

DIRECTIVE
ON
POLICY ON PROHIBITED PRACTICES

22 November 2017

A. OVERRIDING OBJECTIVE

This Directive sets out the rules and instructions of the Asian Infrastructure Investment Bank in order to implement and supplement the Prohibited Practices Policy (PPP).

These rules and instructions ensure that, in accordance with Article 13(9) of the Articles of Agreement, the Bank's financial support is used only for the purpose for which it was granted.

The exercise and interpretation of this Directive shall seek to give effect to this overriding objective.

B. GENERAL PRINCIPLES

1. **Definitions.** Unless otherwise specified, this Directive employs the same defined (i.e. capitalized) terms as the PPP (at Section II).
2. **Applicability.** The applicability of this Directive is coextensive to the PPP, namely any Project for which the Bank is considering or committed to providing Financing or has provided Financing, and corporate procurement, and governs both the subjects of the Code of Conduct for Bank Personnel and the Code of Conduct for Board Officials (together, Bank Staff).
3. **Related Legal Obligations.** This Directive is not intended as full treatment of the subject, and should be read in conjunction with other Bank documents in addition to the PPP such as the Code of Conduct for Board Officials, Code of Conduct for Bank Personnel, Staff Regulations, and Staff Rules.
4. **Misconduct.** A breach by Bank Staff of the terms of the PPP and this Directive may amount to misconduct under the Codes of Conduct. In cases where Bank Personnel are found to have engaged in Prohibited Practices, the matter shall be referred to the Chief Ethics Officer.

C. IMPLEMENTATION

5. The Compliance, Effectiveness and Integrity Unit (CEIU) shall primarily implement the PPP, this Directive and any attendant Administrative Guidance required by this Directive, which may be issued at a later date. Other Bank departments referenced in specific provisions of the

Directive shall be responsible for implementing said provisions. The Administrative Guidance shall provide further clarification and detailed procedures that support this Directive.

D. REPORTING SUSPECTED PROHIBITED PRACTICES

6. **Duty to Report.** The duty of Bank Staff to report suspected Prohibited Practices is unconditional and a duty to promptly report. Violations of this duty to report shall be subject to disciplinary action under the Codes of Conduct. Additionally, disciplinary action shall be taken against Bank Staff who cover-up, or assist in covering-up, any Prohibited Practice.

7. **Reporting to CEIU.** Suspected Prohibited Practices may be submitted on a confidential basis by a Complainant or may be submitted anonymously to complaints@aiib.org or through other practical and convenient means.

8. **Completeness.** All reports of suspected Prohibited Practice shall be accompanied by as much information or evidence as is available to the Bank Staff or Complainant that supports the belief that suspected Prohibited Practices may have occurred. Bank Staff shall not knowingly withhold any material information or evidence.

9. **Confidentiality.** All reports of suspected Prohibited Practices shall be kept confidential, consistent with the need to conduct an adequate and thorough investigation. Investigations shall also be confidential. The Investigations Officer shall have no obligation to provide to the Bank Staff or any other party procedural details of any investigative activity.

E. INVESTIGATIONS

10. **Duty to Cooperate.** All Bank Staff shall cooperate with the Investigations Officer and provide requested information and documents promptly.

11. **The Investigations Officer.** Only the Investigations Officer appointed by the head of CEIU during the Intake Phase shall have the authority to undertake an investigation of suspected Prohibited Practices. Bank Staff shall not undertake their own determination of or investigation of suspected Prohibited Practices or purport to act on behalf of the Investigations Officer.

12. **Intake.** Before a formal investigation is started, the Investigations Officer, in consultation with the head of CEIU or his/her designate, shall determine the complaint's materiality, credibility, and verifiability. Specifically, the Investigations Officer shall assess whether: (i) the report is a suspected Prohibited Practice defined under the PPP; (ii) the Investigations Officer has found sufficient merit based on CEIU's investigative and operational criteria; and (iii) the Investigations Officer has determined that an investigation by CEIU is the most appropriate course of action.

13. **Interviews.** The Investigations Officer shall conduct interviews with witnesses and subjects, who agree to be interviewed on a voluntary basis with the exception of Bank Staff who

have a duty to cooperate with the Investigations Officer. To the extent possible, all witness and subject interviews conducted by the Investigations Officer shall be recorded. Interviews that are not recorded shall be summarized in a Record of Interview. Under no circumstance shall a recording be made covertly or without consent.

14. **Investigation of Members in their Official Capacity.** In cases where the Investigations Officer finds evidence that a Member or any political or administrative subdivision or public sector entity of a Member, and their respective officers, employees and agents, engage in a Prohibited Practice in their were involved in suspected Prohibited Practices in their official capacity, the Investigations Officer shall refer the matter to the head of CEIU, who shall make a recommendation to the President to refer such information to the appropriate Member authorities. All referrals to Member authorities shall be done in consultation with the General Counsel.

15. **Investigation of Members in their Corporate Commercial or Private Capacity.** If a Member or any political or administrative subdivision or public sector entity of a Member, and their respective officers, employees and agents, engage in a Prohibited Practice in their corporate commercial or private capacity, the Bank shall exercise its right to investigate and sanction the offending party who shall be treated as a Respondent as defined in the PPP. If there is evidence that the laws of any Member may have been violated by a Respondent, the Investigations Officer shall refer the matter to the head of CEIU, who shall make a recommendation to the President to refer such information to the appropriate Member authorities. All referrals to Member authorities shall be done in consultation with the General Counsel.

F. SANCTIONS

16. **Aggravating and Mitigating Circumstances.** The Sanctions Officer and the Sanctions Panel shall consider aggravating and mitigating factors of the case. The Sanctions Officer and Sanctions Panel may refer to the “*General Principles and Guidelines for Sanctions*” by some multilateral development banks (MDBs) or any other Policies, Directives, or Administrative Guidance adopted by the Bank on the treatment of these factors.

17. **Settlements.** Only the Investigations Officer shall have the authority to undertake a settlement negotiation with the Respondent. Bank Staff shall not undertake their own settlement negotiations or purport to act on behalf of the Investigations Officer. The Sanctions Officer shall approve the settlement negotiated by the Investigations Officer in consultation with the Bank’s General Counsel.

18. **Corporate Groups.** The Sanctions Officer and the Sanctions Panel may sanction parties in the Bank’s Non-Sovereign Financing Projects in addition to the contractual remedies available to the Bank for breach of relevant covenants and representations in connection with the same misconduct. The Sanctions Officer and the Sanctions Panel shall determine the choice and level of sanctions applied to affiliates as defined in the PPP to ensure that the sanction is commensurate with the degree of culpability or responsibility of those sanctioned and to prevent

evasion of the sanctions. The Sanctions Officer and Sanctions Panel may refer to the “*MDB Harmonized Principles on Treatment of Corporate Groups*” adopted by some MDBs, or any other Policies, Directives, and Administrative Guidance adopted by the Bank for detailed treatment of sanctions involving corporate groups.

19. **Debarment List.** Bank Staff shall ensure that parties identified in the Bank’s Debarment List are not awarded a contract or participate in Bank-funded activities and operations.

20. **Exception to Cross-Debarment.** Exceptionally, if the Sanctions Officer determines not to adopt a debarment decision that is part of the *Agreement for the Mutual Enforcement of Debarment Decisions* (AMEDD), such determination shall be reasoned and reviewed by the President. In such cases, the President shall decide whether to adopt or reverse the Sanctions Officer’s determination.

21. **Evasion of Sanction.** The Sanctions Officer and Sanctions Panel may extend a sanction to any entity based on its determination that such sanction is necessary to prevent evasion or to any entity that seeks to evade or that has been created or acquired for the purpose of evading the sanction imposed on the Respondent.

G. WHISTLEBLOWER PROTECTIONS

22. **Prohibition on Retaliation by Bank Staff.** Bank Staff shall not engage in any form of Retaliation against any person for: (i) reporting suspected Prohibited Practices (even when based on a belief – including a mistaken belief – that the allegations are unfounded); or (ii) cooperating or providing information during an investigation.

23. **Reporting Retaliation.** Whistleblowers who believe they have been the subject of Retaliation in breach of the PPP may report the matter to head of CEIU.

24. **Alternative Reporting Channels.** Where a Whistleblower has grounds to believe that reporting suspected Prohibited Practices to the head of CEIU would subject the complainant to retaliation or create a likelihood that evidence relating to the suspected misconduct shall be concealed or destroyed, the Whistleblower may report suspected Prohibited Practices to the Chief Ethics Officer with a request that an alternate reviewer outside CEIU be designated to review the report of suspected misconduct.

25. **Whistleblower Confidentiality.** Whistleblowers, acting in good faith, may remain anonymous or request that their identity be kept confidential. The Bank shall ensure that the identity of the Whistleblower, who has chosen not to be anonymous, shall be kept confidential inside and outside the Bank unless the whistleblower consents to disclosure. The Bank may disclose if it is determined by the head of the CEIU that the Whistleblower made allegations that were knowingly false or made with reckless disregard as to whether they were true or false.

26. **Non-Protection.** Bank Staff or external parties that report suspected Prohibited Practices that are found to have been made falsely or maliciously may be treated as Fraudulent Practice or, if made by Bank Staff, may amount to a breach of the Codes of Conduct.
27. **Investigation into Reported Retaliation.** Based on the reported Retaliation, the head of CEIU may undertake an investigation into the alleged Retaliation, or refer the matter to the Chief Ethics Officer. The President shall decide whether to accept the findings of the retaliation investigations and the proposed remedial action.
28. **Interim Protection of Retaliation.** The Bank may provide interim protection to Whistleblowers who are Bank Staff to safeguard their security and interests, which may include, but are not limited to, temporary reassignments or placement on paid administrative leave. Interim protections shall be determined by head of CEIU with consent of the concerned Bank Staff, in coordination with the head of Human Resources.
29. **Retaliation by External Party.** If the Bank finds that an external party has committed an act of Retaliation against the Whistleblower, the Bank shall review further dealings with such party and may consider the following or other actions: (i) terminating its dealings with such a party; (ii) refraining from future dealings with such a party; (iii) exercising contractual remedies; or (iv) initiating proceedings under other available channels.
30. **Whistleblowing as Mitigation.** Whistleblowers who have committed a Prohibited Practice may not avoid sanctions by reporting about such Prohibited Practices and seeking protection under the Bank's Whistleblower Protection provisions outlined in the PPP, this Directive, and relevant Administrative Guidance. However, the Sanctions Officer and the Sanctions Panel shall take into account, depending on the circumstances, their reporting and degree of cooperation.

H. PROJECT AND FINANCING DOCUMENTS

31. **Project Documents.** The Bank, through the Vice President for Policy and Strategy, shall ensure that its key project documents and especially its financing documents include a reference to the PPP and the Prohibited Practices, and the Bank's right to undertake audit and investigations.
32. **Co-financed Projects.** Before the Bank agrees to the application of a co-financier's policy on Prohibited Practices, and its investigations and sanctions processes, the Bank, through the Vice President for Policy and Strategy in consultation with CEIU, shall ensure that the co-financier's policy on prohibited practices, and its investigations and sanctions processes are consistent with the Bank's Articles of Agreement and materially consistent with the PPP. Additionally, the Bank shall ensure that its project and financing documents: (i) refer to harmonized definitions of fraudulent practice, corrupt practice, coercive practice, and collusive practice under the AMEDD by some of the multilateral banks (MDB); (ii) include the three additional Prohibited Practices, i.e. obstructive practice, misuse of resources, and theft, as

defined in the PPP; (iii) require co-financiers to immediately inform the Bank of any investigation on the co-financed project once a decision is taken by that co-financier to begin such investigation ; and (iv) include a provision that would allow the Bank's Investigations Officers to conduct joint or parallel investigations with the co-financier's function equivalent to CEIU.
