



An Introduction To The World Bank Sanctions Regime

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In the past decade, there has been a great increase in the number of investigations, prosecutions and settlements by the U.S. [Securities and Exchange Commission](#) and [U.S. Department of Justice](#) pursuant to the Foreign Corrupt Practices Act. While SEC and DOJ enforcement of the FCPA garners the most attention in the press and by companies implementing compliance regimes, companies with international business dealings should be aware of the relatively recent ramp-up by the multilateral development banks (“MDBs”) in enforcement actions based on their own anti-corruption guidelines.

The five most prominent MDBs are the World Bank, the [Inter-American Development Bank](#), the African Development Bank, the Asian Development Bank, and the European Bank for Reconstruction and Development. Each of the MDBs offers financial support and technical advice for economic and social development activities in developing countries.



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According to World Bank estimates, more than \$1 trillion is paid in bribes around the world each year.[1] In order to arrest and prevent this diversion of funds, the bank has implemented a multilevel investigation and sanctions process applicable to anyone receiving funds from a World Bank-financed project. The bank has the authority to impose serious sanctions, including permanent debarment, on any recipient of World Bank funds, including subsidiaries and affiliates. While all of the MDBs have their own investigation, enforcement and sanctions processes, the World Bank, the largest of the MDBs, has been perhaps the most active in using its sanctions process to pursue potential corruption.[2] Thus, any entity accepting World Bank funds either directly or indirectly would be well-advised to be aware of the bank’s sanctions regime and ensure that it has appropriate anti-corruption measures in place to prevent what the bank deems sanctionable conduct.

A Brief Background of Global Anti-Corruption Efforts

By way of background, the United States enacted the FCPA in 1977, which in essence made bribery illegal in carrying out foreign business transactions. Through the 1980s, American businesses that had to compete abroad against foreign companies not subject to the FCPA or equivalent anti-corruption laws began pressuring the United States to extend the reach of the FCPA to level the playing field. The effort to globalize anti-corruption laws began to gain steam in the 1990s. In 1993, for example, a former World Bank official founded Transparency International in Germany, with the agenda of encouraging international institutions and countries to enact and enforce laws outlawing bribery and other forms of corruption. In 1994, the Organization for Economic Cooperation and Development (“OECD”) adopted a recommendation to criminalize foreign bribery. In 1996, World Bank president James Wolfensohn called on the bank to eliminate the “cancer of corruption,” which resulted in the bank aggressively ferreting out corruption in its own ranks and in those with whom it did business. In 1997, the OECD adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which resulted in OECD member countries agreeing to enact laws making it a crime to pay bribes to foreign officials. In 2003, the [United Nations Convention Against Corruption](#) was adopted and signed by 140 member states, requiring each state to enact and enforce criminal sanctions against bribery, among other acts. Then, throughout the 2000s, FCPA enforcement began to rise exponentially, in tandem with the World Bank increasing its own investigation and sanctions efforts.

Basis for World Bank Investigation and Sanctions Jurisdiction

The World Bank investigation and sanctions regime is a quasi-judicial multistep process that can ultimately lead to a judgment issued by the World Bank Sanctions Board. The bank maintains that it has the right to investigate and sanction any recipient of funds on a bank-financed project. The source of the bank’s ability to investigate and sanction is derivative of its fiduciary duty as expressed in the bank’s articles of agreement, and arises from its procurement, consultant and anti-corruption guidelines.^[3] These guidelines provide for bank sanctions as well as contractual remedies in the event that sanctionable conduct is found to have occurred in connection with a bank-financed project. All three guidelines are incorporated into the bank’s legal agreements. In addition, any entity that is awarded a contract financed in whole or in part by the World Bank is required to agree to an audit clause granting the bank audit rights to inspect the books and records of the company and

submit itself to the sanctioning jurisdiction of the World Bank.

The Investigation and Sanctions Process

Investigation by the Institutional Integrity Vice Presidency

The initial step of the World Bank's investigation process involves an inquiry by the bank's institutional integrity vice presidency. INT is tasked with investigating allegations of five categories of sanctionable misconduct — fraud, corruption, collusion, obstruction and coercion.[4]

Often, the first notice a company or individual will get of a bank investigation is a “show cause” letter from INT providing notice of sanctionable misconduct allegations and seeking a response. The show cause letter may not be particularly detailed, making it difficult for the recipient to pinpoint the exact conduct at issue without additional back and forth with INT. The show cause letter will usually be followed by requests for information from INT made pursuant to its audit rights.

The “audit” conducted by INT is not an audit in the accounting sense, but instead involves discovery requests similar to those served in civil discovery. INT has the right to audit and inspect project accounts, records and documents. INT also has the right to request interviews. While motions can be submitted to the World Bank's suspension and debarment officer and the sanctions board during the course of sanctions proceedings to the effect that INT abused its authority, it is unclear whether something equivalent to a motion to quash discovery can be filed while an investigation is pending at the INT level. The World Bank has yet to provide detailed guidance on the scope of its audit rights.

In addition to its investigation function, INT has the authority to resolve cases on its own through settlement. If INT determines that there is a valid basis for continuing the investigation, and does not reach a settlement with the entity or person under investigation, it will prepare a statement of accusations and evidence for submission to the Office of Suspension and Debarment (“OSD”), led by the chief suspension and debarment officer. [5]

Review by the Office of Suspension and Debarment

The Office of Suspension and Debarment reviews the evidence and accusations submitted by INT. The OSD is a small but significant office within the bank. The OSD initially decides whether in its view the evidence gathered by INT is sufficient to find that the company or individual engaged in fraud, corruption, collusion, coercion or obstruction in connection with a bank-financed project. If the OSD finds the evidence sufficient, it issues a notice of sanctions proceedings, which includes a recommended sanction. [6] If the OSD's recommended sanction exceeds a six-month debarment, the company or individual receives an automatic temporary suspension, although it is permitted to submit an explanation to OSD as to why the notice of sanctions proceedings should be withdrawn.[7] According to the World Bank, 67 percent of cases are resolved in some fashion at the OSD level, including through settlement and/or determinations that the evidence does not support a finding of sanctionable conduct [8] If the investigation is not resolved at the OSD level, and the company or individual challenges the allegations or the recommended sanctions, the case then proceeds to the sanctions board.

Hearing Before and Decision by the Sanctions Board

The sanctions board has the authority to issue final decisions on sanctions. The sanctions board is comprised of three World Bank staff and four external, nonbank members. The sanctions board engages in a *de novo* review of the evidence collected by INT and the sanctions recommended by the OSD.[9] The sanctions board will hold a hearing if requested by either INT or the company or individual under investigation, or on its own initiative. The sanctions board will consider written submissions and any evidence (which may include hearsay) that either side submits. There are no general page limits to any submissions and no general time limit to a hearing. Both are set individually for each case by the sanctions board. At the hearing, neither side can offer new evidence; everything must be in the filings submitted in advance. The standard for the sanctions board to find that sanctionable conduct occurred is whether it is "more likely than not" that the company or individual engaged in sanctionable conduct, which is akin to a "preponderance of the evidence" standard. If the sanctions board finds that sanctionable conduct more likely than not occurred, it has the authority to impose sanctions, which are final and not appealable. Sanctions can range from a reprimand to restitution[10] to various categories of debarment, including permanent debarment.[11] The baseline or default sanction, according to the

World Bank, is what is termed “debarment with conditional release.”[12]

Post-Sanction Monitoring by the Integrity Compliance Officer

If the baseline sanction of “debarment with conditional release” is imposed, the integrity compliance officer (“ICO”), a function within INT, has responsibility for monitoring the compliance of the sanctioned company or individual with the conditions required for release and ultimately deciding whether or not reinstatement to do business on bank-financed projects is merited. The conditions for release generally include putting in place an integrity compliance program aimed at preventing future sanctionable conduct that complies with the World Bank’s integrity compliance guidelines.[13] The bank’s integrity compliance guidelines require a company to, among other things, train its employees in its compliance program, conduct due diligence on employees and potential business partners, establish internal financial controls, and provide channels for whistleblowers.[14]

The ICO is often assisted by outside lawyers or law firms retained to act as independent monitors. The independent monitor is chosen, hired by, and paid for by the sanctioned company; however, it appears that the bank has veto power over a particular monitor’s selection. The independent monitor is tasked with generating reports regarding the sanctioned company’s compliance efforts. To determine whether a company has complied with the integrity compliance guidelines, the independent monitor will review the company’s compliance program, interview employees, and inspect books and records, among other things. Ultimately, after a period of time, and upon receipt of compliance reports submitted by the independent monitor (if one has been retained), the ICO decides whether an entity has met the bank’s conditions for release from debarment. If the ICO rejects the application for reinstatement, that decision may be appealed to the sanctions board.

The foregoing procedures and guidelines are continuing to be developed. The bank has stated that additional reforms are currently planned. For example, the bank plans to transition to a fully external sanctions board, as opposed to one that includes Bank employees. The bank also plans to expand the public nature of the sanctions board decisions. Finally, the bank is continuing to revise its sanctioning guidelines in an effort to provide additional guidance to those under investigation.[15]

Additional Consequences of Being Sanctioned

In addition to the sanctions imposed by the sanctions board, companies or individuals doing business on bank-financed projects should be aware of the various follow-on consequences of being sanctioned. First, once sanctions are imposed, the identity of the sanctioned party becomes public along with the conduct for which it was sanctioned. Second, a sanction that includes debarment for any substantial period of time will almost certainly result in a cross-debarment by other MDBs pursuant to the agreement for mutual enforcement of debarment decisions. [16] That means that the sanctioned company or individual will be barred from doing business on projects financed by other MDBs and could be barred by non-MDB public institutions, some of which may give effect to an MDB debarment through their own procurement processes. Third, sanctions will generally extend to a company's subsidiaries and, in some circumstances, its parent entity. Fourth, the World Bank may refer a matter to the criminal or civil authorities of the host country if it believes that national laws have been broken. Thus, for many reasons, a company or individual receiving a show cause letter from the World Bank needs to take the investigation and sanctions process seriously.

Sources of Guidance Relating to the World Bank Investigation and Sanctions Process

To its credit, the World Bank has made substantial efforts to make the sanctions process more transparent. Since 2011, for example, the bank has issued published sanctions board decisions on its website.[17] The published decisions contain the factual background of the bank-financed project at issue, the contentions of the bank and the response and argument of the party under investigation, a summary of the hearing (if held), and the analysis and conclusions of the sanctions board as to whether the case has met the "more likely than not" standard of proof. The analysis and conclusions are supported by extensive citations to the factual and briefing record. The sanctions board is making increasing reference to its prior published decisions as the basis for its decisions, demonstrating that its published opinions are an extremely valuable source of precedent for those arguing against the imposition of sanctions. Notably, a review of the published decisions demonstrates that the sanctions board does not merely rubber stamp the sanctions being sought by the bank. Indeed, the sanctions board often sides at least in part with the responding party, especially in heavily litigated cases.

In addition to the individual published decisions, the sanctions board has committed to issuing periodic law digests. Although the most recent law digest is dated December 2011, the sanctions board has stated that it will publish and update a digest of the aspects of its decisions that “it deems illustrative of the legal principles it has applied in reaching its decisions.”[18] Such digests, once updated, will be another valuable source of precedent, especially as they will provide insight into what the sanctions board itself deems to be its most significant jurisprudence.

Advice for Companies or Individuals Receiving Funds on World Bank or MDB-Financed Projects

In light of the World Bank’s increasingly active and sophisticated sanctions regime, what should companies or individuals participating in World Bank or MDB-financed contracts know? First, given the severity of the potential sanctions the bank and the other MDBs may impose, companies should make it a priority to determine whether they have business dealings directly or indirectly in any MDB-financed project. MDBs operate in emerging markets, where many companies are seeking to gain market share and growth. Industries likely to involve MDB-financed projects include infrastructure, pharmaceuticals, energy, mining, water, sanitation, health, transportation and agriculture. Companies should also assess whether their affiliates or subsidiaries have such contracts, because sanctions may apply to more than just the specific entity that is party to the contract at issue. Second, if a company does have involvement either directly or indirectly in a MDB-financed project, it should make sure that it has a proper anti-corruption program in place (ideally using the World Bank’s integrity compliance guidelines), ensure that its employees are appropriately trained in its compliance program, and set up a system for conducting adequate due diligence on projects and potential counterparties. Third, if a company or individual does receive a show cause letter from the World Bank or an MDB, counsel should be engaged to assist in the response and help navigate through the ensuing investigation and litigation. The consequences are too severe to go it alone.

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[1] The World Bank Sanctions System, 2015. Presented by Jamieson Smith, Senior Counsel (Sanctions), Office of Suspension and Debarment.

[2] According to World Bank statistics, since 1999, the Bank has sanctioned 685 firms and individuals, temporarily suspended 344 firms and individuals, and referred at least 30 matters to member states that have resulted in criminal convictions. *Id.*

[3] IBRD Articles of Agreement, art. III, §5(b); IDA Articles of Agreement, art. V, §1(g).

[4] World Bank Sanctions Procedures, as adopted by the World Bank as of April 15, 2012, at 38-39 (containing definitions of sanctionable conduct).
http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/WBGSanctions_Procedures_April2012_Final.pdf

[5] While its investigation is ongoing, INT has the option to submit what is called a Request for Temporary Suspension to the OSD. The OSD reviews the evidence submitted by INT to determine whether it is sufficient to support a finding that sanctionable conduct has occurred. If the evidence is found to be sufficient, and INT's recommended sanction is for a debarment period greater than two years, then the OSD can issue a Notice of Temporary Suspension for six months, which can be extended for an additional six months upon INT's request. World Bank Sanctions Flowchart.

http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/ETS_Flowchart_Version_1.28.2014.pdf

[6] Sanctions System at the World Bank.

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNIT S/EXTOFFEVASUS/0,,menuPK:3601066~pagePK:64168427~piPK:64168435~theSitePK:3601046,00.html>

[7] World Bank Sanctions System Flowchart.

http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/ETS_Flowchart_Version_1.28.2014.pdf

[8] The World Bank Sanctions System, 2015. Presented by Jamieson Smith, Senior Counsel (Sanctions), Office of Suspension and Debarment.

[9] Sanctions System at the World Bank.

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNIT S/EXTOFFEVASUS/0,,menuPK:3601066~pagePK:64168427~piPK:64168435~theSitePK:3601046,00.html>

[10] The World Bank can require restitution as a sanction, but the more common form of monetary sanction is for a Negotiated Resolution Agreement to include a monetary payment that is held by the Bank to support broader anti-corruption activities. See, e.g., [World Bank Group Settlements](#): How Negotiated Resolution Agreements Fit Within the World Bank Group's Sanctions System.

<http://siteresources.worldbank.org/INTDOII/Resources/NoteOnSettlementProcess.pdf>

[11] World Bank Sanctions Procedures, April 2012, at 23-24.

http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/WBGSanctions_Procedures_April2012_Final.pdf

[12] World Bank Group Integrity Compliance Guidelines.

http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf

[13] Summary of World Bank Integrity Compliance Guidelines.

http://siteresources.worldbank.org/INTDOII/Resources/IntegrityComplianceGuidelines_2_1_11web.pdf

[14] World Bank Group Integrity Compliance Guidelines.

http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf

[15] The World Bank Sanctions System. Presented by Jamieson Smith, Senior Counsel (Sanctions), Office of Suspension and Debarment.

[16] Agreement for Mutual Enforcement of Debarment Decisions.

[http://lnadbg4.adb.org/oai001p.nsf/0/F77A326B818A19C548257853000C2B10/\\$FILE/cross-debarment-agreement.pdf](http://lnadbg4.adb.org/oai001p.nsf/0/F77A326B818A19C548257853000C2B10/$FILE/cross-debarment-agreement.pdf); <http://lnadbg4.adb.org/oai001p.nsf/>

[17] See, e.g., <http://go.worldbank.org/QX9RIK97Y0>

[18] World Bank Group Sanctions Board Law Digest, December 2011.

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNIT S/EXTOFFEVASUS/0,,contentMDK:23065125~pagePK:64168445~piPK:64168309~theSite PK:3601046,00.html>