WHISTLEBLOWER AND WITNESS PROTECTION

1. PURPOSE

The purpose of this Administrative Order (AO) is to set out protections afforded to Whistleblowers and Witnesses.

2. DEFINITIONS

2.1 “Integrity Violation” means (i) in respect of Staff: any act as so defined in AO 2.02 (Code of Conduct); and (ii) in respect of others: any act so defined in the Integrity Principles and Guidelines (2015, as amended from time to time).

2.2 “Misconduct” is misconduct as so defined in AO 2.02 and committed by Staff.

2.3 “Other Misconduct” is Misconduct, other than Integrity Violations, committed by Staff.

2.4 “Retaliation” is any detrimental act, direct or indirect, recommended, threatened or taken against a Whistleblower or Witness; or a person associated with a Whistleblower or Witness or otherwise, in a manner material to the complaint because of a report to, or cooperation with an ADB assessment or investigation concerning any form of suspected violation or misconduct. Retaliation may include, but is not limited to, harassment, discriminatory treatment, improper assignment of work outside the corresponding job description, improper withdrawal of work assignments contained in the job description, inappropriate performance appraisals or salary adjustments, or the withholding of an entitlement. With respect to Staff, Retaliation constitutes Other Misconduct and those who engage in Retaliation are subject to disciplinary procedures and measures under AO 2.04 (Disciplinary Procedures and Measures). With respect to external parties, Retaliation constitutes an Integrity Violation and those who engage in Retaliation are subject to sanctions and other remedial actions under the Integrity Principles and Guidelines.

2.5 “Staff” has the meaning given thereto in AO 2.02, and, for the purpose of this AO, includes other persons covered under paragraph 3.1 of AO 2.02, unless or to the extent otherwise provided in the relevant letter of appointment, contract, renewal or other agreement.

2.6 “Whistleblower” is any person who, in good faith and voluntarily, reports, or is believed to be about to report, or is believed to have reported a suspected violation or misconduct. Under this AO, a Whistleblower that is not Staff is also referred to as “external Whistleblower”.

2.7 “Witness” means any person who is not the subject of an assessment or investigation but who provides, or is requested by ADB to provide information regarding the matter under assessment or investigation. Under this AO, a Witness that is not Staff is also referred to as “external Witness”.

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1 For the purpose of this AO and unless otherwise provided under this AO, the terms “assessment” and “investigation” cover assessment and investigation of a suspected violation or misconduct under AO 2.04, AO 2.10, the Integrity Principles and Guidelines, or the Board Code of Conduct.
3. GENERAL PRINCIPLES

3.1 It is necessary that ADB has complete information in investigating reports of any form of suspected violation or misconduct. In this context, ADB will pursue all reasonable steps to protect Whistleblowers and Witnesses acting in good faith and to ensure that they are not subject to Retaliation.

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

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

3.4 Any person who falsely and/or maliciously reports or alleges any form of suspected violation or misconduct is not protected by ADB. Staff who make false and/or malicious allegations are subject to disciplinary action in accordance with AO 2.04. Individuals or entities, including contractors, suppliers, or consultants, who report false and/or malicious allegations may have their contract(s) terminated and/or be declared ineligible to participate in ADB-financed, -administered, or -supported activities.

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

3.6 Whistleblowers and Witnesses who are not Staff and have committed any form of violation or misconduct may not avoid sanction or other remedial action by reporting the violation or misconduct and seeking protection under this AO. However, depending on the circumstances, their reporting and degree of cooperation will be taken into consideration in determining the appropriate sanction or other remedial action.

4. REPORTING, ASSESSING AND INVESTIGATING ALLEGATIONS OF INTEGRITY VIOLATION AND OTHER MISCONDUCT

General rules on reporting, assessment and investigation

4.1 With the exception of reports concerning persons under paragraphs 4.7 to 4.10 below:

   a. reports of any suspected Integrity Violation should be submitted to the Office of Anticorruption and Integrity (OAI);
   b. reports of suspected Other Misconduct, including bullying and harassment, should be submitted to the Office of Professional Conduct (OPC);
c. reports of suspected Retaliation committed by external parties in an ADB-related activity and in violation of ADB's Anticorruption Policy, and requests for relief, should be submitted to OAI; and

d. reports of suspected Retaliation by Staff and requests for relief should be submitted to OPC which will assess the allegation, unless the primary allegation is an Integrity Violation or is otherwise being or has been investigated by OAI, in which case OPC will refer the allegation to OAI.

4.2 A report of suspected Retaliation will not delay or stop ADB assessment or investigation of any primary allegation.

4.3 The assessment and investigation of Integrity Violations and Other Misconduct, including Retaliation, will be conducted in accordance with this AO, AO 2.02, AO 2.04 and the Integrity Principles and Guidelines, as applicable. This AO supplements AO 2.02, AO 2.04 and the Integrity Principles and Guidelines. Unless AO 2.10 explicitly refers to the applicability of AO 2.02, 2.04 or the Integrity Principles and Guidelines, if there is any conflict with the provisions of AO 2.02, AO 2.04 or the Integrity Principles and Guidelines, the provisions of this AO will prevail.

4.4 ADB is not required to investigate reports of Retaliation reported more than one year after the date on which the Whistleblower or Witness becomes aware of the alleged Retaliation.

4.5 If OAI determines that there has been Retaliation against a Staff and that the Staff’s action related to the assessment or investigation was a contributory factor in an ADB employment action, the burden of proof will shift to ADB to show by clear and convincing evidence that the same employment action would have been taken in the absence of the Staff’s report of any form of violation or misconduct or cooperation with an ADB assessment or investigation.

4.6 Upon conclusion of an investigation concerning Retaliation, OAI will provide a report to the Staff and to Director General, Budget, People, and Management Systems Department (BPMSD). OAI’s report will indicate its investigative findings as to whether Retaliation occurred including recommendations for remedial measures. Within fifteen calendar days of receipt of OAI’s report, Director General, BPMSD will decide whether to accept OAI’s findings and on the appropriate remedial measures to be taken and will inform the Staff of the decision taken.

**Special rules on reporting, assessment and investigation of allegations**

4.7 Reports of any allegations of an Integrity Violation or Other Misconduct (including Retaliation) committed by the Head, OAI; Director, OPC; or the Director General, BPMSD can be made to the Vice President, Administration and Corporate Management (VPAC) and may include a request that an alternative person within or outside ADB be designated to assess and investigate the report. VPAC will, after considering any such request and determining that circumstances so warrant, recommend to the President to appoint a person or persons from within or outside ADB to conduct the assessment and investigation which would otherwise be conducted by OPC or OAI, as applicable.

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2 For the purpose of this AO, “ADB-related activity” includes ADB-financed, -administered, or -supported activity, or any activity that materially affects or may affect or otherwise be relevant to ADB.
4.8 Reports of allegations of Integrity Violations committed by other OAI or OPC staff should be made directly to the Head, OAI. Reports of allegations of Other Misconduct (including Retaliation) committed by other OAI or OPC staff should be made directly to the Director, OPC.

4.9 Reports of any allegations of a suspected Integrity Violation or Other Misconduct (including Retaliation), of any Vice President or the Managing Director General should be made to the President with a request that a person within or outside ADB be designated to assess and investigate the report. The President will, after considering such request and determining that circumstances so warrant, appoint a person or persons from within or outside ADB to conduct the assess and investigation. If OAI or OPC receive any allegation of a suspected Integrity Violation or Other Misconduct (including Retaliation), of any Vice President or the Managing Director General, they will promptly refer such allegation to the President.

4.10 Any allegations relating to the conduct (including Retaliation) 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 Board Code of Conduct and the Ethics Committee and Procedures adopted by the Board of Directors, as amended from time to time.

5. **ANONYMITY AND CONFIDENTIALITY**

5.1 OPC and OAI will protect the identities of Whistleblowers and Witnesses from unauthorized disclosure during and after any assessment and investigation in accordance with the provisions of this AO, AO 2.04 and the Integrity Principles and Guidelines.

5.2 Except to the extent required to pursue disciplinary procedures under AO 2.04, to impose a sanction or other remedial action under the Integrity Principles and Guidelines or remedial measures under this AO, OPC and OAI will maintain the confidentiality of any information provided by Whistleblowers and Witnesses where such information has not been disclosed to parties outside of OPC or OAI, unless such information (i) was made publicly known or in the public domain prior to the time of disclosure by the Whistleblower or Witness; or (ii) is made generally available after disclosure through no action or inaction of OPC or OAI.

OPC and OAI will use all available means, including physical, electronic and procedural controls, to maintain the confidentiality of information obtained from Whistleblowers and Witnesses.

5.3 The Director General, BPMSD, BPMSD authorized personnel, and the President will have access to BPMSD files and records. OAI and OPC will have access rights pursuant to ADB’s rules and procedures. Authorized personnel who have actual conflicts of interest or who have recused themselves from an assessment or an investigation will not be privy to any information on such assessment or investigation.

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

6. **PROTECTIONS FOR WHISTLEBLOWERS AND WITNESSES COVERED BY THE CODE OF CONDUCT**

6.1 Whistleblowers and Witnesses who are Staff will be accorded interim protection during the course of assessment or investigation as necessary to safeguard their security and
interests. Upon recommendation by the Head, OAI and Director, OPC, and where appropriate, with the consent of the concerned Staff, the Director General, BPMSD will decide on the interim protection which may include, but is not limited to, temporary reassignment to another position and if appropriate, placement on paid administrative leave for an initial period not to exceed four months. If the assessment or investigation is still ongoing, an extension of such leave may be approved by VPAC for the period necessary to complete the assessment or investigation.

6.2 If the Staff believes that there is a direct and imminent threat to his or her personal security or to the security of his or her family, he or she must raise the concern with OAI, and the Corporate Services Department (CSD) will undertake the necessary action and/or provide guidance to the Staff on the appropriate security measures.

6.3 Remedial measures under paragraph 4.6 may include relief or other corrective measures for the Staff who has been subject to Retaliation. Such relief or corrective measures may include, but is not limited to, reversal, rescission, or revision, as applicable, of the relevant detrimental act amounting to Retaliation in relation to work assignment, performance appraisals, salary adjustments, or withholding of an entitlement.

6.4 Whistleblowers or Witnesses who are Staff and have claimed Retaliation may appeal within thirty calendar days of receipt of a decision of the Director General, BPMSD made under paragraph 4.6 of this AO, directly to the Appeals Committee, in which case Sections 7 to 18 of AO 2.06 (Administrative Review and Appeal Procedures) will apply. In accordance with AO 2.06, the President makes the final decision on such an appeal, but such decision may be subject of appeal to the ADB Administrative Tribunal in accordance with AO 2.07 (Administrative Tribunal).

7. PROTECTIONS FOR EXTERNAL WHISTLEBLOWERS AND WITNESSES

7.1 External Whistleblowers and Witnesses, including but not limited to contractors, suppliers, consultants, local counterparts, and project beneficiaries engaged in dealings with ADB, are entitled to the protection provided in Sections 5 and 7 of this AO.

7.2 ADB will endeavor to ensure that external Whistleblowers and Witnesses are protected from Retaliation by Staff. Staff who are found to retaliate against them will be subject to disciplinary action under AO 2.04.

7.3 Where an external Whistleblower or Witness may suffer or has suffered Retaliation from a person other than Staff or from an entity or individual that is subject to the Integrity Principles and Guidelines, ADB may, where necessary, coordinate with the member country government concerned, to endeavor to secure transfer or adequate security protection, or employ other reasonable measures to reduce the risks of retaliation.

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

7.5 Should OAI's investigation find that an external Whistleblower or Witness experienced Retaliation through an activity financed or supported by ADB, and that the Whistleblower's or Witness' action related to the assessment or investigation was a contributory factor in an official
ADB action taken against the external Whistleblower or Witness, the burden of proof will shift to ADB to show, by clear and convincing evidence that the same official action would have been taken in the absence of the report or cooperation.

7.6 Upon conclusion of an investigation concerning Retaliation against an external Whistleblower or Witness, OAI will provide its investigation report including its findings to the relevant ADB department for action. The report will indicate whether Retaliation occurred as a result of the Whistleblower’s or Witness’ report of any form of violation or misconduct and will make recommendations to the relevant department for remedial measures. Within fifteen calendar days of receipt of OAI's report, the relevant department will decide on the remedial measures to be taken and will inform OAI of the decision taken. OAI will immediately inform the Whistleblower or Witness of the final action taken.

8. **EXTERNAL REPORTING**

8.1 Protections against Retaliation will be extended to a Staff who reports a suspected violation or misconduct to an entity or individual other than the mechanisms identified under this AO, only where the Staff can show that:

(a) such reporting is necessary to avoid:

(i) a significant threat to public health and safety;

(ii) substantive damage to ADB’s operations; or

(iii) violation of national or international law;

(b) the established internal mechanisms are inadequate because:

(i) the Staff has reasonable grounds to believe that it is not possible to report the suspected violation or misconduct pursuant to any of the established internal mechanisms because all such avenues would subject the Staff to Retaliation within the institution; or

(ii) the Staff has reasonable grounds to believe that it is not possible to report the suspected violation or misconduct pursuant to any of the established internal mechanisms because all such avenues would create a likelihood that evidence relating to the suspected violation or misconduct will be concealed or destroyed; or

(iii) the Staff has previously reported the suspected violation or misconduct through the established internal mechanisms (and not on an anonymous basis), and ADB has failed to inform the staff in writing of the status of the matter within six months of such report; and

(c) the Staff does not accept payment or obtain or aim to obtain any other benefit from any party for such external reporting.

8.2 External reporting made in accordance with paragraph 8.1 of this AO and consistent with any confidentiality obligations to concerned third parties will not be considered as a breach of
Staff obligations relating to disclosure of information.

9. **STAFF GRIEVANCE PROCEEDINGS – WITNESSES**

It is necessary that all relevant information/evidence is available in the context of Staff grievance proceedings under AO 2.06 and AO 2.07, and that a Staff acting in good faith, who is not the applicant in Staff grievance proceedings, can provide information/evidence if called on to do so. Accordingly, ADB will pursue all reasonable steps to ensure that a Staff acting in good faith, who is not the Applicant in staff grievance proceedings, but who is requested to provide information/evidence in Staff grievance proceedings under AO 2.06 and AO 2.07, is not subject to Retaliation. Staff who believe that they have been subject to Retaliation as a consequence of providing information/evidence in staff grievance proceedings must notify OPC or OAI of their concern which will be addressed in accordance with Section 4 above.

10. **RESPONSIBILITY**

The Head, OAI, in coordination with the Director, OPC and Director General, BPMSD, will be responsible for the overall implementation of this AO, the issuance of Appendices to this AO and the update of such Appendices. OAI will include a section on the implementation of this AO in OAI's annual report.

11. **EFFECTIVE DATE**

This AO is effective from 17 December 2021 and supersedes the same AO dated 2 June 2017.

Allegations concerning Retaliation that are pending with OAI or BPMSD prior to the effective date of this AO shall continue to be subject to the procedures under the AO issued on 2 June 2017.