Review of the World Bank Group Sanctions System

Global Multi-Stakeholder Consultations, Phase I: July-October 2013
FEEDBACK SUMMARY

The following is a summary of the feedback received during consultations with external stakeholders in Phase I of the review of the World Bank Group Sanctions System (http://consultations.worldbank.org/consultation/sanctions-reviews). An Initiating Discussion Brief provided background information for the consultations, which were largely conducted online and through a number of targeted face-to-face meetings and video conferences.

The World Bank Group sought input from a wide range of stakeholders, including: external parties who have engaged in the system in the past, such as private sector actors, especially contractors and consultants who participate in Bank Group supported projects, which may engage in the system or are impacted by it; country officials that have been involved in: (a) the implementation of projects affected by corruption or Bank sanctions and/or (b) anti-corruption or debarment matters; other international organizations with sanctions systems, particularly other MDBs; former respondents and their legal counsel; civil society organizations with a stake in the fight against corruption; and academics whose studies focus on governance and anti-corruption, public procurement and/or development effectiveness.

A set of guiding questions helped frame input on key areas for Bank consideration. Because some comments were solicited with the assurance of anonymity, the input from stakeholders is presented in this summary without attribution. Public statements provided by stakeholders as input into this consultation are posted on the consultation website. The feedback received from these consultations will help shape the next generation of the Sanctions System. The feedback received from consultation participant is summarized in the table below.

General Considerations	
Consultation and process of the review	Stakeholders commended the Bank for opening up the sanctions review to public consultation. The steady improvements in the Bank's sanctions process have helped increase not only the effectiveness of the Bank's sanctions system, but also its credibility and transparency. It is clear that the recommendations of the review team are aimed at furthering the Bank's ongoing commitment to good governance and the rule of law.
	The findings and most of the recommendations presented in the Initiating Discussion Brief received support from stakeholders, especially proposals to enhance fairness, transparency, and proportionality of the system, with some caveats (principally ETS and INT's right to appeal, as described below). It is important to strengthen cooperation with and support for anti-corruption initiatives at the

	national level (e.g. through the use of referral reports). It is also necessary to strike the right balance between the objectives of a Bank-administered Sanctions System and the ultimate development goal of enhancing national systems and country ownership.
	Close coordination between the sanctions review and the procurement review is necessary.
Reach of the System	Investigation of cases outside the procurement system should be encouraged, as recommended by the review team, since it is consistent with the mandate of the Bank in the Articles of Agreement concerning the protection of Bank resources. If the anti-corruption mission is to be taken seriously, supervision budgets will need to increase.
	The Bank should follow the review team's recommendation to expand its approaches to deal with fraud and corruption issues in its operations beyond the sanctions proceedings, settlement, and the Voluntary Disclosure Program (VDP).
Reassessment of the Focus and Scope of the Sanctions System	
Shift focus to corrective instead of punitive action	Consultation participants recommended that the World Bank Sanction System should strive to be more transformative than punitive and promote a culture of integrity. This could happen through the kinds and lengths of sanctions imposed by the World Bank and through compliance programs.
View scope in broader strategic context and in consideration of development impact	According to stakeholders, the Sanctions System, as part of the Bank's overall Governance and Anti-Corruption Strategy, should share the objective of not only reducing corruption, but also of promoting the World Bank's goals of eradicating extreme poverty and promoting shared prosperity. Accordingly, the Sanctions System should also give consideration to the social and economic development impacts of its actions in the given context in which the sanctioned company operates. Debarment should not adversely affect beneficiaries of Bank projects, for instance through limiting the pool of qualified bidders for World Bank contracts.
Supply and demand side of corruption	The Bank should look not only at the supply side of corruption (i.e. the bribe giver, usually private sector actor), but also at the demand side (i.e. the bribe taker, usually government officials).
Fairness, Credibility, and Accessibility in the Sanctions System	
High standard of safeguards and due process – but room for improvement	Stakeholders acknowledged that the Bank's Sanctions System provides more opportunities for firms to be heard and defend themselves than other comparable Sanctions Systems. The system is sound, offers legal certainty, and does not require radical changes or a paradigm shift. However, there is still room to enhance due process.
Better built-in protections required	The Bank should maintain a high standard of safeguards and due process in order to protect less experienced businesses from mistakes or from pressure from investigation and debarment proceedings. Procedural protections are essential in all cases to ensure a fair process and equality of arms. Companies should also get the opportunity to access the full record of the investigation.
Unbiased framework necessary	According to feedback providers, the Bank should make sure that its system is not "Americanized"—as it must be understood by different legal traditions and systems around the globe.
	Some stakeholders argued that categorizing the Bank system as purely administrative fails to capture its true essence given the core criminal character of sanctionable practices, the severity of sanctions' potential consequences (including corporate death), and the Bank's regular practice of referring matters to national officials including criminal authorities.
Greater Transparency Needed in the Sanctions System	
More Bank efforts to increase awareness	Consultation participants acknowledged that the Bank has taken a number of important steps toward increasing transparency in the Sanctions System, including the publication of the Law Digest, Sanctions Board decisions, Advisory Opinions of the Bank Group Senior

and understanding	Vice President and General Counsel, the Integrity Vice Presidency's (INT) annual report, in addition to public discussion by the Suspension and Debarment Officer (SDO) and other Bank experts. However, stakeholders asked the Bank to find more ways to ensure that the public fully understands the Sanctions System and the way it handles investigations and penalties. Stakeholders suggested that the Bank consider: (1) increasing awareness among the private sector about the implications of participating in Bank-financed projects, particularly with regard to the applicability of the Sanctions System; (2) making standard bidding documents clearer about sanctionable practices, the investigative process, and about the implications of sanctions; (3) disseminating information about the rights of respondents during sanctions proceedings (including right to counsel) and the possibility to settle the case through a negotiated resolution; (4) providing guidance to project implementing entities on how to handle allegations of fraud and corruption, including in the case of projects and programs supported by other co-financiers; and (5) making public fully reasoned SDO's determinations once they become final, including a description of the facts.
	All rules, regulations, manuals, guidance, precedents and any other authority that the Bank uses or relies upon at any point in the Sanctions System should be more transparent. Some stakeholders asked for more transparency with regard to the suspension list, which is currently not public and is made available only to borrowers through an online secured platform. It was also suggested that Sanctions Board decisions should identify respondents found culpable by name, thus clearly attributing the details of the misconduct to the responsible parties, on the assumption that doing so would deter corruption. The Bank should consider publishing sanctions decisions in the national press/media rather than just on the Bank's website, thus enhancing their deterrent effect.
Disclosure of data	Stakeholders noted that more transparency is required in terms of data collection and reporting on INT investigations and the sanctions process, particularly with regard to the criteria used by INT to select cases for investigation.
Settlements	
Efficiency and accountability considerations	According to feedback providers, settlements have emerged as a helpful tool to increase efficiency in the Sanctions System, but: 1) INT should provide respondents with more of the underlying facts corroborating that misconduct occurred, thus allowing respondents to "fix the problem" and conduct internal investigations; 2) the criteria imposed by INT in practice for entering into settlement should be relaxed, and the Bank should allow for no-admit/no-contest settlements; 3) the prospect of automatic suspension makes sanctions proceedings a non-option for many respondents and may be used by INT to exert undue pressure during settlement negotiations; and 4) strict time limits for settlement discussions (under consideration by the review team) are not warranted, as they would serve to apply unnecessary pressure on the settlement process. INT could require a voluntary restraint from seeking new Bank business from a company that seeks to engage in settlement discussions.
Extent of access to information and transparency	In cases involving multiple independent parties, it was argued that settlement with some parties should not be used as the basis for frustrating information rights. While it may be appropriate for the terms of settlements themselves to be confidential, some stakeholders believed that there is no justification for confidentiality of the underlying facts. The SDO therefore should have the authority to examine the file and to determine what information should be kept confidential and what information should be shared

	with respondents.
	Consultation participants pointed out that greater transparency in the settlement process is necessary to dissipate any perception of subjectivity or favoritism.
	The Bank should issue public statements for all settlements rather than on a selective basis.
Re-Sequencing the First Tier	
Impact on due process and incentive structure	Stakeholders supported the recommendation to re-sequence the first tier of adjudication by allowing respondents to be heard prior to the issuance of a Notice by the SDO and the imposition of a temporary suspension.
	In thinking about due process, the Bank should bear in mind the serious consequences of temporary suspension on a firm including its indirect effects (e.g. the magnitude of the ripple effect in national jurisdictions, impact on stock value, and likelihood of shareholder derivative suits).
Consideration of SEC approach	Participants asked that INT should routinely notify potential respondents about its plans to initiate a sanctions proceeding and give that party an opportunity to be heard. As a model, the Bank could look at the approach of the U.S. Securities and Exchange Commission (SEC) whereby the commission sends respondents a letter (a "Wells Notice") giving them the opportunity to provide information as to why the enforcement action should not be brought against them.
Checks and balances within sequence configuration	The Bank should be wary of giving INT the opportunity to appeal SDO determinations, whether in relation to early temporary suspension or otherwise. If INT were to be given the right to appeal, the Bank should consider making this right subject to clearance by a third party (e.g. the Legal Department).
First Tier: Suspension and Debarment Officer	
Maintain SDO role and ensure balance of power within system	Most stakeholders find that the SDO stage in the Sanctions System's first tier is working as intended and as an important check on prosecutorial discretion. While the Bank should continue with the present role of the SDO, additional safeguards should be considered to ensure that the SDO's independence from INT is institutionalized. By contrast, one stakeholder suggested eliminating the position/function of the SDO in the interest of efficacy and simplicity.
Improve SDO's engagement and disclosure practices	Bank outreach to respondents should improve in order to reduce the numbers of "default" sanctions (i.e. sanctions imposed because respondents did not respond to Notices of Sanctions Proceedings).
Second Tier: Sanctions Board	
Reform Board composition and governance policies	The number of Sanctions Board members from developing countries should be increased; some seats should be kept for representatives of the countries where a respondent firm is registered; and Sanctions Board decisions should be the result of consensus among its members.
	Sanctions Board members should have staggered terms to preserve institutional knowledge and continuity.
	It is important to ensure both the independence and the appearance of independence of the Sanctions Board. The presence of active Bank staff serving as members of the Sanctions Board may potentially compromise full independence. General support for the recommendation of moving to an all-external Sanctions Board, with appropriate measures to mitigate the loss of expertise currently provided by its internal members. However, allowing retirees to join the Sanctions Board as external members was seen by some as

	problematic because of the retiree's proximity to the Bank. Others felt that appointing at least some members with prior Bank experience was essential to retaining some degree of institutional knowledge. One stakeholder recommended the systemic inclusion of individuals with private sector experience as members of the Sanctions Board would make the Sanctions Board more balanced and credible in the eyes of the business community.
Ensure efficient processes and fairness to respondents	The time that it currently takes for the Sanctions Board to issue a final decision—currently 4-6 months—is excessive, especially since respondents are under ongoing suspension. The Bank needs to introduce strict deadlines for actors in the Sanctions System (i.e. INT, OSD and the SB) as a means to ensure efficiency and fairness to respondents.
	Since the Sanctions Board normally holds its sessions at the principal office of the Bank in Washington, D.C., travel costs and other associated hurdles represent an insurmountable barrier for certain types of respondents. The Bank should hold sessions in the country offices in order to give equal opportunities to all respondents, including those with limited means.
	The Bank should follow the review team's preliminary recommendation of increasing the use of panels rather than plenary sessions in cases that do not pose novel issues. In addition, panels could be used to address issues that arise prior to a hearing, such as failure by INT to comply with its disclosure requirements, investigator misconduct, or other serious pre-hearing concerns.
Bring balance to proceedings	Some stakeholders argued that the positions of INT and respondents are not fully balanced at the Sanctions Board stage of proceedings. As the sanctions process is currently structured, the second-tier of adjudication is unbalanced at both the written and hearing stages as INT is granted more opportunities to be heard than the respondent. The Bank should therefore include a right of rejoinder by respondents and limit INT's ability to introduce new evidence after termination of the written phase. Respondents should have the right to rebut INT's arguments and be provided adequate time to do so.
Investigations	
Quality of INT's performance	Stakeholders noted that INT deserves praise for its many committed and talented individuals and should be applauded for its preventive, investigative, and prosecutorial work to promote the Bank's anti-corruption agenda. In particular, the experience and professionalism of INT investigators, the quality of investigation, and the ability of INT investigators to understand the specific factual circumstances of a case are commendable.
	Some stakeholders pointed out that INT needs consistent and better training and that stronger compliance by INT with authoritative interpretation of the Bank's legal framework for sanctions, including by the Sanctions Board, is required.
Nature of INT's priorities and investigative approach	It was recommended that the Bank should place more investigative focus on larger cases. Moreover, stakeholders supported the review team's recommendation that the Bank should adopt a proactive, risk-based investigative approach to uncover corruption and other cases with the most significant impact on the Bank's development goals, rather than exclusively relying on tips or complaints.
	INT staff should assist national investigative agencies and appear/testify before national courts. In addition, it is important to enhance international coordination in the fight against corruption by building relationships with counterparts at the national level. Information sharing and coordination between INT and country/project officials is an essential element to enable country/project officials to address a specific problem.
	Participants called for a more balanced, less adversarial approach in INT's investigations and treatment of respondents is needed.
Areas for improvement to ensure system	Consultation participants identified a number of areas for INT to improve its practices, including its handling of disclosure of exculpatory and/or mitigating evidence; disclosure of confidential information to parties not authorized to receive the information; its use of settlements; variations in the quality of investigations and approaches to investigations by INT personnel; conduct in witness

fairness	interviews and document collection; accuracy of statements to companies during the interview process, including overreaching interpretation of the audit clause; and compliance with INT's obligations under the Sanctions Procedures.
	The Bank should consider ways to ensure INT investigations are completed thoroughly and fairly. At a minimum, greater supervisory oversight to ensure all investigations use a rigorous process of fact gathering and fact testing is necessary.
	It was suggested that currently, INT faces a conflict of interest by acting as both investigator and prosecutor. While different teams within INT have been developed for these different functions, having both housed within INT could result in lesser objectivity about the merits of a case.
Areas for improvement to increase system efficiency and effectiveness	Investigations and sanctions proceedings should be more expeditious, according to stakeholders. The Bank should find ways to deal more efficiently with minor cases such as small fraud and forgery cases. It is also important to differentiate between frivolous and genuine complaints. INT should seek the opinion of project/government authorities before launching an investigation.
Necessary grievance and accountability mechanisms	The Bank should adopt and make public a Code of Conduct for INT, perhaps modeled after the Investigative Guidelines used by the U.N. Stakeholders asked to provide opportunities to challenge INT's conduct in investigations.
	In order to increase the amount of credible information shared with INT and to more aggressively probe corruption, a safe environment for whistleblowers should be created. The Bank should also issue guidance on resisting undue solicitations, particularly when made by public officials.
More transparency, communication, and outreach	The Bank was asked to increase transparency during the investigation period and communicate more effectively with respondents as to what they should expect during the different stages of the proceedings. Specifically, persons interviewed should be told whether or not they are subjects of possible sanctions. The Bank could look at the model adopted by the International Chamber of Commerce's International Court of Arbitration, which has specific procedural rules in place to convene a case management conference at the beginning of arbitration and map out a procedural timetable for the duration of the proceedings.
	The Bank should regularly follow up and report to the public on the results of INT's referrals to national governments. In addition, the sanction system would benefit greatly from promoting relationships and sharing information with other governmental bodies that focus on responding to contractor misconduct or poor performance.
Success Metric, Performance Standards, and Quality Controls	
Metrics by which to evaluate success	According to some feedback providers, social and economic objectives of the Sanctions System should influence the way in which the system is evaluated. The fundamental purpose of the Sanctions System should be to effectively improve the compliance and management of firms, rather than simply to punish them.
	Stakeholders suggested more meaningful metrics to measure the success of INT and the system as a whole. The Bank's focus should be on the quality of the process rather than numerical goals that may or may not be statistically meaningful.
Performance monitoring and impact assessment	The Bank should develop performance standards that set strict time limits for smaller fraud and forgery investigations while providing INT with the time and resources necessary to carry out lengthier, proactive, risk-based investigations for larger corruption cases that significantly undermine the Bank's developmental goals. An integrated case management system is essential to keep track of cases and assess the performance of various units and their staff.
Quality controls	Quality controls should be introduced across the Sanctions System, including, to the extent practicable, criteria that directly relate to

	the ultimate delivery of goods and services to the intended project beneficiaries.
Early Temporary Suspension (ETS)	
Do not compromise quality and quantity of investigation in mainstreaming ETS	Consultation participants emphasized the potentially damaging and irreversible consequences of ETS for companies, of which the Bank needs to be aware. Therefore, stakeholders expressed concerns about mainstreaming ETS and lowering the standard for reviewing ETS requests.
Ensure more proportionality in ETS	The Bank should ensure more proportionality in ETS; for example, where the misconduct is limited to a business unit, the whole corporate group should not be impacted. Also, judging cases based on smaller, less documented reports could lead to sanctions that are disproportionate or unjustified.
Proportionality and Nature of Sanctions	
Recalibrate proportionality between sanctions and misconduct	Stakeholders asserted a lack of proportionality between sanctions and the underlying misconduct. They supported the review team's recommendation that the Bank consider a more flexible and proportionate use of the range of sanctions, especially in minor cases or where respondents demonstrate that they have and will continue to take corrective actions.
	For sanctions involving large corporate groups, the Bank needs to be more nuanced in its application of sanctions. One stakeholder suggested limiting sanctions only to the firm engaged in a sanctionable practice rather than to all its affiliates
Allow borrowers to apply their own debarment lists to Bank-financed operations	The Bank should permit borrowers to apply their own debarment lists to Bank-financed operations. However, one stakeholder cautioned the Bank to be wary of extending a borrowing country's Sanctions System to international competitive bidding (ICB) to prevent the borrowing country from affecting the fairness of the Bank's procurement.
Increase harmonization of debarment systems	Stakeholders called for more harmonization among MDBs' debarment systems. The five MDBs that have signed the cross-debarment agreement should adopt a single unified set of standards and guidelines to ensure the fairness of sanctions.
Adopt a single unified set of MDB standards to ensure the fairness of sanctions	The Bank should put in place a unified second tier of adjudication common to all MDBs whereby a company can object to automatic cross-debarment. The Bank should be mindful of the impact of cross-debarment on businesses, particularly considering that an increasing number of authorities, governments, private entities and other organizations voluntarily cross-debar from the Bank's list. When a sanction results in the firm going out of business, rehabilitation is clearly frustrated.
Small and Medium-Sized Enterprises (SMEs)	
SME engagement, access to information, and awareness about the Sanctions System	According to consultation participants, the Bank should focus on closer engagement with SMEs by paying more attention to their specific needs and by making the system more accessible. Further information-sharing about the Sanctions System and Bank rules more broadly is necessary. SMEs and other low-capacity respondents often do not know about the implications of participating in Bank financed-projects (with respect to investigations, sanctions, etc.).
	The Bank should do more to guarantee SMEs' access to the Sanctions System, including addressing language barriers that may be particularly significant for respondents from non-Anglophone countries.
Promotion and	The Bank is uniquely positioned to promote a culture of compliance in SMEs. More valuable than fines would be the continued

support mechanisms needed for a culture of compliance in SMEs	encouragement of these often geographically scattered entities to adopt meaningful, proportionate compliance policies and related procedures.
	It is important to take into account the cost of compliance monitoring for SMEs and the need to study ways to make the system more affordable to these low-capacity respondents. The Bank should encourage the creation of a pro bono panel of practitioners to provide advice and representation at no cost or low cost.
Potential negative impacts of Board composition and disclosure practices on SMEs	One stakeholder warned that moving to an all-external Sanctions Board with procedures consisting of multiple tiers resembling a quasi-judicial system may have the unintended consequence of further alienating SMEs. Priority should be given to the introduction of simplified procedures and rules for less sophisticated respondents.
Voluntary Disclosure Program	
Reform VDP terms to attract more interest and increase program use	The Bank should take a closer look at the Voluntary Disclosure Program (VDP) and find ways to increase the frequency with which contractors use it. It is necessary to improve the Bank's communication strategy on VDP. Despite efforts to make it more appealing, the program has not attracted significant interest likely because its conditions are too burdensome, especially in cases of minor misconduct and for small to medium-sized enterprises. The 10-year mandatory debarment for breach of VDP terms is also a major disincentive.
Integrity Compliance Programs and Conditions	
Require linkages between integrity compliance programs and Bank incentive structure	Stakeholders encouraged the Bank to continue its efforts to promote a culture of compliance through the imposition of integrity compliance programs as a condition for release from debarment. The Bank could learn from the MIGA/IFC approach to corruption in the private sector, which emphasizes integrity due diligence and other risk management rather than only enforcement.
	The Bank should adopt a policy requiring that firms bidding on Bank-financed contracts over a certain monetary threshold already possess a robust compliance program, as is the case in other procurement systems.
	Many consultation participants expressed concern about a proposal to shift away from debarment with conditional release as a "baseline" sanction, since it is important to get the balance of incentives right (i.e. punish wrongdoing but reward self-cleaning and correction). To strike this balance, the Bank should support the establishment of better compliance systems and increase its recognition of remedial actions as a mitigating factor.
Provide more details and evaluate compliance program effectiveness	More dissemination of information is needed on certain aspects of the "baseline" sanction of debarment with conditional release, such as practical implications of conditions for release, the Bank's definition of a mitigating factor, and the characteristics of a compliance program. The Bank should also conduct thorough research on compliance programs' effectiveness to understand what actually works.
Consider respondent-specific approach	According to feedback providers, an approach more-tailored to the specific conditions of the respondent is necessary, as disproportionate and excessively onerous conditions have the effect of turning conditional debarment into indefinite debarment. Such issues of proportionality particularly impact low-capacity respondents.
Ensure ICO independence and functional capacity	The Integrity Compliance Office (ICO) function should be completely independent of INT. The Bank must provide the ICO with sufficient staff and resources.
Explain selection	The Bank should review and explain the selection criteria for monitors and independent investigators, pursuant to resolution

criteria for ICO's investigative personnel	agreements with the Bank. The Bank should allow a wide range of vendors as monitors in order to avoid creating a conflict of interest. In addition, the Bank should reconsider its excessive reliance on compliance monitors at a time when other jurisdictions are limiting the use of monitors to cases where benefits are clear.
Provide accountability	The Bank should formally acknowledge certification as evidence that a company has developed and implemented an effective integrity compliance program, which is not only adapted to the company's characteristics (corruption risk, size, structure, sector of activity, etc.) but which also corresponds to evolving international best practices standards.
	To reinforce its efforts in corruption prevention, the Bank should, for example, make wider use of integrity pacts and focus on robust project design and supervision mechanisms capable of detecting fraud, collusion, and other sanctionable practices at an early stage and mitigating risks. The Bank is "behind the curve" in adopting e-procurement as the preferred means for procurement in Bank-financed projects.
	The Bank should consider establishing a Compliance Advisory Committee consisting of compliance experts from both public and private companies whose broad knowledge of compliance issues, realities on the ground, and corporate structures could assist the Bank in defining, setting, and refining its compliance standards.
Other Considerations	
Additional aspects to consider	The Bank should consider having staff participate in the evaluation committees established by Borrowers to enhance the fairness and transparency of the bid evaluation process.