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RECENT DEVELOPMENTS IN MULTILATERAL DEVELOPMENT BANK ENFORCEMENT



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MCLE Certificate Information

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- Most participants should anticipate receiving their certificate of attendance in four to eight weeks following the webcast.
- **Please direct all questions regarding MCLE to CLE@gibsondunn.com.**

The Panel



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TABLE OF CONTENTS

01 Multilateral Development Banks and Sanctionable Conduct

02 Types of Sanctions and Negotiated Resolution Agreements

03 Compliance Programs

04 FCPA and MDB Sanctions

05 Mitigating Risk of Sanctions

**THE GROWING ROLE OF
MULTILATERAL
DEVELOPMENT BANKS
AND HOW THEY DEFINE
AND INVESTIGATE
SANCTIONABLE
CONDUCT**

01

Principal Multilateral Development Banks

The World Bank and other **Multilateral Development Banks (MDBs)** are institutions created to finance and support development efforts.



ASIAN DEVELOPMENT BANK



Key Trends in MDB Enforcement

Bigger and even better investigation teams. Over the years, MDBs have continued to build up highly qualified, deeply experienced benches of investigators and enforcement lawyers with diverse professional backgrounds (e.g., auditors, law enforcement, corporate compliance).

Traveling again! Following a COVID-induced pause in on-site investigations (e.g., data collection, interviews), MDB sanctions teams are back and running at full speed.

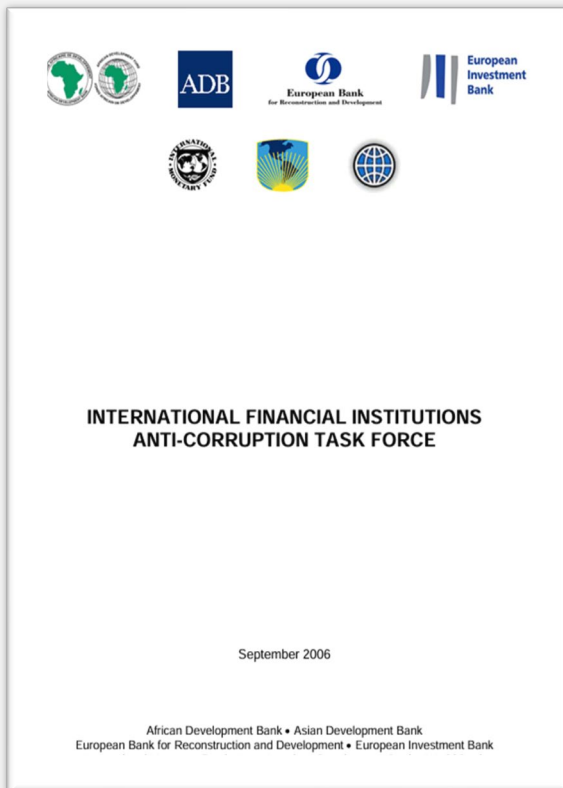
Greater emphasis on prevention and compliance. Integrity units are more keenly focused on preventing misconduct (including through due diligence) and rehabilitating entities than ensnared in sanctions enforcement.

It's not just the World Bank. While the World Bank has historically led the integrity enforcement regime among MDBs, other banks, such as the Inter-American Development Bank, have grown their functions tremendously. Expect further growth and collaboration.

Enforcers, not mere auditors. Audits by MDB integrity functions are not routine check-ups; assume that they are investigations triggered by information suggesting a sanctionable practice.

MDBs' Convergence on a Uniform Framework

MDBs have adopted a series of agreements, principles, and guidelines to harmonize features of their sanctions mechanisms and promote consistency. These include:



MDB
Harmonized
Principles on
Treatment of
Corporate
Groups

General
Principles
and
Guidelines for
Sanctions

The
Agreement
for Mutual
Enforcement
of Debarment
Decisions

MDB General
Principles for
Settlements

Key Definitions

A **corrupt practice** is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

A **fraudulent practice** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

A **collusive practice** is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.

A **coercive practice** is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.

Key Definitions (Cont'd)

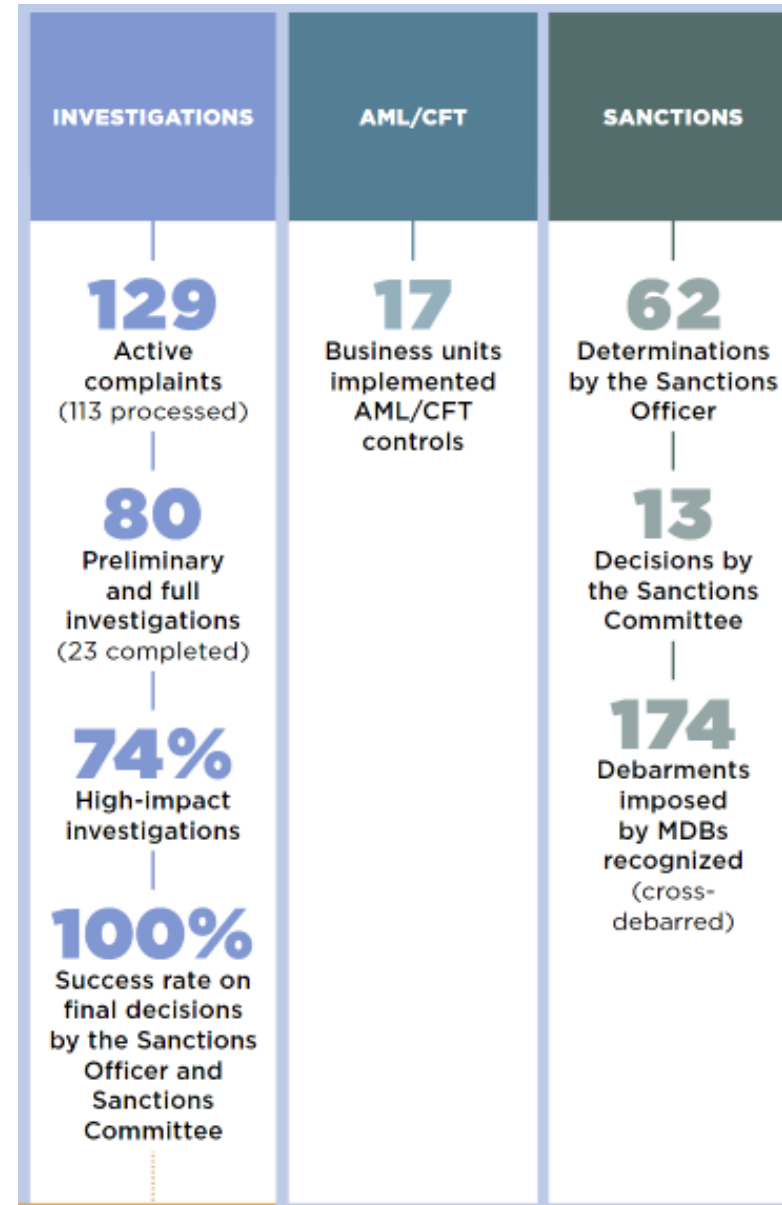
An **obstructive practice** is (i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information.

A **misappropriation** is the use of bank financing or resources for an improper or unauthorized purpose, committed either intentionally or through reckless disregard.

World Bank Sanctions Activity (2023 Annual Report)



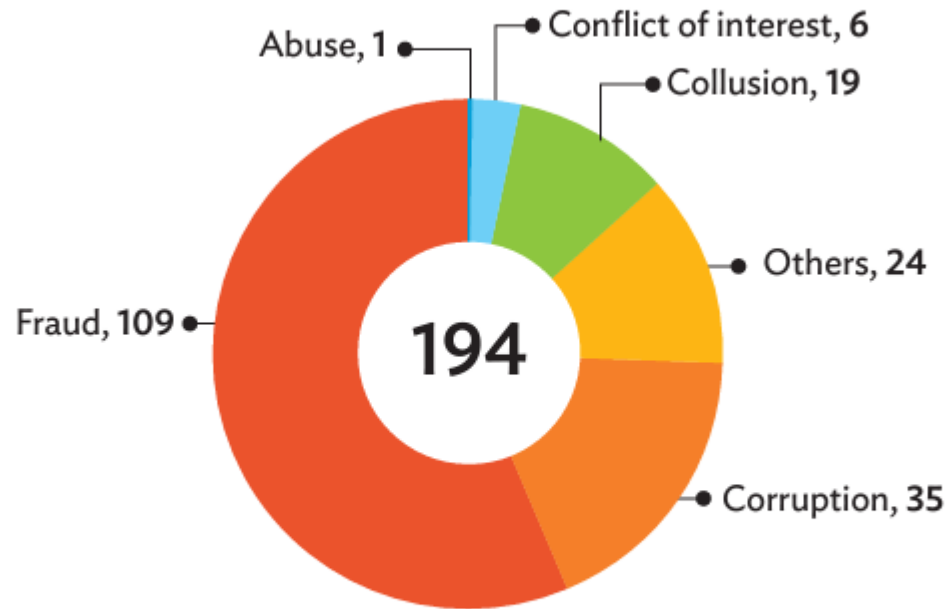
IDB Sanctions Activity (2022 Annual Report)



Asian Development Bank Sanctions Activity (2022 Annual Report)

Complaints Assessment

Types of Complaints Received, 2022



■ Abuse ■ Collusion ■ Conflict of interest ■ Corruption ■ Fraud ■ Others

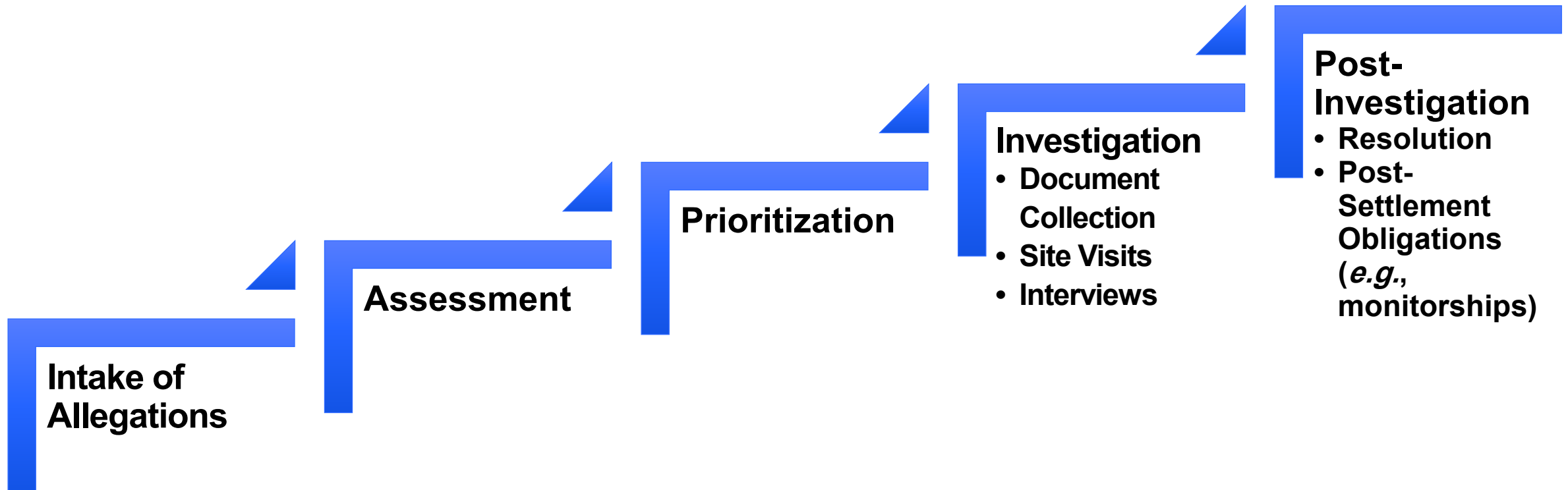
Note: The category “Others” refers to other integrity violations under the Integrity Principles and Guidelines (2015) such as obstruction; complaints of other misconduct such as bullying, harassment, and abuse of authority; and complaints that are not integrity concerns.

Source: Office of Anticorruption and Integrity, ADB.

**TYPES AND
CONSEQUENCES OF
SANCTIONS AND
NEGOTIATED
RESOLUTION
AGREEMENTS**

02

The General Investigative Process



MDBs' General Principles for Settlement

- Settlements may be entered into with subjects (individuals and/or entities) that are voluntarily willing to admit, accept, or not contest culpability/responsibility.
- At any time before submission of the case to the Sanctioning Authority (and, depending on the MDB, in some cases until the sanctions decision is made), the subject(s) of an investigation may try to settle with the MDB.
- A signed settlement agreement has the same effect as if the sanction had been decided/imposed by the MDB's Sanctioning Authority; however, the sanction contained in the settlement agreement and the other terms and conditions shall not be subject to appeal.

Common Settlement Factors

- Factors that may be taken into account in the decision to settle include (but are not limited to):
 - admitting or not contesting culpability/responsibility;
 - cooperation with the investigation;
 - implement an integrity compliance program within a specific time frame; and/or
 - the subject voluntarily discloses the prohibited practice.

Common Conditions to Settlements

- Common conditions include, but are not limited to:
 - a period of debarment;
 - conducting an internal investigation and holding the responsible employee(s) to account;
 - implementation of additional integrity compliance measures;
 - engagement of a third-party compliance monitor;
 - cooperation with the MDB's efforts to investigate misconduct in other projects;
 - self-reporting and cooperation with relevant national authorities and/or the Investigative Offices of other MDBs, where applicable; and
 - sharing information that can inform the MDB of integrity lessons learned.

Range of Sanctions

1. Debarment (without Conditions).
2. Debarment with Conditional Release or Reinstatement.
3. Permanent or Indefinite Debarment.
4. Conditional Non-debarment.
5. Letter of Reprimand.
6. Restitution/Financial Remedies.

GENERAL PRINCIPLES AND GUIDELINES FOR SANCTIONS¹

In furtherance of the Uniform Framework for Preventing and Combating Fraud and Corruption (the "IFI Framework") and in accordance with the Agreement on Mutual Enforcement of Debarment Decisions,² the following institutions (the "Institutions"), now seek to harmonize their respective sanctioning guidelines, to ensure consistent treatment of individuals and firms:

- African Development Bank Group (AfDB)
- Asian Development Bank (ADB)
- European Bank for Reconstruction and Development (EBRD)
- European Investment Bank (EIB)
- Inter-American Development Bank Group (IDB Group)
- World Bank Group (WBG)

1. The Institutions acknowledge that the sanctions process is administrative in nature. Each Institution shall have an independent Investigative Office that conducts investigations and presents its findings to a separate Sanctioning Authority in accordance with the principles set out in the IFI Framework.

2. The Institutions shall sanction persons or entities ("subjects") found to have engaged in Prohibited Practices³ pursuant to each Institution's rules, policies and procedures. Any sanction imposed shall take account of the principle of proportionality, including mitigating and aggravating circumstances.

Range of Sanctions

3. Sanctions, which may be imposed singly or in combination, include, but are not limited to, the following:

- (a) Debarment – where the sanctioned subject may be reinstated at the end of the specified minimum debarment period;
- (b) Debarment with conditional release or reinstatement – where the sanctioned subject may be reinstated, or may benefit from a reduced debarment period upon compliance with conditions imposed by the Institution at the time the sanction is issued (including the adoption and implementation of a Voluntary Compliance Program).

¹ These General Principles and Guidelines are intended to set out common standards for incorporation into each Institution's sanctioning policies.

² Signed on 17 September 2006 by the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, the World Bank Group, the European Investment Bank Group and the International Monetary Fund.

³ 9 April 2010

⁴ Includes corrupt practice, fraudulent practice, coercive practice, and collusive practice, as defined under the IFI Framework.

Range of Sanctions (explained)

1. **Debarment:** The sanctioned party is ineligible for funding and is reinstated at the end of the specified minimum debarment period, without conditions.
2. **Debarment with conditional release or reinstatement:** The sanctioned party may be reinstated, or may benefit from a reduced debarment period upon compliance with conditions imposed at the time of sanction such as adoption of a compliance program.
3. **Permanent or indefinite debarment:** Debarment without reinstatement possibility where there is no reason to believe party can be rehabilitated.
4. **Conditional non-debarment:** The sanctioned party is required to comply, within a stated time period, with specific remedial, preventive, or other conditions to avoid debarment.
5. **Letter of reprimand:** The sanctioned party is reprimanded in the form of a formal “Letter of Reprimand” of the sanctioned party’s conduct.
6. **Restitution/Financial remedies:** The sanctioned party may be required to make restitution to the Borrower or to any other party or take actions to remedy the harm done by its misconduct.

Impact of Sanctions

- Debarment means ineligibility to participate in MDB-funded projects
- Sanctions can be extended to affiliates and subsidiaries
- Potential cross-debarment by other MDBs
- Possible referrals for prosecution to national authorities
- Mandatory cooperation provisions in settlements with the DOJ could be triggered
- Negative publicity
- A compliance monitor may be imposed

Cross-Debarment: A Force Multiplier



- Cross debarment is an agreement among the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, and the World Bank Group [to mutually enforce each other's debarment actions](#).
- After it has debarred an entity, an MDB sends a Notice of Debarment Decision to the other signatories.

Conditions to Cross- Debarment

- A debarment decision will be eligible for cross debarment if it:



MDB'S EXPECTATIONS FOR YOUR CORPORATE COMPLIANCE PROGRAM

03

Reinstatement

- (b) Debarment with conditional release or reinstatement – where the sanctioned subject may be reinstated, or may benefit from a reduced debarment period upon compliance with conditions imposed by the Institution at the time the sanction is issued (including the adoption and implementation of a Voluntary Compliance Program);

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MDB General Principles for Business Integrity Programs

“Core” Principles

- Risk Assessment
- Prohibited Misconduct
- Management Roles
- Integrity Function
- Advice
- Accessibility

Internal Controls

- Employee Due Diligence
- Relationships with Current/Former Public Officials and PEPs
- Employee Contractual Obligations
- Gifts, Hospitality, and Travel
- Charitable Donations and Sponsorships
- Political Contributions
- Facilitation Payments
- Business Development
- Record-Keeping
- Incentives
- Disciplinary Mechanisms
- Financial Controls and Audits
- Independent Assurance
- Decision-Making Process
- Mergers/Acquisitions

MDB General Principles for Business Integrity Programs (Cont'd)

Reporting and Investigation

- Duty to Report
- Whistleblowing/Hotline
- Investigation and Remediation Procedures

Training and Communication

- Training
- Communication

Business Partners

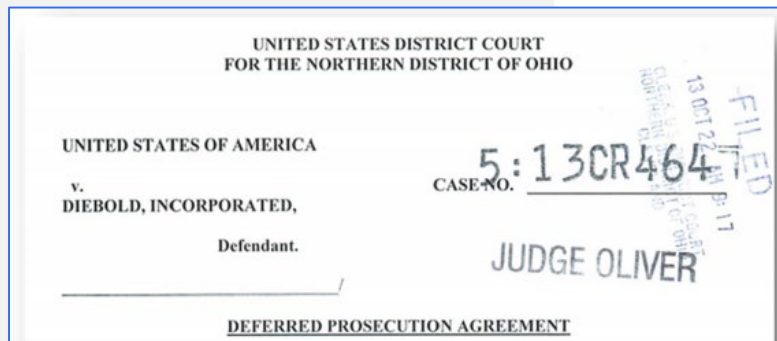
Collective Action/External Engagement

THE INTERSECTION OF THE FCPA AND **MDB** **SANCTIONS**

04

Intersection with National Enforce- ment and the FCPA

- MDBs often make referrals to national enforcement authorities.
- In FY 2023, the World Bank’s Integrity Vice Presidency made 12 referrals—eight detailed referrals and four summary notification letters—to 11 different recipient countries.
- Settling FCPA allegations with DOJ requires cooperation with other enforcement entities and MDBs:
 - FCPA investigations can lead to subsequent MDB investigations and sanctions.
 - The U.K. Serious Fraud Office has a similar relationship with MDB enforcement vis-à-vis the U.K. Bribery Act.



controls, subject to applicable law and regulations. At the request of the Department, the Company shall also cooperate fully with other domestic or foreign law enforcement authorities and agencies, as well as the Multilateral Development Banks (“MDBs”), in any investigation of the Company, its affiliates, or any of its present and former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to corrupt payments.

MITIGATING THE RISK OF BEING SANCTIONED

05

Top 3 Biggest Mistakes in Undergoing an MDB Sanctions Investigation

1. Thinking it's "just an audit" and not a "real" investigation.

2. Falsely admitting wrongdoing in the hope that an apology can fix everything.

3. Not responding and assuming the matter will just go away.

**Don't make the situation worse:
involve counsel as early as possible**

Mitigating the Risk of Being Sanctioned

- Building the ark before the flood: What can a company do before there is a problem?
- What can a company do when MDBs are exercising audit rights in bank-funded projects (e.g., responding to visit requests, broad data collections)?
- What can a company do during a sanctions/integrity investigation?
- How can a company best evaluate whether to self-report, cooperate, or settle?

QUESTIONS?



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Michael has broad white collar defense experience representing corporations and corporate executives facing criminal and regulatory charges. He has represented clients in an array of matters, including accounting and securities fraud, antitrust violations, and environmental crimes, before law enforcement and regulators, including the U.S. Department of Justice and the Securities and Exchange Commission. Michael also has managed numerous internal investigations for publicly traded corporations and conducted fieldwork in nineteen different countries on five continents. In addition to his U.S. government-facing work, Michael has extensive World Bank Group enforcement experience, working on behalf of clients under investigation by the World Bank Integrity Vice Presidency and assisting companies already subject to World Bank sanction.

In his FCPA practice, Michael regularly conducts internal investigations for corporations regarding possible anti-bribery violations and assists them in complying with government subpoenas and negotiating settlements with enforcement agencies. He also routinely advises corporations on the adequacy of the design and implementation of their corporate ethics and compliance programs. This has included extensive work on all programmatic elements, including whistleblowing and investigative procedures, codes of conduct, expense approval and reimbursement processes, and oversight and governance functions, among many others. Michael has designed entire anti-bribery compliance programs for Fortune 100 corporations. He also frequently conducts FCPA training for in-house counsel, corporate executives, and line employees. And he has served as a faculty member for the Ethics and Compliance Officer Association's Global Law School.

Michael clerked for the Honorable Fortunato P. Benavides of the U.S. Court of Appeals for the Fifth Circuit. He is a 2003 *magna cum laude* graduate of the Georgetown University Law Center, where he was inducted into the Order of the Coif. At Georgetown, he served as Senior Articles & Notes Editor of the *American Criminal Law Review* and authored the article on the False Claims Act for the *Seventeenth Survey of White Collar Crime*, 39 Am. Crim. L. Rev. 491 (2002). In 2000, Michael received his Bachelor of Science in Foreign Service *magna cum laude* from Georgetown's Walsh School of Foreign Service, where he was elected to Phi Beta Kappa.

Michael's full biography can be viewed [here](#).

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Pedro G. Soto is of counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher. He is a member of the White Collar Defense and Investigations group, and his practice focuses primarily on anti-corruption and fraud matters. He has more than 12 years of experience representing corporations and individuals under investigation by government authorities. He has also conducted compliance due diligence for over 100 transactions around the world. Pedro has particularly deep experience in Latin America, where he has worked on matters in more than 15 different countries. He also represents foreign governments and private claimants in significant litigation and arbitration matters.

He is recognized as one of the "Best Lawyers: Ones to Watch" in "Criminal Defense: White Collar" in the 2022, 2023, and 2024 editions of *The Best Lawyers in America*.

Pedro speaks and writes frequently on white collar enforcement and compliance issues. Since 2018, he has taught an annual course for the International Chamber of Commerce in Mexico City on "Anti-Corruption Due Diligence in M&A Transactions." Among his most recent publications, Pedro is the co-author of: "*Cooperating with Authorities: The U.S. Perspective*" (published in Global Investigation Review's The Practitioner's Guide to Global Investigations), "*Channeling the Channel Partner Risk: Addressing Anti-Corruption Risk with Channel Partners in the Technology Sector*," (published in The FCPA Report) and "*Anti-Corruption Compliance in Emerging Markets: A Resource Guide*" (an e-book for compliance professionals).

A native Spanish speaker, Pedro has extensive experience in Latin America. He has worked on matters involving Argentina, Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Mexico, Panama, Paraguay, Peru, Puerto Rico, Uruguay, and Venezuela. Pedro also has experience in matters throughout Asia, Europe, and the Middle East.

He earned a Juris Doctor, with honors, from the University of Chicago Law School and a Bachelor of Arts, *magna cum laude*, from Georgetown University.

Pedro's full biography can be viewed [here](#).

EDUCATION

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Christopher R. Kim is a senior managing director in the Washington, DC, office of Guidepost Solutions, focusing on investigations, due diligence, monitorships, and compliance. He brings over 25 years of investigative and/or legal experience in U.S. criminal cases, multilateral development banks sanctions cases, and internal corporate cases.

Mr. Kim's practice is focused on engagements involving investigations including internal investigations, defense investigations for federal, state and/or multilateral development bank sanctions cases and compliance matters involving regulatory actions.

Prior to his private practice, Mr. Kim was a Senior Investigator at the World Bank Group, where he planned, managed, and directed multi-disciplinary teams in the audits of multi-national corporations alleged to have been involved in fraud, corruption and/or collusion in various regions, i.e., Asia, Southeast Asia, Europe and Africa. He also led due diligence efforts involved with the World Bank International Finance Corporation. He has a wealth of experience involving the World Bank Group's sanctions process, i.e., investigations, settlement, litigation, and sanctions board. In addition, he coordinated cases with other multilateral development banks including the Asian Development Bank, InterAmerican Development Bank, European Bank for Reconstruction & Development, European Investment Bank, and the African Development Bank.

Mr. Kim started his career at the Federal Bureau of Investigation (FBI), where he spent 14 years as a Special Agent, Associate Division Counsel (FBI-New York) and Supervisory Special Agent (International Operations Division). In these different roles, he led major investigations and/or advised on legal/policy matters involving transnational organized crime, public corruption, U.S. export-controlled technology, cyber security, and national security issues. He led and/or worked on task forces with numerous federal agencies, including the U.S. Department of Commerce Bureau of Industry Security, Immigration & Customs Enforcement, IRS, and ATF. He also worked on international matters in the International Operations Division and in South Korea as the Acting FBI Legal Attaché.

Mr. Kim's full biography can be viewed [here](#).

EDUCATION

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