

The Coordination Group
Arab Funds Procurement Modernization Project

Guidance Note B—Sanctioning Guidelines

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The purpose of these Guidelines is to assist each member fund of the Coordination Group (as this expression is hereinafter defined) in upholding its fiduciary duty under its respective Articles of Agreement and to ensure that monies entrusted to it are used for the purposes intended.

For purposes of these Guidelines, the expression “Coordination Group” refers, collectively, to 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 purposes stated in the first paragraph above will be accomplished, primarily, through the exclusion of corrupt actors from access to a Fund’s financing (i.e., debarment) and deterrence. Debarment protects a Fund’s financing directly, while deterrence seeks to reduce fiduciary risk by disincentivizing both the respondent in a given case (hereinafter called “Respondent”) and other actors from engaging in Sanctionable Practices (as this expression is defined in the Coordination Group foundational document, “*Anticorruption Procedures Including Guidelines on Procurement Integrity*,” in Projects Financed by [Name of Fund]) in the future, and exacting a “price” for misconduct—through debarment, the cost of meeting conditions for release or non-debarment, or exceptionally, restitution, or other remedies. The publicity surrounding sanctions enhances their deterrent effect.

Moreover, international experience in anticorruption and sanctioning has shown that rehabilitation, through the imposition of conditions designed to improve the integrity culture of sanctioned parties and reduce recidivism, is key to reducing integrity risks.

The foregoing guiding principles are not meant to be prescriptive. They simply aim at providing guidance to those who have the power to impose sanctions on behalf of any Fund as to the relevant considerations to any sanctioning decision.

Section I—Base Sanction

The base sanction for all misconduct is a three-year (3) debarment with conditional release.

Section II—Range of Sanctions

A. Debarment with Conditional Release—Debarment with conditional release is the “baseline” sanction which should normally be applied absent the considerations that would justify another sanction, as outlined in paragraphs B through F below. The purpose of the conditional release is to encourage the Respondent’s rehabilitation and to mitigate further risk to financed activities. Accordingly, the Respondent will only be released from debarment after:

1. The defined debarment period lapses.
2. The Respondent has demonstrated that it has met the conditions set by the Fund. Respondents may not be released prior to the defined debarment period, even if they meet the conditions prior to the period’s lapse, but if so specified, compliance with certain conditions such as cooperation or remedial measures may lead to a reduction in the debarment period. If the defined debarment period exceeds ten (10) years, the Respondent may, after ten (10) years, petition for reduction of the debarment period upon a demonstration of meeting the conditions enumerated by the Fund.

Conditions imposed may include:

1. Implementation or improvement of an integrity compliance program.
2. Remedial measures to address the misconduct for which the Respondent was sanctioned, including disciplinary action or termination of employee(s)/officer(s) responsible for the misconduct.

The Fund verifies whether conditions have been met.

B. Debarment—The Fund may apply this sanction if there would be no reasonable purpose served by imposing conditions. This would occur, for example, in cases where a sanctioned firm has already in place a robust corporate compliance program, the Sanctionable Practice (as this expression is defined in the Fund’s *Framework for a Sanctions Regime*) involved 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—The Fund may apply this sanction to:

1. Parties affiliated with the Respondent that are not directly involved in the Sanctionable Practice in which the Respondent has engaged, but which bear some responsibility therefore, through—for example—a systemic lack of oversight.

2. Respondents that have demonstrated that they have taken comprehensive corrective measures and that such other mitigating factors apply, as outlined below, so as to justify non-debarment.

The conditions imposed will likely be similar to those imposed under debarment with conditional release. In the event that the sanctioned party fails to demonstrate compliance with the conditions within the time periods established by the Fund, a debarment would automatically become effective for a period of time established by the Fund.

D. Letter of Reprimand—A Letter of Reprimand should most often be used to sanction an affiliate of the Respondent that was only guilty of an isolated incident of lack of oversight.

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 conditionality. It is anticipated that permanent debarment would most commonly be applied to natural persons, closely held companies by such persons, and shell companies.

F. Restitution and Other Remedies—Restitution, as well as financial and other remedies, may be used in exceptional circumstances, including those involving fraud in contract execution where there is a quantifiable amount to be restored to the client country or project.

Section III—Cumulative Misconduct

Where the Respondent has been found to have engaged in distinct incidences of misconduct (e.g., corrupt practices and collusion in connection with the same tender), or in misconduct in different cases (e.g., in different projects or in contracts under the same project but for which the misconduct occurred at significantly different times), each separate incidence of misconduct may be considered separately, and sanctioned on a cumulative basis. In the alternative, the fact that the Respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under the provisions of *Section IV—Aggravating Factors*, below.

Section IV—Aggravating Factors

A. Severity of the Misconduct (may increase sanctions by one-to-five {1–5} years):

1. **Repeated Pattern of Conduct.**

2. **Sophisticated Means**—This includes:

- a) The complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment).
- b) The number and type of people or organizations involved.
- c) Whether the scheme was developed or lasted over a long period of time.

d) If more than one jurisdiction was involved.

3. Central Role in Misconduct—Organizer, leader, planner, or prime mover in a group of two (2) or more.

4. Management's Role in Misconduct—If an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct.

5. Involvement of Public Official or Fund Staff Member—If the Respondent conspired with, or involved, a public official or a Fund staff member in the misconduct.

B. Harm Caused by the Misconduct (may increase sanctions by one-to-five {1–5} years):

1. Harm to Public Safety/Welfare—When the misconduct either resulted in, or involves, a foreseeable risk of death or bodily injury, or if public health or safety is endangered by the misconduct.

2. Degree of Harm to Project—Poor contract implementation (e.g., if the quality or quantity of the goods or services provided under the contract does not reflect the terms of the contract, either immediately or over time); or if an implementation delay is caused.

C. Interference with Investigation (may increase sanctions by one-to-five {1–5} years):

1. Interference with Investigative Process—When a Respondent deliberately destroys, falsifies, alters or conceals evidence that is material to the investigation, or makes false statements to investigators in order to materially impede a Fund investigation, and/or threatens, harasses or intimidates any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or acts in a manner intended to materially impede the exercise of a Fund's contractual rights of audit or access to information.

2. Intimidation/Payment of a Witness—When a Respondent has caused or has threatened to cause injury to a witness, his or her assets, employment, reputation, family or significant others, or if the Respondent has offered the witness a payment in exchange for non-cooperation with the Fund.

D. Past History of Adjudicated Misconduct (may increase sanction by ten {10} years):

Prior Debarment or Other Penalty—Prior history must involve misconduct, other than the misconduct for which the Respondent is being debarred. Prior history can include debarments by another multilateral development bank.

Section V—Mitigating Factors

A. Minor Role in Misconduct (may decrease sanction by up to twenty-five percent {25%})—When Respondent is a minor, minimal or peripheral participant, or if no individual with decision-making authority has participated in, condoned or was willfully ignorant of the misconduct.

B. Voluntary Corrective Action Taken (may decrease sanction by up to fifty percent {50%} and greater reduction may be warranted in exceptional circumstances):

1. Cessation of Misconduct—When the timing of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence.

2. Internal Action Against Responsible Individual—When Respondent's management takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative. The timing of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence.

3. Effective Compliance Program—When Respondent establishes or improves, and implements a corporate compliance program. The timing, scope and quality of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence.

4. Restitution or Financial Remedy—When Respondent voluntarily addresses any inadequacies in contract implementation or returns funds obtained through the misconduct. The timing of the action may be indicative of the extent to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence.

C. Cooperation with Investigation (may decrease sanction by up to thirty-three percent {33%} and greater reduction may be warranted in exceptional circumstances):

1. Assistance and/or Ongoing Cooperation—When Respondent has provided substantial assistance in an investigation, and has voluntarily, truthfully, and thoroughly disclosed timely and reliable information.

2. Internal Investigation—When Respondent has conducted its own, effective internal investigation of the misconduct, and relevant facts relating to the misconduct for which it is to be sanctioned, and has shared the results with the Fund. Consideration will also be given to a Respondent conducting its own internal investigation that extends beyond the conduct and facts related to the sanctioned misconduct, and sharing the results with the Fund.

3. Admission/Acceptance of Guilt/Responsibility—Respondent's admission or full and affirmative acceptance of guilt or responsibility for misconduct earlier in the

investigation will give more weight than later in the investigation, or subsequent proceeding.

4. **Voluntary Restraint**—Voluntary restraint from bidding on Fund-financed tenders pending the outcome of an investigation may also be considered as a form of assistance and/or cooperation.