

# Directive: Bank Directive: Sanctions for Fraud and Corruption in Bank Financed Projects

## Bank Access to Information Policy Designation

Public

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1/7/2016

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## Content

Sets out the institutional and normative architecture of the Sanctions System; determines the jurisdiction of the Sanctions System; provides directions on the application of Sanctions.

## Applicable to

IBRD;IDA

## Issuer

Managing Director and Chief Administrative Officer, MDCAO

## Sponsor

Senior Vice President and General Counsel, LEGVP

## SECTION I - PURPOSE AND APPLICATION

1. The purpose of this Directive is to: (i) set out the institutional and normative architecture of the Sanctions System; (ii) determine the jurisdiction of the Sanctions System; and (iii) provide directions on the application of Sanctions; all in connection to Bank Financed Projects.
2. This Directive applies to the Bank.

## SECTION II - DEFINITIONS

As used in this Directive, the capitalized terms have the meanings set out below.

- a. **Anti-corruption Guidelines:** (i) the "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants" dated as of October 15, 2006, as the same may be amended, supplemented or otherwise revised from time to time, (ii) the "Guidelines on Preventing and Combating Fraud and Corruption in Program-for-Results Financing," dated February 1, 2012, as the same may be amended, supplemented or otherwise revised from time to time, or (iii) any later edition or similar instrument which may replace said Guidelines under which a case may be brought in accordance with the Sanctions Procedures.
- b. **Bank:** IBRD and IDA.
- c. **Bank Financed Project:** an investment project or a program for results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant, and governed by the Bank's Procurement Guidelines, Consultant Guidelines or Anti-Corruption Guidelines.
- d. **Board:** the Executive Directors of IBRD, or IDA, or all of them, as applicable.
- e. **Consultant Guidelines:** (i) the January 1997, May 2002 or May 2004 edition of the document entitled "Guidelines: Selection and Employment of Consultants by World Bank Borrowers", as amended, supplemented or otherwise revised from time to time, or (ii) the document entitled "Guidelines: Selection and Employment of Consultants under IBRD Loans and IDA Credits and Grants" dated January 2011, as amended, supplemented or otherwise revised from time to time, or (iii) any later edition or similar instrument which may replace said Guidelines under which a case may be brought in accordance with the Sanctions Procedures.
- f. **F&CSanctions Guidance:** Bank Guidance: Sanctions for Fraud and Corruption in Bank Financed Projects (previously called The Sanctions Manual).
- g. **GAC:** Governance and Anti-Corruption.
- h. **IBRD:** International Bank for Reconstruction and Development.
- i. **ICO:** Integrity Compliance Officer(s) of the Bank.
- j. **IDA:** International Development Association.
- k. **Integrity Vice President:** the head of the Integrity Vice Presidency of the World Bank Group.
- l. **Internal Arrangements:** Bank Procedure: Internal Arrangements for the Sanctions System.
- m. **LEG:** Legal Vice Presidency of the Bank.
- n. **MD:** Managing Director.
- o. **Procurement Guidelines:** (i) the January 1995 or May 2004 edition of the document entitled "Guidelines: Procurement under IBRD Loans and IDA Credits", as amended, supplemented or revised from time to time or (ii) the document entitled "Guidelines: Procurement of Goods, Works and Non-Consulting Services under IBRD Loans and IDA Credits and Grants" dated January 2011, as amended, supplemented or revised from time to time, or (iii) any later edition or similar

instrument which may replace said Guidelines under which a case may be brought in accordance with the Sanctions Procedures.

- p. **Respondent:** as defined in the Sanctions Procedures.
- q. **SAC:** the Sanctions Advisory Committee of the Bank.
- r. **Sanctions Board Policy:** World Bank Group Policy: Sanctions Board Statute.
- s. **Sanctions Framework:** the following documents of the Bank, as amended, supplemented or revised from time to time: (i) World Bank Group Policy: Sanctions for Fraud and Corruption; (ii) the Sanctions Board Policy; (iii) this Directive; (iv) the Sanctions Procedures; (v) the Internal Arrangements; and (vi) the F&CSanctions Guidance.
- t. **Sanctions Procedures:** Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects.
- u. **Sanctionable Practice:** as defined in the Sanctions Procedures.
- v. **Sanction:** any measure established by the World Bank Group to be imposed by the relevant officer of the Sanctions System on a party found culpable of, or responsible for, a Sanctionable Practice.
- w. **Sanctions Board:** the World Bank Group Sanctions Board.
- x. **Sanctions System:** the units established by the World Bank for presenting and adjudicating allegations of Sanctionable Practices, and imposing Sanctions therefor, including (without limitation) the Sanctions Board, SDO, and INT.
- y. **SDO:** the Suspension and Debarment Officer of the Bank.
- z. **Voluntary Disclosure Program:** as defined in the Sanctions Procedures.
- aa. **World Bank Group or WBG:** IBRD, IDA, IFC and MIGA.

## SECTION III - SCOPE

### A. Institutional Architecture

#### 1. Roles

INT, SDO and the Sanctions Board are responsible for the implementation of the Sanctions Framework, and LEG and the SAC facilitate and monitor its implementation, respectively. In the context of the Sanctions System, their roles are determined as follows:

i. *INT*. **INT** is tasked with:

- a. investigating Sanctionable Practices in Bank Financed Projects;
- b. initiating and participating in the sanctions proceedings; and
- c. conducting settlement negotiations and entering into settlement agreements with Respondents.

If the SDO or the Sanctions Board imposes a debarment with conditional release (or conditional non-debarment), INT, through the ICO:

- a. notifies the sanctioned party of the details relating to any imposed conditions and the procedures to be followed when seeking release from sanction;
- b. evaluates and assesses the sanctioned party's current integrity compliance program (if any);
- c. monitors compliance by the sanctioned party with the specified conditions during the period of debarment; and

- d. determines, upon the request of the sanctioned party whether the conditions have been satisfied at the end of the sanction period.
- ii. *SDO*. The SDO conducts an initial review of sanctions cases to allow for their early disposition without the necessity of full sanctions proceedings in every case. Specifically:
- a. The SDO evaluates each case in the first instance, imposes temporary suspensions, taking into account the Respondent's views, and otherwise carries out the duties ascribed to the SDO in the Sanctions Procedures and the Internal Arrangements.
  - b. The SDO monitors compliance with the procedures and requirements set forth in the relevant provisions of the Sanctions Procedures and the Internal Arrangements, including all applicable time limitations and requirements of confidentiality.
- iii. *Sanctions Board*. The Sanction Board's role, composition, competence and responsibilities are set out in in the Sanctions Board Policy.
- iv. *LEG*. LEG facilitates the proper functioning of the Sanctions System, without direct participation in the system itself. Specifically:
- a. LEG develops, drafts, and maintains the Sanctions Framework.
  - b. LEG advises INT, the SDO and the Sanctions Board as to the proper interpretation of the Sanctions Framework. Given its institutional role, LEG's advice is authoritative to the extent it relates to the Bank's legal framework or matters of legal policy.
  - c. LEG's advice may be provided in the context of a particular sanctions case, or outside the context of a particular sanctions case, when an issue of general application arises.
  - d. LEG plays an approval or clearance role in a number of ancillary processes envisaged by the Internal Arrangements.
- v. *SAC*. The SAC is mandated to advise the MD(s) in charge of sanctions on policy and procedural matters concerning the Sanctions System for the Bank. It assists the MD(s) in monitoring and assessing the functioning of the units in charge of implementing the Sanctions Framework. Specifically, the SAC:
- a. Monitors the implementation of the Sanctions Framework and the results of INT, SDO and the Sanctions Board.
  - b. Considers issues relating to the Sanctions Framework and other systemic issues, including any ambiguity in its application.
  - c. Considers proposals for reforms to the Sanctions Framework for the decision of the MD(s) subject, where required, to consultation with the Audit Committee and/or approval by the Executive Directors.
  - d. Periodically reports to the Audit Committee on the functioning of the Sanctions System and related policy issues.
  - e. Facilitates linkages between the Sanctions System and the broader GAC agenda in the World Bank Group, including with the GAC Council and the GAC in Operations working group.
  - f. Acts, through a sub-committee, which will include member(s) of the Audit Committee, as the selection committee of nominees for membership on the Sanctions Board.
  - g. Considers any requests from external or internal stakeholders for disclosure of sanctions-

related information, including pleadings and evidence submitted to SDO or the Sanctions Board.

h. Conducts such other business as the Chair of the SAC may decide.

The SAC shall not:

- a. Play any role in the investigation or adjudication of individual sanctions cases, or
- b. Replace day-to-day interactions among the responsible units in dealing with legal, operational and other issues.

IFC and MIGA management remain responsible for the nomination of IFC and MIGA members and alternates to the Sanctions Board.

## **2. Independence, Impartiality, Integrity, and Professionalism**

The specific measures (including codes of conduct) to ensure the independence, impartiality, integrity, and professionalism of INT, SDO, Sanctions Board, ICO and LEG in the performance of their above mentioned roles are the following:

- i. *INT*. INT maintains diligence and impartiality throughout the investigative process and conducts its activities competently and with the highest level of integrity.
- ii. *SDO*. The SDO is appointed by the President of the Bank and reports to the Office of the President. The President may delegate the budgetary and administrative supervision of the SDO to an MD.

The SDO reviews a case impartially, solely on its merits, and, except as otherwise expressly set out in the Sanctions Framework, does not answer to or take instructions from any other person. The SDO respects and maintains the confidentiality of sanctions proceedings, including any undertaking by the Bank in favor of a Voluntary Disclosure Program participant.

The SDO recuses himself or herself in cases where he or she may have an actual or perceived conflict of interest. The SDO is responsible for appointing an alternate SDO who can act in the SDO's absence or unavailability due to recusal or other reasons.

- iii. *Sanctions Board*. These measures are set out in the Sanctions Board Policy.
- iv. *ICO*. The ICO performs his/her functions in an objective and impartial manner. To this end, INT management ensures that the ICO is not subject to undue influences from within INT or otherwise, through the following measures:
  - a. The ICO has functional and administrative reporting lines independent of the external investigation and litigation units within INT.
  - b. The ICO is subject to the following code of conduct:

(A) The ICO will assess each case fairly, impartially and with due diligence, in accordance with the Sanctions Framework.

(B) In considering cases, the ICO acts independently and, except as expressly provided in the Sanctions Framework does not answer to or take instructions from any other person.

(C) The ICO shall, in the discharge of his or her functions, be guided solely by the merits of the case without regard to any other considerations, including prospects for employment elsewhere in the Bank.

(D) The ICO does not seek or accept any gift or compensation of any kind for the discharge of his or her functions except as provided in his or her letter of appointment.

(E) If the ICO is faced with an actual, apparent or potential conflict of interest with respect to a particular case or entity, or any other circumstance which may give rise to reasonable doubts as to his or her impartiality or objectivity in respect of a particular case or entity, he or she

immediately discloses the matter to the Integrity Vice President. The Integrity Vice President, in consultation with the Bank's Office of Ethics and Business Conduct, decides whether the matter requires that the ICO recuse him or herself from the case or whether the matter may be managed through other forms of mitigation. In cases where the ICO is recused, the Integrity Vice President appoints an alternate ICO (from within or outside INT) for the case in question.

(F) If the Integrity Vice President concludes, after affording the incumbent a reasonable opportunity to address the concerns raised about their conduct, that the ICO has breached this code of conduct or otherwise engaged in conduct unbecoming the function, or which may give rise to reasonable doubts as to his or her impartiality or objectivity, the Integrity Vice President replaces the incumbent with another ICO with terms of reference conforming to the functions set out in this Directive and the Sanctions Procedures.

(G) The Integrity Vice President may delegate the responsibilities under this sub-paragraph (iv) (b) to a director not in charge of external investigations and litigation work of INT.

- v. *LEG*. In providing legal advice in connection with issues arising out of a particular case in the Sanctions System, LEG refrains from expressing any opinion as to the outcome of the case or on the weight or credibility of the evidence.

## **B. Normative Architecture**

### **1. Sources of Law**

The sources of substantive norms for sanctions cases are set out below, in the following order of precedence:

- i. *Articles of Agreement*. The underlying legal basis for the Sanctions System, which also delimits its scope, is the 'fiduciary duty' to protect the use of Bank financing reflected in the Articles of Agreement (IBRD Articles of Agreement, Art. III, Section 5(b) (as amended effective June 27, 2012); IDA Articles of Agreement, Art. V, Section 1(g)).
- ii. *Policy Framework*. The policy framework, as reflected in World Bank Group Policy: Sanctions for Fraud and Corruption.
- iii. *Operational Legal Framework*. The legal framework for the IBRD/IDA financed operation in connection with which the alleged Sanctionable Practice took place, including the legal agreement governing the Bank Financed Project, which incorporates by reference the applicable Procurement, Consultant and/or Anti-Corruption Guidelines, any relevant instrument prepared thereunder, and in cases of projects or operations involving more than one WBG institution, the contractual legal framework applying to the project or operation of such other WBG institution(s).
- iv. *Authoritative Interpretation*. Sources of interpretation of the Sanctions Framework are: (1) the legislative history; (2) LEG's advice provided to INT, the SDO and the Sanctions Board on the proper interpretation of the Bank's legal and policy framework, including the Sanctions Framework and the various definitions of Sanctionable Practices; and (3) the jurisprudence of the Sanctions Board with respect to the application of the Sanctions Framework and the specific standards to particular facts of specific cases.
- v. *General Principles of Law*. General principles of law, to the extent that: (1) a purported general principle of law is actually established as a matter of legal 'fact'; and (2) the importation of such principle is acceptable as a matter of policy and does not contradict the Bank's Articles of Agreement, or the Sanctions Framework.

### **2. Jurisdiction**

- ii. *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.
- iii. *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.

### 3. Application of Sanctions

- i. *MDB Cross-Debarment.* Any decision by the Bank to enforce the debarment decision of another multilateral development bank has the same effect as if the entities(s) or individual(s) debarred by said institution had been debarred by the SDO or the Sanctions Board in the manner described in sub-paragraphs 9.01(c) or Section 9.01(d) of the Sanctions Procedures, as applicable.

#### SECTION IV - EXCEPTION

N/A

#### SECTION V - WAIVER

The Issuer may waive any provision of this Directive, provided that such waiver does not affect the due process rights of the parties to the proceedings.

#### SECTION VI - OTHER PROVISIONS

N/A

#### SECTION VII - TEMPORARY PROVISIONS

N/A

#### SECTION VIII - EFFECTIVE DATE

Effective date for this is 1/7/2016

#### SECTION IX - ISSUER

The Issuer of this Directive is the Managing Director and ChiefAdministrative Officer.

**SECTION X - SPONSOR**

The Sponsor of this Directive is the Senior Vice President and WBG General Counsel.