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World Bank Group
Sanctions Board
Law Digest



**SANCTIONS
BOARD**

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World Bank Group Sanctions Board
Law Digest 2023

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Preface

This Law Digest summarizes, for informational purposes, the evolving case law and processes of the Sanctions Board since its inception in 2007. The summaries of the Sanctions Board's findings 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 <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board#4>.

The Sanctions Board Secretariat is grateful for the invaluable contributions of Chibole Wakoli and the assistance of Damilola Anu Adebayo in the drafting of this edition of the Law Digest.

Abbreviations and Acronyms

Advisory Opinion	Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases (No. 2010/1) at para. 34 (November 15, 2010); released to public by the World Bank Legal Vice Presidency in June 2013
Bank	World Bank, collective term used to refer to IBRD and IDA
Bank Group	World Bank Group
EO	Evaluation and Suspension Officer
Explanation	Respondent's written Explanation
GSD	General Services Department
IBRD	International Bank for Reconstruction and Development
IBA	International Bar Association
ICC	International Chamber of Commerce
ICO	Integrity Compliance Officer
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IFC	International Finance Corporation
IFI	International financial institution
Information Note	The World Bank Group's Sanction Regime: Information Note (November 2011)
INT	Integrity Vice Presidency
ITC	International Trade Centre
LEG	World Bank Group Legal Vice Presidency/World Bank Group General Counsel
MDB	Multilateral development bank
MDB Cross-Debarment Agreement	Agreement for Mutual Enforcement of Debarment Decisions (9 April 2010)
MIGA	Multilateral Investment Guarantee Agency
Notice	Notice of Sanctions Proceedings

Reply	Integrity Vice Presidency's reply to respondent's response
Response	Respondent's written response
ROI	Record of Interview
SAE	Statement of Accusations and Evidence
SB	Sanctions Board
SBS	Sanctions Board Secretariat
SDO	IBRD/IDA Suspension and Debarment Officer
SPADR	Strategy, Performance and Administration
UN	United Nations
UNCITRAL	UN Commission on International Trade Law
VDP	Voluntary Disclosure Program
WBG	World Bank Group
WTO	World Trade Organization

Message

**MANAGING DIRECTOR AND WORLD BANK GROUP
CHIEF ADMINISTRATIVE OFFICER SHAOLIN YANG**

At the World Bank Group (WBG), we have long understood that fighting fraud and corruption is a crucial aspect of fighting poverty. To achieve economic growth and shared prosperity, we must ensure that our much-needed resources are not diverted from the poor through abuse of power or opportunity. Protecting the Bank's funds is, therefore, a core part of our mandate.



In 2023, we mark the 25th anniversary of our first formal sanctioning body—the Sanctions Committee—which was established as an internal mechanism to review allegations of misconduct and recommend sanctions against those who put our funds at risk. There is much to celebrate. Over the years, the WBG has continuously improved this process as we took concerted steps toward greater transparency, independence, and accountability. We have evolved into a two-tiered system that includes an all-external Sanctions Board as the second and final body of review. We have shared our data and lessons learned pertaining to anticorruption investigations, sanctions cases, and integrity compliance annually; published fully reasoned decisions in all contested cases since 2012; and issued a continuous, comprehensive review of the Sanctions Board's jurisprudence in the form of a periodic Law Digest.

Now in its third edition, the Law Digest remains an important resource for all stakeholders interested in the legal framework and principles that guide the WBG's sanctions system. By presenting the Sanctions Board's entire body of precedent in a structured, accessible format, the Law Digest amplifies the impact of sanctions decisions beyond individual cases. In effect, this publication's detailed analysis and summaries provide a wide-ranging frame of reference for ethical behavior in international public procurement and for fair resolution of disputes in this arena. It also helps ensure that our standards of review and decision making remain consistent and that our system remains fully accountable to the public. On behalf of the WBG's senior management, I congratulate the Sanctions Board and its resident Secretariat for their initiative in updating and refining this invaluable publication. I commend them for their efforts in positioning our institution as a leader in the fight against corruption.

Message

SANCTIONS BOARD CHAIR MARIA VICIEN MILBURN

On behalf of the World Bank Group Sanctions Board, I am honored to introduce the third edition of the Sanctions Board Law Digest. The present edition includes case updates and highlights from Sanctions Board cases decided from 2020 to 2022. In this respect, I would like to thank all the members of the Sanctions Board, especially former Sanctions Board Chair John Murphy, for their service and contributions during this period.



As an independent and impartial tribunal, the Sanctions Board has the responsibility to decide all cases based on a neutral assessment of the evidence and a fair application of the law. Being fair, in this context, means that we must not only abide by due process in every case, but also pay due regard to our own precedent and employ consistent legal reasoning across cases. From this perspective, the Law Digest is more than a commendable knowledge-sharing initiative. By compiling and distilling all of the Sanctions Board’s holdings and factual findings since its inception, for the benefit of concerned stakeholders and the general public alike, the Law Digest is a true exercise in transparency and accountability.

Since the second edition of the Law Digest, the Sanctions Board has continued to wrestle with difficult issues of fact and law. The recent cases presented opportunities to refine our jurisprudence on highly relevant questions, including the World Bank Group’s jurisdiction over public officials, sufficient notice requirements, the scope of bidders’ obligations relating to agents, and limitations to the “rogue employee” defense. The Sanctions Board also faced significant challenges in the administration of justice amid a global pandemic. Despite all constraints, with the invaluable support of our Secretariat, we swiftly adapted to a virtual format and continued to deliver fully reasoned decisions without compromising due process or efficiency. In these terms, the new edition of the Law Digest reflects not only the World Bank Group’s strict integrity standards, but also its deep commitment to the fair and timely resolution of disputes. The Sanctions Board is proud to contribute to this institution’s anticorruption mission and commends the World Bank Group’s executive leadership and senior management for investing in the transparency and effectiveness of the sanctions system. We believe the Law Digest is a significant achievement and a powerful addition to these efforts.

1 The Sanctions Board in Historical Context

SUMMARY OF CONTENTS

- A. Brief history of the WBG sanctions processes
 - B. The present sanctions process
 - C. Principles governing the functioning of the sanctions board
 - D. Sanctions board activity from 2007 to the present
-

This chapter reviews the history of the World Bank Group (WBG)¹ Sanctions Board and its present work process. The chapter also provides select metrics and statistics that help illustrate the Sanctions Board’s contributions over time.

A. BRIEF HISTORY OF THE WBG SANCTIONS PROCESSES: 1998–2022

The WBG established its first formal sanctioning body, the Sanctions Committee, in 1998. The Sanctions Committee reviewed allegations of misconduct and made recommendations to the President of the WBG as to whether, and how, culpable parties should be sanctioned. The Sanctions Committee had five members, all 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, a 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.

1. In the context of sanctions, the terms “World 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). The term “World Bank” or “Bank” is used to refer collectively to IBRD and IDA. The Sanctions Board has jurisdiction over the Bank’s Guarantee Projects and Carbon Finance Projects but has no jurisdiction over the International Centre for Settlement of Investment Disputes.

After Mr. Thornburgh’s review, in 2004, the WBG embarked on a series of reforms designed to improve the sanctions system’s efficiency and protect the independence of its decision makers. These reforms replaced the single review mechanism of the Sanctions Committee with a two-tiered system. The new sanctions process included a first-tier review of all allegations by an internal but independent Evaluation and Suspension Officer (EO)² and a second-tier review by an independent body called the Sanctions Board.

The Sanctions Board and its processes have evolved over time. The Sanctions Board was fully constituted and undertook its first review of sanctions cases in 2007. Since then, it has been part of several important policy developments within the WBG, including the addition of a professional Secretariat in 2010, a mandate to issue published decisions and a Law Digest in 2011, and a shift to an all-external membership in 2016. In fiscal year (FY) 2021, because of travel and other logistical challenges brought about by COVID-19, the Sanctions Board conducted all its hearings and deliberations virtually. The easing of COVID-19-related restrictions in FY 2022 facilitated the Sanctions Board’s use of hybrid formats, in which it conducted deliberations and hearings virtually, in person, or both. This flexibility and adaptation ensured that, despite pandemic-related constraints, the Sanctions Board reviewed cases promptly, afforded parties full due process with an opportunity to be heard, and issued decisions in a timely manner.

As of the end of calendar year 2022,³ the Sanctions Board consists of seven members, including the Chair,⁴ and has issued 139 decisions involving 232 entities and individuals.

B. THE PRESENT SANCTIONS PROCESS

Since the reforms discussed above were implemented, the WBG has relied on a two-tiered system to review allegations of fraud, corruption, coercion, collusion, or obstruction in connection with WBG-financed projects. The Sanctions Board serves as the final decision maker for all contested allegations of sanctionable conduct (figure 1.1).

Investigations and first-tier review: The Integrity Vice Presidency (INT), an independent unit within the WBG, investigates potential sanctionable misconduct. 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). The SDO or EO evaluates whether the SAE is sufficient to support a finding of sanctionable misconduct. If so, the SDO or EO issues the respondent a Notice of Sanctions Proceedings (the Notice) with a recommended sanction.⁵ In the Notice,

2. There are four such EOs within the WBG, one dedicated to each of the following categories of projects: Bank (IBRD/IDA) public sector financing, IFC projects, MIGA guarantees, and the Bank’s private sector guarantees and carbon finance projects. Effective March 31, 2013, the EO responsible for cases arising in connection with the Bank’s public sector projects was renamed the World Bank (IBRD/IDA) Suspension and Debarment Officer. Officers in the first tier of the sanctions process in cases pertaining to IFC, MIGA, and Bank private sector guarantee and carbon finance projects, continue to use the title of EO.

3. The WBG FY 2022 ended on June 30, 2022.

4. See Appendix A for the current roster of members.

5. Any affiliates that control the respondent or are under common control with the respondent and that are 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:

FIGURE 1.1
WBG Sanctions System



the SDO or EO may also temporarily suspend the respondent from eligibility for new WBG-financed contracts pending the final outcome of the sanctions proceedings.⁶ The respondent then has an opportunity to submit a written explanation (the Explanation) to the SDO or EO. Upon review of the Explanation, where applicable, the SDO or EO may withdraw the Notice in its entirety or with respect to certain of the allegations,⁷ revise the recommended sanction upon consideration of any additional mitigating or aggravating factors asserted by the respondent,⁸ or lift the temporary suspension. Alternatively, the SDO or EO may leave the initial recommendation unchanged. If the respondent does not contest the allegations or the recommended sanction, the sanction that the SDO or EO recommended is automatically imposed.

Second-tier review: If the respondent chooses to contest INT’s allegations and/or the sanction that the SDO or EO recommended, the respondent may submit a written response (the Response) to the Sanctions Board, the second and final tier of adjudicative review in the WBG’s sanctions system. In this event, INT may file a written reply to the Response (the Reply) with the Sanctions Board. A hearing may be held at the request of either party or at the discretion of the Sanctions Board Chair. In reaching a decision, the Sanctions Board considers the arguments and evidence presented in INT’s SAE; the respondent’s Explanation (if any) and Response;

Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (the World Bank Sanctions Procedures (2016)) at Section III.A, sub-paragraph 9.04(b).

6. The Notice results in a temporary suspension only when the recommended sanction involves debarment exceeding 6 months. See, for example, World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 4.02(a). It is also possible, in select cases, for the SDO/EO to temporarily suspend a party before INT concludes its investigation. See, for example, World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 2.01.
7. See, for example, Sanctions Board Decision No. 137 (2022) at para. 5.
8. See, for example, Sanctions Board Decision No. 137 (2022) at para. 5 (when the SDO revised his original recommended sanctions upon consideration of mitigating factors that the respondents asserted).

INT's Reply; and any additional motions, evidentiary submissions, or oral arguments made at a hearing, if so convened. The Sanctions Board is not bound by any findings or recommendations that INT or the SDO or EO makes but undertakes a *de novo* review of each case presented.

Other decision makers and related processes within the sanctions system

- *Settlement Process*: At any time before or during sanctions proceedings and before the Sanctions Board issues a decision, INT and the respondent may conduct settlement negotiations. INT conducts the settlement process, with the involvement of the WBG's General Counsel and the relevant SDO or EO, depending on the project at issue.⁹
- *IFC and MIGA Internal Advisors*: For IFC or MIGA sanctions cases contested to the Sanctions Board, an IFC or MIGA staff member is appointed to serve as an internal advisor to the Sanctions Board. IFC and MIGA internal advisors are required to advise the Sanctions Board in a manner that is transparent and consistent with due process and the Sanctions Board's independence.¹⁰
- *WBG, IFC, and MIGA General Counsels*: If a question arises as to the proper interpretation of any provision of the procedures or guidelines applicable in pending sanctions cases, the SDO or EO or the Sanctions Board may consult with the General Counsels of the WBG, IFC, or MIGA for advice.¹¹
- *Integrity Compliance Review*: The WBG's Integrity Compliance Officer (ICO), housed within INT, conducts the integrity compliance review. If a respondent receives a sanction of conditional non-debarment or debarment with conditional release, the ICO advises the sanctioned respondent as to the requirements for meeting the conditions incorporated into the sanctions. The ICO also monitors compliance by the sanctioned respondent and decides whether the compliance conditions have been satisfied.¹²

C. PRINCIPLES GOVERNING THE FUNCTIONING OF THE SANCTIONS BOARD

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

—Seneca

Principles of fairness rooted in national legal traditions that have similarly guided other international tribunals over the past century have influenced every aspect of the sanctions process and of the Sanctions Board's emerging body of case law. These principles include the right to due

9. World Bank Sanctions Procedures (2016) at Section III.B; IFC Sanctions Procedures as adopted January 2022 (the IFC Sanctions Procedures (2022)) at Article XI; MIGA Sanctions Procedures as adopted June 28, 2013 (the MIGA Sanctions Procedures (2013)) at Article XI; World Bank Private Sector Sanctions Procedures issued on October 8, 2013 (the World Bank Private Sector Sanctions Procedures (2013)) at Article XI.

10. WBG Policy: Statute of the Sanctions Board, issued on October 18, 2016 (WBG Sanctions Board Statute (2016)) at Section III.A, para. 5.

11. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 1.02(c); IFC Sanctions Procedures (2022) 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).

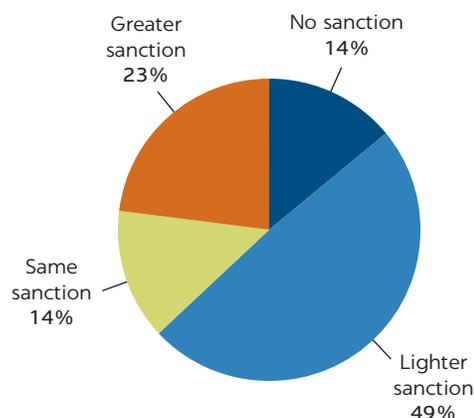
12. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.03; IFC Sanctions Procedures (2022) at Section 9.03; MIGA Sanctions Procedures (2013) at Section 9.03; World Bank Private Sector Sanctions Procedures (2013) at Section 9.03.

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 also by outside observers with an interest in the integrity of the sanctions process.¹³

De novo review: Review by the Sanctions Board is a key component of the sanctions system. Although the terms “appeal” and “appellate review” are frequently used, use of these terms requires clarification. The Sanctions Board’s review is not, nor should it be, a reconsideration of the SDO’s or EO’s findings or recommended sanction. In addition, 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 or EO. Instead, the Sanctions Board undertakes 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 consideration of procedural and evidentiary issues that were not (and perhaps could not be) considered at the first tier of review. As a result, Sanctions Board decisions may rely on significantly different reasoning than was employed at the first tier of review and may reach different conclusions on matters of fact and law. Consequently, some respondents are released from their temporary ineligibility after the Sanctions Board’s consideration of their case, whereas other respondents receive a different sanction for their misconduct. In all contested cases in which the SDO or EO imposed a temporary suspension on the respondent, the Sanctions Board considered this period of suspension in determining the appropriate sanction.

The Sanctions Board held 86 percent of respondents liable for misconduct (figure 1.2). In 14 percent of these instances, the Sanctions Board imposed sanctions that were consistent with those that the SDO or EO recommended. However, the Sanctions Board imposed a lighter sanction than the first tier in 49 percent of these respondents and a greater sanction in 23 percent. For the remaining 14 percent of the contesting respondents, the Sanctions Board found insufficient evidence of misconduct and did not, therefore, impose any sanction. This variance in decision outcomes between the first tier and the Sanctions Board is reflective of a well-functioning quasi-adjudicative system in which the second tier reviews an extended

FIGURE 1.2
Comparison of first and second tier of review, FY 2008–22



¹³ See Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases, No. 2010/1 (November 15, 2010) at Section I.A for a more in-depth discussion of the legal principles applicable to WBG sanctions.

case record. If misconduct is found, the Sanctions Board generally applies a broad range of sanctions (debarment with conditional release, conditional non-debarment, debarment for a fixed period of time, letters of reprimand, and restitution). In cases in which the sanctions imposed are conditional, the conditions that the Sanctions Board applies are similarly varied and tied to the facts of each case and the risk attendant to the misconduct at issue.

Due process protections: The WBG sanctions system adheres to the principle that a party should not be subject to adverse judicial or administrative action without due process of law. 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, including the right to an independent second-tier review, the right to receive notice of the allegations and an opportunity to be heard (through written pleadings or 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:* The respondent or INT may request an oral hearing in a contested case, or the Chair may exercise his/her discretion to convene one.
- *Right to make counterarguments:* The sanctions framework allows for the respondent to make detailed arguments and file evidence in opposition to INT’s allegations. If 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 respondents in preparing and filing any pleadings and participate in the hearing.
- *Access to evidence in the record:* To ensure that respondents are able to mount a meaningful defense, they can review, with certain narrow exceptions,¹⁴ all relevant evidence in INT’s possession that would reasonably tend to exculpate them or mitigate their culpability. 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 non-English language interpretation at hearings, allows for parties to participate remotely via videoconference or teleconference, and invites parties to propose hearing attendees at their discretion. The Sanctions Board accepts filings in electronic and paper format. Consistent with the Sanctions Procedures, the parties may request extensions of time to file their submissions.

Impartiality and independence: In addition to earlier reforms aimed at protecting the Sanctions Board’s impartiality, the WBG revised the Sanctions Board Statute in 2009 and in 2016 to require that an increasing number of Sanctions Board members not be WBG employees. At present, all Sanctions Board members are external to the WBG. The Sanctions Board observes strict [ethical](#) rules providing for recusal of Sanctions Board members from participation in individual cases if

¹⁴ See entry on “Withholding of evidence” in Chapter 2.

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.¹⁵ In addition, the Sanctions Board Statute prohibits *ex parte* communication with Sanctions Board members by all parties to sanctions proceedings. 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.

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.

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 of 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 rulings 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 analyses accessible to the public.

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.¹⁶

— Sri Mulyani Indrawati, Former WBG Managing Director, 2012

¹⁵ Since 2010, Sanctions Board members have recused themselves on 17 occasions because of an actual or perceived conflict of interest.

¹⁶ World Bank Increases Transparency through Inaugural Publication of Sanctions Board Decisions, World Bank Press Release No 2012/481/EXT, issued 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>

D. SANCTIONS BOARD ACTIVITY FROM 2007 TO THE PRESENT

The Sanctions Board has issued 139 decisions affecting 232 respondents from its inception in 2007 through the end of calendar year 2022.¹⁷ Although the mandate of the Sanctions Board covers all WBG-financed projects, by the end of calendar year 2022, the cases brought before the Sanctions Board concerned only the Bank and IFC (figure 1.3).

Sanctions Board decisions have primarily addressed requests to review a party's liability for alleged misconduct or the sanction recommended at the first tier.¹⁸ The Sanctions Board has addressed allegations of collusion, corruption, fraud, and obstruction (figure 1.4). The Sanctions Board has yet to review a case involving allegations of coercion as a type of misconduct. In addition, the Sanctions Board has assessed requests for reconsideration of final decisions, as well as one contested determination of successorship, all of which are discussed in more detail below. Case review and issuance of decisions represent the primary work program of the Sanctions Board.

FIGURE 1.3

Types of financing in cases reviewed by Sanctions Board, FY 2008–22

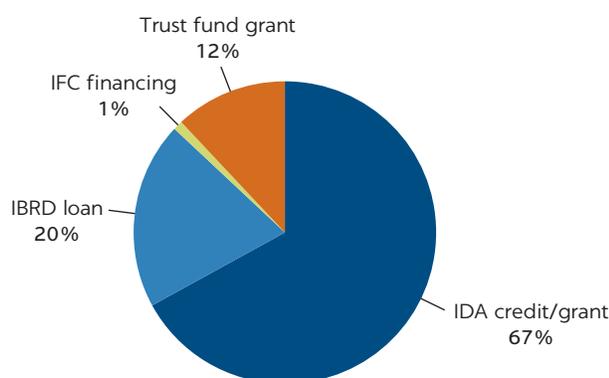
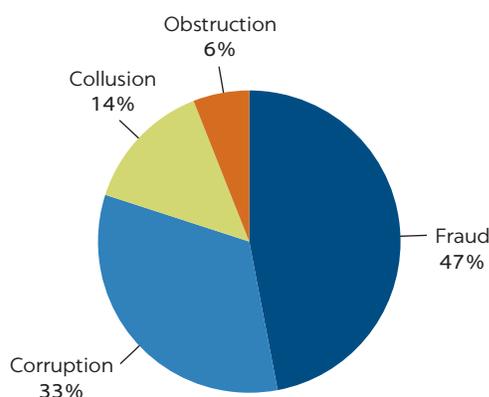


FIGURE 1.4

Types of misconduct alleged in cases reviewed by Sanctions Board, FY 2008–22



¹⁷ This total includes 26 decisions issued pursuant to pre-2011 World Bank Sanctions Procedures, which required the Sanctions Board to issue decisions in uncontested proceedings. See, for example, World Bank Sanctions Procedures (2006) at Part III, Section 5(8); World Bank Sanctions Procedures (Amended 25 June 2010) at Part IV, Section 9(8).

¹⁸ WBG sanctions policies before September 2010 required the Sanctions Board also to issue decisions in “uncontested cases.” The decisions in those cases did not include an analysis of the facts or argument and were limited to acknowledging the respondents’ absence of objection to the first-tier officer’s recommendation and confirming that recommendation.

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

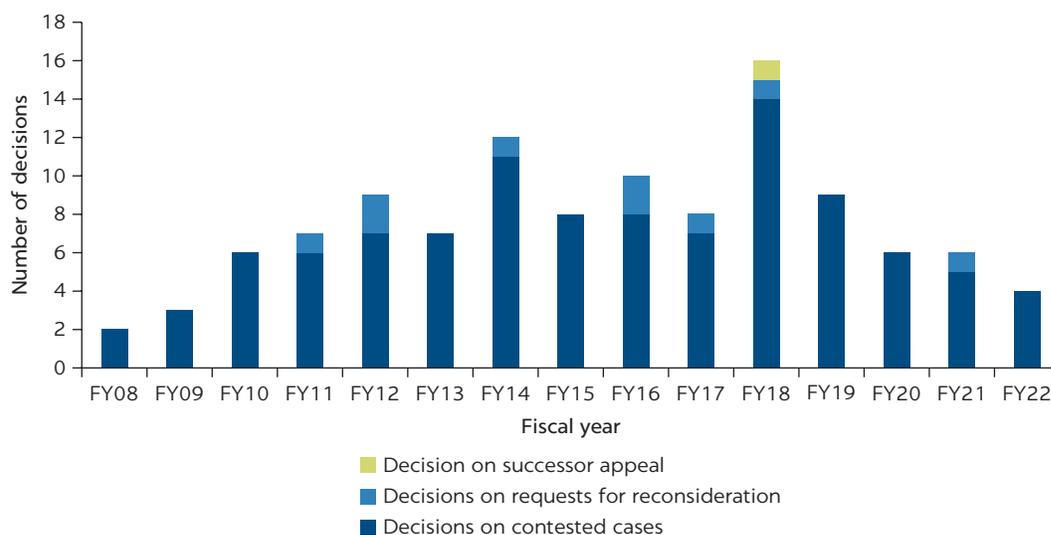
Review of contested cases: The Sanctions Board is mandated to consider all sanctions cases contested after the first tier of review. With respect to sanctions cases contested since 2007, the Sanctions Board has received 111 sanctions cases for consideration involving 311 instances of alleged misconduct related to 186 respondents. The number of decisions that the Sanctions Board issues annually is reflected in figure 1.5. Additional data may be found in the [WBG Sanctions System Annual Report](#).¹⁹

The time between the close of record—the date of the hearing or the last submission, whichever is later—and publication of the Sanctions Board’s decision has ranged from 12 days to 18.5 months, with an average of 31 days (figure 1.6). The difference in time between close of record and issuance of the Sanctions Board’s decision across all cases reflects the variance in the number and complexity of issues that the Sanctions Board must consider.

Hearings: The Sanctions Board holds hearings in contested sanctions cases in which at least one party requests an oral hearing or at the discretion of the Sanctions Board Chairs (figure 1.7). The Sanctions Board may facilitate parties’ remote participation and provide language interpretation services.

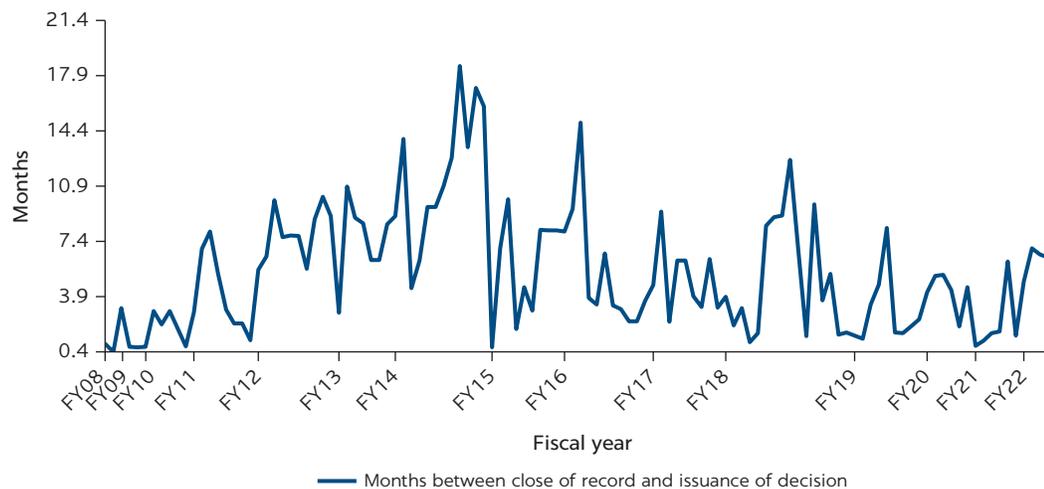
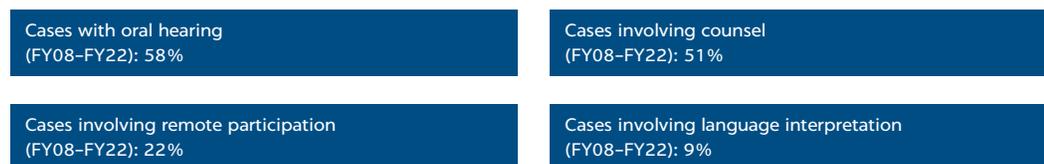
Review of other matters: The various Sanctions Procedures also require that the Sanctions Board consider and issue decisions on contested determinations of non-compliance by the

FIGURE 1.5
Number of decisions issued by Sanctions Board, FY 2008–22



Note: This chart reflects only contested cases brought before the Sanctions Board. It does not consider decisions issued under the pre-2011 Sanctions Procedures during which the Sanctions Board imposed the sanction(s) that the Evaluation and Suspension Officer recommended in uncontested cases. Some decisions reflected in this chart account for more than one sanctions case contested to the Sanctions Board. The number of decisions reflected include Sanctions Board decisions in requests for reconsideration and the Sanctions Board decision in a successor appeal.

¹⁹ The WBG Sanctions System Annual Report FY22 is available at <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board/brief/world-bank-group-issues-fy22-sanctions-system-annual-reportsanctions-system-annual-report>. Previous editions of the Annual Report are available at <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board#5>.

FIGURE 1.6**Case duration from close of record to issuance of decision, FY 2008–22****FIGURE 1.7****Key statistics concerning hearings before Sanctions Board, FY 2008–22**

ICO²⁰ and contested determinations of successorship or assignee status.²¹ The Sanctions Board has issued one such decision, relating to the Bank’s determination of successorship,²² and considered nine requests for reconsideration.²³ A request for reconsideration occurs if a respondent that has been the subject of a sanction imposed by the Sanctions Board requests that the Sanctions Board review its original decision.

Issuance of Sanctions Board decisions: As noted earlier, the Sanctions Board’s determination 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 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 that the Sanctions Board has imposed is depicted in figure 1.8. If the Sanctions Board determines that it is *not* more likely than not that a respondent engaged in sanctionable conduct, no sanction is imposed, and the temporary suspension is terminated.

20 See, for example, World Bank Sanctions Procedures (2016) at Section III.B, sub-paragraph 9.03(e).

21 See, for example, World Bank Sanctions Procedures (2016) at Section III.B, sub-paragraphs 9.04(b)-(c). The Sanctions Board has referred to the challenge of the determination of successorship as a “successor appeal.”

22 Sanctions Board Decision No. 101 (2017).

23 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); Sanctions Board Decision No. 132 (2021).

FIGURE 1.8

Types of sanctions that the Sanctions Board has imposed, FY 2008–22

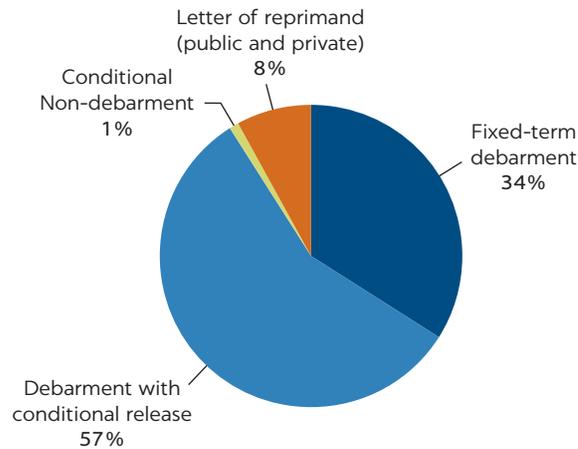


PHOTO 1.1

Sanctions Board Secretariat



Jodi Tuer Glasow
Executive Secretary



Amanda Marie de Oliveira Schneider
Paralegal



Ryan Timothy Velandria McCarthy
Deputy Executive Secretary
(Senior Counsel)



Sharon Louis Giebel
Legal Analyst



Anna Lorem Reyes Ramos
Counsel



Eugenia A. Pyntikova
Counsel



Felipe Rocha dos Santos
Counsel

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, and it operates independently of other WBG units. Secretariat staff work with Sanctions Board members throughout the adjudication process—from monitoring cases that may potentially be appealed through publishing the Sanctions Board’s decisions.

Knowledge sharing, policy work, and engagement with stakeholders: In addition to resolving sanctions cases, the Sanctions Board recognizes the value of knowledge sharing and engagement with the global anticorruption community through targeted outreach efforts. To this end, the Sanctions Board and the Secretariat provide internal consultations to WBG management on the functioning of and potential policy reforms to the WBG sanctions system, engage in dialogue with peers at other international development organizations, and participate in public forums and conferences related to the fight against corruption in development.

2 Sanctions Framework

OVERARCHING ISSUES IN PROCEDURE AND PRACTICE

SUMMARY OF CONTENTS

A. Sources of law	<i>Paragraphs 1-8</i>
B. Interpretation	<i>Paragraphs 9-11</i>
C. Scope of authority	<i>Paragraphs 12-17</i>
D. Jurisdiction	<i>Paragraphs 18-22</i>
E. Evidence	<i>Paragraphs 23-35</i>
F. Procedural matters	<i>Paragraphs 36-47</i>
G. Hearings	<i>Paragraphs 48-53</i>
H. Standard and burden of proof	<i>Paragraphs 54-55</i>
I. Decisions	<i>Paragraphs 56-58</i>

This chapter addresses overarching issues that may arise in any sanctions proceeding before the Sanctions Board. These include threshold questions, such as what may serve as a source of law for the Sanctions Board, as well as practical considerations, such as the conduct of hearings and treatment of interim procedural requests by the parties. The primary focus of this chapter is the Sanctions Board's analyses of these issues during sanctions proceedings. However, when a topic is addressed directly and specifically in a document that is part of the WBG sanctions framework, the language in the document is 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 [WBG Legal Vice Presidency'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. *WBG 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 Sanctions Board members consider each case in accordance with the WBG sanctions framework. According to the WBG Statute of the Sanctions Board,¹ the WBG sanctions framework consists of the following documents:²
 - a. WBG Policy: Sanctions for Fraud and Corruption: Describes objectives and key features of the WBG sanctions system
 - b. WBG Policy: Statute of the Sanctions Board: Sets out the role, composition, competencies, and responsibilities, including a code of conduct, of the WBG Sanctions Board³

1. WBG Sanctions Board Statute (2016) at Section II, item (aa).

2. These and other key documents can be found [online](#). See also Appendix B.

3. WBG Sanctions Board Statute (2016) at Section I, Paragraph 1.

- c. World Bank Directive: Sanctions for Fraud and Corruption: Describes the institutional and normative architecture and the scope of jurisdiction of the sanctions system, as relevant to projects financed by IBRD/IDA
- d. Sanctions Procedures specific to IBRD/IDA, IFC, MIGA, and World Bank Private Sector projects and guarantees
- e. WBG Sanctioning Guidelines: Provides guidance regarding considerations relevant to any sanctioning decision
- f. Voluntary Disclosure Program Guidelines⁴

Earlier versions of the Sanctions Board Statute did not enumerate components of the WBG sanctions framework. Instead, they referred broadly to “formal guidelines” issued by the WBG in relation to 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, [The World Bank Group’s Sanction Regime: Information Note](#), was made available to the public. The Sanctions Board has referred to the Information Note in a number of decisions. In addition to these documents, the Sanctions Board has referred to the Multilateral Development Bank Cross-Debarment Agreement, World Bank staff publications regarding sanctions, and other documents as nonbinding but relevant sources of guidance.

2. **Sanctions Board Code of Conduct:** Part B of the Statute of the Sanctions Board sets out the Sanctions Board’s Code of Conduct, by which all members of the Sanctions Board are required to abide.⁵ Upon recommendation by the President of the WBG, the Executive Directors may remove a Sanctions Board member in the event of a material violation of the Code of Conduct.⁶ The Code of Conduct prescribes rules governing Sanctions Board members’ behavior with respect to fairness, independence, and impartiality; diligence; conduct during proceedings; conflict of interest; post-service activities; confidentiality; mandate of the WBG; non-interference; *ex parte* communications; and conduct unbecoming. In two cases, the Sanctions Board directly addressed adherence to its Code of Conduct with respect to issues concerning *ex parte* communications⁷ and conflict of interest.⁸
 - a. *Ex parte communications:* The Sanctions Board recognized the risks to fair process and perceived impartiality that *ex parte* communications entail. The Sanctions Board noted that its Code of Conduct prohibits Sanctions Board members from engaging “in *ex parte* communications with INT or the respondent regarding the merits of a sanctions proceeding.”⁹ Although the Sanctions Procedures do not specify a corresponding prohibition for INT or respondents, the Sanctions Board urged all parties to

4. The Statute of the Sanctions Board identifies the following additional documents as also part of the Sanctions Framework: (i) World Bank Procedure: Internal Arrangements for the Sanctions System; (ii) World Bank Guidance: Sanctions for Fraud and Corruption; and (iii) the terms of reference of the SDO and EOs. Although these documents are not available publicly, they may be accessed by enquiry to the relevant WBG office (see Appendix C).

5. WBG Sanctions Board Statute (2016) at Section III.A, para. 3.

6. WBG Sanctions Board Statute (2016) at Section III.A, para. 14.i(b) and Section III.B, para. 20.

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

8. Sanctions Board Decision No. 71 (2014) at para. 62.

9. WBG Sanctions Board Statute (2016) at Section III.B, para. 17.

avoid *ex parte* communications, given the obvious risks of prejudice to the other parties and the sanctions process.¹⁰

- b. *Conflict of interest*: In one case, the respondent raised a concern that a Sanctions Board member might have had oversight over and responsibility for the Bank's department employing a former employee of the respondent. The respondent requested that, if that were indeed the case, the Sanctions Board member be recused from the sanctions proceedings. The Sanctions Board clarified that, consistent with its Code of Conduct, it has a protocol to identify and address actual, apparent, and potential conflicts of interest and that a Sanctions Board member's participation in the review of a case is subject to the absence of any such conflict of interest. The Sanctions Board confirmed that this protocol had been followed and that there was no conflict of interest with the relevant Sanctions Board member, who had no supervisory relationship, direct or indirect, with the respondent's former employee.¹¹
3. *WBG Staff Rules*: The Sanctions Board has considered the impact of the World Bank's Staff Rules on select elements of sanctions proceedings, including respondents' access to evidence in the record,¹² and the question of whether an individual Bank staff member may be considered a "public official."¹³
4. *Sanctions Board precedent*: The Sanctions Board considers and refers to its prior decisions in making determinations in new cases.¹⁴ However, this body of precedent is persuasive rather than determinative.
5. *National law*: The Sanctions Board has repeatedly held that WBG rules and not the law of a particular jurisdiction govern sanctions cases.¹⁵ Thus, the Sanctions Board has declined to apply national law in its decisions and has held that provisions of national laws are not

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

11. Sanctions Board Decision No. 71 (2014) at para. 62.

12. In several cases, INT sought to limit 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 allowed INT to limit respondents' access to certain evidence to *in camera* review. However, the Sanctions Board denied INT's requests to withhold evidence from the respondents in its entirety. In making these determinations, the Sanctions Board observed that the WBG sanctions framework contains a default presumption of access by all parties in sanctions proceedings to the written submissions and evidence in those proceedings; the WBG sanctions framework places an obligation on INT to disclose any evidence that may be exculpatory or mitigating; the World Bank's Sanctions Procedures already provide a separate list of exceptional circumstances that may warrant such withholdings; the Staff Rules themselves allow for disclosure of some information; and certain information may be necessary for 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 para. 45; Sanctions Board Decision No. 87 (2016) at paras. 59-62; Sanctions Board Decision No. 113 (2018) at paras. 21-23).

13. In one case, INT argued that a certain third party in a sanctions proceeding may be considered a "public official" for purposes of the relevant definition of sanctionable practice, based in part on the 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 paras. 77 and 78).

14. See, for example, Sanctions Board Decision No. 45 (2011) at para. 52; Sanctions Board Decision No. 85 (2016) at para. 22; Sanctions Board Decision No. 138 (2022) at para. 37.

15. See, for example, Sanctions Board Decision No. 129 (2020) at para. 39.

binding on the Sanctions Board’s proceedings.¹⁶ As specific examples, the Sanctions Board has held that:

- a. 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.¹⁷
- b. 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.¹⁸
- c. Pending national proceedings against a respondent do not warrant a stay of the WBG’s sanctions proceedings against that respondent.¹⁹
- d. Pending national proceedings against a respondent do not exempt that respondent from an obligation to comply with the Bank’s audit and inspection requirements.²⁰
- e. The absence or presence of pending national proceedings against a respondent is not relevant to whether a sanctionable practice has occurred.²¹
- f. National laws that may relate to corporate integrity standards do not supplant specific internal integrity policies necessary for mitigation of a respondent’s sanction.²²

That said, the Sanctions Board has found that national laws and standards may inform its determinations, although they do not govern them. For example, the Sanctions Board has held that:

- a. The role of a respondent’s potential liability under national laws may be relevant to a determination of that respondent’s liability for sanctionable practices²³ but need not be automatically coextensive.²⁴
- b. Certain national standards (that are also broadly consonant with general principles of law) may inform the Sanctions Board’s final decisions.²⁵

6. *International law*: The Sanctions Board has declined to apply provisions of international laws and treaties in sanctions cases, noting the administrative nature of WBG sanctions proceedings and the narrow purpose of the WBG sanctions system.²⁶ Nevertheless, the Sanctions Board has indicated that international law or international precedent may be informative or relevant, especially when the sanctions framework does not address the issue in dispute.²⁷

16. 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 and 60; Sanctions Board Decision No. 86 (2016) at para. 41; Sanctions Board Decision No. 89 (2016) at para. 11.

17. Sanctions Board Decision No. 88 (2016) at para. 26; Sanctions Board Decision No. 128 (2020) at para. 25.

18. Sanctions Board Decision No. 45 (2011) at para. 46; Sanctions Board Decision No. 130 (2020) at para. 39; Sanctions Board Decision No. 136 (2022) at para. 36.

19. Sanctions Board Decision No. 93 (2017) at paras. 35 and 36.

20. Sanctions Board Decision No. 93 (2017) at paras. 83 and 84.

21. Sanctions Board Decision No. 98 (2017) at para. 29.

22. Sanctions Board Decision No. 65 (2014) at para. 77.

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

24. 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.

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

26. Sanctions Board Decision No. 93 (2017) at paras. 31, 35, and 36; Sanctions Board Decision No. 98 (2017) at para. 31.

27. 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 (when 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).

7. *Customary practices and national context*: The Sanctions Board has recognized that, as a general matter, 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.²⁸ However, the Sanctions Board previously rejected the argument that 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.²⁹
8. *General principles of law*: The Sanctions Board has taken note of fundamental principles of fairness, due process, and good faith.³⁰ For instance, with regard to fairness and due process, the Sanctions Board emphasized that the pleading process must end once the parties have been given a fair and adequate opportunity to respond to one another's contentions.³¹ The Sanctions Board has also looked to other general principles of law to inform its analysis, particularly when the issue before the Sanctions Board was not explicitly or otherwise addressed in the applicable sanctions framework.³² However, there have been instances in which the Sanctions Board has declined to allow a procedure or practice that is not expressly permitted in the sanctions framework.³³ For example, in one request for reconsideration, the respondents requested that the Sanctions Board make a "supplemental plea in equity for [a] clarificatory examination of all witnesses."³⁴ The Sanctions Board denied this request, noting that, not only was there no evidence of a failure of due process in the original proceedings, but also that nothing in the sanctions framework or Sanctions Board's precedent allowed for examination of witnesses in a "clarificatory" proceeding.³⁵

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.

28. 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.

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

30. 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 and 19 (discussing impact of INT's choice of respondents); Sanctions Board Decision No. 102 (2017) at para. 33 (discussing allegation that the INT acted in bad faith and engaged in retaliatory prosecution of the Respondent).

31. Sanctions Board Decision No. 107 (2018) at para. 12.

32. Sanctions Board Decision No. 43 (2011) at para. 15; Sanctions Board Decision No. 84 (2015) at para. 23; Sanctions Board Decision No. 98 (2017) at para. 31.

33. Sanctions Board Decision No. 130 (2020) at para. 40 (where the Sanctions Board declined the respondents' request to apply "considerations of equity," finding that this equitable approach did not apply to the Bank's unilateral exercise of jurisdiction in Bank-financed projects).

34. Sanctions Board Decision No. 89 (2016) at para. 15.

35. Sanctions Board Decision No. 89 (2016) at para. 15.

B. INTERPRETATION

World Bank Sanctions Procedures at Section III.A³⁶ (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.

9. *Lacunae in WBG sanctions framework:* The Sanctions Board previously 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.”³⁷ With respect to all matters not addressed in the WBG sanctions framework, Section III.A, sub-paragraph 11 of the Sanctions Board Statute provides that the Sanctions Board shall follow the Sanctions Board Chair’s instructions for the operation of the Sanctions Board.³⁸
10. *Consultations with WBG General Counsels and Legal Departments:* The Sanctions Procedures provide for possible consultation between the Sanctions Board and the respective General Counsels.³⁹ The Sanctions Board has implemented this provision in inviting the views of the WBG General Counsel,⁴⁰ the World Bank Legal Vice Presidency, and the IFC General Counsel in several sanctions cases.⁴¹

36. 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).

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

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

39. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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).

40. The reference to the “World Bank Group’s General Counsel” in the World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 1.02(c) is synonymous with the “World Bank’s Legal Vice Presidency.”

41. 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; Sanctions Board Decision No. 130 (2020) at para.10.

11. *Undefined terms*: When the analysis hinged on a term not defined elsewhere in the sanctions framework, the Sanctions Board stated that, although it may consider a definition proposed by one of the parties, the meaning of the term should be determined in consideration of the context in which it appears.⁴² In this regard, the Sanctions Board has occasionally sought the views of the World Bank Legal Vice Presidency and the IFC General Counsel with respect to the meanings of these undefined terms in their proper context.⁴³

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.⁴⁴ The Sanctions Board is also mandated to review contested determinations of non-compliance by the ICO⁴⁵ and contested determinations of successorship or assignee status by the WBG.⁴⁶
 13. *Basis of Sanctions Board determinations*: As defined in the Sanctions Procedures, the review and deliberation of the Sanctions Board shall be restricted to the record of the sanctions proceedings. The record comprises the Notice of Sanctions Proceedings, the respondent's Explanation (if any), the respondent's Response, INT's Reply, all other

42. Sanctions Board Decision No. 88 (2016) at paras. 26-28 (term "agent").

43. See, for example, Sanctions Board Decision No. 101 (2017) at para. 10. (Sanctions Board sought the views of the World Bank's Legal Vice Presidency as to the meaning of the term "successor" in the context of sanctions proceedings.)

44. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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.

45. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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).

46. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.04(c); IFC Sanctions Procedures (2012) at Section 9.04(c); 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).

related written submissions of arguments and evidence, and all arguments presented at any hearing before the Sanctions Board. The record of the proceedings is confidential and not available to the public.⁴⁷ In its decisions on contested cases, the Sanctions Board has outlined the content of its record and confirmed that it deliberated and reached its decision on the basis of that record.⁴⁸

14. *Authority to issue determinations on defined procedural matters:* The Sanctions Procedures authorize the Sanctions Board and/or the Sanctions Board Chair to rule on specific procedural matters that may arise before issuance of a final decision, including:
 - a. Extension and waiver of various deadlines⁴⁹
 - b. Acceptance of submissions not conforming with stated requirements⁵⁰
 - c. Requiring the translation (in part or in whole) of exhibits not presented in English⁵¹
 - d. Distribution of materials to other respondents in sanctions proceedings⁵²
 - e. Distribution, withholding, redaction, or in camera review of certain materials⁵³
 - f. Decision to hold a hearing⁵⁴
 - g. Acceptance of additional materials into the record⁵⁵
15. *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:
 - a. Reconsideration of final Sanctions Board decisions⁵⁶

47. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 8.02 (a); IFC Sanctions Procedures (2012) at Section 8.02 (a); MIGA Sanctions Procedures (2013) at Section 8.02 (a); World Bank Private Sector Sanctions Procedures (2013) at Section 8.02 (a).

48. See, for example, Sanctions Board Decision No. 40 (2010) at paras. 1 and 2; Sanctions Board Decision No. 43 (2011) at para. 2; Sanctions Board Decision No. 51 (2012) at paras. 1 and 2; Sanctions Board Decision No. 65 (2014) at paras. 2 and 3; Sanctions Board Decision No. 118 (2019) at paras. 1 and 2; Sanctions Board Decision No. 122 (2020) at paras. 1 and 2; Sanctions Board Decision No. 125 (2020) at paras. 1 and 2; Sanctions Board Decision No. 137 (2022) at paras. 1 and 2.

49. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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).

50. World Bank Sanctions Procedures (2016) at Section III.C, paragraph 11.

51. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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).

52. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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).

53. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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).

54. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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.

55. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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).

56. 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); Sanctions Board Decision No. 132 (2021).

- b. Ability to request or compel either party to submit additional evidence or arguments in sanctions proceedings⁵⁷
 - c. Ability to strike or exclude evidence from the record⁵⁸
 - d. Issuance of determinations before an appeal to the Sanctions Board⁵⁹
 - e. Assessment of INT's compliance with its obligations to produce exculpatory and/or mitigating evidence (also see paragraph 43 below)⁶⁰
 - f. Issuance of determinations via letter signed by the Secretary to the Sanctions Board⁶¹
16. *Authority to compel INT to initiate sanctions proceedings*: The Sanctions Board observed that the sanctions framework does not empower the Sanctions Board to compel INT to initiate sanctions proceedings against specific firms or individuals.⁶²
17. *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 proceeding⁶³ or of the specific allegations at issue,⁶⁴ or is explicitly within the purview of another decision maker within the sanctions regime.⁶⁵

57. 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 and 42; Sanctions Board Decision No. 94 (2017) at paras. 20-22.

58. 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.

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

60. Sanctions Board Decision No. 55 (2013) at paras. 31 and 32; Sanctions Board Decision No. 56 (2013) at paras. 28-32; Sanctions Board Decision No. 70 (2014) at paras. 18 and 19; Sanctions Board Decision No. 71 (2014) at paras. 42, 46, 47, 51, and 52; Sanctions Board Decision No. 81 (2015) at paras. 35 and 36; Sanctions Board Decision No. 92 (2017) at para. 48; Sanctions Board Decision No. 93 (2017) at paras. 37 and 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.

61. Sanctions Board Decision No. 71 (2014) at paras. 42-44.

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

63. Sanctions Board Decision No. 45 (2011) at para. 70 (declining a respondent's request to instruct the Bank to provide a non-objection letter with respect to respondent's participation in other projects not germane to the proceedings); Sanctions Board Decision No. 92 (2017) at para. 50 (explaining that neither the Sanctions Board Statute nor any other aspect of the sanctions framework suggests that the Sanctions Board's jurisdiction encompasses review of the legal adequacy of the sanctions system).

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

65. Sanctions Board Decision No. 55 (2013) at paras. 35 and 36 (declining to terminate or limit the temporary suspension imposed at the first tier, before conclusion of sanction proceedings); Sanctions Board Decision No. 60 (2013) at para. 137 (declining to terminate the temporary suspension imposed at the first tier, before conclusion of sanction proceedings); Sanctions Board Decision No. 108 (2018) at para. 27 (declining to impose a stay of proceedings, noting that the authority to grant a stay of proceedings rests with the first-tier review officer).

D. JURISDICTION

Bank Directive: Sanctions for Fraud and Corruption at Section III.B (Normative Architecture)⁶⁶

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 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.

66. This document applies only to the World Bank, not the entire WBG.

18. *Applicable rules:* To determine the rules governing jurisdiction, the Sanctions Board has looked first to the type of financing involved in a sanctions proceeding. In cases in which 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.⁶⁷ If the misconduct could be connected to IFC financing, the Sanctions Board has looked to the applicable IFC Sanctions Procedures and IFC's Anti-Corruption Guidelines.⁶⁸ In both types of proceedings, the Sanctions Board has sought input from relevant General Counsels, as appropriate.⁶⁹
19. *Subject matter jurisdiction:* In determining whether the Bank has jurisdiction to consider allegations of sanctionable practices, the Sanctions Board has closely examined the definitions of sanctionable practices in the various Procurement and Consultant Guidelines associated with the sanctions proceedings, as well as the agreements underpinning the relevant Bank-financed project. 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.⁷⁰

In assessing whether it has jurisdiction to consider specific allegations in sanctions cases, the Sanctions Board has focused narrowly on whether each allegation has an identifiable link to WBG financing.⁷¹ The Sanctions Board has consistently exercised jurisdiction based on the financing agreements underpinning a Bank-financed project, including in cases in which the contract at issue did not refer to WBG sanctions.⁷² In cases in which respondents argued that the Bank committed due process violations by failing to provide sufficient notice of the Bank's sanctions regime, the Sanctions Board found that the respondents received sufficient notice of the Bank's jurisdiction when the bidding documents included the main aspects of the governing sanctions framework.⁷³

When the Sanctions Board's jurisdiction to consider specific procedural questions in a pending proceeding was challenged, the Sanctions Board considered the question of whether a party had another appropriate forum to consider the issue. The Sanctions Board ultimately held that it has jurisdiction to consider matters even before an appeal.⁷⁴

The Sanctions Board has declined to find general jurisdiction to assess broader questions unrelated to allegations in a proceeding, such as the legal adequacy of the sanctions framework,⁷⁵ or to determine and comment on the respondents' eligibility to participate in specific projects.⁷⁶

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

68. Sanctions Board Decision No. 76 (2015) at paras. 9-13.

69. 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.

70. 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, and 56.

71. See, for example, Sanctions Board Decision No. 60 (2013) at para. 17; Sanctions Board Decision No. 76 (2015) at paras. 37-39, 49, and 50.

72. See, for example, Sanctions Board Decision No. 100 (2017) at para. 12; Sanctions Board Decision No. 125 (2020) at para. 11; Sanctions Board Decision No. 130 (2020) at para. 39.

73. Sanctions Board Decision No. 130 (2020) at para. 43. See also Sanctions Board Decision No. 90 (2016) at para. 21.

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

75. See, for example, Sanctions Board Decision No. 55 (2013) at para. 26; Sanctions Board Decision No. 92 (2017) at para. 50.

76. Sanctions Board Decision No. 45 (2011) at paras. 23 and 70.

20. *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 when the applicable Procurement or Consultant Guidelines have included agents in introducing the applicable definitions of sanctionable practice. Likewise, the Sanctions Board has considered allegations against service providers when the applicable Guidelines reflect that jurisdiction in sanctions cases extends to “service providers” acting in the context of procurement under a Bank-financed contract.⁷⁷

The Sanctions Board has found that the WBG institutional rule against sanctioning public officials in some instances⁷⁸ does not preclude a finding of jurisdiction against public officials who hold additional roles (e.g., as representatives of respondent firms) and engage in sanctionable activity in relation to a Bank-financed project in their private capacity.⁷⁹ In the same vein, the Sanctions Board has clarified that, pursuant to the Bank’s longstanding rule, government officials should be exempted from sanctions in relation to official acts, while other categories of public officials may not enjoy the same protection. In line with these standards, the Sanctions Board has asserted jurisdiction over public officials employed as consultants under Bank-financed contracts.⁸⁰

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 to assert jurisdiction to sanction.⁸¹

21. *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.⁸²
22. *Conflicting standards of review*: In the event of potentially conflicting standards of review, including with respect to the applicable definitions of sanctionable practices, the Sanctions Board has taken into account considerations of equity. Thus, the Sanctions Board has accepted the definitions that the borrower and a respondent agreed upon (the bidding documents or the contract), instead of the definitions that the borrower and the Bank agreed upon (i.e., the financing agreement).⁸³ The Sanctions Board has also considered the views of the World Bank’s Legal Vice Presidency in such matters and has referred to them in its decisions.⁸⁴

77. Sanctions Board Decision No. 127 (2020) at para. 17 (referring to January Procurement Guidelines at p. 6).

78. The World Bank Group’s Sanctions Regime: Information Note (November 2011) at pp. 19-20, available at https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/The_World_Bank_Group_Sanctions_Regime.pdf.

79. 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.

80. Sanctions Board Decision No. 78 (2015) at para. 45; Sanctions Board Decision No. 139 (2022) at para. 29.

81. Sanctions Board Decision No. 64 (2014) at para. 28; Sanctions Board Decision No. 81 (2015) at paras. 28 and 29; Sanctions Board Decision No. 130 (2020) at para. 39.

82. Sanctions Board Decision No. 47 (2012) at paras. 20 and 56; Sanctions Board Decision No. 50 (2012) at para. 25; Sanctions Board Decision No. 64 (2014) at para. 30; Sanctions Board Decision No. 100 (2017) at para. 27; Sanctions Board Decision No. 136 (2022) at para. 59.

83. See, for example, Sanctions Board Decision No. 59 (2013) at para. 11; Sanctions Board Decision No. 131 (2021) at para. 10; Sanctions Board Decision No. 134 (2021) at para. 14.

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

E. EVIDENCE

World Bank Sanctions Procedures at Section III.A⁸⁵ (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, 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.

23. *Forms of evidence:* In past cases, the Sanctions Board has always reviewed documentary evidence, which has included official business documents,⁸⁶ relevant images,⁸⁷ correspondence,⁸⁸ and transcripts and other records of testimonial evidence.⁸⁹ In cases in which 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.⁹⁰
24. *Formal rules of evidence:* As provided in the applicable Sanctions Procedures, formal rules of evidence do not apply in the context of sanctions proceedings.⁹¹ Recognizing the flexibility

85. 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.

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

87. 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).

88. See, for example, Sanctions Board Decision No. 92 (2017) at para. 73; Sanctions Board Decision No. 97 (2017) at para. 57; Sanctions Board Decision No. 111 (2018) at para. 30.

89. See, for example, Sanctions Board Decision No. 97 (2017) at para. 57; Sanctions Board Decision No. 106 (2017) at para. 24; Sanctions Board Decision No. 109 (2018) at para. 27.

90. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 2 and 48-53; Sanctions Board Decision No. 96 (2017) at paras. 38-41.

91. Sanctions Board Decision No. 56 (2013) at para. 43; Sanctions Board Decision No. 139 (2022) at para. 14. See also World Bank Sanctions Procedures at Section III.B, sub-paragraph 7.01; IFC Sanctions Procedures at Section 7.01; MIGA Sanctions Procedures at Section 7.01; World Bank Private Sector Sanctions Procedures at Section 7.01.

that such informality affords, the Sanctions Board previously cautioned against parties raising motions and countermotions regarding admissibility of evidence. The Sanctions Board observed that motions and countermotions often lead to highly technical, overly legalistic proceedings, which run counter to informality. In making these observations, the Sanctions Board emphasized that it does not wish to become a forum where respondents may be disadvantaged if they are not represented by legal counsel.⁹²

25. *Sources of evidence:* The Sanctions Board has considered and relied upon direct and circumstantial evidence,⁹³ taking into account the possible biases of its sources⁹⁴ and the recent or dated nature of evidentiary documents and statements.⁹⁵ The Sanctions Board has also considered hearsay evidence within the context of other evidence on the record.⁹⁶
26. *Evidentiary basis:* The Sanctions Board has observed that assertions made by either party must have an evidentiary basis in the record.⁹⁷ At the same time, the Sanctions Board has adopted a flexible approach when considering all probative evidence and noted in one case 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.⁹⁸
27. *Nature and relevance of evidence:* The Sanctions Board has stated that a party submitting documents into the record for the Sanctions Board's review is expected to understand, and be able to articulate, the nature and relevance of these documents. When parties did not identify the nature or relevance of certain materials appended to their submissions, the Sanctions Board Chair requested that those parties amend or clarify those submissions as appropriate.⁹⁹
28. *Conduct of INT's investigation:* The Sanctions Board has generally observed that assertions that the conduct of INT's investigation was improper may, if adequately supported by the record, inform the Sanctions Board's consideration of the credibility, weight, and sufficiency of the evidence furnished by INT.¹⁰⁰ For example, the Sanctions Board has underscored that the use of intimidation is impermissible and may limit or annul the evidentiary weight of an individual's statements or admissions made in that context.¹⁰¹ Accordingly, the Sanctions Board cautioned INT in one case to be careful to avoid conduct that could reasonably be

92. Sanctions Board Decision No. 56 (2013) at para. 43.

93. 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).

94. See, for example, Sanctions Board Decision No. 50 (2012) at para. 39; Sanctions Board Decision No. 92 (2017) at paras. 51-59.

95. 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).

96. See, for example, Sanctions Board Decision No. 56 (2013) at para. 59; Sanctions Board Decision No. 92 (2017) at paras. 55, 57, and 59.

97. 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.

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

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

100. See, for example, Sanctions Board Decision No. 79 (2015) at para. 58; Sanctions Board Decision No. 92 (2017) at para. 50.

101. Sanctions Board Decision No. 60 (2013) at para. 60; Sanctions Board Decision No. 72 (2014) at para. 34.

perceived as intimidating. For the Sanctions Board, any suggestion that an interviewee's request to consult a lawyer demonstrates non-cooperation or hinders INT's investigation may also raise concerns as to the fairness of the investigation and consequently the reliability or weight of the evidence thus obtained.¹⁰²

World Bank Sanctions Procedures at Section III.A¹⁰³ (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 sub-paragraph 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.^[11] 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).
- ... [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.
- (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.
- (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

102. Sanctions Board Decision No. 60 (2013) at para. 60.

103. 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.

(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 sub-paragraph 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 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.

29. *Distribution of evidence:* According to the Sanctions Board, sub-paragraph 5.04(a) of Section III.A of the World Bank Sanctions Procedures (see box above) sets a default presumption that copies of all written submissions and evidence should be provided to all parties to the proceedings.¹⁰⁴
30. *Withholding of evidence:* As a general matter, the Sanctions Board has consistently recognized the “default” disclosure requirement within the applicable Sanctions Procedures.¹⁰⁵

When 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, sub-paragraph 3.02 of the World Bank Sanctions Procedures relating to potentially exculpatory or mitigating evidence.¹⁰⁶ As a general matter, the Sanctions Board has declined respondents’ nonspecific requests for INT to produce evidence, taking note of the Sanctions Procedures provisions regarding “No Discovery.”¹⁰⁷ However, when respondents made a particularized request for certain evidence they argued was not available to

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

105. 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 (requirement of full access to evidence).

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

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

them but was available to INT and was material to the sanctions proceedings, the Sanctions Board addressed the matter in closer detail. In one instance, the Sanctions Board requested access to and assessed the materials in question *in camera* before making a determination that some of the materials must be disclosed.¹⁰⁸ When the request is 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 that the Sanctions Framework does not empower the Sanctions Board to review or compel disclosure of this information.¹⁰⁹

The Sanctions Board has applied greater scrutiny to instances in which 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, sub-paragraph 5.04 of the World Bank Sanctions Procedures by assessing the basis of any such withholding¹¹⁰ and occasionally authorizing INT to use redactions or *in camera* review that would allow the respondent at least some level of access to evidence.¹¹¹ 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.¹¹²

There have been instances in which INT has sought to withhold evidence from respondents on the basis of World Bank Staff Rules, which provide for the protection of confidential personnel information. However, in all such instances, the Sanctions Board has denied the request to withhold this evidence. In doing so, the Sanctions Board has observed that this evidentiary matter highlights the conflict between the requirement of full access to evidence, as set out in Section III.A, sub-paragraph 5.04(a) of the Sanctions Procedures (which also provides certain exceptions), and the restriction on disclosure of Bank personnel information to third parties without authorization of the relevant staff member, as set out in WBG Staff Rule 2.01. The Sanctions Board has stressed that its mandate is to follow the sanctions framework, which governs sanctions proceedings and the Sanctions Board's operations.¹¹³

31. *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).¹¹⁴ The Sanctions Board previously affirmed INT's ability, in accordance with this provision, to remove references to WBG 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

108. Sanctions Board Decision No. 71 (2014) at paras. 42 and 45-48.

109. See, for example, Sanctions Board Decision No. 56 (2013) at para. 82; Sanctions Board Decision No. 118 (2019) at para. 40.

110. See, for example, Sanctions Board Decision No. 60 (2013) at para. 56; Sanctions Board Decision No. 63 (2014) at paras. 42 and 43; Sanctions Board Decision No. 113 (2018) at paras. 21-23; Sanctions Board Decision No. 121 (2019) at paras. 16 and 17.

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

112. 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 and 22 (denying INT's request in part); Sanctions Board Decision No. 121 (2019) at paras. 16 and 17 (denying INT's request).

113. Sanctions Board Decision No. 113 (2018) at para. 23; Sanctions Board Decision No. 136 (2022) at para. 24.

114. See, for example, Sanctions Board Decision No. 64 (2014) at para. 31; Sanctions Board Decision No. 113 (2018) at para. 22.

implicated in the alleged misconduct.¹¹⁵ When 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.¹¹⁶ The Sanctions Board has also taken into account whether the respondents articulated their objections in a consistent and timely manner.¹¹⁷ The Sanctions Board has denied respondents’ requests to redact evidentiary materials that were assertedly “irrelevant and prejudicial,”¹¹⁸ noting that no general requirement of relevance or materiality governs the admission of evidence under the Sanctions Procedures.¹¹⁹

32. *Review of evidence in camera*: The Sanctions Board has authorized *in camera* review of evidence by respondents (or their counsel) when the evidence was originally redacted or withheld but deemed necessary for the respondent to mount a meaningful response.¹²⁰ When 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.¹²¹
33. *Weight of evidence*: In assessing the weight of evidence submitted by parties to sanctions proceedings, the Sanctions Board has considered various factors, including:
 - a. Whether the evidence is relevant to the proceedings¹²²
 - b. Whether the evidence is contemporaneous¹²³
 - c. Whether the evidence is corroborated or contradicted¹²⁴

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

116. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 49 and 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 and 28; Sanctions Board Decision No. 87 (2016) at paras. 59 and 60; Sanctions Board Decision No. 95 (2017) at para. 20; Sanctions Board Decision No. 96 (2017) at para. 48.

117. 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).

118. See, for example, Sanctions Board Decision No. 92 (2017) at paras. 17 and 43 (the respondent firm asserted that INT failed to redact or exclude irrelevant and prejudicial material in the record); Sanctions Board Decision No. 96 (2017) at para. 47 (the respondent alleged that the evidence in question addressed matters outside the scope of the allegations, and that the inclusion of these materials served no purpose other than to demonstrate a propensity to engage in misconduct or imply involvement in “wider alleged wrongdoing”).

119. Sanctions Board Decision No. 92 (2017) at para. 45; Sanctions Board Decision No. 96 (2017) at para. 49.

120. 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.

121. See, for example, Sanctions Board Decision No. 60 (2013) at para. 56 (denying INT’s request when 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 when 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 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).

122. See, for example, Sanctions Board Decision No. 94 (2017) at para. 22.

123. See, for example, Sanctions Board Decision No. 50 (2012) at paras. 40 and 41; Sanctions Board Decision No. 64 (2014) at para. 34; Sanctions Board Decision No. 65 (2014) at para. 34.

124. See, for example, Sanctions Board Decision No. 37 (2010) at para. 43; Sanctions Board Decision No. 50 (2012) at paras. 39 and 40; Sanctions Board Decision No. 59 (2013) at para. 24; 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.

- d. Whether the evidence is complete or presented in a condensed form, such as summaries of conversations and interviews¹²⁵
- e. For testimonial evidence, whether the sources may have been intimidated,¹²⁶ could not fully comprehend the inquiry,¹²⁷ relied on incorrect information,¹²⁸ or had reasons to be less-than-candid¹²⁹
- f. For translated evidence, whether the English-language translations are sufficiently precise¹³⁰
- g. Sources of evidence, their circumstances, and their interests¹³¹
- h. Formal requirements for submissions¹³²
- i. Conduct of INT investigators in obtaining the evidence¹³³
- j. The opposing party's ability to respond to the evidence¹³⁴

In select cases, the Sanctions Board has opined on entire categories of evidence. With respect to Summary Records of Interview (ROIs), the Sanctions Board has observed that such documents do not constitute the best evidence of an oral statement;¹³⁵ and lack the intrinsic accuracy of verbatim transcripts, particularly when none of the interviewees appear to have signed the ROIs to attest to their basic accuracy.¹³⁶ Notwithstanding these conclusions, the Sanctions Board has declined to exclude ROIs as evidence and has considered their weight on a case-by-case basis.¹³⁷ 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,¹³⁸ whether the interviewees agreed that the interview summary was accurate,¹³⁹ how and when the ROIs were prepared,¹⁴⁰ the level of detail presented in the ROIs,¹⁴¹ and whether other evidence corroborated the content of the ROIs.¹⁴²

125. 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 to 35; Sanctions Board Decision No. 65 (2014) at para. 34.

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

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

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

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

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

131. 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. 92 (2017) at paras. 51-54; Sanctions Board Decision No. 118 (2019) at paras. 43-45.

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

133. 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.

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

135. See, for example, Sanctions Board Decision No. 50 (2012) at para. 40; Sanctions Board Decision No. 65 (2014) at para. 34; Sanctions Board Decision No. 78 (2015) at para. 51.

136. 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.

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

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

139. 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 and 35.

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

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

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

34. *Contextual assessment of evidence:* The Sanctions Board has assessed the evidence presented in its specific context.¹⁴³ For example, in assessing testimonial evidence, the Sanctions Board has observed that a party's silence during a group conversation may indicate not only acquiescence, but also lack of agreement or comprehension and as such must be reviewed in context.¹⁴⁴
35. *Withdrawal of evidence:* INT has elected to withdraw evidence after the Sanctions Board denied INT's request to withhold it from the respondents.¹⁴⁵ INT has also withdrawn evidence when the Sanctions Board authorized the withholding but found the evidence irrelevant and thus invited INT to withdraw it.¹⁴⁶

F. PROCEDURAL MATTERS

36. *Joinder of proceedings:* There have been instances in which sanctions cases that were addressed separately at the first tier of review (SDO/EO) involved related accusations, facts, and matters. In these instances, the Sanctions Board has, at the request of the parties, joined certain aspects of the proceedings of these cases, including by holding a joint hearing if requested and issuing a single decision covering the multiple cases.¹⁴⁷ In issuing a single decision, the Sanctions Board previously explained that it was in view of the overlapping parties and pleadings in the cases and considering the value of a holistic approach to the final determination of appropriate sanctions.¹⁴⁸ In some instances, the pleadings and certain evidence were not shared across the cases.¹⁴⁹ In others, the Sanctions Board determined that materials relating to the sanctions proceedings in each of the cases would be made available to the parties to the other proceedings in accordance with the applicable Sanctions Procedures.¹⁵⁰
37. *Due process concerns in the conduct of INT's audit:* In one case, the respondents argued that INT committed a due process violation by conducting an audit and inspection of the respondent firms without a legal or contractual basis for doing so. INT asserted that, even though the Bank's audit rights were not expressly included in the bidding and contractual documents at issue in the case, such audit rights "should be inferred" from the relevant Bank financing agreements and that, in any event, the respondents willingly complied with INT's audit request, thereby rendering any subsequent complaints moot.¹⁵¹ The Sanctions Board found that, contrary to INT's primary argument, the Bank's audit and inspection rights cannot

143. 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.

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

145. Sanctions Board Decision No. 60 (2013) at para. 56-57; Sanctions Board Decision No. 83 (2015) at para. 44; Sanctions Board Decision No. 121 (2019) at para. 17; Sanctions Board Decision No. 136 (2022) at para. 23.

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

147. Sanctions Board Decision No. 41 (2010) (Sanctions Cases No. 77 and No. 110) at paras. 1, 2, and 8; Sanctions Board Decision No. 51 (2012) (Sanctions Cases No. 145 and 146) at para. 7; Sanctions Board Decision No. 63 (2014) (Sanctions Cases No. 119 and No. 124) at para.2; Sanctions Board Decision No. 78 (2015) (Sanctions Cases No. 283 and No. 326) at para. 2; Sanctions Board Decision No. 87 (2016) (Sanctions Cases No. 249 and No. 251) at para. 2; Sanctions Board Decision No. 92 (2017) (Sanctions Cases No. 347 and No. 387) at para. 2; Sanctions Board Decision No. 130 (2020) (Sanctions Cases No. 680 and No. 681 – all the respondents were represented by the same counsel) at paras. 1 and 36.

148. Sanctions Board Decision No. 41 (2010) at para. 8.

149. Sanctions Board Decision No. 51 (2012) at para. 7.

150. World Bank Sanctions Procedures (2016) at Section III.A, para. 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). See also Sanctions Board Decision No. 63 (2014) at para. 2; Sanctions Board Decision No. 78 (2015) at paras. 2, 46, and 47; Sanctions Board Decision No. 87 (2016) at para. 2; Sanctions Board Decision No. 92 (2017) at para. 2; Sanctions Board Decision No. 130 (2020) at paras. 1 and 36.

151. Sanctions Board Decision No. 130 (2020) at paras. 42 and 44.

be established by inference; to create such authority, the audited party must agree to the corresponding obligation to provide documents and cooperate.¹⁵² However, the Sanctions Board clarified that there is no requirement that this agreement be formalized under a written contract. Although INT sent an audit letter to the respondent citing provisions that did not directly support its request, the Sanctions Board considered that the respondents were on notice of INT's asserted basis and could have objected to the inspection then. Given that the respondents agreed to cooperate and the record did not suggest that INT engaged in any coercion or made the audit request in bad faith, the Sanctions Board found no offense to principles of fairness and due process in the conduct of INT's audit.¹⁵³

38. *Motion to dismiss case or terminate proceedings*: The Sanctions Board has generally denied respondents' motions to dismiss a case or terminate sanctions proceedings. Such motions have been based on a variety of factors, including objections to the WBG sanctions framework,¹⁵⁴ INT's omission or delayed disclosure of exculpatory or mitigating evidence,¹⁵⁵ and passage of time since the alleged misconduct (when the delay did not constitute a breach of the statute of limitations under the applicable Sanctions Procedures).¹⁵⁶

In one case, the respondent submitted a motion to dismiss the sanctions proceedings on the grounds that, during the hearing before the Sanctions Board, INT's representative made a statement regarding other potential misconduct by the respondent while acknowledging that INT lacked sufficient proof of such misconduct. According to the respondent, INT's statement at the hearing was inconsistent with minimum standards of fairness and due process and, had this been a jury trial, would have required an immediate declaration of mistrial. In rejecting the motion to dismiss the proceedings, the Sanctions Board underlined that it is not a jury and that sanctions proceedings are administrative in nature without formal rules of evidence. Thus, rather than dismissing the proceedings, the Sanctions Board disregarded the statement by INT's representative and considered and determined the respondent's liability solely on the basis of the evidence accepted into the record.¹⁵⁷

39. *Motion to terminate temporary suspension before close of sanctions proceedings*: The Sanctions Board has declined to terminate or limit the scope of temporary suspension before the conclusion of sanctions proceedings.¹⁵⁸
40. *Motion for stay of proceedings*: The Sanctions Board has declined to impose a stay of proceedings,¹⁵⁹ 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.¹⁶⁰
41. *Request for extension 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

152. Sanctions Board Decision No. 130 (2020) at para. 44 (referring to Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases (No. 2010/1) at para. 34 (November 15, 2010); released to public by the World Bank Legal Vice Presidency in June 2013) available at <https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/AdvisoryOpinion.pdf>.

153. Sanctions Board Decision No. 130 (2020) at para. 44.

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

155. Sanctions Board Decision No. 63 (2014) at paras. 40 and 41.

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

157. Sanctions Board Decision No. 55 (2013) at paras. 40-42.

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

159. Sanctions Board Decision No. 93 (2017) at para. 36; Sanctions Board Decision No. 97 (2017) at paras. 29 and 30.

160. Sanctions Board Decision No. 108 (2018) at para. 27.

Sanctions Board, and confirm participation in hearings.¹⁶¹ 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 when multiple successive requests were involved.

42. *Submission of additional arguments or evidence:* The Sanctions Board and the Sanctions Board Chair have considered additional 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.¹⁶² The following factors have been considered relevant to the question of whether additional arguments or evidence can be admitted into the case record:
- a. Whether the submission accompanied an otherwise authorized filing, such as INT’s Reply¹⁶³
 - b. Whether the submission was in response to an authorization, invitation, or request from the Sanctions Board or the Sanctions Board Chair,¹⁶⁴ for example, when a respondent requested authorization to file an additional submission to rebut an allegation contained in INT’s Reply that was not set out in the Statement of Accusations and Evidence¹⁶⁵
 - c. Whether the submission related to newly available evidence¹⁶⁶
 - d. Whether the submission was timely and material¹⁶⁷

World Bank Sanctions Procedures at Section III.A¹⁶⁸ (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.

161. See, for example, Sanctions Board Decision No. 55 (2013) at paras. 33, 34, and 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).

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

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

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

165. Sanctions Board Decision No. 128 (2020) at para. 14. See also Sanctions Board Decision No. 129 (2020) at para. 25 (the Sanctions Board denied the respondent’s request).

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

167. See, for example, Sanctions Board Decision No. 97 (2017) at paras. 37 and 38.

168. 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.

43. *Request to compel production of evidence:* Requests for the Sanctions Board to compel production of evidence in contested sanctions cases have been submitted by or on behalf of respondents.¹⁶⁹ The Sanctions Board has generally denied such requests when the materials at issue were not identified with sufficient specificity,¹⁷⁰ were likely not available to INT,¹⁷¹ were neither exculpatory nor mitigating within the meaning of the relevant language of the Sanctions Procedures (see box above),¹⁷² or were related to a settlement rather than the ongoing sanctions proceedings.¹⁷³ In addition, the Sanctions Board has declined to consider such requests altogether when the respondent still had an appropriate forum for its demands at the first tier of sanctions proceedings.¹⁷⁴

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.¹⁷⁵ In assessing INT's compliance with its obligations to furnish exculpatory or mitigating evidence, the Sanctions Board previously reviewed whether the evidence at issue would appear to support or undermine any of the parties' assertions; whether the respondent already had, or eventually gained, access to the evidence; and, more generally, whether INT's omission to present this evidence in a timely manner compromised the respondent's ability to mount a meaningful defense.¹⁷⁶

44. *Request to strike or exclude evidence from the record:* Respondents have occasionally requested that the Sanctions Board strike certain evidence that is allegedly prejudicial, irrelevant, or of limited quality.¹⁷⁷ The Sanctions Board has generally considered such requests under the broad standard for admissibility of evidence under the applicable Sanctions Procedures.¹⁷⁸ This standard provides that parties' arguments may be supported by any kind of evidence and that the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.¹⁷⁹ Pursuant to this standard, the Sanctions Board has consistently denied respondents' requests to strike evidence from the record.¹⁸⁰

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

170. See, for example, Sanctions Board Decision No. 126 (2020) at para. 29.

171. See, for example, Sanctions Board Decision No. 135 (2021) at para. 23.

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

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

174. Sanctions Board Decision No. 71 (2014) at paras. 35-38.

175. See, for example, Sanctions Board Decision No. 56 (2013) at para. 32; Sanctions Board Decision No. 93 (2017) at para. 38.

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

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

178. See, for example, Sanctions Board Decision No. 92 (2017) at para. 45; Sanctions Board Decision No. 96 (2017) at para. 49.

179. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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.

180. Sanctions Board Decision No. 55 (2013) at paras. 28 and 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.

45. *Request to exclude certain evidence from consideration against a 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 that another respondent submitted in that case.¹⁸¹ The Sanctions Board declined, observing, *inter alia*, that the applicable Sanctions Procedures recognize the possibility that the respondents in the same proceedings may have different positions and interests and 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.¹⁸²
46. *Effect on final sanction:* In cases in which the parties' procedural requests (particularly requests for extensions and postponements) have meaningfully extended the duration of sanctions proceedings, the Sanctions Board has considered the extent of and reasons for such delays in its determination of the respondents' final sanction.¹⁸³
47. *Death of a respondent:* In one case involving a respondent firm and a respondent individual, the respondent firm informed the Sanctions Board that the respondent individual had died before issuance of the notice of sanctions proceedings. Given the death of the respondent individual before conclusion of sanctions proceedings, the Sanctions Board declined to make any determination with respect to the respondent individual, including whether he engaged in a sanctionable practice.¹⁸⁴

G. HEARINGS

World Bank Sanctions Procedures at Section III.A¹⁸⁵ (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

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

182. Sanctions Board Decision No. 60 (2013) at paras. 46-48.

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

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

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

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. . . .

48. *Requests for hearing:* Consistent with the applicable Sanctions Procedures, requests for a hearing articulated in the respondent's Response to the Notice of Sanctions Proceedings or in INT's Reply are granted as a matter of course.¹⁸⁶ The Sanctions Board has granted hearing requests even when one of the parties objected to the other party's request for a hearing or asserted that a hearing was not necessary.¹⁸⁷ Requests raised at later points in the proceeding, however, are not granted automatically. For instance, when a respondent presented a belated request for a hearing in a submission filed after the deadline for the Response, the Sanctions Board declined this request on the grounds that it was inconsistent with Section III.A, sub-paragraph 6.01 of the Sanctions Procedures.¹⁸⁸

In most cases in which multiple respondents requested a hearing, the Sanctions Board held a single hearing for all parties.¹⁸⁹

In a case in which a request for a hearing was formally rescinded, the Sanctions Board granted that request and did not convene a hearing.¹⁹⁰ Likewise, there have been cases in which neither party requested a hearing and the Sanctions Board Chair did not exercise the discretion, discussed below, to convene a hearing.¹⁹¹

49. *Hearings called by the Sanctions Board Chair:* The Sanctions Board Chair has exercised his/her discretion under Section III.A, sub-paragraph 6.01 of the World Bank Sanctions Procedures, to call a hearing in various circumstances. These include when the Sanctions Board joined two proceedings, but a hearing was requested in only one of the sanctions cases.¹⁹² Similarly, there have been cases in which neither of the parties requested a hearing but the Sanctions Board Chair nevertheless found a hearing to be necessary.¹⁹³ The Sanctions Board Chair has

186. 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).

187. Sanctions Board Decision No. 56 at paras. 26 and 27; Sanctions Board Decision No. 84 (2015) at paras. 16, 17, and 19.

188. Sanctions Board Decision No. 135 (2021) at para. 1.

189. See, for example, Sanctions Board Decision No. 96 (2017) at para. 2; Sanctions Board Decision No. 130 (2020) at para. 1. By contrast, see Sanctions Board Decision No. 4 (2009) (Two of the 15 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.)

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

191. See, for example, Sanctions Board Decision No. 122 (2020) at para. 1; Sanctions Board Decision No. 123 (2020) at para. 1; Sanctions Board Decision No. 125 (2020) at para. 1; Sanctions Board Decision No. 127 (2020) at para. 1.

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

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

also called a hearing in one of the requests for reconsideration. Given that Section III.A, sub-paragraph 6.01 of the World Bank Sanctions Procedures was not directly applicable to those proceedings, the Sanctions Board Chair called a hearing in accordance with Article XI of the applicable Sanctions Board Statute.¹⁹⁴ In one case, the Sanctions Board Chair initially decided to convene a hearing at his discretion, consistent with Section III.A, sub-paragraph 6.01 of the World Bank Sanctions Procedures. However, the Chair ultimately reversed this determination because the respondent, “repeatedly and without good cause,” failed to confirm its availability and intent to participate in the scheduled oral proceedings.¹⁹⁵

50. *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.¹⁹⁶ Participation of legal counsel is not required in sanctions proceedings.
51. *Attendance at hearings:* In most sanctions proceedings that included a hearing, representatives of all parties were in attendance.¹⁹⁷ In one case, the Sanctions Board Chair exercised his discretion in approving specific attendees to the hearing and declining a respondent’s request that unlimited and unspecified attendees be present at the hearing.¹⁹⁸ In some cases, however, all or some of the respondents did not attend.¹⁹⁹ In these cases, the Sanctions Board deliberated and rendered its decision based on the written submissions and statements made at the hearing by those who did attend.²⁰⁰

The Sanctions Board has held hybrid-format hearings, including when the Sanctions Board members hearing the case, INT, and some respondents were physically present in one meeting room and other respondents attended virtually via video conference;²⁰¹ the Sanctions Board members and INT were physically present in a meeting room and the respondent attended virtually via video conference;²⁰² and the meeting was held entirely virtually with the Sanctions Board members, INT, and the respondent’s representatives all attending via video conference from different locations around the world.²⁰³

In addition to the primary parties in each case, the Sanctions Board has occasionally authorized voluntary participation of witnesses.²⁰⁴

194. 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).

195. Sanctions Board Decision No. 135 (2021) at para. 1, fn. 4.

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

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

198. Sanctions Board Decision No. 55 (2013) at paras. 38 and 39.

199. 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.

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

201. See, for example, Sanctions Board Decision No. 63 (2014) at para. 2; Sanctions Board Decision No. 87 (2016) at para. 2; Sanctions Board Decision No. 138 (2022) at para. 1.

202. Sanctions Board Decision No. 124 (2020) at para. 1.

203. Sanctions Board Decision No. 128 (2020) at para. 1; Sanctions Board Decision No. 129 (2020) at para. 1; Sanctions Board Decision No. 130 (2020) at para.1; Sanctions Board Decision No. 134 (2021) at para. 1.

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

52. *Conduct of hearings*: Sanctions Board hearings generally include presentations by INT and each of the contesting parties, as well as questions from Sanctions Board members.²⁰⁵ A hearing was once conducted in two parts held on different dates.²⁰⁶ Questions related to the conduct of hearings have generally been resolved at the discretion of the Sanctions Board Chair, consistent with the applicable Sanctions Procedures.²⁰⁷
53. *Postponement of hearings*: Scheduled hearings have occasionally been postponed after a request from one or more parties to the proceeding.²⁰⁸ In such cases, the Sanctions Board Chair exercised discretion in arriving at a decision, at times inviting input from the party not requesting the postponement.²⁰⁹

H. STANDARD AND BURDEN OF PROOF

World Bank Sanctions Procedures at Section III.A²¹⁰ (Proceedings)

8.02. Determinations by the Sanctions Board

...

- (b) Standard and Burden of Proof.
- (i) Standard of Proof. The Sanctions Board shall determine whether the evidence presented by INT, as contested by the Respondent, supports the conclusion that it is more likely than not that the Respondent engaged in a Sanctionable Practice. “More likely than not” means that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the Respondent engaged in a Sanctionable Practice.
- (ii) Burden of Proof. INT shall have the burden of proof to present evidence sufficient to establish that it is more likely than not that the Respondent engaged in a Sanctionable Practice. Upon such a showing by INT, the burden of proof shall shift to the Respondent to demonstrate that it is more likely than not that the Respondent’s conduct did not amount to a Sanctionable Practice.

54. *Standard of proof*: Consistent with the applicable Sanctions Procedures, the Sanctions Board has confirmed that its role is to determine whether the evidence that INT presented,

205. 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).

206. Sanctions Board Decision No. 56 (2013) at paras. 2 and 34.

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

208. 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. 98 (2017) at para. 67 (request by the respondent); Sanctions Board Decision No. 120 (2019) at para. 61 (request by the respondents).

209. Sanctions Board Decision No. 97 (2017) at paras. 34-36 (request by one of the respondents).

210. See also IFC Sanctions Procedures (2012) at Section 8.02 (b); MIGA Sanctions Procedures (2013) at Section 8.02 (b); World Bank Private Sector Sanctions Procedures (2013) at Section 8.02 (b).

as contested by a respondent, supports the conclusion that it is “more likely than not” that the respondent engaged in a sanctionable practice.²¹¹

55. *Burden of proof*: Consistent with the applicable Sanctions Procedures, the Sanctions Board has found that INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.²¹²

I. DECISIONS

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

13. Sanctions Board Decisions

- (i) The Sanctions Board shall take all decisions by a majority of the members hearing a case.
- (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.A²¹³ (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; and:

- (i) if the Sanctions Board determines that it is not more likely than not that the Respondent engaged in a Sanctionable Practice, the proceedings shall be terminated.^[13]
- (ii) if the Sanctions Board determines that it is more likely than not that the Respondent engaged in one or more Sanctionable Practices, it shall impose an appropriate sanction or sanctions on the Respondent, which sanction(s) shall be selected from the range of possible sanctions identified in sub-paragraph 9.01. In determining the appropriate sanction(s), the Sanctions Board shall not be bound by the recommendation of the SDO.

211. See, for example, Sanctions Board Decision No. 97 (2017) at para. 11; Sanctions Board Decision No. 98 (2017) at paras. 11 and 31; Sanctions Board Decision No. 99 (2017) at para. 8; Sanctions Board Decision No. 102 (2017) at para. 10; Sanctions Board Decision No. 108 (2018) at para. 7; Sanctions Board Decision No. 122 (2020) at para. 7; Sanctions Board Decision No. 130 (2020) at para. 7; Sanctions Board Decision No. 137 (2022) at para. 10.

212. See, for example, Sanctions Board Decision No. 97 (2017) at para. 12; Sanctions Board Decision No. 98 (2017) at paras. 12 and 31; Sanctions Board Decision No. 99 (2017) at para. 9; Sanctions Board Decision No. 102 (2017) at para. 11; Sanctions Board Decision No. 108 (2018) at para. 8; Sanctions Board Decision No. 122 (2020) at para. 8; Sanctions Board Decision No. 130 (2020) at para. 8; Sanctions Board Decision No. 137 (2022) at para. 10.

213. 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.

In either case, the 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.

...

[13] At any time thereafter, however, subject to the time limits set forth in sub-paragraph 4.01(d), INT may submit an amended Statement of Accusations and Evidence to the SDO in accordance with sub-paragraph 3.01, if evidence not available at the time of submission of the Statement of Accusations and Evidence is subsequently received or obtained by INT.

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.

...

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.

56. *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.²¹⁴ The Sanctions Board has emphasized this principle of finality as a fundamental aspect of any judicial or quasi-judicial process.²¹⁵
57. *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 in narrowly defined and exceptional circumstances.²¹⁶ The Sanctions Board reached this determination after noting the absence of directly controlling provisions in the sanctions framework relating to reconsideration; and 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 regarding particular issues.²¹⁷

214. WBG Sanctions Board Statute (2016) at Section III.A, para. 13(ii). World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 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.

215. Sanctions Board Decision No. 43 (2011) at para. 14, Sanctions Board Decision No. 57 (2013) at para. 7; Sanctions Board Decision No. 58 (2013) at para. 7; Sanctions Board Decision No. 84 (2015) at para. 9.

216. Sanctions Board Decision No. 43 (2011) at paras. 11 and 15; Sanctions Board Decision No. 62 (2014) at para. 6; Sanctions Board Decision No. 84 (2015) at para. 9; Sanctions Board Decision No. 132 (2021) at para. 4.

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

In reviewing requests for reconsideration, the Sanctions Board has identified 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 review of a final decision.²¹⁸ By contrast, the Sanctions Board has found that mere attempts to re-argue or re-litigate a case or respondents' failure to present previously available facts or related evidence to the Sanctions Board in a timely or effective manner, on the advice of legal counsel or for other reasons, do not warrant reconsideration.²¹⁹ The Sanctions Board has not granted any respondents' requests for reconsideration.²²⁰

58. *Publication and key contents:* The full texts of Sanctions Board decisions have been published since May 2012.²²¹ 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 sanctions imposed on the respondents and affiliates, if any.²²²

218. See, for example, Sanctions Board Decision No. 84 (2015) at para. 9; Sanctions Board Decision No. 132 (2021) at para. 4.

219. See, for example, Sanctions Board Decision No. 84 (2015) at para. 9; Sanctions Board Decision No. 132 (2021) at para. 4.

220. 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); Sanctions Board Decision No. 132 (2021).

221. World Bank Increases Transparency through Inaugural Publication of Sanctions Board Decisions, World Bank Press Release No 2012/481/EXT, issued on May 30, 2012, <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board/brief/world-bank-increases-transparency-through-inaugural-publication-of-sanctions-board-decisions>.

222. See, for example, Sanctions Board Decision No. 120 (2019), paras. 1, 67, and 68.

3 Sanctionable Practices

SUMMARY OF CONTENTS

A. Fraudulent practice	<i>Paragraphs 1-7</i>
B. Corrupt practice	<i>Paragraphs 8-18</i>
C. Collusive practice	<i>Paragraphs 19-21</i>
D. Obstructive practice	<i>Paragraph 22</i>
E. Coercive practice	<i>Paragraph 23</i>

This chapter presents the Sanctions Board’s analyses with respect to the specific sanctionable practices alleged in contested sanctions proceedings—fraud, corruption, collusion, and obstruction. This chapter also offers an overview of the sanctionable practice of coercion, which has not yet been the subject of proceedings before the Sanctions Board. The applicable definitions of these sanctionable practices are set out in the Procurement Guidelines, Consultant Guidelines, and Anti-Corruption Guidelines¹ of the respective WBG member institutions.² The WBG has revised these Guidelines over time.³ The Sanctions Board’s findings with respect to each sanctionable practice are organized according to the composite elements of the definitions of each sanctionable practice.

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:⁴

- “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

1. See Sources of Law and Jurisdiction discussions in Chapter 2 of this Digest.

2. As outlined in Chapter 1 of this Digest, in the context of sanctions, WBG member institutions comprise IBRD, IDA, IFC, and MIGA.

3. See Appendix D—Definitions of Sanctionable Practices.

4. 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 have not involved these definitions.

/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.”⁵

- “a misrepresentation or omission of facts in order to influence a [procurement/selection] process or the execution of a contract.”⁶
- “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.”⁷

1. *Misrepresentation or omission of facts:* The Sanctions Board has clarified that INT bears the initial burden to show that a respondent made a misrepresentation or omission of facts.⁸ In cases in which the finding of misrepresentation or omission relied on the analysis of a disclosure requirement in bidding documents, the Sanctions Board has looked to the plain language of that requirement.⁹ The Sanctions Board further held that neither a respondent’s subjective assessment of a disclosure requirement nor a respondent’s national legal framework is determinative with respect to the Sanctions Board’s own review of the allegations.¹⁰

There are no precise definitions of “misrepresentation” or “omission of facts.” In certain cases, the Sanctions Board considered whether a respondent’s actions constituted a misrepresentation or omission of facts without specifically categorizing the action in question as a misrepresentation or an omission.¹¹ In other cases, the Sanctions Board specified whether a respondent’s actions constituted a misrepresentation or an omission. For example, in some cases, the Sanctions Board has deemed that a respondent’s failure to disclose pertinent information constitutes a misrepresentation.¹² In other cases, the Sanctions Board has found that such failure to disclose constitutes an omission.¹³

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5. 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).
 6. May 2004 versions of the Procurement or Consultant Guidelines.
 7. October 2006, May 2010, January 2011, and July 2014 versions of the Procurement or Consultant Guidelines.
 8. See, for example, Sanctions Board Decision No. 51 (2012) at paras. 29 and 66; Sanctions Board Decision No. 54 (2012) at para. 18; Sanctions Board Decision No. 71 (2014) at para. 68; Sanctions Board Decision No. 136 (2022) at para. 38.
 9. Sanctions Board Decision No. 131 (2021) at paras. 19 and 21.
 10. Sanctions Board Decision No. 128 (2020) at para. 8. See also Sanctions Board Decision No. 65 (2014) at paras. 42 and 47; Sanctions Board Decision No. 72 (2014) at paras. 37 and 38; Sanctions Board Decision No. 83 (2015) at para. 48.
 11. See, for example, Sanctions Board Decision No. 60 (2013) at para. 96; Sanctions Board Decision No. 65 (2014) at paras. 40 and 49; Sanctions Board Decision No. 123 (2020) at para. 17.
 12. See, for example, Sanctions Board Decision No. 120 (2019) at para. 35 (failure to disclose business relationship with an agent); Sanctions Board Decision No. 123 (2020) at para. 18 (failure to disclose outstanding contractual obligations).
 13. See, for example, Sanctions Board Decision No. 83 (2015) at para. 57 (failure to disclose conflict of interest); Sanctions Board Decision No. 114 (2012) at paras. 31-35 (failure to identify or disclose consultants or associates).

- a. *Misrepresentation of facts*: The Sanctions Board has considered a variety of alleged misrepresentation, including misstatements of commissions to be paid to agents;¹⁴ misrepresentations related to the respondent's potential conflicts of interest;¹⁵ false or forged documents submitted during procurement or selection;¹⁶ false information related to the respondent's expected subcontractors, staff, or consultants;¹⁷ and false documents or statements related to work quality, progress, or cost submitted during execution of a contract.¹⁸
- b. *Evidence of misrepresentation of facts*: The Sanctions Board has assessed a broad array of evidence, often including contemporaneous correspondence reflecting falsity of information at issue, direct indicia of falsity in relevant documents, statements by third parties named in relevant documents, and respondents' own acknowledgments of misrepresentation.¹⁹ In certain cases, the Sanctions Board considered signature samples from the purported signatories on relevant documents.²⁰

When the allegations involved misrepresentations of work experience or other qualifications, the Sanctions Board relied primarily on written statements from the parties named in or supposedly issuing the allegedly fraudulent documents, as well as the respondents' own admissions.²¹ When the alleged misrepresentation involved failure to disclose pertinent information, the Sanctions Board first assessed the scope of the relevant disclosure requirements before determining whether the failure to disclose violated those requirements and thus amounted to a misrepresentation.²²

When the Sanctions Board declined to reach a finding of misrepresentation, that determination focused on the specific language and meaning of the respondent's questioned submission.²³ The Sanctions Board also declined to reach a finding of misrepresentation or omission when INT did not articulate any specific misrepresentations or omissions

14. See, for example, Sanctions Board Decision No. 72 (2014) at para. 39 (misrepresented amounts of commissions); Sanctions Board Decision No. 97 (2017) at para. 43 (falsified expected agent's commission).

15. See, for example, Sanctions Board Decision No. 115 (2019) at paras. 45–47 (misrepresentation relating to conflicts of interest).

16. See, for example, Sanctions Board Decision No. 98 (2017) at paras. 33–35 (false bid security and performance certificates); Sanctions Board Decision No. 126 (2020) at paras. 32 and 33 (false reference letters and audited financial statements).

17. See, for example, Sanctions Board Decision No. 99 (2017) at paras. 18–20 (false information on the CV of a respondent individual and false experience certificate); Sanctions Board Decision No. 102 (2017) at paras. 52 and 53 (false statement regarding anticipated role of business partner, false soil test report); Sanctions Board Decision No. 120 (2019) at paras. 31–35 (failure to disclose relationship with agent).

18. See, for example, Sanctions Board Decision No. 97 (2017) at para. 42 (falsified past purchase orders, supply lists, and invoices); Sanctions Board Decision No. 100 (2017) at para. 32 (false invoices); Sanctions Board Decision No. 102 (2017) at paras. 52 and 53 (false statement regarding anticipated role of business partner, false soil test report).

19. See, for example, Sanctions Board Decision No. 69 (2014) at paras. 19 and 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, and 74; Sanctions Board Decision No. 98 (2017) at para. 33; Sanctions Board Decision No. 106 (2017) at para. 23; Sanctions Board Decision No. 112 (2018) at para. 31; Sanctions Board Decision No. 126 (2020) at para. 31; Sanctions Board Decision No. 127 (2020) at para. 21; Sanctions Board Decision No. 130 (2020) at para. 48.

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

21. See, for example, Sanctions Board Decision No. 61 (2013) at paras. 20 and 21; Sanctions Board Decision No. 69 (2014) at paras. 19 and 20; Sanctions Board Decision No. 99 (2017) at paras. 18–20; Sanctions Board Decision No. 134 (2021) at para. 35.

22. See, for example, Sanctions Board Decision No. 88 (2016) at paras. 24–29; Sanctions Board Decision No. 128 (2020) at para. 21.

23. Sanctions Board Decision No. 59 (2013) at paras. 26–28.

in the record and the evidence did not otherwise support a finding that the respondent made a misrepresentation or otherwise misled a party.²⁴

- c. *Omissions of facts*: The Sanctions Board has considered a wide array of evidence constituting alleged omissions of facts, including failure to disclose information related to agents and potential or perceived conflicts of interest.²⁵ 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.²⁶ The Sanctions Board previously held that disclosure obligations, such as a requirement to identify consultants involved in a project, are not limited to situations in which the consultancy relationship is formalized through a document (e.g., a formal sub-consultancy agreement).²⁷ The Sanctions Board also noted in another case that the fact that the information that is the subject of the omission allegation is publicly available does not constitute a fulfillment of a respondent's specific disclosure obligations related to a selection process.²⁸
- d. *Defenses to alleged misrepresentations or omissions*: The Sanctions Board rejected variations of a "truth defense," such as when respondents argued that their alteration of an auditor's statement served to make it more accurate.²⁹ Similarly, the Sanctions Board rejected an argument that a respondent relied on forgeries because they did not have time to secure genuine authorizations before the bid submission deadline and that the forgeries were used only to show "the true state of affairs" rather than misrepresent any facts.³⁰

When a misrepresentation allegation concerned a requirement to disclose "agents," the Sanctions Board rejected a respondent's defense that it was not required to disclose its arrangement with the individual in question because the individual was not its agent but rather an "independent intermediary,"³¹ or that the individual had a broader business relationship with the respondent than that of an "agent."³² The Sanctions Board has observed that the meaning of the term "agent" must be determined in consideration of the context in which it appears.³³ The Sanctions Board has cautioned that a narrow reading of the term "agent" may be inconsistent with the structure and the underlying purpose of the disclosure requirement at issue.³⁴

24. Sanctions Board Decision No. 119 (2019) at paras. 18-22.

25. 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. 5357; Sanctions Board Decision No. 88 (2016) at paras. 24-29.

26. 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).

27. Sanctions Board Decision No. 114 (2018) at paras. 31-34.

28. Sanctions Board Decision No. 65 (2014) at paras. 48 and 49.

29. Sanctions Board Decision No. 30 (2010) at paras. 18-20, 28, and 29.

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

31. Sanctions Board Decision No. 131 (2021) at para. 22. See also Sanctions Board Decision No. 88 (2016) at paras. 26-28.

32. Sanctions Board Decision No. 136 (2022) at para. 39.

33. Sanctions Board Decision No. 88 (2016) at para. 27; Sanctions Board Decision No. 131 (2021) at para. 22.

34. Sanctions Board Decision No. 88 (2016) at para. 27; Sanctions Board Decision No. 131 (2021) at para. 22; Sanctions Board Decision No. 136 (2022) at para. 43.

2. *Mens rea standard for fraudulent practice*: The Sanctions Board has held that a finding of fraudulent practice requires acts that are knowing or reckless.³⁵

a. *Evidence of knowing conduct*: The Sanctions Board has observed that the applicable Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge from circumstantial evidence and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.³⁶ In finding that certain conduct was made knowingly, 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.³⁷

When a respondent personally submitted an application containing untruthful statements about his own prior experience, the Sanctions Board held that the only logical inference in those circumstances was that the respondent knew and understood that he was providing false information and therefore knowingly engaged in a misrepresentation.³⁸ Likewise, the Sanctions Board has found that some misrepresentations related to a respondent's own past experience were too substantial to have been made in error or through reckless oversight and therefore constituted knowing misconduct.³⁹ The Sanctions Board has also found sufficient evidence of knowledge when a respondent admitted that one or more of its representatives acted knowingly by personally fabricating documents.⁴⁰ The Sanctions Board has further found that respondents made a knowing misrepresentation when an authorized employee of the respondent negotiated and signed an agreement with an individual knowing that the agreement established a commission agent relationship yet failed to disclose this relationship and the commissions paid despite the respondent's obligation to do so.⁴¹ The Sanctions Board has inferred knowledge when respondents took specific steps to conceal facts subject to a disclosure requirement.⁴²

b. *Evidence of reckless conduct*: In assessing recklessness, the Sanctions Board has considered whether circumstantial evidence indicates that a respondent was, or should have

35. 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 and 75; Sanctions Board Decision No. 44 (2011) at para. 22; Sanctions Board Decision No. 136 (2022) at para. 12. (In these decisions, the Sanctions Board held that, based on the bank's legislative history, even when the applicable definition of fraudulent practice does not include an explicit standard of *mens rea*, the "knowing or reckless" standard may nevertheless be implied.)

36. See, for example, Sanctions Board Decision No. 69 (2014) at paras. 21 and 22; Sanctions Board Decision No. 97 (2017) at para. 46; Sanctions Board Decision No. 98 (2017) at paras. 38 and 39; Sanctions Board Decision No. 115 (2019) at para. 48; Sanctions Board Decision No. 127 (2020) at para. 25; Sanctions Board Decision No. 128 (2020) at para. 31; Sanctions Board Decision No. 130 (2020) at para. 51; Sanctions Board Decision No. 131 (2021) at para. 25.

37. 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. 97 (2017) at para. 46; Sanctions Board Decision No. 99 (2017) at paras. 21 and 22; Sanctions Board Decision No. 115 (2019) at paras. 48 and 49; Sanctions Board Decision No. 122 (2020) at para. 21.

38. Sanctions Board Decision No. 124 (2020) at para. 26.

39. Sanctions Board Decision No. 69 (2014) at para. 22; Sanctions Board Decision No. 126 (2020) at para. 36; Sanctions Board Decision No. 137 (2022) at para. 41.

40. Sanctions Board Decision No. 116 (2019) at para. 18; Sanctions Board Decision No. 130 (2020) at para. 51.

41. Sanctions Board Decision No. 131 (2021) at paras. 25 and 26. See also Sanctions Board Decision No. 83 (2015) at para. 51; Sanctions Board Decision No. 136 (2022) at paras. 47 and 48.

42. Sanctions Board Decision No. 60 (2013) at paras. 97-99; Sanctions Board Decision No. 135 (2021) at para. 27.

been, aware of a substantial risk—such as harm to the integrity of the World Bank’s procurement process due to false or misleading bid documents—but nevertheless failed to act to mitigate that risk.⁴³ In assessing *mens rea* with respect to an omitted disclosure, the Sanctions Board has held that a respondent’s experience as a bidder and the apparent importance of the relevant disclosure requirement may support a finding that the omission of the disclosure was, at a minimum, reckless.⁴⁴ When circumstantial evidence was insufficient to infer subjective awareness of risk, the Sanctions Board measured a respondent’s conduct against the common “due care” standard of the degree of care that the proverbial “reasonable person” would exercise under the circumstances.⁴⁵ In other words, the question has consistently been whether the respondent knew or should have known of the substantial risk presented.⁴⁶ 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 was inauthentic, the Sanctions Board has considered, *inter alia*, whether any specific indicia of falsity were apparent with respect to the document⁴⁷ and whether a responsible individual made any effort to control or supervise the bid preparation process.⁴⁸ When the Sanctions Board found that a respondent was or should have been aware of a substantial risk, it considered whether the respondent took precautions commensurate with the risk involved.⁴⁹

The Sanctions Board has found several types of conduct that constitute reckless behavior. Examples include submission of bids without appropriate review (particularly when additional red flags were apparent), engagement of and reliance on representatives without appropriate vetting or documentation, and overall failure to maintain oversight and document authentication mechanisms to mitigate risk of misrepresentation in bids and proposals.⁵⁰

3. *Acts to mislead*: The Sanctions Board has held that misrepresentation of bid or proposal qualifications and other “act[s] to conceal” supported a finding that the misrepresentation misled or was intended to mislead the implementing agency.⁵¹ The Sanctions Board also noted that proof that a respondent was successful in misleading a party is not necessary to show that the respondent deliberately attempted to mislead the recipient of false information.⁵²

43. See, for example, Sanctions Board Decision No. 51 (2012) at para. 33; Sanctions Board Decision No. 68 (2014) at para. 23; Sanctions Board Decision No. 128 (2020) at para. 31; Sanctions Board Decision No. 134 (2021) at para. 38; Sanctions Board Decision No. 137 (2022) at paras. 27 and 29.

44. Sanctions Board Decision No. 128 (2020) at para. 31. See also Sanctions Board Decision No. 56 (2013) at para. 46; Sanctions Board Decision No. 60 (2013) at para. 98.

45. See, for example, Sanctions Board Decision No. 51 (2012) at para. 33; Sanctions Board Decision No. 68 (2014) at para. 23.

46. See, for example, Sanctions Board Decision No. 51 (2012) at para. 33; Sanctions Board Decision No. 68 (2014) at para. 23.

47. See, for example, Sanctions Board Decision No. 61 (2013) at para. 25; Sanctions Board Decision No. 98 (2017) at para. 45.

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

49. See, for example, Sanctions Board Decision No. 68 (2014) at para. 25; Sanctions Board Decision No. 79 (2015) at para. 29.

50. 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 and 36; Sanctions Board Decision No. 117 (2019) at paras. 21-23; Sanctions Board Decision No. 137 (2022) at para. 29.

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

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

4. *Target of fraudulent practice (a party)*: When 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 staff of the agency implementing the project at issue, which agency would have received and evaluated the bids containing misrepresentations.⁵³
5. *Evidence of fraudulent intent*: There are several types of intent, as described below:
 - a. *Intent to influence a procurement or selection process*: The Sanctions Board has held that misrepresentations sought or served to influence a procurement or selection process when the respondents’ false statements or documents rendered the respondents’ submission eligible for consideration, made the submission more competitive, or were generally responsive to the requirements of that procurement or selection process.⁵⁴ The Sanctions Board has explicitly found that intent to influence the procurement process may be inferred when the record revealed that the respondent made a fraudulent misrepresentation in response to a specific bid requirement “[i]rrespective of the bid requirement’s actual significance, and the subjective assessment thereof by a bidder.”⁵⁵
 - b. *Intent to influence a contract execution process*: The Sanctions Board has found evidence of intent to influence execution of a contract when a misrepresentation served to facilitate or inflate a respondent’s remuneration under the contract⁵⁶ or to enable the respondent to satisfy contract requirements more easily.⁵⁷
 - 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 has considered whether the misrepresentation was responsive to a bid or tender requirement and thereby helped the respondent win the tender and benefit from such award.⁵⁸ The Sanctions Board has applied this standard “[i]rrespective of the bid requirement’s actual significance, and the subjective

53. Sanctions Board Decision No. 106 (2017) at para. 24.

54. See, for example, Sanctions Board Decision No. 49 (2012) at paras. 20 and 26 (January 1999 Procurement Guidelines); Sanctions Board Decision No. 51 (2012) at paras. 29, 40, 41, and 73 (May 2004 Consultant Guidelines); Sanctions Board Decision No. 60 (2013) at paras. 100 and 101 (May 2004 and October 2006 Procurement Guidelines); Sanctions Board Decision No. 71 (2014) at para. 76 (May 2004 Consultant Guidelines); Sanctions Board Decision No. 91 (2016) at para. 30 (May 2004 Procurement Guidelines); Sanctions Board Decision No. 124 (2020) at para. 28 (May 2004 and January 2011 Consultant Guidelines); Sanctions Board Decision No. 127 (2020) at para. 27 (January 2011 Procurement Guidelines); Sanctions Board Decision No. 129 (2020) at para. 42 (May 2010 Procurement Guidelines); Sanctions Board Decision No. 130 (January 2011 Procurement Guidelines) at para. 54; Sanctions Board Decision No. 134 (2021) at para. 44 (January 2011 Consultant Guidelines); Sanctions Board Decision No. 136 (2022) at para. 50 (May 2004 Procurement Guidelines).

55. Sanctions Board Decision No. 71 (2014) at para. 76; Sanctions Board Decision No. 91 (2016) at para. 30; Sanctions Board Decision No. 122 (2020) at para. 22; Sanctions Board Decision No. 126 (2020) at para. 37; Sanctions Board Decision No. 128 (2020) at para. 46; Sanctions Board Decision No. 131 (2021) at para. 28; Sanctions Board Decision No. 137 (2022) at para. 51.

56. See, for example, Sanctions Board Decision No. 53 (2012) at paras. 29 and 35-37 (January 1997 Consultant Guidelines); Sanctions Board Decision No. 56 (2013) at paras. 44 and 47 (May 2004 Consultant Guidelines); Sanctions Board Decision No. 83 (2015) at paras. 45, 63, and 67 (May 2004 Consultant Guidelines).

57. Sanctions Board Decision No. 44 (2011) at paras. 20, 44, and 45 (1997 Procurement Guidelines).

58. Sanctions Board Decision No. 61 (2013) at para. 28 (May 2010 Procurement Guidelines); Sanctions Board Decision No. 99 (2017) at para. 23 (January 2011 Consultant Guidelines); Sanctions Board Decision No. 137 (2022) at para. 44 (January 2011 and July 2014 Procurement Guidelines).

assessment thereof by a bidder.”⁵⁹ In one case, the Sanctions Board rejected the defense that a respondent did not ultimately win the contract sought or profit from the misconduct. Instead, the Sanctions Board found that the applicable definition of fraudulent practice does not require that a respondent actually receive the intended financial or other benefit, but only that the respondent acted with the intention or goal of obtaining the benefit.⁶⁰ In the context of contract execution, the Sanctions Board has considered whether the misrepresentation was material to a respondent’s remuneration under the contract.⁶¹

- d. *Intent to avoid an obligation*: The Sanctions Board has held that the respondent’s conduct served to avoid an obligation when the relevant misrepresentation served to give the appearance of compliance with a contract requirement while in fact avoiding it.⁶²
6. *Detriment to the Borrower*: When a definition of fraudulent practice also required a showing of detriment to the Borrower, the Sanctions Board has considered various types of harm to meet this requirement (tangible or quantifiable, as well as intangible).⁶³ The Sanctions Board found sufficient evidence of detriment to the Borrower when 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 execution of the contract and the closing date of the project, or produced threats to public safety or risks of property damage.⁶⁴
7. *Collusive conduct as a type of fraud*: In a few decisions between 2008 and 2010, the Sanctions Board assessed collusive conduct as a subcategory of fraudulent practice, consistent with the applicable Procurement or Consultant Guidelines. The Sanctions Board found sufficient evidence of fraud through collusion when respondents participated in various schemes to coordinate bids and steer contracts to predetermined candidates.⁶⁵

59. Sanctions Board Decision No. 99 (2017) at para. 25 (January 2011 Consultant Guidelines); Sanctions Board Decision No. 112 (2018) at para. 38 (January 2011 Procurement Guidelines); Sanctions Board Decision No. 117 (2019) at para. 24 (January 2011 Procurement Guidelines); Sanctions Board Decision No. 122 (2020) at para. 22 (January 2011 Procurement Guidelines); Sanctions Board Decision No. 126 (2020) at para. 37 (May 2010 Procurement Guidelines); Sanctions Board Decision No. 128 (2020) at para. 34 (July 2014 Procurement Guidelines); Sanctions Board Decision No. 131 (2021) at para. 28 (January 2011 Procurement Guidelines); Sanctions Board Decision No. 137 (2022) at para. 31 (January 2011 and July 2014 Procurement Guidelines).

60. Sanctions Board Decision No. 86 (2016) at para. 39 (October 2006 Consultant Guidelines).

61. See, for example, Sanctions Board Decision No. 92 (2017) at para. 65 (October 2006 Consultant Guidelines and May 2010 Consultant Guidelines); Sanctions Board Decision No. 98 (2017) at paras. 48 and 49 (October 2006 Procurement Guidelines).

62. Sanctions Board Decision No. 86 (2016) at para. 40 (October 2006 Consultant Guidelines); Sanctions Board Decision No. 98 (2017) at para. 49 (October 2006 Procurement Guidelines); Sanctions Board Decision No. 135 (2021) at para. 30.

63. See, for example, Sanctions Board Decision No. 41 (2010) at para. 71; Sanctions Board Decision No. 69 (2014) at para. 24.

64. See, for example, Sanctions Board Decision No. 44 (2011) at paras. 46-50; Sanctions Board Decision No. 47 (2012) at para. 29; Sanctions Board Decision No. 49 (2012) at paras. 27 and 28; Sanctions Board Decision No. 67 (2014) at para. 29; Sanctions Board Decision No. 69 (2014) at para. 24; Sanctions Board Decision No. 73 (2014) at para. 34; Sanctions Board Decision No. 88 (2016) at paras. 39-41; Sanctions Board Decision No. 130 (2020) at para. 57.

65. Sanctions Board Decision No. 4 (2008) at paras. 6 and 7; Sanctions Board Decision No. 40 (2010) at paras. 20-28.

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.”⁶⁶
- “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.”⁶⁷
- “the offering, giving, receiving[,] or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.”⁶⁸

8. *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; email correspondence; private corporate and personal records; accounting documents; transcripts of INT interviews; statements of respondents and their staff or representatives; and circumstantial evidence, such as relative timing of events and communications between parties to the corrupt transaction.⁶⁹

The Sanctions Board clarified that a finding of an offer does not rely only on the existence of a proactive invitation from the respondent. Rather, a promise or commitment to pay when solicited by the receiving party may also constitute an offer for purposes of WBG sanctions proceedings.⁷⁰ 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.⁷¹

9. *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 or personal records of receipts and payments, other internal business records, copies of correspondence, and admissions or detailed testimony of relevant individuals.⁷² In one case, the Sanctions Board declined to find that

66. 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).

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

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

69. Sanctions Board Decision No. 60 (2013) at paras. 70-73; Sanctions Board Decision No. 63 (2014) at paras. 56 and 58; Sanctions Board Decision No. 72 (2014) at paras. 43 and 44; Sanctions Board Decision No. 85 (2016) at paras. 24 and 25; Sanctions Board Decision No. 97 (2017) at para. 55; Sanctions Board Decision No. 108 (2018) at paras. 31, 32, 39, and 46; Sanctions Board Decision No. 111 (2018) at paras. 29-31.

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

71. See, for example, Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions Board Decision No. 136 (2022) at para. 27.

72. Sanctions Board Decision No. 60 (2013) at paras. 66-69; Sanctions Board Decision No. 63 (2014) at paras. 56 and 58; Sanctions Board Decision No. 70 (2014) at para. 21; Sanctions Board Decision No. 72 (2014) at para. 43; Sanctions

anything was given when the evidence of what was given, and whether it was given, was conflicting or otherwise deficient.⁷³

The Sanctions Board clarified in a case that finding that something was given in the context of the definition of corruption does not require the full disbursement of all “ear-marked funds.”⁷⁴ The Sanctions Board has further explained that the recipient need not be the same as the target of influence under the applicable definition of corrupt practice.⁷⁵

10. *Evidence of receiving*: In finding that a respondent received something of value, the Sanctions Board considered that the respondent company’s bank records in conjunction with circumstantial evidence (e.g., internal email correspondence) from the entity that made the gift showed relevant planning and intent.⁷⁶ In another case, the Sanctions Board accepted verbatim interview transcripts as credible evidence of receiving even when unsigned by the witness.⁷⁷
11. *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.⁷⁸ The Sanctions Board has declined to find the alleged solicitation when 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.⁷⁹
12. *Parties in a solicitation*: The Sanctions Board has clarified that, under the applicable definitions of corrupt practice, there is no requirement that one must solicit payment for oneself or that the soliciting party must be the party with influence. Bribe takers may solicit a bribe payer, but so can fellow bribe payers. Specifically, the Sanctions Board has held that the definition of corrupt practice may be read to include 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 in exchange for the third party’s improper influence. The Sanctions Board has thus explained that one firm’s pressure on another firm to make improper payment to public officials may constitute solicitation under the applicable definition of corrupt practice.⁸⁰

Board Decision No. 78 (2015) at paras. 53 and 54; Sanctions Board Decision No. 87 (2016) at paras. 9193, 100, 101, 107, and 108; Sanctions Board Decision No. 92 (2017) at paras. 81, 82, 87, and 88; Sanctions Board Decision No. 93 (2017) at paras. 41-43, 50, 51, 59, and 60; Sanctions Board Decision No. 94 (2017) at paras. 24 and 25; Sanctions Board Decision No. 95 (2017) at paras. 22 and 23; Sanctions Board Decision No. 102 (2017) at paras. 36, 37, and 43-45; Sanctions Board Decision No. 108 (2018) at paras. 31-33 and 39-40; Sanctions Board Decision No. 109 (2018) at paras. 26-29; Sanctions Board Decision No. 110 (2018) at paras. 22 and 23; Sanctions Board Decision No. 130 (2020) at para. 70.

73. Sanctions Board Decision No. 96 (2017) at paras. 60-63. (This case involved a complimentary “study tour” that was allegedly 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.)

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

75. 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.

76. Sanctions Board Decision No. 103 (2017) at paras. 22 and 23.

77. Sanctions Board Decision No. 139 (2022) at para. 37.

78. Sanctions Board Decision No. 50 (2012) at para. 42; Sanctions Board Decision No. 78 (2015) at paras. 63 and 64; Sanctions Board Decision No. 105 (2017) at para. 19; Sanctions Board Decision No. 118 (2019) at paras. 58-60.

79. Sanctions Board Decision No. 85 (2016) at paras. 26-28; Sanctions Board Decision No. 103 (2017) at paras. 24 and 25.

80. Sanctions Board Decision No. 50 (2012) at paras. 43 and 44; Sanctions Board Decision No. 85 (2016) at para. 26; Sanctions Board Decision No. 103 (2017) at paras. 22 and 24.

13. *Offering, giving, receiving, or soliciting as alternative elements:* The definitions of corrupt practice that the Sanctions Board applies identify “offering, giving, receiving, or soliciting” as composite elements of corrupt practice. However, in determining whether corruption took place, the Sanctions Board does not require that all of these elements be met. For example, in one case, INT alleged that a corrupt practice occurred on account of both receiving and soliciting something of value. However, the Sanctions Board found that the first element of corrupt practice was satisfied with respect to INT’s allegation of receipt but not solicitation. Satisfaction of the first element with respect to receipt was sufficient to support an overall finding of corrupt practice.⁸¹ In a similar vein, in a case in which allegations of offering and soliciting were made, the Sanctions Board found that the first element of corrupt practice was satisfied with respect to INT’s allegation of offering but not soliciting. Satisfaction of the first element with respect to offering was sufficient to support an overall finding of corrupt practice.⁸²

Likewise, in assessing simultaneous allegations that there were 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. Thus, in finding the evidence sufficient for one, the Sanctions Board has often declined to address INT’s separate allegation of the other.⁸³ In other select cases, the Sanctions Board has assessed all available evidence and reached a finding that the respondents or their representatives offered or gave things of value⁸⁴ or that the respondents offered and gave things of value as alleged.⁸⁵

14. *Meaning of things of value and anything of value:* Sanctions Board precedent does not show a meaningful distinction in interpretation between “things of value” and “anything of value.” The Sanctions Board has clarified that a “thing of value” for purposes of corrupt practice need not be in the form of money but can be some other type of benefit or advantage.⁸⁶ In this regard, the Sanctions Board has considered a range of items and actions as things of value, including commissions, transfers of funds, cash payments, in-kind gifts, payments for certain expenses (often travel-related) incurred by recipients, recreational events planned for recipients, and hiring decisions with respect to recipients’ employees or family.⁸⁷

81. Sanctions Board Decision No. 103 (2017) at para. 25.

82. Sanctions Board Decision No. 85 (2016) at paras. 22-28.

83. See, for example, Sanctions Board Decision No. 78 (2015) at para. 54; Sanctions Board Decision No. 87 (2016) at paras. 101 and 108; Sanctions Board Decision No. 93 (2017) at paras. 51 and 60; Sanctions Board Decision No. 94 (2017) at para. 25; Sanctions Board Decision No. 109 (2018) at para. 29; Sanctions Board Decision No. 110 (2018) at para. 23; Sanctions Board No. 136 (2022) at para. 29.

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

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

86. See, for example, Sanctions Board Decision No. 85 (2016) at para. 22; Sanctions Board Decision No. 133 (2021) at para. 25.

87. 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 and 44; Sanctions Board Decision No. 78 (2015) at paras. 53 and 54; Sanctions Board Decision No. 85 (2016) at para. 23; Sanctions Board Decision No. 92 (2017) at paras. 81, 82, and 88; Sanctions Board Decision No. 93 (2017) at paras. 41-43, 67-69, and 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. 31-33, 38-40, and 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.

15. *Meaning of corrupt intent*: In assessing this element, the Sanctions Board has focused on respondents' purpose and target of influence and how recipients may have understood respondents' actions.⁸⁸ The Sanctions Board has recognized various purposes of influence as indicative of corrupt intent. For instance, the Sanctions Board has inferred corrupt intent when a respondent public official solicited or received a thing of value from a third party potentially interested in a procurement process in which the public official played a significant role.⁸⁹ The Sanctions Board has also inferred corrupt intent when respondents gave something of value to a public official who was in a position of authority and influence over the respondents' interests and the circumstances of the payment indicated impropriety—even though the specific purpose of influence was unclear.⁹⁰

When allegations relate to the procurement or selection process, the Sanctions Board has considered whether the respondent requested or received access to confidential information about procurement or selection requirements,⁹¹ gained an opportunity to influence bidding or proposal specifications,⁹² requested or received preferential treatment in procurement or selection,⁹³ circumvented the intended procurement process or gained an opportunity to receive direct contracts with the implementation authority,⁹⁴ or avoided intervention or delay that may have harmed the respondent's interests.⁹⁵

When the allegations are related to contract execution, the Sanctions Board has observed that corrupt intent may be reflected in attempts to expedite payment of invoices,⁹⁶ affect negotiations for contract extension and related remuneration,⁹⁷ or facilitate release of certain equipment from customs authorities.⁹⁸ In one case in which the Sanctions Board found no corrupt intent, it observed that providing study tours to public officials does not necessarily indicate intent to influence the public officials' actions, as study tours may well serve a legitimate educational purpose in certain circumstances. The Sanctions Board, however, clarified that providing a trip that is recreational, rather than educational or technical, in nature may support an inference of corrupt intent.⁹⁹

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

89. Sanctions Board Decision No. 78 (2015) at para. 66; Sanctions Board Decision No. 125 (2020) at para. 24; Sanctions Board Decision No. 133 (2021) at para. 28; Sanctions Board Decision No. 139 (2022) at para. 42.

90. Sanctions Board Decision No. 110 (2018) at para. 25; Sanctions Board Decision No. 138 (2022) at para. 29; Sanctions Board Decision No. 139 (2022) at para. 42.

91. Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 95 (2017) at paras. 26-28; Sanctions Board Decision No. 102 (2017) at paras. 38-40.

92. Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 93 (2017) at para. 63; Sanctions Board Decision No. 95 (2017) at paras. 26-28.

93. Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 63 (2014) at paras. 61-64; 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. 96-98, 110, and 111; Sanctions Board Decision No. 93 (2017) at paras. 46 and 71-73; 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 paras. 57 and 58; Sanctions Board Decision No. 102 (2017) at paras. 47 and 48; Sanctions Board Decision No. 103 (2017) at paras. 27-30; Sanctions Board Decision No. 108 (2018) at paras. 34, 35, 41, -42, 48, and 49; Sanctions Board Decision No. 111 (2018) at paras. 34 and 35.

94. Sanctions Board Decision No. 63 (2014) at paras. 61-64; Sanctions Board Decision No. 72 (2014) at paras. 45-47; Sanctions Board Decision No. 93 (2017) at paras. 53-55; Sanctions Board Decision No. 105 (2017) at para. 20.

95. Sanctions Board Decision No. 87 (2016) at para. 103; Sanctions Board Decision No. 103 (2017) at paras. 27-30.

96. Sanctions Board Decision No. 63 (2014) at paras. 65 and 66; Sanctions Board Decision No. 92 (2017) at paras. 84, 89, and 90.

97. Sanctions Board Decision No. 66 (2014) at para. 26.

98. Sanctions Board Decision No. 70 (2014) at para. 23.

99. Sanctions Board Decision No. 96 (2017) at para. 58.

The Sanctions Board has found that a respondent’s awareness that the recipient of a bribe is in a position of authority or influence may support a finding of requisite intent.¹⁰⁰ 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 the respondent’s influence, that the desired influence ultimately materialized, or that the influence was obviously necessary.¹⁰¹

16. *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), bidding documents, petty cash reports, invoices, and relative timing of key events.¹⁰² Conversely, the Sanctions Board declined to find evidence sufficient for a finding of intent when the initial inculpatory evidence was limited, uncorroborated, or otherwise deficient;¹⁰³ or when the respondents sufficiently rebutted INT’s allegations with their own arguments and evidence.¹⁰⁴

In assessing whether respondents acted with a purpose to influence a party, the Sanctions Board referred to an advisory opinion that the World Bank’s Legal Vice Presidency issued providing that a corrupt purpose may be shown 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.”¹⁰⁵

17. *Improper nature of intended influence:* The Sanctions Board held in a case that the concept of “improper influence” is not limited to circumstances in which a public official is induced to act in breach of his or her duties. On the contrary, the payment or offer of any undue advantage to a public official to act or refrain from acting in connection with his or her official duties may constitute improper influence, regardless of whether the official’s act would have been lawful had the payment or offer not been made.¹⁰⁶ The Sanctions Board found sufficient evidence of intent even when the respondents argued that payments

100. See, for example, Sanctions Board Decision No. 85 (2016) at paras. 30 and 32; Sanctions Board Decision No. 87 (2016) at para. 104.

101. See, for example, Sanctions Board Decision No. 60 (2013) at paras. 81-85; Sanctions Board Decision No. 63 (2014) at para. 64; Sanctions Board Decision No. 136 (2022) at para. 35; Sanctions Board Decision No. 138 (2022) at para. 32; Sanctions Board Decision No. 139 (2022) at para. 45.

102. See, for example, Sanctions Board Decision No. 63 (2014) at paras. 61 and 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 and 90; Sanctions Board Decision No. 93 (2017) at paras. 46, 53, 54, 62, 63, 72, and 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. 39, 47, and 48; Sanctions Board Decision No. 103 (2017) at paras. 27-30; Sanctions Board Decision No. 108 (2018) at paras. 34, 35, 41, 42, 48, and 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 and 35; Sanctions Board Decision No. 136 (2022) at para. 34.

103. Sanctions Board Decision No. 96 (2017) at paras. 57-63; Sanctions Board Decision No. 108 (2018) at paras. 56-58.

104. Sanctions Board Decision No. 110 (2018) at paras. 25-27.

105. Sanctions Board Decision No. 118 (2019) at para. 61. See also Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases (No. 2010/1) at para. 53 (November 15, 2010; released to public by the World Bank Legal Vice Presidency in June 2013) available at <https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/AdvisoryOpinion.pdf>.

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

were intended to ensure “a fair evaluation and avoid unfair treatment” by relevant public officials.¹⁰⁷

18. *Targets of influence: public officials, World Bank staff, and other parties:* The Sanctions Board has clarified that a public official who is the intended target of influence need not be—though may be—the same party who received the thing of value under the first element of corrupt practices.¹⁰⁸

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.” When 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) and World Bank staff.¹⁰⁹ 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,”¹¹⁰ which it deemed a clarification, rather than an amendment, of the earlier standard.¹¹¹ The Sanctions Board has also held that individuals appointed as consultants by the World Bank may be deemed to be public officials within the applicable definition. They need not hold a particular type of staff appointment within the WBG.¹¹²

In cases in which the applicable definition of corrupt practice explicitly defined the target of influence as inclusive of “World Bank staff and employees of other organizations taking or reviewing [procurement or selection] decisions,”¹¹³ the Sanctions Board has found that procurement advisors, project managers, and other individuals employed by the implementing agency or World Bank staff need not have been specifically appointed to work on the relevant Bank-financed project. Instead, the Sanctions Board has considered the respondent’s perception of the public official’s role. The Sanctions Board has found that, even without being officially assigned responsibility in the relevant Bank-financed project, a public official may be shown on the record to have an actual or perceived role with respect to the Bank-financed project and thus be the target of sanctionable influence.¹¹⁴

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

108. See, for example, Sanctions Board Decision No. 60 (2013) at para. 75; Sanctions Board Decision No. 136 (2022) at para. 31.

109. Sanctions Board Decision No. 63 (2014) at paras. 61-66; Sanctions Board Decision No. 66 (2014) at para. 25.

110. May 2004 Procurement Guidelines at para. 1.14(a)(i), n.17; May 2004 Consultant Guidelines at para. 1.22(a)(i), n.15.

111. Sanctions Board Decision No. 66 (2014) at para. 25; Sanctions Board Decision No. 125 (2020) at para. 9.

112. Sanctions Board Decision No. 60 (2013) at paras. 77 and 78; Sanctions Board Decision No. 94 (2017) at para. 27.

113. See, for example, May 2004 Procurement Guidelines at para. 1.14(a)(i), n.17; May 2004 Consultant Guidelines at para. 1.22(a)(i), n.15.

114. Sanctions Board Decision No. 60 (2013) at paras. 77 and 78; 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, and 78; Sanctions Board Decision No. 94 (2017) at paras. 27 and 31; Sanctions Board Decision No. 95 (2017) at para. 25; Sanctions Board Decision No. 102 (2017) at para. 39; Sanctions Board Decision No. 103 (2017) at paras. 26 and 27; Sanctions Board Decision No. 105 (2017) at para. 20.

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.”¹¹⁵
- “an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.”¹¹⁶

19. *Meaning of a scheme or arrangement:* The Sanctions Board has found various fact patterns that constitute a scheme or arrangement within the applicable definitions of collusive practice. These fact patterns include 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.¹¹⁷ The Sanctions Board previously held that use of agents or intermediaries between the colluding parties does not preclude a finding of a scheme or arrangement.¹¹⁸ The Sanctions Board also rejected the argument that affiliated companies cannot collude with one another because this would be akin to colluding with oneself. Instead, the Sanctions Board explained that the relevant legal standards require only that INT establish an arrangement between two or more “parties” or “tenderers,” regardless of their ownership structure.¹¹⁹
20. *Evidence of a scheme or arrangement:* As evidence of such schemes and arrangements, the Sanctions Board has considered a broad array of evidence, including copies of email correspondence; testimony of relevant individuals; and any content of the relevant bids that appeared similar, identical, or coordinated.¹²⁰ However, absent “persuasive or direct evidence” indicating a scheme or arrangement in the relevant Bank-financed project itself, the Sanctions Board rejected INT’s assertion that a history of past work between the accused colluders suffices as inculpatory evidence of a “scheme or arrangement.”¹²¹

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

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

117. See, for example, Sanctions Board Decision No. 45 (2011) at para. 40; Sanctions Board Decision No. 87 (2016) at paras. 75–78, 84, and 85; Sanctions Board Decision No. 115 (2019) at paras. 35–40; Sanctions Board Decision No. 118 (2019) at paras. 48–53. 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); Sanctions Board Decision No. 130 (2020) at para. 61.

118. Sanctions Board Decision No. 45 (2011) at paras. 41–44 and 48.

119. Sanctions Board Decision No. 130 (2020) at para. 62.

120. See, for example, Sanctions Board Decision No. 45 (2011) at paras. 30–38; Sanctions Board Decision No. 87 (2016) at paras. 75–78, 84, and 85; Sanctions Board Decision No. 112 (2018) at para. 26; Sanctions Board Decision No. 113 (2018) at paras. 25–28; Sanctions Board Decision No. 130 (2020) at para. 61.

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

21. *Collusive intent*: The Bank’s Guidelines outline several types of intent:

- a. *Designed to establish bid prices at artificial or noncompetitive levels*: The Sanctions Board rejected INT’s assertion that proof of the first element of the definition of collusion—that a scheme or arrangement existed between bidders—obviates the need to prove, as an independent element, that such scheme or arrangement was designed to set prices at artificial, noncompetitive levels.¹²² The Sanctions Board also rejected the notion that artificial, noncompetitive pricing necessarily equates to high prices. Instead, the Sanctions Board 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.¹²³ The Sanctions Board has found this element satisfied when 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.¹²⁴ The Sanctions Board has underscored that, when price levels factor into collusive intent, what is ultimately at issue is the nature of the pricing process, not the final value of the offer,¹²⁵ and that a finding of collusive practice does not require a showing that the desired outcome actually materialized.¹²⁶
- b. *Designed 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 over their competition and in arrangements to share information across bids in a bidding process explicitly designed to be competitive.¹²⁷ 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.¹²⁸

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.”¹²⁹

122. Sanctions Board Decision No. 45 (2011) at paras. 50 and 51.

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

124. Sanctions Board Decision No. 45 (2011) at para. 52; Sanctions Board Decision No. 87 (2016) at paras. 80 and 81; Sanctions Board Decision No. 130 (2020) at para. 65.

125. Sanctions Board Decision No. 45 (2011) at para. 51; Sanctions Board Decision No. 130 (2020) at para. 66.

126. Sanctions Board Decision No. 87 (2016) at para. 81; Sanctions Board Decision No. 113 (2018) at para. 30; Sanctions Board Decision No. 115 (2019) at para. 42; Sanctions Board Decision No. 130 (2020) at para. 66.

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

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

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

22. *Types of obstruction allegations:* Among the types of conduct encapsulated in the Bank’s definition of obstructive conduct, the Sanctions Board’s decisions have assessed allegations of destroying evidence to impede INT’s investigation of misconduct,¹³⁰ deliberately concealing or withholding evidence from INT,¹³¹ deliberately falsifying evidence or making false statements to investigators,¹³² and acting to impede the Bank’s inspection and audit rights.¹³³
- a. *Destroying evidence:* The Sanctions Board has concluded that the respondent had destroyed evidence to impede an investigation in light of testimonial evidence that the respondent’s staff deleted email records during INT’s inquiry and when the timing of events otherwise supported a finding that the deletion of emails was intended to impede the investigation.¹³⁴
 - b. *Concealing or withholding evidence from INT:* The Sanctions Board found that respondents had deliberately withheld evidence from INT when documentary and testimonial evidence reflected that a respondent individual intentionally furnished a narrower range of records than the range available and requested by INT.¹³⁵ In one case, the Sanctions Board found that concealment of evidence was demonstrative of the sanctionable practice of obstruction. The Sanctions Board further found that these same facts pertaining to concealment of evidence were proof of the aggravating factor of “interference by the sanctioned party in the Bank’s investigation.”¹³⁶
 - c. *Falsifying or altering evidence:* The Sanctions Board declined to reach a finding of obstruction when INT’s allegation appeared to rely on an inaccurate characterization of the assertedly falsified evidence.¹³⁷
 - d. *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 emails after becoming aware of INT’s inquiry constituted sufficient evidence of intent.¹³⁸ In another case, the Sanctions Board declined to reach a finding of misconduct when INT relied on a broad interpretation of what would constitute obstruction without presenting evidence of intent.¹³⁹
 - e. *Respondents’ obligations to comply with audit and inspection requests:* In assessing INT’s allegations of obstruction, the Sanctions Board has observed that sanctions proceedings are not criminal in nature; they are an administrative process based on contractual obligations that the respondent has undertaken. Those contractual obligations include an obligation to comply with an audit request from the Bank in relation

130. Sanctions Board Decision No. 60 (2013) at paras. 104-110.

131. Sanctions Board Decision No. 110 (2018) at paras. 28-30.

132. Sanctions Board Decision No. 77 (2015) at paras. 39-41; Sanctions Board Decision No. 87 (2016) at paras. 113 and 118.

133. Sanctions Board Decision No. 87 (2016) at paras. 114-116; Sanctions Board Decision No. 93 (2017) at paras. 8184; Sanctions Board Decision No. 104 (2017) at para. 28; Sanctions Board Decision No. 115 (2019) at paras. 54-56.

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

135. Sanctions Board Decision No. 110 (2018) at paras. 28-30; Sanctions Board Decision No. 134 (2021) at para. 55.

136. Sanctions Board Decision No. 134 (2021) at paras. 55 and 72. See also the discussion of sanctioning factors in Chapter 5 of this Digest.

137. Sanctions Board Decision No. 77 (2015) at paras. 39-42.

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

139. Sanctions Board Decision No. 87 (2016) at para. 113 (noting that INT did not identify any overt acts to show that the respondent individuals’ statements were intended to impede the investigation).

to the relevant contracts and an agreement that failure to comply with an audit request from the Bank may constitute the sanctionable practice of obstruction.¹⁴⁰

- f. *Intent to materially impede exercise of the Bank’s inspection and audit rights:* In assessing this component of obstruction allegations, the Sanctions Board has reviewed the scope of the Bank’s audit rights as articulated in the relevant bidding documents and contracts and then assessed the respondent’s conduct during INT’s investigation and attempt to inspect.¹⁴¹

The Sanctions Board has found sufficient evidence of intent to impede when the applicable documents established the Bank’s right to inspect certain accounts and records, the respondents were notified of INT’s plan to conduct an inspection pursuant to the relevant audit clauses, and the respondent’s representatives nevertheless refused INT’s requests to conduct an audit or produce records.¹⁴² The Sanctions Board has also found indefinite postponements and objections paired with failure to comply to constitute effective refusal of the audit. Further, the Sanctions Board has considered impediments to include incomplete production of materials (in spite of detailed requests by INT) and failure to cooperate candidly and in good faith during audit-related interviews.¹⁴³ The Sanctions Board has declined to accept respondents’ defenses on the basis of zealous advocacy, cooperation with INT’s investigation in other respects, perceived national rights, or other concerns related to disclosure of sensitive materials. The Sanctions Board has held that INT need not prove that the wish to impede the Bank’s audit rights was a respondent’s sole or primary motivation for refusal.¹⁴⁴

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.”¹⁴⁵
- “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.”¹⁴⁶

23. The Sanctions Board has yet to decide a case involving allegations of coercive practice.

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

141. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 114-116; Sanctions Board Decision No. 93 (2017) at paras. 82 and 83; Sanctions Board Decision No. 134 (2021) at paras. 52 and 53.

142. 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; Sanctions Board Decision No. 134 (2021) at para. 53.

143. Sanctions Board Decision No. 87 (2016) at paras. 114-116; Sanctions Board Decision No. 134 (2021) at para. 53.

144. 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; Sanctions Board Decision No. 134 (2021) at para. 53.

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

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

4 Liability

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This chapter presents the Sanctions Board's analyses of the liability of various parties to sanctions proceedings. The Sanctions Board has discussed the standards for direct liability of respondent individuals who engaged in misconduct. In addition, the Sanctions Board has assessed the standards for other types of liability, including the liability of corporate respondents; respondents acting through non-employees, partners, and subcontractors; and affiliates in control of culpable respondents in sanctions proceedings.

A. DIRECT LIABILITY

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

1. See, for example, Sanctions Board Decision No. 63 (2014) at paras. 73 and 74; Sanctions Board Decision No. 86 (2016).

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

bribes, solicitations, or obstructive practices.³ The Sanctions Board declined to find a respondent individual directly liable for certain corrupt offers and payments when 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.⁴

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.⁵

B. VICARIOUS LIABILITY

3. *Respondeat superior*: 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*.⁶ In reaching these determinations, the Sanctions Board has considered the specific facts and circumstances of each case, focusing on whether the employee acted within the course and scope of his/her employment and whether the employee's misconduct was motivated, at least in part, by a purpose to serve the company.⁷ As long as these two criteria are met, a respondent firm may be liable for the acts of its employees regardless of whether the respondent firm authorized, approved, directed, or knew of the employees' misconduct.⁸ The Sanctions Board has declined to hold a respondent firm liable when 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.⁹ The Sanctions Board also declined to hold a respondent firm liable when its authorized representatives were unaware of misconduct that other individuals acting on behalf of a third party were committing.¹⁰

3. See, for example, Sanctions Board Decision No. 70 (2014) at para. 21 (corruption); Sanctions Board Decision No. 72 (2014) at paras. 43 and 44 (corruption); Sanctions Board Decision No. 87 (2016) at paras. 75-78 (collusion); Sanctions Board Decision No. 110 (2018) at paras. 28-31 (obstruction); Sanctions Board Decision No. 118 (2019) at paras. 58-60 (corruption).

4. Sanctions Board Decision No. 64 (2014) at paras. 38-40. See also Sanctions Board Decision No. 96 (2017) at paras. 65-69 and 72.

5. See, for example, Sanctions Board Decision No. 41 (2010) at para. 85; Sanctions Board Decision No. 51 (2012) at para. 42; Sanctions Board Decision No. 52 (2012) at para. 32.

6. See, for example, Sanctions Board Decision No. 31 (2010) at para. 24; Sanctions Board Decision No. 46 (2012) at para. 26; Sanctions Board Decision No. 47 (2012) at para. 32; Sanctions Board Decision No. 51 (2012) at para. 75; Sanctions Board Decision No. 60 (2013) at para. 111; Sanctions Board Decision No. 61 (2013) at para. 29; Sanctions Board Decision No. 113 (2018) at para. 33.

7. See, for example, Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 55 (2013) at para. 51; Sanctions Board Decision No. 60 (2013) at para. 111; Sanctions Board Decision No. 61 (2013) at paras. 29-31; Sanctions Board Decision No. 68 (2014) at paras. 29-31; Sanctions Board Decision No. 78 (2015) at para. 61; Sanctions Board Decision No. 122 (2020) at para. 24; Sanctions Board Decision No. 123 (2020) at para. 28; Sanctions Board Decision No. 126 (2020) at para. 39; Sanctions Board Decision No. 127 (2020) at para. 29; Sanctions Board Decision No. 128 (2020) at para. 35; Sanctions Board Decision No. 129 (2020) at para. 44; Sanctions Board Decision No. 130 (2020) at para. 76; Sanctions Board Decision No. 131 (2021) at paras. 30 and 31; Sanctions Board Decision No. 134 (2021) at paras. 57-60; Sanctions Board Decision No. 135 (2021) at para. 36; Sanctions Board Decision No. 138 (2022) at paras. 34 and 36.

8. Sanctions Board Decision No. 138 (2022) at para. 36.

9. Sanctions Board Decision No. 73 (2014) at para. 36; Sanctions Board Decision No. 96 (2017) at para. 71.

10. Sanctions Board Decision No. 96 (2017) at paras. 71 and 72.

4. *Corporate position or level of employee*: The Sanctions Board clarified that the doctrine of *respondeat superior* applies irrespective of the corporate position or level of an employee. Layers of supervision do not insulate the respondent firm from liability for the acts of employees further down the structure when the employees are acting within the course and scope of their employment.¹¹ Thus, the Sanctions Board rejected a respondent firm's assertion that it was not liable for any improper acts of its employees on the grounds that the employees were lower-level staff acting contrary to the respondent firm's corporate policy. The Sanctions Board clarified that INT need not show that an employee was specifically authorized or instructed to engage in the sanctionable practices. Rather, the relevant question is whether the employee's actions were "a mode, albeit an improper mode," of performing the employee's duties.¹²
5. *Rogue employee defense*: In cases in which respondents asserted that an employee acted in contravention of policy (the rogue employee defense), the Sanctions Board has emphasized that the burden of proof lies with the respondent.¹³ The Sanctions Board has required that the respondent prove that it had adequate corporate policies and controls in place at the time of the misconduct; these internal controls and supervision were reasonably sufficient to prevent or detect the sanctionable practices at issue; and the respondent enforced these controls in a meaningful way, yet the culpable employee evaded them.¹⁴ When the rogue employee evaded internal controls, the Sanctions Board has also required that the respondent firm show that it disciplined the employee for the misconduct.¹⁵

C. LIABILITY FOR ACTS OF NON-EMPLOYEES

6. *Agents, joint venture and consortium partners, subcontractors, and affiliates*: The Sanctions Board has observed as a general principle that a respondent cannot evade liability by performing misconduct through an agent or an affiliate of the respondent, if that same conduct would be sanctionable if the respondent performed it directly.¹⁶ 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.¹⁷

11. Sanctions Board Decision No. 63 (2014) at para. 72. See also Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 47 (2012) at para. 33.

12. See, for example, Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 63 (2014) at para. 71.

13. See, for example, Sanctions Board Decision No. 126 (2020) at para. 41; Sanctions Board Decision No. 137 (2022) at para. 47.

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 and 54; Sanctions Board Decision No. 95 (2017) at para. 33; Sanctions Board Decision No. 137 (2022) at para. 47.

15. Sanctions Board Decision No. Sanctions Board Decision No. 126 (2020) at para. 41; Sanctions Board Decision No. 138 (2022) at para. 37.

16. See, for example, Sanctions Board Decision No. 45 (2011) at para. 41; Sanctions Board Decision No. 51 (2012) at para. 77; Sanctions Board Decision No. 83 (2015) at para. 73.

17. Sanctions Board Decision No. 114 (2018) at para. 47.

D. LIABILITY OF CORPORATE GROUPS

7. *Rebuttable presumptions*: The Sanctions Board has considered four rebuttable presumptions with respect to application of sanctions to corporate groups or entities. First, when the respondent is a corporate entity, sanctions presumptively apply to that entity as a whole unless the respondent demonstrates that only an identifiable division or business unit is responsible and that application to the entire entity is not reasonably necessary to prevent evasion.¹⁸ Second, any sanction imposed shall apply to all entities that a respondent controls 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.¹⁹ Third, sanctions are applied to entities controlling the respondent and to entities under common control only if a degree of involvement in the sanctioned misconduct has been shown or if such application is reasonably necessary to prevent evasion.²⁰ Fourth, sanctions are applied to successors and assigns of the sanctioned respondent unless the successor or assign demonstrates that such application would violate the above-mentioned principles underlying application of sanctions to corporate groups.²¹
8. *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.²²
9. *Controlled affiliates*: Once the Sanctions Board decides that a respondent is culpable of a sanctionable practice, it has generally observed that any sanction imposed on the respondent shall apply to all affiliate entities under the respondent's direct or indirect control.²³ This sanction on a respondent's controlled affiliates is imposed without the Sanctions Board reaching a separate or specific finding of culpability or responsibility on the part of the controlled affiliate.²⁴ In one case, a respondent pleaded for leniency on behalf of its controlled affiliates, which plea was based on the assertions that the affiliates were not involved in the misconduct at issue and that the risk of evasion was low because these entities did not qualify to bid on Bank-financed contracts. In rejecting this plea for leniency, the Sanctions Board explained that the respondent's assertions did not meet the criteria under the sanctions framework that would exclude the affiliate entities from liability. That is, the respondents did not demonstrate that those entities

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

19. Sanctions Board Decision No. 65 (2014) at para. 84. See also The World Bank Group's Sanction Regime: Information Note (November 2011) at p. 21 (Information Note). https://www.worldbank.org/content/dam/documents/sanctions/other-documents/osd/The_World_Bank_Group_Sanctions_Regime.pdf

20. Sanctions Board Decision No. 65 (2014) at para. 84. See also Information Note at p. 21.

21. Sanctions Board Decision No. 65 (2014) at para. 84. See also Information Note at p. 21.

22. Sanctions Board Decision No. 45 (2011) at para. 42; Sanctions Board Decision No. 65 (2014) at para. 60.

23. See World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.04(b); IFC Sanctions Procedures (2022) at Section 9.04(b); MIGA Sanctions Procedures (2013) at Section 9.04(b); World Bank Private Sector Sanctions Procedures (2013) at Section 9.04(b).

24. See, for example, Sanctions Board Decision No. 69 (2014) at para. 46; Sanctions Board Decision No. 130 (2020) at para. 97.

are free of responsibility for the misconduct, that sanctioning those entities would be disproportional, and that sanctioning those entities is not reasonably necessary to prevent evasion.²⁵

10. *Controlling affiliates*: The Sanctions Board has clarified that application of sanctions to a respondent’s controlling affiliates is not a default presumption in sanctions proceedings. Rather, under the sanctions framework, sanctions are applied to entities controlling the respondent only if a degree of involvement in sanctioned misconduct has been shown or such application is reasonably necessary to prevent evasion.²⁶ For example, the Sanctions Board has found a named controlling affiliate of a respondent liable for the misconduct of that respondent when 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.²⁷
11. *Successors*: The Sanctions Board has observed that any sanction imposed on a respondent may be applied to a respondent’s successors and assigns, subject to the principles of the application of sanctions to corporate groups as set out in the applicable Sanctions Procedures.²⁸ The sanctions framework does not currently include a definition of the term “successor.” The Sanctions Board, considering the views of the World Bank Legal Vice Presidency, understood the Bank’s approach to successorship to be based on a concept of economic successorship, specifically, whether the entity in question continues to conduct business operations of the sanctioned entity.²⁹ In one case, the Sanctions Board assessed the contested liability of a successor under an “abuse of discretion” standard, consistent with applicable Sanctions Procedures.³⁰ The Sanctions Board observed that this standard is not a basis for challenging or “second guessing” the decision maker’s ordinary exercise of judgment and that the burden of proof lies with the party alleging abuse.³¹ 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 evidence in the record supported it.³² Despite according the Bank’s determination of successor liability a “high degree of deference,” the Sanctions Board ultimately found that this determination had no observable basis and concluded that the Bank committed an abuse of discretion in making that determination.³³

25. Sanctions Board Decision No. 130 (2020) at para. 97.

26. Sanctions Board Decision No. 65 (2014) at para. 59; Sanctions Board Decision No. 83 (2015) at para. 76. See also Information Note at p. 21.

27. Sanctions Board Decision No. 65 (2014) at paras. 59-63.

28. Sanctions Board Decision No. 55 (2013) at para. 88; Sanctions Board Decision No. 65 (2014) at para. 84. See also Information Note at pp. 21-22.

29. Sanctions Board Decision No. 101 (2017) at para. 10.

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

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

32. Sanctions Board Decision No. 101 (2017) at paras. 10-23.

33. Sanctions Board Decision No. 101 (2017) at para. 23.

12. *Corporate changes*: When a respondent firm has provided detailed evidence of changes in management or corporate identity since the time of the misconduct, the Sanctions Board has considered such developments in deciding whether to find liability of successors.³⁴ The Sanctions Board has rejected an assertion of corporate changes, including new ownership, as a defense against liability when there was insufficient evidence to support the assertions.³⁵

34. See, for example, Sanctions Board Decision No. 66 (2014) at paras. 28-30; Sanctions Board Decision No. 83 (2015) at paras. 74 and 75; Sanctions Board Decision No. 94 (2017) at paras. 33 and 34; Sanctions Board Decision No. 114 (2018) at para. 49.

35. Sanctions Board Decision No. 114 (2018) at para. 49.

5 Sanctioning Analysis

HOW THE SANCTIONS BOARD SELECTS THE APPROPRIATE SANCTION

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This chapter discusses Sanctions Board practice in determining the types and magnitude of sanctions applied to respondents found liable in sanctions cases. The Sanctions Board is required to impose a sanction on any respondent found to have engaged in a sanctionable practice.¹ In determining the specific type of sanction, the Sanctions Board follows the applicable Sanctions Procedures, which identify a non-exhaustive list of sanctioning factors.² The Sanctions Board also considers the WBG Sanctioning Guidelines, which although not binding, provide the Sanctions Board with guidance on considerations relevant to a sanctioning decision.³ In practice, the Sanctions Board uses a diverse array of sanctions, from letters of reprimand to debarments.

This chapter summarizes the Sanctions Board's consideration of the range of possible sanctions; situations in which the respondent engaged in multiple instances of misconduct; and what factors may influence the severity of the sanction imposed, including aggravating and mitigating factors.

1. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 8.01(ii); IFC Sanctions Procedures (2022) 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, sub-paragraph 9.02; IFC Sanctions Procedures (2022) 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 (January 2011).

A. RANGE OF POSSIBLE SANCTIONS

World Bank Sanctions Procedures at Section III.A⁴

9. Sanctions

9.01. Range of Possible Sanctions

- (a) *Reprimand*. The sanctioned party is reprimanded in the form of a formal “Letter of Reprimand” of the sanctioned party’s conduct.
- (b) *Conditional Non-Debarment*. The sanctioned party is required to comply with certain remedial, preventative or other conditions as a condition to avoid debarment from World Bank Group projects. Conditions may include (but are not limited to) verifiable actions taken to improve business governance, including the adoption or improvement and implementation of an integrity compliance program, restitution and/or disciplinary action against or reassignment of employees.
- (c) *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;^[14] (ii) to be a nominated ^[15] 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.^[16]

The ineligibility resulting from debarment shall extend across the operations of the World Bank Group. Debarment arising out of an operation of IFC, MIGA or out of a Bank Guarantee Project or Bank Carbon Finance Project shall also result in ineligibility on the same terms, and to the same extent, as set out above in respect of Bank-Financed Projects.

[14] For the avoidance of doubt, a sanctioned party’s ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

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

4. See also IFC Sanctions Procedures (2022) at Section 9.01; MIGA Sanctions Procedures (2013) at Section 9.01; World Bank Private Sector Sanctions Procedures (2013) at Section 9.01.

[16] For cases involving a violation of a Material Term of the VDP [Voluntary Disclosure Program] Terms & Conditions, the sanctioned party shall be debarred for a period of ten (10) years.

- (d) *Debarment with Conditional Release.* The sanctioned party is subject to ineligibility as outlined in subparagraph 9.01(c) and is released from debarment only if the sanctioned party demonstrates compliance with certain remedial, preventative or other conditions for release, after a minimum period of debarment. Conditions may include (but are not limited to) verifiable actions taken to improve business governance, including the adoption or improvement and implementation of an integrity compliance program, restitution, and/or disciplinary action against or reassignment of employees. Debarment with conditional release shall also result in extension across the operations of the World Bank Group as outlined in sub-paragraph 9.01(c).
- (e) *Restitution.* The sanctioned party is required to make restitution (financial or otherwise) to the Borrower or to any other party.

1. *Base sanction:* A “base sanction” is the sanction that should normally be applied absent considerations, such as aggravating or mitigating factors, that would justify another sanction. As its starting point in determining the appropriate sanction in a given case, the Sanctions Board has relied on the base sanction proposed in the WBG Sanctioning Guidelines for all misconduct: debarment with the possibility of conditional release after a minimum period of three years.⁵
2. *Reprimand:* According to the WBG Sanctioning Guidelines, a letter of reprimand is normally used to sanction an affiliate of the respondent that was guilty of only an isolated incident of lack of oversight.⁶ That said, the Sanctions Board issued a conditional letter of reprimand to a respondent that was found to have acted recklessly and whose sanction was mitigated by the passage of time.⁷ The Sanctions Board also issued a letter of reprimand when the respondent’s predecessor conducted and was found to have had a minor role in the misconduct; and when the respondent’s assistance to the investigation, the passage of time, and the change in management or corporate identity further mitigated the sanction.⁸
3. *Conditional non-debarment:* Pursuant to the WBG Sanctioning Guidelines, this sanction may generally be applied to sanctioned parties affiliated with the respondent that are not directly involved in the sanctionable practice in which the respondent has engaged but bear some responsibility through, for example, a systemic lack of oversight; or

5. WBG Sanctioning Guidelines (2011) at Sections I and II.A; See Sanctions Board Decision No. 90 (2016) at para. 35; Sanctions Board Decision No. 91 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para. 106; Sanctions Board Decision No. 93 (2017) at para. 89; Sanctions Board Decision No. 94 (2017) at para. 39; Sanctions Board Decision No. 95 (2017) at para. 37; Sanctions Board Decision No. 97 (2017) at para. 63; Sanctions Board Decision No. 98 (2017) at para. 54; Sanctions Board Decision No. 99 (2017) at para. 28; Sanctions Board Decision No. 100 (2017) at para. 43.

6. WBG Sanctioning Guidelines at Section II.D; Sanctions Board Decision No. 56 (2013) at para. 55; Sanctions Board Decision No. 65 (2014) at para. 86.ii.

7. Sanctions Board Decision No. 67 (2014) at paras. 44 and 45.

8. Sanctions Board Decision No. 66 (2014) at paras. 37, 49, and 51.

respondents that have demonstrated that they have taken comprehensive corrective measures and that such other mitigating factors apply to justify non-debarment.⁹ The Sanctions Board has rejected requests for conditional non-debarment based on facts and circumstances presented, including the gravity of the misconduct and nature of the respondents' involvement.¹⁰ The Sanctions Board has imposed this sanction only twice. In one case, the Sanctions Board found the respondent liable for a fraudulent practice that had resulted in detriment to the borrower. The Sanctions Board imposed a conditional nondebarment wherein a debarment of one year would apply only if, within a year from the date of the Sanctions Board's decision, the respondent failed to demonstrate that it restituted a specified amount to the borrower, and adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank.¹¹ In the second case, the Sanctions Board found the respondent liable for a corrupt practice. The Sanctions Board imposed a conditional non-debarment wherein a debarment of two years and nine months would apply only if, within two years from the date of the Sanctions Board's decision, the respondent failed to demonstrate that it took appropriate remedial measures to address the sanctionable practice for which it had been sanctioned, and adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank.¹²

4. *Debarment*: The WBG Sanctioning Guidelines recommend that the Bank may apply this sanction if there would be no reasonable purpose served by imposing conditions. This would occur, for example, in cases in which a sanctioned firm has in place a robust corporate compliance program, the sanctionable practice involved the isolated acts of an employee or employees who have already been terminated, or the proposed debarment is for a relative short period of time (e.g., one year or less).¹³ In some of the earlier cases, the Sanctions Board imposed the sanction of a permanent debarment or a debarment for an indefinite period.¹⁴ In cases involving respondent individuals, the Sanctions Board has imposed the sanction of a fixed debarment for periods longer than one year.¹⁵
5. *Debarment with conditional release*: As mentioned in paragraph 1 above, the WBG Sanctioning Guidelines set forth debarment with conditional release as the proposed base sanction. The purpose of conditional release is to encourage the respondent's rehabilitation and mitigate further risk to Bank-financed activities.¹⁶ The WBG Sanctioning Guidelines recommend that a respondent be released from debarment only after the defined debarment period lapses, and the respondent has demonstrated that it has met the conditions set by the EO or Sanctions Board and detailed by the

9. WBG Sanctioning Guidelines (2011) at Section II.C.

10. Sanctions Board Decision No. 41 (2010) at para. 87; Sanctions Board Decision No. 71 (2014) at para. 106.

11. Sanctions Board Decision No. 53 (2012) at para. 70.

12. Sanctions Board Decision No. 138 (2022) at paras. 48 and 49.

13. WBG Sanctioning Guidelines (2011) at Section II.B. See also Sanctions Board Decision No. 1 (2007) at para. 8; Sanctions Board Decision No. 55 (2013) at para. 89.

14. See, for example, Sanctions Board Decision No. 3 (2009) at para. 8.

15. See, for example, Sanctions Board Decision No. 124 (2020) at para. 41 (3-year debarment); Sanctions Board Decision No. 125 (2020) at para. 49 (debarment of 5 years and 6 months); Sanctions Board Decision No. 133 (2021) at para. 44 (8-year debarment added to the debarment in Sanctions Board Decision No. 125); Sanctions Board Decision No. 136 (2022) at para. 67 (2-year debarment).

16. WBG Sanctioning Guidelines (2011) at Section II.A.

Integrity Compliance Officer.¹⁷ Furthermore, if so specified, compliance with certain conditions, such as cooperation or remedial measures, may reduce the debarment period.¹⁸

6. *Restitution*: The WBG Sanctioning Guidelines suggest that restitution may be used in exceptional circumstances, including those involving fraud in contract execution when there is a quantifiable amount to be restored to the client country or project.¹⁹ The Sanctions Board imposed this sanction once in a case involving fraud in contract execution. The Sanctions Board imposed restitution as one of the requirements of a conditional non-debarment.²⁰ As discussed in paragraph 17.d below, the Sanctions Board may also consider restitution to be a mitigating factor in its determination of the sanction to be imposed.

B. MULTIPLE INSTANCES OF MISCONDUCT

WBG Sanctioning Guidelines at Section III²¹ (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)

7. *Unrelated sanctionable practices*: When respondents have engaged in unrelated sanctionable practices, the Sanctions Board has considered the gravity of each allegation separately and determined that a distinct base sanction should be applied to each distinct count (i.e., multiplied),²² even when all misconduct was related to the same project or contract.²³ Similarly, the Sanctions Board has found that multiplication was warranted when the respondent’s sanctionable practices arose from different circumstances, occurred several years apart, did not involve continuous acts, and comprised independent elements of liability and intent.²⁴ The Sanctions Board has also found that

17. See, for example, Sanctions Board Decision No. 51 (2012) at para. 95; Sanctions Board Decision No. 52 (2012) at para. 47.

18. WBG Sanctioning Guidelines (2011) at Section II.A.

19. WBG Sanctioning Guidelines (2011) at Section II.F.

20. Sanctions Board Decision No. 53 (2012) at para. 70.

21. See also Sanctions Board Decision No. 63 (2014) at para. 118; Sanctions Board Decision No. 72 (2014) at para. 65.

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

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

24. Sanctions Board Decision No. 135 (2021) at para. 42.

multiplication was warranted when the respondent engaged in corrupt and collusive practices in connection with separate contracts and for the benefit of different companies.²⁵ Likewise, in a case in which the Sanctions Board addressed two cases jointly and issued a single decision, the Sanctions Board not only applied a separate sanction to each distinct count of misconduct, but also determined that the sanctions should run consecutively. In making this determination, the Sanctions Board considered the gravity of each type of misconduct on its own and that the two cases addressed in its decision were factually unrelated.²⁶ Conversely, the Sanctions Board found that multiplication of sanctions is not applicable when the respondent’s other misconduct was related to a case already adjudicated, pursuant to which the respondent had already been sanctioned. The Sanctions Board considered that applying a distinct base sanction in one case for the misconduct in a previously adjudicated case would effectively result in sanctioning the respondent twice for the same misconduct.²⁷

8. *Related sanctionable practices*: The Sanctions Board has applied aggravation—rather than multiplication—of sanctions in cases in which the acts of misconduct were closely inter-related.²⁸ In such cases, the Sanctions Board has used a single base sanction for the entire scheme, aggravated in light of the various counts of misconduct. Examples of such conduct include when a fraudulent act was committed to prevent the discovery of corrupt practices, the investigation into which was later obstructed;²⁹ when a respondent’s fraudulent practice, the nature of which the Sanctions Board found to be “repetitive, deliberate, and coordinated,” was related to and was a means of furthering the corrupt practice at issue;³⁰ and when the multiple counts of misconduct were factually interconnected, with a respondent’s fraudulent misrepresentations serving, at least in part, to further the respondents’ collusive arrangement.³¹

C. SANCTIONING FACTORS—GENERAL BACKGROUND

World Bank Sanctions Procedures at Section III.A, sub-paragraph 9.02³² (Factors Affecting the Sanction Decision)

Except for cases involving violation of a Material Term of the VDP [Voluntary Disclosure Program] 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:

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25. Sanctions Board Decision No. 139 (2022) at para. 58.
 26. Sanctions Board Decision No. 41 (2010) at para. 89.
 27. Sanctions Board Decision No. 133 (2021) at para. 35.
 28. Sanctions Board Decision No. 60 (2013) at para. 143; Sanctions Board Decision No. 115 (2019) at para. 63; Sanctions Board Decision No. 130 (2020) at para. 82; Sanctions Board Decision No. 134 (2021) at para. 66; Sanctions Board Decision No. 136 (2022) at para. 57; Sanctions Board Decision No. 137 (2022) at para. 54.
 29. Sanctions Board Decision No. 60 (2013) at para. 143.
 30. Sanctions Board Decision No. 97 (2017) at paras. 66 and 69.
 31. Sanctions Board Decision No. 130 (2020) at para. 82.
 32. See also IFC Sanctions Procedures (2022) at Section 9.02; MIGA Sanctions Procedures (2013) at Section 9.02; World Bank Private Sector Sanctions Procedures (2013) at Section 9.02.

- (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.

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.

9. *Rules and guidance:* The Sanctions Procedures provide that, in determining the appropriate sanction, the Sanctions Board shall consider a number of specified factors, as well as “any other factor that the ... Sanctions Board, ... reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice.”³³ Additionally, the WBG Sanctioning Guidelines offer guidance as to considerations that may be relevant to the Sanction Board's analysis, including examples of circumstances that may support the application of “aggravating” or “mitigating” factors identified in the Sanctions Procedures. The WBG Sanctioning Guidelines also suggest the potential impact of individual factors on a respondent's sanction. The Sanctions Board considers the totality of the circumstances

33. World Bank Sanctions Procedures at Section III.A, sub-paragraph 9.02(i); IFC Sanctions Procedures (2022) 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).

and all potential aggravating and mitigating factors to determine an appropriate sanction. The Sanctions Board has emphasized that the “choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.”³⁴ The remainder of this chapter presents the Sanctions Board’s consideration of potential aggravating factors, potential mitigating factors, and other factors that may affect the severity of the sanction imposed.

D. SANCTIONING FACTORS—AGGRAVATING³⁵

10. *Overview*: Sub-paragraph 9.02(a)-(d) of Section III.A of the World Bank Sanctions Procedures require that the Sanctions Board, in determining the appropriate sanction, account for certain expressly identified factors that, if proven, would increase the severity of the sanction imposed.
11. *Severity of misconduct*: The Sanctions Board must consider this factor pursuant to the applicable Sanctions Procedures.³⁶ Section IV.A of the WBG Sanctioning Guidelines identifies five potential indicators that the Sanctions Board may rely on in assessing the severity of misconduct: 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.
 - a. *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 when the misconduct was related to several contracts or projects, was prompted by different requirements in the same tender, or took place over a period of time.³⁷ For instance, the Sanctions Board applied aggravation in a case in which the array of misrepresentations involved separate bids with different bidding consortia and different tender requirements and in which the misrepresentations were specific to each bid and not simply reiterated throughout.³⁸ In contrast, the Sanctions Board has declined to apply aggravation when the sanctionable conduct was attributed to a “single scheme” or a “single course of action”³⁹ or when the asserted additional instances of misconduct were not the subject of the same

34. Sanctions Board Decision No. 122 (2020) at para. 26; Sanctions Board Decision No. 123 (2020) at para. 30; Sanctions Board Decision No. 124 (2020) at para. 32; Sanctions Board Decision No. 125 (2020) at para. 33; Sanctions Board Decision No. 129 (2020) at para. 46; Sanctions Board Decision No. 130 (2020) at para. 78; Sanctions Board Decision No. 134 (2021) at para. 62.

35. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(a)-(d); IFC Sanctions Procedures (2022) at Section 9.02(a)-(d); MIGA Sanctions Procedures (2013) at Section 9.02(a)-(d); World Bank Private Sector Sanctions Procedures (2013) at Section 9.02(a)-(d).

36. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(a); IFC Sanctions Procedures (2022) 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).

37. 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; Sanctions Board Decision No. 126 (2020) at para. 47; Sanctions Board Decision No. 133 (2021) at para. 37; Sanctions Board Decision No. 134 (2021) at para. 68; Sanctions Board Decision No. 137 (2022) at para. 56; Sanctions Board Decision No. 138 (2022) at para. 44; Sanctions Board Decision No. 139 (2022) at para. 59.

38. Sanctions Board Decision No. 127 (2020) at para. 35.

39. 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 proceedings or supported by evidence.⁴⁰ Thus, the Sanctions Board has found that submission of the same false documents in multiple bids constitutes a single course of action, rather than a repeated pattern of conduct.⁴¹

- b. *Sophisticated means*: The WBG Sanctioning Guidelines suggest that, in assessing whether a respondent applied sophisticated means of misconduct, the Sanctions Board may consider 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.⁴² The Sanctions Board has applied aggravation when the respondent's conduct reflected considerable forethought and planning;⁴³ comprised a variety of tactics or diversity of techniques,⁴⁴ or was implemented over a period of time with the active involvement of several individuals or entities.⁴⁵
- c. *Central role in misconduct*: Under 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.⁴⁶ Consistent with this definition, the Sanctions Board has applied aggravation when the respondent has led or initiated acts of

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; Sanctions Board Decision No. 123 (2020) at para. 33.

40. 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.

41. Sanctions Board Decision No. 79 (2015) at para. 39; Sanctions Board Decision No. 117 (2019) at para. 33.

42. WBG Sanctioning Guidelines (2011) at Section IV.A.2.

43. See, for example, Sanctions Board Decision No. 69 (2014) at para. 33 (respondent fabricated three different types of documents, including an inauthentic stamp and forged signatures and seals); Sanctions Board Decision No. 112 (2018) at para. 48 (collusive scheme involving duplication of a large volume of documents, with targeted revisions designed to provide these documents with the appearance of authenticity); Sanctions Board Decision No. 122 (2020) at para. 31 (respondent submitted a likely forgery of a required and official document with aforethought and intent to conceal its inauthentic nature); Sanctions Board Decision No. 125 (2020) at para. 37 (respondent employed a variety of tactics that revealed a level of forethought and planning); Sanctions Board Decision No. 129 (2020) at para. 50; Sanctions Board Decision No. 133 (2021) at para. 38 (respondent devised the backdated contracts with two companies to conceal receipt of the payments that he had solicited); Sanctions Board Decision No. 135 (2021) at para. 44 (respondent submitted misleading invoices to the project management unit and instructed a subcontractor's team to posture as the respondent's employees).

44. See, for example, Sanctions Board Decision No. 87 (2016) at para. 127 (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 (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 (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); Sanctions Board Decision No. 125 (2020) at para. 37 (respondent employed a variety of tactics, including manipulation of technical specifications and concealment of conflict of interest); Sanctions Board Decision No. 130 (2020) at para. 85 (respondent submitted multiple misrepresentations and forged documents in six bids across three tenders); Sanctions Board Decision No. 134 (2021) at para. 71 (diverse, significant, detailed background-related misrepresentations for two key expert candidates in proposal and contract documents in different Bank-financed projects).

45. See, for example, Sanctions Board Decision No. 63 (2014) at para. 98 (a corrupt scheme was implemented over several years, with active participation by many individuals and organizations in planning and executing that scheme); Sanctions Board Decision No. 129 (2020) at para. 50 (aggravation warranted based on apparent forethought and planning by a number of independent parties required to effectuate the fraudulent scheme over several years).

46. WBG Sanctioning Guidelines (2011) at Section IV.A.3.

misconduct involving two or more individuals or entities.⁴⁷ The Sanctions Board has declined to apply aggravation when the record did not reflect that at least one party other than the respondent participated in the misconduct⁴⁸ or that the respondent was the leader or prime mover in that misconduct.⁴⁹

- d. *Management's role in misconduct*: The WBG Sanctioning Guidelines recommend aggravation when a high-level employee of the respondent firm participated in, condoned, or was willfully ignorant of the sanctionable practice.⁵⁰ Accordingly, the Sanctions Board has applied aggravation when the record showed that senior members of a respondent entity's management personally participated in the misconduct.⁵¹ In its analysis, the Sanctions Board has assessed the seniority of staff positions on a case-by-case basis.⁵² In cases finding misconduct by both a respondent entity and a respondent individual holding a senior position within the respondent entity, the Sanctions Board has considered the individual's seniority in position as a potential aggravating factor only for the respondent entity (under "management's role in misconduct"), not for the respondent individual. Accordingly, unless the record demonstrates otherwise, the Sanctions Board has found that a respondent individual's seniority in position is not *per se* relevant to the respondent's own degree of culpability or responsibility in determining aggravation.⁵³
- e. *Involvement of public official or World Bank staff*: Under the WBG Sanctioning Guidelines, an example of severe misconduct is conspiring with or involving a public official or World Bank staff in the sanctionable practice.⁵⁴ The Sanctions Board has applied aggravation when respondents conspired with public officials to secure contracts⁵⁵ and when respondents, admittedly acting on their own initiative, proactively offered and paid a bribe to a public official.⁵⁶ The Sanctions Board has declined to apply aggravation when the record did not establish that the respondent specifically

47. 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; Sanctions Board Decision No. 115 (2019) at para. 65; Sanctions Board Decision No. 125 (2020) at para. 38; Sanctions Board Decision No. 133 (2021) at para. 39; Sanctions Board Decision No. 134 (2021) at para. 69.

48. 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.

49. Sanctions Board Decision No. 85 (2016) at para. 40.

50. WBG Sanctioning Guidelines (2011) at Section IV.A.4.

51. 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; Sanctions Board Decision No. 122 (2020) at para. 30; Sanctions Board Decision No. 127 (2020) at para. 36; Sanctions Board Decision No. 129 (2020) at para. 51; Sanctions Board Decision No. 130 (2020) at para. 84; Sanctions Board Decision No. 134 (2021) at para. 70; Sanctions Board Decision No. 135 (2021) at para. 45; Sanctions Board Decision No. 137 (2022) at para. 57; Sanctions Board Decision No. 138 (2022) at para. 45.

52. 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.

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

54. WBG Sanctioning Guidelines (2011) at Section IV.A.5.

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

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

conspired with or took the initiative to involve a public official in the respondent's misconduct.⁵⁷

12. *Magnitude of harm:* The Sanctions Board must consider magnitude of harm pursuant to the applicable Sanctions Procedures.⁵⁸ Section IV.B of the WBG Sanctioning Guidelines identifies harm to public safety or welfare and the degree of harm to the project as potential indicators of the magnitude of harm that the misconduct subject of the sanctions proceedings caused. The Sanctions Board has applied aggravation when the misconduct directly compromised a procurement or selection process or contract execution. For example, the Sanctions Board has applied aggravation when the misconduct caused substantial delay, introduced risk of structural damage to contract work, or wasted the borrower's time and resources;⁵⁹ necessitated re-bidding or derailed the procurement process;⁶⁰ resulted in financial harm;⁶¹ exposed the Bank or member country to serious operational and reputational risks;⁶² or led to termination of the contract.⁶³ The Sanctions Board previously 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.⁶⁴ The Sanctions Board has declined to apply aggravation when the record did not establish a causal link between that specific harm and the misconduct.⁶⁵
13. *Interference by the sanctioned party in the Bank's investigation:* The Sanctions Board must consider interference by the sanctioned party in the Bank's investigation pursuant to the applicable Sanctions Procedures.⁶⁶ Section IV.C of the WBG Sanctioning Guidelines identifies two potential indicators that the Sanctions Board may rely on in assessing whether the respondent interfered in the Bank's investigation: interference with the investigative process and intimidation or payment of a witness.
 - a. *Interference with investigative process:* According to the WBG Sanctioning Guidelines, interference with the investigative process may manifest in deliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators to materially impede a Bank investigation and/or

57. 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; Sanctions Board Decision No. 136 (2022) at para. 62.

58. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(b); IFC Sanctions Procedures (2022) 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).

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

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

61. See, for example, Sanctions Board Decision No. 53 (2012) at para. 56; Sanctions Board Decision No. 86 (2016) at para. 49; Sanctions Board Decision No. 98 (2017) at para. 61; Sanctions Board Decision No. 125 (2020) at para. 39.

62. See, for example, Sanctions Board Decision No. 65 (2014) at para. 75; Sanctions Board Decision No. 69 (2014) at para. 35; Sanctions Board Decision No. 125 (2020) at para. 39.

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

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

65. See, for example, 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.

66. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(c); IFC Sanctions Procedures (2022) 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).

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 acts intended to materially impede the exercise of the Bank’s contractual rights of audit or access to information.⁶⁷ In its assessment of this aggravating factor, the Sanctions Board previously noted that aggravation may apply to acts taken with the purpose of materially impeding a Bank investigation whether or not this purpose is ultimately achieved.⁶⁸ The Sanctions Board has applied aggravation when respondents made false statements to INT or attempted to influence their employees to withhold cooperation.⁶⁹ The Sanctions Board has also applied aggravation when respondents concealed, destroyed, or altered material evidence⁷⁰ but has applied limited aggravation when the evidence concealed or deleted was subsequently recovered and provided to INT.⁷¹ The Sanctions Board has declined to apply aggravation when the respondent did not engage in any overt acts that impeded INT’s investigation⁷² or INT did not establish that the respondents acted with the intent to impede INT’s investigation.⁷³ In such assessments, the Sanctions Board focused on the scope and articulation of any requests from INT, as well as the actions of the respondents in the context of that investigation.⁷⁴

- b. *Intimidation or payment of a witness*: According to the WBG Sanctioning Guidelines, intimidation may occur when a respondent caused or threatened causing injury to a witness or their assets, employment, reputation, [family], or significant others or when a respondent offered the witness a payment in exchange for non-cooperation with the Bank.⁷⁵ The Sanctions Board has not applied aggravation on the basis of intimidation or payment of a witness. INT previously requested that the Sanctions Board apply aggravation on the basis of intimidation of a witness, alleging *inter alia*, that individuals acting on the respondents’ behalf repeatedly and insistently contacted a witness or made statements intended to intimidate a witness’ family member.⁷⁶ However, in these cases, the Sanctions Board declined to apply aggravation, finding instead that the actions in question, assessed in context, did not constitute a finding of threats, harassment, or intimidation; or that INT’s assertions of intimidation relied on contested evidence of low probative value.⁷⁷

67. WBG Sanctioning Guidelines (2011) at Section IVC.1.

68. Sanctions Board Decision No. 63 (2013) at para. 102.

69. 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.

70. See, for example, Sanctions Board Decision No. 56 (2013) at para. 59; Sanctions Board Decision No. 63 (2013) at para. 102; Sanctions Board Decision No. 114 (2018) at para. 58; Sanctions Board Decision No. 134 (2021) at para. 72.

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

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

73. See, for example, Sanctions Board Decision No. 71 (2014) at para. 88; Sanctions Board Decision No. 100 (2017) at para. 48; Sanctions Board Decision No. 102 (2017) at para. 70; Sanctions Board Decision No. 103 (2017) at para. 37; Sanctions Board Decision No. 115 (2019) at para. 69.

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

75. WBG Sanctioning Guidelines (2011) at Section IVC.2.

76. Sanctions Board Decision No. 47 (2012) at para. 46; Sanctions Board Decision No. 87 (2016) at para. 133.

77. Sanctions Board Decision No. 47 (2012) at para. 47; Sanctions Board Decision No. 87 (2016) at paras. 62 and 134.

14. *Past history of misconduct:* The Sanctions Procedures require that the Sanctions Board consider the sanctioned party's history of misconduct as adjudicated by the WBG or another multilateral development bank in cases in which debarment decisions may be enforced.⁷⁸ The WBG Sanctioning Guidelines define this history as encompassing "prior debarment or other penalty" imposed by the WBG or other development banks.⁷⁹ The WBG Sanctioning Guidelines further state that, to warrant aggravation, the history of misconduct must involve misconduct other than the misconduct for which the respondent is being sanctioned.⁸⁰ The Sanctions Board has not applied aggravation on this basis. In one case, INT alleged that a settlement agreement between a named affiliate of the respondent and the WBG GSD demonstrated a respondent firm's history of misconduct. The record showed that this settlement agreement addressed the conduct of a separate subsidiary of the named affiliate. The Sanctions Board declined to apply aggravation under this factor on the grounds that the named affiliate's voluntary entry into a settlement agreement with GSD did not qualify as a "past history of adjudicated misconduct" for purposes of Section 9.02(d) of the applicable Sanctions Procedures.⁸¹ Separately, 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. The Sanctions Board has emphasized that, although a record of past misconduct may merit treatment as an aggravating factor, the Sanctions Board considers its absence a neutral fact.⁸²

E. SANCTIONING FACTORS—MITIGATING⁸³

15. *Overview:* Sub-paragraph 9.02(e) of Section III.A of the World Bank Sanctions Procedures require that the Sanctions Board, in determining the appropriate sanction, take into account certain expressly identified "mitigating circumstances" that, if proven, would reduce the severity of the sanction imposed.
16. *Minor role in the misconduct:* The Sanctions Procedures identify circumstances in which the sanctioned party played a minor role in the misconduct as a mitigating factor.⁸⁴ The WBG Sanctioning Guidelines suggest that such circumstances may exist in which the respondent was a minor, minimal, or peripheral participant or in which no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct.⁸⁵ The Sanctions Board has clarified that a respondent bears the burden of showing affirmatively that no one with decisionmaking authority participated in, condoned,

78. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(d); IFC Sanctions Procedures (2022) 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).

79. WBG Sanctioning Guidelines (2011) at Section IV.D.

80. WBG Sanctioning Guidelines (2011) at Section IV.D.

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

82. See, for example, Sanctions Board Decision No. 55 (2013) at para. 72; Sanctions Board Decision No. 98 (2017) at para. 62; Sanctions Board Decision No. 100 (2017) at para. 61; Sanctions Board Decision No. 106 (2017) at para. 48. See also Section G, paragraph 26.i. below (Absence of aggravating factors).

83. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(e); IFC Sanctions Procedures (2022) 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).

84. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(e); IFC Sanctions Procedures (2022) 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).

85. WBG Sanctioning Guidelines (2011) at Section V.A.

or was willfully ignorant of the misconduct.⁸⁶ The Sanctions Board has applied mitigation when the record showed that the respondent lacked direct involvement in the sanctionable practice;⁸⁷ the respondent's participation was more passive and limited than that of other participants;⁸⁸ or the respondent did not prompt, encourage, or develop the misconduct at issue.⁸⁹ The Sanctions Board has also applied mitigation when junior employees of the respondent engaged in the misconduct but the respondent's management did not affirmatively participate or condone that behavior.⁹⁰ Conversely, the Sanctions Board has declined to apply mitigation when the respondent (or in the case of a respondent firm, its culpable staff) held a high-level position or had decision-making authority.⁹¹ Finally, the Sanctions Board has declined to apply mitigation when a respondent failed to point to specific evidence in the record to support its assertion or when the evidence in the record did not support its request for mitigation on this basis.⁹²

17. *Voluntary corrective action*: The Sanctions Procedures identify voluntary corrective action taken by the sanctioned party in relation to the misconduct as a mitigating factor.⁹³ The WBG Sanctioning Guidelines suggest that such corrective action may include the respondent's cessation of misconduct, internal action taken against a responsible individual, an effective compliance program, or restitution or other financial remedy.⁹⁴ With respect to each of these potential corrective actions, the Sanctioning Guidelines highlight that the timing of the action may indicate the degree to which it reflects genuine remorse and intention to reform or a calculated step to reduce the severity of the sanction.⁹⁵ The Sanctions Board has held that a respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action⁹⁶ and that lack of sufficiently concrete supporting evidence will limit this mitigating credit.⁹⁷ The Sanctions Board observed in one case that the motivation behind and the timeliness of a claimed corrective action are both relevant to the Sanctions Board's consideration of whether to treat such action as a mitigating factor.⁹⁸

86. Sanctions Board Decision No. 71 (2014) at para. 91; Sanctions Board Decision No. 109 (2018) at para. 45.

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

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

89. Sanctions Board Decision No. 60 (2013) at para. 128; Sanctions Board Decision No. 66 (2014) at para. 37; Sanctions Board Decision No. 139 (2022) at para. 60.

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

91. 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.

92. Sanctions Board Decision No. 79 (2015) at para. 41; Sanctions Board Decision No. 93 (2017) at para. 100; Sanctions Board Decision No. 95 (2017) at para. 43; Sanctions Board Decision No. 100 (2017) at para. 49; Sanctions Board Decision No. 109 (2018) at para. 45; Sanctions Board Decision No. 123 (2020) at para. 34; Sanctions Board Decision No. 129 (2020) at para. 52; Sanctions Board Decision No. 134 (2021) at para. 73.

93. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(e); IFC Sanctions Procedures (2022) 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).

94. WBG Sanctioning Guidelines (2011) at Section V.B.

95. WBG Sanctioning Guidelines (2011) at Section V.B.1-4. See also Sanctions Board Decision No. 44 (2011) at para. 68; Sanctions Board Decision No. 46 (2012) at para. 38; Sanctions Board Decision No. 55 (2013) at para. 76; Sanctions Board Decision No. 56 (2013) at para. 63; Sanctions Board Decision No. 67 (2014) at para. 38.

96. See, for example, Sanctions Board Decision No. 45 (2011) at para. 72; Sanctions Board Decision No. 51 (2012) at paras. 51 and 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; Sanctions Board Decision No. 123 (2020) at para. 35; Sanctions Board Decision No. 126 (2020) at para. 48.

97. Sanctions Board Decision No. 51 (2012) at para. 88.

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

- a. *Cessation of misconduct*: The Sanctions Board has found mitigation to be warranted when 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.⁹⁹ Conversely, the Sanctions Board declined to apply mitigation when the action taken to discontinue the misconduct was not timely or effective, such as when the asserted corrective measures did not appear sufficient to prevent recurrence of the same type of misconduct.¹⁰⁰ The Sanctions Board also declined to apply mitigation when the respondent's alleged corrective sanctions were unrelated to the underlying misconduct, let alone reflective of a conscious and voluntary cessation of that misconduct.¹⁰¹
- b. *Internal action against responsible individual*: The WBG Sanctioning Guidelines suggest that mitigation may be justified when a respondent's management takes appropriate disciplinary or remedial steps with respect to the relevant employee, agent, or representative.¹⁰² The Sanctions Board has applied mitigation when the record included documentary evidence that the respondent undertook internal disciplinary action against participants involved in the misconduct, including demotions, reprimands, withholding of bonuses, termination of consultancy agreements, and provisional measures.¹⁰³ Conversely, the Sanctions Board has declined to apply mitigation when 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, or were meaningful and proportionate to the misconduct.¹⁰⁴ In this regard, the Sanctions Board previously underscored that disciplinary action against an individual employee does not obviate the need for a respondent firm to investigate a matter thoroughly, especially when an appropriate investigation would enable management of the respondent firm to assess and address its own responsibility or that of other employees.¹⁰⁵
- c. *Effective compliance program*: The WBG Sanctioning Guidelines advise that mitigation may be appropriate when a respondent establishes or improves and implements a corporate compliance program.¹⁰⁶ In assessing this factor, the Sanctions Board has considered the quality and quantity of evidence presented; the scope and nature of the integrity compliance measures applied, including whether the measures address the elements described in the WBG Integrity Compliance Guidelines; the nexus between the corrective measures and the misconduct; the timing of the asserted measures; and

99. Sanctions Board Decision No. 56 (2013) at para. 64; Sanctions Board Decision No. 63 (2014) at para. 105.

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

101. Sanctions Board Decision No. 126 (2020) at para. 49.

102. WBG Sanctioning Guidelines (2011) at Section V.B.2.

103. 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; Sanctions Board Decision No. 137 (2022) at para. 61.

104. 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; Sanctions Board Decision No. 130 (2020) at para. 87.

105. Sanctions Board Decision No. 55 (2013) at para. 77.

106. WBG Sanctioning Guidelines (2011) at Section V.B.3.

any available evidence of implementation.¹⁰⁷ The Sanctions Board has thus applied mitigation when a respondent demonstrated that it implemented an effective 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 described in the WBG Integrity Compliance Guidelines.¹⁰⁸ The Sanctions Board has clarified 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 Integrity Compliance Officer may conduct to more fully evaluate the adequacy and implementation of the respondent's integrity compliance measures.¹⁰⁹

The Sanctions Board has declined to apply mitigation when the record contained no evidence that the respondent had implemented compliance measures¹¹⁰ or when the evidence did not demonstrate that the type of measures established would prevent or address the type of misconduct at issue.¹¹¹

d. *Restitution or financial remedy*: The WBG Sanctioning Guidelines advise that mitigation may be appropriate when a respondent voluntarily addresses any inadequacies in contract implementation or returns funds obtained through the misconduct.¹¹² The Sanctions Board has found that mitigation was warranted when respondents offered restitution for damages or completed work without charge, demonstrating their willingness to take responsibility for the misconduct.¹¹³ However, the Sanctions Board has declined to apply mitigation when the alleged financial remedy was a fulfilment of the respondent's preexisting contractual obligations.¹¹⁴

18. *Cooperation with investigation*: Section III.A, sub-paragraph 9.02(e) of the World Bank Sanctions Procedures requires that the Sanctions Board consider, as mitigation, the sanctioned party's cooperation in the investigation or resolution of the case.¹¹⁵ The WBG Sanctioning Guidelines identify various examples of cooperative conduct, as outlined below.

107. See, for example, Sanctions Board Decision No. 120 (2019) at paras. 55 and 56; Sanctions Board Decision No. 134 (2021) at para. 78; Sanctions Board Decision No. 137 (2022) at para. 62.

108. See, for example, Sanctions Board Decision No. 48 (2012) at para. 44; Sanctions Board Decision No. 53 (2012) at paras. 60 and 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 and 94; Sanctions Board Decision No. 113 (2018) at para. 42; Sanctions Board Decision No. 129 (2020) at para. 55; Sanctions Board Decision No. 137 (2022) at para. 62.

109. See, for example, Sanctions Board Decision No. 71 (2014) at para. 94; Sanctions Board Decision No. 137 (2022) at para. 62.

110. See, for example, Sanctions Board Decision No. 45 (2011) at para. 74; Sanctions Board Decision No. 75 (2014) at para. 31; Sanctions Board Decision No. 116 (2019) at para. 26; Sanctions Board Decision No. 117 (2019) at para. 36; Sanctions Board Decision No. 128 (2020) at para. 42; Sanctions Board Decision No. 130 (2020) at para. 88.

111. See, for example, Sanctions Board Decision No. 47 (2012) at para. 51; Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39; Sanctions Board Decision No. 112 (2018) at para. 52; Sanctions Board Decision No. 116 (2019) at para. 26; Sanctions Board Decision No. 126 (2020) at para. 50; Sanctions Board Decision No. 130 (2020) at para. 88.

112. WBG Sanctioning Guidelines (2011) at Section V.B.4.

113. 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.

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

115. See also IFC Sanctions Procedures (2022) 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).

- a. *Assistance and/or ongoing cooperation:* The WBG Sanctioning Guidelines advise that cooperation may be evidenced by INT's representation that the respondent has provided substantial assistance in an investigation, including voluntary disclosure. The WBG Sanctioning Guidelines also suggest that the truthfulness, completeness, and reliability of any information or testimony provided; the nature and extent of the assistance; and the timeliness of assistance are relevant to the determination and extent of any possible mitigation.¹¹⁶ The Sanctions Board has applied mitigation when the respondents' cooperation was reflected in meetings with INT, their responsiveness to INT's inquiries,¹¹⁷ the provision of substantial (especially inculpatory) documentary evidence, and other assistance in the investigation (e.g., organizing interviews with witnesses, reporting misconduct potentially committed by competitors).¹¹⁸ The degree of mitigation that the Sanctions Board has granted has been proportionate to the extent of the respondents' cooperative conduct.¹¹⁹ 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.¹²⁰ Furthermore, the Sanctions Board has held that a respondent's request to consult a lawyer in the course of an interview¹²¹ or a respondent's criticism of the conduct of INT's investigation¹²² does not diminish mitigating credit on the basis of cooperation. The Sanctions Board has declined to apply any mitigation when the assistance that respondents have provided to INT consisted of unsubstantiated assertions, did not have clear relevance to the sanctions proceedings at issue, or otherwise appeared to have low credibility because of internal inconsistencies and less-than-candid conduct.¹²³
- b. *Internal investigation:* The WBG Sanctioning Guidelines advise that mitigation may be applied when a respondent has conducted its own effective internal investigation of the misconduct and shared its results with INT. Consideration may also be given to a respondent conducting its own internal investigation that extends beyond the conduct and facts related to the sanctioned misconduct and sharing the results with INT.¹²⁴

116. WBG Sanctioning Guidelines (2011) at Section V.C.1.

117. Sanctions Board Decision No. 130 (2020) at para. 90; Sanctions Board Decision No. 139 (2022) at para. 62. INT frequently issues show-cause letters to potential respondents in relation to sanctions proceedings. 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.

118. 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 and 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; Sanctions Board Decision No. 129 (2020) at para. 57; Sanctions Board Decision No. 130 (2020) at para. 90; Sanctions Board Decision No. 131 (2021) at para. 38.

119. See, for example, Sanctions Board Decision No. 55 (2013) at para. 80; Sanctions Board Decision No. 65 (2014) at paras. 79 and 80; Sanctions Board Decision No. 67 (2014) at para. 41; Sanctions Board Decision No. 125 (2020) at para. 41; Sanctions Board Decision No. 126 (2020) at para. 52; Sanctions Board Decision No. 133 (2021) at para. 40; Sanctions Board Decision No. 134 (2021) at para. 79; Sanctions Board Decision No. 137 (2022) at para. 64.

120. See, for example, Sanctions Board Decision No. 87 (2016) at paras. 141-144; Sanctions Board Decision No. 106 (2017) at para. 43.

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

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

123. 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; Sanctions Board Decision No. 127 (2020) at para. 38.

124. WBG Sanctioning Guidelines (2011) at Section V.C.2.

In examining this sanctioning factor, the Sanctions Board has considered whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; the respondent shared its findings with INT during INT's investigation or as part of the sanctions proceedings; and the respondent demonstrated that it followed up on any investigative findings and recommendations.¹²⁵

- c. *Admission or acceptance of guilt or responsibility:* The WBG Sanctioning Guidelines advise that the scope and timing of admissions or acceptance of guilt/responsibility are relevant to potential mitigation.¹²⁶ In considering whether admissions warrant mitigating credit, the Sanctions Board has looked to the timing, investigative value, and scope of admissions.¹²⁷ The Sanctions Board has granted mitigation on this basis when respondents took responsibility for their own or their employees' misconduct and did not contest INT's allegations of sanctionable practice.¹²⁸ The Sanctions Board has considered that the belated, inconsistent, or incomplete nature of some admissions reduces or, at times, eliminates their mitigating value.¹²⁹ The Sanctions Board has declined to apply mitigation when the respondent conceded that the facts or events pertaining to the sanctionable practice at issue took place but failed to accept responsibility for it.¹³⁰
- d. *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 a form of assistance or cooperation.¹³¹ The Sanctions Board has granted mitigation when a respondent provided sufficient corroboration for its asserted voluntary restraint, such as contemporaneous evidence of a formal company policy or practice¹³² or proof of withdrawal of bids for Bank-financed contracts pending the outcome of INT's investigation.¹³³ Conversely, the Sanctions Board has declined to grant mitigation when respondents claimed but failed to demonstrate a policy or practice of voluntary restraint before any temporary suspension from eligibility.¹³⁴

125. See, for example, Sanctions Board Decision No. 50 (2012) at para. 67; Sanctions Board Decision No. 55 (2013) at para. 81; Sanctions Board Decision No. 61 (2013) at paras. 45 and 46; Sanctions Board Decision No. 63 (2014) at para. 112; Sanctions Board Decision No. 71 (2014) at para. 98; Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56; Sanctions Board Decision No. 83 (2015) at para. 97; Sanctions Board Decision No. 91 (2016) at paras. 44 and 45; Sanctions Board Decision No. 111 (2018) at paras. 56 and 57; Sanctions Board Decision No. 126 (2020) at para. 53; Sanctions Board Decision No. 137 (2022) at para. 65.

126. WBG Sanctioning Guidelines (2011) at Section V.C.3.

127. Sanctions Board Decision No. 99 (2017) at para. 33; Sanctions Board Decision No. 125 (2020) at para. 42.

128. See, for example, Sanctions Board Decision No. 46 (2012) at para. 41; Sanctions Board Decision No. 48 (2012) at para. 45; Sanctions Board Decision No. 108 (2018) at para. 78.

129. 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 and 34; Sanctions Board Decision No. 105 (2017) at para. 30; Sanctions Board Decision No. 137 (2022) at para. 66.

130. See, for example, Sanctions Board Decision No. 92 (2017) at para. 125; Sanctions Board Decision No. 126 (2020) at para. 54; Sanctions Board Decision No. 129 (2020) at para. 58.

131. WBG Sanctioning Guidelines (2011) at Section V.C.4.

132. Sanctions Board Decision No. 83 (2015) at para. 99; Sanctions Board Decision No. 129 (2020) at para. 59; Sanctions Board Decision No. 130 (2020) at para. 91; Sanctions Board Decision No. 131 (2021) at para. 39; Sanctions Board Decision No. 137 (2022) at para. 67.

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

134. 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 and 59; Sanctions Board Decision No. 116 (2019) at para. 31.

F. ADDITIONAL SANCTIONING FACTORS EXPRESSLY IDENTIFIED IN THE SANCTIONS PROCEDURES

19. *Overview*: In addition to the aggravating and mitigating factors discussed in sections D and E above, the Sanctions Procedures require that the Sanctions Board, in its determination of the appropriate sanction, consider the following expressly identified factors: any breach of the confidentiality of sanctions proceedings;¹³⁵ where applicable, any period of ineligibility decided on by the Bank's GSD in accordance with the World Bank Vendor Eligibility Policy;¹³⁶ and the period of temporary suspension that the sanctioned party has already served.¹³⁷
20. *Breach of confidentiality*: Save for certain prescribed exceptions, the Sanctions Procedures prohibit parties to sanctions proceedings from disclosing to, or discussing with, any third party any part of the record or information relating thereto. According to the Sanctions Procedures, a breach of this confidentiality obligation by a respondent shall be an aggravating factor in determining an appropriate sanction if the violation is brought to the attention of the SDO or the Sanctions Board during sanctions proceedings, and a separate basis for sanction if the violation comes to light after the conclusion of sanctions proceedings.¹³⁸ The Sanctions Board has previously considered a respondent's disclosure of certain evidence in the record to third parties when determining the appropriate sanction.¹³⁹ Because the Sanctions Procedures do not provide for mitigation or other consequences for any potential breaches of confidentiality by the World Bank, the Sanctions Board has declined to apply mitigation for respondents on this basis.¹⁴⁰ However, although the Sanctions Procedures do not provide for a remedy or sanction where INT breaches its confidentiality obligations, the Sanctions Board reminded all parties, including INT, "of the paramount importance of maintaining the confidentiality of case-related information as required under the sanctions framework in order to ensure the integrity of sanctions proceedings."¹⁴¹
21. *Period of ineligibility following a determination by GSD*: The types of cases that are subject to the Sanctions Procedures include those involving sanctionable practices on the basis of which the Director of GSD has determined, in accordance with the World Bank Vendor Eligibility Policy, that the Respondent is non-responsible.¹⁴² According to the World Bank Vendor Eligibility Policy, a non-responsibility determination means a decision to exclude

135. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(f); IFC Sanctions Procedures (2022) 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).

136. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraphs 1(c)(ii) and 9.02(g); IFC Sanctions Procedures (2022) at Sections 1.01(b) and 9.02(g); MIGA Sanctions Procedures (2013) at Sections 1.01(b) and 9.02(g); World Bank Private Sector Sanctions Procedures (2013) at Sections 1.01(b) and 9.02(g).

137. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(h); IFC Sanctions Procedures (2022) 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).

138. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraphs 11.05 and 9.02(f); IFC Sanctions Procedures (2022) at Sections 13.06 and 9.02(f); MIGA Sanctions Procedures (2013) at Sections 13.06 and 9.02(f); World Bank Private Sector Sanctions Procedures (2013) at Sections 13.06 and 9.02(f).

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

140. Sanctions Board Decision No. 78 (2015) at para. 93; Sanctions Board Decision No. 83 (2015) at para. 105.

141. See, for example, Sanctions Board Decision No. 78 (2015) at para. 93.

142. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 1.01(c)(ii); IFC Sanctions Procedures (2022) at Section 1.01(b); MIGA Sanctions Procedures (2013) at Section 1.01(b); World Bank Private Sector Sanctions Procedures (2013) at Sections 1.01(b).

a vendor from eligibility to receive WBG institution contract awards and bid on WBG institution solicitations for a specified or indefinite period of time.¹⁴³ When such cases come before the Sanctions Board, the Sanctions Procedures require that the Sanctions Board, in its determination of the appropriate sanction, consider the period of ineligibility that the GSD Director has imposed.¹⁴⁴ The Sanctions Board has not addressed a case involving sanctionable practices on the basis of which the GSD Director has determined that a respondent is non-responsible.

22. *Period of temporary suspension:* The Sanctions Procedures require that, in its determination of the appropriate sanction, the Sanctions Board consider the period of temporary suspension that the respondent served before the conclusion of sanctions proceedings.¹⁴⁵ The Sanctions Board has always taken into account this period of temporary suspension in determining the appropriate sanction.¹⁴⁶ When adjusting sanctions on this basis, the Sanctions Board has also taken note of the circumstances of any delays that extended the proceedings.¹⁴⁷ When a respondent's period of temporary suspension was entirely subsumed under his debarment pursuant to a case that was adjudicated earlier, the Sanctions Board declined to apply additional mitigation for the same period of ineligibility in the case before it.¹⁴⁸

G. SANCTIONING FACTORS—OTHER

23. *Overview:* The Sanctions Procedures require that the Sanctions Board consider “any other factor” that may be “relevant to the sanctioned party’s culpability or responsibility in relation to the Sanctionable Practice.”¹⁴⁹ The factors in the following paragraphs are not expressly identified in the Sanctions Procedures or described in the WBG Sanctioning Guidelines. These factors are discussed below in the following order: other aggravating factors, other mitigating factors, and neutral factors and factors that the Sanctions Board noted.
24. *Other aggravating factors:* Parties have asserted certain factors in sanctions proceedings, and the Sanctions Board has identified some as being relevant to its analysis and potentially aggravating with respect to the final sanction.

143. According to the World Bank Vendor Eligibility Policy in force in 2022, the Bank official authorized to make the non-responsibility determination is the Director, Strategy, Performance and Administration. See World Bank Vendor Eligibility Policy at para. 2.1(j), <https://thedocs.worldbank.org/en/doc/eb2a500aa303af155590482c51f7a7d1-0180022017/original/Vendor-Elegibility-Policy.pdf>.

144. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(g); IFC Sanctions Procedures (2022) 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).

145. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(h); IFC Sanctions Procedures (2022) 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).

146. See, for example, Sanctions Board Decision No. 118 (2019) at para. 88; Sanctions Board Decision No. 121 (2019) at para. 33; Sanctions Board Decision No. 122 (2020) at para. 32; Sanctions Board Decision No. 123 (2020) at para. 39; Sanctions Board Decision No. 125 (2020) at para. 43; Sanctions Board Decision No. 127 (2020) at para. 39.

147. See, for example, Sanctions Board Decision No. 45 (2011) at para. 67; Sanctions Board Decision No. 55 (2013) at para. 83; Sanctions Board Decision No. 120 (2019) at para. 61; Sanctions Board Decision No. 128 (2020) at para. 44.

148. Sanctions Board Decision No. 133 (2021) at para. 41. See also Sanctions Board Decision No. 72 (2014) at para. 62.

149. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(i); IFC Sanctions Procedures (2022) 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).

- a. *Absence of remorse and failure to respect the sanctions process*: The Sanctions Board has applied aggravation when the respondent's conduct demonstrated lack of genuine remorse or acknowledgement of the inappropriateness of the misconduct.¹⁵⁰
 - b. *Non-cooperation in sanctions proceedings; 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.¹⁵¹ Thus, the Sanctions Board applied aggravation when it found that a respondent significantly changed his positions in his statements to INT during the investigation to his statements to the Sanctions Board at the hearing.¹⁵² In another case, the Sanctions Board found that aggravation was warranted when a respondent's actions before and during the proceedings reflected a consistent lack of candor. In that same case, the Sanctions Board found the respondent's admission of wrongdoing at the hearing to be belated and falling short of full acceptance of responsibility, thereby doing little to offset the respondent's otherwise uncooperative conduct.¹⁵³ Conversely, the Sanctions Board declined to apply aggravation for lack of candor when the respondent admitted to its role in a sanctionable practice and stated its willingness to accept criticism for the same.¹⁵⁴ Taking account of the basic principles of fairness and due process, the Sanctions Board has also declined to apply aggravation for lack of candor when it found that the respondents' denials of responsibility were reasonably presented in the usual course of argument and defense.¹⁵⁵
25. *Other mitigating factors*: Parties in sanction proceedings have asserted certain factors, and the Sanctions Board has identified some as being relevant to its analysis and potentially mitigating with respect to the final sanction.
- a. *Change in management or corporate identity*: The Sanctions Board has applied mitigation when the record demonstrated a corporate restructuring or other changes in the respondent's management, particularly with respect to the individuals involved in the misconduct.¹⁵⁶ However, the Sanctions Board has declined to apply aggravation when the respondent's asserted reorganization did not reflect changes in ownership, control, or management;¹⁵⁷ the corporate changes had no bearing on the respondent's culpability or responsibility for the sanctionable practice at issue;¹⁵⁸ or the respondent failed to provide evidence or details of the asserted structural reorganization.¹⁵⁹

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

151. See, for example, Sanctions Board Decision No. 63 (2014) at para. 121; 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. 125 (2020) at para. 48; Sanctions Board Decision No. 126 (2020) at para. 57; Sanctions Board Decision No. 134 (2021) at paras. 82-84.

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

153. Sanctions Board Decision No. 124 (2020) at para. 37.

154. Sanctions Board Decision No. 95 (2017) at para. 52.

155. Sanctions Board Decision No. 130 (2020) at para. 94; Sanctions Board Decision No. 136 (2022) at para. 65.

156. 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 when a respondent firm filed for bankruptcy, was subsequently acquired by a holding company, and underwent changes in leadership and management practices).

157. Sanctions Board Decision No. 83 (2015) at para. 104; Sanctions Board Decision No. 134 (2021) at para. 85.

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

159. Sanctions Board Decision No. 74 (2014) at para. 48; Sanctions Board Decision No. 134 (2021) at para. 85.

- b. *National debarment*: The Sanctions Board has considered any sanctions imposed on a respondent by the national agency implementing Bank-financed projects in that country.¹⁶⁰
 - c. *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.¹⁶¹
 - d. *Passage of time*: The Sanctions Board has considered as a mitigating factor the passage of a significant period of time from commission of the misconduct or from the Bank's awareness of the potential sanctionable practices to initiation of sanctions proceedings.¹⁶² According to the Sanctions Board, 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.¹⁶³ In considering the appropriate extent of mitigation on this basis, the Sanctions Board has assessed the significance of the delay, 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' possible contributions to the delay.¹⁶⁴
 - e. *Period of WBG debarment already served*: The Sanctions Board has considered the period of public debarment already served in determining the respondent's final sanction, such as when a respondent's Response was filed belatedly, after an Uncontested Notice of Sanctions Proceedings went into effect.¹⁶⁵
 - f. *Pressure to enter into corrupt arrangement*: The Sanctions Board applied mitigation when the record contained evidence showing that the respondent was coerced into agreeing to a corrupt arrangement.¹⁶⁶
26. *Neutral factors and factors that the Sanctions Board has noted or considered*: Parties to sanction proceedings have asserted certain factors, and the Sanctions Board has dismissed them for being neutral or having no bearing on the sanctioned party's culpability or responsibility in relation to the sanctionable practice¹⁶⁷ or has noted or considered them in its analysis.

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

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

162. See, for example, Sanctions Board Decision No. 125 (2020) at para. 45; Sanctions Board Decision No. 126 (2020) at para. 60; Sanctions Board Decision No. 133 (2021) at para. 43; Sanctions Board Decision No. 136 (2022) at para. 66; Sanctions Board Decision No. 137 (2022) at para. 69.

163. 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; Sanctions Board Decision No. 125 (2020) at para. 45; Sanctions Board Decision No. 129 (2020) at para. 62; Sanctions Board Decision No. 134 (2021) at para. 86.

164. 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; Sanctions Board Decision No. 134 (2021) at para. 86.

165. See, for example, Sanctions Board Decision No. 100 (2017) at para. 59; Sanctions Board Decision No. 105 (2017) at para. 34.

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

167. World Bank Sanctions Procedures (2016) at Section III.A, sub-paragraph 9.02(i); IFC Sanctions Procedures (2022) 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).

- a. *Absence of aggravating factors*: The Sanctions Board has consistently found that the absence of aggravating factors, even if proven, is a neutral fact that does not warrant mitigation.¹⁶⁸
- b. *Adverse impact*: The Sanctions Board has generally declined to consider in its sanctioning analysis the potential adverse impacts 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. The Sanctions Board has often noted that these potential adverse impacts do not appear related to respondents' culpability or responsibility for the misconduct.¹⁶⁹
- c. *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 these assertions do not appear to be related to the respondent's culpability or responsibility for the misconduct.¹⁷⁰
- d. *Continued performance or completion of contract or project*: The Sanctions Board has declined to find a respondent's purported satisfactory completion of the contract at issue to be persuasive grounds for mitigation.¹⁷¹ The Sanctions Board also declined to grant mitigation for a respondent's continued performance under the contract at issue.¹⁷² Similarly, the Sanctions Board found that mitigation is not warranted for a respondent's achievement of project milestones or asserted commitment to delivering on project objectives.¹⁷³ The Sanctions Board has clarified that, although delays in or incomplete performance of a project as a result of a respondent's misconduct may be considered an aggravating factor, the satisfaction or completion of contractual obligations is not a mitigating factor in itself.¹⁷⁴
- e. *Generalized policy considerations*: The Sanctions Board has declined to consider in its sanctioning analysis generalized policy considerations, such as the Bank's

168. See, for example, Sanctions Board Decision No. 100 (2017) at para. 61; Sanctions Board Decision No. 106 (2017) at para. 48; Sanctions Board Decision No. 118 (2019) at para. 91; Sanctions Board Decision No. 122 (2020) at para. 36; Sanctions Board Decision No. 123 (2020) at para. 40; Sanctions Board Decision No. 124 (2020) at para. 39; Sanctions Board Decision No. 126 (2020) at para. 59; Sanctions Board Decision No. 128 (2020) at para. 47; Sanctions Board Decision No. 134 (2021) at para. 87.

169. See, for example, Sanctions Board Decision No. 53 (2012) at para. 69 (expected negative impact of debarment on respondent's business operations); Sanctions Board Decision No. 55 (2013) at para. 85 (alleged substantial lost revenues due to temporary suspension); Sanctions Board Decision No. 61 (2013) at para. 50 (expected impact on borrower's market and Bank's choice of partners); Sanctions Board Decision No. 66 (2014) at para. 48 (impact of debarment on reputation of respondent's staff); Sanctions Board Decision No. 86 (2016) at para. 55 (personal hardship and adverse financial consequences); Sanctions Board Decision No. 122 (2020) at para. 35 (impact of debarment on respondent and its employees' families in a high-poverty area); Sanctions Board Decision No. 124 (2020) at para. 40 (personal and professional hardship); Sanctions Board Decision No. 125 (2020) at para. 47 (personal and professional hardship); Sanctions Board Decision No. 126 (2020) at para. 58 (possible reputational damage and loss of business opportunities); Sanctions Board Decision No. 128 (2020) at para. 46 (harm to respondent and its employees); Sanctions Board Decision No. 130 (2020) at para. 96 (expected impact on borrower's market).

170. See, for example, Sanctions Board Decision No. 97 (2017) at para. 79; Sanctions Board Decision No. 106 (2017) at para. 50; Sanctions Board Decision No. 115 (2019) at para. 71.

171. Sanctions Board Decision No. 53 (2012) at para. 67.

172. Sanctions Board Decision No. 52 (2012) at para. 46.

173. Sanctions Board Decision No. 137 (2022) at para. 71.

174. Sanctions Board Decision No. 53 (2012) at para. 67; Sanctions Board Decision No. 54 (2012) at para. 44; Sanctions Board Decision No. 137 (2022) at para. 71.

development focus and purpose of the sanctions system, observing that these considerations do not appear to be related to the respondent's culpability or responsibility for the misconduct at issue in that case.¹⁷⁵

- f. *Insufficient evidence of one of the allegations of misconduct*: In one case, the respondent requested that the Sanctions Board consider as a mitigating factor the fact that INT had not substantiated one of its allegations of sanctionable practice against the respondent. The Sanctions Board declined to apply mitigation on this basis, clarifying that insufficiency of evidence with respect to one allegation did not necessarily have any bearing on the respondent's culpability or responsibility for another allegation of misconduct.¹⁷⁶
- g. *Other contractual violations or improper conduct*: The Sanctions Board has declined to apply aggravation when the respondents purportedly committed other contractual violations or engaged in improper conduct distinct from the misconduct at issue.¹⁷⁷
- h. *Personal health condition*: In one case, the Sanctions Board took note of a respondent individual's health issues at the time of the misconduct that were corroborated by medical records and other evidence.¹⁷⁸
- i. *Record of past 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 these do not appear to be related to the respondent's culpability or responsibility for the misconduct.¹⁷⁹ Similarly, the Sanctions Board declined to apply any mitigating credit for a respondent's business conduct or the assertion that the respondent's business operations were in compliance with domestic and international laws and standards.¹⁸⁰
- j. *Role as "designated loser" in collusion case*: In cases in which collusion is the alleged misconduct, it is often demonstrated that respondents conspired with each other to bid for projects in such a manner that one respondent's proposal was likely to win the bid, and the other's was likely to lose. Certain respondents have sought to assert, as a mitigating factor, their status as "designated loser." In one of the earliest cases, the Sanctions Board considered the respondent's status as "designated loser" in a collusion case.¹⁸¹ However, in a more recent case, the Sanctions Board declined to apply the mitigation that a respondent requested because of its status as a "designated loser." The Sanctions Board observed that the earlier case had been decided under a version of the Sanctions Procedures that did not explicitly require a link between a sanctioning factor and the sanctioned party's culpability or responsibility in relation to the sanctionable practice alleged, which link was now required under the applicable Sanctions Procedures.¹⁸²

175. Sanctions Board Decision No. 79 (2015) at para. 58.

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

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

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

179. 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; Sanctions Board Decision No. 122 (2020) at para. 37; Sanctions Board Decision No. 128 (2020) at para. 48; Sanctions Board Decision No. 131 (2021) at para. 42.

180. Sanctions Board Decision No. 127 (2020) at para. 41.

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

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

k. *Proportionality*

- i. *Proportionality across participants in the misconduct*: In cases involving multiple respondents or affiliates, the Sanctions Board has considered the proportionality of sanctions among parties based on their respective roles in the misconduct.¹⁸³
- ii. *Proportionality across contesting and non-contesting respondents*: The Sanctions Board has noted that, although the SDO's recommendations are not binding on the Sanctions Board, for the sake of proportionality, the Sanctions Board's determination of sanctions for contesting respondents may consider the SDO's recommended sanctions as imposed on non-contesting respondents in the same matter.¹⁸⁴
- iii. *Proportionality with settling parties*: In its sanctioning analysis, the Sanctions Board has declined to consider the sanctions agreed between settling parties. The Sanctions Board has observed that considerations extrinsic to the sanctioned party's relative culpability or responsibility for the misconduct at issue may shape the final sanctions in settlements.¹⁸⁵ The Sanctions Board previously noted that, with respect to settlements reached before initiation of sanctions proceedings, little or no information is available to the Sanctions Board about the facts, allegations, or negotiations underlying those settlements.¹⁸⁶
- iv. *Proportionality with past sanctions cases*: Generally, the Sanctions Board has explained that its choice of sanction is based on a case-by-case analysis tailored to the facts and circumstances presented and informed by applicable past precedent, the proposed baseline sanction, and the sanctioning factors established in the Sanctions Procedures and Sanctioning Guidelines.¹⁸⁷ For example, in one case, the Sanctions Board relied expressly on past sanctions cases in determining the sanction to be imposed, noting that the respondent had presented "no persuasive arguments why the Sanctions Board should not apply similar sanctions for similar misconduct in this case."¹⁸⁸ By contrast, in another case, the Sanctions Board rejected the respondent's assertion that, in past sanctions cases, large companies from the developed world had been given greater opportunity to negotiate settlement agreements with INT than smaller companies from the developing world, such as the respondent. Citing Section 9.02(i) of the Sanctions Procedures, which "expressly limits the Sanctions Board's sanctioning analysis to considerations reasonably relevant to a respondent's own culpability or responsibility for the sanctionable practice," the Sanctions Board found that the respondent had failed to establish the relevance of its argument under this framework.¹⁸⁹

183. 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.

184. See, for example, 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.

185. 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; Sanctions Board Decision No. 125 (2020) at para. 46; Sanctions Board Decision No. 129 (2020) at para. 63.

186. Sanctions Board Decision No. 56 (2013) at para. 82.

187. See, for example, Sanctions Board Decision No. 71 (2014) at para. 106; Sanctions Board Decision No. 79 (2015) at para. 57.

188. Sanctions Board Decision No. 49 (2012) at para. 46.

189. Sanctions Board Decision No. 102 (2017) at para. 87.

- v. *Proportionality between misconduct and recommended sanction*: In cases in which 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, considering all potential aggravating and mitigating factors for each respondent.¹⁹⁰

190. 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.

Concluding Remarks from the Executive Secretary

EXECUTIVE SECRETARY TO THE WBG SANCTIONS BOARD JODI T. GLASOW

Since its inception in 2007 as the second and final decision maker of the WBG's two-tier sanctions system, the Sanctions Board has led the way among international financial institutions in adjudicating allegations of sanctionable misconduct. The published decisions of the Sanctions Board continue to influence other like organizations and are the subject of discussions in scholarly, legal, and international development communities. In recognition of the broader educational value of the Sanctions Board's findings, the Sanctions Board periodically publishes and updates a digest of its decisions that illustrate the legal principles applied in reaching its decisions. This third edition of the WBG Sanctions Board Law Digest continues in this endeavor, highlighting key aspects of the Sanctions Board's procedures, reasoning, and findings.



The Sanctions Board plays a critical role in promoting transparency, efficiency, and fairness of the WBG's sanctions regime. As this Digest illustrates, the shift to an all-external Sanctions Board membership in 2016 enhanced the Sanctions Board's compliance with the obligation to conduct itself with fairness, independence, and impartiality. The Digest further demonstrates that the Sanctions Board has, not only through its procedures, but also in its decisions, underlined the rigor employed to ensure absence of conflicts of interest among Sanctions Board members. Of equal significance, the Digest underscores the critical importance of due process protections such as the prohibition against *ex parte* communications.

Procedural flexibility continues to be a hallmark of the work of the Sanctions Board. As discussed in the Digest, this flexibility proved essential when, like the rest of the world, the global COVID-19 pandemic affected the operations of the Sanctions Board. Owing to the travel and other logistical challenges brought about by COVID-19, the Sanctions Board conducted all its hearings and deliberations virtually in fiscal year 2021. The easing of COVID-19-related restrictions in fiscal year 2022 facilitated the Sanctions Board's use of hybrid formats, in which certain deliberations and hearings were held virtually, others were conducted in person, and certain cases called for a combination of virtual and in-person deliberations and hearings. This flexibility ensured that, despite COVID-19-related constraints, sanctions cases continued to be reviewed promptly, parties were provided with a full opportunity to be heard, and decisions were issued in a timely manner, all while remaining sensitive to cost implications for the parties and the WBG.

We are proud to present this third edition of the Sanctions Board's Law Digest. The Sanctions Board's growing body of case law continues to serve as a critical component of the international community's commitment to justice and accountability in publicly financed projects. I would like to thank the Sanctions Board members who contributed to this body of case law; the Secretariat staff; and the former Executive Secretary, Giuliana Dunham-Irving, who oversaw management of the Secretariat from July 2017 through December 2022.

APPENDIX A

Current and Past Members of the Sanctions Board

The Sanctions Board consists of seven members, all external to the WBG: three members appointed for IBRD/IDA, two for IFC, and two for MIGA. The WBG Executive Directors appoint Sanctions Board members, who 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 6 years. The members consider specific sanctions cases in panel (3 persons) or plenary (5+ persons) sessions, irrespective of their type of appointment (Bank, IFC, or MIGA). This chapter provides the backgrounds of current Sanctions Board members and lists past members and chairs, along with their countries of nationality.

CURRENT SANCTIONS BOARD MEMBERS

World Bank Members

Ms. Maria Vicien Milburn (Chair)

Ms. Maria Vicien Milburn, an Argentinian and Spanish national, has served on the WBG 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 UN Educational, Scientific and Cultural Organization (2009-2014) and Director of the General Legal Division of the UN Office of Legal Affairs (2004-2009). She provided legal advice on all issues relating to the operation of the two organizations worldwide.

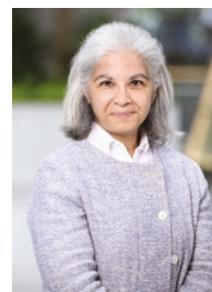
She oversaw all commercial contracting, directed the conduct of all litigation and arbitration, and advised on international treaties and conventions. Previously, she served for nearly 15 years as Registrar of the UN Administrative Tribunal. Since retirement from the UN in 2014, Ms. Vicien Milburn has 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 placed 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 UN 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 (LLM, 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 WBG Sanctions Board since July 2019. Ms. Yasseen is a partner with the Geneva Law Firm MENTHA and 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 consultant to the WTO/International Trade Centre (ITC). She has been acting as counsel and arbitrator (sole, chair, co-arbitrator) in ad hoc and institutional arbitration proceedings under various rules. She was a member of the Ad Hoc Division of the Court of Arbitration for Sport to the XXXI Olympiad—the Rio 2016 Olympic Games. She is a member of several panels and associations, including the ICC Arbitration Commission, where she was an active member of the task forces on the revision of the ICC Rules of Arbitration; States, State Entities, and ICC arbitration; and Emergency Arbitrator Proceedings; and on the International Bar Association (IBA) task force drafting the Rules for Investor-State Mediation. She is a member of the International Law Association International Commercial Arbitration Committee. Ms. Yasseen is also a regular delegate to the UNCITRAL Commission and Working Group II and III sessions, including those on transparency in treaty-based investor-State arbitration (the transparency rules and the Mauritius Convention), enforcement of settlement agreements (the Singapore Convention), and the current sessions on the investor-state dispute settlement reform. She has co-authored the ITC contractual and incorporated joint-venture model agreements and their user’s guide, published in the UN Conference on Trade and Development/WTO Trade Law series in Geneva. Ms. Yasseen holds degrees in Law, History and Literature from the University of Geneva and an LLM 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).



Mr. Philip Daltrop

Mr. Philip Daltrop, a U.K. and German national, has served on the Sanctions Board since October 2022. He has 35 years of experience as an international lawyer, mostly spent in a variety of legal, procurement, and integrity functions at several multilateral development banks. He worked in Manila for the Asian Development Bank for 20 years, retiring as Deputy General Counsel in 2011 after also heading the Asian Development Bank’s procurement, integrity, and internal audit offices. Since then, he has worked as a freelance legal consultant, based



in London and Jakarta, undertaking assignments in these areas for the World Bank, Asian Infrastructure Investment Bank, and other organizations. Earlier in his career, he worked for 10 years in the London, Brussels, and Tokyo offices of Allen & Overy; in the legal department of the U.K. Foreign and Commonwealth Office; as a finance lawyer for the Inter-American Development Bank; and as a project lawyer for the World Bank. He holds an undergraduate degree in Philosophy, Politics and Economics (First Class) and a master's in International Human Rights Law (with Distinction), both from Oxford University. He completed postgraduate legal examinations and training as an English solicitor in London.

IFC Members

Ms. Adedoyin Rhodes-Vivour

Mrs. Adedoyin Rhodes-Vivour, a Nigerian national, has served on the WBG Sanctions Board since November 2020. Mrs. Rhodes-Vivour, SAN, C.Arb has practiced law for nearly 40 years, specializing in international arbitration, commercial law, litigation and various forms of alternative dispute resolution. She is a graduate of the University of Lagos, Nigeria (LLB, LLM) and King's College London, University of London (MA in International Peace and Security with merit). Mrs. Adedoyin is a British Chevening Scholar and awardee of the U.S. Information Services Young African Leaders Programme (1990). She is a Fellow and Chartered Arbitrator of the Chartered Institute of Arbitrators United Kingdom. She is a Centre for Effective Dispute Resolution [UK] accredited mediator. Mrs. Rhodes-Vivour is a practicing African International Arbitrator and Senior Advocate of Nigeria. She is a former member of the Permanent Court of Arbitration, The Hague, The Netherlands. She is a member of the ICC International Court of Arbitration, ICC Arbitration and Alternative Dispute Resolution Commission, ICC Africa Commission, and International Commercial Arbitration Committee of the International Law Association. She acts as an arbitrator and counsel in ad hoc and institutional arbitrations and is listed on the panel and database of arbitrators of various leading international arbitration Institutions. She is recognized as one of the world's preeminent practitioners in the field. She is recognized in publications including *Guide to the World's Leading Commercial Arbitration Experts* (expert guides) and *Who's Who Legal*. She is described as an arbitrator who "garners strong praise from market sources for her first-class practice" and is adjudged as "providing clients with a wealth of expertise as both arbitrator and counsel across the financial services and energy sectors." She is recognized as one of the female pioneers in dispute resolution in the 2nd Edition of *Women Pioneers in Dispute Resolution* published by the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH on behalf of the German Federal Ministry for Economic Cooperation and Development with the co-operation of ArbitralWomen. Mrs. Rhodes-Vivour is a Vice President of the London Court of International Arbitration African Users Council and a member of the Singapore International Arbitration Centre (SIAC) Users Council. She is the immediate past chair of the Chartered Institute of Arbitrators UK Nigeria Branch and a board member of the African Arbitration Association. She is an approved tutor of the Chartered Institute of Arbitrators and is a Chartered Institute of Arbitrators Regional Pathway Leader for Africa. Mrs. Rhodes-Vivour is a member of ArbitralWomen and co-chair of the Equal Representation in Arbitration Pledge African Subcommittee. She is the author of the book *Commercial Arbitration Law and Practice in Nigeria through the Cases* published by LexisNexis, South Africa.



Mr. Cavinder Bull

Mr. Cavinder Bull, a Singaporean national, has served on the WBG 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 and international arbitration, acting as counsel and as arbitrator in commercial and investor-state arbitrations. Mr. Bull is Vice-President of SIAC Court of Arbitration and was the Deputy Chair of SIAC from 2010 to 2017. He is a member of the Governing Board of the International Council for Commercial Arbitration, Vice-President of the Asian Pacific Regional Arbitration Group, and a member of the Asian Business Law Institute Advisory Board. Mr. Bull graduated with First Class Honors in law from Oxford University and holds an LLM 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, the Chief Justice of Singapore appointed him as Senior Counsel.



MIGA Members

Mr. Eduardo Zuleta

Mr. Eduardo Zuleta, a Colombia national, has served on the WBG Sanctions Board since November 2020. Mr. Zuleta serves as arbitrator in commercial and investment disputes, including annulment committees under the International Centre for Settlement of Investment Disputes (ICSID) Convention. Mr. Zuleta presently serves as Vice President of the ICC Court of Arbitration. The chair of the ICSID Administrative Council appointed him to the ICSID panel of arbitrators in 2011, and the Republic of Colombia appointed him as a member of the ICSID panel of arbitrators in 2018. Mr. Zuleta was co-Chair of the Arbitration Committee of the IBA, where he led the amendments to the *IBA Guidelines on Conflicts of Interest in International Arbitration* and the adoption of the *IBA Guidelines for Party Representation in International Arbitration*. Mr. Zuleta is a member of the Governing Board of the International Council for Commercial Arbitration, a member of the Advisory Board of the New York International Arbitration Center, a past member of the court of arbitration of the London Court of International Arbitration, and founder and past president of the Latin American Arbitration Association. Mr. Zuleta is listed as an arbitrator on the China International Economic and Trade Arbitration Commission, Hong Kong International Arbitration Center, Singapore International Arbitration Center, and various arbitration centers in Latin America. Mr. Zuleta holds a law degree from the Universidad del Rosario, Bogotá, D.C., Colombia, where he graduated with honors, best student in his class; a Master of Laws in Financial Law, by the same law school; and a master's degree, with merit, in Commercial and Investment Arbitration, Investment law, and Treaty law, with specialization in International Dispute Resolution, from Queen Mary University of London. Mr. Zuleta is a partner at Zuleta Abogados Asociados. He was a partner in a Colombian law firm and a partner at Baker&Mckenzie, where he had an extensive practice in mergers and acquisitions, project finance, and international finance. Mr. Zuleta has written extensively on commercial and investment arbitration and has been invited as a lecturer and panelist to several law schools worldwide. He is an adjunct professor at Georgetown University Law Center.



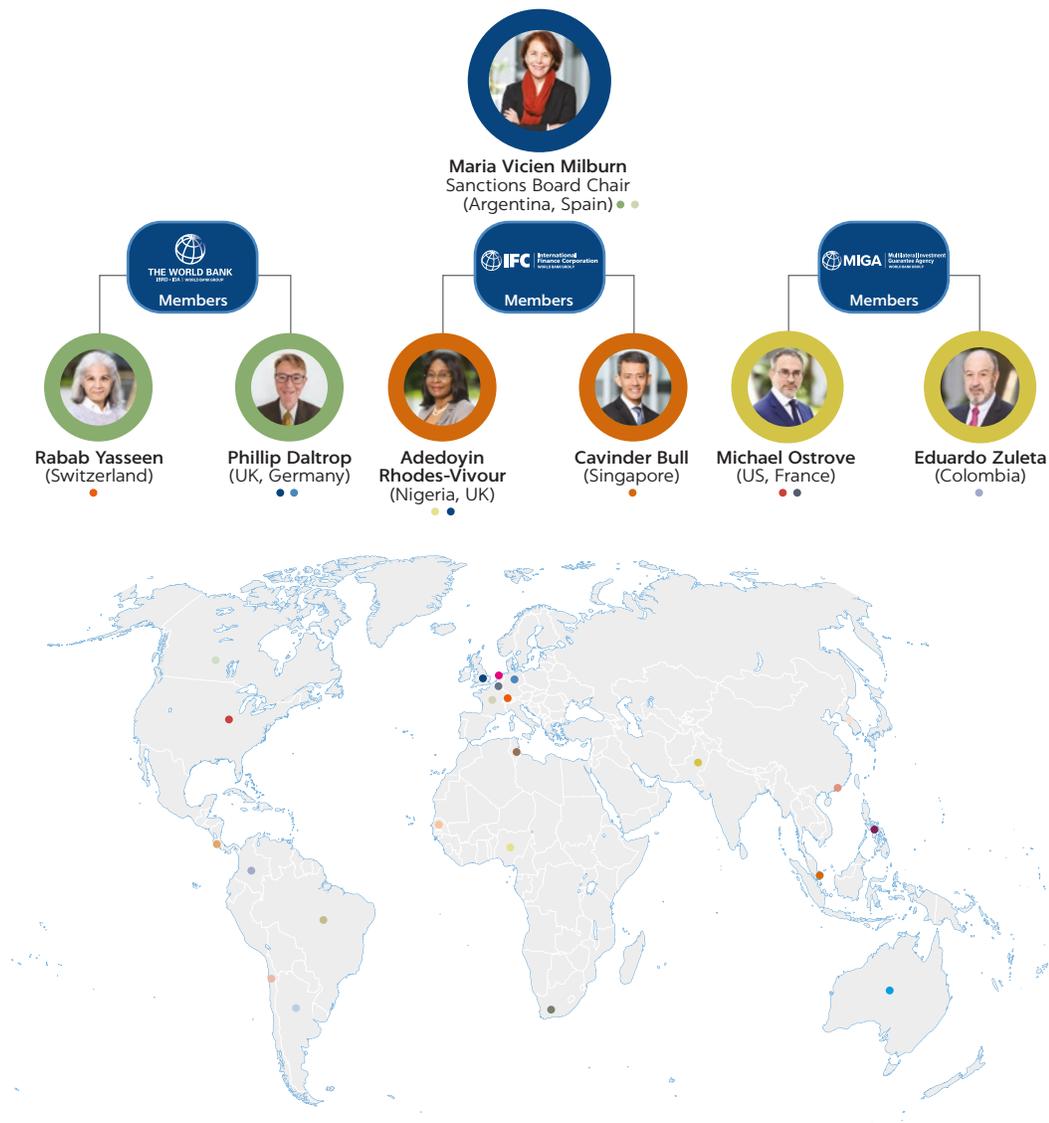
Mr. Michael Ostrove

Mr. Michael Ostrove, a U.S.–French dual national, has served on the WBG Sanctions Board since December 2021. Mr. Ostrove is a partner in the DLA Piper law firm and is Global Co-Chair of their International Arbitration Group. He serves as a Vice-President of the ICC International Court of Arbitration. Admitted to the Paris and New York bars, he has more than 25 years of experience with international commercial arbitration, investment arbitration, and other public international law disputes, as well as litigation before domestic and regional courts, such as the Cour Commune de Justice et d'Arbitrage and the Court of Justice of the European Union. Mr. Ostrove routinely acts as lead advocate in arbitrations on behalf of sovereign states, international organizations, commercial entities, and individuals. He has broad experience in corruption investigations on behalf of multinational corporations and state authorities. Mr. Ostrove sits as an arbitrator, and he is an adjunct professor of international arbitration in a master's program at the Université de Paris II. He is a member of the Advisory Committee to the Wayne State University Law School Program for International Legal Studies and of the Executive Committee of the Foundation for International Arbitration Advocacy. Mr. Ostrove speaks and publishes frequently on international arbitration and investment law and is regularly named as a leading practitioner by the specialized press. Mr. Ostrove earned his BA from Yale University, magna cum laude, and his JD from the University of California at Berkeley, with Order of the Coif honors.



MAP A.1

Nationalities of past and current Sanctions Board members



PAST SANCTIONS BOARD MEMBERS

IBRD/IDA

- Mr. John Murphy, South Africa (Chair)
- 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, 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

- Ms. Olufunke Adekoya, Nigeria and United Kingdom
- 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

MIGA

- Mr. Mark Kantor, United States
- Mr. Alejandro A. Escobar, Chile and United States
- 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

Source: World Bank.

APPENDIX B

Key Documents Relating to the WBG Sanctions Framework and Process

The documents in the table below can be accessed at:

<https://www.worldbank.org/en/about/unit/sanctions-system#3>

DOCUMENT TITLE	VERSION
World Bank Sanctions Procedures	October 15, 2006
World Bank Sanctions Procedures	May 11, 2009 (as amended June 25, 2010)
World Bank Sanctions Procedures	September 15, 2010
World Bank Sanctions Procedures	January 1, 2011 (as amended July 8, 2011)
World Bank Sanctions Procedures	April 15, 2012
World Bank Sanctions Procedures	June 28, 2016
IFC Sanctions Procedures	January 1, 2007
IFC Sanctions Procedures	November 1, 2012
IFC Sanctions Procedures	January 2022
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
World Bank Procurement Regulations for Investment Project Financing Borrowers (for projects after July 1, 2016)	First published, July 2016 Fourth edition, November 2020
Anti-Corruption Guidelines	July 1, 2016
Terms and Conditions of the World Bank Voluntary Disclosure Program	August 16, 2006
Cross-Debarment Agreement	April 9, 2010
Summary of WBG Integrity Compliance Guidelines	2011
Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases (No. 2010/1)	November 15, 2010
WBG Sanctions Regime—Information Note	2011
WBG Sanctions Regime—Overview	August 10, 2010
Report Concerning the Debarment Process of the World Bank, Thornburgh et al.	August 14, 2002

APPENDIX C

Key Offices and Contacts

WBG Sanctions Board

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

Head: Ms. Jodi Tuer Glasow, Executive Secretary to the Sanctions Board

Contact: sanctionsboard@worldbank.org

WBG General Counsel and World Bank Legal Vice Presidency

Webpage: https://www.worldbank.org/en/about/unit/legal_vice_presidency

Head: Mr. Christopher Stephens, Senior Vice President and WBG General Counsel

Contact: legalhelpdesk@worldbank.org

WBG Integrity Vice Presidency

Webpage: <https://www.worldbank.org/en/about/unit/integrity-vice-presidency>

Head: Mr. Mouhamadou Diagne, Vice President, Integrity

Contact: Mr. Daniel Nikolits, External Affairs Officer, dnikolits@worldbankgroup.org

WBG Integrity Compliance Office

Webpage: <https://www.worldbank.org/en/about/unit/integrity-vice-presidency>

Head: Ms. Lisa K. Miller, Head, Integrity Compliance, Integrity Vice Presidency

Contact: integritycompliance@worldbank.org

World Bank Office of Suspension and Debarment

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

Head: Mr. Jamieson Andrew Smith, World Bank Chief Suspension and Debarment Officer

Contact: osd@worldbank.org

Sanctions at IFC

Webpage: https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ac_home/sanctionable_practices

Head: Mr. Ramit Kumar Nagpal, Vice President and General Counsel

Contact: Mr. Karim Suratgar, IFC Evaluation and Suspension Officer: ksuratgar@ifc.org

Ms. Ceri Lawley, IFC Chief Compliance Officer: clawley@ifc.org

Sanctions at MIGA

Webpage: <https://www.miga.org/integrity>

Head: Ms. Aradhana Kumar-Capoor, Director and General Counsel

Contact: Ms. Shamali De Silva, MIGA Evaluation and Suspension Officer: sdesilval@worldbank.org

Mr. Ivan Illescas, MIGA Senior Counsel: iillescas@worldbank.org

Sanctions Relating to Private Sector IBRD/IDA Projects

Contact: Ms. Akiko Ogawa, Evaluation and Suspension Officer for IBRD/IDA Guarantees and Carbon Finance: aogawa@worldbank.org

APPENDIX D

Definitions of Sanctionable Practices

This appendix to the Law Digest presents various definitions of sanctionable practices that WBG member institutions adopted since 1995.

WBG¹

The following definitions of Sanctionable Practices apply to cases brought under the 2016 Procurement Framework, applicable to projects financed after July 1, 2016:

- i. “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- ii. “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;
- iii. “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;
- iv. “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;
- v. “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 provided for under paragraph 2.2 e. below.²

Note: The term “party” is not defined.

1. World Bank Procurement Regulations for Investment Project Financing (IPF) Borrowers (Fourth Edition, November 2020) at Annex IV, para. 2.2.a, available at: <https://thedocs.worldbank.org/en/doc/178331533065871195-0290022020/original/ProcurementRegulations.pdf>.

2. Paragraph 2.2 e provides that the Bank “[r]equires 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.”

IBRD/IDA³

A. 2006 DEFINITIONS

The following definitions of Sanctionable Practices apply to cases brought under the October 2006, May 2010, January 2011 and July 2014 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;^[19]

“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;^[20]

“Corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;^[21]

“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;^[22] 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.

[19] 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.

[20] 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.

[21] 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.

[22] 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.

3. World Bank Sanctions Procedures (2012) at Appendix 1; World Bank Sanctions Procedures (2016) at Section II(r).

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

“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.

IFC⁴

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.

4. IFC Sanctions Procedures (2022) at Annex A.

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 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^[22] 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.

[22] 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.

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.

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.

MIGA⁵**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.

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 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.

5. MIGA Sanctions Procedures (2013) at Annex A.

2. 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 IFC^[15], MIGA, or PRG^[16] 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.

[15] “IFC” means the International Finance Corporation, a member of the World Bank Group.

[16] “PRG” means the Partial Risk Guarantee operations conducted by the Project Finance Group of the International Bank for Reconstruction and Development.

3. 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.

4. 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.

5. 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 PROJECTS⁶

Bank Private Sector Anti-Corruption Guidelines 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

6. World Bank Private Sector Sanctions Procedures (2013) at Annex A.

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.

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* of the World Bank Group Sanctions Board presents structured summaries of the Sanctions Board's precedent as set out in 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.



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