



# 6<sup>th</sup> ADB Business Opportunities Fair

ADB's Role in Procurement: Review,  
Oversight and Integrity

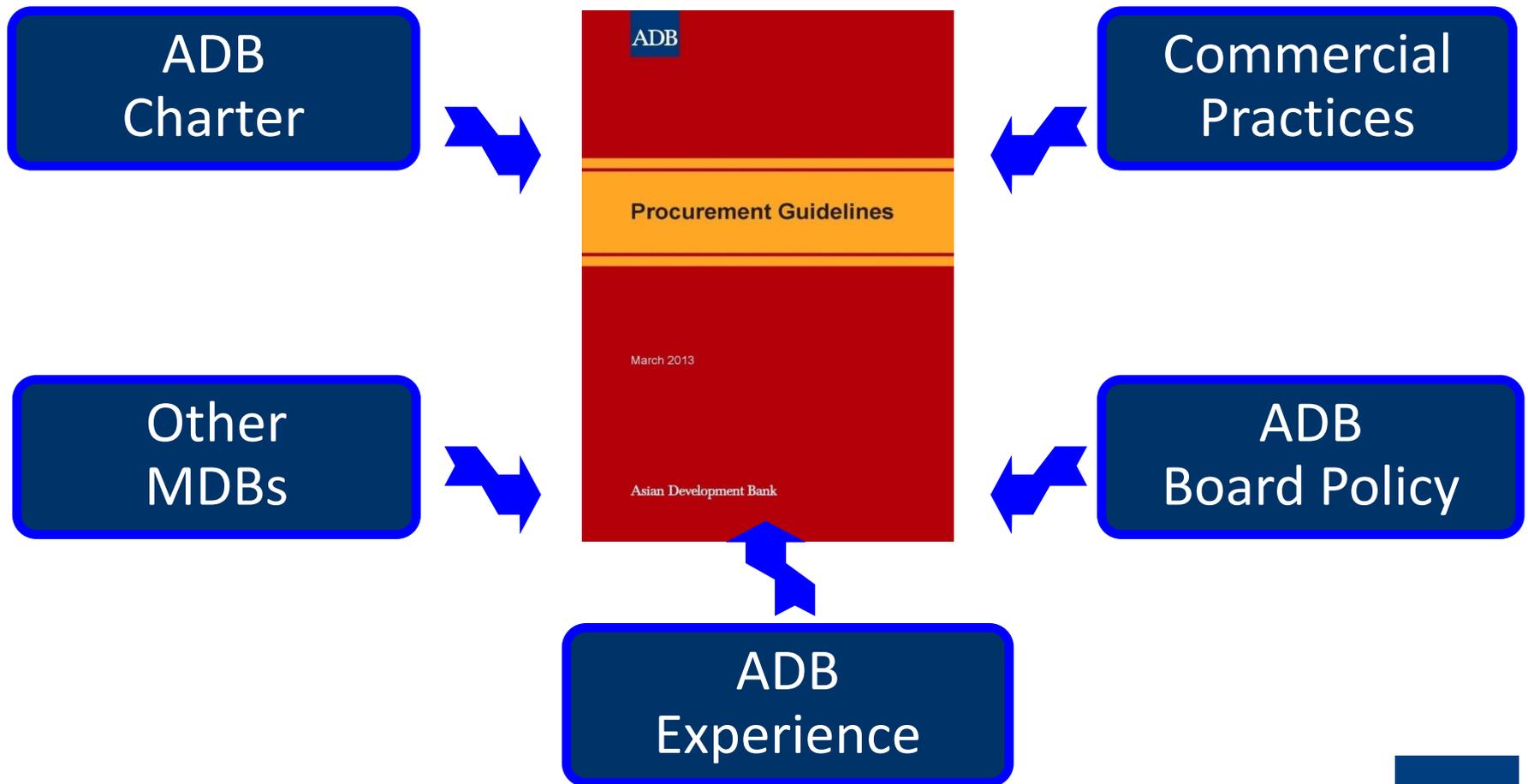
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# ADB's Procurement Framework



# 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

# 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



# **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

## ADB's Role:

Ensure that draft bidding documents are consistent with:

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

- 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.

# 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

## 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.

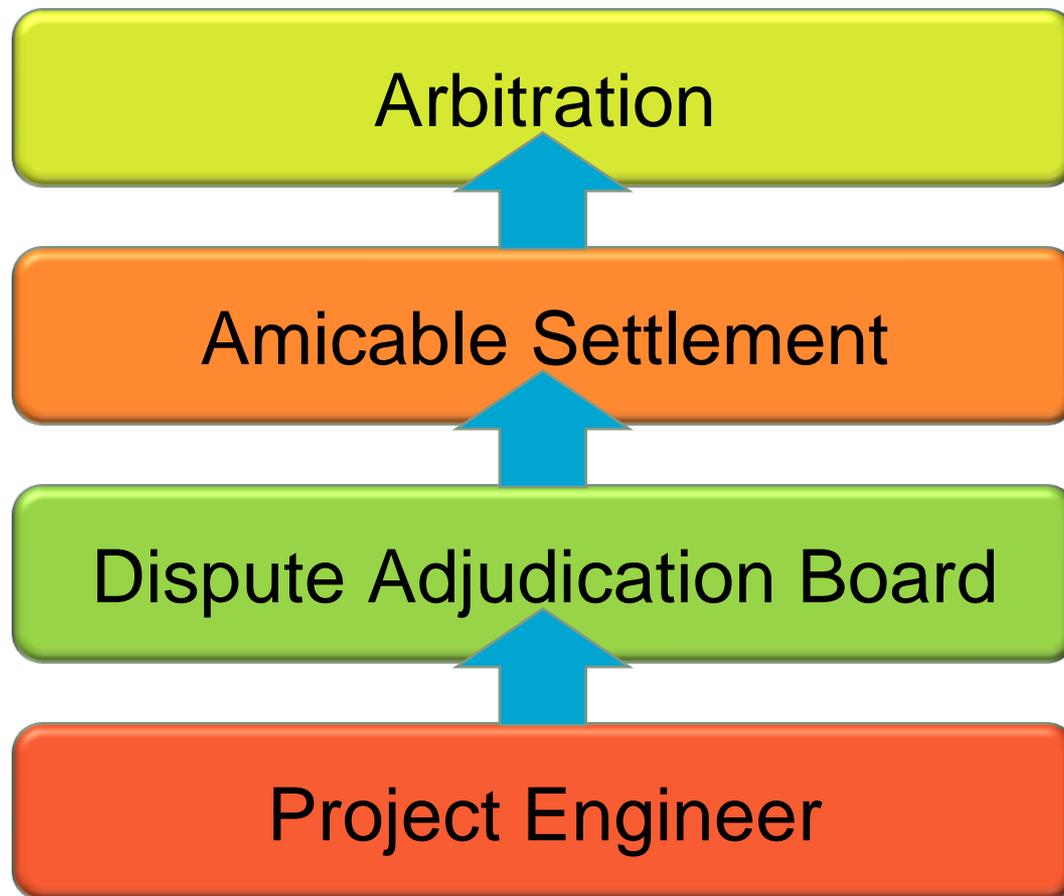
– Bidders with complaints/clarifications may send copies of their communications on issues and questions with the Borrower to ADB or to write to ADB directly

# Conflict Resolution: Post Contract Award

## 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
- 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.

# 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

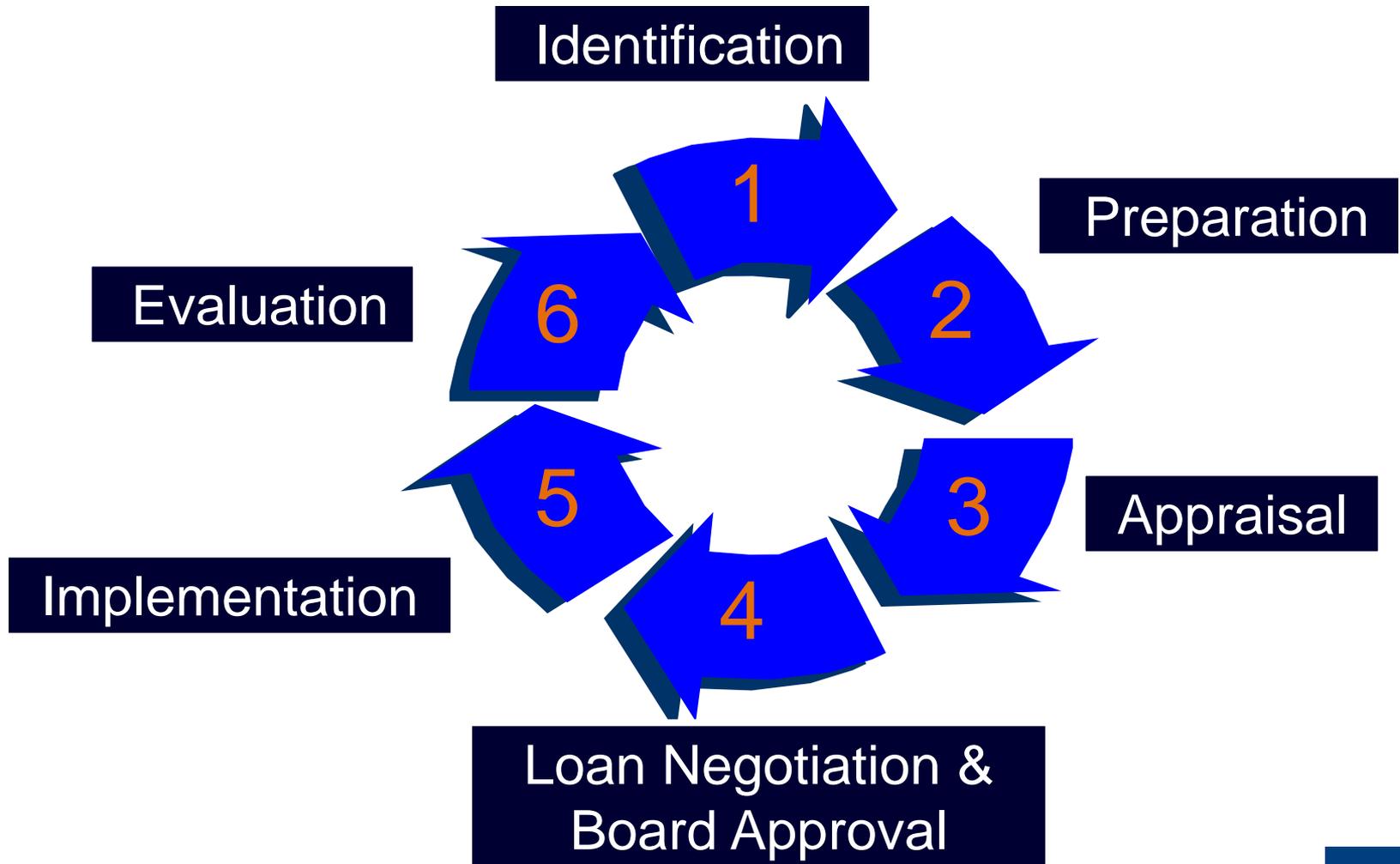
Integrity Due Diligence



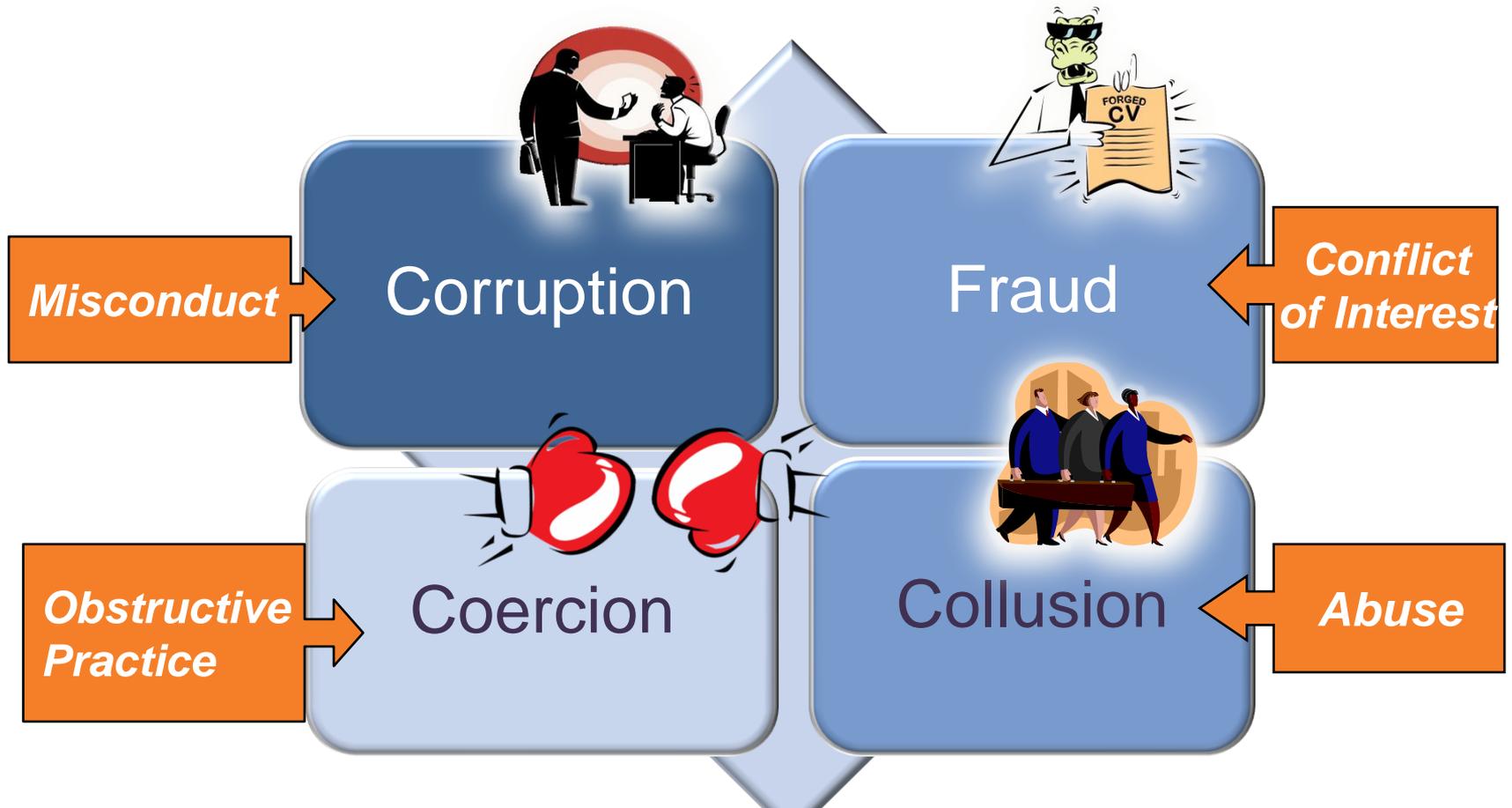
# ADB's Anticorruption Policy



# The Project Cycle

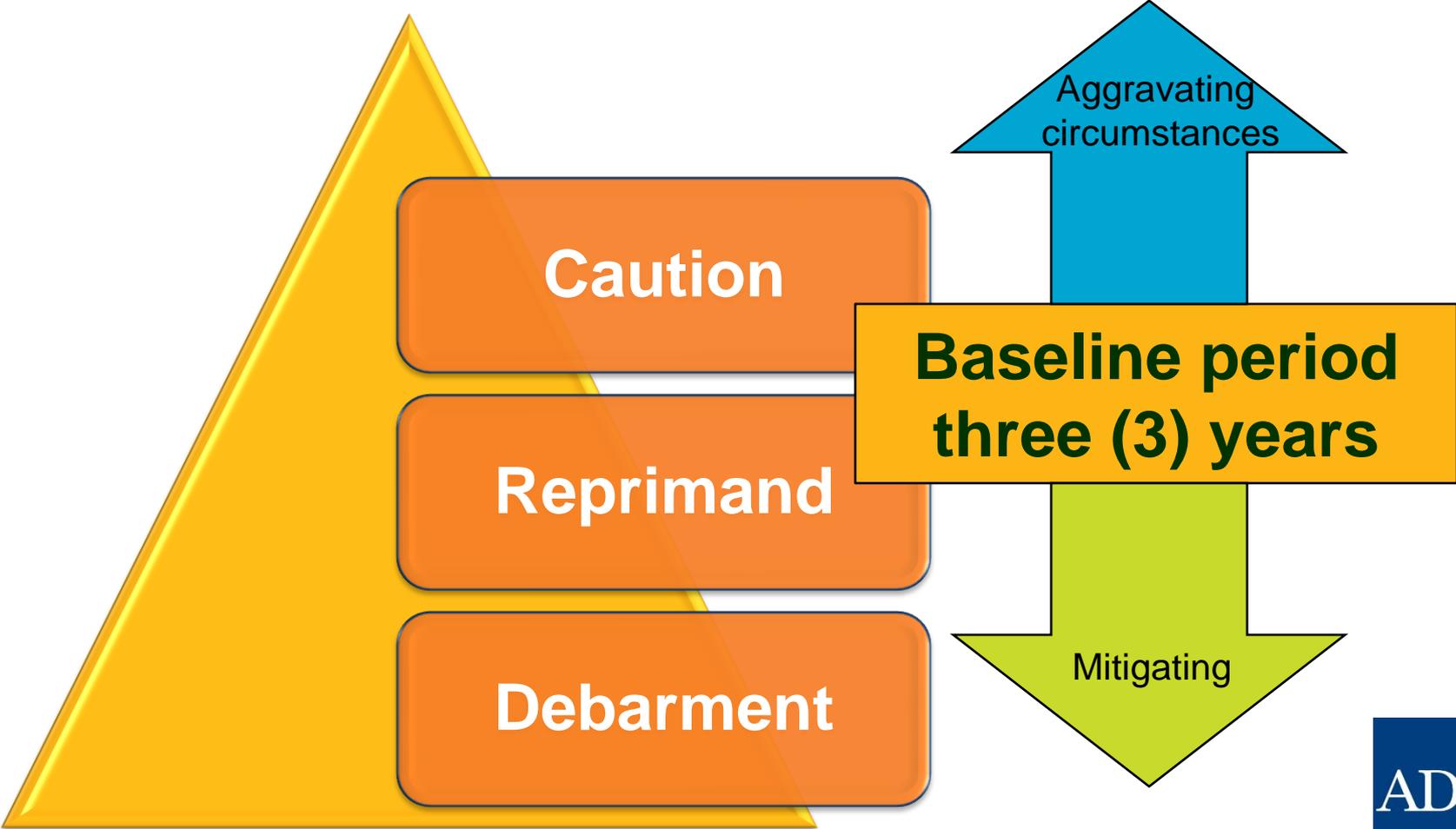


# Integrity Violations



**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

*Rural Development Project*



**DISBURSEMENTS SUSPENDED  
IMMEDIATELY**



**FINANCING CANCELLED**



***Sliding/collapse of retaining wall***

# Effect of Substandard Work

*Community-Based Infrastructure Services Sector*

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

