

ADB's Role in Procurement

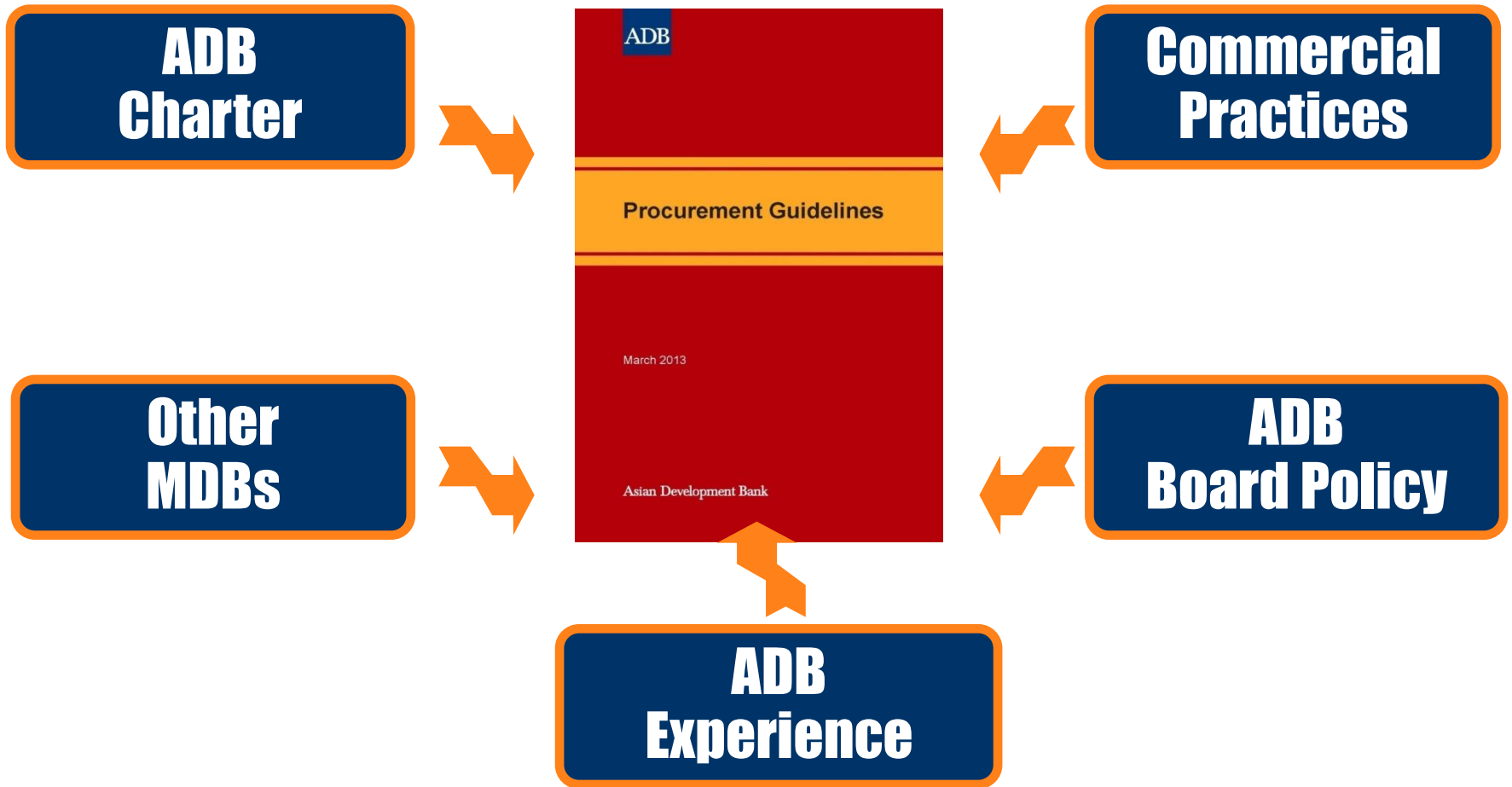
ADB Business Opportunities Fair 2014

The ADB logo consists of the letters "ADB" in a white, serif font, centered within a dark blue square. A thin blue horizontal line is positioned below the square.

ADB

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ADB's Procurement Framework



The Charter

- ADB-financing shall be used only for procurement in member countries of goods and services produced in member countries.
- For which the loan was granted, with due attention to economy and efficiency

The Procurement Guidelines

- Board approved January 2006
- Harmonized with those of the World Bank
- Last updated 2013 (Eligibility)
- Material deviations from Guidelines require Board approval

Harmonization with Other MDBs

- Procurement and Consulting Guidelines harmonized with other MDBs
- Regular coordination meetings, e.g. Heads of Procurement
- Common standard biddings documents

Commercial Practices

- ADB mandates the use of recognized and accepted commercial forms of contract, e.g. FIDIC etc.
- ADB permits borrowers to consider factors other than price in evaluation, e.g. operating costs, efficiency, environmental benefits etc.

Identification and Preparation

- The EA's procurement capacity is assessed
 - The EA prepares a procurement plan
 - ADB reviews the plan at loan negotiations
 - The plan is published in the project administration manual
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Implementation

- First use of all NCB and ICB bidding documents prior reviewed by ADB
- Then after prior review of those above the procurement plan threshold
- Bid evaluations reviewed for ICB and NCB, prior or post respectively
- Bid evaluations for all contracts above \$10 million approved by the Procurement Committee

Implementation

- Contracts are subject to national laws
- Major modifications subject to ADB prior approval
- Termination requires ADB agreement
- Contracts exist independently of ADB's financing

Points to Note for Firms

- Borrowers have sole legal responsibility for procurement
- It is the entity(ies) bidding/proposing that is assessed, not associated firms
- Experience of parties not bidding is not considered
- ADB and its borrowers are not permitted by the procurement policies to waive pass/fail criteria



2. Contracts and Dispute Resolution

Procurement Reviews

- Ensure that the process is carried out in accordance with agreed procedures.
- Ensure that the proceeds of its financing are used with due attention to considerations of economy and efficiency.

Standard Bidding Documents

- Borrower must use the appropriate Standard Bidding Document (SBD) issued by ADB, with minimum changes.
- The SBD for Works makes use of the relevant General Conditions of Contract prepared by FIDIC.

ADB's Role:

Ensure that draft bidding documents are consistent with:

- ✓ SBDs
- ✓ ADB's Procurement Guidelines
- ✓ Financing Agreement
- ✓ Project Administration Instructions.

Contract Approval

Prior Review

- ADB is notified of the results of the evaluation and comparison of bids before the Borrower makes a decision to award the Contract.

ADB's Role:

- Provide “no objection” to the recommendation for Contract award if consistent with financing agreement, Procurement Guidelines and the procurement plan
- Borrower must use the Contract incorporated in the Bidding Document, as reviewed by ADB.

Contract Approval

Post Review

- The documentation relating to the award of contract are reviewed by ADB after contract award is made.

ADB's Role:

- Determine whether procurement was in accordance with the agreed procedures.
- If not, declare Misprocurement.

Conflict Resolution

- Prior to Contract Award
- Post Contract Award



Conflict Resolution: Prior to Contract Award

- Bidders with complaints/clarifications may send copies of their communications on issues and questions with the Borrower to ADB or to write to ADB directly

ADB's Actions:

- Generally, review the communication and refer the matter to the Borrower, with comments and advice, for action or response.
- ADB may enter into discussion with bidders where it deems necessary to conduct investigations, audit, evaluation or other assessments of the procurement process.

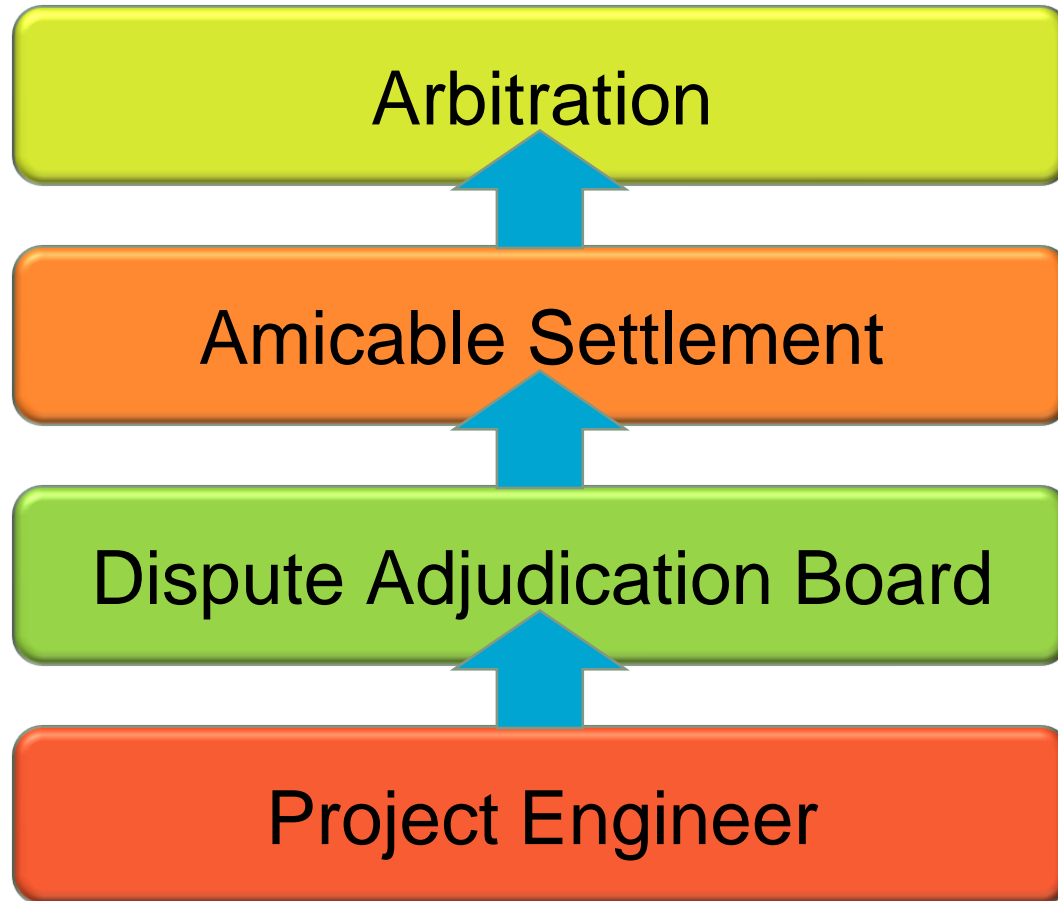
Conflict Resolution: Post Contract Award

- Involves disputes arising out of or in connection with the Contract
- **ADB is not a Party to the Contract.**
- **Privity of Contract Principle:** a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it.
- Thus: ADB has no right or obligation to sue to enforce the Contract.

It is not ADB's Role:

- To resolve the dispute
- To advise a Party to accept any decision
- To determine whether an arbitration should ensue

Dispute Resolution Mechanism under FIDIC



Office of Anticorruption and Integrity (OAI)



Initial contact for allegations of integrity violations



Undertake Project Procurement-Related Reviews (PPRRs)

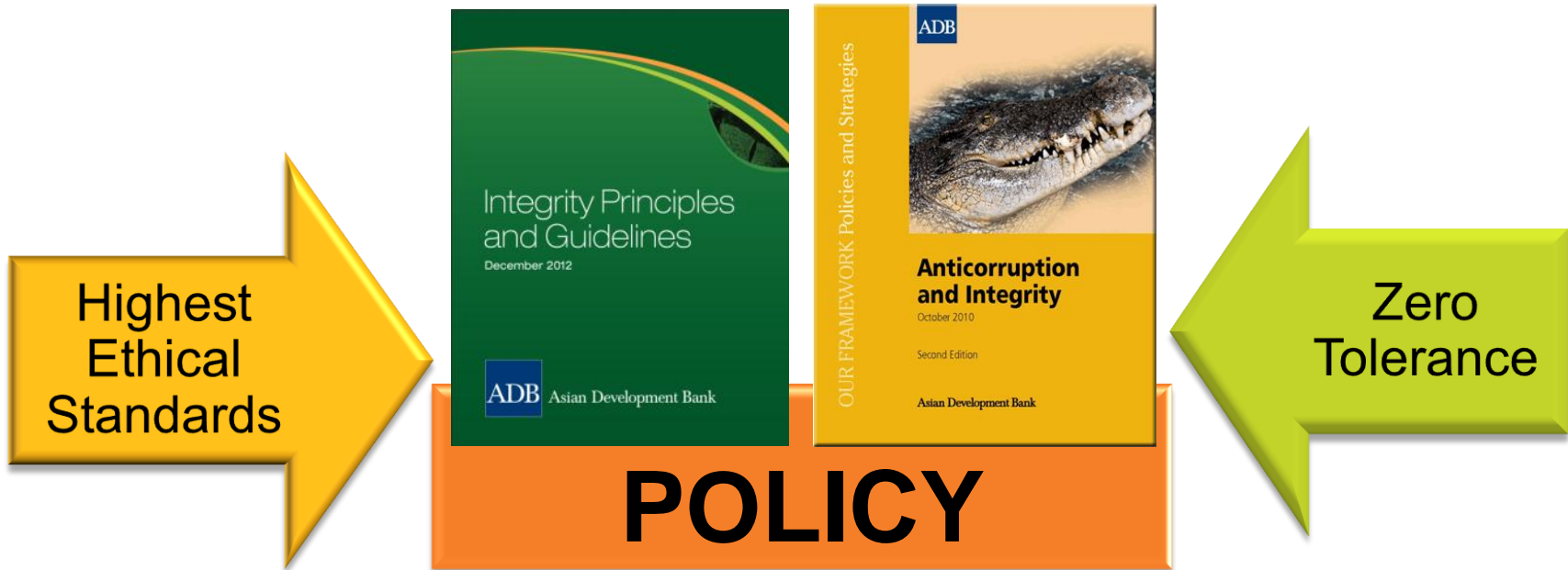
Investigate allegations of fraud and corruption

Promote awareness of Anticorruption Policy

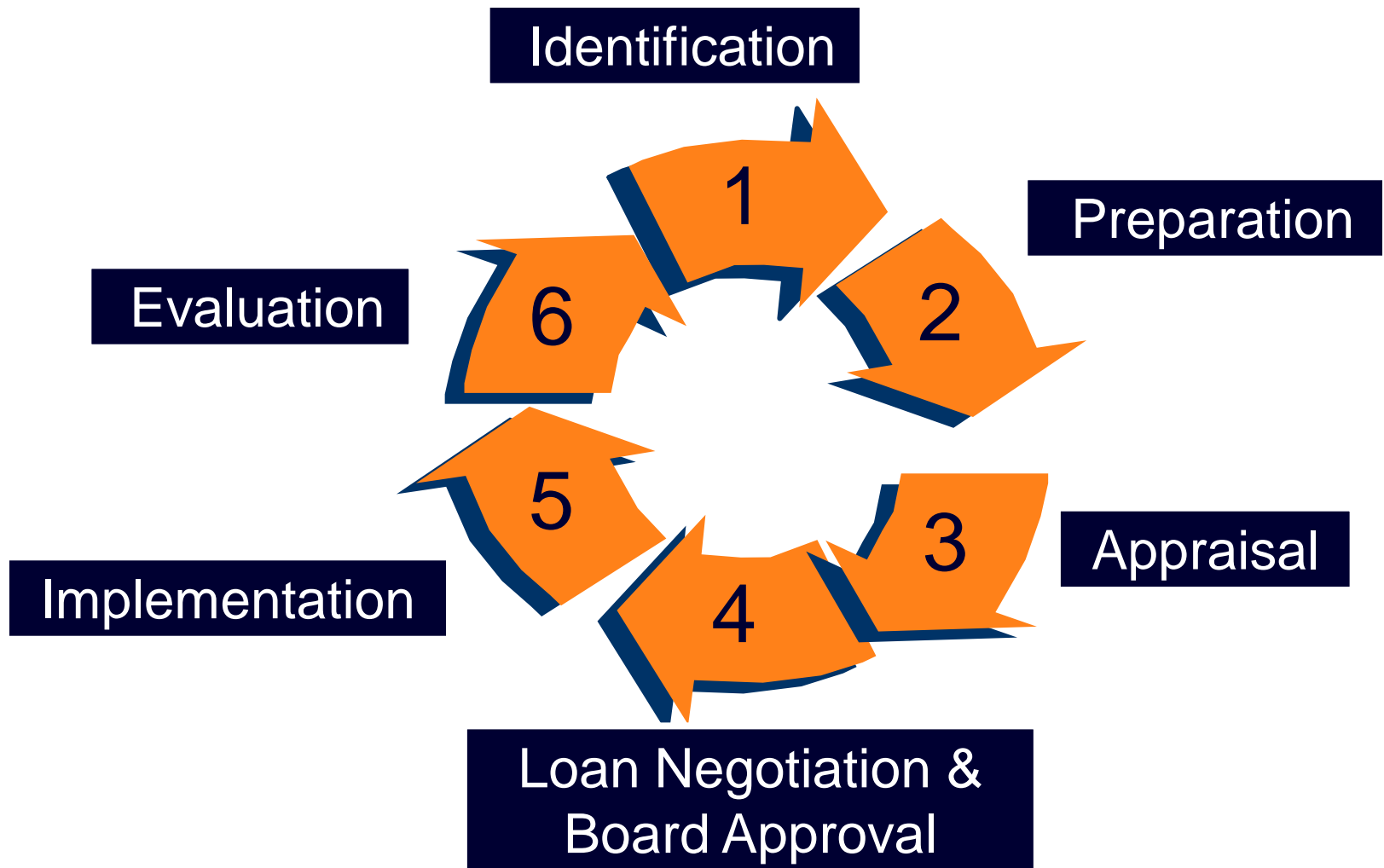
Integrity Due Diligence



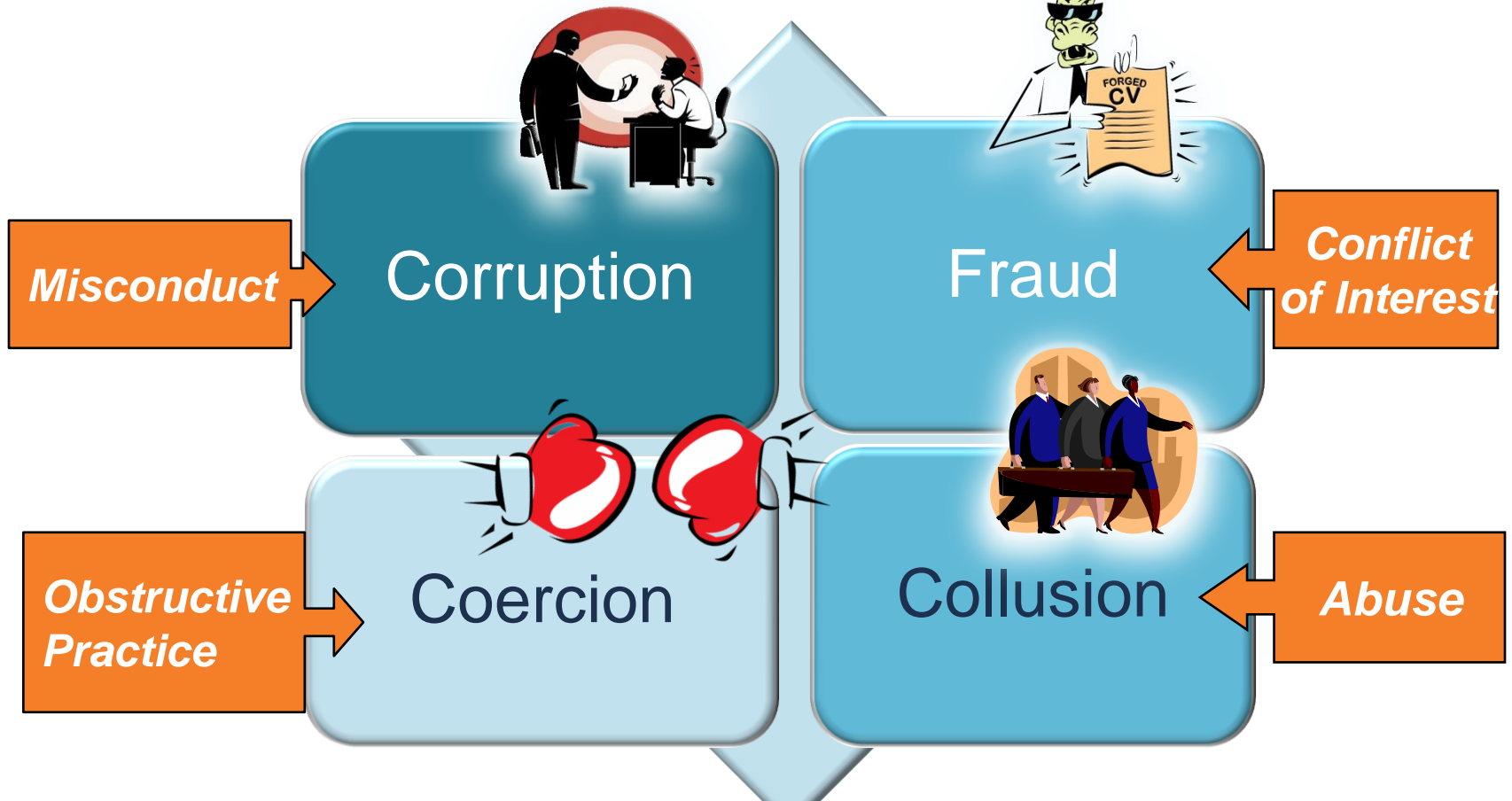
ADB's Anticorruption Policy



The Project Cycle

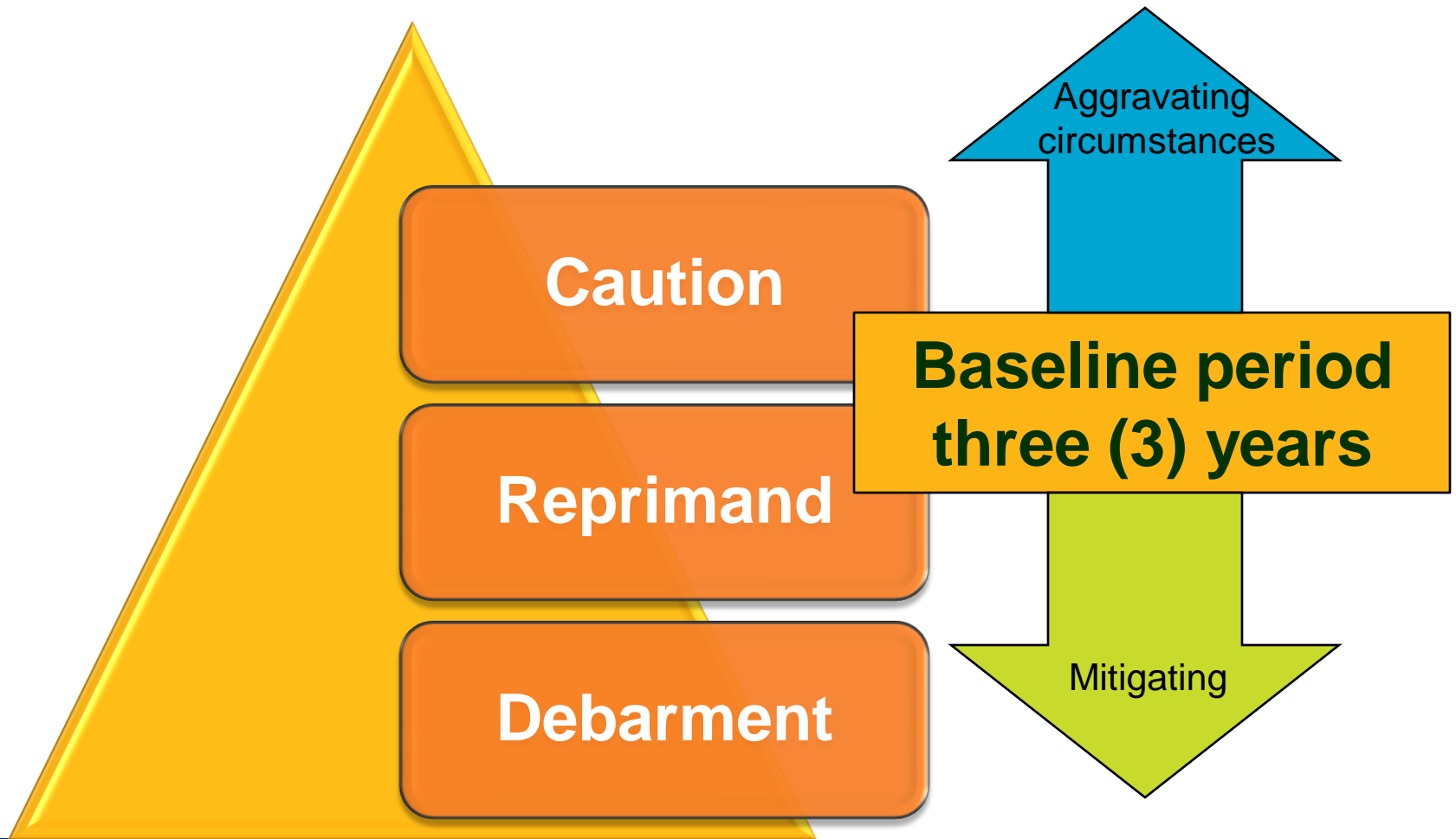


Integrity Violations



MDB harmonized definitions

Remedial Actions Against Proven Integrity Violations



Impact of Sanctions



Ineligible to participate in future ADB-related activities



Likely not to have an impact on ongoing activities



Contract variations subject to OAI endorsement



No automatic reinstatement

Cross debarment where applicable

Examples of Good Project Delivery



Bridge work in China

Effect of Substandard Work



**DISBURSEMENTS SUSPENDED
IMMEDIATELY**



FINANCING CANCELLED



Sliding/collapse of retaining wall

Effect of Substandard Work



Worms found in the muddy well

PROJECT CANCELLED

Non-operational water pumps due to non-maintenance and mechanical problems

How can you help?

Report Issues

Conduct Due Diligence (for those who nominate personnel)

Join/Give Training

Provide/ Ask for Advisory

Adhere to the highest ethical standards

Working Together As Development Partners

