

ENFORCEMENT COMMITTEE TERMS OF REFERENCE

ARTICLE I

1. These Terms of Reference (the “**ToRs**”) shall govern the Enforcement Committee of the European Bank for Reconstruction and Development (the “**Bank**”).
2. Unless otherwise defined herein, expressions defined in the Bank’s Enforcement Policy and Procedures (the “**EPPs**”) shall bear the same meanings herein.

ARTICLE II

The Enforcement Committee shall receive and determine appeals from the Enforcement Commissioner’s Decisions and certain of the Enforcement Commissioner’s determinations and shall perform such other functions and responsibilities as set forth in the EPPs.

ARTICLE III

1. The Enforcement Committee shall be composed of five (5) members (the “**Members**” and each, a “**Member**”). The Members shall be governed by the Code of Conduct attached as Annex A hereto, as may be amended from time to time (the “**Enforcement Committee Code of Conduct**”).
2. Three (3) Members shall be from outside the Bank (the “**External Members**” and each, an “**External Member**”) and shall be appointed by the Bank’s Board of Directors upon recommendation by the Bank’s President. The candidates must not have previously held or hold any appointment with the Bank, including as a staff member, a Board Official (as defined in the Code of Conduct for Officials of the Board of Directors of the EBRD) or a consultant.
3. Two (2) Members shall be appointed by the President from among senior Bank staff with knowledge of the Bank’s procurement and/or operational processes (the “**Internal Members**” and each, an “**Internal Member**”).
4. External Members shall be appointed for a five-year term, renewable once and Internal Members shall be appointed for a five-year renewable term; provided that, of the five Members initially appointed, the President shall designate the terms of one External Member (other than the Chairperson of the Enforcement Committee) and one Internal Member as four (4) years. All subsequent terms of both External and Internal Members shall be five (5) years.
5. The term of each Member’s appointment shall commence as stipulated in the Member’s letter of appointment. Each Member shall hold office until the expiry of his/her term or earlier resignation or removal by the Bank’s Board of Directors for cause in accordance with Article X.

6. In the event that a Member resigns from the Enforcement Committee prior to the end of his/her term, the President shall appoint a successor to complete the term. If such successor is appointed within one (1) year before the expiration of the relevant Member's term, the appointment of such successor may be renewed, without it counting as a regular renewal under paragraph 4 above.

7. All renewals of the Members' terms shall be made by the Board of Directors, in the case of External Members, and the President, in the case of Internal Members.

ARTICLE IV

1. The President shall appoint a Chairperson from among the External Members.

2. The Chairperson shall direct the work of the Enforcement Committee, represent the Enforcement Committee in all administrative matters, assign Panels (as described in Article V) and preside at all sessions of the Enforcement Committee.

3. In all matters not addressed in these ToRs, the Enforcement Committee Code of Conduct or the EPPs, the Members shall follow the instructions of the Chairperson who may consult with the Bank's General Counsel.

4. If unable to act, the Chairperson shall designate one of the External Members as an acting Chairperson. No case shall be heard by the Enforcement Committee except under the chairmanship of the Chairperson or an acting Chairperson.

ARTICLE V

1. Save for the circumstances described in paragraph 3 below, the Chairperson shall appoint a panel comprising him/herself, one External Member and one Internal Member (a "**Panel**") to hear and determine each case pursuant to the EPPs.

2. Attendance of all three (3) Panel Members is required to constitute a quorum of a Panel.

3. If, in the opinion of the Chairperson, the complexity of a particular case requires a plenary session of all five (5) Members, or when it is necessary to deal with a question affecting the operation of the Enforcement Committee or any other matter warranting consideration by the full Enforcement Committee, the Chairperson shall convene such session. In such case, attendance of all five (5) Members is required to constitute a quorum.

4. The Chairperson shall organise the work programme for each Panel (if paragraph 1 above applies) or plenary session (if paragraph 3 above applies) in consultation with its Members and shall schedule meetings as needed.

ARTICLE VI

The Secretariat to the Enforcement Committee shall consist of one or more members of Bank staff to be appointed by the President of the Bank to assist the Enforcement Committee. The Chairperson shall supervise the work of the Secretariat. If the Secretariat is unable to act or all its members recuse themselves from acting, the Chairperson, in consultation with the Internal Members, shall appoint an acting Secretary.

ARTICLE VII

Any and all costs incurred by the Enforcement Committee in the course of carrying out its responsibilities, including without limitation, translation costs, remuneration of the External Members and costs of transcription, shall be borne exclusively by the Bank. Each External Member shall receive such compensation as set out in his/her letter of appointment.

ARTICLE VIII

1. The Enforcement Committee shall hold the meetings of each Panel or plenary session at the Bank's Headquarters, unless the Chairperson considers that the efficient conduct of the proceedings warrants holding meetings elsewhere. Any one or more, or all, Members of the Enforcement Committee may participate in a meeting by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence at a meeting for purposes of establishing a quorum.

2. The Enforcement Committee and Panel proceedings, including hearings and deliberations of the Enforcement Committee or Panel, as the case may be, shall be confidential and shall not be open to the public.

ARTICLE IX

1. Each Member shall have a vote of equal authority, whether acting in a full Enforcement Committee or in a Panel.

2. Each decision of the full Enforcement Committee shall require the majority vote of at least three (3) Members.

3. Each decision of a Panel shall require the majority vote of at least two (2) Members.

4. Each decision shall be in English, in the form of a single, fully reasoned, written decision, without any concurring or dissenting opinions. The Chairperson shall designate the author of each decision.

ARTICLE X

1. The External Members may be removed by the Bank's Board of Directors upon recommendation by the President in the event of violation of the Enforcement Committee Code of Conduct.
2. The President, the Chairperson and other Members shall have the right to initiate a proposal for such removal, in the latter cases, by written request to the President.
3. The External Member in question shall be notified of the alleged grounds for the proposed removal and be afforded a reasonable opportunity to respond to the allegation(s). If there appear to be sufficient grounds for removal, the President shall refer the matter to the Board of Directors for decision.

ARTICLE XI

Each External Member is an expert performing missions for the Bank and, as such, benefits, in the member countries of the Bank, from the privileges, immunities and exemptions accorded to experts performing missions for the Bank under Articles 51 and 52 of the Agreement Establishing the Bank. Any such privileges, immunities and exemptions shall be afforded the External Member solely in relation to the performance of his/her duties for the Enforcement Committee and can be waived by the Bank to such extent and upon such conditions as it may determine.

ARTICLE XII

These ToRs (excluding the Enforcement Committee Code of Conduct) may be amended by the President in consultation with the Chairperson and the General Counsel.

ANNEX A

ENFORCEMENT COMMITTEE CODE OF CONDUCT

1. ***Fairness, Independence and Impartiality.*** Each Member of the Enforcement Committee shall consider each case fairly, impartially and with due diligence, in accordance with the ToRs and the EPPs.
2. In considering cases, each Member shall act independently and shall not answer to or take instructions from the Bank's management, members of the Bank's Board of Directors, member governments, Respondents or any other entity.
3. Each Member shall, in the discharge of his/her functions, be guided solely by the merits of the case without regard to any other considerations, including prospects of employment at the Bank (in the case of External Members) or of promotion or re-assignment within the Bank (in the case of Internal Members).
4. No Member shall seek or accept any gift or compensation of any kind for the discharge of his/her functions, except as provided in his/her or her letter of appointment and except for reasonable hospitality in the margins of Enforcement Proceedings, as permitted under the Bank's Travel and Expenses Policy.
5. ***Diligence.*** Each Member shall act diligently and expeditiously in the performance of his/her duties.
6. ***Conduct during Proceedings.*** Each Member shall maintain order, act in accordance with commonly accepted decorum, and remain patient and courteous towards all participants in the Enforcement Proceedings.
7. ***Conflict of Interest.*** Each Member shall promptly advise the Chairperson of any conflict of interest concerning the performance of his/her duties for the Enforcement Committee, and shall recuse him/herself from any case in which he/she has an actual, perceived or potential conflict of interest. Such a conflict of interest would be present if the private interests of a Member influence or may influence the objective and impartial performance of his/her duties. In this regard, private interests include any advantage for the Member, his/her family or personal acquaintances. In making such disclosure, the Member should take care not to reveal facts that may prejudice the consideration of a pending case.
8. Members shall recuse themselves from participation in Enforcement Proceedings involving a project, loan or any other transaction with respect to which they have participated personally and substantially, whether in their current position, a prior assignment or previous employment. For purposes of this paragraph, to "participate personally and substantially" means to be involved in a recommendation or decision as chair, leader or member of a team, task force, committee, board or other similar body or individually, if such involvement is of significance to the matter or forms the basis for a reasonable appearance of such significance. With respect to the recommendation or decision, it requires more than mere knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.
9. ***Post-Service Activities.*** An External Member shall not, for a period of two (2) years immediately following the end of his/her term on the Enforcement Committee, accept any

kind of employment, consultancy or interest in any firm that has been a Respondent in any Enforcement Proceedings in which he/she has participated.

10. For a period of two (2) years immediately following the end of the Member's term on the Enforcement Committee, such Member shall be disqualified to appear as a counsel, agent or representative of any Respondent in any Enforcement Proceedings before either the Enforcement Commissioner or Enforcement Committee.

11. An External Member shall not accept employment with the Bank or provide the Bank with services in connection with any Bank project for a period of two (2) years immediately following the end of such Member's term on the Enforcement Committee.

12. **Confidentiality.** A Member shall be required to observe the confidentiality of information to which the Member will have access as a Member of the Enforcement Committee, and shall not use or disclose to any third party any non-public information obtained as a result of his/her membership in the Enforcement Committee.

13. **Non-interference.** Any Member who is not participating on a Panel shall not interfere with, or seek to influence, the work or decision of the Members of that Panel.

14. **Ex Parte Communication.** Prior to the issuance of the Final Decision on a particular matter, Members shall not engage in any *ex parte* communication with OCCO or the Respondent regarding such matter, except to the extent permitted under the EPPs.

17. **Conflict with the Code of Conduct for EBRD Personnel.** With respect to Internal Members only, in the event of any conflict between provisions of the Enforcement Committee Code of Conduct and those of the Code of Conduct for EBRD Personnel, the provisions of the Code of Conduct for EBRD Personnel shall prevail.

18. **Amendments.** Any amendment to this Enforcement Committee Code of Conduct shall be agreed jointly by the General Counsel and the Chief Compliance Officer.

19. Each Member shall agree to be bound by this Enforcement Committee Code of Conduct, as it may be amended from time to time, at the time of his/her appointment. Any violation of this Enforcement Committee Code of Conduct may serve as grounds for removal of any Member from the Enforcement Committee, as set out in Article X of the ToRs. A Member shall report any violation of this Code that comes to his/her attention to the Chairperson, except where such violation has been committed by the Chairperson, in which case the Member shall report it to the Bank's General Counsel.