



December 2019

Proposed Amendments to the Code of Conduct, Ethics Committee and Procedures, and Associated Guidelines for Directors, Alternate Directors, and the President of the Asian Development Bank

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Asian Development Bank

I. INTRODUCTION

1. The Code of Conduct for ADB Directors, Alternate Directors, and the President of the Asian Development Bank (“the Code of Conduct”) sets forth the principles and ethical standards applicable to Directors, Alternate Directors, and the President, and was adopted by the Board of Directors on 22 September 2006.¹ In addition to the Code of Conduct, the Board also adopted the Ethics Committee and Procedures, which describes the roles and responsibilities of the Ethics Committee and the procedures to be followed in implementing the code of conduct.²

2. In July 2018, the Board Effectiveness Working Group established a subgroup composed of Directors Ariffin (chair), Beluche, Panday, Song, and Syurkani, to determine the need to review and revise the Code of Conduct, the Ethics Committee and Procedures, and associated Guidelines.

II. PROPOSED AMENDMENTS

3. The subgroup met on five occasions from July 2018 to May 2019 to consider the Code of Conduct, the Ethics Committee and Procedures, and associated Guidelines, and identified possible revisions to bring the standards and procedures in line with best practice. The subgroup’s recommendations were presented to the Board Effectiveness Working Group and other directors at a coffee session on 7 October 2019, at which the Directors present expressed support for the subgroup’s recommendations. The final report of the subgroup is in Appendix 1.

4. Directors requested staff to prepare textual amendments to carry out the recommendations in the subgroup’s final report. Appendix 2 sets out the text of the Code of Conduct, Ethics Committee and Procedures, and associated Guidelines, as proposed to be amended. To assist the Board’s consideration, a redline version with explanatory notes showing words proposed to be added and deleted is in Appendix 3.

III. RECOMMENDATION

5. The President recommends that the Board of Directors approve the Amendments to the Code of Conduct, the Ethics Committee and Procedures, and Associated Guidelines as set forth in Appendix 2. Once approved, such amendments would take effect 30 days after the date of approval.

¹ ADB. 2006. *Code of Conduct and Ethics Committee and Procedures for Directors, Alternate Directors, and the President*. Manila (R184-06). On 22 June 2011, the Board approved an amendment to Paragraph 6(b) of the Code of Conduct.

² On 21 April 2008, the Board also approved four guidelines relating to the application of the obligations under the Code of Conduct. ADB. 2008. *Guidelines for Code of Conduct and Ethics Committee and Procedures for Directors, Alternate Directors, and the President*. Manila (R67-08).

FINAL REPORT OF THE SUBGROUP ON THE BOARD CODE OF CONDUCT (30 October 2019)

1. The Subgroup¹ was established by the Board Effectiveness Working Group (BEWG) to determine whether there is a need to review and revise the Code of Conduct for Directors, Alternate Directors and President of the Asian Development Bank (“Code of Conduct”), and to send its recommendations thereon to the BEWG. The Subgroup met 5 times between July 2018 and May 2019.²

2. The Subgroup has reviewed the substantive obligations and procedural rules set forth in the Code of Conduct and associated Guidelines and compared these against those of other international institutions. The Subgroup also reviewed the sufficiency of the Ethics Committee and Procedures (ECAP), which was adopted by the Board of Directors to “apply to ethics matters concerning Directors, Alternate Directors and Temporary Alternate Directors in respect of their duties as such in order to ensure sound governance pursuant to the Code of Conduct [...]”. The Subgroup considered that the ECAP should be read together with the Code of Conduct, and any review of the Code of Conduct necessitates a review of the ECAP.

Recommendations of the Subgroup

3. Following its review, the Subgroup considers that, while the Code of Conduct, ECAP and Guidelines are largely sufficient and fit for purpose, there are certain areas that may benefit from greater specificity or clarity in order to accord with best practice.

4. The Subgroup’s recommendations to the BEWG on potential areas for amendments are set forth in the Annex 1.

5. As part of its review, the Subgroup considered the appropriateness of extending the Board Code of Conduct to Director’s Advisors. After its deliberation, the Subgroup noted that under the terms of their appointment, Director’s Advisors are subject to the Code of Conduct applicable to ADB staff which is set forth in AO 2.02 (see, AO 2.13, para. 5.3), and there was no need to amend the coverage of the Board Code of Conduct.

¹ The Subgroup is composed of EDs Ariffin (Chair), Beluche, Panday, Song and Syurkani.

² The Subgroup met on 19 July 2018, 9 November 2018, 13 December 2018, 27 March 2019 and 17 May 2019.

Table A1: Subgroup Recommendations for Amendments

	Issue	Rationale	Recommendation	Comments
RECOMMENDATIONS RELATING TO THE BOARD CODE OF CONDUCT				
1.	<p>Duty to disclose financial or business interests</p>	<p>The Board Code of Conduct prohibits the holding of any financial interest in transactions of the ADB or projects or enterprises involving the ADB, except within certain limits. Footnote 6 states that, in the event that ADB provides for an annual financial disclosure requirement for its Vice Presidents and senior staff, the Ethics Committee will recommend to the Board of Directors suitable and simple procedures for annual financial disclosure by Directors, Alternate Directors and the President.</p> <p>There is not currently an annual financial disclosure requirement for Vice Presidents and senior staff, however all staff (including VPs and senior staff) are required to submit an “annual declaration of compliance” in which they must declare, <i>inter alia</i>, whether or not they, or their immediate family members, have any assets or interests that might reflect unfavorably on ADB or that might be in actual or apparent conflict with their duties as staff. The Ethics Committee has not, to date, established an equivalent program for Board members.</p> <p>The Subgroup considered that it was important to ensure that all Board members were under a positive obligation to report financial and business interests which may give rise to a risk of actual, potential or perceived conflicts of interests with their</p>	<p>Amend the Code of Conduct to introduce a requirement for Directors, Alternate Directors and President to complete a declaration of compliance.</p>	<p>By establishing a requirement to complete a declaration of compliance, Board members would have a responsibility similar to the obligations undertaken by Vice-Presidents and senior staff, in the context of the staff annual declaration of compliance.</p> <p>Such a declaration would serve as confirmation that the Director, Alternate Director or President does not have financial interests contrary to their obligations under the Board Code of Conduct, and if they do, they commit to seeking guidance thereon from the Ethics Committee (as contemplated under paragraph 6 of the Ethics Committee and Procedures).</p> <p>The Board could approve a Guideline to the Code of Conduct which provides further guidance on the procedures for obtaining this declaration.</p>

	Issue	Rationale	Recommendation	Comments
		ADB duties, so that such risks can be managed.		
2.	Elaborating on the standards of conduct relating to bullying and harassment	<p>Under the existing rules, Directors, Alternate Directors and the President are subject to the general requirement to treat their colleagues and staff with “courtesy and respect.”</p> <p>The Code of Conduct applicable to ADB staff, however, provides more detailed guidance on the type of behavior that is expected in the workplace, with detailed definitions of conduct that is deemed to be harassment and bullying.</p> <p>The Subgroup considers there is merit in ensuring a unified set of expectations of behavior that is applicable across the institution, amongst staff and the Board.</p>	Amend the Code of Conduct to incorporate the definition of harassment and bullying applicable to staff.	The detailed definitions would be copied verbatim from the Staff Code of Conduct, and could be set out in a footnote or Guideline to the Code of Conduct. These definitions were fully considered in the last update to the Staff Code of Conduct, and reflects best practice and appropriate standards for ADB.
3.	Duty to Report Misconduct	<p>The Board Code of Conduct does not create a duty for Board members to report their suspicions of misconduct by staff or Board members. By contrast, in the case of staff, they have a duty to report suspected misconduct.</p> <p>The Subgroup considered that Board members, as senior officials in the institutions, should be in a position to honor a similar duty to report in the event they become aware of suspected misconduct of staff or Board members.</p>	Amend the Code of Conduct to create a duty for Directors, Alternate Directors and the President to report any form of suspected misconduct by staff members or Board officials to the appropriate authorities.	In revising the relevant section of the Code of Conduct, there would be language to make clear that frivolous or knowingly false allegations may itself amount to misconduct.
4.	Elaborating on the prohibition against retaliation	The Board Code of Conduct does not explicitly prohibit retaliation against a person who provides information in good faith about suspected misconduct or participates in an ethics or internal dispute resolution process.	Amend the Code of Conduct to create an obligation to refrain from any form of retaliation.	The Subgroup noted that such a prohibition was an important means to safeguard the integrity of the ethics and dispute resolution procedures, by ensuring that complaints can be lodged, and investigations carried out without interference.

	Issue	Rationale	Recommendation	Comments
5.	No undue influence in procurement and personnel matters	<p>The current rule indirectly addresses this issue but does not expressly state that this obligation covers non-interference by Directors and Alternates in “procurement and personnel matters” (and is a question frequently raised by incoming Board members).</p> <p>At the time ADB’s Board Code of Conduct was adopted, the Board paper proposing the Code explained that the text of the existing provision (i.e. paragraph 3(a) of the Code) was added to address non-interference in “staffing and procurement matters”, and would bring the ADB’s Code “more closely into line with comparator organizations such as the World Bank”, thus demonstrating that the obligation under the Code of Conduct was intended to capture non-interference by Directors and Alternates in personnel and procurement matters.</p> <p>The Codes of Conduct of four other comparator organizations reviewed by the Subgroup (including the World Bank, upon whose Code ADB’s was modelled) have in place language which explicitly proscribe Board officials from exerting undue influence on management and staff on procurement and personnel matters.</p>	Amend the Code of Conduct to make this obligation explicit.	<p>The amendment would not introduce a new obligation on Directors and Alternates, but would make what is implicit and indirect, explicit and clear, helping to avoid confusion and uncertainty.</p> <p>The proposed amendment would not change the substance of the existing obligation and is not intended to impede Board members’ ordinary oversight functions.</p>
6.	Duty to notify if arrested	<p>The Subgroup noted that two comparator organizations (the World Bank and the AIB) had in place provisions by which Board officials must notify the Ethics Committee if s/he is arrested, charged, or convicted of criminal offences. There is no equivalent provision under the Board Code of Conduct.</p>	Amend the Code of Conduct to create a duty to inform the ADB in the event of an arrest, charge or conviction.	<p>Such a responsibility would be in place to allow the ADB to appropriately respond to any such incident.</p> <p>The requirement could be to notify the Chair of the Ethics Committee.</p>

	Issue	Rationale	Recommendation	Comments
		<p>The Subgroup debated the practicality and utility of such a provision, but concluded that, on balance, there is merit in ensuring that the institution is made aware of such occurrence, so that it is better placed to respond appropriately. Such a requirement would also help to mitigate practical, political or reputational risks resulting from such an event.</p>		
RECOMMENDATIONS RELATING TO THE ETHICS COMMITTEE AND PROCEDURES (ECAP), AND GUIDELINES				
7.	<p>Establishing a referral mechanism from the Office of Anticorruption and Integrity to the Ethics Committee</p>	<p>The existing rules provide that allegations must meet certain requirements with respect to its form and content (see, Guidelines on Form and Content of Allegations), and such allegations should be made in writing to the Chair of the Ethics Committee. The rules do not currently provide for staff to bring a complaint to the other mechanisms in the Bank with respect to possible bullying, harassment or retaliation by a Director, Alternate Director or the President. Under the relevant rules, the Ethics Committee is required to refer a matter to appropriate offices in the event it uncovers potential misconduct by a staff member of the ADB or potential fraud. There is not, however, an equivalent provision by which matters brought to the attention of the staff mechanism (e.g. OAI) may be referred to the Ethics Committee.</p>	<p>Amend the Ethics Committee and Procedures to provide for the Head, OAI to refer to the Ethics Committee a complaint received from ADB staff about workplace misconduct (i.e. bullying, harassment or retaliation) by a Director, Alternate Director, or President.</p> <p>Amend the Ethics Committee and Procedures to provide for the Ethics Committee to also consider matters referred by the Head, OAI who in the course of his/her work uncovers potential misconduct by a Director, Alternate Director or the President.</p>	
8.	<p>Updating References to the Office of the Auditor General</p>	<p>The existing provisions of Ethics Committee and Procedures and Guidelines provide for the Office of the Auditor General (OAG) to perform functions with</p>	<p>Amend the Ethics Committee and Procedures and Guidelines to update all</p>	<p>Such amendment would serve to update the Board rules to bring it in alignment with the transfer of functions from OAG and OAI.</p>

	Issue	Rationale	Recommendation	Comments
		<p>respect to an investigation, if requested. Since September 2009, however, OAG is no longer responsible for investigations of staff integrity and ethical complaints, and such responsibilities now lie with the Office of Anticorruption and Integrity (OAI).</p>	<p>references to replace OAG with OAI.</p>	
9.	<p>Role and responsibilities of the Ethics Committee in Misconduct Investigations</p>	<p>Under the existing rules, upon receiving an allegation of misconduct, the Ethics Committee must “review the allegations and determine whether they are credible and whether they are appropriate for consideration by the Board of Directors”, and a full investigation may only commence with the formal approval of the Board of Directors. In this way the entire Board is notified of the allegations before there has been a full investigation into a matter, which may have implications on the fairness of the process and the stated principles in the Code of Conduct by which subjects are entitled to a presumption of innocence and that confidentiality should be preserved.</p>	<p>Amend the Ethics Committee and Procedures to authorize the Ethics Committee to conduct a full investigation where it concludes that a complaint is sufficiently credible, verifiable and material, and the Board would only be seized of a matter when the Ethics Committee is prepared to recommend to the Board that the facts indicate that misconduct occurred.</p> <p>Amend the Ethics Committee and Procedures to specify the standards which will be applied by the Ethics Committee when it conducts a preliminary assessment of a complaint, in order to decide whether a full investigation is warranted. Instead of the present procedures where the Ethics Committee is tasked with determining whether a complaint is</p>	<p>The Subgroup considered that any process should be guided by the following principles: (i) the need to ensure a thorough and prompt investigation before misconduct is established; and (ii) the need to protect the due process rights of the subject and the complainant. The Subgroup noted that the current procedure, by which the full Board is informed of a complaint before there has been an investigation into the credibility of the complaint, may have negative implications for the due process and the privacy rights of both the complainant and the subject. The recommendations are aimed at achieving a balance between safeguarding the privacy rights of the complainants and the subject of the complaint and ensuring a fulsome and confidential investigation process.</p> <p>The proposal is that the Ethics Committee shall conduct a full investigation into allegations of misconduct without the need for Board approval, in the event that they conclude that a complaint is sufficiently credible, verifiable and material. The Subgroup members noted that, while an investigation is on-going, there is nothing that forestalls a subject from taking mitigating measures, and such efforts may be taken into account by the Ethics</p>

	Issue	Rationale	Recommendation	Comments
			“credible and appropriate” for Board consideration for a full investigation, the Ethics Committee will need to determine whether a complaint is sufficiently credible, verifiable and material such that it will proceed to initiate a full investigation. ^a	Committee in reaching its recommendations to the Board. The Subgroup members also took note that the Ethics Committee may seek the assistance of OAI or the General Counsel in an investigation. OAI, in particular, is equipped with the skills required for conducting an investigation of workplace misconduct. In this regard, the Ethics Committee would have access to such expertise that it considers may be necessary to conduct the investigation.

^a In this regard, consideration might be given to a standard that is applied in the staff context. Under AO 2.04, upon the receipt of a complaint of alleged misconduct by a staff member, a preliminary assessment is conducted to determine whether there is a legitimate basis to warrant an investigation. The complaint should have allegations or information that are: (a) within the investigator’s mandate; (b) credible, i.e. there is a reasonable possibility that misconduct occurred; (c) verifiable, i.e., practical options exist to obtain sufficient Evidence to determine the truth of the allegations on a balance of probabilities; (d) material, i.e., the matter is of sufficient importance to justify the projected requirements of the investigation and any remedial action; and (e) if applicable, other relevant considerations, e.g. whether the matter may be effectively addressed through other options. (AO 2.04, Appendix 2, section 7.4).

Source: Asian Development Bank.

PROPOSED AMENDMENTS TO THE BOARD CODE OF CONDUCT, ETHICS COMMITTEE AND PROCEDURES, AND ASSOCIATED GUIDELINES

I. CODE OF CONDUCT

This Code of Conduct has been adopted by the Board of Directors of the Asian Development Bank to set forth principles and ethical standards for the Directors, Alternate Directors and Temporary Alternate Directors, and the President in connection with, or having a bearing upon, their status and responsibilities in the Asian Development Bank. As the Directors, Alternate Directors and the President are entrusted with responsibilities as prescribed in the Charter, By-Laws, and related documents of the Asian Development Bank, their personal and professional conduct must comply with the standards and procedures set forth herein.

1. Definitions

For purposes of this Code of Conduct, the following terms shall have the meanings set forth below:

- (a) "ADB" shall refer to the Asian Development Bank.
- (b) "Alternate Directors" shall refer to both the Alternate Directors and the Temporary Alternate Directors of the Asian Development Bank, unless otherwise specified.
- (c) "Charter" shall refer to the Agreement Establishing the Asian Development Bank.
- (d) "Code" shall refer to this Code of Conduct.
- (e) "Immediate family members" means spouse plus dependents, where dependents shall have the same meaning for purposes of this Code as is used for purposes of benefits provided by ADB to the Directors and Alternate Directors, as such definition may be amended from time to time for the purpose of such benefits.
- (f) "Short-term trading" shall mean any combination of the buying and selling of securities within six months; and the buying and selling of a right or obligation to buy or sell securities shall be treated as buying or selling the securities.

2. Application

- (a) This Code, as amended, shall take effect 30 days after the date of approval of the amendments by the Board of Directors with respect to conduct arising or occurring on or after that date, and shall supersede the Code of Conduct adopted by the Board of Directors on 22 September 2006 and amended on 22 June 2011.

(b) The provisions set forth in this Code shall apply to all Directors, Alternate Directors, and to the President, as specified herein. The provisions shall apply to Temporary Alternate Directors only when they are acting in such capacity.

3. Basic Standard of Conduct

Directors, Alternate Directors and the President shall carry out their responsibilities as prescribed in the Charter, By-Laws, and related documents of ADB¹ to the best of their ability and judgment, and shall maintain the highest standards of integrity in their personal and professional conduct and observe principles of good governance. In this connection, the Directors, Alternate Directors and the President note certain relevant provisions of the Charter and, in particular, the requirement that the ADB, its President, Vice-Presidents, and staff members shall not interfere in the political affairs of any member country, nor be influenced in their decisions by the political character of the member country² concerned, and that only economic considerations shall be relevant to their decisions.³ In addition, the Directors note the requirement that all member countries respect the international character of the duty of the President, Vice-Presidents, and staff members to ADB and refrain from all attempts to influence them in the discharge of their duties.⁴ They also note the requirement under the By-Laws of the ADB that it is their duty to devote to the activities of ADB such time and attention as the interest of ADB may require.⁵

4. Conflicts of Interest

(a) In performing their duties, Directors, Alternate Directors and the President shall carry out their responsibilities to the exclusion of any personal advantage.

(b) Directors, Alternate Directors and the President shall endeavor to avoid any situation involving an actual conflict, or the appearance of a conflict, between their personal interests and the performance of their official duties. If an actual conflict arises, the Director, Alternate Director or President concerned shall promptly refer the matter in writing to the Chair of the Ethics Committee described in Paragraph 12 below and shall withdraw from attendance or participation in deliberations or decision-making connected with that matter. If an appearance of conflict arises, or if there is doubt whether a conflict, actual or apparent, exists, the Director, Alternate Director or President concerned shall promptly refer the matter in writing to the Chair of the Ethics Committee for guidance.

¹ For example, the Rules of Procedures of the Board of Directors.

² The term "country" as used in this Code refers to a member of ADB and does not imply any view on the part of ADB as to the member's sovereignty or independent status.

³ See Article 36(2) of the Charter.

⁴ See Article 36(3) of the Charter.

⁵ See By-Laws Section 7 (A) (a) and (b).

5. Personal Financial Affairs

(a) Except within the limits specified in this Paragraph, Directors, Alternate Directors and the President shall avoid having any financial interest in transactions of the ADB or in projects or enterprises involving the ADB. A Director, Alternate Director or the President may acquire for investment purposes and subsequently sell securities issued by ADB but shall not engage in short-term trading in such securities. A Director, Alternate Director or the President shall not use any information not generally available to the public to further their private interests or those of any other person or entity, including through the acquisition or sale of securities issued by the ADB or any other transaction. The provisions of this Paragraph shall apply also to the Directors', Alternate Directors', and President's immediate family members, but without prejudice to the application of ADB's spousal employment policies.

(b) Directors, Alternate Directors and the President shall complete a declaration of compliance with the foregoing provision.⁶

6. Future Employment

(a) When negotiating for, or entering into an arrangement concerning, prospective employment outside the ADB for themselves or for their immediate family members, Directors, Alternate Directors and the President shall not allow such circumstances to influence the performance of their duties.

(b) Directors and Alternate Directors shall not seek, apply for, or take up appointment as an ADB staff member, engagement as an ADB consultant, or any other work remunerated by ADB (except as a Director's Advisor), while serving as Directors or Alternate Directors, or within one year following the end of such service. The provisions of this Paragraph 6(b) shall not apply to Temporary Alternate Directors.

7. Disclosure of Information

(a) Directors, Alternate Directors and the President shall at all times observe the applicable policies of the ADB regarding disclosure of information.

(b) Directors, Alternate Directors and the President shall protect the security of any information obtained in the performance of their duties that is not otherwise available to the public and, except as required to perform their duties as Directors, Alternate Directors or President, shall not use such information or disclose it to others. The provisions of this Paragraph 7(b) shall continue to apply to Directors, Alternate Directors and President, without limitation, after their terms of service have expired.

(c) Directors and Alternate Directors shall make clear in what capacity they are speaking when issuing public statements relating to ADB. The President may speak on behalf of the Board

⁶ The declaration of compliance shall be in the form specified in the Guidelines on the Declaration of Compliance Relating to Financial Interests.

of Directors in the capacity as Chair of the Board; Directors or Alternate Directors may only speak on behalf of the Board of Directors with its agreement.

(d) The provisions of this Paragraph 7 shall not limit the provision of information by Directors and Alternate Directors to their sending authority(ies) and other members of their constituency(ies), as appropriate, as may be required in the course of carrying out their duties as Directors and Alternate Directors.

8. Gifts and Entertainment

In regard to acceptance of favors, gifts, and entertainment from persons having dealings with ADB, Directors, Alternate Directors and the President shall exercise tact and judgment to avoid the appearance of improper influence on the performance of their official duties. The ordinary courtesies of international business and diplomacy may be accepted, but gifts, favors, and entertainment, as well as loans and other services, shall not be accepted unless they are of insignificant monetary value. Any gift that is accepted on the basis of the Director's, Alternate Director's or President's judgment that refusal to accept would offend or embarrass the gift-giver or ADB shall be promptly turned over to ADB for charitable donation, display on the premises, or independent appraisal on the basis of which the Director, Alternate Director or President may be allowed to purchase the gift.⁷

9. Conduct Within the Institution – Courtesy and Respect and Performance of Official Functions

(a) Directors, Alternate Directors and the President shall treat their colleagues and staff with courtesy and respect, and avoid behavior that constitutes, or could be perceived to constitute, harassment or bullying.⁸

(b) Directors, Alternate Directors and the President shall exercise adequate control and supervision over matters for which they are individually responsible and the resources for which they are entrusted, and shall know and observe the budgetary standards and restrictions regarding their offices. Directors, Alternate Directors and the President shall ensure that property and services of ADB are used by themselves and persons in their offices only for the official business of ADB.

(c) Directors and Alternates may take appropriate action at the ADB, in the interests of their respective constituencies, provided that such measures are consistent with the rules and procedures of the ADB. Whether taking such actions or otherwise, they shall not attempt to exert undue influence on the President, Vice-President(s), officers and staff with respect to: (i) the awarding of contracts for the procurement of works, goods and services; (ii) the investigation and resolution of any dispute or allegations dealt with in accordance with the applicable policies and procedures of the ADB, including in procurement matters; and (iii) the appointment, compensation, and termination of staff members of the ADB.

⁷ See Guidelines on Gifts and Entertainment for guidance on the application of this provision.

⁸ See Guidelines on the Prohibition of Harassment and Bullying for guidance on the definition of these terms.

10. Duty to Report Misconduct and Prohibition of Retaliation

(a) Directors, Alternate Directors and the President have a duty to report any form of suspected misconduct of which they become aware, to the appropriate person for investigation.⁹ Frivolous or knowingly false allegations made by a Director, an Alternate Director or the President shall be considered a violation of this Code.

(b) Directors, Alternate Directors and the President shall refrain from any form of retaliation, i.e., any detrimental act, direct or indirect, recommended or threatened, against an individual for using any channels available to report suspected misconduct or to raise ethical concerns, for participating as a witness in an ethics matter, or for taking part in an internal dispute resolution proceedings.

11. Compliance with Local Laws

(a) Directors, Alternate Directors and the President shall observe the laws of each jurisdiction in which they are present pursuant to their duties so as not to be perceived as abusing the privileges and immunities conferred upon ADB and upon them. This provision does not abrogate or waive any diplomatic immunities which may be held by Directors, Alternate Directors and the President.

(b) Directors, Alternate Directors and the President shall inform the Chair of the Ethics Committee in the event, while holding office, they are arrested, charged or convicted of a criminal offense, other than minor violations.

12. Ethics Committee

As soon as possible after this Code has taken effect, the Board of Directors shall establish an Ethics Committee to assist it to address matters relating to the application of this Code, as requested by the Board of Directors or as required under this Code or the Ethics Committee and Procedures. The Board of Directors shall adopt procedures for use by the Ethics Committee. Members of the Ethics Committee shall not be subject to direction, shall respect the confidentiality of its proceedings,¹⁰ and shall seek to establish the facts and exercise informed balanced judgment in their consideration of matters dealt with by the Ethics Committee.

⁹ Any allegations relating to the conduct of a Director, Alternate Director or the President should be reported to the Chair of the Ethics Committee of the Board in accordance with the procedures set forth in this Code. Suspected integrity violations (including retaliation) by staff, contractors or consultants should be reported to the Office of Anticorruption and Integrity (OAI). All other forms of suspected misconduct by staff, including harassment, and bullying should be reported to the Office of Professional Conduct.

¹⁰ Amongst other things, members of the Ethics Committee shall establish arrangements within their own constituency offices to ensure that papers relating to the Committee's work are securely handled and stored so as to protect the confidentiality of this work and ensure the privacy of the President, individual Directors or Alternate Directors who may have dealings with the Committee.

II. ETHICS COMMITTEE AND PROCEDURES

On 22 September 2006, the Board of Directors of the Asian Development Bank (“ADB”) established a committee to address ethics matters (the “Ethics Committee”) and adopted the following procedures to take effect 60 days after date of adoption by the Board of Directors. These procedures were amended by the Board of Directors on [*insert date of Board decision*], and such amendments are to take effect 30 days after the date of approval. These procedures shall apply to ethics matters concerning Directors, Alternate Directors, and Temporary Alternate Directors in respect of their duties as such in order to ensure sound governance pursuant to the Code of Conduct for Directors, Alternate Directors, and the President of the Asian Development Bank. The provisions herein also apply to the President, where applicable, both in the capacity as Chair of the Board and as President.¹

1. Scope of Responsibility

The Ethics Committee shall consider:

- (a) requests from Directors, Alternate Directors or the President for guidance concerning possible actual or potential conflicts of interest, or other ethical aspects of conduct in respect of Directors, Alternate Directors or the President, and provide advice in response thereto; and
- (b) allegations of misconduct against Directors, Alternate Directors or the President that relate to the performance of official duties or actions that affect their performance of official duties, whether such actions are taken prior to, during, or, with respect to any applicable restrictions on future employment or disclosure of information, subsequent to their terms of service as Directors, Alternate Directors or President, and make recommendations to the Board of Directors with respect thereto.

2. Composition and Appointments

- (a) The Ethics Committee shall consist of five Directors and/or Alternate Directors (“Committee Members”). In appointing Committee Members and Chair, the President will seek to ascertain and abide by the consensus of the Board of Directors. In the event that consensus cannot be established in a timely way, the President will appoint the Committee Members and/or Chair having regard to the views of the Board of Directors. Efforts shall be made to have the membership of the Ethics Committee reflect the economic, cultural and geographic diversity of the member countries of ADB.
- (b) Committee Members ordinarily shall be appointed for two-year terms following each regular election of Directors. If any Committee Member shall resign mid-term, a new Committee Member

¹ The definition of terms as set forth in the Code of Conduct for Members of the Board of Directors, as such Code may be amended from time to time, shall also apply wherever the same terms are used in these procedures.

shall be appointed in accordance with the appointment procedures provided for under Paragraph 2(a) above, to complete the remainder of the term.

3. Counsel to the Ethics Committee

The General Counsel shall act as Counsel to the Ethics Committee, and shall be available to give advice to the Ethics Committee and to Directors, Alternate Directors or the President, at their request. In order to preserve confidentiality, the General Counsel shall establish procedures to ensure that any documents or other material relating to the work of the Ethics Committee are securely handled and held within the Office of the General Counsel. Secure procedures shall also be adopted if documents are distributed beyond that Office. Access to such documents, other materials and any associated information shall be limited to the General Counsel and those few individuals whom the General Counsel designates as having a need to be involved with the issue. The privacy of individuals and the presumption of innocence shall be respected at all times.

4. Secretary to the Ethics Committee

The Secretary shall act as Secretary of the Ethics Committee. In order to preserve confidentiality, the Secretary shall establish procedures to ensure that any documents or other material relating to the work of the Ethics Committee are securely handled and held within the Office of the Secretary. Secure procedures shall also be adopted if documents are distributed beyond that Office. Access to such documents, other materials and any associated information shall be limited to the Secretary and those few individuals whom the Secretary designates as having a need to be involved with the issue. The privacy of individuals and the presumption of innocence shall be respected at all times.

5. General Rules of Procedure of the Ethics Committee

(a) The quorum for a meeting shall be five Committee Members. The Chair shall seek to schedule meetings of the Committee to enable all members to attend, consistent also with ensuring that matters before the Committee are dealt with in timely fashion. Every effort shall be made to conduct meetings with all Committee Members physically present. However, in exceptional circumstances, Committee Members may attend by telephone or videoconference, subject also to the consent of any Director, Alternate Director or President who may be the subject of an agenda item for the meeting. If, nonetheless, a Committee Member cannot attend for any reason, another Director or Alternate Director will be designated to act in the place of the absent Committee Member² in accordance with the appointment procedures provided for under Paragraph 2(a), and taking into consideration the economic, cultural and geographic diversity of the member countries of ADB.

² In the event that a matter pending before the Ethics Committee involves the President, and an absent Committee Member must be replaced, Article 35 of the Charter shall apply.

- (b) Decisions of the Ethics Committee shall be taken by simple majority. If a decision is not unanimous the view(s) of the minority are also to be recorded in any report prepared for the Board of Directors.
- (c) Where a matter pending before the Ethics Committee involves the President, or a Committee Member or an Alternate Director or Temporary Alternate Director in his or her office, the President or Committee Member shall not be eligible to attend or participate in any deliberations or decision-making regarding such matter.
- (d) In the interests of preserving confidentiality, attendance at meetings of the Ethics Committee shall be restricted to Committee Members. The Counsel to the Ethics Committee, the Secretary to the Ethics Committee, and other individuals whose attendance is specifically authorized by the Ethics Committee, may also attend when requested by the Committee. Documents circulated for the consideration of the Ethics Committee shall be distributed only to the Committee Members. They may also be circulated to the Counsel, the Secretary and others, if specifically authorized by the Chair of the Ethics Committee, after consultation with and subject to the guidance of Committee Members.
- (e) In the interests of preserving confidentiality, the Board of Directors shall receive the reports of the Ethics Committee and conduct all deliberations or decision-making under these procedures in Restricted Executive Sessions of the Board of Directors consisting exclusively of Directors (or the Alternate of a Director who is unable to attend) and chaired by the Chair of the Board of Directors.³
- (f) Without prejudice to Paragraph 7(g) of these procedures, where a matter pending before the Board of Directors pursuant to these procedures involves a Director or his or her Alternate Director, the Director and Alternate Director shall be eligible to attend in order to present his/her views regarding an allegation against them but shall not participate in deliberations, or decision making regarding such allegations.
- (g) In proceedings pursuant to these procedures, the Ethics Committee, the Board of Directors and, to the extent required for an investigation pursuant to Paragraph 7(e), the Head of the Office of Anticorruption and Integrity (OAI) or the General Counsel, shall at all times follow a fair process. If asked to conduct an investigation, the General Counsel will establish appropriate arrangements within the Office to ensure that the investigation is conducted independently, including by assigning different legal counsel to this task than those who assist the General Counsel to act as Counsel to the Ethics Committee.
- (h) The Ethics Committee, the Head, OAI or the General Counsel, to the extent necessary to conduct an investigation pursuant to Paragraph 7(e), and only to that extent, shall have access to Directors, Alternate Directors, the President, Vice-Presidents and staff members and to pertinent records, emails and documents. In the course of such investigation the Ethics Committee, the Head, OAI or the General Counsel shall not have access to communications between a Director or Alternate Director concerned and his/her sending authority(ies) except with the latter's consent.⁴

³ In the event that a matter under consideration involves the President, the President shall not attend, and Article 35 of the Charter shall apply.

⁴ See Guidelines on Access During Investigations to Records, Emails and Documents.

6. Procedures for Handling Requests for Guidance

- (a) A Director, Alternate Director or the President shall submit a written request for guidance concerning possible actual or potential, conflicts of interest, or other ethical aspects of conduct in respect of his or her personal situation to the Chair for consideration by the Ethics Committee in accordance with the procedures set forth in this Paragraph 6.
- (b) The Ethics Committee shall review the request. Counsel to the Ethics Committee shall be available to assist with this review, if necessary. The Ethics Committee may at any time request further information from the individual who submitted the request for guidance.
- (c) The Ethics Committee shall provide in writing its advice in response to each individual who has submitted a request for guidance. The Ethics Committee may communicate such advice to other Directors, Alternate Directors and the President, subject to consultation with the individual and in a manner that ensures the privacy of the individual concerned.
- (d) An individual who is not satisfied with the advice received from the Ethics Committee in response to a request for guidance may request reconsideration by the Ethics Committee, and if dissatisfied with the Ethics Committee's reconsideration, may request a review by the Board of Directors.

7. Procedures for Handling Allegations of Misconduct

- (a) If an individual wishes to make an allegation of misconduct against a Director, Alternate Director or the President, he/she shall submit such allegation in writing and in confidence to the Chair of the Ethics Committee who shall bring any such allegation to the attention of the Ethics Committee for its consideration in accordance with the procedures set forth in this Paragraph 7.⁵ In such a case, the Directors, Alternate Directors or the President concerned shall be presumed not to have engaged in misconduct until such time as the Board of Directors decides under Paragraph 7(f) that there is sufficient evidence to establish, on a balance of probabilities, that the alleged misconduct did occur.
- (b) Where the Office of Professional Conduct (OPC) or the Office of Anticorruption and Integrity (OAI) receives an allegation that a Director, Alternate Director or the President engaged in bullying, harassment or retaliation, such office shall transmit such allegations without delay to the Ethics Committee to be handled in accordance with these procedures.
- (c) The Ethics Committee shall consider any matter referred to it by the Head, OAI, or Director, OPC who in the course of his/her work uncovers potential misconduct of a Director, Alternate Director, or the President.
- (d) As soon as is practicable, the Ethics Committee shall review the allegations and conduct a preliminary assessment to determine whether there is a legitimate basis to warrant an investigation. In this regard, the Ethics Committee will assess whether the allegations are: (i) within the Ethics Committee's mandate; (ii) credible, i.e., there is a reasonable possibility that

⁵ See Guidelines on Form and Content of Allegations.

misconduct occurred; (iii) verifiable, i.e., practical options exist to obtain sufficient evidence to determine the truth of the allegations on a balance of probabilities; and (iv) material, i.e., the matter is of sufficient importance to justify the projected requirements of the investigation and any remedial action. Counsel to the Ethics Committee shall be available to assist with this review.

(e) If the Ethics Committee concludes that the allegations do not give rise to a legitimate basis to warrant an investigation following the preliminary assessment conducted under Paragraph 7(d), the Ethics Committee may decide to take no further action. If the allegations do give rise to a legitimate basis to warrant an investigation, the Ethics Committee shall initiate an investigation as soon as is practicable. The Committee may request the Head, OAI or the General Counsel to assist in the investigation. If so requested, the Head, OAI⁶ or General Counsel shall conduct an investigation and shall submit a report on such investigation to the Ethics Committee, with a recommendation whether the facts indicate that misconduct occurred, and if so, what measures may be appropriately imposed.

(f) As soon as is practicable, based on the findings of the investigation, the Ethics Committee shall make a recommendation to the Board of Directors whether the facts indicate that misconduct occurred, and if so, what measures may be appropriately imposed. The Board of Directors shall take a final decision based on the findings and recommendations of the Ethics Committee and, if applicable, the Head, OAI or the General Counsel. In cases of misconduct by a Director, appropriate measures may include issuance of a written censure or other action by the Board of Directors and, if the circumstances warrant it, provision of notice of such censure or other action to the Governor(s) of the member country⁷ (or countries) that appointed or elected the Director. In cases of misconduct by an Alternate Director or a Temporary Alternate Director, appropriate measures may include censure by the Board of Directors and recommendation of other appropriate action to be taken by the Director who appointed him or her. In cases of misconduct by the President, the Board of Directors may recommend appropriate measures to the Board of Governors that may include censure and other appropriate action by the Board of Governors.

(g) Each Director, Alternate Director or the President, if alleged to have committed misconduct, shall be provided with timely notice of the allegations, all relevant documentation and the opportunity to present his or her views regarding the allegations (i) to the Ethics Committee in the context of its preliminary assessment under Paragraph 7(d); and (ii) to the Ethics Committee before it recommends, and to the Board of Directors before it makes any recommendations or decisions on whether the facts indicate that misconduct occurred, and if so, what measures may be appropriately imposed. In exceptional cases⁸, the Ethics Committee shall permit the individual who is alleged to have committed misconduct to be accompanied by an advisor from within or outside of ADB. In other cases, the Ethics Committee, having regard to the particular circumstances of the case, may permit such accompaniment by an advisor.

⁶ If asked to conduct an investigation, the Head, OAI shall establish arrangements within his/her office to protect the confidentiality of this work.

⁷ The term "country" as used in this Code refers to a member of ADB and does not imply any view on the part of ADB as to the member's sovereignty or independent status.

⁸ The Ethics Committee shall decide what are exceptional cases, taking into consideration all the circumstances including the gravity of the allegations. For example, an exceptional case might involve an allegation that the individual concerned had committed what would normally be considered under the laws of member countries to be a serious crime, punishable by imprisonment of more than one year.

(h) If the Ethics Committee in the course of its work uncovers potential misconduct by a staff member of ADB, or potential fraud or corruption by a contractor or consultant in a project financed or executed by ADB, it shall refer the matter to the Head, OAI.

(i) Any staff member who makes frivolous or knowingly false allegations against a Director, Alternate Director or the President shall be subject to disciplinary procedures in accordance with Administrative Order No. 2.04. Frivolous or knowingly false allegations made by the President, a Director or an Alternate Director shall be considered a violation of the Code of Conduct and will be subject to the procedures of this Code.

III. GUIDELINES ON THE APPLICATION OF THE CODE OF CONDUCT

A. Guidelines on Gifts and Entertainment

1. The following Guidelines are established for the interpretation and application of Paragraph 8 of the Code of Conduct "Gifts and Entertainment".

2. Any person covered by the Code of Conduct may accept the ordinary courtesies of international business and diplomacy, but shall not accept any favors, gifts, entertainment, loans or other services from persons having dealings with ADB unless they are of insignificant monetary value. Ordinary courtesies of international business and diplomacy include meals sponsored by the hosts and inexpensive memorabilia that they may give to guests to commemorate their visit.

3. When a person who is covered by the Code of Conduct accepts a gift that is of significant monetary value because refusal to accept it would offend or embarrass the gift-giver or ADB, he or she shall submit the gift to the Director, Facilities and Asset Management Division, Office of Administrative Services (OAFSA), with an accompanying memorandum setting out the circumstances in which the gift was received. The Director, OAFSA shall determine the value of the gift, and shall return it to the person concerned if its value is US\$50 or less. In such a case the person concerned may either keep the gift or submit it to Director, OAFSA for charitable donation.

4. If the Director, OAFSA determines that the value of the gift is more than US\$50, the person concerned may purchase the gift by paying ADB an amount equivalent to the assessed value of the gift. If the person concerned does not wish to purchase the gift, ADB will either sell it and donate the proceeds to charity, or retain it for display on the premises.

B. Guidelines on Access during Investigations to Records, Emails and Documents

1. These Guidelines are established for the interpretation of Paragraph 5(h) of the Ethics Committee and Procedures ("ECAP"), which provides that the *"[t]he Ethics Committee, the Head, OAI or the General Counsel, to the extent necessary to conduct an investigation pursuant to Paragraph 7(e) of the ECAP, shall have access to Directors, Alternate Directors, the President, Vice-Presidents and staff members and to pertinent records, emails and documents. In the course*

of such investigation the Ethics Committee, Head, OAI or the General Counsel (the "Investigators") shall not have access to communications between a Director or Alternate Director concerned and his/her sending authority(ies) except with the latter's consent."

2. Investigations under Paragraph 7(e) of the ECAP of allegations of misconduct against a Director, Alternate Director or the President shall be carried out with paramount consideration being given to safeguarding the rights of the subject of the inquiry, and to protecting the confidentiality of the investigation. Any investigation shall also be conducted as discreetly as possible with a view to protecting the reputation of the subject of the investigation and of any other person who may be involved, and avoiding any unreasonable intrusions into the personal privacy of the subject of the investigation. If the Ethics Committee requests the Head, OAI or the General Counsel to assist in the investigation, the Ethics Committee shall approve the terms of reference for such assistance (the "terms of reference"). The terms of reference may be amended during the course of the investigation with the approval of the Ethics Committee.

3. Such investigations shall include collection and analysis of all evidence, both in support of, and refuting, allegations that the subject of the investigation has engaged in misconduct ("allegations"). In this context, Investigators may access only the records, emails and/or documents of the subject of the investigation, and of other concerned persons, that are relevant to the investigation.

4. When conducting an investigation under Paragraph 7(e) of the ECAP of allegations of misconduct against a Director, Alternate Director or the President, the Investigators shall have full and unrestricted access to information and records concerning all ADB activities, ADB personnel, and physical property of ADB. They shall be authorized to

- (a) examine any and all ADB files, records including records of telephone calls, books, data, papers, and any other materials whatsoever related to ADB's business if such documents and materials are relevant to the allegation and may help support or refute such allegations; and
- (b) take temporary physical possession of any material referred to above, against written receipt if requested, and make copies for his/her own official use.

5. The Investigators and Ethics Committee Members shall hold any information, knowledge, and material that they acquire in the course of discharging their duties in confidence so that the privacy of the subject of the investigation is protected to the fullest extent possible.

6. The subject of the investigation may request the Chair of the Ethics Committee to require concerned persons to produce specific records, emails and/or documents that he or she considers are relevant to the allegations. If the Chair of the Ethics Committee is satisfied that such records, emails and/or documents are relevant to the allegations, he or she shall require persons concerned to provide copies of them to the subject of the investigation, who shall hold such documents in confidence.

7. The Investigators shall not have access to the e-mail box of a Director, Alternate Director or the President unless access to the e-mail box has been specifically authorized in the terms of reference approve by the Ethics Committee under Paragraph 2 above. Any such authorization must be based on sufficient justification.

8. Notwithstanding the above, the Investigators shall not have access to any communications between a Director or Alternate Director and the governmental authorities (political and administrative) that they represent, except with the latter's consent.

C. Guidelines on Form and Content of Allegations

1. These Guidelines are established under Paragraph 7(a) of the Ethics Committee and Procedures ("ECAP") to provide for the appropriate form and content of any documentation regarding allegations of misconduct against Directors, Alternate Directors or the President in relation to the performance of official duties or actions that affect their performance of official duties⁹ ("allegations").

2. Any person may submit an allegation in good faith against a Director, Alternate Director or the President.

3. Staff members who make frivolous or knowingly false allegations shall be subject to disciplinary procedures under Administrative Order No. 2.04. Any such allegations made by a Director, Alternate Director or the President shall be considered a violation of the Code of Conduct and shall be subject to the procedures of the Code.¹⁰ In the event that persons other than staff members make frivolous or knowingly false allegations, the President shall decide, in consultation with the Ethics Committee and the person/s against whom such allegations have been made, on appropriate measures that may include legal action.

4. Allegations must be addressed to the Chair of the Ethics Committee, in writing, and signed. The name of the signatory must be clearly stated, together with his/her personal and official status. No anonymous allegations shall be accepted.

5. Persons making allegations must state their allegations concisely, and summarize all relevant evidence available to them, including the names and contact information, if possible, of any witnesses that can corroborate evidence supporting the allegations.

6. If there is documentary evidence to support the allegations, such evidence must be attached to the allegations as annexes. If the original documents are not in English, they must be accompanied by translations into English, with the accuracy of the translations certified to by the translator concerned. Where only part of a document is relevant to the allegation, only the relevant part need be annexed.

7. The person making the allegation must submit four copies, including annexes, in addition to the original.

⁹ Such actions may have been taken prior to, during, or, with respect to any applicable restrictions on future employment or disclosure of information, subsequent to, their term of service as Director, Alternate Director or President (see Paragraph 1(b) of the ECAP).

¹⁰ Paragraph 10(a) of the Code of Conduct.

D. Guidelines on the Declaration of Compliance Relating to Financial Interests

1. These Guidelines are established to provide procedures for the completion of a declaration of compliance by Directors, Alternate Directors and the President as required by Paragraph 5(b) of the Code of Conduct.

2. Within 30 days of assumption of office, and in accordance with any additional schedule the Ethics Committee may determine, Directors, Alternate Directors, and the President, will file with the Secretary of the Ethics Committee the following declaration:

“(i) I declare that I have read the Code of Conduct for Directors, Alternate Directors, and President of the Asian Development Bank, and in particular Paragraph 5 thereof, and certify that:

Neither I, nor my immediate family members, hold any financial interests in transactions of the ADB or in projects or enterprises involving the ADB.

OR

I, and/or my immediate family members, have financial interests in transactions of the ADB or in projects or enterprises involving the ADB. I will disclose these to the Ethics Committee and seek guidance thereon.

(ii) I acknowledge that while I may hold ADB-issued securities for investment purposes, I shall refrain from any short-term trading in such securities. (*“Short-term trading” is defined in Paragraph 1(f) of the Code of Conduct*)

(iii) I declare that I will not use any information not generally available to the public to further my or another’s private interest, including through the acquisition or sale of securities issued by the ADB or any other transaction.

(iv) I shall promptly seek the Ethics Committee’s guidance, in accordance with the procedures set forth in Paragraph 6(a) of the Ethics Committee and Procedures, in the event that I, or my immediate family members, have, or plan to undertake, any financial dealings which may be in conflict (either actual, potential or perceived) with my obligations under the Board Code of Conduct.”

3. Directors, Alternate Directors and the President shall update this declaration as may be necessary if there is a change in circumstances.

4. The Ethics Committee shall oversee and administer the Declaration of Compliance exercise, with the assistance of The Secretary, and shall be authorized to amend this Guideline from time to time.

E. Guidelines on the Prohibition of Harassment and Bullying

1. These Guidelines elaborate on the meaning of harassment and bullying under Paragraph 9(a) of the Code of Conduct.

2. To ensure a unified set of expectations of behavior that is applicable across ADB, the definitions of bullying and harassment applicable to the Board shall be harmonized with that which is applicable under the Staff Code of Conduct. Accordingly, for the purposes of the Board Code of Conduct, the following definitions apply:

(a) “Bullying” is a form of Harassment consisting of repeated or persistent aggression or other malicious behavior in any form by one or more persons which has the effect of humiliating, belittling, offending, intimidating or discriminating against another person. It may include persistent, unwarranted or unconstructive criticism, personal abuse and/or ridicule, either in public or private, which humiliates or demeans the individual targeted, gradually eroding his or her self-confidence or intending to do so. Criticism, disapproval, negative performance assessment and similar appraisal, appropriately conveyed, do not, by themselves, constitute bullying or harassment.

(b) “Harassment” is any unwarranted or unwelcome behavior, verbal, psychological or physical, that interferes with work or creates an intimidating, hostile or offensive work environment. Harassment includes but is not limited to sexual harassment and bullying. Sexual harassment is any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature which results in physical, sexual or psychological harm or suffering to another person, or which is made or suggested to be a condition of employment, promotion or other personnel action or creates an intimidating, hostile or offensive environment.

3. The Ethics Committee shall be authorized to amend these Guidelines in order to ensure appropriate alignment with the relevant definitions under the Staff Code of Conduct.

PROPOSED AMENDMENTS TO THE BOARD CODE OF CONDUCT, ETHICS COMMITTEE AND PROCEDURES, AND ASSOCIATED GUIDELINES

(Redline Version with Explanatory Notes)

I. CODE OF CONDUCT

This Code of Conduct has been adopted by the Board of Directors of the Asian Development Bank to set forth principles and ethical standards for the Directors, Alternate Directors and Temporary Alternate Directors, and the President in connection with, or having a bearing upon, their status and responsibilities in the Asian Development Bank. As the Directors, Alternate Directors and the President are entrusted with responsibilities as prescribed in the Charter, By-Laws, and related documents of the Asian Development Bank, their personal and professional conduct must comply with the standards and procedures set forth herein.

1. Definitions

For purposes of this Code of Conduct, the following terms shall have the meanings set forth below:

- (a) "ADB" shall refer to the Asian Development Bank.
- (b) "Alternate Directors" shall refer to both the Alternate Directors and the Temporary Alternate Directors of the Asian Development Bank, unless otherwise specified.
- (c) "Charter" shall refer to the Agreement Establishing the Asian Development Bank.
- (d) "Code" shall refer to this Code of Conduct.
- (e) "Immediate family members" means spouse plus depend~~ae~~nts, where depend~~ae~~nts shall have the same meaning for purposes of this Code as is used for purposes of benefits provided by ADB to the Directors and Alternate Directors, as such definition may be amended from time to time for the purpose of such benefits.
- (f) "Short-term trading" shall mean any combination of the buying and selling of securities within six months; and the buying and selling of a right or obligation to buy or sell securities shall be treated as buying or selling the securities.

2. Application

- (a) This Code, ~~as amended~~, shall take effect ~~30~~ 60 days after ~~the~~ date of ~~approval of the amendments by the adoption~~ of Board of Directors with respect to conduct arising or occurring on or after that date, and shall supersede the Code of Conduct adopted by the Board of Directors on ~~19 April 2004~~ 22 September 2006 and amended on 22 June 2011.

(b) The provisions set forth in this Code shall apply to all Directors, Alternate Directors, and to the President, as specified herein. The provisions shall apply to Temporary Alternate Directors only when they are acting in such capacity.

3. Basic Standard of Conduct

~~(a)~~—Directors, Alternate Directors and the President shall carry out their responsibilities as prescribed in the Charter, By-Laws, and related documents of ADB¹ to the best of their ability and judgment, and shall maintain the highest standards of integrity in their personal and professional conduct and observe principles of good governance. In this connection, the Directors, Alternate Directors and the President note certain relevant provisions of the Charter and, in particular, the requirement that the ADB, its President, Vice-Presidents, and staff members shall not interfere in the political affairs of any member country, nor be influenced in their decisions by the political character of the member country² concerned, and that only economic considerations shall be relevant to their decisions.³ In addition, the Directors note the requirement that all member countries respect the international character of the duty of the President, Vice-Presidents, and staff members to ADB and refrain from all attempts to influence them in the discharge of their duties.⁴ They also note the requirement under the By-Laws of the ADB that it is their duty to devote to the activities of ADB such time and attention as the interest of ADB may require.⁵

~~(b)~~—~~Directors, Alternate Directors and the President shall observe the laws of each jurisdiction in which they are present pursuant to their duties so as not to be perceived as abusing the privileges and immunities conferred upon ADB and upon them. This provision does not abrogate or waive any diplomatic immunities which may be held by Directors, Alternate Directors and the President.~~

Note: The text of Paragraph 3(b) has been relocated to Paragraph 11 below.

4. Conflicts of Interest

(a) In performing their duties, Directors, Alternate Directors and the President shall carry out their responsibilities to the exclusion of any personal advantage.

(b) Directors, Alternate Directors and the President shall endeavor to avoid any situation involving an actual conflict, or the appearance of a conflict, between their personal interests and the performance of their official duties. If an actual conflict arises, the Director, Alternate Director or President concerned shall promptly refer the matter in writing to the Chair of the Ethics Committee described in ~~Section-Paragraph 120~~ below and shall withdraw from attendance or participation in deliberations or decision-making connected with that matter. If an appearance of conflict arises, or if there is doubt whether a conflict, actual or apparent, exists, the Director,

¹ For example, the Rules of Procedures of the Board of Directors.

² The term “country” as used in this Code refers to a member of ADB and does not imply any view on the part of ADB as to the member’s sovereignty or independent status.

³ See Article 36(2) of the Charter.

⁴ See Article 36(3) of the Charter.

⁵ See By-Laws Section 7 (A) (a) and (b).

Alternate Director or President concerned shall promptly refer the matter in writing to the Chair of the Ethics Committee for guidance.

5. Personal Financial Affairs

(a) Except within the limits specified in this Paragraph, Directors, Alternate Directors and the President shall avoid having any financial interest in transactions of the ADB or in projects or enterprises involving the ADB.⁶ A Director, Alternate Director or the President may acquire for investment purposes and subsequently sell securities issued by ADB but shall not engage in short-term trading in such securities. A Director, Alternate Director or the President shall not use any information not generally available to the public to further their private interests or those of any other person or entity, including through the acquisition or sale of securities issued by the ADB or any other transaction. The provisions of this Paragraph shall apply also to the Directors', Alternate Directors', and President's immediate family members, but without prejudice to the application of ADB's spousal employment policies.

(b) Directors, Alternate Directors and the President shall complete a declaration of compliance with the foregoing provision.⁶

Note: Proposed new text gives effect to the Subgroup's recommendation to introduce a requirement for Directors, Alternate Directors and the President to complete a declaration of compliance. Footnote 6 has been amended to reflect this new obligation and to provide for a Guideline to be established on the procedures for this declaration. (See Recommendation 1 of Subgroup's report)

6. Future Employment

(a) When negotiating for, or entering into an arrangement concerning, prospective employment outside the ADB for themselves or for their immediate family members, Directors, Alternate Directors and the President shall not allow such circumstances to influence the performance of their duties.

(b) Directors and Alternate Directors shall not seek, apply for, or take up appointment as an ADB staff member, engagement as an ADB consultant, or any other work remunerated by ADB (except as a Director's Advisor), while serving as Directors or Alternate Directors, or within one year following the end of such service. The provisions of this Paragraph 6(b) shall not apply to Temporary Alternate Directors.

7. Disclosure of Information

(a) Directors, Alternate Directors and the President shall at all times observe the applicable policies of the ADB regarding disclosure of information.

⁶ ~~In the event that ADB provides for an annual financial disclosure requirement for its Vice Presidents and senior staff members, the Ethics Committee will recommend to the Board of Directors suitable and simple procedures for annual financial disclosure by Directors, Alternate Directors and the President. The declaration of compliance shall be in the form specified in the Guidelines on the Declaration of Compliance Relating to Financial Interests.~~

(b) Directors, Alternate Directors and the President shall protect the security of any information obtained in the performance of their duties that is not otherwise available to the public and, except as required to perform their duties as Directors, Alternate Directors or President, shall not use such information or disclose it to others. The provisions of this Paragraph 7(b) shall continue to apply to Directors, Alternate Directors and President, without limitation, after their terms of service have expired.

(c) Directors and Alternate Directors shall make clear in what capacity they are speaking when issuing public statements relating to ADB. The President may speak on behalf of the Board of Directors in the capacity as Chair of the Board; Directors or Alternate Directors may only speak on behalf of the Board of Directors with its agreement.

(d) The provisions of this **Section Paragraph 7** shall not limit the provision of information by Directors and Alternate Directors to their sending authority(ies) and other members of their constituency(ies), as appropriate, as may be required in the course of carrying out their duties as Directors and Alternate Directors.

8. Gifts and Entertainment

In regard to acceptance of favors, gifts, and entertainment from persons having dealings with ADB, Directors, Alternate Directors and the President shall exercise tact and judgment to avoid the appearance of improper influence on the performance of their official duties. The ordinary courtesies of international business and diplomacy may be accepted, but gifts, favors, and entertainment, as well as loans and other services, shall not be accepted unless they are of insignificant monetary value. Any gift that is accepted on the basis of the Director's, Alternate Director's or President's judgment that refusal to accept would offend or embarrass the gift-giver or ADB shall be promptly turned over to ADB for charitable donation, display on the premises, or independent appraisal on the basis of which the Director, Alternate Director or President may be allowed to purchase the gift.⁷

Note: Footnote 7 is amended to reflect that the Board adopted Guidelines on Gifts and Entertainment on 21 April 2008 (see R67-08).

9. Conduct Within the Institution – Courtesy and Respect and Performance of Official Functions

(b) Directors, Alternate Directors and the President shall treat their colleagues and staff with courtesy and respect, **and avoid behavior that constitutes, or could be perceived to constitute, harassment or bullying.**⁸

Note: Proposed amendment gives effect to the Subgroup's recommendation to (i) explicitly address bullying and harassment; and (ii) harmonize the definitions of bullying and harassment with that set forth in the Staff Code of Conduct. Footnote 8 is proposed to provide for a Guideline

⁷ ~~Within 90 days of its establishment, the Ethics Committee shall prepare Guidelines, subject to the approval of the Board of Directors, for the interpretation and application of Section 8 of this Code. See Guidelines on Gifts and Entertainment for guidance on the application of this provision.~~

⁸ See Guidelines on the Prohibition of Harassment and Bullying for guidance on the definition of these terms.

which would set out the definition of bullying and harassment. (See Subgroup Recommendation 2)

(b) Directors, Alternate Directors and the President shall exercise adequate control and supervision over matters for which they are individually responsible and the resources for which they are entrusted, and shall know and observe the budgetary standards and restrictions regarding their offices. Directors, Alternate Directors and the President shall ensure that property and services of ADB are used by themselves and persons in their offices only for the official business of ADB.

(c) Directors and Alternates may take appropriate action at the ADB, in the interests of their respective constituencies, provided that such measures are consistent with the rules and procedures of the ADB. Whether taking such actions or otherwise, they shall not attempt to exert undue influence on the President, Vice-President(s), officers and staff with respect to: (i) the awarding of contracts for the procurement of works, goods and services; (ii) the investigation and resolution of any dispute or allegations dealt with in accordance with the applicable policies and procedures of the ADB, including in procurement matters; and (iii) the appointment, compensation, and termination of staff members of the ADB.

Note: Proposed amendment gives effect to the Subgroup's recommendation to more explicitly express the obligation not to exert undue influence in procurement and personnel matters. The proposed language is adapted from an equivalent provision in the Code of Conduct applicable to the Board of the World Bank. (See, Subgroup Recommendation 5)

10. Duty to Report Misconduct and Prohibition of Retaliation

(a) Directors, Alternate Directors and the President have a duty to report any form of suspected misconduct of which they become aware, to the appropriate person for investigation.⁹ Frivolous or knowingly false allegations made by a Director, an Alternate Director or the President shall be considered a violation of this Code.

(b) Directors, Alternate Directors and the President shall refrain from any form of retaliation, i.e., any detrimental act, direct or indirect, recommended or threatened, against an individual for using any channels available to report suspected misconduct or to raise ethical concerns, for participating as a witness in an ethics matter, or for taking part in an internal dispute resolution proceedings.

Note: Proposed amendment gives effect to the Subgroup's recommendation to establish a duty to report suspected misconduct. Proposed new footnote 9 specifies the appropriate channels for complaints. Paragraph 10(a) also restates the existing language in the Ethics Committee and Procedures, Paragraph 7(g), which specifies that frivolous or knowingly false allegations is misconduct. (See Subgroup Recommendation 3) Proposed paragraph 10(b) gives effect to the

⁹ Any allegations relating to the conduct of a Director, Alternate Director or the President should be reported to the Chair of the Ethics Committee of the Board in accordance with the procedures set forth in this Code. Suspected integrity violations (including retaliation) by staff, contractors or consultants should be reported to the Office of Anticorruption and Integrity (OAI). All other forms of suspected misconduct by staff, including harassment, and bullying should be reported to the Office of Professional Conduct.

Subgroup's recommendation to elaborate on a prohibition against retaliation. (See, Subgroup Recommendation 4)

11. Compliance with Local Laws

(a) Directors, Alternate Directors and the President shall observe the laws of each jurisdiction in which they are present pursuant to their duties so as not to be perceived as abusing the privileges and immunities conferred upon ADB and upon them. This provision does not abrogate or waive any diplomatic immunities which may be held by Directors, Alternate Directors and the President.

(b) Directors, Alternate Directors and the President shall inform the Chair of the Ethics Committee in the event, while holding office, they are arrested, charged or convicted of a criminal offense, other than minor violations.

Note: Proposed Paragraph 11(a) is a relocation of the existing Paragraph 3(b). Proposed Paragraph 11(b) gives effect to the Subgroup's recommendation to introduce a duty to report if arrested, charged or convicted of a criminal offense. (See, Subgroup Recommendation 6).

12. Ethics Committee

As soon as possible after this Code has taken effect, the Board of Directors shall establish an Ethics Committee to assist it to address matters relating to the application of this Code, as requested by the Board of Directors or as required under this Code or the Ethics Committee and Procedures. The Board of Directors shall adopt procedures for use by the Ethics Committee. Members of the Ethics Committee shall not be subject to direction, shall respect the confidentiality of its proceedings,¹⁰ and shall seek to establish the facts and exercise informed balanced judgment in their consideration of matters dealt with by the Ethics Committee.

II. ETHICS COMMITTEE AND PROCEDURES

Note: Proposed amendments to replace the Office of the Auditor General, with the Office of Anticorruption and Integrity, gives effect to Subgroup Recommendation 8.

On 22 September 2006, the Board of Directors of the Asian Development Bank ("ADB") ~~hereby establishes~~ established a committee to address ethics matters (the "Ethics Committee") and ~~adopts~~ adopted the following procedures to take effect 60 days after date of adoption by the Board of Directors. ~~These procedures were amended by the Board of Directors on [insert date of Board decision], and such amendments are to take effect 30 days after the date of approval.~~ These procedures shall apply to ethics matters concerning Directors, Alternate Directors, and Temporary

¹⁰ Amongst other things, members of the Ethics Committee shall establish arrangements within their own constituency offices to ensure that papers relating to the Committee's work are securely handled and stored so as to protect the confidentiality of this work and ensure the privacy of the President, individual Directors or Alternate Directors who may have dealings with the Committee.

Alternate Directors in respect of their duties as such in order to ensure sound governance pursuant to the Code of Conduct for ~~Directors, Alternate Directors, and the President of the Asian Development Bank members of the Board of Directors adopted on 21 November 2006~~. The provisions herein also apply to the President, where applicable, both in the capacity as Chair of the Board and as President.¹¹

1. Scope of Responsibility

The Ethics Committee shall consider:

- (a) requests from Directors, Alternate Directors or the President for guidance concerning possible actual or potential conflicts of interest, or other ethical aspects of conduct in respect of Directors, Alternate Directors or the President, and provide advice in response thereto; and
- (b) allegations of misconduct against Directors, Alternate Directors or the President that relate to the performance of official duties or actions that affect their performance of official duties, whether such actions are taken prior to, during, or, with respect to any applicable restrictions on future employment or disclosure of information, subsequent to their terms of service as Directors, Alternate Directors or President, and make recommendations to the Board of Directors with respect thereto.

2. Composition and Appointments

(a) The Ethics Committee shall consist of five Directors and/or Alternate Directors (“Committee Members”). In appointing Committee Members and Chair, the President will seek to ascertain and abide by the consensus of the Board of Directors. In the event that consensus cannot be established in a timely way, the President will appoint the Committee Members and/or Chair having regard to the views of the Board of Directors. Efforts shall be made to have the membership of the Ethics Committee reflect the economic, cultural and geographic diversity of the member countries of ADB.

(b) Committee Members ordinarily shall be appointed for two-year terms following each regular election of Directors. If any Committee Member shall resign mid-term, a new Committee Member shall be appointed in accordance with the appointment procedures provided for under Paragraph 2(a) above, to complete the remainder of the term.

3. Counsel to the Ethics Committee

The General Counsel shall act as Counsel to the Ethics Committee, and shall be available to give advice to the Ethics Committee and to Directors, Alternate Directors or the President, at their request. In order to preserve confidentiality, the General Counsel shall establish procedures to

¹¹ The definition of terms as set forth in the Code of Conduct for Members of the Board of Directors, as such Code may be amended from time to time, shall also apply wherever the same terms are used in these procedures.

ensure that any documents or other material relating to the work of the Ethics Committee are securely handled and held within the Office of the General Counsel. Secure procedures shall also be adopted if documents are distributed beyond that Office. Access to such documents, other materials and any associated information shall be limited to the General Counsel and those few individuals whom the General Counsel designates as having a need to be involved with the issue. The privacy of individuals and the presumption of innocence shall be respected at all times.

4. Secretary to the Ethics Committee

The Secretary shall act as Secretary of the Ethics Committee. In order to preserve confidentiality, the Secretary shall establish procedures to ensure that any documents or other material relating to the work of the Ethics Committee are securely handled and held within the Office of the Secretary. Secure procedures shall also be adopted if documents are distributed beyond that Office. Access to such documents, other materials and any associated information shall be limited to the Secretary and those few individuals whom the Secretary designates as having a need to be involved with the issue. The privacy of individuals and the presumption of innocence shall be respected at all times.

5. General Rules of Procedure of the Ethics Committee

(a) The quorum for a meeting shall be five Committee Members. The Chair shall seek to schedule meetings of the Committee to enable all members to attend, consistent also with ensuring that matters before the Committee are dealt with in timely fashion. Every effort shall be made to conduct meetings with all Committee Members physically present. However, in exceptional circumstances, Committee Members may attend by telephone or videoconference, subject also to the consent of any Director, Alternate Director or President who may be the subject of an agenda item for the meeting. If, nonetheless, a Committee Member cannot attend for any reason, another Director or Alternate Director will be designated to act in the place of the absent Committee Member¹² in accordance with the appointment procedures provided for under Paragraph 2(a), and taking into consideration the economic, cultural and geographic diversity of the member countries of ADB.

(b) Decisions of the Ethics Committee shall be taken by simple majority. If a decision is not unanimous the view(s) of the minority are also to be recorded in any report prepared for the Board of Directors.

(c) Where a matter pending before the Ethics Committee involves the President, or a Committee Member or an Alternate Director or Temporary Alternate Director in his or her office, the President or Committee Member shall not be eligible to attend or participate in any deliberations or decision-making regarding such matter.

¹² In the event that a matter pending before the Ethics Committee involves the President, and an absent Committee Member must be replaced, Article 35 of the Charter shall apply.

(d) In the interests of preserving confidentiality, attendance at meetings of the Ethics Committee shall be restricted to Committee Members. The Counsel to the Ethics Committee, the Secretary to the Ethics Committee, and other individuals whose attendance is specifically authorized by the Ethics Committee, may also attend when requested by the Committee. Documents circulated for the consideration of the Ethics Committee shall be distributed only to the Committee Members. They may also be circulated to the Counsel, the Secretary and others, if specifically authorized by the Chair of the Ethics Committee, after consultation with and subject to the guidance of Committee Members.

(e) In the interests of preserving confidentiality, the Board of Directors shall receive the reports of the Ethics Committee and conduct all deliberations or decision-making under these procedures in Restricted Executive Sessions of the Board of Directors consisting exclusively of Directors (or the Alternate of a Director who is unable to attend) and chaired by the Chair of the Board of Directors.¹³

(f) Without prejudice to Paragraph 7(eg) of these procedures, where a matter pending before the Board of Directors pursuant to these procedures involves a Director or his or her Alternate Director, the Director and Alternate Director shall be eligible to attend in order to present his/her views regarding an allegation against them but shall not participate in deliberations, or decision making regarding such allegations.

(g) In proceedings pursuant to these procedures, the Ethics Committee, the Board of Directors and, to the extent required for an investigation pursuant to Paragraph 7(ee), the ~~Auditor General~~ **Head of the Office of Anticorruption and Integrity (OAI)** or the General Counsel, shall at all times follow a fair process. If asked to conduct an investigation, the General Counsel will establish appropriate arrangements within the Office to ensure that the investigation is conducted independently, including by assigning different legal counsel to this task than those who assist the General Counsel to act as Counsel to the Ethics Committee.

(h) The Ethics Committee, the ~~Auditor General~~ **Head, OAI** or the General Counsel, to the extent necessary to conduct an investigation pursuant to Paragraph 7(ee), and only to that extent, shall have access to Directors, Alternate Directors, the President, Vice-Presidents and staff members and to pertinent records, emails and documents. In the course of such investigation the Ethics Committee, ~~Auditor General~~ **the Head, OAI** or the General Counsel shall not have access to communications between a Director or Alternate Director concerned and his/her sending authority(ies) except with the latter's consent.¹⁴

6. Procedures for Handling Requests for Guidance

(a) A Director, Alternate Director or the President shall submit a written request for guidance concerning possible actual or potential, conflicts of interest, or other ethical aspects of conduct in respect of his or her personal situation to the Chair for consideration by the Ethics Committee in accordance with the procedures set forth in this ~~Section~~ **Paragraph 6**.

¹³ In the event that a matter under consideration involves the President, the President shall not attend, and Article 35 of the Charter shall apply.

¹⁴ ~~The Ethics Committee shall establish, subject to the approval of the Board, appropriate Guidelines for the interpretation of this provision.~~ See Guidelines on Access During Investigations to Records, Emails and Documents.

- (b) The Ethics Committee shall review the request. Counsel to the Ethics Committee shall be available to assist with this review, if necessary. The Ethics Committee may at any time request further information from the individual who submitted the request for guidance.
- (c) The Ethics Committee shall provide in writing its advice in response to each individual who has submitted a request for guidance. The Ethics Committee may communicate such advice to other Directors, Alternate Directors and the President, subject to consultation with the individual and in a manner that ensures the privacy of the individual concerned.
- (d) An individual who is not satisfied with the advice received from the Ethics Committee in response to a request for guidance may request reconsideration by the Ethics Committee, and if dissatisfied with the Ethics Committee's reconsideration, may request a review by the Board of Directors.

7. Procedures for Handling Allegations of Misconduct

- (a) If an individual wishes to make an allegation of misconduct against a Director, Alternate Director or the President, he/she shall submit such allegation in writing and in confidence to the Chair of the Ethics Committee who shall bring any such allegation to the attention of the Ethics Committee for its consideration in accordance with the procedures set forth in this **Section Paragraph 7**.¹⁵ In such a case, the Directors, Alternate Directors or the President concerned shall be presumed not to have engaged in misconduct until such time as the Board of Directors decides under Paragraph 7 **(df)** that there is sufficient evidence to establish, on a balance of probabilities, that the alleged misconduct did occur.
- (b) Where the Office of Professional Conduct (OPC) or the Office of Anticorruption and Integrity (OAI) receives an allegation that a Director, Alternate Director or the President engaged in bullying, harassment or retaliation, such office shall transmit such allegations without delay to the Ethics Committee to be handled in accordance with these procedures.
- (c) The Ethics Committee shall consider any matter referred to it by the Head, OAI, or Director, OPC who in the course of his/her work uncovers potential misconduct of a Director, Alternate Director, or the President.

Note: Proposed amendments gives effect to the Subgroup's recommendation to establish a mechanism for the Office of Anticorruption and Integrity and, when operational, the Office of Professional Conduct, to refer allegations relating to a Director, Alternate Director or the President to the Ethics Committee. (See, Subgroup Recommendation 7) Footnote 5 is amended to reflect the Board's adoption of these Guidelines on 21 April 2008 (see R67-08)

- ~~(d)~~ As soon as is practicable, the Ethics Committee shall review the allegations and **conduct a preliminary assessment to determine whether there is a legitimate basis to warrant an investigation are credible and whether they are appropriate for consideration by the Board of Directors**. In this regard, the Ethics Committee will assess whether the allegations are: (i) within

¹⁵ ~~Within 90 days of its establishment, the Ethics Committee shall establish~~ See Guidelines on Form and Content of Allegations. ~~for the appropriate form and content of any documentation to be provided regarding such allegations, covering matters such as the required specificity of allegations and identification of the person making the allegations. Anonymous allegations will be rejected.~~

the Ethics Committee's mandate; (ii) credible, i.e., there is a reasonable possibility that misconduct occurred; (iii) verifiable, i.e., practical options exist to obtain sufficient evidence to determine the truth of the allegations on a balance of probabilities; and (iv) material, i.e., the matter is of sufficient importance to justify the projected requirements of the investigation and any remedial action. Counsel to the Ethics Committee shall be available to assist with this review.

(e) If the Ethics Committee concludes that the allegations do not give rise to a legitimate basis to warrant an investigation following the preliminary assessment conducted under Paragraph 7(d) ~~appear credible, or if they seem inappropriate for consideration by the Board of Directors,~~ the Ethics Committee may decide to take no further action. If the allegations do give rise to a legitimate basis to warrant an investigation, ~~appear credible and appropriate for consideration by the Board of Directors, the Ethics Committee shall recommend to the Board of Directors that an investigation be conducted.~~

~~(c) If, based upon the Ethics Committee's recommendations, the Board of Directors agrees that an investigation shall be conducted,~~ the Ethics Committee shall initiate an investigation as soon as is practicable. The Committee may request the ~~Auditor General Head, OAI~~ or the General Counsel to assist in the investigation. ~~The Board of Directors may advise the Ethics Committee whether use of the Auditor General or the General Counsel would be appropriate.~~ If so requested, the ~~Auditor General Head, OAI~~¹⁶ or General Counsel shall conduct an investigation and shall submit a report on such investigation to the Ethics Committee, with a recommendation whether the facts indicate that misconduct occurred, and if so, what measures may be appropriately imposed.

~~(fd)~~ As soon as is practicable, based on the findings of the investigation, the Ethics Committee shall make a recommendation to the Board of Directors whether the facts indicate that misconduct occurred, and if so, what measures may be appropriately imposed. The Board of Directors shall take a final decision based on the findings and recommendations of the Ethics Committee and, if applicable, the ~~Auditor General Head, OAI~~ or the General Counsel. In cases of misconduct by a Director, appropriate measures may include issuance of a written censure or other action by the Board of Directors and, if the circumstances warrant it, provision of notice of such censure or other action to the Governor(s) of the member country¹⁷ (or countries) that appointed or elected the Director. In cases of misconduct by an Alternate Director or a Temporary Alternate Director, appropriate measures may include censure by the Board of Directors and recommendation of other appropriate action to be taken by the Director who appointed him or her. In cases of misconduct by the President, the Board of Directors may recommend appropriate measures to the Board of Governors that may include censure and other appropriate action by the Board of Governors.

(ge) Each Director, Alternate Director or the President, if alleged to have committed misconduct, shall be provided with timely notice of the allegations, all relevant documentation and the opportunity to present his or her views regarding the allegations (i) to the Ethics Committee in the context of its preliminary assessment under Paragraph 7(d); and (ii) to the Ethics Committee before it recommends, and to the Board of Directors before it makes any recommendations or

¹⁶ If asked to conduct an investigation, the ~~Auditor General Head, OAI~~ shall establish arrangements within his/her office to protect the confidentiality of this work.

¹⁷ The term "country" as used in this Code refers to a member of ADB and does not imply any view on the part of ADB as to the member's sovereignty or independent status.

decisions, ~~as set forth in these procedures (i) whether to conduct an investigation; or (ii) on whether the facts indicate that misconduct occurred, and if so, what measures may be appropriately imposed.~~ In exceptional cases¹⁸, the Ethics Committee shall permit the individual who is alleged to have committed misconduct to be accompanied by an advisor from within or outside of ADB. In other cases, the Ethics Committee, having regard to the particular circumstances of the case, may permit such accompaniment by an advisor.

(hf) If the Ethics Committee in the course of its work uncovers potential misconduct by a staff member of ADB, or potential fraud or corruption by a contractor or consultant in a project financed or executed by ADB, it shall refer the matter to the ~~Auditor General Head, OAI if potential fraud or corruption is involved, or to the Director General of the Budget, Personnel and Management Systems Department if no allegation of fraud or corruption is involved.~~

(ig) Any staff member who makes frivolous or knowingly false allegations against a Director, Alternate Director or the President shall be subject to disciplinary procedures in accordance with Administrative Order No. 2.04. Frivolous or knowingly false allegations made by the President, a Director or an Alternate Director shall be considered a violation of the Code of Conduct and will be subject to the procedures of this Code.

Note: Paragraphs 7(d) to (i) have been renumbered to give effect to new Paragraphs 7(b) and (c) above. Amendments to Paragraphs 7(d), (e) and (g) give effect to the Subgroup's recommendation to authorize the Ethics Committee to conduct an investigation when it concludes there is a legitimate basis for an investigation, without first seeking approval from the Board of Directors. (See Subgroup Recommendation 9)

III. GUIDELINES ON THE APPLICATION OF THE CODE OF CONDUCT

A. Guidelines on Gifts and Entertainment

1. The following Guidelines are established for the interpretation and application of ~~Section Paragraph 8~~ of the Code of Conduct "Gifts and Entertainment".
2. Any person covered by the Code of Conduct may accept the ordinary courtesies of international business and diplomacy, but shall not accept any favors, gifts, entertainment, loans or other services from persons having dealings with ADB unless they are of insignificant monetary value. Ordinary courtesies of international business and diplomacy include meals sponsored by the hosts and inexpensive memorabilia that they may give to guests to commemorate their visit.
3. When a person who is covered by the Code of Conduct accepts a gift that is of significant monetary value because refusal to accept it would offend or embarrass the gift-giver or ADB, he or she shall submit the gift to the Director, Facilities and Asset Management Division, Office of Administrative Services (OAF), with an accompanying memorandum setting out the circumstances in which the gift was received. The Director, OAF shall determine the value of

¹⁸ The Ethics Committee shall decide what are exceptional cases, taking into consideration all the circumstances including the gravity of the allegations. For example, an exceptional case might involve an allegation that the individual concerned had committed what would normally be considered under the laws of member countries to be a serious crime, punishable by imprisonment of more than one year.

the gift, and shall return it to the person concerned if its value is US\$50 or less. In such a case the person concerned may either keep the gift or submit it to Director, OAFSA for charitable donation.

4. If the Director, OAFSA determines that the value of the gift is more than US\$50, the person concerned may purchase the gift by paying ADB an amount equivalent to the assessed value of the gift. If the person concerned does not wish to purchase the gift, ADB will either sell it and donate the proceeds to charity, or retain it for display on the premises.

B. Guidelines on Access during Investigations to Records, Emails and Documents

1. These Guidelines are established for the interpretation of Paragraph 5(h) of the Ethics Committee and Procedures (“ECAP”), which provides that the “[t]he Ethics Committee, the ~~Auditor General Head, OAI~~ or the General Counsel, to the extent necessary to conduct an investigation pursuant to Paragraph 7(ee) of the ECAP, shall have access to Directors, Alternate Directors, the President, Vice-Presidents and staff members and to pertinent records, emails and documents. In the course of such investigation the Ethics Committee, ~~Auditor General Head, OAI~~ or the General Counsel (the “Investigators”) shall not have access to communications between a Director or Alternate Director concerned and his/her sending authority(ies) except with the latter’s consent.”

2. Investigations under Paragraph 7(ee) of the ECAP of allegations of misconduct against a Director, Alternate Director or the President shall be carried out with paramount consideration being given to safeguarding the rights of the subject of the inquiry, and to protecting the confidentiality of the investigation. Any investigation shall also be conducted as discreetly as possible with a view to protecting the reputation of the subject of the investigation and of any other person who may be involved, and avoiding any unreasonable intrusions into the personal privacy of the subject of the investigation. If the Ethics Committee requests the ~~Auditor General Head, OAI~~ or the General Counsel to assist in the investigation, the Ethics Committee shall approve the terms of reference for such assistance (the “terms of reference”). The terms of reference may be amended during the course of the investigation with the approval of the Ethics Committee.

3. Such investigations shall include collection and analysis of all evidence, both in support of, and refuting, allegations that the subject of the investigation has engaged in misconduct (“allegations”). In this context, Investigators may access only the records, emails and/or documents of the subject of the investigation, and of other concerned persons, that are relevant to the investigation.

4. When conducting an investigation under Paragraph 7(ee) of the ECAP of allegations of misconduct against a Director, Alternate Director or the President, the Investigators shall have full and unrestricted access to information and records concerning all ADB activities, ADB personnel, and physical property of ADB. They shall be authorized to

- (a) examine any and all ADB files, records including records of telephone calls, books, data, papers, and any other materials whatsoever related to ADB’s business if such documents and materials are relevant to the allegation and may help support or refute such allegations; and

- (b) take temporary physical possession of any material referred to above, against written receipt if requested, and make copies for his/her own official use.
5. The Investigators and Ethics Committee Members shall hold any information, knowledge, and material that they acquire in the course of discharging their duties in confidence so that the privacy of the subject of the investigation is protected to the fullest extent possible.
6. The subject of the investigation may request the Chair of the Ethics Committee to require concerned persons to produce specific records, emails and/or documents that he or she considers are relevant to the allegations. If the Chair of the Ethics Committee is satisfied that such records, emails and/or documents are relevant to the allegations, he or she shall require persons concerned to provide copies of them to the subject of the investigation, who shall hold such documents in confidence.
7. The Investigators shall not have access to the e-mail box of a Director, Alternate Director or the President unless access to the e-mail box has been specifically authorized in the terms of reference approve by the Ethics Committee under Paragraph 2 above. Any such authorization must be based on sufficient justification.
8. Notwithstanding the above, the Investigators shall not have access to any communications between a Director or Alternate Director and the governmental authorities (political and administrative) that they represent, except with the latter's consent.

C. Guidelines on Form and Content of Allegations

1. These Guidelines are established under Paragraph 7(a) of the Ethics Committee and Procedures ("ECAP") to provide for the appropriate form and content of any documentation regarding allegations of misconduct against Directors, Alternate Directors or the President in relation to the performance of official duties or actions that affect their performance of official duties¹⁹ ("allegations").
2. Any person may submit an allegation in good faith against a Director, Alternate Director or the President.
3. Staff members who make frivolous or knowingly false allegations shall be subject to disciplinary procedures under Administrative Order No. 2.04. Any such allegations made by a Director, Alternate Director or the President shall be considered a violation of the Code of Conduct and shall be subject to the procedures of the Code.²⁰ In the event that persons other than staff members make frivolous or knowingly false allegations, the President shall decide, in consultation with the Ethics Committee and the person/s against whom such allegations have been made, on appropriate measures that may include legal action.

¹⁹ Such actions may have been taken prior to, during, or, with respect to any applicable restrictions on future employment or disclosure of information, subsequent to, their term of service as Director, Alternate Director or President (see Paragraph 1(b) of the ECAP).

²⁰ ~~Paragraph 7(g), ECAP.~~ Paragraph 10(a) of the Code of Conduct.

4. Allegations must be addressed to the Chair of the Ethics Committee, in writing, and signed. The name of the signatory must be clearly stated, together with his/her personal and official status. No anonymous allegations shall be accepted.
5. Persons making allegations must state their allegations concisely, and summarize all relevant evidence available to them, including the names and contact information, if possible, of any witnesses that can corroborate evidence supporting the allegations.
6. If there is documentary evidence to support the allegations, such evidence must be attached to the allegations as annexes. If the original documents are not in English, they must be accompanied by translations into English, with the accuracy of the translations certified to by the translator concerned. Where only part of a document is relevant to the allegation, only the relevant part need be annexed.
7. The person making the allegation must submit four copies, including annexes, in addition to the original.

D. Guidelines on the Declaration of Compliance Relating to Financial Interests

Note: These proposed Guidelines serve to define the Declaration of Compliance relating to financial interests, as required under Paragraph 5(b) of the Code. It is proposed that the Ethics Committee will administer the declaration process with the assistance of The Secretary, and will be tasked with keeping this Guideline up to date. (See, Subgroup Recommendation 1)

1. These Guidelines are established to provide procedures for the completion of a declaration of compliance by Directors, Alternate Directors and the President as required by Paragraph 5(b) of the Code of Conduct.
2. Within 30 days of assumption of office, and in accordance with any additional schedule the Ethics Committee may determine, Directors, Alternate Directors, and the President, will file with the Secretary of the Ethics Committee the following declaration:

“(i) I declare that I have read the Code of Conduct for Directors, Alternate Directors, and President of the Asian Development Bank, and in particular Paragraph 5 thereof, and certify that:

Neither I, nor my immediate family members, hold any financial interests in transactions of the ADB or in projects or enterprises involving the ADB.

OR

I, and/or my immediate family members, have financial interests in transactions of the ADB or in projects or enterprises involving the ADB. I will disclose these to the Ethics Committee and seek guidance thereon.

(ii) I acknowledge that while I may hold ADB-issued securities for investment purposes, I shall refrain from any short-term trading in such securities. (*“Short-term trading” is defined in Paragraph 1(f) of the Code of Conduct*)

(iii) I declare that I will not use any information not generally available to the public to further my or another's private interest, including through the acquisition or sale of securities issued by the ADB or any other transaction.

(iv) I shall promptly seek the Ethics Committee's guidance, in accordance with the procedures set forth in Paragraph 6(a) of the Ethics Committee and Procedures, in the event that I, or my immediate family members, have, or plan to undertake, any financial dealings which may be in conflict (either actual, potential or perceived) with my obligations under the Board Code of Conduct."

3. Directors, Alternate Directors and the President shall update this declaration as may be necessary if there is a change in circumstances.

4. The Ethics Committee shall oversee and administer the Declaration of Compliance exercise, with the assistance of The Secretary, and shall be authorized to amend this Guideline from time to time.

E. Guidelines on the Prohibition of Harassment and Bullying

Note: To ensure a unified set of expectations of behavior that is applicable across ADB, this Guideline incorporates the definitions of bullying and harassment applicable under the Staff Code of Conduct, and provides for the Ethics Committee to update the definitions in the Guideline to ensure appropriate alignment between the definitions applied in the Board and Staff Codes of Conduct. (See, Subgroup Recommendation 2)

1. These Guidelines elaborate on the meaning of harassment and bullying under Paragraph 9(a) of the Code of Conduct.

2. To ensure a unified set of expectations of behavior that is applicable across ADB, the definitions of bullying and harassment applicable to the Board shall be harmonized with that which is applicable under the Staff Code of Conduct. Accordingly, for the purposes of the Board Code of Conduct, the following definitions apply:

(c) "Bullying" is a form of Harassment consisting of repeated or persistent aggression or other malicious behavior in any form by one or more persons which has the effect of humiliating, belittling, offending, intimidating or discriminating against another person. It may include persistent, unwarranted or unconstructive criticism, personal abuse and/or ridicule, either in public or private, which humiliates or demeans the individual targeted, gradually eroding his or her self-confidence or intending to do so. Criticism, disapproval, negative performance assessment and similar appraisal, appropriately conveyed, do not, by themselves, constitute bullying or harassment.

(d) "Harassment" is any unwarranted or unwelcome behavior, verbal, psychological or physical, that interferes with work or creates an intimidating, hostile or offensive work environment. Harassment includes but is not limited to sexual harassment and bullying. Sexual harassment is any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature which results

in physical, sexual or psychological harm or suffering to another person, or which is made or suggested to be a condition of employment, promotion or other personnel action or creates an intimidating, hostile or offensive environment.

3. The Ethics Committee shall be authorized to amend these Guidelines in order to ensure appropriate alignment with the relevant definitions under the Staff Code of Conduct.