

## **WHISTLEBLOWER AND WITNESS PROTECTION**

### **1. PURPOSE**

1.1 The purpose of this Administrative Order (AO) is to provide operational procedures on whistleblower and witness protection, including the protections afforded to whistleblowers and witnesses.

### **2. DEFINITIONS**

2.1 “Abuse” means theft, waste or improper use of ADB assets in ADB-financed or ADB-supported activity, either committed intentionally or through reckless disregard.

2.2 “Coercion” or “coercive practice” means 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.

2.3 “Collusion” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

2.4 “Conflict of interest” means 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.

2.5 “Corruption” or “corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

2.6 “Evidence” means 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.

2.7 “False or malicious allegations” means allegations that are knowingly, deliberately or recklessly inaccurate or misleading, to gain some competitive advantage or cause harm to a person or entity.

2.8 “Fraud” or “fraudulent practice” is any action 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.

2.9 “Integrity violation” is any act which violates ADB’s Anticorruption policy and includes, abuse, coercion, collusion, conflict of interest, corruption, and fraud, as defined herein.

2.10 “Misconduct” includes, but is not limited to, the failure to observe the Staff Regulations, AOs, Administrative Circulars and all other duties of employment. For purposes of this AO, it also includes, but is not limited to, the acts or omissions specified in paragraph 2.1 of [AO 2.04 \(Disciplinary Measures and Procedures\)](#) except those related to an integrity violation.

2.11 “Retaliation” is misconduct and is any detrimental act, direct or indirect, recommended, threatened or taken against a whistleblower or witness or person associated with a whistleblower or witness in a manner material to the complaint because of the report or cooperation with an ADB investigation by the whistleblower or witness. It includes but is not limited to harassment, discriminatory treatment, assignment of work outside the corresponding job description, inappropriate performance appraisals or salary adjustments, or the withholding of an entitlement. As retaliation constitutes misconduct, those engaged in retaliation are subject to the disciplinary provisions under AO 2.04.

2.12 “Staff” or “staff member” means all former and current ADB staff, and Vice Presidents.

2.13 “Subject of an investigation” means a person who is alleged to have engaged in an integrity violation and/or misconduct that the Office of Anticorruption and Integrity (OAI) is investigating or misconduct that the Human Resources Division of Budget, Personnel, and Management Systems Department (BPHR) is investigating.

2.14 “Whistleblower” is any person who, in good faith and voluntarily, reports, or is believed to be about to report, or is believed to have reported a suspected integrity violation or misconduct.

2.15 “Witness” means any person who is not the subject of an investigation but who provides information or evidence at the request of OAI or BPHR regarding a matter under investigation.

### **3. GENERAL PRINCIPLES**

3.1 ADB will pursue all reasonable steps to protect whistleblowers and witnesses acting in good faith and to ensure that they are not subject to retaliation.

3.2 Any person who reports a suspected integrity violation or misconduct may remain anonymous or request that his or her name be kept confidential.

3.3 Whistleblowers are encouraged and witnesses are required to report in a manner that will facilitate effective investigation, which in general requires open or confidential, rather than anonymous, reporting. Whistleblowers who choose to report on an anonymous basis must provide in a timely manner enough information concerning the basis of the allegations and sufficient detail or supporting evidence that the matter can be pursued responsibly. Even where anonymous allegations are sufficiently detailed or supported to permit an investigation to be conducted, no final finding of misconduct will be made based solely on the anonymous allegations without independent corroboration.

3.4 Any person who reports false or malicious allegations of integrity violation or misconduct is not protected by ADB. Staff who make false and malicious allegations are subject to disciplinary action in accordance with AO 2.04. Individuals or entities,

including contractors, suppliers, or consultants, who report false and malicious allegations may have their contract(s) terminated and/or be declared ineligible to participate in ADB-financed or ADB-supported activities.

3.5 Staff have the right and obligation to refuse to participate in misconduct. Whistleblowers and witnesses who are ADB staff and have committed integrity violations or misconduct may not avoid disciplinary action by reporting the integrity violations or misconduct and seeking protection under this AO. However, depending on the circumstances, their reporting and degree of cooperation will be taken into consideration when determining the appropriate disciplinary action.

3.6 Whistleblowers and witnesses who are non-ADB staff and have committed integrity violations may not avoid sanction or other remedial action by reporting the integrity violations and seeking protection under this AO. However, depending on the circumstances, their reporting and degree of cooperation will be taken into consideration in determining the appropriate sanction or other remedial action.

#### **4. REPORTING AND INVESTIGATION OF INTEGRITY VIOLATION AND MISCONDUCT**

4.1 A staff member has a duty to report any suspected integrity violation to OAI. A staff member is encouraged to report any suspected misconduct to BPHR but is not required to do so.

4.2 No approvals or authorizations are needed by staff to report a suspected integrity violation or misconduct.

4.3 Reports of any allegations of a suspected integrity violation or misconduct of managerial staff in OAI or Budget, Personnel, and Management Systems Department (BPMMSD) can be made to the Vice President (Finance and Administration) with a request that an alternative person within or outside ADB be designated to review the report. The Vice President (Finance and Administration) will, after considering such request and determining that circumstances so warrant, recommend to the President to appoint a person or persons from within or outside ADB to conduct the investigation which would otherwise be conducted by OAI or BPHR.

4.4 Reports of any allegations of a suspected integrity violation or misconduct of any Vice President can be made to the President with a request that a person within or outside ADB be designated to review the report. The President will, after considering such request and determining that circumstances so warrant, appoint a person or persons from within or outside ADB to conduct the investigation.

4.5 Allegations of misconduct by ADB staff involving integrity violations will be investigated by OAI in accordance with ADB's Integrity Principles and Guidelines and Appendix 2 of AO 2.04. This AO supplements the Integrity Principles and Guidelines and if there is any conflict with the provisions of the Integrity Principles and Guidelines, this AO will prevail.

4.6 Allegations of misconduct by ADB staff other than those relating to integrity violations will be investigated by BPHR in accordance with Appendix 2 of AO 2.04.

## **5. ANONYMITY AND CONFIDENTIALITY**

5.1 OAI and BPHR will protect the identities of whistleblowers and witnesses from unauthorized disclosure during and after an investigation in accordance with the provisions of AO 2.04.

5.2 Except to the extent required to pursue disciplinary procedures under AO 2.04 or to impose a sanction under ADB's Integrity Principles and Guidelines, OAI and BPHR will maintain the confidentiality of any information provided by whistleblowers and witnesses where such information has not been disclosed to parties outside of OAI and BPHR, and which is (i) not made publicly known or in the public domain prior to the time of disclosure by the whistleblower or witness; or (ii) made generally available after disclosure through no action or inaction of OAI or BPHR. OAI and BPHR will use all available means, including physical, electronic and procedural controls, to maintain the confidentiality of information obtained from whistleblowers and witnesses.

5.3 Only the Head, OAI, OAI authorized staff, and the President will have access to OAI files and records, and only the Director General, BPMSD, BPMSD authorized staff, and the President will have access to BPMSD files and records, and the authority to determine whether such files and records, unedited or redacted, may be shared with other parties on a need-to-know basis. Authorized staff who have actual conflicts of interest or who have recused themselves from an investigation will not be privy to any information on such investigation.

5.4 Staff involved in an investigation in any capacity are required to preserve and protect the confidentiality of information related to investigations, including the identity of the subjects of investigation, witnesses, or other parties concerned.

## **6. REPORTING AND INVESTIGATING RETALIATION**

6.1 Staff who believe that they have been subject to retaliation as a consequence of reporting a suspected integrity violation or of cooperating with an OAI investigation must notify OAI of their concern and seek relief from retaliation and in the case of reporting suspected misconduct or cooperating with a BPHR investigation, must notify BPHR of their concern and seek relief from retaliation.

6.2 A report of retaliation will not interfere with investigation of the primary allegation of integrity violation or misconduct.

6.3 BPHR will refer reports of retaliation to OAI for investigation in accordance with Appendix 2 of AO 2.04.

6.4 Reports of retaliation by an Executive Director, Alternate Executive Director or the President, may be submitted as an allegation of misconduct directly to the Chair of the Ethics Committee, in accordance with Section 7 of the Ethics Committee and Procedures adopted by the Board of Directors.

6.5 OAI will review reports of retaliation to determine whether they are (i) within ADB's jurisdiction; (ii) credible; (iii) verifiable; and (iv) material. ADB is not required to investigate reports of retaliation reported more than one year after the date on which the

whistleblower or witness becomes aware of the alleged retaliation. OAI will review reports of retaliation following the procedures set out in Appendix 2 of AO 2.04.

6.6 If OAI determines that a staff member did experience retaliation for having reported a suspected integrity violation or misconduct or for having cooperated with an OAI or BPHR investigation and that the staff member's action related to the investigation was a contributory factor in the retaliation, the burden of proof will shift to ADB to show by clear and convincing evidence that the same action would have been taken in the absence of the staff member's report or cooperation.

6.7 Upon conclusion of an investigation concerning retaliation, OAI will provide a report to the staff member and to Director General, BPMSD. OAI's report will indicate its investigative findings as to whether retaliation occurred including recommendations for remedial action. Within fifteen calendar days of receipt of OAI's report, Director General, BPMSD will decide whether to accept OAI's findings and on the appropriate remedial actions to be taken and will inform the staff member of the decision taken.

## **7. PROTECTIONS FOR STAFF MEMBER WHISTLEBLOWERS AND WITNESSES**

7.1 Whistleblowers and witnesses who are staff will be accorded interim protection during the course of review or investigation as necessary to safeguard their security and interests. At the direction of the Director General, BPMSD, and with the consent of the concerned staff, such interim protection may include, but is not limited to, temporary reassignment to another position and if appropriate, placement on paid administrative leave for an initial period not to exceed four months. If the investigation is still ongoing, an extension of such leave may be approved by the President for the period necessary to complete the investigation.

7.2 If the staff member believes that there is a direct and imminent threat to his or her personal security or to the security of his or her family, he or she can raise the concern with OAI and BPHR, and OAFSA-SE will provide guidance to the staff on the appropriate security measures.

7.3 When the Director General, BPMSD has decided under paragraph 6.7 of this AO that retaliation has occurred, the appropriate remedial actions will include relief or other corrective measures for the staff member who has been subject to retaliation.

7.4 Whistleblowers or witnesses who are staff and have claimed retaliation may appeal within thirty calendar days of receipt of a decision of the Director General, BPMSD made under paragraph 6.7 of this AO, directly to the Appeals Committee, in which case Sections 7 to 18 of [AO 2.06 \(Administrative Review and Appeal Procedures\)](#) will apply. In accordance with AO 2.06, the President makes the final decision on such an appeal, but such decision is subject to review by the ADB Administrative Tribunal in accordance with [AO 2.07 \(Administrative Tribunal\)](#).

## **8. PROTECTIONS FOR EXTERNAL WHISTLEBLOWERS AND WITNESSES**

8.1 External whistleblowers and witnesses, including contractors, consultants, local counterparts, and project beneficiaries engaged in dealings with ADB, are entitled to the protection provided in Sections 5 and 8 of this AO.

8.2 ADB will endeavor to ensure that external whistleblowers and witnesses are protected from retaliation by staff. Staff who are found to retaliate against them will be subject to disciplinary action under AO 2.04.

8.3 External whistleblowers and witnesses who believe they have been subject to retaliation as a consequence of reporting a suspected integrity violation or misconduct or for cooperating with an ADB investigation will notify OAI of this concern.

8.4 Where an external whistleblower or witness may suffer or has suffered retaliation from other than staff because of a report to ADB or cooperation with an ADB investigation, ADB may use its good offices with the member country government to endeavor to secure transfer or adequate security protection or employ other reasonable measures to reduce the risks of retaliation.

8.5 External parties who make false or malicious allegations or who retaliate against whistleblowers and witnesses may have their contract(s) terminated or be declared ineligible to participate in ADB-financed or ADB-supported activities, or may be subject to sanction or other remedial action, following the procedures under the Integrity Principles and Guidelines.

8.6 When an external whistleblower or witness reports retaliation to OAI, OAI will review the report to determine whether the allegation is (i) within ADB's jurisdiction; (ii) credible; (iii) verifiable; and (iv) material. ADB is not required to investigate reports of retaliation reported more than one year after the date on which the whistleblower becomes aware of the alleged retaliation. Should these criteria be met, resulting in an OAI investigation on retaliation, this investigation will follow the procedures under the Integrity Principles and Guidelines.

8.7 Should OAI's investigation find that an external whistleblower or witness did experience retaliation through an activity financed or supported by ADB, and that the whistleblower's or witness's action related to the investigation was a contributing factor in the retaliation, the burden of proof will shift to ADB to show, by clear and convincing evidence that the same action would have been taken in the absence of the report or cooperation.

8.8 Upon conclusion of an investigation concerning retaliation against an external whistleblower or witness, OAI will provide its investigation report including its findings to the relevant ADB department for action and to the whistleblower or witness and BPHR. The report will indicate whether retaliation occurred as a result of the whistleblower's or witness's report of integrity violation or misconduct and will make recommendations to the relevant department for remedial action. Within fifteen calendar days of receipt of OAI's report, the relevant department will decide on the remedial action to be taken and will inform OAI and BPHR of the decision taken. OAI will immediately inform the whistleblower or witness of the action taken.

## **9. EXTERNAL REPORTING**

9.1 Protections against retaliation will be extended to a staff member who reports a suspected integrity violation or misconduct to an entity or individual outside of the established internal mechanisms where the staff member can show that:

- (a) such reporting is necessary so as to avoid
  - (i) a significant threat to public health and safety;
  - (ii) substantiative damage to ADB's operations; or
  - (iii) violations of national or international law; and
- (b) the established internal mechanisms are inadequate because:
  - (i) the staff member has grounds to believe that it is not possible to report the suspected integrity violation or misconduct pursuant to any of the established internal mechanisms because all such avenues would subject the staff member to retaliation within the institution; or
  - (ii) the staff member has grounds to believe that it is not possible to report the suspected integrity violation or misconduct pursuant to any of the established internal mechanisms because all such avenues would create a likelihood that evidence relating to the suspected integrity violation or misconduct will be concealed or destroyed; or
  - (iii) the staff member has previously reported the suspected integrity violation or misconduct through the established internal mechanisms (and not on an anonymous basis), and ADB has failed to inform the staff member in writing of the status of the matter within six months of such report; and
- (c) the staff member does not accept payment or any other benefit from any party for such report.

9.2 External reports made in accordance with paragraph 9.1 of this AO and consistent with any confidentiality obligations to concerned third parties will not be considered as a breach of staff obligations relating to disclosure of information.

## **10. RESPONSIBILITY**

10.1 The Director General, BPMSD, in coordination with the Head, OAI, will be responsible for the overall implementation of this AO. OAI will coordinate with BPMSD on including a section on the implementation of this AO in OAI's annual report.

## **11. EFFECTIVE DATE**

11.1 This AO is effective from 11 December 2009 with respect to reports made on or after this date.