



Integrity Principles and Guidelines

November 2006

Asian Development Bank

CONTENTS

	Page
International Financial Institutions Principles and Guidelines for Investigations	1
General Principles	1
Definitions	5
Rights and Obligations	5
Procedural Guidelines	8
Investigative Findings.....	10
Referrals to National Authorities	10
Review and Amendment	10
Publication.....	10
Sanctions	11
Basis for Remedial Action	11
Determining Remedial Action.....	12
Imposing Remedial Action	13
Appeals	16
Reinstatement	17
Disclosure	18

INTERNATIONAL FINANCIAL INSTITUTIONS PRINCIPLES AND GUIDELINES FOR INVESTIGATIONS

PREAMBLE

The following Institutions have jointly endorsed these common principles and guidelines for investigations conducted by their respective investigative units:¹

- 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.²

For ADB: These principles and guidelines shall apply to the Integrity Division of the Office of the Auditor General (OAGI), its staff, and any party OAGI or the Auditor General authorizes or the President appoints to perform investigations that OAGI would otherwise perform.

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

GENERAL PRINCIPLES

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

¹ The designated investigative units are the Office of the Auditor General of the African Development Bank Group, the Integrity Division of the Asian Development Bank, the Office of the Chief Compliance Officer of the European Bank for Reconstruction and Development, the Inspectorate General of the European Investment Bank Group, the Office of Institutional Integrity of the Inter-American Development Bank Group, the Department of Institutional Integrity of the World Bank Group. The Management of the IMF supports and encourages these efforts to fight corruption in project lending and dealings with private firms. Unlike the other Organizations, the IMF does not engage in project lending or lending to the private sector. It maintains procedures tailored to the circumstances of the IMF to deal with potential issues of staff misconduct and safeguard the use of Fund resources.

² 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.

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: Corrupt and fraudulent practices under ADB's Anticorruption Policy (Board Paper R-89-98, approved 2 July 1998) are defined as follows (Board Paper R179-06, *Anticorruption Policy: Harmonized Definitions of Corrupt And Fraudulent Practices*, approved 8 September 2006):

- A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- A fraudulent practice 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.
- A coercive practice 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.
- A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

Misconduct that OAGI might investigate is limited to

- abuse (theft, waste or improper use of assets related to ADB-financed activity, either committed intentionally or through reckless disregard), pursuant to Administrative Order (AO) 1.02, Organizational Bulletin, applicable to the Office of the Auditor General (OAG);
- a 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, as defined under the Anticorruption Policy (Board Paper R185-04, *Anticorruption Policy: Proposed Clarifications and Related Changes to Consulting and Procurement Guidelines*, approved 11 November 2004); and
- any other misconduct as referred to in paragraph 11 as defined under ADB's AOs that OAGI would investigate 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.
5. Appropriate procedures shall be put in place to investigate allegations of Misconduct on the part of any staff member of an Investigative Office.
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 anti-fraud and corruption activities of its Investigative Office in accordance with its policies on the disclosure of information.

For ADB: Pursuant to its Anticorruption Policy, ADB will work to ensure all its projects, activities and staff adhere to the highest ethical standards. To help achieve this, the Anticorruption Policy designates OAG as the initial point of contact for allegations of fraud, corruption and abuse among ADB-financed projects or its staff. ADB established OAGI (originally the Anticorruption Unit) to handle all matters related to such allegations.

OAGI, its staff, and any party OAGI or the Auditor General authorizes or the President appoints to perform investigations that OAGI would otherwise perform, shall assess allegations and conduct investigations under these principles and guidelines promptly, thoroughly, and confidentially, and recommend administrative action for ADB to take to address such concerns.

Under its Terms of Office approved by the President 21 December 2004, OAGI will

- be the initial point of contact for all alleged incidents of fraud, corruption, or abuse among any ADB-financed or supported activity, including its staff;
- conduct independent and objective investigations of fraud, corruption, abuse known to or identified by OAGI, where appropriate coordinating with or advising Management, the Budget, Personnel and Management Systems Department (BPMSSD), Office of the General Counsel (OGC), or other departments/offices in a manner that does not compromise OAGI's independence and objectivity;
- conduct ADB-financed procurement-related audits to help prevent and detect fraud, corruption or other forms of abuse;
- advance awareness of ADB's Anticorruption Policy and procedures;
- provide training related to the Anticorruption Policy and procedures, including corruption and fraud awareness and internal control mechanisms to detect and deter corruption and fraud, to ADB staff and other parties to ADB-financed or supported activities, in coordination with BPMSSD and other departments/offices, as appropriate;
- formulate and promulgate guidelines and procedures relating to its

investigative and audit activities for the President's approval;

- consult and collaborate with other multilateral development banks, international institutions or other relevant parties to exchange ideas, practical experience, and insight on how best to address fraud, corruption, and abuse internally and externally; and
- support ADB efforts to strengthen its developing member countries' supreme audit institutions' audit and fraud detection capacities.

Annually, or as the President may otherwise request, OAGI will submit through the Auditor General a report to the President summarizing the activities of OAGI. The report will include statistical summaries and summaries of significant fraud and corruption cases that OAGI screened and investigated. OAGI shall make the report available through ADB's website.

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: OAGI will ensure it retains its information and records under adequate physical, electronic and procedural controls. OAGI will limit the circulation of information regarding an investigation strictly to those with a need to know. Depending on the nature of the case, OAGI may disclose certain evidence to the subject of an investigation (a party about which an allegation has been made or for which credible information exists to reasonably suspect that the party might have committed a corrupt or fraudulent practice, abuse or other misconduct) in a manner that considers the need to protect whistleblowers (any party that conveys in good faith a concern, allegation or evidence of a corrupt or fraudulent practice, abuse or other misconduct subject to investigation under these principles and guidelines) and witnesses (parties that are not the subject of a preliminary examination or investigation that the Investigative Office requests provide information regarding a matter under investigation).

Only OAGI, the Auditor General, and the President may access OAGI files and records. OAGI, the Auditor General, or the President may determine that OAGI files and records may be shared, unedited or redacted, as appropriate, with other parties.

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: ADB's AO 2.02 explains staff duties, rights and responsibilities, as well as misconduct.

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: ADB may refer to this standard of proof as preponderance of evidence.

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: ADB will extend this right, within the limits of its abilities, to any party that conveys in good faith a concern, allegation or evidence of fraud, corruption, or abuse. Because ADB is an independent international financial institution and its Anticorruption Policy and procedures are administrative mechanisms, ADB is very limited in the steps it can take to protect the interests of whistleblowers and witnesses that are not ADB staff.

OAGI will use its best efforts to encourage and protect whistleblowers and witnesses and will protect their identities from unauthorized disclosure throughout and following an investigation. OAGI shall maintain the confidentiality of any information that could, in its judgment, compromise whistleblowers or witnesses. OAGI will pursue all reasonable steps, including recommending BPMSD pursue disciplinary action related to ADB staff, to ensure whistleblowers and witnesses acting in good faith with allegations or evidence of fraud, corruption, or abuse are not subject to retaliation or punishment.

Retaliation against a whistleblower or witness is any act detrimental to the whistleblower or witness that a preponderance of evidence shows was taken because of the whistleblower's complaint or witness's cooperation with an OAGI investigation. When a whistleblower or witness claims and OAGI can establish that the whistleblower's or witness's action related to an OAGI investigation was a contributing factor to the alleged retaliation, the burden of proof shall shift to the subject alleged to have acted against the whistleblower or witness.

ADB is not required to investigate allegations of retaliation reported more than one year after the date on which the complainant becomes aware of the alleged retaliation.

Management and staff should be aware of the personal security risks to themselves, contractors, consultants, and local counterparts when they

encounter instances of fraudulent and corrupt practices. In cases where a staff member's personal safety or career prospects are at risk, OAGI will encourage ADB management to take appropriate measures to remedy the situation.

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

For ADB: ADB staff are obligated to report allegations or evidence of fraudulent and corrupt practices related to ADB-financed activity, including its staff, to OAGI. Staff members who feel that they have been subject to retaliation or otherwise treated unfairly as a consequence of having reported such concerns, provided evidence, or cooperated with OAGI can request an administrative review under ADB's AOs.

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

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

- Staff members must make themselves available to be interviewed and must reply fully and truthfully to all questions asked.
- Subjects of an investigation may request the accompaniment of 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 BPMSD; the Security, Immunities and Community Relations Section of the Institutional Services Division, Office of Administrative Services; OAG; or Office of the General Counsel. Staff members 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.
- Staff members must provide OAGI with any items requested that are within the staff member's control including, but not limited to, documents and other physical objects.
- A staff member who is the subject of an investigation must allow his or her financial information to be provided directly to OAGI when requested. Upon OAGI's request, the subject must provide written authorization addressed to his or her financial institution to this effect that waives any privacy or confidentiality rights the subject may otherwise have related to the information to be disclosed.
- Staff members must cooperate in any testing requested by OAGI, including but not limited to fingerprint identification, handwriting analysis, use of a breathalyzer, and physical examination and analysis.
- Staff members are obligated to preserve and protect the confidentiality of all information discussed with OAGI and BPMSD.

If a staff member does not comply with any obligation to cooperate, ADB may draw an adverse inference from such refusal. In such cases, OAGI may refer the matter to BPMSD to consider disciplinary action. This shall include not responding timely and fully to OAGI inquiries or providing documents or other evidence that OAGI requests, destroying or concealing evidence, or misrepresenting facts during, or otherwise inhibiting, an OAGI 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:	<p>OAGI will retain</p> <ul style="list-style-type: none"> ➤ Files of investigations related to projects for ten years from receiving the complaint; ➤ Files of investigations related to ADB staff for five 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; ➤ Contracts related to retained audit and investigative consultants for five years after the termination of contract; ➤ Correspondence, including inter-office memos and recommendations to management, for five years; and ➤ 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: AO 1.02, Organizational Bulletin, applicable to OAG, as well as OAGI's Terms of Office, provide OAGI full and unrestricted access to information and records relating to all ADB activities. OAGI may examine any and all ADB files, records, books, data, papers, and any other materials related to ADB's business, as and when deemed necessary; and take temporary physical possession of any material, and make copies.

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.

For ADB: OAGI will share information with other international organizations and representatives or agencies of ADB member countries that request and have a need to know such information in the interest of cooperation, harmonization, and transparency. When it does so, OAGI will require recipients of such information to protect the confidentiality of such information and use it only for the purpose for which OAGI disclosed the information.

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

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.

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: At the conclusion of a preliminary evaluation, OAGI staff will recommend and the Auditor General or the Auditor General's designee will determine if the case warrants investigation or if OAGI should close the case. If OAGI closes a case at the conclusion of screening, it will document the reasons and decision of the Auditor General or the Auditor General's designee, and retain the case

information in OAGI's fraud and corruption database. If OAGI determines and the Auditor General or the Auditor General's designee concurs a case warrants investigation, OAGI will document its plan to verify the allegation and obtain endorsement of that plan by the Auditor General or the Auditor General's designee.

If a complaint involves ADB staff, OAGI may coordinate succeeding investigative actions with BPMSD, considering relevant AOs. OAGI shall do this at its discretion and in a manner that does not influence OAGI'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: At its discretion, OAGI may gather documentary, video, photographic, computer forensic, or tape-recorded evidence without notice 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.

For ADB: OAGI, with the Auditor General's concurrence and in consultation with the Central Operations Services Office, will select any such external investigative experts based on criteria. OAGI will coordinate all investigative work performed by such experts.

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: Both the Director, OAGI and Auditor General must endorse closing an investigation.

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.

SANCTIONS

BASIS FOR REMEDIAL ACTION

48. Any failure to adhere to ADB's Anticorruption Policy may form the basis for ADB to impose a remedial action or sanction. The Anticorruption Policy requires all parties to ADB-financed activity to maintain the highest ethical standards.
49. The Anticorruption Policy establishes that corruption means the abuse of public or private office for personal gain. The Anticorruption Policy further described corrupt and fraudulent practices to comprise corrupt, coercive, collusive and fraudulent practices, defined as follows:
 - a) A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
 - b) A fraudulent practice 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.
 - c) A coercive practice 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.
 - d) A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
50. Although conflicts of interest might not constitute a corrupt or fraudulent practice, they relate to maintaining high ethical standards and have led to abuse of position. Therefore, ADB has defined a conflict of interest under its Anticorruption Policy as 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.
51. In addition, ADB considers an obstructive practice to demonstrate a failure to maintain the highest ethical standards required by ADB's Anticorruption Policy. An obstructive practice is deliberately destroying, falsifying, altering or concealing information or evidence material to an investigation being conducted under these principles and guidelines; making false statements to investigators to materially impede such an investigation; threatening, harassing or intimidating any party to prevent that party from disclosing its knowledge of matters relevant to an investigation or from pursuing an investigation; or any act intended to materially impede the exercise of ADB's rights of access to information.
52. ADB may determine that other international financial institutions' or legal or regulatory bodies' decisions that a party has failed to adhere to appropriate ethical standards (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 required by ADB's Anticorruption Policy.

53. Any 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.

DETERMINING REMEDIAL ACTION

Governments or Borrowers

54. If investigative findings indicate that an official of a government or borrower engaged in a corrupt or fraudulent practice, abuse or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy, OAGI will report its findings to Management. OAGI 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

55. If investigative findings indicate that an ADB staff member engaged in a corrupt or fraudulent practice, abuse or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy and OAGI concludes that BPMSD should consider disciplinary action under AO 2.04, OAGI will report its findings to BPMSD. BPMSD is solely responsible for the disciplinary process under AO 2.04. OAGI may advise and support BPMSD throughout any disciplinary process.
56. In cases where ADB staff are the subject of an investigation, OAGI may recommend and the Auditor General and Director General, BPMSD, may approve granting amnesty from remedial action under the Anticorruption Policy and these procedures, when appropriate, to parties other than ADB staff prepared to cooperate with OAGI's investigation.

Bidders, Consultants, Contractors, Suppliers, or Other Third Parties to ADB-financed Activity

57. If investigative findings indicate that any bidder, consultant, contractor, supplier or other party to ADB-financed activity engaged in a corrupt or fraudulent practice, abuse or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy, OAGI will present its findings, and explain the basis for such findings, to any individual or any principal firm that might be subject to a remedial action and provide the party an opportunity to respond before OAGI presents its case to the Integrity Oversight Committee.³ OAGI will notify any firm that might be subject to a remedial action that the Integrity Oversight Committee may impose a remedial action on the subject firm's officers, directors, and associated firms. At OAGI's discretion, it may present investigative findings to those associated parties; however, not doing so shall not preclude the Integrity Oversight Committee from imposing a remedial action on them.
58. In cases involving a bidder, consultant, contractor, supplier or other related party to ADB-financed activity, the Integrity Oversight Committee may grant amnesty from

³ OAGI does not control administrative actions that may result from its findings related to borrowers and current ADB staff. Therefore, in those cases, OAGI cannot determine the timing of ADB presenting its findings or the opportunity for such parties to respond to those findings.

remedial action under the Anticorruption Policy and these procedures, when appropriate, to parties (other than ADB staff) prepared to cooperate with OAGI's investigation.

59. OAGI shall provide the Integrity Oversight Committee a report of its investigation, supported with all relevant documentation. OAGI will recommend to the Integrity Oversight Committee a remedial that ADB may impose.

IMPOSING REMEDIAL ACTION

60. The Integrity Oversight Committee consists of three regular voting members and three alternate members, who fill any vacancies that might occur among the regular members due to absence or conflict of interest. The Auditor General will nominate and the President shall appoint members among ADB's senior staff, including one as Chair, to serve for a specified period.⁴ The head, or a representative designated by the head, of the Central Operations Services Office, and an Assistant General Counsel may advise the Integrity Oversight Committee. Committee decisions will be by majority vote. OAGI serves as the secretariat to the Integrity Oversight Committee.
61. The Integrity Oversight Committee shall determine if there is a preponderance of evidence, based on OAGI's report and any other information the Integrity Oversight Committee might request, to demonstrate that a party did not adhere to ADB's Anticorruption Policy and if there is a basis to consider remedial action. The Integrity Oversight Committee may make operational recommendations related to the cases it considers.
62. OAGI, as Secretariat to the Integrity Oversight Committee, will communicate the Integrity Oversight Committee'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, OAGI will notify the relevant party of a right to appeal subject to the criteria outlined in these principles and guidelines. Where OAGI finds it impossible to notify a subject of an Integrity Oversight Committee decision, OAGI will publish that decision on the ADB website following procedures outlined hereunder.
63. OAGI, in collaboration with Management and departments/offices concerned, will ensure controls are in place to enforce Integrity Oversight Committee decisions.
64. The Integrity Oversight Committee may determine that ADB will impose sanctions on a party for any failure to adhere to ADB's Anticorruption Policy. Sanctions that the Integrity Oversight Committee may impose include reprimands and debarment of parties. When debarred, a party is ineligible to participate in ADB-financed activity, though usually without effect upon existing contractual obligations. The Integrity Oversight Committee may recommend the cancellation of existing contractual obligations. In addition to their punitive nature, sanctions ensure responsiveness to ADB's goal of maintaining the highest ethical standards among the activities it finances (including all parties involved in those activities) and its staff.
65. When determining sanctions, the Integrity Oversight Committee will consider a number of factors:

⁴ Terms will normally be 12 months, but the Auditor General and/or President may specify a different term.

- a) 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.
 - b) ADB procedures are administrative in nature and neither a legal nor judicial, nor a quasi-legal or quasi-judicial process.
 - c) It is not ADB's objective to put entities out of business, although the risk that this might occur shall not prevent ADB from imposing an appropriate sanction.
 - d) Since entities other than individuals change ownership, organizational structure, and leadership, the justification for declaring a firm ineligible might change after a period of time.
 - e) As a change in character for individuals may be less likely, ADB may consider not engaging further any individual who has committed any corrupt or fraudulent practice, abuse or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy.
66. Considering these factors, ADB will debar entities other than individuals indefinitely only in the event of extraordinary circumstances (e.g., repeated violations of ADB's Anticorruption Policy). Debarment of entities other than individuals will be limited to a specified minimum period after which ADB, through the Integrity Oversight Committee, may "reassess" the sanction period in order to extend (e.g., if the party is known to have engaged in other corrupt or fraudulent practices, abuse or other misconduct, or otherwise did not adhere to ADB's Anticorruption Policy during its sanction period) or end the sanction period.
67. The following will guide the Integrity Oversight Committee when it determines debarment periods:
- a) Minimum debarment period: 1 year
 - b) Maximum debarment period for first violation
 - i) individuals: indefinitely
 - ii) other entities: 7 years
 - c) Debarment period for subsequent violation:
 - i) individuals: indefinitely
 - ii) other entities: up to 10 years
68. Other than in cases for which ADB debars an individual indefinitely, all debarment periods will be a minimum period, at the end of which time the Integrity Oversight Committee will consider reinstating the individual or other entity as outlined in these principles and guidelines.

69. When determining a sanction, the Integrity Oversight Committee shall consider, where possible, precedent cases, recognizing that the specific circumstances of each case are unique. It may also consider mitigating and aggravating circumstances relevant to the case.
- a) Mitigating factors may include, but are not limited to, the reasons the corruption, fraud or other misconduct occurred, due diligence demonstrated by the party, internal controls and procedures that might deter and detect the type of corruption, fraud or other misconduct that occurred, and the degree to which the party was aware of ADB's policies and procedures.
 - b) Aggravating circumstances may include, but are not limited to, failing to cooperate with an investigation, retaliation against a whistleblower or witness, and knowingly acting contrary to ADB policies or procedures.
70. The Integrity Oversight Committee may also consider, among others:
- a) whether the party continued the corrupt or fraudulent practices or other misconduct after becoming aware of OAGI's investigation;
 - b) the degree of cooperation shown during investigation or any attempt to conceal corrupt or fraudulent practices or other misconduct;
 - c) evidence of restitution and steps taken to address the concerns;
 - d) the nature of the corrupt or fraudulent practices or other misconduct and the circumstances and manner under which the fraud and/or corruption was committed (i.e., attempted fraud or corruption versus committed fraud or corruption);
 - e) the reasons furnished by the party in defense to the corrupt or fraudulent practices or other misconduct;
 - f) the background of the party, or an entity's directors, officers, or other principals; and
 - g) if another multilateral development bank or international organization debarred the party.
71. In cases involving an association of parties (including joint ventures), the Integrity Oversight Committee will impose a sanction on the party that engaged in the ethical misconduct, if such accountability can be determined. In cases where the associated parties are closely related, sanctions may be imposed on more than one party. A related party is one that has
- a) the ability, directly or indirectly, to control or significantly influence another party;
 - b) a familial relationship;
 - c) common or related ownership, management, or control; or

- d) an agreement or dependency for a specific or limited purpose, such as a joint venture, with the another party.
72. In assessing related parties, major shareholding, control of or influence over a firm might not necessarily be related to a specific percentage ownership.
73. The Integrity Oversight Committee may determine circumstances warrant applying sanctions also to the principals (owners, directors, officers, or major shareholders) of a firm, as well as related parties, including affiliated or associated firms or joint venture partners, if it determines that circumstances warrant doing so. In reaching its decision, the Integrity Oversight Committee will consider
- e) management and organizational structure,
 - f) if the related party was involved in or influenced the corrupt or fraudulent practice, abuse or other misconduct, or other failure to adhere to ADB's Anticorruption Policy that was the subject of the investigation, or was the intended beneficiary of such acts
 - g) the potential influence of the subject of the investigation might have on a related party

APPEALS

74. A bidder, consultant, contractor, supplier, or other third party subject to a sanction may appeal the Integrity Oversight Committee's decision to the Sanction Appeals Committee within 90 days from the date of OAGI's notice of the Integrity Oversight Committee's decision. Any such appeal must be in writing, and clearly and concisely state the reason(s) for the requested review of the Integrity Oversight Committee's decision. The Sanction Appeals Committee will consider only appeals that include new information to the extent that:
- a) such information was not known, or could not reasonably have been known, to the party at the time that explanations were sought by OAGI, and
 - b) such information would have been relevant to the decision of the Integrity Oversight Committee.
75. The Sanction Appeals Committee shall consider appeals of the Integrity Oversight Committee's decisions by a party upon which the Integrity Oversight Committee has imposed a sanction, subject to the criteria noted in the Investigation Procedures. The Sanction Appeals Committee may reduce or lift sanctions ADB has imposed on the basis of the appeal. It may also require the Integrity Oversight Committee to reconsider a case if the Sanction Appeals Committee determines the appeal has a significant impact on parties besides the one making an appeal.
76. The Sanction Appeals Committee consists of three vice presidents.⁵ The Auditor General is Secretariat to the Committee. The vice president with the longest

⁵ If there are only three incumbent 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.

vice-presidential tenure will chair the Sanction Appeals Committee. The Auditor General 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.

77. 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 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.
78. Decisions of the Sanction Appeals Committee on any appeal shall be final, binding and not subject to further appeal.

REINSTATEMENT

79. Debarred parties are responsible to seek reinstatement; however, OAGI may attempt to notify parties of the opportunity to request reinstatement approximately 45 days before the end of the minimum sanction period.
80. Requests for reinstatement shall:
 - a) be in writing, addressed to the Director, OAGI, as secretariat to the Integrity Oversight Committee;
 - b) reference to the reason for the sanction; and
 - c) provide a basis for which ADB should consider their reinstatement.
81. OAGI will assess the credibility of any request for reinstatement, and will assess the merits of reinstating a party. Factors that OAGI may consider may include:
 - a) the reason(s) a sanction was imposed;
 - b) restitution;
 - c) changes in management or ownership;
 - d) verifiable mechanisms to improve business governance;
 - e) effective administrative, civil or criminal action initiated by the debarred party as a result of sanctions imposed by ADB;
 - f) any other information indicating that the party engaged in corrupt or fraudulent practices after being sanctioned by ADB, including sanctions imposed by other Organizations; and
 - g) results of administrative or criminal investigations.
82. At the conclusion of its review or investigation, OAGI will prepare a report to the Integrity Oversight Committee with a recommendation regarding reinstatement of the party. 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).

83. In cases where ADB debarred an entity's principals (e.g., owners, directors, officers, or shareholders), or related parties in conjunction with imposing a sanction on an entity that violated ADB's Anticorruption Policy or procedures, OAGI's review, report, and recommendations, and the decision of the Integrity Oversight Committee may also address ADB's sanction of those entities.
84. OAGI will communicate in writing the Integrity Oversight Committee's decision, including any basis of a decision to deny reinstatement or 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 within 90 days of the date of ADB's notice of the decision, subject to the criteria outlined in the Investigation Procedures.
85. OAGI may unilaterally initiate an assessment of the merits of reinstating a party or otherwise removing the party from the list of ineligible parties. OAGI may do this to prevent obsolescence of ADB's list of debarred parties.

DISCLOSURE

86. The list of parties ADB debars is not published, in accordance with ADB's Public Communications Policy. OAGI will inform parties that ADB declares ineligible that ADB currently does not make public their names and that an attempt to participate in ADB-financed activities while ineligible will result in an extension of the sanction period and a notice on ADB's website, including that party's name.
87. In the interest of cooperation, harmonization and transparency, OAGI may determine that other international organizations and representatives or agencies of ADB member countries have a need to know the names of parties declared ineligible to participate in ADB-financed activity, or other information related to OAGI investigations. When it does so, OAGI will require recipients of such information to protect it and use it only for the purpose for which OAGI disclosed the information.
88. If OAGI finds it impossible to communicate with the subject of an Integrity Oversight Committee decision (e.g., if the subject refuses to accept correspondence, or has moved and cannot be located), the Integrity Oversight Committee may approve posting the information, including the name of the subject on ADB's website.