

# **MIGA SANCTIONS PROCEDURES**

## **I. INTRODUCTION**

The Multilateral Investment Guarante

- (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) A “**Fraudulent Practice**” means any act or omission, including a misrepresentation, that knowingly or recklessly<sup>4</sup> misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- (6) “**MIGA Counterparty**” means, in relation to a MIGA Project, any individual or entity which is (i) a guarantee holder of a MIGA guarantee, (ii) a project enterprise (as defined in a MIGA guarantee) (iii) a project sponsor or guarantor, (iv) a co-insurer or reinsurer of a MIGA Project, (v) a broker or (vi) a service provider, consultant or counterparty in relation to MIGA technical assistance or a contract providing goods or services to MIGA.
- (7) “**MIGA Evaluation Officer**” means the individual MIGA staff member appointed by the President of MIGA as the Evaluation and Suspension Officer to review proposed Notices of Sanctions Proceedings (“Notice”) and determine whether there is sufficient evidence in each case to issue a

- (9) “**Notice of Sanctions Proceedings**” or the “**Notice**” means the document containing INT’s<sup>6</sup> findings of Sanctionable Practices issued by the MIGA Evaluation Officer to a named firm or individual together with the sanction recommended by the MIGA Evaluation Officer.
- (10) An “**Obstructive Practice**” means (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a World Bank Group 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 MIGA’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.
- (11) “**Respondent**” means any MIGA Counterparty which is alleged to have engaged in a Sanctionable Practices and who has been designated as such in a Notice.
- (12) A “**Sanctionable Practice**” means any Corrupt Practice, Fraudulent Practice, Coercive Practice, Collusive Practice or Obstructive Practice in connection with a MIGA Project or MIGA operations or any violation of a Material Term of the VDP Terms & Conditions in relation to a MIGA Project.

## **II. PREPARATION OF THE NOTICE OF SANCTIONS PROCEEDINGS**

### **Section 1. Department of Institutional Integrity**

The Department of Institutional Integrity (INT) investigates Sanctionable Practices<sup>7</sup>, in World Bank Group projects.

### **Section 2. Referrals to the MIGA 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 MIGA Evaluation Officer a proposed Notice, which may become the basis of an official Notice as described hereafter.

### **Section 3. Contents of Notice of Sanctions Proceedings**

The Notice shall:

- (1) state INT's specific allegations of a Sanctionable Practice and INT's

- (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 MIGA 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 MIGA 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 has engaged in the alleged Sanctionable Practice and any other consideration relevant to the proceedings, including the likelihood of recovery in the case of a Claim paid by MIGA. The MIGA 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 MIGA Evaluation Officer, the MIGA Evaluation Officer<sup>9</sup> shall close the matter and shall notify the Director of INT accordingly.
2. ***Referral Back to INT:*** If the MIGA Evaluation Officer determines that the sanctions proceedings are not appropriate, the MIGA Evaluation Officer shall not issue the Notice and shall notify the Director of INT of the decision and the basis therefor. The Director of INT may resubmit a proposed Notice to the MIGA 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 MIGA Evaluation Officer determines that there is sufficient justification to issue a Notice to the Respondent, the MIGA 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.

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<sup>9</sup> For cases arising out of MIGA Projects, 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 the VDP Terms & Conditions, the MIGA 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.

4. ***Recommendation of Appropriate Sanction:*** The MIGA Evaluation Officer shall include in the Notice a 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<sup>10</sup> and after due consideration, to the extent applicable, of the factors in Section 15(5).

5. ***Respondent's Explanation in Opposition to Temporary Suspension:*** Within forty-five (45) days after the date of issuance of the Notice, the Respondent may explain

and the matter shall be referred to the Sanctions Board for its review and decision pursuant to the Sanctions Board Statute<sup>13</sup>.

8. ***Sanctions in Uncontested Proceedings:*** If the Respondent does not inform the Sanctions Board pursuant to Section 6(2) of the Respondent's desire to contest the allegations and/or the sanction recommended<sup>14</sup> by the MIGA Evaluation Officer in the Notice within ninety days (90) days after the date of issuance of the Notice (including in those cases where, pursuant to Section 5(6), the MIGA Evaluation Officer has determined that the temporary suspension shall not come into effect), the Sanctions Board shall, through the Secretary and without need of a hearing, issue a Sanctions Board decision imposing the sanction recommended by the MIGA Evaluation Officer in the Notice.

9. ***Withdrawal of Notice:*** Within thirty (30) days after the date of the submission of an Explanation, the MIGA Evaluation Officer may withdraw the Notice upon concluding that there is insufficient evidence to support a finding that the Respondent engaged in any Sanctionable Practice. The MIGA Evaluation Officer shall notify the Respondent and the Director of INT of the withdrawal and the reasons therefor, and the proceedings shall be closed. Such withdrawal and closure shall be subject to INT's opportunity to submit a revised proposed Notice on the basis of additional information not contained in the original Notice, in which case the matter shall proceed in accordance with the procedures set forth in Section 5(1).

#### **IV. SUBMISSIONS TO THE MIGA 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 MIGA 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 issuance of the Notice, the Respondent may submit to the Sanctions Board through the Secretary a written response to the allegations and recommended sanction contained in the Notice (the "Response"). The Response may contain written arguments and evidence, subject to Section 6(7), and shall contain a certification, signed by an individual Respondent or an authorized officer of a Respondent that is an entity, that the

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<sup>13</sup> The terms Sanctions Board, Sanctions Board Panel, Sanctions Board Chair and Panel Chair shall have the meanings intended under the Sanctions Board Statute.

<sup>14</sup> For cases involving the alleged violation of a Material Term of the VDP Terms & Conditions, the mandatory sanction is a ten (10)-year debarment.

information contained therein is true, complete and correct to the best of the signer's knowledge after the exercise of reasonable due diligence in reviewing the matter and the records of the Respondent within the Respondent's possession or control.

3. ***INT's Reply in Support of the Notice of Sanctions Proceedings:*** Within thirty (30) days after the Respondent's submission of its Response, INT may submit to the Sanctions Board through the Secretary a written reply to the arguments and evidence contained in the Response (the "Reply").

4. ***Submission of Additional Materials:*** In the event that additional material evidence becomes available to INT or to the Respondent after the applicable deadlines for the submission of written materials have passed, but prior to the conclusion of the hearing to be held on the matter, the Sanctions Board Chair or the Chair of the Sanctions Board Panel (the "Panel Chair") convened to hear the case pursuant to Articles VII or VIII of the Sanctions Board Statute may, as a matter of discretion, authorize such additional evidence to be submitted, together with a brief argument predicated upon such evidence. The Sanctions Board Chair or the Panel Chair may also authorize either INT or the Respondent to submit, within a reasonable timeframe, additional arguments and evidence in response to the evidence and arguments contained in the additional materials presented by the other party.

5. ***Language:*** All written materials submitted to the Sanctions Board shall be submitted through the Secretary, in English, except that exhibits shall be in the original language with the pertinent parts translated into English. The Sanctions Board or the Sanctions Board Panel may require, either *sua sponte* or on request by the other party, that the other parts or the entirety of an exhibit be translated into English, as such Chair may deem appropriate under the circumstances.

6. ***Time Period for Filing Submissions:*** Time periods for filing submissions shall be those specified in Sections 5 and 6 of these Procedures, subject to any reasonable extension of time granted as a matter of discretion by the Sanctions Board Chair or the Panel Chair in accordance with the Sanctions Board Statute.

7. ***Length:*** The Sanctions Board Chair or the Panel Chair in accordance with the Sanctions Board Statute shall set reasonable limits for the length of written submissions.

## **Section 7. Admissions of Culpability**

The Respondent may admit all or part of any allegation set forth in the Notice. The Respondent may also present evidence and arguments of mitigating circumstances<sup>15</sup>, the intervening implementation of programs to detect or prevent Sanctionable Practices, or other facts relevant to the Sanction Board's decision concerning an appropriate sanction. Such evidence and arguments shall be submitted in accordance with the schedule for written submissions set forth in these Procedures.

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<sup>15</sup> Except for cases involving the violation (if determined) of a Material Term of the VDP Terms & Conditions, for which the mandatory sanction is a ten (10)-year debarment.



## **Section 8. Distribution of Written Materials**

1. *Distribution of Materials to INT and the Respondent:* The Secretary shall provide to INT and the Respondent, in a timely manner, copies of the materials.

## Section 11. Representation at Hearings

1. **INT:** INT shall be represented before the Sanctions Board by a representative who may or may not be an employee of the World Bank Group.
2. **The Respondent:** A Respondent may be self-represented or represented by an attorney or any other individual authorized by the Respondent, at the Respondent's own expense.

## Section 12. Conduct of Hearings

1. **Attendance:** The representatives of INT and the Respondent and the Respondent's representatives may be present throughout the hearing. The hearing including the submissions shall remain confidential and not open to the public. Neither the representatives of INT nor the Respondent nor the Respondent's representatives shall be present for or participate in the deliberations of the Sanctions Board or the Sanctions Board Panel.

2. **Presentations:**

- (a) **Order:** INT shall present its case first. The Respondent or Respondent's representative shall present the Respondent's case second. INT shall be permitted to reply.
- (b) **Length:** The Sanctions Board Chair 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<sup>16</sup>.

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

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<sup>16</sup> Except in cases involving the alleged violation of a Material Term of the VDP Terms & Conditions, for which the mandatory sanction is a ten (10)-year debarment.

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.

### **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.

## **VII. IMPOSITION OF SANCTIONS BY THE SANCTIONS BOARD**

### **Section 15. Findings and Sanction Decision**

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- (b) **Burden of Proof:** INT shall have the burden of proof to present evidence sufficient to establish that it is more likely than not that the Respondent engaged in a Sanctionable Practice in a MIGA Project. Upon such a showing by INT, the burden of proof shall shift to the Respondent to demonstrate that it is more likely than not that Respondent's conduct did not amount to a Sanctionable Practice.
- (c) **Insufficient Evidence:** If the Sanctions Board or the Sanctions Board Panel determines that it is more likely than not that the Respondent did not engage in a Sanctionable Practice, the Sanctions Board or the Sanctions Board Panel shall notify INT and the Respondent in writing, and the proceedings shall be terminated. The Notice may be resubmitted if evidence not available at the time of filing of the Notice is subsequently obtained.
- (d) **Sanctions Board's Decision:** If the Sanctions Board or the Sanctions Board Panel determines that it is more likely than not that the Respondent did engage in a Sanctionable Practice, it shall impose an appropriate sanction on the Respondent, which sanction shall be selected from the range of possible sanctions identified in Section 15(3). In determining the appropriate sanction, the Sanctions Board or the Sanctions Board Panel shall not be bound by the recommendation of the MIGA Evaluation Officer.

3. ***Range of Possible Sanctions:***

- (a) **Reprimand:** The Sanctions Board 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 be a MIGA Counterparty ("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 a MIGA Counterparty. This ineligibility resulting from debarment shall extend to new activities under Bank Projects, acting as an IFC Counterparty and as a PRG Counterparty (as "new activities under Bank Projects", "IFC Counterparty" and "PRG Counterparty" are defined in the Bank's, IFC's and PRG's respective Sanctions Procedures). Debarment arising out of other World Bank Group projects (other than MIGA Projects) shall also render the Respondent ineligible to be involved as a MIGA Counterparty in a MIGA 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 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 conditions of release set forth in the decision of the Sanctions Board or the Sanctions Board Panel, such as introduction and/or implementation of corporate compliance or ethics programs, compliance with procurement requirements, or other measures. Such debarment with conditional release shall also result in cross-debarment among other World Bank Group entities (on the same terms and conditions) as outlined in Section 15(3) (b).
- (e) **Restitution Requirements:** The Sanctions Board or the Sanctions Board Panel may decide to require the Respondent to make restitution of diverted funds to any other party.
- (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 Sanctions Board or the Sanctions Board Panel may impose the most severe sanction for the most serious Sanctionable Practice. However, when warranted by the circumstances<sup>17</sup>, the Sanctions Board or the Sanctions Board Panel may impose cumulative sanctions pertaining to the multiple Sanctionable Practices.

4. ***Parties Subject to Sanction:*** When the Sanctions Board or the Sanctions Board Panel imposes a sanction on a particular Respondent, the Sanctions Board or the Sanctions Board Panel may also impose an appropriate sanction on any individual or organization that, directly or indirectly, controls or is controlled by the Respondent.

5. ***Factors Affecting the Sanction Decision:*** Except for cases involving violation of a Material Term of the VDP Terms & Conditions for which there is a mandatory sanction, the Sanctions Board or the Sanctions Board Panel may consider the following factors in determining an appropriate sanction:

- (a) egregiousness and severity of the Respondent's conduct;

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<sup>17</sup> An example would be a corrupt practice coupled with an obstructive practice.



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

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

2. ***Information Pertaining to a Project Co-Insured or Re-Insured by or with Another Organization or Agency:***

(a) If MIGA determines that there is information relating to a Sanctionable Practice in connection with a MIGA Project that is co-insured or re-insured by, or undertaken together with, another international or multinational organization, including another development bank, or by an agency of a member government that promotes international development, MIGA may at any time make such information available to such organization or agency. In determining whether to disclose such information, MIGA shall consider, among other factors, the standards for withholding sensitive information set forth in Section 8(3).

(b) MIGA may also disclose such information to participants in its Cooperative Underwriting Program and Reinsurance partners as required to comply with its contractual disclosure obligations. In determining whether to disclose such information, or the extent of such disclosure, MIGA shall consider, among 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:*** MIGA may at any time make available materials submitted to the Sanctions Board to another international or multinational organization, including another development bank, or to an agency of a member government that promotes international development, where MIGA and such organization or agency have agreed that the organization or agency shall make similar information available from its own files to the World Bank Group. In determining whether to approve the disclosure of such materials, MIGA shall consider, among other factors, the standard for withholding sensitive materials set forth in Section 8(3).

4. ***No Prejudice to Administration or Operations:*** Nothing in this Section 18 or elsewhere in the Sanctions Procedures limits, prejudices or qualifies any rights or privileges MIGA may have to provide information to its co-insurance or reinsurance partners, in any MIGA Project, or in the course of dispute resolution, or otherwise in the course of administration or operation of its projects and transactions.

## **IX. ADDITIONAL PROVISIONS**

### **Section 19. Effective Date**

These Procedures shall become effective on October 15, 2006 and shall apply to all projects for which a Definitive Application for a MIGA guarantee (or request for Technical Assistance) is filed on or after that date.

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