

TERMS OF REFERENCE OF THE ENFORCEMENT COMMISSIONER OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

I. Introduction

1. These Terms of Reference (the "**ToRs**") shall govern the role of the Enforcement Commissioner 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.

II. Purpose and role of the Enforcement Commissioner

As the first-tier decision-maker of the Enforcement Proceedings under the EPPs, the Enforcement Commissioner is a critical component in ensuring efficient, effective and fair implementation of the EPPs.

III. Responsibilities

1. The Enforcement Commissioner has the authority to carry out the duties ascribed to the Enforcement Commissioner in the EPPs, including, without limitation, responsibility for issuing Notices of Prohibited Practice, Notices of Third Party Finding and Notices of Mutual Enforcement; determining whether, based on the evidence, it is more likely than not that the Respondent has engaged in a Prohibited Practice and whether it is more likely than not that, following a Third Party Finding, it is more likely than not that the Respondent would be an unacceptable Bank Counterparty; imposing appropriate Enforcement Action(s); deciding to issue a notice of temporary suspension and further deciding to terminate or reinstate the temporary suspension; and providing clearance of any settlement agreements.
2. The Enforcement Commissioner evaluates each enforcement case in accordance with the EPPs. He/she decides each case impartially, solely on its merits and independently, and does not answer to, or take instructions from, any other person.
3. The Enforcement Commissioner shall recuse him/herself in cases where he/she may have an actual or perceived conflict of interest. Such a conflict of interest would be present if any private interests of the Enforcement Commissioner influenced or might influence the objective and impartial performance of his/her duties. In this regard, private interests include any advantage for him/herself, his/her family or personal acquaintances.

4. The Enforcement Commissioner shall recuse him/herself in cases involving a project wherein he/she has Participated Personally and Substantially. For purposes of this paragraph, to "Participate Personally and Substantially" has the meaning ascribed to it in Rule 6, paragraph (g)(i) of the Code of Conduct for EBRD Personnel.

5. The Enforcement Commissioner is expected to rely exclusively on the Record and his/her assessment thereof with respect to any factual matters relevant to his/her determination.

6. For a period of two (2) years after the end of the his/her assignment as the Enforcement Commissioner, the Enforcement Commissioner shall be disqualified to appear as a counsel, agent or representative of any Respondent in any Enforcement Proceedings before his/her successor Enforcement Commissioner or the Enforcement Committee.

7. The Enforcement Commissioner shall respect and maintain the confidentiality of the Enforcement Proceedings, and shall not use or disclose any non-publicly available information obtained as a result of his/her role as the Enforcement Commissioner except to the extent permitted under the EPPs.

IV. Appointment and reporting lines

1. The Enforcement Commissioner is appointed by the President of the Bank and reports budgetarily and administratively to the Bank's General Counsel.

2. Where the Enforcement Commissioner is unable to act, or recuses him/herself from acting, the President shall appoint an acting Enforcement Commissioner in consultation with the Bank's General Counsel

V. Amendments

These ToRs may be amended by the President of the Bank in consultation with the Bank's General Counsel.