



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

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

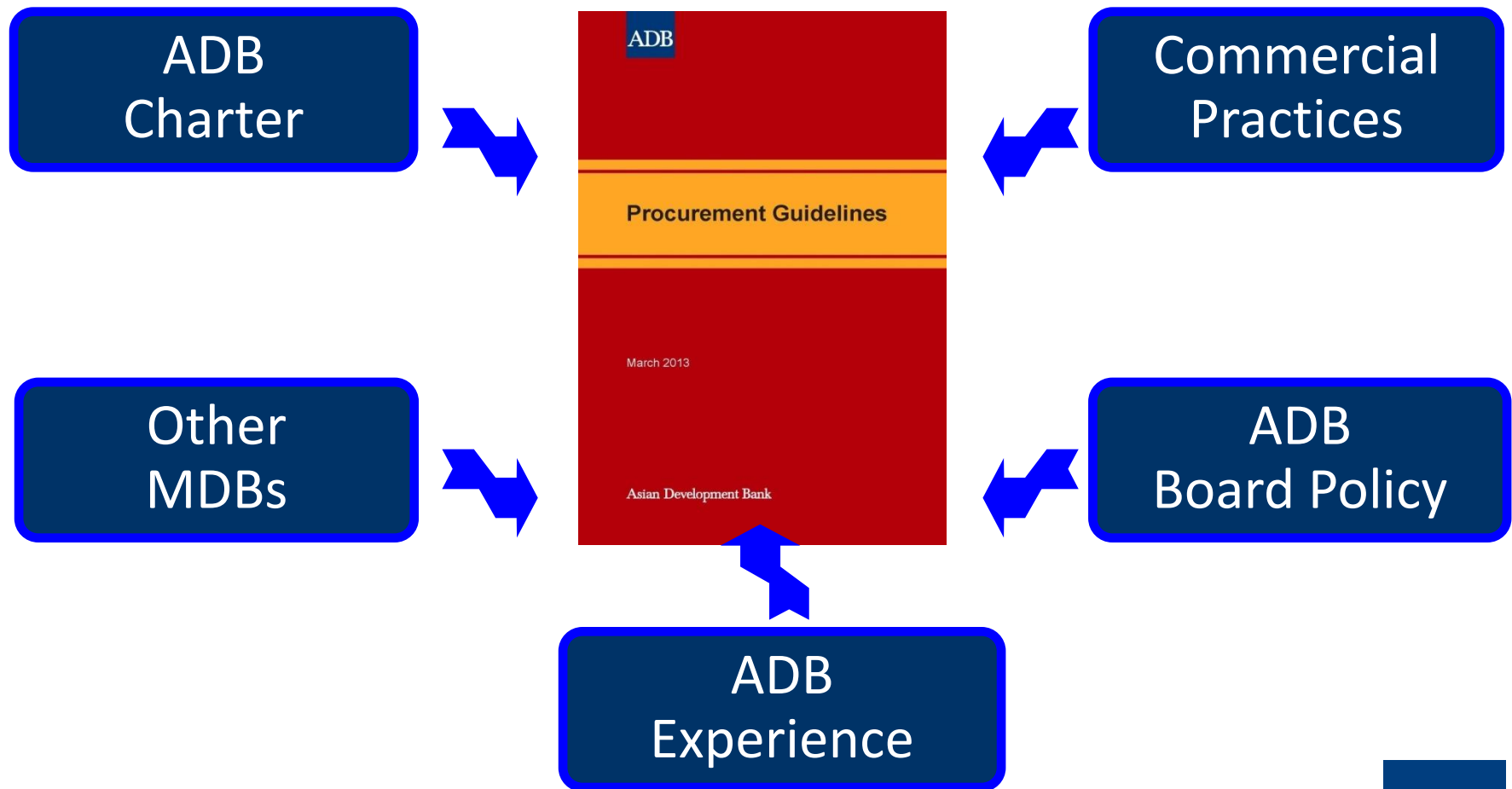
By: David Binns, OAI

Jeff Taylor, OSFMD

26 March 2015

*The views expressed in this presentation are the views of the author/s and do not necessarily reflect the views or policies of the Asian Development Bank, or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy of the data included in this presentation and accepts no responsibility for any consequence of their use. The countries listed in this presentation do not imply any view on ADB's part as to sovereignty or independent status or necessarily conform to ADB's terminology.*

# 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.

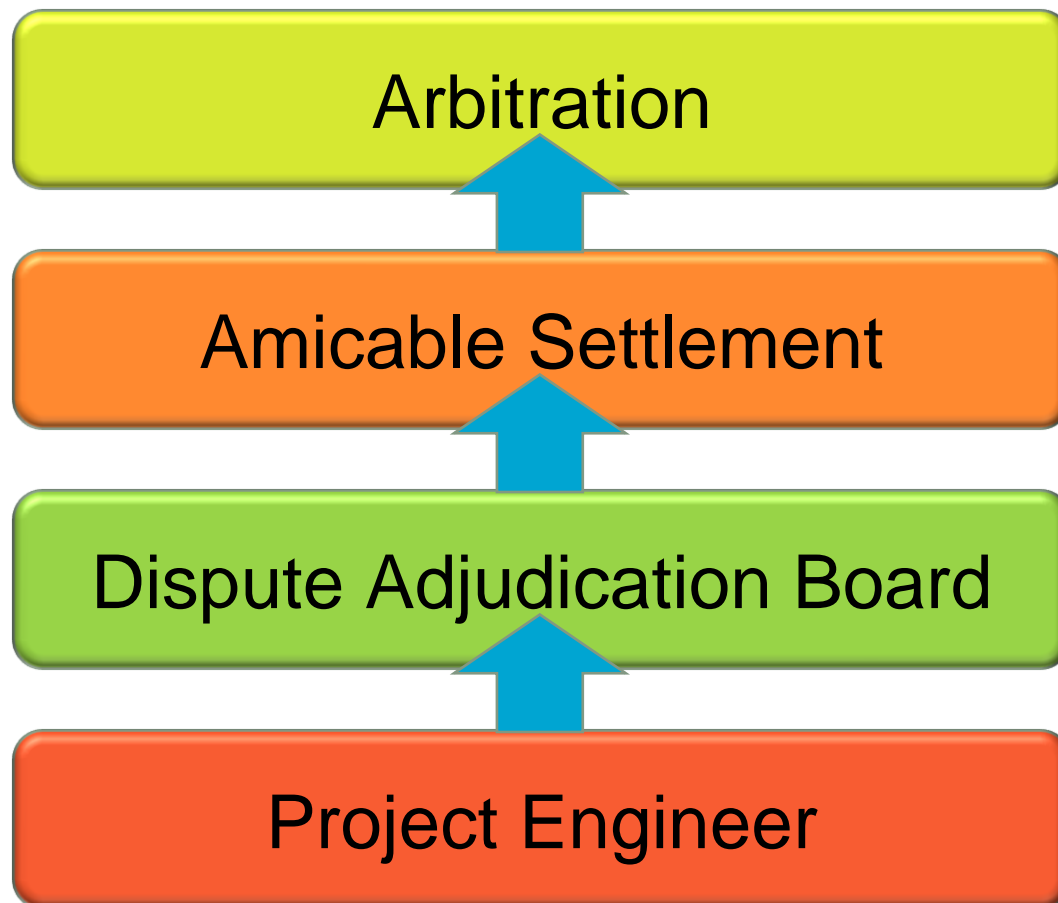
– Bidders with complaints/clarifications may send copies of their communications on issues and questions with the Borrower to ADB or to write to ADB directly

# Conflict Resolution: Post Contract Award

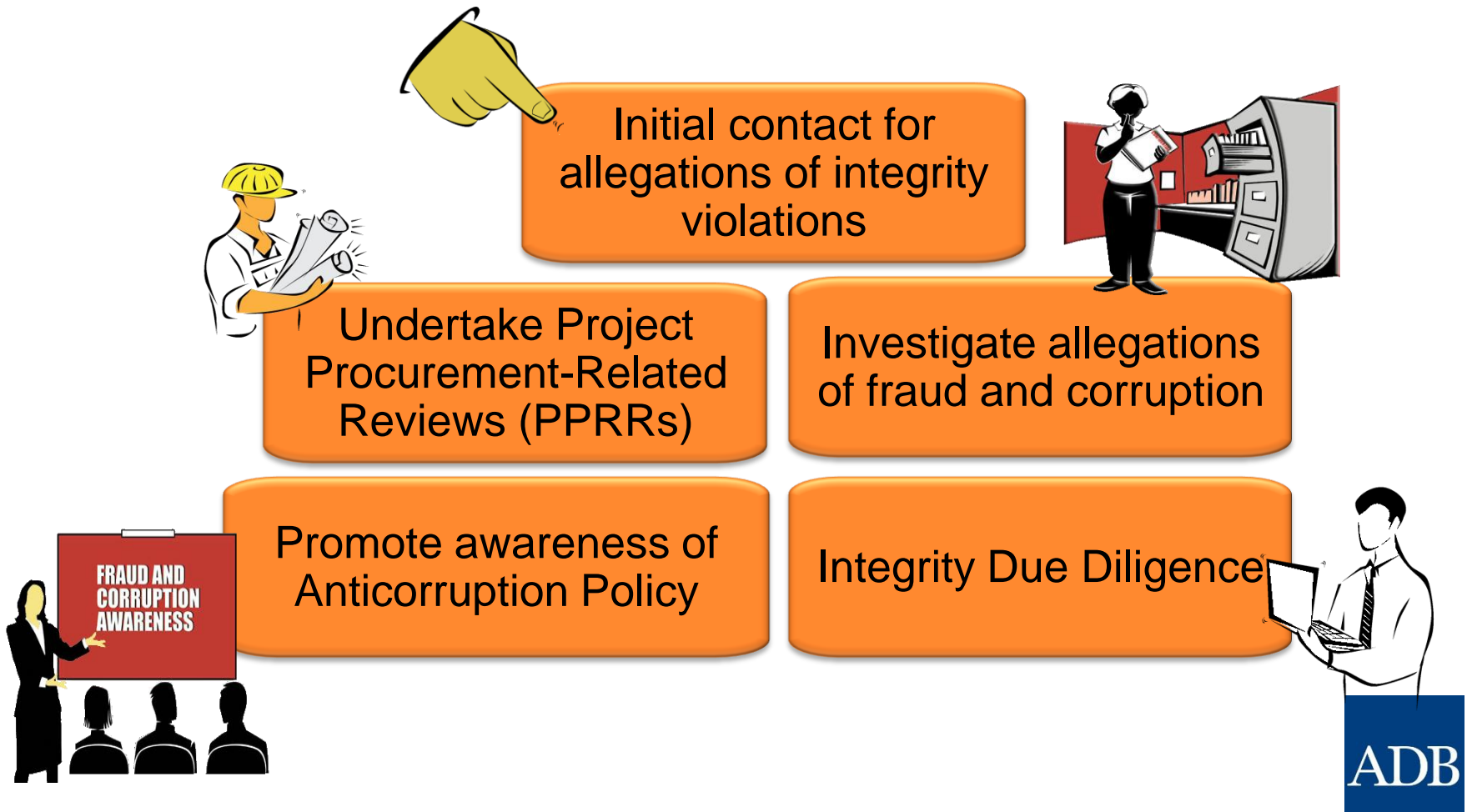
## It is not ADB's Role:

- 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



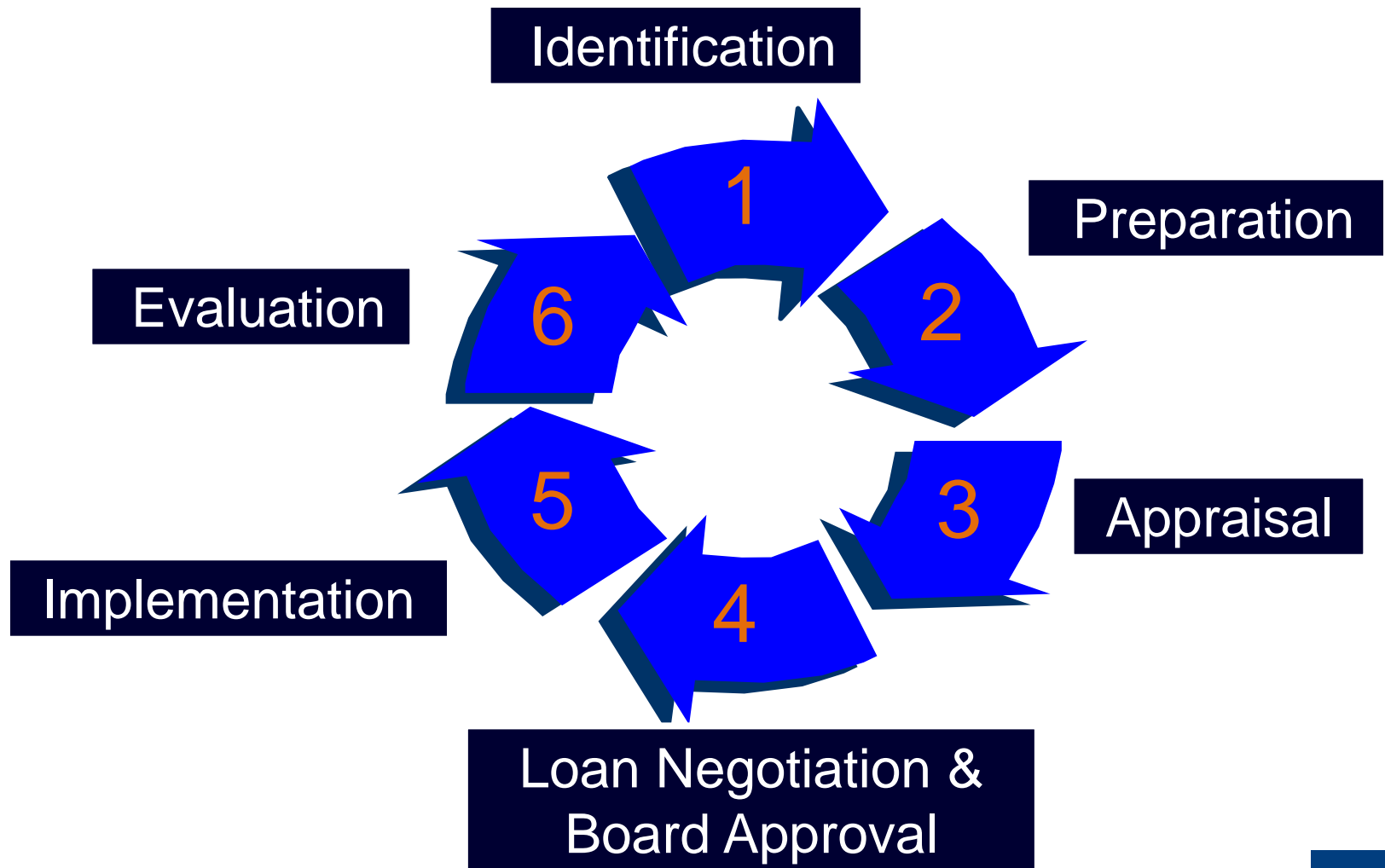
# Office of Anticorruption and Integrity (OAI)



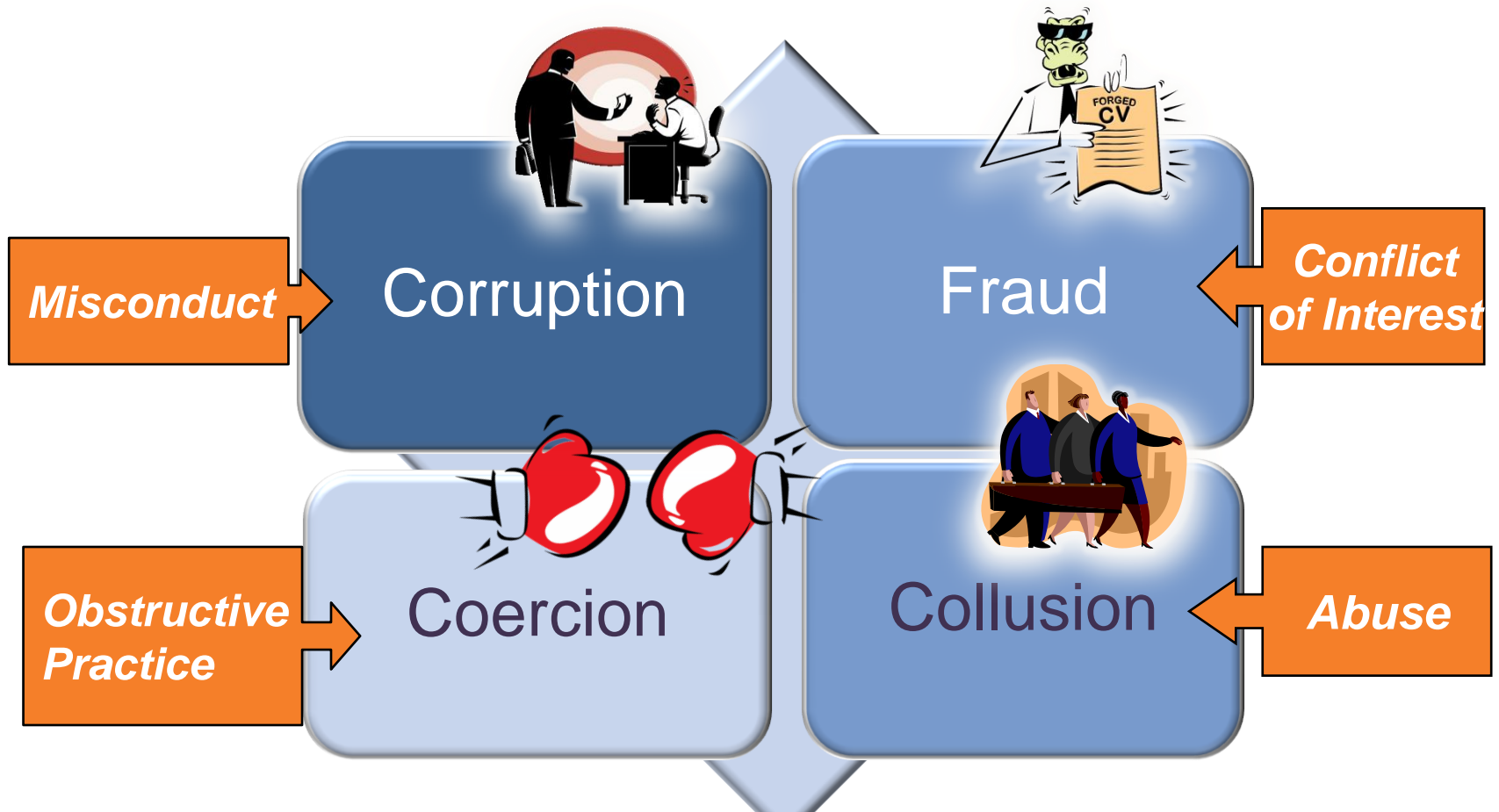
# ADB's Anticorruption Policy



# The Project Cycle

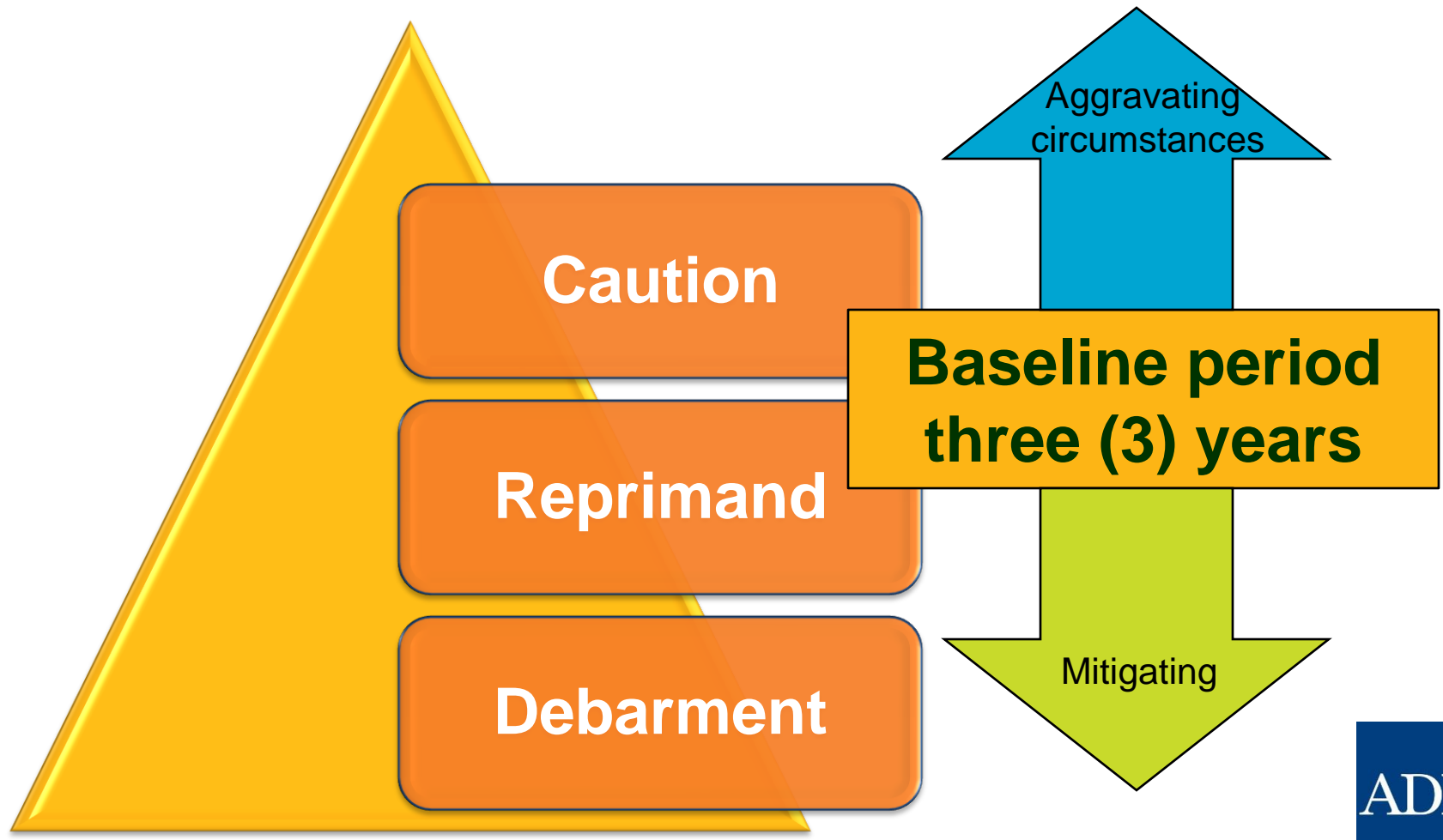


# Integrity Violations



**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

