Reply presenting arguments and evidence in order to address the arguments and evidence set forth in the Response. The Reply shall be limited to arguments and evidence offered in rebuttal to the Response. The Secretary shall forward a copy of the Reply to the Respondent(s).

6.4 Submission of Additional Materials

In the event that additional material evidence becomes available to the CCO or to the Respondent(s) after the applicable deadlines for the submission of written materials have passed, the Enforcement Committee may, as a matter of discretion, authorise such additional evidence to be submitted. In such event, the Enforcement Committee may also authorise either the CCO or the Respondent(s) to submit, within a reasonable period of time, additional arguments and evidence in response to the evidence and arguments contained in the additional materials presented by the other party.

6.5 Oral Representations

- (i) Should the Respondent(s) wish to make oral representations to the Enforcement Committee, such a request must be made by the Respondent(s) in the Response or, in writing submitted to the Secretary within ten (10) days following the delivery of the Reply from the Secretary.
- (ii) If a request for oral representations is made, the Secretary of the Enforcement Committee, shall provide the Respondent and the CCO no less than [30] days notice of the date, time and location of the meeting. The CCO shall be present or represented at the meeting and authorised to make oral representations in reply to the Respondent's oral representations. The CCO's oral representations shall be limited to arguments and evidence offered in rebuttal to the Respondent's oral representations. All oral representations shall be informal and shall be limited to arguments and evidence contained in the written submissions, and may rely upon or refute individual items of evidence.
- (iii) If no request for oral representations is made by Respondent, the Enforcement Committee shall review the matter and render its decision on the basis of the Record, without any oral representations by either the Respondent or the CCO.

6.6 Basis for Findings, Evidence and Standard of Proof Required

- (i) The review and deliberation of the Enforcement Committee shall be restricted to the Record, to the oral representations, if any, and to other facts available in the public domain.
- (ii) Formal rules of evidence shall not apply. The Enforcement Committee shall have discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.
- (iii) In relation to a Notice of Prohibited Practice, the Enforcement Committee shall determine whether the evidence presented supports the conclusion that it is more likely than not that Respondent(s) engaged in the alleged Prohibited Practice.
- (iv) In relation to a Notice of Third Party Finding, the Enforcement Committee shall determine whether it is more likely than not that the Bank's operations or reputation would be harmed or impaired if the Bank did not take Enforcement and Disclosure Actions following a Third Party Finding.
- (v) 'More probable than not' means that upon consideration of all of the relevant evidence and materials, a preponderance of the evidence and materials supports the finding.

6.7 Recommendations

- (i) If the Enforcement Committee determines that it is more likely than not that the Respondent(s) did engage in the alleged Prohibited Practice, it shall prepare a report of its determination to the President which shall include its

recommendation as to the Enforcement and Disclosure Actions to be taken vis-à-vis the Respondent and any of its Affiliates.

- (ii) If the Enforcement Committee determines that it is more likely than not that the Bank's operations or reputation would be harmed or impaired if the Bank did not take Enforcement and Disclosure Action following a Third Party Finding, it shall prepare a report of its determination to the President which shall include its recommendation as to the Enforcement and Disclosure Actions to be taken vis-à-vis the Respondent.

6.8 Factors Affecting Decisions to take Enforcement and Disclosure Actions

Recommendations and decisions to take Enforcement and Disclosure Actions shall take account of the following factors:

- (i) egregiousness and severity of the Respondent's conduct;
- (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 damage caused by the Respondent to EBRD;
- (iv) past conduct of the Respondent involving a Prohibited Practice;
- (v) breach or attempted breach of the Respondent's undertaking pursuant to Section 7.3(iii) to voluntarily refrain from seeking to become a Bank Counterparty pending the final outcome of the Enforcement Proceedings;
- (vi) mitigating circumstances, including the extent to which the Respondent cooperated in the investigation and whether such cooperation is of substantial benefit to the EBRD;
- (vii) if applicable, period of suspension already imposed on the Respondent; and
- (viii) any other factor that the Enforcement Committee, or President in consultation with the Executive Committee, deems relevant.

6.9 Decision of the President in consultation with the Executive Committee

On receipt of the Record and recommendation of the Enforcement Committee submitted pursuant to Section 6.7, the President, in consultation with the Executive Committee, shall decide:

- (i) to accept the recommendation of the Enforcement Committee in whole, and take the recommended Enforcement and Disclosure Actions vis-à-vis the Respondent(s) and any of its/their Affiliates. In such event the decision of the President shall be final and shall take effect immediately upon notification of the decision by the Secretary of the Enforcement Committee to the Respondent(s) and any its/their Affiliate(s) affected by the decision; or

- (ii) to accept the recommendation of the Enforcement Committee in part and make its own determination as to the appropriate Enforcement and Disclosure Actions to be taken and as to the Respondent(s) and any of its/their Affiliates vis-à-vis which the Enforcement and Disclosure Action are to be taken. In such event the decision of the President shall be final and shall take effect immediately upon notification of the decision by the Secretary of the Enforcement Committee to the Respondent(s) and any its/their Affiliate(s) affected by the decision; or
- (iii) to reject the recommendation of the Enforcement Committee and refer the matter back to the Enforcement Committee for further consideration; or
- (iv) to reject the recommendation of the Enforcement Committee and order the Enforcement Committee to close the matter and record the decision in the case file. In such event, the Secretary of the Enforcement Committee shall inform the Respondent(s) of the decision.

6.10 Distribution of Decision of Enforcement Action(s) or Notice of Mutual Enforcement

- (i) The Secretary shall send notice of the President's decision to the Respondent and any of its Affiliates affected by the decision, the Enforcement Committee, the CCO, and the Board of Directors, and in particular the Director representing the country of the Respondent(s).
- (ii) The Secretary shall send the Notice of Mutual Enforcement to the Board of Directors and in particular to the Director representing the country of the affected entity(ies) or individual(s).

VII. ENFORCEMENT DECISIONS AND DISCLOSURE DECISIONS

7.1 Purpose

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

7.2 Enforcement Actions

Enforcement Actions may 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: the Respondent receives a formal "Letter of Reprimand".

- (iv) Debarment: the Respondent is 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: the Respondent is 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 fails to demonstrate its compliance with the prescribed conditions within the time periods established, a debarment would automatically become effective for a period of time.
- (vi) Debarment with Conditional Release: the Respondent is 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 demonstrates compliance with specified conditions such as the introduction and/or implementation of corporate compliance or ethics programs.
- (vii) Restitution; Respondent is ordered to make restitution of diverted funds to any other party.

7.3 Disclosure

- (i) Where a Respondent is subject to Debarment or Debarment with Conditional Release, once the decision has been communicated to it, the Enforcement Action shall be posted on the Bank's internet site (www.ebrd.com). The posting shall remain on the site for as long as the Enforcement Action is effective.
- (ii) Once the Notice of Mutual Enforcement has been delivered or deemed delivered, the Mutual Enforcement shall be posted on the Bank's internet site (www.ebrd.com). The posting shall remain on the site for as long as the Mutual Enforcement is effective.
- (iii) Where a Respondent is subject to an Enforcement Action as provided at Section 7.2(i), (ii), (iii) and/or (v), 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 organization and authority or agency of a member country of the Bank, as deemed appropriate by the President in consultation with the members of the Executive Committee.
- (iv) A Suspension Decision made pursuant to Section 5.2 shall be subject to public disclosure unless the Respondent has informed the Enforcement Committee in writing within 10 days of receipt of the decision that the Respondent shall voluntarily refrain from seeking to become a Bank Counterparty pending a final outcome of the Enforcement Proceedings.

7.4 Disclosure to other Institutions and Agencies

If the Enforcement Committee 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 by an agency of a member government that promotes international development, the Enforcement Committee may, at any time, subject to authorisation by the Executive Committee, direct the CCO to make available to that organisation or agency any information the Bank may have relating to the commission of the Prohibited Practice.

7.5 Reciprocal Sharing of Information

- (i) At any time, the Enforcement Committee may authorise the CCO or another officer of OCCO to make materials submitted in the context of Enforcement Proceedings available to any international organisation that has agreed to make similar information available from its own files to the Bank. Before giving any such authorisation, the Enforcement Committee shall obtain an opinion of the General Counsel regarding the legal aspects of the proposed sharing and, in particular, its potential ramifications to the Bank's status, privileges and immunities.
- (ii) Where an Enforcement Action meets the conditions for Mutual Enforcement and following notification under Subsection 6.10(i), the Enforcement Committee shall direct the Secretary to give appropriate notice to all Mutual Enforcement Institutions, and shall authorise the CCO or another officer of OCCO to provide copies of all relevant documentation upon request from a Mutual Enforcement Institution. Before giving any such authorisation, the Enforcement Committee shall obtain an opinion of the General Counsel regarding the legal aspects of the proposed sharing and, in particular, its potential ramifications to the Bank's status, privileges and immunities.

VIII. GENERAL PROVISIONS

8.1 Computation of Time

Unless stated otherwise, the term "days" as used in the present policy and procedures means calendar days, including weekends and holidays. If the last day of any period of time prescribed by the present policy and procedures falls on a weekend or on another day on which the Bank's Headquarters in London, England is not officially open for business, the period shall run until the end of the next day on which the Bank's Headquarters is officially open for business.

8.2 The Bank reserves the right to alter, amend, supplement, or revise the present policy and procedures, with or without notice. In addition, the Bank may adapt, modify, waive, or suspend the present policy and procedures in particular cases as circumstances warrant at any time without notice.

8.3 Nothing in the present policy and procedures 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.

- 8.4** The present policy and procedures do not apply to investigations and possible disciplinary action concerning Bank employees.
- 8.5** The present policy and procedures is effective as from 27 March 2009 and shall apply to all proceedings for which a Notice of Prohibited Practice or a Notice of Third Party Finding is issued on or after that date. The revisions to the present policy and procedures regarding the mutual enforcement of debarment decisions shall enter into force as from 6 May 2010.