

WORLD BANK GROUP SANCTIONS REGIME: AN OVERVIEW

1. This paper provides Executive Directors, for discussion, an overview of the World Bank Group sanctions regime, as it has developed since its inception in 1990. Part I gives some basic background on the legal and operational aspects of the regime; and Part II sets out the next steps for the regime. The Annex to this paper provides a brief history of the regime, with particular focus on the most recent reforms in 2010.

PART I: BACKGROUND

2. The Bank's Articles of Agreement require the institution to make arrangements to ensure that financings provided by the Bank are used for their intended purposes and with due attention to economy and efficiency.¹ This fundamental requirement is often referred to as the 'fiduciary duty', which forms the legal and policy basis for much of the Bank's fiduciary framework for its operations, including its project-level anti-corruption efforts.
3. To this end, the Bank Group has established a set of legal and other tools to help prevent and combat fraud and corruption in Bank Group projects and programs. Collectively known as the 'sanctions regime', these tools are both administrative and operational in character.
4. On the administrative side, the Bank Group has a formal process for sanctioning firms and individuals which have been found to have engaged in fraud and corruption in Bank Group financed projects, primarily by declaring them ineligible to be awarded Bank Group contracts, a step commonly known as 'debarment'. Sanctions are intended to advance the fiduciary duty by excluding corrupt actors from access to Bank financing while serving as a deterrent both for the sanctioned firm and for others. Sanctions can also serve as incentives for rehabilitation.
5. On the operational side, the Bank Group has developed corruption provisions in its legal agreements with borrowers and other recipients of Bank Group funds, as well as practices and procedures aimed at reducing the risk of, or detecting and addressing, potential fraud and corruption in Bank Group financed operations.

PART II: AN OVERVIEW OF THE SANCTIONS REGIME

A. The Sanctions Process.

6. The Bank Group maintains a formal process for sanctioning firms and individuals which have been found to have engaged in fraud and corruption in Bank Group financed projects. This process is intended to provide the accused party, known as the Respondent, with basic due

¹ See BRD Articles of Agreement, Article III, Section 5 (b), IDA Articles of Agreement, Article V, Section

process before deciding whether the Respondent will be sanctioned and, if so, which sanction is appropriate.

7. Sanctionable PracticesThe Bank Group has agreed with other multilateral development banks (MDBs) that certain defined forms of fraud and corruption should be sanctioned². These include corrupt practice, fraudulent practice, collusive practice and coercive practice. In addition, the Bank Group may also sanction a firm or individual for having engaged in 'obstructive practice' in connection with an INT investigation. Collectively, these practices are referred to as 'sanctionable practices'³.
8. Investigation and Preparation of a Statement of Accusations and EvidenceThe Bank's Integrity Vice Presidency (INT) is charged with, among other things, investigating allegations and other indications that sanctionable practices have occurred in connection with Bank Group financed projects. If, after investigation, INT believes that there is sufficient evidence to warrant a sanction, INT will prepare a Statement of Accusations and Evidence (SAE) and submit it to the Board of Directors for review and approval. The Board of Directors will then decide whether to sanction the Respondent and, if so, which sanction is appropriate.

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observable basis or is otherwise arbitrary, is based on disregard of a material a material mistake of fact, or was taken in material violation of the Sanctions Procedures).

- x 'Plain vanilla' debarment In cases where no appreciable purpose would be served by imposing conditions for release, sanctioned parties may be debarred for a specified period of time, after which they are automatically released from debarment. This would occur, for example, in cases where a sanctioned firm has already in place a robust corporate compliance program, the sanctionable practice involved the acts of an employee or employees who have already been terminated, and the proposed debarment is for a relative short period of time (e.g., one year or less). At the opposite extreme, in exceptional cases where there is no realistic prospect that a Respondent can be rehabilitated, it may also be sanctioned permanently.
- x Conditional NonDebarment

20. Voluntary Disclosure Program The Bank Group also maintains a voluntary disclosure program (VDP) that allows firms not under active investigation to come forward and disclose past misconduct to the Bank. VDP participants are required, among other things, to institute a robust, monitored compliance program to prevent future misconduct. In exchange, the Bank agrees not to seek sanctions for disclosed misconduct and to keep the participant's identity confidential however, the participant breaches its VDP obligations, it is subject to year mandatory debarment.
21. Corporate Procurement The General Services Department's (GSD) Vendor Eligibility Policy prescribes standards and procedures for determining whether a vendor is excluded (and thereby debarred), either permanently or for a specific period of time, from receiving future corporate contract awards from the Bank Group based on a finding by the GSD Director that the vendor is "non-responsible". The Director of GSD may suspend a vendor pending a final responsibility determination, during which time the vendor is afforded an opportunity to show cause why it should be found responsible. The Director of GSD may determine that a vendor is non responsible based on fraudulent, corrupt, collusive, coercive or obstructive practices, or based on any other action that the Director determines is so serious in nature that it affects the present responsibility of the vendor or could result in harm to the Bank's reputation. GSD's definitions of fraud and corruption under the Vendor Eligibility Policy is identical to the definition of fraud and corruption under the Bank Group's Sanctions Regime, and GSD's sanctions guidelines are similarly aligned with those of the Sanctions Board.
22. Firms and individuals debarred by the EO or Sanctions Board are also debarred by GSD. Under a proposal that Management is submitting simultaneously with this paper (see paragraph 160 below), GSD debarments will also be crossdebarred to Bank operations.

B. Operational Aspects of the Sanctions Regime

23. Original Sanctions Regime The Bank also has a number of anti corruption tools with direct application to its operations, including anti corruption provisions in its legal agreements with borrowers and other recipients of Bank financing, and certain practices and procedures, particularly in the area of procurement, aimed at reducing the risk of, or detecting and addressing, potential fraud and corruption in Bank financed operations.
24. Procurement and Consultant Guidelines The Procurement and Consultant Guidelines establish as Bank policy the requirement that borrowers and loan beneficiaries, as well as bidders, suppliers, contractors and consultants, maintain the 'highest standards of ethics' and, to this end, further provide for Bank sanctions as well as contractual remedies in the event that certain defined forms of fraud and corruption occur in connection with the procurement/selection or execution of Bank financed contracts.¹⁰ The Guidelines also allow the Bank access to bid and contract documentation through the so called 'third party audit clause'.¹¹

⁹ For details of the VDP, see Voluntary Disclosure Program (VDP), R2006/0137, IDA/R2006-0147, IFC/R2006-0204; MIGA/R2006/0041 (July 12, 2006).

¹⁰ The current provisions are found in Section 1.14 of the Procurement Guidelines and Section 1.22 of the Consultant Guidelines. The scope of the policy has been expanded so that the current version of these provisions

25. General Conditions The Bank has remedies under the IBRD and IDA General Conditions that allow the Bank to cancel an amount of the loan equivalent to any Bank financed contract if it had been tainted by corruption¹² and to suspend disbursements whole or in part in the event that fraud and corruption occurs without timely and appropriate action being taken to address the situation.¹³

26. Anti-Corruption Guidelines The Anti-Corruption Guidelines, like the Procurement and Consultant Guidelines, are incorporated by reference into the Bank's legal agreements.¹⁴ The Anti-Corruption Guidelines set out the harmonized definitions of Sanctionable Practices, as well as a set of undertakings by the Borrower and other recipients of Bank funds aimed at preventing and combating fraud and corruption in connection with the use of such funds. The Guidelines also establish the Bank's right to sanction firms and individuals found to have engaged in any fraud and corruption in connection with the use of loan proceeds, not only in connection with procurement.

27. Private Sector Operations. IFC, MIGA and PRG operations form an integral arm.¹⁴ ()-13(l)8(he)14()

29. Preventive Services Following the Volcker Panel recommendations

31. Review of the Sanctions Regime There has not yet been a review of the sanctions regime as a whole, since its legal framework was put into place in late 2006. While the regime, in particular the sanctions process, has not been operational for very long, the Audit Committee believes that insights can be gained from undertaking such a review in the coming months. Management has agreed to undertake such a review,

A BRIEF HISTORY OF T

and help insulate it from political pressures.²² The 2004 reforms also included the expansion of possible sanctions to include the current range of different sanctions, albeit under guidance later developed by Management, the 'baseline' or default sanction was 'plain vanilla' default. In July 2004, the Board approved (in principle) the adoption of a Voluntary Disclosure Program (VDP) to provide incentives for cooperation with Bank investigators.²³

implementing that change was circulated to the Executive Directors and approved by them on an absence of objection basis.³³

fraud and corruption. At the same time, debarment with conditional release had been modified so that fulfillment of the conditions was optional for the debarred party, leading to a reduction in the initial debarment period rather than being *in a qua non* for release. This left the Bank Group and Borrowers alike with considerable residual fiduciary and reputational risk. This state of affairs led Bank Group staff to examine ways to increase the effectiveness of the sanctions process in achieving its primary purpose—safeguarding Bank Group funds—by devising a mechanism to provide the Bank Group with better assurance of rehabilitation before firms are let back into the system.

19. After discussions with the Audit Committee in July 2009 and again in May 2010, the Board adopted debarment with conditional release, rather than 'plain vanilla' debarment, as the baseline sanction for sanctions. And debarment with conditional release was revised to reflect the original 2002 Thornburgh recommendation and the 2004 Board Paper, whereby the debarred party would be required to meet certain conditions before re-entry. (A)1 ndaomm tpuTh0(pur)23(po)10(h r) [(A)1

may also serve as a benchmark for further harmonization of sanctions policies and practices with other MDBs. The updated Sanctioning Guidelines, unlike the previous version, are made public to further these objectives.

23. Settlements The current formal mechanism for the negotiated resolution of sanctions cases was also introduced in 2010. Negotiated resolutions such as plea bargaining or settlement agreements are a near universal feature of civil, administrative and criminal procedure across legal systems as a useful means to enhance efficiency by resolving disputes using less time and fewer resources while providing certainty.^{3(r)13(e)14(nt)8ia(r)13(e)142}

indicated that they have taken the necessary steps to make the agreement effective to their operations.