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# The World Bank Sanctions System

*By Drew Harker & Nathaniel Castellano*[*]

With billions of dollars flowing from the World Bank to development projects around the world every year, companies are understandably attracted to the prospect of receiving World Bank-financed contracts. But these opportunities come with risk. The World Bank's sanctions system operates at the cutting edge of international anti-corruption enforcement. Companies working on Bank-financed contracts, as well as their affiliates and subsidiaries, may be debarred and thereby excluded from all World Bank-financed contracts.[1] Debarment by the World Bank will usually result in cross-debarment by other multi-lateral Development Banks. The risk is not limited to opportunities with Development Banks, as the World Bank's investigators will likely refer their findings to national authorities, potentially resulting in further liability.

For companies familiar with U.S. government contracting, the Bank's sanctions system may seem similar to U.S. suspension and debarment. Indeed, both systems use suspension and debarment to exclude companies from procurement markets. But there are several fundamental differences between the two systems that are important to understand before committing to a Bank-financed contract opportunity.[2] Companies may find that the Bank's anti-corruption enforcement is more akin to U.S. enforcement of its False Claims Act (FCA)[3] and Foreign Corrupt Practices Act (FCPA)[4] than the U.S. suspension and debarment system.

This BRIEFING PAPER provides a guide to the World Bank's sanctions system. First, the PAPER provides some foundational background information about the World Bank's recent anti-corruption efforts, the creation of its sanctions system, and its legal basis. Second, the PAPER walks through the basic procedures of the World Bank's sanctions system, from the investigators' initial screening through both stages of the Bank's two-tiered sanctions process. Third, it discusses the implications of debarment by the Bank and possible collateral effects. Finally, it explores means to mitigate the risk of being sanctioned by the World Bank.

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## Origins, Goals, And Objectives Of The Bank's Sanctions System

Suspension and debarment are powerful tools for excluding contractors from competing in procurement markets. They have long been used as administrative remedies in the United States to avoid doing business with unethical, irresponsible, or unqualified contractors. The World Bank relies on these measures as a means of sanctioning and deterring behavior that compromises the Bank's dual mandate of eliminating extreme poverty and increasing shared prosperity.[5]

The creators of the U.S. system understood suspension and debarment as drastic measures because they reduce competition in procurement markets and impose compliance requirements that ultimately increase the costs of procurement. In the United States, suspension and debarment are viewed by the government as business decisions that should only be made in the best interest of the government; they are not punitive measures. Present responsibility is the cornerstone concept of the U.S. suspension and debarment system.[6] Absent a few statutes that mandate debarment in the event of a violation, no contractor will be suspended or debarred by the United States, regardless of its past misconduct, it if can demonstrate that it is presently responsible to contract with the government.[7]

The World Bank's sanctions system was designed with fewer business concerns in mind. It originated in 1996 in the wake of then-World Bank President Wolfensohn's infamous "cancer of corruption" speech, which marked a new age in the Bank's focus on corruption as a threat to its mission. Wolfensohn framed corruption in Bank-financed procurements as a threat to the Bank's fiduciary duty to ensure that Bank funds are spent for their intended purpose, as found in Article 5, Section 3, of the Bank's Articles of Agreement. The World Bank does not fully embrace the American concept of present responsibility. If sufficient evidence of sanctionable conduct is submitted to the Bank's sanctions system, the accused contractor and its affiliates will likely be suspended and debarred, regardless of their present responsibility.[8]

This comparison is not to suggest that the United States turns a blind eye to fraud and corruption. To the contrary, the United States vigorously pursues civil and criminal redress for fraud and corruption through the FCA and FCPA, among others. But the World Bank cannot rely on those statutory anti-corruption mechanisms—or any of the national laws of its member or borrowing countries—to reduce the risk that its funds will be misused. The World Bank's inability to rely on traditional national law enforcement and judicial systems to protect its resources explains, in part, why the Bank's sanctions system is less forgiving of past misconduct than the rules governing U.S. suspension and debarment. Given these fundamental differences in how the systems are designed, contractors and their counsel are likely to encounter problems if they approach the World Bank's sanctions system the same way that they approach U.S. suspension and debarment.[9] Instead, these companies may find that mitigating the risk of Bank sanctions is more comparable to mitigating the risk of FCA and FCPA liability than suspension or debarment by a U.S. agency.

## Legal Basis Of The World Bank Sanctions System

Before discussing the Bank's procedures for investigating and adjudicating potentially sanctionable conduct, it helps to have context for the legal basis of the Bank's sanctions system. The World Bank takes the position that the legal basis for its relatively recent anti-corruption efforts is rooted in its fiduciary duty to ensure that Bank funds are spent for their intended purpose. Therefore, the legal

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framework that governs each sanctions case is based on the specific loan agreement that governs the use of Bank funds. Accordingly, the Bank describes the jurisdiction for its sanctions system as contractual in nature.

When the World Bank enters into a loan agreement with a Borrower to implement a development project, the loan agreement gives the Borrower responsibility for project implementation, including contract award and administration. However, the Bank plays a significant role throughout the project, including the procurement process. Each loan agreement incorporates the Bank's procurement policy, which as of June 2016 is reflected in the Procurement Framework.[10]

The Procurement Framework includes Procurement Regulations, which govern how Borrowers conduct and administer any procurement with Bank funding. In doing so, the Procurement Regulations dictate provisions that must be flowed down to any resulting contract.[11] Annex IV of the Procurement Regulations addresses fraud and corruption by stating that all contracts must require compliance with the Anti-Corruption Guidelines. The Anti-Corruption Guidelines set forth ethical obligations for recipients of Bank funds.[12] Annex IV clearly states that the Bank has authority to sanction those determined to have engaged in fraud or corruption, and it incorporates the definitions of sanctionable conduct that are provided in the Anti-Corruption Guidelines.[13]

Annex IV also requires that all contracts include an audit clause that gives the Bank's investigators authority to access documents related to a procurement. Specifically, the Bank requires that:

> [A] clause be included in request for bids/request for proposals documents and in contracts financed by a Bank loan, requiring bidders (applicants/proposers), consultants, contractors, and suppliers; and their sub-contractors, sub-consultants, agents, personnel, consultants, service providers or suppliers, permit the Bank to inspect all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.[14]

A footnote to the regulation excerpted above explains that these inspections are not routine audits; they are usually investigative and relate to allegations of fraud and corruption:

> Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact finding activities undertaken by the Bank or persons appointed by the Bank to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.[15]

As detailed in the following sections of this Paper, if investigation reveals sufficient evidence of sanctionable conduct in connection with Bank funds by the accused party (referred to as the Respondent). investigators will likely initiate the sanctions process. As of June 1, 2016, the procedures and standards of the sanctions process are set forth in the Sanctions Procedures.[16]

## Investigation And Adjudication Process

The Bank's sanctions system consists of two phases. First, investigators in the Integrity Vice Presidency (INT) investigate allegations of sanctionable conduct. Second, if investigation substantiates the allegations, the case proceeds to a two-tiered sanctions process, where the first tier is the Office of Suspension and Debarment (OSD) and the second tier is the Sanctions Board.

A central theme of the Bank's sanctions system is that the investigators have substantial discretion. In addition to deciding if and when to initiate the sanctions process, Bank investigators have considerable discretion to negotiate settlement agreements.[17] Therefore, it is almost always in a contractor's best interest to cooperate with INT during any investigation and seek to negotiate a settlement before allegations are submitted to OSD. At OSD, the Bank's Chief Suspension and Debarment Officer (SDO) independently reviews the sufficiency of INT's allegations, but, if the evidence of sanctionable conduct is sufficient, then the SDO has little, if any, discretion to decide whether debarment is warranted. In almost all cases, regardless of the Respondent's present responsibility or additional remedial steps, substantiated allegations of any sanctionable conduct will result in some period of temporary suspension and debarment.

To be sure, the duration of the debarment recommended by the SDO may vary based on evidence of aggravating and mitigating factors, but any period of suspension or debar-

 

ment is likely to trigger adverse affects, such as foregone business opportunities, reputational damage, and possible reporting requirements to third parties, such as banks and other financial institutions that are the source of operating capital for the contractor. Published decisions from the Sanctions Board suggest that it may be more willing than the SDO to reduce the severity of a sanction based on mitigating and aggravating factors. But even the Sanctions Board's willingness to reduce a sanction is nothing akin to the highly discretionary decisionmaking of a U.S. SDO.[18] When considered in light of the fact that it may take well over a year to receive a final decision from the Sanctions Board, most Respondents will be well advised to negotiate a settlement with INT instead of working through the sanctions process.

## Investigation Of Sanctionable Conduct

INT is tasked with, among other things, investigating allegations that sanctionable conduct occurred in connection with World Bank funds.[19] To be sanctionable, conduct must fall within the 10-year statute of limitations and the definitions of corruption, fraud, collusion, coercion, or obstruction:

> 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.
>
> A "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly[20] misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
>
> 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.
>
> 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.
>
> An "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.[21]

INT does not have formal subpoena powers, but, as provided through the audit clause required by Annex IV of the Procurement Regulation, INT does have third-party audit rights to access documents related to the procurement. Further, they have considerable power to persuade companies to facilitate their investigation, as cooperation with INT is a mitigating factor taken into account when determining the length of a debarment period, while failure to cooperate is an aggravating factor. INT's power of persuasion was strengthened by the addition of obstruction to the list of independent sanctionable practices; interfering with an investigation is itself sanctionable conduct.[22]

Data suggest that nearly a quarter of all investment projects receive at least one complaint of fraud and corruption.[23] INT receives allegations of sanctionable conduct from many sources, including bank staff, competing contractors, private citizens, whistleblowers, public watchdogs, other multilateral banks, and national authorities.[24] INT screens these allegations to ensure they are related to Bank funding and implicate sanctionable practices.[25]

If the screening shows that a sanctionable process may have occurred in connection with Bank financing, investigators open a complaint file and conduct further assessment to determine whether to move from the preliminary inquiry stage to a full investigation.[26] According to INT, this review involves consideration of the seriousness of the allegations, the credibility of the complaint, the presence of corroborating evidence, the value of funds involved, the quality of evidence, the potential development impact, the ability to investigate, the risk of investigation, and the reputational risk to the Bank.[27] INT aims to keep this process between 12 and 18 months, depending on the complexity of the case.[28] In the Bank's 2016 fiscal year, INT investigated 279 preliminary inquiries, and 64 were selected for full investigation.[29]

During the investigation process, INT may provide a notice of audit notifying an entity or individual that INT is triggering its rights under the audit clause to access project-related information. The notice could be formal or informal. The audit could result in issuance of a show cause letter providing INT's findings and a preliminary opportunity to respond. Both of these documents should be taken seriously, because, as explained throughout, cooperating with INT during these early stages of investigation is likely the most effective way of avoiding or mitigating the risk of debarment. In addition, statements against interest or statements that are incomplete or misleading to the investigators during this early stage could themselves be the basis for sanctions.

If an investigation substantiates the allegations, INT will ultimately submit a Statement of Accusations and Evidence

 

(SAE) to OSD. However, in some cases, INT may seek temporary suspension before it concludes an investigation in order to exclude the contractor from receiving Bank-financed contracts as soon as possible.

Temporary Suspension is the Bank's corollary to the concept of suspension in the United States.[30] Before the investigation is complete, INT can file a Request for Temporary Suspension with OSD if it believes that (1) there is sufficient evidence to support a finding of sanctionable conduct, (2) it is highly likely that the investigation will be successfully concluded, and (3) an SAE will be submitted to OSD within one year. OSD will issue a Notice of Temporary Suspension if the SDO determines that (1) there is sufficient evidence to support a finding that the Respondent engaged in sanctionable conduct and (2) if the accusations were included in an SAE then the SDO would recommend a sanction of debarment for a period of no less than two years.[31]

As soon as the Notice of Temporary Suspension is issued, the Respondent is effectively debarred and therefore ineligible to receive Bank contracts.[32]

Temporary suspension typically lasts six months, with the possibility of INT requesting a six-month extension.[33] The fact of temporary suspension is made available to certain Bank staff to ensure implementation, but no public announcement is made.[34] INT reports utilizing temporary suspension eight times during the Bank's 2016 fiscal year.[35]

As with suspension in the United States, the accused contractor—*i.e.*, the Respondent—is deemed ineligible for further World Bank-financed contracts before it is given any opportunity to respond.[36] Within 30 days of the delivery of the Notice of Temporary Suspension, the Respondent may submit a written Explanation as to why suspension should be withdrawn.[37] The SDO may lift temporary suspension any time the SDO determines that there was manifest error in imposing the temporary suspension or any other clear basis for termination.[38] To that end, INT must provide the SDO with any exculpatory evidence revealed during the period of temporary suspension.[39] While the Sanctions Procedures seem to require that the Notice of Sanctions Proceedings will include the accusations and evidence that INT submits to OSD as the basis for temporary suspension, it is not clear if, when, or how a Respondent will be notified of exculpatory evidence revealed during the period of temporary suspension.[40] If INT fails to submit an SAE to OSD by the end of the temporary suspension period, the temporary suspension is lifted.[41] However, if INT does timely submit an SAE, then the temporary suspension is extended throughout the duration of the sanctions proceedings.[42]

## Two-Tiered Sanctions Process

### Initial Evaluation By The Office of Suspension And Debarment

OSD is the first tier of the World Bank's sanctions process. Regardless of whether INT requests Temporary Suspension while its investigation is underway, if INT pursues a sanction after its investigation is complete, it must submit a complete SAE to OSD.[43] The SDO independently determines whether the SAE contains sufficient evidence of sanctionable conduct.[44] Sufficient evidence exists where the SAE reveals that it is more likely than not that the Respondent engaged in sanctionable conduct.[45]

An SAE may contain several allegations of sanctionable conduct, each of which must be substantiated. If the SDO finds that any of the allegations are insufficiently substantiated, then those unsubstantiated allegations are rejected and returned to INT with a reasoned explanation of the deficiencies.[46] Data from OSD reveal that 36% of all SAEs contain at least one insufficiently substantiated allegation.[47] However, the same data from OSD reveal that 96% of all SAEs contained at least one allegation of sanctionable conduct that was substantiated.[48] So, while INT does occasionally submit an SAE that contains unsubstantiated allegations, almost all SAEs contain at least one substantiated allegation of sanctionable conduct.

### Determination Of Recommended Sanction

If OSD determines that the SAE is substantiated with sufficient evidence of sanctionable conduct, OSD will consider all evidence of mitigating and aggravating factors, recommend a sanction, and send a Notice of Sanctions Proceedings to the Respondent.[49] The notice will include the a copy of the SAE, notice of the recommended sanction, and instruction on how to challenge the initial determination.[50] If OSD recommends a sanction that includes a period of debarment of at least six months, then the Respondent is temporarily suspended as soon as it receives the notice.[51]

The Sanctions Procedures and Sanctioning Guidelines seem, on their face, to give OSD considerable discretion to determine, on a case-by-case basis, whether debarment is warranted and how long that debarment should last. Technically, OSD can choose among five different sanctions: debarment with conditional release, debarment for a fixed

 

period, conditional nondebarment, public letter of reprimand, and restitution.[52] Further, the Sanctions Procedures include a nonexhaustive set of factors to be considered when determining the appropriate sanction, which seems to suggest considerable discretion to weigh whether debarment is warranted:[53]

(1) Severity of the misconduct;

(2) Magnitude of the harm caused by the misconduct;

(3) Respondent's interference in the Bank's investigation;

(4) Respondent'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;

(5) Mitigating circumstances, including where the Respondent played a minor role in the misconduct, took voluntary corrective action, or cooperated in the investigation or resolution of the case, including through settlement;

(6) Breach of the confidentiality of the sanctions proceedings;

(7) The period of temporary suspension already served by the sanctioned party; and

(8) Any other factor that OSD reasonably deems relevant to the Respondent's culpability or responsibility in relation to the Sanctionable Practice.

Despite this seemingly broad discretion, however, the Bank has clearly identified debarment with conditional release for a minimum period of three years as the default sanction for all sanctionable conduct. Absent extraordinary circumstances, OSD will recommend a sanction of debarment with conditional release for a period greater than six months (usually the three-year default). Therefore, absent extraordinary circumstances, the Respondent will be temporarily suspended upon receipt of the Notice of Sanctions Proceedings.[54]

Note here a critical distinction between the World Bank and U.S. systems. In the United States, any suspension or debarment requires an affirmative determination that such action is in the best interest of the government. A contractor will not be suspended or debarred if the contractor can show that it is presently responsible despite past misconduct, and suspension and debarment officers have discretion to enter into administrative agreements in lieu of suspension or debarment even when a contractor cannot demonstrate present responsibility.[55]

### Attribution To Affiliates

If a Notice of Sanctions Proceedings is issued, OSD must determine whether to extend its recommended sanction to any of the Respondent's affiliates.[56] Both the U.S. and the Bank generally define two entities as affiliates when either has control over or the ability to control the other, or when a third party controls or has the ability to control both entities.[57]

The Bank defines control as "the ability to direct or cause the direction of the policies or operations of another entity, whether through the ownership of voting securities or otherwise."[58] The Bank relies on several indicia of ownership and control that are similar to those found in the Federal Acquisition Regulation (FAR), such as interlocking equity ownership or management, overlapping employees, and sharing of facilities.[59] The Bank applies four rebuttable presumptions when applying sanctions to corporate groups:[60]

(1) Sanctions apply to the entire corporate entity unless the Respondent can show that the sanctionable practice was limited to a particular unit or division;

(2) Sanctions are applied to all subsidiaries (*i.e.* entities controlled by the Respondent) unless the Respondent can show that the application would be disproportionate and not reasonably necessary to avoid circumvention;

(3) Sanctions are *not* applied to parents (entities controlling the Respondent) and 'sister' firms (entities under common control with the Respondent), unless INT can show some degree of either culpability (*i.e.*, direct involvement in the wrongdoing) or responsibility (*i.e.*, failure to supervise or maintain adequate controls) or that extension of responsibility is necessary to avoid circumvention of the sanction; and

(4) When INT has made a prima facie case that a firm is the successor or assign of a sanctioned entity, the sanction will apply to the putative successor or assign unless it can rebut INT's case or otherwise show that such application would be inconsistent with the spirit of the guidance principles of the sanctions system.

 

If OSD recommends that an affiliate be sanctioned, the affiliate will receive a Notice of Sanctions Proceedings and will be afforded the same procedural rights as the original Respondent.[61]

### Written Explanation To OSD

Once the Respondent and its affiliates receive the notice, they have 30 days to submit a written Explanation to OSD.[62] OSD then has 30 days to reconsider the evidence presented and adjust its sanction as necessary.[63] Unless OSD, in its discretion, determines that separate filings are warranted, a Respondent and its affiliates will submit a consolidated Explanation.[64]

### Appealing To The Sanctions Board

Regardless of whether an Explanation is submitted, the Respondent has 90 days from receipt of the Notice of Sanctions Proceedings to submit a written Response to the second tier of the sanctions system—the World Bank Group's Sanctions Board.[65] As of July 1, 2016, the Sanctions Board is comprised of seven members, all of whom are independent from the Bank.[66] Previously, three members were appointed from among senior Bank Staff.

Approximately 33% of sanctions cases are appealed to the Sanctions Board.[67] If the Respondent does not appeal to the Sanctions Board, then OSD's determination is deemed to be uncontested, and the SDO's recommended sanction immediately goes into effect.[68]

The Sanctions Board reviews cases *de novo*.[69] INT and the Respondent will both be allowed to present their cases through written filings and, in some cases, formal hearings.[70] Unless the Sanctions Board determines that separate filings are warranted, a Respondent and its affiliates will submit consolidated filings.[71] There is no time limit to the duration of these proceedings, and the Sanctions Board may ultimately issue a harsher sanction than the one initially recommended by the SDO.[72] Given that most Respondents will be temporarily suspended during these proceedings, it is important to note that the Sanctions Board will consider time served when imposing a final debarment period, which is analogous to the U.S. debarment process.[73] The Sanction Board's decision is final and without appeal, and the sanction imposed, if any, goes into effect when the decision is issued.[74]

As of January 1, 2011, all Sanctions Board decisions are published on the Bank's website.[75] The published Sanctions Board decisions reveal a developing body of jurisprudence that can be used to determine how the Board may respond in certain cases, particularly with respect to mitigating and aggravating factors. The published cases seem to suggest that the Sanctions Board is willing to meaningfully reduce the period of debarment initially recommended by OSD based on evidence of mitigating factors. More specifically, the decisions demonstrate the Board's willingness to reduce a period of debarment based on meaningful evidence of voluntary corrective action, conducting an internal investigation, removing culpable employees, implementation of and improvements to a compliance program, and cooperation with INT. However, the decisions also reveal that the Sanctions Board is willing to scrutinize evidence of these mitigating factors to ensure that the respondent's efforts were meaningful, well documented, and appropriately tailored.[76]

## Debarment, Cross Debarment, Conditional Release, And Referral

### Debarment

If the Respondent is debarred, the Respondent's name is placed on a public database on the Bank's website, which provides a brief description of the grounds for debarment.[77] Assuming a Respondent receives the standard sanction of a three-year minimum debarment with conditional release, it will be ineligible to receive Bank-financed contracts:

> *Debarment*. The sanctioned party is declared ineligible, either indefinitely or for a stated period of time, (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Project.[78]

### Cross-Debarment

Debarment by the Bank extends to four other multilateral development banks: the Asian Development Bank, African Development Bank, European Bank for Reconstruction and Development, and Inter-American Development Bank. In 2010, these multi-development banks entered into a cross-debarment agreement whereby " 'entities debarred by one . . . may be sanctioned for the same misconduct by the other participating development banks.' "[79] Cross-debarment is triggered when an entity is debarred for at least one year; however, in extraordinary circumstances, the development banks may decline to impose cross-debarment on a case-by-case basis.

### Conditional Release

Assuming a Respondent receives the default sanction of three-year debarment with conditional release, release from debarment is not automatic after the three-year minimum debarment period. Instead, as the name suggests, release from debarment is conditional. Compliance with the conditions of release from debarment is monitored by the Integrity Compliance Office (ICO), which operates within INT.[80]

Shortly after debarment with conditional release is imposed, an Integrity Compliance Officer will contact the sanctioned party and advise them of the requirements for meeting the conditions of release. The ICO will then monitor the sanctioned party's progress and compliance. Prior to release from debarment, the sanctioned party must submit an application that explains and evidences its compliance with all conditions for release.[81]

The ICO has broad discretion to determine whether the conditions for release are satisfied. If the ICO makes a determination of noncompliance, the ICO will specify a continuation period of the debarment, not to exceed one year, after which the sanctioned party may again apply for release. An ICO's determination of noncompliance can be appealed to the Sanctions Board. The Sanctions Board's review is limited to a deferential abuse of discretion standard. An abuse of discretion will only be found if the ICO's noncompliance determination (1) lacks an observable basis or is otherwise arbitrary, (2) is based on disregard of a material fact or a material mistake of fact, or (3) was taken in material violation of the applicable provisions of the Sanctions Procedures.[82]

Release from debarment will generally always be conditioned on implementation of a compliance program. The ICO has promulgated Integrity Compliance Guidelines that provide a framework for the types of internal controls and compliance measures that the ICO looks for. The guidelines suggest a "clearly articulated and visible prohibition of misconduct," a culture of ethical conduct and commitment to compliance, and internal policies that incentivize positive behavior and penalize violations. More specifically, the guidelines emphasize the importance of internal controls over financial matters, contracts, and decisionmaking. With respect to business partners, the guidelines emphasize the importance of conducting due diligence, monitoring the relationship, and providing notice of ongoing compliance measures. With respect to employees, the guidelines emphasize training and communication, the availability of reporting mechanisms and hotlines, a duty to report noncompliance, and periodic certification by key personnel.[83]

The ICO compliance guidelines are fairly consistent with the business ethics and compliance requirements required by the clause at FAR 52.203-13. That FAR clause requires, among other things, a written code of business ethics and conduct that is available to all employees, due diligence to prevent and detect criminal conduct, and promotion of an "organizational culture that encourages ethical conduct and a commitment to compliance with the law." It also requires a compliance program and internal control system, employee training, internal reporting mechanisms, and disciplinary action for improper conduct.

### Referral

INT has a well-established policy of referring its findings to national authorities, so there is a real risk that the World Bank's anti-corruption efforts will result in liability under national laws. INT has expressed a clear interest in strengthening its partnerships with national enforcement. In Fiscal Year 2016 alone, INT made 62 referrals following its investigations.[84]

INT's cooperation with national enforcement agencies is likely to be bolstered by the Canadian Supreme Court's decision in *World Bank Group v. Wallace*.[85] In that case, INT investigated corruption allegations that involved a Canadian company working on a Bank-financed contract in Bangladesh. INT shared the findings of its investigation with Canadian law enforcement. When Canadian authorities prosecuted the company, the defendant sought to compel production of certain INT records and testimony of INT officials. The World Bank refused, citing the immunity conferred upon its personnel and its archives by the Bank's Articles of Agreement. The Canadian Supreme Court agreed with the Bank, and, in doing so, explained that discouraging cooperation between INT and national authorities could damage the global fight against corruption.[86] There is, of course, no guarantee that other countries will give such deference to the Bank's immunities, but, for now, it seems safe to assume that INT will continue to partner with national authorities.

## Mitigating The Risk Of Sanction

There are several ways for companies with Bank-financed contracts to mitigate the risk of being sanctioned: (1) implement a compliance system; (2) cooperate and negotiate with INT; (3) voluntarily disclosure; and (4) take advantage of

procedural protections available at OSD and the Sanctions Board.

### Implement A Compliance System

First and foremost, contractors should implement compliance mechanisms that reduce the likelihood of sanctionable conduct ever occurring, thus avoiding the sanctions system all together.[87] While easy to suggest, a compliance system that completely eliminates the risk of sanctionable conduct occurring is arguably impossible, and most likely not worth the costs of its marginal benefits. While every compliance program should be tailored to individual circumstances, contractors considering World Bank-financed contracts should consider the Integrity Compliance Guidelines discussed above.

### Cooperate And Negotiate With INT

In the event that sanctionable conduct does occur, or that allegations of sanctionable conduct arise, contractors should engage with investigators before an SAE is submitted to OSD. This could include providing investigators with evidence necessary to completely alleviate the need for further investigation or entering into a settlement agreement with investigators and thus avoiding the sanctions process.

Of course, if there is no underlying sanctionable conduct, it is preferable to convince INT of this, so that the investigation ends at that stage. If investigators only see evidence of sanctionable conduct, or do not uncover material mitigating evidence, they may submit an SAE to OSD that, on its face, appears to be sufficient evidence of sanctionable conduct. This will likely lead to a recommended sanction of debarment with conditional release for over six months, and thus the contractor will be temporarily suspended. Only after either submitting an explanation to OSD in response to the recommended sanction notice or going through the entire Sanctions Board appeal process will the Respondent be able to prove that no sanctionable conduct occurred. Far better to get this evidence to INT before any SAE is submitted to OSD, and thus before any suspension is put in place.[88]

If INT does identify evidence of sanctionable conduct, it is better to at least try to negotiate a settlement with INT than to take the very real risk that OSD will issue a temporary suspension. INT and a Respondent may attempt to negotiate a settlement agreement, which is the World Bank's corollary to the United States' concept of administrative agreements.[89] Like administrative agreements, a settlement agreement with INT will normally require the introduction of or improvement to a compliance program.[90] INT and a Respondent can choose to enter settlement negotiations at any time during the sanctions process, and doing so effectively stays the proceedings for up to 90 days.[91]

Even if a settlement cannot be reached before INT obtains temporary suspension or submits an SAE, the Respondent's cooperation with INT during the investigation phase can be used as evidence of a mitigating factor at OSD and the Sanctions Board. During this time, the Respondent should be careful to document all of the actions it takes to investigate and voluntarily remediate any misconduct that may have occurred. The Respondent should conduct an independent and thorough internal investigation, identify and voluntarily end any misconduct or noncompliance, hold culpable individuals accountable, improve existing compliance measures and internal controls to prevent future misconduct, and, perhaps most importantly, document all of these actions so that they can be demonstrated to OSD and the Sanctions Board if necessary.

### Voluntary Disclosure

If a contractor learns of sanctionable conduct in relation to a Bank-financed contract before INT begins an investigation, it may be possible to avoid the investigation and sanctioning process entirely by voluntarily disclosing that information through the Bank's Voluntary Disclosure Program (VDP). VDP was introduced as a means of overcoming limitations to the Bank's investigatory powers by partnering with the private sector to identify misuse of funds in Bank-financed contracts.[92]

If a request to join VDP is accepted, the contractor is under an obligation to voluntarily disclose all sanctionable misconduct that may have occurred during all previous and ongoing Bank contracts.[93] The contractor must conduct an internal investigation, submit the result to the Bank, and then adopt a compliance program and engage an independent monitor that is acceptable to the Bank. The independent monitor will then track the contractor's compliance for three years.[94] In exchange for the required information and compliance measures, the Bank will agree to not sanction the contractor and will keep its participation confidential.[95] Any breach of the conditions of the VDP agreement is grounds for mandatory 10-year debarment.[96]

### Procedural Protections Before OSD And The Sanctions Board

If settlement cannot be negotiated, contractors must

understand and take advantage of the procedural protections available at each step of the sanctions process and the substantive body of law developing at the Sanctions Board. As outlined briefly above, the first step of the sanctions process is for INT to submit an SAE to OSD. OSD will then either dismiss the case for insufficient evidence or issue a Notice of Sanctions Proceedings that includes a recommended sanction, which often results in temporary suspension. While OSD is completely independent in its evaluation of the evidence, the only facts it sees to make its initial determination are those INT includes in the SAE.[97]

(1) *File an Explanation with OSD*. The first procedural safeguard a Respondent may take advantage of is to submit an Explanation and seek reconsideration of the sanction recommended in the Notice of Sanctions Proceedings. This may include correcting evidentiary issues or challenging legal conclusions. At a minimum, the Respondent should consider providing additional evidence of mitigating factors to reduce the duration of the recommended sanction.[98] Despite an obligation to include all mitigating evidence in the SAE, INT may not uncover all mitigating evidence that exists and is not necessarily incentivized to emphasize mitigating evidence during the sanctions process. Therefore, there is a real possibility that a reduced sanction could follow from the Respondent's Explanation.[99]

(2) *Appeal to the Sanctions Board*. If not satisfied with OSD's response to an Explanation, the Respondent should consider seeking *de novo* review at the Sanctions Board. Unlike in the United States, where review of an agency suspension and debarment decision is based on highly deferential review of the administrative record, the Sanctions Board will accept new evidence and arguments from the Respondent and INT.[100] The SDO's initial recommendation and determination receive no deference.[101]

A decision to seek review from the Sanctions Board should be made with consideration of the time and cost associated with doing so. It is possible that it could take the Sanctions Board longer to decide a case than the duration of the underlying recommended debarment, which would effectively preclude any meaningful remedy. Also, the Sanctions Board could ultimately issue a more severe sanction than that recommended by the SDO. Further, the Board's decision could publicly disclose evidence that results in negative publicity. While published decisions technically do not name the Respondent, in some cases it will be possible to determine the identity of the entity involved by comparing the date of the decision with the date that debarred entities are listed on the Bank's public database of debarred contractors.

Finally, appeal to the Sanctions Board must be weighed against the prospect of challenging INT investigators, which could disrupt working relationships and will give them the opportunity to submit more evidence against the Respondent. Respondents may generally be concerned that challenging INT will lead to more vigorous and frequent investigations in the future. Given that release from conditional debarment requires collaboration and cooperation with an ICO that operates within INT, a Respondent may fear that challenging investigators at the Sanctions Board will make it more difficult to regain eligibility.

## Conclusion

As domestic contracting opportunities become scarce and contractors look abroad, World Bank-financed development contracts likely appear lucrative. But these contracting opportunities involve risks that many contractors are not accustomed to, particularly the risk of being suspended or debarred by the World Bank's sanctions system.

The World Bank sanctions system is similar to the U.S. suspension and debarment system in many respects, but the two systems are also different in important ways. Indeed, the World Bank sanctions system often seems more akin to U.S. enforcement of the FCA and FCPA. Contractors and their counsel should be sure to understand these differences and take steps to mitigate the risk of being sanctioned.

## Guidelines

These *Guidelines* are intended to assist you in understanding the World Bank's sanctions system. They are not, however, a substitute for professional representation in any specific situation.

**1.** When seeking a World Bank-financed contracting opportunity, consider the risk of being sanctioned by the Bank, which could lead to considerable financial and reputational damage to the sanctioned entity and its affiliates, as well as referral to national authorities.

**2.** While the World Bank's sanctions system is similar in many respects to the United States suspension and debarment system, the two regimes are different in important ways.

**3.** Unlike the United States, where suspension and debar-

ment generally will not be imposed on a contractor who can demonstrate present responsibility, the World Bank will usually impose the sanctions of suspension and debarment based on a finding of sanctionable conduct, regardless of the contractor's present responsibility.

**4.** Unlike in the United States, where agency SDOs possess substantial discretion to investigate alleged wrongdoing and determine if suspension or debarment is warranted, the World Bank's sanctions system vests most discretion with the investigators in INT. INT decides whether to initiate an investigation, enter settlement negotiations, or pursue sanctions by submitting an SAE to OSD. If sufficient evidence of sanctionable conduct is submitted to OSD, the Bank's SDO has little, if any, discretion to avoid recommending the default sanction of a three-year debarment with conditional release. Accordingly, engagement with INT at an early stage of their investigation is usually well advised.

**5.** To mitigate the risk of sanction, contractors should implement compliance systems to reduce the risk of sanctionable conduct occurring.

**6.** If a contractor discovers that sanctionable conduct has occurred before INT initiates an investigation, the contractor should consider the benefits of the Bank's Voluntary Disclosure Program.

**7.** If INT issues an audit notice or a show cause letter, or otherwise initiates an investigation, the best course of action will almost always be to cooperate and seek to either resolve the investigators' concerns or enter into a negotiated settlement.

**8.** If settlement is not possible before INT submits an SAE to OSD, be sure to understand and consider taking advantage of all procedural protections provided by the Bank's two-tier sanctions process. This includes the right to submit an Explanation to OSD and appeal to the Sanctions Board for de novo review.

## ENDNOTES:

[1]It can be challenging to identify all of the World Bank policies and guidance that relate to a particular contract or sanctions proceedings. For reference, this PAPER provides full citation for the primary documents in this endnote. The World Bank has published several official documents relating to its sanctions system, some of which have been updated multiple times. Most of the relevant documents can be found online at the primary World Bank Sanctions System webpage. The foundation for much of the Bank's sanctions system is found in the Anti-Corruption Guidelines, which were most recently updated in 2011. See World Bank Group, Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants (2006) [hereinafter Anti-Corruption Guidelines]. The latest rendition of the Bank's Sanctions Procedures is The World Bank Group, Procedure: Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects (June 1, 2016) [hereinafter after 2016 Sanctions Procedures]. The Sanctions Procedures reference, but do not include, guidance on the Bank's Voluntary Disclosure Program. See The World Bank Group, Terms and Conditions of the World Bank's Voluntary Disclosure Program—VDP (August 16, 2006), [hereinafter 2006 VDP Terms].

The Bank's Office of Suspension and Debarment (OSD) and Integrity Vice-Presidency (INT) have also published materials explaining their operations, often including empirical data. See The World Bank Group, Office of Suspension and Debarment, Report on Functions, Data, and Lessons Learned 2007–2015 (2015) [hereinafter OSD 2015 Report]; The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2016 (2016) [hereinafter INT 2016 Report]; The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2015 (2015) [hereinafter INT 2015 Report]; The World Bank Group, Integrity Vice Presidency, Annual Update Fiscal Year 2014 (2014) [hereinafter INT 2014 Report].

For additional analysis and commentary, see Dubois, Ezzedin & Swan, "Suspension and Debarment on the International Stage: Experiences in the World Bank's Sanctions System," 2016 No. 3. Pub. Procrmt. L.R. 61 (2016); Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403 (2016); Harker & Castellano, "Practice Tips: World Bank Anti-Corruption and Fraud Enforcement," 57 No. 46 Gov't. Contractor ¶ 386 (Dec. 16, 2015); Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195 (2012).

[2]See generally Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403 (2016).

[3]31 U.S.C.A. §§ 3729–3733.

[4]15 U.S.C.A. §§ 78m, 78dd-1, 78dd-2, 78dd-3, 78ff.

[5]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 406 (2016).

[6]See FAR subpt. 9.4.

[7]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 407–17 (2016).

[8]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 407–08, 417–19 (2016).

[9]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 407–08, 417–19 (2016).

[10]The World Bank Group, Bank Policy: Procurement in IPF and Other Operational Procurement Matters (July 2016), available at https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4002.

Previously, the Bank's procurement policy was implemented in a more piecemeal fashion with one set of guidelines for procurement of consultants and another set of guidelines for procurement of goods and works. Both of those guidelines included terms related to fraud and corruption that provided the jurisdictional basis for Bank sanctions. As a gap-filler, the loan agreements would also incorporate the Anti-Corruption Guidelines to cover any use of Bank funds that fell outside of both procurement guidelines.

[11]The World Bank Group, Procurement Regulations for IPF Borrowers (July 2016), available at https://policies.worldbank.org/sites/ppf3/PPFDocuments/Forms/DispPage.aspx?docid=4005 [hereinafter World Bank Procurement Regulations].

[12]World Bank Procurement Regulations, supra note 11, Annex IV, at 69–70; Anti-Corruption Guidelines, supra note 1.

[13]World Bank Procurement Regulations, supra note 11, Annex IV, at 70, ¶ 2.2d.

[14]World Bank Procurement Regulations, supra note 11, Annex IV, at 70, ¶ 2.2e.

[15]World Bank Procurement Regulations, supra note 11, Annex IV, at 70, ¶ 2.2e, n.1.

[16]See Anti-Corruption Guidelines, supra note 1, ¶¶ 4, 9(d).

[17]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 418–19, 426–37 (2016).

[18]For example, consider Sanctions Board Decision No. 63 (Jan. 2014). In that case, OSD initially recommended the standard sanction of debarment with conditional release for a minimum debarment period of three years. In response to an Explanation submitted by the Respondent, OSD revised its recommended sanction to debarment with conditional release for a minimum debarment period of two years. On appeal, the Sanctions Board only imposed a sanction of a six-month, retroactive, nonconditional debarment. In other words, the Sanctions Board reduced OSD's recommended debarment period by 75%, eliminated the conditionality of release from debarment, and made the debarment period retroactive. In effect, the Respondent regained eligibility as soon as the Sanctions Board decision was issued. This reduction was based largely on the weight of mitigating evidence.

[19]INT 2014 Report, supra note 1, at 30.

[20]Note that the Bank interprets and applies "recklessly" in a manner that is similar to the American common law standard of negligence. Anti-Corruption Guidelines, supra note 1, ¶ 7, n.10.

[21]Anti-Corruption Guidelines, supra note 1, ¶ 7. Note that the Bank's sanctions system reaches less conduct than the U.S. suspension and debarment system, because FAR Subpart 9.4 contains catch-all provisions for "any other cause." FAR 9.406-2(c), 9.407-2(c); see also Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 217 (2012).

[22]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 420 (2016).

[23]INT 2016 Report, supra note 1, at 10.

[24]INT 2014 Report, supra note 1, at 20, 30.

[25]INT 2014 Report, supra note 1, at 30.

[26]INT 2014 Report, supra note 1, at 30.

[27]INT 2014 Report, supra note 1, at 20, 30.

[28]INT 2014 Report, supra note 1, at 33.

[29]INT 2016 Report, supra note 1, at 4.

[30]See Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 219 (2012); see also FAR 9.407.

[31]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 2.01(c).

[32]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.01(c)

[33]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 2.04.

[34]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 4.02(e); see also Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 220–21 (2012).

[35]INT 2016 Report, supra note 1, at 4.

[36]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 422 (2016).

[37]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 2.03.

[38]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 2.04(d).

[39]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 2.04(d).

[40]2016 Sanctions Procedures, supra note 1, § III(A), ¶¶ 2.04(b), 4.01(b).

 

[41]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 2.04(c).

[42]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 2.04(b).

[43]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 422 (2016).

[44]OSD 2015 Report, supra note 1, at 12.

[45]2016 Sanctions Procedures, supra note 1, §§ III(A), ¶ 4.01(a), II(u).

[46]OSD 2015 Report, supra note 1, at 12.

[47]OSD 2015 Report, supra note 1, at 12.

[48]OSD 2015 Report, supra note 1, at 32. INT reports its "substantiation rate" at 62%. INT 2016 Report, supra note 1, at 4. This is one of several indications of discrepancies in the way that INT and OSD collect, analyze, and report data regarding their role in the sanctions system. See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 429 n.200 (2016).

[49]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 4.01(b).

[50]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 4.01(b).

[51]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 4.02.

[52]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.01.

[53]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.02. The Bank's Sanctioning Guidelines provide more detailed information about these mitigating and aggravating factors, with indicative ranges for increases and reduction. The World Bank Group, Sanctioning Guidelines (Jan. 1, 2011).

[54]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 423–24 (2016).

[55]See FAR subpt. 9.4; Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 422–24, 426–37 (2016); Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 208, 210, 215 (2012).

[56]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.04.

[57]See Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 229–30 (2012). Specifically, the Bank defines "affiliate" as: "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." 2016 Sanctions Procedures, supra note 1, § II(a).

[58]See FAR 9.403; Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 230 (2012).

[59]See Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 230–31 (2012); Leroy & Fariello, The World Bank Group Sanctions Process and Its Recent Reforms 20 (2012).

[60]See Leroy & Fariello, The World Bank Group Sanctions Process and Its Recent Reforms 34–35 (2012).

[61]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.04(b).

[62]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 4.02(b).

[63]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 4.02(c).

[64]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.04(b).

[65]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 5.01.

[66]The World Bank Group, Policy: Statute of the Sanctions Board § III(a)(3) (2016).

[67]OSD 2015 Report, supra note 1, at 33.

[68]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 4.04.

[69]See 2016 Sanctions Procedures, supra note 1, § III(A), ¶ 8; OSD 2015 Report, supra note 1, at 13.

[70]See 2016 Sanctions Procedures, supra note 1, § III(A), ¶¶ 5–8.

[71]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.04(b).

[72]See Decision No. 69 (June 2014) (imposing a five-and-a-half-year debarment with conditional release when OSD initially recommended the standard sanction of three year debarment with conditional release).

[73]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 425 (2016); FAR 9.406-4.

[74]See 2016 Sanctions Procedures, supra note 1, § III(A), ¶ 8.03.

[75]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 425 (2016).

[76]See, e.g., Decision No. 69 (June 2014); Decision No 63 (Jan. 2014); Decision No. 56 (June 2013); see also Abikoff, Wood, Huneke, Anti-Corruption Law and Compliance: Guide to the FCPA and Beyond 531–32 (2014).

[77]See 2016 Sanctions Procedures, supra note 1, § III(A), ¶ 10.

 

[78]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.01(c)

[79]See Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 232 (2012).

[80]See Leroy & Fariello, The World Bank Group Sanctions Process and Its Recent Reforms 14–17 (2012).

[81]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.03(a)–(c).

[82]2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.03(d)–(e).

[83]See The World Bank Group, Summary of Integrity Compliance Guidelines, available at http://pubdocs.worldbank.org/en/489491449169632718/Integrity-Compliance-Guidelines-2-1-11.pdf.

[84]INT 2016 Report, supra note 1, at 13.

[85]World Bank Group v. Wallace, 2016 SCC 15 (Can.).

[86]See World Bank Group v. Wallace, 2016 SCC 15, ¶¶ 47–94 (Can.); see also Zimmerman & Dunham-Irving, "Canada Supreme Court Rules in Support of World Bank, Strengthens Global Anti-Corruption Fight," FCPA Blog (May 05, 2016).

[87]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 438–39. (2016).

[88]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 442 (2016).

[89]See Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 421, 422 (2016); Dubois, "Domestic and International Administrative Tools To Combat Corruption: A Comparison of US Suspension and Debarment With the World Bank's Sanctions System," 2012 U. Chi. Legal F. 195, 233 (2012).

[90]2016 Sanctions Procedures, supra note 1, § III(B).

[91]2016 Sanctions Procedures, supra note 1, § III(B).

[92]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 443 (2016).

[93]See 2006 VDP Terms, supra note 1, at 11.

[94]See 2006 VDP Terms, supra note 1, at 12.

[95]See 2006 VDP Terms, supra note 1, at 7, 13.

[96]See 2006 VDP Terms, supra note 1, at 14–15.

[97]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 444 (2016).

[98]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 444 (2016). For the list of mitigating and aggravating factors OSD will consider, see 2016 Sanctions Procedures, supra note 1, § III(A), ¶ 9.02.

[99]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403, 444–45 (2016).

[100]2016 Sanctions Procedures, supra note 1, § III(A), ¶¶ 5–8.

[101]Castellano, "Suspensions, Debarments, and Sanctions: A Comparative Guide to United States and World Bank Exclusion Mechanisms," 45 Pub. Cont. L.J. 403 (2016), at 445.