Date of issuance: September 30, 2015

Sanctions Board Decision No. 83 (Sanctions Case No. 202)

IDA Credit No. 4028-VN
Vietnam

Decision of the World Bank Group! Sanctions Board:

i. imposing a sanction of debarment on a respondent entity in Sanctions Case No.202 (the "First Respondent Firm"), together with any entity that is an Afflliate? directly or indirectly controlled by the First Respondent Firm, for a period of one (1) year beginning from the date of this decision. This sanction is imposed on the First Respondent Firm for fraudulent practices.

ii. imposing a sanction of reprimand on a second respondent entity in Sanctions Case No.202 (the "Second Respondent Firm") (together with the First Respondent Firm, the "Respondents") by means of a formal letter of reprimand
to be posted on the World Bank's website for a period of three
(3) months beginning from the date of this decision. This sanction is imposed on
the Second Respondent Firm for fraudulent practices.

iii. finding insufficient evidence to conclude that it is more likely than not that the named affiliate in Sanctions Case No. 202 (the "Named Affiliate") (together with
the Respondents, the "Contesting Parties") is liable for the Respondents' fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board considered this case in plenary sessions held in person and
through virtual means in June 2015. The Sanctions Board was composed of L. Yves Fortier (Chair), Alison Micheli, Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, and J. James Spinner.

2. A hearing was held on June 4, 2015, at the request of the Contesting Parties and in
accordance with Article VI of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in

I In accordance with Section l.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the "Sanctions Procedures"), the term "World Bank Group" means, collectively, the International Bank for Reconstruction and Development ("IBRD"), the International Development Association ("IDA"), the International Finance Corporation ("IFC"), and the Multilateral Investment Guarantee Agency ("MIGA"). For the avoidance of doubt, the term "World Bank Group" includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID"). As
in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section l.Ol(a), n.l.
2 The term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, Procedures at

Sanctions Board Decision No. 83
Page 2 of30

person. The Contesting Parties were represented by outside counsel and the Executive Vice President and General Counsel of the Named Affiliate, all attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board's consideration included the following:

1. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and
Suspension Officer (the "EO,,)3 to the Contesting Parties on July 17, 2014 (the
"Notice"), appending the Statement of Accusations and Evidence (the "SAE")
presented to the EO by INT, dated June 18,2012;

11. Explanation submitted by the Contesting Parties to the EO on August 15,
2014 (the "Explanation");

111. Response submitted by the Contesting Parties to the Secretary to the Sanctions
Board on October 31,2014 (the "Response"); and

IV. Reply submitted

Sanctions Board Decision No. 83
Page 3 of30

Procedures, demonstrated to the ICO that it has complied with the conditions originally stipulated for non-debarment.

5. Upon review of the Explanation, and noting that the Contesting Parties indicated in
that submission that the Second Respondent Firm is the legal successor to the Second Predecessor Firm, the EO determined that additional mitigation was warranted for (i) the Respondents for the compliance program implemented by the corporate group controlled by the Named Affiliate (the "Group"), internal action against a responsible individual, and voluntary restraint; and (ii) the Second Respondent Firm based on the Second Predecessor Firm's minor role in the misconduct. On these grounds, the EO reduced the recommended minimum period of ineligibility to two (2) years for the First Respondent Firm and to one
(1) year for the Second Respondent Firm in lieu of its predecessor. The EO did not revise the recommended sanction for the Named Affiliate.

6. Effective July 17, 2014, pursuant to Section 4.02(a) of the Sanctions Procedures, the
EO temporarily suspended the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;" (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service providers of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects")" pending the final outcome of the sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

7. This case arises in the context of the Vietnam Urban Water Supply Development
Project (the "Project"), which sought to improve water and household sanitation services in selected district towns and large urban centers in participating provinces. On July 15, 2005, IDA and the Socialist Republic of Vietnam (the "Borrower") entered into a development

4 For the avoidance of doubt, the scope of ineligibility to be awarded a contract includes, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 9.01(c)(i), n.16.

5 A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section 9.01(c)(ii), n.17.

6 For the avoidance of doubt, the term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section l.OI(c)(i), n.3.

Sanctions Board Decision No. 83
Page 4 of30

credit agreement to provide the equivalent of approximately US$113 million (later revised to the equivalent of approximately US$98 million) to finance the Project. The Project became effective on November 11, 2005, and closed on June 30, 2013.

8. On March 12, 2007, the implementing agency for the Project (the "Implementing Agency") issued a request for proposals (the "RFP") under the Project for a contract for consulting services for sub-project preparation and support (the "Contract"). The RFP was issued to six shortlisted entities, including a consortium of the First Respondent Firm's predecessor (the "First Predecessor Firm") (together with the Second Predecessor Firm, the "Respondents' Predecessors"), the Second Predecessor Firm, and two sub-consultants (respectively, the "First Sub-Consultant"d

Sanctions Board Decision No. 83
Page 5 of30

Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

13. Under Section 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of
proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

14. The alleged sanctionable practice in this case has the meaning set forth in the World
Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"), which governed the selection process for the Project under the development credit agreement, and whose definition of fraudulent practice was repeated in the RFP and the Contract. Paragraph 1.22(a)(ii) of these Guidelines defines the term "fraudulent practice" as "a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract." This definition does not include an explicit mens rea requirement such as the "knowing or reckless" standard adopted by the Bank from October 2006 onward." However, the legislative history of the Bank's various definitions of "fraudulent practice" reflects that the October 2006 incorporation of the "knowing or reckless" standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new Iimitation." Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under the pre-October 2006 definitions."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

1. Allegations of fraudulent practices

15. INT alleges that the Respondents' Predecessors engaged in four distinct fraudulent
practices in connection with the Contract.

16. Fraud allegation 1: INT alleges that the Respondents' Predecessors knowingly failed
to disclose and affirmatively misrepresented the existence of an agreement with a marketing consultant (the "Marketing Consultant"), and failed to disclose subsequent payments to the Marketing Consultant. According to INT, the Respondents' Predecessors therefore knowingly breached their initial and ongoing obligations pursuant to the RFP and the Contract to disclose any agency relationship or commission payments.

7 See, e.g., World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 2006) at para. 1.22(a)(ii) (defining "fraudulent practice" as "any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party
to obtain financial or other benefit or to avoid an obligation") v (to) Tj d Td (or) tampts

Sanctions Board Decision No. 83
Page 6 of30

17. Fraud allegation 2: INT alleges that the Respondents' Predecessors knowingly or recklessly failed to disclose a conflict of interest involving the First Sub-Consultant; and thereby breached their obligation under the RFP to disclose any actual or potential conflicts of interest. According to INT, a close relationship between the First Sub-Consultant and a now-former World Bank staff member involved in the selection process for the Contract (the "World Bank Official") created an actual or potential conflict of interest for the Respondents' Predecessors, who considered the connection a business advantage.

18. Fraud allegation 3: INT alleges that the Respondents' Predecessors knowingly submitted a falsified receipt for reimbursement of costs incurred during the execution of the Contract. INT contends that the Sanctions Board has established that the use of a false or fabricated document constitutes a fraudulent practice even if the document's content is substantially correct.

Sanctions Board Decision No. 83
Page 7 of30

B. The Contesting Parties' Principal Contentions in the Explanation and the Response

1. Contentions regarding withheld or redacted exhibits

22. Prior to submission of the Response, the Contesting Parties had requested in camera access to a withheld exhibit, access to a second withheld exhibit, and access to an unredacted version of a third exhibit. In the Response, the Contesting Parties requested, in the alternative, that the Sanctions Board not consider these exhibits as evidence in this case. As discussed in Paragraphs 43-44 below, the Sanctions Board resolved these requests on May 28,2015.

2. Contentions regarding the Second Predecessor Firm's role

23. The Contesting Parties assert that INT fails to demonstrate that the Second Predecessor Firm played any role with played any

Sanctions Board Decision No. 83
Page 8 of30

be submitted to the Implementing Agency. The Contesting Parties further assert that there is no evidence to suggest that the work of unapproved personnel was invoiced to the Implementing Agency; and that if the work of unapproved personnel was billed to the Implementing Agency, there was minimal harm.

4. Contentions regarding the Named Affiliate's responsibility for the
alleged misconduct

28. The Contesting Parties argue that INT fails to establish a basis for sanctioning the
Named Affiliate for any of the alleged misconduct. The Contesting Parties assert, inter alia, that (i) the Named Affiliate did not exercise significant operational management control over its subsidiaries at the time of the Project; (ii) the Named Affiliate did not demonstrate a systematic lack of oversight or otherwise fail to supervise its subsidiaries; (iii) there is no connection between any individuals affiliated with the Named Affiliate and the substantive misconduct alleged in the SAE; and (iv) INT has not shown that sanctioning the Named Affiliate is necessary to avoid circumvention of any sanction imposed on the Respondents.

5. Sanctioning factors

29. In the Explanation, the Contesting Parties request that the Notice be withdrawn as it
relates to the Named Affiliate and the Second Predecessor Firm, and that the recommended sanction for the First Respondent Firm be reduced. In the Response, the Contesting Parties dispute the application of the aggravating factors asserted by INT and reassert the mitigating factors recognized by the EO, including the First Respondent Firm's internal action against staff members; the Second Predecessor Firm's minor role in the conduct at issue; and the compliance program and voluntary restraint policy instituted across the Group. The Contesting Parties further assert that mitigation is warranted for the following factors not credited by the EO: (i) significant passage of time since the Proposal's submission and INT's awareness of the alleged misconduct; (ii) structural changes to the Group; (iii) departure of key individuals; (iv) cooperation of the First Predecessor Firm and the Named Affiliate with INT's audit and investigations; and (v) INT's breaches of confidentiality.

C. INT's Principal Contentions in the Reply

1. Contentions regarding withheld or redacted exhibits

30. In response to the Contesting Parties' contentions regarding withheld or redacted
exhibits, INT asserted that it properly restricted access to the exhibits under the Sanctions Procedures and World Bank Group confidentiality rules.

2. Contentions regarding the Second Predecessor Firm's role

31. INT argues that, even if the Second Predecessor Firm did not perform on the Contract, the Second Predecessor Firm was a signatory to the Proposal and the Contract through its representative, the Director, and thus remained jointly and severally liable for the misconduct alleged. INT further asserts that the Second Predecessor Firm derived a significant business

Sanctions Board Decision No. 83
Page 9 of30

benefit from the Contract and that the First Predecessor Firm and the Director acted as agents of the Second Predecessor Firm.

3. Contentions in support of the allegations of fraudulent practices

32. Fraud allegation 1: INT asserts that the Contesting Parties' characterization of the First Predecessor Firm's agreement with the Marketing Consultant and the terms of the agreement itself demonstrate that the Marketing Consultant acted as a "commission agent." In
addition, INT disputes the Contesting Parties' argument that the Director lacked the requisite
mens rea in failing to disclose the agency relationship with the Marketing Consultant.

33. Fraud allegation 2: INT asserts that evidence in the record demonstrates that the
Director was aware of the conflict of interest involving the First Sub-Consultant prior to the
Director's submission of the Proposal. According to INT, the Contesting Parties were at least
reckless because they knew or should have w Td (reckow7.36 0 T(of) Tj about.04 0 Td (allegation 0 T

Sanctions Board Decision No. 83
Page 100f30

to the Marketing Consultant, and that the Marketing Consultant's connections to government officials provided a motive not to disclose the relationship. With respect to the second allegation, INT asserted that the Respondents' Predecessors acted knowingly or recklessly, or were willfully blind, in failing to disclose the First Sub-Consultant's relationship with the World Bank Official. Regarding the third allegation, INT asserted that the falsified receipt was intended to recover expenses ineligible for reimbursement. As to the fourth allegation, INT asserted that the Replacement's lack of requisite qualifications provides evidence of a motive to submit falsified timesheets for that individual's work.

39. INT also addressed the Named Affiliate's potential liability for the alleged misconduct and appropriate sanctions for the Contesting Parties. INT asserted that the Named Affiliate is
directly liable for all of the alleged misconduct because the Contesting Parties operated as a
single economic unit. INT further asserted that sanctions in this case would only be effective
if they reached the Named Affiliate, because the Respondents operate exclusively in their
home countries and the Bank does not finance development projects in those countries.

40. The Contesting Parties disputed INT's allegations of fraudulent practices. The
Contesting Parties arguputed The dos allegations 59.04 0 Td (th0egations) Tj 44 0 Td (misconduct)by0 Td (The8's) Tj 3 the alleged reimburseudulent 3o the does pthe effective 36 0 T (reimb.56 -13.68 Td3 Ba4 the

Sanctions Board Decision No. 83 Page 11 of30

A. Requests for Access to 9sts

Sanctions Board Decision No. 83 Page 12 of30

Director's conduct may

Sanctions Board Decision No. 83
Page 13 of30

determined in December 2009 "that [the Marketing Consultant] is an agent and should have been disclosed to [the World Bank]." On the basis of this record, the Sanctions Board finds that it is more likely than not that the First Predecessor Firm's representatives misrepresented and failed to disclose its agency relationship with the Marketing Consultant and failed to disclose commissions or fees paid to the Marketing Consultant in connection with the Contract.

b. Made knowingly or recklessly

51. As the record reveals, the Director took part in negotiating and signed the First Predecessor Firm's agreement with the Marketing Consultant, and knew that the agreement established a commission agent relationship in connection with the Proposal and the Contract. Pursuant to the agreement, the First Predecessor Firm was required to pay a percentage commission to the Marketing Consultant, and the Marketing Consultant was obligated to assist the First Predecessor Firm with improving its market position and securing consulting and engineering contracts in Vietnam. The Marketing Consultant's own invoices referred to its payments as a "success fee." On the basis of this record, the Sanctions Board finds that it is more likely than not that the First Predecessor Firm's representatives acted knowingly in misrepresenting and failing to disclose the First Predecessor Firm's commission agent relationship with the Marketing Consultant and in failing to disclose commission payments made under that agreement.

c. In order to influence a selection process or execution of a
contract

52. The Sanctions Board has previously found sufficient evidence of intent to influence the procurement process where the record showed that misrepresentations had been made in response to a tender requirement.l'' As discussed above in Paragraph 48, the RFP, the Fin-I Form, and the requirem

Sanctions Board Decision No. 83
Page 14 of30

consider, consistent with past precedent, II whether the First Predecessor Firm (i) had an actual or potential conflict of interest, (ii) that was subject to a disclosure obligation, and (iii) disclosed any such conflict of interest.

1. Actual or potential conflict of interest

54. The record supports a finding that officials of the First Sub-Consultant included the son and/or business associate of the World Bank Official, a now-former Bank staff member with responsibility for the Project. The record includes the Director's contemporaneous statements that the First Sub-Consultant had a "close relationship with a local [World Bank] officer" and that it was "generally known" that the World Bank Official's son is an official of the First Sub-Consultant. In addition, a due diligence report prepared by a third party for the
Named Affiliate states that the World Bank Official and an official of the First Sub-
Consultant were "friends and business partners," and confirms that the World Bank Official
owns the property that the First Sub-Consultant uses as its office. The record also indicates
that the World Bank Official was actively involved in the First Sub-Consultant's business, as
confirmed by a former official of the First Sub-Consultant in an interview with INT.

55. In light of the above, the Sanctions Board finds that it is more likely 2.8 (finds) 4.8n0j 15 100 Tz

likely

Sanctions Board Decision No. 83
Page 15 of30

obligation under the RFP to disclose its conflict of interest and thereby engaged in an omission of facts. The first element of the definition of fraudulent practice is therefore met. 12

b. Made knowingly or recklessly

58. The record indicates that the Director knew that an actual or potential conflict of interest existed at the time the Proposal was. submitted, and that conflicts of interest were subject to disclosure. More than a month before submitting the Proposal, the Director prepared the "Draft Business Strategy for Vietnam," in which he describes the First Sub-Consultant as having a "close relationship with a local [World Bank] officer." This document indicates the Director's awareness of the actual or potential conflict of interest prior to the submission of the Proposal, and demonstrates that he considered the relationship significant enough to note in a "Business Strategy." In addition, the Director confirmed during his interview with INT that he was concerned that the rumored relationship between the First Sub-Consultant and the World Bank Official, if known, could damage the Proposal. This statement indicates that the Director deliberately chose not to disclose the relationship between the First Sub-Consultant and the World Bank Official.

59. Considering the totality of the evidence, including evidence of the conflict of interest discussed in Paragraph 54 above, the Sanctions Board finds that it is more likely than not that the Director knowingly omitted to disclose the relationship between the First Sub-Consultant and the World Bank Official.

c. In order to influence a selection process or execution of a
contract

60. As noted above, the RFP required bidders "to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect." As also discussed above, the record reveals the Director's statementhat he was concerned that the rumored relationship between the First Sub-Consultant and the World Bank Official, if known, could damage the Proposal. This evidence supports a finding that it is more likely than not that the Director withheld information about the conflict of interest in order to influence the selection process for the Contract.

3. Fraud allegation 3: Alleged submission of a false receipt

a. Misrepresentation or omission of facts

61. The Contesting Parties concede that the Director, on behalf of the First Predecessor Firm, engaged the services of an outside firm to create a false value added tax ("VAT") receipt in support of a claim for payment under the Contract, and subsequently submitted the

12 The Sanctions Board notes that the decision on this element was taken by a majority of the members reviewing this case. In contrast to the majority view, one member found that the First Predecessor Firm did not have a disclosure obligation in relation to an actual or potential conflict of interest, and would therefore dismiss the second allegation of fraudulent practice against the Contesting Parties.

Sanctions Board Decision No. 83
Page 16 of30

falsified receipt to the Implementing Agency for reimbursement. Accordingly, the Sanctions Board finds that it is more likely than not that the Director made a misrepresentation of fact by submitting a false receipt for reimbursement.

b. Made knowingly or recklessly

62. The record supports a finding that it is more likely than not that the Director acted knowingly in submitting the false receipt for reimbursement. As noted above, the Contesting Parties concede that the Director specifically engaged an outside firm to create the false receipt and that the Director subsequently submitted the false receipt for reimbursement.

c. In order to influence a selection process or execution of a
contract

63. The Sanctions Board has found evidence of intent to influence the execution of a contract where a misrepresentation was material to a respondent's remuneration under the contract. I3 Here, Section 6.2(c) of the Contract provides for the reimbursement of "expenses actually and reasonably incurred by the Consultant." According to the Contesting Parties, the
Director sought and obtained the false receipt because the Implementing Agency made a
belated and unprecedented request - only after the expenses had been incurred - that the
expenses be supported by a VAT receipt. In a memorandum to INT, the First Respondent
Firm states that the receipt was submitted to the Implementing Agency with a view to
complying with a clerical requirement of the Implementing Agency for reimbursement. On
the basis of this record, the Sanctions D 143>> BDC -239.76 -25 INT, th1d (INT,) 2 Td (complying) 6 0 Td (toT9.84 0 T the

Sanctions Board Decision No. 83
Page 17 of30

for "Replacement of Personnel: Other Personnel": (i) "False time sheets to seek approval for replacements in the near future," and (ii) "Official substitution needed or not has to be found in advance unofficially from [the Implementing Agency]." In February 2009, the Director sought to replace the Procurement Specialist with the Replacement; and the Implementing Agency sought approval for the substitution from the World Bank, which the World Bank denied later that month. Subsequently, the Director stated in an email to an official of the First Sub-Consultant that "I would propose that we invoice [the Replacement's] input as if [the Procurement Specialist] would have worked." Consistent with this email, the First Predecessor Firm's March and April 2009 invoices included listings for the Procurement Specialist.

65. In light of the above, the Sanctions Board finds that it is more likely than not that the
Director submitted false timesheets to the Implementing Agency.

b. Made knowingly or recklessly

66. The evidence discussed in Paragraph 64 supports a finding that it is more likely than
not that the Director acted knowingly in submitting false timesheets in the Procurement Specialist's name for work performed by the Replacement. Significantly, as noted above, after the World Bank declined to approve the proposed replacement of the Procurement Specialist with the Replacement, the Director recommended to an official of the First Sub-Consultant that "we invoice [the Replacement's] input as if [the Procurement Specialist] would have worked."

c. In order to influence a selection process or execution of a
contract

67. Sections 3.7(a) and 4.3 of the Contract specify that the replacement of key personnel-
such as the Procurement Specialist - must be approved by the Implementing Agency. The record supports a finding that the Director's submission of the false timesheets in March and April 2009 for work by unapproved personnel, but in the name of approved personnel, was intended to circumvent these provisions of the Contract while still receiving remuneration for work performed under the Contract. Accordingly, the Sanctions Board finds that it is more likely than not that the Director's submission of the false timesheets was intended to influence the execution of the Contract.

C. Liability of the Contesting Parties for the Sanctionable Practices

68. The Sanctions Board will next address the liability of each ofthe Contesting Parties by considering whether: (i) the First Predecessor Firm may be deemed liable for the fraudulent conduct of the Director; (ii) the Second Predecessor Firm may be deemed liable for the conduct of the Director and the First Predecessor Firm; (iii) the Respondents may be deemed liable as successors for the conduct of the Respondents' Predecessors; and (iv) the Named Affiliate may be deemed liable for the conduct of the Respondents' Predecessors.

Sanctions Board Decision No. 83
Page 18 of30

1. Liability of the First Predecessor Firm for the acts of the Director

69. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer. IS Where a respondent entity has denied responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has assessed any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct. 16

70. The record supports a finding that the Director engaged in the fraudulent misconduct within the course and scope of his duties and with the purpose of serving the interests of the First Predecessor Firm. The Director was authorized by a power of attorney "to represent alone [the First Predecessor Firm], to submit the technical and financial proposal, negotiate and sign the contract agreement and any related documents." The Director signed the Contract on behalf of both the First Predecessor Firm and the Second Predecessor Firm. Accordingly, the Sanctions Board finds that the First Predecessor Firm is liable for the four types of fraudulent practices committed by the Director in regard to the agency agreement and commissions for the Marketing Consultant, the conflict of interest involving the First Sub-Consultant and the World Bank Official, the false VAT receipt, and the false timesheets. The Sanctions Board notes that the Contesting Parties do not present, and the record does not provide any basis for, a rogue employee defense.

2. Liability of the Second Predecessor Firm for the conduct of the Director
and the First Predecessor Firm

71. The Contesting Parties asserthat the Second Predecessor Firm was not involved in the Project and therefore should not be subject to sanctions. IN18.48 0 T1sanctions. World 5he

Sanctions Board Decision No. 83 Page 19 of30
Predecessor Firm

Sanctions Board Decision No. 83
Page 21 of30

D. Sanctioning Analysis

1. General framework for determination of sanctions

78. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 9.01. The range of sanctions set out in Section 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

79. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.i" The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case."

80. The Sanctions Board is required to consider the types of factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

81. Should the Sanctions Board impose a sanction on a respondent, it may also, pursuant to Section 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of such respondent.

2. Factors applicable in the present case

a. Severity of the misconduct

82. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate. sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means, and the involvement of a public official or World Bank staffas examples of severity.

83. Repeated pattern of conduct: INT asserts that aggravation is warranted for the "multiplicity and seriousness" of the sanctionable practices. Considering that the Respondents' Predecessors engaged in four factually distinct types of fraudulent practices

24 See Sanctions Board Decision No. 40 (2010) at para. 28.

25 Sanctions Board Decision No. 44 (2011) at para. 56.

Sanctions Board Decision No. 83
Page 22 of30

over a period of two years, the Sanctions Board finds that significant aggravation is warranted
for the Respondents under this factor.

84. Sophisticated means: Section IV.A.2 of the Sanctioning Guidelines states that aggravation may be warranted for sophisticated means based on, inter alia, "the complexity of
the misconduct (e.g., degree of planning, diversity of techniques applied, level warr5(e) Tj 23.04

Sanctions Board Decision No. 83
Page 23 of30

Sanctions Board finds that aggravation IS warranted for the Respondents in these circumstances.

c. Past history of adjudicated misconduct

87. Section 9.02(d) of the Sanctions Procedures provides that the Sanctions Board shall consider "the sanctioned party's past history of misconduct as adjudicated by the World Bank Group or by another multilateral development bank." Section IV.D of the Sanctioning Guidelines clarifies that such prior history must involve misconduct other than the misconduct at issue in the present proceedings. Without referring to these provisions, INT asserts that an aggravating factor in this case is the Group's history of misconduct as shown by a settlement agreement between the Named Affiliate and the World Bank Group's General Services

Sanctions Board Decision No. 83
Page 24 of30

respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.F

90. Cessation of misconduct: Section V.B.I of the Sanctioning Guidelines states that mitigation may be appropriate where a respondent ceases to engage in misconduct. The Contesting Parties assert that "at least some measure of mitigation" is warranted for the First Predecessor Firm's termination of its relationship with the Marketing Consultant. However, the misconduct with respect to the Marketing Consultant was not based on the existence of a relationship with the Marketing Consultant, but rather based on the First Predecessor Firm's failure to disclose its relationship with and payments to the Marketing Consultant. Accordingly, the cessation of this misconduct would occur only upon appropriate disclosure. As noted in Paragraph 50, there is no indication in the record that the First Predecessor Firm at any time disclosed to the Implementing Agency its relationship with or payments to the Marketing Consultant. The Sanctions Board finds that mitigation is not warranted in these circumstances.

91. Internal action against responsible individuals: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Sanctions Board has previously declined to apply mitigation based on internal action against responsible staff where the respondent failed to substantiate its stated rneasures.P or provided limited evidence of action against only one of the responsible individuals.i" The Contesting Parties assert that mitigation is justified on this ground because the Director was separated from the Group after the Group's investigation of the misconduct was concluded, and the Director's supervisor received a written reprimand for inadequate supervision. The record includes a copy of the Director's signed termination agreement and the letter of reprimand to the Director's supervisor. The supervisor's letter of reprimand refers to her negligence in supervising the Project and the Director. However, the termination agreement with the Director - the central actor in the misconduct - does not specify the reason for separation. Accordingly, the Sanctions Board finds that the record does not reveal the type of internal action that may justify mitigation.

92. Effective compliance program: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record reveals the "[e]stablishment or improvement ... and implementation of a corporate compliance program" by a respondent. The Contesting Parties present documentary evidence to support their assertion that, since 2008, the Group has instituted numerous enhancements to its compliance systems and procedures. While INT disputes the effectiveness of the Named Affiliate's compliance policies in effect at the time of the misconduct, it does not address the effectiveness of the compliance measures that the Contesting Parties asserto have subsequently implemented.

27 See, e.g., Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 63 (2014) at para. 104.
28 Sanctions Board Decision No. 44 (2011) at paras. 71-72.

29 Sanctions Board Decision No. 56 (2013) at para. 67.

Sanctions Board Decision No. 83
Page 25 of30

93. The Sanctions Board notes that the Group's written compliance policies, as included in
the record, appear to address the types of fraudulent misconduct in this case and most of the principles set out in the World Bank Group's Integrity Compliance Guidelines. Although the record does not contain direct evidence of the written policies' implementation, the written policies themselves appear to contain concrete and potentially effective measures for preventing the kind of fraudulent misconduct at issue here. Notably, a large portion of the written compliance materials in the record relates to interactions with third-party business partners. Furthermore, an internal report issued by the First Respondent Firm in January 2010 commits to the implementation of recordkeeping rules specifically targeted at halting the practice of keeping "parallel timesheets" as involved in the fourth fraudulent practice. Accordingly, the Sanctions Board finds that the asserted compliance measures, as supported by the written policies, warrant mitigation for the Respondents.

f. Cooperation

94. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a
respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation, internal investigation, and voluntary restraint as examples of cooperation.

95. Assistance and/or ongoing cooperation: Section V.C.l of the Sanctioning Guidelines states that cooperation may take the form of assistance to INT's investigation or ongoing cooperation, with consideration of "INT's representation that the respondent has provided substantial assistance," as well as "the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." The Sanctions Board has previously accorded mitigation where, for example, a respondent's managers met with INT on several occasions and provided relevant information.'? or corresponded with INT and made relevant personnel available for interviews." In the present case, INT asserts that the Contesting Parties offered limited cooperation, including by "conducting their own inquiry and providing limited disclosure of certain improprieties." The Contesting Parties respond that INT understates the extent of their cooperation.

96. The record reveals that INT interviewed the Director - the central actor in the alleged
misconduct and an official of the First Predecessor Firm at the time of the interview - and that the Contesting Parties provided extensive internal documentary evidence to INT, including inculpatory evidence as relied upon by INT in the SAE and the Reply. On the basis of this record, the Sanctions Board finds that mitigation is justified for the Respondents in light of the

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Sanctions Board Decision No. 83
Page 27 of30

102. Passage of time: The Sanctions Board has previously considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.P This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents." At the time of
the EO's issuance of the Notice in July 2014, approximately seven years and three months had
elapsed since the submission of the Proposal in April 2007; and approximately four years and
ten months had elapsed since INT conducted its audit of the Respondents' Predecessors in
September 2009. INT argues that the passage of time in this case should be viewed in the
context of the "prolonged negotiations" for a potential settlement from April 2010 to
June 2012, which INT asserts resulted partly from the Contesting Parties' conduct. However, INT the resultco

Sanctions Board Decision No. 83
Page 28 of30

suggests that the change in the Group's corporate structure was a form of internal restructuring in light of changing business strategies rather than a restructuring arising from a fundamental change in ownership or control. In addition, and in contrast to past precedent where mitigation was applied under this factor," the record in this case is not clear as to the scope of any relevant changes in management since the time of the misconduct. Finally, as a general matter, the Sanctions Board notes that the expected adverse impact of sanctions in itself does not necessarily show that mitigation is warranted. 39

105. INT's alleged breaches of confidentiality: The Contesting Parties seek mitigation based on INT's asserted breaches of confidentiality. According to the Contesting Parties, INT sent a letter to counsel for a competitor, confirming that INT was investigating the Group in two separate matters. The Contesting Parties also state that the Group understood that INT may have discussed its investigation with that competitor's principal shareholder. Section 9.02(i) of the Sanctions Procedures expressly limits the Sanctions Board's sanctioning analysis to considerations reasonably relevant to a respondent's own culpability or responsibility for the sanctionable practice. The Contesting Parties fail to establish the relevance of its arguments under this framework. The Sanctions Board also notes that Section 13.06 of the Sanctions Procedures ("Confidentiality") does not provide for mitigation or other consequences for breaches of confidentiality by the World Bank. Consistent with past precedent.t'' the Sanctions Board declines to apply mitigation on this basis.

106. The Named Affiliate's assistance with INT's China Project investigation: INT asserts that mitigation is warranted for the Named Affiliate's cooperation with !NT's audit of the China Project. The Contesting Parties assert, and INT does not dispute, that the Named Affiliate provided substantial assistance, at its own cost, to !NT's investigation in connection with that project. However, the Sanctions Board does not consider the Named Affiliate's cooperation with the China Project to be relevant to the Respondents' culpability or responsibility for the misconduct in this case. Accordingly, the Sanctions Board declines to apply mitigation on this ground.

107. Unspecified mitigating factors asserted by INT: Under the header of "Mitigating
Factors" in the SAE, INT identifies certain submissions of the Contesting Parties that INT
asserts may contain factors relevant to "appreciating the circumstances surrounding the
subject misconduct." The parties do not address which additional grounds for mitigation, if

38 See Sanctions Board Decision No. 53 (2012) at para. 66 (applying mitigation in light of successive changes in
the respondent's management since the time of the misconduct a decade ago); Sanctions Board Decision
No. 66 (2014) at para. 49 (applying mitigation where the respondent provided detail.d (in)8 Sanctegiee8 0 Td (a Td (Sanctbelfor

Sanctions Board Decision No. 83 Page 29 of30

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