World Bank Sanctions Program: Compliance and Enforcement

Understanding the Investigations Processes and Sanctions Decisions, Structuring Compliance Programs, Avoiding Penalties and Debarment

TUESDAY, APRIL 30, 2013

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today’s faculty features:

Pascale H. Dubois, Suspension and Debarment Officer, The World Bank, Washington, D.C.

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Jonathan Shapiro, Integrity Compliance Officer (ICO), World Bank Group, Washington, D.C.

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The World Bank Group

- Multilateral Development Bank (MDB) – 188 countries
- Financial & technical assistance to developing countries
- FY 12: $52.6 billion in credits, loans, grants, guarantees
Why does the World Bank care?
“NEW” BABY WARMER
Preventing Fraud & Corruption

Through

Administrative Sanctions
Changing Landscape

- World Bank sanctions and system highly influential internationally
- More sanctions systems and use of suspensions and debarments
- Changes coming in procurement and country systems
World Bank Enforcement
Making an Impact

Since 1999...

✓ 610 firms and individuals publicly debarred
✓ 218 firms and individuals temporarily suspended
✓ At least 30 criminal convictions based on referrals
Sanctions Process

- **INT:** Investigations
- **OSD:** Temporary Suspension & Adjudication (if no appeal) 61%
- **SANCTIONS BOARD:** Adjudication (if appeal) 39%
- **ICO (within INT):** Compliance
Suspension & Debarment Officer

- Evaluates Accusation and Evidence
- Temporarily Suspends
- Recommends Sanction
- Reviews Explanation
- Sanctions (if no appeal)
The Sanctions Phase:
The World Bank’s Two-Tier Sanctions System

- Conducts investigation
- Investigates allegations of fraud, corruption, collusion, coercion, and obstruction
- Prepares and submits a Statement of Accusations and Evidence (SAE) to OSD

Sanctions Board
- Comprised of 4 external members and 3 Bank staff
- Reviews case ‘de novo’
- May hold a hearing with parties and witnesses
- Imposes sanctions (not bound by SDO’s recommendation)
- Decisions are final and not appealable
- 39% of cases are resolved at this level

Suspension and Debarment Officer
- Evaluates evidence presented by INT
- Issues Notice of Sanctions Proceedings to respondent
- Temporarily suspends respondent
- Recommends a sanction (becomes effective if respondent does not contest)
- 61% of cases are resolved at this level

Integrity Vice Presidency
- Conducts investigation
- Investigates allegations of fraud, corruption, collusion, coercion, and obstruction
- Prepares and submits a Statement of Accusations and Evidence (SAE) to OSD
Sanctionable Practices

Fraud
Corruption
Collusion
Coercion
Obstruction

Consultant and Procurement Guidelines;
Sanctions Procedures;
Anti-Corruption Guidelines for Borrowing Countries
Range of Sanctions

- Debarment with Conditional Release ('baseline' or default)
- Indefinite or Fixed-Term Debarment (without conditions)
- Conditional Non-Debarment
- Letter of Reprimand
- Restitution or other Remedy
Impact of Sanctions (Part I)

- Public
- Published
- Ineligible
- Cross-debarred
- May affect affiliates
- Conditional release
Table 1: Debarred & Cross-Debarred Firms & Individuals

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Country</th>
<th>Ineligibility Period</th>
<th>Grounds</th>
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<tbody>
<tr>
<td>CENNET INŞAAT İTH.</td>
<td>KASIMOĞLU İŞHANI KAT: 4 NO:7, HOPA/ARTVIN, HOPA</td>
<td>Turkey</td>
<td>07-MAR-2013 to 06-MAR-2016</td>
<td>Procurement Guidelines, 1.14(a)(ii)</td>
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<td>LARSEN &amp; TOUBRO</td>
<td>L&amp;T HOUSE, BALLARD ESTATE, P.O. BOX 278, MUMBAI - 400 001</td>
<td>India</td>
<td>07-MAR-2013 to 06-SEP-2013</td>
<td>2004 Procurement Guidelines, 1.14(a)(ii)</td>
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<td>LIMITED*148</td>
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<td>COMPANY LTD.*147</td>
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<td>GERMAN DURAND</td>
<td>CALLE 14, ESQUINA 7, ZAVALLOS CUE, ASUNCION</td>
<td>Paraguay</td>
<td>13-FEB-2013 to 08-MAR-2017</td>
<td>Cross Debarment: IDB</td>
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<td>ARQUITECTURA Y CONSTRUCCION</td>
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<td>MADERON FURNITURE</td>
<td>AVENIDA ARTIAGAS 2207, ASUNCION</td>
<td>Paraguay</td>
<td>13-FEB-2013 to 08-MAR-2017</td>
<td>Cross Debarment: IDB</td>
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<td>OR MADERON MUEBLES</td>
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<td>MR. CRISTOBAL GAUTÓ</td>
<td>AVENIDA ARTIAGAS 2207, ASUNCION</td>
<td>Paraguay</td>
<td>13-FEB-2013 to 08-MAR-2017</td>
<td>Cross Debarment: IDB</td>
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<td>PORTILLO</td>
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Sanctions are Published

The determinations of the World Bank Evaluation and Suspension Officer Determinations have been published in accordance with Section 10.01(b) of the World Bank Sanctions Procedures, as adopted as of January 1, 2011, which provides as follows:

(b) Publication of Sanctions Board Determinations. The full text of the decisions of the determinations of the Evaluation Officer in uncontested proceedings.

Determinations in uncontested proceedings governed by the Sanctions Procedures are not publicly available. For further information, please refer to the Key and Reference Documents.

Sanctions Board Decision No. 46 (Sanctions Case No. 210 - Respondent Canaan, Ltd., International General, Sudan)

Sanctions Board Decision No. 47 (Sanctions Case No. 205 - Respondent Enterprise Générale De Construction)

Sanctions Board Decision No. 48 (Sanctions Case No. 198 - Respondent Al Tajuat Company, General Contractor, Mehsin Moslami, Iran)

Sanctions Board Decision No. 49 (Sanctions Case No. 707 - Respondent ENVISO Central de Negocios IV, China)

Sanctions Board Decision No. 50 (Sanctions Case No. 709 - Respondent Supremoarch Solutions Inc., USA)

Sanctions Board Decision No. 51 (Sanctions Case No. 192 - Respondent B.V.S. Constructors, Portugal)

Sanctions Board Decision No. 52 (Sanctions Case No. 199 - Respondent A Pontual - Mozambique)

Sanctions Board Decision No. 53 (Sanctions Case No. 196 - Respondent OAO Dustlik and I. M. O. M. Comércio de Díbito Pick Up Car Auto Pecas) and Mr. José Mauro da Silva (November 15, 2012)

Sanctions Board Decision No. 54 (Sanctions Case No. 196 - Respondent OAO Dustlik and I. M. O. M. Comércio de Díbito Pick Up Car Auto Pecas) and Mr. José Mauro da Silva (July 17, 2012)

Sanctions Board Decision No. 55 (Sanctions Case No. 196 - Respondent OAO Dustlik and I. M. O. M. Comércio de Díbito Pick Up Car Auto Pecas) and Mr. José Mauro da Silva (July 17, 2012)

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Sanctions are Published
Sanctions Board Digest

- Law Digest in December 2011 - key data on Sanctions Board role, caseload and case law
- Contains over 250 points of legal principle and findings
- Decisions Released May 2012 - will be updated to reflect new decisions
Impact of Sanctions (Part II)

• Public
• Published
• Ineligible
• Cross-debarred
• May affect affiliates
• Conditional release
MDB Cross-Debarment

- In March 2010 the WBG and four other MDBs signed an agreement for the mutual enforcement of debarment decisions
- Covers debarments that are public, over one year
- Harmonized definitions of sanctionable practices
- Cross-debarment automatic, subject to ‘opt out’ in exceptional cases on legal/policy grounds
Three Choices

VDP | SETTLEMENTS | SANCTIONS
The Voluntary Disclosure Program

Allows participating firms to
- Voluntarily disclose information about their misconduct in Bank-financed or supported projects or contracts

in exchange for
- No debarment
- Confidentiality

provided that they
- Cease misconduct
- Voluntarily and fully disclose information about Bank-related Misconduct for past 5 years
- Conduct an internal investigation
- Implement a Compliance Program
- Engage a Compliance Monitor (3 years)
- Pay most costs associated with participation

or face a 10-year debarment
The VDP Effect

- Firms Enter VDP
- Better Informed Investigations
- More Bank Sanctions
- Increased Risk for Non-VDP Firms
Be Part of the Solution

Business Without Bribes

The World Bank's Voluntary Disclosure Program is a win-win proposition.

Firms that participate in the program foster a strong culture of responsible corporate citizenship, protect their brand from potential reputational damage, and contribute to a more level playing field for everyone who competes for World Bank-financed contracts.

What They’re Saying about VDP

“When a firm decides to disclose its past corrupt behavior, this is one more firm that can contribute to ending the plague of corruption. The more tools we have like the VDP, the more we will be able to reduce corruption in a substantial way.”

Huguette Labelle,
Chair, Transparency International
Three Choices

VDP  SETTLEMENTS  SANCTIONS
Settlements


Press Release No: 2012/201/INT

Two of the three debarments are part of negotiated resolution agreements in the wake of the companies’ acknowledgment of misconduct

WASHINGTON, December 13, 2011 — The World Bank Group today announced the debarment of Kellogg Brown & Root Pty Ltd (KBR Pty) for a period of two years with conditional release following an investigation by the Bank’s Integrity Vice Presidency (INT) into violations of the Consultant’s Guidelines under a Bank-financed water supply project in Vietnam. KBR Pty, an Australian subsidiary of KBR, Inc., misrepresented the availability of key consultants during contract negotiation and execution, which resulted in KBR Pty being awarded the contract and led to delays in contract execution.

Under the terms of the agreement KBR Inc. will also implement remedial measures to its corporate compliance program to comply with the World Bank Compliance standards.

“This settlement shows the Bank’s work on integrity is resilient while we support companies to clean up their operations and therefore enforcing international compliance standards,” said Leonard McCarthy, Integrity Vice President at the World Bank.
Sanctions and Compliance

Sanctions help ensure World Bank Group funds go to development
When firms or individuals are found through an INT investigation to have engaged in fraudulent, corrupt, collusive, coercive or obstructive practices, the World Bank may impose a sanction such as debarment. Debarred entities are then ineligible to be awarded a World Bank-financed contract, either permanently or for designated period of time. Sanctions hold wrongdoers accountable for their misconduct, and help deter others from engaging in similar behavior.

More focus on maintaining clean business practices
The World Bank Group's sanctions system will now put emphasis on debarred parties meeting certain integrity compliance conditions before they can once again participate in Bank Group-financed activities. These conditions encourage debarred parties to focus on rehabilitating their business practices. The existing sanction of debarment with conditional release has become the default sanction for cases initiated under the Bank Group's revised Sanctions Procedures as of September 2010. Going forward the establishment (or improvement) and implementation of an integrity compliance program satisfactory to the WB will be a principal condition to ending a debarment (or conditional non-debarment), or in the case of some existing debarments, early termination of the debarment.

The World Bank Group's New Integrity Compliance Officer
Also in September 2010, the World Bank Integrity Vice Presidency appointed an Integrity Compliance Officer (ICO). In addition, to monitoring integrity compliance by sanctioned companies (or codes of conduct for individuals), the ICO also will decide whether the compliance condition, and/or others established by the Sanctions Board or a WBG Evaluation and Suspension Officer as part of a debarment, have been satisfied. See Sanctions Procedures Section 9.03 (Compliance with Conditions for Non-Debarment and Release from Debarment).

The Summary of World Bank Group Integrity Compliance Guidelines incorporate standards, principles and components commonly recognized by many institutions and entities as good governance and anti-fraud and corruption practices. They are not intended to be all-inclusive, exclusive or prescriptive; rather a party’s adoption of these Guidelines, or variants thereof, should be determined based on that party’s own circumstances.
World Bank Group
Integrity Compliance Guidelines*

1. Prohibition of Misconduct
2. Responsibility (leadership, individual, compliance function)
3. Program Initiation, Risk Assessment, and Reviews
4. Internal Policies (vetting employees, conflict of interest, gifts, hospitality, entertainment, travel, political contributions, charity, facilitation payments, recordkeeping, and fraudulent, collusive and coercive practices)
5. Business Partners (due diligence, informing partner of integrity commitment, reciprocal commitment, proper documentation, appropriate remuneration, monitoring/oversight)
6. Internal Controls (financial, contractual obligations, decision-making processes)
7. Training & Communication
8. Incentives (positive, disciplinary measures)
9. Reporting (duty to report, advice, whistle blowing/hotlines, periodic certification)
10. RemEDIATE Misconduct (investigating procedures, respond)
11. Collective Action

* Guidelines continually updated to reflect global best practice.
Baseline Sanction

Board endorsed in September 2010
Condition: Adopt an “Integrity Compliance Program”

F&C Policies & Practices

- Prevent
- Detect
- Remediate
- Investigate
Maintain same ethics commitment—but adapt entity-specific measures

Big Company
Adopt systemic measures

Location?
Industry?
Size?
Risk?

SME
Adopt less formalized measures

World Bank Group Integrity Compliance Guidelines:
The Conditional Release Process

Office of the Integrity Compliance Officer

SDO or Sanctions Board Issue Decision

Notify of Condition & Release Process

Evaluate Program & Provide Guidance

Monitor Program Implementation

Release Decision:
WBG Eligible or Application Rejected; may appeal to Sanctions Board
For more information:

www.worldbank.org/integrity
For more information:

www.worldbank.org/sanctions
For more information:

www.worldbank.org/vdp
Questions?

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• Pascale Dubois, World Bank: pdubois@worldbank.org
• Jonathan Shapiro, World Bank: jshapiro1@worldbank.org
Common Corruption and Fraud Activity in World Bank-Financed Projects

Common activity indicating corruption:

- Procurement officials require bidders to hire “consultants” who provide no legitimate services.
- Companies disguise direct payments to procurement officials as legitimate payments.
- Companies hire “experts” who previously worked for the procurement authority to assist with bid preparation.
- Authorities narrowly design project specifications to benefit one company.
- Authorities include complicated technical features in the tender to give themselves discretion in the selection process.
- Companies gain access to confidential information about tender specifications or competitors’ bid prices.
- Procurement authorities fully vet and disqualify one bid while giving a less rigorous review to another.
- Companies “entertain” procurement officials to win favor and develop complicated schemes to hide bribe payments.

Common activity indicating fraud:

- Bidders misrepresent their qualifications in bid documents.
- Bidders submit false performance certificates or other documentation to support their bids.
- Individuals set up fictitious companies to obtain contracts.
- Companies submit false invoices.
The Respondent’s Considerations

Internal Investigations:
- Should address more than just corrupt acts (investigation plans should aim to identify fraud, collusion, and coercion as well).
- Transactions related to MDB-financed projects should be delineated from other transactions.
- Heavy emphasis / focus on public procurement processes.

Voluntary Disclosure and Cooperation:
- Participants in Voluntary Disclosure Program commit to (1) not engage in misconduct in the future; (2) disclose to the Bank the results of an investigation; and (3) implement a robust internal compliance program.
- In return, participants avoid debarment for disclosed past misconduct, keep their identities confidential, and may continue to compete for Bank-supported projects.

Negotiated Resolution Agreement:
- Bank demands (1) acknowledgement of wrongdoing; (2) adoption of compliance measures; (3) cooperation.
- Can occur at any stage of investigation.
- Might include monetary penalty or debarment or both.
- Avoids costs and uncertainties associated with sanctions proceedings.
The Respondent’s Considerations

**INT’s Investigative Powers:**
- Cannot compel production of documents, interviews of witnesses, or search of premises.
- But might have contractual audit rights.
- INT looks for ways to leverage its resources.
- Limited powers offset by lower standard of proof.

**Coordination with National Authorities:**
- Referrals to national authorities (even when no sanction is imposed).
- Sharing of evidence (in both directions).
- Encouraging national authorities to act (SNC Lavalin).
- Joint operations.
- Conditioning support.
- Relevant because international bribery schemes can touch multiple countries.
- National authorities’ reasons for acting on World Bank evidence can be diverse.

**Broad Impacts of Debarment and Cross-Debarment:**
- Reputation of company.
- Due diligence / red flag effects.
Guidance for Practitioners

Relationship Between World Bank Rules and National Laws:
- National laws do not directly apply.
- National laws can be relevant and persuasive.

Compliance Programs Should Address All Sanctionable Practices
- Not only corruption risk, but fraud and collusion as well.
- Implications for policies, internal controls, training, etc.

Helpful Resources:
- World Bank Sanctions Board Law Digest.
- Sanctions Board Decisions now published on-line.
- Sanctions procedures, procurement guidelines, and other key documents available on-line.
THANK YOU

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