

## **UPDATE TO THE FREQUENTLY ASKED QUESTIONS (as of February 5, 2009)**

### **Are there differences between the Referral Reports that the Bank shares with governments and the sanctions process document (called a Notice) that the Bank provides to the companies and individuals that it is considering sanctioning? If so, why are they different?**

There are differences between the two documents, because they are written for respective purposes.

The Bank refers its investigative findings to member country governments when the Bank finds evidence which indicates that their laws may have been violated. It is then up to the government to conduct its own, independent investigation into the case following its national laws and procedures. The Bank's Referral Reports are written to help guide that national investigation and thus typically do not contain all of the details and supporting evidence obtained through the Bank's own investigation.

The reason for this is that the Bank conducts its investigations under its own administrative rules and procedures, which should be distinguished from those required in a national investigation or prosecution. The Bank is, of course, willing to provide assistance with national agency investigations upon request, including (subject to some restrictions) sharing the evidence underlying the Bank's findings. The Referral Report is, therefore, an offer to begin a cooperative relationship between the Bank and the investigative agency, if the investigative agency so desires.

In contrast, the Bank's sanctions Notice gives evidence-based reasons why a company or individual should be sanctioned. The Bank's Sanctions Procedures, as well as basic principles of fairness, require the Bank to provide these companies and individuals with detailed evidence, because they need that information to understand the Bank's arguments to be in a position to properly defend themselves. As a result, a sanctions Notice contains a different set of details and documents than a Referral Report, though as noted a member country government that has received a Referral Report and is seeking to investigate the case can always ask the Bank for additional information.

## **FREQUENTLY ASKED QUESTIONS ABOUT THE [RECENT SANCTIONS ANNOUNCED BY THE WORLD BANK](#) UNDER A PHILIPPINES ROADS PROJECT (as of January 23, 2009)**

### **1. Why were these firms investigated and debarred?**

These firms were investigated for possible wrongdoing in connection with the bidding processes for two road contracts under phase one of the National Roads Improvement and Management Program (NRIMP-I) financed by the World Bank with the Government of the Philippines.

The National Roads Improvement and Management Program was a \$150 million project, approved by the World Bank Board in February 2000. It financed the first phase of a program that supported the Philippines Government's reforms in the road sector. Between 2003 and 2006, the World Bank team identified excessive pricing and other signs of possible collusion by several construction companies on three successive rounds of bidding for two road rehabilitation contracts. As a result, the World Bank team refused to give its "no objection" to the award of

these contracts. It also reported its observations to the [Department of Institutional Integrity](#)<sup>1</sup> (INT) of the World Bank.

During a thorough investigation, INT gathered evidence that several firms and individuals may have engaged in collusion in connection with the bidding for these two contracts. The [World Bank Sanctions Board](#), which is comprised of external legal experts and senior World Bank staff, has now reviewed the case and sanctioned seven firms and one individual on grounds of collusion.<sup>2</sup> (For the [press release](#), click [here](#); for more details on the WB sanctions process, click [here](#))

NRIMP-I set out to help establish management and financing systems which would ensure the sustainable upgrading and preservation of the country's national roads network. As a result of the now completed project, some 1,400 kilometers of roads were built or resurfaced and the management of money for roads within the Department of Public Works and Highways was improved. The program overall has led to a significant improvement in the lives of the beneficiary communities by facilitating their access to markets, schools and health centers and has created a more modern and transparent roads management system around the country.

## **2. Now that the Sanctions Process is complete, will the World Bank recover its money and how much will it recover?**

The World Bank has no money to recover from this case of collusion as it did not finance the contracts.

Under the National Roads Improvement and Management Program (NRIMP-I), the World Bank rejected the proposed contract awards for two large road contracts in three successive rounds of bidding between 2003 and 2006 because the Bank team noticed excessive pricing and other signs of possible collusion. As a result, the World Bank refused to give its "no objection" to award of these contracts worth an estimated \$33 million and reported the case to the Department of Institutional Integrity (INT) of the World Bank.

## **3. How common is it for the World Bank to debar firms?**

Public sanction is viewed by experts as a significant deterrent to fraud and corruption. Over the past decade, the World Bank Group has recognized corruption as one of the greatest obstacles to economic and social development and we have applied sanctions to firms from many countries where they have been determined to have engaged in these wrongdoing.

Since 1999, more than 350 firms and individuals from more than 22 countries – including the US, Sweden, the Netherlands, and the United Kingdom – have been banned from bidding for Bank-financed projects, either indefinitely or for a specific period of time. All of their names are published on the World Bank's website at [www.worldbank.org/debar](http://www.worldbank.org/debar) for the term of the debarment.

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<sup>1</sup> This Department has since become the Integrity Vice-Presidency (INT).

<sup>2</sup> Another firm was separately debarred in August 2008 in connection with the same NRIMP-1 case. That proceeding was not contested by the firm and accordingly, under the applicable procedures, did not require Sanctions Board hearing.

A number of other international financial institutions also debar firms for fraud and corruption.

The World Bank Group needs to assure its shareholder governments, developing world partners, and other stakeholders that we will exercise the utmost fiduciary responsibility to safeguard the funds entrusted to us. We owe this responsibility to the people we are seeking to assist.

Fraud and corruption, if unchecked, can erode confidence among donors and beneficiaries, leading to skepticism about the effectiveness of international development and, ultimately, jeopardizing our very mission: overcoming poverty and building inclusive and sustainable growth and opportunity.

#### 4. How does the World Bank define fraud and corruption?

Per the World Bank Sanctions Procedures, the following are the current definitions<sup>3</sup> used by the World Bank for practices constituting “fraud and corruption”:

- 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;<sup>4</sup>
- 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;<sup>5</sup>
- 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;<sup>6</sup>
- 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;<sup>7</sup>
- An “obstructive practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in

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<sup>3</sup> It should be noted that the applicable definitions of fraud and corruption in the NRIMP-1 case were those found in the World Bank’s Guidelines: Procurement Under IBRD Loans and IDA Credits (Jan. 1995, rev. Jan. and Aug. 1996, Sept. 1997, and Jan. 1999) (Procurement Guidelines). In that version of the Procurement Guidelines, collusive practices were considered a form of fraudulent practice, in turn defined to mean “a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition.”

<sup>4</sup> For the purpose of the Bank’s Procurement and Consultant Guidelines, the term “another party” refers to a public official acting in relation to the procurement or selection process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

<sup>5</sup> For the purpose of the Bank’s Procurement and Consultant Guidelines, the terms “party” refers to a public official and “benefit” and “obligation” relate to the procurement or selection process or contract execution; and the “act or omission” is intended to influence the procurement or selection process or contract execution.

<sup>6</sup> For the purpose of the Bank’s Procurement and Consultant Guidelines, the term “party” refers to a participant in the procurement or selection process or contract execution.

<sup>7</sup> For the purpose of the Bank’s Procurement and Consultant Guidelines, the term “parties” refer to participants in the procurement or selection process (including public officials) attempting to establish bid prices at artificial, non competitive levels.

order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or 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.

**5. Given that the Sanctions Board found that these firms have colluded, shouldn't each of the governments involved be launching criminal proceedings?**

Our internal process determines whether there is sufficient evidence of sanctionable offenses under the World Bank's policies and procedures for us to pursue sanctions. The Bank's sanctions regime is an administrative process, not a criminal one, which relies on specific definitions of the sanctionable offenses (see question 4) and involves different evidentiary and burden of proof requirements.

INT has shared its investigative reports with the countries of firms involved in this case and we trust that the national authorities will look closely at these reports and take the necessary steps from here. It is dependent on the national legal framework in each country to judge whether legal proceedings in the country are warranted.

**6. Now that the sanctions are made public, how do we get the report of INT that was the basis of this decision?**

Submissions in sanctions cases are confidential in nature and are not available for public dissemination – in part to avoid putting at risk some of the sources. However, if an INT investigation finds evidence that a country's national laws may have been violated, INT shares a copy of its report with affected countries. In this case, a copy of the INT report was shared with the Philippines Department of Finance and the Office of the Ombudsman in late 2007. The report was also shared with the authorities of the other countries whose firms were involved. A report summarizing the Bank's investigative findings will be posted on the INT page of the World Bank website following the Bank's redaction and review protocol.

**7. How does this case fit with the World Bank's global fight against fraud and corruption and its anti-corruption work in East Asia & Pacific?**

In 2007, the World Bank Group endorsed a new strategy entitled "Strengthening World Bank Group Engagement on Governance and Anticorruption." The strategy's three pillars are to:

- build capable, transparent, and accountable institutions through assistance to countries;
- minimize corruption in Bank-funded projects by assessing corruption risk in projects upstream, actively investigating allegations of fraud and corruption, and strengthening project oversight and supervision; and,
- expand partnerships with multilateral and bilateral development institutions, civil society, the private sector, and other actors to address corruption.

The NRIMP-1 case is a good example of the Bank's anti-corruption processes working at their best. We detected the possibility of collusion very early, we took action to investigate, we worked with the Government in the Philippines to strengthen anti-corruption controls in the follow-on project, we undertook an extensive and fair due process to allow the companies to respond to the allegations, and at the end of this process we took action to sanction companies determined to have engaged in wrongdoing.

In addition, in developing the second phase of the NRIMP project which was approved by the World Bank's Board in May 2008, we took into account the lessons learned through the investigation. A battery of stringent anti-corruption measures was incorporated into the project's design, including:

- Use of an independent procurement evaluator (IPE) to improve the transparency and integrity of procurement processes;
- Further enhanced procurement controls to ensure the reliability of contract cost estimates, detect over-pricing through bid analysis, enhance supervision control over contract variations and disseminate complaints mechanism in bid documents;
- Strengthening internal controls and internal audit capacity in the Department of Public Works & Highways;
- Adoption of enhanced business processes – with increased use of computerized business systems and enhanced processes for procurement and financial management, the efficiency of transaction processing will be improved and opportunities for interference reduced; and,
- Independent oversight by civil society – a coalition of citizen and road user groups has been established, named “RoadWatch” (*“Bantay Lansangan”*), to strengthen the voice and influence of citizens in ensuring transparency and proper use of public funds for roads, and to counter corruption at high levels of government and society.

## **8. Why does the World Bank debar firms?**

Misuse of public money is a problem for everyone, everywhere, from the least developed to the most developed nations. The Bank has a responsibility to ensure that the money it is entrusted with is used for its intended purposes.

When we receive allegations of fraud and corruption in our projects we take action to get to the bottom of what happened and, where necessary, apply sanctions to individuals or firms found to have acted improperly, in order to hold them accountable.

The fight against corruption is vital for a fair and just society, but no country is absolutely free from the problem. That is why the World Bank supports governments that want to improve their governance standards and fight corruption. These partnerships are in part about ensuring that national and World Bank money is used properly. But it is also about putting in place standards that will apply to other projects and sectors so that the funds the World Bank makes available for development to improve the lives of poor people are used for that purpose.

In the Philippines roads case, we acted quickly when concerns were raised that bids for contracts were coming in – in successive rounds of bidding – with excessively high prices and showing signs of collusion between firms.

## **9. Some of the debarred firms have claimed that they did not have due process and that they “did not have their day in court.”**

The Bank's sanctions process ensures that any and all evidence is evaluated carefully and that individuals and firms alleged to have committed wrongdoing are granted a meaningful opportunity to dispute the allegations against them.

All of the respondents in this case received the Bank's Notice of Sanctions Proceedings in May 2008 and were given 90 days to submit a response in their defense and contest the allegations against them. The firms were also offered the opportunity as part of their response to request a hearing before the Bank's Sanctions Board. The Sanctions Board took all of their submissions into account in making their decision.

This is a summary of the [Sanctions process](#):

- INT investigates allegations that a firm or individual has engaged in a sanctionable offense in connection with a World Bank-financed project;
- If INT believes that there is sufficient evidence that a sanctionable practice has occurred, it prepares a proposed Notice of Sanctions Proceedings and submits it to the World Bank's Evaluation and Suspension Officer (EO);
- The EO reviews the evidence submitted by INT and determines if the evidence is sufficient to support a finding that the alleged sanctionable practice has occurred. If so, the EO issues a Notice of Sanctions Proceedings to the firm or individual alleged to have engaged in the sanctionable offense, recommends a sanction, and may temporarily suspend the firm or individual pending the final outcome of the proceedings;
- If the firm or individual does not contest the allegations and/or the recommended sanction, the recommended sanction is imposed;
- If the firm or individual does contest the allegations and/or the recommended sanction, the case is referred to the World Bank's Sanctions Board, and any temporary suspension stays in force until a final determination is made;
- The Bank's Sanctions Board reviews the submissions from all parties and if requested by a Respondent or INT, will hold a hearing on the matter, during which parties may present arguments and evidence, before any sanction is imposed;
- If the Sanctions Board finds that the evidence supports the conclusion that it is more likely than not that the alleged sanctionable offense occurred, it will impose an appropriate sanction.

In 2006, the Bank reformed its sanctions process to ensure that outside legal experts would play the deciding role in corruption cases. No World Bank staff, either from the investigation office, INT, or from the project team, are involved in the sanctions decision-making process. This ensures the independence of all Sanctions Board decisions.