

Procedure

Procedure on Constructive Notice under the EPPs

23 January 2018

Procedure on Constructive Notice under the EPPs

Section I: Purpose

This document describes the process the Enforcement Commissioner will apply to establish the date of constructive notice with respect of a Notice of Prohibited Practice, a Notice of Third Party Finding and/or a Suspension Decision, for the purpose of the Section III, Articles 14.2 (v) and (vii) of the EPPs.

Section II: Definitions

Terms defined in the EPPs have the same meaning in this Procedure as in the EPPs.

Terms used in this Procedure have the following meanings.

Deliverable Document	Means any of a Notice of Prohibited Practice, a Notice of Third Party Finding or a Suspension Decision.
EPPs	The Enforcement Policy and Procedures of the European Bank for Reconstruction and Development dated 4 October 2017.
Follow-up Letter	Has the meaning given in Section IV, Article 1 (b) of this Procedure.

Section III: Legal Basis

Section III, Article 14.2 (v) and (vii) of the EPPs.

Section IV: Scope

1. If a Deliverable Document, sent by registered mail or equivalent system to an address determined in accordance with Section III, Article 14.1 (ii) of the EPPs, is returned to the Enforcement Commissioner without having been delivered and without the entity or individual sought to be made a Respondent having refused delivery of same:-
 - a. the address of the entity or individual sought to be made a Respondent will be considered unknown or fictitious for the purposes of Section III, Article 14.2 (v) of the EPPs;
 - b. the Enforcement Commissioner will send a further letter (the “Follow-up Letter”) to the entity or individual sought to be made a Respondent; and
 - c. the Enforcement Commissioner will publish on the Bank’s website (<http://www.ebrd.com/who-we-are/our-values/enforcement-commissioner.html>) a public notice stating that the Enforcement Commissioner is attempting to locate the entity or individual sought to be made a Respondent in order to deliver the Deliverable Document to that entity or individual.

2. The Follow-up Letter will:-
 - a. be marked “Confidential”;
 - b. contain/append a copy of the Deliverable Document to which it relates; and
 - c. be addressed to the entity or individual sought to be made a Respondent, at the same address as is referred to in the first paragraph of Section IV, Article 1 of this Procedure.
3. The Follow-up Letter will state the relevant contact details for the Enforcement Commissioner and that:-
 - a. the Enforcement Commissioner has attempted to deliver the Deliverable Document to the entity or individual sought to be made a Respondent but has not succeeded in doing so;
 - b. the entity or individual sought to be made a Respondent may obtain the Deliverable Document by contacting the Enforcement Commissioner by mail, telephone, e-mail or fax, the details of which are set out in the Follow-up Letter;
 - c. the Enforcement Commissioner has published a public notice on the Bank’s website (<http://www.ebrd.com/who-we-are/our-values/enforcement-commissioner.html>), indicating that the Enforcement Commissioner is attempting to locate the entity or individual sought to be made a Respondent, in order to deliver the Deliverable Document to that entity or individual;
 - d. the entity or individual sought to be made a Respondent will be deemed to have constructive notice of the issuance of the Deliverable Document and to be in receipt thereof on the day which is 45 days after the date on which the public notice relating to such Deliverable Document was posted on the Bank’s website, unless actual delivery of such Deliverable Document is accomplished or deemed receipt of the Deliverable Document, pursuant to Section III, Article 14.2 (iv) of the EPPs, occurs before that date; and
 - e. the public notice will remain on the Bank’s website until the earliest to occur of actual delivery, deemed receipt or constructive notice of the issuance of the Deliverable Document.
4. The Follow-up Letter may be sent by any of the means of mail used by the Bank in its usual course of business (including, without limitation, regular mail, special delivery mail or international signed-for mail) or by courier.
5. If neither the CCO nor the Enforcement Commissioner know of an address for an entity or an individual sought to be made a Respondent, the Enforcement Commissioner will publish on the Bank’s website (<http://www.ebrd.com/who-we-are/our-values/enforcement-commissioner.html>) a public notice indicating that the Enforcement Commissioner is attempting to locate that entity or individual in order to deliver a Deliverable Document to that entity or individual.

6. A public notice published under Section IV, Article 1 (c) or Section IV, Article 5 of this Procedure will remain on the Bank's website until 45 days after the date on which such public notice was posted on the Bank's website or, if earlier, the date of actual delivery or deemed receipt of the Deliverable Document to which such public notice relates.
7. An entity or an individual sought to be made a Respondent will be deemed to have constructive notice of the issuance of a Deliverable Document published under Section IV, Article 1 (c) or Section IV, Article 5 of this Procedure and to be in receipt thereof, on the last day of the 45 day period referred to in Section IV, Article 6 of this Procedure, unless actual delivery or deemed receipt of the Deliverable Document to which the public notice relates occurs before that date.
8. In the event that an entity or an individual sought to be made a Respondent has constructive notice of the issuance of a Deliverable Document, the delay prescribed in a Notice to submit a Response under Section III, Article 5.1 (i) of the EPPs will be automatically waived and the Enforcement Commissioner may proceed to issue a Enforcement Commissioner's Decision against the Respondent under Section III, Article 4.8(i) of the EPPs without further delay.

Section V: Waivers, Exceptions and Treatment under EBRD's Public Information Policy

Waivers

A deviation from a requirement of this Procedure that is not explicitly permitted by its terms may be approved by the Enforcement Commissioner.

Exceptions

Not Applicable.

Disclosure

To be disclosed.

Section VI: Transitional Provisions

Not Applicable.

Section VII: Effective Date

This Procedure is effective on 23 January 2018.

Section VIII: Decision Making Framework

The Enforcement Commissioner is accountable for this Procedure, under Section III, Article 14.2 (v) and (vii) of the EPPs.

The Enforcement Commissioner is responsible for this Procedure, under Section III, Article 14.2 (v) and (vii) of the EPPs.

Section IX: Review and Reporting

Not Applicable.

Section X: Related Documents

The Enforcement Policies and Procedures of the European Bank for Reconstruction and Development, dated 4 October 2017 (see

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395242259920&pagename=EBRD%2FContent%2FDownloadDocument>).