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# THE WORLD BANK GROUP:
# MUTUAL ENFORCEMENT OF DEBARMENT DECISIONS AMONG MULTILATERAL DEVELOPMENT BANKS

**March 3, 2010**

## ABBREVIATIONS AND ACRONYMS

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| AfDB | African Development Bank |
| AsDB | Asian Development Bank |
| EBRD | European Bank for Reconstruction and Development |
| ED | Executive Director |
| EIB | European Investment Bank |
| IADB | Inter-American Development Bank |
| IBRD | International Bank for Reconstruction and Development |
| IDA | International Development Association |
| IFC | International Finance Corporation |
| IFI | International Financial Institution |
| IMF | International Monetary Fund |
| INT | Institutional Integrity Vice Presidency |
| LEG | Legal Vice Presidency |
| MD | Managing Director |
| MIGA | Multilateral Investment Guarantee Agency |
| OPCS | Operations Policy and Country Services |
| WBG | World Bank Group |

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# THE WORLD BANK GROUP:
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# AMONG MULTILATERAL DEVELOPMENT BANKS

## INTRODUCTION

1. This paper sets forth Management's proposal to establish a cross-debarment regime, whereby firms and individuals debarred by one Multilateral Development Bank (MDB) may be sanctioned, for the same misconduct, by other MDBs participating in the regime. The paper is organized according to the following Sections: (i) background; (ii) rationale for establishing a cross-debarment regime; (iii) associated risks; (iv) the Cross-Debarment Agreement; and (v) recommendations and next steps.

## I. BACKGROUND

2. In February 2006, the Joint International Financial Institution Anti-Corruption Task Force agreed to work towards a "consistent and harmonized approach to combat corruption in the activities and operations of the member institutions," recognizing that "a unified and coordinated approach is critical to the success of the shared effort to fight corruption and prevent it from undermining the effectiveness of their work" (hereinafter "Uniform Framework").[1] It was agreed that the institutions would, among other initiatives, "explore further how compliance and enforcement actions taken by one institution can be supported by the others."[2] This agreement was predicated on the understanding that "mutual recognition of … enforcement actions would substantially assist in deterring and preventing corrupt practices." Those MDBs taking part in the Task Force were the African Development Bank (AfDB), the Asian Development Bank (AsDB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the International Monetary Fund (IMF), the Inter-American Development Bank (IADB), and the World Bank Group (WBG). The Uniform Framework was signed by the Heads of the participating institutions in September 2006.

3. In early 2009, some amongst the MDBs that comprised the Task Force (AfDB, AsDB, EBRD, EIB, IADB, and the WBG)[3] expressed an interest in exploring the establishment of a mutual enforcement of sanctions regime. A number of meetings were held between representatives of the participating MDBs.[4]

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[1] Uniform Framework for Preventing and Combating Fraud and Corruption, in *International Financial Institutions Anti-Corruption Task Force*, September 2006 at p. 1.

[2] Id., pp. 2-3.

[3] The IMF has not taken part in the discussions because it does not have a mandate to investigate allegations of fraud and corruption.

[4] Representatives included staff from the integrity and legal offices of the MDBs. The World Bank Group also included representatives from OPCS, IFC and MIGA.

4. Initially the MDBs considered the establishment of a Joint Sanctions Board (JSB), which it was believed could play an important role in facilitating a unified approach to decreasing fraud and corruption in MDB-supported projects. However, a number of hurdles were identified. The primary concerns centered on: (i) the requirement that each MDB would have to relinquish independent control over their sanctions framework (e.g., independent oversight, rule making, etc.); (ii) the strong desire of MDBs to maintain some level of discretion and control with respect to the decision-making process in individual cases arising from their projects; and (iii) the potential impact a joint sanctions process might have on the privileges and immunities of individual MDBs. In light of these concerns, it was agreed that a logical next step towards further harmonization of sanctions processes would be the creation of an effective cross-debarment regime.

5. During the course of 2009 and 2010, representatives of five of the six MDBs that met in early 2009 – the AfDB, AsDB, EBRD, IADB and the WBG – met to discuss and agree on the critical elements of a cross-debarment regime.[5] The result has been an agreement in principle on a document entitled Agreement for Mutual Enforcement of Debarment Decisions (hereinafter "Cross-Debarment Agreement"). The draft Cross-Debarment Agreement is attached as Annex A to this paper for information.

6. The draft Cross-Debarment Agreement contains the following key elements that form the basis for the proposed cross-debarment regime: (i) core due process principles (hereinafter "Core Principles") that underlie the sanctions system of each of the MDBs that can participate in the Agreement; (ii) conditions for automatic recognition of debarment decisions under the Agreement; (iii) limited opt-out provisions; and (iv) implementation modalities to enable operation of the Agreement. Each of these elements is discussed in greater detail in Section IV, below. Also discussed in Section IV is an explanation as to how cross-debarment would work in practice.

## II. RATIONALE FOR THE ESTABLISHMENT OF A CROSS-DEBARMENT REGIME

7. As recognized in the 2006 Uniform Framework, cross-debarment among MDBs would greatly enhance deterrence and prevention of corrupt practices, thus advancing and strengthening integrity efforts and safeguarding development resources from corrupt participants. In addition, cross-debarment would support consistency of sanctions across MDBs and harmonization of due process and sanctioning standards. It would also address reputational risks associated with financing contracts with participants sanctioned by other MDBs.

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[5] The EIB will not join the group of participating institutions at the present time. Its sanctions system is still in the development stage and, when EIB does impose sanctions, its debarment decisions will be subject to review by courts and institutional bodies within the European Union (EU). Therefore, if EIB were to cross-debar based on the debarments of another MDB, including the WBG, the debarment could be subject to review by an EU court or institutional body. Under these circumstances, it was agreed that it was premature to include the EIB in the cross-debarment regime. The EIB is continuing to participate in the discussions amongst the Banks and is reviewing how it might join the regime at a later time.

8. Currently, each of the MDBs that has taken part in cross-debarment discussions has a separate sanctions process. Other than the EBRD, none of the MDBs has a process in place for cross-debarring – whereby the sanctions imposed by one MDB would be recognized by any other MDB. Consequently, sanctioned parties could continue to do business with other MDBs and potentially engage in further misconduct in relation to contracts financed by fellow MDBs. This situation could result in further prejudice: (i) to the borrowing clients; (ii) to donors, many of which overlap on the Boards of MDBs; and (iii) of most concern, to the poor, who are intended to be the ultimate beneficiaries of the work conducted by all MDBs. Moreover, the MDBs are faced with serious reputational risks for continuing to engage with firms and individuals found by a sister institution to have committed acts of fraud or corruption.

9. Cross-debarment would also significantly enhance the deterrent effect of sanctions by any one MDB. Cross-debarment would effectively multiply the economic impact of a debarment on a firm or individual by foreclosing the possibility of the firm or individual winning contracts with the other MDBs.

10. Further, smaller, regional MDBs, would likely be more willing to take part in a cross-debarment regime than a JSB – due to the same hurdles referenced above in paragraph 4. To this end, the WBG and the other MDBs have already commenced working with smaller, regional MDBs, to help them develop and implement adequate anti-corruption programs. Significantly, some of these MDBs have expressed interest in participating in a cross-debarment regime. The addition of other MDBs would be a positive development which would further strengthen deterrence, harmonization and collaboration – all key components in the fight against fraud and corruption. Of course, these MDBs would need to demonstrate that they have investigative, due process and sanctions systems in place that would meet the standards set out in the Cross-Debarment Agreement.

11. Under the proposed cross-debarment regime, it is anticipated that each MDB will continue to conduct its own independent investigations. However, the possibility of cross-debarment will substantially increase incentives for enhanced sharing of information and joint investigations.[6] In this respect, it is anticipated that the regime will lead to further cooperation and collaboration among the MDBs and possibly a more systematized exchange of investigative data. For example, if two or more MDBs are investigating the same company on different projects and on the basis of different allegations, the MDBs will likely agree among themselves which institution should take a case forward to sanctions (i.e., which MDB has the strongest and most egregious case) and thus potentially trigger a cross-debarment. Likewise, if two or more MDBs are *considering* investigating the same company on different projects and on the basis of

[6] The term "joint investigations" does not mean that a single investigation will be carried out jointly. Rather, it means that each organization will carry out its own investigation 'in parallel' with the other organization. This should result in enhanced collaboration and information sharing, which should in turn expedite investigations.

different allegations, the MDBs will likely decide who has the best evidence and the greatest likelihood of substantiating a case.[7]

12. Cross-debarment represents something of a departure from the historical basis for sanctions, which focuses exclusively on the use of the Bank loan proceeds and the Bank's fiduciary duty to ensure their proper use under the Articles of Agreement.[8] The basis for sanctions as set forth in the Procurement, Consultant and Anti-Corruption Guidelines has been articulated in terms of sanctionable practices committed in connection with Bank-financed contracts and/or the use of Bank loan proceeds. But Management is of the view that cross-debarment also serves to fulfill the Bank's fiduciary duty by enhancing the effect of its own sanctions as mentioned above. Furthermore, it serves to reduce fiduciary risk to Bank financing by excluding firms and individuals which have been found to have engaged in sanctionable practices, even if those practices have not (yet) been committed in connection with a Bank loan.

## III. ASSOCIATED RISKS

13. The primary risks arising from this proposal are: (i) cross-debarment could have a chilling effect on bidders; and (ii) cross-debarment could lead cross-debarred entities that are faced with going out of business to raise legal claims in an effort to survive.

14. Management is of the view that these risks are outweighed by the benefits of cross-debarment outlined in Section II (Rationale) above.

15. Cross-debarment could have a 'chilling effect' on bidders, who would be faced with increased risks in bidding for MDB contracts. However, the chilling effect would likely apply to those firms and individuals whose practices are already questionable. This deterrent effect would be a desirable outcome. Further, a risk of cross-debarment could incentivize firms to re-evaluate their governance and compliance systems in an effort to mitigate the risk of cross-debarment. In this respect, the WBG will engage in outreach with the business community to explain the cross-debarment regime and what steps they can take to mitigate the risk of cross-debarment.

16. A cross-debarment decision could lead to increased litigation risk. While MDBs are generally immune from judicial process, this does not preclude court claims from being filed and testing the MDB's immunities. Some jurisdictions may be more willing than others to entertain a claim filed against a debarment decision. Further, the standard for "defamation" is not the same in every jurisdiction. For example, in some jurisdictions 'truth' is not a defense in defamation cases.

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[7] The typical case will not usually have two MDBs with the same allegation(s) against the same firm(s) in the same project. Therefore, the WBG does not envisage that it will be called upon by the other MDBs to carry out a disproportionate number of investigations. In any case, the WBG would expect to manage the process so that allocation of investigative workload is not disproportional.

[8] See, e.g., IBRD Articles of Agreement, Article III, Section 5(b). See also IDA Articles of Agreement, Article V, Section 1(g), which contains a substantively identical provision.

17. It bears noting that the July 2009 Audit Committee paper on sanctions reform provided an extensive analysis of the defamation risks that we face in connection with the publication of sanctions decisions, including a survey of the main elements of the offense and defenses across several 'benchmark' jurisdictions.[9] That analysis is relevant in respect of cross-debarment, because in both situations (publication of our sanctions decisions or publication based on the decision of another MDB), it is the publication of the sanction that would most likely trigger litigation. The July 2009 paper concluded that the risks of litigation are outweighed by "the more significant benefits to be gained from increased transparency."[10]

18. Further, the inclusion of 'notice' language in the Bank's standard bidding documents could mitigate this litigation risk. Such language would put the bidders on notice (i) of the possibility of cross-debarment and the bidder's consent to such possibility, and (ii) that the bidder's submission of a bid and its signing of the contract represents an acknowledgement that the MDB is not subject to civil or criminal liability in respect of any matter related to, or arising from, the contract. It bears emphasizing that none of the MDBs has thus far been subject to a successful claim of defamation arising in connection with a debarment decision.

## IV. THE CROSS-DEBARMENT AGREEMENT

### *A. Core due process principles that underlie the sanctions system of each of the MDBs that can participate in the Agreement*

19. The integrity offices the MDBs have been meeting regularly for a number of years in the interest of harmonizing their practices and policies and engaging in increased information sharing and collaboration. The 2006 Uniform Framework, and the principles set out therein, was a culmination of such meetings – as well as of meetings with the operational and legal offices of the MDBs.

20. In light of the close working relationship, the MDBs understand the critical importance of establishing minimum *Core Principles* to which each participating MDB must adhere to ensure confidence in each other's decisions and to maintain a perception, both internally and externally, of fairness and objectivity. The *Core Principles* help to ensure best practice predictability in the investigative and sanctioning processes, while allowing flexibility for independent rule-making within each organization.

21. The *Core Principles* set out in the Cross-Debarment Agreement are derived from the principles agreed upon by the Heads of the MDBs in the 2006 Uniform Framework, which was later endorsed by each institution. The principles, terms, conditions, definitions and guidelines set out in the Uniform Framework were the result of a

[9] See *Sanctions Reform: Proposals to Improve the Sanctions Process*, Management Presentation to the Audit Committee July 29, 2009, paras. 16-21, and Annex B.

[10] Id., para. 21.

significant amount of deliberation by and between the integrity and legal offices of the MDBs that endorsed the Uniform Framework:

- Adoption of the four harmonized sanctionable practices agreed by the IFI Task Force in 2006 as set out in the Uniform Framework. These include: fraud, corruption, collusion and coercion. The harmonized definitions for the sanctionable practices were endorsed by the World Bank. Each of the participating MDBs has now formally adopted the harmonized definitions of these sanctionable practices.[11]

- Use of the IFI Principles and Guidelines for Investigations agreed by the Task Force in 2006 as part of the Uniform Framework. INT, as have the integrity offices of the other participating MDBs, has been conducting its investigations pursuant to these Principles and Guidelines since 2006.

- Use of a sanctions process with certain key due process elements, including

    (i) an internal investigative authority and a distinct decision-making authority,[12]

    (ii) written and publicly available procedures that require notice to accused parties and an opportunity to respond,[13]

    (iii) the 'more probable than not' standard of proof or equivalent (as set out in the Uniform Framework),[14] and

    (iv) a range of sanctions that take into account the principle of proportionality, including aggravating and mitigating factors.[15]

### *B. Conditions for automatic recognition of debarment decisions*

22. The MDB Working Group considered but rejected a system whereby each MDB would be able to engage in a *de novo* review of the sanctions decisions before agreeing to cross-debar. It was concluded that permitting such a review would not only be costly and laborious, because each case from each participating MDB would have to be reviewed on

[11] The WBG has an additional sanctionable practice of obstruction.

[12] At the WBG, INT serves as the internal investigative authority and the Sanctions Board serves as the distinct decision-making authority.

[13] Like the WBG, each of the participating MDBs has written procedures governing their investigative and sanctions processes.

[14] The standard of proof in the WBG's Sanctions Procedures is "more likely than not," which is substantively the same as "more probable than not." This standard, or an equivalent, is used by the other MDBs.

[15] Each of the MDBs, including the WBG, takes into account elements of proportionality, as well as any aggravating or mitigating factors when determining what sanction to impose.

its merits – substantively and procedurally – but could result in inconsistent decisions among participating MDBs. This would present reputational risks, and might incentivize litigation by sanctioned entities or individuals against the organization that imposes the strictest sanction on the same facts. Therefore, it was agreed that the more effective form of cross-debarment would be one that is triggered automatically so long as certain specified conditions, described below, are met and the institution does not exercise its right to "opt out" as explained below.

23. ***First Condition***: *The subject must be debarred for one or more of the four sanctionable offenses – fraud, corruption, collusion or coercion.*[16] As discussed previously, these four offenses were defined in the Uniform Framework and have been adopted by each of the participating MDBs. Notably, the Uniform Framework Task Force (i.e., the Heads of the MDBs comprising the Task Force) emphasized that "a common understanding of the practices prohibited" was "[c]ritical to the success of a harmonized approach" to "combat corruption in the activities and operations of the member institutions."[17]

24. ***Second Condition***: *To ensure transparency, the original debarment decision must be made public.* This condition is essential, to ensure a level of transparency to the sanctioning process, maximize the deterrent impact and also to allow for the implementation of the subsequent cross-debarments. It is generally through publication that the implementing agencies and other interested parties are made aware of debarments. Decisions that are not publicized will not be subject to cross-debarment.

25. ***Third Condition***: *The period of debarment must exceed one year.* It was recognized that in some instances case-specific circumstances may justify imposition of lesser periods of debarment and may not warrant the more onerous impact of cross-debarment. Moreover, in some limited situations cross-debarment could potentially put some companies out of business. This risk would likely arise in respect of firms or individuals whose business is linked almost entirely to MDB-supported projects. While this would most certainly be a deterrent to engaging in sanctionable practices, it may also be viewed as being unduly harsh in some cases – and could increase litigation risk. In an effort to balance these competing concerns, the Cross-Debarment Agreement proposes that cross-debarment only be applicable to debarments exceeding one year. A positive outcome of limiting cross-debarments to debarments in excess of one year is that companies would have a greater incentive to cooperate with participating MDBs to the fullest extent possible in the hopes of mitigating their sanction to a level that would avoid cross-debarment.

26. ***Fourth Condition***: *The original decision to debar must be made after the Cross-Debarment Agreement comes into effect.* The cross-debarment would apply to sanction

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[16] Debarment for obstructive practices is not included because the WBG is the only MDB that recognizes obstructive practices as a sanctionable offense.

[17] Uniform Framework for Preventing and Combating Fraud and Corruption, in *International Financial Institutions Anti-Corruption Task Force*, September 2006 at p. 1.

decisions made by a participating MDB after the cross-debarment regime comes into effect. Such prospective application is in line with application of other types of international or multi-party treaties or agreements that rely on common actions or recognition of decisions of another. Given that cross-debarment increases the impact of a debarment decision, such prospective application following publication of the cross-debarment regime is also consistent with due process considerations that underlie the proposed regime.

27. Further, it bears emphasizing that cross-debarment is not a form of punishment, but an institutional decision not to engage in business (via member countries) with a firm found to have engaged in fraudulent or corrupt behavior. Sanctions proceedings are administrative in nature and part of systems internal to the MDBs. The purpose of an investigative/sanctions process is to gather information, and to establish and find facts, so that a decision can be made whether there is a need to impose limitations on the ability of a subject firm to conduct business on WBG-supported projects pursuant to internal policies and procedures. The underlying concerns about cross-debarring a company based on the decision of another institution is whether the investigation was carried out according to best practice, whether the subject was afforded due process and whether the system used to impose the sanction is based on best practice principles. The Cross-Debarment Agreement was designed with these considerations in mind.

28. ***Fifth Condition***: *The debarment decision must have been made within ten years of the sanctionable practice.*[18]

29. ***Sixth Condition***: *The underlying debarment may not be imposed solely in recognition of a decision by a national or other international forum*. Cross-debarment will only apply to decisions based on an independent finding by a given MDB's own decision-making authority. It will not apply to decisions made by a national authority unless such decisions simply form the basis for making an independent finding and decision by an MDB using its own internal sanctions process.

30. ***Seventh Condition***: *The length of the period of debarment would be set by the MDB that imposed the original sanction and could only be altered by the MDB that set the original period of debarment*. Therefore, for example, if the sanctioning MDB imposes debarment for a period of three years with a requirement that the company show at the end of the debarment period that it has been rehabilitated (e.g., debarment with conditional release as a baseline sanction), cross-debarment would not only be for a period of three years, but would not end unless and until the originating MDB has in fact determined that the company has satisfied the rehabilitation requirement(s). In other words, the period of debarment and any modifications thereto will be determined solely by the participating MDB making the original debarment decision.

[18] Ten years is the current statute of limitations in the WBG's Sanctions Procedures.

### *C. Limited "Opt Out" Provisions*

31. The Working Group recognized that there may be exceptional situations in which individual MDBs may need to opt out of the cross-debarment regime in particular cases, where there are overriding "legal or other institutional considerations."[19] For example, the WBG would not sanction a firm that is participating in the Voluntary Disclosure Program (VDP) unless the misconduct relates to a WBG-supported project that knowingly was not disclosed.[20] Similarly, the WBG would not be able to enforce a sanction through cross-debarment against a firm with whom the WBG has resolved a case through a settlement agreement, if the terms of the settlement related, in whole or in part, to the conduct for which the other MDB debarred the firm.[21] However, debarments that are part of settlements would be subject to cross-debarment. Lastly, if a sanctioning MDB's decision is egregiously sweeping in scope or duration, it could also significantly impair the development missions of the other MDBs.

32. Any decision to 'opt out' would not affect the decision of the other participating MDBs to cross-debar in the same case. If an MDB chooses to exercise this clause, it will be required to provide written notice of its decision to each of the other participating MDBs.[22] It is believed that this notification requirement will dis-incentivize MDBs from making extensive use of the clause. Anything other than exceptional use of the opt-out clause would endanger the credibility of the system as a whole.[23] The objective is to create a common denominator of automatic cross-debarment, while recognizing the reality that, on an exceptional basis, an MDB may need to decide not to cross-debar.

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[19] This broad language was decided upon, in part: (i) to avoid the possibility of the WBG breaching the confidentiality of a VDP participant; and (ii) to recognize that there may be other situations in which an MDB would need to opt out. An assessment whether there are "legal or other institutional considerations" in a case, is a decision that will be made by WBG management.

[20] Under the VDP, a firm is required to disclose misconduct on WBG-supported projects. If the firm is sanctioned by another MDB for misconduct unrelated to a WBG-supported project, the firm would still be protected by the VDP vis-à-vis the WBG.

[21] A firm's participation in the VDP, or a firm's settlement with the Bank (that does *not* include a period of debarment) would be the two principal reasons for the WBG to opt out of cross-debarment. Other MDBs do not use these or similar tools for reaching resolution of a case, nor do they envisage using such tools in the near future.

[22] However, the MDB will not be required to provide reasons. To require that reasons be given would require the WBG to breach the confidentiality of a VDP participant – if a firm's participation in the VDP is the reason for *the WBG* to opt-out.

[23] The WBG is cognizant of the need to minimize to the greatest extent possible the use of the 'opt out' provision. Bearing this in mind, the WBG intends to undertake heightened due diligence of firms wishing to enter the VDP or to settle. This will include: (i) asking the firm beforehand whether they are currently under investigation by, or discussing resolution of a case with, any other investigating or prosecuting authority; and (ii) verifying with the integrity offices of other MDBs whether the firm is under investigation. The latter can be accomplished, without revealing the name of the firm, by a regular exchange of lists with MDBs, of firms that are being, or may soon be, under investigation. Also, the WBG intends to include in the VDP a provision that would void the agreement if it is determined by the WBG that the firm sought to enter the VDP with knowledge that it was under investigation by another investigating or prosecuting authority and/or was seeking resolution of such case. These measures will greatly minimize a firm's ability to seek 'safe harbor' in the VDP from cross-debarment.

33. It is important to note that bi-lateral and multi-lateral agreements routinely have opt-out clauses. The inclusion of such clauses is not a statement of 'expectation' that the clause will be used, but rather an acknowledgement of the reality that exceptional circumstances do in fact arise from time to time. In the absence of an opt-out clause, an MDB confronted with a legal or institutional matter that would preclude the imposition of cross-debarment would have to withdraw from the Cross-Debarment Agreement. That, most assuredly, would not be a desired result.

### *D. Implementation Modalities*

*Entry into force*

34. The Agreement will only enter into force for a participating MDB upon: (a) its signature of the Agreement; and (b) notice by the participating MDB and at least one other signatory that they have fulfilled all requirements for implementation of the Agreement. Signatories to the Agreement would be free to withdraw with notice.

*Ability of additional MDBs to join the cross-debarment regime*

35. Several other regional MDBs have already expressed an interest in joining a mutual recognition of debarment regime. It was agreed that other MDBs will be able to join only if (i) they sign a letter of adherence representing full compliance with the *Core Principles,* and (ii) all existing signatories consent. No other MDBs qualify at present.

*Cross-Debarment Agreement will be made public upon execution*

36. It is proposed that the Agreement be made public. This would put subject firms and individuals on notice about the possibility of cross-debarment and substantially increase the deterrent value of each debarment decision. Upon execution of the framework, the WBG will launch a proactive and aggressive communications strategy to ensure that participants in WBG operations are made aware of the new regime and the enhanced consequences of engaging in a sanctionable practice.

### *E. How Cross-Debarment Will Work*

37. Each MDB will still retain independent authority to debar. When the relevant decision-making body of an MDB (for the WBG, the Sanctions Board) imposes a period of debarment, the sanctioning MDB will provide prompt written notice of that decision to each of the integrity offices of other participating MDBs, in sufficient detail so that the other participating MDBs can confirm that each of the pre-requisite conditions for cross-debarment have been met. The written notice will include the identification of the entities or individuals sanctioned, the sanctionable practice(s) found, and the terms of the debarment. Unless a participating MDB believes any of the prerequisite conditions have not been met or it decides to exercise its rights under the "opt out" clause," the participating MDB will promptly enforce the debarment decision.

38. Using the WBG as an example, INT would receive notice from another MDB. INT would then assess whether there are any 'legal or institutional considerations' that might preclude cross-debarment. INT would provide the notice and INT's assessment to the Chief Procurement Officer, OPCR, and to a representative from LEG, IFC and MIGA. If there is no objection to INT's proposed course of action, INT would notify OPCPR to put the name of the sanctioned firm or individual on the cross-debarment list. If there is a concern, then the units (INT, OPCR, LEG, IFC and MIGA) would consult and, hopefully, reach a consensus. If not, then the matter would be escalated to Senior Management for decision.[24]

39. It is important to note that the subsequent investigation and sanction of a debarred entity for new or distinct sanctionable practices would not be precluded under the cross-debarment regime. The fact that an entity or individual is already cross-debarred will not proscribe a participating MDB from pursuing sanctions proceedings against the same entity or individual for unrelated misconduct. If an entity already debarred is subsequently found by a participating MDB to have engaged in other sanctionable practices, that entity would be subject to either a concurrent, consecutive or subsequent period of debarment (as deciding by the relevant decision-making authority) that would normally lead to a cross-debarment as well.

## V. RECOMMENDATIONS AND NEXT STEPS

40. ***Board Approval***: On the basis of the foregoing, the Executive Directors of IBRD and IDA and the Boards of IFC and MIGA are requested to approve the following changes to the sanctions regime to introduce cross-debarment by other MDBs:

(i) The policy content of the amendments to the IBRD/IDA Anti-Corruption Guidelines substantially in the form attached as Annex B.
(ii) The policy content of the amendments to the Sanctions Procedures for IBRD/IDA, IFC, MIGA, and Bank Guarantee Operations substantially in the form attached as Annexes C-1, C-2, C-3 and C-4, respectively.
(iii) The amendments to the IBRD General Conditions for Loans substantially in the form attached as Annex D.
(iv) The amendments to the IDA General Conditions for Credits and Grants substantially in the form attached as Annex E.
(v) The amendments to the Consultant and Procurement Guidelines substantially in the form attached as Annexes G-1 and G-2, respectively.

Upon Board approval of the amendments to the IBRD and IDA General Conditions, similar changes will be made to the Standard Conditions for Trust Fund Grants, the Standard Conditions for Advances made by the World Bank under its Project Preparation Facility, and the Standard Conditions for Loans made by the World Bank Out of the Climate Investment Funds.

[24] A draft protocol, outlining how cross-debarment would work within the Bank, is attached at Annex F.

41. ***Effective Date:*** Upon Board approval as specified in paragraph 40 above and upon effectiveness of the Cross-Debarment Agreement, the foregoing changes will apply as follows:

- to all loans, credits and IDA grants for which the invitation to negotiate is issued on or after May 1, 2010;

- to all trust fund grants and grants made out of the Bank's net income or administrative budget, for which the legal agreements are signed on or after May 1, 2010; and

- to all IFC, MIGA and Bank Guarantee projects covered by the debarment regime from the date that the debarment regime went into effect for IFC, MIGA and Bank Guarantee operations, provided the Cross-Debarment Agreement becomes effective.

In addition, Management proposes to modify all existing legal agreements, subject to the no-objection of the relevant borrower/recipient and the effectiveness of the Cross-Debarment Agreement. Such amendments would come into effect on the expiration of the no-objection period and would permit the application of the cross-debarment regime to (i) all new contracts under existing projects for which the notification of award is issued and/or the contracts are signed after the effective date of such amendment letter, and (ii) existing contracts under such projects whose scope, price or other terms are subject to material modification after the effective date of the respective amendment.

42. Further, if the Executive Directors approve this recommendation, a protocol will be prepared collectively by the participating MDBs, setting out in detail the process to be followed and the relevant points of contact. Further, as mentioned earlier, the Bank will be using an internal protocol (see Annex F). The protocol outlines the process to be followed to accept and implement debarments by other MDBs, and explains how cross-debarments will be posted on the Bank's website. Cooperation and collaboration agreements between participating MDBs will also be considered in the interest of increasing, expediting and facilitating the exchange of investigative information to make the cross-debarment as seamless as possible.

43. In addition, an aggressive internal and external communications strategy will be put into place, informing staff, member countries and other external parties of the establishment, applicability and implications of the cross-debarment regime. The external communications strategy will consist of strategically targeted oral and written communications in a number of different fora to those who will be impacted (the business community) and those who may have an interest (civil society organizations and the public).

44. Lastly, the WBG will conduct an assessment of the cross-debarment regime after a period of 18 months from implementation. The assessment will identify lessons learned.