

The Coordination Group
Arab Funds Procurement Modernization Project

**Anticorruption Procedures Including Guidelines
on Procurement Integrity**

Anticorruption Procedures Including Guidelines on Procurement Integrity

Project Financed by *[Name of Fund]*

Dated

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1. Purpose and General Principles

These *Procedures*, including the *Guidelines on Procurement Integrity*—which are an integral part hereof—are designed to prevent and combat Fraud and Corruption (as hereinafter defined) that may occur in connection with the use of proceeds of financing from *[name of Fund]* during the preparation and/or implementation of projects finance by *[name of Fund]*. They set out the general principles, requirements, and sanctions applicable to persons and entities which receive, are responsible for the deposit or transfer of, or take or influence decisions regarding the use of, such proceeds.

All persons and entities referred to above must observe the highest standard of ethics. Specifically, all such persons and entities must take all appropriate measures to prevent and combat, mitigate any existing instance of, and refrain from engaging in Fraud and Corruption, all in connection with the use of the proceeds of the *[name of Fund]* financing.

2. Legal Obligations

The Legal Agreement¹ providing for a Loan² governs the legal relationships between the Client³ and [name of Fund]⁴ with respect to the particular project for which the Loan is made. The responsibility for the implementation of the project⁵ under the Legal Agreement, including the use of Loan proceeds, rests with the Client. [Name of Fund], for its part, has a fiduciary duty under its Articles of Agreement to, “make arrangements to ensure that the proceeds of any Loan are used only for the purposes for which the Loan was granted, with due attention to considerations of economy, efficiency, and without regard to political or other non-economic influences or considerations.” These *Procedures* constitute an important element of those arrangements and are made applicable to the preparation and implementation of the project as provided in the Legal Agreement.

3. Scope of Application

The following provisions of these *Procedures* cover Fraud and Corruption that may occur in connection with the use of Loan proceeds during the preparation and implementation of a project financed, in whole or in part, by [name of Fund] which is a member of the Coordination Group (as hereinafter defined). These *Procedures* cover Fraud and Corruption in the direct diversion of Loan proceeds for ineligible expenditures, as well as Fraud and Corruption engaged in for the purpose of influencing any decision as to the use of Loan proceeds. All such Fraud and Corruption is deemed, for purposes of these *Procedures*, to occur in connection with the use of Loan proceeds. For purposes of these *Procedures*, the Coordination Group consists of: the Abu Dhabi Fund for Development (ADFD), Arab Bank for Economic Development in Africa (BADEA), Arab Fund for Economic and Social Development (AFESD), Kuwait Fund for Arab Economic Development (KFAED), Islamic Development Bank (IsDB), OPEC Fund for International Development (OFID), Qatar Fund for Development (QFFD), and Saudi Fund for Development (SFD) (collectively, the “Arab Funds,” each, a “Fund”), and such other Fund, or Funds, as may be approved for inclusion in the Arab Fund Group.

¹ References in these *Procedures* to “Legal Agreement” include any Loan Agreement providing for a [name of Fund] loan or Grant Agreement providing for a [name of Fund] grant, any Guarantee Agreement providing for a guarantee by the Member Country of such [name of Fund] Loan, any agreement providing for a project preparation advance, any Trust Fund Grant or Loan Agreement providing for a recipient-executed trust fund grant or loan in cases where these *Procedures* are made applicable to such agreement, and any Project Agreement with a Project Implementing Entity related to any of the above.

² References to “Loan” or “Loans” include loans and grants made by [name of Fund], as well as project preparation advances, and recipient-executed trust fund grants or loans for projects to which these *Procedures* are made applicable under the agreement providing for such grant and/or loan. These *Procedures* do not apply to [name of Fund] guarantee operations.

³ References in these *Procedures* to the “Client” include the borrower of a [name of Fund] loan or the recipient of a [name of Fund] grant, or of a trust fund grant or loan. In some cases, a [name of Fund] Loan may be made to an entity other than the Member Country. In such cases, references in these *Procedures* to “Client” include the Member Country as Guarantor of the Loan, unless the context requires otherwise. In some cases, the project, or a part of the project, is carried out by a Project Implementing Entity with which [name of Fund] has entered into a Project Agreement. In such cases, references in these *Procedures* to the “Client” include the Project Implementing Entity, as defined in the Legal Agreement.

⁴ References in these *Procedures* to [name of Fund] include [name of Fund] whether acting in its own capacity or as administrator of trust funds financed by other donors.

⁵ References in these *Procedures* to the “project” means the Project as defined in the Legal Agreement.

These *Procedures* apply to the Client and all other persons (or entities) which either receive Loan proceeds for their own use (e.g., “end users”), persons, or entities such as fiscal agents which are responsible for the deposit or transfer of Loan proceeds (whether or not they are beneficiaries of such proceeds), and persons or entities which take or influence decisions regarding the use of Loan proceeds. All such persons and entities are referred to in these *Procedures* as, “recipients of Loan proceeds,” whether or not they are in physical possession of such proceeds.⁶

These *Procedures* apply to the procurement of goods, works, non-consulting services, and consulting services financed (in whole or in part) out of the proceeds of a Loan from *[name of Fund]*. Additional specific requirements relating to Fraud and Corruption in connection with such procurement are set out in *[Refer to appropriate section of the Procurement Regulations for {name of Fund}]*, dated *[insert date]*, as the same may be amended from time to time.

4. Definitions of Practices Constituting Fraud and Corruption

These *Procedures* address the following defined sanctionable practices when engaged in by recipients of Loan proceeds in connection with the use of such proceeds:⁷

a. **Corrupt Practice**—is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.⁸

b. **Fraudulent Practice**—is any act or omission, including a misrepresentation, that knowingly or recklessly⁹ misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

c. **Collusive Practice**—is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

d. **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.

e. **Obstructive Practice** is:

i. Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators in

⁶ Certain persons or entities may fall under more than one category identified in paragraph 3 in these *Procedures*. A financial intermediary, for example, may receive payment for its services, will transfer funds to end users and will make or influence decisions regarding the use of Loan proceeds.

⁷ Unless otherwise specified in the Legal Agreement, whenever these terms are used in the Legal Agreement, they have the meanings set out in these *Procedures*.

⁸ Typical examples of corrupt practice include bribery and “kickbacks.”

⁹ To act “knowingly or recklessly,” the fraudulent actor must either know that the information or impression being conveyed is false, or be recklessly indifferent as to whether it is true or false. Mere inaccuracy in such information or impression, committed through simple negligence, is not enough to constitute fraudulent practice.

order to materially impede a *[name of Fund]* investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice

ii. Threatening, harassing, or otherwise intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation, or from pursuing the investigation

iii. Acts intended to materially impede the exercise of *[name of Fund]*'s contractual rights of audit or access to information.¹⁰

The above practices, as so defined, are referred to collectively and individually in these *Procedures* as, "Fraud and Corruption."

5. Client Actions to Prevent and Combat Fraud and Corruption in connection with the Use of Loan Proceeds

In furtherance of the above-stated purpose and general principles, the Client will:

a. Take all appropriate measures to prevent Fraud and Corruption in connection with the use of Loan proceeds, including (but not limited to):

i. Adopting appropriate fiduciary monitoring tools, administrative practices, and institutional arrangements to ensure that the proceeds of the Loan are used **only** for the purposes for which the Loan was granted

ii. Ensuring that all of its representatives¹¹ involved with the project, and all recipients of Loan proceeds with which it enters into an agreement related to the Project, receive a copy of these *Procedures*, and are made aware of its contents

b. Immediately report to *[name of Fund]* any allegations of Fraud and Corruption in connection with the use of Loan proceeds that come to its attention

c. If *[name of Fund]* determines that any person or entity referred to in a. above has engaged in Fraud and Corruption in connection with the use of Loan proceeds, take timely and appropriate action, satisfactory to *[name of Fund]*, to address such practices when they occur

d. Include such provisions in its agreements with each recipient of Loan proceeds as *[name of Fund]* may require to give full effect to these *Procedures*, including, but not limited to, provisions:

i. Requiring such recipient to abide by paragraph 6 below

ii. Requiring such recipient to permit *[name of Recipient]* to inspect all accounts, records, and other documents relating to the project required to be maintained pursuant to the Legal Agreement, and to have them audited by, or on behalf of, *[name of Fund]*

¹⁰ Such rights include those provided for, inter alia, in paragraph 5d above of these *Procedures*.

¹¹ References in these *Procedures* to "representatives" of an entity also include its officials, officers, employees, and agents.

iii. Providing for the early termination or suspension by the Client of the agreement if such recipient is declared ineligible by *[name of Fund]* under paragraph 7 below

iv. Requiring restitution by such recipient of any amount of the loan with respect to which Fraud and Corruption has occurred.

e. Cooperate fully with representatives of *[name of Fund]* in any investigation into allegations of Fraud and Corruption in connection with the use of Loan proceeds

f. In the event that *[name of Fund]* declares any recipient of Loan proceeds ineligible as described in paragraph 7 below, take all necessary and appropriate action to give full effect to such declaration by, among other things:

i. Exercising the Client's right to terminate early or suspend the agreement between the Client and such recipient

ii. Seeking restitution.

6. Other Recipients of Loan Proceeds

In furtherance of the above-stated purpose and general principles, each recipient of Loan proceeds which enters into an agreement with the Client (or with another recipient of Loan proceeds) relating to the Project will:

a. Carry out its project-related activities in accordance with the above-stated general principles, the provisions of its agreement with the Client referred to in paragraph 5 above, and include similar provisions in any agreements related to the project into which it may enter with other recipients of Loan proceeds

b. Immediately report to *[name of Fund]* any allegations of Fraud and Corruption in connection with the use of Loan proceeds that come to its attention

c. Cooperate fully with representatives of *[name of Fund]* in any investigation into allegations of Fraud and Corruption in connection with the use of Loan proceeds

d. Take all appropriate measures to prevent Fraud and Corruption by its representatives (if any) in connection with the use of Loan proceeds, including, but not limited to:

i. Adopting appropriate fiduciary monitoring tools, administrative practices, and institutional arrangements to ensure that the proceeds of the Loan are used only for the purposes for which the Loan was granted

ii. Ensuring that all its representatives receive a copy of these *Procedures* and are made aware of its contents.

e. In the event that any representative of such recipient is declared ineligible as described in paragraph 7 below, take all necessary and appropriate action to give full effect to such declaration by, among other things, either removing such representative from all duties and responsibilities in connection with the project

or, when requested by *[name of Fund]* or otherwise appropriate, terminating its contractual relationship with such representative

f. In the event that it has entered into a project-related agreement with another person or entity which is declared ineligible as described in paragraph 7, take all necessary and appropriate action to give full effect to such declaration by, among other things:

- i. Exercising its right to terminate early or suspend such agreement
- ii. Seeking restitution.

7. Actions by *[Name of Fund]* in Cases of Fraud and Corruption

In furtherance of the above-stated purpose and general principles, *[name of Fund]* has the right to sanction, in accordance with *[name of Fund]*'s sanctions policies and procedures, any individual or entity¹²—other than the Member Country¹³—including (but not limited to) publicly declaring such individual or entity, either indefinitely, or for a stated period of time ineligible:

- a. To be awarded a *[name of Fund]*-financed contract
- b. To benefit from a *[name of Fund]*-financed contract, financially or otherwise, for example as a sub-contractor
- c. To otherwise participate in the preparation or implementation of the project or any other project financed, in whole or in part, by *[name of Fund]*:
 - i. If at any time *[name of Fund]* determines¹⁴ that such individual or entity has engaged in Fraud and Corruption in connection with the use of Loan proceeds¹⁵
 - ii. If another financier, including a member of the Coordination Group, with which *[name of Fund]* has entered into an agreement for the mutual enforcement of debarment decisions¹⁶ has declared such individual or entity ineligible to receive proceeds of financings made by such financier, or otherwise to participate in the preparation or implementation of any project financed in whole or in part by such financier as a result of a determination by such financier that the individual or entity has engaged in

¹² As in the case for bidders in the procurement context, *[name of Fund]* may also sanction individuals and entities which engage in Fraud or Corruption in the course of applying to become a recipient of Loan proceeds (e.g., a bank which provides false documentation so as to qualify as a financial intermediary in a project finance by *[name of Fund]*) irrespective of whether they are successful.

¹³ For purposes of these *Procedures*, "Member Country" includes officials and employees of the national government or of any of its political or administrative subdivisions, and government-owned enterprises and agencies that are not eligible to compete for and be awarded contracts financed by *[name of Fund]*.

¹⁴ The Coordination Group intends to establish a Sanctions Board, and related procedures, for the purpose of making such determinations. The procedures of said Sanctions Board are expected to set forth the full set of sanctions available to *[name of Fund]*.

¹⁵ The sanction may, without limitation, also include restitution of any amount of the Loan with respect to which Fraud and Corruption has occurred. The Coordination Group may publish the identity of any individual or entity declared ineligible under paragraph 7 of these *Procedures*.

¹⁶ Also sometimes referred to as "cross-debarment."

Fraud and Corruption in connection with the use of the proceeds of a financing made by such financier; or

iii. If *[name of Fund]* has found the individual or entity to be a non-responsible vendor on the basis of Fraud and Corruption in connection with *[name of Fund]*'s vendor eligibility policy.

8. Miscellaneous

The provisions of these *Procedures* do not limit any other rights, remedies¹⁷ or obligations of *[name of Fund]* or the Client under the Legal Agreement or any other document to which the *[name of Fund]* and the Client are both parties.

¹⁷ The Legal Agreement provides *[name of Fund]* with certain rights and remedies which it may exercise with respect to the Loan in the event of Fraud and Corruption in connection with the use of Loan proceeds, in the circumstances described therein.

Appendix—Guidelines on Procurement Integrity

A. Purpose and Scope of Application

The provisions of this *Appendix* to the *Anticorruption Procedures* Financed by [insert name of Fund] (the latter procedures being hereinafter referred to as the “*Anticorruption Procedures*”) apply with respect to procurement under any project financed by a member of the Coordination Group. For purposes of this *Appendix* to the *Anticorruption Procedures*, the Coordination Group consists of: the Abu Dhabi Fund for Development (ADFD), Arab Bank for Economic Development in Africa (BADEA), Arab Fund for Economic and Social Development (AFESD), Kuwait Fund for Arab Economic Development (KFAED), Islamic Development Bank (IsDB), OPEC Fund for International Development (OFID), Qatar Fund for Development (QFFD), and Saudi Fund for Development (SFD) (collectively, the “Arab Funds,” each, a “Fund”), and such other Fund, or Funds, as may be approved for inclusion in the Arab Fund Group.

B. Requirements

The Fund requires that beneficiaries of Fund financial assistance (hereinafter referred to as “Beneficiaries,” each a “Beneficiary”), bidders (applicants/proposers), consultants, contractors, suppliers, sub-contractors, sub-consultants, service providers, agents (whether declared or not), and any of their personnel observe the highest standard of ethics during the procurement process, selection, and contract execution of Fund-financed contracts, and refrain from fraud and corruption.

For the purposes of this provision, the Fund sets forth the following definitions and terms:

- a. **“Corrupt Practice”** is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party
- b. **“Fraudulent Practice”** is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation
- c. **“Collusive Practice”** is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party
- d. **“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
- e. **“Obstructive Practice”** is:
 - i. Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation
 - ii. Making false statements to investigators in order to materially impede a CG investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice
 - iii. Threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation

iv. Acts intended to materially impede the exercise of the CG's inspection and audit rights provided for under paragraph i. below ("*Requires an inspection clause...*").

f. **Reject a proposal for award**—if the Fund determines that the firm or individual recommended for award, any of its personnel, agents, sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has—directly or indirectly—engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question.

g. **The Fund may take appropriate actions**—in addition to the legal remedies set out in the relevant *Legal Agreement* (as this term is defined in the Fund's *Anticorruption Procedures*), including declaring misprocurement. If a Fund determines—at any time—that representatives of the Beneficiary, or of a recipient of any part of the proceeds of the Loan (as this term is defined in the Fund's *Anticorruption Procedures*), engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement process, selection, and/or execution of the contract in question, without the Beneficiary having taken timely and appropriate action satisfactory to the Fund to address such practices when they occur, actions will be taken. Failure to inform the Fund in a timely manner at the time the Beneficiary knew such practices occurred is also incorporated under appropriate actions in this *Legal Agreement*.

h. **Sanctions**—pursuant to the Fund's *Anticorruption Procedures*, and in accordance with its prevailing sanctions policies and procedures as set forth in the Fund's Sanctions Framework, any firm or individual determined at any time by the Fund to have engaged in Fraud and Corruption in connection with the procurement process, selection and/or execution of a Fund-financed contract

i. **Requires an inspection clause**—included to permit the Fund to inspect all accounts, records, and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Fund. This inspections clause applies to request(s) for bids/request(s) for proposals, associated documents, and in contracts financed by the Fund, as well as to all bidders (applicants/proposers), consultants, contractors, suppliers, as well as their sub-contractors, sub-consultants, agents, personnel, consultants, and service providers.

j. **Requirement for national procurement arrangements (including Public Private Partnerships)**—all bidders (applicants/proposers) and consultants submitting bids/proposals under national procurement arrangements (and/or PPPs) are required to accept the application of—and agree to comply with—the Fund's *Anticorruption Procedures* during the procurement process, selection, and/or contract execution, including:

- i. The Fund's right to sanction as set forth in paragraph h. above
- ii. The Fund's inspection and audit rights as set forth above in paragraph i.
- iii. Consulting and applying the Coordination Group's lists, if any, of firms and individuals suspended or debarred.

Note: In the event that a Beneficiary signs a contract with a firm—or an individual—suspended or debarred by the Coordination Group, the Fund does **not** finance the related expenditures, and may apply other remedies as appropriate.

k. **Requirement when a Beneficiary selects a United Nations (UN) agency** to provide goods, works, non-consulting services, and/or technical assistance services in accordance with the relevant paragraphs of the Fund’s Procurement Regulations under an agreement signed between the Beneficiary and the UN agency, the foregoing provisions of *Appendix* paragraph B. “*Requirements*” regarding sanctions on Fraud and Corruption shall apply in their entirety to all contractors, consultants, sub-contractors, sub-consultants, service providers, suppliers, and their employees that have signed contracts with the UN agency.

l. As an exception to the foregoing, paragraphs h. and i. above do not apply to the UN agency and its employees:

i. Paragraph i. above does not apply to contracts between the UN agency and its service providers and suppliers. In such cases, the UN agency applies its own rules and regulations for investigating allegations of Fraud and Corruption, subject to such terms and conditions as the Fund and the UN agency may agree—including an obligation to periodically inform the Fund of the decisions and actions taken.

ii. The Fund retains the right to require the Beneficiary to invoke remedies such as suspension or termination. United Nations agencies shall consult the Coordination Group’s lists (if any) of firms and individuals suspended or debarred.

Note: In the event a UN agency signs a contract or purchase order with a firm or an individual suspended or debarred by the Coordination Group, the Fund does **not** finance the related expenditures, and may apply other remedies as appropriate.

With the specific agreement of the Fund—a Beneficiary may introduce into the request for bids/request for proposals document for contracts financed by the Fund, a requirement that the bidder (or consultant) include in the bid or proposal an undertaking of the bidder (or consultant) to observe, in the procurement process, the country’s laws against fraud and corruption (including bribery), as such laws have been identified in the request for bids/request for proposals documents. The Fund will accept the introduction of such a requirement at the request of the Beneficiary, provided the arrangements governing the undertaking are satisfactory to the Fund.