WORLD BANK GROUP SANCTIONS REGIME: AN OVERVIEW

1. This paper provides Executive Directors, for discussion, an overview of the World Bank Group sanctions regime, as it has developed over time since its inception in 1996. Part I gives some basic background on the legal and policy basis for the regime; Part II provides an overview of both the sanctions process and the operational aspects of the regime; and Part III discusses next steps for the regime. The Annex to this paper provides a brief history of the regime, with particular focus on the most recent reforms in 2009-2010.

PART I: BACKGROUND

2. The Bank's Articles of Agreement require the institution to make arrangements to ensure that financings provided by the Bank are used for their intended purposes and with due attention to economy and efficiency.[1] This fundamental requirement is often referred to as the 'fiduciary duty', which forms the legal and policy basis for much of the Bank's fiduciary framework for its operations, including its project-level anti-corruption efforts.

3. To this end, the Bank Group has established a set of legal and other tools to help prevent and combat fraud and corruption in Bank Group projects and programs. Collectively known as the 'sanctions regime', these tools are both administrative and operational in character.

4. On the administrative side, the Bank Group has a formal process for sanctioning firms and individuals which have been found to have engaged in fraud and corruption in Bank Group-financed projects, primarily by declaring them ineligible to be awarded Bank Group-financed contracts, a step commonly known as 'debarment'. Sanctions are intended to advance the fiduciary duty by excluding corrupt actors from access to Bank financing, while serving as a deterrent both for the sanctioned firm and for others. Sanctions can also serve as incentives for rehabilitation.

5. On the operational side, the Bank Group has developed anti-corruption provisions in its legal agreements with borrowers and other recipients of Bank Group funds, as well as practices and procedures aimed at reducing the risk of, or detecting and addressing, potential fraud and corruption in Bank Group-financed operations.

PART II: AN OVERIEW OF THE SANCTIONS REGIME

A. The Sanctions Process.

6. The Bank Group maintains a formal process for sanctioning firms and individuals which have been found to have engaged in fraud and corruption in Bank Group financed projects. This process is intended to provide the accused party, known as the 'Respondent', with basic due

[1] *See* IBRD Articles of Agreement, Article III, Section 5 (b), IDA Articles of Agreement, Article V, Section 6.

process before deciding whether the Respondent will be sanctioned and, if so, which sanction is appropriate.

7. ***Sanctionable Practices***. The Bank Group has agreed with other multilateral development banks (MDBs) that certain defined forms of fraud and corruption should be sanctionable.[2] These include corrupt practice, fraudulent practice, collusive practice and coercive practice. In addition, the Bank Group may also sanction a firm or individual for having engaged in 'obstructive practice' in connection with an INT investigation. Collectively, these practices are referred to as 'sanctionable practices'.[3]

8. ***Investigation and Preparation of a Statement of Accusations and Evidence***. The Bank's Integrity Vice Presidency (INT) is charged with, among other things, investigating allegations and other indications that sanctionable practices have occurred in connection with Bank Group financed projects. If, after investigation, INT believes that there is sufficient evidence that a firm or individual has engaged in a sanctionable practice, it launches a sanctions case by submitting a Statement of Accusations and Evidence to an Evaluation and Suspension Officer (EO).

9. ***Early Temporary Suspension***. The Bank Group has a special mechanism for suspending firms and individuals from eligibility during the investigation phase. The EO, upon request by INT in exceptional cases, may impose a temporary suspension on the subject of an INT investigation prior to the commencement of formal sanctions proceedings, if the EO finds that there is already sufficient evidence that the subject has engaged in at least one sanctionable practice. Firms may petition the EO for the lifting of the suspension and provide rebutting evidence.

10. ***Sanctions Proceedings***. The core of the sanctions process lies in formal sanctions proceedings, which consist of the following two tiers:

- A first tier review of the Statement of Accusations and Evidence by the EO for sufficiency of the evidence. If the EO finds that the accusations are supported by sufficient evidence, he/she issues a Notice of Sanctions Proceedings to the Respondent, appending the Statement of Accusations and Evidence and recommending an appropriate sanction and temporarily suspending the Respondent from eligibility for Bank-financed contracts. The Respondent is temporarily suspended from eligibility to be awarded Bank financed contracts upon issuance of the Notice. The Respondent may file an Explanation with the EO seeking either dismissal of the case or a reduction in the recommended sanction. If the Respondent does not contest the EO's final determination, the recommended sanction (if any) is then imposed on the Respondent.

[2] International Financial Institutions Anti-Corruption Task Force, "Uniform Framework For Preventing And Combating Fraud And Corruption" (September 2006).

[3] These definitions may be found in Annex A to the Sanctions Procedures; paragraph 7 of the World Bank Anti-Corruption Guidelines (2006); and Section 1.14 of the Guidelines Procurement Under IBRD Loans And IDA Credits (May 2004, as revised October 1, 2006 and May 1, 2010); and Section 1.22 of Guidelines: Selection and Appointment of Consultant by World Bank Borrowers (May 2004, as revised October 1, 2006 and May 1, 2010); s*ee also* "Sanctions Reform: Proposal to Extend the Current Sanctions Regime to Partial Credit Guarantees", R2009-0246; IDA/R2009-0262 (October 5, 2009).

- In cases where the Respondent wishes to contest the EO's final determination, it may trigger a second tier review by filing a Response with the World Bank Group's Sanctions Board, a body composed of three Bank staff and four non-Bank staff, which considers the case *de novo* and takes the final decision on an appropriate sanction, if any. This phase of the proceedings may include hearings if either the Respondent or INT requests them. The name(s) of the sanctioned party(ies) and the sanction(s) imposed are made public.

11. The same basic procedures apply to cases relating to IFC, MIGA and Bank Guarantee operations, with adjustments appropriate to their different business models, in particular separate EOs with more expansive standards of review and the appointment of alternate members of the Sanctions Board to hear cases relating to private sector operations.

12. ***Settlements***. In appropriate circumstances, sanctions may also be imposed on a Respondent through a negotiated resolution of the case. Under this mechanism, sanctions cases may be resolved by negotiations at any stage of the sanctions process up to the issuance of a decision by the Sanctions Board, or during the investigation stage prior to the commencement of sanctions proceedings.

13. Settlements are subject to a number of procedural and substantive safeguards to ensure fairness, transparency and credibility, including criteria for entering into settlements and a number of procedural 'checks and balances'. Among other things, the Bank Group General Counsel clears all settlement agreements, in agreement with the General Counsel of IFC or MIGA in cases involving IFC or MIGA projects. Settlements are also subject to review by the relevant EO to confirm that: (i) the agreement was entered into voluntarily and without duress and (ii) the agreed sanction, if any, is consistent with the Sanctioning Guidelines. The settlement is then embedded within a sanction imposed by the EO.

14. ***Sanctions***. The Sanctions Procedures provide for a range of five possible sanctions:

- *Debarment with Conditional Release*: The 'baseline' or default sanction[4] is to impose a minimum period of debarment (i.e., ineligibility to be awarded a Bank Group financed contract or otherwise participate in Bank Group financed activities) of three years, after which the sanctioned party may be released if it has complied with certain defined conditions. The conditions normally include the debarred party putting in place, and implementing for an adequate period, an integrity compliance program satisfactory to the World Bank Group. Respondents must apply for release and provide evidence that they have met the conditions for release. Management, acting through an integrity compliance officer (ICO), [5] will make the initial determination as to whether the conditions for release have been met. If the decision is negative, the Respondent has the right to appeal the decision to the Sanctions Board. This appeal would not second-guess the ICO's judgment (e.g., as to the adequacy of a compliance program) but is rather meant to ensure that the ICO has not abused his/her discretion (i.e., if the ICO's determination lacks an

[4] The term 'baseline' sanction means the sanction that would normally be imposed for a sanctionable practice before giving effect to any aggravating or mitigating factors.
[5] The ICO's decision is subject to the no objection of the Integrity Vice President and the Bank Group General Counsel.

observable basis or is otherwise arbitrary, is based on disregard of a material fact or a material mistake of fact, or was taken in material violation of the Sanctions Procedures).

- *'Plain vanilla' debarment*. In cases where no appreciable purpose would be served by imposing conditions for release, sanctioned parties may be debarred for a specified period of time, after which they are automatically released from debarment. This would occur, for example, in cases where a sanctioned firm has already in place a robust corporate compliance program, the sanctionable practice involved the isolated acts of an employee or employees who have already been terminated, and the proposed debarment is for a relative short period of time (e.g., one year or less). At the opposite extreme, in exceptional cases where there is no realistic prospect that the Respondent can be rehabilitated, it may also be sanctioned permanently.

- *Conditional Non-Debarment*. Under this sanction, the sanctioned party is not debarred provided the party complies with certain defined conditions within a set time frame. If the conditions are not met, the party is debarred for a defined period of time. Compliance with conditions for non-debarment is determined by the ICO and subject to the same procedure as for conditions for release from debarment. Conditional non-debarment is normally applied in cases where the Respondent has already taken comprehensive voluntary corrective measures and the circumstances otherwise indicate that it need not be debarred. It is also applied to parents and other affiliates of Respondents in cases where they were not engaged in misconduct but a systemic failure to supervise made the misconduct possible.

- *Letter of Reprimand*. In some cases, debarment or even conditional non-debarment may be disproportionate to the offense. In such cases, the Bank issues a letter of reprimand to the sanctioned party. Examples include cases where an affiliate of the Respondent has been found to have some shared responsibility for the misconduct because of an isolated lapse in supervision, but the affiliate was not in any way complicit in the misconduct.

- *Restitution*. In appropriate cases, the sanctioned party may be required to make restitution to the Borrower or to any other party or take actions to remedy the harm done by its misconduct.[6]

15. The choice of the appropriate sanction by the EO or the Sanctions Board is guided by Sanctioning Guidelines, a public document that seeks to enhance predictability, while maintaining sufficient room for the exercise of discretion by the EOs and the Sanctions Board in order to reflect the unique circumstances of each particular case. The Guidelines include detailed treatment of aggravating and mitigating factors, with indicative ranges for increases (in the case of aggravating factors) and reductions (in the case of mitigating factors). Except when permanent debarment is imposed, parties debarred for a minimum period in excess of 10 years may petition for a reduction of the minimum period of debarment after 10 years have elapsed.

[6] Appropriate cases may include those where the damage caused by the misconduct is clear and quantifiable. Restitution has not been imposed to date, largely due to lack of clear criteria to how to calculate the quantum to be restituted and how to determine the appropriate recipient.

16. The Sanctions Procedures provide that affiliates of Respondents may also be sanctioned, and that sanctions may be applied to the successors and assigns of sanctioned parties. Management has developed guidance for dealing with sanctioning of corporate groups, as well as corporate restructurings which may occur after a firm is sanctioned. The guidance provides flexible principles for the application of sanctions to affiliates of the Respondent(s) and successors and assigns. The guidance also allows targeted sanctions in cases where the sanctionable practice is shown to have been limited to a particular division within a firm. The Sanctions Procedures afford parent or 'sister' entities due process, so they may defend themselves against charges of culpability or responsibility for the Respondent's wrongdoing, with substantially the same procedural rights as Respondents themselves.

17. ***MDB Cross-Debarment***. The Bank Group also imposes sanctions based on a debarment decided by another MDB. Under an agreement signed in March 2010, each MDB informs the other MDBs of its debarments of over one year and, subject to an 'opt out', the other MDBs enforce those debarments. Such 'cross-debarments' by the Bank Group of other MDBs' debarments are not subject to the sanctions process, but are implemented by Bank Group staff as a matter of course. Decisions to opt out are taken by Management, based solely on legal or policy considerations, and are expected to be highly exceptional.[7]

18. ***Information Sharing*****:** The new Sanctions Procedures provide for the sharing of pleadings and materials submitted in connection with sanctions proceedings, on a confidential basis, with other MDBs and international organizations, as well as national authorities, if disclosure is determined to be in the best interests of the Bank Group. While it does not occur with any regularity, from time to time the Bank receives requests for pleadings, for example, to inform the decision of an international or national authority whether it would 'cross-debar' Bank debarment decisions. This has now become somewhat moot for most MDBs in light of the recent agreement on mutual recognition of debarment decisions, but such requests could still come from international organizations not party to the MDB agreement as well as from national authorities. The decision on information sharing would be taken on a case-by-case basis by INT, in consultation with the Bank Group General Counsel.[8]

19. ***Sanctions Procedures and Sanctions Board Statute***. Management has developed and issued detailed Sanctions Procedures that govern the sanctions process described above. The functioning of the Sanctions Board is also governed by a Sanctions Board Statute, which, among other things, lays out the process for appointing and removing the members of the Sanctions Board, and appends a Code of Conduct. The external members of the Sanctions Board (which include its Chair) are appointed by Executive Directors, on nomination by the President of the Bank Group, while the internal members are appointed by the President. The Code of Conduct requires, among other things, that Sanctions Board members consider each case fairly, impartially and with due diligence, disclosing and avoiding any conflicts of interest. The EO is Bank staff and has formal terms of reference.

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[7] *See* "The World Bank Group: Mutual enforcement of Debarment Decisions Among Multilateral Development Banks", M2010-0358, IDA/SecM201010-0429 (June 10, 2010).

[8] INT has developed an internal protocol setting out the procedures and criteria for sharing information with third parties. In deciding cases governed by the IFC or MIGA Sanctions Procedures, the Bank Group General Counsel would consult with the IFC or MIGA General Counsel, as appropriate.

20. ***Voluntary Disclosure Program***. The Bank Group also maintains a voluntary disclosure program (VDP) that allows firms not under active investigation to come forward and disclose past misconduct to the Bank. VDP participants are required, among other things, to institute a robust, monitored compliance program to prevent future misconduct. In exchange, the Bank agrees not to seek sanctions for disclosed misconduct and to keep the participant's identity confidential. If, however, the participant breaches its VDP obligations, it is subject to a ten-year mandatory debarment.[9]

21. ***Corporate Procurement***. The General Services Department's (GSD) Vendor Eligibility Policy prescribes standards and procedures for determining whether a vendor is excluded (and thereby debarred), either permanently or for a specific period of time, from receiving future corporate contract awards from the Bank Group based on a finding by the GSD Director that the vendor is "non-responsible". The Director of GSD may suspend a vendor pending a final responsibility determination, during which time the vendor is afforded an opportunity to show cause why it should be found responsible. The Director of GSD may determine that a vendor is non-responsible based on fraudulent, corrupt, collusive, coercive or obstructive practices, or based on any other action that the Director determines is so serious in nature that it affects the present responsibility of the vendor or could result in harm to the Bank Group's reputation. GSD's definitions of fraud and corruption under the Vendor Eligibility Policy is identical to the definition of fraud and corruption under the Bank Group's Sanctions Regime, and GSD's sanctions guidelines are similarly aligned with those of the Sanctions Board.

22. Firms and individuals debarred by the EO or Sanctions Board are also 'cross-debarred' by GSD. Under a proposal that Management is submitting simultaneously with this paper (see paragraph 60 below), GSD debarments will also be 'cross-debarred' to Bank operations.

B. Operational Aspects of the Sanctions Regime

23. ***Original Sanctions Regime***. The Bank also has a number of anti-corruption tools with direct application to its operations, including anti-corruption provisions in its legal agreements with borrowers and other recipients of Bank financing, and certain practices and procedures, particularly in the area of procurement, aimed at reducing the risk of, or detecting and addressing, potential fraud and corruption in Bank-financed operations.

24. ***Procurement and Consultant Guidelines***. The Procurement and Consultant Guidelines establish as Bank policy the requirement that borrowers and loan beneficiaries, as well as bidders, suppliers, contractors and consultants, maintain the 'highest standards of ethics' and, to this end, further provide for Bank sanctions as well as contractual remedies in the event that certain defined forms of fraud and corruption occur in connection with the procurement/selection or execution of Bank financed contracts.[10] The Guidelines also allow the Bank access to bid and contract documentation through the so-called 'third party audit clause'.[11]

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[9] For details of the VDP, *see* "Voluntary Disclosure Program (VDP)", R2006-0137, IDA/R2006-0147, IFC/R2006-0204; MIGA/R2006-0041 (July 12, 2006).

[10] The current provisions are found in Section 1.14 of the Procurement Guidelines and Section 1.22 of the Consultant Guidelines. The scope of the policy has been expanded so that the current version of these provisions

25. ***General Conditions***. The Bank has remedies under the IBRD and IDA General Conditions that allow the Bank to cancel an amount of the loan equivalent to any Bank financed contract if it had been tainted by corruption[12] and to suspend disbursements, in whole or in part, in the event that fraud and corruption occurs without timely and appropriate action being taken to address the situation.[13]

26. ***Anti-Corruption Guidelines***. The Anti-Corruption Guidelines, like the Procurement and Consultant Guidelines, are incorporated by reference into the Bank's legal agreements.[14] The Anti-Corruption Guidelines set out the harmonized definitions of Sanctionable Practices, as well as a set of undertakings by the Borrower and other recipients of Bank funds aimed at preventing and combating fraud and corruption in connection with the use of such funds. The Guidelines also establish the Bank's right to sanction firms and individuals found to have engaged in any fraud and corruption in connection with the use of loan proceeds, not only in connection with procurement.

27. ***Private Sector Operations***. IFC, MIGA and PRG operations form an integral part of the World Bank Group sanctions regime, and parties in these operations may be sanctioned for corrupt, fraudulent, collusive, coercive, or obstructive practices, in addition to being subject to contractual remedies for these same offenses. IFC, MIGA, and Bank's staff working on PRG have operationalized the sanctions regime through the inclusion of appropriate provisions in their financing/guarantee documents, technical assistance agreements and other documentation. Each entity has adopted Anti-Corruption Guidelines, attached to their legal agreements, which further explain the definitions and provide examples relevant to the private sector operations. IFC discloses the sanctions process to prospective partners through its "mandate letter," which defines the scope and basic terms of IFC's investment.

28. ***Company Risk Profile Database***. In addition to the legal tools outlined above, the Bank has recently developed a number of non-legal tools to help in its anti-corruption efforts. Perhaps the most significant of these tools is the Company Risk Profile Database (CRPD), a database of firms and individuals under investigation by INT. The CRPD assists Bank operational staff in assessing if a company or an individual being considered for a tender award poses a fiduciary risk. The database is not a basis for objecting to a contract recommendation, but a tool to focus further inquiries.[15] Access to the database is provided to IFC and incorporated into its own due diligence processes.

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cover bidders, suppliers, and contractors and their agents (whether declared or not), personnel, subcontractors, sub-consultants, service providers or suppliers.

[11] *See* the Procurement Guidelines Section 1.14 (e), and the Consultant Guidelines 1.22 (e).

[12] IBRD General Conditions for Loans 7.03 (c) (as amended 2006).

[13] Id. at 7.02 (c).

[14] These include IBRD Loan and Project Agreements, and IDA Financing and Project Agreements, as well as Grant Agreements financed by IBRD or IDA administrated Recipient-Executed Trust Funds. The application of the sanctions regime to RETFs was confirmed when the new OP/BP 14.40 was adopted in July 2008.

[15] Staff have had access to the CRPD since June 2009. In November 2009, OPCS issued guidance to operational staff on the use of the database encouraging use of the database prior to issuing no objection letters to Borrowers' recommendations for contract awards, pre-qualifications and short listing of consultants. Usage of the database substantially increased following the issuance of the guidance, from 20 queries a month to over 320 a month by January 2010.

29. ***Preventive Services***. Following the Volcker Panel recommendations, prevention has become a major focus of INT's work. To this end, it has established a Preventive Services Unit (PSU) composed of specialists in operations from across the Bank with expertise in various sectors, including legal and judicial reform, infrastructure, and social sectors. The mandate of the PSU includes a review, analysis and publication of fraud and corruption risks in Bank-supported operations, based on lessons learned from INT's investigative work, allegations trends, and other INT information. The PSU uses this knowledge to provide just in time advice to operational colleagues regarding mitigation of integrity risks in Bank operations at the design and implementation stages. It also translates this knowledge into various preventive tools (including, for example, the Fraud and Corruption Awareness Handbook, and the Red Flags tools brochure) and practical training and capacity-building materials utilized to raise awareness of fraud and corruption risks and appropriate preventive measures with colleagues inside and outside the Bank.

PART III: NEXT STEPS

30. ***Proposed Reforms Requiring Approval of Executive Directors***. While the bulk of the improvements to the sanctions process developed by Management since last year are incremental in nature (see Annex), a few will require the approval of Executive Directors because they alter the system in ways that go beyond the parameters of the 2004 Board Paper. These improvements have therefore not yet been adopted, pending such approval. These changes, described in detail in a separate paper to be submitted to Executive Directors simultaneously with this paper, include:

- ***Publication of Sanctions Board Decisions***. Beginning no later than January 1, 2011, to improve transparency and accountability in the sanctions process, Management proposes that the full text of Sanctions Board decisions be made publicly available.

- ***Publication of EO Determinations***. In line with the transparency provided by the publication of Sanctions Board decisions, Management proposes that EO determinations be published in uncontested cases, where the EO's determination becomes the basis for imposing a sanction.

- ***Corporate/Operational Cross-Debarment***. Management proposes to enhance the effectiveness and consistency of the Bank Group's sanctions regime by referring GSD debarment decisions relating to fraud and corruption in connection with corporate procurement to the operational sanctions process so that firms debarred by GSD could also be sanctioned for operational purposes.

- ***Extension of Sanctions Regime to Carbon Finance Operations***. Management proposes to extend the current sanctions regime to the Bank's carbon finance operations, involving the sale and purchase of emission reductions under Emission Reduction Purchase Agreements ("ERPAs") entered into by the Bank in its capacity as trustee of the various carbon funds administered by the Bank.

31. ***Review of the Sanctions Regime***. There has not yet been a review of the sanctions regime as a whole, since its legal framework was put into place in late 2006. While the regime, in particular the sanctions process, has not been operational for very long, the Audit Committee believes that insights can be gained from undertaking such a review in the coming months, and Management has agreed to undertake such a review, starting once the current round of reforms to the sanctions process has been put into place. The scope and modalities for the Review are under discussions with the Audit Committee.

ANNEX

A BRIEF HISTORY OF THE SANCTIONS REGIME

1. ***The Sanctions Committee***. The Bank's sanctions process was first formulated in a paper presented to Executive Directors in July 1996[16] and implemented in a January 1998 Operational Memorandum.[17] The original process included a Sanctions Committee, composed of senior Bank staff, which reviewed allegations of fraud and corruption by bidders, contractors, suppliers and consultants in IBRD-financed projects and recommended an appropriate sanction to the President of the Bank, who took the final decision on any sanction, usually a debarment but, in cases of minor misconduct, a letter of reprimand.

2. Since then, the Bank has periodically made incremental improvements to the sanctions process to address various 'loopholes' that had been discovered in the system, and to otherwise increase its efficiency and effectiveness.

3. ***Establishment of INT***. The first major step was the establishment of INT in 2001 with a mandate to investigate allegations of fraud and corruption in Bank-financed projects and present its findings to the Sanctions Committee.[18] Prior to INT's establishment, allegations had been investigated by a variety of means, including by outside law firms, IAD auditors, and a Corruption and Fraud Investigations Unit (CFIU). A review by a panel led by former UN Under-Secretary General and US Attorney General, Mr. Dick Thornburgh, in 2000 found that the Bank's anti-corruption efforts would be better served by consolidating the Bank's investigatory responsibility within a single department.[19]

4. ***2004 Reforms***. The Thornburgh panel was again commissioned in 2002 to review the sanctions process, resulting in a major overhaul of the process in 2004 which established the basic two-tiered structure that still operates today.[20] It was at this point that a first tier review by the EO was introduced, to allow for the relatively quick disposition of cases.[21] The EO was also authorized to impose temporary suspensions, which under the procedures later adopted, took place 90 days after the commencement of formal proceedings. The Sanctions Committee was replaced with an autonomous Sanctions Board including a majority of external members, which would take final decisions in sanctions cases, in order to enhance the credibility of the process

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[16] *See* President's Memorandum together with a report entitled "Fraud and Corruption-Proposed Amendments in the Bank's Loan Documents for the Purpose of Making Them More Effective in the Fight Against Fraud and Corruption", President's Memorandum dated July 11, 1996.

[17] *See* "Fraud and Corruption under Bank-Financed Contracts: Procedures for Dealing with Allegations against Bidders, Suppliers, Contractors, or Consultants", Operational Memorandum dated January 5, 1998.

[18] INT was also charged with investigating allegations of misconduct by Bank staff; this function (except with respect to misconduct amounting to significant fraud or corruption) has been transferred to the Office of Ethics and Business Conduct (EBC).

[19] *See* Dick Thornburgh, Ronald L. Gainer, Cuyler H. Walker, "Report Concerning Mechanisms to Address Problems of Fraud and Corruption" (January 21, 2000 (Rev.)).

[20] *See* Dick Thornburgh, Ronald L. Gainer, Cuyler H. Walker, "Report Concerning the Debarment Process of the World Bank" (August 14, 2002 (Rev.)).

[21] *See* President's Memorandum together with a report entitled "Reform of the World Bank's Sanctions Process", dated February 19, 2004.

and help insulate it from political pressures.[22] The 2004 reforms also included the expansion of possible sanctions to include the current range of different sanctions, albeit under guidance later developed by Management, the ‘baseline’ or default sanction was ‘plain vanilla’ debarment. Also in July 2004, the Board approved (in principle) the adoption of a Voluntary Disclosure Program (VDP) to provide incentives for cooperation with Bank investigators.[23]

5. Also in 2004, the Procurement and Consultant Guidelines were amended in 2004 to update the definitions relating to fraud and corruption and to increase the Bank’s access to bid and contract documentation through the so-called ‘third party audit clause’.[24]

6. In the following year, the sanctions process was expanded to include the Bank’s private sector operations in MIGA and IFC, as well as Bank partial risk guarantee operations (see below).[25] Similar procedures were adopted for these entities, with adjustments appropriate to their different business models, in particular separate EOs with more expansive standards of review and the appointment of alternate members of the Sanctions Board to hear cases relating to private sector operations. However, the new sanctions process, for both IBRD/IDA and private sector cases, was only implemented in 2006, in tandem with a number of further reforms to the process.

7. ***2006 Reforms***. Meanwhile, work began to address a significant lingering loophole in the regime. While the early emphasis on Bank financed procurement may have been justified by the particular vulnerability of public procurement to fraud and corruption, experience had shown that fraud and corruption could also occur *outside* procurement, for example, in the case of implementing agencies such as NGOs or financial intermediaries which are identified in the course of project design rather than selected through procurement. At the same time, there was a growing realization that anti-corruption efforts would be far more effective if undertaken in collaboration with the Bank’s partners. As a result, the Bank had begun to work with other multilateral development banks (MDBs) to harmonize approaches to fraud and corruption in projects, culminating with the formation of an IFI Task Force in February 2006, which developed a uniform framework for preventing and combating fraud and corruption, including harmonized definitions for corrupt, fraudulent, collusive and coercive practices.

8. These efforts bore fruit in 2006, when further improvements to the sanctions regime were proposed by Management and approved by Executive Directors, including (1) the expansion of the sanctions regime beyond procurement to cover more generally fraud and corruption that may occur in connection with the use of Bank financing in the preparation and/or implementation of Bank-financed projects through, among other things, the adoption of new IFI Task Force harmonized definitions; and (2) adoption by the Bank of “obstructive practice” as a separate sanctionable offense, covering both non-compliance with the Bank’s third-party audit rights and

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[22] *See id*.
[23] *See* “Reform of the World Bank’s Sanctions Process (Revised)”, President’s Memorandum to the Executive Directors dated June 24, 2004 (R2004-0025/2).
[24] *See* Guidelines: Procurement under IBRD Loans and Credits and Guidelines: Selection and Employment of Consultants by World Bank Borrowers: Proposed Modifications (R2003-0129; ID/R2003-0152).
[25] Supplemental Note (Anti-Fraud and Anti-Corruption Measures in IFC and MIGA Operations) to the President’s Memorandum and report entitled “Reform of the world Bank’s Sanctions Process” (R2004-0025/1).

deliberate obstruction of Bank investigations into fraud and corruption.[26] Also in 2006, the Bank rolled out the detailed programmatic elements of the VDP based on a number of pilots that had been undertaken under the authorization in the 2004 Board Paper.[27]

9. Along with the foregoing changes to the sanctions process, a number of reforms were made to the legal framework for Bank operations as part of the 2006 Reforms. Most importantly, the Bank introduced Anti-Corruption Guidelines which, like the Procurement and Consultant Guidelines, are incorporated by reference into the Bank's legal agreements.[28] The Anti-Corruption Guidelines set out the newly harmonized definitions, as well as a set of undertakings by the Borrower and other recipients of Bank funds aimed at preventing and combating fraud and corruption in connection with the use of such funds. The Guidelines also established the Bank's right to sanction firms and individuals found to have engaged in any fraud and corruption in connection with the use of loan proceeds, not only in connection with procurement. The Procurement and Consultant Guidelines were concurrently amended to include the harmonized definitions[29] and the General Conditions were amended to add additional 'contractual remedies'[30] relating to fraud and corruption, including the right to suspend disbursements in the event that fraud and corruption occurs without timely and appropriate action being taken to address the situation.[31]

10. ***2007 Volcker Recommendations***. More recently, a panel led by former US Federal Reserve Chair, Mr. Paul Volcker, recommended in September 2007, and Management adopted in January 2008, a number of measures to strengthen INT and the Bank's approach to anti-corruption more generally. Among these were the proposals that INT be upgraded to a Vice Presidency, which was implemented in 2008. The Volcker panel also recommended that the Chair of the Sanctions Board (and of any panel thereof) should be one of its external members, in order to enhance the effectiveness and perceived independence of the sanctions process.[32] A separate note

[26] *See* "Sanctions Reform: Expansion of Sanctions Regime Beyond Procurement and Sanctioning of Obstructive Practices", President's Memorandum to the Executive Directors dated June 12, 2006. Concurrently, amended Sanctions Procedures were adopted, reflecting both the 2004 and 2006 rounds of sanctions reform.

[27] The programmatic elements proposed in 2006 differed in some respects from the original concept as envisaged in 2004. Most notably, rather than providing for a lesser sanction for VDP participants, the programmatic elements included an undertaking by the Bank to forebear from sanctioning the participant entirely, in exchange for its disclosure of misconduct and adoption of an integrity compliance program.

[28] These include IBRD Loan and Project Agreements, and IDA Financing and Project Agreements, as well as Grant Agreements financed by IBRD or IDA administrated Recipient-Executed Trust Funds. The application of the sanctions regime to RETFs was confirmed when the new OP/BP 14.40 was adopted in July 2008.

[29] Those definitions, found in Section 1.14 of the Procurement Guidelines and Section 1.22 of the Consultant Guidelines, include a number of clarifying footnotes that relate those definitions to the procurement/selection context.

[30] In this context, the term 'contractual remedies' refers to the rights of the Bank to take remedial action under its loan and other legal agreements, including the right to suspend or cancel future disbursements, the right to demand a refund of outstanding disbursements, and the right to accelerate the maturity of the loan.

[31] *See* General Conditions for Loans 7.02(c).

[32] *See* "Independent Panel Review of the World Bank Group Department of Institutional Integrity", September 13, 2007, prepared by an independent panel headed by Paul A. Volcker (commonly known as the "Volcker Report"), paragraphs 81 et seq. The same proposal had been made by Thornburgh in 2002 but, for various reasons, not adopted by the Bank at the time.

implementing that change was circulated to the Executive Directors and approved by them on an absence of objection basis.[33]

11. ***2009-2010 Reforms***. Although, as described above, the current sanctions process was authorized by Executive Directors in 2004 and its legal framework finalized in 2006, the process only began operations in earnest in the spring of 2007.[34] As the various actors in the system—in particular OES and INT, as well as LEG, which advises both offices—gained experience with the new process, it quickly became obvious that much still remained to be worked out. The procedures proved to contain a number of ambiguities on some key points and the internal guidance materials soon proved too generic to be truly useful, particularly in determining appropriate sanctions and in dealing with corporate groups and changes in corporate form.

12. At the same time, experience had also shown that there were inefficiencies and lingering vulnerabilities that undermined the effectiveness of the system, both at the 'front end' (e.g. firms under investigation remain eligible to bid for Bank financed contracts) and at the 'back end' (e.g., sanctioned firms were normally released from debarment without any demonstration of rehabilitation). The drive for greater efficiency also led the Bank to consider and then pilot negotiated resolutions to sanctions cases (aka settlements) in lieu of full-blown sanctions proceedings. Finally, momentum was building for greater transparency and accountability in the system, which led to calls for publication of Sanctions Board decisions and, later, to calls for publication of EO determinations as well.

13. ***Reforms Implemented in 2009: Early Temporary Suspension***. The first reform proposal, discussed with the Audit Committee in April 2009[35] and adopted by Management in May 2009, allows INT, in exceptional cases, to request that the EO impose a temporary suspension on the subject of an INT investigation prior to the commencement of formal sanctions proceedings, if INT believes it has sufficient evidence that the subject has engaged in at least one sanctionable practice.

14. The Bank Group faced fiduciary and reputational risks when it had credible evidence that a firm or individual had engaged in fraud and corruption and the firm or individual remained eligible to bid on Bank Group-financed projects up until the time it is formally sanctioned by the Bank Group. Before adoption of ETS, those risks had been partially addressed by the introduction of temporary suspension in the Sanctions Procedures as part of the 2004 reforms, but temporary suspension occurred only after formal proceedings commenced, leaving a 'window' of vulnerability between the time that evidence was uncovered and the time that a suspension could be imposed—a period that could be considerable, up to many months or over a year, since INT still needed to complete its investigation (often including inquiries into related allegations) and subsequently prepare a proposed Notice of Sanctions Proceedings for submission to the relevant EO. Given the open eligibility for IBRD/IDA-financed procurement, in particular, the Bank

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[33] *See* "Appointment of an External Sanctions Board Chair" dated February 5, 2009 (R2009-0017).

[34] The initial Sanctions Board members and the Evaluation and Suspension Officers were appointed in or around March 2007. The first proposed Notice of Sanctions Proceedings was submitted by INT to the EO in June 2007; the first Notice was issued by the EO in December 2007; and the first sanction imposed by the Sanctions Board in June 2008.

[35] *See* "Sanctions Reform: Proposal for Early Temporary Suspension" dated April 15, 2009 (AC2009-0120).

needed a formal mechanism to remove such firms and individuals from eligibility during this 'window' of vulnerability. In the absence of this mechanism, task teams were faced with severe challenges in finding ways to mitigate the risks that the Bank faces, leading at times to delays in processing projects.

15. ***Application of the Sanctions Regime to Partial Credit Risk Guarantees (PCG)***. Although the most frequently utilized Bank Group guarantee instrument is the partial risk guarantee, the Bank Group also offers PCGs.[36] There are specific sanctions regimes applicable in respect of Bank Group loans and the Bank Group's partial risk guarantees, but neither of those sanctions regimes had been expressed to apply in the context of PCGs. The Bank therefore extended the scope of application of the sanctions regime to PCGs in October 2009.[37]

16. ***Further Reforms Implemented in 2010***. A number of further improvements and refinements to the sanctions process were discussed with the Audit Committee in April and July 2009, and again in May 2010, and then adopted by Management, effective as of September 15, 2010. These included adoption of debarment with conditional release as the 'baseline' sanction, enhanced internal guidance on dealing with corporate groups and restructurings, updated sanctioning guidelines, introduction of a formal mechanism for the negotiated resolution of sanctions cases (aka settlements), a mechanism for the removal of Sanctions Board members and a new Code of Conduct, and a series of 'tweaks' to the procedures to remove various ambiguities, inefficiencies and vulnerabilities. Also in 2010, the Bank concluded a major agreement with other MDBs on 'cross-debarment'.

17. ***Debarment with Conditional Release as the 'Baseline' Sanction***. As mentioned above, the 2004 reforms introduced a range of sanctions besides 'plain vanilla' debarment, including debarment with release conditioned on the fulfillment of certain conditions, notably improvements in corporate governance. The 2004 Board Paper proposed that respondents subject to this sanction "would be declared ineligible for a stated period of time, but would *only* become eligible again after the period if it had complied with the conditions of release."[38]

18. Under the Sanctioning Guidelines adopted by Management in 2006, the 'baseline' sanction to be imposed for any sanctionable practice was debarment for a stated period of time.[39] Under this sanction, the Bank Group has no discretion as to whether sanctioned firms may become eligible again for Bank Group-financed contracts once they 'serve their time', and often no way of determining whether they have actually been rehabilitated or will simply continue to engage in

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[36] In a PCG, the Bank Group covers debt service defaults on a specified portion of a loan made by private investors /foreign creditors either for a public sector investment project or for a program associated with the implementation of structural and social reforms. The PCG is triggered by non-payment, rather than by a specified risk. The key objective of offering PCGs is to improve the member country's or the relevant public sector entity's access to international financial markets (i.e. the extension of term or maturity of the commercial loan).

[37] *See* "Sanctions Reform: Proposal to Extend the Current Sanctions Regime to Partial Credit Guarantees", R2009-0246; IDA/R2009-0262, October 5, 2009.

[38] *See* the 2004 Board paper, paragraph [35].

[39] *See* World Bank Sanctioning Guidelines (2006), pages 2-3. The 'baseline' sanction means that the 'default' sanction that would ordinarily be imposed on a Respondent found to have engaged in a Sanctionable Practice in the absence of mitigating or aggravating circumstances. However, the Guidelines are not binding rules and the EO and Sanctions Board retain the discretion to determine the appropriate sanction in each case.

fraud and corruption. At the same time, debarment with conditional release had been modified so that fulfillment of the conditions was optional for the debarred party, leading to a reduction in the initial debarment period rather than being a *sine qua non* for release. This left the Bank Group and Borrowers alike with considerable residual fiduciary and reputational risk. This state of affairs led Bank Group staff to examine ways to increase the effectiveness of the sanctions process in achieving its primary purpose—safeguarding Bank Group funds—by devising a mechanism to provide the Bank Group with better assurance of rehabilitation before firms are let back into the system.

19. After discussions with the Audit Committee in July 2009 and again in May 2010, Management adopted debarment with conditional release, rather than 'plain vanilla' debarment, as the baseline sanction for sanctions. And debarment with conditional release was revised to reflect the original 2002 Thornburgh recommendation and the 2004 Board Paper, whereby the debarred party would be required to meet certain conditions before it would be released, after a certain minimum period of time. The purpose of this change in the baseline sanction is not to debar companies for a longer period of time or indefinitely, but to place greater emphasis on rehabilitation, encouraging sanctioned firms to adopt adequate, effective policies and measures that make it less likely that they will engage in such misconduct again.

20. Between its first discussion with the Audit Committee in April 2009 and further discussion in May 2010, Management developed detailed guidance on the principal conditions for release, which focus on the debarred party demonstrating that it has in place, and has implemented for an adequate period, an integrity compliance program satisfactory to the World Bank Group. Bank Group staff engaged in extensive consultations with both public and private sector stakeholders, and extensively studied international best practice models including the recently adopted OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance, in developing integrity compliance guidelines for the World Bank Group against which its compliance programs would be evaluated.

21. ***Enhanced Guidance on Corporate Groups***. Also in 2010, Management adopted enhanced guidance in two key areas: more detailed guidance on dealing with corporate groups and restructurings, and more granular—but still flexible—sanctioning guidelines. The Sanctions Procedures had included the ability to sanction certain affiliates of the Respondent (i.e., those controlling and those controlled by the Respondent) since 2001. This ability helps guard against circumvention of Bank Group sanctions through the use of affiliates or changes in corporate forms. Some guidance had been developed at the time with criteria for applying sanctions to affiliates as well as to successors and assigns, but the guidance was relatively 'thin', leading to uncertainty when issues had arisen, for example in a case involving the appropriate application of sanctions after a complex corporate restructuring.

22. ***Updated Sanctioning Guidelines***. The update of the Sanctioning Guidelines had the three main objectives of providing: (1) greater predictability for both the decision makers and the potential parties to sanctions proceedings; (2) greater clarity about the basis of sanctions decisions to MDBs and other institutions participating in mutual recognition of sanctions (a.k.a. 'cross-debarment') with the Bank Group (see below); and (3) guidance and flexibility to INT in negotiating agreed resolutions of sanctions cases. As a secondary objective, these Guidelines

may also serve as a benchmark for further harmonization of sanctions policies and practices with other MDBs. The updated Sanctioning Guidelines, unlike the previous version, are made public to further these objectives.

23. ***Settlements***. The current formal mechanism for the negotiated resolution of sanctions cases was also introduced in 2010. Negotiated resolutions such as plea bargaining or settlement agreements are a near universal feature of civil, administrative and criminal procedure across legal systems as a useful means to enhance efficiency by resolving disputes using less time and fewer resources while providing certainty of outcome for the parties, but were missing as a formal part of the Bank Group sanctions process. Prior to this amendment, the Bank had already resolved two major sanctions cases through negotiation with actual or potential Respondents, but settlements will be more efficient and add more value now that they will operate within a clear, formalized framework.

24. ***New Code of Conduct and Removal of Sanction Board members***. The Sanctions Board Statute was amended to fill a rather obvious 'loophole' by introducing a mechanism for the removal of Sanctions Board members in the case where they may have become incapacitated, violated their duties under the Conflict of Interest Guidelines or otherwise engaged in serious misconduct that negatively affects their ability to serve, the credibility of the sanctions process or the reputation of the Bank. At the same time, the ability to remove Sanctions Board members was carefully delimited and properly checked and balanced, to avoid undermining the independence of the Board, or at least the appearance thereof.

25. ***Other Reforms.*** The 2009-2010 reforms also corrected a number of ambiguities, inefficiencies and vulnerabilities in the process through relatively minor 'tweaks' to the Sanctions Procedures and related practices. These included (i) the adoption of several new practices to strengthen the confidentiality of sanctions proceedings, including the limited redaction of certain types of information from pleadings and evidence, *in camera* review of certain evidence, and an explicit obligation for the parties to keep proceedings confidential; (ii) elimination of voluntary restraint in lieu of listing temporarily suspended Respondents on Client Connection; (iii) making temporary suspension automatic, applicable across the Bank Group upon issuance of a Notice of Sanction Proceedings by the relevant EO, (iv) formal rules on delivery (including so-called 'constructive delivery' in cases where Respondents cannot be located after reasonable attempts to do so); (v) allowing the EO to modify his/her recommended sanction in light of an Explanation from the Respondent; (vi) eliminating the 'rubber stamp' of EO recommendations by the Sanctions Board in cases where the Respondent does not contest; and, finally, (vii) various 'quick fixes' to clarify some ambiguities in the drafting of the procedures.[40]

26. ***MDB Cross-Debarment***. In April 2010, the Bank Group and four other major MDBs signed an agreement on the mutual enforcement of debarment decisions.[41] This agreement provided that each MDB would inform each other of their debarments of over one year and, subject to an exceptional 'opt out' for legal or policy considerations, would enforce each other's debarments. The agreement dramatically increased the effectiveness of each MDB's debarments by multiplying their effect on debarred parties. To date, the Bank and two other MDBs have

[40] *See Sanctions Reform Proposals for Improving the Sanctions Process* (July 17, 2009), AC2009-0075.
[41] *See* "Minutes of meeting of the Executive Directors" dated April 8, 2010 (M2010-16).

indicated that they have taken the necessary steps to make the agreement effective to their operations.