SANCTIONS REFORM: EXPANSION OF SANCTIONS BEYOND PROCUREMENT AND SANCTIONING OF OBSTRUCTIVE PRACTICES

JULY 28, 2006
<table>
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<tr>
<th>Acronym</th>
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<tr>
<td>AfDB</td>
<td>African Development Bank</td>
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<td>AsDB</td>
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<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
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<td>EIB</td>
<td>European Investment Bank</td>
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<td>IBRD</td>
<td>International Bank for Reconstruction and Development</td>
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<td>IDA</td>
<td>International Development Association</td>
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<td>IDB</td>
<td>Inter-American Development Bank</td>
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<td>IFC</td>
<td>International Finance Corporation</td>
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<td>IFI</td>
<td>International Financial Institution</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>INT</td>
<td>Department of Institutional Integrity</td>
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<td>MDB</td>
<td>Multilateral Development Bank</td>
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<td>Multilateral Investment Guarantee Agency</td>
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<td>NGO</td>
<td>Non-governmental organization</td>
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<td>PIU</td>
<td>Project Implementation Units</td>
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<td>PRG</td>
<td>Partial Risk Guarantee</td>
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SANCTIONS REFORM: EXPANSION OF SANCTIONS BEYOND PROCUREMENT AND SANCTIONING OF OBSTRUCTIVE PRACTICES

INTRODUCTION

1. This paper sets forth Management's proposals to reform the sanctions regime currently in place within the World Bank Group by expanding its coverage beyond procurement and by making obstruction of Bank investigation into allegations of fraud and corruption a separate sanctionable offense. The paper is divided into three parts:

Part I. IBRD/IDA, which outlines the sanction reform process to date, details the proposed further changes to the current sanctions regime as they would apply to International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA), and explains the rationale for these changes.

Part II. IFC/MIGA/PRG, which outlines how the proposed changes would apply to International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA) and the Bank's Partial Risk Guarantee (PRG) operations.

Part III. Recommendations and Next Steps.

PART I – IBRD/IDA

I. Background

2. Anti-Corruption and the Sanctions Process. The World Bank's Articles of Agreement require the institution to make arrangements to ensure that monies provided by the Bank are used for their intended purposes and with due attention to economy and efficiency. For more than a decade, the World Bank has increasingly worked to address corrupt and fraudulent behavior in Bank-financed or supported projects. Fraud and corruption divert loan proceeds from their intended purpose(s) and/or direct loan proceeds to sub-optimal uses, thus violating the requirements of economy and efficiency. Moreover, fraud and corruption impairs development in all its dimensions. Diversion of funds from development projects through fraud,

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1 As used in this Part I, “World Bank” or “Bank” refers to IBRD and IDA.
2 See IBRD Articles of Agreement, Article III, Section 5(b). See also IDA Articles of Agreement, Article V, Section l(g), which contains a substantively identical provision.
corruption, collusion, and coercion impairs the ability of governments, donors, and the Bank to achieve the goals that have been set for reducing poverty, attracting investment and encouraging good governance.

3. The Bank’s sanctions process was first formulated in a paper presented to the Executive Directors in July 1996 and implemented in a January 1998 Operational Memorandum. An independent department within the Bank, the Department of Institutional Integrity (INT), was established in 2001 with the mandate to investigate allegations of fraud and corruption in Bank-financed projects as well as allegations of staff misconduct. The findings of INT investigations as they relate to bidders, suppliers, contractors, consultants and service providers under Bank projects are provided to the Bank’s Sanctions Committee, a committee of senior management established in November 1998 to review the evidence of fraud, corruption, collusion or coercion (as those terms are defined in the Bank’s Procurement Guidelines and Consultant Guidelines) and recommend to the President an appropriate sanction to be imposed. Such debarment proceedings are currently governed by detailed written procedures issued in August 2001. To date, the Bank has declared 333 firms/individuals ineligible to participate in future Bank-financed procurement, while 18 firms/individuals have received letters of reprimand but have remained eligible to participate in Bank-financed procurement. The names of ineligible firms and individuals, as well as the names of firms and individuals to whom the Bank has addressed a letter of reprimand, are posted on the Bank’s website for the period of the sanction.

4. **Sanctions Reform.** In July 2004, the Executive Directors approved the paper entitled *Reform of the World Bank’s Sanctions Process* ("Board paper"). In light of lessons learned in the implementation of the sanctions process and reviews undertaken by a team led by Mr. Thornburgh, former U.S. Attorney-General and Deputy Secretary-General of the UN, the Board paper recommended, among other things, three major revisions to the current sanctions process: (1) replacement of the current Sanctions Committee with a Sanctions Board composed of both Bank staff and non-Bank staff, that will review cases of fraud and corruption in both Bank-financed projects and IFC and MIGA operations and take final decisions on appropriate sanctions; (2) establishment of a new staff position of "Evaluation Officer" with the authority to

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4 See Report Concerning the Debarment Processes of the World Bank, dated August 14, 2002, which was the second report issued by Thornburgh and his team and is available online at: http://siteresources.worldbank.org/NTDOII/Resources/thornburghreport.pdf. The first Thornburgh Report was entitled Report to Shengman Zhang, Managing Director and Chairman of the Oversight Committee on Fraud and Corruption, The World Bank Concerning Mechanisms to Address Problems of Fraud and Corruption and was dated January 21, 2000. A third report entitled Report Concerning the Proposed Strategic Plan of the World Bank’s Department of Institutional Integrity and the Adequacy of the Bank’s Mechanisms and Resources for Implementing that Strategy, was issued on July 9, 2003.
issue temporary sanctions pending final resolution of cases on appeal to the Sanctions Board; and (3) greater flexibility in imposing sanctions.¹

5. In 2005, the Bank undertook an in depth review of its anti-corruption activities in order to fully implement the recommendations in the 2004 Board paper and strengthen its ability to prevent and combat fraud and corruption. The review considered, among other things, whether to (a) expand the range of sanctionable offenses to include obstruction of a Bank investigation, (b) enhance its enforcement mechanism for its third-party audit rights under Bank-financed contracts, (c) broaden the definitions of corruption, fraud, collusion and coercion, and (d) to broaden the application of the sanctions regime beyond the procurement context.

6. These matters have formed the basis of a discussion with the Audit Committee in meetings over the course of many months, and the substance of the current package was endorsed by the Committee on June 28, 2006. The recommendations made by committee members in the course of these discussions have been reflected in the version of the IBRD/IDA Anti-Corruption Guidelines and the amendments to the General Conditions described below.

7. Harmonization of Anti-Corruption Efforts with other MDBs. These discussions took place at the same time as increasing collaboration has occurred between the integrity/investigation units of the multilateral development banks (MDBs) and at a time when both the Inter-American Development Bank (IDB) and the African Development Bank (AfDB) were developing new anti-corruption and/or sanctioning policies.

8. Since December 2004, the integrity units of the European Bank for Reconstruction and Development (EBRD), IDB, Asian Development Bank (AsDB), AfDB and the World Bank have worked together in a series of “MDB Integrity Forums” to reach a common understanding on various issues under their shared purview. As part of their collaboration, the MDBs compared the standards and definitions that are currently in use by each of the institutions and identified some differences. Consequently, one of the key issues which the MDBs have focused on is the need to harmonize definitions of fraud and corruption in order to ensure that the MDBs are working to a common standard. This is in part to ensure that the MDBs act with unity of purpose and message when fraud and corruption is proven, rather than competing to the “lowest

¹ The 2004 Board paper was revised in a supplemental note approved by the Executive Directors on an absence-of-objection basis in May 2005, in order to provide for Sanctions Board members specifically dedicated to IFC and MIGA matters. The same supplemental note also made two modifications to the sanctions process as described in the Board paper, by removing an opportunity for INT to request Sanctions Board review of the sanction proposed by the Evaluation Officer and streamlining the mechanism for the Evaluation Officer to close a case for lack of evidence. The extension of the sanctions regime to IFC and MIGA was detailed in a Supplemental Note (R2004/0025/1, IDA/R2004-0031/1, IFC/R2004-0010/1 and MIGA/R2004-0010/1).
common denominator”. A second factor is the need to ensure commonality in definitions as a precursor to cross-sanctioning.6

9. At the last two MDB Forums, in October and November 2005, significant progress was made on laying the groundwork to develop a more unified front in the fight against corruption, including by agreeing on draft harmonized definitions of fraud, corruption, collusion and coercion which, among other things, broaden the scope of these definitions beyond procurement.

10. IFI Anti-Corruption Task Force. In the meantime, the heads (or senior representatives) of the EBRD, IDB, AsDB, AfDB and the World Bank, as well as the European Investment Bank (EIB) and the International Monetary Fund (IMF), met on February 18, 2006 and set up an Anti-Corruption Task Force (IFI Task Force) to consider a number of issues and develop a uniform framework for preventing and combating fraud and corruption, including harmonized definitions.7

11. The first official meeting of the IFI Task Force was hosted by the Director of INT at the World Bank, and took place on April 7, 2006. At that Task Force meeting, the wording of the definitions was agreed in principle, subject to obtaining the necessary institutional approvals. Subsequent meetings of the Task Force took place on June 6, 2006 and July 10, 2006 and were respectively hosted by EBRD and EIB.

II. Proposals for Sanctions Reform

12. Proposals. Based on the foregoing, Management proposes the following further changes to the sanctions regime to enhance its effectiveness:

- Expansion of the sanctions regime beyond procurement to cover more generally fraud and corruption that may occur in connection with the use of Bank loan proceeds in the preparation and/or implementation of Bank-financed investment projects. This will be accomplished, in part, through the

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6 “Cross-sanctioning” refers to one of the issues now under discussion in the IFI Anti-Corruption Task Force (referred to in paragraphs 10 and 11 below) whereby firms or individuals sanctioned by one International Financial Institution (IFI) may be sanctioned, for the same misconduct, by other IFIs.

7 The Task Force is to report back at the Bank's Annual Meetings in Singapore in September 2006. The agreed Terms of Reference for the Task Force state as follows:

The members of the IFI Anti-Corruption Task Force agree to develop a Uniform Framework for Preventing and Combating Fraud and Corruption by September 2006 that will seek to:

1. Harmonize their definitions of fraud and corruption;
2. Improve consistency of their investigative rules and procedures;
3. Strengthen information sharing among them;
4. Assure compliance and enforcement actions taken by one member institution are supported by all others;
5. Develop concrete proposals to assist countries over the longer term to strengthen their capacity to combat corruption and improve cooperation with civil society, other stakeholders and institutions, such as the press and judiciaries, with a goal to enhance transparency and accountability.
adoption of new definitions of corrupt, fraudulent, collusive, and coercive practices.

- Adoption of “obstructive practices” as a separate sanctionable offense, covering both non-compliance with the Bank’s third-party audit rights and deliberate obstruction of Bank investigations into fraud and corruption.

A. Expansion of Sanctions Regime beyond Procurement

13. **Rationale.** Under the World Bank’s current sanctions process, the Bank imposes sanctions for corrupt, fraudulent, collusive, and coercive practices, as defined under the Procurement Guidelines and the Consultants Guidelines, in the context of the procurement of works, goods, and services, the selection and employment of consultants, and the execution of contracts resulting from such procurement or selection. Corrupt, fraudulent, collusive, or coercive practices that may occur in the preparation or implementation of a Bank-financed project, but outside the procurement or selection processes or contract execution, are not currently subject to sanctions. The proposed expansion of the sanctions regime is essentially intended to ensure consistency of treatment of cases of such practices by expanding the current sanctions regime to cover more generally fraud and corruption occurring in Bank-financed operations, to better fulfill the Bank’s fiduciary duty to ensure the proper use of all loan proceeds.

14. There have been cases where entities engaging in corruption in connection with the use of Bank loan proceeds in the preparation and/or implementation of IBRD/IDA financed projects have escaped sanction. These cases have primarily involved financial intermediaries in Bank-financed projects, or non-governmental organizations (NGOs) receiving Bank funds as direct or indirect recipients. Since these entities were involved in the project as implementing entities rather than as providers of services procured under the Bank’s Procurement or Consultants Guidelines, they were not covered by the current sanctions regime. It is important to note that, since the Bank has not defined these behaviors as sanctionable outside procurement/selection, other such cases may not have come to the attention of the Bank. It is therefore not possible to know with certainty the full extent of the problem.

15. **Examples of Gaps in Current Sanctions Regime.** By way of example, in one case where a commercial bank acting as a financial intermediary had made sub-loans to local beneficiaries out of the proceeds of a Bank loan sought kickbacks in order to process sub-loan applications, the Bank was unable to debar or impose other sanctions on the commercial bank under the Bank’s sanctions process. In another

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8 Guidelines on Procurement under IBRD Loans and IDA Credits dated May 2004.
10 Such practices, however, whether or not in the procurement/selection context, are normally subject to contractual remedies under the Bank’s legal agreements (including the General Conditions).
11 I.e., corrupt, fraudulent, coercive and collusive practices.
case, false representations were made by a financial intermediary in order to persuade
the Borrower and the Bank that the intermediary satisfied their requirements for its
participation in the project. Such conduct, however improper and potentially
detrimental to the success of the project, was not covered by the Procurement or
Consultants Guidelines and therefore escaped sanction under the Bank’s existing
sanctions process.

16. Likewise, an NGO that is the direct or indirect recipient of Bank funds may make
material misrepresentations to the Bank about the use of project funds for purposes
not agreed in the Loan Agreement, or mislead the Bank by, for example, showing the
Bank false audit reports. In one such case in the past, the NGO was determined not to
be sanctionable by the Bank because it had not been brought into the project through
the Bank’s procurement process.

17. The proposed move to encompass fraud and corruption committed outside the
procurement context includes the coverage of fraud and corruption committed
without the involvement of public officials. The financial intermediaries and NGOs
mentioned above were private parties and interact with other private parties in the
course of project implementation. In addition, private parties may engage in fraud and
corruption while assisting the project implementation units (PIUs) in the preparation,
implementation and the supervision of the projects.

18. Moreover, the current definitions do not adequately cover acts in furtherance of an
offense (even where the act is not completed, possibly due to discovery by relevant
authorities or other fortuity) or agreements to undertake a prohibited course of
conduct. Because the coverage of attempts and conspiracies is common in a wide
range of national jurisdictions, the Bank has decided to include such acts within the
scope of its sanctions regime.

19. Expanded Definitions Relating to Fraud and Corruption. Management proposes to
expand the sanctions regime by, among other things, broadening the definitions of
fraud and corruption. The proposed definitions have been agreed in principle by Bank
staff and with other MDBs in the context of the IFI Anti-Corruption Task Force, and
endorsed by the Audit Committee.

20. The current definition of “corrupt practice” is “the offering, giving, receiving, or
soliciting, directly or indirectly, of any thing of value to influence the action of a
public official ... taking or reviewing a procurement decision”. The proposed
definition removes the reference to procurement, adds “improperly” after the word
“influence” and substitutes the phrase “public official” with the phrase “another
party”. The addition of “improperly” is necessary to avoid the possible inference that
legitimate conduct (such as the payment of a salary to “influence” workers to do their

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13 The proposed definitions are broadly consistent with those found in international instruments concerning
corruption. For further details, see the Audit Committee paper entitled Sanctions Reform: Background Note on Definitions of Fraud and Corruption, dated May 23, 2006 (AC2006-0040), which provides a
comparative analysis of the proposed harmonized definitions with definitions used in existing international
instruments concerning corruption.
21. The current definition of “fraudulent practice” is “a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract”. The proposed definition expands the purpose from influencing procurement to “obtain[ing] a financial or other benefit, or avoid[ing] an obligation”. It also includes a new requirement that the fraud must “knowingly or recklessly” mislead or attempt to mislead. The words “knowingly or recklessly” were added to avoid the possible inference that any inaccuracy in a contractual representation, committed through mere negligence, could constitute fraud.

22. The current definition of “collusive practice” is limited to bid rigging. The proposed definition extends the application of the definition to include collusion to commit other illicit acts, e.g. corrupt and fraudulent practices.

23. The current definition of “coercive practice” is “harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.” The proposed definition removes the reference to procurement and substitutes the achievement of an “improper purpose” (e.g., furtherance of corrupt or fraudulent practices) and adds the word “impairing” as an alternate to the word “harming”.

24. The matrix attached as Annex A provides a graphic word-by-word comparison of the definitions of these terms as currently set out in the Procurement and Consultant Guidelines with those proposed in this paper.

25. **Scope of expansion.** The new sanctions regime would cover fraud and corruption committed (or attempted) by recipients of loan proceeds in connection with the use of Bank loan proceeds in all Bank-financed investment projects. The terms “recipients of loan proceeds” and “use of loan proceeds”, however, would be interpreted broadly. The regime would cover fraud and corruption not only in the direct diversion of loan proceeds for ineligible expenditures, but also fraud and corruption engaged in for the purpose of influencing any decision as to the use of loan proceeds. All such actions are deemed “use of loan proceeds”. Similarly, recipients of loan proceeds include 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),

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14 The expanded sanctions regime does not apply to development policy lending (DPLs) except in cases where the Bank agrees with the Borrower on specified purposes for which loan proceeds may be used.
and persons or entities which take or influence decisions regarding the use of loan proceeds.\textsuperscript{15}

26. It is expected that most non-procurement-related sanctions cases would typically involve an NGO or financial intermediary responsible for the implementation of a particular component or subcomponent of a project and which has been found to have engaged in sanctionable practices. The Bank would not sanction government officials or employees, or government-run agencies and entities other than those autonomous state-owned enterprises that are eligible to participate in procurement processes.\textsuperscript{16} Cases involving government officials, employees, agencies and entities would be addressed, as is currently the case, by the Borrower taking timely and appropriate action to remedy the situation, failing which the Bank would have the right to exercise its contractual remedies. As is now the case in the procurement context, the list of sanctioned individuals and entities would be publicly disclosed by posting on the Bank's website.

27. IBRD/IDA Anti-Corruption Guidelines. Management proposes to include the expanded definitions of “corrupt practice”, “fraudulent practice”, “coercive practice” and “collusive practice” in a new framework document entitled “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants” (the IBRD/IDA Anti-Corruption Guidelines). These Guidelines, if approved, would be included as part of the package of normative documents, such as the Procurement Guidelines and the Consultant Guidelines, that apply to Bank-financed projects. Like those other Guidelines, the new IBRD/IDA Anti-Corruption Guidelines would be incorporated by reference into the legal agreements for each project. The Borrower would be required to distribute the Guidelines to all project participants with which it enters into a contract and to make project participants aware of the Guidelines' contents. For this purpose, the Guidelines would be translated from English into the five other official United Nations languages. The text of the proposed IBRD/IDA Anti-Corruption Guidelines is attached as Annex B.

28. In addition to the expanded definitions, the Guidelines set out the basic actions that borrowers and other recipients of loan proceeds are required to undertake to prevent and combat fraud and corruption in Bank-financed projects. These include taking all appropriate measures to prevent fraud and corruption, distributing the Anti-Corruption Guidelines to project participants, informing the Bank of allegations of fraud and corruption, taking timely and appropriate action when cases of fraud and

\textsuperscript{15} These categories are not mutually exclusive. Certain persons or entities may fall under more than one category. A financial intermediary, for example, may receive payment for its services, transfer funds to end users and make or influence decisions regarding the use of loan proceeds.

\textsuperscript{16} State-owned enterprises, referred to as Government-owned enterprises in paragraph 1.8 (c) of the Procurement Guidelines and paragraph 1.11 (b) of the Consultant Guidelines, are eligible to participate in their own country if they are legally and financially autonomous, operate under commercial law, and are not dependent agencies of the Borrower. In addition, Government-owned universities and research centers may participate under certain conditions in Bank-financed consulting assignments as per paragraph 1.11 (c) of the Consultant Guidelines.
corruption arise, cooperating with Bank investigations, and taking all necessary and appropriate action to give full effect to Bank-imposed sanctions. The Guidelines also set out the actions that the Bank may take against persons and entities that engage in fraud and corruption, including the imposition of sanctions against the corrupt party (which would, with appropriate adjustments, be similar to those available in the procurement context).

29. **Changes to IBRD/IDA General Conditions.** In addition, Management proposes the following amendments to the IBRD and IDA General Conditions to enhance the legal tools at the Bank’s disposal to prevent and combat fraud and corruption:

- Two new events of suspension would enable the Bank to suspend the loan: (a) if the loan were to a Borrower that is not a member country, and the Borrower has been declared ineligible to participate in Bank-financed projects for having engaged in fraud or corruption in another project; and (b) if the Bank determined that fraud or corruption has occurred in connection with the use of Bank loan proceeds without timely and appropriate action having been taken by the Borrower to address such practices when they occur. In addition, any breach of the undertakings in the Anti-Corruption Guidelines would permit the Bank to suspend the loan under the existing event of suspension for nonperformance.

- The existing cancellation remedy for fraud or corruption, which is tied to the procurement/selection context, would be broadened to cover any instance of fraud and corruption that occurs generally in connection with the use of loan proceeds. This remedy would be linked to the amount of the loan that has been tainted by fraud or corruption.

- The refund remedy for IDA grants would be expanded to enable IDA to seek refund of amounts tainted by fraud and corruption in both procurement and nonprocurement contexts.

The text of these draft amendments is attached as Annex C.

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17 Currently, debarment only operates prospectively—i.e., the sanctioned party may continue to perform under any ongoing contracts but may not bid for future contracts. This makes sense in the context of procurement, where contractors generally perform specific, time-bound activities. But, since outside the procurement context, sanctioned parties may be “fixtures” that are part of the implementation arrangements for the duration of a project or for an indefinite period, sanctions may cause the interruption of current arrangements as well as the exclusion from future arrangements.

18 *IBRD General Conditions for Loans*, dated July 1, 2005 and *IBRD General Conditions for Credits and Grants*, dated July 1, 2005.

19 “Obstructive practices” would not be covered by this new remedy.

20 This remedy is already available where the fraud or corruption occurs in the procurement context. See Section 7.02(b) of the IBRD General Conditions and Section 6.02(b) of the IDA General Conditions.

21 Section 7.02(b) of the IBRD General Conditions; Section 6.02(b) of the IDA General Conditions.

22 Refunds of loan proceeds tainted by fraud or corruption are normally obtained through threat of acceleration (which is permitted if any nonperformance default occurs and continues for 60 days).
B. Obstructive Practices

30. **Rationale.** Under the current sanctions process, which has no separate sanction for obstruction of investigation, firms have a perverse incentive to destroy evidence or intimidate witnesses. For example, if the Bank is investigating a firm for bribery of a staff member in relation to a Bank-financed project and the firm destroyed evidence which could prove their guilt, under present rules the destruction could only be used as an aggravating factor in the sanctions process, and only if the Bank were able to prove the underlying offense of corruption. A firm could attempt to avoid sanction by preventing the Bank from gathering sufficient evidence to prove the underlying allegation of corruption.

31. The Bank’s ability to inspect records of firms accused of corruption may be based on either voluntary agreement by the firm to allow access to its records and staff and/or the contractual rights the Bank has under the “third party audit clause” in the contract between the firm and the Borrower (or other recipient of loan proceeds). The Bank cannot access the records of a firm with which neither it nor the Borrower is in privity of contract, e.g. a firm which mounted unsuccessful bid for a contract in Bank-financed project, although such firm may have been involved in fraud and corruption in connection with the Bank-financed project; in such cases, the Bank must rely purely on voluntary cooperation by the firm—which is unlikely where the firm has something to hide.

32. Firms that have engaged in fraud or corruption have a strong incentive simply not to cooperate with Bank investigations. Even in circumstances where, technically speaking, they are obligated by contract to do so, firms may decide (and have decided) simply not to honor their contractual obligations—presumably, these firms have determined that the consequences of non-compliance are outweighed by the possible consequences of revealing incriminating evidence. In many cases, the investigation is conducted after the contract is already performed and the services paid for, so that the consequences of non-compliance are essentially nil. In such cases, the Bank currently lacks an effective mechanism to enforce its third party audit rights.

33. Recognizing obstruction of investigation as a separate sanctionable offense would encourage firms to act responsibly, and deter them from destroying evidence, harassing witnesses or otherwise obstructing the Bank’s investigations. It would provide a means for enforcing the Bank’s third-party rights and a mechanism for discouraging firms from non-cooperation in circumstances where there are no contractual rights or where those rights have lapsed. It would also be consistent with

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23 Typically, the Bank does not enter into contracts for project implementation directly with service providers. That is done by the Borrower or other entity that is charged with the implementation of the project or portion of the project. However, the Bank requires borrowers and others to include a “third party audit clause” in its contracts with service providers. This is currently limited to contracts subject to procurement, but the Anti-Corruption Guidelines provides that this requirement will extend to all agreements between the Borrower and recipients of loan proceeds beyond the procurement context.
the approach of many national jurisdictions and with the Thornburgh's recommendation in his Second Report in 2002 for strengthening the Bank's sanctions process to address a broader panoply of misconduct.

34. **New Definition of "Obstructive Practice"**. Management proposes to make obstruction of Bank investigations into allegations of fraud or corruption sanctionable. To this end, a new sanctionable offense defined as "obstructive practice" would apply both in procurement and nonprocurement contexts. This definition would be included in the IBRD/IDA Anti-Corruption Guidelines (as noted above), the Procurement and Consultant Guidelines, and the Sanctions Procedures.

35. "Obstructive practice" is defined in the Anti-Corruption Guidelines as "(i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information". Management proposes to make definition of "obstructive practice" require deliberate commission of specified acts

24 Examples of national jurisdictions that have specific criminal provisions to deter obstruction of investigation include Peru, Belgium, France, UK and the US. In the US, for example, Section 802 of the Corporate and Criminal Fraud Accountability Act of 2002 (better known as the Sarbanes-Oxley Act) defines the offense of "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy" as follows:

> Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined ... imprisioned not more than 20 years, or both.

25 The Second Thornburgh Report at page 30-31 states that "it ... would be advisable to add coverage of ... acts designed to conceal fraud or corruption, by whomever undertaken. Such coverage is common in the jurisprudence of a wide range of national jurisdictions."

26 This proposal was first discussed at the Audit Committee in June 2005. See Proposal on Sanctions Reform-Next Steps (AC2005-0058), June 29, 2005.

27 The definition, as it applies in the nonprocurement context, is included in paragraph 7 of the new Anti-Corruption Guidelines (Annex B).

28 IFC, MIGA and Bank PRGs, consistent with private sector practices, do not have third party audit rights in the agreements with guarantee beneficiaries (usually lenders but sometimes project sponsors), project companies and project sponsors. Instead, they generally have a right of access to the audited (almost always required on an annual basis) financial accounts and records of the project company, and to communicate with and receive information from its accountants. Thus, under clause (ii) of the "obstructive practices" definition, Bank PRGs should not be understood to have a contractual right of audit in the same manner as the Bank in its usual financing operations. In the IFC, MIGA and Bank PRG’s Anti-Corruption Guidelines' definition of "obstructive practice", the reference to Bank's contractual rights of audit therefore does not apply.
designed to materially impede Bank’s investigation of fraud and corruption. Small delays or mere inefficiencies would not constitute “obstructive practices.”

C. Related Issues

36. Procurement Cases of fraud and corruption specific to procurement/selection of consultants matters would continue to be subject to the fraud and corruption-related provisions of the Procurement and Consultant Guidelines. The Procurement and Consultant Guidelines ineligibility provisions would be modified to include new ineligibility grounds stemming from sanctions imposed pursuant to the Anti-Corruption Guidelines. The Guidelines would incorporate the expanded definitions, appropriately clarified for the procurement context, as well as the expansion of the definitions of fraud and corruption to encompass obstructive practices. The change in definitions is not expected to have a substantive impact on the sanctions regime as it applies to procurement and consultants. The texts of the amendments to Procurement Guidelines are attached in Annex D; equivalent amendments would be made to the Consultant Guidelines.

37. Jurisdiction of the Inspection Panel. Procurement matters, including actions or omissions by the Bank in connection with allegations of fraud and corruption in the procurement context, are excluded from the Inspection Panel’s review. Given the close interrelation between the Procurement Guidelines and the draft IBRD/IDA Anti-Corruption Guidelines, the same approach should logically be taken for complaints relating to actions or omissions by the Bank in relation to the draft IBRD/IDA Anti-Corruption Guidelines and the related provisions of the General Conditions. The sanctions process is designed to address the sensitive issues that arise in sanctioning fraud and corruption, and has been found to work well to date. To introduce the Inspection Panel as an additional administrative review process would add undue complications and confusion.

PART II: IFC/MIGA/PRG

38. Background and Rationale. As mentioned above, the 2004 sanctions reform package extended the coverage of the sanctions regime to IFC, MIGA and the PRG operations. This extension was operationalized through the adoption of procedures and guidelines, which were endorsed by the Audit Committee in February and June 2005. In order to provide a cohesive World Bank Group approach in the fight

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29 Resolution Establishing the Inspection Panel, dated September 1993 (Resolutions No. IBRD 93-10, No. IDA 93-6), and approved by the Executive Directors on September 21 and 22 (R93-122/2 and R93-122/3, paragraph 14 (b). See also, Clarifications of Certain Aspects of the Resolution Establishing the Inspection Panel, dated September 30, 1996, and approved by the Executive Directors on October 17, 1996 (R96-204), under the Section on eligibility and access.

against fraud and corruption, the proposed further sanctions reforms would likewise cover IFC, MIGA and PRG.

39. Application of Sanctions Reform Proposals to IFC, MIGA and PRG. IFC, MIGA and PRG operations would impose, in addition to their contractual remedies for prohibited activities, sanctions for corrupt, fraudulent, collusive, coercive, or obstructive practices in all of their operations, including investments, guarantees, advisory work, and technical assistance. The definitions of those practices currently under discussion with the other MDBs would form the basis for debarment and sanctions in IFC, MIGA and PRG operations. When the definitions are finalized, IFC, MIGA and PRG will operationalize them in their financing/guarantee documents, technical assistance agreements, and other documentation. As a result of the foregoing, procedures and guidelines presented by IFC, MIGA, and PRG to the Audit Committee in February and July 2005 will require conforming modifications.

40. Attached as Annex E are draft guidelines that clarify how the new definitions of "Corrupt Practices", "Fraudulent Practices", "Coercive Practices" and "Collusive Practices" will be interpreted in the context of IFC, MIGA and PRG operations. The draft guidelines were prepared jointly by IFC, MIGA and the Bank in cooperation with the Department of Institutional Integrity (INT), and were discussed by the Audit Committee on June 28, 2006. The guidelines may be supplemented or modified from time to time, by joint agreement of INT, IFC, MIGA and the Bank’s PRG operations, to reflect better the intended operation of the new definitions as they apply to private sector operations, and to reflect experience with the definitions as it develops. It is intended that the guidelines will be, in all substantive respects, identical for MIGA, IFC and the Bank’s PRG operations.

41. Once approved by the Board, the revised definitions of "Corrupt Practices", "Fraudulent Practices", "Coercive Practices", "Collusive Practices" and "Obstructive Practices", as clarified by the attached guidelines, will replace the current definition of "Prohibited Payments" found in the Sanctions Procedures for each of IFC, MIGA and the Bank’s PRG operations and would also be incorporated into their investment and guarantee documents.

42. Further details on how IFC, MIGA and the Bank (for its PRG operations) would implement the new definitions in their operations for purposes of the World Bank Group sanctions program are set forth respectively at Annexes F, G and H.

PART III: RECOMMENDATIONS AND NEXT STEPS

43. Board Approval. On the basis of the foregoing, Management recommends approval by the Executive Directors of IBRD and IDA and the Board of Directors of IFC and MIGA of the following changes to the sanctions regime:

i. The policy content of the IBRD/IDA Anti-Corruption Guidelines set forth in Annex B.
ii. The amendments to IBRD General Conditions set forth in Annex C and equivalent amendments to the IDA General Conditions.
iii. The amendments to the Procurement Guidelines set forth in Annex D and equivalent amendments to the Consultant Guidelines.
iv. The policy content of the Anti-Corruption Guidelines for IFC, MIGA and World Bank Guarantee Transactions set forth in Annex E.

44. **Effective Date.** The foregoing reforms will apply as follows:
   - to all IBRD and IDA financed investment projects, as well as PRG operations, for which the Project Concept Note is issued on or after October 15, 2006;
   - all IFC projects and Technical Assistance Advisory Services (TAAS) projects for which a Project Data Sheet-Early Review (PDS ER) is approved on or after October 15, 2006; and
   - all MIGA projects for which a Definitive Application is filed on or after October 15, 2006.

45. **Next Steps.** If the foregoing changes are approved by Executive Directors, Management will proceed to implement any corresponding modifications to the Sanctions Board statute, Sanctions Procedures, the Terms of Reference for the Evaluation Officers, the Sanctioning Guidelines, and the related Guidance Note. As a general rule, however, unless otherwise required, the same procedures would apply to both procurement and nonprocurement cases. A brief summary of the anticipated corresponding changes is set forth in Annex I.
### ANNEX A: SANCTIONS REFORM: COMPARISON OF CURRENT AND PROPOSED DEFINITIONS OF FRAUD AND CORRUPTION

<table>
<thead>
<tr>
<th>Corrupt practice</th>
<th>Current Definition</th>
<th>Proposed Definition</th>
<th>Comment(s) on Rationale and/or Effect of Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directly or indirectly, of any thing of value</td>
<td>The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value</td>
<td>The offering, giving, receiving or soliciting, directly or indirectly, of anything of value</td>
<td>No change.</td>
</tr>
<tr>
<td>in the procurement process or in contract execution</td>
<td></td>
<td></td>
<td>De-links purpose from procurement context.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Add requirement that the influence be “improper”.</td>
</tr>
<tr>
<td></td>
<td>[Anti-Corruption Guidelines provide context to cover recipients of loan proceeds acting in connection with the preparation or implementation of a Bank-financed project.]</td>
<td></td>
<td>Changes “target” of corrupt practice from “public official” to “another party” to cover private parties (e.g., NGOs, financial intermediaries) in IBRD/IDA context.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Covers “private corruption” in IFC/MIGA/PRG context.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Context removed from proposed definition and covered by Anti-Corruption Guidelines (for IBRD/IDA and in explanatory note (for IFC/MIGA/PRG).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Context changes from procurement to use of loan proceeds generally.</td>
</tr>
</tbody>
</table>

Page 1 of 2
### ANNEX A: SANCTIONS REFORM: COMPARISON OF CURRENT AND PROPOSED DEFINITIONS OF FRAUD AND CORRUPTION

<table>
<thead>
<tr>
<th><strong>Fraudulent practice</strong></th>
<th>A misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract.</th>
<th>Any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party</th>
<th>No substantive change. Clarifies that fraudulent practice may include behavior (e.g., act or omission) as well as communication. Additional requirement that act or omission must mislead or attempt to mislead. Adds requirement that the actor must mislead “knowingly or recklessly”, i.e., that the actor must either know that the information or impression being conveyed is false, or be recklessly indifferent as to whether it is true or false. Mere inaccuracy in such information or impression, committed through simple negligence, is not enough to constitute fraudulent practice. Effectively no change, since the current definition does not identify a “target”. De-links purpose of fraudulent practice from procurement context.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Coercive practice</strong></td>
<td>Harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.</td>
<td>Impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.</td>
<td>Adds element of “impairing” to that of “harming”, i.e., that the coercion may take the form of preventing the targeted party from a future benefit that would otherwise accrue to that party. [Not a substantive change but a clarification of the forms that “harm” may take. No change. No substantive change. De-links purpose from procurement context. Parallels that of “corrupt practice”.</td>
</tr>
<tr>
<td><strong>Collusive practice</strong></td>
<td>A scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, non-competitive levels.</td>
<td>An arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.</td>
<td>No substantive change. De-links possible actors from procurement context. Anti-Corruption Guidelines provide that at least one of the parties (i.e., the party being sanctioned) must be a recipient of loan proceeds. No substantive change results from deletion. De-links purpose from procurement context (i.e., bid rigging). Parallels that of corrupt, fraudulent and coercive practices.</td>
</tr>
</tbody>
</table>
GUIDELINES

On Preventing and Combating Fraud and Corruption in Projects
Financed by IBRD Loans and IDA Credits and Grants

Dated __________, 2006

Purpose and General Principles

1. These Guidelines are designed to prevent and combat fraud and corruption that may occur in connection with the use of proceeds of financing from the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA), during the preparation and/or implementation of IBRD/IDA-financed investment projects. They set out the general principles, requirements and sanctions applicable to persons and entities which receive, are responsible for the deposit or transfer of, or take or influence decisions regarding the use of, such proceeds.

2. All persons and entities referred to in paragraph 1 above must observe the highest standard of ethics. Specifically, all such persons and entities must take all appropriate measures to prevent and combat fraud and corruption, and refrain from engaging in, fraud and corruption, in connection with the use of the proceeds of IBRD or IDA financing.

Legal Considerations

3. The Loan Agreement providing for a Loan governs the legal relationships between the Borrower and the Bank with respect to the particular project for which the Loan is made. The responsibility for the implementation of the project under the Loan Agreement, including the use of Loan proceeds, rests with the Borrower. The Bank, for

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1 References in these Guidelines to "Loan Agreement" include any Guarantee Agreement providing for a guarantee by the Member Country of an IBRD Loan, Financing Agreement providing for an IDA Credit or IDA Grant, agreement providing for a project preparation advance, or Institutional Development Fund (IDF) Grant, Trust Fund Grant Agreement providing for a recipient-executed trust fund Grant in cases where these Guidelines are made applicable to such agreement, and the Project Agreement with a Project Implementing Entity related to an IBRD loan or IDA credit or grant, and references to "loans" include IBRD loans as well as IDA credits and grants, project preparation advances, IDF grants and recipient-executed trust fund grants for projects to which these Guidelines are made applicable under the agreement providing for such grant, but excludes development policy lending, unless the Bank agrees with the Borrower on specified purposes for which loan proceeds may be used.

2 References in these Guidelines to the "Borrower" include the recipient of a grant. In some cases, an IBRD Loan may be made to an entity other than the Member Country. In such cases, references in these Guidelines to "Borrower" include the Member Country as Guarantor of the Loan, unless the context requires otherwise. In some cases, the project, or a part of the project, is carried out by a Project Implementing Entity with which the Bank has entered into a Project Agreement. In such cases, references in these Guidelines to the "Borrower" include the Project Implementing Entity, as defined in the Loan Agreement.

3 References in these Guidelines to the "Bank" include both IBRD and IDA.

4 References in these Guidelines to the "project" means the Project as defined in the Loan Agreement.
its part, has a fiduciary duty under its Articles of Agreement to “make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.” These Guidelines constitute an important element of those arrangements and are made applicable to the implementation of the project as provided in the Loan Agreement.

Scope of Application

4. The following provisions of these Guidelines cover fraud and corruption that may occur in connection with the use of loan proceeds during the preparation and implementation of a project financed, in whole or in part, by the Bank. These Guidelines cover fraud and corruption in the direct diversion of loan proceeds for ineligible expenditures, as well as fraud and corruption engaged in for the purpose of influencing any decision as to the use of loan proceeds. All such actions are referred to in these Guidelines as “use of loan proceeds”.

5. These Guidelines apply to the Borrower and other 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.

6. The Bank’s specific policy requirements on fraud and corruption in connection with the procurement or execution of contracts for goods, works or services financed out of the proceeds of a loan from the Bank, are covered in the Guidelines: Procurement under IBRD Loans and IDA Credits (May 2004), as amended _______ 2006 (“Procurement Guidelines”) and the Guidelines: the Selection and Employment of Consultants by World Bank Borrowers (May 2004), as amended _______ 2006 (“Consultant Guidelines”). For ease of reference, the relevant sections of the Procurement Guidelines and Consultant Guidelines are set forth in the Annex to these Guidelines.

Definitions of Practices Constituting Fraud and Corruption

7. These Guidelines address the following defined practices when engaged in by recipients of loan proceeds in connection with the use of such proceeds:

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5 IBRD’s Articles of Agreement, Article III, Section 5(b); IDA’s Articles of Agreement, Article V, Section 1(g).

6 Certain persons or entities may fall under more than one category identified in paragraph 5. A financial intermediary, for example, may receive payment for its services, will transfer funds to end users and will make or influence decisions regarding the use of loan proceeds.

7 Unless otherwise specified in the Loan Agreement, whenever these terms are used in the Loan Agreement, including in the applicable General Conditions, they have the meanings set out in paragraph 7 of these Guidelines.
A "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.  

A "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

A "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

A "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

An "obstructive practice" is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.

8. The above practices, as so defined, are sometimes referred to collectively in these Guidelines as "fraud and corruption".

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8 Typical examples of corrupt practice include bribery and "kickbacks".
9 To act "knowingly or recklessly", the fraudulent actor must either know that the information or impression being conveyed is false, or be recklessly indifferent as to whether it is true or false. Mere inaccuracy in such information or impression, committed through simple negligence, is not enough to constitute fraudulent practice.
10 Such rights include those provided for, inter alia, in paragraph 9(d) below.
Borrower Actions to Prevent and Combat Fraud and Corruption in connection with the Use of Loan Proceeds

9. In furtherance of the above-stated purpose and general principles, the Borrower will:

(a) take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices in connection with the use of loan proceeds, including (but not limited to) (i) adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the proceeds of the loan are used only for the purposes for which the loan was granted, and (ii) ensuring that all of its representatives\(^{11}\) involved with the project, and all recipients of Loan proceeds with which it enters into an agreement related to the Project, receive a copy of these Guidelines and are made aware of its contents;

(b) immediately report to the Bank any allegations of fraud and corruption in connection with the use of loan proceeds that come to its attention;

(c) if the Bank determines that any person or entity referred to in (a) above has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in connection with the use of loan proceeds, take timely and appropriate action, satisfactory to the Bank, to address such practices when they occur;

(d) include such provisions in its agreements with each recipient of Loan proceeds as the Bank may require to give full effect to these Guidelines, including (but not limited to) provisions (i) requiring such recipient to abide by paragraph 10 of these Guidelines, (ii) requiring such recipient to permit the Bank to inspect all of their accounts and records and other documents relating to the project required to be maintained pursuant to the Loan Agreement and to have them audited by, or on behalf of, the Bank, (iii) providing for the early termination or suspension by the Borrower of the agreement if such recipient is declared ineligible by the Bank under paragraph 11 below; and (iv) requiring restitution by such recipient of any amount of the loan with respect to which fraud and corruption has occurred;

(e) cooperate fully with representatives of the Bank in any investigation into allegations of fraud and corruption in connection with the use of loan proceeds; and

(f) in the event that the Bank declares any recipient of Loan proceeds ineligible as described in paragraph 11 below, take all necessary and appropriate action to give full effect to such declaration by, among other things, (i) exercising the Borrower’s right to terminate early or suspend the agreement between the Borrower and such recipient and/or (ii) seeking restitution.

\(^{11}\) References in these Guidelines to “representatives” of an entity also include its officials, officers, employees and agents.
Other Recipients of Loan Proceeds

10. In furtherance of the above-stated purpose and general principles, each recipient of Loan proceeds which enters into an agreement with the Borrower (or with another recipient of Loan proceeds) relating to the Project will:

(a) carry out its project-related activities in accordance with the above-stated general principles and the provisions of its agreement with the Borrower referred to in paragraph 9 (d) above; and include similar provisions in any agreements related to the Project into which it may enter with other recipients of Loan proceeds;

(b) immediately report to the Bank any allegations of fraud and corruption in connection with the use of loan proceeds that come to its attention;

(c) cooperate fully with representatives of the Bank in any investigation into allegations of fraud and corruption in connection with the use of loan proceeds; and

(d) take all appropriate measures to prevent corrupt, fraudulent, collusive, coercive and obstructive practices by its representatives (if any) in connection with the use of loan proceeds, including (but not limited to): (i) adopting appropriate fiduciary and administrative practices and institutional arrangements to ensure that the proceeds of the loan are used only for the purposes for which the loan was granted, and (ii) ensuring that all its representatives receive a copy of these Guidelines and are made aware of its contents;

(e) in the event that any representative of such recipient is declared ineligible as described in paragraph 11 below, take all necessary and appropriate action to give full effect to such declaration by, among other things, either removing such person or entity from all duties and responsibilities in connection with the project or, when requested by the Bank or otherwise appropriate, terminating its contractual relationship with such person; and

(f) in the event that it has entered into a project-related agreement with another person or entity which is declared ineligible as described in paragraph 11 below, take all necessary and appropriate action to give full effect to such declaration by, among other things, (i) exercising its right to terminate early or suspend such agreement and/or (ii) seeking restitution.

Sanctions and Related Actions by the Bank in Cases of Fraud and Corruption

11. In furtherance of the above-stated purpose and general principles, the Bank will have the right to take the following actions:
(a) sanction any recipient of Loan proceeds\textsuperscript{12} other than the Member Country\textsuperscript{13} (and/or, if such recipient is an entity rather than a natural person, any of its representatives); sanctions include (but are not limited to) declaring such person or entity ineligible to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of the project or any other project financed, in whole or in part, by the Bank, if at any time the Bank determines\textsuperscript{14} that such person or entity has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in connection with the use of loan proceeds;\textsuperscript{15}

(b) if the Bank determines that any such recipient of Loan proceeds is also a potential provider of goods, works or services, declare it ineligible under paragraph 1.8 (d) of the Procurement Guidelines or paragraph 1.11 (e) of the Consultant Guidelines (as appropriate); and

(c) declare a firm, consultant or individual ineligible under paragraph 11 (a) above if such firm, consultant or individual has been declared ineligible under paragraph 1.14 of the Procurement Guidelines or under paragraph 1.22 of the Consultant Guidelines.

Miscellaneous

12. The provisions of these Guidelines do not limit any other rights, remedies\textsuperscript{16} or obligations of the Bank or the Borrower under the Loan Agreement or any other document.

\textsuperscript{12} As in the case for bidders in the procurement context, the Bank may also sanction persons and entities which engage in fraud or corruption in the course of applying to become a recipient of Loan proceeds (e.g., a bank which provides false documentation so as to qualify as a financial intermediary in a Bank-financed project) irrespective of whether they are successful.

\textsuperscript{13} Member Country includes officials and employees of the national government or of any of its political or administrative subdivisions, and government owned enterprises and agencies that are not eligible to bid under paragraph 1.8(b) of the Procurement Guidelines or participate under paragraph 1.11(b) of the Consultant Guidelines.

\textsuperscript{14} The Bank has established a Sanctions Board, and related procedures, for the purpose of making such determinations. The procedures of the Sanctions Board sets forth the full set of sanctions available to the Bank.

\textsuperscript{15} The sanction may, without limitation, also include restitution of any amount of the loan with respect to which sanctionable conduct has occurred. The Bank may publish the identity of any entity declared ineligible under paragraph 11.

\textsuperscript{16} The Loan Agreement provides the Bank with certain rights and remedies which it may exercise with respect to the loan in the event of fraud and corruption in connection with the use of loan proceeds, in the circumstances described therein.
POSSIBLE REVISIONS TO IBRD GENERAL CONDITIONS AND
LOAN AND GUARANTEE AGREEMENTS
RELEVANT TO FRAUD AND CORRUPTION
(New text is bolded)

I. TEXT OF NEW COVENANT IN THE LOAN AGREEMENT:¹

The Borrower shall ensure that the Project is carried out in accordance with the provisions of the Anti-Corruption Guidelines.

NEW DEFINITION: “Anti-Corruption Guidelines” means the “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants, dated [insert date of approval by the Executive Directors], 2006

II. TEXT OF NEW COVENANT IN THE GUARANTEE AGREEMENT:

The Guarantor shall perform all obligations of the Guarantor referred to in the provisions of the Anti-Corruption Guidelines in accordance with its provisions.

III. TEXT OF NEW COVENANT IN THE PROJECT AGREEMENT:²

The Project Implementing Entity shall perform all obligations of the Project Implementing Entity referred to in the Anti-Corruption Guidelines in accordance with such provisions.

IV. TEXT OF NEW REMEDIES IN THE GENERAL CONDITIONS:³

A. TEXT OF NEW EVENTS OF SUSPENSION:

If any of the events specified in paragraphs (a) through (m) of this Section occurs and is continuing, the Bank may, by notice to the Loan Parties, suspend in whole or in part the right of the Borrower to make withdrawals from the Loan Account. Such suspension shall continue until the event (or events) which gave rise to the suspension has (or have) ceased to exist, unless the Bank has notified the Loan Parties that such right to make withdrawals has been restored.

¹ Similar revisions would be made to the Financing Agreements for IDA Credits and Grants.
² Similar revisions would be made to the Project Agreements for IDA Credits and Grants.
³ Similar revisions would be made to the IDA General Conditions for Credits and Grants.
(l) **Fraud and Corruption.** At any time, the Bank determines that any representative of the Guarantor or the Borrower or the Project Implementing Entity, or any other recipient of any of the Loan proceeds, has engaged in corrupt, fraudulent, coercive or collusive practices in connection with the use of Loan proceeds, without the Guarantor or the Borrower or the Project Implementing Entity (or any other such recipient) having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur.

(m) **Ineligibility.** The Bank or the Association has declared the Borrower (other than the Member Country) or the Project Implementing Entity ineligible to receive proceeds of loans made by the Bank or of credits or grants made by the Association or otherwise to participate in the preparation or implementation of any project financed, in whole or in part, by the Bank or the Association, as a result of a determination by the Bank or the Association that the Borrower or the Project Implementing Entity has engaged in fraudulent, corrupt, coercive or collusive practices in connection with the use of Loan proceeds.

B. **TEXT OF EXPANDED EVENT OF CANCELLATION BY THE BANK:**

If any of the events specified in paragraphs (a) through (f) of this Section occurs with respect to an amount of the Unwithdrawn Loan Balance, the Bank may, by notice to the Loan Parties, terminate the right of the Borrower to make withdrawals with respect to such amount. Upon the giving of such notice, such amount shall be cancelled.

(c) **Fraud and Corruption.** At any time, the Bank:

(i) determines, with respect to any amount of the Loan proceeds, that corrupt, fraudulent, collusive or coercive practices were engaged in by representatives of the Guarantor or the Borrower or the Project Implementing Entity (or other recipient of the Loan proceeds), without the Guarantor, the Borrower or the Project Implementing Entity (or other recipient of the Loan proceeds) having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur.
V. TEXT OF EXPANDED REFUND REMEDY IN THE GENERAL CONDITIONS APPLICABLE TO IDA GRANTS:

(a) If the Association determines that an amount of the Withdrawn Grant Balance has been used in a manner inconsistent with the provisions of the Financing Agreement or these General Conditions, the Recipient shall, upon notice by the Association to the Recipient, promptly refund such amount to the Association. Such inconsistent use shall include, without limitation:

(i) use of such amount to make a payment for an expenditure that is not an Eligible Expenditure; or

(ii) (A) engaging in corrupt, fraudulent, collusive or coercive practices in connection with the use of such amount or (B) use of such amount to finance a contract during the procurement or execution of which such practices were engaged in by representatives of the Recipient or the Project Implementing Entity (or other recipient of such amount of the Withdrawn Grant Balance), in either case without the Recipient or the Project Implementing Entity (or other such recipient) having taken timely and appropriate action satisfactory to the Association to address such practices when they occur.

(b) Except as the Association may otherwise determine, the Association shall cancel all amounts refunded pursuant to this Section.

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4 The Loan and Credit acceleration remedies are much broader than the Grant refund provision in that they allow the Bank to accelerate the Loan/Credit 60 days after the Bank has notified the Borrower/Guarantor/Project Implementing Entity of any default by the Borrower/Guarantor/Project Implementing Entity to perform its obligations under its agreement with the Bank, and such default is continuing. One such default would be failure to comply with the Anti-Corruption Guidelines. For this reason, it was unnecessary to revise the acceleration remedies.
Revisions will need to be made in the Procurement Guidelines in the paragraphs dealing with Eligibility and Fraud and Corruption. These proposed revisions appear in bold in the text below. Similar changes will be made in the Consultant Guidelines.

Eligibility

1.8 (d) A firm declared ineligible by the Bank in accordance with sub-paragraph (d) of paragraph 1.14 of these Guidelines or in accordance with the World Bank Group anti-corruption policies shall be ineligible to be awarded a Bank-financed contract during the period of time determined by the Bank.

Fraud and Corruption

1.14 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, and contractors and their subcontractors under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

(iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

(iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

(v) "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and

threatening, harassing or intimidating any party to prevent it from
disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under par. 1.14 (e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;

(c) will cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;

(d) will sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, a Bank-financed contract; and

(e) will have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, a provision be included requiring bidders, suppliers and contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

17/ In this context, any action taken by a bidder, supplier, contractor, or a subcontractor to influence the procurement process or contract execution for undue advantage is improper.

18/ For the purpose of these Guidelines, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

19/ For the purpose of these Guidelines, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

20/ For the purpose of these Guidelines, “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non competitive levels.
21/ For the purpose of these Guidelines, “party” refers to a participant in the procurement process or contract execution.

22/ For the purpose of these Guidelines, “party” refers to a participant in the procurement process or in contract execution.
ANNEX E

ANTI-CORRUPTION GUIDELINES
FOR
IFC, MIGA, AND WORLD BANK GUARANTEE TRANSACTIONS


1. Corrupt Practices

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

INTERPRETATION

A. Corrupt practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.

B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor’s books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.

C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates applicable law.

D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.

E. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of “Corrupt Practices”
relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

2. **FRAUDULENT PRACTICES**

A “Fraudulent Practice” is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial benefit or to avoid an obligation.

**INTERPRETATION**

A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a “Fraudulent Practice” for purposes of World Bank Group sanctions.

B. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC, MIGA, or PRG operations. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to IFC, MIGA and PRG operations.

3. **COERCIVE PRACTICES**

A “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

**INTERPRETATION**

A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.
4. Collusive Practices

A "Collusive Practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

**Interpretation**

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

5. Obstructive Practices

An "Obstructive Practice" is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice, and threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of [the World Bank Group entity's] contractual rights of access to information under this [Agreement].

**Interpretation**

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

**General Interpretation**

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.
This paper describes how IFC would implement new definitions of “corrupt practices,” “fraudulent practices,” “coercive practices,” “collusive practices” and “obstructive practices” in its operations for purposes of the World Bank Group sanctions program.

Existing Contract Provisions That Will Be Replaced

IFC's current investment documents include an anti-corruption covenant, using the following definition:

"Prohibited Payments" any offer, gift, payment, promise to pay or authorization of the payment of any money or anything of value, directly or indirectly, to or for the use or benefit of any Official (including to or for the use or benefit of any other Person if the Borrower [or Sponsor] knows, or has reasonable grounds for believing, that the other Person would use such offer, gift, payment, promise or authorization of payment for the benefit of any such Official), for the purpose of influencing any act or decision or omission of any Official in order to obtain, retain or direct business to, or to secure any improper benefit or advantage for, the Borrower, its Affiliates or any other Person; provided that any such offer, gift, payment, promise or authorization of payment shall not be considered a Prohibited Payment if, in IFC's reasonable opinion, it (i) is lawful under applicable written laws and regulations or (ii) is made for the purpose of expediting or securing the performance of a routine governmental action (as such term is construed under applicable law);

"Official" any officer of a political party or candidate for political office in the Country or any officer or employee (i) of the Government (including any legislative, judicial, executive or administrative department, agency or instrumentality thereof) or (ii) of a public international organization;
Annex F

IFC also requires its Borrowers to covenant to be in material compliance with applicable law.

New Provisions After Definitions Are Approved

To implement the new definitions, IFC will replace the existing definitions with the new definitions in IFC's financing documents, technical assistance agreements, and other documentation. The new definitions would appear substantially as follows in IFC's specimen loan documentation (with corresponding changes for the other IFC investment instruments):

**Section 1.01 Definitions**

"Corrupt Practice" the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

"Fraudulent Practice" any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

"Coercive Practice" impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

"Collusive Practice" an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

"Obstructive Practice" (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of IFC's contractual rights of access to information under this [Loan Agreement].
"Prohibited Practice" any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice or Obstructive Practice;

The negative covenants in IFC's financing documents would prohibit the borrowers from engaging in Prohibited Practices with respect to the project. As is the case with breaches of IFC's other loan covenants, in the event of a breach of the Prohibited Practices covenant, IFC would be able to cease disbursements to its borrower, declare an event of default, and/or accelerate its loan, depending on the phase of the investment. In addition to the contractual remedies, a breach of the covenant by an IFC borrower or sponsor could lead to sanctions under the World Bank Group sanctions program including debarment of IFC sponsors and borrowers from future World Bank Group projects.

The new definitions will also require some technical corresponding changes to the Sanctions Board Statute, Sanctions Procedures, Sanctioning Guidelines, and Guidance Note presented to the Audit Committee in paper AC2005-0011 of February 16, 2005, to reflect the new definitions.

The Anti-Corruption Guidelines

To supplement these new anti-corruption definitions, IFC would adopt Guidelines which would clarify the meaning of the new definitions in the context of IFC's investment operations. The Guidelines would be made publicly available, after a consensus is reached among the international financial institutions on their approach to the Guidelines and the text of the Guidelines is reported to the Executive Directors. The Guidelines also would be shared with IFC clients.
Annex G

MULTILATERAL INVESTMENT GUARANTEE AGENCY

IMPLEMENTATION OF NEW DEFINITIONS OF CORRUPT, FRAUDULENT, COERCIVE AND COLLUSIVE PRACTICES IN MIGA CONTRACTS OF GUARANTEE

This paper explains how MIGA will implement the new definitions of “corrupt practices,” “fraudulent practices,” “coercive practices,” “collusive practices” and “obstructive practices” in its Contracts of Guarantee once those definitions are approved by the Board of Directors.

Existing Contract Provisions

MIGA’s existing Contracts of Guarantee contain a definition of corrupt practices as well as covenants which obligate Guarantee Holders to take action to prevent corrupt practices as defined and provisions outlining MIGA’s rights and remedies if corrupt practices occur in relation to a Guaranteed Project. These key provisions are found in the following three sections of the standard MIGA Contract of Guarantee:

- Article 9.1(b) (Exclusions), which provides in relevant part that “MIGA shall in no case be liable for any Loss which is due to: . . . (b) Corrupt Practices . . . attributable to the Guarantee Holder or the Project Enterprise.”

- Article 12.2(c) (Duties of Guarantee Holder) which provides in relevant part that “the Guarantee Holder covenants that it shall exercise due diligence to, and is entitled to require the Project Enterprise to . . . (c) refrain from, in connection with the Investment Project, . . . engaging in Corrupt Practices . . .”

- Article 13.7 (Termination by MIGA) which provides that MIGA shall have the right to terminate the Contract “if at any time as reasonably determined by MIGA, the Guarantee Holder or the Project Enterprise, as applicable, is . . . engaging in Corrupt Practices.”

MIGA contracts also contain covenants requiring Guarantee Holders to comply with applicable laws in the host country.

Amendments to Existing Provisions

To implement the new definitions, MIGA will make the following amendments to its standard Contracts of Guarantee once the definitions are approved by the Board of Directors.
Annex G

Definitions

The following definitions will be added to MIGA’s Contract of Guarantee, replacing the current definition of “Corrupt Practices”:

A “Corrupt Practice” means the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

A “Fraudulent Practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

A “Coercive Practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

A “Collusive Practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

An "Obstructive Practice" means (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of MIGA’s contractual rights of access to information under this Contract.

Amendment of Article 9.1

Article 9.1(b) shall be amended to read as follows:

9.1 MIGA shall in no case be liable for any Loss which is due to:* * *

(b) Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Money Laundering, or violations of any bona fide non-discriminatory laws or regulations of general application not designed by the Host Government to have a confiscatory effect, in each case attributable to the

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1 MIGA has not included Obstructive Practices in this clause because it does not believe its inclusion makes sense in context.
Annex G

Guarantee Holder [or the Project Enterprise] in connection with the Investment Project;

Amendment of Article 12.2

Article 12.2(c) would be amended to read as follows:

12.2 The Guarantee Holder covenants that it shall exercise due diligence to, and is entitled to require the Project Enterprise to:

(c) refrain from, in connection with the Investment Project, employing Harmful Child Labor, using Forced Labor, engaging in Corrupt Practices, Fraudulent Practices, Coercive Practices, Collusive Practices, Obstructive Practices or Money Laundering;

Amendment of Article 13.7

Article 13.7 would be amended to read:

13.7 MIGA shall have the right to terminate the Contract, without any further obligation, effective on the date of MIGA's Notice of Termination, if at any time as reasonably determined by MIGA, the Guarantee Holder [or the Project Enterprise, as applicable.] is:

(a) in material violation of the laws and regulations of the Host Country with respect to the Guaranteed Investment or the Investment Project;

(b) in material violation of MIGA's Environmental Policies and Guidelines; or

(c) employing Harmful Child Labor, using Forced Labor, or engaging in Corrupt Practices or Money Laundering; or


2 The bracketed language would be deleted in guarantees of non-shareholder loans and in appropriate circumstances guarantees of minority equity interests.

3 The bracketed language would be deleted in guarantees of non-shareholder loans and in appropriate circumstances guarantees of minority equity interests.
Annex G

provided, however, that MIGA may grant, at its sole discretion, a reasonable period of time to cure the foregoing situations.

Under the revised language, MIGA would be entitled to terminate the policy immediately if prohibited practices occur. In addition to that entitlement, MIGA would retain the right to grant, at its sole discretion, a cure period for situations involving such prohibited acts. MIGA believes this approach is analytically comparable to the approach taken by IFC and the World Bank with respect to exercise of default remedies under their loan documents.

Further Provisions

In addition to the contractual remedies, a breach of the covenant by a Guarantee Holder could under the World Bank Group sanctions program lead to sanctions, including debarment of a Guarantee Holder from future World Bank Group projects.

The new definitions once approved by the Board will also require some technical corresponding changes to the Sanctions Board Statute, Sanctions Procedures, Sanctioning Guidelines, and Guidance Note presented to the Audit Committee in paper AC2005-0011 of February 16, 2005. Once the Sanctions Procedures have been so amended, MIGA will develop contractual language stating that Guarantee Holders will be subject to the Sanctions Process, and that a copy of the Sanctions Procedures will be made available to them.

The Anti-Corruption Guidelines

To supplement these contractual provisions, MIGA would adopt Guidelines which would clarify the meaning of the new anti-corruption definitions in the context of MIGA’s Guarantee Operations. These Guidelines, once adopted, would be binding on MIGA and its Guarantee Holders and would be attached as an Annex to the Contracts.
This paper describes how the World Bank would implement new definitions of "corrupt practices," "fraudulent practices," "coercive practices," "collusive practices" and "obstructive practices" in its partial risk guarantee (PRG) operations for purposes of the World Bank Group sanctions program once those new definitions are approved by the Board of Directors.

Existing Contract Provisions

In recent PRG operations, the World Bank has required project companies to: (i) represent that they have not engaged in fraudulent or corrupt activities; and (ii) covenant not to engage in corrupt and fraudulent practices.

In addition, the World Bank has negotiated provisions in its guarantee agreements for PRG operations that permit the World Bank to: (i) suspend coverage under the guarantees for undisbursed amounts under the guaranteed loan if there is substantial evidence that the guarantee holder has engaged in corrupt or fraudulent practices or that the project company has engaged in such practices and the guarantee holder knew or should have known of such practices; and (ii) terminate the guarantee agreement if the guarantee holder has engaged in corrupt or fraudulent practices or if the project company has engaged in such practices and the guarantee holder knew or should have known of such practices.

Approach Going Forward

To implement the new definitions, the World Bank would include the new definitions (and the interpretations thereof included in the Anti-Corruption Guidelines – see Annex E) in guarantee agreements and project agreements for new PRG operations once those definitions are approved by the Board of Directors. The new definitions would be as follows:

"Corrupt Practice" the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
Annex H

"Fraudulent Practice" any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

"Coercive Practice" impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

"Collusive Practice" an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

"Obstructive Practice" (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation, or making false statements to investigators, in order to materially impede a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise [IBRD's/IDA's] contractual rights of access to information under this Agreement.

The World Bank would require the project company for the project for which the World Bank has provided a PRG to provide representations and covenants in the project agreement between the World Bank and the project company to the effect that the project company has not engaged and will not engage in any corrupt, fraudulent, coercive, collusive or obstructive practice with respect to the project.
Annex H

The World Bank would also include provisions in its guarantee agreement for PRG operations that would entitle the World Bank to suspend coverage for undisbursed loan amounts or terminate the guarantee if the guarantee holder engages in any corrupt, fraudulent, coercive, collusive or obstructive practice with respect to the project or if the project company engages in such practices and the guarantee holder knew or should have known of such practices.

Further Provisions

In addition to the contractual remedies referred to above, the World Bank would include provisions in PRG guarantee and project agreements to the effect that a breach by the guarantee holder or project entity of its representations and covenants concerning corrupt, fraudulent and other prohibited practices would entitle the World Bank Group to exercise sanctions under the World Bank Group sanctions program, including debarment from future World Bank Group projects.

Once the Sanctions Procedures have been so amended, the World Bank for its PRG operations will develop contractual language stating that guarantee holders will be subject to the Sanctions Process, and that a copy of the Sanctions Procedures will be made available to them.

The Anti-Corruption Guidelines

To supplement the contractual provisions, the World Bank would adopt the Anti-Corruption Guidelines for IFC, MIGA and World Bank Guarantee Transactions (Annex E) which would clarify the meaning of the new definitions in the context of PRG operations. Like the new definitions, the Guidelines, once adopted, would be made binding on guaranteed parties and entities with whom the World Bank has entered into a project agreement for a PRG operation through provisions included in PRG guarantee and project agreements. The Guidelines would also be made publicly available, after a consensus is reached among the international financial institutions on their approach to the Guidelines and the text of the Guidelines is reported to the Executive Directors.
INITIAL LIST OF ANTICIPATED CORRESPONDING CHANGES TO THE SANCTIONS BOARD DOCUMENTS

1. On February 16, 2005 and June 29, 2005, Management submitted to the Audit Committee a package of documents for discussion during the Audit Committee meetings on the implementation of the Sanctions Reform Process on February 23, 2005 (AC2005-0011) and June 29, 2005 (AC2005-0067). These documents were prepared by Management to implement certain recommendations in the Board paper entitled Reform of the World Bank’s Sanctions Process (R2004-0025/2; IDA/R2004-0031/2; IFC/R2004-0019/2; MIGA/R2004-0010/2).

2. These implementing documents include revised versions of the documents previously discussed by the Audit Committee on December 13, 2004 (AC2004-0103), consisting of the:

   a) Sanctions Board Statute;
   b) Conflict of Interest Guidelines for Members of the Sanctions Board;
   c) World Bank Sanctions Procedures;
   d) Evaluation and Suspension Officer ("Evaluation Officer")-Terms of Reference;
   e) World Bank Sanctioning Guidelines;
   f) Guidance Note for the Sanctions Board Members on the Use of Sanctioning Guidelines;
   g) IFC Sanctions Procedures;
   h) IFC Sanctioning Guidelines;
   i) Evaluation and Suspension Officer ("IFC Evaluation Officer")- Terms of Reference;
   j) MIGA Sanctions Procedures;
   k) MIGA Sanctioning Guidelines;
   l) Evaluation and Suspension Officer ("MIGA Evaluation Officer")- Terms of Reference; and
   m) Sanctions Procedures for Bank Guarantee Projects (PRG).

3. In 2005, the Bank undertook an in depth review of certain topics relating to anti-corruption activities. This formed the basis for the recent discussions with the Audit Committee and the submission of the present Board paper. The last Audit Committee meeting on the proposed new reform initiative was held on June 28, 2006 (AC2006-0054).

4. In view of these latest developments, there is a need to revisit the previously submitted drafts of the implementing documents. The scope and the precise language of the corresponding changes to the implementing documents would largely depend on the subsequent Board consideration of the present Board paper.
The following bullets provide a snapshot of these probable corresponding changes.

- Revision of the implementing documents to reflect the new expanded scope of the sanctions regime to include all fraud and corruption that may occur beyond procurement but in connection with the use of Bank loan proceeds in the preparation and/or implementation of Bank-financed investment projects. For example, I(c) of the previously submitted Sanctions Procedures would be amended by deleting the restrictive reference to “projects in which procurement was governed by the Bank’s Procurement Guidelines or Consultant Guidelines” and inserting a new language to reflect the expanded regime. A similar amendment would need to be introduced in the Terms of Reference of the Evaluation Officer.

- All definitions, for example in I(d) of the previously submitted Sanctions Procedures, and references elsewhere in the implementing documents to the subject offenses would need to be revised to reflect the new definitions of “corrupt practice,” “fraudulent practice,” “collusive practice,” “coercive practice and the new offense of “obstructive practice.” Similar amendments would need to be introduced in the Terms of Reference of the Evaluation Officer.

- The current Board paper also refers to “acts in furtherance of an offense (even where the act is not completed, possibly due to discovery by relevant authorities or other fortuity) or agreements to undertake a prohibited course of conduct.” There is a need for further reflection on how to capture these concepts in the implementing documents.

- The definition and all references to the term “Respondent,” for example in I(g) of the previously submitted Sanctions Procedures, would need to be revised to reflect the expansion of the sanctions regime to “recipients of loan proceeds” as broadly understood. The term includes not only actual beneficiaries or end users but also persons or entities which channel Bank loan proceeds to end users, as well as persons or entities which take or influence decisions regarding the use of Bank loan proceeds.

- In view of the new offense of “obstructive practice,” all references to the aggravating circumstance of “destruction or concealment of evidence, and obstruction of the investigation, including refusal to provide access to accounts, records and other relevant documents” (See for example Section 15-5(e) and Section 12-2(e) of the previously submitted Sanctions Procedures) would need to be deleted to prevent twice penalizing the same misconduct.

These and other changes would need to be further reflected in the counterpart documents for IFC, MIGA and Partial Risk Guarantee Operations (PRG).