

# ANTICORRUPTION POLICY: HARMONIZED DEFINITIONS OF CORRUPT AND FRAUDULENT PRACTICES

## I. INTRODUCTION

1. In July 1998, the anticorruption policy<sup>1</sup> of the Asian Development Bank (ADB) established, among others, that as an institution, ADB intended to reduce the burden that corruption exacts upon governments and economies in the Asia and Pacific region. In November 2004, ADB clarified that fraud and corruption under the anticorruption policy comprised corrupt, fraudulent, collusive, and coercive practices, and defined those terms.<sup>2</sup> In addition, ADB defined conflict of interest under the anticorruption policy.

2. In February 2006, the heads of the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank, Inter-American Development Bank, International Monetary Fund and the World Bank agreed, among others, on the need to standardize their definition of corruption and established a task force to develop a uniform framework for preventing and combating fraud and corruption. The task force has completed its work and has agreed in principle on standardized definitions of corrupt and fraudulent practices and principles and on guidelines to investigate such practices in activities financed by the task force's member institutions.

3. The World Bank's representatives told the task force that on 1 August 2006, the World Bank adopted the definitions agreed upon by the task force as part of a broad anticorruption sanctions reform package. The World Bank also adopted "interpretive guidelines" for the definitions.

## II. CURRENT CORRUPT AND FRAUDULENT PRACTICE DEFINITIONS

4. Recognizing that there is no universal or comprehensive definition of corrupt behavior, the ADB anticorruption policy defined corruption as "the abuse of public or private office for personal gain" and also included a more comprehensive definition.<sup>3</sup> In November 2004, to ensure that ADB could fulfill its responsibilities to ensure that all ADB-financed projects and its staff maintain the highest ethical standards, and following consultations with most of the international financial institutions listed in para. 2, the President recommended and the Board of Directors approved clarifications to the anticorruption policy.<sup>4</sup> These established that corrupt and fraudulent practices under the anticorruption policy comprise the following acts:

- (i) corrupt practice, which is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party;
- (ii) fraudulent practice, which is any action, including misrepresentation, to obtain a financial or other benefit or avoid an obligation by deception;
- (iii) coercive practice, which is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or persons closely related to a party, to improperly influence the actions of that party; and

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<sup>1</sup> ADB. 1998. *Anticorruption Policy*. Manila.

<sup>2</sup> ADB. 2004. *Anticorruption Policy: Proposed Clarifications and Related Changes to Consulting and Procurement Guidelines*. Manila.

<sup>3</sup> Footnote 1, para. 17.

<sup>4</sup> Footnote 2.

- (iv) collusive practice, which is an arrangement between two or more entities without the knowledge, but designed to improperly influence the actions, of another party.

The clarifications considered all existing references to corrupt and fraudulent practices in the context of the anticorruption policy, including references in ADB's ordinary and special operations loan regulations,<sup>5</sup> to comprise these four terms.

### **III. HARMONIZED CORRUPT AND FRAUDULENT PRACTICE DEFINITIONS**

5. To harmonize definitions among the international financial institutions participating in the task force, corrupt and fraudulent practices under the anticorruption policy shall now be defined as follows:

- (i) A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- (ii) 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.
- (iii) 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.
- (iv) 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.

6. ADB's definition of conflict of interest under the anticorruption policy will remain unchanged.

7. ADB is evaluating the interpretive guidelines that the World Bank has adopted and will further assess whether there is a need for such guidelines at ADB that would be consistent with ADB's anticorruption policy. Unlike ADB, the World Bank does not have a specific institutional anticorruption policy.

### **IV. AMENDMENTS TO CONSULTING SERVICES AND PROCUREMENT GUIDELINES AND LOAN REGULATIONS**

8. ADB's *Procurement Guidelines*<sup>6</sup> and *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers*<sup>7</sup> reflect ADB's definitions of corrupt and fraudulent practices. Adopting the revised definitions detailed in paragraph 5 will mean that those documents will have to be updated.

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<sup>5</sup> As established by ADB (footnote 1, para. 75), those regulations refer to "corrupt or fraudulent practices."

<sup>6</sup> ADB. 2006. *Procurement Guidelines*, Manila, Section 1.14.

<sup>7</sup> ADB. 2006. *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers*, Manila, Section 1.23.

## V. RECOMMENDATION

9. To harmonize ADB's definitions of fraud and corruption with those of other international financial institutions, the President recommends that the Board approve the definitions detailed in para. 5. As explained in para. 8, such definitions will be incorporated into ADB's *Procurement Guidelines* and *Guidelines on the Use of Consultants by the Asian Development Bank and Its Borrowers*.