



# Anticorruption and Integrity

October 2010

Second Edition

Asian Development Bank



# **Anticorruption and Integrity**

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# Integrity Principles and Guidelines

May 2010

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# I. INTERNATIONAL FINANCIAL INSTITUTIONS PRINCIPLES AND GUIDELINES FOR INVESTIGATIONS<sup>1</sup>

## PREAMBLE

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

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

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

For ADB: These principles and guidelines shall apply to the Office of Anticorruption and Integrity (OAI), its staff, and any party OAI authorizes or the President appoints to perform investigations that OAI would otherwise perform, and to all ADB staff as well as consultants and contractors engaged by ADB and other third parties involved in ADB-related activity<sup>3</sup> in observance of the Anticorruption Policy.<sup>4</sup>

For the purpose of this document, use of the term “Organization” includes reference to all institutions that are part of or related to the abovementioned Institutions. The investigative units of each Organization are hereinafter referred to as the “Investigative Office.”

<sup>1</sup> The International Financial Institutions Principles and Guidelines for Investigations, adopted by the enumerated institutions, are incorporated as Section I of these Integrity Principles and Guidelines, with paragraphs specific to ADB inserted.

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

<sup>3</sup> “ADB-related activity” is defined in paragraph 1.C, *infra*.

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

## GENERAL PRINCIPLES

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

For ADB:

- 1.A. OAI is the initial point of contact and investigative office for allegations of integrity violations involving ADB-related activities or ADB staff.
- 1.B. "Integrity violation" is any act which violates ADB's Anticorruption Policy, including corrupt, fraudulent, coercive, or collusive practice, abuse, conflict of interest, and obstructive practice, as defined herein.
- 1.C. "ADB-related activity" includes ADB-financed, administered or supported activity, or any activity that materially affects or may affect or otherwise be relevant to ADB.

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

For ADB:

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

- i. Corrupt practice, which is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- ii. Fraudulent practice, which is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- iii. Coercive practice, which is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- iv. Collusive practice, which is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;<sup>5</sup>
- v. Abuse, which is theft, waste, or improper use of assets related to ADB-related activity, either committed intentionally or through reckless disregard;
- vi. Conflict of interest, which is any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations;

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<sup>5</sup> The definitions of corruption, fraud, coercion, and collusion are harmonized with other multilateral development banks and adopted by ADB under Board Paper R179-06 (*supra* at footnote 3).

- vii. Obstructive practice, which includes (a) deliberately destroying, falsifying, altering, or concealing of evidence material to an ADB investigation; (b) making false statements to investigators in order to materially impede an ADB investigation; (c) threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (d) materially impeding ADB's contractual rights of audit or access to information;
- viii. Violations of ADB sanctions;
- ix. Other violations of ADB's Anticorruption Policy, including failure to adhere to the highest ethical standards; and
- x. Retaliation against whistleblowers or witnesses, which is any detrimental act, direct or indirect, recommended, threatened or taken against a whistleblower or witness, or person associated with a whistleblower or witness, in a manner material to a complaint because of the report or cooperation with an ADB investigation by the whistleblower or witness, which shall be investigated in accordance with Administrative Order (AO) 2.10.<sup>6</sup>

2.B. Investigations may include attempts to commit any integrity violations.

2.C. Allegations of misconduct by ADB staff involving integrity violations or retaliation against whistleblowers or witnesses will be investigated by OAI in accordance with these Integrity Principles and Guidelines, Appendix 2 of AO 2.04<sup>7</sup> and AO 2.10.

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

3. The Investigative Office shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity. In particular, the Investigative Office shall perform its duties independently from those responsible for or involved in operational activities and from staff members liable to be subject of investigations and shall also be free from improper influence and fear of retaliation.

4. The staff of the Investigative Office shall disclose to a supervisor in a timely fashion any actual or potential conflicts of interest he or she may have in an investigation in which he or she is participating, and the supervisor shall take appropriate action to remedy the conflict.

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

<sup>6</sup> Whistleblower and Witness Protection.

<sup>7</sup> Disciplinary Measures and Procedures.

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

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

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

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

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

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

6.B. Under its Terms of Reference, the Head, OAI is directly responsible to the President. He or she reports directly to the President, and through the President, to the Audit Committee of the Board of Directors, on the significant activities and outcomes of OAI. In carrying out OAI's activities, the Head, OAI and the authorized staff members in OAI shall have full and unrestricted access to (and may have temporary possession or control of) information and records relating to all ADB activities, ADB personnel, and ADB physical property. The principal responsibilities of OAI are

- In collaboration with relevant departments/offices, to advance awareness of ADB's Anticorruption Policy;
- In consultation with relevant departments/offices, propose and review appropriate procedures under the Anticorruption Policy to ensure that all staff members and projects adhere to the highest standards to maintain integrity against corruption;
- To serve as the initial point of contact for all alleged incidents of fraud, corruption, or abuse, as defined by ADB pursuant to its Anticorruption Policy, in any ADB-financed activity, including its staff members;
- To conduct independent and objective investigations of fraud and corruption, collusive practice, coercive practice, conflict of interest, and abuse pursuant to the ADB's Anticorruption Policy known to or identified by OAI;
- In collaboration with Office of the Auditor General (OAG) and as part of the prevention efforts, to conduct project procurement-related reviews of ADB-financed activities, to help prevent and detect fraud, corruption, or abuse;

- To provide investigative findings, which shall be dealt with as stipulated in these Integrity Principles and Guidelines.
- In the conduct of investigation, to coordinate with Management, Office of the General Counsel (OGC), BPMSD, and other departments/offices as appropriate, and adopt appropriate procedures to determine whether fraud, corruption, or abuse under the Anticorruption Policy has occurred; gather sufficient evidential matter thereon; design procedures to follow in attempting to identify the perpetrators, the extent of the fraud, corruption, or abuse, the techniques used, and the cause of the fraud, corruption, or abuse; determine if controls need to be implemented or strengthened to reduce vulnerability; and design mechanisms to help disclose the existence of similar fraud, corruption, or abuse.
- To investigate allegations of misconduct by staff members involving violations of ADB's Anticorruption Policy (including fraudulent practices, corrupt practices, or conflicts of interest) or abuse (theft, waste, or improper use of ADB assets, either committed intentionally or through reckless disregard), in accordance with these Integrity Principles and Guidelines and Appendix 2 of AO 2.04.
- To investigate allegations of misconduct referred to by Human Resources Division in accordance with AO 2.04.
- To prepare and submit an annual report to the President summarizing its activities.
- To consult and collaborate with other multilateral development banks, international finance institutions, or other relevant parties to exchange ideas, practical experience, and insight on how best to address fraud, corruption, or abuse, internally and externally.

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

For ADB: 7.A. OAI will retain its information and records under adequate physical, electronic, and procedural controls. OAI will limit the circulation of information regarding an investigation strictly to those with a need-to-know. Depending on the nature of the case, OAI may disclose certain evidence to the subject of an investigation<sup>8</sup> in a manner that considers the need to protect whistleblowers and witnesses in accordance with AO 2.10.

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

<sup>8</sup> "Subject" of an investigation means a party who is alleged to have engaged in an integrity violation and/or misconduct that OAI is investigating.

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

## DEFINITIONS

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

For ADB: 11.A. ADB's rules of conduct and standards of behavior are provided in AO 2.02.<sup>9</sup> ADB rules describing misconduct are found in AO 2.04.

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

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

## RIGHTS AND OBLIGATIONS

### Witnesses and Subjects

13. A staff member who qualifies as a "whistleblower" under the rules, policies and procedures of the Organization shall not be subjected to retaliation by the Organization. The Organization will treat retaliation as a separate act of misconduct.

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

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

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<sup>9</sup> Personnel Policy Statement and Duties, Rights and Responsibilities of Staff Members

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

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

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

- Being available to be interviewed and replying fully and truthfully to all questions asked.
- Providing OAI with any items requested that are within the staff member's control including, but not limited to, documents and other physical objects.
- Cooperating in any testing requested by OAI, including but not limited to fingerprint identification, handwriting analysis, use of a breathalyzer, and physical examination and analysis.
- Preserving and protecting confidentiality of all information discussed with OAI and BPMSD.

15.B. A staff member who is the subject of an investigation must allow his or her financial information to be provided directly to OAI if so requested. Upon OAI's request, the subject must provide written authorization addressed to his or her financial institution to this effect, waiving any privacy or confidentiality rights the subject may otherwise have related to the information to be disclosed.

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

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

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

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

### Investigative Office

18. The investigation should be conducted expeditiously within the constraints of available resources.

19. The Investigative Office should examine both inculpatory and exculpatory information.

20. The Investigative Office shall maintain and keep secure an adequate record of the investigation and the information collected.

For ADB: 20.A. OAI will retain

- Files of investigations related to ADB staff for a minimum 5 years after the staff member separated from ADB, subject to the staff member attaining an age or there being circumstances that ADB would not consider rehiring the staff member;
- Files of other investigations for a minimum of 10 years from receiving the complaint;
- Files of project procurement-related reviews for 5 years after the issuance of report;
- Contracts related to retained audit and investigative consultants for a minimum of 5 years after the termination of contract;
- Correspondence, including interoffice memos and recommendations to management for a minimum of 5 years; and
- OAI annual reports to the President permanently.

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

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

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

For ADB: 23.A. AO 1.02,<sup>10</sup> applicable to OAI, and OAI's Terms of Reference, provide OAI full and unrestricted access to information and records relating to all ADB activities. OAI may examine any and all ADB files, records, books, data, papers, and any other materials related to ADB's activities, as and when deemed necessary; and take temporary physical possession of any material; and make copies.

23.B. Requests for access to e-mails shall be made in accordance with AO 4.05.<sup>11</sup>

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

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

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

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

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

## PROCEDURAL GUIDELINES

### Sources of Complaints

27. The Investigative Office shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources.

28. Where practicable, the Investigative Office will acknowledge receipt of all complaints.

<sup>10</sup> *Organizational Bulletin*, 12 October 2009.

<sup>11</sup> *Information and Communication Technology Principles*, 11 September 2007.

## Receipt of Complaint

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

## Preliminary Evaluation

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

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

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

30.B. At the conclusion of a screening, OAI staff shall recommend closure of the complaint or further investigation to the Head, OAI or his/her designee. Decisions to close a case at the conclusion of screening shall be documented through an approved Closing Report, which presents the reasons for this decision. Information related to closed complaints will be retained in OAI’s files. Recommendations for further investigation will be documented through an approved Investigative Plan to verify the allegation.

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

## Case Prioritization

31. Decisions on which investigations should be pursued are made in accordance with the rules, policies, and procedures of the Organization; decisions on which Investigative Activities are to be utilized in a particular case rest with the Investigative Office.

32. The planning and conduct of an investigation and the resources allocated to it should take into account the gravity of the allegation and the possible outcome(s).

## Investigative Activity

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

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

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

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

36. Subject to the Organization's rules, policies, and procedures, if, at any time during the investigation, the Investigative Office considers that it would be prudent, as a precautionary measure or to safeguard information, to temporarily exclude a staff member that is the subject of an investigation from access to his or her files or office or to recommend that he or she be suspended from duty, with or without pay and benefits, or to recommend placement of such other limits on his or her official activities, the Investigative Office shall refer the matter to the relevant authorities within the Organization for appropriate action.

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

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

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

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

## INVESTIGATIVE FINDINGS

41. If the Investigative Office does not find sufficient information during the investigation to substantiate the complaint, it will document such findings, close the investigation, and notify the relevant parties, as appropriate.

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

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

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

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

## REFERRALS TO NATIONAL AUTHORITIES

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

## REVIEW AND AMENDMENT

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

## PUBLICATION

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

## II. SANCTIONS

### BASIS FOR REMEDIAL ACTION

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

49. In accordance with the Agreement for Mutual Enforcement of Debarment Decisions,<sup>12</sup> ADB may cross-debar parties that have been debarred by any of the other participating institutions,<sup>13</sup> and the other participating institutions may cross-debar parties that ADB has publicly debarred. OAI shall be responsible for notifying the other participating institutions of each debarment decision made by ADB qualifying under the Agreement, and any modification thereto.

50. ADB may decide that another international financial institution's or legal or regulatory body's determination that a party has failed to adhere to appropriate ethical standards, as defined by any established system of principles, rules, or duties, including the laws or regulations of a state, constitutes that party's failure to maintain the highest ethical standards as required by ADB's Anticorruption Policy. The party may be subject to remedial action in accordance with these Integrity Principles and Guidelines.

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

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

53. It is not ADB's objective to put firms<sup>14</sup> or individuals out of business through its sanctions, although the risk that this might occur shall not prevent ADB from imposing an appropriate sanction.

### NOTICE TO SUBJECTS

#### ADB Staff

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

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<sup>12</sup> Signed on 9 April 2010, and as amended from time to time.

<sup>13</sup> The other participating institutions consist of African Development Bank Group, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group.

<sup>14</sup> "Firm" is used generically and includes corporations, institutions, organizations, and other entities that may have independent legal status or otherwise may be distinguished from specific individuals within them.

## Other Parties

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

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

57. The parties shall be given the opportunity to respond to any allegation and evidence against them. OAI may withhold particular evidence or information if there is a reasonable basis to conclude that revealing the evidence or information might endanger the life, health, safety, or well-being of any person or entity, including whistleblowers, or is otherwise sensitive or confidential.

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

59. The subject may also request to be allowed an opportunity to make oral representations to OAI, providing specific reasons for its request.

60. If a subject refuses to receive the notice from OAI, or receives the notice but fails to respond, OAI will draw an adverse inference from such refusal or failure, and this refusal or failure may be considered as an aggravating circumstance.

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

## REMEDIAL ACTION

### Governments

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

## ADB Staff

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

## Other Parties

64. Where a bidder, consultant, contractor, supplier, or other nongovernment third party found by OAI to have committed an integrity violation disputes OAI's investigative findings or recommended sanction, or when there is no response to the findings, OAI shall provide the Integrity Oversight Committee a report of its investigation, supported with all relevant documentation, including the party's response to the findings if any.

65. Where the party responds to OAI's investigative findings and recommended sanction, and does not dispute the findings or recommended sanction, OAI may determine that ADB impose sanctions as set forth in this section.

66. The Integrity Oversight Committee consists of three regular voting members, and up to six alternate members to fill any vacancies that might occur among the regular members due to absence or conflict of interest. The Head, OAI will nominate and the President shall appoint members among ADB's senior staff, including one as Chair, to serve for a specific period.<sup>15</sup> Staff, including representatives from Central Operations Service Office and the Office of the General Counsel, may be called upon to advise the Integrity Oversight Committee. Integrity Oversight Committee decisions will be by majority vote. The Director, OAI serves as the secretariat to the Integrity Oversight Committee.

67. Disclosure of conflicts of interests shall be made to the Integrity Oversight Committee through the secretariat. A member or advisor of the Integrity Oversight Committee will recuse himself or herself from participating in any discussion or decision concerning any matter in which he or she has a conflict of interest. If there is any dispute on whether a conflict of interest exists, it shall be decided by the other Integrity Oversight Committee members. Recusals and decisions on conflicts of interest will be documented in writing by the secretariat.

68. The Integrity Oversight Committee shall determine if there is a basis to impose remedial action on a preponderance of evidence, based on OAI's report and any other information the Integrity Oversight Committee might request or be presented with, to demonstrate that a subject violated ADB's Anticorruption Policy. The Integrity Oversight Committee may make operational recommendations related to the cases it considers, and may also consider whether, in exceptional cases, to publish the name of the debarred firm or individual pursuant to paragraph 100.

69. The Integrity Oversight Committee or OAI may determine that a party shall be ineligible to participate in ADB-financed, administered, or supported activities:

- (i) **Debarment.** Debarments reflect an administrative decision not to do business with a party whom ADB does not consider to live up to the highest ethical standards. Debarment will

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<sup>15</sup> Terms will normally be 24 months, but the Head, OAI and/or President may specify a different term.

usually not affect existing contractual obligations, but the Integrity Oversight Committee and OAI may recommend the cancellation of existing contractual obligations.

Debarment, other than indefinite debarments, will have a specified minimum period. Upon expiry of the sanction period, reinstatement is not automatic, but the debarred party may request reinstatement. Upon receipt of a request for reinstatement, ADB, through OAI, will reassess the sanction to determine whether to reinstate the party or extend the period (e.g., if the party is known to have engaged in any integrity violation during its sanction period), in accordance with the procedures on reinstatement outlined hereunder.

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

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

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

70. Other sanctions that the Integrity Oversight Committee or OAI may determine that ADB will impose are:

- (iv) **Reprimand.** A reprimand is a censure for a party's actions and notification that subsequent violations may result in a higher penalty. A written reprimand is appropriate for an isolated incident of lack of oversight, or where the integrity violation or the party's role in it is minor.
- (v) **Restitution and/or Remedy.** Restitution and other financial remedies may be used where there is a quantifiable amount to be restored to the client country or project. This may be recommended independently or jointly with other sanctions.

71. The Integrity Oversight Committee or OAI may also determine that ADB will take other remedial action not amounting to sanction, including caution letters, such as where a party has committed a lapse not amounting to an integrity violation (e.g., ordinary negligence).

72. A reprimand, caution, or warning does not affect a party's eligibility to participate in ADB-financed, administered, or supported activity.

73. In cases involving an association of parties, including joint ventures, the Integrity Oversight Committee or OAI will impose sanctions on the party that committed the integrity violation, if accountability can be determined.

74. The Integrity Oversight Committee or OAI may determine that sanctions should also be imposed on the associated party, or the principals (such as owners, directors, officers, or major shareholders) of a firm, and/or other related parties, if warranted, even if the related party was not directly involved in the violation. Related parties may include those that have:

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

75. In determining sanctions on associated parties, principals, or related parties, the Integrity Oversight Committee or OAI will consider, among others:

- (i) management and organizational structure;
- (ii) if the related party was involved in or influenced the integrity violation, or was the intended beneficiary of such acts; and
- (iii) the possibility that the subject may circumvent a sanction through the related party, taking into account the influence the subject of the investigation has on a related party, and whether the subject may obtain benefits through the related party.

76. When appropriate, the Integrity Oversight Committee or OAI may decide not to sanction parties (other than ADB staff) who cooperate with OAI's investigation.

## PERIOD OF DEBARMENT

77. The base sanction for integrity violations is 3-year debarment. The Integrity Oversight Committee or OAI may impose a greater or lesser debarment period depending on the circumstances of each case. The Integrity Oversight Committee or OAI shall consider the following factors, among others, in imposing greater or lesser sanctions:

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

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

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

79. In determining whether a greater or lower debarment period should be imposed, the Integrity Oversight Committee or OAI will be guided by the following ranges:

- (i) First debarments, including cases where a party has previously been given a reprimand
  - (a) individuals: 1 year to indefinite
  - (b) firms: 1 to 7 years
- (ii) Second debarments
  - (a) individuals: up to indefinite
  - (b) firms: up to 10 years
- (iii) Subsequent debarments
  - (a) individuals: up to indefinite
  - (b) firms: up to 20 years

80. The Director of OAI will communicate the Integrity Oversight Committee's or OAI's decisions, including any remedial action, to the subject(s) of such decision(s) and, where relevant, to Management or operational departments. In all cases where the Integrity Oversight Committee has decided to impose a remedial action, OAI will notify the relevant party of a right to appeal in accordance with the criteria outlined in these Integrity Principles and Guidelines. Where OAI finds it impossible to notify a party of an Integrity Oversight Committee decision, OAI will publish that decision on the ADB website following procedures outlined hereunder.

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

## APPEALS

82. A bidder, consultant, contractor, supplier, or other third party subject to a sanction decided by ADB may appeal the Integrity Oversight Committee's decision to the Sanction Appeals Committee

within 90 days from the date of OAI's notice of the Integrity Oversight Committee's decision. Any sanctioned party, which could not be notified of the sanction by OAI through no fault of the party, but which later learns of the sanction, may appeal within a reasonable time. Any appeal must be in writing, and clearly and concisely state the reason(s) for the requested review of the Integrity Oversight Committee's decision, and explain the reasons why OAI had not been able to contact the party, if applicable.

83. Debarments as a consequence of sanctions violations are not subject to appeal and the decision of the Integrity Oversight Committee or OAI, as applicable, shall be final.

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

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

85. The Sanction Appeals Committee may reduce or lift sanctions ADB has imposed on the basis of the appeal. The Sanction Appeals Committee may, as an alternative measure, require the Integrity Oversight Committee to reconsider a case if it determines that the evidence submitted should be reassessed.

86. The Sanction Appeals Committee shall consist of two or three vice presidents, depending upon the nature of the case and the length of the sanction.<sup>16</sup> The Head, OAI is secretariat to the Committee. The vice president with the longest vice presidential tenure will chair the Sanction Appeals Committee. The Head, OAI shall nominate members to comprise the Committee and will be present in an advisory capacity. The General Counsel may be present in an advisory capacity. In straightforward cases, the Head, OAI may submit an appeal case on a no-objection basis to the Sanction Appeals Committee, which in such cases shall consist of two vice presidents, unless one of the two members of the Sanction Appeals Committee requests that a third vice president be involved in deciding the appeal.

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

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

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<sup>16</sup> If the nature of the sanction calls for consideration by three vice presidents, and the Secretariat determines it is not possible to convene a meeting of three vice presidents within a reasonable time period, the Chair may appoint a head or deputy head of department or office to serve as the third committee member.

## REINSTATEMENT

89. Debarred parties may seek reinstatement upon expiry of the debarment period. OAI may attempt to notify parties of the opportunity to request reinstatement approximately 45 days before the end of the minimum sanction period.

90. Requests for reinstatement shall

- (i) be in writing, addressed to the Director, OAI;
- (ii) refer to the reason for the sanction; and
- (iii) provide the basis for which ADB should consider their reinstatement.

91. OAI will assess the credibility of any request for reinstatement, and will assess the merits of reinstating a party. Factors that OAI may consider may include:

- (i) compliance with conditions imposed pursuant to paragraph 69(b);
- (ii) reason(s) a sanction was imposed;
- (iii) restitution;
- (iv) changes in management or ownership of a firm, and whether the firm's principals have been and remain sanctioned;
- (v) verifiable mechanisms to improve business governance;
- (vi) effective administrative, civil, or criminal action initiated by the debarred party to remedy the integrity violation;
- (vii) any other information indicating that the party engaged in integrity violations after being sanctioned by ADB, including sanctions imposed by other organizations; and
- (viii) results of administrative or criminal investigations.

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

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

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

95. Any sanctioned party that could not be notified of the findings and sanction by OAI through no fault of the party, but which later learns of the sanction, may request reinstatement at any time, including any information and explanations in support of the request, including why the party could not be notified. In such case, the request for reinstatement shall be considered by the Integrity Oversight Committee. Such decisions shall be final, binding, and not subject to further appeal.

96. OAI may unilaterally initiate an assessment of the merits of reinstating a party or otherwise removing the party from the list of parties declared ineligible by ADB. OAI may do this to prevent a miscarriage of justice, or to prevent the obsolescence of ADB's list of debarred parties.

## DISCLOSURE

97. The list of parties ADB debars is not published, in accordance with ADB's Public Communications Policy. However, the list is not confidential as OAI makes the list of parties ADB debars available to parties with a demonstrated need-to-know, including, but not limited to, ADB's Board of Directors, government agencies involved in ADB activities, other multilateral development institutions, and bilateral donor agencies.

98. OAI will inform parties that ADB declares ineligible that ADB does not publicize their names, but that an attempt to participate in ADB-financed, administered, or supported activities while ineligible will result in an extension of the sanction period and their names being publicized on ADB's website and a consequential debarment by other institutions pursuant to the Agreement for Mutual Enforcement of Debarment Decisions. OAI will also publicize the names of parties debarred pursuant to paragraphs 79(b) and (c). Publication shall not take place until the expiration of the appeal period, or rejection of the appeal, if any.

99. If all reasonable attempts to communicate with the subject of a debarment decision has failed (e.g., if the subject refuses to accept correspondence, or has moved and cannot be located), the Integrity Oversight Committee or OAI may approve posting the information, including the name of the subject on ADB's website, which will then lead to cross-debarment pursuant to the Agreement for Mutual Enforcement of Debarment Decisions.

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

## CROSS-DEBARMENT

101. Under the Agreement for Mutual Enforcement of Debarment Decisions, a debarment decision by a participating institution will qualify for cross-debarment by other participating institutions if:

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

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

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

103. When sanctions qualifying under the Agreement for Mutual Enforcement of Debarment Decisions are imposed by other participating institutions, the Head and Director of OAI will screen the list of sanctions to determine if cross-debarment by ADB should be done. The screening shall consider ADB's eligibility rules on nationality, excluding those that would otherwise be ineligible for nationality reasons, and if the cross-debarment would be inconsistent with ADB's legal or other institutional considerations. If the decision to cross-debar is made, the cross-debarment will be publicized on ADB's website, effective from the date of such publication. Any decision not to cross-debar a firm or individual that would otherwise be eligible to participate in ADB-financed activities shall be recommended by the Head OAI to the President.

104. When the sanction on a cross-debarred party is lifted by the sanctioning participating institution, the cross-debarment by ADB shall likewise be lifted.

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# ADB's Anticorruption Policy

2 July 1998

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## ABBREVIATIONS

ADB	Asian Development Bank
BPMSD	Budget, Personnel and Management Systems Department
COSO	Central Operations Services Office
DMC	developing member country
GDP	gross domestic product
IMF	International Monetary Fund
MDB	multilateral development bank
NGO	nongovernment organization
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OGA	Office of the General Auditor
OGC	Office of the General Counsel
SPD	Strategy and Policy Department

## I. INTRODUCTION

1. The problem of corruption, here defined as the misuse of public or private office for personal gain, has been one of the most enduring dilemmas confronting governments throughout history. Although differences may exist in the nature and scope of corrupt behavior, and the extent to which anticorruption measures are enforced, the phenomenon can be found at all times and within virtually every political system. It can also be found within the private sector. Indeed, the linkage between public and private sector corruption is an area of particular concern for both developed and developing countries in Asia and the Pacific.

2. Historically, concern about corruption has tended to run in cycles, in which revelations of official abuses prompted anticorruption campaigns and administrative countermeasures that subsequently faded from view until the next round of scandals provided further impetus for reform. The desire to reduce or eliminate corruption was at the core of many enduring innovations for good governance. The major public administration reforms of the late nineteenth and early twentieth centuries—such as the introduction of a meritocratic civil service system, and professional management of government ministries and departments, or the creation of more formalized budget, procurement, and audit processes and agencies—had their roots in the desire to avoid earlier abuses of graft and political patronage.

3. Recently, the effort to combat corruption has moved to the center of the debate about good governance and economic growth. The impetus behind this move has come from many sources. On the donor side, the end of the Cold War has reduced the willingness of countries providing aid to overlook financial improprieties in light of broader geopolitical interests. Donor fatigue has placed increasing pressure upon foreign assistance agencies to demonstrate that they are delivering maximum value for the money. Many multinational corporations have come to believe their interests are better served by open and transparent competition. At the extremes, the negative example of a handful of “kleptocratic” regimes has underscored the danger of political and social collapse if widespread corruption is allowed to fester unchecked.

4. On the recipient side, in countries throughout Asia and the Pacific, the citizenry has served notice that it is no longer willing to tolerate gross abuses of the public trust for private gain. The liberalization of the press in many parts of the world has enabled journalists to write more freely about official indiscretions. Improvements in education and increased information flow between countries have made their public more aware of anticorruption efforts in other countries and less willing to tolerate systematic abuses at home. The rise of new global nongovernment organizations (NGOs) dedicated to fighting corruption has helped bring and keep the issue in the spotlight in both the developed and the developing world.

5. Many of these dynamics are likely to exist for at least the next decade or more, resulting in a fundamental change in the context within which multilateral development banks (MDBs) operate. Pressure for more active measures against graft and corruption is no longer likely to be isolated and sporadic. Like questions relating to the environment or women in development, influential and well-connected constituencies both within and outside of the MDB community will press hard to ensure that issues of corruption and good governance remain an important and ongoing element of the development debate.

6. In response to these pressures, many international organizations are adopting more robust anticorruption measures:

- (i) At a Summit of the Americas in May 1994, the Organization of American States (OAS) pledged to outlaw cross-border bribery and the “illicit enrichment” of officials in the hemisphere. In March 1996, 21 member states of OAS signed the Caracas Convention, which calls for energetic collective action in four principal areas: preventative measures and international cooperation, transnational bribery, illicit enrichment, and extradition. The Caracas Convention is now in force between the countries that have ratified it: Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru, and Venezuela.
- (ii) The Organisation for Economic Co-operation and Development (OECD) Ministerial Council approved a resolution encouraging its member states to end the tax deductibility of foreign bribes and commissions for their multinational corporations in May 1996. A year later, it approved a full set of recommendations for criminalizing transnational bribery, enacting stricter accounting requirements and external and internal audit controls, tighter public procurement, and enhanced international controls. In December 1997, OECD ratified a convention making the bribery of foreign officials a criminal offense, on a par with the bribery of local government officials in the country where the corporation is based.
- (iii) The International Chamber of Commerce recently approved revised rules of conduct that prohibit bribes and recommended that its member associations around the globe, and their member corporations, adopt and apply these tighter rules.
- (iv) In December 1996, the United Nations General Assembly passed the Declaration Against Corruption and Bribery in International Commercial Transactions.

7. One of the most forceful proponents of a tough stance on anticorruption issues is the World Bank’s President, James Wolfensohn. At the annual meetings of the World Bank and the International Monetary Fund (IMF) in October 1996, Wolfensohn characterized corruption as a “cancer” on the global economy and emphasized that it was time to “put teeth” into the World Bank’s efforts to address it. The Managing Director of IMF, Michel Camdessus, was equally blunt, noting that IMF officials will henceforth regard it as their duty to press for anticorruption reforms in countries seeking to borrow money. In the wake of the annual meetings, a working group was established under the Development Economics Vice Presidency of the World Bank to develop an integrated anticorruption strategy. The final report, along with accompanying staff guidelines, was endorsed by the World Bank’s Board of Executive Directors on 2 September 1997.

8. The World Bank’s approach envisions a balanced strategy to combat corruption resting upon four pillars: (i) preventing fraud and corruption in World Bank-financed projects; (ii) helping countries that request World Bank support in their efforts to reduce corruption; (iii) taking corruption more explicitly into account in country assistance strategies, policy dialogue, analytical work, and the choice and design of projects; and (iv) adding voice and support to international efforts to reduce corruption.<sup>1</sup>

9. In August, IMF took the unprecedented step of suspending the second tranche of an Enhanced Structural Adjustment Facility when one of its member countries failed to demonstrate that it was pursuing adequate measures to reduce the problem of corruption. The World Bank has strongly supported IMF’s move and warned that its own lending will be “substantially reduced” failing

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1 See World Bank. 1997. *Helping Countries Combat Corruption: The Role of the World Bank*. Washington, DC.

decisive action on the part of that government.<sup>2</sup> At the annual meetings of the World Bank and IMF in Hong Kong, China in September 1997, the commitment of both institutions to combat corruption was strongly reaffirmed.

10. The 1997 summit of the Group of Seven industrial nations in Denver, United States, placed particular emphasis upon the role of the MDBs in combating corruption. The communique from the preliminary meeting of finance ministers and central bankers in April maintained, "in view of the corrosive effects of bribery and corruption generally on the achievement of sustainable economic development, growth, and stability, we welcome the increased attention to these problems on behalf of international financial institutions and the OECD." In June, the final summit statement urged IMF and the MDBs to strengthen their activities to help countries fight corruption, including measures to ensure the rule of law, improve the efficiency and accountability of the public sector, and increase institutional capacity and efficiency. The international financial institutions were also encouraged to promote good governance in their respective areas of competence and to collaborate fully with the World Bank's effort to establish procurement guidelines that meet the highest standards for transparency and rigor.

11. Many of the developing member countries (DMCs) of the Asian Development Bank (ADB) have played an integral role in the growing anticorruption movement. In East Asia, several countries that have enjoyed high growth rates in the past have expressed concern that perceptions of corruption can hamper their ability to attract future investment. In 1995, the People's Republic of China passed legislation requiring leading Communist Party cadre levels above the country level to declare their income. Thailand's Prime Minister pledged in January 1997 to clean up the Customs Department, which was creating numerous "hidden costs" for foreigners seeking to do business in Thailand. That same month, the President of the Philippines characterized "the nightmare of corruption in public service" as one of the country's most persistent afflictions and ordered all government departments to submit monthly progress reports on their fight against corruption within their offices.

12. On the South Asian subcontinent, the problem of corruption has become one of the most pressing issues confronting government leaders today. In Pakistan, the Prime Minister has made the effort to clean up government one of the key goals of his new administration. India's President recently characterized corruption as one of the greatest challenges now confronting his country.<sup>3</sup>

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2 Cited in Oxford Analytica. 1997. *Asia Pacific Daily Brief*, 14 August. Other problems cited by IMF include the failure to prosecute the perpetrators of a multimillion dollar financial fraud, irregularities surrounding the award of contracts for two power projects, and the use of extrabudgetary funds to purchase a presidential jet and build an international airport in the president's hometown.

3 K.R. Narayanan. 1997. "Next an India for All, Tolerant and Uncorrupt," editorial, *International Herald Tribune*, 13 August.

## II. ADB'S RESPONSE

13. As a major multilateral development institution and one of the leading sources of development funding in Asia, ADB welcomes this emphasis on combating corruption as part of its broader work on issues of governance and capacity building. ADB's Board paper, *Governance: Sound Development Management*, recognizes the importance of accountability for public officials, and transparency and predictability in government operations—critical principles in the fight against corruption.<sup>4</sup> The policy's emphasis upon strengthening the essential prerequisites for effective public administration is designed to ensure that the fundamental building blocks for transparent, predictable, and accountable administration are in place. These building blocks include an appropriate legal framework and effective enforcement mechanisms; a professional, competent, motivated, and meritocratic civil service; transparent procurement practices; effective internal control systems; and a well-functioning independent audit office. Participation, the fourth major principle in ADB's governance policy, is also of relevance. The experience of Hong Kong, China, and Singapore demonstrates that public support is a critical asset in the long-term struggle against official malfeasance.

14. At the broadest level, ADB's stance on anticorruption issues is intended to reduce the burden that widespread, systemic corruption exacts upon the governments and economies of the region. More specifically, ADB's approach is centered upon three objectives:

- (i) supporting competitive markets and efficient, effective, accountable, and transparent public administration as part of ADB's broader work on good governance and capacity building;
- (ii) supporting promising anticorruption efforts on a case-by-case basis and improving the quality of our dialogue with the DMCs on a range of governance issues, including corruption; and
- (iii) ensuring that ADB projects and staff adhere to the highest ethical standards.

15. The third and fourth sections will set the stage for the discussion of these objectives by addressing the definitional questions that have surrounded the topic and the costs that corruption imposes upon development. The remainder of the paper will consider the nature of ADB's response. The fifth section outlines ADB's position on anticorruption issues and describes the current ADB programs with significant anticorruption components. It also highlights the implications of the ADB's anticorruption policy for current ADB operations. The last section concludes by highlighting specific next steps for ADB to take in implementing this policy.

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<sup>4</sup> R151-95: *Governance: Sound Development Management*, 17 August.

### III. DEFINITIONS OF CORRUPTION

16. The term "corruption" is used as a shorthand reference for a large range of illicit or illegal activities. Although there is no universal or comprehensive definition as to what constitutes corrupt behavior, the most prominent definitions share a common emphasis upon the abuse of public power or position for personal advantage. *The Oxford Unabridged Dictionary* defines corruption as "perversion or destruction of integrity in the discharge of public duties by bribery or favor." *The Merriam Webster's Collegiate Dictionary* defines it as "inducement to wrong by improper or unlawful means (as bribery)." The succinct definition utilized by the World Bank is "the abuse of public office for private gain." This definition is similar to that employed by Transparency International (TI), the leading NGO in the global anticorruption effort:

"Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them."<sup>5</sup>

17. These definitions are useful but, in the ADB's judgment, they do not give adequate attention to the problem of corruption in the private sector or to the role of the private sector in fostering corruption in the public sector. As a shorthand definition, ADB defines corruption as "the abuse of public or private office for personal gain." A more comprehensive definition is as follows:

Corruption involves behavior on the part of officials in the public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed.

18. A list of illicit behavior typically referred to as "corruption" is presented in Box 1. This catalogue is not exhaustive and is intended to illustrate the areas of greatest interest and concern to ADB. Some types of corruption are internal, in that they interfere with the ability of a government agency to recruit or manage its staff, make efficient use of its resources, or conduct impartial in-house investigations. Others are external, in that they involve efforts to manipulate or extort money from clients or suppliers, or to benefit from inside information. Still others involve unwarranted interference in market operations, such as the use of state power to artificially restrict competition and generate monopoly rents.

19. More narrow definitions of corruption are often necessary to address particular types of illicit behavior. In the area of procurement fraud, for example, the World Bank defines corrupt practice as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution." Fraudulent practice is defined as "a misrepresentation of facts in or to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders ... designed to establish bid prices at artificial, noncompetitive levels and to deprive the Borrower of the benefits of free and open competition."<sup>6</sup>

<sup>5</sup> See World Bank 1997, p. 8. See also Transparency International. 1996. *The TI Sourcebook*, edited by Jeremy Pope. Berlin: TI, p.1. The World Bank definition includes the activities of private agents who subvert public policies and processes for competitive advantage.

<sup>6</sup> In the movement to harmonize ADB procurement standards with those of the World Bank on the topic of corruption, these definitions may also be adopted by ADB. See the last section of this paper.

20. It is often useful to differentiate between grand corruption, which typically involves senior officials, major decisions or contracts, and the exchange of large sums of money; and petty corruption, which involves low-level officials, the provision of routine services and goods, and small sums of money. It is also useful to differentiate between systemic corruption, which permeates an entire government or ministry; and individual corruption, which is more isolated and sporadic. Finally, it is useful to distinguish between syndicated corruption in which elaborate systems are devised for receiving and disseminating bribes, and nonsyndicated corruption, in which individual officials may seek or compete for bribes in an ad hoc and uncoordinated fashion.

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**Box 1. An illustrative list of corrupt behaviors**

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- The design or selection of uneconomical projects because of opportunities for financial kickbacks and political patronage.
- Procurement fraud, including collusion, overcharging, or the selection of contractors, suppliers, and consultants on criteria other than the lowest evaluated substantially responsive bidder.
- Illicit payments of “speed money” to government officials to facilitate the timely delivery of goods and services to which the public is rightfully entitled, such as permits and licenses.
- Illicit payments to government officials to facilitate access to goods, services, and/or information to which the public is not entitled, or to deny the public access to goods and services to which it is legally entitled.
- Illicit payments to prevent the application of rules and regulations in a fair and consistent manner, particularly in areas concerning public safety, law enforcement, or revenue collection.
- Payments to government officials to foster or sustain monopolistic or oligopolistic access to markets in the absence of a compelling economic rationale for such restrictions.
- The misappropriation of confidential information for personal gain, such as using knowledge about public transportation routings to invest in real estate that is likely to appreciate.
- The deliberate disclosure of false or misleading information on the financial status of corporations that would prevent potential investors from accurately valuing their worth, such as the failure to disclose large contingent liabilities or the undervaluing of assets in enterprises slated for privatization.
- The theft or embezzlement of public property and monies.
- The sale of official posts, positions, or promotions; nepotism; or other actions that undermine the creation of a professional, meritocratic civil service.
- Extortion and the abuse of public office, such as using the threat of a tax audit or legal sanctions to extract personal favors.
- Obstruction of justice and interference in the duties of agencies tasked with detecting, investigating, and prosecuting illicit behavior.

## IV. THE COSTS OF CORRUPTION

21. Corruption has not always been perceived as having a negative impact upon development. In earlier decades, arguments were advanced that it could have beneficial effects. In countries where public sector wages are often low and in some cases may not even be enough to live on, some maintained that it was natural for civil servants to augment their salaries by other means. It was alleged that corruption could advance economic efficiency by helping restore artificial and administratively determined prices to market-clearing levels. Others maintained that corruption played a useful redistributive role, transferring resources from wealthy individuals and corporations to those of more modest means, or that it could serve as a tool of national integration by allowing ruling elites to entice or co-opt fractious political, ethnic, or religious groups. Finally, some scholars have argued that corruption is a natural stage of development. They note that it was generally widespread in many advanced countries until recently, when it was reduced (but not eliminated) through the gradual imposition of public sector reforms over the last century.

22. Robert Klitgaard, one of the most astute students of the problem of corruption in development, notes that these arguments have several common features.<sup>7</sup> First, they often refer to the benefits stemming from specific illicit acts and do not consider the systemic impact of corruption. Although a given incident or transaction may have positive results, it may also generate negative externalities that degrade the performance of the system as a whole and compromise the economy's long-term dynamic efficiency.

23. Second, many of the alleged benefits from corruption, such as streamlining government transactions or enhancing civil service pay, only appear as such against the background of a public sector that is failing to perform effectively. The experience of economies such as Singapore indicates that patient and persistent efforts toward improved public sector management, by streamlining customs procedures or by paying wages that are competitive with the private sector, for example, are likely to result in greater benefits over time than tolerating relatively high levels of corruption to compensate for these deficiencies.

24. Third, corruption encourages people to avoid both good regulations and bad. There is no guarantee that an importer who bribes a customs official to expedite the clearance of badly needed medication one week will not bribe the official to expedite the clearance of illegal narcotics the next.

25. The task of evaluating the practical impact of corruption upon a country's development is a complicated one that is now being subject to increasing scholarly attention. Although there are instances when illicit acts can improve the economic rates of return, the bulk of the evidence indicates that corrupt actions typically generate far more costs than benefits. A study of corruption in one African country, for example, concluded that corruption intensified ethnic conflict, ruined the efficiency of municipal government and federal agencies, crippled the merit system of hiring and promotion, and generated an "atmosphere of distrust which pervades all levels of administration." A study of an Asian country found that in none of the cases under consideration was the money

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<sup>7</sup> Robert Klitgaard. 1988. *Controlling Corruption*. Berkeley and Los Angeles: University of California Press, p. 32.

raised through corruption “directly and productively invested.”<sup>8</sup> An extensive study of corruption in another Asian country concluded:

Graft and corruption has strongly affected development efforts negatively, belying the so-called “revisionist hypothesis” prevalent in the West which considers corruption as either a necessary step in the development process or a means of speeding it up. Instead [our research] found that corruption leads to the favoring of inefficient producers, the unfair and inequitable distribution of scarce public resources, and the leakage of revenue from government coffers to private hands. Less directly, but no less perniciously, corruption leads to loss of confidence in government.<sup>9</sup>

26. Upon closer inspection, many of corruption’s alleged distributive, efficiency, and political benefits turn out to be illusory. Rather than enhancing a more equitable distribution of income, corruption distorts the allocation of social resources away from those who are legally entitled to them and toward the rich, the powerful, and the politically well connected. Rather than compensating civil servants for poor pay, corruption undermines the merit system and compromises service professionalism and esprit de corps. At times, it can even foster additional inefficiencies within the public sector.<sup>10</sup> Instead of cementing political loyalties, corruption more often breeds public cynicism and resentment toward the political process and those associated with it.

27. Many studies of the cost of corruption in individual cases paint a disturbing picture of resources lost, squandered, or devoted to suboptimal uses:

- (i) Some estimates calculate that as much as \$30 billion in aid for Africa has ended up in foreign bank accounts. This amount is twice the annual gross domestic product (GDP) of Ghana, Kenya, and Uganda combined.<sup>11</sup>
- (ii) Over the last 20 years, one East Asian country is estimated to have lost \$48 billion due to corruption, surpassing its entire foreign debt of \$40.6 billion.<sup>12</sup>
- (iii) An internal report of another Asian government found that over the past decade, state assets have fallen by more than \$50 billion, primarily because corrupt officials have deliberately undervalued them in trading off big property stakes to private interests or to international investors in return for payoffs.<sup>13</sup>
- (iv) In one South Asian country, recent government reports indicate that \$50 million daily is misappropriated due to mismanagement and corruption. The Prime Minister stated publicly recently that the majority of bureaucrats and the administrative machinery from top to bottom are corrupt.<sup>14</sup>

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8 The African citation is from Herbert Werlin. 1979. “The Consequences of Corruption: The Ghanaian Experience,” in Monday U. Ekpo, ed. *Bureaucratic Corruption in Sub-Saharan Africa: Toward a Search for Causes and Consequences*. Washington DC: University Press of America, p. 253. The second citation is from Kang Sintaek. 1978. “Conclusions and Recommendations,” in a paper prepared for the Fourth Working Meeting on Bureaucratic Behavior and Development, Hong Kong, China, August, cited in Klitgaard. 1988. p. 37.

9 Ledivina V. Carino and Josie H. de Leon. 1983. *Final Report for the Study of Graft and Corruption, Red Tape and Inefficiency in Government*, cited in Klitgaard. 1988. p. 38.

10 In one African country, for example, each imported container shipment is inspected three times by custom officers because of the opportunity for graft and speed payments, rather than conducting a spot check based upon the previous history of the importer, as is the practice in many other countries.

11 Michelle Celarier. 1996. “The Search for the Smoking Gun,” *Euromoney* (September): 49.

12 Philippine Government estimate, cited from *Reuter Newswire*. 1997. “Philippines Corruption a ‘Nightmare’ -Ramos,” 11 January. See also *Philippine Star*. 1997. “Commission on Audit: P1.2 B Lost to Graft Each Year,” 12 June.

13 Internal report, cited from *Business Week*. 1993. “The Destructive Costs of Greasing Palms,” 6 December, p. 133.

14 *The News*. 1997. 28 March.

- (v) In one North American city, businesses were able to cut \$330 million from an annual waste disposal bill of \$1.5 billion by ridding the garbage industry of Mafia domination. A particular problem was the permeation of regulatory bodies by organized crime.<sup>15</sup>
- (vi) Studies of the impact of corruption upon government procurement policies in several Asian countries reveal that these governments have paid from 20% to 100% more for goods and services than they would have otherwise.<sup>16</sup>
- (vii) Corruption can cost many governments as much as 50% of their tax revenues. When customs officials in a Latin American country were allowed to receive a percentage of what they collected, there was a 60% increase in customs revenues within 1 year.<sup>17</sup>
- (viii) Some estimates of the role of corruption in a European country concluded that it has inflated this country's total outstanding government debt by as much as 15% or \$200 billion. In one city, anticorruption initiatives have reduced the cost of infrastructure outlays by 35%–40%, allowing the city to significantly increase its outlays for the maintenance of schools, roads, street lamps, and social services.<sup>18</sup>

28. Although almost impossible to value accurately, the indirect costs of corruption can often dwarf its direct costs. Scarce resources are squandered on uneconomical projects because of their potential to generate lucrative payoffs, and priority sectors such as education or health suffer disproportionately. Legitimate entrepreneurial activity is hindered or suppressed. Public safety is endangered by substandard products and construction. Capital is redirected toward more transparent and predictable investment sites. Individuals who would not otherwise engage in illicit behavior decide they have no alternative, and intellectual energy is diverted from more productive pursuits to figuring out ways to "get around the system." In extreme cases, the legitimacy of the public sector itself is called into question, and governments may be confronted with political instability or collapse.

29. Although corruption is costly, its impact upon development is not uniform. Some countries can tolerate relatively high levels of bribery and graft and continue to maintain respectable rates of economic growth, whereas others cannot. Several factors influence the extent to which corruption serves as a brake upon the process of development. At the most basic level, a state's natural resource base and the sources of its comparative advantage play a critical role in its ability to attract investment.<sup>19</sup> A second factor is the form in which corruption is practiced. In some countries, corruption is highly routinized. Payoffs are generally known in advance and concentrated at the top in a "one-stop" fashion. Such an approach may reduce transaction costs and add a measure of predictability to investment decisions, making the country inherently more attractive than others where many different officials can demand unspecified and unanticipated payments. Finally, the extent to which money remains in the country and is invested in productive economic activity, or flows abroad into foreign bank accounts, will also have an impact upon a nation's ability to tolerate relatively high levels of corruption and still enjoy decent rates of economic growth.

15 *The Financial Times*. 1997. 6 June.

16 Thinapan Nakata. 1978. "Corruption in the Thai Bureaucracy. Who Gets What, How and Why in Its Public Expenditures." *Thai Journal of Public Administration* 18 (January): 102–128; Clive Gray. 1979. "Civil Service Compensation in Indonesia." *Bulletin of Indonesian Economic Studies* 15 (March): 85–113; and Robert Wade. 1982. "The System of Administrative and Political Corruption: Canal Irrigation in India." *Journal of Development Studies* 18 (April): 287–328. Cited in Klitgaard. 1988. pp. 39–40.

17 *Business Week*. 1993. "The Destructive Costs of Greasing Palms." 6 December, pp. 134–135.

18 *Business Week*. 1993. "The Destructive Costs of Greasing Palms." 6 December, p. 135.

19 States with rare or valuable natural resources can generally attract more investment than those seeking to compete as a source of low wage, labor-intensive manufacturing. Ironically, such resource-rich countries also often enjoy lower growth rates than their poorer counterparts. See Philip R. Lane and Aaron Tornell. 1996. "Power, Growth and the Voracity Effect." *Journal of Economic Growth*, 1 (June): 213–241.

30. In spite of these caveats, the most recent and innovative empirical research demonstrates that—even correcting for variables such as bureaucratic efficiency—countries that tolerate relatively high levels of corruption are unlikely to perform as well economically as they would have otherwise. In a study of over 70 countries during the late 1970s and early 1980s, IMF economist Paolo Mauro found that corruption “is strongly negatively associated with the investment rate, regardless of the amount of red tape.” Mauro’s model indicates that a one standard deviation improvement in the “corruption index” will translate into an increase of 2.9% of GDP in the investment rate and a 1.3% increase in the annual per capita rate of GDP growth.<sup>20</sup>

31. This analysis is supported by other recent studies. Using data from 39 industrial and developing countries that controlled for income, education, and policy distortion, two World Bank researchers found that countries that were perceived to have relatively low levels of corruption were always able to attract significantly more investment than those perceived to be more prone to corrupt or illicit activity. This result held true for both countries where corruption was highly syndicated and predictable, and countries where it was not.<sup>21</sup> Another recent study, which utilized econometric analysis to examine the impact of corruption upon foreign direct investment in East Asia, found that perceptions of corruption had a strong and negative impact upon the flow of foreign investment. According to the study’s findings, East Asia is no different from any other region in this regard.<sup>22</sup>

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20 Paolo Mauro. 1995. “Corruption and Growth.” *Quarterly Journal of Economics*. (August): 681–711. The citations are from pages 695 and 683, respectively. It should be noted that many of these cross-country econometric studies are based on levels of perceived (versus actual) corruption, and that such studies can have problems in desegregating corruption’s effects from those of other variables related to the quality of governance.

21 The analysis was conducted by Jose Eduardo Campos and Sanjay Pradhan in conjunction with the 1997 World Development Report. Washington DC: World Bank, pp. 102–109.

22 Shang-Jin Wei. 1997. “How Taxing is Corruption on International Investors.” *Working Paper 6030*, National Bureau of Economic Research, Cambridge, MA.

## V. ADB'S POSITION ON ANTICORRUPTION ISSUES

32. In light of the discussion above, ADB affirms that corrupt and illicit behavior is a serious brake upon the development process. ADB rejects the argument that corruption's beneficial effects outweigh its negative consequences, or that it is inappropriate for international financial institutions to address such issues. ADB notes that experience drawn from Asia and the Pacific region and elsewhere demonstrates that significant progress can be made in the struggle against corruption if the proper legal, institutional, and policy reforms are in place. ADB welcomes the growing focus upon anticorruption issues as part of its broader effort to advance the principles of transparency, predictability, accountability, and participation under its governance policy.

33. At the broadest level, ADB's stance on anticorruption issues is intended to reduce the burden that widespread, systemic corruption exacts upon the economies of the region and the development of ADB's DMCs. In keeping with Article 36(2) of the Charter, ADB initiatives regarding corruption will be grounded solely upon economic considerations and concerns of sound development management. They will not involve interference in the political affairs of a DMC or be influenced by its political character.

34. More specifically, ADB's approach is centered upon three basic objectives:

- (i) supporting competitive markets and efficient, effective, accountable, and transparent public administration as part of ADB's broader work on good governance and capacity building;
- (ii) supporting promising anticorruption efforts on a case-by-case basis and improving the quality of our dialogue with the DMCs on a range of governance issues, including corruption; and
- (iii) ensuring that ADB projects and staff adhere to the highest financial and ethical standards.

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**Objective no. 1: Supporting competitive markets and efficient, effective, accountable, and transparent public administration**

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35. As a matter of policy, the major thrust of the Bank's anticorruption effort will address this problem as a part of its broader work on governance and capacity building. ADB's approach seeks to be proactive and to place a premium upon continuous efforts to upgrade the efficiency of markets and the quality of the public sector as a whole. This focus upon prevention over prosecution reflects the belief that most priority governance initiatives have significant positive externalities in the struggle against corruption. Long-term success is more likely to come through patient and persistent economic, legal, and institutional reforms rather than short-term and largely reactive efforts to punish wrongdoers.<sup>23</sup>

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<sup>23</sup> The detection and prosecution of illicit activities has been an important part of successful anticorruption efforts. However, the most effective approaches have combined efforts toward prosecution with an even stronger emphasis upon prevention. ADB's own experience and comparative advantage fall strongly on the side of prevention.

36. There are two priority areas where ADB will concentrate its broader governance effort: policy dialogue directed toward economic liberalization and public administration reform. Regarding the former, ADB can use its dialogue with the DMCs to advance policy recommendations that will help eliminate market distortions and reduce opportunities for rent seeking on the part of firms or officials. The liberalization of licensing regimes, the opening up of access to foreign exchange markets, the reduction of administered prices, the expansion of credit opportunities for small farmers and businesspeople, the removal of subsidies and soft loans to favored companies, and the introduction of a clear distinction between production and regulatory functions are all ways in which policy changes can level the playing field and reduce opportunities for corrupt or illicit behavior. ADB is already pursuing many of these initiatives in its dialogue with the DMCs (Box 2).

### **Box 2. Examples of ADB loans and grants supporting market liberalization and policy reforms**

**Loan 1444 and TA 2587: Kyrgyz Road Rehabilitation Project and Institutional Strengthening of the Road Sector.** In June 1996, the Board approved a loan for \$50 million to the Kyrgyz Republic for road rehabilitation. A component of this project and its associated technical assistance (TA) were designed to open the transport sector to competition, so that customers are free to choose between competing alternatives on the basis of price and quality of service, and there is no government discrimination (through regulations, price controls, discriminatory licensing practices, or other interventions) between government-owned and private operators of transport services.

**Loan 1506: Gujarat Public Sector Resource Management Program.** In December 1996, the Board approved a loan of \$250 million and an additional TA grant to the Indian state of Gujarat to improve the quality of its public sector management, to support the disinvestment of selected state enterprises, and to improve its infrastructure. A critical objective of the Bank's policy dialogue was to reverse the impact of past policies and regulations that discriminated against private sector participation in infrastructure, including a lack of transparency of the decision-making system; the absence of regulations governing entry, evaluation of bids, and tenders; problems related to pricing and regulatory issues in monopolistic conditions; and weakness of the legal system, dispute resolution, and arbitration. The goal was to reduce the involvement of the public sector in the direct provision of certain goods and services, while reorienting and strengthening its regulatory role in ensuring a level playing field for public-private sector operations.

37. There are several ways in which the ADB's work in enterprise reform and financial markets development, along with its private sector operations, is contributing to increased competitiveness, transparency, and accountability. ADB is supporting a range of policy-based reforms in many countries that are intended to amend banking regulations to allow greater competition and to reduce directed lending while strengthening the capacity of regulatory agencies. This is also true in the area of capital markets, where ADB is seeking to enhance disclosure practices and improve market surveillance. Through its private sector operations, ADB invests in catalytic projects such as ratings agencies, which provide transparency in the capital market by publishing independent judgments on the investment quality of debt instruments, thus helping investors make informed investment decisions. ADB is also becoming increasingly involved in strengthening corporate governance in the private companies and investment funds where it has an equity interest. In the wake of the financial crisis that has affected many countries in the Asian and Pacific region, these efforts are being rapidly expanded. ADB is also considering providing support for new initiatives in areas such as money laundering.

38. Particular care must be taken in dealing with issues of privatization. There are often powerful financial and economic rationales for the state divesting from activities where it has little comparative advantage. Preliminary research also indicates that, when done properly, privatization can also help lower the level of corruption.<sup>24</sup> However, in many countries the privatization process has often been fraught with allegations of bribery, theft, and embezzlement. To avoid this problem, it is critical that transparent, unbiased, and fully contestable procedures be utilized in the sale of state assets. When the sale involves a natural monopoly, it is also important that capable, independent regulatory agencies be established to provide adequate oversight prior to privatization. Issues of best practice involving corporate governance will also be an important component of ADB loans and TA grants addressing issues of privatization, corporatization, and public enterprise management.

39. Many basic public administration reforms during the late nineteenth and early twentieth centuries came about in response to official malfeasance. By focusing as a first priority upon comprehensive public sector reform, ADB can help its DMCs effect changes that will make corrupt behavior more difficult to engage in and more readily detected once it occurs. A breakdown of broader reform initiatives with significant anticorruption components is presented in Appendix 1.

40. Turning first to the executive branch, there are several priority areas where efforts to upgrade the quality of a country's public administration will pay significant dividends in the struggle against corruption. Efforts to strengthen information systems, particularly those relating to financial management, should enhance transparency and accountability, and strengthen the capacity of governments to monitor their expenditures. Measures to strengthen internal audit functions and to ensure adequate control over disbursements can play the dual role of helping monitor and improve performance while making theft and embezzlement more easily detected. Procurement reform, which ADB is already pursuing in a number of DMCs, can reduce costs while simultaneously making it more difficult to perpetrate fraud and abuse.

41. Another area where significant progress can be made is civil service reform. As ADB's Board paper, *Governance: Sound Development Management* notes, the cumulative effect of poor salaries, low morale and productivity, uncertain prospects for career development, and insufficient linkage of merit to promotion can foster pervasive corruption among public officials.

42. ADB can support a number of initiatives to redress these problems. Measures to strengthen establishment management and control for civil service positions will help ensure that there are no "ghost employees" on the payroll. Efforts to decompress pay scales and improve employment conditions throughout the civil service will lower the incentive for illicit behavior. Initiatives to reduce the number of exemptions and special allowances will make remuneration more transparent. Measures to improve procedures for recruitment and promotion should help avoid abuses of patronage, nepotism, and favoritism, and help to foster the creation of an independent, meritocratic civil service. Efforts to draft and enforce a code of ethics will clarify what is expected of civil servants and ensure adherence to appropriate norms of behavior.

43. Finally, one can improve the efficiency and effectiveness of the public sector while simultaneously reducing opportunities for corruption by narrowing its scope for intervention. Within ministries, agencies, and departments, one of the best approaches is the re-engineering of business processes. As procedures are simplified and streamlined, the need for "speed money" payments to

24 Daniel Kaufmann and Paul Siegelbaum. 1996. "Privatization and Corruption in Transition Economies." *Journal of International Affairs* 50 (2): 419-458.

expedite services disappears. At a broader level, deregulation, commercialization, and privatization can, under appropriate circumstances, achieve similar objectives. As the sphere of state activity decreases, then as a general rule the opportunity for soliciting bribes will also go down.

44. Several “good governance” initiatives relating to the legislative and judicial branches can also help in the fight against corruption. One important means to enhance accountability is to strengthen the parliament’s oversight function and improve the capacity of parliamentary institutions, such as supreme audit agencies, to function effectively. Measures for legal and judicial reform, such as efforts to reduce judicial backlogs through alternate dispute resolution techniques, or to improve courtroom management to ensure cases can be tried in a timely fashion, or to enhance the independence and professionalism of the judiciary, will all have positive externalities in the struggle against corruption. The same is true for efforts to reduce critical skill gaps in areas such as accounting and audit.

45. These initiatives are noncontroversial and widely recognized to be the building blocks of solid public sector management. ADB is already pursuing a number of such initiatives within its existing portfolio of loans and TA grants (Box 3). They will serve as the core of the ADB’s anticorruption effort as part of its broader program for strengthening governance and capacity building.

### **Box 3. Examples of ADB loans and grants for good governance with anticorruption components**

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**RETA 5688: Regional Long Term Audit Training Program for Members of the Asian Organization of Supreme Audit Institutions.** This initiative for \$1.0 million was approved by the Board in June 1996. It envisions a 5-year program to strengthen regional training programs for supreme audit institutions and to upgrade the training and technical audit skills of individual audit institutions.

**TA 2186: Strengthening the Legal Framework for Customs Administration in the People’s Republic of China.** This TA program for \$646,000 was approved by the Board in October 1994. Its objectives were to assist the Customs General Administration (CGA) in (i) proposing new effective legislation and regulations relating to border control of international property rights, antidumping countervailing duties, anticommercial fraud measures, and external auditing; (ii) establishing a legal information system for customs legislation and regulations; and (iii) training for CGA staff in implementing these measures.

**TA 2616: Public Administration Reform in Sri Lanka.** In July 1996, the President approved a grant of \$275,000 to the Government of Sri Lanka to help reverse a lengthy decline in the quality and capability of the public sector. Two of the goals of this initiative were to rationalize public sector cadres and to enhance the accountability of government employees by introducing results-based management systems and procedures.

**Loan 1513: Support for the Public Sector Reform Program in the Republic of the Marshall Islands.** In January 1997, the Board approved a loan of \$12 million to support the implementation of a public sector reform program intended to stabilize the Government’s financial situation, improve the efficiency of its public sector, and enhance its ability to provide an enabling environment for private sector growth. Third tranche conditions in the loan place a premium upon making procedures for issuing business and foreign investment licenses more transparent and predictable. They also provide for the establishment of the Office of the Ombudsman to ensure the fair and independent arbitration of disputes between the Government and public at large.

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**Objective no. 2: Supporting promising anticorruption efforts on a case-by-case basis and improving the quality of dialogue on governance issues**

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46. ADB may also be called upon to assist its DMCs in pursuing explicit anticorruption programs. Such assistance could include efforts to develop a national anticorruption strategy; improve the ability of the courts to try corruption cases; respond to requests from legislators and government officials for legal or TA in drafting anticorruption statutes or professional codes of conduct; strengthen the legal mechanisms for review of administrative action, e.g., the creation of an ombudsman or provision for judicial review; or improve the capacity of anticorruption agencies to detect or prosecute illicit behavior.

47. ADB will give careful consideration to any request from a DMC for assistance in developing an anticorruption effort. Since these activities are likely to be politically delicate and require detailed knowledge of the particular circumstances surrounding each case, ADB will provide staff with flexibility and discretion in pursuing such initiatives on a case-by-case basis. ADB assistance should be guided by three principles: (i) the assistance must be requested by the DMC government; (ii) the request must be consistent with ADB's broader country operational strategy and ongoing efforts in the field of governance and capacity building; and (iii) the request should fall in an area where ADB has or can provide relevant expertise.

48. In a similar fashion, ADB will consider supporting regional anticorruption efforts; workshops, seminars, conferences, and training activities; research and publications dealing with anticorruption issues; and possible collaboration with local and international NGOs whose mission or work program advances such initiatives.

49. Staff should exercise caution in addressing several sets of initiatives that will typically remain beyond ADB's scope of involvement. They include efforts to influence the domestic debate within its DMCs regarding a particular anticorruption strategy or set of anticorruption initiatives; anticorruption programs that are highly politicized and targeted at a particular individual or political party; and initiatives that are largely cosmetic in nature and designed to foster the illusion of progress without the substance. ADB should not provide assistance to any anticorruption measure unless there is an understanding with its DMC over the nature and scope of these initiatives and their importance within that country's overall development strategy.

50. ADB has several mechanisms for engaging in dialogue with its DMCs on issues of governance (including corruption), ranging from the country operational strategy and the country assistance program discussions, to country portfolio review missions, to project appraisal, implementation, and review missions. ADB staff charged with country strategy and program formulation, including the drafting of the country strategy and program documents, as well as staff responsible for loan or TA projects, should address corruption in the context of broader governance and capacity-building issues. They should be knowledgeable about issues of corruption and its impact within their particular geographic and/or sectoral sphere of operations. They will use these mechanisms to discuss and recommend ways in which ADB can help advance the principles of sound development management, including measures that would help combat corruption, in any country where corruption affects ADB projects and the country's general prospects for economic growth.

51. The country portfolio review missions and project review missions provide a useful venue for discussing the policies and practices that impede the efficient implementation of ADB projects. Under most circumstances, staff who suspect that corruption may have occurred or be occurring within a given ADB project should follow the procedures outlined in paragraph 64 and report the matter to the Office of the General Auditor (OGA), who will determine the optimal course of action. In rare cases where rapid follow-up actions may be needed, staff can address such issues explicitly with the relevant company, executing agency, or appropriate investigative agencies after clearance from their director and the Office of the General Counsel (OGC). Any discussion with a given firm or government agency should, however, be limited to a specific ADB operation or set of operations.

52. Consistent with the ADB's *Media Guidelines*, the President, vice-presidents, and heads of offices or departments can speak to the press about issues of corruption as they deem necessary in the conduct of ADB operations. Other ADB staff are free to discuss issues of corruption in general terms, provided they follow the procedures prescribed in the *Media Guidelines*. However, they should not speak to the press about either specific examples of corruption among ADB suppliers or in DMCs, or the general level of corruption within a company or nation without previously receiving clearance from the vice-president concerned or, in his or her absence, ADB's chief information officer.

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**Objective no. 3: Ensuring ADB projects and staff adhere to the highest ethical standards**

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53. If ADB efforts to reduce illicit behavior between its DMCs and suppliers and contractors are to be credible, it is essential that ADB staff be beyond reproach, and the ADB's internal regulations and procedures support the highest ethical standards. Toward this end, the third pillar of the ADB's anticorruption policy calls for more robust internal measures to enhance the integrity of ADB operations. These measures will take place along five dimensions: (i) maintaining the integrity of ADB lending and TA operations; (ii) strengthening the ADB's procurement policy; (iii) updating the ADB's Code of Conduct and creating independent internal reporting mechanisms to address allegations of corruption among ADB staff or within ADB operations; (iv) improving the quality of oversight and management of ADB loans and TA grants; and (v) ensuring that all ADB staff are familiar with the anticorruption policy and act in a manner consistent with both the letter and the spirit of this policy.

**1. Maintaining the integrity of ADB lending and TA operations**

54. If there is credible evidence of corruption in an ADB-financed loan or TA grant, ADB will address the issue in consultation with the relevant country during project review or country portfolio review missions. Breaches of specific loan regulations or covenants could result in a decision by Management to blacklist the firm involved, suspend disbursements, or cancel the loan.

55. In keeping with the evolving practice of IMF and the World Bank, Management and staff will consider issues of corruption more explicitly in the formulation of the country strategy and program. Cases may occur in which corruption has reached such proportions that it poses a significant impediment to the probity of ADB operations or the attainment of a country's fundamental development objectives. Under such circumstances, Management could elect to lower or suspend ADB lending and TA operations to that country after consultation with the country and the Board.

56. Conversely, situations may also exist where a given country has made significant progress in improving the efficiency, effectiveness, and integrity of its public and private sectors. Under such circumstances, Management may elect to accelerate the lending program or provide additional TA resources to ensure sustainability of the reforms.

57. In light of the complex and highly differentiated nature of corruption, it is important that ADB Management and staff be granted some degree of flexibility in dealing with individual cases within the parameters laid out in this policy. While acknowledging the need for fairness and consistency in its operations, and strongly affirming the importance of a "zero tolerance" policy when credible evidence of corruption exists among ADB staff or projects, ADB notes that different types of corruption will require different responses. There is a need for careful judgment based on accurate information and the specifics of the situation. ADB's anticorruption effort will place particular emphasis upon the implementation of practical and cost-effective prevention control measures, in a fashion consistent with the Charter principle of "economy and efficiency."

## 2. Procurement reform

58. An Anticorruption Task Force chaired by the Central Operations Services Office (COSO) was recently convened to examine ADB procurement policy. The Task Force considered various anticorruption measures adopted by the World Bank in July 1996, in which it is required that borrowers, bidders, suppliers, and contractors "observe the highest standard of ethics" during the procurement and execution of contracts.<sup>25</sup> In implementing this approach, the World Bank will

- (i) reject a proposal for an award if it determines that the bidder recommended for the award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (ii) cancel the portion of the loan allocated to a contract for goods or works if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the borrower or a beneficiary of the loan during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to the World Bank to remedy the situation;
- (iii) declare a firm ineligible, either indefinitely or for a stated period, to be awarded a World Bank-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a World Bank-financed contract; and
- (iv) have the right to require that in contracts financed by a World Bank loan, a provision be included requiring suppliers and contractors to permit the World Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the World Bank.

59. Similar provisions were introduced in the World Bank's *Guidelines for Selection and Employment of Consultants*. On 2 September 1997, the World Bank's Board agreed to an amendment to procurement guidelines to accommodate a "no bribery pledge" in the bid form, which can be inserted into World Bank-financed projects at the request of the borrower and will obligate firms to observe local laws with respect to the bribing of government officials.

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<sup>25</sup> R96-112/1 *Proposed Amendments in the Bank's Loan Documents for the Purpose of Making Them More Effective in the Fight Against Fraud and Corruption*, International Bank for Reconstruction and Development, 23 July 1996.

60. The Task Force considered these and other measures, which were discussed with Management. In line with the recommendation of the Group of Seven industrial nations, and having taken into account the advantages of harmonizing practice among the MDBs with regard to procurement and the engagement of consultants, ADB will introduce anticorruption provisions effectively identical to those adopted by the World Bank for the rejection of proposals, loan cancellation, declaration of ineligibility, and inspection rights, as set forth in the previous page. ADB will also introduce an optional “no bribery pledge” in the bid form that will be similar to that of the World Bank. Following the adoption of the anticorruption policy paper by the Board, changes to this effect will be incorporated in the ADB’s *Guidelines for Procurement* and the *Guidelines on the Use of Consultants by the Asian Development Bank and its Borrowers* and submitted to the Board for approval. The text for these changes is provided in Appendix 2. The guidelines will be further supplemented by provisions in the ADB’s *Loan Regulations* allowing ADB to cancel loans where there is evidence of corruption or fraud in connection with the award of a contract being financed by ADB.<sup>26</sup> The text of these changes is provided in Appendix 3.

61. In addition to introducing these new measures, existing ADB guidelines will be applied more rigorously and systematically to ensure greater fairness and transparency in the procurement process. Particular attention will be devoted to eliminating delays and requests for extensions in the prequalification, bid evaluation, contract award, advance payment, project start-up, and progress payment phases. Greater effort will also be devoted to scrutinizing the number and scope of change orders, including the introduction of random audits, with the aim of ensuring the appropriateness of such requests. When the contract is to be financed wholly or partly by ADB, the contract documents shall include an undertaking by the contractor that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, will be given or received in connection with the procurement process or in the contract execution.

62. With regard to the ADB’s private sector operations, procurement issues are most relevant in the financing of infrastructure projects. In a fashion consistent with the Working Paper, *Review of Private Sector Operations*, sponsors for infrastructure projects must have been selected by the host government in a transparent manner, preferably through competitive bidding. If it is a negotiated project, the engineering, procurement, and construction contract for the project must be competitively bid.

### 3. Updating code of conduct and creating independent internal reporting mechanisms

63. OGC, in consultation with the Budget, Personnel and Management Systems Department (BPMSD), drafted amendments of Section 4 of Administrative Order No. 2.02 to extend its scope to cover matters concerning business affiliations and private activities, financial interests, investments and trading activities, and the disclosure of financial and business interests. The purpose of these amendments was to prevent the occurrence of a conflict, or the appearance of such a conflict, among staff members between their personal interests and their duties and responsibilities as staff members. On 28 May 1998, Management endorsed these changes, and Section 4 has now become a comprehensive Code of Conduct applicable to all staff members of ADB.

64. Additional measures are necessary to ensure that the ADB’s internal policies and procedures for addressing issues of corrupt or illicit behavior are consistent with those of the other MDBs and evolving best practice. Currently, there are no publicized independent channels whereby incidents of corruption can be reported for investigation. Under this policy, OGA will serve as the initial point of

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<sup>26</sup> OGC. 1986. *Ordinary Operations Loan Regulations*. ADB, Manila. OGC. 1982. *Special Operations Loan Regulations*. ADB, Manila.

contact for allegations of fraud and corruption in ADB projects or among staff. In consultation with the Strategy and Policy Department (SPD), OGC, BPMSD, COSO, and other relevant departments, OGA will consider appropriate measures to be adopted under this policy to ensure that all ADB staff and projects adhere to the highest standards of ethical conduct.

65. In the event that ADB staff or external parties are not satisfied by OGA's preliminary finding on a particular case, they can bring it to the attention of Management, who can determine if the case should be resubmitted to OGA for further review, sent to an independent investigator or audit firm for examination, or dismissed if no further action is warranted. A subset of potential cases could also qualify for consideration by the Inspection Committee, provided that they met the criteria for inspection outlined in the *Establishment of an Inspection Function* and the *Inspection Procedures* approved by the Inspection Committee on 9 October 1996.<sup>27</sup>

#### 4. Improving the quality of oversight

66. ADB will undertake a number of measures to enhance the quality of project monitoring and audit. These measures will improve the overall quality and effectiveness of ADB-financed projects, thereby ensuring the integrity of ADB operations and making corrupt or illicit behavior more difficult to perpetrate and more readily detected should it occur.

67. The capacity of OGA will be strengthened to enable it to address anticorruption issues effectively. Specialized training in forensic accounting and other investigative techniques will be provided, and be extended to select financial analysts and project implementation officers. Additional staff with specific skills in these areas will be recruited. Ongoing OGA efforts to streamline internal work procedures to free up greater resources for audits of high-risk and high-impact areas will continue. OGA will devote more time to conducting audits of project procurement-related activities, which will help prevent and detect corruption or other forms of fraud. In collaboration with supreme audit institutions in the ADB's DMCs, OGA will also begin a series of random audits of ADB projects to monitor financial compliance and physical progress. OGA will strengthen its exchange of information with supreme audit institutions in ADB DMCs, and—working in collaboration with other ADB departments—it will play an active role in assessing the need to upgrade the audit capability of such institutions. OGA will also consider ways in which project audit reports can be made more accessible and user-friendly to operations staff. The effectiveness of these measures will be evaluated after the first year and additional steps will be considered as needed.

68. In the context of the recommendations of the Task Force on Improving Project Quality, more resources are already being made available to improve the frequency, duration, and quality of project administration missions.<sup>28</sup> Care will be taken to broaden the technical expertise of these missions and to ensure that staff with relevant qualifications participate, particularly in the financial, managerial, and policy areas. Although it may not be possible to upgrade the quality of supervision for all projects across the board, additional resources will be directed toward upgrading the supervision of projects that are particularly at risk and to initiating a program of random audits to monitor project implementation.<sup>29</sup>

27 Doc. R225-95, *Establishment of an Inspection Function*. 10 November. Since many areas where corruption is most likely to occur (such as procurement or the selection of consultants) fall beyond ADB Inspection Committee's mandate, staff anticipate that relatively few cases of alleged corruption are likely to be brought before the Committee.

28 ADB. 1995. *Report of the Task Force on Improving Project Quality*. Manila, pp. 22-26.

29 Guidelines will be issued for implementation of the proposed Anticorruption Policy. Prior to this, staff will examine the ways in which ADB operations can be streamlined and cost-effective measures for strengthening project monitoring and supervision can be introduced.

69. The relevant sections in the *Project Administration Instructions* and the *Loan Disbursement Handbook* will be revised to require that qualified accountants be recruited by the executing or implementing agency and that robust internal control systems and accounting systems be in place for a project before loan disbursement can be made. Consideration will be given to designing and utilizing appropriate efficiency indicators to monitor financial and physical progress on a quarterly basis, and any variances between targeted efficiency performance and actual performance must be justified. The quality of the ADB's management information systems will be enhanced to provide managers with more timely information for monitoring project processing, loan administration, and the status of mission budget utilization.

70. When there is compelling evidence that corrupt or illicit activities have hampered the effectiveness of ADB projects or lowered their rate of return, this problem should be explicitly noted in ADB documentation, including project supervisory reports, project completion reports, project evaluation reports, performance audit reports, and other relevant documents so that appropriate remedial action can be considered. Managers and staff should avoid using opaque or euphemistic language that may obscure the nature of the problem.<sup>30</sup>

#### 5. Advancing staff awareness

71. These measures will be ineffective if ADB staff are unfamiliar with the provisions of ADB's anticorruption policy and Code of Conduct or fail to exercise due diligence in the performance of their duties. While it is not the intention of this policy to turn ADB staff into "police officers," or to make the objective of reducing corruption paramount over other development goals, all departments and staff have a compelling obligation to ensure the integrity of ADB operations within their respective areas of responsibility. ADB staff will be required to familiarize themselves with the content of this policy and staff guidelines, and be prepared to respond appropriately as required.

72. The integrity of ADB staff is one of the institution's greatest assets, and staff violations of the ADB's Code of Conduct or other relevant guidelines will be dealt with severely. Any allegation of corrupt or illicit behavior by ADB staff should be turned over to OGA, who—in conjunction with the relevant ADB departments—will determine the credibility of the accusations and the need for further investigation. Credible claims will be investigated promptly, thoroughly, and confidentially by OGA and BPMSD, who can draw upon additional expertise within or outside of ADB as needed. In accordance with the disciplinary procedures outlined in Administrative Order No. 2.04, staff found guilty of such behavior will be subject to a number of sanctions, including reassignment, demotion, suspension without pay, restitution and/or forfeiture of pay, termination, and summary dismissal.<sup>31</sup> These sanctions will apply equally to situations in which staff improperly and unlawfully enrich themselves and/or those close to them, and circumstances in which they induce others to do so.

73. To advance staff awareness, SPD, OGC, OGA, and BPMSD will collaborate in producing a series of internal training workshops and seminars to inform staff about ADB's policy and to address the issues and options involved in assisting the efforts of DMC governments, suppliers, and contractors to combat corruption.

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30 For an excellent example of how the topic of corruption can be dealt with candidly yet diplomatically in Bank documents, see Post-Evaluation Office. 1997. *Special Study on Issues Pertaining to the Engagement of Consultants in Bank Loan Projects and Their Effect on Project Performance*. Manila: ADB.

31 Section 5 of Administrative Order No. 2.04 provides for appeals procedures to the Appeals Committee and ultimately to the Administrative Tribunal.

## VI. CONCLUSIONS AND RECOMMENDATIONS

74. This paper recommends a number of concrete measures for establishing ADB's anticorruption policy. These measures can be broken down along three lines: revisions of ADB policy and staff guidelines, new programming and project management initiatives, and internal administrative changes.

75. The following policy recommendations are submitted for consideration and approval by the Board:

- (i) Adopt the approach and recommendations contained within this document as a policy paper and as a Management directive in the form of staff instructions.
- (ii) Approve the revisions to the ADB's guidelines for procurement and on the use of consultants and the proposed amendment to ADB's ordinary and special operations loan regulations as set forth in Appendixes 2 and 3.
- (iii) Consider additional changes in the *Project Administration Instructions* and *Loan Disbursement Handbook* to strengthen financial controls and improve reporting requirements.

76. The paper recommends the following changes in ADB programming and project management:

- (i) Continue to expand ADB's assistance on issues of governance and capacity building, with particular attention to promoting market liberalization and public administration reform.
- (ii) Give increased emphasis to strengthening key institutions for advancing transparency and accountability in the DMCs (such as supreme audit agencies, procurement agencies, regulatory agencies, ombudsman offices, etc.) as part of ADB's broader emphasis upon governance and capacity building.
- (iii) Where appropriate, support regional initiatives and research on advancing accountability and transparency in the Asia and Pacific region through TA grants.
- (iv) Upgrade the quality of supervision during project implementation and strengthen project review missions, with particular emphasis upon those projects most at risk.
- (v) Develop a series of training seminars, workshops, etc., on the ADB's anticorruption policy and how staff can best advance integrity within ADB operations and in collaborative work with the DMCs.
- (vi) Publish a simplified brochure and other information materials describing the ADB's anticorruption policy for public dissemination.

77. Finally, the paper recommends the following administrative changes in ADB operations at the department/office level:

- (i) Enforce current procurement guidelines more rigorously to avoid unnecessary delays, extensions, and excessive change orders.
- (ii) Designate OGA as the initial point of contact for alleged incidents of corruption among ADB projects and staff, and instruct OGA to work out appropriate procedures for performing this function in consultation with relevant ADB departments.

- (iii) In consultation with BPMSD, consider increasing OGA's staff complement to enable it to better fulfill its responsibilities under this policy.
- (iv) In consultation with BPMSD and COSO, consider cost-effective ways to strengthen project monitoring and supervision, and any additional resources that may be necessary to perform these tasks.
- (v) Direct OGA and BPMSD to collaborate in providing training in forensic accounting and other investigative techniques to select OGA staff, financial analysts, and project implementation officers.
- (vi) Direct OGC and BPMSD to conduct a series of seminars and/or other informational activities to inform ADB staff about the revisions to Administrative Order No. 2.02; Section 4 regarding the staff Code of Conduct, which were endorsed by Management on 28 May 1998.

78. To monitor and coordinate ADB's efforts with respect to anticorruption initiatives and programming, the departments and offices concerned will be requested to provide SPD, OGA, and OGC (in respect of legal frameworks and legal issues of relevance to other areas of action) with periodic appraisals on ways in which they are implementing the policy's provisions.

79. After Board approval of ADB's operational policy on anticorruption issues, a Board paper will be circulated in due course analyzing ADB's experience with the anticorruption policy, proposing modifications to the operational approach as necessary, and indicating more specific budgetary and other resource implications.

## VII. APPENDIXES

- 1 Breakdown of Governance and Capacity Building Initiatives with Strong Anticorruption Elements
- 2 Proposed Revisions to ADB's Guidelines for Procurement Related to Anticorruption
- 3 Proposed Amendment to the Ordinary and Special Operations Loan Regulations

## Appendix 1

## Breakdown of Governance and Capacity-Building Initiatives with Strong Anticorruption Elements

Target Entity	Type of Intervention	Example
<p><b>Executive Branch</b> Civil Service Commission</p> <p>Ministry of Finance/Ministry of Development</p> <p>Various executive branch ministries, agencies, and departments</p>	<ul style="list-style-type: none"> <li>• Revise pay and benefits to ensure comparability with alternative employment opportunities</li> <li>• Strengthen measures for establishment and control</li> <li>• Develop and widely publicize civil service code of ethics</li> <li>• Strengthen management control and information systems</li> <li>• Strengthen expenditure monitoring and control</li> <li>• Support strengthening procurement guidelines</li> <li>• Streamline and reengineer business processes to reduce opportunities for the payment of speed money</li> </ul>	<p>TA 2616 to Sri Lanka for Public Administration Reform</p> <p>TA 2538 Improved Budget Management in Micronesia</p> <p>Loan 1506 for India Gujarat Public Sector Resource Management Program</p> <p>TA 2701 Institutional Strengthening of the National Office for Procurement Evaluation in Viet Nam</p> <p>TA 2186 Strengthening the Legal Framework for Customs Administration in the People's Republic of China</p>
<p><b>Legislative Branch</b> Supreme Audit Agency</p> <p>Parliamentary research institutions</p> <p>Ombudsman Office, etc.</p>	<ul style="list-style-type: none"> <li>• Institute measures to make the agency/citizen interface more transparent and user-friendly, through name tags, document requirements, posted fee schedules, etc.</li> <li>• Enhance capacity and independence of Supreme Audit Agency</li> <li>• Strengthen capacity of Parliament to serve independent watchdog function</li> <li>• Strengthen access of citizens for independent redress of grievances</li> </ul>	<p>TA 2459 Technical Assistance to Nepal for Efficiency Enhancement of Customs Operations</p> <p>RETA 5688 Regional Long-Term Audit Training Program for Members of the Asian Organization of Supreme Audit Institutions</p> <p>TA 2463 for Institutional Strengthening of the Office of the Auditor General in Fiji Islands</p> <p>USAID/CRS Efforts to Strengthen Parliamentary Capacity in Economies in Transition</p> <p>TA 2599 Civil Service Reform Implementation for Marshall Islands UNDP Project on Policy Coordination and Governance in the South Pacific</p>
<p><b>Judicial Branch</b> Reducing judicial backlog</p> <p>Strengthening primary institutions: the judiciary and Ministry of Justice</p> <p>Strengthening secondary institutions: law schools and local legal research</p>	<ul style="list-style-type: none"> <li>• Develop mechanisms for alternative dispute resolution</li> <li>• Support continuing education for judges and lawyers</li> <li>• Introduce updated court management and information systems</li> </ul>	<p>TA 2521 for Alternative Dispute Resolution in India</p> <p>TA 2727 Restructuring and Capacity Building in Mongolia's Ministry of Justice</p>
<p><b>Civil Society</b> Business-government councils</p>	<ul style="list-style-type: none"> <li>• Provide feedback loops between business and government on general good governance issues</li> </ul>	

## Appendix 2

### Proposed Revisions to ADB's Guidelines for Procurement Related to Anticorruption<sup>32</sup>

In keeping with evolving best practice among multilateral development banks, Sections 2.14, 2.15, and 2.16 of ADB's Guidelines for Procurement will be modified as follows:

#### Fraud and Corruption

2.14 ADB's policy is to require borrowers (including beneficiaries of ADB loans) and bidders/suppliers/contractors under ADB-financed contracts to observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, ADB

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; and
  - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the borrower, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, noncompetitive levels and to deprive the borrower of the benefits of free and open competition;
- (b) will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contracts in question;
- (c) will cancel the portion of the loan allocated to a contract for goods or works if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the borrower or of a beneficiary of the loan during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation;
- (d) will declare a firm ineligible, either indefinitely or for a stated period, to be awarded an ADB-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, an ADB-financed contract; and
- (e) will have the right to require that, in contracts financed by an ADB loan, a provision be included requiring suppliers and contractors to permit ADB to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by ADB.

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<sup>32</sup> Similar provisions will be inserted into ADB's *Guidelines on the Use of Consultants by the Asian Development Bank and its Borrowers*.

2.15 With the specific agreement of ADB, a borrower may introduce, into bid forms for large contracts financed by ADB, an undertaking of the bidder to observe, in competing for and executing a contract, the country's laws against fraud and corruption (including bribery), as listed in the bidding documents. A footnote should also be inserted into documents where such a pledge has been inserted, noting that it has been placed there at the request of the borrower.

2.16 When the contract is to be financed wholly or partly by ADB, the contract documents shall include an undertaking by the contractor that no fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the bid, have been given or received in connection with the procurement process or in the contract execution.

### Appendix 3

## Proposed Amendment to the Ordinary and Special Operations Loan Regulations

Section 8.03 of the Ordinary Operations Loan Regulations and the Special Operations Loan Regulations will be amended to read as follows. The relevant revisions have been underlined.

Section 8.03. **Cancellation by ADB.** If (i) the right of the Borrower to make withdrawals from the Loan Account shall have been suspended with respect to any amount of the Loan for a continuous period of thirty (30) days, or (ii) at any time ADB determines, after consultation with the Borrower, that any amount of the Loan will not be required for the purposes of the Project, or (iii) at any time ADB determines, with respect to any contract to be financed out of the proceeds of the Loan, that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement/consultant selection or the execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation, or (iv) at any time ADB determines that the procurement of any contract to be financed out of the proceeds of the Loan is inconsistent with the procedures set forth or referred to in the Loan Agreement, or (v) by the date specified in the Loan Agreement as the closing date for withdrawals an amount of the Loan shall remain unwithdrawn from the Loan Account, ADB may by notice to the Borrower and the Guarantor, if any, terminate the right of the Borrower to make withdrawals with respect to such amount or contract. Upon giving of such notice, the amount of the Loan or the relevant portion thereof shall be canceled.

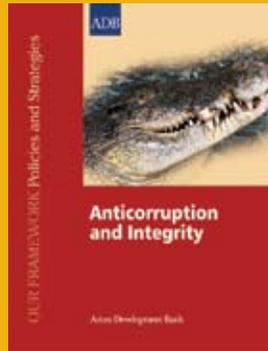
## Anticorruption and Integrity: Our Framework Policies and Strategies

This publication is comprised of the two Asian Development Bank (ADB) documents: *Integrity Principles and Guidelines* (May 2010) and the *Anticorruption Policy* (July 1998).

ADB's Office of Anticorruption and Integrity investigates allegations of fraud, corruption, coercive practice, collusive practice, conflict of interest, obstructive practice, and related misconduct in ADB-financed activities, in accordance with ADB's Integrity Principles and Guidelines.

ADB's Anticorruption Policy requires all parties, including staff, borrowers, beneficiaries, bidders, suppliers, and contractors to observe the highest ethical standards when participating in ADB-financed activities. The Policy supports ADB's obligation, in accordance with Article 14(xi) of the Agreement Establishing the Asian Development Bank, to ensure that the proceeds of ADB financing are used only for their intended purposes.

This publication supercedes and replaces *Anticorruption and Integrity*, first edition, (see right) in its entirety.



## About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries substantially reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than \$2 a day, with 903 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

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

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