



C I A N

French Council of Investors in Africa

ANTI-CORRUPTION COMMITTEE

RESPONSE TO CONSULTATION REVIEW OF THE WORLD BANK GROUP SANCTIONS SYTEM

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Paris, 28 October 2013

The French Council of Investors in Africa (CIAN) is a private corporate organization, created in 1979, gathering companies invested in Africa. It counts over a 120 member companies amounting for about 75% of French overall business activity in Africa.

CIAN promotes and facilitates business connections between France and the African continent through experience and information sharing via thematic Committees, counseling via a powerful international network and lobbying and high-level contacts with private and public stakeholders involved in Africa's development. Its Anti-corruption Committee was established in 2002 and discuss with members the latest legal developments related to the fight against corruption and the best practices to prevent corruption and resist undue solicitations. The Committee regularly presents its members' concerns to national and international authorities.

Introduction

The French Council of Foreign Investors in Africa (CIAN) is committed to fighting corruption in all its forms. In 2005, the CIAN's Anti-corruption Committee published a declaration which CIAN member companies signed.

To help its member companies resist undue the solicitations they frequently face in Africa, the Anti-corruption Committee published a handbook *Resisting Extortion Solicitations in Tax and Customs Matters* in 2010.

CIAN member companies are attentive to the actions taken by the World Bank to combat corruption in Africa. They are particularly attentive to the actions taken by the Integrity Vice-Presidency, the Office of Suspension and Debarment and the Sanctions Committee.

CIAN member companies acknowledge the importance of sanctions to combat corruption and consider crucial the principles of equity, justice and transparency applied during investigations, judgments and sanctions. These principles are also important to the credibility of the Bank's sanctions regime.

The CIAN therefore welcomes the World Bank's initiative in launching the consultation on its sanctions regime.

Comments

Question 1: Should the World Bank Group take further steps to enhance the system's fairness, credibility, efficiency and/or effectiveness?

The CIAN Anti-corruption committee deplores that, overall, sanctions are almost exclusively directed at combating active corruption and hardly cover passive corruption. By increasing scrutiny of the passive side of a corrupt act, the Bank could dissuade administrative officials from engaging in undue solicitation. While the World Bank transmits its sanction dossiers to the country where the corrupt act took place, country administrations only very rarely prosecute the officials having been on the receiving end of bribes. Country administrations would be more likely to take meaningful legal action against their public agents if the World Bank published their names in a black list as clearly as it publishes a black list for companies.

The Bank may also consider implementing a peer review system similar to that used by the OECD to follow the application of its anti-corruption convention. This peer review system could be held at a regional level (Africa, Asia, etc.) and each country receiving World Bank funds could report on a regular basis what measures they've put in place to prevent corruption in attributing contracts and what kinds of legal action was taken against their public agents following World Bank sanctions.

Question 2: Are there any other issues the sanctions system review should address?

The World Bank sanctions system could take on a role of promoting compliance by including in its sanctions the obligation to finance collective actions to prevent corruption (in the form of conferences, forums, business associations, school programs, etc.). The collective actions could take place in the country where the corrupt act took place and with the active participation of the administration that was involved in the corrupt act.

Question 3: What measures can the World Bank Group take to improve the transparency of the sanctions system?

As mentioned above (question 1), the CIAN Anti-corruption Committee recommends that the World Bank publish a list of the public officials having received bribes and make this list as publicly available and as accessible as the black list of companies.

Question 4: What can be done to enhance the usefulness and/or effectiveness of the guidance materials for potential contracts of Bank-financed contracts?

The CIAN Anti-corruption Committee identifies no further actions to enhance the usefulness and/or effectiveness of the guidance materials.

Question 5: Is the guidance on treatment of corporate groups sufficiently clear and comprehensive?

The guidance on treatment of corporate groups seems sufficiently clear and comprehensive.

Question 6: Should additional steps be taken by World Bank to make its system more accessible to all respondents, including SMEs?

The CIAN Anti-corruption Committee recommends providing companies, particularly SMEs, with Bank-financed, externalized legal counsel to help guide them through the sanctions process by explaining their rights and how to proceed to defend themselves. Such counsel could be given by independent law firms disposing of a few hours of World Bank-financed legal advice. For the sake of avoiding conflicts of interest, these law firms would then in no way be able to advise the companies on their particular cases with the World Bank.

Question 7: Should the Sanctions Board be entirely external to the Bank? What can the Bank do to improve the independence and credibility of the Sanctions Board?

Any action that can ensure the absence of conflicts of interest within the Sanctions Board will improve its credibility.

The CIAN Anti-corruption Committee recommends systematically including in the Sanctions Board people having had experience in the private sector, ideally in the sectors that are involved in the types of projects the World Bank finances (or similar). People having had this experience are in a better position to understand and explain the concrete difficulties faced by businesses. By including this criterion for selection, the business community would see the Sanctions Board as more balanced and credible.

The CIAN Anti-corruption Committee also recommends paying particular attention to the nationalities represented in the Sanctions Board. To its knowledge, no European is currently on the Sanctions Board.

Question 8: Is there anything more that could be done to further improve the efficiency of the system?

The CIAN Anti-corruption Committee wishes to emphasize that improving the efficiency of the system should not be made to the detriment of maintaining the balance of rights between companies and the Bank (cf. point 10 below).

Question 9: Should the settlements mechanism be made more transparent?

The settlements appear to be sufficiently transparent.

Question 10: How can the “early temporary suspension and “debarment with conditional release” mechanisms be made more effective?

The CIAN Anti-corruption Committee regrets that the full report of the Sanctions review was not made available for the purposes of the present consultation. Paragraph 39 of the Initiating Discussion Brief includes a recommendation to *mainstream* the use of Early Temporary Suspension. It is unclear what is meant by “mainstreaming” and what specific recommendations were made in this respect.

The CIAN Anti-corruption Committee is concerned that, for the sake of mainstreaming and increasing efficiency, quality and quantity requirements for the evidence collected during an investigation would be reduced. The fact that the Bank could judge cases based on smaller, less-documented reports could lead to sanctions that are disproportionate or unjustified.

Mainstreaming should not be an objective in and of itself; the World Bank must do its utmost to ensure that the investigations are conducted appropriately and that sanctions decisions are based upon sufficient evidence and proof of sufficient quality.

Question 11: Does the current system provide respondents adequate opportunity to defend themselves?

Companies have adequate opportunity to defend themselves as long as they have recourse to suspensive appeal.

Question 12: Should the first phase of sanctions proceedings be re-sequenced so that the SDO no longer reviews INT’s evidence and that OSD decisions are subject to appeal by INT?

The CIAN Anti-corruption Committee recommends clearly separating the role of investigations by INT and the role of judgment by OSD. The OSD currently makes its judgments independently of the investigation, by examining the reality and gravity of the charges and making its assessments.

Allowing companies to appeal before the dossier is transmitted to the OSD undermines the OSD’s role of independent judge and blurs the roles between the two departments. In cases where the INT has already made a decision on an appeal, the OSD’s role will be reduced to gate-keeping. This re-sequencing would also weaken the INT’s independence, who must conduct its investigation and at the same time defend itself to the companies it is investigating.

Companies appealing to INT during an investigation would also be appealing to the OSD if their initial appeal is rejected, thereby generating additional paperwork and administrative costs to both the World Bank and the respondents. This double system of appeal will not necessarily provide any significant benefit or relief to the companies given that in the existing system a significant number of cases prepared by INT are not admitted by the OSD. In these cases, companies do not need to appeal at all if the INT file is rejected by the OSD.

Paragraph 48 of the Initiating Discussion Brief indicates that “SDO decisions, including ETS determinations, should be subject to review by the SB, at the request of either respondents or INT”. The CIAN Anti-corruption Committee considers that the current system is well balanced. By allowing the INT to appeal a decision by the OSD, the World Bank would disproportionately increase the power of the investigating entity to the detriment of the entity judging the facts based on the proof provided. The current configuration obliges INT to transmit only the cases that are the most strongly supported by evidence; this reinforces the credibility of the current system.

Companies can appeal SDO decisions, which is of course significant to the credibility of the system.

Paragraph 48 of the Initiating Discussion brief also indicates that “the independence of all SB members and of the SDO should be enhanced by providing them with six-year, non-renewable terms with prior removal only on the ground now applicable to external SB members”. The CIAN Anti-

corruption Committee wishes to highlight here that what is important is not the length of SB or SDO terms but ensuring the independence and absence of conflicts of interest vis-à-vis not only companies, but also Member-states and other Bank departments.

Question 13: What should be the overall goal(s) for the Sanctions System? How should the Bank measure and define success in achieving such goal(s)?

The overall goal of the Sanction System should be to encourage companies and administrations to behave with integrity when conducting business and attributing contracts. The Sanctions System should not only provide for financing of collective actions (cf. point #2) and for a peer-review system (cf. point 1) but also take into account companies' efforts to prevent corruption. Companies that have invested time and effort into fostering a culture of integrity by implementing strong compliance programs to prevent corruption should benefit from a reduction of penalties, particularly for companies having implemented their compliance programs well after the charges are brought against them.

It seems that today, the existence of anti-corruption programs is not sufficiently valued. Companies have been sanctioned by the World Bank to costly monitoring even though these companies had, since the corrupt acts, designed and implemented anti-corruption programs recognized by judges for their quality and effectiveness. Not taking into account company efforts in this area equates to subjecting companies to a double sentence.

Ultimately, the purpose of World Bank sanctions should be not only deterring corruption but also encouraging companies to develop anti-corruption compliance programs.

Question 14: Additional comments

The CIAN Anti-corruption Committee recommends that the World Bank issue guidance on resisting undue solicitations, particularly with regards to undue solicitations made by public officials in World Bank-financed projects.

A whistle blowing line for companies to denounce undue solicitations from public officials or for public officials to denounce bribe offers from companies could also be useful to curbing corruption in World Bank-financed projects.