PROPOSAL FOR THE IMPLEMENTATION OF A SANCTIONS PROCESS WITHIN THE AFRICAN DEVELOPMENT BANK

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1 Whenever used within the context of this paper, “African Development Bank” or the “Bank” means the African Development Bank, the African Development Fund and the Nigeria Trust Fund.
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PROPOSAL FOR THE IMPLEMENTATION OF A SANCTIONS PROCESS WITHIN THE AFRICAN DEVELOPMENT BANK GROUP

1. INTRODUCTION

1.1 It will be recalled that on 9 April 2010, the leaders of the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, and the World Bank Group signed the Agreement for Mutual Enforcement of Debarment Decisions (the “Agreement”). This Agreement establishes a framework within which entities or persons found to have engaged in wrongdoing in development projects financed by International Financial Institution (“IFI”) may be sanctioned for the same misconduct by the other participating development banks in circumstances where such entity or person is debarred by one IFI for a period exceeding a year. The Agreement was the culmination of years of coordination work by these institutions which recognized that a unified and coordinated approach is critical to the success of the shared efforts to fight corruption and prevent such corruption from undermining the effectiveness of their work.

1.2 The Agreement has not yet entered into force with respect to the African Development Bank (the “Bank”). In accordance with its terms, the Agreement will become effective in respect of the Bank once all the requirements for its implementation have been fulfilled and the Bank has given notice of such fulfillment to the other participating IFIs. In order to ensure that certain minimum standards are adhered to and maintained in the investigations and sanctions process of the participating institutions, it is necessary that all participating institutions mutually adhere to certain due process principles to ensure that, internally and externally, there is fairness and objectivity in the investigative and sanctioning process based on principles set out in the Agreement.

1.3 To enable the Agreement to become effective with respect to the Bank, the Bank will have to:

- Make changes to the Bank’s Rules and Procedures for Procurement of Goods and Works and the Rules and Procedures for the Use of Consultants in order to allow the Bank to declare ineligible, entities and individuals that have, directly or through an agent, been determined by a participating institution to have engaged in fraudulent, corrupt, coercive, obstructive or collusive practices. Existing rules and procedures limit sanctions to entities and firms that have, directly or through an agent, been determined to be involved in the prohibited practices when competing for, or in executing, Bank-Group financed operations.

- Ensure that its sanctions decisions are made public because the other participating institutions will only be able to recognize Bank-imposed sanctions and cross-debar sanctioned individuals or entities, if the Bank makes its sanctions decisions public.

- Strengthen and segregate the different internal administrative steps in the sanctioning process. The investigation function, the decision-making function and the appeals function will be separated, and processes and procedures put in place to ensure that the subject of an investigation is provided due process in accordance with the core principles set forth in the Agreement.
• Modify its anti-corruption processes, in particular its investigation procedures, to ensure compliance with the Uniform Framework for Preventing and Combating Fraud and Corruption (as defined in section 2.3 below).

1.4 This paper sets out a proposal for amending the Bank’s current sanctions process in order to address the last two bullet points above. The paper first provides background on the integrity and anti-corruption function at the Bank. It then examines the current sanctions process within the Bank. The paper then summarizes the current sanctions processes within other select IFIs in relation to their integrity and anti-corruption functions. Thereafter, the paper compares the current Bank process with that of the other IFIs and makes some proposals for improvement to the Bank’s sanctions process. The paper then sets out the conclusions and recommendations.

2. BACKGROUND

2.1. The integrity and anti-corruption function at the Bank was established by a Board of Directors Resolution adopted on 8 July 2005 and was mandated as the only Division within the Bank Group designated to carry out investigations into allegations of fraud and corruption involving Bank personnel and external partners. The Division began its operations in 2006, as a Division reporting to the Office of the Auditor General (“OAGL”), who then reported directly to the President. Since that time, the Bank has worked with other IFIs in finding ways to strengthen anti-corruption measures in its activities and internal processes.

2.2 In February 2006, the leaders of the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the International Monetary Fund, the Inter-American Development Bank and the World Bank Group agreed to establish a Joint International Financial Institutions Anti-Corruption Task Force (the “Task Force”) to work towards a consistent and harmonized approach to combat corruption in the activities and operations of the member institutions. The leaders of the IFIs recognized that a unified and coordinated approach is critical to the success of the shared effort to fight corruption and prevent it from undermining the effectiveness of their work.

2.3. On September 17, 2006 the leaders of the IFIs agreed on a Uniform Framework for Preventing and Combating Fraud and Corruption (the “Uniform Framework”) in the activities and operations of their institutions. The said Uniform Framework built on the work of the Task Force established in February 2006. The institutions recognize that corruption undermines sustainable economic growth and is a major obstacle to the reduction of poverty. The leaders outlined the following joint activities to combat fraud and corruption:

(a) Standardised definitions of fraudulent and corrupt practices to facilitate the investigation of activities financed by member institutions;

(b) Common principles and guidelines for investigations;

(c) Exchange of information in connection with investigations;

(d) Due diligence principles to enhance integrity in private sector lending and investments; and

(e) Ensuring that compliance and enforcement actions by one member institution are supported by the others.
2. 4. As an active participant in the Task Force and the Uniform Framework, the Bank has been able to study and benefit from the approaches undertaken by other members to enhance the integrity function within their respective institutions. In response to internal demands for measures that would improve the integrity function at the Bank, the Board of Directors on 26 April 2010, approved the document entitled, “Fine Tuning the Organizational Structure” (ADB/BD/WP/2010/41/Rev.1.) The document sets out proposals to strengthen the Bank’s organizational structure in order to achieve better operational synergy and alignment. Following this, the Integrity and Anti-Corruption Division, formerly within the Office of Auditor General was upgraded into a stand-alone Department (IACD). The new structure aimed to allow the integrity and anti-corruption function to be carried out independently of OAGL. The Department is headed by a Director and, in addition to reporting directly to the President, also maintains a dotted reporting line to the Board of Directors for the purpose of regular briefings on its activities. A further restructuring of IACD is proposed for approval by the Board of Directors in order to take into account its revised role in the proposed sanctions process and to improve its resource capabilities.

3. THE ROLE OF THE INTEGRITY AND ANTI-CORRUPTION DEPARTMENT AT THE BANK

3.1 IACD is currently in charge of the integrity and anti-corruption function of the Bank, and retains the overriding mandate to undertake investigations into allegations of corruption, fraud and malpractice, or suspicions thereof, in Bank- activities. The Department is also responsible for developing preventative measures to proactively reduce the potential for corruption within Bank Group activities. Based on its investigative findings, IACD currently participates in sanctions decisions against persons and entities found to be involved in corrupt practices in Bank activities. It is foreseen that this should no longer be the case once the processes being proposed under this paper are approved by the Board of Directors. It should also be recalled that IACD is also currently involved in conducting investigations in cases of staff misconduct, such as those with respect to conflicts of interest, abuse of authority or others. Some of these cases involve Sanctionable Practices. However, because the recourse mechanisms for such staff cases are spelt out in the Bank’s Staff Rules and in the Bank’s Codes of Conduct, it is Management’s view that it would be advisable for IACD to revert to the more traditional functions performed by the integrity functions of some of the IFIs, notably the World Bank. It is therefore proposed that IACD focuses exclusively on the investigation of fraud and corruption in Bank-Group financed operations and internal corporate procurement issues (together “Bank-Group Financed Operations”). Without prejudice to the above, the proposed scope of activities of IACD would continue to include the investigation of cases where Bank staffs are involved in Sanctionable Practices in connection with Bank Group-Financed Operations. For the avoidance of doubt, the scope of IACD’s mandate will include Sanctionable Practices which fall within the context of violations of (i) Presidential Instruction PI 02/2012 issued by the President on 21 February 2012 as amended from time to time, (ii) the Rules and Procedures for the Procurement of Goods and Works as amended from time to time; and (ii) the Rules and Procedures for the Use of Consultants as amended from time to time. It is also understood that IACD’s activities shall also include Sanctionable Practices which relate to Trust Funds (whether Special Trust Funds or not), facilities, initiatives and any other resources managed by or/and entrusted to the Bank.

3.2 The investigation of staff misconduct which is not related to Sanctionable Practices in connection with Bank-Group Financed Operations will be addressed by CHRM or another unit.

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1 As defined under the Uniform Framework including “obstructive practices”.
which will be established by the end of the year. It is envisaged that additional human resources will be recruited for that specific purpose. It is proposed, however, that until this specific expertise is available outside IACD, IACD will continue to handle matters of staff misconduct concerning all Sanctionable Practices not related to Bank-Group Financed Operations.

4. THE CURRENT STATUS OF THE BANK’S SANCTIONS PROCESS AND THE INTEGRITY AND ANTI-CORRUPTION FUNCTION

4.1 In creating a new enforcement regime, the IFIs agreed on four core Sanctionable Practices as defined in the Uniform Framework, (hereby attached as Annex VII) and listed below:

- a corrupt practice which is defined as the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- a fraudulent practice which is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- a coercive practice which is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; and
- a collusive practice which is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

Additionally, the Asian Development Bank includes conflict of interest in its anticorruption policy. The World Bank and the Inter-American Development Bank subject obstructive practices to sanctions. The amendments to the Bank’s procurement rules, which Management has proposed for approval by the Board, would add “obstructive practice” to the list of Bank-Sanctionable Practices.

4.2 Currently, the processes governing sanctions within the Bank are derived from the following instruments: (i) the IFIs Uniform Framework; (ii) the Bank’s zero-tolerance policy against corruption; and (iii) the Bank’s Rules and Procedures for Procurement of Goods and Works and the Rules and Procedures for the Use of Consultants. In addition, the Standard Bidding Documents (SBDs) and the Requests for Proposals (RFPs) developed by the Bank require Borrowers (including beneficiaries of Bank loans), as well as Bidders/Suppliers/Contractors under Bank-Group financed contracts, to observe the highest ethical standards during the procurement and execution of contracts. The Bank defines “corrupt practice”, “fraudulent practice”, “collusive practice” and “coercive practice” as sanctionable offences against persons and entities found to be in violation of its rules in connection with Bank-Group Financed Operations.

4.3 The Bank’s current sanctions process does not conform to the required standards that must be in place for the Agreement to be effective with respect to a Participating Institution. One aspect in which the Bank’s process does not conform with what is required pursuant to the Agreement relates to the multiple roles played by IACD in conducting investigations which include, making

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3 As agreed by the IFIs on September 17, 2006.

recommendations to the President and, upon approval, implementing the sanctions, which is an uncommon practice among IFI’s, where investigative functions are separated from enforcement functions. One result of the IACD performing multiple functions is that the transparency of the current process could be brought under scrutiny by both the sanctioned entities and the other IFI’s that would be required under the terms of the Agreement to recognize the Bank’s sanctions decisions. By virtue of the fact that the Bank has signed the Agreement, the Bank is required to re-evaluate the functions of IACD in relation to the handling of sanctions, and re-examine the robustness of the sanctions process.

4.4 Management is therefore proposing new processes at the Bank, to include:

(a) the creation of an independent sanctions process where the investigative and enforcement functions are vested in separate bodies and, unlike the current Bank process, the investigative office does not: (i) conduct investigations, and (ii) recommend sanctions following the outcome of its own investigations but rather focuses on its key competency of conducting investigations;

(b) involving a variety of internal stakeholders, to develop a sanctions process that will create independent bodies to handle sanctions;

(c) determining modalities for the publication of sanctioned entities on the Bank’s website and the communication of those names to other interested parties including the IFI’s; and

(d) further developing the Bank’s enforcement mechanisms for implementing the Agreement and bringing them in line with best practices.

5. CURRENT SANCTIONS PROCESSES WITHIN OTHER INTERNATIONAL FINANCIAL INSTITUTIONS

5.1 The current sanctions processes and the integrity and anti-corruption functions of four IFIs are discussed in this paper. They include: The World Bank, the Asian Development Bank the European Bank for Reconstruction and Development and the Inter-American Development Bank. In summary, these IFI’s have investigative offices with similar mandates to IACD to conduct investigations into allegations of fraud and corruption in projects financed by their respective institutions. They each have in place written policies and procedures that are implemented in a manner that ensures that the sanctions process and decisions reached are independent from the investigative offices of the IFI concerned as described in this Section.

5.2 The World Bank Group has a written sanctions process contained in its Sanctions Board Statute as well as its Sanctions Procedures. It maintains a two-tier system in imposing sanctions. First, if the Integrity Vice Presidency (INT), the World Bank Group’s Investigative Office, determines that there is sufficient evidence to conclude that there is sanctionable misconduct by a firm or individual, it commences the sanctions process by submitting a Statement of Accusation and Evidence to the Evaluation and Suspension Officer (EO). If the EO agrees that the evidence is sufficient to conclude that it is more likely than not that a Sanctionable Practice occurred, it issues a Notice to the accused parties, along with a recommended sanction (its first-tier process). The Respondent is temporarily suspended pending the outcome of the proceeding (unless the Respondent convinces the EO that this is not necessary) and the sanction is implemented unless there is an appeal. If the firm or individual contests the evidence presented by INT and/or the sanction recommended by the EO, the case is appealed to the World Bank’s Sanctions Board (second tier process), whose decision is final and cannot be appealed further. The Respondent may submit a written brief to the Sanctions Board in response, and either the Respondent or INT may request a hearing before the Sanctions Board. INT may also submit a written response to any
submission by a Respondent. The Sanctions Board proceeding is "de novo". The Sanctions Board is comprised of four (4) external members (appointed by the Executive Directors of the World Bank Group from a list of candidates drawn by the President), and three (3) internal members, appointed by the President from among senior World Bank Group staff. There is also a Sanctions Board Secretary who is a Bank staff who functionally reports to the Chair of the Sanctions’ Board.

5.3 The Asian Development Bank (AsDB) has an investigative office called the Office of Anti-Corruption and Integrity (OAI). AsDB has also adopted written sanctions procedures and rules found in the OAI’s Internal Desk Procedures Manual and the AsDB’s Integrity Principles and Guidelines. At the conclusion of investigations, OAI provides its investigative findings of wrongdoing to the Integrity Oversight Committee (IOC), the organ responsible for determining sanctions. A sanctioned party may appeal the IOC decision to another body called the Sanction Appeals Committee (SAC) as a last recourse. There are no sanctions hearings. However, the parties are informed of IOC’s findings and given an opportunity to respond before the findings are sent to SAC. The SAC will render its decision only on the basis of a consensus of all members. Should the Chair of SAC determine that the Committee is unable to reach a consensus, the Chair will request the President’s involvement. The President will help to resolve the differences and allow the SAC to reach a unanimous decision or, if that is still not possible, the President takes a final decision. OAI can suggest a sanction in their findings letter to a Respondent and, if the Respondent does not dispute the finding and accepts the recommended sanction, OAI can then decide upon the sanction without involving the IOC. If the Respondent does not accept the recommended sanction, the case is passed on to the IOC recommending the same sanction as presented in OAI’s findings letter. The IOC is comprised of three (3) regular voting members consisting of one (1) external member and two (2) staff members. The internal members are all AsDB staff at Director Level and are appointed by the President annually. The IOC decisions are made by majority vote, and shall include the vote of the external member. In case the external member’s vote is not part of the majority decision, a new meeting will be called involving, in so far as possible, the three members that initially discussed the case, plus an additional internal and additional external member. The SAC is comprised of three (3) AsDB vice presidents and can reduce or lift sanctions, as well as require that the IOC reconsider a case. The Head, OAI is the secretary of SAC and the Director, OAI performs secretariat functions for the IOC.

5.4 The European Bank for Reconstruction and Development (EBRD) has an investigative office, called the Office of the Chief Compliance Officer (OCCO), headed by the Chief Compliance Officer (CCO). It also has a written sanctions process found in the Enforcement Policy Procedure (EPP). When OCCO determines that there is sufficient evidence to support a finding of Prohibited Practice (description of sanctionable offences), the head of OCCO prepares a report including a draft Notice of Prohibited Practice for consideration by the Enforcement Committee (EC). The EC considers all relevant materials and representations contesting the proposed sanctions and, if it arrives at a determination that the Respondent engaged in an alleged Prohibited Practice, it prepares a report of its determination to the President, which includes its “own” recommendations (these could be different from those of the CCO), for sanctions. An oral hearing is held at the request of the Respondent only; otherwise, decisions are based on the record. The President makes sanctions decisions in consultation with the members of the Executive Committee, which is an internal Bank committee comprising of the First Vice President, three Vice Presidents, the Secretary General, General Counsel and Chief Economist. There is no right to appeal sanctions decisions to the President's Office or otherwise. A senior support staff from the Office of the General Counsel (OGC) performs the role of Secretary to the Enforcement Committee. In addition, two (2) OGC lawyers act as advisers to the EC in order to secure the necessary legal support for the EC Chair.
5.5 The Inter-American Development Bank (IDB) has an investigative office called the Office of Institutional Integrity (OII). It has written sanctions rules contained in the Sanctions Procedure and follows a two-tier process in imposing sanctions. Based on its investigative findings, the OII makes sanctions recommendations to a case officer (first tier process). The case officer reviews the Preliminary Notice of Administrative Action (PNAA) and may: (i) decide not to issue a Notice of Administrative Action (NAA) if it so determines, in consultation with the Chairperson of the Sanctions Committee, that the PNAA does not by a preponderance of evidence support a finding that the Respondent engaged in a Prohibited Practice; or (ii) proceed to issue a NAA including a recommended sanction to be imposed on the Respondent. The NAA explains that the Respondent has an opportunity to appeal the NAA to the Sanctions Committee (second tier process) and failure to do so will result in the allegation being deemed admitted and the imposition of the recommended sanction. The Sanctions Committee decides the case when the Respondent elects to respond to the NAA and after having heard the parties. There is no appeal against the decision of the Sanctions Committee. The Respondent may request that the matter be re-opened for reconsideration only on the basis of newly discovered facts which by due diligence could not have been discovered prior to the Sanctions Committee's decision. The Respondent has no automatic right to reconsideration, and the Sanctions Committee makes the determination on whether or not the matter should be re-opened for reconsideration. The Sanctions Committee will ordinarily render its decision on the basis of the written record without a hearing and the parties have no right to a hearing – though a hearing may happen at the discretion of the Sanctions Committee. The Sanctions Committee is made up of seven (7) members (four (4) external and three (3) internal IDB staff) appointed by the President. Cases will generally be decided by a panel comprised of three (3) members, one (1) internal and two (2) external members. The President designates a member of the Sanctions Committee as Chairperson and appoints a Secretary, who shall not be a member of the Sanctions Committee and who reports directly to the Sanctions Committee.

6. RETHINKING THE BANK’S CURRENT Sanctions Process

6.1 The Bank’s current sanctions practice, which relies on the provisions of the Bank’s Rules and Procedures for Procurement of Goods and Works and the Rules and Procedures for the Use of Consultants for the imposition of sanctions against firms and individuals, is the only one of its kind among the IFI’s. Unlike the integrity office of the Bank which conducts investigations, determines sanctions, and makes recommendations to the President, other IFI’s have a separate sanctions process that is independent from their investigative offices.

6.2 Without establishing a sanctions process with similar checks and balances to those in place at other IFI’s, the Bank will not be able to achieve its commitment under the Agreement to have in place adequate internal processes for the imposition of sanctions. This is because the current sanctions structure is not in accordance with either the requirements of the Uniform Framework or the Agreement. In light of the above, this paper proposes how the Bank can entrench international best practices into its accountability mechanisms by developing a sanctions process that complements the Bank’s controls and safeguards while ensuring due process is afforded to those subject to investigation and that sister participating IFIs can have confidence when recognizing the Bank’s enforcement decisions.
7. **UPDATING THE SANCTIONS REGIME**

7.1 The purpose of the Bank’s anti-fraud and corruption sanction regime has been and remains to uphold its fiduciary duty under the Agreement Establishing the African Development Bank to ensure that the funds entrusted to it are used for the purposes intended. One of the key components of the sanctions process is the framework of enforcement actions available to the Bank not only to deter prohibited conduct (specific and general deterrence), but also to provide a mechanism to rehabilitate sanctioned entities through the implementation of a compliance framework.

7.2 The experience of the Bank and its sister institutions over the last ten (10) years in the areas of anti-corruption and fraud and enforcement, reflecting international consensus, has shown that rehabilitation through the imposition of conditions designed to improve the integrity culture of sanctioned parties and reduce recidivism, is a key means to reduce integrity risks. To date, the sanctions proceedings at the Bank have had only one disciplinary tool available to address a wide range of conduct with varying levels of culpability.

7.3 The rest of this section (i) articulates a range of disciplinary tools to better tailor the sanction to the conduct and to the desired outcomes of the rehabilitative process, (ii) proposes guidance for taking into consideration aggravating and mitigating factors with built-in incentives for cooperation, and (iii) sets out the guidelines that will govern the Bank’s implementation of the Agreement.

7.4 The following six disciplinary options, ranging from the least to the most severe sanction, are proposed below for adoption by the Bank:

(a) **Letter of Reprimand**: A reprimand is a censure for a party’s actions and notification that subsequent violations may result in a higher penalty. A written reprimand is appropriate for an isolated incident of lack of oversight, or where the integrity violation or the party’s role in it is minor.

(b) **Conditional Non-Debarment**: The Respondent is required to comply with certain remedial, preventative or other conditions to avoid debarment from Bank Group-Financed Operations. Conditions may include (but are not limited to) verifiable actions taken to improve business governance, including the introduction, improvement and/or implementation of corporate compliance or ethics programs, restitution or disciplinary action against or reassignment of employees.

(c) **Debarment**: Debarment reflects an administrative decision not to do business with a party found to have engaged in Sanctionable Practices. Debarment, other than permanent debarments, will have a specified minimum period. Such period shall be determined taking into account the merit of the case.

(d) **Debarment with Conditional Release**: Debarment with conditional release is the ‘baseline’ sanction which should normally be applied absent the considerations that would justify a greater or lesser sanction. The purpose of the conditional release is to encourage the respondent’s rehabilitation and to mitigate further risk to Bank-Group Financed Operations. Accordingly, the respondent and other sanctioned parties will only be released from debarment after (i) the defined debarment period lapses and (ii) the respondent has demonstrated that it has met the conditions set by the Sanctions Office or the Sanctions Appeals Board.
(e) **Permanent Debarment**: Permanent debarment is generally only appropriate in cases where it is believed that there are no reasonable grounds for thinking that the respondent can be rehabilitated through compliance or other conditionalities.

(f) **Restitution and/or Remedy**: Restitution and other financial remedies may be used where there is a quantifiable amount to be restored to the client country or to the Bank. This may be recommended independently or jointly with other sanctions.

For the avoidance of doubt, it is important to note that measures taken by the Bank to enforce decisions made by other institutions, (cross-debarment) will not affect existing contractual obligations.

7.5 **Sanctioning Guidelines**: The Board of Directors will be invited to take note of the standardized IFIs practice\(^5\) which will take into consideration a number of factors that may affect the sanction imposed upon a sanctioned entity. As a non-exhaustive list, factors that could be considered aggravating factors in determining the sanction to be imposed include a repeated pattern of prohibited practices by the sanctioned entity, the degree of involvement of a particular party in the alleged act of prohibited practices, whether or not there are several prohibited practices involved such as both fraud and corruption involved (as opposed to only one but not the other), and the involvement of or bribery of Bank staff or government officials. Factors that could be mitigating include the respondent’s conduct in the course of the Bank’s investigation. The principles articulated below are meant to serve only as guidance to those who have the discretion to impose sanctions. More detailed guidelines will be developed by IACD, the Sanctions Office and the Sanctions Appeals Board based on these principles and the subsequent guidelines will be issued in the form of a Presidential Directive and shared with the Board of Directors.

(a) **Responsibility**: A party shall be considered responsible for any act or attempted act that would serve as a basis for remedial action undertaken by it, which includes (but shall not be limited to) employees, personnel, agents, sub-consultants, sub-contractors, service providers, suppliers or representatives, acting in the capacity of representing the entity, regardless of whether the act has been specifically authorized.

(b) **Associated Parties and/or Principals**: The Sanctions Commissioner or the Sanctions Appeals Board may determine that sanctions should also be imposed on an associated party such as a company affiliate or a principal such as owners, directors, officers, or shareholders.

(c) **Aggravating and Mitigating Factors**: In their sanctioning decision, the Sanctions Commissioner and the Sanctions Appeal Board will be guided by the principal of proportionality. Aggravating factors that justify an increase in the debarment period include inter alia: (i) the severity of the misconduct, such as repeated misconduct, the involvement of public officials or Bank staff, the central role in the misconduct or the sophistication of the means; (ii) the harm caused by the misconduct, such as harm to public safety or the degree of harm to the project; and (iii) interference with the investigation, such as intimidating witnesses, payment of witnesses or deliberately destroying, falsifying, altering or concealing evidence material to the investigation.

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\(^5\) Guidelines are being harmonized and finalized by the IFIs. Once completed, these guidelines will be submitted to the Board for information.
Mitigating factors that justify a decrease in the debarment period include inter alia: (i) a minor role in the misconduct; (ii) voluntary corrective action, such as cessation of the misconduct; internal management action to address misconduct, the implementation of effective compliance measures or the restitution of funds obtained through the misconduct; and (iii) cooperation with the investigation, such as voluntary disclosure, the conduct of an internal investigation and the sharing of the results with IACD or the admission of guilt and responsibility. The timing of the mitigating factors may be indicative of whether these reflect genuine remorse and intention to reform.

(d) **Base Sanction:** The base sanction for integrity violations is three year debarment with conditional release. This is the sanction that normally applies absent aggravating or mitigating considerations that would justify a different sanction.

(e) **Negotiated Resolution:** In order to facilitate investigations and the sanction process, an important tool needed in the Bank’s fraud and corruption arsenal is to allow for the possibility of the negotiated resolution of cases. At any time prior or during sanction proceedings prior to the issuance of a decision by the Sanctions Appeals Board, IACD and a respondent, acting jointly, may request the appellate body for a stay in the proceedings for the purpose of conducting settlement negotiations. The negotiated settlement will be subject to formal clearance by the Sanctions Commissioner. In order not to undermine the credibility and the moral principles underlying the sanctions regime, negotiated resolutions must be used cautiously.

8. **IMPLEMENTATION OF THE AGREEMENT ON MUTUAL ENFORCEMENT OF DEBARMENT DECISIONS (CROSS DEBARMENT) AND PROPOSED CHANGES IN THE SANCTIONS PROCESS**

8.1 It should be recalled that IFI’s sanctions processes are administrative and not penal in nature. They do not provide for a comprehensive legal or judicial assessment of whether an entity has committed fraud or corruption, and can therefore not be compared with due process based on criminal procedure rules, as guaranteed in most of the Bank’s Member countries through legislation and judicial systems. One important reason for this is that the IFIs do not intend to establish a legal or judicial framework which could supersede or contradict those of their Member Countries. Moreover, the IFIs enjoy immunity in their Member Countries, and therefore have to avoid the impression of being supra leges (above the law) when it comes to their ability to impose sanctions. Formal rules of evidence do not apply in the sanctions proceedings of IFIs. The standard of proof is therefore much lower than the criminal law standard of “beyond reasonable doubt”. What needs to be proved is whether the evidence supports the conclusion that it is “more likely than not”, a standard sometimes referred to as “more probable than not”, that the Respondent engaged in a Sanctionable Practice.

8.2 The Agreement⁶ sets out the criteria for enforcing cross-debarment by each participating institution which include, *inter alia:* (i) sanctions must rely on the investigative process; (ii) sanctions must be published; (iii) the initial period of debarment must exceed one year; (iv) the Sanctionable Practice must not have been committed more than ten years prior to the sanctioning decision; and (v) the decision of the sanctioning IFI must not have been made in recognition of a decision made in a national or other international forum.

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⁶ Paragraph 4 of the Agreement sets out the ‘Modalities for Mutual Enforcement of Debarment Decisions’.
8.3 For cross debarment to work, the debarring IFI sends a notification letter to a receiving institution which determines if all the criteria listed above have been met. The receiving institution does not make a de novo review of the sanctions. If the criteria are met, cross debarment will be implemented, and if not it will be rejected. Cross debarment has been hailed as another tool to fight corruption, leveraging the deterrence effect of one entity being debarred by a participating IFI, and is key in the global fight against fraud and corruption.

8.4 In line with the requirements set out in the Agreement, it is proposed that: (i) a two-tier sanctions process is developed for the Bank; (ii) a Sanctions Office headed by a Sanctions Commissioner and a Sanctions Appeals Board with detailed responsibilities are established; and (iii) one Secretary to support the Sanctions Commissioner and one Secretary to support the Sanctions Appeals Board. In accordance with the recommendations of the Thornburgh Report, it is important to note that this proposal removes the responsibility for assessing the evidence revealed by investigations and imposing the sanctions recommended by IACD from the Bank’s President to an independent Sanctions Commissioner and the Sanctions Appeals Board. The Bank’s President’s role in the process would be two-fold: (i) the appointment of Bank staff to the Sanctions Office and to the Sanctions Appeals Board; and (ii) the nomination for the Board of Directors’ approval of (a) the Sanctions Commissioner and his/her alternate and (b) the external members and their alternates to the Sanctions Appeals Board.

8.5 As detailed in this paper, the two tier sanctions process will serve to separate the investigative role from that of the imposition of sanctions. The two tier process adopted by the IDB and the World Bank Group ensures an efficient, effective and fair sanctions process, and this paper proposes a similar albeit modified model for the Bank. The initial tier allows for the early disposal of cases without the necessity of a hearing in every case. The second tier is the appeals process which provides the Respondent with a chance for a fair and just hearing following sanctions imposed in the first-tier process.

8.6 The Sanctions Office (“SO”) (first-tier process) will be headed by a Sanctions Commissioner (SC) who will be assisted by a Secretary (Secretary to the Sanctions Office (SSO)). The SO will receive from IACD, evidence of a Sanctionable Practice in connection with a Bank-Group Financed Operations based on IACD’s findings. The SO will then determine whether IACD’s accusations are supported by sufficient evidence, following which the SO shall issue a ‘Notice of Sanctions Proceedings’ (the “Notice”) to the Respondent. The Notice shall set out the recommended sanction(s) and also inform the Respondent of the manner in which it may contest the accusations and/or the recommended sanction in the Notice. Also the Notice will advise the Respondent that the Respondent will be sanctioned as recommended by the SC if the Respondent fails to submit a Response within a certain time frame as set out in the guidelines which will be

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7 There is however one exception to be noted. The Agreement, in its paragraph 7, indeed states that «Notwithstanding the provisions above, a Participating Institution may decide not to enforce a debarment by the Sanctioning Institution where such enforcement would be inconsistent with its legal or other institutional considerations and, in such case, will promptly notify the other Participating Institutions of such decision».

8 In 2001, the World Bank undertook a review of the debarment process with the objective of compiling the best practices followed by international public institutions. As part of this review, the World Bank engaged Mr. Richard Thornburgh, the former Under-Secretary of the United Nations and a former Attorney General of the United States. In August, 2002, the World Bank received Mr. Thornburgh's report assessing the World Bank's debarment process. The World Bank Board has approved the public disclosure of this report titled, 'Report Concerning the Debarment Process at the World Bank' and dated 14 August 2002.
publicly available. As a pilot phase for the initial 3 years, the SC\(^\text{9}\) and an alternate SC (who will act as SC should the latter be incapacitated), will be external experts\(^\text{10}\) appointed by the Executive Directors of the Bank on the recommendation of the President. Following the expiry of the initial three (3) year period, the President shall recommend to the Board whether or not the SC should continue being an external expert, or whether he/she should be appointed from amongst the Bank’s staff. The SSO will be a PL4 Bank staff appointed by the President and will report functionally to the Sanctions Commissioner and administratively to the Chief Operating Officer (COO), and will be assisted by one administrative assistant and consultants as and when required.

8.7 The Respondent will have an opportunity to appeal the decision of the SO to the Sanctions Appeals Board (“SAB”). Within a defined period after delivery of the Notice, the Respondent may contest the case by submitting to the SAB (second-tier process), through the Sanctions Appeals Board Secretary (“SABS”), a written response to the accusations and/or recommended sanction contained in the Notice. The SAB consists of three substantive members and three alternate members\(^\text{11}\). The substantive and alternate members will be composed of two (2) external experts\(^\text{12}\) (appointed by the Executive Directors of the Bank on the recommendation of the President), and one (1) internal member, (appointed by the President from among senior Bank staff). The SAB will consider cases on a de novo basis. The SABS, will be a Bank staff at PL-2 level reporting functionally to the Chair of the SAB and administratively to the President of the Bank.\(^\text{13}\) He/she will be assisted by one administrative assistant and consultants as and when required.

8.8 IACD will be responsible for receiving and reviewing requests for cross-debarment from other IFIs. Upon receipt of the names of entities to be cross-debarred, IACD will inform CSVP, ORPF and GECL to assess whether (i) the request for cross-debarment of the respective entity may pose an institutional or legal problem to the Bank and (ii) the Bank should evoke the necessary safeguards under the Agreement. ORPF will be responsible for publishing on the Bank Group’s website, updating, and maintaining the list of sanctioned entities.

\(^\text{9}\) It is foreseen that the SC will not come to the Headquarters/TRA more than twice a year for a maximum duration of six weeks. However the SC will be available on retainer to work remotely if necessary.

\(^\text{10}\) External experts are defined as individuals who have not previously held or currently hold any appointment as governors, directors, alternates, officers or employees of the Bank.

\(^\text{11}\) As for the SAB, it is foreseen that the SAB members will not convene more than twice a year for a maximum duration of four weeks but be available on retainer to work remotely if necessary.

\(^\text{12}\) See footnote 12.

\(^\text{13}\) The role of the SABS is similar to that of the Executive Secretary (“ES”) of the Administrative Tribunal. The ES reports functionally to the President of the Administrative Tribunal and administratively to the President of the Bank and receives applications instituting proceedings, is responsible for transmitting all documents and making all notifications required in connection with the Administrative Tribunal, attends all hearings and meetings of the Administrative Tribunal, prepares minutes of these hearings and meetings and keep all records of the hearings and meetings. (Rules of Procedure of the Administrative Tribunal – 2011 Edition).
9. CONCLUSION AND RECOMMENDATIONS

9.1 The proposals detailed in this paper will significantly strengthen the integrity and anti-corruption function and sanctions process within the Bank, thereby ensuring that the Bank continues to fulfill its mandate to contribute to the sustainable economic development and social progress of African countries, specifically in combating fraud and corruption.

9.2 Accordingly, the Board of Directors is requested to approve:

(a) the establishment of the Sanctions Office to include a Sanctions Commissioner, an alternate Sanctions Commissioner and the Secretary to the Sanctions Office;

(b) the establishment of a Sanctions Appeals Board comprising three (3) substantive members, three (3) alternate members and a Sanctions Appeals Board Secretary;

(c) the Terms of Reference for the aforementioned as set out in Annexes I, II, III and IV of this proposal; and

(d) expansion of the range of sanctions available to include: letter of reprimand, conditional non-debarment, debarment, debarment with conditional release, permanent debarment, restitution and/or remedy as outlined in section 7.4 of this paper.
1. General Responsibilities

The Sanctions Commissioner (“SC”) shall be the head of the Sanctions Office (the “SO”) and shall exercise its functions independently. As a pilot phase for the initial three (3) years, the SC and the alternate SC shall be external experts appointed by the Executive Directors of the Bank on the recommendation of the President. The SO is a critical component in ensuring an efficient, effective and fair sanctions process. The SC has authority to issue Notices of Sanction to Respondents and to impose sanctions.

2. Operational Responsibilities

The SC shall have a Secretary to the Sanctions Office at PL4 level and an administrative assistant.

(a) The SC reviews the evidence of a Sanctionable Practice as presented by IACD and determines, upon consideration of all the facts and arguments presented whether there is sufficient evidence to support IACD’s finding.

(b) The SC will then notify IACD on whether or not there is sufficient evidence to support a finding that the Respondent is engaged in a Sanctionable Practice.

(c) If the SC determines that the evidence is sufficient to support the finding of a Sanctionable Practice, then he/she shall issue a Notice of Sanction (the “Notice”) to the Respondent and notify the Chair of the Sanctions Appeals Board (SAB) and the Director of IACD.

(d) If the Respondent informs the SAB through the Sanction’s Appeal Board Secretary (SABS) that it desires to contest the allegations and/or the sanction recommended by the SC in the Notice, the SC shall refer the matter to the SAB for its review and final decision.

(e) If the Respondent does not inform the SAB that it desires to contest the allegations or the sanction recommended by the SC in the Notice, the SC’s Notice shall become final and the sanction will be imposed.

(f) The SC shall respect and maintain the confidentiality of the sanctions proceedings and shall be recused in cases where the SC may have an actual or perceived conflict of interest.

(g) Rules and Procedure and the Code of Conduct for the SO shall be developed by the Bank in consultation with the SC.

(h) The SC shall be held harmless from any losses, costs, damages or liability to which the SC may be subject as a result of claims by third parties resulting from any function exercised within the scope of the present terms of reference and his/her assignment contract, except those resulting from the gross negligence or willful misconduct of the SO.
3. Selection Criteria

The external candidate for the SC must not have previously held or currently hold any appointment as governors, directors, alternates, officers or employees of the Bank. He/She should:

(a) be a national of either a member country of the Bank or State Participant in the Fund;

(b) have extensive knowledge of Africa and Bank operations, or related or similar experience working with similar institutions, including in the area of the procurement;

(c) have knowledge of and experience in the conduct of investigations, standards of proof and evidence, and legal and policy issues relating to the operations of the Bank or related or similar institutions;

(d) have managerial capacity to plan and direct the use of resources, implement an efficient case management system and exercise independent judgment;

(e) be of proven expertise, competence, independence, and integrity and

(f) have a minimum of fifteen (15) years relevant experience, competencies and an advanced degree in law.
ANNEX II

TERMS OF REFERENCE
FOR THE SANCTIONS OFFICE SECRETARY (PL4)

1. General Responsibilities

The Secretary to the Sanctions Office (the “SSO”) shall exercise her/his functions independently. She/he shall be appointed by the President of the Bank and report functionally to the Sanctions Commissioner (“SC”) and administratively to the COO. The SSO shall be appointed from among the staff of the Bank to assist the SC. The SC shall supervise the work of the SSO.

2. Operational Responsibilities

The SSO shall be assisted by an administrative assistant. The SSO:

(a) Will receive findings as evidence of the Sanctionable Practice from IACD.

(b) Will prepare such evidence and will brief the SC on all aspects of a case;

(c) Will be responsible for transmitting all documents and making all notifications required in connection with the case.

(d) Will make for each case a dossier which shall record all actions taken in connection with such case and the dates thereof.

(e) Shall respect and maintain the confidentiality of the sanctions proceedings.

3. Selection Criteria

The SSO should:

(a) have extensive knowledge of the operations and operational policies, including in the area of the procurement, of the Bank or related or similar institutions;

(b) have knowledge of and experience in the conduct of investigations, standards of proof and evidence, and legal and policy issues relating to the operations of the Bank or related or similar institutions;

(c) have managerial capacity to plan and direct the use of resources, implement an efficient case management system and exercise independent judgment;

(d) have proven competence, independence and integrity; and

(e) have a minimum of seven (7) years relevant experience, competencies and an advanced degree in law or other related field.
1. **General Responsibilities**

The Sanctions Appeals Board (SAB) shall review and take decisions in sanctions cases and perform such other detailed functions and responsibilities as set forth in the sanctions process. The SAB shall be comprised of three (3) members and three (3) alternate members. Two (2) members of the SAB shall be external experts appointed by the Executive Directors of the Bank on the recommendation of the President and one (1) member shall be appointed by the President from among senior Bank staff. One initial (1) external member shall be appointed for a shorter period of two (2) years, while the other member shall be appointed for a period of three (3) years, which term may be renewed for a further period of three (3) years. The shorter term of two (2) years is to enable the appointment of a new member who will benefit from the transition of knowledge regarding the activities of the SAB. The SAB will utilize a de novo process and generally render its decision on the basis of the written record without a hearing and the parties have no right to a hearing. However, the SAB may, in its discretion, hold such hearings as it deems necessary. No representative of IACD or the Respondent may be present during any part of the SAB’s deliberations.

2. **Operational Responsibilities**

The SAB is responsible for:

(a) determining whether the evidence is sufficient to support a finding that a Respondent has engaged in a Sanctionable Practice in connection with a Bank Group-Financed Operation;

(b) making final decisions on appropriate sanctions in cases of Sanctionable Practice (s) in connection with a Bank-Group Financed Operation; and

(c) developing its own rules and procedures and code of conduct.

3. **Selection Criteria**

The external candidates for the SAB must not have previously held or currently hold any appointment as governors, directors, alternates, officers or employees of the Bank. They should:

(a) be a national of either a member country of the Bank or State Participant in the Fund;

(b) have extensive knowledge of Africa and Bank operations, or related or similar experience working with similar institutions, including in the area of procurement matters, law and dispute resolution mechanisms;
(c) have knowledge of and experience in the conduct of investigations, standards of proof and evidence, and legal and policy issues relating to the operations of the Bank or related or similar institutions;

(d) have proven expertise, competence, integrity and ability to exercise independent judgment; and

(e) have a minimum of fifteen (15) years relevant experience and an advanced degree in law or other related field.

(f) The members of the SAB shall be held harmless from any losses, costs, damages or liability to which the members of the SAB may be subject as a result of claims by third parties resulting from any function exercised within the scope of the present terms of reference and his/her assignment contract, except those resulting from the gross negligence or willful misconduct of the members of the SAB.
ANNEX IV

TERMS OF REFERENCE
FOR THE SANCTIONS APPEALS BOARD SECRETARY (SABS) (PL2)

1. General Responsibilities

The Sanctions Appeals Board Secretary (the “SABS”) shall exercise her/his functions independently. She/he shall be appointed by and report to the Chair of SAB and to the President of the Bank administratively. The Chair of the SAB shall supervise the work of the Secretary to the SAB.

2. Operational Responsibilities

The SABS shall be assisted by an administrative assistant. The SABS:

(a) Will receive Notices of Sanction Proceedings addressed to the Respondent and as issued by the Sanctions Office.

(b) Will receive and prepare Notices of Appeal from decisions made by the SC.

(c) Will be responsible for transmitting all documents and making all notifications required in connection with the appeal.

(d) Will brief the SAB members on all aspects of a case during its deliberations;

(e) Will schedule all Board meetings and hearings of the SAB.

(f) Will prepare for each case a dossier which shall record all actions taken in connection with an appeal and the dates thereof.

(g) Will attend hearings and meetings of the SAB and prepare and keep minutes as may be instructed by the Chair.

(h) Shall respect and maintain the confidentiality of the sanctions proceedings.

3. Selection Criteria

The SABS should:

(a) be a national of either a member country of the Bank or State Participant in the Fund;

(b) have extensive knowledge of the operations and operational policies of the Bank, including in the area of the procurement, or similar experience from related or similar institutions;
(c) have knowledge of and experience in the conduct of investigations, standards of proof and evidence, and legal and policy issues relating to the operations of the Bank or related or similar institutions;

(d) have managerial capacity to plan and direct the use of resources, implement an efficient case management system and exercise independent judgment;

(e) have proven competence, independence and integrity; and

(f) have a minimum of ten (10) years relevant experience, the requisite competencies and an advanced degree in law or other related field.
ANNEX V

PROPOSED SANCTIONS PROCESS

Appellate Level
Sanctions Appeals Board (SAB)
Sanctions Appeals Board Secretary (SABS)

First Level Review
Sanctions Office (SO)
Sanctions Commissioner (SC)
Secretary to the Sanction Office (SSO)

Investigations
Integrity and Anti-Corruption Department (IACD)
AGREEMENT FOR MUTUAL ENFORCEMENT OF DEBARMENT DECISIONS

PREAMBLE

The African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group (each a “Participating Institution”, collectively the “Participating Institutions”):

Acknowledge their membership in the International Financial Institutions Anti-Corruption Task Force and the Uniform Framework for Preventing and Combating Fraud and Corruption, dated September 17, 2006 (the “Uniform Framework”) and attached hereto as Annex A.

Reaffirm the provisions of paragraph 5 of the Uniform Framework that:

“[e]ach of the member institutions of the IFI Task Force has a distinct mechanism for addressing and sanctioning violations of its respective anti-corruption policies,”

“mutual recognition of these enforcement actions would substantially assist in deterring and preventing corrupt practices,” and

Confirm the importance of establishing a system for mutual recognition of enforcement actions in furtherance of the provisions of paragraph 5 of the Uniform Framework.”

1The African Development Bank Group consists of the African Development Bank, the African Development Fund and Nigeria Trust Fund. The African Development Bank and the African Development Fund are public international organizations and the Nigeria Trust Fund is a fund administered by the African Development Bank pursuant to a trust agreement.

2The Inter-American Development Bank Group consists of the Inter-American Development Bank (IDB), the Inter-American Investment Corporation (IIC) and the Multilateral Investment Fund (MIF), which cooperate on operations in their developing member countries. The IDB and the IIC are public international organizations. The MIF is a fund under the administration of the IDB. Each has a distinct legal status, governance structure and assets.

3The World Bank Group is comprised of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID).
Now agree as follows:

1. Each Participating Institution will enforce debarment decisions made by another Participating Institution, in accordance with the terms and conditions of this Agreement.

CORE PRINCIPLES

2. Each Participating Institution hereby represents that its internal mechanisms for addressing and sanctioning violations of its respective anti-corruption policies are consistent with, and incorporate, the following core principles:

   a. Adoption of the harmonized definitions of sanctionable (also known as prohibited) practices that include (i) Fraudulent Practice, (ii) Corrupt Practice, (iii) Coercive Practice, and (iv) Collusive Practice, as defined in the Uniform Framework;

   b. Adherence to the International Financial Institutions Principles and Guidelines for Investigations as they appear in the Uniform Framework, which require each Participating Institution to conduct fair, impartial and thorough investigations;

   c. Application of a process to determine whether a sanctionable practice has occurred and the appropriate enforcement action to address it that:

      i. Includes an internal authority responsible for the investigative function and a distinct decision-making authority;

      ii. Operates pursuant to written and publicly available procedures that require (a) notice to the entity or entities and/or individual(s) against whom the allegations are made, and (b) an opportunity for those entities and individuals to respond to the allegations;

      iii. Employs the standard of proof embodied in the Uniform Framework being “more probable than not,” or its equivalent; and

      iv. Provides for a range of sanctions that takes into account the principle of proportionality, including mitigating and aggravating factors.
MODALITIES FOR MUTUAL ENFORCEMENT OF DEBARMENT DECISIONS

3. Each Participating Institution will promptly notify the other Participating Institutions of each debarment decision qualifying under Paragraph 4 made by its decision-making authority, and any modification thereto. The notice shall include (a) the names of the entities or individuals sanctioned, (b) the sanctionable practice(s) found to have been committed, and (c) the terms of the debarment or modification.

4. Upon receipt of such notice, the other Participating Institutions will enforce such decision as soon as practicable, subject to the following criteria:

   a. The decision was based, in whole or in part, on a finding of a commission of one or more of the sanctionable practices defined in the Uniform Framework;

   b. The decision is made public by the Sanctioning Institution;

   c. The initial period of debarment exceeds one year;

   d. The decision was made after this Agreement has entered into force with respect to the Sanctioning Institution;

   e. The decision by the Sanctioning Institution was made within ten years of the date of commission of the sanctionable practice; and

   f. The decision of the Sanctioning Institution was not made in recognition of a decision made in a national or other international forum.

5. The period of debarment and any modifications thereto will be determined solely by the Sanctioning Institution.

6. Each Participating Institution may pursue independent debarment proceedings for separate sanctionable practices by the same entity or individual already debarred by the Sanctioning Institution, which may result in concurrent, consecutive or subsequent periods of debarment for the entity or individual.

7. Notwithstanding the provisions above, a Participating Institution may decide not to enforce a debarment by the Sanctioning Institution where such enforcement would be
inconsistent with its legal or other institutional considerations and, in such case, will promptly notify the other Participating Institutions of such decision.

SIGNATURE AND ENTRY INTO FORCE

8. This Agreement will enter into force for a Participating Institution upon (a) its signature of this Agreement; and (b) notice by such Participating Institution that it has fulfilled all of the requirements for the implementation of this Agreement.

ADDITIONAL SIGNATORIES

9. Following its entry into force, other international financial institutions may join this Agreement upon the consent of all Participating Institutions and signature of a Letter of Adherence by the international financial institution substantially in the form provided in Annex B. Upon adherence, such international financial institution shall become a Participating Institution for purposes of this Agreement.

WITHDRAWAL

10. A Participating Institution may withdraw from this Agreement by delivering a written notice of withdrawal to the Heads of other Participating Institutions.

PUBLICATION

11. Each Participating Institution may publish this Agreement in accordance with its policies for disclosure of information.

MISCELLANEOUS

12. Each Participating Institution will designate a unit responsible for receiving and issuing notices pursuant to this Agreement. The identity of such responsible unit shall be notified to the other Participating Institutions in writing.
Dated as of: 9 April, 2010

Donald Kaberuka  
African Development  
Bank Group

Hirohiko Kuroda  
Asian Development  
Bank

Thomas Mirow  
European Bank for  
Reconstruction and  
Development

Luis Alberto Moreno  
Inter-American Development  
Bank Group

Robert B. Zoellick  
World Bank Group
ANNEX VII – UNIFORM FRAMEWORK FOR PREVENTING AND COMBATING FRAUD AND CORRUPTION
INTERNATIONAL FINANCIAL INSTITUTIONS ANTI-CORRUPTION TASK FORCE

September 2006
UNIFORM FRAMEWORK FOR PREVENTING AND
COMBATING FRAUD AND CORRUPTION

On February 18, 2006, the leaders of the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank Group, International Monetary Fund, Inter-American Development Bank Group and the World Bank Group agreed to establish a Joint International Financial Institution Anti-Corruption Task Force to work towards a consistent and harmonized approach to combat corruption in the activities and operations of the member institutions. The leaders of the member institutions recognize that a unified and coordinated approach is critical to the success of the shared effort to fight corruption and prevent it from undermining the effectiveness of their work.

The International Financial Institutions (IFI) Task Force has agreed on the following recommended elements of a harmonized strategy to combat corruption in the activities and operations of the member institutions.¹

1. Definitions of Fraudulent and Corrupt Practices

Critical to the success of a harmonized approach is a common understanding of the practices prohibited. To this end, the Task Force has agreed in principle on the following standardized definitions of fraudulent and corrupt practices for investigating such practices in activities financed by the member institutions.

- A corrupt practice is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- A fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- A coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- A collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

Each of the member institutions will determine implementation within its relevant policies and procedures, and consistent with international conventions.

¹ The Management of the IMF supports and encourages these efforts to fight corruption in project lending and dealings with private firms. Unlike the other member institutions, the IMF does not engage in project lending or lending to the private sector. It maintains procedures tailored to the circumstances of the IMF to deal with potential issues of staff misconduct and safeguard the use of Fund resources.
2. Principles and Guidelines for Investigations

It is recognized that detection, investigation and sanctions are vital to effectively deterring corrupt activities. All investigations must be thorough, professional and respectful of the parties involved. To promote consistency in the practices of the member institutions' investigative units, the Task Force has endorsed the attached common principles and guidelines for investigations.

3. Exchange of Information

The Task Force has recognized that exchange of relevant information among member institutions will promote a common approach and enhance cooperation in addressing integrity issues in their activities. It is also critical to ensure that the confidentiality of information be maintained so whistleblowers and others remain confident in their ability to communicate with member institutions. The IFI Task Force has agreed that the institutions should exchange information, as appropriate, in connection with investigations into fraudulent and corrupt practices consistent with these principles.

4. Integrity Due Diligence

The member institutions of the IFI Task Force recognize the need to promote ethical business practices and good governance consistent with international standards as part of their lending and investment decisions. Accordingly, the Task Force recommends that member institutions will be guided by the following general principles in analyzing integrity issues relating to private sector lending and investment decisions:

- adequate "know-your-customer" procedures to ensure identification of beneficial ownership;
- close scrutiny of parties that have been convicted of or are under investigation for serious crimes, investigated or sanctioned by a regulatory body or appearing on a sanctions list recognized by the member institution;
- close scrutiny of parties involved in civil litigation involving allegations of financial misconduct;
- close scrutiny of Politically Exposed Persons consistent with the recommendations of the Financial Action Task Force;
- identification of mitigants and enforcement of covenants that address integrity risks; and
- ongoing monitoring of integrity risks through portfolio management.

5. Mutual Recognition of Enforcement Actions

Each of the member institutions of the IFI Task Force has a distinct mechanism for addressing and sanctioning violations of its respective anti-corruption policies. The Task Force recognizes that mutual recognition of these enforcement actions would substantially assist in deterring and preventing corrupt practices. The member institutions will explore further how compliance and enforcement actions taken by one institution can be supported by the others. As an immediate
step, the Task Force recommends that each member institution should seek to require all bidders, sponsors, or other firms or individuals participating in activities financed by a member institution to disclose any sanction imposed on that firm or individual by a member institution.

6. Support for Anti-Corruption Efforts of Member Countries

The Task Force recognizes the critical importance of ensuring integrity within the member institutions as well as the activities they finance. The Task Force also supports the initiatives of member countries and other stakeholders, including the press and judiciary, to increase transparency and accountability, strengthen governance and combat corruption.

To this end, the Task Force recommends that member institutions continue to develop analytical tools designed to assess risks of corruption in individual countries, sectors and regions and institutional capabilities to respond to those risks. In addition, member institutions should, within their respective mandates, seek to develop a proactive and coordinated approach to assist member countries and the private sector in the development of institutions, as well as administrative systems and policies that eliminate opportunities for fraudulent and corrupt practices.

The Task Force also recommends that the member institutions work to strengthen coordination on governance, integrity and anti-corruption activities and technical assistance with other donors, including in their activities in individual countries, to avoid duplication and maximize synergies. Where appropriate, member institutions also should assist executing agencies in evaluating integrity risks among potential contractors and in developing good governance and anti-corruption mechanisms.
INTERNATIONAL FINANCIAL INSTITUTIONS
PRINCIPLES AND GUIDELINES FOR INVESTIGATIONS

PREAMBLE

The following Institutions have jointly endorsed these common principles and guidelines for investigations conducted by their respective investigative units:  

- the African Development Bank Group
- the Asian Development Bank
- the European Bank for Reconstruction and Development
- the European Investment Bank Group
- the Inter-American Development Bank Group
- the World Bank Group

These principles and guidelines are intended to be used as guidance in the conduct of investigations in conjunction with the policies, rules, regulations, and privileges and immunities applicable in the Organization. For the purpose of this document, use of the term “Organization” includes reference to all institutions that are part of or related to the above-mentioned Institutions. The investigative units of each Organization are hereinafter referred to as the “Investigative Office.”

GENERAL PRINCIPLES

1. Each Organization shall have an Investigative Office responsible for conducting investigations.

2. The purpose of an investigation by the Investigative Office is to examine and determine the veracity of allegations of corrupt or fraudulent practices as defined by each institution including with respect to, but not limited to, projects financed by the Organization, and allegations of Misconduct on the part of the Organization’s staff members.

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2 The designated investigative units are the Office of the Auditor General of the African Development Bank Group, the Integrity Division of the Asian Development Bank, the Office of the Chief Compliance Officer of the European Bank for Reconstruction and Development, the Inspectorate General of the European Investment Bank Group, the Office of Institutional Integrity of the Inter-American Development Bank Group, the Department of Institutional Integrity of the World Bank Group. The Management of the IMF supports and encourages these efforts to fight corruption in project lending and dealings with private firms. Unlike the other Organizations, the IMF does not engage in project lending or lending to the private sector. It maintains procedures tailored to the circumstances of the IMF to deal with potential issues of staff misconduct and safeguard the use of Fund resources.

3 These guidelines are not intended to confer, impose, or imply any duties, obligations, or rights actionable in a court of law or in administrative proceedings on the Organization carrying out the investigation. Nothing in the guidelines should be interpreted as affecting the rights and obligations of each Organization per its rules, policies and procedures, nor the privileges and immunities afforded to each Organization by international treaty and the laws of the respective members.
3. The Investigative Office shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity. In particular, the Investigative Office shall perform its duties independently from those responsible for or involved in operational activities and from staff members liable to be subject of investigations and shall also be free from improper influence and fear of retaliation.

4. The staff of the Investigative Office shall disclose to a supervisor in a timely fashion any actual or potential conflicts of interest he or she may have in an investigation in which he or she is participating, and the supervisor shall take appropriate action to remedy the conflict.

5. Appropriate procedures shall be put in place to investigate allegations of Misconduct on the part of any staff member of an Investigative Office.

6. Each Organization shall publish the mandate and/or terms of reference of its Investigative Office as well as an annual report highlighting the integrity and anti-fraud and corruption activities of its Investigative Office in accordance with its policies on the disclosure of information.

7. The Investigative Office shall take reasonable measures to protect as confidential any non-public information associated with an investigation, including the identity of parties that are the subject of the investigation and of parties providing testimony or evidence. The manner in which all information is held and made available to parties within each Organization or parties outside of the Organization, including national authorities, is subject to the Organization's rules, policies and procedures.

8. Investigative findings shall be based on facts and related analysis, which may include reasonable inferences.

9. The Investigative Office shall make recommendations, as appropriate, to the Organization's management that are derived from its investigative findings.

10. All investigations conducted by the Investigative Office are administrative in nature.

DEFINITIONS

11. Misconduct is a failure by a staff member to observe the rules of conduct or the standards of behavior prescribed by the Organization.

12. The Standard of Proof that shall be used to determine whether a complaint is substantiated is defined for the purposes of an investigation as information that, as a whole, shows that something is more probable than not.

RIGHTS AND OBLIGATIONS

Witnesses and subjects

13. A staff member who qualifies as a "whistleblower" under the rules, policies and procedures of the Organization shall not be subjected to retaliation by the Organization. The Organization will treat retaliation as a separate act of Misconduct.
14. The Organization may require staff to report suspected acts of fraud, corruption, and other forms of Misconduct.

15. The Organization shall require staff to cooperate with an investigation and to answer questions and comply with requests for information.

16. Each Organization should adopt rules, policies and procedures and, to the extent that it is legally and commercially possible, include in its contracts with third parties, provisions that parties involved in the investigative process shall cooperate with an investigation.

17. As part of the investigative process, the subject of an investigation shall be given an opportunity to explain his or her conduct and present information on his or her behalf. The determination of when such opportunity is provided to the subject is regulated by the rules, policies and procedures of the Organization.

Investigative Office

18. The Investigative Office should conduct the investigation expeditiously within the constraints of available resources.

19. The Investigative Office should examine both inculpatory and exculpatory information.

20. The Investigative Office shall maintain and keep secure an adequate record of the investigation and the information collected.

21. The staff of the Investigative Office shall take appropriate measures to prevent unauthorized disclosure of investigative information.

22. The Investigative Office shall document its investigative findings and conclusions.

23. For purposes of conducting an investigation, the Investigative Office shall have full and complete access to all relevant information, records, personnel, and property of the Organization, in accordance with the rules, policies and procedures of the Organization.

24. To the extent provided by the Organization’s rules, policies and procedures and relevant contracts, the Investigative Office shall have the authority to examine and copy the relevant books and records of projects, executing agencies, individuals, or firms participating or seeking to participate in Organization-financed activities or any other entities participating in the disbursement of Organization funds.

25. The Investigative Office may consult and collaborate with other Organizations, international institutions, and other relevant parties to exchange ideas, practical experience, and insight on how best to address issues of mutual concern.

26. The Investigative Office may provide assistance to and share information with other Investigative Offices.
PROCEDURAL GUIDELINES

Sources of Complaints

27. The Investigative Office shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources.

28. Where practicable, the Investigative Office will acknowledge receipt of all complaints.

Receipt of Complaint

29. All complaints shall be registered and reviewed to determine whether they fall within the jurisdiction or authority of the Investigative Office.

Preliminary Evaluation

30. Once a complaint has been registered, it will be evaluated by the Investigative Office to determine its credibility, materiality, and verifiability. To this end, the complaint will be examined to determine whether there is a legitimate basis to warrant an investigation.

Case Prioritization

31. Decisions on which investigations should be pursued are made in accordance with the rules, policies and procedures of the Organization; decisions on which Investigative Activities are to be utilized in a particular case rest with the Investigative Office.

32. The planning and conduct of an investigation and the resources allocated to it should take into account the gravity of the allegation and the possible outcome(s).

Investigative Activity

33. The Investigative Office shall, wherever possible, seek corroboration of the information in its possession.

34. For purposes of these guidelines, Investigative Activity includes the collection and analysis of documentary, video, audio, photographic, and electronic information or other material, interviews of witnesses, observations of investigators, and such other investigative techniques as are required to conduct the investigation.

35. Investigative Activity and critical decisions should be documented in writing and reviewed with managers of the Investigative Office.

36. Subject to the Organization’s rules, policies and procedures, if, at any time during the Investigation, the Investigative Office considers that it would be prudent, as a precautionary measure or to safeguard information, to temporarily exclude a staff member that is the subject of an investigation from access to his or her files or office or to recommend that he or she be suspended from duty, with or without pay and benefits, or to recommend placement of such other limits on his or her official activities, the Investigative Office shall refer the matter to the relevant authorities within the Organization for appropriate action.
37. To the extent possible, interviews conducted by the Investigative Office should be conducted by two persons.

38. Subject to the discretion of the Investigative Office, interviews may be conducted in the language of the person being interviewed, where appropriate using interpreters.

39. The Investigative Office will not pay a witness or a subject for information. Subject to the Organization's rules, policies and procedures, the Investigative Office may assume responsibility for reasonable expenses incurred by witnesses or other sources of information to meet with the Investigative Office.

40. The Investigative Office may engage external parties to assist in its investigations.

INVESTIGATIVE FINDINGS

41. If the Investigative Office does not find sufficient information during the investigation to substantiate the complaint, it will document such findings, close the investigation, and notify the relevant parties, as appropriate.

42. If the Investigative Office finds sufficient information to substantiate the complaint, it will document its investigative findings and refer the findings to the relevant authorities within the Organization, consistent with the Organization's rules, policies and procedures.

43. Where the Investigative Office's investigative findings indicate that a complaint was knowingly false, the Investigative Office shall, where appropriate, refer the matter to the relevant authorities in the Organization for further action consistent with the Organization's rules, policies and procedures.

44. Where the Investigative Office's investigative findings indicate that there was a failure to comply with an obligation existing under the investigative process by a witness or subject, the Investigative Office may refer the matter to the relevant authorities in the Organization.

REFERRALS TO NATIONAL AUTHORITIES

45. The Investigative Office may consider whether it is appropriate to refer information relating to the complaint to the appropriate national authorities, and the Investigative Office will seek the necessary internal authorization to do so in cases where it finds a referral is warranted.

REVIEW AND AMENDMENT

46. Any amendments to the Guidelines will be adopted by the Organizations by consensus.

PUBLICATION

47. Any Organization may publish these Principles and Guidelines in accordance with its policies on the disclosure of information.
Annexe VIII

BUDGETARY IMPLICATIONS

I. Sanctions Appeals Board

i) Missions, Consultants, STS & Representation Fee

<table>
<thead>
<tr>
<th>Description</th>
<th>Additional Amount Requested (UA)- (Annually)</th>
<th>Additional Amount Requested (UA) (2012- Temporarily Prorated)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultants (Fees &amp; Missions)</td>
<td>74 720,00</td>
<td>74 720,00</td>
</tr>
<tr>
<td>Additional Consultants</td>
<td>20 000,00</td>
<td>20 000,00</td>
</tr>
<tr>
<td>STS</td>
<td>9 800,00</td>
<td>9 800,00</td>
</tr>
<tr>
<td>Entertainment</td>
<td>5 000,00</td>
<td>5 000,00</td>
</tr>
<tr>
<td>Hospitality</td>
<td>5 000,00</td>
<td>5 000,00</td>
</tr>
<tr>
<td>Total</td>
<td>114 520,00</td>
<td>114 520,00</td>
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</table>

ii) Personnel (Descriptions of the positions are provided in the annex)

Request for New Position: 1 PL2

iii) Missions, Consultants, STS & Representation Fee

<table>
<thead>
<tr>
<th>Grade</th>
<th>Title</th>
<th>Annual Salary (UA)</th>
<th>Benefits (UC)</th>
<th>Additional Costs</th>
<th>Total (UA) Entire Year</th>
<th>Total UA Entire Year (Prorated)</th>
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<tbody>
<tr>
<td>PL2</td>
<td>Sanctions Appeals Board</td>
<td>87 557,00</td>
<td>57 787,62</td>
<td>39 400,65</td>
<td>184 745,27</td>
<td>107 768,07</td>
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<tr>
<td></td>
<td>Secretary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

- The additional budget requested for the Sanctions Appeals Board is: 299 265,27 UC
- The total budget requested (temporarily prorated) for the Sanctions Appeals Board is: 222 288,07 UC
II. Sanctions Office

i) Consultants, STS and Representation Fees

<table>
<thead>
<tr>
<th>Description</th>
<th>Additional Amount Requested (UA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultants (Fees)</td>
<td>25 000,00</td>
</tr>
<tr>
<td>Additional Consultants</td>
<td>10 000,00</td>
</tr>
<tr>
<td>STS</td>
<td>9 800,00</td>
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<tr>
<td>Entertainment</td>
<td>3 000,00</td>
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<tr>
<td>Hospitality</td>
<td>3 000,00</td>
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<tr>
<td>Total</td>
<td>50 800,00</td>
</tr>
</tbody>
</table>

ii) Personnel (Descriptions of the positions are provided in the annex)

<table>
<thead>
<tr>
<th>Grade</th>
<th>Title</th>
<th>Annual Salary (UA)</th>
<th>Benefits (UA)</th>
<th>Additional Costs</th>
<th>Total (UA) Entire Year</th>
<th>Total (UA) Entire Year (Prorated)</th>
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</thead>
<tbody>
<tr>
<td>PL4</td>
<td>Secretary to the Sanctions Office</td>
<td>61 172,00</td>
<td>40 373,52</td>
<td>27 527,40</td>
<td>129 072,92</td>
<td>75 292,54</td>
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</table>

- The total budget requested (annually) for the Sanctions Office is: 179 872,92 UC
- The total budget requested (temporarily prorated) for the Sanctions Office is: 126 092,54 UC

III. Total Budget for the Sanctions Appeals Board and the Sanctions Office

<table>
<thead>
<tr>
<th></th>
<th>Entire Year (UA)</th>
<th>Total au prorata temporis (UA)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sanctions Appeals Board</td>
<td>299 265,27</td>
<td>222 288,07</td>
</tr>
<tr>
<td>Sanctions Office</td>
<td>179 872,92</td>
<td>126 092,54</td>
</tr>
<tr>
<td>Total</td>
<td>479 138,19</td>
<td>348 380,61</td>
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