

IFC SANCTIONS PROCEDURES

I. INTRODUCTION

(a) The International Finance Corporation ("IFC") is issuing the procedures set forth in this document (these "Procedures") to inform IFC staff, parties accused of wrongdoing, and other interested parties, of the procedures currently to be followed in sanctioning corrupt, fraudulent, collusive, coercive or obstructive practices, whether in connection with IFC projects and operations ("IFC Projects"), or the violation of a Material Term of the Terms & Conditions of the World Bank Group's Voluntary Disclosure Program ("VDP") where the VDP violation arises out of or relates to IFC projects or operations¹. These Procedures are intended to assist in facilitating the reasonable exercise of discretion by IFC officials in responding to allegations of corrupt, fraudulent, collusive, coercive or obstructive practices, and do not in themselves confer any rights or privileges. These Procedures shall be interpreted and applied in accordance with the Anti-Corruption Guidelines for IFC, MIGA and the World Bank Guarantee transactions, as amended from time to time.

(b) As of the date of the issuance of these Procedures, the terms set forth below shall have the following meanings:

(1) A "coercive practice" means 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;

(2) A "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(3) A "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(4) "Days" means calendar days, unless stated otherwise;

(5) "IFC Counterparty" means, with respect to IFC investment projects, a borrower, investee company or sponsor, and with respect to IFC technical assistance and advisory services, a consultant or service provider;

(5) "IFC Evaluation Officer" means the individual IFC staff member appointed by the President of IFC as the IFC Evaluation and Suspension Officer to review proposed Notices of Sanctions Proceedings ("Notice") and determ

also have the authority to impose temporary suspensions from eligibility to receive IFC financing and to recommend an appropriate sanction based on the facts alleged in the Notice. The International Bank for Reconstruction and Development (IBRD) and the International Development Association ("IDA" and together with IBRD, the "World Bank" or the "Bank"), the Bank in relation to investment projects guaranteed by the Bank (a "Bank Guarantee Project"), and the Multilateral Investment Guarantee Agency (MIGA) shall each have their respective Evaluation Officer ("Bank Evaluation Officer", "Bank Guarantee Project Evaluation Officer" and "MIGA Evaluation Officer", respectively) in accordance with their own sanctions procedures.

(6) A "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly² misleads, or attempts to mislead, a party to obtain a financial or other benefit or to a

cases for which a Notice has not been issued by the IFC Evaluation Officer as of the date of revision.

(d) Nothing in these Procedures, and nothing revealed during proceedings under these Procedures, shall be considered to alter, abrogate, or waive IFC's status, immunities and privileges as set forth in IFC's Articles of Agreement or other provisions of national or international law.

II. PREPARATION OF THE NOTICE OF SANCTIONS PROCEEDINGS

Section 1. Department of Institutional Integrity

The Department of Institutional Integrity ("INT") investigates allegations of Sanctionable Practices³, in World Bank Group⁴ projects.

Section 2. Referrals to the IFC Evaluation Officer

If, as a result of an investigation, the Director of INT believes that there is sufficient evidence to support a finding of a Sanctionable Practice, INT shall present to the IFC Evaluation Officer a proposed Notice, which may become the basis of the official Notice as described hereafter.

Section 3. Contents of Notice of Sanctions Proceedings

The Notice of Sanctions Proceedings shall:

- (1) state INT's specific allegations of a Sanctionable Practice and INT's designation of each Respondent alleged to have engaged in such practices;
- (2) include INT's summary of the facts constituting the alleged Sanctionable Practice;
- (3) attach or identify the evidence that INT intends to present to the IFC Evaluation Officer and to the Sanctions Board in support of any proposed sanction, together with any exculpatory or mitigating evidence, as contemplated in Section 4;
- (4) state the sanction recommended by the IFC Evaluation Officer in

recommended sanction⁵ in the Notice, the Respondent must so notify the Secretary of the Sanctions Board (the "Secretary") in the manner described in Section 5(7);

(6) state the procedure by which the Respondent may respond to the allegations and/or the recommended sanction as described in Section 6(2); and

(7) append a copy of these Procedures, as then in effect and a copy of the Sanctions Board Statute, as then in effect.

Section 4. Disclosures of Exculpatory or Mitigating Evidence

In transmitting to the IFC Evaluation Officer a proposed Notice, and in transmitting to the Sanctions Board all subsequent written submissions, INT shall present all relevant evidence in INT's possession or knowledge that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability.

III. COMMENCEMENT OF PROCEEDINGS

Section 5. Issuance of Notice of Sanctions Proceedings

(1) ***Review of Proposed Notice:*** The IFC Evaluation Officer shall review the proposed Notice and, within one hundred twenty (120) days after receipt from INT, shall determine whether sanctions proceedings are appropriate. The review shall take into account whether there is sufficient evidence to support a finding that the Respondent engaged in the alleged Sanctionable Practice and any other consideration relevant to the proceedings including the likelihood of recovery on IFC's loan or investment. The IFC Evaluation Officer may, in its discretion, consult with the Respondent as needed to make such determination.

If the proposed Notice pertains to an alleged Sanctionable Practice that took place more than ten (10) years prior to the date on which the Notice would be issued by the IFC Evaluation Officer,⁶ the IFC Evaluation Officer shall close the matter and shall notify the Director of INT accordingly.

(2) ***Referral Back to INT:*** If the IFC Evaluation Officer determines that the sanctions proceedings are not appropriate, the IFC Evaluation Officer shall not issue the Notice and shall notify the Director of INT of the decision and the basis

⁵ Except for a case involving an alleged violation of a Material Term of the VDP Terms & Conditions, where the appropriate sanction is mandatory ten (10)-year debarment.

⁶ For cases arising out of IFC projects and operations, the date of a Sanctionable Practice shall be deemed to be the date on which the last constituent act or element of the Sanctionable Practice occurred. For cases involving alleged violation of a Material Term of VDP Terms & Conditions, the Evaluation Officer shall close the matter and shall notify the Director of INT accordingly if the proposed Notice pertains to VDP Terms & Conditions which terminated more than ten (10) years prior to the date on which the Notice would be issued.

therefor. The Director of INT may resubmit a proposed Notice to the IFC Evaluation Officer after making appropriate amendments, in which case the procedures set out in Section 5(1) shall apply to the resubmitted proposed Notice.

(3) ***Issuance of Notice:*** If the IFC Evaluation Officer determines that there is sufficient justification to issue a Notice to the Respondent, the IFC Evaluation Officer shall issue the Notice to the Respondent and shall notify the Chair of the Sanctions Board (the "Sanctions Board Chair") and the Director of INT.

(4) ***Recommendation of Appropriate Sanction:*** The IFC Evaluation Officer shall include in the Notice the IFC Evaluation Officer's recommendation of the appropriate sanction to be imposed on each Respondent, which shall be selected from the range of possible sanctions identified in Section 15(3) of these Procedures and with due consideration, to the extent applicable, of the factors in Section 15(5)⁷.

IV. SUBMISSIONS TO THE IFC EVALUATION OFFICER AND TO THE SANCTIONS BOARD

Section 6. Written Submissions

(1) ***Respondent's Explanation in Opposition to Temporary Suspension:*** The Respondent's Explanation opposing a temporary suspension shall consist of a single document not exceeding twenty single-sided pages, unless the IFC Evaluation Officer approves a longer submission, and shall present arguments by the Respondent and summarize any credible evidence in support thereof. No other opportunity to oppose a temporary suspension, either orally or in writing, shall be provided to the Respondent.

(2) ***Respondent's Response to Notice of Sanctions Proceedings:*** Within ninety (90) days after is

Panel may, in its discretion and upon request by INT, withhold particular evidence upon a determination that there is a reasonable basis to conclude that revealing the particular evidence might endanger the life, health, safety, or well-being of a person or constitute a violation of any undertaking by IFC in favor of a participant in the VDP.

Section 9. Contents of Record

The record to be considered by the Sanctions Board shall consist of the Notice, the Response, the Reply, all other related written submissions of arguments and evidence, and all arguments presented at any hearing before the Sanctions Board, including any Explanation submitted pursuant to Section 5(5). The record shall be confidential and will not be available to the public.

V. HEARINGS

Section 10. Applications

Should the Respondent or INT desire that the Sanctions Board hold a hearing on the allegations against the Respondent, such request shall be made in the Respondent's Application to the Sanctions Board.

(2) ***Presentations:***

(a) **Order:** INT shall present its case first. The Respondent or the Respondent's representative shall present the Respondent's case second. INT shall be permitted to reply.

(b) **Length:** The Sanctions Board or the Panel Chair shall set a reasonable period of time for each presentation.

(c) **Form:** Presentations shall be informal. They shall be limited to arguments and evidence contained in the written submissions, and may rely upon or refute individual items of evidence.

(d) **Live Testimony:** No live witness testimony shall be taken, except that one or more witnesses may be called and questioned only by the members of the Sanctions Board or the Sanctions Board Panel. A Respondent who appears in person or, in the case of a Respondent that is an entity, through an authorized representative, may make a statement during the hearing. There shall be no cross-examination, although rebuttal evidence may be presented during the hearing.

(e) **Matters Relating to the Sanction:** INT and the Respondent may present evidence of mitigating or aggravating factors relating to the appropriateness of a particular sanction.¹⁴

(3) ***Response to Questions:*** The representative of INT and the Respondent or the Respondent's representative shall be subject to questions by the members of the Sanctions Board or the Sanctions Board Panel. A party's refusal to answer, or failure to answer truthfully or credibly, may be construed against that party.

VI. EVIDENCE

Section 13. Forms of Evidence

Any kind of evidence may form the basis of arguments presented in a sanctions proceeding and conclusions reached by the Sanctions Board or the Sanctions Board Panel. The Sanctions Board or the Sanctions Board Panel shall have discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered. Hearsay evidence or documentary evidence shall be given the weight deemed appropriate. Without limiting the generality of the foregoing, the Sanctions Board or the Sanctions Board Panel shall have the discretion to infer purpose, intent and/or knowledge on the part of the Respondent, or any other party, from circumstantial evidence before it. Formal rules of evidence shall not apply.

¹⁴ Except in a case involving an alleged violation of a Material Term of the VDP Terms & Conditions, where the appropriate sanction is mandatory ten (10)-year debarment.

Section 14. Privileged Materials

Communication between an attorney, or a person acting at the direction of an attorney, and a client for the purpose of providing or receiving legal advice ("attorney-client communications"), and writings reflecting the mental impressions, opinions, conclusions or legal theories of an attorney in connection with a legal representation ("attorney work product") shall be privileged and exempt from disclosure.

sanction, the Sanctions Board or the Sanctions Board Panel shall not be bound by the recommendations of the IFC Evaluation Officer.

(3) ***Range of Possible Sanctions:***

(a) **Reprimand:** The Sanctions Board or the Sanctions Board Panel may decide that the Respondent be reprimanded in the form of a formal "Letter of Reprimand" of the Respondent's conduct.

(b) **Debarment:** The Sanctions Board or the Sanctions Board Panel may decide that the Respondent be declared ineligible, either indefinitely or for a stated period of time, to become an IFC Counterparty in any new IFC Project ("debarment"). For cases involving the violation of a Material Term of the VDP Terms & Conditions, the Sanctions Board or the Sanctions Board Panel shall declare the Respondent ineligible for a period of 10 years to be an IFC Counterparty. This ineligibility resulting from debarment shall extend to new activities of the Bank, acting as a PRG Counterparty, and acting as a MIGA Counterparty (as "PRG Counterparty" and "MIGA Counterparty" are defined in their respective Sanctions Procedures). Debarment arising out of Bank projects, Bank Guarantee Projects and MIGA projects shall also render the Respondent ineligible to become an IFC Counterparty in any new IFC Project.

(c) **Conditional Non-Debarment:** The Sanctions Board or the Sanctions Board Panel may decide that the Respondent be required to comply with certain remedial, preventative or other measures as a condition to avoid debarment from World Bank Group projects. In the event the Respondent fails to demonstrate its compliance with the conditions within the time periods established, a debarment would automatically become effective for a period of time established by the Sanctions Board or the Sanctions Board Panel.

(d) **Debarment with Conditional Release:** The Sanctions Board or the Sanctions Board Panel may decide that the Respondent be made subject to debarment with conditional release, under which the Respondent's period of debarment would be reduced or terminated if the Respondent demonstrates compliance with the conditions001 T1 Tccodial, prevdec8the eve9nt be rep

(f) **Combination of Sanctions:** The Sanctions Board or the Sanctions Board Panel may decide to impose one or more of the above sanctions in the alternative or in combination.

(g) **Multiple Sanctionable Practices:** For cases involving multiple Sanctionable Practices, the Sanction Board or the Sanctions Board Panel may impose the most severe sanction for the most serious Sanctionable Practice. However, when warranted by the circumstances¹⁵, the Sanction Board or the Sanctions Board Panel may impose cumulative sanctions pertaining to the multiple Sanctionable Practices.

(4) ***Parties Subject to the:***

(h) period of temporary suspension already served by the Respondent;
and

(i) any other factor that the Sanctions Board or the Sanctions Board Panel deems relevant.

Section 16. Entry Into Force of Final Decision

(1) ***Final Nature of Decision:*** The decision of the Sanctions Board or the Sanctions Board Panel shall be final and shall take effect immediately, without prejudice to any action taken by any government under its applicable law.

(2) ***Dissemination of Decision:*** The decision of the Sanctions Board or the Sanctions Board Panel shall be transmitted by the Sanctions Board Secretary to the Respondent and INT, the Executive Directors representing the host country concerned and the country of the Respondent, and Bank and MIGA.

VIII. DISCLOSURE

Section 17. Disclosure of a Sanction to the Public

If a sanction is imposed on a Respondent, or on another individual or organization as provided in Section 15(4), information concerning the identity of each sanctioned party and the sanctions imposed shall be publicly disclosed.

Section 18. Disclosure of Information Obtained in the Course or as a Result of a Sanctions Proceeding to Government Authorities and Other Organizations¹⁶

(1) ***Information Pertaining to Illegal Activities:*** If IFC determines that law of a member country may have been violated by a Respondent, IFC may at any time make available to its government counterpart information relating to such potential violation. In determining whether to disclose such information, IFC shall consider, among other factors, the standard for withholding sensitive information set forth in Section 8(3).

(2) ***Information Pertaining to a Project Financed by Another Organization or Agency:*** If IFC determines that there is information relating to a Sanctionable Practice in connection with a project financed by another international or multinational organization, including another development bank, or by an agency of a member government that promotes international development, IFC may at any time make such information available to that organization or agency. In determining whether to disclose such information, IFC shall consider, among

¹⁶ IFC may withhold information if it determines that disclosure would violate any undertaking by IFC in favor of a VDP participant.

other factors, the standards for withholding sensitive information set forth in Section 8(3).

(3) *Sharing of Materials Submitted to the Sanctions Board With Other Organizations or Agencies:*