

**THE WORLD BANK GROUP'S SANCTIONS REGIME:
INFORMATION NOTE**

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This Note is intended for informational purposes only. It is not a full treatment of its subject and does not create any legal rights, remedies or obligations. It is not meant to supersede or modify the World Bank Sanctions Procedures, the Statute of the World Bank Group Sanctions Board or the Sanctioning Guidelines.

The World Bank Group reserves the right to amend this Note at any time, including to reflect changes in its legal and policy framework for sanctions or in the interpretation thereof.

INTRODUCTION

The World Bank Group (the ‘Bank Group’)¹ has identified corruption as among the greatest obstacles to economic and social development. Corruption undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.

Furthermore, the Articles of Agreement for IBRD and IDA (the ‘Bank’) require the institutions 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.² 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.

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.

THE SANCTIONS PROCESS

The Bank Group maintains a formal process for sanctioning firms and individuals that 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 process before any decision is made as to whether the Respondent will be sanctioned and, if so, which sanction is appropriate. Bank Group Management has developed and issued detailed Sanctions Procedures³ that govern the sanctions process.

¹ The Bank Group is comprised of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for the Settlement of Investment Disputes (ICSID). IBRD together with IDA hereinafter referred to as the ‘Bank’.

² *IBRD Articles of Agreement*, Art. III, Section 5(b); and *IDA Articles of Agreement*, Art. V, Section 1(g). See FURTHER REFERENCES, below.

³ See FURTHER REFERENCES, below.

Sanctionable Practices

The Bank Group has agreed with other multilateral development banks (MDBs)⁴ that certain defined forms of fraud and corruption should be sanctionable and has agreed on harmonized definitions of such sanctionable practices. These harmonized sanctionable practices include corrupt practice, fraudulent practice, collusive practice and coercive practice. In addition, the Bank Group also may sanction a firm or individual for having engaged in an ‘obstructive practice’ in connection with an investigation by the Bank Group’s Integrity Vice Presidency (INT) or the exercise of the Bank’s inspection and audit rights. Collectively, these practices are referred to as ‘sanctionable practices’.⁵

Investigation and Preparation of a Statement of Accusations and Evidence

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, INT will submit a Statement of Accusations and Evidence to the relevant Evaluation and Suspension Officer (EO).⁶

Early Temporary Suspension

The Bank Group has a special mechanism for suspending firms and individuals from eligibility during the investigation phase. The relevant EO, upon request by INT, 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.

⁴ The four other major MDBs with whom the Bank has agreed on a cross debarment policy are the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank Group. See Sanctions Proceedings, FURTHER REFERENCES, below.

⁵ These definitions may be found in the *Sanctions Procedures* (in Annex A), the *Anti-Corruption Guidelines*, the *Procurement Guidelines*, and the *Consultant Guidelines*. See FURTHER REFERENCES, below.

⁶ The Bank Group has separate EOs for cases involving IBRD/IDA, IFC, MIGA and IBRD/IDA Guarantee operations. See Sanctions Proceedings, FURTHER REFERENCES, below.

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 relevant 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 (Notice) to the Respondent, appending the Statement of Accusations and Evidence, recommending an appropriate sanction, and, if applicable, temporarily suspending the Respondent from eligibility to be awarded for Bank Group-financed contracts. 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 is then imposed on the Respondent.
- In cases where the Respondent wishes to contest the EO's final determination, the Respondent 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.⁷ This phase of the proceedings may include hearings if either the Respondent or INT requests them.

The name(s) of those sanctioned, as well as any imposed sanction(s) are made public. The World Bank Listing of Debarred Firms & Individuals is publicly available on the Bank Group's website.⁸ In addition, as of 2011, the decisions of the Sanctions Board, as well as those of the EO in uncontested cases, are posted on the Bank's website.⁹ The holdings of the Sanctions Board are also to be published in the form of a law digest available on the Bank's external website.

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

⁷ See Statute of the World Bank Group Sanctions Board, FURTHER REFERENCES, below.

⁸ See List of Sanctioned Parties, FURTHER REFERENCES, below.

⁹ See Jurisprudence, FURTHER REFERENCES, below.

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.

Range of Sanctions

The EO, or, if a case is contested, the Sanctions Board, decides on the appropriate sanction(s) to be imposed in a particular case. Their decisions are discretionary and may be guided by, among other things, the non-prescriptive Sanctioning Guidelines.¹⁰ These Guidelines are intended to provide predictability and consistency while ensuring that both the EO and the Sanctions Board retain the ability to reflect the unique circumstances of each particular case in their decisions.

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

- *Debarment with Conditional Release.* The ‘baseline’ or default sanction¹¹ 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 (3) years, after which the sanctioned party may be released from debarment if it has complied with certain defined conditions. The conditions typically include the sanctioned party putting in place, and implementing for an adequate period, an integrity compliance program satisfactory to the Bank Group. Sanctioned parties must apply for release and must provide evidence that they have met the conditions for release. The Bank Group’s Integrity Compliance Officer (ICO) makes the initial determination as to whether the conditions for release have been met. If the decision is negative, the sanctioned party has the right to appeal the decision to the Sanctions Board, based, however, on the limited grounds of ‘abuse of discretion’ (see page 28 below).
- *Debarment for a Fixed Term.* In cases where no appreciable purpose would be served by imposing conditions for release, sanctioned parties may be debarred for a

¹⁰ See FURTHER REFERENCES, below.

¹¹ The term ‘baseline’ sanction means the sanction that normally would be imposed for a sanctionable practice before giving effect to any aggravating or mitigating factors in a specific case.

specified period of time, after which they are automatically released from debarment. This may occur, for example, in cases where a sanctioned firm already has 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 where there is no realistic prospect that the Respondent can be rehabilitated, it may be sanctioned permanently.

- *Conditional Non-Debarment.* Under this sanction, the sanctioned party is not debarred provided that the sanctioned party complies with certain defined conditions within a set time frame. Determinations as to whether a sanctioned party has met the established conditions are made by the ICO; he/she applies the same procedure as when reviewing whether a sanctioned party has met the conditions for release from debarment. If the conditions of conditional non-debarment are not met, the sanctioned party is debarred for a defined period of time. Conditional non-debarment may be applied, for example, in cases where the Respondent already has taken comprehensive voluntary corrective measures and the circumstances otherwise indicate that it need not be debarred. Conditional non-debarment also may be applied to parents and other affiliates of Respondents in cases where the parent or affiliates were not engaged in misconduct, but where 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, and in other appropriate cases, a letter of reprimand is issued to the sanctioned party. A letter of reprimand may be issued, for example, in 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.* Under this sanction, the sanctioned party is required to make restitution to the borrower of Bank Group funds, the Bank Group or another party sufficient to, at a minimum, disgorge illicit profits, remedy harm done to the borrower of Bank Group funds or others, or to the public good, or to undertake other remedial measures.

The Sanctions Procedures include a non-exhaustive set of aggravating and mitigating factors to be considered when determining an appropriate sanction. The Sanctioning Guidelines include detailed treatment of these factors, with indicative ranges for increases (in the case of aggravating factors) and reductions (in the case of mitigating factors) in the debarment period. Except when permanent debarment is imposed, parties debarred for a minimum period in excess of ten (10) years may petition for a reduction of the minimum period of debarment after ten (10) years have elapsed.

Sanctions Board Statute

The functioning of the Sanctions Board is 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 for Sanctions Board members. The external members of the Sanctions Board (which include its Chair) are appointed by the Executive Directors of the Bank Group, 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.

Settlements

In appropriate circumstances, sanctions also may be imposed on a Respondent through a negotiated resolution of the case. Under this mechanism, sanctions cases may be resolved by negotiations between INT and a Respondent 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.

Settlements are subject to a number of procedural and substantive safeguards to ensure fairness, transparency and credibility, including established 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 the agreed sanction, if any, is broadly consistent with the World Bank Sanctioning Guidelines (Sanctioning Guidelines). The settlement is then reflected in a sanction imposed by the relevant EO.

Corporate Groups

The Sanctions Procedures provide that affiliates of Respondent(s) may be sanctioned, and that sanctions may be applied to the successors and assigns of sanctioned parties. Flexible principles help guide the application of sanctions to affiliates of the Respondent(s) and successors and assigns (see page 20 below). The Sanctions Procedures afford parent and/or other affiliated 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.

MDB Cross-Debarment

The Bank Group also imposes sanctions based on a debarment decided by another MDB. Under an *Agreement for Mutual Enforcement of Debarment Decisions* signed in April 2010, each participating MDB informs the other participating MDBs of its debarments of over one year, and, subject to an ‘opt out’ provision, the other participating MDBs enforce each of those debarments. Such ‘cross-debarments’ by the Bank Group of other MDBs’ debarments are not subject to the sanctions process, but are implemented by the Bank Group as a matter of course. Decisions by the Bank Group to opt out of a specific debarment decision are taken by Bank Group Management, based solely on legal or policy considerations, and are expected to be highly exceptional.

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 Group. VDP participants are required, among other things, to institute a robust, monitored compliance program to prevent future misconduct. In exchange, the Bank Group 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 (10)-year mandatory debarment.¹²

Corporate Procurement

Bank Group corporate procurement (i.e., procurement undertaken by the Bank Group of goods and services destined for its own use) is conducted by the General Services Department (GSD). GSD's *World Bank Vendor Eligibility Policy* prescribes standards and procedures for determining whether a vendor is 'non-responsible,' a debarment determination that is made by the Director of GSD. A vendor that is found to be non-responsible is, indefinitely or for a specified period of time: (i) ineligible to receive Bank Group contract awards or to bid on Bank Group solicitations; (ii) excluded from conducting business with the Bank Group as agents or representatives of other vendors; and (iii) precluded from having discussions with the Bank Group concerning the awarding of contracts. The Director of GSD also 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 of GSD 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 are identical to the definitions of fraud and corruption under the Bank Group's Sanctions Regime, and GSD's sanctions guidelines are similarly aligned with those of the EO and the Sanctions Board. A non-responsibility determination extends to all affiliates of the vendor,

¹² *Voluntary Disclosure Program*: see FURTHER REFERENCES, below.

unless the non-responsibility decision provides otherwise. Firms and individuals debarred by the EO or the Sanctions Board are also 'cross-debarred' by GSD. Similarly, GSD debarments are 'cross-debarred' to Bank operations through a referral mechanism set out in the Sanctions Procedures.

OPERATIONAL ASPECTS

The Bank Group 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 Group financing.

Procurement Guidelines and Consultant Guidelines

In IBRD and IDA investment lending and other operations, the Procurement Guidelines and Consultant Guidelines establish as Bank policy the requirement that Bank borrowers and loan beneficiaries, as well as bidders, suppliers, contractors, and consultants, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, maintain the 'highest standards of ethics'. To this end, the Procurement Guidelines and Consultant Guidelines 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. The Procurement Guidelines and Consultant Guidelines also allow the Bank to have access to bid and contract documentation through the so-called 'third party audit clause'.¹³ The Procurement Guidelines and Consultant Guidelines are incorporated by reference into the Bank's legal agreements.¹⁴

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 such contract was tainted by corruption and to suspend disbursements, in whole or in part, in the event that fraud and corruption occurs without timely and appropriate action being taken by the recipient of Bank funds to address the situation.

¹³ *Procurement Guidelines*, Section 1.16 (e); and *Consultant Guidelines*, Section 1.23 (e). See FURTHER REFERENCES, below.

¹⁴ These include *IBRD Loan and Project Agreements*, and *IDA Financing and Project Agreements*, as well as *Grant Agreements* financed by IBRD or IDA-administered *Recipient-Executed Trust Funds*.

Anti-Corruption Guidelines

The Anti-Corruption Guidelines, like the Procurement and Consultant Guidelines, are incorporated by reference into the Bank's legal agreements. The Anti-Corruption Guidelines set out the harmonized definitions of sanctionable practices, as well as obstructive practice. In addition, the Anti-Corruption Guidelines provide for a set of undertakings by recipients of Bank funds aimed at preventing and combating fraud and corruption in connection with the use of such funds. The Anti-Corruption Guidelines also independently state 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 generally, not only in connection with procurement.

Private Sector Operations

IFC, MIGA and Partial Risk Guarantee (PRG) operations form an integral part of the 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 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, which are attached to each entity's respective legal agreements and which further explain the definitions and provide examples relevant to the Bank Group's 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.

FREQUENTLY ASKED QUESTIONS

APPLICABLE LAW

What is the legal basis for the World Bank sanctions regime?

The underlying legal basis for the sanctions regime is the ‘fiduciary duty’ to protect the use of Bank financing, set out in its Articles of Agreement.¹⁵ This provision not only provides the legal basis for the regime but it also delimits its scope. Thus, the Bank has not asserted the authority to debar parties based on the misuse of project co-financing, nor has it debarred for wrongdoing that may be illegal or immoral (such as tax evasion) that does not impinge on the use of Bank loans, credits or grants.

What is the operational legal framework for sanctions cases?

The main source of law is the legal framework for the Bank financing in connection with which the alleged Sanctionable Practice took place. This is because it is the legal framework that (i) establishes the Bank’s authority to sanction firms and (ii) contains the relevant definitions of Sanctionable Practice by which the allegations that are the subject of sanctions proceedings should be judged.

What conduct is sanctionable?

The Bank Group has agreed with other multilateral development banks (MDBs) on harmonized definitions of sanctionable practices.¹⁶ These practices are 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 or the exercise of the Bank’s inspection and audit rights. Collectively, these practices are referred to as ‘sanctionable practices’.¹⁷

¹⁵ *IBRD Articles of Agreement*, Art. III, Section 5(b); *IDA Articles of Agreement*, Art. V, Section 1(g).

¹⁶ International Financial Institutions Anti-Corruption Task Force, *Uniform Framework for Preventing and Combating Fraud And Corruption* (September 2006). See FURTHER REFERENCES, below.

¹⁷ These definitions may be found in the *Sanctions Procedures* (in Annex A), the *Anti-Corruption Guidelines*, the *Procurement Guidelines*, and the *Consultant Guidelines*. See FURTHER REFERENCES, below.

What role is played by ‘general principles of law’?

In cases where the written law does not provide a clear answer, the sanctions regime recognizes general principles as a source of law. The application of general principles of law is subject to certain considerations, including: *First*, the policy implications of any ‘importation’ of legal theories and the likely impact on the Bank Group’s overall legal framework are carefully considered. *Second*, due weight is given to the need for legal certainty, recalling that the definitions of fraud and corruption are embedded in legal agreements and harmonized with other MDBs. *Third*, fundamental fairness requires that any legal theories flow logically from a reasonable understanding of the intended meaning and scope of the definitions, as evidenced by the text of the definitions themselves or from their legislative history.

As is the case in other judicial or quasi-judicial proceedings, in cases where no source of law provides an answer to a legal question, the EO or the Sanctions Board may, on an exceptional basis, decide a matter according to their best faith judgment of the demands of fundamental fairness.

Is national law binding on the Bank?

National law is not binding on the Bank, and it cannot be used to supersede the Bank’s own legal framework. However, national law can provide a useful point of reference, both to establish the existence of a general principle of law as described above, or simply as a possible approach to a difficult legal issue for which the Bank’s own framework provides no clear answer. However, in order to avoid any suggestion of a retroactive application of norms, caution is exercised in applying national law concepts to sanctions cases. National law concepts are more likely to be reference points for the prospective amendment of the Bank’s legal framework, and, in fact, many aspects of the Bank’s sanctions process have been grounded in a survey of national legal systems.

JURISDICTION

What is the basis for the World Bank’s ‘jurisdiction’ in sanctions cases?

While neither the Sanctions Board Statute nor the Sanctions Procedures have extensive formal rules on jurisdiction, in the broad sense of ‘power’ or ‘legal right’, the Bank’s

jurisdiction to sanction is grounded in the ‘fiduciary duty’ in its Articles of Agreement (see above), and therefore extends, in principle, to any subject matter and to any legal person that is reasonably necessary to protect the Bank’s funds. However, the Bank has established more limited parameters for its sanctions process which are explained in more detail below.

What types of cases are subject to sanctions proceedings?

The subject matter of sanctions cases is stipulated by the World Bank Sanctions Procedures. Article III of the Statute of the Sanctions Board provides as follows:

The Sanctions Board shall review and take decisions in sanctions cases and perform such other detailed functions and responsibilities as set forth in the Sanctions Procedures.

Similarly, the EO has the authority to carry out the duties ascribed to him or her, as set forth in the Sanctions Procedures. Section 1.01(c) of the Sanctions Procedures, in turn, provides that the Procedures cover cases:

- (i) in connection with Bank financed¹⁸ or Bank executed projects and programs governed by the Bank’s Procurement Guidelines, Consultant Guidelines or Anti-Corruption Guidelines (such projects being hereinafter referred to, collectively, as “Bank Projects”);
- (ii) on the basis of which the Director, General Service Department (GSD) has determined, in accordance with the World Bank Vendor Eligibility Policy, that the Respondent is non-responsible;
- (iii) arising from the violation of a Material Term of the Terms & Conditions of the VDP; and
- (iv) arising from violations of Section 13.06 of these Procedures.

¹⁸ Bank financed projects and programs include those financed by trust funds administered by the Bank.

What individuals and entities are subject to sanction?

To answer the question of what individuals and entities are subject to sanction, it is necessary to refer to the particular Guidelines under which the case in question is being brought. There are three different options:

1. *Procurement Guidelines*. Section 1.16 of the current (January 2011) version of the Procurement Guidelines provides that:

It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), subcontractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.

In this context, any action to influence the procurement process or contract execution for undue advantage is improper.¹⁹ The Guidelines go on to state that, in furtherance of this policy, the Bank:

will sanction a firm or individual, at any time, in accordance with prevailing Bank's sanctions procedures, including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated sub-contractor, consultant, supplier or service provider of an otherwise eligible firm being awarded a Bank-financed contract[.]

A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document)

¹⁹ *Procurement Guidelines*, page 11, note 18. See FURTHER REFERENCES, below.

is one which either has been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and/or know-how that allow the bidder to meet the qualification requirements for the particular bid, or (ii) appointed by the Borrower.

It is clear from this expansive formulation that the jurisdiction of the Bank's sanctions regime essentially includes any and all actors involved in Bank financed procurement, other than the Borrower itself.

A firm or an individual may be declared ineligible to be awarded a Bank-financed contract (i) upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including *inter alia* cross-debarment as agreed with other International Financial Institutions, including MDBs, and through the application of the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption, and/or (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding.

2. *Consultant Guidelines.* The relevant provisions of the Consultant Guidelines parallel those of the Procurement Guidelines, and the jurisdictional analysis of cases brought under the Consultant Guidelines run along the same lines. Under the current version of these Guidelines, jurisdiction extends to consultants, and their agents (whether declared or not), personnel, sub-contractors, sub-consultants, service providers or suppliers, under Bank-financed contracts.
3. *Anti-Corruption Guidelines.* The Anti-Corruption Guidelines, which were first adopted in October 2006, provide a separate and broad-based jurisdictional basis for sanctions cases. These Guidelines provide that the Bank may sanction

any recipient of loan proceeds (other than a Member Country) and, if the recipient is an entity rather than a natural person, any of its representatives.

The term 'recipient of loan proceeds' is defined in the Guidelines very broadly:

all [...] persons or entities which either receive Loan proceeds for their own use (e.g., "end users"), persons or entities such as fiscal agents which are responsible for the deposit or transfer of Loan proceeds (whether or not they are beneficiaries of such proceeds), and persons or entities which take or influence decisions regarding the use of Loan proceeds. All such persons and entities are referred to in these Guidelines as 'recipients of Loan proceeds', whether or not they are in physical possession of such proceeds.

For purposes of sanctions, the Guidelines also provide that recipients of loan proceeds also include persons and entities which commit a sanctionable practice in the course of applying to become recipients of loan proceeds, irrespective of whether they are successful in their application.

Are governments and government officials subject to sanction?

The Anti-Corruption Guidelines specifically exclude from the Bank's ability to sanction Member Countries, which includes government officials (at any level) and state-owned enterprises if they would be ineligible to bid under the Bank's Procurement or Consultant Guidelines. Although this exclusion is not explicitly stipulated in either the Procurement or Consultant Guidelines, it nevertheless has been the Bank's long-standing policy not to sanction governments or government officials. The rationale for this policy lies in the cooperative structure of the Bank, respect for the sovereignty of its Member and the fact that alternative means are available to address these cases, in particular the Borrower's obligation to take timely and appropriate action and the Bank's ability to exercise contractual remedies in the event that the Borrower fails to do so.

It should be noted, however, that the exemption that the Bank affords to government officials is functional in nature. To the extent that a government official

engages in a Sanctionable Practice in his or her private capacity, the exemption does not apply and the official is subject to sanction.

Is the Respondent's consent necessary to establish jurisdiction?

Like subject matter jurisdiction, the equivalent of *in personam* jurisdiction for the Bank's sanctions process is established through the application of any of the Procurement, Consultant or Anti-Corruption Guidelines to the *project* where the Sanctionable Practice allegedly took place. This jurisdiction does not depend on, and is not affected by, the provisions of any subsidiary agreement between the Borrower and the Respondent or other third parties or, for that matter, the lack of any such agreement.

CORPORATE GROUPS AND INDIVIDUALS

Can 'related' firms and individuals be sanctioned?

Individuals and firms may be sanctioned as Respondents only if they are found to be culpable, that is, where they have been directly involved in the sanctionable practice. However, affiliates that control Respondents may also be sanctioned because they have a degree of responsibility for the sanctionable practice, for example, due to a failure to supervise or to maintain adequate controls or an ethical culture within the corporate group. Responsibility does not normally lead to debarment, but rather to conditional non-debarment, or to a letter of reprimand in cases involving an isolated incident of a failure to supervise, although egregious forms of responsibility (including 'wilful blindness' to sanctionable practices) may lead to sanctions of a severity comparable to those imposed for culpability. Affiliates controlled by sanctioned parties are also normally subject to sanction.

The choice and level of sanctions applied to affiliates, however, are ultimately decided by the EO or the Sanctions Board, in their discretion, on the merits of each case, to ensure that the sanction is commensurate with the degree of culpability or responsibility of those sanctioned and to prevent evasion of the sanctions.

What factors are considered in deciding whether sanctions will be applied to corporate groups?

The following general principles are applied in deciding whether and how a sanction may be applied to a corporate group:

- Sanctions are applied to entities within corporate groups on the basis of informed decision and judgment based on the facts of the case and the interests of the Bank, not a rigidly automatic approach.
- Sanctions are applied flexibly to avoid evasion.
- A sanctioned party is a person with demonstrable culpability or responsibility for the misconduct.²⁰
- Sanctions are proportionate to the offense.

These principles are applied using four rebuttable presumptions when considering the application of sanctions to corporate groups:

- When the Respondent is an entity, sanctions are applied to the entire entity unless the Respondent demonstrates that only an identifiable division or business unit is responsible and application to the entire entity is not reasonably necessary to prevent evasion.
- Sanctions are applied to all entities controlled by the Respondent (i.e., subsidiaries), unless the Respondent demonstrates that the entities are free of responsibility for the misconduct, and that application to the entities would be disproportional and is not reasonably necessary to prevent evasion.
- Sanctions are applied to entities controlling the Respondent and to entities under common control only if a degree of involvement in sanctioned misconduct has been shown, or if such application is reasonably necessary to prevent evasion.
- Sanctions are applied to successors and assigns unless the successor or assign demonstrates that such application would violate the above-mentioned principles underlying the application of sanctions to corporate groups.

²⁰ Affiliates, however, may also be sanctioned in order to avoid evasion of the sanctions, for example in the case of entities controlled by a sanctioned party.

What is an 'affiliate'?

An entity is an 'affiliate' of another entity if: (i) either entity controls or has the power to control the other, or (ii) a third party controls or has the power to control both entities. The definition covers entities organized after the sanction but with the same or similar management, ownership or principal employees as the sanctioned entity.

What amounts to 'control'?

'Control' means the ability to direct or to cause the direction of the policies or operations of another entity, whether through the ownership of voting securities, by contract or otherwise. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the imposition of a sanction that has the same or similar management, ownership, or principal employees as the person that was suspended or debarred.

The Bank may issue clarifications from time to time as to which affiliates are covered under a sanction, and the names of sanctioned affiliates may be added to the List of Debarred Firms on the Bank's external website.

What due process rights do successors and assigns have?

When a determination is made by the Bank after the conclusion of sanctions proceedings that an existing sanction should apply to a particular firm or individual as the successor/assign of a sanctioned party, the successor/assign is given notice and has the right of appeal to the Sanctions Board, but only on grounds of abuse of discretion.

What criteria apply to the application of sanctions to successors and assigns?

While sanctions are not automatically applied to successors or assigns, as indicated above, a rebuttable presumption is applied that successors and assigns are subject to any sanction imposed on their predecessors. The successor/assign may rebut this presumption by demonstrating that such application would violate the general principles adopted by the Bank outlined above, including that such application would impose a disproportionate

penalty on the successor/assign. If the successor/assign can show to the satisfaction of the Bank that the business of the original sanctioned entity is limited to a particular portion of the successor entity(ies) (e.g., particular subsidiaries within a corporate group), then the Bank may decide to limit the application of the sanction accordingly. There are likely to be cases, however, where the originally sanctioned predecessor has become so intertwined with the business of the successor or where the original business represents such a large portion of the overall business of the successor entity(ies) that such a limitation will be either impracticable or will pose an unacceptable reputational and/or fiduciary risk to the Bank Group.

MONITORING SANCTIONS

How are conditions for release monitored?

An Integrity Compliance Officer (ICO), in consultation with relevant Bank Group members including IFC or MIGA, monitors the debarred party's performance of the required conditions throughout the debarment period. The debarred party may be required to provide periodic reports during the debarment period, copies of internal and external audit reports and similar documents for its Bank Group and non-Bank Group projects. Moreover, the debarred party is required to report incidents of fraud, corruption or any other type of misconduct detected in its activities and the remedial action(s) taken in respect thereof. To the extent that these matters are not themselves specified conditions in an EO or a Sanctions Board decision, the ICO may require that an independent compliance monitor, external auditor or similar expert be engaged at the outset of Program monitoring and/or during monitoring when there are red flags reported or discovered regarding a party's activities (at the expense of the party, within reason and when appropriate taking into account the nature of the misconduct leading to debarment or the subsequent red-flagged circumstances of misconduct, and the party's financial circumstances).

What functions does the Integrity Compliance Officer perform?

In the context of a debarment with conditional release (or, with appropriate adaptations, conditional non-debarment) imposed by the EO and/or the Sanctions Board, the ICO:

- notifies the debarred party of the details relating to any imposed conditions and the procedures to be followed when seeking release from debarment;
- evaluates and assesses the debarred party's current Integrity Compliance Program (if any). The ICO may comment on and provide guidance for suggested improvements in the debarred party's Integrity Compliance Program, while making it clear that no assurances are being given that adoption of any Bank Group-recommended Integrity Compliance Program principles, guidelines, policies or tools will ensure later release from debarment. The ICO, consistent with Bank Group policies and practices (e.g., requiring audit rights as in IBRD and IDA-financed projects), may also tailor specific requirements and/or conditions to the circumstances of the debarred party;
- monitors compliance by the debarred party with the specified conditions during the period of debarment; and
- determines, upon the request of the debarred party, whether the conditions have been satisfied at the end of the debarment period.

When are parties released from debarment?

The ICO may decide to release a party from debarment only if the specified conditions for release have been satisfied, including that the debarred party has established and implemented a Program reasonably capable of mitigating the risks associated with the Bank Group permitting the party once again to be eligible to bid on, or otherwise engage or participate in, Bank Group-financed projects. The ICO has broad discretion in making his or her determination. That discretion is exercised with due diligence and good faith, and is subject to appeal on limited grounds. Generally, this risk assessment and verification process is accomplished through a combination of direct engagement with the debarred party, as well as through independent parties including compliance monitors or investigative firms (where deemed practical and affordable under the circumstances), and internal and external auditors. If, based on his or her assessment, the ICO decides that the conditions have not been satisfied, the ICO provides the debarred party with a determination of non-compliance, including the reasons for that determination; and the

ICO may, in his or her discretion, notify the debarred party that it shall not be allowed to reapply for release from debarment for a period not exceeding one year following that determination, with the right to reapply on an annual basis thereafter. The ICO may also deny an application for release for no longer than one year, with an extension of no more than one year, in order to complete an investigation into the verification of any reportable act of misconduct.

SETTLEMENTS

What is the purpose of allowing for settlements of sanctions cases?

Settlements provide an efficient way of resolving sanctions cases without resorting to full sanctions proceedings. Settlements can save considerable resources, while providing certainty of result for both the Bank and the party under investigation. At the same time, settlements are handled with discretion and transparency. For this reason, the Bank has established a formal mechanism, with appropriate checks and balances, to ensure fundamental fairness and equal treatment.

What types of settlements are possible?

There are two principal types of settlements, 'definitive' settlement agreements and deferral agreements:

- *'Definitive' Settlement Agreements.* These agreements effectively end—or, for settlements reached prior to their commencement, replace—sanctions proceedings in respect of the case with an agreed sanction which may (or may not) include compliance by the Respondent with certain conditions; and
- *Deferral Agreements.* These agreements 'freeze' sanctions proceedings for a period of time pending compliance by the Respondent with certain conditions, upon compliance of which the case is then settled.

What clearances are required before a settlement is approved?

Before submission to the EO, settlement agreements are subject to clearance by the Bank Group General Counsel and, in appropriate cases, consultation with the Vice President, Operations Policy and Country Services (OPCS). The General Counsel reviews the agreement for legal validity and conformity with the Bank’s legal framework. Consultation with OPCS is appropriate in cases where the terms and conditions of the settlement would impact on operations in ways that go beyond a ‘normal’ debarment or other sanction, for example in the case of voluntary restraint under a conditional non-debarment.

What happens if sanctions proceedings have already started?

For those settlements that occur after sanctions proceedings have commenced, INT, acting jointly with one or more Respondents, is permitted to request the EO for a stay of proceedings for the purpose of pursuing settlement negotiations at any time during sanctions proceedings. The initial period of stays may last no more than sixty (60) days, but is renewable once for another thirty (30) days upon confirmation by both parties that they continue to be actively engaged in settlement negotiations. Requests are granted as a matter of course. These limitations serve to incentivize the parties—in particular the Respondent—to pursue settlement talks with due diligence and dispatch.

What is the effect of a settlement agreement or of a deferral agreement?

Once reviewed by the EO, settlement agreements are ‘embedded’ within a sanction imposed on the Respondent(s). If, for example, the sanction is conditional non-debarment, then violation of the settlement agreement would result in debarment for the period specified in the settlement agreement.

Deferral agreements result in an immediate deferral of proceedings. Any materials submitted to the EO are not considered withdrawn, but rather their consideration by the EO is suspended. The deferral agreement may specify whether or not any temporary suspension will be lifted or maintained. Any pending period for submission of a pleading runs anew if proceedings resume. (For example, if the deferral occurs after an Explanation but before submission of a Response, the Respondent has a full ninety (90) days to submit its Response if proceedings resume.)

How are alleged violations of settlement agreements handled?

Performance of deferral and settlement agreements is monitored by the ICO on behalf of INT. INT notifies the Respondent if, in INT's view, the settlement agreement has been violated. The Respondent then has thirty (30) days to submit a denial or justification for the violation, after which the INT, in consultation with the Bank Group General Counsel, determines whether the settlement agreement has, in fact, been violated. If a violation is so determined, the consequences specified in the settlement agreement (e.g., debarment for a stated period of time) ensue. (In cases where the settlement agreement permits an opportunity to 'cure' violations, as a first step, the notification is given first to the Respondent.) Violations of a deferral agreement result in the resumption of sanctions proceedings. The Respondent may appeal INT's determination to the Sanctions Board, but only on limited grounds of 'abuse of discretion' (see page 28 below).

What criteria are considered before the Bank enters into settlements?

INT has the discretion to determine, in consultation with the Bank Group General Counsel, whether or not it is appropriate to engage in settlement negotiations with a particular Respondent(s). However, this discretion is exercised bearing in mind a number of clearly stipulated considerations. These include the degree of cooperation of the Respondent, whether significant resources can be saved, and the value of any information the Respondent can provide about its own or others' malfeasance. Respondents must enter into settlements of their own free will and free from any duress.

How does the Bank ensure that settlement agreements are entered into fairly?

In order to ensure fundamental fairness, the EO is charged with reviewing settlement agreements to verify that the terms of the agreement are broadly consistent with the Sanctioning Guidelines. If, after reviewing the settlement agreement, the EO finds that either (i) the Respondent did not enter into the agreement freely and fully informed of its terms, and free of duress, and/or (ii) the terms of the agreement manifestly violate Sections 9.01 or 9.02 of the Sanctions Procedures or the Sanctioning Guidelines, the EO informs INT

and the Respondent(s), whereupon the settlement agreement is terminated without prejudice to either party.

Can the EO modify a settlement agreement?

The EO's review is limited to either accepting or rejecting the settlement agreement. The EO may not impose any sanction other than the sanction stipulated in the agreement or otherwise modify the agreement in any other respect.

APPEALS FOR ABUSE OF DISCRETION

How does the Bank ensure that discretion is not exercised unfairly?

The Sanctions Procedures provide that Respondents may challenge certain discretionary determinations and decisions made by the Bank in connection with sanctions proceedings, to wit:

- Decisions by Bank Management concerning the application of Bank sanctions to successors and assigns;
- Decisions by the ICO of non-compliance with conditions for release from debarment or non-debarment; and
- Determinations by INT that a Respondent has failed to comply with the terms and conditions of a Settlement Agreement.

The parties affected by these decisions have the right to fundamental fairness which, in this case, means that the decision-maker may not abuse his or her discretionary power by taking a decision that flies in the face of logic, the evidence or procedure.

What kinds of decisions amount to 'abuse of discretion'?

The Sanctions Procedures provide that the ICO or another Bank officer commits an 'abuse of discretion' if his or her decision

- lacks an 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 relevant procedures, as set out in the Sanctions Procedures.

Abuse of discretion is meant to encompass truly abusive or otherwise egregious behavior on the part of the decision-maker. It is not a basis for challenging or 'second guessing' the decision-maker's ordinary exercise of judgment. Examples include decisions motivated by prejudice, an egregious lack of due diligence including ignoring key facts or pieces of evidence, denying the Respondents a reasonable opportunity to make their case or otherwise engaging in abuses of process.

A claim that that the decision-maker has disregarded a fact may not be based on the decision-maker's good-faith assessment of the weight to be given to any particular piece of evidence or the conclusions to be drawn from that evidence. In cases involving an alleged abuse of discretion, the burden of proof lies with the Respondent or other party alleging the abuse.

FURTHER REFERENCES

For more information about the World Bank Group's sanctions regime, refer to the following documents:

- *Agreement for Mutual Enforcement of Debarment Decisions*, signed by the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group, and World Bank Group (April 9, 2000)
www.adb.org/documents/integrity/cross-debarment-agreement.pdf
- International Financial Institutions Anti-Corruption Task Force, *Uniform Framework For Preventing And Combating Fraud And Corruption* (September 2006) [**Uniform Framework**]
<http://www.afdb.org/en/about-us/structure/integrity-and-anti-corruption/uniform-framework-ifis/>
- World Bank Group, *Mutual Enforcement of Debarment Decisions Among Multilateral Development Banks* (March 3, 2010).
<http://go.worldbank.org/NC5IDB1UJ0>
- *World Bank Group Sanctioning Guidelines* (January 1, 2011) [**Sanctioning Guidelines**]
<http://go.worldbank.org/CVUUIS7HZ0>
- World Bank, *Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants* (dated October 15, 2006 and revised in January, 2011) [**Anti-Corruption Guidelines**]
<http://go.worldbank.org/G81DJ33HF0>

- World Bank, *Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits & Grants* (January 2011) [**Procurement Guidelines**]
<http://go.worldbank.org/RPHUY0RFI0>
- World Bank, *Guidelines: Selection and Appointment of Consultants under IBRD Loans & IDA Credits & Grants by World Bank Borrowers* (January 2011) [**Consultant Guidelines**]
<http://go.worldbank.org/U9IPSLUDC0>
- World Bank, *Sanctions Board Statute* (September 15, 2010)
<http://go.worldbank.org/CVUUIS7HZ0>
- *World Bank Sanctions Procedures* (as of January 1, 2011)
<http://go.worldbank.org/CVUUIS7HZ0>
- *World Bank Vendor Eligibility Policy*
<http://go.worldbank.org/W40WJB5AA0>

Jurisprudence:

- The determinations of the EO in uncontested cases are available at:
<http://go.worldbank.org/G7E00UXW90>
- The decisions of the Sanctions Board are available at:
[to come]

List of Debarred Firms

<http://www.worldbank.org/debarr>