



Review of the World Bank Group Sanctions System

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Response to Consultation

ETHIC Intelligence

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***ETHIC Intelligence** is a certification agency specialized in anti-corruption compliance programs. It is a private company headquartered in Paris and presided by Philippe Montigny, former member of the OECD Office of the Secretary-General and former adviser to the President of the OECD Development Centre (1987-1997).*

ETHIC Intelligence's Certification Committee awards certificates that attest to the quality and effective implementation of companies' corruption-prevention programs, thus setting an anti-corruption norm within the private sector vis-à-vis evolving international best practices.

For more information on ETHIC Intelligence certification: www.ethic-intelligence.com

Summary

As a certification agency specialized in anti-corruption compliance programs, ETHIC Intelligence recommends that the World Bank formally acknowledge certification as evidence that a company has developed and implemented an effective program to prevent corruption which is not only adapted to its specificities (corruption risk, size, structure, sector of activity, etc.) but which also corresponds to evolving international best practices standards.

The World Bank can make more use of its conditional non-debarment, debarment with conditional release and DPA procedures in order to incentivize companies to strengthen their compliance programs. Certification of anti-corruption compliance programs could be used as a necessary step to lifting conditional debarment and/or to reaching settlement.

Requiring external verification from SMEs that they are aware of corruption risks, have formalized policies to prevent these risks and are committed to observing anti-corruption laws and conventions could also help increase engagement of, and raise awareness among, SMES on this issue.

Using certification to measure company anti-corruption compliance efforts in the public procurement process

For cases involving corruption, the World Bank may consider requiring certification from companies having been sanctioned through debarment with conditional release or conditional non-debarment as well as from companies negotiating settlements. Certification of a company's program to prevent corruption provides the World Bank with externally-verified evidence of the concrete steps taken by a company to prevent corruption and constitutes verifiable proof of the strength of its program. Certification could therefore be used by the World Bank as a condition to lift its sanction on a company or as a requirement in the negotiation of a settlement.

Certification can help close the "loophole" left by "the lack of attention to fraud and corruption outside procurement" (pt. 20 of the Initiating Discussion Brief). This is because certification covers a company's entire compliance program to prevent corruption and not just that which pertains to procurement.

Point 23 of the Initiating Discussion Brief includes a recommendation to develop "clear criteria for the use of restitution/remedy". In cases involving corruption, the criteria for

developing and implementing a strong anti-corruption compliance program within companies under sanctions can be drawn from the same criteria used to obtain certification. The criteria used for ETHIC Intelligence certification has been developed by specialists in anti-corruption compliance and, along with the terms of reference and methodology, are clear and available to the public.

Point 35 of the Initiating Discussion Brief mentions that the resources devoted to the Integrity Compliance Office (ICO) may never be sufficient to carry out its function properly. By requiring certification of companies in its sanctions, the World Bank effectively delegates the dialog, support and monitoring function to an external party with specialized expertise in anti-corruption compliance, thereby freeing up time and resources for the World Bank.

It would be most unfortunate to revisit the designation of debarment with conditional release as the baseline sanction (Point 36 of the Initiating Discussion Brief) simply because the Integrity Compliance Office lacks resources to engage with companies on developing strong compliance systems (a function which can be delegated externally). Debarment with conditional release, conditional non-debarment and DPAs effectively recognize and reward companies for their compliance efforts as well as provide companies with the opportunity to rethink their way of doing business; conditionality in World Bank sanctions can be, for many companies, not only an opportunity but also a strong incentive to improve their programs. In response to question 13 of the Consultation Plan (What should be the overall goals for the Sanctions System? How should the Bank measure and define success in achieving such goals?), we believe that the World Bank has a role to play in promoting and encouraging ethical business practices, which it can achieve through DPAs and conditionality. In contrast, if the World Bank were to favor plain debarment or increasing sanctions for repeat offenses, companies would have more of an incentive to cover up offenses and prolong settlement negotiations prior to the start of sanctions proceedings (Point 28 of the Initiating Discussion Brief).

Certification provides an incentive for companies to improve their programs beyond the objective of avoiding World Bank sanctions. They can use their certification to actually promote their anti-corruption compliance programs externally and internally to gain employee buy-in and foster a culture of compliance. They will also be incentivized to continuously improve their programs in view of renewing certification.

Because ETHIC Intelligence methodology includes an in-depth, on-site audit of compliance programs against terms of reference covering the highest international standards, ETHIC Intelligence certification has been cited by judicial authorities as evidence of a company's commitment to compliance and as a reason for lowering the imposed fine.

Using Validation to increase awareness among SMEs

Point 50 of the Initiating Discussion Brief points to a lack of engagement and responsiveness from SMEs in the sanctions system. In order to increase awareness of corruption issues among SMEs, the World Bank may consider requiring Validation from SMEs wishing to participate in World Bank-funded projects. As part of the validation process, executive management of SMEs receive in-person training on why and how to prevent corruption in

their operations, thereby increasing awareness of the issue. SMEs also receive advice and support to set up their own policies to prevent corruption.

By requiring Validation of SMEs, the World Bank ensures that they:

- Have undergone an external compliance risk assessment revealing no prior convictions;
- Have a CEO openly committed to complying with anti-corruption conventions and related applicable national and local anti-corruption laws;
- Understand corruption-related risks in general and their own risks in particular;
- Understand (including through in-person training) why their clients and business partners seek to mitigate corruption risks ;
- Have formalized a policy to prevent corruption in their operations.

ETHIC Intelligence becomes in charge of engaging with SMEs (effectively the monitoring and support function), thereby freeing time and resources for the ICO.

SMEs would be required to invest in their Validations, meaning that they would have reason to take the process seriously. SMEs would also benefit from personalized assistance (from ETHIC Intelligence and the auditor on-site) and as owners of their Validation, SMEs would be able to use it as a sales argument vis-à-vis other potential clients.

For more information on ETHIC Intelligence certification and validation processes, please visit www.ethic-intelligence.com