

## **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 or the General Counsel, to the extent necessary to conduct an investigation pursuant to Paragraph 7(c) 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 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(c) 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 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(c) 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 approved 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.

*21 April 2008*