

DISCIPLINARY MEASURES AND PROCEDURES

1. PURPOSE AND DEFINITIONS

1.1 This Administrative Order (AO) sets forth ADB's policies and procedures governing disciplinary actions which may be taken against a staff member for misconduct. The purpose of this AO is to explain what behavior may constitute misconduct, how misconduct will be investigated and the review and decision-making process by which ADB may assess and impose disciplinary measures.

1.2 The purpose of taking disciplinary measures is to protect the integrity and efficiency of ADB which may be jeopardized by staff misconduct. Disciplinary measures shall be imposed only following a thorough Investigation of the facts and after affording the staff member concerned an opportunity to state his/her case.

1.3 It is essential that, if an incident of misconduct is alleged or discovered, prompt action is taken to determine the substance and circumstances of the matter. Heads of Departments/Offices and Directors are responsible to maintain discipline of all staff members under their supervision and to report incidents of unsatisfactory conduct or misconduct to the Director, Human Resources Division (BPHR).

1.4 Specialized capitalized terms used in this AO are defined in Appendix 1.

2. EXAMPLES OF MISCONDUCT

2.1 Disciplinary measures may be imposed whenever there is a finding of misconduct or attempted misconduct. Except as otherwise specified, misconduct does not need to be intentional. Misconduct includes, but is not limited to, the failure to observe the Staff Regulations, AOs, Administrative Circulars and all other duties of employment. Misconduct further includes, but is not limited to, the following acts and omissions:

(a) Abuse or misuse of ADB's benefits and allowances; including any such abuse or misuse by the staff member's dependents;

(b) Intentional or reckless disregard of duty or gross negligence in the performance of assigned duties; absence from duty without justifiable cause;

(c) Abuse or misuse of authority or official position, including violations under ADB's Anticorruption Policy, or any conduct that may be detrimental to ADB or to its reputation;

(d) Abuse of or misuse of the privileges and immunities accorded to staff members under the ADB Charter, the ADB Headquarters Agreement, ADB Host Country Agreements and any other relevant agreements;

(e) Abuse or misuse of ADB funds, assets, resources or other property for which ADB bears responsibility;

(f) Acts that violate applicable criminal law (e.g., theft, felonious acts, use or possession of illegal drugs); the making of knowingly false statements or willful misrepresentation or Fraud pertaining to official matters, whether oral or written;

(g) Condonation or willful failure to disclose knowledge of the misconduct of other staff members where it is subsequently determined the staff member could reasonably have been expected to come forward;

(h) Retaliation against those who in good faith bring allegations of unsatisfactory conduct or misconduct to the attention of Management or who avail themselves of ADB's grievance procedures; and

(i) Other unsatisfactory conduct (e.g., physical assault; harassment, including harassment on the basis of sex, age, race or creed and threats against supervisors and/or other staff members).

3. INTERIM MEASURES

3.1 If a charge of misconduct is made against a staff member, the following interim measures may be taken pending Investigation of the charges against the staff member:

(a) Temporary Transfer/Assignment to other Duties. The staff member may be transferred temporarily to another Department/Division or be assigned to different duties and responsibilities within his/her Department/Division.

(b) Limit/Denial of Access. The staff member's access to ADB or to his/her work area (including files, electronic databases and e-mail facilities) may be limited or denied as Budget, Personnel and Management Systems Department (BPMSD) determines to be necessary.

(c) Administrative Leave. The staff member may be placed on paid administrative leave with all conditions as may be appropriate, including a prohibition against entering ADB premises.

(d) Suspension pending Investigation. The staff member may be suspended from duty without salary, such suspension being without prejudice to the rights of the staff member.

(e) Notwithstanding any prohibitions against entering ADB premises that may be imposed pursuant to this Section 3, with authorization from Director, BPHR such staff member may be allowed to enter ADB premises under escort, if necessary, to prepare his/her defense or for any other reason determined by Director, BPHR to be valid, reasonable and necessary.

3.2 A staff member may be suspended without salary pending Investigation if there are charges of misconduct against the staff member which, if proven, may justify the staff member's dismissal and where immediate protective measures are warranted (including but not limited to situations where the staff member or his/her misconduct poses a danger to ADB or its staff). Such suspension without salary would, for example, be warranted if the information available is sufficient to indicate that the staff member has deliberately misled ADB through false statement, misrepresentation or Fraud, or that the staff member has misused ADB funds.

3.3 The interim measures mentioned above may be taken for a maximum of four months by the Director General, BPMSD. Such measures may be extended by the President for a further two months. The interim measure of suspension without salary must be approved by the President.

3.4 If, at the end of the period for which interim measures were taken in accordance with paragraphs 3.1, 3.2 and 3.3, formal disciplinary procedures have not been completed, the interim measures shall be lifted and the staff member shall be entitled to reimbursement of any amount of remuneration withheld.

4. DISCIPLINARY MEASURES

4.1 Disciplinary measures imposed by ADB on a staff member shall be determined on a case-by-case basis, taking into account the criteria set forth in this Section. They may take the forms indicated below.

4.2 Depending on the circumstances of the case, one or more of the following disciplinary measures may be taken by ADB when misconduct is determined to have occurred, provided the disciplinary procedure against the staff member is initiated within one year from the date the misconduct is discovered and brought to the attention of BPMSD or the Integrity Division of the Office of the Auditor General (OAGI):

- (a) Written censure;
- (b) Forfeiture of salary and reduction in salary, including withholding salary increases and the reduction of salary in respect of a prior year in which it is later determined that misconduct occurred;
- (c) Removal of privileges or benefits whether permanently or for a specified period of time;
- (d) Suspension from duty with reduced salary or without salary;
- (e) Reassignment;
- (f) Transfer or assignment to a lower level position and/or demotion, either with or without reduction in salary;
- (g) Loss of the opportunity to work as a consultant or contractual employee employed by ADB or on ADB-financed activity permanently or for a specified period;
- (h) Dismissal for misconduct; and/or
- (i) Loss of their and their dependents' eligibility to continue participation in all ADB insurance plans normally available to all staff members upon termination of their appointment.

5 MEASURES NOT CONSIDERED DISCIPLINARY

The following measures are not considered disciplinary in nature for purposes of this AO:

- (a) Oral or written reprimands which may be given by Heads of Departments/Offices and division Directors, including the Director General, BPMSD for unsatisfactory conduct which is not so serious as to warrant discipline.
- (b) Recovery of money owed to ADB including overpayments made to staff members as a result of a false statement, Fraud, misrepresentation or negligence. ADB will recover from the staff member's termination benefits (e.g., salaries, leave encashment, severance pay) any amounts owed to ADB. ADB will recover such amounts and the interest thereon at the rate prescribed for salary advances in AO No. 2.09 (*Appointment and Separation*). Such recovery of overpayments and interest is not discipline, and will not absolve the staff member from proceedings under this AO and the imposition of a disciplinary measure.
- (c) Interim measures pursuant to Section 3.

6. CRITERIA FOR IMPOSING DISCIPLINARY MEASURES

6.1 The disciplinary measure should be proportionate to the seriousness of the misconduct.

6.2 In assessing the seriousness of the misconduct, the following criteria should be taken into consideration:

- (a) the degree to which the standard of conduct has been breached by the staff member;
- (b) the gravity of the adverse consequences and damage or potential damage to ADB, its staff or any third party;
- (c) the recurrence of misconduct by the staff member, particularly when there is a repetition of misconduct of a similar nature;
- (d) the official position held by the staff member and the extent to which the staff member was entrusted with responsibilities in matters to which the misconduct relates;
- (e) collusion with other staff members in the act of misconduct;
- (f) whether the misconduct was a deliberate act;
- (g) the personal circumstances of the staff member and the staff member's length of satisfactory service; and
- (h) the staff member's admission of the misconduct prior to the date it was discovered and any action taken by the staff member to mitigate any adverse consequences resulting from his/her misconduct.

6.3 The disciplinary measure of dismissal for misconduct is particularly appropriate when the misconduct is serious or recurrent, or has jeopardized, or would in the future be likely to jeopardize, the reputation of ADB and its staff; in case of serious threats of staff members against their supervisors or other staff members; when it is found that a staff member has misused funds, assets, resources or other property of ADB or other public funds, assets, resources or property for which ADB bears responsibility; when misconduct involves Fraudulent Practices, Corrupt Practices or abuse of authority or abuse or misuse of ADB benefits; or if the staff member has, prior or subsequent to appointment, deliberately misled the Bank through a Fraudulent Practice (including a misleading omission from a Personal History Form or a Medical History Form). Dismissal for misconduct is also appropriate when the breach of trust is so serious that continuation of the staff member's services is not in the interest of ADB.

7. EXERCISE OF DISCIPLINARY POWERS

7.1 Section 24 of the Staff Regulations provides that "the President may impose disciplinary measures on staff members whose conduct is unsatisfactory. He may summarily dismiss a staff member for serious misconduct in accordance with the procedures to be established by the Bank." These powers of the President shall be exercised in the following manner:

- (a) in respect of professional staff, the powers are exercised by the President; and
- (b) in respect of national officers/administrative staff, the power to impose disciplinary measures is delegated to the Director General, BPMSD, except in case of dismissal for misconduct for which the power is retained by the President.

8. THE INVESTIGATIVE PROCESS

8.1 Allegations of misconduct shall be investigated as follows:

(a) 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), shall be investigated by OAGI in accordance with ADB's Integrity Principles and Guidelines and Appendix 2 of this AO. OAGI may, however, within its discretion, avail of assistance from investigators outside of ADB.

(b) Allegations of misconduct other than those stated in paragraph (a) above shall be investigated by BPHR. BPHR, may however, within its discretion, refer the matter to OAGI, to the Office of Administrative Services (OAS), or to the staff member's Director or Head of Department/Office for investigation of such misconduct in accordance with Appendix 2 of this AO. Allegations of misconduct involving a claim of harassment, as defined in AO 2.11 (Prevention of Harassment), shall be investigated by BPHR in accordance with Appendix 2 of this AO and the special procedures provided in AO 2.11.

(c) Where the President determines that circumstances so warrant, including where a Conflict of Interest may exist for the Investigator, the President may appoint a person (or persons) from within or outside of ADB to conduct the Investigation of any allegation of misconduct which would otherwise be investigated by OAGI, OAS, BPHR or the staff member's Director or Head of Department/Office. Any such investigations shall be investigated in accordance with Appendix 2 of this AO.

(d) As a general rule, the Investigator shall advise the staff member that he/she is under Investigation. However, if the Investigator determines, in his/her discretion, that such notification could lead to the concealment or destruction of Evidence or attempts to improperly influence Witnesses, the Investigator may delay notifying the staff member until such threat is reasonably abated. The explanations of the staff member may be sought with a view to determining if the initiation of formal disciplinary proceedings is warranted. In such a case, the staff member shall be informed that, if his/her explanations prove unsatisfactory, formal disciplinary proceedings may be initiated.

(e) Upon completion of the Investigation, if the Investigator finds sufficient information during the Investigation to substantiate the allegation of misconduct, it will document its investigative findings and provide an investigative report to the Director, BPHR.

8.2 Nothing in Section 8.1 shall be construed to limit the authority of OAS to conduct fact-finding investigations involving security matters, pursuant to its mandate of ensuring the safety and protection of all ADB personnel, ADB's official guests and visitors, and ADB's facilities and assets. If an investigation by OAS indicates possible misconduct, the matter shall be immediately referred to Director, BPHR.

9. FORMAL DISCIPLINARY PROCEDURES

9.1 The following officers may initiate formal disciplinary procedures:

(a) in respect of professional staff, the Director General, BPMSD;

(b) in respect of national officers/administrative staff, the Director, BPHR; or

(c) in all cases of misconduct which may warrant dismissal, the Director General, BPMSD.

9.2 Where an Investigation shows that there is a Preponderance of Evidence to indicate that the staff member has engaged in misconduct, the following procedures shall be carried out by BPMSD:

- (a) The initiating officer (paragraph 9.1 of this AO) shall address to the staff member a confidential memorandum describing the misconduct and informing the staff member of the charges against him/her. This memorandum shall specify the alleged misconduct. The staff member shall be advised that he/she may nominate another staff member to represent him/her or act on his/her behalf, except staff members in the Office of the General Counsel (OGC), the Office of the Secretary (SEC), the Office of the Auditor General (OAG), OAS and BPMSD. The initiating officer shall also provide the staff member with a copy of the investigative report for the staff member's response.
- (b) The memorandum to the staff member shall be delivered under strictly confidential cover by hand, but if not feasible, by courier service or registered mail with receipt of delivery to the staff member's last known address. The staff member shall note the date of receipt on the duplicate copy and forward this copy to the Director, BPHR for retention in the personal career file.
- (c) The staff member shall have ten working days to provide BPMSD with a written response to the memorandum. If the staff member requires additional time to respond, BPMSD may grant a reasonable extension upon the staff member's written request to the initiating officer, which shall state cogent reasons why he/she requires additional time. In the event that the staff member does not respond within the time provided, the review process shall nevertheless proceed.
- (d) The staff member's reply under paragraph 9.2(c) of this AO shall be discussed with the staff member by the initiating officer or an officer acting on his/her behalf who shall prepare minutes of the discussion. The staff member shall be given a copy of these minutes.

9.3 Review by BPMSD:

Following the period by which the staff member is required to respond pursuant to paragraph 9.2 (c) above, Director General, BPMSD (for professional staff and all potential dismissal cases) or the Deputy Director General, BPMSD (for national officers and administrative staff) shall review the final investigative report, all relevant supporting documents and any staff response. Following its review, the Director General or the Deputy Director General, BPMSD may either:

- (a) With the approval of the President (for cases involving professional staff and/or dismissal) or the Director General, BPMSD (for national officers or administrative staff), close the matter and promptly inform the staff member against whom the allegation was made, that the matter has been closed, notwithstanding any non-disciplinary measures that have been taken or may be taken by ADB to address the staff member's conduct; or
- (b) Request further investigation by the Investigator and provide the staff member with any new Evidence obtained by the Investigator for the staff member's additional response; or
- (c) Make a written recommendation of discipline to the President (for cases involving professional staff and/or dismissal) or the Director General, BPMSD (for national officers or administrative staff) and forward it, along with the final investigative report, all relevant supporting documents and any staff comments, to him/her for decision.

9.4 Conflict of Interest

Where the President determines that there would be a Conflict of Interest for BPMSD to review the matter, he/she shall designate an ADB staff member outside of BPMSD, to conduct the review process.

10 THE DECISION-MAKING PROCESS REGARDING DISCIPLINARY MEASURES

10.1 Non-Dismissal Matters Involving National Officers or Administrative Staff:

For disciplinary matters involving national officers or administrative staff, which do not involve dismissal, upon receipt of the Deputy Director General, BPMSD's recommendation pursuant to Section 9.3 above, the Director General, BPMSD shall decide whether discipline is appropriate, and if so, what measure to impose. In making this determination, the Director General, BPMSD shall consider the recommendation of the Deputy Director General, BPMSD, any staff comments, the investigative report and all relevant supporting documents, as well as the criteria set forth in Section 6.

10.2 For Matters Involving Professional Staff and/or Dismissal:

For disciplinary matters involving Professional Staff and/or matters of dismissal, upon receipt of the Director General, BPMSD's recommendation pursuant to Section 9.3 above, the President shall decide whether discipline is appropriate, and if so, what measure to impose. In making this determination, the President shall consider the recommendation of the Director General, BPMSD, any staff comments, the investigative report and all relevant supporting documents, as well as the criteria set forth in Section 6.

10.3 Notification of Discipline

If disciplinary measure(s) are imposed on the staff member by the authorized officer, the staff member shall be informed accordingly by the Director General, BPMSD, or in case of national officers/administrative staff, by the Director, BPHR. A copy of the recommendation of the Director General, BPMSD or the Deputy Director General, BPMSD shall be attached to such communication.

11. APPEAL PROCEDURES

Any staff member against whom disciplinary action has been taken may file an appeal against the decision to the Appeals Committee pursuant to AO 2.06 (*Administrative Review and Appeal Procedures*). The Appeals Committee shall determine whether the finding of misconduct was proper and whether the measure of discipline was proportionate to the misconduct.

12. RESPONSIBILITY

The Director General, BPMSD is responsible for the interpretation and the application of this AO

13. CONFIDENTIALITY

During the Investigation and the formal disciplinary proceedings, confidentiality shall be observed.

14. EFFECTIVITY

This AO as amended is effective from 13 December 2006 and supersedes the same Order issued on 9 July 1998. For clarification, this AO shall govern all relevant aspects of any disciplinary matter that is initiated as of 13 December 2006, regardless of when the misconduct occurred.

DEFINITIONS

The following terms, when capitalized, shall have the following meanings in AO 2.04 and Appendix 2:

1. Conflict of Interest: 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.
2. Corrupt Practice: The offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
3. Evidence: Any physical object, record, document (in any form), testimony or other information, that tends to establish the existence or non-existence of an allegation or fact.
4. Fraudulent Practice: 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.
5. Investigation: A process designed to gather and analyze information to examine and determine the veracity of an allegation of misconduct.
6. Investigator: A person authorized by ADB to conduct an investigation under Section 8 of AO 2.04.
7. Preponderance of Evidence: Evidence which is more credible and convincing than that presented by the other party. In cases of misconduct, it is a standard of proof requiring that the Evidence as a whole shows that it is more probable than not that the staff member committed misconduct.
8. Subject: A staff member or a member of a staff member's immediate family who is the subject of an allegation of misconduct as defined under paragraph 2.1 of this AO.
9. Testing: An investigative procedure used to assist in the determination of whether misconduct has occurred including, but not limited to, fingerprint identification, handwriting analysis, use of a breathalyzer, and urine or blood analysis.
10. Witness: Any person who is not a Subject of an Investigation but who is requested by ADB to provide information regarding a matter under Investigation.

INVESTIGATION OF SUSPECTED MISCONDUCT

1. PURPOSE

This Appendix sets forth the general principles and procedures for the investigation of suspected misconduct of staff members described in AO 2.04.

2. DUTY TO COOPERATE

2.1 Staff members have a duty to cooperate fully in an Investigation when requested by ADB to do so. Such cooperation includes, but is not limited to, the following:

- (a) Staff members must make themselves available to be interviewed and must reply fully and truthfully to all questions asked;
- (b) Staff members must provide the Investigator with any items requested that are within the staff member's control including, but not limited to, documents, handwriting samples and/or other physical objects;
- (c) Upon the written request of the Investigator, a staff member who is the Subject of an Investigation, must instruct his or her bank, and/or medical provider or other authorities to release directly to the Investigator such information that is specifically and materially related to the issues which are the subject of the Investigation;
- (d) Staff members must cooperate in any Testing that is reasonably requested by the Investigator;
- (e) Staff members must cooperate with reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB property (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives). ADB e-mail accounts and other electronic information may be accessed by the Investigator in accordance with AO 4.17.

2.2 If a staff member refuses to comply with any obligations set forth in this Section 2, ADB may draw an adverse inference from such refusal and/or may take disciplinary action against the staff member.

3. REPRESENTATION OF STAFF MEMBERS DURING INVESTIGATION

Subjects 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 OGC, SEC, OAG, OAS, 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

4. PRIVACY AND CONFIDENTIALITY

4.1 Confidentiality of Matter Under Investigation. All staff members involved in an Investigation (including Witnesses) are obligated to preserve and protect the confidentiality of all information that they come to know in the course of an Investigation, including details of the allegations and the identity of the Subject, Witnesses, or any other parties concerned.

4.2 Confidentiality of Staff Reporting Misconduct. ADB shall not identify by name, any person who has reported suspected misconduct unless: (a) the person consents to disclosure; or (b) the Investigator had obtained sufficient evidence that the person has knowingly and willfully reporting false information regarding the misconduct of another staff member.

5. CONDUCT OF INVESTIGATION

5.1 Conduct of Investigators: Investigators shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct their activities competently and with the highest levels of integrity. In particular, Investigators shall perform their 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.

5.2 Conflicts of Interest: Investigators shall disclose to the Auditor General or Director General, BPMSD, 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 Auditor General or Director General, BPMSD as the case may be, shall take appropriate action to remedy the conflict. Failure to do so may subject the Investigator to disciplinary action under this AO.

5.3 Interviews of Subjects and Witnesses: To the extent possible, interviews conducted by the Investigator shall be conducted by two persons. If a written statement is prepared, it shall be signed by the interviewee.

5.4 Treatment of Evidence: Evidence should be systematically logged and securely maintained. Evidence should be marked to indicate the date that it was obtained, the source from whom it was obtained and the identity of the individual who received it.

5.5 Content of Investigative Reports. Following an Investigation pursuant to paragraph 8 of this AO, the Investigator shall prepare an investigative report, including, at a minimum:

- (a) Investigative findings based on the facts and related analysis, which may include reasonable inferences;
- (b) Exhibits of all relevant Evidence;
- (c) Any signed statements by Subjects or Witnesses; and
- (d) Recommendations, as appropriate, to BPMSD that are derived from the investigative findings.

6. STANDARD OF PROOF

The standard of proof for the Investigation is a Preponderance of Evidence.

7. COOPERATION WITH NATIONAL AUTHORITIES

7.1 Referral to National Authorities. If ADB suspects that a staff member has committed or attempted to commit a criminal offense in violation of a member country's laws, ADB may refer the results of the investigation to the relevant national authorities. Such referral, however, may only be made after consultation with OGC and only with the approval of the President.

7.2 Notification to Subject. The Subject(s) must be notified of the fact of the referral and provided with copies of any documents that were provided to the national authorities as soon as is reasonably possible. However, where ADB or the national authority has determined that there is a reasonable danger that the Subject may attempt to destroy Evidence, flee the jurisdiction or harass or intimidate witnesses, such

notification may be delayed as long as the circumstance warranting such concern, exists.

8. REVIEW OF INVESTIGATIVE REPORTS

8.1 Investigators to Retain Investigative Reports. Only the President, the General Counsel, the Director General, BPMSD, and the Director, BPHR, or persons designated by one of them, may examine the investigative reports described in Section 5.5 above, as necessary to perform his/her official duties.

9. ACCESS TO NON-PUBLIC INFORMATION OBTAINED DURING INVESTIGATION

9.1 The Investigator will ensure that it retains its information and records under adequate physical, electronic and procedural controls. The Investigator will limit the circulation of information regarding an investigation strictly to those with a need to know.

9.2 Only OAGI, the Auditor General and the President may examine any Evidence or investigative findings not included in the investigative reports described in Section 5.5 of this Appendix 2 in respect of allegations of misconduct investigated under paragraph 8.1(a) of this AO.

9.3 Only the President, the General Counsel, the Director General, BPMSD, and the Director, BPHR, the Investigator or persons designated by one of them, may examine any Evidence or investigative findings not included in the investigative reports described in Section 5.5 of this Appendix 2 in respect of allegations of misconduct investigated under paragraph 8.1(b) of this AO.