

ANNEX: EXTRACT FROM EBRD "PROCUREMENT POLICIES AND RULES"

Eligibility

2.6 The Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects regardless of whether the country is a member of the Bank. Firms from developing countries as well as from the Bank's countries of operations are encouraged to participate on equal terms and thereby assist their own country's development process. Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfil the contract in question. Clients will not exclude a firm from open competition for a contract for reasons unrelated to its capability to perform the contract in question unless, as a matter of law or official regulation, the client's country prohibits commercial relations with the firm's country.

2.7 Consistent with international law, the proceeds of the Bank's loans, equity investment or guarantees should not be used for payment to persons or entities or for any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. Persons or entities, or suppliers offering goods and services, covered by such prohibition should therefore not be eligible for the award of Bank-financed contracts.

Client responsibilities

2.8 Clients are responsible for implementing Bank-financed projects, including all aspects of the procurement process from the planning stage through the award of contracts, as well as the administration of the contracts themselves. The Bank may advise and assist clients in the procurement process and institutional development for specific projects but is not a party to the resulting contracts. The rights

and obligations of the client vis-à-vis tenderers for goods, works and services to be furnished for the project will be governed by the tender documents issued by the client and not by these Policies and Rules.

Amendment to Paragraph 2.9 of the Bank's Procurement Policies and Rules

In May 2007, the Bank's Board of Directors approved amendments to paragraph 2.9 of the Bank's Procurement Policies and Rules. The amendments reflect the IFI's "Uniform Framework for Preventing and combating Fraud and Corruption" and provides a set of definitions for corrupt, fraudulent, coercive and collusive practices.

Paragraph 2.9 (page 3) in the Bank's Procurement Policies and Rules, published August 2000, is therefore obsolete (deleted in the internet version) and is replaced by the following:

Fraud and corruption

2.9 It is the Bank's policy to require that clients (including beneficiaries of Bank loans), as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.

In pursuance of this policy, the Bank defines, for the purposes of this provision, the terms set forth below as follows:

- i) "**corrupt practice**" means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
- ii) "**fraudulent practice**" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

The Bank, in respect of the procurement of goods, works and services governed by Section 3, the selection of concessionaires pursuant to Paragraph 4.4, and the selection of consultants governed by Section 5:

- a) will reject a proposal for award if it determines that the supplier, contractor, concessionaire or consultant recommended for award has engaged in corrupt, fraudulent, coercive or collusive practices in competing for the contract in question;
- b) will cancel the portion of the Bank financing allocated to a contract for goods, works, services or concessions if it at any time determines that corrupt, fraudulent, coercive or collusive practices were engaged in by representatives of the client or of a beneficiary of the Bank financing during the procurement or the execution of that contract, without the client having taken timely and appropriate

action satisfactory to the Bank to remedy the situation;

- c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has engaged in corrupt, fraudulent, coercive or collusive practices in competing for, or in executing, a Bank-financed contract;
- d) reserves the right, where a client or a firm has been found by a judicial process or other official enquiry to have engaged in corrupt, fraudulent, coercive or collusive practices,
 - i) to cancel all or part of the Bank financing for such client; and
 - ii) to declare that such a firm is ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract; and
- e) will have the right to require that, in contracts financed by the Bank, a provision be included requiring suppliers, contractors, concessionaires and consultants to permit the Bank to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Bank