

**The Coordination Group**  
**Arab Funds Procurement Modernization Project**

**Guidance Note A—Framework for a  
Sanctions Regime**

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This note proposes a framework for a sanctions regime to be adopted by each 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.

The Background section provides the legal and policy basis for the proposed sanctions regime, and the Sanctions Regime portion provides an overview of both the proposed sanctions process as well as the operational aspects of the proposed sanctions regime.

### A. Background

Inherent to each Fund’s establishment document is the requirement to ensure that financings provided by such Fund are used for their intended purposes, and with due regard to economy and efficiency. This fundamental requirement constitutes the legal and policy basis for much of each Fund’s fiduciary framework for its operations.

To this end, it is proposed that each Fund adopt a set of legal and other tools to help prevent and combat fraud and corruption, and other prohibited practices in its projects and programs (collectively, “Prohibited Practices”). Collectively known as the “Sanctions Regime,” these tools are both administrative and operational in nature.

On the administrative side, it is proposed that each Fund put in place a formal process for sanctioning firms and individuals found to have engaged in Prohibited Practices under one or more of its financed projects, primarily by declaring them ineligible to be awarded Fund-financed contracts, a step commonly known as “debarment.” Sanctions are intended to exclude corrupt actors from access to Arab Fund financing, while serving as a deterrent both for the sanctioned firm and for others.

On the operational side, it is proposed that each Fund develop anticorruption-related provisions in its legal agreements with borrowers and other recipients of its financial resources (collectively, “Beneficiaries”), as well as practices and procedures aimed at addressing potential Prohibited Practices under its financed operations.

## **B. The Sanctions Regime**

### **The Sanctions Process**

It is proposed that each Fund put in place—and thereafter maintain—a formal process for sanctioning firms and individuals found to have engaged in Prohibited Practices under one or more projects financed by such Fund. Such a process would provide the accused party (the “Respondent”) with basic due process before the Fund decides whether the Respondent will be sanctioned and, if so, to what extent such sanction is appropriate.

**Sanctionable Practices**—As agreed among other multilateral development banks, it is proposed that each Fund decree that certain defined forms of Prohibited Practices under Fund-financed projects will be sanctionable. These include corrupt practice, fraudulent practice, collusive practice, and coercive practice. In addition, any Fund may also sanction a firm or individual for having engaged in obstructive practice in connection with an investigation conducted by such Fund. Collectively, these practices are referred to as “Sanctionable Practices.”

**Investigation and Preparation of a Statement of Accusations and Evidence**—It is proposed that each Fund nominate, from among its own senior staff, one or more officers charged with investigating allegations and other indications that one or more Sanctionable Practices have occurred in connection with a Fund-financed project. If, after investigation, the Fund determines that there is sufficient evidence that a firm or individual has engaged in a Sanctionable Practice, it launches a sanctions case by submitting a Statement of Accusations and Evidence to its own senior management.

**Sanctions Proceedings**—The core of the sanctions process lies in formal sanctions proceedings which consist of a review of the Statement of Accusations and Evidence for sufficiency of the evidence. If the Fund’s senior management finds that the accusations are supported by sufficient evidence, it recommends an appropriate sanction, and temporarily suspends the Respondent from eligibility for contracts financed by the Fund in question. The Respondent is temporarily suspended from eligibility to be awarded contracts financed by the concerned Fund upon issuance of a suspension from eligibility notice. The Respondent may file an explanation with the relevant Fund’s senior management seeking either dismissal of the case or a reduction in the recommended sanction. If the Respondent does not contest the senior management’s final determination, the recommended sanction (if any) is then imposed on the Respondent.

**Settlements**—In appropriate circumstances, sanctions may also be imposed on a Respondent through a negotiated resolution of the case. Under this mechanism, sanctions cases may be resolved by negotiations at any stage of the sanctions process up to an issuance of a decision by the Fund’s senior management, or during the investigations stage prior to the commencement of sanctions proceedings.

**Sanctions**—There are five possible sanctions that could befall a Respondent:

- a. **Debarment with Conditional Release**—The “baseline” or default sanction is to impose a minimum period of debarment (i.e., ineligibility to be awarded a Fund-

financed contract or otherwise participate in a Fund-financed activity) of three years, after which the sanctioned party may be released if it has complied with certain defined conditions. The conditions normally include the debarred party putting in place, and implementing for an adequate period, an integrity compliance program satisfactory to the Fund. Respondents must apply for release and provide evidence that they have met the conditions for release. The Fund will make the initial determination as to whether the conditions for release have been met.

b. **“Plain vanilla” Debarment**—In cases where no appreciable purpose would be served by imposing conditions for release, sanctioned parties may be debarred for a specified period of time, after which they are automatically released from debarment. This would occur, for example, in cases where a sanctioned firm has already in place a robust corporate compliance program, the sanctionable practice involved the isolated acts of an employee or employees who have already been terminated, and the proposed debarment is for a relative short period of time (e.g., one year or less).

c. **Conditional-Non-Debarment**—Under this sanction, the sanctioned party is not debarred provided the party complies with certain defined conditions within a set time frame. If the conditions are not met, the party is debarred for a defined period of time. Compliance with conditions for non-debarment is determined by the Fund and subject to the same procedure as for conditions for release from debarment. Conditional non-debarment is normally applied in cases where the Respondent has already taken comprehensive voluntary corrective measures and the circumstances otherwise indicate that it need not be debarred. It is also applied to parents and other affiliates of Respondents in cases where they were not engaged in misconduct but a systemic failure to supervise made the misconduct possible.

d. **Letter of Reprimand**—In some cases, debarment or even conditional non-debarment may be disproportionate to the offense. In such cases, the Fund would issue a letter of reprimand to the sanctioned party. Examples include cases where an affiliate of the Respondent has been found to have some shared responsibility for the misconduct because of an isolated lapse in supervision, but the affiliate was not in any way complicit in the misconduct.

e. **Restitution**—In appropriate cases, the sanctioned party may be required to make restitution to the Beneficiary or to any other party, or take actions to remedy the harm done by its misconduct. Appropriate cases may include those where the damage caused by the misconduct is clear and quantifiable.

The choice of the appropriate sanction by the Fund’s senior management is guided by certain guidelines (the “Sanctioning Guidelines”), a document to be made public by each one of the Arab Funds that seeks to enhance predictability and transparency, while maintaining sufficient room for the exercise of discretion in order to reflect the unique circumstances of each particular case.

**Sanctioning Guidelines**—These will include detailed treatment of aggravating and mitigating factors, with indicative ranges for increases (in the case of aggravating factors), and reductions (in the case of mitigating factors). They will also cover cases where affiliates of

Respondents may also be sanctioned, and that sanctions may be applied to the successors and assigns of sanctioned parties. The Sanctioning Guidelines will afford parent or “sister” entities due process, so they may defend themselves against charges of culpability or responsibility for the Respondent’s wrongdoing, with substantially the same procedural rights as Respondents themselves. It is proposed that the senior management of each Fund develop and issue detailed Sanctioning Guidelines that govern the processes described above.

**Information Sharing**—It is proposed that each Fund share on a confidential basis with other Funds, as well as with national authorities, materials, and documentation submitted in connection with sanctions proceedings if disclosure is determined to be in the best interests of the Arab Funds. The decision on information sharing would be taken on a case-by-case basis by the concerned Fund’s senior management.

**Vendor Eligibility Policy**—It is proposed that each Fund adopt a *Vendor Eligibility Policy* that provides for standards and procedures to determine whether a vendor is excluded (and thereby debarred), either permanently or for a specific period of time, from receiving future corporate contract awards from the Fund based on a finding by the Fund that the vendor is “non-responsible.” A Fund may suspend a vendor pending a final responsibility determination, during which time the vendor is afforded an opportunity to show cause why it should be found responsible. The Fund may determine that a vendor is non-responsible based on fraudulent, corrupt, collusive, coercive or obstructive practices, or based on any other action that the Fund determines is so serious in nature that it affects the present responsibility of the vendor or could result in harm to the Fund’s reputation. The definitions of fraud and corruption under the *Vendor Eligibility Policy* will be identical to those of fraud and corruption under the Fund’s Sanctions Regime.

### **Operational Aspects of the Sanctions Regime**

It is proposed that each Fund put in place several anticorruption tools with direct application to its operations as part of the legal and policy framework under which it operates. These tools include anticorruption provisions in its legal agreements with Beneficiaries, certain practices, and procedures—particularly in the area of procurement—aimed at reducing the risk, detection, and addressing of potential fraud and corruption in Fund-financed operations:

a. **Remedies under Loan Agreements**—It is proposed that each Fund revise its standard loan agreements to provide for remedies that allow the Fund to cancel an amount of the loan equivalent to any Fund-financed contract, if it had been tainted by corruption, and to suspend disbursements, in whole or in part, in the event that fraud and corruption occurs without timely and appropriate action being taken to address the situation.

b. **Procurement and Consultant Guidelines**—It is proposed that the Procurement and Consultant Guidelines of each Fund be modified to require Beneficiaries—as well as bidders, suppliers, contractors, and consultants—to maintain the “highest standards of ethics,” and, to this end, further provide for sanctions and contractual remedies in the event that certain defined forms of fraud and corruption (or other Prohibited

Practices), occur in connection with the procurement/consultant selection, or execution of Fund-financed contracts.

c. **Anticorruption Procedures**—It is proposed that each Fund develop and adopt *Anticorruption Procedures*, to be incorporated by reference into each Fund's loan and grant agreement. The *Anticorruption Procedures* will set out the harmonized definitions of Sanctionable Practices, as well as a set of undertakings by Beneficiaries aimed at preventing and combating fraud and corruption, and other Prohibited Practices in connection with the use of such funds. The *Anticorruption Procedures* will also establish the Fund's right to sanction firms and individuals found to have engaged in any fraud and corruption or other Prohibited Practices in connection with the use of loan proceeds, not only in connection with procurement.