

2019

World Bank Group  
**Sanctions Board**  
Law Digest



WORLD BANK GROUP



THE WORLD BANK GROUP  
SANCTIONS BOARD



World Bank Group Sanctions Board  
**Law Digest 2019**

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# Preface

This *Law Digest* summarizes for informational purposes the evolving case law of the Sanctions Board since its inception in 2007. The summaries of holdings presented in this document cannot be read to supersede or revise any text within a final Sanctions Board decision. For further reference, the full text of published Sanctions Board decisions is available at <http://worldbank.org/sanctions>.

The Sanctions Board Secretariat is grateful for the research assistance of academic externs and consultants who supported this project, including Kathrin Bausch, Kelly Chapman, Tiffany Kassamo Dayemo, Oretha Manu, Katya Petrova Pavlova, James Everett Richardson, and Camille Henri Vaillon.

# Abbreviations

EO	Evaluation and Suspension Officer
GSD	General Services Department
IBRD	International Bank for Reconstruction and Development
ICO	Integrity Compliance Officer
IDA	International Development Association
IFC	International Finance Corporation
INT	Integrity Vice Presidency
MIGA	Multilateral Investment Guarantee Agency
SBS	Sanctions Board Secretariat
SDO	IBRD/IDA Suspension and Debarment Officer
VDP	Voluntary Disclosure Program
WBG	World Bank Group



# Message

MANAGING DIRECTOR AND WORLD BANK GROUP CAO SHAOLIN YANG

At the World Bank Group, we believe that a world free of corruption is fundamental to a world free of poverty. Our sanctions system is a vital integrity mechanism that helps its member institutions—IBRD, IDA, IFC, and MIGA—swiftly and fairly investigate and address allegations of fraud, corruption, and other misconduct in the projects that we finance. In our fight against corruption, these accountability mechanisms are critical for upholding our commitment to the clients we serve and to the shareholders who have entrusted us with their resources. Becoming a better World Bank Group—as part of our Forward Look strategy—requires that we continue to support our sanctions system and widely disseminate its important work and findings.



As the second and final tier of the World Bank Group sanctions system, the Sanctions Board contributes significant value as an independent and diverse tribunal that hears the most complex cases of alleged corruption, fraud, collusion, and other types of misconduct. This robust quasi-adjudicative process culminates in decisions that are final, public, and comprehensively reasoned. This system allows stakeholders, including our development partners, civil society, and World Bank Group management to learn about evolving integrity risks in development projects and continuously enhance our anti-corruption efforts.

Twelve years after the Sanctions Board's establishment as an independent body in 2007—and more than 100 final decisions later—the World Bank Group is pleased to share this valuable Law Digest review of the Sanctions Board's jurisprudence with the international development community.

By looking at patterns of allegations and sanctions over time, the Digest helps us distill key lessons on how to reduce risks of corruption in development. By providing details of the facts and analysis in various cases, it demonstrates our commitment to transparency and due process. Finally, by illustrating the work of our sanctions system, the Digest serves as a beacon for other development institutions as they build and implement their own sanctions systems. The World Bank Group's senior management congratulates the Sanctions Board and its resident Secretariat for their efforts this past year and going forward.



# Message

**SANCTIONS BOARD CHAIR J. JAMES SPINNER (2012–19) AND  
SANCTIONS BOARD CHAIR JOHN RAYMOND MURPHY (2019–CURRENT)**

It is with pleasure that we introduce the second edition of the World Bank Group's Sanctions Board Law Digest. Since its establishment in 2007, the Sanctions Board has issued 121 decisions. In accordance with the World Bank Group's Sanctions Framework, all decisions since 2012 have been published in full. Unpublished deci-



sions, issued under earlier versions of the World Bank's Sanctions Procedures, are summarized in the first Sanctions Board Law Digest published in 2011. This volume is based on the Sanctions Board's holdings and analysis from all of its decisions issued since 2007.

Since the Bank's publication of the first Sanctions Board Law Digest, the Sanctions Board has issued decisions in which it addressed a number of novel legal topics, and has seen significant developments and streamlining in the World Bank Group's own Sanctions Framework. The format of the current digest of the Sanctions Board's growing body of case law departs from the first edition, which sought primarily to describe core holdings in unpublished decisions of the Sanctions Board. In this new publication, readers will see succinct analysis of the Sanctions Board's approaches to various questions and topics as reflected in the 100+ decisions issued to date. For instance, the Digest reviews the Sanctions Board's precedents on topics as diverse as jurisdiction, the admission and assessment of evidence, and the factors considered by the Sanctions Board in imposing a sanction.

The Sanctions Board's case law, the Sanctions Board's Law Digest, and other publications relating to the sanctions system, all reflect the Bank Group's commitment to transparency and accountability as a development institution. We thank the Bank Group's executive leadership and management for prioritizing these values and hope that this publication serves all stakeholders in the fight against fraud and corruption in development, from individual companies to national and international institutions.



# 1 The Sanctions Board in Historical Context

## SUMMARY OF CONTENTS

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- A. Brief history of WBG sanctions policies 1998–2019
  - B. The present sanctions process
  - C. Contributions of the Sanctions Board
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**ABSTRACT** This chapter reviews the history of the World Bank Group’s<sup>1</sup> Sanctions Board, as well as its present work process. The chapter also provides select metrics and statistics that help understand the Sanctions Board’s contributions over time.

### A. BRIEF HISTORY OF WBG SANCTIONS POLICIES 1998–2019

The World Bank Group’s (WBG) first formal sanctioning body was established in 1998. This was the Sanctions Committee, organized to review allegations of misconduct and to make recommendations to the President of the World Bank Group as to whether and how culpable parties should be sanctioned. The Sanctions Committee was composed of five members, all internal Bank staff. During its approximately eight years of work, the Sanctions Committee reviewed allegations involving more than 400 entities and individuals.

In 2002, the Bank commenced an internal review of its sanctions process. As part of that initiative, the Bank engaged Mr. Richard Thornburgh, former Under-Secretary-General of the United Nations and former Attorney General of the United States, to make recommendations for reform consistent with the best practices of leading public international organizations.

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1. In the context of sanctions, the terms “World Bank Group,” “Bank Group,” or “WBG” are used to refer collectively to 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 avoidance of doubt, the term includes the Bank’s Guarantee and Carbon Finance Projects but does not include the International Centre for Settlement of Investment Disputes (ICSID). The term “World Bank” or “Bank” is used to refer collectively to IBRD and IDA.

In response to Mr. Thornburgh’s review, in 2004, the World Bank Group embarked on a series of reforms designed to improve the sanctions system’s efficiency and protect the independence of its decision makers. These reforms ultimately replaced the single review mechanism of the Sanctions Committee with a two-tiered system. The new sanctions process included an initial review of all allegations by an internal but independent Evaluation and Suspension Officer (EO),<sup>2</sup> and a second and final review by an independent body called the Sanctions Board.

The Sanctions Board was fully constituted and undertook its first review of sanctions cases in 2007. During the past 12 years, the Sanctions Board was part of several important policy developments within the World Bank Group, including the addition of a professional Secretariat in 2010, a requirement to issue published decisions and a Law Digest in 2011, and a shift to all-external membership among Sanctions Board members in 2016.

Institutional rules governing the sanctions process, including the work of the Sanctions Board, were most recently amended and republished in 2016 consistent with the Bank Group’s larger Policies and Procedures Framework. As of the end of fiscal year 2019,<sup>3</sup> the Sanctions Board consists of seven members, including the Chair, and has issued 121 final decisions involving 210 entities and individuals.

## B. THE PRESENT SANCTIONS PROCESS

The World Bank Group relies on a two-tiered system to review allegations of fraud, corruption, coercion, collusion, or obstruction in connection with Bank Group–financed projects, with the Sanctions Board as the final decision maker for all contested allegations of sanctionable conduct (figure 1.1).

***Investigations and first-tier review:*** Potential sanctionable misconduct is investigated by the Integrity Vice Presidency (INT), an independent unit within the Bank Group. If INT finds evidence of sanctionable misconduct by a firm or individual, it presents the case as a formal Statement of Accusations and Evidence (SAE) to an officer at the first tier of review (the Suspension and Debarment Officer—SDO—or the EO).<sup>4</sup> That first-tier officer evaluates whether the SAE is sufficient to support a finding of sanctionable misconduct (figure 1.2). If so, the SDO/EO issues a Notice of Sanctions Proceedings (the Notice) with a recommended sanction to the respondent,<sup>5</sup> and may temporarily suspend the respondent from eligibility for new Bank Group–financed contracts pending the final outcome of the sanctions proceedings.<sup>6</sup> Upon review of a respondent’s subsequent written explanation, the SDO/EO may withdraw the

2. There are four such officers within the World Bank Group, one dedicated to each type of project, whether it be Bank (IBRD/IDA) public sector financing, IFC projects, MIGA guarantees, or the Bank’s private sector guarantees and carbon finance projects. Effective March 31, 2013, the title of the EO with responsibility for cases arising in connection with the Bank’s public sector projects changed to “IBRD/IDA Suspension and Debarment Officer” (SDO). Officers in the first tier of the sanctions process in cases pertaining to IFC, MIGA, and Bank Guarantee and Carbon Finance projects use the title of Evaluation Officer or EO.

3. The World Bank Group’s fiscal year 2019 ended on June 30, 2019.

4. See footnote 2.

5. Any affiliates that control the respondent or are under common control with the respondent, and that are also subject to the temporary suspension and recommended sanction, similarly receive a copy of the Notice and have the right to represent themselves in the course of the same sanctions proceedings. See, for example, World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (the “World Bank Sanctions Procedures (2016)”) at Section III.A, subparagraph 9.04(b).

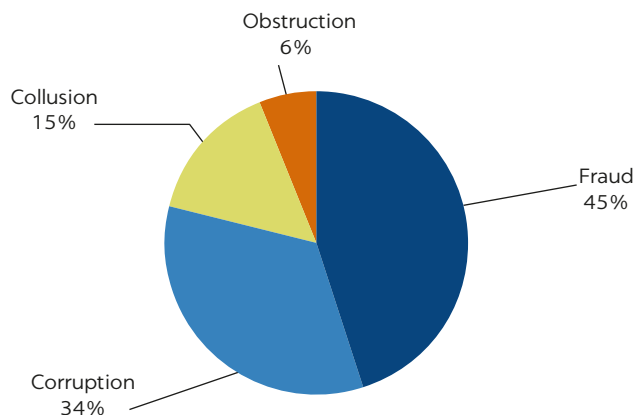
6. The Notice only results in a temporary suspension where the recommended sanction involves debarment exceeding six months. See, for example, World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 4.02(a). It is also possible, in select cases, for the first-tier officer to suspend a party before INT concludes its investigation. See, for example, World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 2.01.

FIGURE 1.1



FIGURE 1.2

Types of misconduct alleged in cases reviewed by the Sanctions Board, FY08–FY19



Notice, revise the recommended sanction, or lift the temporary suspension. Alternatively, the SDO/EO may leave the initial recommendation unchanged. If the respondent does not contest the allegations or the recommended sanction, the sanction recommended by the SDO/EO is automatically imposed.

**Second-tier review:** If the respondent chooses to contest INT’s allegations and/or the sanction recommended by the first-tier officer, the case is referred to the Sanctions Board, the second and final tier of review in the World Bank Group’s sanctions process. In addition to the respondent’s arguments, the Sanctions Board also considers INT’s arguments in reply, as well as any additional motions, evidentiary submissions, and oral arguments made at a hearing, which is held at the request of either party or at the discretion of the Sanctions Board Chair. The Sanctions Board is not bound by any findings or recommendations made by INT or the first-tier officer; rather, it undertakes a full de novo review of each case presented.

### Other decision makers and related processes within the sanctions system

- *Integrity compliance review*: The integrity compliance review is conducted by the World Bank Group’s Integrity Compliance Officer (ICO). The ICO is responsible for assessing the compliance of sanctioned respondents with any conditions incorporated into their sanctions.<sup>7</sup>
- *Settlement process*: The settlement process is conducted by the World Bank Group’s Integrity Vice Presidency, with involvement from the World Bank Group’s General Counsel and one of the first-tier officers, depending on the project at issue.<sup>8</sup>
- *IFC and MIGA Internal Advisors*: Participation of International Finance Corporation (IFC) or Multilateral Investment Guarantee Agency (MIGA) Internal Advisors is required in IFC and MIGA sanctions cases contested to the Sanctions Board.<sup>9</sup>
- *WBG, IFC, and MIGA General Counsel*: General Counsel of the WBG, IFC, and MIGA may be asked to provide guidance as to the interpretation of Sanctions Procedures applicable in pending sanctions cases.<sup>10</sup>

## C. CONTRIBUTIONS OF THE SANCTIONS BOARD

*“Auditor et altera pars.”* (The other side shall also be heard.)

—Seneca

Every aspect of the sanctions process and of the Sanctions Board’s emerging body of case law has been influenced by principles of fairness that have deep roots in national legal traditions and that have similarly guided other international tribunals over the past century. These principles include the right to due process, the right to an independent and impartial tribunal, and transparency through publication of reasoned opinions for review and discussion—not only by the parties, but outside observers with an interest in the integrity of the sanctions process.

**“Appellate” review**: Review by the Sanctions Board is a meaningful and important component of the sanctions system. Although the terms “appeal” and “appellate” are frequently used, they require some clarification. The Sanctions Board’s review is not, nor should it be, a reconsideration of the SDO/EO’s decision or recommended sanction. Also, unlike a typical appellate review, the system does not allow for the Sanctions Board to affirm the recommendation made at the first tier, or to remand the case back to the SDO/EO. Instead, it is a *de novo* consideration of all contested cases based on a larger record that includes at least one additional round of pleadings, permits an in-person hearing, and may include

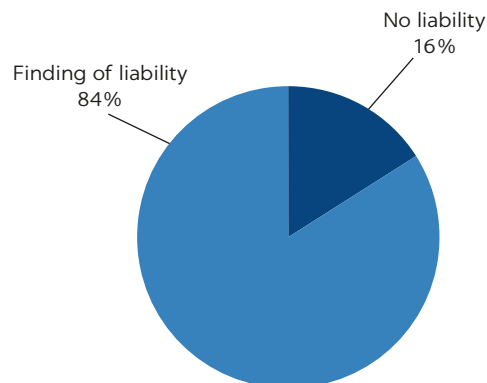
7. See World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.03; IFC Sanctions Procedures as adopted November 1, 2012 (the “IFC Sanctions Procedures (2012)”) at Section 9.03; MIGA Sanctions Procedures as adopted June 28, 2013 (the “MIGA Sanctions Procedures (2013)”) at Section 9.03; World Bank Private Sector Sanctions Procedures issued on October 8, 2013 (the “World Bank Private Sector Sanctions Procedures (2013)”) at Section 9.03.

8. See World Bank Sanctions Procedures (2016) at Section III.B; IFC Sanctions Procedures (2012) at Article XI; MIGA Sanctions Procedures (2013) at Article XI; World Bank Private Sector Sanctions Procedures (2013) at Article XI.

9. World Bank Group Sanctions Board Statute at Section III.A, paragraph 5.

10. See World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 1.02(c); IFC Sanctions Procedures (2012) at Section 1.02(b)(iii); MIGA Sanctions Procedures (2013) at Section 1.02(b)(iii); World Bank Private Sector Sanctions Procedures (2013) at Section 1.02(b)(iii).



**FIGURE 1.3****Comparison between the first and second tier of review, FY15–FY19**

consideration of procedural issues that were not (and perhaps could not be) considered at the first tier of review. As a result, the decisions of the Sanctions Board may rely on significantly different reasoning than was employed at the first tier of review and may reach different conclusions on matters of both fact and law. Some respondents are released from their temporary ineligibility following the Sanctions Board’s consideration of their case and some respondents simply receive a different (and sometimes more severe) sanction for their misconduct (figure 1.3).

As figure 1.3 reflects, in the 84 percent of instances where the Sanctions Board found liability it also imposed a sanction. In most such cases, the sanction involved a debarment with conditional release, as proposed by the SDO at the first tier of review, but the period of debarment was in some cases greater or lesser than the initial recommendation. In all cases, the Sanctions Board took into account, as required, the respondents’ period of non-public ineligibility during the pendency of sanctions proceedings. In a proportion of cases (approximately 36 percent of all appeals), the Sanctions Board imposed a different type of sanction—either a fixed debarment not accompanied by any conditions or a letter of reprimand.

**Due process protections:** The principle that a party should not be subject to adverse judicial or administrative action without due process of law has been enshrined in the constitutions and legal traditions of countless nations and in multilateral institutions. Due process refers to the safeguards necessary to ensure that all stakeholders in an adjudicative process—including the public at large—can have confidence in the outcome of that process. Due process concerns have influenced many aspects of the sanctions system and the Sanctions Board’s practices in particular, including the right to independent appellate review, the right to a hearing, and the right to retain counsel.

As part of the Sanctions Board’s review, the parties have access to the following due process protections:

- *Right to an oral hearing:* Either the respondent or INT may request an oral hearing in a contested case.
- *Right to make counterarguments:* The sanctions framework allows for the respondent to make detailed arguments and file evidence in opposition to INT’s allegations. Where a party has submitted additional substantive arguments, evidence, or procedural motions, the Sanctions

Board Chair has allowed the other party to make a supplemental submission in response. Both parties may make arguments in the alternative without prejudice to their case.

- *Access to counsel:* Respondents are permitted to engage the assistance of counsel and/or to change their selected counsel without any prejudice to the respondents. Counsel may assist the respondents in preparing and filing any pleadings as well as participating in the hearing.
- *Access to evidence in the record:* To ensure that respondents are able to mount a meaningful defense, they have a right, with certain narrow exceptions, to review evidence that is presented against them or that is available, relevant, and could potentially help them to rebut allegations of misconduct; respondents are also permitted to submit their own evidence in support of their cases.
- *Effective and low-cost participation:* The Sanctions Board does not impose any fees on the parties relating to contesting a case or participating in a hearing. The Sanctions Board arranges for, and covers the cost of, any foreign language interpretation at hearings; allows for parties to participate remotely via videoconference or teleconference; and invites the parties to propose hearing attendees at their discretion. The Sanctions Board accepts filings in both electronic and paper formats and, consistent with the Sanctions Procedures, the parties may request extensions of time to make their submissions.

### **WBG Policy: Sanctions for Fraud and Corruption at Section III.B (“Principles Governing the Sanctions System”)**

**2. Independence.** The SDO, the EOs, the ICO, and each member of the Sanctions Board consider each case in the sanctions system impartially and solely on its merits, and do not answer to or take instructions from Management, members of the Board [of Executive Directors], member governments, respondents, or any other entity or individual. All officers and representatives of the sanctions system exercise their independent judgment in carrying out their respective roles and responsibilities in accordance with the relevant policies, directives and procedures of the World Bank Group, including (without limitation) this Policy and the related directives and procedures, and with due regard to the related guidance issued by Management and such legal advice as may be provided by the World Bank Group General Counsel or, with respect to IFC or MIGA, by their respective General Counsels. In providing legal advice to the SDO, the relevant EO, or the Sanctions Board in connection with issues arising out of a particular case in the sanctions system, the relevant General Counsels refrain from expressing any opinion as to the outcome of the case or on the weight or credibility of the evidence.

***Impartiality and independence:*** In addition to earlier reforms aimed at protecting the Sanctions Board’s impartiality, the Sanctions Board Statute was revised in 2009 and 2016 to require that an increasing number of the Sanctions Board’s members not be employed by the Bank Group. At present, all Sanctions Board members are external to the World Bank Group. The Sanctions Board observes strict ethical rules providing for recusal of Sanctions Board members from participation in individual cases, both where there is a genuine conflict of interest, and in any circumstances that could give rise to reasonable doubts about a Sanctions Board member’s

impartiality or independence.<sup>11</sup> In addition, the Sanctions Board Statute prohibits ex parte communication with Sanctions Board members, by all parties to sanctions proceedings. Finally, in 2016, the WBG issued a high-level policy on Sanctions for Fraud and Corruption, identifying and describing “Independence” as one of the principles governing the sanctions system (above).

**Fully reasoned published decisions:** Since its inception the Sanctions Board has issued reasoned decisions that specify the facts and legal analysis underlying its determinations in each case. Since the January 2011 revision to the Sanctions Procedures, the Sanctions Board has published full texts of its decisions, available online; these decisions are also shared directly with the parties. The holdings in unpublished decisions between 2007 and 2012 were presented in the first edition of the Sanctions Board’s Law Digest (2011). The shift to publicly available decisions makes the Sanctions Board’s analysis accessible to the public and is consistent with the Bank’s commitment to transparency.

By publishing Sanctions Board decisions, we are making all parties involved in the sanctions process more accountable. This move should deepen the deterrent effect of debarments and enhance the educational value of the Sanctions Board’s findings.<sup>12</sup>

—Sri Mulyani Indrawati, former WBG Managing Director, 2012

## D. SANCTIONS BOARD ACTIVITY FROM 2007 TO THE PRESENT

The Sanctions Board has issued 121 decisions affecting 210 respondents from its inception in 2007 through the end of the 2019 fiscal year.<sup>13</sup> These decisions have primarily addressed requests to review a party’s liability for alleged misconduct or the sanction recommended at the first tier.<sup>14</sup> In addition, they have assessed requests for reconsideration of final decisions and a contested determination of successorship, all discussed in more detail below. Case review and issuance of decisions presents the primary work program of the Sanctions Board.

**Thirty-three percent of all sanctions cases are contested to the WBG Sanctions Board.**

**Review of contested cases:** The Sanctions Board is mandated to consider all sanctions cases contested from the first tier of review. With respect to sanctions cases contested since 2007, the Sanctions Board has received a total of 93 sanctions cases for consideration involving 279 instances of alleged misconduct and relating to 163 respondents. A summary of key statistics is presented in figures 1.4 and 1.5, and additional data can be found in the WBG Sanctions System Annual Report.

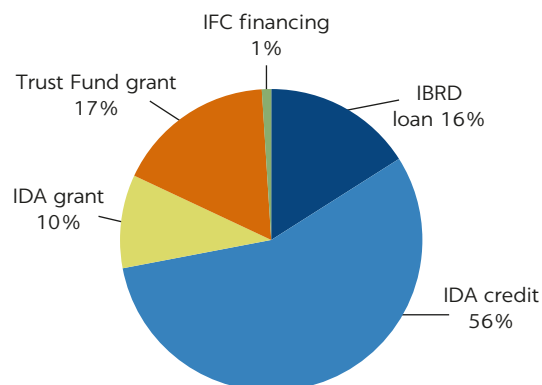
The time elapsed between the Sanctions Board’s receipt of a contested case and the publication of the Sanctions Board’s decision in that case has ranged from three months to two years (figure 1.6). The Sanctions Board’s formal review of the allegations begins at the close of pleadings or, in cases with a hearing, close of hearing and following clearance

11. Since 2010, Sanctions Board members have recused themselves on 16 occasions due to an actual or perceived conflict of interest.

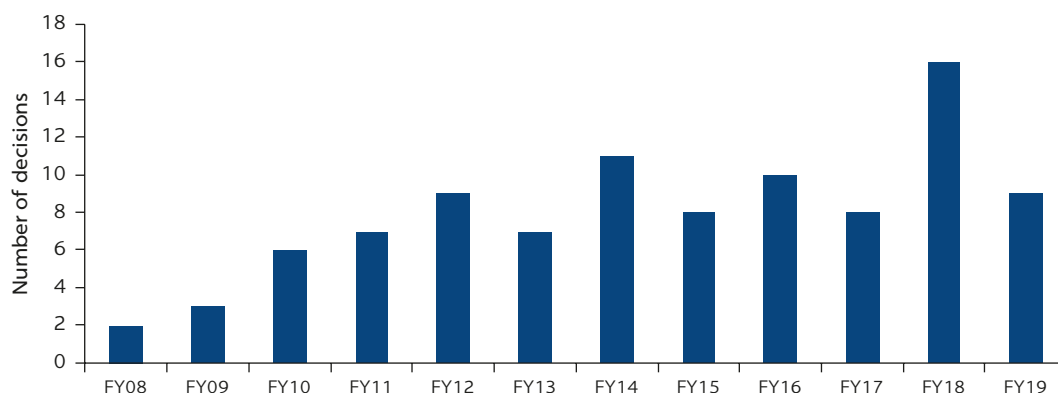
12. World Bank Increases Transparency through Inaugural Publication of Sanctions Board Decisions, World Bank Press Release No 2012/481/EXT, issued on May 30, 2012, available at: <https://www.worldbank.org/en/news/press-release/2012/05/30/world-bank-increases-transparency-through-inaugural-publication-of-sanctions-board-decisions>.

13. This total includes 25 decisions issued pursuant to pre-2011 World Bank Sanctions Procedures, which required the Sanctions Board to issue decisions in uncontested proceedings.

14. WBG sanctions policies prior to September 2010 required the Sanctions Board to also review and issue decisions in “uncontested cases.” The decisions in those cases did not include an analysis of the facts or argument and were largely limited to acknowledging the respondents’ absence of objection to the first-tier officer’s recommendation.

**FIGURE 1.4****Types of financing in cases reviewed by the Sanctions Board, FY08–FY19**

Note: IBRD = International Bank for Reconstruction and Development; IDA = International Development Association; IFC = International Finance Corporation.

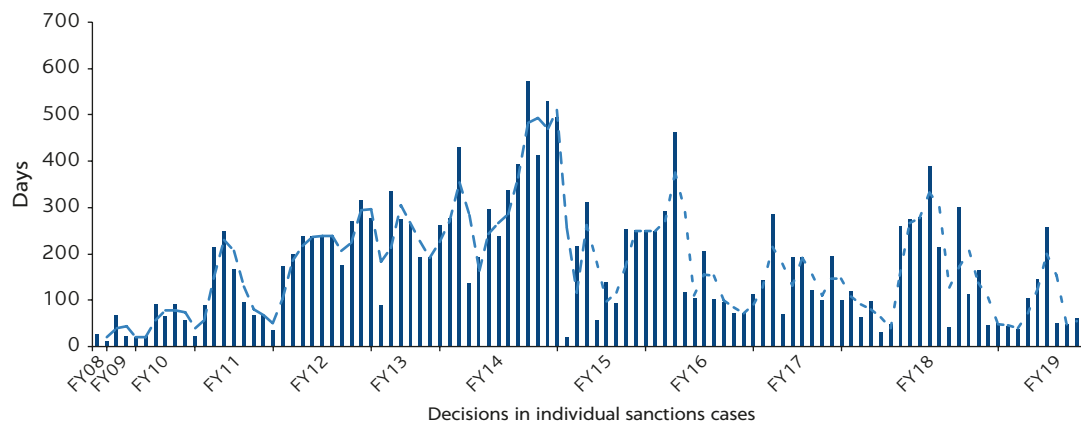
**FIGURE 1.5****Decisions issued by the Sanctions Board in contested cases, FY08–FY19**

Note: This chart does not take into account the decisions issued under pre-2011 Sanctions Procedures where the Sanctions Board imposed the sanction(s) recommended by the Evaluation and Suspension Officer in uncontested cases. The number of decisions issued may account for more than one sanctions case contested to the Sanctions Board and also include decisions in successor appeals and requests for reconsideration. During FY11–FY19, the Sanctions Board issued a decision every 39 days, on average.

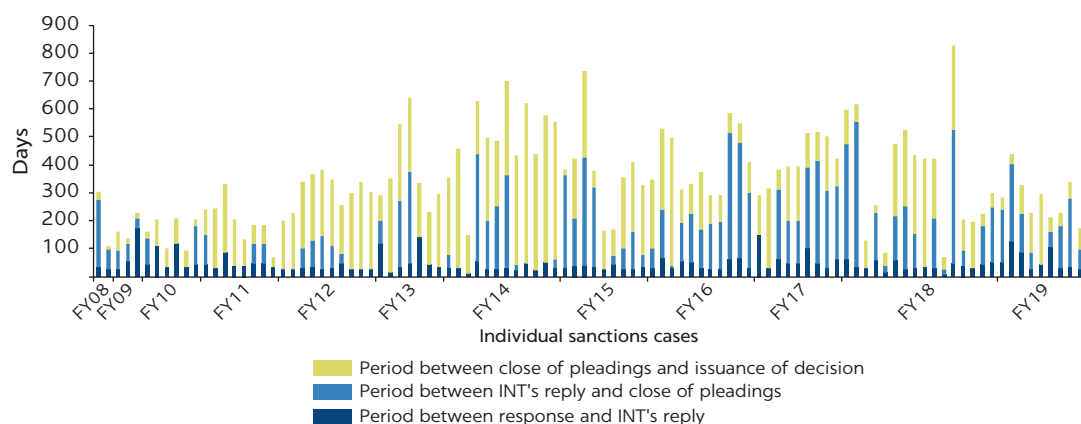
of potential conflicts, although the Sanctions Board or the Sanctions Board Chair may become involved at an earlier stage, if threshold procedural questions require resolution. Variance in the periods of time between the initiation of an appeal and the issuance of the Sanctions Board's decision may be attributed to the circumstances of a particular case (figure 1.7). For instance, an appeal may be followed by several additional submissions, new evidence, procedural motions, and more than one hearing session.<sup>15</sup> Further, the number and complexity of issues that the Sanctions Board must consider varies significantly between cases.

15. Sanctions Board Decision No. 56 (2013) at para. 2.

**FIGURE 1.6**  
**Period between close of pleadings and issuance of decision, FY08–FY19**



**FIGURE 1.7**  
**Case duration from date of appeal to issuance of decision, FY08–FY19**



**Hearings:** The Sanctions Board holds hearings in contested sanctions cases where at least one party requests an oral hearing or at the discretion of the Sanctions Board Chair. These oral proceedings sometimes involve the participation of counsel and may facilitate parties' remote participation as well as foreign language interpretation services.

**Review of other matters:** The various Sanctions Procedures also require the Sanctions Board to consider and issue decisions on contested determinations of noncompliance by the ICO<sup>16</sup> and contested determinations of successorship or assignee status.<sup>17</sup> To date, the Sanctions Board has issued one such decision, relating to the Bank's determination of successorship.<sup>18</sup> In addition, the Sanctions Board has, in its discretion, considered eight requests for reconsideration of final decisions (figure 1.8).

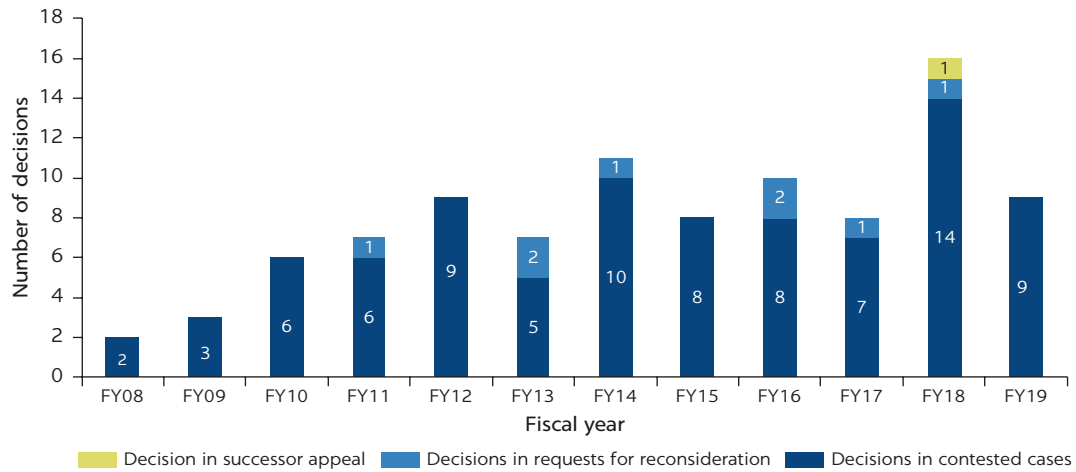
**Issuance of Sanctions Board decisions:** As noted earlier, a determination by the Sanctions Board is based on a de novo review of the parties' evidence and arguments. If the Sanctions Board concludes that a respondent is, more likely than not, liable for the sanctionable conduct

16. See, for example, World Bank Sanctions Procedures (2016) at Section III.B, subparagraph 9.03(e).

17. See, for example, World Bank Sanctions Procedures (2016) at Section III.B, subparagraphs 9.04(b)–(c).

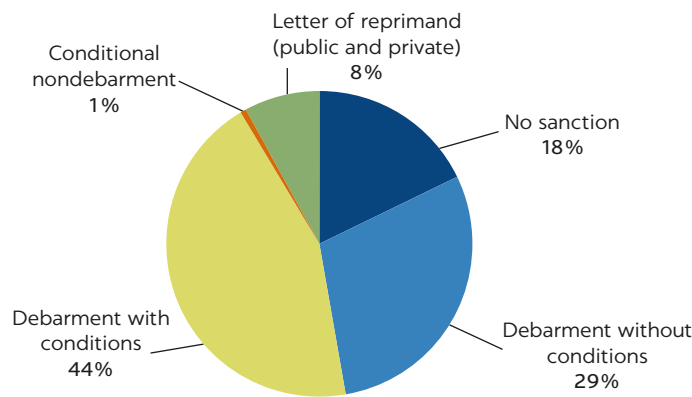
18. Sanctions Board Decision No. 101 (2017).

**FIGURE 1.8**  
**Number of decisions issued by the Sanctions Board, FY08–FY19**



Note: This chart does not take into account the decisions issued under pre-2011 Sanctions Procedures where the Sanctions Board imposed the sanction(s) recommended by the Evaluation and Suspension Officer in uncontested cases. The number of decisions issued may account for more than one sanctions case contested to the Sanctions Board and also include decisions in successor appeals and requests for reconsideration. During the period of FY11–FY19, the Sanctions Board has issued a decision every 39 days, on average.

**FIGURE 1.9**  
**Types of sanctions imposed by the Sanctions Board, FY08–FY19**



alleged, it imposes one of several possible sanctions, ranging from a letter of reprimand to permanent debarment. The historic frequency of each type of sanction is depicted in figure 1.9. Where the Sanctions Board determines that it is not more likely than not that a respondent committed sanctionable conduct, no sanction is imposed, and the temporary suspension is terminated.

**Sanctions Board Secretariat:** The Sanctions Board is supported by a dedicated secretariat, established in 2010. Since its creation, the mission of the Sanctions Board Secretariat has been to provide the Sanctions Board with the support necessary to decide cases fairly, efficiently, and thoroughly—including through legal research, case management, and logistical support. To this end, the Secretariat employs a team of attorneys and professional support staff (photo 1.1), and it operates independently of other Bank Group units. The staff of the Secretariat work with the Sanctions Board members throughout the adjudication process—from monitoring cases that may potentially be appealed through publishing the Sanctions Board’s ultimate decisions.

PHOTO 1.1

**Sanctions Board Secretariat**



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From left to right: Giuliana Dunham Irving, Executive Secretary to the Sanctions Board; Felipe Rocha dos Santos, Counsel; Anna Lorem Ramos, Counsel; Ryan Velandria McCarthy, Senior Counsel; Sharon Louis Chandran, Legal Analyst; Amanda Schneider, Senior Program Assistant; Eugenia Pyntikova, Counsel.

PHOTO 1.2

**Meeting of the appellate bodies of multiple multilateral development bank sanctions regimes**



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Representatives of the sanctions systems of the World Bank Group; Inter-American Development Bank Group; African Development Bank Group; European Bank for Reconstruction and Development; the Global Fund to Fight AIDS, Tuberculosis and Malaria; and the International Fund for Agricultural Development.

***Knowledge sharing and engagement with stakeholders:*** In addition to direct engagement as a decision maker in sanctions proceedings, the Sanctions Board recognizes its responsibility to appropriately engage with stakeholders outside the context of sanctions cases, share lessons learned with peers at similar tribunals, and contribute to the work of the global anti-corruption community through targeted outreach efforts. To that end, the Sanctions Board and the Secretariat provide internal consultations to Management on the functioning and possible future reforms of the WBG sanctions system; engage in dialogue with similar sanctions appeals bodies at other international development organizations (photo 1.2); and participate in public forums and conferences that relate to administrative sanctions as a tool against corruption in development.





# 2 Sanctions Framework

## OVERARCHING ISSUES IN PROCEDURE AND PRACTICE

### SUMMARY OF CONTENTS

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A. Sources of law	<i>Paragraphs 1–7</i>
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C. Scope of authority	<i>Paragraphs 12–16</i>
D. Jurisdiction	<i>Paragraphs 17–21</i>
E. Evidence	<i>Paragraphs 22–32</i>
F. Procedural requests	<i>Paragraphs 33–41</i>
G. Hearings	<i>Paragraphs 42–47</i>
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**ABSTRACT** This chapter addresses overarching issues that may arise in any sanctions proceeding before the Sanctions Board, including threshold questions such as what may serve as a source of law for the Sanctions Board and practical considerations such as conduct of hearings and treatment of interim procedural requests by the parties. The primary focus of this chapter is the Sanctions Board’s analysis of these various issues in the course of sanctions proceedings. However, where a topic is addressed directly and specifically in a document that is part of the World Bank Group (WBG) Sanctions Framework, that language is often excerpted for reference.

### A. SOURCES OF LAW

#### **Bank Directive: Sanctions for Fraud and Corruption in Bank-Financed Projects at Section III.B (“Normative Architecture”)**

1. Sources of Law. The sources of substantive norms for sanctions cases are set out below, in the following order of precedence:
  - i. *Articles of Agreement*. The underlying legal basis for the sanctions system, which also delimits its scope, is the “fiduciary duty” to protect the use of Bank

financing reflected in the Articles of Agreement (IBRD Articles of Agreement, Art. III, Section 5(b) (as amended effective June 27, 2012); IDA Articles of Agreement, Art. V, Section 1(g)).

- ii. *Policy Framework*. The policy framework, as reflected in World Bank Group Policy: Sanctions for Fraud and Corruption.
- iii. *Operational Legal Framework*. The legal framework for the IBRD/IDA financed operation in connection with which the alleged Sanctionable Practice took place, including the legal agreement governing the Bank Financed Project, which incorporates by reference the applicable Procurement, Consultant and/or Anti-Corruption Guidelines, any relevant instrument prepared thereunder, and in cases of projects or operations involving more than one WBG institution, the contractual legal framework applying to the project or operation of such other WBG institution(s).
- iv. *Authoritative Interpretation*. Sources of interpretation of the Sanctions Framework are: (1) the legislative history; (2) LEG's advice provided to INT, the SDO and the Sanctions Board on the proper interpretation of the Bank's legal and policy framework, including the Sanctions Framework and the various definitions of Sanctionable Practices; and (3) the jurisprudence of the Sanctions Board with respect to the application of the Sanctions Framework and the specific standards to particular facts of specific cases.
- v. *General Principles of Law*. General principles of law, to the extent that: (1) a purported general principle of law is actually established as a matter of legal 'fact'; and (2) the importation of such principle is acceptable as a matter of policy and does not contradict the Bank's Articles of Agreement, or the Sanctions Framework.

1. *Sanctions Framework*: The Sanctions Board has looked primarily to the documents constituting the Sanctions Framework as governing its work and its analysis of sanctions cases. The Sanctions Board's Code of Conduct mandates that members of the Sanctions Board consider each case in accordance with the WBG Sanctions Framework. According to the WBG Sanctions Board Statute, the WBG Sanctions Framework consists of the following documents:<sup>1</sup>

- i. WBG Policy: Sanctions for Fraud and Corruption—Describes objectives and key features of the WBG sanctions system.
- ii. WBG Policy: Statute of the Sanctions Board—Sets out the role, composition, competencies, and responsibilities of the WBG Sanctions Board.

1. These and other key documents can be found online at <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board#3> or by inquiry to the relevant WBG office (see appendixes B and C).

- iii. World Bank Directive: Sanctions for Fraud and Corruption—Describes the institutional and normative architecture as well as the scope of jurisdiction of the sanctions system, as relevant to projects financed by International Bank for Reconstruction and Development/International Development Association (IBRD/IDA).
- iv. Sanctions Procedures specific to IBRD/IDA, International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA), and World Bank Private Sector projects and guarantees.
- v. WBG Sanctioning Guidelines—Provides guidance regarding considerations relevant to any sanctioning decision.

Earlier versions of the Sanctions Board Statute did not enumerate components of the WBG Sanctions Framework but referred broadly to “formal guidelines” issued by the WBG in respect of sanctions proceedings. Advice from the WBG General Counsel at the time clarified that the WBG Sanctioning Guidelines and the Sanctions Manual—an internal World Bank publication issued in 2011—were included in the category of binding guidelines. An excerpt of the Sanctions Manual, titled *The World Bank Group’s Sanctions Regime: Information Note* was made available to the public. The Sanctions Board has referred to the Information Note in a number of past decisions. In addition to these documents, the Sanctions Board has also referred to the multilateral development bank (MDB) Cross-Debarment Agreement, publications by World Bank staff on the topic of sanctions, and other documents as nonbinding but relevant sources of guidance.

2. *WBG’s institutional rules*: The Sanctions Board has previously considered the impact of the World Bank’s Staff Rules on select elements of sanctions proceedings, including respondents’ access to evidence in the record<sup>2</sup> and the question of whether an individual staff member of the Bank may be considered a “public official.”<sup>3</sup>
3. *Sanctions Board precedent*: The Sanctions Board considers and refers to its prior decisions in making determinations in new cases.<sup>4</sup> However, this body of precedent is persuasive

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2. In several past cases, INT has sought to limit the respondents’ access to certain evidence that INT asserted was protected by WBG staff rules relating to confidentiality of personnel information. In these cases, the Sanctions Board has allowed INT to limit the respondents’ access to certain evidence to *in camera* review but has denied INT’s requests to withhold evidence from the respondents in its entirety. In making these determinations, the Sanctions Board has observed that (i) the World Bank Group’s Sanctions Framework contains a default presumption of access by all parties in sanctions proceedings to the written submissions and evidence in those proceedings; (ii) the World Bank Group’s Sanctions Framework places an obligation on INT to disclose any evidence that may be exculpatory or mitigating; (iii) the World Bank’s Sanctions Procedures do already provide a separate list of exceptional circumstances that may warrant such withholdings; (iv) the Staff Rules themselves allow for the disclosure of some information; and (v) certain information may be necessary for the respondents to mount a meaningful defense in the course of sanctions proceedings. (Sanctions Board Decision No. 60 (2013) at para. 56; Sanctions Board Decision No. 71 (2014) at paras. 42, 45–46; Sanctions Board Decision No. 87 (2016) at para. 60; Sanctions Board Decision No. 113 (2018) at paras. 21–23.)

3. In one past case, INT argued that a certain third party in a sanctions proceeding may be considered a “public official” for purposes of a definition of sanctionable practice in that case based in part on Staff Rules providing that Short-Term Consultants are considered “Bank staff.” (The relevant definition of sanctionable practices stipulated that Bank staff may be considered a type of “public official” under a Bank-financed project.) The Sanctions Board considered this and other evidence in finding that the individual was a Bank staff member. (Sanctions Board Decision No. 60 (2013) at para. 78.)

4. See, for example, Sanctions Board Decision No. 88 (2016) at paras. 55, 59–61.

rather than determinative,<sup>5,6</sup> particularly in light of the evolution of standards set out in the WBG's Sanctions Framework.<sup>7</sup>

4. *National law*: The Sanctions Board has repeatedly held that sanctions cases are governed by World Bank Group rules and not by the law of a particular jurisdiction.<sup>8</sup> The Sanctions Board has thus declined to apply national law in its decisions<sup>9</sup> and has held that provisions of national laws are not binding on the Sanctions Board's proceedings.<sup>10</sup> As specific examples, the Sanctions Board has held that:
  - i. It is not appropriate for the language of bidding documents for a Bank-financed project to be interpreted by reference to national laws of the country of the respondent;<sup>11</sup>
  - ii. The scope of a respondent's liability under the WBG sanctions process may not be coextensive with the scope of that respondent's potential liability under national law;<sup>12</sup>
  - iii. Pending national proceedings against a respondent do not warrant a stay of the WBG's sanctions proceedings against that respondent;<sup>13</sup>
  - iv. Pending national proceedings against a respondent do not exempt that respondent from an obligation to comply with the Bank's audit and inspection requirements;<sup>14</sup>
  - v. The absence or presence of pending national proceedings against a respondent is not relevant to whether a sanctionable practice has occurred;<sup>15</sup> and
  - vi. National laws that may relate to corporate integrity standards do not supplant specific internal integrity policies necessary for mitigation of a respondent's sanction.<sup>16</sup>

The Sanctions Board has found national laws and standards may inform its determinations, albeit not governing the same. For example, the Sanctions Board has held that:

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5. Compare Sanctions Board Decision No. 74 (2014) at para. 36 (applying aggravation based on repetition where a respondent included a false document in several bids) with Sanctions Board Decision No. 79 (2015) at para. 39 (declining to apply aggravation based on repetition where a respondent included a false document in several bids).
  6. Compare Sanctions Board Decision No. 6 (2009) at para. 7 (applying mitigation where the relevant contract was cancelled prior to any payments being made to the respondent) with Sanctions Board Decision No. 45 (2011) at paras. 7, 63 (declining to apply mitigation where the respondent's misconduct was discovered early, before award of the contract, which the respondent did not receive).
  7. Compare World Bank Sanctions Procedures (June 2010) at Section 19(5) with World Bank Sanctions Procedures (2011) at Section 9.02 (providing different lists and descriptions of factors affecting a sanctions decision).
  8. See, for example, Sanctions Board Decision No. 63 (2014) at para. 53; Sanctions Board Decision No. 93 (2017) at para. 36; Sanctions Board Decision No. 98 (2017) at para. 29; Sanctions Board Decision No. 104 (2017) at paras. 23–25.
  9. See, for example, Sanctions Board Decision No. 45 (2011) at para. 46; Sanctions Board Decision No. 50 (2012) at para. 51; Sanctions Board Decision No. 55 (2013) at para. 50; Sanctions Board Decision No. 104 (2017) at para. 25.
  10. Sanctions Board Decision No. 43 (2011) at para. 24; Sanctions Board Decision No. 50 (2012) at para. 51; Sanctions Board Decision No. 55 (2013) at para. 50; Sanctions Board Decision No. 63 (2014) at para. 53; Sanctions Board Decision No. 65 (2014) at paras. 42–43, 60; Sanctions Board Decision No. 86 (2016) at para. 41. See also Sanctions Board Decision No. 89 (2016) at para. 11 (observing, inter alia, that national law standards and judgments are not binding on the Bank or the Sanctions Board's proceedings, in finding that certain parliamentary resolutions relating to national investigations do not constitute newly available and potentially decisive facts warranting reconsideration of a final Sanctions Board decision).
  11. Sanctions Board Decision No. 88 (2016) at para. 26.
  12. Sanctions Board Decision No. 45 (2011) at para. 46.
  13. Sanctions Board Decision No. 93 (2017) at paras. 35–36.
  14. Sanctions Board Decision No. 93 (2017) at paras. 83–84.
  15. Sanctions Board Decision No. 98 (2017) at para. 29.
  16. Sanctions Board Decision No. 65 (2014) at para. 77.

- vii. The role of a respondent’s potential liability under national laws may be relevant to a determination of that respondent’s liability for sanctionable practices,<sup>17</sup> but need not be automatically coextensive;<sup>18</sup> and
  - viii. Certain national standards (that are also broadly consonant with general principles of law) may inform the Sanctions Board’s own final decisions.<sup>19</sup>
5. *International law*: The Sanctions Board has declined to apply provisions of international laws and treaties in sanctions cases, noting both the administrative nature of the WBG’s sanctions proceedings and the narrow purpose of the WBG sanctions system.<sup>20</sup> Nevertheless, the Sanctions Board has indicated that international law or international precedent that may be informative or relevant, especially where the Sanctions Framework does not address the issue in dispute.<sup>21</sup>
  6. *Customary practices and national context*: The Sanctions Board, as a general matter, has recognized that industry standards, customary business practices, or firm-specific business policies may be relevant to a determination of whether a respondent acted reasonably under the specific circumstances in a sanctions case.<sup>22</sup> However, the Sanctions Board has rejected the argument that asserted national context, particularly the broad presumption of misconduct in a given business sector, can be determinative as to whether a sanctionable practice was committed under the standards applicable to the WBG sanctions system.<sup>23</sup>
  7. *General principles of law*: The Sanctions Board has taken note of fundamental principles of fairness and due process,<sup>24</sup> including where a matter at issue was not otherwise addressed in the applicable Sanctions Framework.<sup>25</sup>

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17. Sanctions Board Decision No. 78 (2015) at para. 45.

18. Sanctions Board Decision No. 45 (2011) at para. 46; Sanctions Board Decision No. 50 (2012) at para. 51; Sanctions Board Decision No. 63 (2014) at para. 53; Sanctions Board Decision No. 65 (2014) at para. 42; Sanctions Board Decision No. 86 (2016) at para. 41.

19. Sanctions Board Decision No. 43 (2011) at para. 24.

20. Sanctions Board Decision No. 93 (2017) at para. 36; Sanctions Board Decision No. 98 (2017) at para. 31.

21. Sanctions Board Decision No. 43 (2011) at para. 23 (considering the standards of international tribunals as informative to the question of whether final decisions may be reconsidered in certain circumstances); Sanctions Board Decision No. 84 (2015) at para. 29; Sanctions Board Decision No. 89 (2016) at para. 12 (where the Sanctions Board considered, *inter alia*, whether the respondent had identified any international law or international precedent in determining whether the Bank’s adoption of the 2010 Sanctioning Guidelines was an exceptional circumstance warranting reconsideration of an earlier final Sanctions Board decision).

22. Sanctions Board Decision No. 51 (2012) at para. 33; Sanctions Board Decision No. 52 (2012) at para. 25; Sanctions Board Decision No. 54 (2012) at para. 22; Sanctions Board Decision No. 61 (2013) at para. 23; Sanctions Board Decision No. 67 (2014) at para. 26; Sanctions Board Decision No. 68 (2014) at para. 23; Sanctions Board Decision No. 73 (2014) at para. 29; Sanctions Board Decision No. 77 (2015) at para. 33; Sanctions Board Decision No. 79 (2015) at para. 26; Sanctions Board Decision No. 82 (2015) at para. 31; Sanctions Board Decision No. 88 (2016) at para. 31.

23. Sanctions Board Decision No. 98 (2017) at para. 30.

24. See, for example, Sanctions Board Decision No. 38 (2010) at para. 54 (discussing impact of passage of time on a respondent’s sanction); Sanctions Board Decision No. 43 (2011) at para. 15 (discussing finality of decisions); Sanctions Board Decision No. 56 (2013) at para. 32 (discussing INT’s obligation to disclose exculpatory or mitigating evidence); Sanctions Board Decision No. 60 (2013) at para. 58 (discussing conduct of INT’s interviews); Sanctions Board Decision No. 121 (2019) at paras. 18–19 (discussing impact of INT’s choice of respondents).

25. Sanctions Board Decision No. 43 (2011) at para. 15; Sanctions Board Decision No. 84 (2015) at para. 23; Sanctions Board Decision No. 89 (2016) at para. 15; Sanctions Board Decision No. 98 (2017) at para. 31; Sanctions Board Decision No. 102 (2017) at para. 33.

Basic principles of fairness require, among other protections, that interviewees be informed in due course of the possible outcome of an investigation, and be provided an opportunity to mount a meaningful response to any allegations against them.

—Sanctions Board Decision No. 60 (2013) at para. 58

## B. INTERPRETATION

### World Bank Sanctions Procedures at Section III.A<sup>26</sup> ("Proceedings")

#### 1.02. Interpretation

- (a) *Use of Terms.* Unless the context otherwise requires, any term used in this Procedure in the singular includes the plural, and the plural includes the singular; pronouns of a particular gender include the other gender.
- (b) *References and Headings.* The headings of paragraphs and sub-paragraphs of this Procedure are for ease of reference only and do not constitute interpretations of the text hereof. Unless otherwise expressly indicated, references in this Procedure to paragraphs or sub-paragraphs refer to paragraphs or sub-paragraphs hereof.
- (c) *Questions as to Proper Interpretation.* If any question arises as to the proper interpretation of any provision of this Procedure or of the Procurement, Consultant or Anti-Corruption Guidelines, the SDO or the Sanctions Board may consult with the World Bank Group General Counsel for advice.

- 8. *Sanctions Board Statute:* On matters not addressed in the WBG Sanctions Framework, the Sanctions Board has followed Section III.A, subparagraph 11 of the Sanctions Board Statute, which provides that the Sanctions Board shall follow the Sanctions Board Chair's instructions for the operation of the Sanctions Board in such circumstances.<sup>27</sup>
- 9. *Consultations with WBG General Counsel and Legal Departments:* The Sanctions Procedures provide for possible consultation between the Sanctions Board and the General Counsel.<sup>28</sup> The Sanctions Board has implemented this provision in inviting the

26. See also IFC Sanctions Procedures (2012) at Section 1.02(b); MIGA Sanctions Procedures (2013) at Section 1.02(b); World Bank Private Sector Sanctions Procedures (2013) at Section 1.02(b).

27. Sanctions Board Decision No. 43 (2011) at paras. 6, 12–13; Sanctions Board Decision No. 55 (2013) at para. 39; Sanctions Board Decision No. 57 (2013) at paras. 5–6; Sanctions Board Decision No. 58 (2013) at paras. 5–6; Sanctions Board Decision No. 62 (2014) at paras. 5–6; Sanctions Board Decision No. 71 (2014) at para. 42; Sanctions Board Decision No. 84 (2015) at paras. 2, 8–9, 23. Note that Article XI of the Sanctions Board Statute often referenced in these decisions is the equivalent of Section III.A, subparagraph 11 of the 2016 Sanctions Board Statute.

28. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 1.02(c); IFC Sanctions Procedures (2012) at Section 1.02(b)(iii); MIGA Sanctions Procedures (2013) at Section 1.02(b)(iii); World Bank Private Sector Sanctions Procedures (2013) at Section 1.02(b)(iii).

views of the WBG General Counsel, the World Bank’s Legal Vice Presidency, and the IFC General Counsel in select sanctions cases.<sup>29</sup>

10. *Lacunae in framework*: The Sanctions Board has observed that “[t]he fact [that] lacunae exist in the Statute and Procedures is in itself unremarkable. No statutory or procedural framework can be expected to anticipate and comprehensively address all conceivable scenarios or issues that may arise within a complex process.”<sup>30</sup> In past cases where a question before the Sanctions Board was not addressed by any provision of the Sanctions Framework, the Sanctions Board has referred to the Sanctions Board Statute, which provides that, in all matters not addressed in the WBG Sanctions Framework, “the Sanctions Board shall follow the instructions of the Sanctions Board Chair for the operation of the Sanctions Board.”<sup>31</sup>
11. *Undefined terms*: Where analysis hinged on a term not defined elsewhere in the Sanctions Framework, the Sanctions Board has considered whether one of the parties had proposed a definition.<sup>32</sup>

## C. SCOPE OF AUTHORITY

### Sanctions Board Statute at Section III.A (“The Statute”)

1. *Competence*. The Sanctions Board shall review and take decisions in sanctions cases and perform such other detailed functions and responsibilities as set forth in the WBG Sanctions Framework.
  2. In the event of a dispute as to whether the Sanctions Board has competence over a particular matter, the Sanctions Board shall decide whether it has the authority to handle such matter under Part A of this Section.
  - ...
  11. *Matters Not Covered*. In all matters not addressed in the WBG Sanctions Framework, the Sanctions Board shall follow the instructions of the Sanctions Board Chair for the operation of the Sanctions Board.
12. *Authority to issue final decisions in sanctions cases*: As defined in the Sanctions Procedures, the Sanctions Board is mandated to issue decisions in contested sanctions cases involving allegations of sanctionable practice<sup>33</sup> as well as contested determinations of noncompliance

29. Sanctions Board Decision No. 76 (2015) at para. 36; Sanctions Board Decision No. 78 (2015) at para. 45; Sanctions Board Decision No. 87 (2016) at para. 16; Sanctions Board Decision No. 88 (2016) at para. 12; Sanctions Board Decision No. 101 (2017) at para. 10; Sanctions Board Decision No. 104 (2017) at para. 21; Sanctions Board Decision No. 119 (2019) at para. 21.

30. Sanctions Board Decision No. 43 (2011) at para. 12.

31. Sanctions Board Decision No. 43 (2011) at paras. 12–13; Sanctions Board Decision No. 55 (2013) at para. 39; Sanctions Board Decision No. 57 (2013) at para. 5; Sanctions Board Decision No. 58 (2013) at para. 5; Sanctions Board Decision No. 62 (2014) at para. 5; Sanctions Board Decision No. 84 (2015) at para. 5.

32. Sanctions Board Decision No. 88 (2016) at paras. 26–28 (term “agent”); Sanctions Board Decision No. 101 (2017) at paras. 10–11 (term “successor”).

33. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 8.01; IFC Sanctions Procedures (2012) at Section 8.01; MIGA Sanctions Procedures (2013) at Section 8.01; World Bank Private Sector Sanctions Procedures (2013) at Section 8.01. See also Sanctions Board Decisions Nos. 1–2, 4–6, 12, 27–31, 36–41, 44–56, 59–61, 63–79, 81–83, 85–88, 90–100, 102–106, 108–112.

by the Integrity Compliance Officer (ICO)<sup>34</sup> and contested determinations of successorship or assignee status by the WBG.<sup>35</sup>

13. *Authority to issue determinations on defined procedural matters:* The Sanctions Procedures provide for the Sanctions Board's and/or the Sanctions Board Chair's review and decision of specific procedural matters that may arise prior to the issuance of a final decision, including:
  - i. Extension and waiver of various deadlines.<sup>36</sup>
  - ii. Acceptance of submissions not conforming with stated requirements.<sup>37</sup>
  - iii. Submission of additional translations of materials not presented in English.<sup>38</sup>
  - iv. Distribution of materials to other respondents in sanctions proceedings.<sup>39</sup>
  - v. Distribution, withholding, redaction, or *in camera* review of certain materials.<sup>40</sup>
  - vi. Decision to hold a hearing.<sup>41</sup>
  - vii. Acceptance of additional materials into the record.<sup>42</sup>
14. *Authority to fill procedural gaps:* In addition to decisions on procedural matters explicitly identified in the applicable Sanctions Procedures, the Sanctions Board has recognized its authority to fill certain procedural gaps, including on the following topics:
  - i. Reconsideration of final Sanctions Board decisions.<sup>43</sup>
  - ii. Ability to request or compel either party to submit additional evidence or arguments in sanctions proceeding.<sup>44</sup>

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34. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.03(e); IFC Sanctions Procedures (2012) at Section 9.03(e); MIGA Sanctions Procedures (2013) at Section 9.03(e); World Bank Private Sector Sanctions Procedures (2013) at Section 9.03(e).

35. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.04(c); IFC Sanctions Procedures (2012) at Section 9.03; MIGA Sanctions Procedures (2013) at Section 9.04(c); World Bank Private Sector Sanctions Procedures (2013) at Section 9.04(c). See also Sanctions Board Decision No. 101 (2017).

36. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 5.02(b) and Section III.C, paragraph 10; IFC Sanctions Procedures (2012) at Section 5.02(b); MIGA Sanctions Procedures (2013) at Section 5.02(b); World Bank Private Sector Sanctions Procedures (2013) at Section 5.02(b).

37. World Bank Sanctions Procedures (2016) at Section III.C, paragraphs 10–11.

38. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 5.02(a); IFC Sanctions Procedures (2012) at Section 5.02(a); MIGA Sanctions Procedures (2013) at Section 5.02(a); World Bank Private Sector Sanctions Procedures (2013) at Section 5.02(a).

39. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 5.04(b); IFC Sanctions Procedures (2012) at Section 5.04(b); MIGA Sanctions Procedures (2013) at Section 5.04(b); World Bank Private Sector Sanctions Procedures (2013) at Section 5.04(b).

40. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 5.04(c)–(e); IFC Sanctions Procedures (2012) at Section 5.04(c)–(e); MIGA Sanctions Procedures (2013) at Section 5.04(c)–(e); World Bank Private Sector Sanctions Procedures (2013) at Section 5.04(c)–(e).

41. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 6.01; IFC Sanctions Procedures (2012) at Section 6.01; MIGA Sanctions Procedures (2013) at Section 6.01; World Bank Private Sector Sanctions Procedures (2013) at Section 6.01.

42. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 5.01(c); IFC Sanctions Procedures (2012) at Section 5.01(c); MIGA Sanctions Procedures (2013) at Section 5.01(c); World Bank Private Sector Sanctions Procedures (2013) at Section 5.01(c).

43. Sanctions Board Decision No. 43 (2011); Sanctions Board Decision No. 57 (2013); Sanctions Board Decision No. 58 (2013); Sanctions Board Decision No. 62 (2014); Sanctions Board Decision No. 80 (2015); Sanctions Board Decision No. 84 (2015); Sanctions Board Decision No. 89 (2016); Sanctions Board Decision No. 107 (2018).

44. Sanctions Board Decision No. 28 (2010) at para. 42; Sanctions Board Decision No. 56 (2013) at paras. 28–32; Sanctions Board Decision No. 71 (2014) at paras. 41–42; Sanctions Board Decision No. 92 (2017) at para. 48; Sanctions Board Decision No. 94 (2017) at paras. 20–22.



- iii. Ability to strike evidence from the record.<sup>45</sup>
  - iv. Issuance of determinations prior to an appeal to the Sanctions Board.<sup>46</sup>
  - v. Assessment of Integrity Vice Presidency (INT)'s compliance with its obligations to produce exculpatory and/or mitigating evidence (also see paragraph 37 below).<sup>47</sup>
  - vi. Issuance of determinations via letter signed by the Secretary to the Sanctions Board.<sup>48</sup>
15. *Authority to compel INT to initiate sanctions proceedings*: The Sanctions Board has observed that the Sanctions Framework does not empower the Sanctions Board to compel INT to initiate sanctions proceedings against specific firms or individuals.<sup>49</sup>
16. *Limits on scope of authority*: Notwithstanding its ability to fill procedural gaps and assume authority over certain matters not addressed in the Sanctions Framework, the Sanctions Board has consistently rejected any request for a determination that falls outside the scope of the pending sanctions proceeding,<sup>50</sup> falls outside the scope of the specific allegations at issue,<sup>51</sup> or is explicitly within the purview of another decision maker within the sanctions regime.<sup>52</sup>

## D. JURISDICTION

### Bank Directive: Sanctions for Fraud and Corruption at Section III.B (“Normative Architecture”)<sup>53</sup>

#### 2. Jurisdiction.

i. *Subject Matter Jurisdiction*. The subject matter jurisdiction of the sanctions system (types of cases subject to sanctions proceedings) is determined by Section 1.01(c) of

45. Sanctions Board Decision No. 55 (2013) at paras. 28, 30; Sanctions Board Decision No. 56 (2013) at paras. 38–43; Sanctions Board Decision No. 60 (2013) at para. 54; Sanctions Board Decision No. 71 (2014) at para. 49; Sanctions Board Decision No. 92 (2017) at para. 45; Sanctions Board Decision No. 94 (2017) at para. 21; Sanctions Board Decision No. 96 (2017) at para. 49; Sanctions Board Decision No. 97 (2017) at para. 31.

46. Sanctions Board Decision No. 71 (2014) at para. 41.

47. Sanctions Board Decision No. 55 (2013) at paras. 31–32; Sanctions Board Decision No. 56 (2013) at paras. 28–32; Sanctions Board Decision No. 70 (2014) at paras. 18–19; Sanctions Board Decision No. 71 (2014) at paras. 42, 46–47, 51–52; Sanctions Board Decision No. 81 (2015) at paras. 35–36; Sanctions Board Decision No. 92 (2017) at para. 48; Sanctions Board Decision No. 93 (2017) at paras. 37–38; Sanctions Board Decision No. 94 (2017) at paras. 20–22; Sanctions Board Decision No. 96 (2017) at para. 51; Sanctions Board Decision No. 100 (2017) at para. 28; Sanctions Board Decision No. 102 (2017) at para. 33; Sanctions Board Decision No. 111 (2018) at para. 25.

48. Sanctions Board Decision No. 71 (2014) at paras. 43–44.

49. Sanctions Board Decision No. 121 (2019) at para. 18.

50. Sanctions Board Decision No. 45 (2011) at para. 70 (declining a respondent's request to instruct the Bank to provide a nonobjection letter with respect to respondent's participation in other projects not germane to the proceedings).

51. Sanctions Board Decision No. 73 (2014) at para. 43 (declining to apply aggravation based on facts not formally alleged in the same sanctions proceedings).

52. Sanctions Board Decision No. 55 (2013) at paras. 35–36 (declining to terminate or limit the temporary suspension imposed at the first tier, prior to conclusion of sanction proceedings); Sanctions Board Decision No. 60 (2013) at para. 137 (declining to terminate the temporary suspension imposed at the first tier, prior to conclusion of sanction proceedings); Sanctions Board Decision No. 108 (2018) at para. 27 (declining to impose a stay of proceedings, noting that this possibility is explicitly defined as under the purview of the first-tier officer).

53. Note that this document applies only to the World Bank, not the entire World Bank Group.

the Sanctions Procedures and paragraph 1 of Section III, Part A of the Sanctions Board Policy.

ii. *In Personam Jurisdiction.* The in personam jurisdiction of the sanctions system (individuals and entities subject to sanction) is determined by the applicable Procurement, Consultant or Anti-Corruption Guidelines under which the case in question is being brought and it does not require the Respondent's consent. The Procurement, Consultant or Anti-Corruption Guidelines contain specific provisions, which establish the Bank's right to sanction specific individuals and entities.

### **WBG Policy: Statute of the Sanctions Board at Section III.A ("The Statute")**

1. *Competence.* The Sanctions Board shall review and take decisions in sanctions cases and perform such other detailed functions and responsibilities as set forth in the WBG Sanctions Framework.

### **World Bank Sanctions Procedures at Section III.A ("Proceedings")**

1.01. Legal Basis and Purpose of These Procedures.

...

(c) *Cases Subject to these Procedures.* This Procedure sets out the procedures to be followed in cases involving Sanctionable Practices:

- (i) in connection with Bank-Financed Projects;
- (ii) on the basis of which the Director, General Service Department (GSD) has determined, in accordance with the World Bank Vendor Eligibility Policy, that the Respondent is non-responsible;
- (iii) arising from the violation of a Material Term of the Terms & Conditions of the Voluntary Disclosure Program (VDP); and
- (iv) arising from violations of sub-paragraph 11.05 of this Section III.A.

17. *Applicable rules:* To determine the rules governing jurisdiction, the Sanctions Board has looked first to the type of financing involved in a sanctions proceeding. For cases where allegations of misconduct were linked to loans, credits, or grants involving IBRD or IDA, the Sanctions Board has looked to the applicable Sanctions Procedures and the relevant version(s) of the World Bank's Procurement and/or Consultant Guidelines.<sup>54</sup> Where the

54. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 15–17; Sanctions Board Decision No. 119 (2019) at para. 10.

misconduct could allegedly be connected to IFC financing, the Sanctions Board has looked to the applicable IFC Sanctions Procedures and IFC's Anti-Corruption Guidelines.<sup>55</sup> In both types of proceedings, the Sanctions Board has also sought the input of the relevant General Counsel, as appropriate.<sup>56</sup>

18. *Subject matter jurisdiction*: The Sanctions Board has consistently asserted jurisdiction over individual sanctions cases where misconduct was alleged in relation to a Bank-financed project and in a manner consistent with an applicable version of Procurement or Consultant Guidelines.<sup>57</sup> The Sanctions Board has declined to find general jurisdiction to assess broader questions unrelated to the allegations in a specific proceeding, such as the legal adequacy of the Sanctions Framework,<sup>58</sup> or to determine and comment on the respondents' eligibility to participate in specific projects.<sup>59</sup>

In assessing whether it has jurisdiction to consider specific allegations in sanctions cases, the Sanctions Board has looked narrowly to whether each allegation had an identifiable link to World Bank Group financing.<sup>60</sup> Where the Sanctions Board's jurisdiction to consider specific procedural questions in a pending proceeding was challenged, the Sanctions Board has taken into account the question of whether a party had another appropriate forum to consider the issue and has held that the Sanctions Board does have jurisdiction to consider matters even prior to an appeal.<sup>61</sup>

The Sanctions Board has looked closely to the definitions of sanctionable practices in various Procurement and Consultant Guidelines associated with a sanctions proceeding as well as the agreements underpinning a relevant Bank-financed project, to determine whether the Bank had jurisdiction to consider the specific allegations of sanctionable practice raised in that case. As a general matter, the Sanctions Board has looked to confirm that the financing agreement(s) for the Bank-financed project and/or subsequent agreements between the borrower and the respondent defined the sanctionable practices alleged against the respondent.<sup>62</sup>

19. *In personam jurisdiction*: The Sanctions Board has generally considered cases against bidders and consultants working directly on Bank-financed projects, consistent with language describing sanctionable conduct in various versions of the Procurement and Consultant Guidelines. The Sanctions Board has also considered allegations against agents of such bidders or consultants, where the applicable Procurement or Consultant Guidelines have included agents in introducing the applicable definitions of sanctionable practice. The Sanctions Board has not found the WBG institutional rule against sanctioning public officials in some instances<sup>63</sup> to preclude a finding of jurisdiction against public officials who

55. Sanctions Board Decision No. 76 (2015) at paras. 9–13.

56. See, for example, Sanctions Board Decision No. 76 (2015) at para. 36; Sanctions Board Decision No. 78 (2015) at para. 45; Sanctions Board Decision No. 87 (2016) at para. 16; Sanctions Board Decision No. 88 (2016) at para. 12; Sanctions Board Decision No. 104 (2017) at para. 21.

57. See Sanctions Board Decision No. 60 (2013) at paras. 10–17.

58. Sanctions Board Decision No. 55 (2013) at para. 26.

59. Sanctions Board Decision No. 45 (2011) at paras. 23, 70.

60. Sanctions Board Decision No. 60 (2013) at para. 17; Sanctions Board Decision No. 76 (2015) at paras. 35–53.

61. Sanctions Board Decision No. 71 (2014) at paras. 38–41.

62. See, for example, Sanctions Board Decision No. 59 (2013) at para. 11; Sanctions Board Decision No. 72 (2014) at para. 15; Sanctions Board Decision No. 87 (2016) at paras. 16–17, 55–56.

63. See Appendix C, “Key Documents Relating to the WBG Sanctions Framework and Process.”

held additional roles (for example, as representatives of respondent firms) and engaged in sanctionable activity in relation to a Bank-financed project and in their private capacity.<sup>64</sup>

The Sanctions Board has held that, under the Sanctions Framework, the Bank does not need the consent of or privity of contract with a respondent in order to assert jurisdiction to sanction.<sup>65</sup>

20. *Statute of limitations*: The Sanctions Board has followed the language of the applicable Sanctions Procedures in considering whether an allegation against a respondent may have been time-barred.
21. *Conflicting standards*: In the event of potentially conflicting legal standards with respect to a sanctions proceeding, the Sanctions Board has noted “considerations of equity” and has, for example, accepted the standards agreed between the borrower and an accused respondent (that is, the bidding documents or the contract) instead of the standards agreed between the borrower and the Bank (that is, the financing agreement).<sup>66</sup> The Sanctions Board has additionally considered the views of the World Bank’s Legal Vice Presidency in such matters and has referred to them in its decisions.<sup>67</sup>

## E. EVIDENCE

### World Bank Sanctions Procedures at Section III.A<sup>68</sup> (“Proceedings”)

#### 7. Evidence

7.01. *Forms of Evidence*. Any kind of evidence may form the basis of arguments presented in a sanctions proceeding and conclusions reached by the SDO or the Sanctions Board. The SDO and the Sanctions Board 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 by the SDO or the Sanctions Board. Without limiting the generality of the foregoing, the SDO and the Sanctions Board shall have the discretion to infer purpose, intent and/or knowledge on the part of the Respondent, or any other party, from circumstantial evidence. Formal rules of evidence shall not apply.

7.02. *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 and writings reflecting the mental impressions,

64. Sanctions Board Decision No. 78 (2015) at paras. 43–45; Sanctions Board Decision No. 115 (2019) at paras. 29–33; Sanctions Board Decision No. 118 (2019) at para. 38.

65. Sanctions Board Decision No. 64 (2014) at para. 28; Sanctions Board Decision No. 81 (2015) at paras. 28–29.

66. See, for example, Sanctions Board Decision No. 59 (2013) at para. 11.

67. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 16–17.

68. See also IFC Sanctions Procedures (2012) at Article VII; MIGA Sanctions Procedures (2013) at Article VII; World Bank Private Sector Sanctions Procedures (2013) at Article VII.

opinions, conclusions or legal theories of an attorney in connection with a legal representation shall be privileged and exempt from disclosure.

7.03. *No Discovery.* Except as expressly provided for in this Procedure, the Respondent shall have no right to review or obtain any information or documents in the Bank's possession.

22. *Forms of evidence:* In past cases, the Sanctions Board has always reviewed documentary evidence,<sup>69</sup> which has included official documents,<sup>70</sup> relevant images,<sup>71</sup> copies of correspondence,<sup>72</sup> transcripts and other representations of testimonial evidence,<sup>73</sup> and pattern analysis.<sup>74</sup> In cases where a hearing took place, the Sanctions Board has also considered statements made at that hearing—whether directly by the parties, by their representatives, or by witnesses.<sup>75</sup>
23. *Sources of evidence:* The Sanctions Board has considered and relied upon both direct and circumstantial evidence,<sup>76</sup> taking into account the possible biases of its sources<sup>77</sup> and the recent or dated nature of evidentiary documents/statements.<sup>78</sup> The Sanctions Board has also considered evidence described by one of the parties as “hearsay” and has considered, in its analysis, the overall context of evidence produced.<sup>79</sup>
24. *Quantity of evidence:* The Sanctions Board has observed that assertions made by either party should have at least some evidentiary basis in the record.<sup>80</sup> At the same time, the Sanctions Board has adopted a flexible approach when considering all probative evidence, and has noted that it does not require that INT “support every forgery allegation with predetermined types of testimonial or documentary evidence—which, depending on the circumstances, may not always be available.”<sup>81</sup>
25. *Organization of evidence:* Where parties omitted to identify the nature and/or relevance of certain materials appended to their submissions, the Sanctions Board Chair has requested that those parties amend or clarify those submissions as appropriate.<sup>82</sup>

69. See, for example, Sanctions Board Decision No. 50 (2012) at para. 40.

70. See, for example, Sanctions Board Decision No. 69 (2014) at para. 33.

71. See, for example, Sanctions Board Decision No. 98 (2017) at para. 58 (letterhead, seals, and signatures); Sanctions Board Decision No. 118 (2019) at para. 66 (photograph).

72. See, for example, Sanctions Board Decision No. 97 (2017) at para. 57.

73. See, for example, Sanctions Board Decision No. 106 (2017) at para. 24; Sanctions Board Decision No. 109 (2018) at para. 27.

74. See, for example, Sanctions Board Decision No. 4 (2009) at para. 3; Sanctions Board Decision No. 112 (2018) at para. 26.

75. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 2, 48–53.

76. See, for example, Sanctions Board Decision No. 60 (2013) at para. 80 (“the Respondents’ own statements provide direct evidence of their intent”); Sanctions Board Decision No. 61 (2013) at para. 23 (observing that the Sanctions Board may consider circumstantial evidence in its assessment of recklessness).

77. See, for example, Sanctions Board Decision No. 50 (2012) at para. 39.

78. See, for example, Sanctions Board Decision No. 78 (2015) at para. 58 (declining to accept a Respondent’s argument and noting that certain evidence in support of that argument was not contemporaneous); Sanctions Board Decision No. 81 (2015) at para. 38 (finding the record sufficient to support a finding of misrepresentation and noting that certain inculpatory evidence was contemporaneous).

79. See, for example, Sanctions Board Decision No. 56 (2013) at para. 59.

80. Sanctions Board Decision No. 60 (2013) at para. 87; Sanctions Board Decision No. 61 (2013) at para. 41; Sanctions Board Decision No. 63 (2014) at para. 50.

81. Sanctions Board Decision No. 59 (2013) at para. 25.

82. See, for example, Sanctions Board Decision No. 112 (2018) at paras. 22–23.

## World Bank Sanctions Procedures at Section III.A<sup>83</sup> ("Proceedings")

### 5. Referrals to the Sanctions Board

...

#### 5.04. *Distribution of Written Materials*

- (a) *Distribution of Materials to INT and the Respondent.* The Secretary to the Sanctions Board shall provide to INT and the relevant Respondent, in a timely manner, copies of all written submissions and evidence, and any other materials received or issued by the Sanctions Board relating to the proceedings against said Respondent not previously provided by the SDO, except as otherwise provided in this subparagraph 5.04.
- (b) *Distribution of Materials to Other Respondents in Sanctions Proceedings.* The Secretary may, at any time and upon approval of the Sanctions Board, make materials relating to sanctions proceedings against a particular Respondent available to other Respondents in sanctions proceedings involving related accusations, facts, or matters.<sup>[11]</sup> In determining whether to approve the disclosure of such materials, the Sanctions Board shall consider, among other factors, the standard for withholding sensitive materials set forth in sub-paragraph 5.04(c).
- (c) *Distribution of Sensitive Materials.* The Sanctions Board may, in its discretion and upon request by INT, agree to the withholding of particular evidence submitted to the SDO or the Sanctions Board, 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 the Bank in favor of a VDP participant. In the event that the Sanctions Board denies INT's request, INT shall have the option to withdraw such evidence from the record or to request withdrawal of the Notice.

... [11] For avoidance of doubt, materials subject to disclosure under sub-paragraph 5.04(b) do not include settlement agreements entered into under Part B of this Section or any related materials.

- (d) *Redaction of Materials.* Notwithstanding the provisions of sub-paragraphs (a) and (b) above, INT, in its sole discretion, may redact particular parts or pieces of evidence presented to the Respondent or the Sanctions Board, by: (i) removing references to WBG staff; and (ii) removing references to other third parties (together with other material that would permit such third parties to be identified), in cases where the identity of such parties is either not relevant or not germane to the case. The Respondent may challenge such redaction in its Response under subparagraph 5.01(a), in which case the Sanctions Board shall review the unredacted version of such evidence to determine whether the redacted information is necessary to enable the Respondent to mount a meaningful response to the allegations

83. See also IFC Sanctions Procedures (2012) at Section 5.04; MIGA Sanctions Procedures (2013) at Section 5.04; World Bank Private Sector Sanctions Procedures (2013) at Section 5.04.

against it. In the event that the Sanctions Board determines that the redacted information is necessary, the unredacted version of the evidence in question will be made available to the Respondent in accordance with sub-paragraph (e) below, and the Respondent shall be afforded an opportunity to comment thereon in an additional submission under sub-paragraph 5.01(c).

- (e) *In Camera Review of Certain Materials.* Upon request by INT, the Sanctions Board may provide that certain pieces of evidence be made available to the Respondent solely for review at a designated Bank country office or such other place as the Sanctions Board Chair may designate for such purpose. The Respondent may request the Sanctions Board Chair, in consultation with INT, to designate another place upon a showing that review at such location would present an undue burden. Such materials shall be available for review during normal business hours, for as long as the Respondent may reasonably request, but the Respondent shall not be authorized to make copies of such materials.

26. *Distribution of evidence:* The Sanctions Board has observed that the World Bank Sanctions Procedures (see subparagraph 5.04 in box above) set a default presumption that copies of all written submissions and evidence should be provided to all parties to the proceedings.<sup>84</sup>

27. *Withholding of evidence:* As a general matter, the Sanctions Board has consistently recognized the “default” disclosure requirement within the applicable Sanctions Procedures.<sup>85</sup>

Where respondents have accused INT of improperly withholding certain evidence from the record, the Sanctions Board has considered such complaints under the standard set out in Section III.A, subparagraph 3.02 of the World Bank Sanctions Procedures, relating to potentially exculpatory or mitigating evidence.<sup>86</sup> As a general matter, the Sanctions Board has declined respondents’ nonspecific requests for INT to produce evidence, taking note of the Sanctions Procedures provision regarding “No Discovery.”<sup>87</sup> However, where the respondents made a particularized request for certain evidence they argued was not available to them, but was available to INT and was material to the sanctions proceedings, the Sanctions Board reviewed the matter more closely. Specifically, the Sanctions Board requested access to and assessed the materials in question *in camera*

84. Sanctions Board Decision No. 65 (2014) at para. 32.

85. Sanctions Board Decision No. 60 (2013) at para. 56 (“default presumption of access”); Sanctions Board Decision No. 65 (2014) at para. 32 (“default presumption that copies of all written submissions and evidence should be provided to all parties to the proceedings”); Sanctions Board Decision No. 66 (2014) at para. 21 (“default presumption that copies of all written submissions and evidence should be provided to all parties to the proceedings, subject only to certain exceptions”); Sanctions Board Decision No. 71 (2014) at para. 48 (“default disclosure requirement”); Sanctions Board Decision No. 113 (2018) at para. 23 (“the requirement of full access to evidence”).

86. See, for example, Sanctions Board Decision No. 56 (2013) at paras. 28–32.

87. See, for example, Sanctions Board Decision No. 55 (2013) at paras. 31–32; Sanctions Board Decision No. 118 (2019) at para. 41.

before making a determination that some of the materials must be disclosed.<sup>88</sup> Where the request related to details of a settlement between the Bank and a party, the Sanctions Board has noted that settlement information is not relevant in contested sanctions cases for purposes of determining sanctions and the Sanctions Framework does not empower the Sanctions Board to review or compel the disclosure of this information.<sup>89</sup>

The Sanctions Board has applied greater scrutiny to instances where INT withheld evidence from the respondents but included it in the record for the Sanctions Board's review. In such cases, the Sanctions Board applied Section III.A, subparagraph 5.04 of the World Bank Sanctions Procedures by (i) assessing the basis of any such withholding<sup>90</sup> and (ii) occasionally authorizing INT to use redactions or *in camera* review that would allow the respondent at least some level of access to evidence.<sup>91</sup> The question of whether the Sanctions Board authorized INT's withholding often hinged on whether the Sanctions Board found the evidence at issue to fall within any of the exceptional circumstances enumerated in Section III.A, subparagraph 5.04(c) of the World Bank Sanctions Procedures.<sup>92</sup>

28. *Redaction of evidence*: The Sanctions Board has recognized that INT has discretion to redact documents in the record, consistent with Section III.A, sub-paragraph 5.04(d) of the World Bank Sanctions Procedures (“Redaction of Materials”).<sup>93</sup> The Sanctions Board has affirmed INT's ability, in accordance with this provision, to remove references to World Bank Group staff from evidence presented in the course of sanctions proceedings, noting that this is not limited by type of staff appointment or affected by whether the staff member is implicated in the alleged misconduct.<sup>94</sup> Where respondents have challenged INT's redactions, the Sanctions Board has focused primarily on whether INT's redactions inhibited the respondents' ability to mount a meaningful defense<sup>95</sup> and took into account whether the respondents articulated their objections in a consistent and timely manner.<sup>96</sup> The Sanctions Board has denied a respondent's requests to redact evidentiary materials that were assertedly “irrelevant and prejudicial,” noting that no general requirement of relevance or materiality governs the admission of evidence under the Sanctions Procedures.<sup>97</sup>

88. See, for example, Sanctions Board Decision No. 71 (2014) at paras. 45–48.

89. See, for example, Sanctions Board Decision No. 118 (2019) at para. 40.

90. See, for example, Sanctions Board Decision No. 60 (2013) at para. 56; Sanctions Board Decision No. 63 (2014) at paras. 42–43; Sanctions Board Decision No. 113 (2018) at para. 21; Sanctions Board Decision No. 121 (2019) at paras. 16–17.

91. See, for example, Sanctions Board Decision No. 71 (2014) at paras. 48, 50; Sanctions Board Decision No. 113 (2018) at para. 22.

92. See, for example, Sanctions Board Decision No. 60 (2013) at para. 56 (denying INT's request); Sanctions Board Decision No. 63 (2014) at para. 43 (granting INT's request); Sanctions Board Decision No. 71 (2014) at para. 48 (denying INT's request); Sanctions Board Decision No. 113 (2018) at paras. 21–22 (denying INT's request in part); Sanctions Board Decision No. 121 (2019) at paras. 16–17 (denying INT's request).

93. See, for example, Sanctions Board Decision No. 64 (2014) at para. 31.

94. Sanctions Board Decision No. 60 (2013) at para. 51.

95. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 49, 52 (see also Section III.A, subparagraph 5.04(d) of the World Bank Sanctions Procedures (2016)); Sanctions Board Decision No. 64 (2014) at para. 32; Sanctions Board Decision No. 71 (2014) at para. 61; Sanctions Board Decision No. 86 (2016) at paras. 27–28; Sanctions Board Decision No. 87 (2016) at paras. 59–60; Sanctions Board Decision No. 95 (2017) at para. 20; Sanctions Board Decision No. 96 (2017) at para. 48.

96. Sanctions Board Decision No. 63 (2014) at para. 44 (declining to consider a challenge to INT's redaction that was articulated in the respondent's Explanation but not renewed in the respondent's Response).

97. Sanctions Board Decision No. 92 (2017) at para. 45.



29. *Review of evidence in camera*: The Sanctions Board has authorized *in camera* review of evidence by respondents (or their counsel) where the evidence was originally redacted or withheld but deemed necessary for the respondent “to mount a meaningful response.”<sup>98</sup> Where INT has requested that select evidence be presented to the opposing parties only *in camera*, the Sanctions Board has considered the specifics of INT’s sensitivity concerns, the impact of the restriction, the value of the evidence in light of the stated accusations, and the respondent’s stated interest in the evidence.<sup>99</sup>
30. *Weight of evidence*: In assessing the weight of evidence submitted by parties to sanctions proceedings, the Sanctions Board has considered various factors, including:
- i. Whether the evidence is relevant to the proceedings;<sup>100</sup>
  - ii. Whether the evidence is contemporaneous;<sup>101</sup>
  - iii. Whether the evidence is corroborated or contradicted,<sup>102</sup> particularly with respect to summaries of conversations and interviews;<sup>103</sup>
  - iv. For testimonial evidence, whether the sources may have been intimidated,<sup>104</sup> could not fully comprehend the inquiry,<sup>105</sup> relied on incorrect information,<sup>106</sup> or had reasons to be less-than-candid;<sup>107</sup>
  - v. For translated evidence, whether the English-language translations are sufficiently precise;<sup>108</sup>
  - vi. Whether the evidence is complete or presented in a condensed form;<sup>109</sup>

98. See, for example, Sanctions Board Decision No. 64 (2014) at para. 32; Sanctions Board Decision No. 71 (2014) at para. 48; Sanctions Board Decision No. 87 (2016) at para. 60.

99. See, for example, Sanctions Board Decision No. 60 (2013) at para. 56 (denying INT’s request where the Bank staff rules cited as a basis for INT proposed restriction included an applicable exemption); Sanctions Board Decision No. 65 (2014) at para. 32 (denying INT’s request where the relevant materials consisted of correspondence already likely available to the named affiliate and noting that limited redactions “should suffice to address INT’s concerns” regarding sensitivity of information included therein); Sanctions Board Decision No. 66 (2014) at paras. 20–22 (declining to consider INT’s proposed complex and conditional restrictions on access, given that the evidence at issue did not appear to have any exculpatory or additional mitigating value beyond what INT already conceded in the Statement of Accusations and Evidence (SAE); the respondent was aware of and did not object to the proposed restrictions; and the respondent stated that it did not wish to view the withheld materials).

100. See, for example, Sanctions Board Decision No. 87 (2016) at para. 62; Sanctions Board Decision No. 94 (2017) at para. 22.

101. See, for example, Sanctions Board Decision No. 63 (2014) at para. 50; Sanctions Board Decision No. 64 (2014) at para. 34; Sanctions Board Decision No. 65 (2014) at para. 34.

102. See, for example, Sanctions Board Decision No. 50 (2012) at paras. 39–40; Sanctions Board Decision No. 59 (2013) at para. 24.

103. See, for example, Sanctions Board Decision No. 37 (2010) at para. 43; Sanctions Board Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 44 (2011) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34; Sanctions Board Decision No. 47 (2012) at para. 24; Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 55 (2013) at para. 29; Sanctions Board Decision No. 63 (2014) at para. 50; Sanctions Board Decision No. 64 (2014) at paras. 34–35; Sanctions Board Decision No. 65 (2014) at para. 34; Sanctions Board Decision No. 78 (2015) at para. 51; Sanctions Board Decision No. 100 (2017) at para. 29; Sanctions Board Decision No. 118 (2019) at para. 42.

104. See, for example, Sanctions Board Decision No. 60 (2013) at para. 60.

105. Sanctions Board Decision No. 64 (2014) at para. 34.

106. Sanctions Board Decision No. 45 (2011) at para. 35.

107. Sanctions Board Decision No. 50 (2012) at para. 40.

108. Sanctions Board Decision No. 119 (2019) at para. 21.

109. See, for example, Sanctions Board Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34; Sanctions Board Decision No. 47 (2012) at para. 24; Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 55 (2013) at para. 29; Sanctions Board Decision No. 64 (2014) at paras. 34–35; Sanctions Board Decision No. 65 (2014) at para. 34.

- vii. Sources of evidence, their circumstances, and their interests;<sup>110</sup>
- viii. Formal requirements for submissions;<sup>111</sup>
- ix. Conduct of INT investigators in obtaining the evidence;<sup>112</sup> and
- x. The opposing party's ability to respond to the evidence.<sup>113</sup>

In select cases, the Sanctions Board has opined on entire categories of evidence. With respect to Summary Records of Interview or "ROIs," the Sanctions Board has observed that such documents do not constitute the best evidence of an oral statement<sup>114</sup> and lack the intrinsic accuracy of verbatim transcripts, particularly where the records of interview did not appear signed by any of the interviewees to attest to their basic accuracy.<sup>115</sup> Notwithstanding these conclusions, the Sanctions Board has declined to exclude ROIs as evidence<sup>116</sup> and has considered their weight on a case-by-case basis. In assessing the evidentiary weight of ROIs, the Sanctions Board has reviewed, *inter alia*, whether the interviewees were appropriately informed and able to participate in the conversation,<sup>117</sup> whether the interviewees agreed that the interview summary was accurate,<sup>118</sup> how and when the ROIs were prepared,<sup>119</sup> the level of detail presented in the ROIs,<sup>120</sup> and whether the content of the ROIs was corroborated by other evidence.<sup>121</sup>

- 31. *Interpretation of evidence:* The Sanctions Board has assessed the evidence presented in its specific context.<sup>122</sup> In assessing testimonial evidence, the Sanctions Board has observed that a party's silence during a group conversation may indicate acquiescence but may also reflect lack of agreement or lack of comprehension and as such must be reviewed in context.<sup>123</sup>
- 32. *Withdrawal of evidence:* INT has elected to withdraw evidence after the Sanctions Board denied INT's request to withhold it from the respondents<sup>124</sup> and where the Sanctions

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110. See, for example, Sanctions Board Decision No. 50 (2012) at para. 39; Sanctions Board Decision No. 64 (2014) at para. 34; Sanctions Board Decision No. 118 (2019) at paras. 43–45.

111. Sanctions Board Decision No. 27 (2010) at paras. 20–21; Sanctions Board Decision No. 39 (2010) at paras. 61–62.

112. See, for example, Sanctions Board Decision No. 45 (2011) at para. 35; Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 60 (2013) at para. 60; Sanctions Board Decision No. 64 (2014) at para. 34.

113. See, for example, Sanctions Board Decision No. 1 (2007) at para. 7; Sanctions Board Decision No. 87 (2016) at para. 62.

114. See, for example, Sanctions Board Decision No. 78 (2015) at para. 51.

115. See, for example, Sanctions Board Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34; Sanctions Board Decision No. 47 (2012) at para. 24; Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 55 (2013) at para. 29; Sanctions Board Decision No. 65 (2014) at para. 34; Sanctions Board Decision No. 78 (2015) at para. 51; Sanctions Board Decision No. 100 (2017) at para. 29.

116. Sanctions Board Decision No. 63 (2014) at para. 50.

117. Sanctions Board Decision No. 64 (2014) at para. 34.

118. See, for example, Sanctions Board Decision No. 37 (2010) at para. 43; Sanctions Board Decision No. 45 (2011) at para. 34; Sanctions Board Decision No. 47 (2012) at para. 24; Sanctions Board Decision No. 64 (2014) at paras. 34–35.

119. Sanctions Board Decision No. 63 (2014) at para. 50.

120. Sanctions Board Decision No. 64 (2014) at para. 35.

121. See, for example, Sanctions Board Decision No. 63 (2014) at para. 50.

122. See Sanctions Board Decision No. 40 (2010) at para. 25; Sanctions Board Decision No. 44 (2011) at para. 27; Sanctions Board Decision No. 60 (2013) at para. 108.

123. Sanctions Board Decision No. 50 (2012) at para. 30.

124. Sanctions Board Decision No. 60 (2013) at paras. 56–57; Sanctions Board Decision No. 83 (2015) at para. 44; Sanctions Board Decision No. 121 (2019) at para. 17.

Board authorized the withholding but found the evidence irrelevant and invited INT to withdraw it.<sup>125</sup>

## F. PROCEDURAL REQUESTS

33. *Motions to dismiss case/terminate proceedings*: The Sanctions Board has generally declined respondents' motions to dismiss the case or terminate the sanctions proceedings. Such motions have been based on a variety of factors, including objections to the World Bank Group's Sanctions Framework,<sup>126</sup> asserted lack of inculpatory evidence,<sup>127</sup> and passage of time since the alleged misconduct (where the delay did not constitute a breach of the statute of limitations under the applicable Sanctions Procedures).<sup>128</sup>
34. *Motions to terminate temporary suspension prior to close of sanctions proceedings*: The Sanctions Board has consistently declined to terminate or limit the scope of temporary suspension prior to the conclusion of sanctions proceedings.<sup>129</sup>
35. *Motions for stay of proceedings*: The Sanctions Board has declined to impose a stay of proceedings noting that this possibility is explicitly defined in the Sanctions Procedures as under the purview of the first-tier officer and as predicated on a settlement agreement.<sup>130</sup>
36. *Requests for extensions of time*: The Sanctions Board Chair has considered reasoned requests for extensions of time to file standard pleadings, respond to determinations and requests from the Sanctions Board, and confirm participation in hearings.<sup>131</sup> The Sanctions Board Chair has considered such requests on a case-by-case basis, occasionally inviting the other party to comment on pending extension requests, especially where multiple successive requests were involved.
37. *Submissions of additional arguments or evidence*: The Sanctions Board Chair and the Sanctions Board have considered such submissions in their discretion and on a case-by-case basis, typically with reference to the relevant provision for "Submission of Additional Materials" under the applicable Sanctions Procedures.<sup>132</sup> Generally, the following factors have been considered relevant to the question of whether additional arguments or evidence can be admitted into the case record:
  - i. Whether the submission accompanied an otherwise authorized filing, such as INT's Reply.<sup>133</sup>

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125. Sanctions Board Decision No. 63 (2014) at para. 43.

126. Sanctions Board Decision No. 55 (2013) at para. 26.

127. Sanctions Board Decision No. 63 (2014) at paras. 40–41.

128. Sanctions Board Decision No. 63 (2014) at para. 51; Sanctions Board Decision No. 64 (2014) at para. 30.

129. Sanctions Board Decision No. 55 (2013) at paras. 35–36; Sanctions Board Decision No. 60 (2013) at para. 137.

130. See, for example, Sanctions Board Decision No. 108 (2018) at para. 27. Note: settlement agreements are also referred to as "negotiated resolution agreements" or NRAs.

131. See, for example, Sanctions Board Decision No. 55 (2013) at para. 83 (extensions granted for submissions by INT and the respondent); Sanctions Board Decision No. 79 (2015) at para. 52 (extensions granted to file the Explanation and the Response); Sanctions Board Decision No. 100 (2017) at para. 5 (retroactive extension granted to file Response).

132. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 63–64.

133. See, for example, Sanctions Board Decision No. 60 (2013) at para. 54.

- ii. Whether the submission was responsive to an authorization, invitation, or request from the Sanctions Board or the Sanctions Board Chair.<sup>134</sup>
- iii. Whether the submission related to newly available evidence.<sup>135</sup>
- iv. Whether the submission was timely and material.<sup>136</sup>

### World Bank Sanctions Procedures at Section III.A<sup>137</sup> ("Proceedings")

#### 3. Referrals to the Suspension and Debarment Officer

3.02. *Disclosures of Exculpatory or Mitigating Evidence.* In submitting a Statement of Accusations and Evidence to the SDO, INT shall present all relevant evidence in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability. If any such evidence comes into INT's possession subsequently, such evidence shall be disclosed by written submission to the SDO or Sanctions Board, as the case may be.

...

#### 7. Evidence

7.03. *No Discovery.* Except as expressly provided for in this Procedure, the Respondent shall have no right to review or obtain any information or documents in the Bank's possession.

38. *Requests to compel production of evidence:* Requests for the Sanctions Board to compel production of evidence in contested sanctions cases have only been submitted by/on behalf of the respondents, rather than INT.<sup>138</sup> The Sanctions Board has generally denied such requests where the documents at issue were not identified with specificity, were likely not available to INT, were neither exculpatory nor mitigating within the meaning of the relevant language of the Sanctions Procedures (see box above),<sup>139</sup> or related to a settlement rather than the ongoing sanctions proceeding.<sup>140</sup> In addition, the Sanctions Board has declined to consider such requests altogether where the respondent still had an appropriate forum for its demands at the first tier of sanctions proceedings.<sup>141</sup>

134. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 37–39.

135. See, for example, Sanctions Board Decision No. 72 (2014) at paras. 27–29.

136. See, for example, Sanctions Board Decision No. 97 (2017) at para. 38.

137. See also IFC Sanctions Procedures (2012) at Sections 3.02 and 7.03; MIGA Sanctions Procedures (2013) at Sections 3.02 and 7.03; World Bank Private Sector Sanctions Procedures (2013) at Sections 3.02 and 7.03.

138. Sanctions Board Decision No. 55 (2013) at paras. 31–32; Sanctions Board Decision No. 56 (2013) at paras. 28–32; Sanctions Board Decision No. 71 (2014) at paras. 35–39, 51–52; Sanctions Board Decision No. 81 (2015) at paras. 35–36; Sanctions Board Decision No. 82 (2015) at para. 23; Sanctions Board Decision No. 87 (2016) at paras. 63–64; Sanctions Board Decision No. 92 (2017) at para. 48; Sanctions Board Decision No. 93 (2017) at paras. 37–38; Sanctions Board Decision No. 94 (2017) at paras. 20–22; Sanctions Board Decision No. 96 (2017) at paras. 50–51; Sanctions Board Decision No. 100 (2017) at paras. 15, 28; Sanctions Board Decision No. 102 (2017) at paras. 32–33; Sanctions Board Decision No. 111 (2018) at paras. 15, 24–25.

139. See, for example, Sanctions Board Decision No. 55 (2013) at paras. 31–32; Sanctions Board Decision No. 56 (2013) at paras. 28–32; Sanctions Board Decision No. 94 (2017) at paras. 20–22.

140. Sanctions Board Decision No. 56 (2013) at para. 30.

141. Sanctions Board Decision No. 71 (2014) at paras. 35–38.

However, the Sanctions Board has also recognized that INT's obligation to disclose exculpatory or mitigating evidence under the applicable Sanctions Procedures is a matter of fundamental fairness and thus essential to the Sanctions Board's ability to identify and weigh all relevant factors in reaching its sanctions decisions.<sup>142</sup>

In assessing INT's compliance with its obligations to furnish exculpatory or mitigating evidence, the Sanctions Board has reviewed whether the evidence at issue would appear to support or undermine any of the parties' assertions, whether the respondent already had access to the evidence, and—more generally—whether INT's omission to timely present this evidence compromised the respondent's ability to mount a meaningful defense.<sup>143</sup>

39. *Requests to strike evidence from the record*: Respondents have occasionally requested that the Sanctions Board strike certain evidence that is assertedly prejudicial, irrelevant, or of limited quality.<sup>144</sup> The Sanctions Board has generally considered such requests under the broad standard for admissibility of evidence under the applicable Sanctions Procedures.<sup>145</sup> This standard provides that parties' arguments may be supported by “[a]ny kind of evidence” and that the Sanctions Board retains discretion “to determine the relevance, materiality, weight, and sufficiency of all evidence offered.”<sup>146</sup> Under this standard, the Sanctions Board has consistently denied respondents' requests to strike evidence from the record.<sup>147</sup>
40. *Requests to exclude certain evidence from consideration against that respondent*: In one case that involved multiple contesting respondents who were separately represented, the Sanctions Board received a request that its review of the allegations against one respondent exclude from consideration evidence submitted by another respondent in that case.<sup>148</sup> The Sanctions Board declined, observing, inter alia, that the applicable Sanctions Procedures (i) recognize the possibility that the respondents in the same proceedings may have different positions and interests and (ii) do not expressly provide for the possibility of excluding one respondent's properly filed pleadings from consideration in regard to the other respondents in the same proceedings.<sup>149</sup>
41. *Effect on final sanction*: In cases where the parties' procedural requests (particularly requests for extensions and postponements) have meaningfully extended the duration of sanctions proceedings, the Sanctions Board has taken both the extent and source of such delays into account during its selection of the respondents' final sanction.<sup>150</sup>

142. See, for example, Sanctions Board Decision No. 56 (2013) at para. 32.

143. See, for example, Sanctions Board Decision No. 63 (2014) at para. 41.

144. See, for example, Sanctions Board Decision No. 96 (2017) at para. 49 (“irrelevant and prejudicial”).

145. See, for example, Sanctions Board Decision No. 92 (2017) at para. 45.

146. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 7.01; IFC Sanctions Procedures (2012) at Section 7.01; MIGA Sanctions Procedures (2013) at Section 7.01; World Bank Private Sector Sanctions Procedures (2013) at Section 7.01.

147. Sanctions Board Decision No. 55 (2013) at paras. 28, 30; Sanctions Board Decision No. 56 (2013) at paras. 38–43; Sanctions Board Decision No. 60 (2013) at para. 54; Sanctions Board Decision No. 71 (2014) at para. 49; Sanctions Board Decision No. 92 (2017) at para. 45; Sanctions Board Decision No. 94 (2017) at para. 21; Sanctions Board Decision No. 96 (2017) at para. 49; Sanctions Board Decision No. 97 (2017) at para. 31.

148. Sanctions Board Decision No. 60 (2013) at para. 45.

149. Sanctions Board Decision No. 60 (2013) at paras. 46–48.

150. See, for example, Sanctions Board Decision No. 98 (2017) at para. 67; Sanctions Board Decision No. 113 (2018) at para. 45.

## G. HEARINGS

### World Bank Sanctions Procedures at Section III.A<sup>151</sup> ("Proceedings")

#### 6. Hearings

6.01. *Applications for a Hearing.* Upon request by the Respondent in its Response or by INT in its Reply, or upon decision by the Sanctions Board Chair, the Sanctions Board will hold a hearing on the accusations against the Respondent. The Secretary, after consulting with the Chair, shall provide the Respondent and the Integrity Vice President reasonable notice of the date, time and location of the hearing. If no hearing is held, the Sanctions Board shall review the case and render its decision on the basis of the existing record, in accordance with sub-paragraph 8.02(a).

6.02. *Representation at Hearings.* INT shall be represented in a sanctions proceeding by one or more representatives who may or may not be employees of the World Bank Group. 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.

#### 6.03 *Conduct at Hearings.*

- (a) Attendance. . . .
- (b) Presentations by the parties. . . .
- (c) Response to Questions. . . .

42. *Requests for hearing:* Consistent with the applicable Sanctions Procedures, requests for a hearing articulated in either the Response or the Reply are granted as a matter of course.<sup>152</sup> Requests raised at later points in the proceeding, however, are not similarly automatically granted. When presented with conditional requests for a hearing, even if raised in the Response or Reply, the Sanctions Board did not consider such submissions to constitute formal requests for a hearing as contemplated in the applicable Sanctions Procedures.<sup>153</sup> In the majority of cases where a hearing was requested by multiple respondents, the Sanctions Board held a single hearing for all parties.<sup>154</sup>

151. See also IFC Sanctions Procedures (2012) at Sections 3.02 and 7.03; MIGA Sanctions Procedures (2013) at Sections 3.02 and 7.03; World Bank Private Sector Sanctions Procedures (2013) at Sections 3.02 and 7.03.

152. See, for example, Sanctions Board Decision No. 38 (2010) at para. 2 (only INT requested a hearing); Sanctions Board Decision No. 46 (2012) at para. 2 (only the respondent requested a hearing); Sanctions Board Decision No. 71 (2014) at para. 2 (both parties requested a hearing); Sanctions Board Decision No. 76 (2015) at para. 2 (only one of the respondents requested a hearing).

153. Sanctions Board Decision No. 4 (2009) at para. 13.

154. See, for example, Sanctions Board Decision No. 96 (2017) at para. 2. But see Sanctions Board Decision No. 4 (2009) (where two of the fifteen contesting respondents in that case submitted separate requests for a hearing, the Sanctions Board granted each request but held separate hearings and issued separate decisions to the respondents).

Where a request for a hearing was formally rescinded, the Sanctions Board granted the rescission request and did not convene a hearing in that case.<sup>155</sup>

43. *Hearings called by the Sanctions Board Chair:* The Sanctions Board Chair has used his discretion under Section III.A, subparagraph 6.01 of the World Bank Sanctions Procedures, to call a hearing in various circumstances, including where the Sanctions Board joined two proceedings, but a hearing was requested in only one of those sanctions cases;<sup>156</sup> and where the case involved no hearing requests but the Sanctions Board Chair nevertheless found a hearing to be necessary.<sup>157</sup> The Sanctions Board Chair has also called a hearing in one of the requests for reconsideration considered by the Sanctions Board. Given that Section III.A, subparagraph 6.01 of the World Bank Sanctions Procedures was not directly applicable to those proceedings, the Sanctions Board Chair made his decision to call a hearing under Article XI of the applicable Sanctions Board Statute.<sup>158</sup>
44. *Representation at hearings:* Consistent with the applicable Sanctions Procedures, parties have participated in hearings without any legal representation (*pro se*), as well as with the assistance of counsel and/or other authorized representatives.<sup>159</sup> Participation of legal counsel is not required in sanctions proceedings.
45. *Attendance at hearings:* In most sanctions proceedings that included a hearing, representatives of all the parties were in attendance.<sup>160</sup> The Sanctions Board Chair has exercised his discretion in approving specific attendees to the hearing and has declined a respondent's request that unlimited and unspecified attendees be present at the hearing in that case.<sup>161</sup> In some cases, however, all or some of the respondents, did not attend.<sup>162</sup> The Sanctions Board deliberated and rendered a decision in those cases based on the written submissions and statements made at the hearing by those who did attend.<sup>163</sup>

In addition to the primary parties in each case, the Sanctions Board has occasionally authorized the voluntary participation of witnesses.<sup>164</sup>

46. *Conduct of hearings:* Sanctions Board hearings generally include presentations by INT and each of the contesting parties, as well as a period of questions from the Sanctions Board members.<sup>165</sup> A single hearing has also been conducted in two parts, held on

155. Sanctions Board Decision No. 38 (2010) at para. 2.

156. Sanctions Board Decision No. 63 (2014) at para. 2.

157. Sanctions Board Decision No. 73 (2014) at para. 1; Sanctions Board Decision No. 97 (2017) at para. 2.

158. Sanctions Board Decision No. 84 (2015) at para. 2. See also WBG Sanctions Board Statute (2010) at Article XI (“In all matters not addressed in this Statute, the Code of Conduct or the Sanctions Procedures or any formal guidelines issued by the Bank in respect of sanctions proceedings, the Sanctions Board shall follow the instructions of the Sanctions Board Chair for the operation of the Sanctions Board”).

159. See, for example, Sanctions Board Decision No. 73 (2014) at para. 1; Sanctions Board Decision No. 83 (2015) at para. 2.

160. See, for example, Sanctions Board Decision No. 60 (2013) at para. 2.

161. Sanctions Board Decision No. 55 (2013) at paras. 38–39.

162. See, for example, Sanctions Board Decision No. 50 (2012) at para. 2; Sanctions Board Decision No. 97 (2017) at para. 2; Sanctions Board Decision No. 114 (2018) at para. 1.

163. See, for example, Sanctions Board Decision No. 50 (2012) at para. 2; Sanctions Board Decision No. 97 (2017) at para. 2.

164. Sanctions Board Decision No. 76 (2015) at para. 32; Sanctions Board Decision No. 87 (2016) at para. 51.

165. See, for example, Sanctions Board Decision No. 50 (2012) at para. 21 (questions from the Sanctions Board to INT); Sanctions Board Decision No. 60 (2013) at paras. 40–43 (presentations by the parties); Sanctions Board Decision No. 112 (2018) at para. 17 (questions from the Sanctions Board to the respondent).

different dates.<sup>166</sup> Questions relating to the conduct of hearings have generally been resolved at the discretion of the Sanctions Board Chair, consistent with the applicable Sanctions Procedures.<sup>167</sup>

47. *Postponement of hearings*: Scheduled hearings have occasionally been postponed following a request by one or more parties to the proceeding. In such cases, the Sanctions Board Chair has made the decision in his discretion, at times inviting input from the party not requesting the postponement.<sup>168</sup>

## H. DECISIONS

### WBG Policy: Statute of the Sanctions Board at Section III.A (“The Statute”)

#### 13. Sanctions Board Decisions

...

- (ii) Decisions shall be final and without appeal. Each decision shall include a brief statement of the reasons on which it is based.

### World Bank Sanctions Procedures at Section III.A<sup>169</sup> (“Proceedings”)

#### 8.01. Sanctions Board Decisions

The Sanctions Board shall determine, based on the record, whether or not it is more likely than not that the Respondent engaged in one or more Sanctionable Practices . . . [T]he Sanctions Board shall issue a written decision setting forth a recitation of the relevant facts, its determination as to the culpability of the Respondent, any sanction to be imposed on the Respondent and its Affiliates and the reasons therefor.

...

#### 8.03. Entry into Force and Final Nature of Sanctions Board Decisions

The decision of the Sanctions Board shall be final and without appeal, and shall be binding on the parties to the proceedings. The decision shall take effect immediately, without prejudice to any action taken by any government under its applicable law.

166. Sanctions Board Decision No. 56 (2013) at paras. 1–2, 34.

167. See, for example, Sanctions Board Decision No. 55 (2013) at paras. 38–39.

168. Sanctions Board Decision No. 65 (2014) at para. 82 (request by contesting parties); Sanctions Board Decision No. 73 (2014) at para. 51 (request by the respondent); Sanctions Board Decision No. 81 (2015) Dissenting Opinion at para. 4 (request by the respondents); Sanctions Board Decision No. 97 (2017) at paras. 34–36 (request by one of the respondents); Sanctions Board Decision No. 98 (2017) at para. 67 (request by the respondent); Sanctions Board Decision No. 120 (2019) at para. 61 (request by the respondent).

169. See also IFC Sanctions Procedures (2012) at Sections 8.01, 8.03, and 10.01; MIGA Sanctions Procedures (2013) at Sections 8.01, 8.03, and 10.01; World Bank Private Sector Sanctions Procedures (2013) at Sections 8.01, 8.03, and 10.01.



...

#### 10.01. Disclosure to the Public

(b) *Publication of Sanctions Board Decisions and SDO Determinations.* The full text of the decisions of the Sanctions Board . . . shall be publicly disclosed.

48. *Finality:* Consistent with the Sanctions Board Statute, applicable Sanctions Procedures, and other components of the Sanctions Framework, the Sanctions Board’s decisions on contested sanctions cases before it are final and without appeal.<sup>170</sup> The Sanctions Board has emphasized this principle of finality as a “fundamental aspect of any judicial or quasi-judicial process.”<sup>171</sup>
49. *Reconsideration:* Notwithstanding the final nature of the Sanctions Board’s decisions in contested proceedings, the Sanctions Board has held that it may engage in reconsideration of its own decisions where the circumstances are “narrowly defined and exceptional.”<sup>172</sup> The Sanctions Board reached this determination after noting (i) the absence of directly controlling provisions in the Sanctions Framework relating to reconsideration and (ii) specific provisions in the Sanctions Board Statute instructing the Sanctions Board to follow the guidance of the Sanctions Board Chair in “matters not addressed in [key documents of the Sanctions Framework]” and to decide the scope of its own competence over particular issues.<sup>173</sup>
- In considering past requests for reconsideration, the Sanctions Board has identified the discovery of newly available and potentially decisive facts, fraud or other misconduct in the original proceedings, or a clerical mistake in the issuance of the original decision as possible examples of exceptional circumstances that may warrant a review of a final decision.<sup>174</sup> To date, none of the respondents’ requests for reconsideration have been granted by the Sanctions Board.<sup>175</sup>
50. *Publication and key contents:* The full text of Sanctions Board decisions has been published since May 2012.<sup>176</sup> The published decisions generally summarize the relevant facts and procedural history of each case and present the Sanctions Board’s analysis of all allegations and sanctioning factors, if applicable. The decisions have also always identified the relevant members of the Sanctions Board presiding over a sanctions case and the specific sanctions imposed on the respondents and affiliates, if any.<sup>177</sup>

170. Sanctions Board Statute (2016) at paragraph 13(ii); WB Sanctions Procedures (2016) at Section III.A, subparagraph 8.03; IFC Sanctions Procedures (2012) at Section 8.03; MIGA Sanctions Procedures (2013) at Section 8.03; World Bank Private Sector Sanctions Procedures (2013) at Section 8.03. See also Sanctions Board Decision No. 118 (2019) at para. 1.

171. Sanctions Board Decision No. 43 (2011) at para. 14.

172. Sanctions Board Decision No. 43 (2011) at paras. 11, 15.

173. Sanctions Board Decision No. 43 (2011) at para. 6.

174. See, for example, Sanctions Board Decision No. 84 (2015) at para. 9.

175. See, for example, Sanctions Board Decision No. 43 (2011); Sanctions Board Decision No. 84 (2015).

176. “World Bank Increases Transparency through Inaugural Publication of Sanctions Board Decisions,” May 30, 2012, available at: <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board/brief/world-bank-increases-transparency-through-inaugural-publication-of-sanctions-board-decisions#>.

177. See, for example, Sanctions Board Decision No. 120 (2019).



# 3 Sanctionable Practices

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A. Fraudulent practice	<i>Paragraphs 1–9</i>
B. Corrupt practice	<i>Paragraphs 10–21</i>
C. Collusive practice	<i>Paragraphs 22–23</i>
D. Obstructive practice	<i>Paragraphs 24–30</i>
E. Coercive practice	<i>Paragraph 31</i>

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**ABSTRACT** This chapter presents the Sanctions Board’s analysis with respect to the specific sanctionable practices alleged in contested sanctions proceedings, which have included fraud, corruption, collusion, and obstruction. The applicable definitions of these sanctionable practices are set out in the Procurement Guidelines, Consultant Guidelines, and Anti-Corruption Guidelines of the respective World Bank Group (WBG) member institutions<sup>1</sup> and have been revised over time.<sup>2</sup> The Sanctions Board’s holdings with respect to each sanctionable practice are organized according to composite elements of the definitions of misconduct.

### A. FRAUDULENT PRACTICE

The following definitions of fraudulent practice have applied to sanctions cases brought under the various versions of the Bank’s Procurement and Consultant Guidelines:<sup>3</sup>

- a misrepresentation of facts in order to influence a [procurement/selection] process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among [bidders/consultants] (prior to or after [bid submission/submission of proposals]) designed to establish [bid] prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition.<sup>4</sup>

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1. See Jurisdiction discussion in chapter 2.

2. See appendix D: Sanctionable Practices.

3. Although sanctionable practices are also defined in various versions of the Bank’s “Anti-Corruption Guidelines” (formally titled “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”), cases considered by the Sanctions Board to date have not involved these definitions.

4. January 1995 version of the Procurement Guidelines (revised January and August 1996, September 1997, and January 1999) or the January 1997 version of the Consultant Guidelines (revised September 1997, January 1999, and May 2002).

- a misrepresentation or omission of facts in order to influence a [procurement/selection] process or the execution of a contract.<sup>5</sup>
- any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.<sup>6</sup>

1. *Misrepresentations of facts*: Examples of alleged misrepresentations considered by the Board include misstatements of commissions to be paid to agents; misrepresentations relating to the respondent's potential conflicts of interest; false or forged documents submitted during procurement/selection; false information relating to the respondent's expected subcontractors, staff, or consultants; and false documents or statements relating to work quality, progress, or cost, submitted during the execution of a contract.<sup>7</sup>

In past decisions reviewing evidence of alleged misrepresentations, the Sanctions Board has assessed a broad array of evidence, often including contemporaneous correspondence reflecting the falsity of information at issue, direct indicia of falsity in the relevant documents, statements by third parties named in the relevant documents, and the respondents' own acknowledgments of misrepresentation.<sup>8</sup> In some cases, the Sanctions Board also considered signature samples from the purported signatories on relevant documents.<sup>9</sup> Where the Sanctions Board declined to reach a finding of misrepresentation, that determination focused on the specific language and meaning of the respondent's submission.<sup>10</sup>

2. *Defenses to alleged misrepresentations/omissions*: The Sanctions Board has rejected variations of a "truth defense," such as where respondents argued that their alteration of an auditor's statement served to make it more accurate<sup>11</sup> and where respondents obtained forged documents assertedly in order to save time, even though they could have obtained legitimate documents if not for the bid submission deadline.<sup>12</sup> The Sanctions Board also declined to reach a finding of misrepresentation or omission where the Integrity Vice Presidency (INT) did not articulate any specific misrepresentations or omissions in the record and the

5. May 2004 versions of the Procurement or Consultant Guidelines.

6. October 2006, May 2010, January 2011, and July 2014 versions of the Procurement or Consultant Guidelines.

7. See, for example, Sanctions Board Decision No. 97 (2017) at paras. 40–43 (falsified past purchase orders, supplier lists, expected agent's commission, and invoices); Sanctions Board Decision No. 98 (2017) at paras. 33–35 (false bid security and performance certificates); Sanctions Board Decision No. 99 (2017) at paras. 18–20 (false information on the CV of an individual respondent and false experience certificate); Sanctions Board Decision No. 100 (2017) at para. 32 (false invoices); Sanctions Board Decision No. 102 (2017) at paras. 52–53 (false statement regarding anticipated role of business partner, false soil test report); Sanctions Board Decision No. 115 (2019) at paras. 45–47 (affirmative misrepresentation relating to conflicts of interest); Sanctions Board Decision No. 120 (2019) at paras. 31–35 (failure to disclose relationship with agent).

8. See, for example, Sanctions Board Decision No. 69 (2014) at paras. 19–20; Sanctions Board Decision No. 81 (2015) at para. 38; Sanctions Board Decision No. 82 (2015) at para. 28; Sanctions Board Decision No. 92 (2017) at paras. 61–62, 67–70, 73–74; Sanctions Board Decision No. 106 (2017) at para. 23; Sanctions Board Decision No. 112 (2018) at para. 31.

9. Sanctions Board Decision No. 46 (2012) at para. 23; Sanctions Board Decision No. 61 (2013) at para. 19.

10. Sanctions Board Decision No. 59 (2013) at paras. 26–28; Sanctions Board Decision No. 73 (2014) at paras. 22–23. See also Sanctions Board Decision No. 119 (2019) at paras. 18–22.

11. Sanctions Board Decision No. 30 (2010) at paras. 18–20, 29.

12. Sanctions Board Decision No. 49 (2012) at para. 24.

evidence did not otherwise support a finding that the respondent made a misrepresentation or otherwise misled a party.<sup>13</sup>

3. *Omissions of fact*: Examples of alleged omissions of fact considered by the Sanctions Board include failures to disclose information related to agents and potential/perceived conflicts of interest.<sup>14</sup> In such cases, the Sanctions Board has considered the scope of the respondents' obligations to disclose the facts at issue and whether the respondents' conduct breached those obligations.<sup>15</sup> The Sanctions Board has held that disclosure obligations need not extend only to formalized/documented transactions (such as a formal subconsultancy agreement).<sup>16</sup> The Sanctions Board has also noted that public availability or discoverability of information does not constitute fulfillment of a respondent's specific disclosure obligations related to a selection process.<sup>17</sup>
4. *Mens rea standard for fraudulent practice*: The Sanctions Board has held that a finding of fraudulent practice requires acts that are knowing or reckless.<sup>18</sup>
  - a. *Evidence of knowing conduct*: The Sanctions Board has often observed that the applicable Sanctions Procedures (i) recognize the Sanctions Board's discretion to infer knowledge from circumstantial evidence; and (ii) state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.<sup>19</sup> In finding that certain conduct was knowing, the Sanctions Board has looked to the respondents' own admissions and testimony, documentary evidence reflecting contemporaneous awareness of wrongdoing, and circumstantial evidence that a respondent's misrepresentation could not have happened without knowledge.<sup>20</sup>
  - b. *Evidence of reckless conduct*: In assessing recklessness, the Sanctions Board has considered whether circumstantial evidence indicates that a respondent was, or should have been, aware of a substantial risk—such as harm to the integrity of the procurement process due to false or misleading bid documents—but nevertheless failed to act to mitigate that risk.<sup>21</sup> Where circumstantial evidence was insufficient to infer subjective awareness of risk, the Sanctions Board has measured a respondent's conduct against the common “due care” standard of the degree of care that the proverbial

13. Sanctions Board Decision No. 119 (2019) at paras. 18–22.

14. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 94–96; Sanctions Board Decision No. 65 (2014) at paras. 41–49; Sanctions Board Decision No. 83 (2015) at paras. 53–57; Sanctions Board Decision No. 88 (2016) at paras. 27–29.

15. See, for example, Sanctions Board Decision No. 65 (2014) at paras. 41–49 (information relating to agents); Sanctions Board Decision No. 83 (2015) at paras. 53–57 (conflicts of interest).

16. Sanctions Board Decision No. 114 (2018) at para. 34.

17. See, for example, Sanctions Board Decision No. 65 (2014) at paras. 48–49.

18. See, for example, Sanctions Board Decision No. 55 (2013) at para. 46 (holding that mere submission of multiple forged certificates together does not necessarily lead to the conclusion that the party making such submissions acted knowingly or recklessly); Sanctions Board Decision No. 68 (2014) at paras. 23–26 (finding sufficient evidence of reckless conduct, based on the conclusion that the respondent should have been aware of a risk of forgery but failed to take measures commensurate with that risk). See also Sanctions Board Decision No. 41 (2010) at paras. 74–75 (holding that, where the applicable definition of fraudulent practice does not include an explicit standard of mens rea, the “knowing or reckless” standard may nevertheless be implied).

19. See, for example, Sanctions Board Decision No. 69 (2014) at paras. 21–22; Sanctions Board Decision No. 98 (2017) at paras. 38–39.

20. See, for example, Sanctions Board Decision No. 46 (2012) at para. 24; Sanctions Board Decision No. 69 (2014) at para. 22; Sanctions Board Decision No. 99 (2017) at paras. 21–22; Sanctions Board Decision No. 115 (2019) at paras. 48–49.

21. See, for example, Sanctions Board Decision No. 51 (2012) at para. 33.

“reasonable person” would exercise under the circumstances.<sup>22</sup> In other words, the question has consistently been whether the respondent knew or should have known of the substantial risk presented.<sup>23</sup> In determining whether a respondent was aware or, based on apparent red flags, should have been aware of a specific substantial risk that a document is inauthentic, the Sanctions Board has considered, *inter alia*, whether any specific indicia of falsity were apparent with respect to the document,<sup>24</sup> and whether a responsible individual made any effort to control or supervise the bid preparation process.<sup>25</sup> Where the Sanctions Board found that a respondent was or should have been aware of a substantial risk, the Sanctions Board considered whether the respondent took precautions commensurate with the risk involved.<sup>26</sup>

The Sanctions Board has found various types of conduct to constitute reckless behavior. Examples include submission of bids without appropriate review (particularly where additional “red flags” were apparent), engagement and reliance on representatives without appropriate vetting or documentation, and overall failure to maintain oversight and document authentication mechanisms so as to mitigate risk of misrepresentation in bids and proposals.<sup>27</sup>

5. *Acts to mislead*: The Sanctions Board has held that a misrepresentation of bid or proposal qualifications and other “act[s] to conceal” supported a finding that the misrepresentation misled or intended to mislead the implementing agency for the relevant Bank-financed project.<sup>28</sup> The Sanctions Board has also noted that proof that a respondent was successful in misleading a party, although inculpatory, is not necessary to show that the respondent deliberately attempted to mislead the recipient of false information.<sup>29</sup>
6. *Target of fraudulent conduct (“a party”)*: Where the applicable definition of fraud required that the respondent mislead or attempt to mislead a party, the Sanctions Board looked to the definition of “a party” set out in the applicable Procurement or Consultant Guidelines and interpreted this term to include the staff of the agency implementing the project at issue, which agency would have received and evaluated the bids containing misrepresentations.<sup>30</sup>
7. *Evidence of fraudulent intent*: The various definitions of fraudulent conduct over time have outlined several types of intent, presented by category below:
  - a. *Intent to influence a procurement/selection process*: The Sanctions Board has held that misrepresentations sought or served to influence a procurement/selection process where the respondents’ false statements or documents rendered the respondent’s submission eligible for consideration, made the submission more competitive, and/or were generally responsive to the requirements of that procurement/selection process.<sup>31</sup>

22. See, for example, Sanctions Board Decision No. 51 (2012) at para. 33.

23. See, for example, Sanctions Board Decision No. 51 (2012) at para. 33.

24. See, for example, Sanctions Board Decision No. 61 (2013) at para. 25.

25. See, for example, Sanctions Board Decision No. 98 (2017) at paras. 46–47.

26. See, for example, Sanctions Board Decision No. 79 (2015) at para. 29.

27. See, for example, Sanctions Board Decision No. 68 (2014) at paras. 24–26; Sanctions Board Decision No. 77 (2015) at paras. 34–36; Sanctions Board Decision No. 112 (2018) at paras. 35–36; Sanctions Board Decision No. 117 (2019) at paras. 21–23.

28. See, for example, Sanctions Board Decision No. 61 (2013) at para. 22; Sanctions Board Decision No. 114 (2018) at paras. 36–39.

29. Sanctions Board Decision No. 48 (2012) at para. 24.

30. See, for example, Sanctions Board Decision No. 61 (2013) at paras. 5, 22; Sanctions Board Decision No. 75 (2014) at para. 24; Sanctions Board Decision No. 102 (2017) at para. 56; Sanctions Board Decision No. 106 (2017) at para. 24.

31. See, for example, Sanctions Board Decision No. 49 (2012) at para. 26; Sanctions Board Decision No. 51 (2012) at paras. 40–41, 73; Sanctions Board Decision No. 60 (2013) at paras. 100–101.

- b. *Intent to influence a contract execution process*: The Sanctions Board has found evidence of intent to influence the execution of a contract where a misrepresentation served to facilitate or inflate a respondent's remuneration under the contract,<sup>32</sup> or to enable the respondent to more easily satisfy contract requirements.<sup>33</sup>
- c. *Intent to obtain a financial or other benefit*: In assessing whether a respondent's conduct served to obtain a financial or other benefit in the context of procurement or selection, the Sanctions Board considered whether the misrepresentation was responsive to a bid/tender requirement and could thus improve the likelihood of the respondent being selected. The Sanctions Board has applied this standard "[i]rrespective of the bid requirement's actual significance, and the subjective assessment thereof by a bidder"<sup>34</sup> and has declined to accept as a defense the fact that a respondent did not ultimately win the contract sought or profit from the misconduct.<sup>35</sup> In the context of contract execution, the Sanctions Board considered whether the misrepresentation was material to a respondent's remuneration under the contract.<sup>36</sup>
- d. *Intent to avoid an obligation*: The Sanctions Board has held that the respondent's conduct served to avoid an obligation where the relevant misrepresentation served to give the appearance of compliance with a contract requirement, while in fact avoiding it.<sup>37</sup>
8. *Detriment to the borrower*: Where a definition of fraudulent practice also required a showing of detriment to the borrower, the Sanctions Board considered various types of harm to fit this category (tangible or quantifiable as well as intangible).<sup>38</sup> The Sanctions Board found sufficient evidence of detriment to the borrower where a respondent's use of forged documents served to distort the selection process, caused the borrower to expend resources to review and evaluate an invalid bid, caused the borrower to contract with a company willing to engage in unethical behavior, delayed the execution of the contract and the closing date of the project, or produced threats to public safety or risks of property damage.<sup>39</sup>
9. *Collusive conduct as a type of fraud*: In a small number of decisions between 2008 and 2010, the Sanctions Board also assessed collusive conduct as a subcategory of fraudulent practice, consistent with the applicable Procurement/Consultant Guidelines. There, the Sanctions Board found sufficient evidence of fraud through collusion where respondents participated in various schemes to coordinate bids and steer contracts to predetermined candidates.<sup>40</sup>

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32. See, for example, Sanctions Board Decision No. 53 (2012) at paras. 35–37; Sanctions Board Decision No. 56 (2013) at para. 47; Sanctions Board Decision No. 83 (2015) at paras. 63, 67.

33. Sanctions Board Decision No. 44 (2011) at paras. 44–45.

34. See, for example, Sanctions Board Decision No. 71 (2014) at para. 76; Sanctions Board Decision No. 99 (2017) at para. 25.

35. See Sanctions Board Decision No. 61 (2013) at para. 28; Sanctions Board Decision No. 86 (2016) at para. 39; Sanctions Board Decision No. 98 (2017) at paras. 48–49.

36. See, for example, Sanctions Board Decision No. 92 (2017) at para. 65; Sanctions Board Decision No. 98 (2017) at paras. 48–49.

37. Sanctions Board Decision No. 86 (2016) at para. 40; Sanctions Board Decision No. 98 (2017) at para. 49.

38. See, for example, Sanctions Board Decision No. 69 (2014) at para. 24.

39. See, for example, Sanctions Board Decision No. 44 (2011) at paras. 47–48; Sanctions Board Decision No. 49 (2012) at para. 28; Sanctions Board Decision No. 67 (2014) at para. 29; Sanctions Board Decision No. 73 (2014) at para. 34; Sanctions Board Decision No. 88 (2016) at paras. 39–41.

40. Sanctions Board Decision No. 4 (2008); Sanctions Board Decision No. 5 (2009); Sanctions Board Decision No. 40 (2010).

## B. CORRUPT PRACTICE

The following definitions of corrupt practice have applied to sanctions cases brought under the various versions of the Bank’s Procurement and Consultant Guidelines:

- the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the [procurement/selection] process or in contract execution.<sup>41</sup>
- the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the [procurement/selection] process or in contract execution.<sup>42</sup>
- the offering, giving, receiving[,] or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.<sup>43</sup>

10. *Evidence of an “offer”*: In assessing whether there was an offer, the Sanctions Board has considered the totality of the evidence and arguments presented, including written agreements, e-mail correspondence, private corporate and personal records, accounting documents, transcripts of INT’s interviews, the statements of respondents and their staff/representatives, and circumstantial evidence such as the relative timing of events and communications between parties to the corrupt transaction.<sup>44</sup>

The Sanctions Board has clarified that a finding of an offer does not rely on the existence of any proactive invitation by the respondent and that a promise or commitment to pay when solicited by the receiving party may indeed constitute an offer for purposes of World Bank Group (WBG) sanctions proceedings.<sup>45</sup> The Sanctions Board has also held that the record may support a finding of an offer even without full disbursement of all “earmarked funds.”<sup>46</sup> In addition, the Sanctions Board has noted that the recipient of an offer need not be the same as the target of influence under the applicable definition of corrupt practice.<sup>47</sup>

11. *Evidence of “giving”*: In assessing whether something was given, the Sanctions Board has considered the full scope of available evidence and arguments, including bank records reflecting specific transactions, corporate/personal records of receipts and payments, other internal business records, copies of correspondence, and admissions or detailed testimony of relevant individuals.<sup>48</sup> The Sanctions Board has declined to find that anything was “given”

41. January 1995 version of the Procurement Guidelines (revised January and August 1996, September 1997, and January 1999) or the January 1997 version of the Consultant Guidelines (revised September 1997, January 1999, and May 2002).

42. May 2004 versions of the Procurement and Consultant Guidelines.

43. May 2004, October 2006, May 2010, January 2011, and July 2014 versions of the Procurement or Consultant Guidelines.

44. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 70–73; Sanctions Board Decision No. 63 (2014) at paras. 56, 58; Sanctions Board Decision No. 72 (2014) at paras. 43–44; Sanctions Board Decision No. 85 (2016) at paras. 23–25; Sanctions Board Decision No. 97 (2017) at paras. 54–55; Sanctions Board Decision No. 108 (2018) at paras. 31–32, 39, 46; Sanctions Board Decision No. 111 (2018) at paras. 27–31.

45. Sanctions Board Decision No. 60 (2013) at para. 73.

46. Sanctions Board Decision No. 63 (2014) at para. 59.

47. See, for example, Sanctions Board Decision No. 72 (2014) at para. 43. See also paragraph 19.

48. Sanctions Board Decision No. 60 (2013) at paras. 66–69; Sanctions Board Decision No. 63 (2014) at paras. 56, 58; Sanctions Board Decision No. 70 (2014) at para. 21; Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions Board Decision No. 78 (2015) at paras. 53–54; Sanctions Board Decision No. 87 (2016) at paras. 91–93, 100–101, 107–108; Sanctions Board Decision No. 92 (2017) at paras. 81, 87–88; Sanctions Board Decision No. 93 (2017) at paras. 40–43, 49–51, 58–60; Sanctions Board Decision No. 94 (2017) at paras. 24–25; Sanctions Board Decision No. 95 (2017) at paras. 22–23; Sanctions Board Decision No. 102 (2017) at paras. 35–37, 43–45; Sanctions Board Decision No. 108 (2018) at paras. 31–33, 39–40; Sanctions Board Decision No. 109 (2018) at paras. 26–29; Sanctions Board Decision No. 110 (2018) at paras. 22–23.



where the evidence with respect to what was given, and whether it was given, was conflicting or otherwise deficient.<sup>49</sup>

The Sanctions Board has clarified that a finding that something was “given” in the context of the definition of corruption does not require the full disbursement of all “earmarked funds”<sup>50</sup> or that the recipient be the same as the target of influence under the applicable definition of corrupt practice.<sup>51</sup>

12. *“Offering” and “giving” as alternative elements*: In assessing simultaneous allegations that there was both an offer and a gift, the Sanctions Board has repeatedly noted that “offering” and “giving” are set out as alternative elements of corrupt practice under the applicable definitions and, in finding the evidence sufficient for one, has often declined to address INT’s separate allegation of the other.<sup>52</sup> In select other cases, the Sanctions Board assessed all available evidence and reached a finding that the respondents or their representatives “offered or gave” things of value<sup>53</sup> or that the respondents both offered and gave things of value as alleged.<sup>54</sup>
13. *Evidence of “receiving”*: In finding that a respondent received something of value, the Sanctions Board has considered that respondent company’s bank records in conjunction with circumstantial evidence (internal e-mail correspondence) from the entity that made the gift showing relevant planning and intent.<sup>55</sup>
14. *Evidence of “soliciting”*: In assessing whether a respondent’s employees solicited something of value, the Sanctions Board has considered all evidence presented, including contemporaneous correspondence and acknowledgments by relevant individuals.<sup>56</sup> The Sanctions Board has declined to find the alleged solicitation where the record did not include sufficient evidence that the respondent’s staff asked, enticed, or sought to pressure the party assertedly expected to make a payment.<sup>57</sup>
15. *Parties in a solicitation*: The Sanctions Board has observed that bribe-takers may obviously solicit a bribe-payer, but so can fellow bribe-payers. Specifically, the Sanctions Board has held that the definition of corrupt practice may include both the act of soliciting something for oneself in exchange for exerting improper influence, as well as the act of soliciting or enticing another to give something to a third party.<sup>58</sup>
16. *Meaning of “things of value” and “anything of value”*: Sanctions Board precedent does not show a meaningful distinction in the interpretation of “things of value” versus “anything

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49. Sanctions Board Decision No. 96 (2017) at paras. 60–63. (This case involved a complimentary “study tour” that was allegedly simply a recreational trip presented as a reward. The Sanctions Board concluded that the evidence was insufficient to find that a respondent provided this trip to the recipient, as alleged.)

50. Sanctions Board Decision No. 63 (2014) at para. 59.

51. Sanctions Board Decision No. 60 (2013) at para. 65 (noting that, “[a]s worded, the applicable definitions of corrupt practices encompass situations where a respondent pays another party, either public or private, to exert influence over a public official acting in the procurement process or contract execution”). See also Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions Board Decision No. 78 (2015) at para. 53.

52. See, for example, Sanctions Board Decision No. 78 (2015) at para. 54.

53. Sanctions Board Decision No. 108 (2018) at para. 40.

54. Sanctions Board Decision No. 63 (2014) at para. 58; Sanctions Board Decision No. 97 (2017) at para. 55.

55. Sanctions Board Decision No. 103 (2017) at paras. 22–23.

56. Sanctions Board Decision No. 50 (2012) at para. 42; Sanctions Board Decision No. 78 (2015) at paras. 63–64; Sanctions Board Decision No. 105 (2016) at para. 19; Sanctions Board Decision No. 118 (2019) at paras. 58–60.

57. Sanctions Board Decision No. 85 (2016) at paras. 26–28; Sanctions Board Decision No. 103 (2017) at paras. 24–25.

58. See, for example, Sanctions Board Decision No. 50 (2012) at paras. 43–44.

of value.” The Sanctions Board has considered a range of items and actions as “things/anything” of value including commissions, transfers of funds, cash payments, gifts in-kind, payments for certain expenses (often travel-related) incurred by the recipients, recreational events planned for the recipients, and hiring decisions with respect to the recipients’ employees or family.<sup>59</sup> The Sanctions Board has also noted that the respondent’s perception of the thing/service provided may be determinative.<sup>60</sup>

17. *Meaning of corrupt intent:* In assessing this element, the Sanctions Board has focused on the respondent’s purpose and target of influence, and how the respondent’s actions may be understood by the recipient.<sup>61</sup> The Sanctions Board has recognized various purposes of influence as indicative of corrupt intent. When allegations related to the procurement/selection process, the Sanctions Board has considered whether the respondent requested or received access to confidential information about procurement/selection requirements, opportunity to influence the bidding/proposal specifications, preferential treatment in procurement/selection, circumvention of the intended procurement process, opportunity to receive direct contracts with the implementation authority, or avoidance of intervention/delay that may have harmed the respondent’s interests.<sup>62</sup> When allegations related to contract execution, the Sanctions Board has agreed that such intent may be reflected in attempts to expedite payment of invoices, provide favorable reviews of the respondent’s work under the contract, affect negotiations for contract extension and related remuneration, or facilitate the release of certain equipment from customs authorities.<sup>63</sup>

The Sanctions Board has found a respondent’s expectation that the recipient of a bribe would be in a position of influence and evidence of actual influence to support a finding of requisite intent.<sup>64</sup> However, the Sanctions Board has held that INT need *not* prove that the respondent was aware of the specific identity or official status of the target of their influence, that the desired influence ultimately materialized, or that the influence was obviously necessary.<sup>65</sup>

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59. See, for example, Sanctions Board Decision No. 66 (2014) at para. 24; Sanctions Board Decision No. 70 (2014) at para. 21; Sanctions Board Decision No. 72 (2014) at paras. 43–44; Sanctions Board Decision No. 78 (2015) at paras. 53–54; Sanctions Board Decision No. 85 (2016) at para. 23; Sanctions Board Decision No. 92 (2017) at paras. 81, 88; Sanctions Board Decision No. 93 (2017) at paras. 41–43, 67–69, 74–76; Sanctions Board Decision No. 96 (2017) at paras. 54–56; Sanctions Board Decision No. 97 (2017) at para. 55; Sanctions Board Decision No. 102 (2017) at paras. 43–45; Sanctions Board Decision No. 108 (2018) at paras. 31–32, 38–40, 52–55; Sanctions Board Decision No. 109 (2018) at paras. 26–29; Sanctions Board Decision No. 110 (2018) at paras. 21–23; Sanctions Board Decision No. 111 (2018) at paras. 27–31.

60. Sanctions Board Decision No. 96 (2017) at para. 58 (declining to find corrupt intent where the evidence was insufficient to show that the respondents viewed a complimentary trip as recreational and not as a study tour).

61. See, for example, Sanctions Board Decision No. 87 (2016) at para. 94; Sanctions Board Decision No. 105 (2017) at para. 20.

62. Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 63 (2014) at paras. 61–65; Sanctions Board Decision No. 72 (2014) at paras. 45–47; Sanctions Board Decision No. 78 (2015) at paras. 55–59; Sanctions Board Decision No. 87 (2016) at paras. 96, 103, 110; Sanctions Board Decision No. 93 (2017) at paras. 46, 54–55, 63, 72; Sanctions Board Decision No. 94 (2017) at paras. 28–30; Sanctions Board Decision No. 95 (2017) at paras. 26–28; Sanctions Board Decision No. 97 (2017) at para. 57; Sanctions Board Decision No. 102 (2017) at paras. 38–40, 47–48; Sanctions Board Decision No. 103 (2017) at paras. 27–30; Sanctions Board Decision No. 105 (2017) at para. 20; Sanctions Board Decision No. 108 (2018) at paras. 34–35, 41–42, 48–49; Sanctions Board Decision No. 111 (2018) at paras. 34–35.

63. Sanctions Board Decision No. 63 (2014) at paras. 65–66; Sanctions Board Decision No. 66 (2014) at para. 26; Sanctions Board Decision No. 70 (2014) at para. 23; Sanctions Board Decision No. 92 (2017) at paras. 84, 89–90; Sanctions Board Decision No. 109 (2018) at para. 31; Sanctions Board Decision No. 110 (2018) at para. 25.

64. See, for example, Sanctions Board Decision No. 85 (2016) at paras. 30, 32.

65. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 81–85; Sanctions Board Decision No. 63 (2014) at para. 64.

18. *Evidence of corrupt intent*: The Sanctions Board has based its findings of corrupt intent on a variety of direct and circumstantial evidence, including statements of relevant individuals, records of interview, contemporaneous documentation (including correspondence), and the relative timing of key events.<sup>66</sup> Conversely, the Sanctions Board declined to find evidence sufficient for a finding of intent where the initial inculpatory evidence was limited, uncorroborated, or otherwise deficient;<sup>67</sup> or where the respondents sufficiently rebutted INT’s allegations with their own arguments and evidence.<sup>68</sup>
19. *Evidence of intent to influence*: In assessing whether respondents acted with a purpose to influence a party, the Sanctions Board has also referred to an advisory opinion issued by the World Bank’s Legal Vice Presidency, which provided that corrupt influence may be shown either directly or “by reference to a course of dealing, acts of the accused party or other circumstantial evidence from which purpose can reasonably be inferred.”<sup>69</sup>
20. *“Improper” nature of intended influence*: In considering whether the intended influence was “improper,” the Sanctions Board did not require a showing of intended breach of duty or unlawful acts.<sup>70</sup> Indeed, the Sanctions Board has found sufficient evidence of intent even where the respondents argued that payments were intended to ensure “fair treatment” by relevant public officials.<sup>71</sup>
21. *Targets of influence: public officials, World Bank staff, and other parties*: In cases involving allegations of corrupt practice under pre-2006 Procurement or Consultant Guidelines, the definition of corrupt practice required that the respondent’s intended influence be directed at a “public official.” Where the applicable Guidelines did not define this term, the Sanctions Board considered it to include government officials (particularly officials at the government agency implementing the relevant Bank-financed project) as well as World Bank staff.<sup>72</sup> With respect to the latter, the Sanctions Board clarified that it was relying on inclusion of Bank staff in the later definition of “public official,”<sup>73</sup> which it deemed a clarification, rather than an amendment, of the earlier standard.<sup>74</sup>

In cases where the applicable definition of corrupt practice also explicitly defined the target of influence as inclusive of “World Bank staff and employees of other organizations taking or reviewing [procurement/selection] decision,”<sup>75</sup> the Sanctions Board has found that procurement advisors, project managers, and other individuals within the implementing

66. See, for example, Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 63 (2014) at paras. 61–62; Sanctions Board Decision No. 78 (2015) at para. 57; Sanctions Board Decision No. 85 (2016) at para. 31; Sanctions Board Decision No. 92 (2017) at paras. 84, 90; Sanctions Board Decision No. 93 (2017) at paras. 46, 53–54, 62–63, 72, 79; Sanctions Board Decision No. 94 (2017) at paras. 28–30; Sanctions Board Decision No. 95 (2017) at paras. 26–28; Sanctions Board Decision No. 97 (2017) at para. 57; Sanctions Board Decision No. 102 (2017) at paras. 38–40, 47–48; Sanctions Board Decision No. 103 (2017) at paras. 27–30; Sanctions Board Decision No. 108 (2018) at paras. 34–35, 41–42, 48–49; Sanctions Board Decision No. 109 (2018) at para. 31; Sanctions Board Decision No. 110 (2018) at paras. 25–27; Sanctions Board Decision No. 111 (2018) at paras. 34–35.

67. Sanctions Board Decision No. 92 (2017) at paras. 98–100; Sanctions Board Decision No. 96 (2017) at paras. 57–63; Sanctions Board Decision No. 108 (2018) at paras. 56–58.

68. Sanctions Board Decision No. 110 (2018) at paras. 25–27.

69. Sanctions Board Decision No. 118 (2019) at para. 61.

70. See, for example, Sanctions Board Decision No. 60 (2013) at para. 82.

71. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 82, 85.

72. See Sanctions Board Decision No. 63 (2014) at paras. 61–66; Sanctions Board Decision No. 66 (2014) at para. 25.

73. May 2004 Procurement Guidelines at para. 1.14(a)(i), n.17; May 2004 Consultant Guidelines at para. 1.14(a)(i), n.15.

74. Sanctions Board Decision No. 66 (2014) at para. 25.

75. See, for example, May 2004 Procurement Guidelines at para. 1.14(a)(i), n.17; May 2004 Consultant Guidelines at para. 1.14(a)(i), n.15.

agency or World Bank staff who appeared to have responsibilities, authority, or influence with respect to the relevant Bank-financed project all fit the scope of this term.<sup>76</sup>

The Sanctions Board has emphasized the importance of the respondents' perception of the role of their targets of influence and has held that the alleged "public official" need not have been specifically appointed or designated to work on a particular contract and need not have held a particular type of staff appointment within the World Bank Group.<sup>77</sup>

### C. COLLUSIVE PRACTICE

The following definitions of collusive practice have applied to sanctions cases brought under the various versions of the World Bank's Procurement and Consultant Guidelines:

- a scheme or arrangement between two or more [bidders/consultants], with or without the knowledge of the Borrower, designed to establish [bid] prices at artificial, non-competitive levels.<sup>78</sup>
- an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.<sup>79</sup>

22. *Scheme or arrangement*: The Sanctions Board has found various fact patterns to constitute a "scheme or arrangement," including shared preparation and coordination of bids among supposedly competing bidders, disclosure of confidential pricing information among bidders or associated parties, and a system whereby a staff member of the implementing agency shared draft bidding requirements with certain bidders and revised the requirements based on those bidders' input before publication.<sup>80</sup> The Sanctions Board has held that a finding of "scheme or arrangement" is not precluded by use of agents or intermediaries between the colluding parties.<sup>81</sup>

As evidence of such schemes and arrangements, the Sanctions Board has considered a broad array of evidence, including copies of e-mail correspondence, testimony of relevant

76. Sanctions Board Decision No. 60 (2013) at paras. 77–78; Sanctions Board Decision No. 70 (2014) at para. 22; Sanctions Board Decision No. 72 (2014) at paras. 45–47; Sanctions Board Decision No. 78 (2015) at para. 56; Sanctions Board Decision No. 87 (2016) at para. 104; Sanctions Board Decision No. 92 (2017) at para. 83; Sanctions Board Decision No. 93 (2017) at paras. 45, 47, 56, 71, 78; Sanctions Board Decision No. 94 (2017) at paras. 27, 31; Sanctions Board Decision No. 95 (2017) at paras. 24–25; Sanctions Board Decision No. 102 (2017) at para. 39; Sanctions Board Decision No. 103 (2017) at paras. 26–27; Sanctions Board Decision No. 105 (2017) at para. 20.

77. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 77–78; Sanctions Board Decision No. 87 (2016) at paras. 103–104; Sanctions Board Decision No. 94 (2017) at para. 31; Sanctions Board Decision No. 105 (2017) at para. 20.

78. May 2004 versions of the Procurement and Consultant Guidelines.

79. October 2006, May 2010, January 2011, and July 2014 versions of the Procurement or Consultant Guidelines.

80. See, for example, Sanctions Board Decision No. 45 (2011) at para. 40; Sanctions Board Decision No. 87 (2016) at paras. 75–77, 84–85; Sanctions Board Decision No. 115 (2019) at paras. 35–40; Sanctions Board Decision No. 118 (2019) at paras. 47–53. See also Sanctions Board Decision No. 121 (2019) at paras. 21–23 (finding evidence sufficient to support one, but not both, allegations of an arrangement).

81. Sanctions Board Decision No. 45 (2011) at paras. 41–44.

individuals, and any content of the relevant bids that appeared similar, identical, or coordinated.<sup>82</sup> However, the Sanctions Board has declined to find a history of past work between the accused colluders as inculpatory evidence of a “scheme or arrangement” in a pending sanctions case.<sup>83</sup>

23. *Collusive intent*: The various definitions of collusive conduct over time have outlined several types of intent, presented by category below:
- a. *To establish bid prices at artificial or noncompetitive levels*: The Sanctions Board has held that this element must be independently proven to the appropriate standard by INT and cannot be satisfied merely by furnishing sufficient evidence of a scheme or arrangement.<sup>84</sup> The Sanctions Board has observed that an assessment of this element requires an “inquiry [into] the nature of the pricing, not the simple quantitative level of the prices,” and that a showing of high prices is neither necessary nor sufficient for a finding of collusion.<sup>85</sup> Finally, the Sanctions Board has found this element satisfied where the record showed identical pricing, consistent differences in bid pricing, common errors across multiple bids, and other evidence of shared bid preparation and efforts to stifle competition.<sup>86</sup>
  - b. *To achieve an improper purpose, including to influence improperly the actions of another party*: The Sanctions Board has held that an improper purpose is reflected in arrangements to stifle open competition by giving one bidder an advantage against competition and in arrangements to share information across bids in a bidding process explicitly designed to be competitive.<sup>87</sup> The Sanctions Board has noted that evidence that the desired influence actually materialized is not necessary for a finding of collusive practice, although it may bolster a showing of the respondent’s intent to effect this influence.<sup>88</sup>

## D. OBSTRUCTIVE PRACTICE

The following definition of obstructive practice has applied to sanctions cases brought under the various versions of the Bank’s Procurement and Consultant Guidelines:

- [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 Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or [ii] acts intended to materially impede the exercise of the Bank’s inspection and audit rights.<sup>89</sup>

82. See, for example, Sanctions Board Decision No. 45 (2011) at paras. 30–38; Sanctions Board Decision No. 87 (2016) at paras. 75–78, 84–85; Sanctions Board Decision No. 112 (2018) at para. 26; Sanctions Board Decision No. 113 (2018) at paras. 25–28.

83. Sanctions Board Decision No. 45 (2011) at para. 39.

84. Sanctions Board Decision No. 45 (2011) at paras. 50–51.

85. Sanctions Board Decision No. 45 (2011) at para. 51.

86. Sanctions Board Decision No. 45 (2011) at para. 51; Sanctions Board Decision No. 87 (2016) at paras. 80–81.

87. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 87–88; Sanctions Board Decision No. 112 (2018) at para. 27; Sanctions Board Decision No. 115 (2019) at paras. 41–43.

88. Sanctions Board Decision No. 87 (2016) at para. 87; Sanctions Board Decision No. 115 (2019) at para. 42.

89. October 2006, May 2010, January 2011, and July 2014 versions of the Procurement or Consultant Guidelines.

24. *Types of obstruction allegations*: Among the various types of conduct encapsulated in the Bank's definition of obstructive conduct, the Sanctions Board's decisions have assessed allegations of destroying evidence in order to impede INT's investigation of misconduct,<sup>90</sup> deliberately concealing or withholding evidence from INT,<sup>91</sup> deliberately falsifying evidence or making false statements to investigators,<sup>92</sup> and acting to impede the Bank's inspection and audit rights.<sup>93</sup>
25. *Destroying evidence*: The Sanctions Board has concluded that the respondent had, more likely than not, destroyed evidence in order to impede an investigation in light of testimonial evidence that the respondent's staff had deleted e-mail records during INT's inquiry and where the timing of events otherwise supported a finding that the deletion of e-mails was intended to impede the investigation.<sup>94</sup>
26. *Concealing or withholding evidence from INT*: The Sanctions Board found that respondents had deliberately withheld evidence from INT where documentary and testimonial evidence reflected that a respondent individual had requested a bank to furnish a more narrow range of records than the range available and requested by INT.<sup>95</sup>
27. *Falsifying or altering evidence*: The Sanctions Board has declined to reach a finding of obstruction where INT's allegation appeared to rely on an inaccurate characterization of the assertedly falsified evidence.<sup>96</sup>
28. *Intent to materially impede a Bank investigation*: In assessing whether destruction of evidence was accompanied by intent to materially impede INT's investigation, the Sanctions Board assessed the relative timing of events and found that deletion of e-mails following awareness of INT's inquiry constituted sufficient evidence of intent.<sup>97</sup> The Sanctions Board has declined to reach a finding of misconduct where INT relied on a broad interpretation of what would constitute obstruction, without presenting evidence of intent.<sup>98</sup>
29. *Respondents' obligations to comply with audit and inspection requests*: In assessing INT's allegations of obstruction, the Sanctions Board has repeatedly observed that "Sanctions proceedings are not criminal in nature; they are an administrative process based on contractual obligations undertaken by the Respondent. Those contractual obligations include, first, an obligation to comply with an audit request by the Bank in relation to the relevant contracts, and second, an agreement that failure to comply with an audit request by the Bank may constitute the sanctionable practice of obstruction."<sup>99</sup>
30. *Intent to materially impede the exercise of the Bank's inspection and audit rights*: In assessing this component of obstruction allegations, the Sanctions Board first reviewed the scope of the Bank's audit rights as articulated in the relevant bidding documents and

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90. Sanctions Board Decision No. 60 (2013) at paras. 102–110.

91. Sanctions Board Decision No. 110 (2018) at paras. 28–30.

92. Sanctions Board Decision No. 77 (2015) at paras. 39–41; Sanctions Board Decision No. 87 (2016) at paras. 113, 118.

93. Sanctions Board Decision No. 87 (2016) at paras. 114–116; Sanctions Board Decision No. 93 (2017) at paras. 81–84; Sanctions Board Decision No. 104 (2017) at para. 28; Sanctions Board Decision No. 115 (2019) at paras. 54–56.

94. Sanctions Board Decision No. 60 (2013) at para. 105.

95. Sanctions Board Decision No. 110 (2018) at paras. 28–30.

96. Sanctions Board Decision No. 77 (2015) at paras. 39–42.

97. Sanctions Board Decision No. 60 (2013) at para. 105.

98. Sanctions Board Decision No. 87 (2016) at para. 113 (noting that INT did not identify any overt acts to show that the individual respondents' statements intended to impede the investigation).

99. Sanctions Board Decision No. 93 (2017) at para. 83; Sanctions Board Decision No. 104 (2017) at para. 28.

contracts and then reviewed the respondent's conduct during INT's investigation and attempt to inspect.<sup>100</sup>

The Sanctions Board found sufficient evidence of intent to impede where the applicable documents established the Bank's right to inspect certain accounts and records, the respondent was notified of INT's plan to conduct an inspection pursuant to the relevant audit clauses, and that respondent's representatives nevertheless refused INT's requests to conduct an audit or produce records.<sup>101</sup> The Sanctions Board has found indefinite postponements and objections paired with failure to comply to constitute effective refusal of the audit.<sup>102</sup> The Sanctions Board has declined to accept respondents' proposed defenses on the basis of zealous advocacy, cooperation with INT's investigation in other respects, perceived national rights, or other concerns relating to disclosure of sensitive materials. The Sanctions Board has held that INT need not prove that a respondent's refusal was motivated solely or primarily by the wish to impede the Bank's audit rights.<sup>103</sup>

## E. COERCIVE PRACTICE

The following definitions of coercive practice have applied to sanctions cases brought under the various versions of the Bank's Procurement and Consultant Guidelines:

- harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.<sup>104</sup>
- impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.<sup>105</sup>

31. *Allegations of threatening conduct*: The Sanctions Board's precedent does not include a case which involved formal allegations of coercive practice. However, the Sanctions Board has considered cases that involved possible aggravation on the basis of a respondent's interference in an investigation by way of witness intimidation.<sup>106</sup> Precedent on this sanctioning factor is discussed in chapter 5.

100. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 114–116; Sanctions Board Decision No. 93 (2017) at paras. 82–83.

101. Sanctions Board Decision No. 87 (2016) at paras. 114–116; Sanctions Board Decision No. 104 (2017) at para. 28; Sanctions Board Decision No. 118 (2019) at paras. 68–72.

102. Sanctions Board Decision No. 87 (2016) at paras. 114–116.

103. Sanctions Board Decision No. 60 (2013) at para. 105; Sanctions Board Decision No. 93 (2017) at para. 83; Sanctions Board Decision No. 104 (2017) at para. 28.

104. May 2004 versions of the Procurement and Consultant Guidelines.

105. October 2006, May 2010, January 2011, and July 2014 versions of the Procurement or Consultant Guidelines.

106. See, for example, Sanctions Board Decision No. 71 (2014) at para. 89.





# 4 Theories of Liability

## SUMMARY OF CONTENTS

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A. Direct liability	<i>Paragraphs 1–2</i>
B. Vicarious liability	<i>Paragraphs 3–5</i>
C. Liability for acts of nonemployees	<i>Paragraphs 6–7</i>
D. Liability of affiliates	<i>Paragraphs 8–9</i>
E. Liability of successors and assigns	<i>Paragraph 10</i>
F. Other proposed defenses to liability	<i>Paragraph 11</i>

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**ABSTRACT** This chapter presents the Sanctions Board’s analysis on various theories of liability of parties in sanctions proceedings. In addition to the standards for direct liability of respondent individuals who engaged in misconduct, the Sanctions Board has also assessed the standards for indirect liability of corporate respondents, respondents acting through nonemployees, partners and subcontractors, and affiliates in control of culpable respondents in sanctions proceedings.

### A. DIRECT LIABILITY

1. *Respondent individuals*: The Sanctions Board has found individual respondents liable for misconduct where the respondents directly competed for Bank-financed contracts or held positions of authority (including roles as authorized representatives or roles with supervisory responsibilities) in firms that competed for or executed contracts in Bank-financed projects.<sup>1</sup> Such respondents were found liable for knowing or reckless fraudulent conduct, including, for instance, where an individual respondent knew of some initial forgeries in a bid but did not attempt to mitigate continued risks of misrepresentation in later submissions.<sup>2</sup> Where allegations included corruption, collusion, or obstruction, the Sanctions Board considered whether the individual respondents

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1. See, for example, Sanctions Board Decision No. 63 (2014) at paras. 73–74; Sanctions Board Decision No. 99 (2017) at paras. 17–20.

2. Sanctions Board Decision No. 41 (2010) at para. 85.

directly participated in the relevant schemes, bribes, solicitations, or obstructive practices.<sup>3</sup> Conversely, the Sanctions Board declined to find an individual respondent directly liable for certain corrupt offers and payments where the record did not establish that the individual authorized these actions or breached any duty to supervise the staff who engaged in the corrupt conduct.<sup>4</sup>

2. *Respondent firms*: The Sanctions Board has held that a corporate respondent is “directly and/or vicariously” liable for the conduct of its owner or controlling executive who engaged in the misconduct or knowingly permitted the misconduct to continue.<sup>5</sup>

## B. VICARIOUS LIABILITY

3. *Respondent individuals*: The Sanctions Board has *not* held respondent individuals liable exclusively for the conduct of others.<sup>6</sup>
4. *Respondent firms*: The Sanctions Board has consistently held corporate respondents vicariously liable for the acts of their owners, staff, and authorized representatives under the doctrine of *respondeat superior*.<sup>7</sup> In reaching these determinations, the Sanctions Board has considered the specific facts and circumstances of each case, focusing on (i) whether the employee acted within the course and scope of his/her employment and (ii) whether the employee’s misconduct was motivated, at least in part, by a purpose to serve the respondent company.<sup>8</sup> The Sanctions Board has declined to hold a respondent firm liable where the record did not show—to the required standard—that the individuals who directly engaged in the misconduct were acting on behalf of the respondent firm,<sup>9</sup> or were acting as the respondent firm’s duly authorized officers or employees.<sup>10</sup> The Sanctions Board has also declined to hold a respondent firm liable where its authorized

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3. See, for example, Sanctions Board Decision No. 70 (2014) at para. 21 (payment); Sanctions Board Decision No. 72 (2014) at paras. 43–44 (offer); Sanctions Board Decision No. 87 (2016) at paras. 75–78 (collusion); Sanctions Board Decision No. 110 (2018) at paras. 28–37 (obstruction); Sanctions Board Decision No. 118 (2019) at paras. 58–60 (solicitation).

4. See, for example, Sanctions Board Decision No. 64 (2014) at paras. 38–40.

5. See, for example, Sanctions Board Decision No. 41 (2010) at para. 85; Sanctions Board Decision No. 52 (2012) at para. 32.

6. See Sanctions Board Decision No. 2 (2008); Sanctions Board Decision No. 4 (2009); Sanctions Board Decision No. 12 (2009); Sanctions Board Decision No. 27 (2010); Sanctions Board Decision No. 28 (2010); Sanctions Board Decision No. 30 (2010); Sanctions Board Decision No. 38 (2010); Sanctions Board Decision No. 39 (2010); Sanctions Board Decision No. 41 (2010); Sanctions Board Decision No. 51 (2012); Sanctions Board Decision No. 60 (2013); Sanctions Board Decision No. 61 (2013); Sanctions Board Decision No. 63 (2014); Sanctions Board Decision No. 70 (2014); Sanctions Board Decision No. 72 (2014); Sanctions Board Decision No. 73 (2014); Sanctions Board Decision No. 78 (2015); Sanctions Board Decision No. 81 (2015); Sanctions Board Decision No. 86 (2016); Sanctions Board Decision No. 87 (2016); Sanctions Board Decision No. 90 (2016); Sanctions Board Decision No. 92 (2017); Sanctions Board Decision No. 97 (2017); Sanctions Board Decision No. 99 (2017); Sanctions Board Decision No. 105 (2017); Sanctions Board Decision No. 108 (2018); Sanctions Board Decision No. 109 (2018); Sanctions Board Decision No. 110 (2018); Sanctions Board Decision No. 113 (2018); Sanctions Board Decision No. 115 (2019); Sanctions Board Decision No. 118 (2019); Sanctions Board Decision No. 120 (2019).

7. See, for example, Sanctions Board Decision No. 31 (2010) at para. 24; Sanctions Board Decision No. 113 (2018) at para. 33.

8. See, for example, Sanctions Board Decision No. 55 (2013) at para. 51; Sanctions Board Decision No. 78 (2015) at para. 61.

9. Sanctions Board Decision No. 96 (2017) at para. 71.

10. Sanctions Board Decision No. 73 (2014) at para. 36.

representatives were unaware of misconduct being committed by other individuals acting on behalf of a third party.<sup>11</sup>

5. *Defenses to vicarious liability*: The Sanctions Board has declined to accept, as a defense to vicarious liability, the respondent firm’s asserted lack of authorization of the misconduct,<sup>12</sup> or the fact that a culpable employee’s position within the corporate structure did not expose him to direct supervision.<sup>13</sup> Where a respondent argued that an employee acted in contravention of policy (aka the “rogue employee defense”), the Sanctions Board has required that the respondent also prove that it had implemented (and the culpable employee had nevertheless evaded) internal controls reasonably sufficient to prevent or detect the sanctionable practices at issue.<sup>14</sup>

### C. LIABILITY FOR ACTS OF NONEMPLOYEES

6. *Agents, joint venture and consortium partners, subcontractors, or affiliates*: The Sanctions Board has observed as a “general principle” that a respondent cannot evade liability by carrying out misconduct through an agent or an affiliate of the respondent, if that same conduct would be sanctionable if carried out directly by the respondent.<sup>15</sup> In applying this principle, the Sanctions Board found associates of a respondent firm that submitted a proposal and signed the contract liable for the sanctionable conduct that they directed.<sup>16</sup>
7. *Subsidiaries*: The Sanctions Board has held that a respondent cannot disclaim responsibility for a subsidiary within its scope of control merely because the respondent declines to exercise such control.<sup>17</sup>

### D. LIABILITY OF AFFILIATES

8. *Controlling affiliates*: The Sanctions Board has found a named controlling affiliate of a respondent liable for the misconduct carried out by that respondent where the record supported a finding that the controlling affiliate was responsible for the conduct. In assessing possible responsibility, the Sanctions Board considered whether the controlling affiliate had a duty to supervise the respondent, was aware of or willfully blind to the respondent’s misconduct, and failed to intervene to prevent or address the misconduct.<sup>18</sup>
9. *Controlled affiliates*: Without reaching a specific finding of culpability or responsibility, the Sanctions Board has generally observed that any sanction imposed on a respondent shall apply to all affiliate entities under the respondent’s direct or indirect control.<sup>19</sup>

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11. Sanctions Board Decision No. 96 (2017) at paras. 71–72.

12. See, for example, Sanctions Board Decision No. 63 (2014) at para. 71.

13. Sanctions Board Decision No. 63 (2014) at para. 72.

14. See, for example, Sanctions Board Decision No. 37 (2010) at para. 42; Sanctions Board Decision No. 47 (2012) at para. 33; Sanctions Board Decision No. 55 (2013) at paras. 53–54; Sanctions Board Decision No. 95 (2017) at para. 33.

15. Sanctions Board Decision No. 45 (2011) at para. 41.

16. See, for example, Sanctions Board Decision No. 114 (2018) at paras. 5–6, 47.

17. Sanctions Board Decision No. 45 (2011) at para. 42.

18. Sanctions Board Decision No. 65 (2014) at paras. 59–63.

19. See, for example, Sanctions Board Decision No. 69 (2014) at para. 46.

## E. LIABILITY OF SUCCESSORS AND ASSIGNS

10. *Successors*: The Sanctions Board has assessed the contested liability of a successor under an “abuse of discretion” standard, consistent with applicable Sanctions Procedures.<sup>20</sup> The Sanctions Board observed that this standard is not a basis for challenging or “second guessing” the decision maker’s ordinary exercise of judgment, the burden of proof lies with the party alleging abuse, and the Bank is entitled to a “high degree of deference” in its determination.<sup>21</sup> In its analysis of whether the Bank abused its discretion in applying a sanction to the perceived successor entity, the Sanctions Board examined the specific bases of the Bank’s conclusion and whether it was supported by evidence in the record.<sup>22</sup>

## F. OTHER PROPOSED DEFENSES TO LIABILITY

11. *Corporate changes*: The Sanctions Board has rejected asserted corporate changes, including new ownership, as a defense to liability, where the assertions were not supported by sufficient evidence.<sup>23</sup>

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20. Sanctions Board Decision No. 101 (2017) at para. 4.

21. Sanctions Board Decision No. 101 (2017) at paras. 4, 23.

22. Sanctions Board Decision No. 101 (2017) at paras. 10–23.

23. See, for example, Sanctions Board Decision No. 114 (2018) at para. 49.

# 5 Sanctioning Analysis

## HOW THE SANCTIONS BOARD SELECTS THE APPROPRIATE SANCTION

### SUMMARY OF CONTENTS

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A. Type of entity being sanctioned	<i>Paragraphs 1–2</i>
B. Number of instances of misconduct	<i>Paragraph 3</i>
C. Sanctioning factors: General background	<i>Paragraph 4</i>
D. Sanctioning factors: Aggravating	<i>Paragraphs 5–13</i>
E. Sanctioning factors: Mitigating	<i>Paragraphs 14–16</i>
F. Sanctioning factors: Other	<i>Paragraphs 17–34</i>

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**ABSTRACT** This chapter discusses the Sanctions Board’s practice in determining the specific type and magnitude of sanctions applied to respondents found liable in sanctions cases. As a preliminary matter, the Sanctions Board is required to impose a sanction on any respondent found to have engaged in a sanctionable practice.<sup>1</sup> In determining the specific type of sanction, the Sanctions Board follows the applicable Sanctions Procedures, which define a nonexclusive list of sanctioning factors.<sup>2</sup> The Sanctions Board also takes into consideration the World Bank Group’s (WBG) Sanctioning Guidelines, which are nonbinding and provide guidance as to the considerations relevant to a sanctioning decision.<sup>3</sup> In practice, the Sanctions Board has used a diverse array of sanctions, from letters of reprimand to debarments with release after a period of years, conditional on the fulfillment of specific requirements designed to reduce risk of misconduct.

The Sanctions Board’s analysis includes the following questions: (i) whether the liable entity is a respondent or an affiliate in the proceedings, (ii) whether the respondent engaged in one or multiple instances of misconduct, and (iii) what additional factors may serve to aggravate (increase) and/or mitigate (reduce) the sanction imposed.

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1. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 8.01(ii); IFC Sanctions Procedures (2012) at Section 8.01(b); MIGA Sanctions Procedures (2013) at Section 8.01(b); World Bank Private Sector Sanctions Procedures (2013) at Section 8.01(b).

2. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02; IFC Sanctions Procedures (2012) at Section 9.02; MIGA Sanctions Procedures (2013) at Section 9.02; World Bank Private Sector Sanctions Procedures (2013) at Section 9.02.

3. WBG Sanctioning Guidelines (2010).

## A. TYPE OF ENTITY BEING SANCTIONED

1. *Individuals*: The Sanctions Board has not commented on whether certain sanctions are more or less appropriate for individual respondents.
2. *Corporate entities*: The Sanctions Board has considered four rebuttable presumptions to guide its determination with respect to the application of sanctions to corporate groups or entities.<sup>4</sup> First, where the respondent is a corporate entity, sanctions presumptively apply to that entire entity as a whole unless the respondent demonstrates that only an identifiable division or business unit is responsible, and application to the entire entity is not reasonably necessary to prevent evasion.<sup>5</sup> Second, any sanction imposed shall apply to all entities controlled by a respondent, unless the respondent demonstrates that the entities are free of responsibility for the misconduct, and that application to those entities would be disproportional and is not reasonably necessary to prevent evasion.<sup>6</sup> Third, sanctions are applied to entities controlling the respondent and to entities under common control with the respondent only if the evidence reveals a degree of involvement in the sanctioned misconduct, or if such application is reasonably necessary to prevent evasion of the sanction by the culpable party/parties.<sup>7</sup> Fourth, sanctions are also applied to successors and assigns of the sanctioned respondent unless the successor or assign demonstrates that such application would violate the abovementioned principles underlying the application of sanctions to corporate groups.<sup>8</sup>

## B. NUMBER OF INSTANCES OF MISCONDUCT

### WBG Sanctioning Guidelines at Section III ("Cumulative Misconduct")

Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct (e.g., corrupt practices and collusion in connection with the same tender) or in misconduct in different cases (e.g., in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.1 ["Repeated Pattern of Conduct"] below.

(Emphasis in original.)

4. See, for example, Sanctions Board Decision No. 65 (2014) at paras. 84–85, citing the World Bank Group's Sanctions Regime: Information Note (November 2011) at p. 21, available at: [https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/The\\_World\\_Bank\\_Group\\_Sanctions\\_Regime.pdf](https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/The_World_Bank_Group_Sanctions_Regime.pdf) ("Information Note").

5. Sanctions Board Decision No. 65 (2014) at paras. 84–85; Sanctions Board Decision No. 55 (2013) at para. 87.

6. Information Note at p. 21.

7. Information Note at p. 21.

8. Information Note at p. 21.

3. *Multiple instances*: Where respondents engaged in unrelated sanctionable practices, the Sanctions Board has considered the gravity of each allegation separately and determined that a distinct base sanction<sup>9</sup> should be applied to each distinct count of misconduct,<sup>10</sup> even where all misconduct related to the same project or contract.<sup>11</sup> However, the Sanctions Board applied aggravation rather than a multiplied sanction in a case where the acts of misconduct were closely interrelated, such as where a fraudulent act sought to prevent the discovery of the corrupt practices, the investigation into which was later obstructed.<sup>12</sup>

### C. SANCTIONING FACTORS: GENERAL BACKGROUND

#### **World Bank Sanctions Procedures at Section III.A, subparagraph 9.02<sup>13</sup>** **(“Factors Affecting the Sanction Decision”)**

Except for cases involving violation of a Material Term of the VDP Terms and Conditions for which there is a mandatory ten-year debarment, the SDO or Sanctions Board, as the case may be, shall consider the following factors in determining an appropriate sanction:

- (a) the severity of the misconduct;
- (b) the magnitude of the harm caused by the misconduct;
- (c) interference by the sanctioned party in the Bank’s investigation;
- (d) the sanctioned party’s past history of misconduct as adjudicated by the World Bank Group or by another multilateral development bank in cases where debarment decisions may be enforced;
- (e) mitigating circumstances, including where the sanctioned party played a minor role in the misconduct, took voluntary corrective action or cooperated in the investigation or resolution of the case, including through settlement under Part B of this Section;
- (f) breach of the confidentiality of the sanctions proceedings as provided for in sub-paragraph 11.05;
- (g) in cases brought under sub-paragraph 1.01(c)(ii) following a determination of non-responsibility, the period of ineligibility decided by the Director, GSD;
- (h) the period of temporary suspension already served by the sanctioned party; and
- (i) any other factor that the SDO or Sanctions Board, as the case may be, reasonably deems relevant to the sanctioned party’s culpability or responsibility in relation to the Sanctionable Practice.

9. A “base sanction” is the sanction selected prior to the consideration of any sanctioning factors and application of any aggravation or mitigation on that basis. The base sanction for all misconduct is debarment with the possibility of conditional release after a minimum period of three years (WBG Sanctioning Guidelines (2010) at Section I).

10. See, for example, Sanctions Board Decision No. 102 (2017) at para. 66.

11. See, for example, Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 97 (2017) at para. 66.

12. See Sanctions Board Decision No. 60 (2013) at para. 143.

13. See also IFC Sanctions Procedures (2012) at Section 9.02; MIGA Sanctions Procedures (2013) at Section 9.02; World Bank Private Sector Sanctions Procedures (2013) at Section 9.02.

### WBG Sanctioning Guidelines at Introduction (p. 1)

“[T]hese Guidelines . . . are not meant to be prescriptive in nature, but [are meant] to provide guidance to those who have discretion to impose sanctions on behalf of the WBG as to the considerations that the WBG believes are relevant to any sanctioning decision.”

4. *Rules and guidance*: As set out in the excerpts above, the Sanctions Procedures require consideration of enumerated “factors affecting the sanction decision,” and the general category of “any other factor that [the decision maker] reasonably deems relevant to the sanctioned party’s culpability or responsibility in relation to the Sanctionable Practice.”<sup>14</sup> The WBG Sanctioning Guidelines provide additional nonprescriptive guiding principles on sanctioning analysis, which include specific examples of circumstances that may support the application of “aggravating” or “mitigating” factors identified in the Sanctions Procedures, and propose the impact of individual factors on a respondent’s sanction. This Law Digest presents the Sanctions Board’s analysis in this area consistent with the structure of the Sanctions Procedures and the Sanctioning Guidelines read together—beginning with potential aggravating factors, followed by potential mitigating factors, and concluding with other factors that may impact the severity analysis of a sanction.

## D. SANCTIONING FACTORS: AGGRAVATING

5. *Severity of misconduct*: The Sanctions Board must consider this factor, pursuant to the applicable Sanctions Procedures.<sup>15</sup> Section IV.A of the WBG Sanctioning Guidelines identifies a repeated pattern of conduct, sophisticated means of the misconduct, central role in the misconduct, management’s role in the misconduct, and involvement of a public official or World Bank staff as examples of severity.
- i. *Repeated pattern of conduct*: The WBG Sanctioning Guidelines do not define what may constitute a “repeated pattern of conduct.” The Sanctions Board has applied aggravation on this basis where the misconduct related to several contracts or projects, was prompted by different requirements in the same tender, and/or extended over a period of time.<sup>16</sup> In contrast, the Sanctions Board has declined to apply aggravation where the sanctionable conduct was attributed to a “single scheme” or a “single course of action,”<sup>17</sup>

14. World Bank Sanctions Procedures at Section III.A, subparagraph 9.02(i).

15. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(a); IFC Sanctions Procedures (2012) at Section 9.02(a); MIGA Sanctions Procedures (2013) at Section 9.02(a); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(a).

16. See, for example, Sanctions Board Decision No. 60 (2013) at para. 122; Sanctions Board Decision No. 72 (2014) at para. 56; Sanctions Board Decision No. 74 (2014) at para. 36; Sanctions Board Decision No. 82 (2015) at para. 44; Sanctions Board Decision No. 98 (2017) at para. 57; Sanctions Board Decision No. 102 (2017) at para. 68.

17. See, for example, Sanctions Board Decision No. 63 (2014) at para. 97; Sanctions Board Decision No. 79 (2015) at para. 39; Sanctions Board Decision No. 86 (2016) at para. 47; Sanctions Board Decision No. 105 (2017) at para. 26; Sanctions Board Decision No. 106 (2017) at para. 35; Sanctions Board Decision No. 117 (2019) at para. 33; Sanctions Board Decision No. 120 (2019) at para. 50.



- or where the asserted additional instances of misconduct were not the subject of the same sanctions proceedings or supported by evidence.<sup>18</sup>
- ii. *Sophisticated means*: The WBG Sanctioning Guidelines advise that respondents may be found to have used sophisticated means in the course of their misconduct, as evidenced by the complexity of the misconduct (including the degree of planning, diversity of techniques, and level of concealment), number and type of actors involved, duration of the scheme, or number of jurisdictions involved.<sup>19</sup> The Sanctions Board has applied aggravation where the respondent's conduct reflected "considerable forethought and planning,"<sup>20</sup> comprised "a variety of tactics" or "diversity of techniques,"<sup>21</sup> and/or was implemented over a period of time with the active involvement of several individuals or entities.<sup>22</sup>
  - iii. *Central role in misconduct*: According to the WBG Sanctioning Guidelines, a respondent plays a central role in a sanctionable practice by acting as the organizer, leader, planner, or prime mover in a group of two or more.<sup>23</sup> Consistent with this definition, the Sanctions Board has applied aggravation where the respondent led or initiated misconduct involving two or more individuals or entities.<sup>24</sup> The Sanctions Board has declined to apply aggravation where the record did not reflect that at least one other party apart from the respondent participated in the misconduct,<sup>25</sup> or that the respondent was the leader or prime mover in that misconduct.<sup>26</sup>
  - iv. *Management's role in misconduct*: The WBG Sanctioning Guidelines recommend aggravation where a high-level employee of the respondent firm participated in, condoned, or was willfully ignorant of the sanctionable practice.<sup>27</sup> Accordingly, the Sanctions Board has applied aggravation where the record showed that senior members of a respondent entity's management personally participated in the misconduct.<sup>28</sup>

18. See, for example, Sanctions Board Decision No. 73 (2014) at para. 43; Sanctions Board Decision No. 102 (2014) at para. 68; Sanctions Board Decision No. 104 (2017) at para. 36.

19. WBG Sanctioning Guidelines (2010) at Section IV.A.2.

20. See, for example, Sanctions Board Decision No. 69 (2014) at para. 33 (where a respondent fabricated three different types of documents, which included an inauthentic stamp and forged signatures and seals); Sanctions Board Decision No. 112 (2018) at para. 48 (where a collusive scheme included duplication of a large volume of documents, with targeted revisions so as to lend these documents the appearance of authenticity).

21. See, for example, Sanctions Board Decision No. 87 (2016) at para. 127 (where a collusive scheme used manipulation of bid requirements, collaborative bid preparation and submission, improper payments to a government official, and influence of potential competitors); Sanctions Board Decision No. 93 (2017) at para. 96 (where a corrupt scheme used a variety of tactics, including an intermediary to pay bribes, provision of personal trips for public officials, and provision of information to a public official used to disqualify competitors); Sanctions Board Decision No. 95 (2017) at para. 40 (where a corrupt scheme used a variety of tactics, including receipt of confidential bid information from a public official, use of an alias by the public official in an agreement with the respondent, and use of an intermediary to pay a bribe).

22. See, for example, Sanctions Board Decision No. 63 (2014) at para. 98 (where a corrupt scheme was implemented over several years, with active participation by a high number of individuals and organizations in planning and executing that scheme).

23. WBG Sanctioning Guidelines (2010) at Section IV.A.3.

24. See, for example, Sanctions Board Decision No. 60 (2013) at para. 124; Sanctions Board Decision No. 90 (2016) at para. 38; Sanctions Board Decision No. 114 (2018) at para. 56.

25. See, for example, Sanctions Board Decision No. 67 (2014) at para. 37; Sanctions Board Decision No. 86 (2016) at para. 48; Sanctions Board Decision No. 115 (2019) at para. 65.

26. See, for example, Sanctions Board Decision No. 85 (2016) at para. 40.

27. WBG Sanctioning Guidelines (2010) at Section IV.A.4.

28. See, for example, Sanctions Board Decision No. 66 (2014) at para. 36; Sanctions Board Decision No. 70 (2014) at para. 32; Sanctions Board Decision No. 87 (2016) at para. 129; Sanctions Board Decision No. 93 (2017) at para. 97; Sanctions Board Decision No. 102 (2017) at para. 69; Sanctions Board Decision No. 110 (2018) at para. 40; Sanctions Board Decision No. 120 (2019) at para. 51.

In its analysis, the Sanctions Board has assessed the seniority of staff positions on a case-by-case basis.<sup>29</sup> The Sanctions Board has declined to apply aggravation for individual respondents on the basis of their own positions within the company.<sup>30</sup>

- v. *Involvement of public official or World Bank staff*: Under the WBG Sanctioning Guidelines, another example of severe misconduct is where respondents conspire with, or involve, a public official or World Bank staff in the sanctionable practice.<sup>31</sup> The Sanctions Board has applied aggravation where the respondents conspired with public officials to secure contracts;<sup>32</sup> and where the respondents, admittedly acting on their own initiative, proactively offered and paid a bribe to a public official.<sup>33</sup> The Sanctions Board has declined to apply aggravation where the record did not establish that the respondent specifically conspired with, or took the initiative to involve, a public official in the respondent's misconduct.<sup>34</sup>
6. *Magnitude of harm*: The Sanctions Board must consider this factor, pursuant to the applicable Sanctions Procedures.<sup>35</sup> Section IV.B of the WBG Sanctioning Guidelines identifies harm to public safety/welfare and harm to project as examples of harm caused by the misconduct. The Sanctions Board has applied aggravation where the misconduct directly compromised a procurement/selection process or contract execution. Examples include instances where the misconduct caused substantial delays, introduced risk of structural damage to contract works, wasted the borrower's time and resources,<sup>36</sup> necessitated rebidding and derailed the procurement process,<sup>37</sup> resulted in financial harm,<sup>38</sup> exposed the Bank or member country to serious operational and reputational risks,<sup>39</sup> or led to the termination of the contract.<sup>40</sup> The Sanctions Board has noted that aggravation does not require that the magnitude of harm exceed a certain value threshold or that the respondent be the sole cause of the harm.<sup>41</sup> The Sanctions Board has declined to apply aggravation where the record did not support the fact of the asserted harm (beyond general detriment to the Bank's partner country), or a causal link between that specific harm and the misconduct.<sup>42</sup>

29. See, for example, Sanctions Board Decision No. 56 (2013) at para. 56; Sanctions Board Decision No. 60 (2013) at para. 125; Sanctions Board Decision No. 78 (2015) at para. 77; Sanctions Board Decision No. 97 (2017) at para. 71; Sanctions Board Decision No. 106 (2018) at para. 36.

30. See, for example, Sanctions Board Decision No. 86 (2016) at para. 54; Sanctions Board Decision No. 108 (2018) at para. 73.

31. WBG Sanctioning Guidelines (2010) at Section IVA.5.

32. See, for example, Sanctions Board Decision No. 87 (2016) at para. 130; Sanctions Board Decision No. 115 (2019) at para. 67.

33. See Sanctions Board Decision No. 70 (2014) at para. 33.

34. See, for example, Sanctions Board Decision No. 50 (2012) at para. 62; Sanctions Board Decision No. 60 (2013) at para. 126; Sanctions Board Decision No. 83 (2015) at para. 85; Sanctions Board Decision No. 93 (2017) at para. 98; Sanctions Board Decision No. 108 (2018) at para. 74.

35. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(b); IFC Sanctions Procedures (2012) at Section 9.02(b); MIGA Sanctions Procedures (2013) at Section 9.02(b); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(b).

36. See, for example, Sanctions Board Decision No. 44 (2011) at para. 63; Sanctions Board Decision No. 50 (2012) at para. 64.

37. See, for example, Sanctions Board Decision No. 50 (2012) at para. 64; Sanctions Board Decision No. 55 (2013) at paras. 67–68.

38. See, for example, Sanctions Board Decision No. 53 (2012) at para. 56; Sanctions Board Decision No. 98 (2017) at para. 61.

39. See, for example, Sanctions Board Decision No. 65 (2014) at para. 75; Sanctions Board Decision No. 69 (2014) at para. 35.

40. See, for example, Sanctions Board Decision No. 83 (2016) at para. 86; Sanctions Board Decision No. 86 (2016) at para. 49.

41. See Sanctions Board Decision No. 82 (2015) at para. 47.

42. See, for example, Sanctions Board Decision No. 49 (2012) at paras. 28, 36; Sanctions Board Decision No. 78 (2015) at para. 78; Sanctions Board Decision No. 93 (2017) at para. 99; Sanctions Board Decision No. 94 (2017) at para. 44; Sanctions Board Decision No. 115 (2019) at para. 68.

7. *Interference by the sanctioned party in the Bank's investigation*: The Sanctions Board must consider this factor, pursuant to the applicable Sanctions Procedures.<sup>43</sup> Section IV.C of the WBG Sanctioning Guidelines identifies specific types of interference with the investigative process as well as intimidation or payment of a witness as examples of interference with the investigation.
- i. *Interference with investigative process*: The WBG Sanctioning Guidelines advise that interference with the investigative process includes false statements to investigators, tampering with material evidence, and acts to impede the Bank's audit or inspection rights.<sup>44</sup> The Sanctions Board has applied aggravation where respondents made false statements to the Integrity Vice Presidency (INT) or attempted to influence their employees to withhold cooperation.<sup>45</sup> The Sanctions Board has also applied aggravation where respondents concealed, destroyed, or altered material evidence;<sup>46</sup> but has applied limited aggravation where the evidence concealed or deleted was subsequently recovered and provided to INT.<sup>47</sup> The Sanctions Board has declined to apply aggravation where the respondent refused to provide information to INT, but such refusal did not amount to overt acts that impeded INT's investigation<sup>48</sup> or was not accompanied by the intent to interfere.<sup>49</sup> In such assessments, the Sanctions Board focused on the scope and articulation of any requests from INT as well as the specific actions of the respondents in the context of that investigation.<sup>50</sup>
  - ii. *Intimidation/payment of a witness*: The WBG Sanctioning Guidelines advise that this category includes offering a witness payment in exchange for noncooperation with the Bank, or causing or threatening injury to a witness's person, employment, assets, reputation, family, or significant other.<sup>51</sup> INT has previously requested aggravation on this basis, alleging, inter alia, that individuals acting on the respondents' behalf repeatedly and insistently contacted a witness or made statements intended to intimidate a witness's family member.<sup>52</sup> The Sanctions Board declined to apply aggravation in those cases, however, holding that the actions in question, assessed in context, did not support a finding of threats, harassment, or intimidation; or that INT's assertions of intimidation relied on contested evidence of low probative value.<sup>53</sup>

43. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(c); IFC Sanctions Procedures (2012) at Section 9.02(c); MIGA Sanctions Procedures (2013) at Section 9.02(c); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(c).

44. WBG Sanctioning Guidelines (2010) at Section IV.C.1.

45. See, for example, Sanctions Board Decision No. 63 (2013) at para. 102; Sanctions Board Decision No. 87 (2016) at para. 132; Sanctions Board Decision No. 92 (2017) at para. 115.

46. See, for example, Sanctions Board Decision No. 56 (2013) at paras. 57–59; Sanctions Board Decision No. 63 (2013) at para. 102; Sanctions Board Decision No. 114 (2018) at para. 58.

47. See Sanctions Board Decision No. 106 (2017) at para. 37.

48. See, for example, Sanctions Board Decision No. 69 (2014) at para. 37; Sanctions Board Decision No. 86 (2016) at para. 50.

49. See, for example, Sanctions Board Decision No. 115 (2019) at para. 69.

50. See, for example, Sanctions Board Decision No. 71 (2014) at para. 88; Sanctions Board Decision No. 112 (2018) at para. 49.

51. WBG Sanctioning Guidelines (2010) at Section IV.C.2.

52. See, for example, Sanctions Board Decision No. 47 (2012) at para. 46; Sanctions Board Decision No. 87 (2016) at para. 133.

53. See Sanctions Board Decision No. 47 (2012) at para. 47; Sanctions Board Decision No. 87 (2016) at paras. 62, 134.

8. *Past history of misconduct*: The Sanctions Procedures require that the Sanctions Board consider the sanctioned party's past history of misconduct as adjudicated by the World Bank Group or by another multilateral development bank in cases where debarment decisions may be enforced.<sup>54</sup> The WBG Sanctioning Guidelines define this as "prior debarment or other penalty" imposed either by WBG or other development banks and suggest an increase of 10 years of debarment on this basis.<sup>55</sup> The WBG Sanctioning Guidelines further state that, in order to warrant aggravation, the history of misconduct must involve misconduct other than the misconduct for which the respondent is being sanctioned.<sup>56</sup> The Sanctions Board has not previously applied aggravation on this basis and has specifically declined to apply aggravation on the basis of a settlement agreement between a sanctioned entity's subsidiary and the Bank's General Services Department.<sup>57</sup> The Sanctions Board has also consistently declined to consider the absence of past history of misconduct as a potential basis for mitigation of a sanction.<sup>58</sup>
9. *Other aggravating factors*: The Sanctions Procedures require the Sanctions Board to consider "any other factor" that may be "relevant to the sanctioned party's culpability or responsibility in relation to the [s]anctionable [p]ractice."<sup>59</sup> The factors in the following paragraphs were not enumerated in the Sanctions Procedures or described in the WBG Sanctioning Guidelines, but have been asserted by one of the parties in sanctions proceedings or identified by the Sanctions Board as relevant in its analysis and potentially aggravating as to the final sanction.
10. *Lack of candor*: The Sanctions Board has applied aggravation for actions that demonstrate a respondent's lack of candor in the proceedings, such as persistent yet implausible statements contradicting substantial evidence.<sup>60</sup>
11. *Absence of remorse and failure to respect the sanctions process*: The Sanctions Board has applied aggravation where the respondent's conduct demonstrated a lack of genuine remorse or acknowledgment of the inappropriateness of the misconduct.<sup>61</sup>
12. *Shifting factual assertions*: The Sanctions Board has applied aggravation where it found that a respondent significantly changed his positions from his statements to INT during the investigation to his statements to the Sanctions Board at the hearing.<sup>62</sup>

54. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(d); IFC Sanctions Procedures (2012) at Section 9.02(d); MIGA Sanctions Procedures (2013) at Section 9.02(d); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(d).

55. WBG Sanctioning Guidelines (2010) at Section IV.D.

56. WBG Sanctioning Guidelines (2010) at Section IV.D.

57. See Sanctions Board Decision No. 83 (2015) at para. 87.

58. See, for example, Sanctions Board Decision No. 55 (2013) at paras. 70–72. See also Section F, paragraph 28 ("Absence of aggravating factors").

59. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(i); IFC Sanctions Procedures (2012) at Section 9.02(i); MIGA Sanctions Procedures (2013) at Section 9.02(i); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(i).

60. See, for example, Sanctions Board Decision No. 71 (2014) at para. 107; Sanctions Board Decision No. 77 (2015) at para. 59; Sanctions Board Decision No. 87 (2016) at para. 152; Sanctions Board Decision No. 90 (2016) at para. 48; Sanctions Board Decision No. 95 (2017) at para. 52 (declining to apply aggravation).

61. See Sanctions Board Decision No. 100 (2017) at para. 58.

62. See Sanctions Board Decision No. 73 (2014) at para. 54.

13. *Other contractual violations or improper conduct:* The Sanctions Board has declined to apply aggravation where the respondents purportedly committed other contractual violations or engaged in other improper conduct that are distinct from the misconduct at issue.<sup>63</sup>

## E. SANCTIONING FACTORS: MITIGATING

14. *Minor role in the misconduct:* The Sanctions Procedures require the Sanctions Board to consider circumstances where the sanctioned party played a minor role in the misconduct as potentially mitigating.<sup>64</sup> The WBG Sanctioning Guidelines suggest that such circumstances may exist where the respondent was a minor, minimal, or peripheral participant; or where no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.<sup>65</sup> Consistent with these standards, the Sanctions Board has applied mitigation where the respondent's role in the misconduct appeared to be indirect;<sup>66</sup> the respondent's participation was more passive and limited than that of other participants;<sup>67</sup> or the respondent did not prompt, encourage, or develop the scheme at issue.<sup>68</sup> The Sanctions Board has also applied mitigation where junior employees of the respondent engaged in the misconduct, but the respondent's management did not affirmatively participate or condone that behavior.<sup>69</sup> Conversely, the Sanctions Board has declined to apply mitigation where the respondent (or, in the case of a respondent firm, its culpable staff) held a high-level position or had decision-making authority.<sup>70</sup> Finally, the Sanctions Board has also declined to apply mitigation where a respondent firm's request for mitigation on this basis was simply not supported by evidence.<sup>71</sup>
15. *Voluntary corrective action—general standards:* The Sanctions Procedures require the Sanctions Board to consider as potentially mitigating the sanctioned party's voluntary corrective action in relation to the misconduct.<sup>72</sup> The WBG Sanctioning Guidelines suggest that such corrective action may include the respondent's cessation of misconduct, internal action taken against a responsible individual, effective compliance program, or restitution or another financial remedy.<sup>73</sup> The Sanctions Board has held that a respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action,<sup>74</sup>

63. See, for example, Sanctions Board Decision No. 78 (2015) at para. 92; Sanctions Board Decision No. 83 (2015) at para. 103.

64. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(e); IFC Sanctions Procedures (2012) at Section 9.02(e); MIGA Sanctions Procedures (2013) at Section 9.02(e); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(e).

65. WBG Sanctioning Guidelines at Section V.A.

66. Sanctions Board Decision No. 83 (2015) at para. 88.

67. Sanctions Board Decision No. 45 (2011) at para. 61.

68. Sanctions Board Decision No. 60 (2013) at para. 128; Sanctions Board Decision No. 66 (2014) at para. 37.

69. Sanctions Board Decision No. 46 (2012) at para. 37; Sanctions Board Decision No. 116 (2019) at para. 23.

70. Sanctions Board Decision No. 54 (2012) at para. 38; Sanctions Board Decision No. 55 (2013) at para. 75; Sanctions Board Decision No. 79 (2015) at para. 41.

71. See, for example, Sanctions Board Decision No. 109 (2018) at para. 45.

72. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(e); IFC Sanctions Procedures (2012) at Section 9.02(e); MIGA Sanctions Procedures (2013) at Section 9.02(e); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(e).

73. WBG Sanctioning Guidelines at Section V.B.

74. See, for example, Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 51 (2012) at paras. 51, 86; Sanctions Board Decision No. 52 (2012) at para. 39; Sanctions Board Decision No. 53 (2012) at para. 59; Sanctions Board Decision No. 60 (2013) at para. 129; Sanctions Board Decision No. 67 (2014) at para. 38; Sanctions Board Decision No. 71 (2014) at para. 92.

and that the lack of sufficiently concrete supporting evidence will limit or eliminate any possible mitigating credit on this basis.<sup>75</sup> The Sanctions Board has observed that both motivation and timeliness of a claimed corrective action are relevant to the analysis of possible mitigation.<sup>76</sup>

- i. *Cessation of misconduct*: The Sanctioning Guidelines advise that the timing of the cessation of misconduct may indicate the degree to which it reflects genuine remorse and intention to reform, rather than being a calculated step to reduce the severity of the sanction.<sup>77</sup> The Sanctions Board has found that mitigation on this basis was warranted where the management of a respondent acted promptly and took meaningful corrective measures to halt the sanctionable practices, such as terminating business relationships with other participants in the misconduct and formally revising relevant internal processes.<sup>78</sup> Conversely, the Sanctions Board declined to apply mitigation where the asserted action to discontinue the misconduct was not effective or timely.<sup>79</sup>
- ii. *Internal action against responsible individual*: The WBG Sanctioning Guidelines propose this as an additional example of voluntary corrective action and advise that mitigation may be justified where a respondent's management takes appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative.<sup>80</sup> The Sanctions Board has granted varying degrees of mitigation where the record included documentary evidence that the respondent undertook internal disciplinary action against participants in the misconduct, including demotions, reprimands, withholding of bonuses, and provisional measures.<sup>81</sup> Conversely, the Sanctions Board has declined to apply mitigation where a respondent did not specify or offer evidence that the claimed disciplinary actions took place, were implemented in a timely manner, were taken in response to the sanctionable conduct at issue, and/or were meaningful and proportionate to the misconduct.<sup>82</sup>
- iii. *Effective compliance program*: The WBG Sanctioning Guidelines advise that mitigation may be appropriate on this basis where a respondent establishes or improves, and implements a corporate compliance program.<sup>83</sup> The Sanctions Board has granted varying degrees of mitigation where a respondent demonstrated that it implemented an effective integrity compliance program, including by submitting evidence of specific policies and procedures relevant to the type of misconduct at issue and measures that corresponded with the principles set out in the World Bank Group's Integrity Compliance

75. See, for example, Sanctions Board Decision No. 51 (2012) at para. 88.

76. See Sanctions Board Decision No. 45 (2011) at para. 73.

77. WBG Sanctioning Guidelines at Section V.B.1.

78. See, for example, Sanctions Board Decision No. 56 (2013) at para. 64; Sanctions Board Decision No. 63 (2014) at para. 105.

79. See, for example, Sanctions Board Decision No. 67 (2014) at para. 39.

80. WBG Sanctioning Guidelines at Section V.B.2.

81. See, for example, Sanctions Board Decision No. 2 (2008) at para. 7; Sanctions Board Decision No. 46 (2012) at para. 39; Sanctions Board Decision No. 48 (2012) at para. 44; Sanctions Board Decision No. 63 (2014) at para. 106.

82. See, for example, Sanctions Board Decision No. 44 (2011) at para. 72; Sanctions Board Decision No. 49 (2012) at para. 38; Sanctions Board Decision No. 55 (2013) at para. 77; Sanctions Board Decision No. 74 (2014) at para. 40; Sanctions Board Decision No. 83 (2015) at para. 91; Sanctions Board Decision No. 102 (2017) at para. 73; Sanctions Board Decision No. 106 (2017) at para. 41; Sanctions Board Decision No. 116 (2019) at para. 25.

83. WBG Sanctioning Guidelines at Section V.B.3.

Guidelines.<sup>84</sup> The Sanctions Board has held that the extent of mitigation applied, and the question of whether mitigation is warranted, may depend on the quality and quantity of evidence presented, the scope and nature of the integrity compliance measures applied, and the timing of implementation of the compliance program.<sup>85</sup> The Sanctions Board has held that its findings with respect to mitigation of a final sanction based on an integrity compliance program are made without prejudice to any future assessment that the WBG Integrity Compliance Officer may conduct to more fully evaluate the adequacy and implementation of the respondent's integrity compliance measures.<sup>86</sup>

- iv. *Restitution or financial remedy*: The WBG Guidelines advise that mitigation may be appropriate where a respondent voluntarily addresses any inadequacies in contract implementation or returns funds obtained through the misconduct.<sup>87</sup> The Sanctions Board has found that mitigation was warranted where respondents offered restitution for damages or completed work without charge, demonstrating their willingness to take responsibility for the misconduct.<sup>88</sup> However, the Sanctions Board has declined to apply mitigation where the asserted financial remedy was in fact a consequence of enforcing the respondent's preexisting contractual obligations.<sup>89</sup>
16. *Cooperation with investigation*: Section III.A, subparagraph 9.02(e) of the Sanctions Procedures requires that the Sanctions Board consider circumstances where the sanctioned party cooperated in the investigation or resolution of the case. The WBG Sanctioning Guidelines identify various forms of cooperative conduct, outlined in turn below.
- i. *Assistance and/or ongoing cooperation*: The WBG Sanctioning Guidelines advise that cooperation may be reflected in a variety of factors, including INT's representation that the respondent substantially assisted the investigation and other evidence of voluntary disclosure. The WBG Sanctioning Guidelines also provide that the truthfulness, completeness, reliability of any information or testimony provided; the nature and extent of the assistance; and the timeliness of assistance are relevant to the degree of possible mitigation.<sup>90</sup> The Sanctions Board has applied mitigation where respondents' cooperation was reflected in meetings with INT, their responsiveness to INT's inquiries,<sup>91</sup> the provision of substantial (especially

84. See, for example, Sanctions Board Decision No. 48 (2012) at para. 44; Sanctions Board Decision No. 53 (2012) at paras. 60–61; Sanctions Board Decision No. 55 (2013) at para. 78; Sanctions Board Decision No. 56 (2013) at para. 69; Sanctions Board Decision No. 60 (2013) at para. 130; Sanctions Board Decision No. 63 (2014) at para. 107; Sanctions Board Decision No. 68 (2014) at para. 40; Sanctions Board Decision No. 71 (2014) at paras. 93–94; Sanctions Board Decision No. 113 (2018) at para. 42.

85. See, for example, Sanctions Board Decision No. 45 (2011) at para. 74; Sanctions Board Decision No. 47 (2012) at para. 51; Sanctions Board Decision No. 51 (2012) at para. 52; Sanctions Board Decision No. 56 (2013) at para. 69; Sanctions Board Decision No. 63 (2014) at para. 107; Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39; Sanctions Board Decision No. 75 (2014) at para. 31; Sanctions Board Decision No. 87 (2016) at para. 138; Sanctions Board Decision No. 112 (2018) at para. 52; Sanctions Board Decision No. 116 (2019) at para. 26; Sanctions Board Decision No. 117 (2019) at para. 36; Sanctions Board Decision No. 120 (2019) at paras. 55–57.

86. See, for example, Sanctions Board Decision No. 71 (2014) at para. 94.

87. WBG Sanctioning Guidelines at Section V.B.4.

88. See Sanctions Board Decision No. 53 (2012) at para. 62; Sanctions Board Decision No. 78 (2015) at para. 82; Sanctions Board Decision No. 102 (2017) at para. 75.

89. Sanctions Board Decision No. 44 (2011) at para. 74; Sanctions Board Decision No. 56 (2013) at para. 70.

90. WBG Sanctioning Guidelines at Section V.C.1.

91. One type of inquiry that INT frequently makes to potential respondents in relation to sanctions proceedings is a show-cause letter. This is a standard type of document that generally notifies the respondent of INT's investigation and its basic findings, informs the respondent what sanctionable practices appear to have taken place, and invites the respondent to provide explanations and evidence relevant to the investigation.

inculpatory) documentary evidence, and other assistance in the investigation (such as organizing an interview with a witness).<sup>92</sup> The degree of mitigation granted by the Sanctions Board has been proportionate to the extent of respondents' cooperative conduct.<sup>93</sup> Notably, a finding of interference with INT's investigation in the same case has served as an indicator that the assistance provided was not substantial, but has not precluded mitigation for a respondent's otherwise cooperative conduct.<sup>94</sup> Further, the Sanctions Board has held that mitigating credit on the basis of cooperation is not diminished by a respondent's request to consult a lawyer in the course of an interview<sup>95</sup> or a respondent's criticism of the conduct of INT's investigation.<sup>96</sup> The Sanctions Board has declined to apply any mitigation where the assistance provided to INT by respondents consisted of unsubstantiated assertions, did not bear clear relevance to the sanctions proceedings at issue, and/or otherwise appeared to have low credibility by way of internal inconsistencies and less-than-candid conduct.<sup>97</sup>

- ii. *Internal investigation*: The WBG Sanctioning Guidelines advise that mitigation may be granted where a respondent conducted an effective internal investigation of the misconduct and shared its results with INT.<sup>98</sup> In determining whether to apply mitigation on this basis, the Sanctions Board has considered both the nature of the investigation and the respondent's conduct thereafter. Specifically, the Sanctions Board has assessed whether the investigation appeared to be appropriately thorough, or was conducted by independent and qualified professionals, and whether it produced evidence relevant and material to the investigation, which the respondent then shared with INT.<sup>99</sup>
- iii. *Admission/acceptance of guilt/responsibility*: The WBG Sanctioning Guidelines advise that the scope and timing of admissions or acceptance of guilt/responsibility are relevant to potential mitigation on this basis.<sup>100</sup> The Sanctions Board has applied mitigation on this basis where respondents took responsibility for their own or their employees' misconduct and did not contest INT's specific and otherwise

92. See, for example, Sanctions Board Decision No. 47 (2012) at para. 53; Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 63 (2014) at para. 110; Sanctions Board Decision No. 66 (2014) at para. 42; Sanctions Board Decision No. 68 (2014) at para. 42; Sanctions Board Decision No. 70 (2014) at para. 35; Sanctions Board Decision No. 72 (2014) at para. 61; Sanctions Board Decision No. 73 (2014) at paras. 47–48; Sanctions Board Decision No. 74 (2014) at para. 42; Sanctions Board Decision No. 102 (2017) at para. 77; Sanctions Board Decision No. 116 (2019) at para. 28.

93. See, for example, Sanctions Board Decision No. 55 (2013) at para. 80; Sanctions Board Decision No. 65 (2014) at paras. 79–80; Sanctions Board Decision No. 67 (2014) at para. 41.

94. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 141–144; Sanctions Board Decision No. 106 (2017) at paras. 37, 43.

95. Sanctions Board Decision No. 60 (2013) at para. 133.

96. Sanctions Board Decision No. 65 (2014) at para. 81.

97. See, for example, Sanctions Board Decision No. 61 (2013) at para. 44; Sanctions Board Decision No. 69 (2014) at para. 41; Sanctions Board Decision No. 77 (2015) at para. 54; Sanctions Board Decision No. 83 (2015) at para. 106; Sanctions Board Decision No. 103 (2017) at para. 38.

98. WBG Sanctioning Guidelines at Section V.C.2.

99. See, for example, Sanctions Board Decision No. 55 (2013) at para. 81; Sanctions Board Decision No. 63 (2014) at para. 112; Sanctions Board Decision No. 91 (2016) at paras. 44–45; Sanctions Board Decision No. 111 (2018) at paras. 56–57.

100. WBG Sanctioning Guidelines at Section V.C.3.



substantiated allegations of sanctionable practice.<sup>101</sup> The belated, inconsistent, or incomplete nature of some admissions has reduced or, at times, eliminated their mitigating value in the Sanctions Board's decisions.<sup>102</sup>

- iv. *Voluntary restraint*: The WBG Sanctioning Guidelines advise that voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation may also be considered as a form of assistance and/or cooperation.<sup>103</sup> The Sanctions Board has granted mitigation where a respondent provided sufficient corroboration for its asserted voluntary restraint, such as contemporaneous evidence of a formal company policy<sup>104</sup> or proof of withdrawal of bids for Bank-financed contracts pending the outcome of INT's investigation.<sup>105</sup> Conversely, the Sanctions Board has declined to grant mitigation where respondents claimed but failed to demonstrate a policy or practice of voluntary restraint prior to any temporary suspension from eligibility.<sup>106</sup>

## F. SANCTIONING FACTORS: OTHER

The Sanctions Procedures require the Sanctions Board to consider “any other factor” that may be “relevant to the sanctioned party’s culpability or responsibility in relation to the [s]anctionable [p]ractice,”<sup>107</sup> as well as the respondent’s period of temporary suspension prior to final sanction,<sup>108</sup> any breach in the applicable rules of confidentiality,<sup>109</sup> and any period of ineligibility following a determination by the Director of GSD<sup>110</sup> (the Bank’s General Services Department, which can sanction vendors).<sup>111</sup> Unless otherwise specified, additional factors in the following paragraphs were not enumerated in the Sanctions Procedures or described in the WBG Sanctioning Guidelines, but have been asserted by one of the parties in sanctions proceedings or identified by the Sanctions Board as relevant in its analysis and potentially mitigating as to the final sanction.

101. See, for example, Sanctions Board Decision No. 46 (2012) at para. 41; Sanctions Board Decision No. 108 (2018) at para. 78.

102. See, for example, Sanctions Board Decision No. 36 (2010) at para. 41; Sanctions Board Decision No. 55 (2013) at para. 82; Sanctions Board Decision No. 60 (2013) at para. 134; Sanctions Board Decision No. 61 (2013) at para. 47; Sanctions Board Decision No. 66 (2014) at para. 43; Sanctions Board Decision No. 70 (2014) at para. 36; Sanctions Board Decision No. 75 (2014) at para. 35; Sanctions Board Decision No. 92 (2017) at para. 125; Sanctions Board Decision No. 97 (2017) at para. 74; Sanctions Board Decision No. 99 (2017) at paras. 33–34; Sanctions Board Decision No. 105 (2017) at para. 30.

103. WBG Sanctioning Guidelines at Section V.C.4.

104. See, for example, Sanctions Board Decision No. 83 (2015) at para. 99.

105. Sanctions Board Decision No. 102 (2017) at para. 80.

106. See, for example, Sanctions Board Decision No. 44 (2011) at para. 66; Sanctions Board Decision No. 74 (2014) at para. 45; Sanctions Board Decision No. 111 (2018) at paras. 58–59; Sanctions Board Decision No. 116 (2019) at para. 31.

107. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(i); IFC Sanctions Procedures (2012) at Section 9.02(i); MIGA Sanctions Procedures (2013) at Section 9.02(i); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(i).

108. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(h); IFC Sanctions Procedures (2012) at Section 9.02(h); MIGA Sanctions Procedures (2013) at Section 9.02(h); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(h).

109. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(f); IFC Sanctions Procedures (2012) at Section 9.02(f); MIGA Sanctions Procedures (2013) at Section 9.02(f); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(f).

110. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(g); IFC Sanctions Procedures (2012) at Section 9.02(g); MIGA Sanctions Procedures (2013) at Section 9.02(g); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(g).

111. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 1(c)(ii).

17. *Period of temporary suspension:* The Sanctions Procedures require that the Sanctions Board consider the period of a respondent's temporary suspension prior to the conclusion of sanctions proceedings.<sup>112</sup> The Sanctions Board has always taken into account this period of suspension (including any "early" temporary suspension)<sup>113</sup> in its decisions, but, in adjusting the sanction on this basis, has also taken note of the circumstances of any delays that extended the duration of proceedings.<sup>114</sup>
18. *Breach of confidentiality:* The Sanctions Procedures require that the Sanctions Board consider in its analysis any breach of confidentiality rules set out for sanctions proceedings.<sup>115</sup> The Sanctions Board has taken into account a respondent's disclosure of certain evidence in the record to third parties, contrary to the provisions of the Sanctions Procedures, in calculating the appropriate sanction in that case.<sup>116</sup> The relevant confidentiality provisions prohibit disclosures (subject to exceptions), and violation of these prohibitions by a respondent may lead to aggravation of a sanction or institution of separate sanctions proceedings.<sup>117</sup> These provisions do not provide for mitigation or other consequences for any potential breaches of confidentiality by the World Bank.<sup>118</sup> Accordingly, the Sanctions Board has declined to apply mitigation for respondents when such breaches were asserted.<sup>119</sup>
19. *Period of ineligibility following a determination by GSD:* The Sanctions Procedures require that the Sanctions Board consider the period of ineligibility imposed by the Director of GSD following a determination of the respondent's nonresponsibility as a vendor to the WBG.<sup>120</sup> The Sanctions Board has not previously received requests for or applied aggravation or mitigation on this basis.
20. *Period of WBG debarment already served:* The Sanctions Board has taken into account the period of public debarment already served in determining the respondent's final sanction, such as where a respondent's Response was filed belatedly, after an Uncontested Notice of Sanctions Proceedings went into effect.<sup>121</sup>

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112. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(h); IFC Sanctions Procedures (2012) at Section 9.02(h); MIGA Sanctions Procedures (2013) at Section 9.02(h); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(h).

113. See World Bank Sanctions Procedures (2016) at Section III.A, paragraph 2; IFC Sanctions Procedures (2012) at Article II; MIGA Sanctions Procedures (2013) at Article II; World Bank Private Sector Sanctions Procedures (2013) at Article II.

114. See, for example, Sanctions Board Decision No. 118 (2019) at para. 88; Sanctions Board Decision No. 120 (2019) at para. 61.

115. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 9.02(f); IFC Sanctions Procedures (2012) at Section 9.02(f); MIGA Sanctions Procedures (2013) at Section 9.02(f); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(f).

116. See Sanctions Board Decision No. 92 (2017) at para. 129.

117. World Bank Sanctions Procedures (2016) at Section III.A, subparagraph 11.05; IFC Sanctions Procedures (2012) at Section 13.06; MIGA Sanctions Procedures (2013) at Section 13.06; World Bank Private Sector Sanctions Procedures (2013) at Section 13.06.

118. See, for example, Sanctions Board Decision No. 78 (2015) at para. 93; Sanctions Board Decision No. 83 (2015) at para. 105.

119. See, for example, Sanctions Board Decision No. 78 (2015) at para. 93; Sanctions Board Decision No. 83 (2015) at para. 105.

120. World Bank Sanctions Procedures (2016) at Section III.A, subparagraphs 1.01(c)(ii), 9.02(g); IFC Sanctions Procedures (2012) at Sections 1.01(b), 9.02(g); MIGA Sanctions Procedures (2013) at Sections 1.01(b), 9.02(g); World Bank Private Sector Sanctions Procedures (2013) at Sections 1.01(b), 9.02(g).

121. See, for example, Sanctions Board Decision No. 105 (2017) at para. 34.

21. *National debarment*: The Sanctions Board has taken into account a debarment imposed on a respondent by the national agency implementing Bank-financed projects in that country.<sup>122</sup>
22. *Passage of time*: The Sanctions Board has applied mitigation where a significant period of time passed from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the WBG's initiation of sanctions proceedings. According to the Sanctions Board, the 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.<sup>123</sup> In considering the appropriate extent of mitigation on this basis, the Sanctions Board has assessed the significance of the delay as well as the respondents' assertions (and supporting evidence), the impact of the passage of time on the respondents' ability to conduct an internal investigation and respond to the allegations, and the respondents' own possible contributions to the delay.<sup>124</sup>
23. *Change in management/corporate identity*: The Sanctions Board has applied mitigation where the record demonstrated a corporate restructuring and/or other changes in the respondent's management, particularly with respect to individuals involved in the misconduct.<sup>125</sup> The Sanctions Board has declined to apply aggravation where the respondent's asserted reorganization did not reflect changes in ownership, control, or management;<sup>126</sup> where the corporate changes had no bearing on the respondent's culpability or responsibility for the sanctionable practice at issue;<sup>127</sup> or where the respondent failed to provide evidence or details of the asserted structural reorganization.<sup>128</sup>
24. *Pressure to enter into corrupt arrangement*: The Sanctions Board has applied mitigation where the record contained evidence showing that the respondent was coerced into agreeing to a corrupt arrangement.<sup>129</sup>
25. *Personal health condition*: In one case, the Sanctions Board took note, in determining the sanction, of an individual respondent's health issues at the time of the misconduct, which were corroborated by medical records and other evidence.<sup>130</sup>
26. *Role as "designated loser" in collusion case*: The Sanctions Board previously took into account the respondent's status as designated loser in a collusion case,<sup>131</sup> but, noting a change in the sanctions framework, declined to grant mitigation under this factor in a later case, as a circumstance not relevant to the respondent's culpability or responsibility.<sup>132</sup>

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122. See, for example, Sanctions Board Decision No. 54 (2012) at para. 43; Sanctions Board Decision No. 102 (2017) at para. 84.

123. See, for example, Sanctions Board Decision No. 68 (2014) at para. 47; Sanctions Board Decision No. 72 (2014) at para. 64; Sanctions Board Decision No. 102 (2017) at para. 83.

124. See, for example, Sanctions Board Decision No. 87 (2016) at para. 154; Sanctions Board Decision No. 92 (2017) at para. 130; Sanctions Board Decision No. 97 (2017) at para. 77; Sanctions Board Decision No. 106 (2017) at para. 47.

125. See, for example, Sanctions Board Decision No. 53 (2012) at para. 66; Sanctions Board Decision No. 66 (2014) at para. 49. See also Sanctions Board Decision No. 98 (2017) at para. 69 (applying some mitigation where a respondent firm filed for bankruptcy, was subsequently acquired by a holding company, and underwent changes in leadership and management practices).

126. See Sanctions Board Decision No. 83 (2015) at para. 104.

127. See Sanctions Board Decision No. 116 (2019) at para. 33.

128. See Sanctions Board Decision No. 74 (2014) at para. 48.

129. See Sanctions Board Decision No. 94 (2017) at para. 53.

130. See Sanctions Board Decision No. 109 (2018) at para. 54.

131. See Sanctions Board Decision No. 4 (2009) at para. 12.

132. See Sanctions Board Decision No. 112 (2018) at para. 56.

27. *Notification to the Bank*: The Sanctions Board has considered as a mitigating factor the respondent's efforts to inform the World Bank of apparent gaps in the project's implementation and documentation.<sup>133</sup>
28. *Absence of aggravating factors*: The Sanctions Board has held that the absence of aggravating factors (such as harm to the project or history of past misconduct) is generally a neutral fact that does not warrant mitigation.<sup>134</sup>
29. *Insufficient evidence of one of the allegations of misconduct*: In a case where INT alleged multiple instances and types of misconduct the Sanctions Board has declined to consider, in its sanctioning analysis, the fact that one of the allegations did not result in a finding of liability. In its decision, the Sanctions Board observed that the insufficiency of evidence with respect to one allegation did not necessarily have a bearing on the respondent's culpability or responsibility for other misconduct in that case.<sup>135</sup>
30. *Adverse impact*: The Sanctions Board has generally declined to consider, in its sanctioning analysis, the potential adverse impact of the Bank's investigation, sanctions proceedings, temporary ineligibility, or final sanction on the respondent individual, a respondent's business, the borrower, or other stakeholders, often noting that this did not appear related to the respondent's culpability or responsibility for the misconduct.<sup>136</sup>
31. *The respondent's performance*: The Sanctions Board has generally declined to consider, in its sanctioning analysis, the respondent's operational capacity, history of performance, or development contributions, often noting that this did not appear related to the respondent's culpability or responsibility for the misconduct.<sup>137</sup>
32. *Conduct of INT's investigation*: The Sanctions Board has generally declined to consider, in its sanctioning analysis, the respondent's assertions regarding the conduct of INT's investigation, noting that this did not appear related to the respondent's culpability or responsibility for the misconduct.<sup>138</sup> However, the Sanctions Board also observed that such assertions, if adequately supported by the record, may inform the Sanctions Board's consideration of the credibility, weight, and sufficiency of the evidence furnished by INT in that case.<sup>139</sup>
33. *Generalized policy considerations*: The Sanctions Board has declined to consider, in its sanctioning analysis, generalized policy considerations such as the Bank's development

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133. See Sanctions Board Decision No. 82 (2015) at para. 56.

134. See, for example, Sanctions Board Decision No. 55 (2013) at paras. 70–72; Sanctions Board Decision No. 71 (2014) at paras. 85–86; Sanctions Board Decision No. 95 (2017) at para. 55; Sanctions Board Decision No. 106 (2017) at para. 48.

135. See Sanctions Board Decision No. 77 (2015) at para. 60.

136. See, for example, Sanctions Board Decision No. 53 (2012) at para. 69 (expected negative impact of debarment on the respondent's business operations); Sanctions Board Decision No. 55 (2013) at para. 85 (asserted lost revenues due to temporary suspension); Sanctions Board Decision No. 61 (2013) at para. 50 (expected impact on borrower's market and the Bank's choice of partners); Sanctions Board Decision No. 66 (2014) at para. 48 (impact of debarment on reputations of respondent's staff); Sanctions Board Decision No. 86 (2016) at para. 55 (personal hardship and adverse financial consequences).

137. See, for example, Sanctions Board Decision No. 60 (2013) at para. 139; Sanctions Board Decision No. 93 (2017) at para. 104; Sanctions Board Decision No. 117 (2019) at para. 45.

138. See, for example, Sanctions Board Decision No. 115 (2019) at para. 71.

139. See, for example, Sanctions Board Decision No. 79 (2015) at para. 58.

focus and purpose of the sanctions system, observing that this did not appear related to the respondent's culpability or responsibility for the misconduct at issue in that case.<sup>140</sup>

34. *Proportionality*:

- i. *Proportionality across participants in the misconduct*: In cases involving multiple respondents and/or affiliates, the Sanctions Board has considered the proportionality of sanctions among parties based on their respective roles in the misconduct.<sup>141</sup>
- ii. *Proportionality across contesting and noncontesting respondents*: The Sanctions Board has previously noted that, while it is not bound by the Suspension and Debarment Officer (SDO)'s recommendations, the Sanctions Board's determination of sanctions for contesting respondents may take into account the SDO's recommended sanctions as imposed on noncontesting respondents in the same matter for the sake of proportionality.<sup>142</sup>
- iii. *Proportionality with settling parties*: The Sanctions Board has declined to consider the sanctions agreed between settling parties to bear upon its own determination of contested sanctions for respondents, noting that the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.<sup>143</sup>
- iv. *Proportionality with past sanctions cases*: The Sanctions Board has declined to take into account proportionality with past sanctions cases on the ground that this does not relate to the respondent's culpability or responsibility.<sup>144</sup> The Sanctions Board has more generally stated that its choice of sanction is based on a case-by-case analysis tailored to the specific facts and circumstances presented and informed by relevant precedent and the applicable provisions of the Sanctions Procedures and Sanctioning Guidelines.<sup>145</sup>
- v. *Proportionality between misconduct and recommended sanction*: In cases where the respondents have asserted that the recommended sanction is not commensurate with the misconduct, the Sanctions Board has reiterated its determination of appropriate sanctions on a case-by-case basis, taking into account all potential aggravating and mitigating factors for each respondent.<sup>146</sup>

140. See, for example, Sanctions Board Decision No. 79 (2015) at para. 58.

141. See, for example, Sanctions Board Decision No. 49 (2012) at para. 42; Sanctions Board Decision No. 51 (2012) at para. 93; Sanctions Board Decision No. 56 (2013) at para. 83; Sanctions Board Decision No. 60 (2013) at para. 141.

142. See, for example, Sanctions Board Decision No. 48 (2012) at para. 49; Sanctions Board Decision No. 50 (2012) at para. 70; Sanctions Board Decision No. 74 (2014) at para. 49; Sanctions Board Decision No. 105 (2017) at para. 33.

143. See, for example, Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 85 (2016) at para. 53; Sanctions Board Decision No. 92 (2017) at para. 132; Sanctions Board Decision No. 108 (2018) at para. 83; Sanctions Board Decision No. 109 (2018) at para. 55; Sanctions Board Decision No. 118 (2019) at para. 92.

144. See, for example, Sanctions Board Decision No. 102 (2017) at para. 87.

145. See, for example, Sanctions Board Decision No. 71 (2014) at para. 106; Sanctions Board Decision No. 79 (2015) at para. 57. See also Sanctions Board Decision No. 49 (2012) at para. 46 (referencing relevant precedent and noting that similar misconduct resulted in similar sanctions in past cases).

146. See, for example, Sanctions Board Decision No. 85 (2016) at para. 53; Sanctions Board Decision No. 92 (2017) at para. 132; Sanctions Board Decision No. 99 (2017) at para. 38.



## 6 Other Matters

This chapter addresses remaining issues not already covered in previous chapters of this Law Digest.

1. *Ex parte communications*: The Code of Conduct for members of the Sanctions Board included in the Sanctions Board Statute sets out a provision regarding “Ex Parte Communications,” which states, “Members of the Sanctions Board shall not engage in ex parte communications with INT or the respondent regarding the merits of a sanctions proceeding.”<sup>1</sup> Although the Sanctions Board has not specified a corresponding prohibition for the Integrity Vice Presidency (INT) or respondents, the Sanctions Board has recognized potential risks to fair process and perceived impartiality of proceedings, and has urged all parties to avoid ex parte communications.<sup>2</sup>
2. *Settlements between the Bank and other parties*: The Sanctions Board has identified a distinction between settlements reached by the Bank with entities not party to the sanctions case at issue on the one hand and formal sanctions proceedings on the other hand.<sup>3</sup> As a result, the Sanctions Board has declined to make materials in such settlements available to respondents.<sup>4</sup>
3. *Administrative nature of sanctions proceedings*: The Sanctions Board has emphasized that sanctions proceedings are administrative in nature.<sup>5</sup> The Sanctions Board has also observed that motions and countermotions often lead to a highly technical and overly legalistic proceeding which runs counter to informality.<sup>6</sup>
4. *Death of a respondent*: Where an individual respondent died prior to the conclusion of sanctions proceedings, as was disclosed to the Sanctions Board by a second respondent in the same case, the Sanctions Board declined to make any determination as to that respondent in its decision.<sup>7</sup>

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1. WBG Policy: Statute of the Sanctions Board at Section III.B, para. 17.

2. Sanctions Board Decision No. 63 (2014) at para. 49

3. Sanctions Board Decision No. 56 (2013) at para. 30.

4. Sanctions Board Decision No. 56 (2013) at para. 30.

5. Sanctions Board Decision No. 55 (2013) at para. 42.

6. Sanctions Board Decision No. 56 (2013) at para. 43 (referring to the fact that formal rules of evidence do not apply in the context of the Bank’s sanctions proceedings).

7. Sanctions Board Decision No. 29 (2010) at para. 29.





# Concluding Remarks

**SANCTIONS BOARD EXECUTIVE SECRETARY GIULIANA DUNHAM IRVING**

As the leading international tribunal responsible for adjudicating allegations of sanctionable misconduct in an international development context, the Sanctions Board's decisions have an impact that reaches far beyond the parties to individual cases. The Sanctions Board's work has influenced other organizations engaged in enforcing anti-corruption and anti-fraud rules or adjudicating those cases, and it has been an object of considerable interest in the broader scholarly, legal, and international development communities.



Bearing in mind the wide reach of the Sanctions Board's decisions, it is impossible to overstate the value of efforts taken by the World Bank Group to ensure transparency in the Sanctions Board's decision-making process—particularly through the publication of reasoned decisions. The Sanctions Board's decisions articulate precisely what constitutes sanctionable misconduct in the circumstances of each case and what rights and obligations the parties have in the context of the World Bank Group's formal administrative sanctions proceedings.

As the Bank Group and other multilateral development institutions consider further reforms aimed at improving the transparency, efficiency, and fairness of their sanctions regimes, certain lessons learned over the years become particularly instructive. For example, introduction of a secretariat to provide the Sanctions Board with appropriate legal and logistical support has enhanced the Sanctions Board's capacity to address its cases with greater efficiency, precision, and sensitivity to due process protections. Procedural flexibility has also proven to be extremely important, particularly as it enables adaptations—such as permitting respondents to appear by videoconference—that allow increased participation by the parties and lower cost both to the parties and to the Bank Group.

Further, as this edition of the Digest has shown, the Sanctions Board's decisions have identified and—where appropriate—sought to fill lacunae in the Bank Group's sanctions framework. Institutional decisions reforming and further developing the framework's constituent texts may therefore benefit from the Sanctions Board's documented experience of applying existing

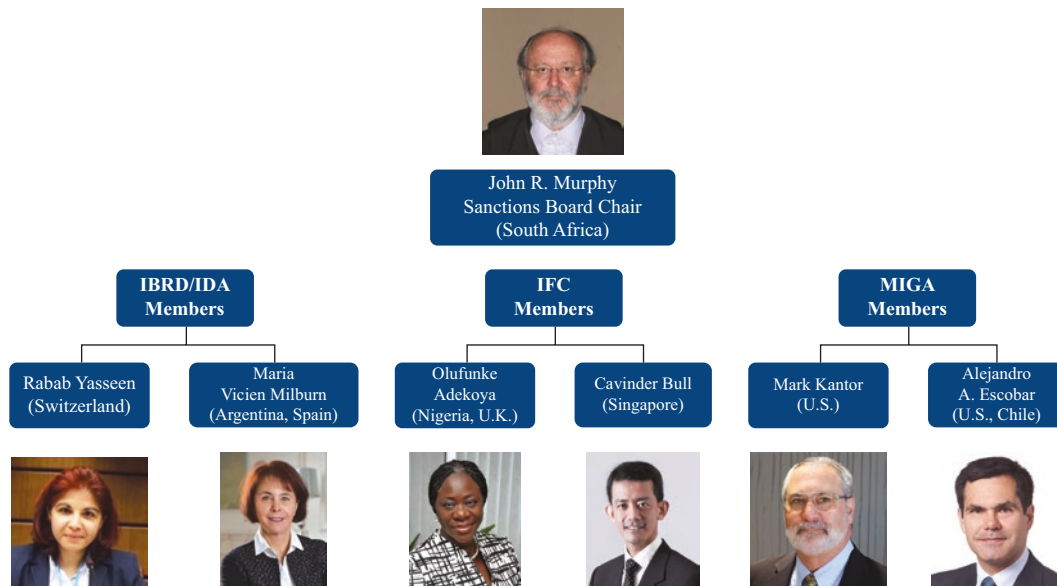
standards (or grappling with their absence) to a diverse and growing array of fact patterns and arguments in individual cases.

In sum, although the Sanctions Board is still a relatively young decision-making body, it has already demonstrated the Bank Group's commitment to fighting misconduct in the development sector using a fair and transparent approach. The Sanctions Board's growing body of case law, as examined in this Digest, has become—and will continue to serve as—a critical component of the international community's commitment to justice as an answer to misconduct.

## APPENDIX A

# Current and Past Members of the Sanctions Board

The Sanctions Board consists of seven members, all external to the World Bank Group. This total includes three members appointed for International Bank for Reconstruction and Development/International Development Association (IBRD/IDA), two for International Finance Corporation (IFC), and two for Multilateral Investment Guarantee Agency (MIGA). Sanctions Board Members are appointed by the World Bank Group's Executive Directors and are required to be familiar with procurement matters, law, dispute resolution mechanisms, or operations of development institutions. Sanctions Board members are appointed for single, nonrenewable terms of up to six years. The members consider specific sanctions cases in panel (three-person) or plenary (five+ person) sessions, irrespective of their type of appointment (Bank, IFC, or MIGA). This appendix provides the list and backgrounds of current members of the Sanctions Board as well as a list of past members and Chairs, along with their countries of nationality.



## A. CURRENT SANCTIONS BOARD MEMBERS

### World Bank members

#### Mr. John R. Murphy (Chair)

Judge John R. Murphy, a South African national, has served on the World Bank Group Sanctions Board since July 2019. He is a Judge of Appeals of the United Nations Appeals Tribunal and served as its President from January 2018 to December 2018. He is also an Acting Judge of Appeals of the Labour Appeal Court of South Africa and was previously a Judge of the High Court of South Africa (Gauteng Division, Pretoria). Prior to that he served as a Judge of the Labour Court of South Africa and was South Africa's first Pensions Ombudsman (the Pension Funds Adjudicator) between 1997 and 2003. He has worked as an arbitrator and mediator for the Commission for Conciliation, Mediation and Arbitration and the Independent Mediation Service of South Africa and was an Associate Professor of Law and Head of the Department of Public Law at the University of the Western Cape. He has served on various statutory bodies in South Africa including the Council for Medical Schemes. In 2003–04 he was the Presiding Judge in the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters.



#### Ms. Maria Vicien Milburn

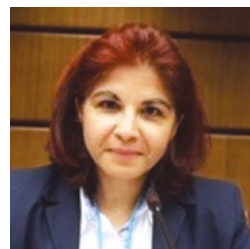
Ms. Maria Vicien Milburn, an Argentinian and Spanish national, has served on the World Bank Group Sanctions Board since July 2019. Ms. Vicien Milburn has served for more than 35 years as an international lawyer in the United Nations System, holding such senior roles as General Counsel of United Nations Educational, Scientific, and Cultural Organization (UNESCO; 2009–14), and Director of the General Legal Division of the UN Office of Legal Affairs (2004–09). She provided legal advice on all issues relating to the operation of the two organizations worldwide. She oversaw all commercial contracting, directed the conduct of all litigation and arbitration, and advised on international treaties and conventions. Previously, she served for nearly 15 years as Registrar of the UN Administrative Tribunal. Since retirement from the UN in 2014, Ms. Vicien Milburn has served in multiple capacities as a special advisor to international organizations. In 2014, the UN Secretary-General appointed her to the Board of Inquiry into incidents that occurred on UN property during the 2014 conflict in Gaza. Since 2017, she has been a member, and since 2019 the President, of the Independent Advisory Oversight Committee of the World Intellectual Property Organization. She has also acted as a consultant to the Office of the Registrar of the International Criminal Court. Ms. Vicien Milburn currently serves as a judge and arbitrator in the context of disputes of an international character. In 2017, she was designated on the list of panelists of the Dispute Settlement Body of the World Trade Organization (WTO). In 2018, she was appointed as Judge of the Administrative Tribunal of the European Bank for Reconstruction and Development. She also acts as arbitrator in cases conducted under the auspices of the International Chamber of Commerce (ICC), including those involving sovereign states. She is an observer to the United Nations Commission on International Trade Law (UNCITRAL) Working Groups II and III on international arbitration, a member of the



ICC Arbitration Commission, and an advisor to the Board of the Arbitration Court of Madrid. A graduate of the University of Buenos Aires Law School (1974) and Columbia University (LL.M., 1976), she is admitted to practice law in New York and Buenos Aires. The American Bar Association awarded her the 2013 Mayre Rasmussen Award for the Promotion of Women in International Law.

### **Ms. Rabab Yasseen**

Ms. Rabab Yasseen, a Swiss national, has served on the World Bank Group Sanctions Board since July 2019. Ms. Yasseen is a partner with the Geneva Law Firm MENTHA, and also serves as Deputy Judge to the Civil Courts in Geneva, Switzerland. She previously held positions in major law firms, as General legal counsel to the University of Geneva, and as a consultant to the World Trade Organization and International Trade Centre (WTO/ITC). She has been acting as counsel/arbitrator (sole/chair/co-arbitrator) in both ad hoc and institutional arbitration proceedings under various rules. She was a member of the Ad Hoc Division of the Court of Arbitration for Sports (CAS) to the XXXI Olympiad—the Rio 2016 Olympic Games. She is a member of several panels and associations, including the International Chamber of Commerce (ICC) arbitration commission where she was an active member of the task forces on “the revision of the ICC rules of arbitration,” on “States, State-entities and ICC arbitration,” on “the Emergency Arbitrator proceedings,” as well as the International Bar Association (IBA) task force drafting the “investor-State mediation rules.” She is a member of the International Law Association (ILA) International Commercial Arbitration Committee. Ms. Yasseen is also a regular delegate to the United Nations Commission on International Trade Law (UNCITRAL) and Working Group II and III sessions, including those on “transparency in treaty-based investor-State arbitration” (the transparency rules and the Mauritius Convention), on the “enforcement of settlement agreements” (the Singapore Convention), and the current sessions on “the investor-State dispute settlement reform.” She has coauthored both the ITC contractual and incorporated joint-venture model agreements and their user’s guide, published in the United Nations Conference on Trade and Development (UNCTAD)/WTO Trade Law series in Geneva. Ms. Yasseen holds degrees in law, history and literature from the University of Geneva, as well as an LL.M. in international business law from King’s College London. She is admitted to the Geneva bar and as a solicitor to the Supreme Court (England and Wales).



## **IFC members**

### **Ms. Olufunke Adekoya**

Ms. Olufunke Adekoya, a Nigerian and U.K. national, has served on the Sanctions Board since 2014. Ms. Adekoya is a Partner at ALEX, one of the largest full-service commercial law firms in Nigeria where she heads the Dispute Resolution practice group. She obtained a Second Upper Law degree from the then University of Ife, in Ile-Ife, South West Nigeria in 1974, professional legal qualifications from the Nigerian Law School in 1975, and an LL.M. from Harvard Law School in 1977. She was elevated to the rank of Senior Advocate of Nigeria in September 2001, and requalified as a Solicitor in England and Wales in July 2004. Ms. Adekoya is a Fellow and Chartered Arbitrator with the Chartered Institute of Arbitrators, and a past Chairman of its branch in



Nigeria. She is also a board member of the recently established Lagos Court of Arbitration as well as of the African Users Council of the London Court of International Arbitration. In 2014, she was elected to the Board of Governors of the International Council for Commercial Arbitration.

### **Mr. Cavinder Bull**

Mr. Cavinder Bull, a Singapore national, has served on the World Bank Group Sanctions Board since October 2018. Mr. Bull practices at Drew & Napier LLC, one of the largest firms in Singapore, where he is the Chief Executive Officer. He has an active practice in complex litigation as well as in international arbitration where he acts both as counsel and as arbitrator in commercial and investor-state arbitrations. Mr. Bull is also Vice President of the Singapore International Arbitration Centre (SIAC) Court of Arbitration and was the Deputy Chairman of SIAC from 2010 to 2017. He is also a member of the

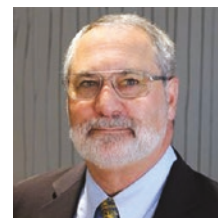


Governing Board of International Council for Commercial Arbitration (ICCA), Vice President of the Asian Pacific Regional Arbitration Group, and a member of the Asian Business Law Institute's Advisory Board. Mr. Bull graduated with First Class Honors in law from Oxford University and holds an LL.M. from Harvard Law School, which he attended on a Lee Kuan Yew Scholarship. Mr. Bull is admitted to the bars of Singapore, New York, and England and Wales. In 2008, he was appointed as Senior Counsel by the Chief Justice of Singapore.

## **MIGA members**

### **Mr. Mark Kantor**

Mr. Mark Kantor, a U.S. national, has served on the World Bank Group Sanctions Board since July 2017. Mr. Kantor serves as an arbitrator and mediator in commercial and investment disputes. He is a qualified arbitrator and a member of the American Arbitration Association (AAA) Commercial and International Panels, the AAA's Large Complex Case Roster, the AAA International Centre for Dispute Resolution (AAA-ICDR)'s Energy Arbitrators List, the ICC Arbitrator Database, the Chartered Institute of Arbitrators, the London Court of International Arbitration list of arbitrators, the rosters of arbitrators of the Hong Kong, Singapore and Kuala Lumpur International Arbitration Centers, the International Institute for Conflict Prevention and Resolution (CPR) Panel of Distinguished Neutrals for Banking and Finance, the CPR International Panel, and the CPR Energy Committee. Mr. Kantor is also a Chartered Arbitrator of the Chartered Institute of Arbitrators. He is the recipient of the 2011 Arbitral Women Honorable Man Award and the 2013 Best Lawyers Washington, DC, International Arbitration–Governmental “Lawyer of the Year.” Before becoming an arbitrator, Mr. Kantor worked at Milbank, Tweed, Hadley & McCloy LLP, where he was a partner in the Corporate and Project Finance Groups in the Washington, DC, office. Mr. Kantor teaches courses in International Business Transactions and in International Arbitration at the Georgetown University Law Center (Recipient, 2006 Fahy Award for Outstanding Adjunct Professor). Mr. Kantor holds a master's degree in public policy from the University of Michigan's Institute



for Public Policy Studies, and a J.D. from the University of Michigan Law School. He is licensed to practice law in New York and Washington, DC.

**Mr. Alejandro A. Escobar**

Mr. Alejandro A. Escobar, a Chilean and U.S. national, has served on the Sanctions Board since July 2017. Mr. Escobar is a partner in the London office of Baker Botts LLP, where he has worked since 2002 advising businesses and states in disputes arising out of investment protection treaties and within the context of public-private partnerships. He has handled numerous claims of expropriation and abusive regulation in various industries, including power, oil and gas, telecommunications, and public concessions and procurement. In addition, he regularly sits as an arbitrator, including presiding over an ICC tribunal in an oil and gas concession dispute governed by English law. Prior to Baker Botts, Mr. Escobar was a Senior Counsel at the International Centre for Settlement of Investment Disputes (ICSID) where he handled numerous investment treaty matters. He has also served as a Visiting Professor at University College London, where he taught International Law of Foreign Investment, a topic he continues to lecture on to academic and professional audiences. Mr. Escobar holds a PhD from the University of Cambridge, a Certificate of Merit from The Hague Academy of International Law, and a bachelor's degree in law from the University of Chile. He is admitted to practice law before the Supreme Court of Chile and the Supreme Court of England and Wales.



## B. PAST SANCTIONS BOARD MEMBERS

### IBRD/IDA

Ms. Marielle Cohen-Branche, France  
 Ms. Cornelia Cova, Switzerland  
 Ms. Patricia Diaz-Dennis,  
 United States  
 Mr. L. Yves Fortier, Canada (Chair)  
 Mr. Fathi Kemicha, Tunisia (Chair)  
 Mr. Danny Leipziger, United States (Chair)  
 Mr. Hassane Cissé, Senegal  
 Ms. Hoonae Kim, Republic of Korea  
 Ms. Ellen Gracie Northfleet, Brazil  
 Ms. Randi Ryterman, United States  
 Mr. Hartwig Schäfer, Germany  
 Mr. J. James Spinner, United States and  
 Colombia (Chair)  
 Mr. Denis Robitaille, Canada  
 Ms. Catherine O'Regan, South Africa  
 Ms. Alison Micheli, United States

### IFC

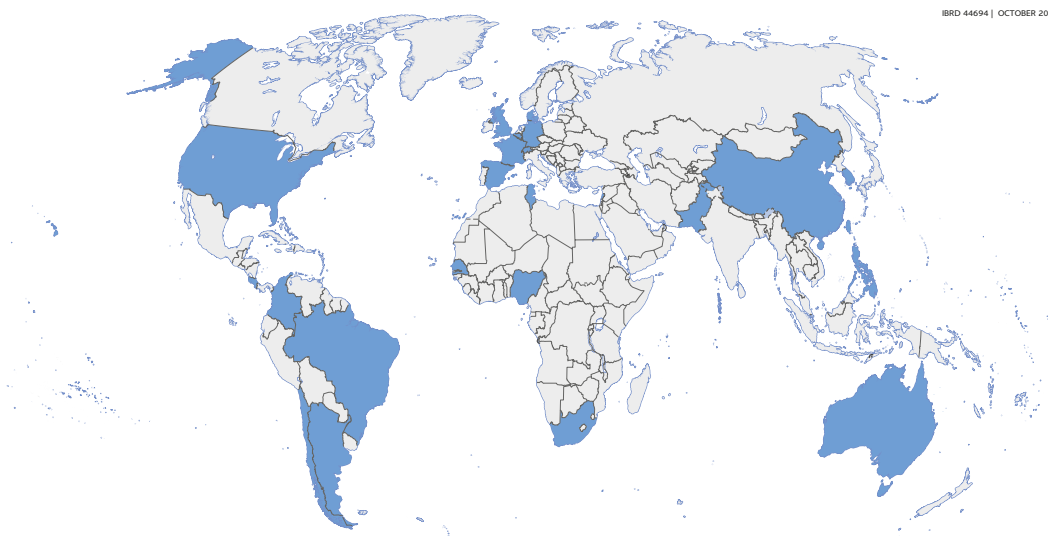
Mr. Syed Babar Ali, Pakistan  
 Mr. Rodrigo B. Oreamuno, Costa Rica  
 Ms. Georgina Baker, United Kingdom  
 Mr. William Bulmer, United Kingdom  
 Ms. Robin Glantz, United States  
 Mr. Morgan Landy, United States  
 Mr. Jesus P. Estanislao, Philippines  
 Ms. Teresa Cheng, Hong Kong SAR, China

### MIGA

Mr. Nabil Fawaz, Lebanon  
 Mr. Daniel Villar, United States  
 Mr. Bernard Hanotiau, Belgium  
 Mr. Anne van't Veer, Netherlands  
 Ms. Judith Pearce, Australia  
 Ms. Margaret A. Walsh, United States

#### MAP A.1

Nationalities of past and current Sanctions Board members



IBRD 44694 | OCTOBER 2019

Source: World Bank.



## APPENDIX B

# Key Offices and Contacts

### **WBG Sanctions Board**

Web page: <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board>

Contact: Ms. Giuliana Dunham Irving, Executive Secretary to the Sanctions Board:  
[sanctionsboard@worldbank.org](mailto:sanctionsboard@worldbank.org)

### **WBG General Counsel and WB Legal Vice Presidency**

Web page: [http://www.worldbank.org/en/about/unit/legal\\_vice\\_presidency](http://www.worldbank.org/en/about/unit/legal_vice_presidency)

Contact: [legalhelpdesk@worldbank.org](mailto:legalhelpdesk@worldbank.org)

### **WBG Integrity Vice Presidency**

Web page: <http://www.worldbank.org/en/about/unit/integrity-vice-presidency>

Contact: Ms. Julia Oliver, Communications Officer: [joliver@worldbankgroup.org](mailto:joliver@worldbankgroup.org)

### **WBG Integrity Compliance Office**

Web page: <https://www.worldbank.org/en/about/unit/integrity-vice-presidency#3>

Contact: Ms. Lisa Miller, Integrity Compliance Officer: [lmiller1@worldbank.org](mailto:lmiller1@worldbank.org)

### **World Bank Office of Suspension and Debarment**

Web page: <https://www.worldbank.org/en/about/unit/sanctions-system/osd>

Contact: Mr. Jamieson Andrew Smith, IBRD/IDA Chief Suspension and Debarment Officer:  
[osd@worldbank.org](mailto:osd@worldbank.org)

### **Sanctions at IFC**

Web page: [https://www.ifc.org/wps/wcm/connect/topics\\_ext\\_content/ifc\\_external\\_corporate\\_site/ac\\_home/sanctionable\\_practices](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ac_home/sanctionable_practices)

Contacts: Mr. Karim Suratgar, IFC Evaluation and Suspension Officer: [ksuratgar@ifc.org](mailto:ksuratgar@ifc.org)

Ms. Ceri Lawley, IFC Chief Compliance Officer: [clawley@ifc.org](mailto:clawley@ifc.org)

### **Sanctions at MIGA**

Web page: <https://www.miga.org/integrity>

Contacts: Ms. Aradhana Kumar-Capoor, MIGA Evaluation and Suspension Officer:  
[akumarcapoor@worldbank.org](mailto:akumarcapoor@worldbank.org)

Mr. Ivan Illescas, MIGA Senior Counsel: [Illescas@worldbank.org](mailto:Illescas@worldbank.org)

### **Sanctions Relating to Private Sector IBRD/IDA Projects**

Contact: Ms. Susan Maslen, Evaluation and Suspension Officer for IBRD/IDA Guarantees  
and Carbon Finance: [smaslen@worldbank.org](mailto:smaslen@worldbank.org)

## APPENDIX C

# Key Documents Relating to the WBG Sanctions Framework and Process

These documents can all be accessed at  
<https://www.worldbank.org/en/about/unit/sanctions-system#3>

DOCUMENT TITLE	VERSION
WB Sanctions Procedures	October 15, 2006
WB Sanctions Procedures	May 11, 2009 (as amended June 25, 2010)
WB Sanctions Procedures	September 15, 2010
WB Sanctions Procedures	January 1, 2011 (as amended July 8, 2011)
WB Sanctions Procedures	April 15, 2012
WB Sanctions Procedures	June 28, 2016
IFC Sanctions Procedures	January 1, 2007
IFC Sanctions Procedures	November 1, 2012
MIGA Sanctions Procedures	October 15, 2006
MIGA Sanctions Procedures	June 28, 2013
World Bank Private Sector Sanctions Procedures	2006
World Bank Private Sector Sanctions Procedures	September 24, 2013
WBG Sanctioning Guidelines	January 1, 2011
Sanctions Board Statute	September 15, 2010
Sanctions Board Statute	As amended February 17, 2009
Sanctions Board Statute (Catalogue Number EXC6.03-POL.108)	October 18, 2016
WBG Policy: Sanctions for Fraud and Corruption (Catalogue Number EXC6.03-POL.105)	June 13, 2016
World Bank Directive: Sanctions for Fraud and Corruption in Bank Financed Projects (Catalogue Number MDCAO6.03-DIR.103)	June 28, 2016
Cross-Debarment Agreement	April 9, 2010
Summary of WBG Integrity Compliance Guidelines	2011
Information Note on the WBG Sanctions Regime	2011
WBG Sanctions System Brochure	2017



## APPENDIX D

# Definitions of Sanctionable Practices

This appendix to the Law Digest presents various definitions of sanctionable practices adopted by the World Bank Group's member institutions since 2004.

### WBG<sup>1</sup>

The following definitions of Sanctionable Practices apply to cases brought under the 2016 Procurement Framework, applicable to projects financed after July 1, 2016. *Note: No Sanctions Board decisions have yet been issued with respect to such Projects.*

“[C]oercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

“corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

“fraudulent practice” is 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; and

“obstructive practice” is (a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of the Bank's inspection and audit rights[.]

*Note: The term “party” is not defined.*

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1. World Bank Group Procurement Regulation, Annex IV. Procurement Regulations for Investment Project Financing (IPF) Borrowers (August 2018), available at: <http://pubdocs.worldbank.org/en/178331533065871195/Procurement-Regulations.pdf>.

## IBRD/IDA<sup>2</sup>

### A. 2006 DEFINITIONS

The following definitions of Sanctionable Practices apply to cases brought under the October 2006, May 2010 and January 2011 versions of the Procurement, Consultant or Anti-Corruption Guidelines:

“Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;<sup>3</sup>

“Collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;<sup>4</sup>

“Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;<sup>5</sup>

“Fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;<sup>6</sup> and

“Obstructive practice” is (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 Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.

### B. 2004 DEFINITIONS

The following definitions of Sanctionable Practices apply to cases brought under the May 2004 versions of the Procurement or Consultant Guidelines:

“Corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the [procurement/selection] process or in contract execution;

“Fraudulent practice” means a misrepresentation or omission of facts in order to influence a [procurement/selection] process or the execution of a contract;

“Collusive practices” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish [bid] prices at artificial, non-competitive levels; and

2. World Bank Sanctions Procedures (2012), Appendix 1.

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

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

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

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

“Coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.

### C. PRE-2004 DEFINITIONS

The following definitions of Sanctionable Practices apply to cases brought under the January 1995 version of the Procurement Guidelines (revised January and August 1996, September 1997 and January 1999) or the January 1997 version of the Consultant Guidelines (revised September 1997, January 1999 and May 2002):

“Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the [procurement/selection] process or in contract execution.

“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement [selection] process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among [bidders/consultants] (prior to or after [bid submission/submission of proposals]) designed to establish bid prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

*Note: The foregoing definitions are provided for information only. The definitions set forth in the Procurement, Consultant or Anti-Corruption Guidelines, or in the Bank’s Administrative Manual, are the sole source of legal authority.*

## IFC<sup>7</sup>

### IFC Anti-Corruption Guidelines

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practice,” “Fraudulent Practice,” “Coercive Practice,” “Collusive Practice,” and “Obstructive Practice” in the context of IFC operations.

#### 1. Corrupt Practices

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

#### *Interpretation*

- A. Corrupt practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of corrupt practices.

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7. IFC Sanctions Procedures (2012) at Annex A.

- B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor's books and records. Similarly, an investor will not be held liable for corrupt or fraudulent practices committed by entities that administer bona fide social development funds or charitable contributions.
- C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute corrupt practices unless the action violates Applicable Law.
- D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.
- E. The World Bank Group<sup>8</sup> does not condone facilitation payments. For the purposes of implementation, the interpretation of "Corrupt Practices" relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

## 2. Fraudulent Practices

A "Fraudulent Practice" is any action or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

### *Interpretation*

- A. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a "Fraudulent Practice" for purposes of this Agreement.
- B. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC, MIGA, or PRG operations. Similarly, other illegal behavior is not condoned, but will not be considered as a Fraudulent Practice for purposes of this Agreement.

## 3. Coercive Practices

A "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

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8. The "World Bank" is the International Bank for Reconstruction and Development, an international organization established by Articles of Agreement among its member countries and the "World Bank Group" refers to the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the International Centre for Settlement of Investment Disputes.



**Interpretation**

- A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
- B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

**4. Collusive Practices**

A “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

**Interpretation**

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

**5. Obstructive Practices**

An “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of false statements to investigators, in order to materially impede a World Bank Group investigation into accusations 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) an act intended to materially impede the exercise of IFC’s access to contractually required information in connection with a World Bank Group investigation into accusations of a corrupt, fraudulent, coercive or collusive practice.

**Interpretation**

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

**General Interpretation**

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.

**MIGA<sup>9</sup>****MIGA’s Anti-Corruption Guidelines**

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practices,” “Fraudulent Practices,” “Coercive Practices,” “Collusive Practices,” and “Obstructive Practices” in the context of MIGA operations.

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9. MIGA Sanctions Procedures (2013) at Annex A.

## **Corrupt Practices**

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another person.

### ***Interpretation***

1. Corrupt Practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of Corrupt Practices.
2. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor’s books and records. Similarly, an investor will not be held liable for Corrupt or Fraudulent Practices committed by entities that administer bona fide social development funds or charitable contributions.
3. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute Corrupt Practices unless the action violates applicable law.
4. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.
5. The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of “Corrupt Practices” relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

## **Fraudulent Practices**

A “Fraudulent Practice” is any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.

### ***Interpretation***

1. An action, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a “Fraudulent Practice” for purposes of World Bank Group sanctions.
2. Fraudulent Practices are intended to cover actions or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or

against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in IFC15, MIGA, or PRG16 operations. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to IFC, MIGA and PRG operations.

### **Coercive Practices**

A “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of a person to influence improperly the actions of a person.

#### ***Interpretation***

1. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
2. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

### **Collusive Practices**

A “Collusive Practice” is an arrangement between two or more persons designed to achieve an improper purpose, including to influence improperly the actions of another person.

#### ***Interpretation***

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

### **Obstructive Practices**

An “Obstructive Practice” is: (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of 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 person to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or (b) acts intended to materially impede 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.

#### ***Interpretation***

Any action legally or otherwise properly taken by a person to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

**General Interpretation**

A person should not be liable for actions taken by unrelated third parties unless the first person participated in the prohibited act in question.

**IBRD/IDA PRIVATE SECTOR PROJECTS<sup>10</sup>**

**Anti-Corruption Guidelines  
for World Bank Guarantee and Carbon Finance Transactions**

The purpose of these Guidelines is to clarify the meaning of the terms “Corrupt Practice,” “Fraudulent Practice,” “Coercive Practice,” “Collusive Practice,” and “Obstructive Practice” in the context of World Bank guarantee (partial risk guarantee and partial credit guarantee) projects; and carbon finance transactions, where the World Bank, as trustee of a carbon fund, purchases emission reductions under an emission reductions purchase agreement.

**1. Corrupt Practices**

A “Corrupt Practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

**Interpretation**

- A. Corrupt Practices are understood as kickbacks and bribery. The conduct in question must involve the use of improper means (such as bribery) to violate or derogate a duty owed by the recipient in order for the payor to obtain an undue advantage or to avoid an obligation. Antitrust, securities and other violations of law that are not of this nature are excluded from the definition of Corrupt Practices.
- B. It is acknowledged that foreign investment agreements, concessions and other types of contracts commonly require investors to make contributions for bona fide social development purposes or to provide funding for infrastructure unrelated to the project. Similarly, investors are often required or expected to make contributions to bona fide local charities. These practices are not viewed as Corrupt Practices for purposes of these definitions, so long as they are permitted under local law and fully disclosed in the payor’s books and records. Similarly, an investor will not be held liable for Corrupt Practices or Fraudulent Practices committed by entities that administer bona fide social development funds or charitable contributions.
- C. In the context of conduct between private parties, the offering, giving, receiving or soliciting of corporate hospitality and gifts that are customary by internationally-accepted industry standards shall not constitute Corrupt Practices unless the action violates applicable law.
- D. Payment by private sector persons of the reasonable travel and entertainment expenses of public officials that are consistent with existing practice under relevant law and international conventions will not be viewed as Corrupt Practices.

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10. World Bank Private Sector Sanctions Procedures (2013) at Annex A.

The World Bank Group does not condone facilitation payments. For the purposes of implementation, the interpretation of “Corrupt Practices” relating to facilitation payments will take into account relevant law and international conventions pertaining to corruption.

## **2. Fraudulent Practices**

A “Fraudulent Practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

### ***Interpretation***

- A. An act, omission, or misrepresentation will be regarded as made recklessly if it is made with reckless indifference as to whether it is true or false. Mere inaccuracy in such information, committed through simple negligence, is not enough to constitute a “Fraudulent Practice” for purposes of World Bank Group sanctions.
- B. Fraudulent Practices are intended to cover acts or omissions that are directed to or against a World Bank Group entity. It also covers Fraudulent Practices directed to or against a World Bank Group member country in connection with the award or implementation of a government contract or concession in a project financed by the World Bank Group. Frauds on other third parties are not condoned but are not specifically sanctioned in World Bank guarantee projects or carbon finance operations. Similarly, other illegal behavior is not condoned, but will not be sanctioned as a Fraudulent Practice under the World Bank sanctions program as applicable to World Bank guarantee projects or carbon finance operations.

## **3. Coercive Practices**

A “Coercive Practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

### ***Interpretation***

- A. Coercive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.
- B. Coercive Practices are threatened or actual illegal actions such as personal injury or abduction, damage to property, or injury to legally recognizable interests, in order to obtain an undue advantage or to avoid an obligation. It is not intended to cover hard bargaining, the exercise of legal or contractual remedies or litigation.

## **4. Collusive Practices**

A “Collusive Practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

### ***Interpretation***

Collusive Practices are actions undertaken for the purpose of bid rigging or in connection with public procurement or government contracting or in furtherance of a Corrupt Practice or a Fraudulent Practice.

## **5. Obstructive Practices**

An “Obstructive Practice” is (i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making of 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) an act intended to materially impede the exercise of the World Bank’s access to contractually required information in connection with a World Bank Group investigation into allegations of a corrupt, fraudulent, coercive or collusive practice.

### ***Interpretation***

Any action legally or otherwise properly taken by a party to maintain or preserve its regulatory, legal or constitutional rights such as the attorney-client privilege, regardless of whether such action had the effect of impeding an investigation, does not constitute an Obstructive Practice.

### ***General Interpretation***

A person should not be liable for actions taken by unrelated third parties unless the first party participated in the prohibited act in question.



ECO-AUDIT

***Environmental Benefits Statement***

The World Bank Group is committed to reducing its environmental footprint. In support of this commitment, we leverage electronic publishing options and print-on-demand technology, which is located in regional hubs worldwide. Together, these initiatives enable print runs to be lowered and shipping distances decreased, resulting in reduced paper consumption, chemical use, greenhouse gas emissions, and waste.

We follow the recommended standards for paper use set by the Green Press Initiative. The majority of our books are printed on Forest Stewardship Council (FSC)-certified paper, with nearly all containing 50-100 percent recycled content. The recycled fiber in our book paper is either unbleached or bleached using totally chlorine-free (TCF), processed chlorine-free (PCF), or enhanced elemental chlorine-free (EECF) processes.

More information about the Bank's environmental philosophy can be found at <http://www.worldbank.org/corporateresponsibility>.





This edition of the *Law Digest* for the World Bank Group's Sanctions Board presents structured summaries of the Sanctions Board's precedent as set out through more than 100 decisions issued since 2007. The *Law Digest* also includes key data relating to the work of the Sanctions Board and the World Bank Group's larger sanctions system. Themes covered in this digest include the scope of the Sanctions Board's authority, various types of procedural and evidentiary questions in sanctions proceedings, and the Sanctions Board's overall analysis of the allegations of fraud, corruption, collusion, and obstruction in projects supported by the World Bank Group that form the core of individual sanctions cases.