



**BANQUE OUEST AFRICAINE DE  
DEVELOPPEMENT**

**Manual of Procedures of investigations and sanctions in the fight  
against corruption and fraud**

**APRIL 2014**

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**List of Acronyms and Abbreviations**

- BOAD** : WEST AFRICAN DEVELOPMENT BANK
- CCM** : Mixed Consultative Committee
- CSFC** : Supervisory Committee of Fraud and Corruption
- DCR** : Division in charge of compliance and regulation
- DILFC** : Division of the integrity and the fight against the fraud and corruption
- MPPCF** : Policy Manual and Procedures for Prevention and Fight against Corruption and Fraud
- UEMO** : Economic and Monetary Union of West Africa
- UO** : Organizational unit

## **1. Introduction**

The West African Development Bank (BOAD), considers the corruption, fraud and other reprehensible as practices very prejudicial to the fulfillment of its mission. To promote economic and social development sustainable in the States members of the Economic and Monetary Union of West Africa (UEMOA), BOAD adopted on May 8, 2012, a manual of policy and Procedures for the prevention and fight against Corruption and fraud (MPPCF) in order to clarify under what conditions and how corruption and fraud can occur in the operations of the Bank, the modalities of their prevention and to define the outline on the way in which the staff of the Bank and other collaborators must respond to acts of corruption and fraud in the operations of the Bank.

To fight against corruption and fraud, the Bank wants to fight a battle on several fronts to reduce incentives in this regard and the gains to draw and, at the same time, reducing the risks associated.

For this purpose, BOAD has recourse to preventive measures such as risk assessments and awareness programs to discourage reprehensible practices and avoid them courses in procurement within the Bank and in operations financed by the Bank and its affiliates. To strengthen good governance and transparency, the Bank adopted a whistleblower protection policy. The present Procedures of investigations and sanctions in the fight against corruption and fraud are directives that deal with essential tools, institutional and operational as investigations and penalties, to effectively discourage corrupt practices.

These procedures are developed by drawing upon the uniform framework for preventing and combating fraud and corruption prepared by the Working Group on the fight against the corruption of the international financial institutions in September 2006 and the policies and procedures adopted on the subject by such institutions. These BOAD procedures apply in the process

to issue findings on allegations of misconduct arising in the context of the activities of the Bank, as well as for all cases where it will be necessary to take a decision in a case involving an allegation of improprieties committed by any party or beneficiary of the activities by the Bank or its resident missions.

## **2. Purpose of the investigation function**

The purpose of the investigation within the BOAD function is to examine to determine the veracity of allegations of corruption or improprieties such as defined in the policy manual and Procedures for the prevention and fight against Corruption and fraud, particularly as regards, but without limitation, projects funded by the BOAD and allegations of misconduct on the part of its staff.

## **3. Definitions**

The terms and expressions defined in the MPPCF and used in these procedures will have the meaning attributed to them in the MPPCF, unless the context requires otherwise.

In addition, in these proceedings, the terms and expressions in italics as defined below have the meaning attributed to them, unless the context requires otherwise:

"Funding agreement" includes agreements under which the bank undertakes to provide funding for projects, programs, grants, warranty, technical assistance or any other form of intervention.

"Unlawful acts" instructions involving the violation of the law, waste, mismanagement, abuse of authority, a serious and specific danger to the health or safety of the public;

«Affiliate» means any natural or legal person who controls, is controlled by, or is under common control with the defendant, as determined by the Bank.

"Notice" means the notice of procedures of sanctions issued by the Office of the sanctions as described in the section on sanctions procedures.

"Notice of temporary suspension", it is the notification issued by the Office of the sanctions laid down by the sanctions procedures.

'office of sanctions' is, as appropriate, the division in charge of compliance and regulations (DCR) in the Directorate for Legal Affairs or the disciplinary board; the DCR and the disciplinary board are responsible for the implementation of the policy of prevention and fight against Corruption and fraud of the BOAD regards sanctions respectively BOAD staff members and people outside the BOAD.

"Coercion" means to undermine or cause harm, or threaten to undermine or cause harm, directly or indirectly, to a party or its assets to influence the actions of this part;

'Collusion' means an arrangement between two or more parties, to achieve some unfair purpose, including influencing improperly the actions of another party;

"Appeal Board" means the Commission of appeal of sanctions. Its missions are insured, as applicable; by the Supervisory Committee for fraud and corruption (CSFC) if the respondent is a third party and the Commission Consultative joint (CCM) such as established by the staff if the respondent falls within the staff of the Bank. The CCM is organized and functions in accordance with the rules laid down by the staff regulations and the staff rules. Ruling on appeal in accordance with its rules of conciliation. Regarding the CSFC, it is organized and functions in accordance with its decision of creation.

«Corruption» consists of offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

'Sanctions Decision' is a final decision taken by the President, on recommendation, as appropriate, of the disciplinary board or the office of sanctions or the Appeal Board.

"Whistle blowing" means an employee of the Bank, the representative of a regional or non-regional company, or any third party who shall notify or is about to notify an act of corruption in a bank transaction, by contacting the Bank of anonymously or short ;

*"Legal Affairs Department" is the Organizational Unit (OU) in charge of legal affairs of the Bank.*

«DILFC», means the Division of integrity and the fight against the corruption of the Bank, which, inter alia, conducts independent investigations into allegations of improprieties. The DILFC is led by a head of Division, appointed by the President of the Bank which acts and receives all opinion on behalf of the DILFC.

"State (s) member (s)" means one or several State (s) member (s) of UEMOA  
'Exclusion' means declaring a company or an ineligible person, permanently or temporarily, to tender, participate as a subcontractor in markets, or to benefit from ;

'fraud' means any act or omission, including a misrepresentation which induces in error or attempts to mislead a party to obtain, directly or indirectly, a benefit financial or otherwise or to escape from an obligation;

"Respondent or defendant" means a natural person or a legal person, individual or collective, public or private, who would have committed an offence and liable to sanctions and who has been designated (cited) in the results obtained following investigations in matters of improprieties or a notice of sanctions procedures.

"Breach" means do not observe the rules and norms of behavior of the Bank;

"Practices liable to sanctions or misconduct" is any act of corruption, fraudulent, collusive maneuvers, coercive maneuvers, obstruction and obstructive maneuvers within the operations financed by the Bank, as defined in the Manual Policy and Procedures for prevention and fight against Corruption and Fraud (MPPCF)

"President" means the president of the Bank.

'Projects' include projects, operations and internal corporate markets funded, run or administered by the Bank, funds, facilities, initiatives and all other resources managed by or entrusted to the Bank as well as the process of acquisition of the Bank as defined in its procurement rules.

'Programs' include operations, groups of projects or activities funded, run or administered by the Bank. These programs can be funded, through facilities, initiatives and other resources managed by or entrusted to the Bank as well as the process of acquisition of the Bank as defined in its procurement rules.

"De Novo" process, it is the process to be undertaken by the Commission of appeal of sanctions in order to review a decision of the Office of the sanctions. This process involves the examination of the comments made by the Office of the sanctions and the reasoning based these arguments in more new elements of evidence which may be presented.

*Procedures" indicates the procedures of sanctions.*

"Whistle-blower protection" refers to the set of measures taken to protect from retaliation anyone who denounces or is about to denounce the fraud and corruption in Bank projects;

"The results of reprehensible practices", are the results presented in the report of the DILFC. They shall contain the information referred to in paragraphs 5.1 and 5.2 of these sanctions procedures.

"Staff regulations" means the effective staff regulations of the BOAD.

"Procurement rules" means the rules and procedures of the Bank for the acquisition of goods and works and the Bank rules and procedures for the use of consultants.

"Reprisal" means any measure taken against an employee of the Bank, of an individual or entity because of the denunciation of a breach of the rules and regulations of the Bank by a company, a person or any other entity.

« Statutes » means the statutes of BOAD

'The staff regulations' means the statute governing the staff of the BOAD.

#### **4. The investigation and prevention**

The Bank encourages integrity and prevention to promote a proactive role in deterrence of corruption and other harmful practices in operations financed by the Bank.

With regard to investigations, the Bank requires that they are comprehensive, professional and respectful of the parties concerned. They must be

conducted in accordance with the policies, rules, regulations, privileges and immunities applicable to BOAD.

#### **4.1 Organizational unit of integrity and prevention surveys**

The integrity and the fight against corruption (DILFC) Division is the first point of contact for allegations of violations of integrity activities conducted by BOAD or staff of the Bank. It is responsible for investigations in the fight against corruption and fraud.

Its main mission is to conduct independent investigations into the allegations of corruption, fraud and other misconduct committed in connection with the operations financed by the BOAD. The Division also develops preventive measures to reduce, in advance, possible risks of corruption, fraud, misconduct and other wrongdoing under the operations financed by the Bank practices. Operational functions of the DILFC also include risk assessment and the use of surveillance measures in the context of investigations.

The DILFC does not sanction recommendations. The Bureau of investigations receives allegations of improprieties and conducts investigations. It then submits its report to the competent authorities, in accordance with the procedure of the Bank to impose sanction. The DILFC reports are transmitted to the President of the Bank.

The integrity and the fight against corruption (DILFC) Division perform the functions of Office of integrity and prevention and investigation office.

##### **4.1.1 The Investigation Office**

As the investigation office, the Division of integrity and the fight against corruption (DILFC) led by the head of the Division appointed by the President,

is responsible for the conduct of investigations. The head of the integrity and the fight against corruption Division ensures the role of 'Commissioner of investigations' BOAD.

The Office of investigations has for mission to:

- Unfettered, conduct investigations into allegations of fraud, corruption and misconduct within the Bank and in the activities it funds. These investigations relate to projects financed by the Bank, acts of misconduct committed by agents and who have a relationship with the activities funded by the Bank, administrative budgets and misuse of resources. It adopts a both reactive approach in the treatment of allegations of corruption and fraud that proactive in the prevention of acts of the same nature ;
- ensure compliance with policies, procedures and guidelines relating to integrity and ethics;
- review transactions and other material in order to ensure compliance with Bank policies and international conventions ;
- supervise and implement procedures and mechanisms to ensure the confidentiality of the hotline, protect whistleblowers and anonymous denunciation of acts of corruption and fraud within the Bank and in the activities financed by the Bank in the Member States ;
- receive and pre-select allegations and accusations of fraud, corruption and irregularities or suspected of such acts within the Bank and in the activities funded by the;
- use the means of surveillance deemed reasonable and necessary for the continuation of investigations; have unrestricted access to all persons subject to an investigation, to archives, documents, goods,

registers, systems of the Bank and the assets which it has custody or control, and any authority, institution, company or person beneficiary of the Bank's operations ;

- Monitor the implementation of survey recommendations ;
- report regularly to the President on allegations received and screened, as well as the State of progress of the investigations and the implementation of the recommendations is related;
- assess the risks of fraud and corruption for the purpose of establishing the opportunity to implement control mechanisms or to strengthen, to reduce vulnerability and develop tests to facilitate the detection of cases of fraud, corruption or irregularities;
- Campaigns of awareness and information on fraud and corruption in the Member States and provide relevant training to the staff of the Bank and its external partners.

#### **4.1.2 The Office of the integrity and prevention**

As Office of integrity and prevention, Division of integrity and the fight against corruption (DILFC) led by the head of the Division appointed by the President is mandated by:

- preventing offences by developing tools to strengthen compliance with the due diligence, in assessing the risk of corruption, fraud and other financial operations of the Bank crimes, by determining the measures or the institutional reforms necessary to fill gaps and by serving as a resource centre for lessons learned and best practices ;

- better to promote integrity in the daily banking operations ;
- Improve the prevention and detection of wrongdoing. The survey results are discussed with the relevant operational departments to foster dialogue on the improvement of business processes and helping to prevent future wrongdoing ;
- organize workshops for the staff of the Bank and systematically take part in the orientation of new staff of the Bank seminars to enhance awareness and understanding of the rules and procedures of the Bank relating to ethics and integrity in procurement, as well as of the means available for recording complaints of corruption fraud and misconduct ;
- establish and take proactive steps, including campaigns and information program to train and help operations staff and other partners of the Bank ;
- Technical assistance limited to colleagues such as fight against corruption national organizations, with which it can conduct investigations on the ground.

## **4.2 Diligence integrity**

BOAD recognizes the need to promote, in accordance with international standards; operational practices fingerprint ethics and good governance in the taking of decisions relating to lending and investment operations. Accordingly, the Bank recommends that the organizational units (OUs) involved in the fight against corruption and fraud to be guided by the following general principles in the analysis of integrity issues related to decision making concerning loans and investments:

- adequate procedures concerning the 'reputation of the customer' to ensure the exact identity of the true beneficiary;
- scrutiny of the indicted parties or subject to investigation for serious offences, examined or sanctioned by a regulatory body or on a "red list" recognized;
- scrutiny of the parties involved in a civil dispute with allegations of financial wrongdoing;
- a thorough review of politically exposed persons;
- the reduction of risk factors identification and implementation of provisions taking into account the risks associated with integrity;
- A continuous monitoring of the risks associated with integrity in the context of portfolio management.

### **4.3 General principles for surveys**

#### **4.3.1 Reprehensible practices**

WADB mobilises funds and allocated to Member States and businesses of the UEMOA, in order to promote the socio-economic progress in the sub region. To accomplish this mission, it is important that these funds are used for their intended purpose. The DILFC contributes to the achievement of the mission of the WADB, avoiding and detecting corruption, fraud and other practices injurious, defined as reprehensible practices.

Objectionable practices - corruption, fraudulent, collusive maneuvers, coercive maneuvers and obstruction and obstructive maneuvers within the operations financed by the Bank - have been defined in the Manual of Policy and Procedures for the prevention and fight against Corruption and Fraud (MPPCF). These definitions apply to individuals and businesses as well as financing operations, management and procurement of the Bank.

### **4.3.2 Support to the actions of the Member States**

WADB recognizes the importance of preserving the integrity in the activities it funds. It also supports the initiatives undertaken by the Member States of the UEMOA and other stakeholders, including the press and the judiciary, to strengthen the transparency and accountability, improving governance and combating corruption.

The Bank will seek to promote a proactive and coordinated strategy to assist Member States and the private sector to develop institutions, systems and administrative policies which are able to eliminate the risk of fraud and corruption.

The Bank will strive to strengthen the coordination of activities in governance, integrity and fighting corruption with the technical assistance provided by other donors of funds involved in the Bank's operations in the various States in order to avoid duplication and maximize synergies. If applicable, WADB will help implementing bodies to assess the potential risks related to integrity in contractors and to strengthen the mechanisms of good governance and fight against corruption.

### **4.3.3 Objectivity, impartiality, fairness and independence of the investigation office during the investigation process**

The Investigation Bureau will evidence of objectivity, impartiality, and fairness throughout the investigation process and conducts its activities in a competent manner and with the highest levels of integrity. In particular, the investigation office exercises its powers in independence with regard to officials or managers of operational activities and to the members of staff likely to be subject to investigation and works protected from inappropriate pressures and fear of reprisal.

#### **4.3.4 Conflict of interest management**

The investigation office staff brings to the knowledge of the General Comptroller, in a timely manner, any conflict of interest or potential knowledge during an investigation in which it participates. The General Comptroller addresses a note to the Chairman of the BOAD to take appropriate measures to remedy the conflict. When the conflict concerns the Comptroller general himself, it shall inform the President within 48 hours. The President then takes appropriate measures to remedy the problem.

#### **4.3.5 Investigations into allegations of misconduct by members of the staff of the Bureau of investigation**

The following appropriate procedures are applied to investigate allegations of misconduct on the part of a member any of the staff of the Bureau of investigation:

- the allegations concerning the misconduct of the staff of the Bureau of investigation must be reported must be the Comptroller General and the Chairman of the WADB. Such allegations will be examined by the Bureau of investigation investigators, appointed by the Comptroller General.
- the allegations concerning the Comptroller General must be reported to the President of the Bank. They will be examined by an expert of inquiry chosen by the President that will make its findings directly to the President.

The Bank published, in its annual report, the investigation office activities focusing on the preservation of the integrity and the fight against fraud and corruption, in accordance with its policy on disclosure of information.

#### **4.3.6 Obligation for the staff of the Bank to denounce and to cooperate**

Staff of the Bank is required to report acts of fraud, corruption, misconduct and other punishable practices immediately but in any event, no later than seven (7) days after knowledge of fraud or corruption.

The staff of the Bank shall report any alleged violation of integrity to the Bureau of investigation. No approval or permissions are needed for staff to report a suspected integrity violation or misconduct.

A staff member described as a "whistleblower" within the meaning of the rules, policies and procedures of the BOAD is safe from reprisals by the Bank and the people involved in the wrongdoing alleged or denounce.

BOAD will deal with the retaliation as separate Act of misconduct<sup>1</sup>.

BOAD can ask the staff to denounce acts of fraud, corruption and other forms of misconduct.

The staff of the Bank is required to cooperate with an investigation and respond to questions and to meet requests for information.

#### **4.3.7 Protection of whistleblowers and people subject of the allegations**

The office of investigation takes reasonable steps to protect the confidentiality of any non-public information related to an investigation, including the identity of those who are the subjects of the investigation and parties who provide testimony or evidence. How information is kept and

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<sup>1</sup> Misconduct is the failure by a staff member, the rules of conduct or standards of conduct prescribed by the organization, including the Code of Ethics staff.

placed at the disposal of the parties, including the national authorities is governed by the rules, policies and procedures of the BOAD.

During the investigation and until the sanction has been determined, the investigation Office takes reasonable steps to protect and treat as confidential the identity of the subjects of this investigation.

Bureau of investigation takes reasonable steps to protect and treat as confidential the identity of parties who provide testimony or evidence. Depending on the nature of the case, the Investigation Bureau can disclose some evidence about an investigation in a manner that takes into account the need to protect informants and witnesses in accordance with the Bank whistleblower protection policy. Only the Bureau of investigation can access to its folders and files.

A staff member who is regarded as a "whistleblower" according to the rules, policies and procedures of the Bank only can be subjected to retaliatory measures by the Bank. The Bank will deal with the retaliation as a separate Act of misconduct.

#### **4.3.8 Protection of information**

The Board of inquiry can determine whether its files and records can be shared (edited or redacted) with other parties to support other surveys or where it is deemed necessary to fulfil its tasks. All documents and information for the case, open open, founded or unfounded, are kept in a secure and confidential manner by the Bureau of investigation for at least three years.

The office of investigation holds and keeps in a safe place the complete records of the investigation and the information collected.

The Investigative Office shall keep and preserve in a safe place the complete files of the investigation and the information gathered.

The investigation office must maintain and secure an adequate record of the survey and the information gathered. Complaints records should be kept for at least five years after the filing of the complaint.

The staff of the investigation office takes appropriate measures to prevent the unauthorized disclosure of investigation information.

#### **4.3.9 Administrative investigations**

All the surveys commissioned by the Survey Office were administrative in nature. Given the administrative nature of the investigations, a staff member who is the subject of the investigation doesn't have the right to be accompanied during the interview by another employee or former employee in its defence. The provisions of the staff regulations of the BOAD do not apply.

#### **4.3.10 Probability of a fact**

For the purposes of an investigation, the standard of proof which must be used to determine if a complaint is substantiated is defined by information that, as a whole, show that one thing is more likely than not.

"More likely than not", means that when the examination of all the relevant evidence and materials, a preponderance of the evidence and materials support the conclusion.

#### **4.3.11 Fault of a member of the staff of the WADB**

A fault was the failure by a staff member of the BOAD to observe the rules of conduct or standards of conduct prescribed by the Bank. In particular, the misconduct includes but is not limited to reprehensible practices cited above.

#### **4.3.12 Due diligence in the conduct of investigations**

The Investigation office examines exculpatory and inculpatory information, and without delay.

The office of investigation conducted the survey diligently taking into account constraints and available resources.

#### **4.3.13 Access to the information of the investigation Office**

For the purposes of the investigation, the investigation office has a full access and unrestricted information and all folders, personal, and goods appropriate to the Bank, in accordance with the rules, to the policies and procedures of the BOAD.

To the extent where rules, policies and procedures, and relevant contracts permit, the investigation office is authorized to examine and copy the books and registers appropriate projects, organs execution, individuals, or the participating companies or seeking to participate in the activities financed by the Bank and all other entities participating in the disbursement of the funds of the Bank.

The office of investigation can consult and collaborate with other organizations, international institutions, and other interested parties to exchange ideas, practical experiences and visions on how to better deal with issues of mutual interest.

The Investigation office can provide assistance, and share information with other offices of investigation.

The Investigation office can provide assistance, and share information with other offices of investigation, including with national authorities, in the interest of cooperation, harmonization or other relevant considerations. Bureau of investigation will require the recipients of this information use it only for the purposes for which the Bureau of investigation disclosed information in order to protect the confidentiality of this information.

To the extent where rules, policies and procedures, and relevant contracts permit, the investigation office is authorized to examine and copy the books and registers appropriate projects, organs execution, individuals, or the participating companies or seeking to participate in the activities financed by the Bank and all other entities participating in the disbursement of the funds of the Bank.

#### **4.3.14 Right of defense**

As part of the investigative process, a physical or legal person subject to an inquiry will have the opportunity to explain its conduct and present information in its favour. The timing is determined by the Bureau of investigation taking into account the right of the subject to be informed as well as the level of investigations, to the rules, policies and procedures of the BOAD.

The Investigation office has the duty of examining inculpatory and exculpatory information.

#### **4.3.15 Survey Results**

The office of investigation shall document the findings of its investigations and findings.

The results of the survey are based on facts and related analyses, which may include reasonable inferences.

Office of investigation records results and the findings of the investigation.

#### **4.3.16 Duty to report to the President of the Bank**

Office of investigation made recommendations to the President of the BOAD based on the results of the survey.

Office of investigation reports to the President of BOAD, investigative findings. Recommendations are not necessarily limited to the structural deficiencies of the Bank favoured punishable practices that have been identified during the investigations.

In all cases, the office of investigation made a point of its activities to the President of the Bank every six months. He submitted at the discretion of the President of the Bank an annual report of fraud investigations..

### **4.4 Guidelines of investigation procedure**

#### **4.4.1 Sources of the complaints**

The Investigation office accepts complaints wherever they come from, including complaints from anonymous or confidential sources.

As much as possible, the office of investigation acknowledges receipt of all complaints.

The complaint form can be used for any complaint.

#### **4.4.2 Reception of a complaint**

All complaints are recorded and reviewed to determine if they are within the jurisdiction of the jurisdiction or the jurisdiction of the Bureau of investigation.

#### **4.4.3 Preliminary evaluation**

As soon as a complaint is registered, it is evaluated by the Bureau of investigation to determine its credibility, its materiality and its verifiability. For the purposes of the preliminary assessment, the following definitions shall apply:

- credible: there is a reasonable possibility that a violation has occurred ;
- substantial: the issue is sufficiently important to justify the planned expenditure of the investigation and corrective action ;
- Ascertainable: possible options exist to obtain sufficient evidence to determine the veracity of these allegations, according to the balance of probabilities.

To this end, the complaint is examined to determine whether or not a legitimate basis to initiate an investigation.

Following the preliminary assessment, investigation office staff recommends to the Chief of the DILFC, the closure of the complaint or the continuation of the investigation. The Comptroller general shall decide on the issue and reports to the President of the Bank.

If the head of the DILFC, recommendation and on the instruction of the President of the Bank, decides to prosecute, it must promptly record the decision in the case management system. In this case, investigations are made according to the rules, policies and procedures of the Bank. In cases

where the case is shelved, documents y related are classified by the Survey Office.

If the head of the DILFC, recommendation and on the instruction of the President of the Bank, decides not to prosecute, it must promptly record the decision in the case management system. Information about the allegation and its evaluation should be available on request by parties. These cases are not reported in the "annual report of fraud investigations" of the Bureau of investigation.

The planning and conduct of an investigation and the resources are to be allocated should take account of the seriousness of the allegation and the possible result.

Decisions on the initiation of the investigations shall be taken in accordance with the rules, policies and procedures of the Bank; the decision to open an investigation in a particular case is a matter for the Bureau of investigation.

#### **4.4.4 Conduct of the survey**

Office of investigation seeks, as far as possible, corroboration of the information in its possession. When this is not possible, the investigation office processes the information according to its best belief.

For the purposes of these guidelines, the investigative activity includes the collection and analysis of documents, videos, recordings, photographs, and electronic information, forensic evidence or any other materials, the hearings of witnesses, comments from investigators and such other investigative techniques that requires the conduct of the investigation.

The investigative activity and the key decisions are written and reviewed under the responsibility of the head of the DILFC.

Subject to rules, policies and procedures of the Bank, if, at any time during the investigation, the Bureau of investigation judge as a prudent, precautionary or to protect information, temporarily prevent a staff member who is the subject of an investigation to have access to its records or his office, or recommend its suspension with or without compensation and benefits, or to recommend such other limits to its official activities, the Bureau of investigation refers to the Chairman of the BOAD for the follow-up to after opinion of the Office of the sanctions.

As far as possible, the interviews conducted by the Investigation Bureau are conducted by two or more persons.

Subject to the discretion of the Bureau of investigation, interviews are conducted in the language of the person who is the subject of the investigation, if necessary with the assistance of interpreters.

The office of investigation must provide, at its request, a copy of the report of interviews to the witness or the person concerned by the investigation after closing investigations. Interviews can be recorded with the agreement of the witness or the person concerned by the investigation.

The investigation office does not pay a witness or a subject for information. Subject to the rules, policies and procedures of the Organization, the Bureau of investigation may assume responsibility for reasonable expenses incurred by witnesses or other sources of information to meet the Bureau of investigation.

Investigation office can use external experts to assist it in its investigations.

#### **4.4.5 Results of investigation**

If during the investigation the office of investigation is not sufficient information to judge a complaint, she puts in writing its conclusions, closes the investigation, and notify the parties concerned, the need.

If the office of investigation finds sufficient information to judge a complaint, he established the record of the case and addresses a note y relative to the Chairman of the BOAD, in accordance with the rules, policies and procedures in force of the institution.

When the results of the investigation of the office of investigation indicate that a complaint is knowingly misleading, the office of investigation, where appropriate, shall bring the matter before the President for further action in accordance with the rules, policies and procedures in force of the institution.

When the results of the Survey Office indicate that a witness or a subject is not complied with an existing obligation within the meaning of the investigative process, the Investigation Bureau can refer the matter to the Chairman of the BOAD for possible sanctions.

Where practicable, the investigation office will acknowledge receipt of complaints that have a connotation of political manipulation in accordance with BOAD whistleblower protection policy and will recommend to the President of the Bank, the response to send to the informer among other information that the Board of inquiry shall document in this case:

- the name of the official who received the complaint;
- the date and the method of contact with the complainant;
- the identity of the complainant, if disclosed;
- a brief summary of the allegations, including the type of alleged wrongdoing and the parties expected to be involved ;
- The connection to the Bank, if any, including the description and location of the project or the operation concerned;
- Any other information that the employee considers it important.

#### **4.4.6 Referral to national authorities**

Investigation office may deliberate the effect of whether it is appropriate to transmit information relating to the complaint to the competent national authorities, and shall obtain the necessary internal authorization when it deems the reference before the national authorities justified.

#### **4.4.7 How to contact the Division of integrity and the fight against Corruption (DILFC)**

WADB protects the privacy of complainants and accepts the anonymous allegations. The Bank staff and the public in general can use numbers secure the DILFC to denounce the fraud, corruption, coercion, collusion or obstruction to the breast of the Bank or in operations financed by the Bank.

##### **By phone**

The DILFC can be reached by phone with answering machine and a recorder to secure number: (+ 228) 80 00 00 09

Only a member of the staff of the DILFC is entitled to reply on this line or access to voicemail.

##### **By telefax (fax)**

The denunciations and information may be communicated to the DILFC by secure fax: **(+ 228) 22 23 25 78**

##### **By email**

The DILFC can be contacted by secure email at the secure address below:  
**[investigations@boad.org](mailto:investigations@boad.org)**.

##### **By mail**

Marked '**Confidential**' emails must be sent to the following address:

***Mr the Commissioner of investigations***

***West African Development Bank***

***Division of integrity and the fight against corruption (DILFC)***

***BP 1172 Lomé***

***Togo***

### **In person**

Any informant or anyone involved in the investigation or the proceedings of investigations can appear in person on the premises of the BOAD, at the following address:

***West African Development Bank***

***Division of integrity and the fight against corruption (DILFC)***

***68, Avenue de la libération Lomé Togo***

In the statement of concerns, any person concerned is asked to give as much information and detail as possible, as well as answering the questions database information who, what, where, when and how.

### **4.4.8 Complaints**

The Bank strongly encourages persons with knowledge of cases of misconduct to report them to the DILFC. Even if the DILFC accepts anonymous complaints, it encourages whistleblowers to identify since the allegations under the cover of anonymity are often more difficult to examine and may not respond to the concerns of the complainant. For this purpose, the Bank has adopted a whistleblower protection policy that protects whistleblowers against retaliation.

The attached form is completed by the informant for information on the reported facts. It can be downloaded from the website of the BOAD at the following address: [www.boad.org](http://www.boad.org). This form must include at least the answers to the following key issues:

- What has happened ? Full description of the facts giving all relevant details.
- When did the facts occur? indication of the date, time and other credentials ;
- Where did the facts occur? Indication of where the misconduct occurred and on what occasion (country, city, area ...) ;
- Who are the persons and / or entities? indication of the names and addresses of individuals or companies who, in the opinion of the informant, are affected by improper practices summarized or are implicated in these practices or have knowledge ;
- In what these facts do relate to the BOAD? Explanation of the link between these allegations and internal procurement activities or operations financed by BOAD.

In addition, the form must specify the name and coordinates of the informer.

## **5. Sanctions**

Sanctions are decisions taken by the Bank to penalize individuals or companies convicted of improprieties. The system of sanctions of the BOAD has a purely administrative character and is separate from the investigation procedure. Sanctions are applied in accordance with the principle of proportionality, taking into account the mitigating and aggravating circumstances. The sanctions include: reprimands, exclusion, restitution, etc. Exclusion is the decision to declare that an entity is ineligible to bid or to be awarded future contracts managed, funded or supported by BOAD.

### **5.1 The system of sanctions**

The DILFC has the primary mandate to conduct investigations into allegations of improprieties. The decision to punish individuals or entities on the basis of the investigation of the DILFC reports is dissociated from the investigative process. It is created to BOAD desks of sanctions to hear and determine questions y relating.

BOAD is implementing a procedure to two levels for determining penalties for proven, committed improprieties in managed projects, financed or supported by the Bank. At the end of the investigations into allegations, the DILFC transmits the investigation reports to the President of the Bank, which will conduct a preliminary review and will, if necessary, a decision of sanction.

When the investigations focus on allegations of improprieties committed by members of staff of the Bank, and which have a relationship with operations financed by the Bank, administrative budgets and the misuse of the resources of the institution, the DILFC reports its findings to the President of the Bank. The President of the Bank, after consultation with the Bureau of sanctions, can enter the folder the disciplinary board of the BOAD because of the seriousness of the facts and the sanctions advocated, in accordance with staff regulation. The disciplinary board shall decide on the sanction and made proposals to the President that brand or its agreement. Any officer Bank who feels aggrieved by a decision of sanction of the President following the recommendations of the disciplinary board may appeal before the Joint Consultative Committee in accordance with the staff regulations and the staff rules.

When the investigations focus on allegations of improprieties committed by physical or legal persons external to the Bank and which are related with operations financed by the Bank, administrative budgets and the misuse of the resources of the institution, the DILFC transmits its conclusions to the President of the Bank which captures the Office of sanctions. Sanctions Bureau is investigating the consequences legal, financial, political, etc., of the

sanctions proposed to the Bank. He addressed a note to the BOAD President who may or not, on the basis of the recommendations, hold sanctions to be sent to the respondent by the Office of the sanctions. The person or the entity concerned may appeal against a decision taken by the President of the Bank to study the legal, financial and political consequences etc. of the sanctions proposed to the Bank. He addressed a note to the BOAD President who may or not, on the basis of the recommendations, hold sanctions to be sent to the respondent by the Office of the sanctions. On the basis of the conclusions of the appeal, the CSFC address its recommendations to the President of the Bank, which decides the final position of the Bank. In case of dissatisfaction, the person or the entity concerned may apply to the competent court, in accordance with the provisions of the contract that binds with the BOAD. Where no contract is binding the Bank to the person or entity concerned, it may apply to the judicial authorities of his choice.

The Office of sanctions is the first level of the procedure of sanction when it comes to physical or legal persons external to the Bank. The president shall appoint a Commissioner of sanctions which is the head of the division of compliance and regulatory and assuming the functions of Office of the sanctions within the charged UO for Legal Affairs. Commissioner of sanctions has rank of Director or Deputy Director. It coordinates the activities of the Office of the sanctions and is responsible for conducting litigation relating to notifications and the collection of the information necessary for the performance of the tasks of the Bureau's sanction.

The Appeal Board receives and determines appeals against decisions of sanctions imposed by the President of the Bank on the proposal of the Office of the sanctions. It decides on the facts and makes recommendations to the President of the Bank who decides to conduct. For this purpose, the functions of the Supervisory Committee of the fraud and Corruption (CSFC), are defined in the policy manual and Procedures for preventing and fighting Corruption and fraud (MPPCF) in paragraph 46 and are recorded by decision

of the President of the Bank on the creation of the Ethics Committee, and such that they can be reviewed as appropriate.

## **5.2 Organizational units responsible for sanctions**

### **5.2.1 The Office of sanctions**

The sanctions office is responsible for ensuring the role of office of the sanctions in accordance with the procedures in force on ethics, prevention and fight against fraud and corruption, and as such:

- coordinate the implementation of policies, procedures and guidelines relating to integrity and ethics in relation to sanctions ;
- propose to the President of the Bank, penalties for the implementation of the recommendations of the findings of surveys of the bureau of investigation ;
- Exchange with the defendants, within the limit of the policies and procedures of the Bank, and study the legal, financial, political consequences of the sanctions proposed to the Bank ;
- send a note to the Chairman of the BOAD and inform the respondent, when sanctions are brought against the latter ;
- Provide support to the Joint Consultative Commission (JCC) and the Supervisory Committee of fraud and Corruption (CSFC) for the treatment of appeals of the respondents.
- to regularly report to the Presidency of the Bank in respect of the fight against money laundering and the financing of terrorism as well as sanctions in ethics, combating fraud and corruption in the Institution, and to submit an annual report of activities.

Commissioner of sanctions is the head of the Office of the sanctions. He is responsible for the coordination of activities that such office as defined by the regulation in force on the Organization and operation of the Bank. He is the Secretary of the CFSC

### **5.2.2 Boards of appeals**

These appeals were brought, as appropriate to the level:

- The Joint Consultative Committee (JCC), when it comes to a staff member of the Bank ;
- - The Monitoring Committee of the Fraud and Corruption, if the respondent is an external person or entity to the Bank.

#### A. The joint consultative commission

The rules and procedures of the CCM are governed by the provisions of the UNCITRAL conciliation rules, which specifies the conditions of instruction and procedures applicable to the CCM to settle through conciliation, the different that could oppose the Bank in its agents relating to conditions of employment, including, all relevant provisions of the staff regulations, of the staff regulation, all the provisions applicable to the staff of the Bank as well as their implementing texts. Those provisions are among others, those of the [manual of policy and Procedures for the prevention and fight against Corruption and fraud \(MPPCF\)](#), the [manual of Procedures for investigation and sanctions](#) in the fight against Corruption and fraud, [whistleblower protection policy](#), the [code of ethics of the Bank](#), of the Charter of the representative of the Bank in [the Board of Directors of companies and institutions](#) i.e...

#### B. The Supervisory Committee of the fraud and Corruption (CSFC)

The Supervisory Committee of fraud and Corruption is responsible for processing appeals by third parties (external to the Bank). It is composed as follows :

President: Vice President of BOAD

Members :

- Secretary General
- President of the CCM
- Chairman of Ethics
- Committee Directors of departments in charge of operations, finance, and accounting, strategy, studies and cooperation
- Director of the Legal Affairs
- Controller General
- Head of Office surveys
- Head Office of integrity and prevention
- head of the Office of the sanctions

The Commissioner of the sanctions is the Secretary of the CSFC.

### **5.3 Procedure of sanctions**

#### **5.3.1 Publication of the reprehensible observations of practices**

Following an investigation, where the DILFC considers that the evidence supports the conclusion of one or more reprehensible practices, the DILFC shall submit to the President of the Bank as soon as the investigation is completed, the findings of misconduct ("findings of reprehensible practices"). When the President of the Bank decides to seize the Office of sanctions, directs the Bureau of investigation to send a copy of any file on the case to the Office of the sanctions.

### **5.3.2 Summary of the observations of practices of sanctions**

Conclusions of misconduct must:

- Identify the Member of the staff, the part, the ally or another partner of the Bank suspected of having committed a punishable act of sanctions ;
- indicate the alleged punishable practice of sanctions;
- provide a summary of the facts and considerations relevant to allegations of practice punishable by sanctions;
- propose a sanction for this practice objectionable;
- join all the elements of evidence relevant in support of these allegations, as well as any exculpatory evidence or mitigating in the possession of the DILFC, and
- Attach any other information that the DILFC judge as evidence of reprehensible practices findings.

### **5.3.3 Disclosure of the proof with discharge or attenuating**

In presenting the results of practice liable to sanctions in the Office of the sanctions, the DILFC must present all relevant evidence in its possession which could, reasonably, tend to show that the defendant did not commit the alleged punishable practice of sanctions (evidence to discharge) or that there are circumstances which mitigate the guilt of the respondent. If the

DILFC comes into possession of such evidence after the presentation of the findings of the liable practice of sanctions, this evidence must be submitted in writing, in the Office of the sanctions or to the Appeal Board, if applicable.

#### **5.3.4 Publication of the Notice of Sanctions Proceedings**

If sanctions Office determines that the punishable by sanctions practice findings support a finding prima facie that the respondent has committed a punishable act of sanctions, Commissioner of sanctions must issue a notice of procedure of sanctions ("notice") to the respondent, on the instruction of the President of the Bank, and notify the DILFC. Sanctions can also make an other qualification of a punishable by sanctions practice based on the evidence provided by the DILFC, which is not provided for in the findings of the DILFC.

#### **5.3.5 Contents of Notice of Sanctions Proceedings**

The notice must include the information in the findings of practice punishable by sanctions such as:

- indicate that the respondent is invited to respond to the allegations contained in the findings of practice punishable by sanctions within thirty (30) days of receipt of the notice ;
- Indicates that if the defendant does not respond to the notice, sanctions Office reserves the right to issue a decision based only on the evidence provided by the DILFC. Such a decision may or not be contrary to the interest of the respondent ;
- indicate that the Office of sanctions should issue a decision and prescribe one or more penalties from the list of penalties in these proceedings of sanctions after review of the response of the respondent and, punishable by sanctions practice findings ;

- Indicate to the respondent once the determination of sanctions is made, the decision will be final and binding unless the defendant files an appeal against the decision ;
- as appropriate, inform the respondent that a temporary suspension has been issued against the respondent and the manner in which the defendant may contest the suspension temporary, as described in item 5.2.15.(Temporary suspension) of these procedures ;
- Attach a copy of the procedures in force at the time of publication of the notice.

The notice and all the information relating to it, must be transmitted electronically and on paper by the sanctions to the respondent Commissioner, provided that all efforts are made to preserve the confidential nature of information and the integrity of the process of sanctions.

### **5.3.6 Response from the defendant**

The respondent may, within thirty (30) days of receipt of the notice, file a response to the Commissioner of the sanctions. The answer may challenge the findings and/or the content of the notice.

### **5.3.7 Issuing a decision of the Commissioner of sanctions s**

The sanctions must review the findings for liable practice of sanctions as well as the response of the respondent in order to determine whether a preponderance of the evidence to conclude that the respondent has committed a reprehensible act. The Office of sanctions may seek clarification on the evidence and documents submitted by the DILFC or the defendant, at

any time before issuing a final decision (decision sanction').

The Office of sanctions should in no later than fifteen (15) working days after receipt of the reply from the respondent, issue a decision on the sanctions on the basis of the sufficiency or not results or evidence in the findings of practice liable to sanctions and on the instruction of the President, shall inform, without delay, the respondent and the DILFC of decision. When the Office of sanctions is not able to issue decision on sanctions within fifteen (15) days referred to above, the Commissioner of sanctions must, no later than at the expiration of this time limit, provide written notification of the Office of the Sanctions to the DILFC and the defendant on his inability to do so. The notification must include an estimate, in good faith, of the period for delivery of the decision of sanctions, and should be sent to the DILFC and the respondent with an archived copy.

### **5.3.8 Requests for revision**

The DILFC present to the Office of the sanctions, an application for review of a decision taken by the latter as soon as reasonable after the discovery of new evidence that the DILFC could not discover as a result research brought forward the decision issued by the Office of the sanctions. These applications must also include requests for review of a sanction or sanctions in the case of the discovery of new evidence which exonerate the respondent or attenuates the allegations against the respondent following the results of the survey of the DILFC. In one such case, Commissioner of the sanctions after notifies instruction of the President, without delay, to the respondent the application for review. The defendant may present additional evidence in response to the new evidence provided by the DILFC within thirty (30) days of receipt of the request for review.

### **5.3.9 Requests for revision**

The Office of sanctions may revise the penalty in the light of the request for review. In the case where the Office of sanctions revises the sanction, Commissioner of sanctions, after the President's instruction, forthwith inform the respondent and the DILFC.

### **5.3.10 Determination of sufficient evidence**

When sanctions Office retains that reprehensible practice findings are not supported by a preponderance of the evidence, the Commissioner of the sanctions in fact notification to the DILFC, in writing, providing the reasons for its position.

The DILFC may, at any time, bring a punishable by sanctions practice finding revised at the Office of sanctions.

### **5.3.11 Withdrawal of notice or revision of the penalty**

The Office of sanctions may withdraw the notice on the grounds that there is a manifest error or other clear basis to support a finding of insufficient evidence against the respondent.

### **5.3.12 Submission of revised findings of misconduct**

When the sanctions office withdraws its opinion, the DILFC may submit findings of improprieties revised on the basis of additional information and/or surveys.

### **5.3.13 Failure to submit an answer**

If the respondent fails to submit a response within the period specified in the item 5.2.14.(Limitation period) of these proceedings, the allegations contained in the notice shall be deemed be uncontested and the sanction

comes into force. The Commissioner of sanctions shall promptly notify the DILFC and submit a note to the President of the Bank in this sense.

#### **5.3.14 Limitation period**

Any initiative must be taken for alleged practice liable to sanctions which has been committed more than five (5) years after the commission of the last act or omission constituting the alleged offence and liable of sanctions.

#### **5.3.15 Temporary suspension**

##### **A. Request for temporary suspension**

If, at the time of the presentation of the findings of improprieties or before the conclusion of an investigation, the DILFC believes that investigated continuing eligibility would cause financial hardship or imminent for the Bank reputation, the DILFC may apply to the Office of the sanctions, temporary suspension ("application"), requesting that the respondent either temporarily suspended the eligibility to participate in projects or programs financed by the Bank and to receive new contracts and other forms of support of the Institution.

The application must contain the elements mentioned in the procedures of sanctions, as well as a description of ongoing investigations, an exceptional testimony, the basis of the application, proof of the urgency of the request, and an estimate, in good faith to the time needed to conclude the investigation. When the request is made before the publication of the findings of improprieties or notice, the DILFC must provide sufficient evidence to indicate the probability that the defendant committed a reprehensible act. The DILFC also certifies that the temporary suspension is requested, in good faith, and that investigations are continuing with application and diligence.

## B. Launch of a notice of temporary suspension

If the sanctions Office determines that there is evidence in support of the application, and that the preponderance of the evidence allows to conclude that the respondent is engaged in punishable by sanctions practice for which an appropriate sanction would be at least d ' a year of exclusion, the Commissioner of sanctions, on the instruction of the President of the Bank, will issue a notice of temporary suspension to the respondent and simultaneously notify the Appeal Board and the DILFC. Unless restored, in accordance with 5.2.15 E. (Recovery or end of the temporary suspension) following these procedures, the temporary suspension shall be for a period of twelve (12) months. The DILFC may request a renewal of the temporary suspension, no later than one (1) month before the end of the temporary suspension.

## C. The opposition by the respondent to the temporary suspension

When the notice of temporary suspension is launched before the notice of sanctions procedure, the defendant may submit an objection to the temporary suspension ("Objection") within thirty (30) days to the Commissioner of the sanctions. The opposition must include information and arguments militant in favour of the respondent, despite the evidence in the notice of temporary suspension, to remain eligible to participate in projects or programmes financed by the Bank or participate in new activities funded or administered by the Bank.

## D. Recovery or the end of the temporary suspension

The Office of sanctions reviews the information and arguments presented by the DILFC and the respondent, and may propose to the President of the Bank to decide to terminate the temporary suspension or recovery of the. The Commissioner of sanctions shall promptly notify the DILFC and the defendant

of the decision to terminate or reinstate the temporary suspension. There is no new appeal against the decision of the Bureau of the sanctions to restore or terminate a temporary suspension.

#### E. Effect of the temporary suspension

During the publication of the notice of temporary suspension, the defendant is deemed not eligible for the award of new contracts for projects or programmes financed by the Bank or participate in new activities funded or administered by BOAD.

#### F. Renewal of the temporary suspension

In case the DILFC is unable to publish findings of improprieties in eleven (11) months following publication of the notice of temporary suspension, it can submit to the Office of sanctions, an application for renewal of a temporary suspension. The sanctions must take a decision on the renewal of the suspension within fifteen (15) days after the request, after statements by the President. The temporary suspension is deemed to be extended until the decision of the Bureau of the sanctions. Commissioner of sanctions shall without delay, inform the respondent of its decision.

#### G. End of validity of the temporary suspension notice

In the case where the DILFC is not an application as specified in item 5.2.15 (G: renewal of the temporary suspension) above, the suspension shall end at the end of the period laid down in the notice of temporary suspension.

### **5.3.16 Granting of remedies and sanctions by the Office of sanctions**

Within thirty (30) days after the end of the process or the procedure laid down in this regard, the Office of sanctions must draw its conclusions on repair to

allow or recommend sanctions that are justified by the circumstances and as provided in section 5 (sanctions) of these sanctions procedures.

### **5.3.17 appeals**

#### **A. registration**

The calls are a recording at the level of the Appeal Board, the CCM for the personnel of the Bank or the CSFC for external respondents to the Bank. The records include all applications before the Commissioner of sanctions, including notice, the answer, the call, a rebuttal and the decision on sanctions. The appeal is deemed to have commenced on the date of receipt of the application filed by the defendant to the Appeal Committee within the required timeframe.

#### **B. Start of the appeal**

The defendant may file an appeal of sanctions ('call') decision to the Appeal Board within thirty (30) days of the receipt of the decision of sanctions. Given that the appeal before the Board of appeal is a process of novo, respondent shall have the right, to present its new arguments and to provide new evidence not contained in the response to the Commissioner of sanctions as the respondent considers useful, and explain the reasons why it considers that the decision on sanctions should be rejected.

#### **C. Duration of submissions**

The Chairman of the Appeal Board shall set reasonable limits for the duration of written submissions to the Commission

#### **D. The DILFC response**

The Appeal Board transmits a copy of the appeal to the DILFC and the Office of sanctions no later than five (5) days of receipt or, in exceptional circumstances, within a reasonable time limited. Office in collaboration with the DILFC sanctions, can give a response to the appeal of the defendant (hereinafter "response") within fifteen (15) days of the receipt. The response should provide new arguments and provide new evidence not contained in the findings of misconduct to the Office of the sanctions, and that the DILFC considers useful to consider appeal.

#### E. Refutation of the respondent

The Appeal Board must, no later than five (5) days after receipt, or within a reasonable time limited, send the response of the Office of the sanctions to the defendant. The defendant may present additional arguments (hereinafter "refutation") in response to the answer within fifteen (15) days, in circumstances where the DILFC, with the support of the Office of the sanctions, provides new evidence or arguments exclusively in its response to the respondent's appeal. The rebuttal shall be limited to the arguments against the answer and / or in support of the appeal.

#### F. Clarifications

The Appeal Board may request clarification or additional evidence either the respondent or the DILFC. When requested by the Appeal Board, it must allow the other party to present arguments and evidence, in response, within any time that the Board of appeal may, in its discretion, determine. The Appeal Board has the discretion to allow the presentation of new evidence through the Secretary of appeal before the decision of the Appeal Board (final decision). Unless authorized by the Appeal Board, no other evidence, can not be presented after the rebuttal.

#### G. Related procedures

The Appeal Board must take into account the records of all related procedures or other matter before the Appeal Board on the same defendant. The Appeal Board must take into account any previous final decision, taken more than five years before the opening of the current procedure.

#### H. Audiences

The Appeal Board must make its final decision on the basis of the record and the parties do not have the right to an oral hearing. The Appeal Board may however, at its discretion, hold such a hearing deems appropriate at the request of the respondent or the DILFC, supported in this by the Office for sanctions if the Appeal Board finds reasonable grounds for such a hearing. The Appeal Board may also request a hearing on its own initiative. The Appeal Board must determine the nature, duration and form of all hearings. Unless otherwise provided, the parties must bear their own costs for hearings.

#### I. closed deliberations

Except contrary provision in the present procedures, no representative of the DILFC or the defendant may not be present during a part of the deliberations of the Appeal Board. All records related to the deliberations of the Appeal Board are confidential.

#### J. Extension of time limit

The DILFC and the defendant have the automatic right to the extension of any time limit. Either DILFC, or the defendant may request reasonable extensions to the date limit for the submission of clarifications. When the Appeal Board considers that this request should be granted, it may, at its discretion, grant reasonable extensions to the date limit. The Commission can also grant extensions for submission of the reply and rebuttal.

#### K. Admissions of guilt

The defendant may admit all or part of the allegations of the notice, without prejudice to its right to contest other allegations. The defendant may also present evidence and arguments of mitigating circumstances, including a confession and the implementation of programmes by the defendant aimed to detect or prevent fraud or corruption or any agreement with the Bank in relation to allegations or other issues relating to the assent procedure. Evidence and arguments must be presented with planned submissions 5.2.18 E, procedures for the sanctions, this, in accordance with the corresponding deadlines.

#### L. Advisers to the Appeal Board

The Appeal Board should seek legal advice as it deems necessary for the responsible organizational unit of Legal Affairs or, where applicable, to any external legal advice to assist it in its deliberations. In this case, all communications shall be deemed subject to the rules of the Appeal Board and shall be exempt from disclosure.

### **5.3.18 Recordkeeping and distribution of materials**

#### A. Recordkeeping

The sanctions must maintain all necessary records for the work of the Commissioner of the sanctions. The secretariat of the Commission shall maintain all necessary records for the work of the Appeal Board.

#### B. Distribution of documents

The Commissioner of the sanctions is responsible for submitting all documents and a notice published by the Office of the sanctions and transmits the file as required, in accordance with the present procedures. The Chairman of the Appeal Board is responsible for submitting all documents and notices issued by the Appeal Board. The Chairman of the Appeal Board shall provide to the DILFC and the defendant, in a timely manner, and according to the requirements of these procedures, copies of all written submissions and evidence, and all the other documents received or produced by the Appeal Board relating to the proceedings against the defendant, and that are not already provided by the Commissioner of the sanctions. Unless otherwise provided, the Chairman of the Appeal Board should include all relevant evidence to put at the disposal of the Office of the sanctions, which must be reasonably likely to exonerate the respondent or to mitigate the guilt.

#### C. Distribution of documents to other parties

The Chairman of the Appeal Board may, on application of a party or other parties concerned, approve the distribution of the documents submitted to the Appeal Board to the:

- other defendants in the procedures of sanctions concerning charges, the facts or other related issues ;
- other organizational units of the Bank to which the documents would be needed in the exercise their functions ;
- other parties in the framework of references, under the present procedures of sanctions.

In the exercise of his discretion to approve the distribution of materials, the Chairman of the Appeal Board must consider, inter alia, the standard of disclosure of the evidence discharge standard to conceal material sensitive

to the point 5.2.18 (D: Distribution of sensitive material) present procedures of sanctions and any other considerations that the Appeal Board can determine.

#### D. Distribution of documents or other sensitive information

Notwithstanding the foregoing, the Commissioner of sanctions or the Committee of appeal, as the case may be, may, at the request of the DILFC decide to concealment of evidence including submitted at the Office of sanctions or the Committee of appeal, following the finding that there is a reasonable basis to conclude that disclosure of the particular evidence might endanger life, health, safety or well-being of a person or constitute a breach of a commitment made by the Bank. If the Appeal Board rejects the request of the DILFC, it has the ability to remove these items from the folder. In cases where the evidence is withdrawn, the Commissioner of sanctions should withdraw proof of notice.

#### E. Writing materials

The DILFC may, at its discretion, prepare some parts or elements of evidence presented to the respondent or to the appeal board by deleting references to the staff of the Bank and other third parties (with other elements that could enable those persons to be identified), where the identity of these stakeholders is not relevant to the case or when the disclosure can be regarded as prejudicial as defined in the policies of the Bank. The defendant may challenge this wording in his appeal. The Appeal Board must consider the version of such evidence before deletions are carried out to determine whether the written information is necessary to enable the respondent to mount a significant response to the allegations against him. If the Appeal

Board finds that written information is necessary, the opportunity will be given to the DILFC either to remove the evidence of, or put at the disposal of the respondent, as provided for by the Appeal Board. The defendant may submit comments as clarification as provided for in item 5.2.17. (F: Clarifications) of these procedures.

### **5.3.19 The decisions taken by the Appeal Board**

#### A. Decision

The Appeal Board considers whether there is a preponderance of the evidence that supports the conclusion that the respondent has committed a punishable act of sanctions.

#### B. Finding of insufficient evidence

If the Appeal Board finds that the preponderance of the evidence does not allow to conclude that the respondent was liable practice of sanctions, the procedures must be completed. In such a case, the Chairman of the Appeal Board shall prepare a written document, save the finding of the Appeal Board and the closure of the procedure and quickly provide the document to the DILFC, the Office of sanctions and the respondent.

#### C. Request for the reopening of a dossier by the DILFC

The DILFC may request that a closed case be reopened for further consideration on the basis of the newly discovered facts which a reasonable treatment could not be done before the end of the procedure. This request shall be submitted to the Commissioner of the sanctions no later than thirty (30) days following the discovery of these developments, and in no case can

be filed no later than twenty-four (24) months from the closing of the proceedings. Upon receipt of this request by the Commissioner of sanctions, a sanction Office decides to reopen the case for further proceedings or decides not to reopen.

#### D. Find sufficient evidence

If the Appeal Board considers that the preponderance of the evidence to conclude that the respondent was liable practice of sanctions, it must prepare a final summary of the findings of the Appeal Board and impose on the respondent, one of the penalties referred to by these procedures. No appeal may be brought against the final decision and it takes effect immediately, without prejudice to any action taken by a Government, under the applicable law.

### **5.3.20 Pronunciation of sanctions**

#### A. Impositions

The Office of sanctions or the Appeal Board, as appropriate, may impose sanctions. A penalty may be imposed in addition to other.

#### B. Range of sanctions

Sanctions following may be laid down in a decision on sanctions, and if necessary by a final decision.

- (i) Letter of reprimand: it's an official letter of blame for the actions of the respondent were informed on subsequent offences that can lead to a

more severe penalty. A reprimand is appropriate for an isolated incident of lack of monitoring, or when the role of the respondent in the subject practice of sanctions is minor.

- (ii) Status of non-radiation: the respondent is required to take certain corrective, preventive or other actions within a set period to avoid exclusion by the Bank. These conditions may include (without limitation) verifiable actions taken to improve corporate governance, including the establishment, improvement and / or implementation of corporate compliance or of programs ethics, integrity and or corporate control, correction of damages, restitution or disciplinary action against or reassignment of employees. However, when the defendant fails to demonstrate compliance with the requirements within the prescribed period, exclusion automatically enters into force for the period specified in the decision to issue the sanction.
  
- (iii) Radiation: This is an administrative decision not to do business with a person convicted of having engaged in misconduct party. The exclusion should generally not affect existing contractual obligations, but the Commissioner of sanctions or the appeal board may recommend the cancellation of existing contractual commitments. Exclusion measures should provide a minimum period, taking the merits of the case into account.
  
- (iv) Exclusion with conditional release: it is the basic punishment that should be applied unless there is reason for a lesser or greater sanction. The purpose of conditional release is to encourage the rehabilitation of the respondent and mitigate more risk on projects or programmes. The defendant will be exempt from radiation after (i) the end of the period of cancellation defined in advance and (ii) that the respondent has demonstrated that it has met the conditions laid down by the Bureau of sanctions or the Appeal Board.

- (v) Permanent exclusion: permanent exclusion is generally appropriate in cases where it believes that there are not reasonable grounds to believe that the defendant may be rehabilitated through the planned provisions or other conditions.
  
- (vi) Restitution and compensation: restitution and other financial remedies can be used where there is a quantifiable amount to return to the Bank, in the country of the client, the project or programme. This can be recommended independently or jointly with other sanctions.
  
- (vii) Other penalties: other sanctions may be recommended or applied in an appropriate manner, including, but without limitation, restitution of funds and the imposition of fines corresponding to the reimbursement of the costs of investigation and prosecution.

#### C. Effects of radiation

The ineligibility resulting from measures of exclusion under these procedures, unless waived by the Bank, may extend to operations of the Bank and shall also make ineligible respondent to the awarding of contracts for projects or programs financed by the Bank, to receive a product of the Bank's funds or to otherwise participate in the preparation or execution of a project or a program financed by the Bank.

#### D. Factors influencing the choice of sanctions

By issuing a sanction, the following factors may be considered:

- the responsibility of the respondent ;

- the huge nature and severity of the acts of the respondent;
- the past conduct of the respondent in a reprehensible practice;
- the extent of the losses caused by the respondent;
- the damage caused by the respondent to the operations of the Bank, including the credibility of the process of the internal market;
- the nature of the involvement of the respondent under the objectionable practice;
- mitigating circumstances: they include the implementation of programs to prevent and detect fraud or corruption or other corrective measures by the defendant;
- the period of provisional suspension already served by the defendant ;
- the economies of the Bank's resources or the facilitation of a survey conducted by the DILFC, occasioned by the admission by the respondent of his guilt or his cooperation, including any voluntary disclosure, in investigation process;
- the violation of the confidentiality of the procedure of sanctions ;
- the sanctions imposed on the respondent by other parties, including another organization international or multinational, including another bank of development ;
- Any other factor that the Office of sanctions or the Appeal Board considers relevant.

#### E. Sanctions from other institutions

The sanctions provided in these procedures must be independent, and without prejudice to the recognition by the Bank of sanctions from other institutions, the decisions of other institutions to recognize the sanctions imposed by the Bank or taking other actions, including the approval of all the other policies on the part of the Bank and which relate to the markets and the eligibility of other parties to participate in Bank-financed activities.

#### F. Discretions for imposition of sanctions

Where appropriate, the Office of sanctions or the Appeal Board may, on request of the DILFC, decide not to punish those who cooperate with the investigations of the DILFC.

#### G. Communication of the final decision

The final decision on the instruction of the President of the Bank, shall be communicated to the respondent and the DILFC. The decision on sanctions or the final decision, where appropriate, must be published in accordance with the policy dissemination and access to information and all other applicable rules of the Bank.

#### H. Requests for reopening by the respondent

The respondent may request that the case be reopened for reconsideration on the basis of the newly discovered facts and that, as part of the due diligence, could not be discovered before the publication of the final decision. Such an application shall be submitted to the Appeal Board no later than forty (40) days after the discovery of these new facts, and must in no case be filed no later than twelve (12) months from the publication of the

final decision. Upon receipt of this request, the Appeal Board will decide, in its sole discretion, to reopen the case for further proceedings as it deems appropriate. The defendant has no automatic right to a review.

### **5.3.21 Related parties and other relationships**

#### A. related parties

If the liability is determined, sanctions may be imposed on a party, like the leaders of the company, owners, directors, officers or shareholders, and other related parties ("related Parties") to the commission of an objectionable practice.

#### B. Sanctions against associated parties

To determine sanctions on the associated parties, officials, or other related parties, the Office of sanctions or the Appeal Board takes into account:

- the management and organizational structure;
- If the related party has been involved in or influenced the reprehensible practice or was the intended beneficiary of these acts;
- the possibility that the respondent may circumvent a sanction by the blessing of the associated party, taking into account the influence that the respondent has the associated party, and vice versa;
- If the defendant can get the benefits from the associated party.

Notwithstanding the foregoing, the Office of sanctions and the Appeal Board must take into account the harmonized principles 'Mechanisms of development banks in the field of treatment of enterprise groups'.

#### C. Rights of the associated parties

The associated parties shall have procedural rights that are equivalent to those of the respondent as provided in these procedures; unless the Office of sanctions or the Appeal Board concluded that all presentations of the associated Parties come in consolidation with those of the respondent.

#### D. Successors and assigns

Any penalty imposed applies to successors and assigns the sanctioned party, as determined by the Bank.

### **5.3.22 Proof**

#### A. Standard of proof

For the purposes of these proceedings, the preponderance of evidence is determined on the basis of the consistency of the facts under consideration and relevant documents until the body of the crime is constituted, demonstrating that it is more likely than not that the respondent has committed a punishable act of sanctions.

#### B. Burden of proof

The DILFC has the burden of presenting sufficient evidence to establish that the preponderance of the evidence demonstrates that the respondent had a practice punishable by sanctions. The burden of proof is then up to the respondent to demonstrate that it is more likely than not that his conduct did not constitute a punishable by sanctions practice.

#### C. Eligibility and assessment of the evidence

The arguments presented in the Office of the sanctions and the Appeal Board, and the findings will be able to rely on any type of evidence admissible. The Office of the sanctions and the Appeal Board are empowered to determine the admissibility, relevance, the weight and sufficiency of the evidence.

#### D. Knowledge inference

The Office of the sanctions and the Appeal Board have the power to infer on the objectives, intentions and knowledge of the respondent, or any other part, from circumstantial evidence.

### **5.3.23 Revelation**

#### A. Disclosure decisions

After the decision of sanction has become final or at the end of the proceedings before the Appeal Board, as appropriate, the Bank must disclose the identity of the sanctioned parties, the sanction, other than reprimands and sanctions liable practice for which the sanction has been imposed. In addition, the Bank must disclose the summary of the decisions of the Bureau of the sanctions and, where appropriate, of the Appeal Board in accordance with the Bank's disclosure policy and access to information. The Appeal Board shall publish and update periodically a compendium of

decisions that he feels illustrates the legal principles to arrive at its decisions. The Bank may also make disclosures to borrowers, other organizations international and multinational, governmental authorities and other parties deemed necessary in accordance with its policies.

B. Reference to other units of the Bank

If the Office of sanctions or the Appeal Board concludes that the respondent committed a procedural irregularity or one wrongful act other than subject practice of sanctions in the context of projects or programs, Office of sanctions or the Appeal Board may refer the matter to the competent Department of the Bank for further possible action.

### **5.3.24 Negotiated settlements**

A. Stay of proceedings

At any time of the procedure, the DILFC, with one or more respondents can ask jointly that sanctions Office or appeal board, where appropriate, suspend the procedure to conduct settlement negotiations. An initial judgment of the procedure may be granted for a period of sixty (60) days, but may be renewed on joint application of the DILFC and the respondent for sixty (60) days, with confirmation, in writing, by both parties that they continue to be actively engaged in settlement negotiations

B. Submissions and review of regulations

At any time before or after the beginning of the procedure of sanction, but prior to the issuance of a final decision, the DILFC and one or several respondents may submit a copy signed by the settlement agreement in the Office of the penalties for review, accompanied by a certification by both

parties that the defendant has concluded the agreement freely and fully, informed that it is its terms and without any constraint. Where a stay of proceedings has been granted, the submission shall automatically stop the procedure in respect to what was agreed in the settlement agreement.

#### C. Review of the regulation by the Office of the sanctions

The sanctions must review the settlement agreement to ensure its fairness, transparency and credibility. The sanctions must consider the terms of the agreement in order to ensure that they do not clearly violate these procedures or any policy issued by the Bank. The Office of the penalties for all settlement agreements, must confirm that the terms of the agreement do not clearly violate these procedures or any policy issued by the Bank. The sanctions must impose the sanction provided for in the agreement and informed, after statements by the President and without delay, the DILFC and the respondent. The agreement will take effect immediately or otherwise, the date is indicated. If the Office of penalties concludes that the respondent had not concluded the settlement agreement freely and was not fully informed of its terms, Commissioner of sanctions must inform, without delay, the DILFC and the defendant, after which the agreement is terminated without prejudice to the parties. In both cases, the Commissioner of the Bureau of the sanctions is advising through the appeal of the result Board.

#### D. Publication of the settlement agreements

A summary of any settlement agreement between the Bank and the respondent in accordance with the provisions of these procedures is published on the website of the Bank and the name of the concerned respondent.

#### E. Effect of the settlement agreements

a. disposition set

If the settlement agreement provides for the final settlement of a case or a portion thereof, in such a case, this case or part thereof shall be terminated on the effective date provided for in the settlement agreement.

b. Conditional closing

If the settlement agreement provides for the postponement of proceedings for a period of time at specified conditions, procedures should be laid down for the period specified in the agreement, provided that the defendants comply. Unless the convention expressly provides otherwise, at the end of the deferral period and where the respondent complies with all conditions stipulated in the agreement, the case is closed. The time spent on the regulations is deemed completed during the period of this report.

c. Obligation to comply with the terms and conditions

Unless the settlement agreement expressly provides, compliance by the respondent of the terms and conditions of the agreement is a discharge condition of radiation or the conditions of non - exclusion, if applicable.

d. effect

If a settlement agreement enters into force before the beginning of the procedure, its terms have the same effect if the procedure has been initiated and concluded with the result, including the imposition of such a sanction to the respondent which can be specified in the agreement. It must be granted to the other terms of the agreement set out in the agreement.

F. Compliance with the settlement agreements

Unless the settlement agreement expressly otherwise provided, the DILFC must determine all interpretations, questions or subjects of controversy regarding compliance by the respondent of the terms and conditions of the agreement. Where settlement agreements providing for a postponement of proceedings, if the DILFC establishes that the respondent has violated the settlement agreement, the case should be reopened and resume at the point where it had been postponed. If the defendant considers that the DILFC has abused his discretion, under this provision, the defendant may file an appeal in the context of these proceedings.

### **5.3.25 General Dispositions**

#### A. Certification

All submissions by a defendant under these procedures must contain a certificate attesting that the information contained is true and correct to the best knowledge of the signatory, that it was produced after reasonable investigation in the circumstances of its investigations. The certification must be made by the respondent or an agent having permission to do so on the part of the respondent,.

#### B. Language

All submissions in respect of these procedures should be made, in writing, in French. When one of the parties provides documents that have been written in other languages, the original documents shall be provided with an official translation in French.

#### C. Publication

All reviews and comments relating to these procedures shall, except as otherwise, be submitted, in writing, and be deemed received at the reception. The Office of the sanctions and the Appeal Board must send all documents by mail, service messaging, or any other means which will provide a proof of receipt. The documents forwarded to the DILFC can be sent to addresses secure e-mail specifically provided for this purpose. The Office of sanctions or the Chairman of the Appeal Board may, at their discretion, accept the submission of documents electronically. Notice of temporary suspension, a decision of sanction, or any other document is deemed issued to the respondent on the date of its deposit in the mail or by a courier service. Submissions to the Office of sanctions or the Appeal Board shall be deemed submitted on the date of receipt. In the event of dispute as to the date from which a document should be considered as delivered or submitted, the Commissioner of sanctions or the president of the Commission of appeal, as the case may be, may take the appropriate decision. The Bank may make rules respecting the remission of the notices and other documents to the respondent.

#### D. Interpretation

##### a. Uses of terms

Unless the context requires an interpretation different terms used in these procedures in the singular are worth for the plural, and the plural earned for the singular. It is same for pronouns, of a special nature to the other.

##### b. References and titles

The titles of articles, sections and sub-sections of these procedures are purely indicative and are not the substantive elements of the procedures for purposes of interpretation of the text.

##### c. Questions concerning the correct interpretation

If a question arises as to the interpretation of a provision of these proceedings, the Commissioner of sanctions or the Appeal Board shall consult with the Directorate of Legal Affairs of the Bank for advice.

d. Time of calculation

"Days" means calendar days, including weekends and holidays. If the last day of a deadline falls on a weekend or any other days where the offices of the Bank are not officially open to the public, the last day will be the end of the next day where the Bank's offices are officially open for business. "The offices of the Bank" means the address indicated in the notice.

#### E. Amendments or other modification

These procedures are adopted to guide the exercise of discretion by the Bank, and are not enough to confer any rights or privileges to any party. The Bank may change, modify, supplement or revise these procedures, with or without notice.

#### F. Reservation of immunities and privileges

Nothing in these procedures is intended to modify, repeal, or lift the immunities and privileges set out in the statutes of the BOAD and the headquarters agreements signed with the Governments.

#### G. The Bank disclosure policy

The sharing of information is subject to the limitations contained in the policy dissemination and access to information, adopted by the Bank and other policies governing the Bank, as amended from time to time regarding the use and confidentiality of information, the contractual obligations of the Bank with third parties, and other considerations relevant to these policies and contracts.

#### H. Non-application to investigations of entities and government officials

These sanctions procedures do not apply to investigations of governmental entities. Investigations concerning the employees of the Bank and other officials whose relations with the Bank are governed by the Code of ethics and the rules of the staff of the Bank, or to other cases, as defined in the Bank's other policies are applied in accordance with the rules prescribed by those documents. However, when the allegations relate to matters of fraud

and corruption, investigations are conducted in the case of these procedures.

I. Amendment of procedures for investigations and sanctions

These procedures should be amended from time to time, and each amendment shall enter into force on the date specified in the amendment concerned. Each amendment is applicable to the sanctions procedure for which a notice is issued after the entry into force of this amendment.

## Annex

### **FORM OF DENUNCIATION OF AN OBJECTIONABLE PRACTICE**

Denunciation shall at least include responses to the following essential questions:

1. What has happened? Full description of the facts by giving all relevant details :
2. When did the facts occur? indication of the date, time and other credentials :
3. Where did the facts occur? Mention of the place where the misconduct occurred and what opportunity (country, city, area...):
4. Who are the persons or entities concerned? indication of the names and contact details of persons or undertakings which, in the opinion of the informer, are affected by summarized reprehensible practices or are involved in these practices or have knowledge :
5. In what these facts do relate to the BOAD? Explanation of the link between these allegations and internal procurement activities or operations financed by BOAD :
6. In addition, the form must specify the name and coordinates of the informer.

NB: The informant can produce information on as many pages as it deems necessary.