

PUBLIC

## WHISTLEBLOWER REPORTING AND PROTECTION

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# PE Staff Rule No. 328 Whistleblower Reporting and Protection

**Effective:** October 2012

## 1. PURPOSE

The purpose of this policy is to help define protections for Bank employees and other parties supporting the Bank's integrity environment.

## 2. DEFINITIONS

**2.1 Employee:** The term "employee" for the purposes of this Staff Rule includes all categories of employees, regardless of their form of contract, including consultants and other contractual employees.

**2.2 External Party:** The term "external party" for the purposes of this Staff Rule means any non-employee party, including individuals or entities either engaged in or seeking dealings with the Bank, and their employees, agents and representatives.

**2.3 Good Faith Reporting:** The term "good faith" for the purposes of this Staff Rule means acting with a reasonable belief that information shared with Bank authorities is true.

### **2.4 Retaliation:**

2.4.1 The term "retaliation" for the purposes of this Staff Rule means any action taken or threatened against an individual to punish him or her for cooperating in good faith on matters concerning Prohibited Practices <sup>1</sup> or Misconduct <sup>2</sup> (collectively, "wrongdoing") as provided herein.

2.4.2 Retaliation may include, but is not limited to, wrongful termination, harassment, improper assignment of work outside of the corresponding position description, unsubstantiated adverse evaluation of performance or determination of merit pay, the withholding of any entitlement, any unfounded adverse personnel action against others because of their association with a Whistleblower (as defined in section 102.6 herein) and adverse decisions regarding the continuity of employment, including the non-renewal of a fixed term or other temporary contract, except when based on the appropriate application of Bank staff rules, policies, regulations and contract terms.

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<sup>1</sup> [Prohibited Practices definition](#)

<sup>2</sup> [Code of Ethics and Professional Conduct](#)

2.4.3 Retaliation against external parties may also include, but is not limited to, retaliation in recruitment and procurement, in the award of contracts, in the administration of contracts, in evaluations of performance, and in the execution or negotiation of dealings with the Bank.

2.4.4 The definition of retaliation for the purposes of this Staff Rule includes actions taken, or threatened, as provided herein even when based on a belief (including a mistaken belief) that reporting or cooperation was about to occur or has occurred and when the allegations are determined to be unfounded. Retaliation includes taking, threatening or recommending retaliatory actions. Retaliation also includes actions undertaken to prevent or improperly influence reporting or cooperation.

2.4.5 Retaliation does not include: (i) Bank actions that are based on the appropriate application of Bank staff rules, policies, regulations and contract terms; and (ii) Bank actions, including sanctions for Misconduct, that may be perceived by a Whistleblower as adverse but are related to or based on policy considerations, facts and circumstances other than the party's having acted as a Whistleblower.

**2.5 Supervisor:** For the purposes of this Staff Rule, "supervisors" are staff members with a Grade 4 or above and who have employees reporting to them for the purposes of employee performance management.

**2.6 Whistleblower:** A Whistleblower is an employee or external party who, in good faith, reports allegations of fraud, corruption, or other Prohibited Practices in Bank-financed activities, as defined in the Bank's Sanctions Procedures,<sup>3</sup> or of Misconduct, as defined in the Bank's Code of Ethics and Professional Conduct, or of misconduct under the Code of Conduct of the Boards of Executive Directors of the IDB and IIC and of the Donors Committee of the MIF,<sup>4</sup> to the authorities provided for in this Staff Rule. A witness who, in good faith, provides information, including testimony or written or electronic evidence, while participating in a Bank investigation, audit or other inquiry related to such matters, is also a Whistleblower.

### **3. PROHIBITION OF RETALIATION**

Any employee or external party should be free to report to the Bank's authorities allegations of wrongdoing, and to cooperate with the Bank's authorities in the context of an investigation, audit or other inquiry without fear of retaliation by a Bank employee. Retaliation is expressly prohibited and is a form of Misconduct.

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<sup>3</sup> [Sanctions Procedures](#)

<sup>4</sup> [Code of Ethics and Professional Conduct](#)

## **4. REPORTING AND COOPERATION**

**4.1** It is the duty of all employees to report suspected Prohibited Practices, including fraud and corruption, in Bank-financed activities. Employees are encouraged to report suspected Misconduct on the part of employees as described in the Bank's Code of Ethics and Professional Conduct. Supervisors, as defined herein, have a duty to report *any* Misconduct, including suspected Misconduct reported to them by others.

**4.2** It is the duty of all employees, including Staff Association officers, to cooperate with Bank investigations, audits, or other inquiries. External parties may be required by contractual commitments to cooperate with an investigation, audit or other inquiry, and are otherwise encouraged to do so to support the Bank's institutional integrity.

## **5. BANK AUTHORITIES FOR REPORTING AND COOPERATION**

**5.1** The Bank has several authorities for reporting and with whom employees cooperate in Bank investigations, audits or other inquiries. Reports of suspected Misconduct by Bank employees shall be directed to the Office of Ethics. Reports of suspected Prohibited Practices in Bank-financed activities by external parties shall be directed to the Office of Institutional Integrity.

**5.2** Several Bank authorities may also receive reports on matters related to their areas of responsibility, or may be involved in investigations and otherwise reviewing the Bank's activities. These authorities include, but are not limited to, the Office of Institutional Integrity, the Office of Ethics, the employee's supervisors (to include the Department Manager or Head of Office), the supervisors of the employee regarding whom a Whistleblower is making allegations, the Human Resources Department, the Office of the Executive Auditor, the Sanctions Committee, the Administrative Tribunal, the Independent Consultation and Investigation Mechanism and the Conduct Committee of the Board of Executive Directors (each with its respective jurisdiction).

**5.3** It is the duty of each of these authorities to act in accordance with the Bank's policies governing their functions for protecting confidential information.

**5.4** Employees should support the Bank's integrity systems and respect the rights of other employees and other parties. The reporting of allegations should be made in good faith to a designated authority and in accordance with this Staff Rule. Employees should use appropriate channels for reporting. Employees should also properly use the Bank's communications systems. Dissemination of allegations through broadly-distributed e-mails or other communication media and to parties that are not authorities for reporting, and the dissemination of unsubstantiated rumors or other defamatory information, are not appropriate

use of Bank resources, may not be viewed as whistleblowing, may not be eligible for protections afforded by this Staff Rule and may be subject to disciplinary sanction.

**5.5** Employees who, in good faith, report suspected Misconduct and/or Prohibited Practices under this Staff Rule shall be provided with updates on the status of the review or investigative process of the suspected Misconduct or Prohibited Practice, upon written request. Status updates regarding suspected Misconduct by other employees shall be provided by the Office of Ethics, and status updates regarding suspected Prohibited Practices under review by Office of Institutional Integrity shall be provided by that office. The Office of Ethics and Office of Institutional Integrity shall endeavor to provide updates within 30 (thirty) days of receipt of a request. The sharing of such updates, and determining the content of such updates, shall be undertaken in accordance with Bank policies on confidentiality.

## **6. ADDITIONAL ASSISTANCE FOR EMPLOYEES**

**6.1** An employee who wishes to report an allegation may seek the advice of the Office of the Ombudsperson. The Office of the Ombudsperson is subject to strict standards of confidentiality, as established in Bank policy.<sup>5</sup> Therefore, an employee may consider speaking to the Ombudsperson, on a confidential basis. For the avoidance of doubt, the Office of the Ombudsperson is not a reporting authority of the Bank and, as a result, contact with the Ombudsperson, on its own, would not satisfy the reporting obligations described in Section 104 of this Staff Rule and would not trigger an investigation.

**6.2** The Staff Association may also offer additional resources for advice and assistance to employees. However, the Staff Association is not considered a reporting authority of the Bank and does not represent Bank Management. Therefore, contact with the Staff Association would not satisfy the reporting obligations described in Section 104 of this Staff Rule and would not trigger an investigation.

## **7. FORMS OF REPORTING**

**7.1** The Bank has policies governing reporting, including anonymous reporting and confidentiality, and employees and external parties are encouraged to inquire and understand these policies as they may apply to the distinct Bank authorities when acting as Whistleblowers.<sup>6</sup>

**7.2** Any party, including an employee, who chooses to report anonymously should endeavor to provide in a timely manner information concerning the basis of the allegations and sufficient detail or supporting evidence so that the matter can be reasonably considered.

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<sup>5</sup> [PE-323-1 - Ombudsperson](#)

<sup>6</sup> [Procedures for the Code of Ethics, Office of Institutional Integrity, OII](#)

Insufficiency of information or lack of timely reporting may be the basis for not investigating a matter or taking other action.

**7.3** Employees or external parties who choose to report anonymously should keep in mind that if their identities are not known by the Bank, it would not be possible for the Bank to provide them with the protections afforded by this Staff Rule.

**7.4** The identity of an employee or external party who identifies him or herself in making a report of wrongdoing will be confidential. Confidentiality for the purposes of this Staff Rule means that the employee or external party provides his or her name, but the Bank office to whom the report is made will reveal the source of the allegation outside of such office only on a need-to-know basis in order to permit an investigation to be undertaken (if appropriate), and to respond to the concerns presented, unless:

- (a) the employee or external party consents to the disclosure;
- (b) it is determined that
  - (i) the employee or external party made allegations that were knowingly false or made with reckless disregard as to whether they were true or false or
  - (ii) there appears to be a risk of imminent danger or serious harm to individuals or the Bank;
- (c) the Bank is requested to disclose such information by a competent judicial authority within a member government and agrees to comply with such request; or
- (d) the Bank otherwise has a legal obligation to disclose such information.

**7.5** An anonymous allegation will not alone provide for a basis for disciplinary or other sanction. An investigation of an anonymous allegation should provide evidence that corroborates an anonymous allegation in order to serve as a basis for a disciplinary or other action.

## **8. DUTY TO ACT WITH REGARD FOR TRUTH**

The principles established in this Staff Rule for the protection of Whistleblowers apply to an employee or external party who has a reasonable belief that the information provided through such reporting or cooperation is true (regardless of whether the allegations are determined to be well founded). A reporting party who provides information that is known by the reporting party to be false, or provides information with a reckless or negligent disregard for truth or that is intentionally incomplete and withholds critical information known by the reporting party is not protected by this Staff Rule and may be subject to sanctions.

## **9. REPORTING OF RETALIATION**

**9.1** A Whistleblower who reports in good faith suspected wrongdoing, or cooperates with the above-mentioned authorities and believes that s/he has been retaliated against for doing so, or believes that s/he is or may be experiencing retaliation as otherwise provided for in this Staff Rule, should report his/her concerns to the Office of Ethics. The Office of Ethics shall refer allegations concerning retaliation by external parties to the appropriate Bank authorities in accordance with the Procedures for the Code of Ethics and Professional Conduct. Alternatively, an employee may choose to report suspected retaliation to the General Manager of the Human Resources Department, the Chief, Talent Management Division of the Human Resources Department or a Human Resources Business Partner.

**9.2** If such a Whistleblower believes that retaliation is undertaken by a member of the Board of Executive Directors, the Whistleblower should report his or her concerns in accordance with the Code of Conduct of the Board of Executive Directors and the Operating Guidelines for the Conduct Committee.

**9.3** Reporting to a Bank authority should be made promptly once a Whistleblower believes that s/he has been the subject of retaliation.

**9.4** Employees should also observe the time periods for limitations on certain claims. If an employee seeks to proceed with a formal grievance alleging the non-observance by the Bank of his or her terms and conditions of employment as provided in Staff Rule PE-323-3, an employee's access to certain resources in the Bank's grievance system may be governed by regulations requiring that employees make certain claims within periods that begin to toll from the date the employee is first notified of the decision or other action, including an alleged act of retaliation, which is being challenged.

## **10. ACTIONS TO MITIGATE THE POSSIBILITY OF RETALIATION AND CONSEQUENCES OF RETALIATION**

**10.1** The Ethics Officer, in consultation with the appropriate Bank authorities that s/he deems appropriate, and after hearing the views of the Whistleblower, may recommend to the Vice President for Finance and Administration that s/he directs exceptional measures to mitigate reasonable concerns that a Whistleblower may be subject to retaliation, such as, the suspension of the effect of actions alleged to be retaliatory, the reassignment of employees, the authorization of special leave, the exercise of contractual rights with external parties, or any other actions deemed appropriate to mitigate the possibility of retaliation and consequences of retaliation.

**10.2** If it is established by the corresponding authority that an employee has committed an act of retaliation against a Whistleblower, then that employee shall be subject to disciplinary

sanction, which may include termination of Bank employment. The Bank shall also take actions that the Bank deems appropriate to remedy the retaliation, including the rescission of improperly-motivated decisions and the undertaking of actions wrongfully withheld.

**10.3** If it is established by the corresponding authority that an external party has committed an act of retaliation, then any dealings with such party shall be reviewed by the Bank, and the Bank may take actions to hold the external party accountable. Actions may include, but are not limited to: terminating its dealings with such party, refraining from future dealings with such party, or exercising contractual remedies, if applicable.

**10.4** This Staff Rule shall not obligate the Bank to investigate any allegation concerning the actions of external parties, serve as a basis to provide any form of protection or compensation to any party, or to create any liability for the Bank for the actions (including alleged actions) of employees or of external parties that are taken without the Bank's authorization, or for actions that are not otherwise expressly provided for in this Staff Rule.

**10.5** The Bank shall not be obligated to take any exceptional measures or to provide remedies that are unrelated to the retaliation or that extend beyond the entitlements provided for by the employee's contract of employment or the Bank's contractual commitments to external parties, including the award of further contracts.

**10.6** The cooperation of a Whistleblower with Bank authorities shall not necessarily exonerate that party from sanction by the Bank for that party's wrongdoing; however, such cooperation shall be taken into consideration as a mitigating factor in determining any disciplinary sanction, if applicable.

## **11. REFERRAL TO NATIONAL AUTHORITIES**

The President may authorize the referral of concerns regarding the possibility of retaliation or allegations of retaliation to national authorities and cooperate with national authorities when there are concerns of the possible violation of national law or when otherwise determined by the Bank to be necessary to uphold the principles of this Staff Rule.

## **12. REPORTING TO AUTHORITIES OUTSIDE THE BANK**

**12.1** The protections against retaliation, as provided for in this Staff Rule, are extended to employees reporting to Bank authorities. Employees are generally required to report suspected acts of wrongdoing, including retaliation, to the corresponding authorities of the Bank. Such protections shall also be extended to an employee who reports suspected wrongdoing to an authority outside of the Bank provided that:



- (1) The employee has a reasonable basis to believe that such reporting is necessary to avoid:
  - (i) a significant threat to public health or safety;
  - (ii) a substantial damage to the Bank's operations; or
  - (iii) a violation of national or international law; and
- (2) The Bank's internal mechanisms are inadequate because:
  - (i) The employee has a reasonable basis to believe that it is not possible to report the suspected wrongdoing to any Bank authority because the employee would be subjected to retaliation within the institution; or
  - (ii) The employee has a reasonable basis to believe that such reporting would create a likelihood that evidence relating to the suspected wrongdoing would be concealed or destroyed; and, further,
- (3) That the employee does not accept payment or any other benefit from any party for such report; and the reporting does not violate the Bank's obligations to protect the confidential information of third parties.

**12.2** Reporting to an authority outside of the Bank by employees in accordance with this section shall not be considered a breach of the employee's obligations with regard to the Bank's Code of Ethics and Professional Conduct and other policies governing the use of confidential information.

### **13. REQUEST FOR RELIEF**

Where an employee has made a prima facie case of Retaliation for having acted as a Whistleblower (i.e., by showing that s/he is a Whistleblower, as defined herein, and that s/he has a reasonable belief that his/her having acted as a Whistleblower was a factor in a subsequent adverse employment action), the burden of proof would then shift to the Bank to show by clear and convincing evidence that the same employment action would have been taken absent the Whistleblowing.