GIR Global Investigations Review

The Guide to Multilateral Development Bank Investigations - First Edition

Common pitfalls in MDB audits and charting a path to effective settlement of allegations

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Multilateral development banks (MDBs) are foundational to emerging markets; however, it's no small task to ensure that development financing is used transparently and effectively, especially in regions where corruption and misconduct can undermine progress. Edited by Yas Froemel of IO Integrity Professionals Association and Daniel Zapf of White & Case, the GIR Guide to Multilateral Development Bank Investigations provides a comprehensive analysis of MDB integrity, bringing together perspectives from legal practitioners, consultants and MDBs with the aim of fostering greater accountability and collaboration in the fight against misconduct in MDB-financed projects.

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Common pitfalls in MDB audits and charting a path to effective settlement of allegations

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Summary

INTRODUCTION

Any given year, multilateral development banks (MDBs) fund thousands of development projects around the world, disbursing hundreds of billions of dollars[2] for initiatives that run the gamut from infrastructure to education, healthcare to agriculture, and even environmental investments, among others. Many of these projects are in markets that present a high risk of corruption.[3] Notwithstanding these risks, accessing the MDBs' significant pipeline of funding can be quite enticing for multinational companies seeking to do business in the developing world. In many developing countries, MDBs are the lenders of last resort and the only viable paths to getting large projects funded.

Given the neighbourhoods in which they often lend money, MDBs have developed robust enforcement mechanisms to ensure that MDB-funded projects are not marred by 'sanctionable practices' of corruption, fraud, collusion, coercion or obstruction. Indeed, particularly over the past two decades, MDBs – especially the World Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the African Development Bank – have developed vigorous enforcement programmes to investigate and, if appropriate, punish these sanctionable practices. Every year, MDBs receive thousands of complaints of potential misconduct[4] and open hundreds of investigations.[5]

Often described innocuously in official correspondence as project 'audits', MDBs' investigations are not mere administrative exercises; they are typically fully fledged investigations that may involve cooperation with, or referrals to, national law enforcement agencies[6] and INTERPOL.[7] Even in instances in which law enforcement does not get involved, the consequences of adverse sanctions decisions on a company or individual can be financially and reputationally devastating. If MDBs determine that a sanctionable practice has occurred, they often impose a 'debarment', or the formal disqualification from contracting (directly or indirectly) with one or more MDBs for a defined period of time (or even indefinitely). These sanctions are public and often accompanied by severe conditions and collateral consequences, including the imposition of a corporate compliance monitor[8] and third-party investigator, ongoing cooperation requirements and reciprocal blacklisting by other MDBs.[9] For many companies, such a debarment could be fatal.

Subjects of an MDB audit should treat these exercises accordingly and appreciate that they are often triggered by the MDB receiving specific information suggesting that a sanctionable practice has occurred. The audits themselves can be quite intrusive and disruptive of business operations as they typically involve site visits, data collections, forensic reviews of accounting records and personnel interviews. Managing these audits – including the important decision of whether to cooperate and to what degree – sets the foundation for the potential resolution of any misconduct identified.

This chapter provides practical guidance on how companies and individuals should navigate MDB audits from the moment they receive a notice of audit, including by identifying the key mistakes that respondents can make when undergoing an audit. We then explore the key considerations to potential settlement of the MDB's allegations of sanctionable practices, the types of sanctions usually covered in settlement agreements, and strategies for mitigating the severity or impact of the sanctions to be negotiated.

THE NOTICE OF AUDIT

The first indication of trouble ahead for putative respondents is receiving an audit notice or audit letter from the corresponding MDB's investigative office.[10] In this notice, the MDB will first identify the specific funding or contract that it is auditing, the nominal target of the audit and the scope of the issues under review. Respondents should pay close attention to the notices, as they will identify the specific institution whose rules apply to the underlying contract and whose sanctionable practices standards will be applied to the audit and the conduct at issue.

These MDB audits are not routine, course-of-business audits to ensure compliance with a contract; they are targeted inquiries that often stem from information that an MDB has received suggesting that misconduct may have been afoot in the project. While MDBs often play their cards close to their chests and do not reveal their sources of information, based on our experience with these audits, we understand that MDBs often arrive at these investigative leads through a combination of (1) internal reporting from the project finance teams overseeing the specific loans, (2) referrals from local law enforcement, (3) media reports, (4) complaints from whistleblowers or disgruntled former employees, and (5) tips from disgruntled competitors.

In short, by the time that MDBs' investigative offices knock on a respondent's door for an audit, it is likely that they have already identified indicia of misconduct, and their innocuous-seeming audit and documentation requests are in fact targeted exercises to confirm suspicions of specific wrongdoing. Every step a respondent takes from that moment on should be calculated to reduce potential liability and mitigate collateral risks.

NAVIGATING AN AUDIT: THE TOP 10 MISTAKES RESPONDENTS MAKE

When faced with an audit request, respondents must be thoughtful in how they approach the situation. The operating rule is to do no (further) harm. If the best course of action is to cooperate with the investigating MDB, it is important to work with the investigators to share information collaboratively and explore mitigation steps that can be taken mid-investigation, including potential voluntary suspension.

In this regard, it is crucial to avoid common pitfalls that may derail the entire defence, unintentionally result in liability or make pre-existing liability worse. In our experience, the following are 10 of the most common mistakes that respondents make in approaching MDB audits:

- Thinking that it is 'just an audit' and not a 'real investigation': Despite their innocuous description as audits, these matters are not traditional financial audits that seek to reconcile accounts; they are fully fledged investigations involving extensive document and data collection, on-site visits and personnel interviews. They can be quite disruptive to business operations. But, most importantly, the results of these audits can be turned over to prosecutors in relevant jurisdictions and can become the basis of criminal proceedings. As noted above, even in instances in which law enforcement does not become involved, the penalties that MDBs can impose – often with the force multiplier of 'cross-debarment' – can be financially and reputationally devastating to companies and individuals alike. It is a fundamental error to dismiss these audits as something less than a real investigation.
- Assuming that you can just 'explain away' the situation: In many instances, companies or individuals who receive an MDB audit notice believe that the matter is a simple misunderstanding that can be explained away. It seldom is. As noted previously,

audits are most often driven by leads that MDBs have received suggesting that particular misconduct has occurred. MDB investigators often come to the audit table with undisclosed evidence or testimony from third parties that establishes prima facie sanctionable practices. In these instances, additional off-the-cuff explanations to investigators, such as highlighting that this is 'how things are done' in a particular market, can make matters worse by giving investigators facts that do not mean much in isolation but that when combined with other information they may be holding could complete a picture of potential misconduct.

- Falsely admitting wrongdoing in the hope that an apology can fix everything: Unusual as it may sound, in some instances, respondents will falsely admit to wrongdoing thinking that apologising for the misconduct will be sufficient to close the matter quickly. It will not. MDB investigators can be quite dogged in their pursuits, and by the time they have launched a formal audit, they are unlikely to just 'go away' – and certainly not by merely getting an apology of sorts. To the degree that any company or individual admits to misconduct, it can expect that MDBs will want such an admission in writing as part of a settlement – which can carry meaningful penalties – or that, absent a settlement, such an admission will be used against the party in litigation before the respective MDB's internal sanctioning bodies.
- Not being truthful or obstructing the audit process: The corollary to not falsely admitting wrongdoing is the requirement to always be truthful with the MDB's investigators. Of course, this does not necessarily mean divulging every piece of information. Any disclosures to MDBs should be consulted carefully with legal counsel to evaluate potential exposure from them. But to whatever degree a respondent is providing testimony (oral or written) or documentation to MDBs' investigative offices, such information must be truthful and accurate to the best of the respondent's understanding and recollection. The failure to provide truthful information or, worse, manipulating records (e.g., doctoring documents or deleting emails or chats) can be the basis for a stand-alone obstruction of audit charge, as well as enhancements to the penalty for the underlying conduct.
- Not responding and assuming that the matter will just go away: While it is a mistake to overshare with MDBs, it is equally problematic not to respond to an audit request altogether and simply to assume that MDB investigators will lose interest and the matter will go away. They will not. MDBs have highly qualified, deeply experienced benches of investigators and enforcement lawyers with diverse professional backgrounds (e.g., auditors, law enforcement and corporate compliance). They are steadfast in their pursuits, and they will simply make the case against the respondent through other means, including by soliciting evidence and cooperation from other third parties. In some instances, the failure to cooperate could push MDBs to cooperate with law enforcement authorities in the relevant jurisdiction, which greatly enhances the risk profile for respondents. This outcome will almost certainly result in MDBs sanctioning corporations or individuals through mechanisms akin to 'default' judgments.
- Not understanding your own facts and situation before speaking with investigators: Corporate respondents to MDB investigations often make the crucial mistake of responding to audit requests and sitting down for interviews without first getting their own affairs in order. Effective management of these audits requires companies or individuals to get ahead of the situation and conduct an internal review to identify

misconduct promptly, at least to the extent possible under the circumstances. It is important that when a company receives any indication of misconduct – or, in this case, an audit notice – it conducts a targeted, privileged[11] investigation through counsel to try to ascertain the facts surrounding the potential misconduct. If an MDB sends a notice of audit for a particular project, it is important for companies to try to understand what occurred with that particular project and whether there are any apparent irregularities and to remediate any issues promptly. It is also critical to determine whether potential misconduct in connection with one project has spread to or tainted other projects. Conducting an internal investigation thus has two key advantages. First, when speaking with MDB investigators, companies do not want to have a blind spot of not knowing about potential misconduct and in the process invertedly (and without appropriate consideration) making the problem worse by turning over additional facts and evidence that will be used against them. Second, by getting ahead of the situation, companies put themselves in a position to bring facts to the MDB's attention proactively, thus potentially securing substantial cooperation or self-disclosure credit (as described below).

- Sitting down with investigators without legal counsel: Just as it would be unwise for a potential defendant to sit down with criminal investigators without legal counsel present, it is equally unwise for a respondent to an MDB investigation to sit down with investigators without counsel. The challenges here can be diverse. For example, respondents may be unwittingly waiving certain rights or may be digging themselves or their company into a deeper hole than needed by providing erroneous or extraneous information to investigators without adequately considering legal privilege, defences and strategy. Moreover, counsel with experience in MDB investigations can often help 'cut through' issues with investigators to focus the review as narrowly as possible. For example, MDB investigators will often serve respondents with dozens of document requests. Experienced counsel can often work collaboratively with investigators to whittle down expansive lists of requests to the handful of high-priority requests that the investigators are most focused on, thus saving time and resources and ensuring that the inquiry remains as narrowly focused as possible.
- Not recognising that the burden of proof to establish liability is low: Unlike criminal prosecutions in most countries, which require relatively conclusive evidence of the offence – in the United States, proof beyond a reasonable doubt, for example – violations of MDBs' sanctionable practices standards must be established by only the 'preponderance of the evidence'.[12] That is, to be found liable of a sanctionable practice, the MDB need prove only that the violation is 'more likely than not'. This standard is substantially lower than many respondents would expect, and few borrowers or participants in MDB-funded projects are aware of this at the time they agree to the MDBs' terms.
- Thinking that committing sanctionable practices requires intentional conduct: The standards for violating 'sanctionable practices' can be different from and lower than for traditional criminal charges. While in jurisdictions such as the United States, criminal offences such as fraud require scienter – that is, intent or knowledge of wrongdoing – under MDB standards, no such knowledge is required for a non-criminal, MDB-sanctionable practice. For example, to establish a 'fraudulent practice' under MDB standards, the investigative authority need prove only that a person acted or 'misrepresented' a fact 'recklessly' – even if not knowingly or

intentionally – in a manner that misled or attempted to mislead someone.[13] When combined with the lower burden of proof described above, a party can end up running afoul of sanctionable practices standards on little more than a foot fault; that is, investigators need prove only that a party more likely than not engaged in reckless conduct – even an omission, not an affirmative act – to establish fraud. Many respondents are surprised to learn that the standards can be tripped so easily and that not acting intentionally will not suffice as a defence.

- Overlooking that a problem with one MDB can be a problem with all: To make their sanctions more effective, the Asian Development Bank Group, African Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank Group and World Bank Group have entered into what is known as a 'cross-debarment agreement'.[14] Pursuant to this agreement, 'entities debarred by one MDB will be sanctioned for the same conduct by the other signatories'.[15] The stated aim of the agreement is that it 'multiplies the deterrence factor of a single sanction and allows participating institutions to make the most of limited investigative resources'.[16] For cross-debarment to apply, the underlying debarment must (1) have been for fraud, corruption, collusion or coercion (not 'obstruction'); (2) have been public; (3) have been for one year or longer; and (4) not have been based on a decision of a national or other international authority.[17] In practical terms, this means that a corrupt or fraudulent scheme in, say, a remote city in Bolivia could have global effects for the respondent by banning it from doing business with the World Bank and the Asian, African, European and Inter-American regional development banks. The agreement thus functions essentially as a force multiplier and greatly enhances the burden of any sanctions on the respondent.

POTENTIAL PATH TO RESOLUTION: THE NEGOTIATED SETTLEMENT

SETTLEMENT AGREEMENTS

Assuming that the MDB's investigators have developed sufficient information to support a potential sanctionable practice charge, respondents should think strategically about what potential path to resolving the allegation best aligns with their operations and needs. One path is litigation; the other path, as is explored here, is settlement.

MDBs party to the MDB General Principles for Settlements agreement[18] have outlined 'the basic features considered by the respective MDBs regarding settlements of investigations of Prohibited Practices'.[19] Recognising that settlements 'can also be an efficient way to resolve investigation findings',[20] the General Principles for Settlements provide that '[s]ettlements may be agreed with subjects (individuals and/or entities) that are voluntarily willing to admit, accept, or not contest culpability/responsibility for having committed Prohibited Practices and to sign an agreement'.[21] A signed settlement agreement has the same effect as if the sanction had been decided or 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.[22]

MDBS' CONSIDERATIONS IN SETTLEMENT

In considering whether a matter is appropriate for settlement, MDBs will evaluate issues such as whether '[t]he subject has admitted (or will admit) or does not contest (or will not contest) culpability/responsibility for the Prohibited Practice(s)'.[23] They will also consider whether

the subject 'is cooperating (or has agreed to cooperate) with the MDB's Investigative Office',-[24] whether it is 'prepared to commit to implement an integrity compliance programme to the MDB's standards within a specific time frame'[25] and, finally, whether the subject 'voluntarily disclose[d] the Prohibited Practice'.[26]

In addition to the above considerations, 'mitigating factors to be taken into consideration when determining an appropriate sanction for settlements may include (but are not limited to)' whether the subject has taken corrective or remedial measures in light of the misconduct identified.[27] MDBs also consider whether '[t]he subject is conducting (or will conduct) an effective internal investigation and relevant facts/findings, and documentation and records of interview supporting such findings are being (or will be) shared with the Investigative Office with no restrictions on their use.'[28]

Taken together, these factors are relevant to the question of whether a settlement is appropriate and, if so, to 'the severity of the sanction imposed by the settlement'.[29]

TYPICAL CONDITIONS AND SANCTIONS IN SETTLEMENTS

In the event of settlement, common corporate conditions include, but are not limited to, (1) a period of debarment or another specific sanction; (2) conducting an internal investigation and holding responsible employees to account; (3) commitments to implementing additional integrity compliance measures; (4) engagement of a third-party compliance monitor; (5) cooperation with the MDB's efforts to investigate misconduct in other projects; (6) self-reporting and cooperation with relevant national authorities or the investigative offices of other MDBs, or both, as applicable; and (7) sharing information that can inform the MDB of integrity lessons learnt.

The specific form of sanction that MDBs may seek in settlement varies as well. On one end of the spectrum, the relevant MDB could issue a 'letter of reprimand', through which the sanctioned party is reprimanded in the form of a formal letter.[30] This is the least severe of the sanctions, in that it does not involve any period of debarment and does not necessarily result in publicity against the respondent. Another sanction that the MDBs may impose is financial restitution, whereby a sanctioned party may be required to make restitution to the MDB borrower or to any other party or take actions to remedy the harm done by its misconduct.[31] Restitution is to be used 'in exceptional circumstances, including those involving fraud in contract execution where there is a quantifiable amount to be restored to the client country or project'.[32] Finally, with respect to sanctions other than debarment, MDBs may impose conditional non-debarment, whereby the sanctioned party is required to, within a stated time period, comply with specific remedial, preventive or other conditions to avoid debarment.[33]

The final type of sanction is the best known and most powerful: debarment. There are several iterations of debarment that will greatly affect the severity of the sanction. First, MDBs may impose a standard debarment in which the sanctioned party is ineligible for funding and is reinstated at the end of the specified minimum debarment period, without conditions.-[34] Second, MDBs may impose debarment with conditional release or reinstatement. Here, a 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 programme.[35] Finally, and most severely, MDBs could impose permanent or indefinite debarment. This type of debarment without reinstatement possibility is imposed in instances in which the MDB has no reason to believe that a sanctioned party can be rehabilitated.[36]

KEY INFLECTION POINTS FOR RESPONDENTS IN SETTLEMENT

While MDBs control many of the key points with respect to settlement, there are certain inflection points that respondents could try to negotiate to minimise the impact of a potential sanction.

First, respondents could advocate for lesser forms of sanctions that do not result in debarment. As noted above, this includes a letter of reprimand, conditional non-debarment and potential restitution. Obtaining one of these alternatives to debarment may be a tall order, because debarment is generally considered the 'base sanction for all misconduct'.[37] Thus, any request to deviate from this base sanction must be well articulated and founded and cite any exceptional circumstances that apply. [38]

Second, corporate respondents could make arguments as to the level of entity within a corporate hierarchy that should be sanctioned. As a general matter, pursuant to the MDB Harmonized Principles on Treatment of Corporate Groups,[39] '[s]anctions will be implemented with respect to entities within corporate groups . . . based on the facts of the case.'[40] The key threshold in deciding which entity to sanction is that it must be the entity 'with demonstrable responsibility for the prohibited practice or controlled by a party responsible for the prohibited practice'.[41] The baseline rule is that '[s]anctions will generally be applied to all entities controlled by the Respondent', but the MDB has discretion not to extend the sanction upon controlled entities 'if the Respondent demonstrates inter alia to the satisfaction of the [MDB] that such entities are free from responsibility for the prohibited practice, and application to the entities would be disproportionate, and application is not reasonably necessary to prevent evasion'.[42] Finally, pursuant to the Harmonized Principles, '[s]anctions will be applied to entities controlling the Respondent and to entities under common control if the [MDB] demonstrates involvement in the sanctioned prohibited practice', which 'may include willful blindness and a failure to supervise'.[43] Thus, for example, if a hypothetical respondent is an industrial conglomerate that owns and controls an engineering firm engaged in corrupt practices in connection with an MDB-funded project, such conglomerate could argue that the sanction should stay at the engineering company level because it is the one responsible for the misconduct and because it is the only entity that participates in MDB-funded projects. Other companies within the conglomerate that are not in the same line of business, had no involvement in the alleged misconduct and do not engage in MDB-funded projects should be prime candidates for exclusion under the Harmonized Principles on Treatment of Corporate Groups.

Importantly, MDBs are deeply concerned about possible evasion of sanctions through use of corporate shells. Thus, they will not normally 'lower' the level of sanctions to a project level or special purpose vehicle if it means that the persons or entities behind the alleged misconduct can merely register another firm or special purpose vehicle and continue to bid on MDB-financed projects. In short, MDBs want to sanction at the uppermost corporate level that was 'involved'[44] in the misconduct such that it will give any resulting sanction the most practical effect.

Third, if a period of debarment is inevitable, then the next priority becomes negotiating for the shortest debarment possible. This has critical implications. For example, and as explained above, a debarment imposed by one MDB of less than one year would not be subject to cross-debarment at other MDBs.

One of the most effective tools to negotiating for a shorter debarment is preparing a thoughtful submission to the MDB on the factors that mitigate the severity of the conduct or resulting harm. For instance, the World Bank Group's Sanctioning Guidelines outline key factors that its Integrity Vice Presidency (INT) will consider as mitigants, along with the potential reduction from the applicable 'base' penalty. Among these are the following:

- an up to 25 per cent decrease in penalty if the respondent can prove that it had only a 'minor role' in the misconduct at issue. This includes showing that its role was 'minor, minimal or peripheral' and that 'no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct';[45]
- an up to 50 per cent decrease or greater 'in exceptional circumstances' depending on the degree of voluntary corrective action taken – specifically, whether (1) the timing of cessation of misconduct suggests that it was done for 'genuine remorse and intention to reform' as opposed to 'a calculated step to reduce the severity of the sentence';[46] (2) internal action was taken against responsible individuals, including 'taking appropriate disciplinary and/or remedial steps' as to such individuals;-[47] (3) the company has established or improved and implemented an effective corporate compliance programme; or (4) the respondent 'voluntarily addresses any inadequacies in contract implementation or returns funds obtained through misconduct';[48] and
- an up to 33 per cent decrease or greater 'in extraordinary circumstances' based on the degree of cooperation with the MDB's investigation.[49] Here, the World Bank specifically outlines as relevant criteria (1) the degree of assistance and ongoing cooperation that the respondent provided, including, if applicable, voluntary disclosure, and the truthfulness, completeness and reliability of any information provided, among other things;[50] (2) whether the respondent 'conducts its own, effective internal investigation' of the issues and 'shared results with INT';[51] (3) whether the respondent admits or fully and affirmatively 'accept[s] guilt or responsibility for misconduct' and the timing of when such acceptance occurs;[52] and (4) whether the respondent has voluntarily restrained from bidding on World Bank-financed tenders pending the outcome of the investigation.[53]

Implementing these mitigation factors early in an audit – including conducting an internal investigation, clearly and definitively ceasing any misconduct, remediating any issues identified and voluntarily restraining from applying for additional MDB financing – will have a greater impact on the mitigation value that an MDB will be willing to grant. Thus, for example, a respondent who faces charges for corrupt practices and fraudulent practices – which, together, and absent aggravating factors, entail a 'base' sanction of six years of debarment – could obtain a substantial discount of up to 50 per cent of such debarment by enacting prompt and effective voluntary corrective action.

Fourth, and finally, respondents should ensure that MDBs are not imposing 'cumulative' sanctions that effectively double count offences and 'stack' debarment periods. While MDBs' rules generally permit investigative offices to charge 'separate incidence[s] of misconduct' and 'sanction [them] on a cumulative basis',[54] their ability to do so depends on one of two applying factors. First, to be able to charge conduct separately and sanction it cumulatively, the conduct must be based on 'factually distinction [sic] incidences of misconduct'.[55] Second, and alternatively, the misconduct at issue must be 'in different cases (e.g., in different projects or in contracts under the same project but for which the

misconduct occurred at significantly different temporal times').[56] In practice, we have seen this double-counting scenario play out in instances in which, for example, a respondent is charged with fraud in connection with a financial transaction but also charged with collusion for having entered into that very transaction in conjunction with other individuals. Of course, this scenario presumptively runs afoul of the World Bank Group Sanctioning Guidelines, which declare that cumulative charging would be appropriate only if there are factually distinct incidences of misconduct; the same predicate acts cannot be charged twice for mere stacking purposes.[57]

CONCLUSION

MDB audits or investigations are serious matters with potentially crippling financial and reputational consequences for corporations and individuals alike. They require a respondent's careful attention and thoughtful response. Audits – and cooperation therein – must be approached with a clear-eyed understanding that the rules are heavily stacked in the MDBs' favour. MDBs (1) define offences or sanctionable practices broadly; (2) set a lower burden of proof to establish violations than most criminal courts adjudicating the same types of offences would have; (3) investigate the conduct pursuant to procedural rules that the MDBs themselves design; (4) create the conditions for settlements that they deem acceptable; (5) in the absence of a settlement, charge respondents before their adjudicative bodies, which, at least at the first level, are affiliated with their own banks and at which they have a significant 'home-field advantage'; and (6) by virtue of their rules, foreclose the possibility of litigation before national courts on grounds of immunity.[58]

Because of this uneven playing field, respondents to MDB audits must be purposeful in responding to audit requests, conducting their own investigation of the facts, cooperating with authorities and positioning themselves effectively to seek cooperation credit in the event of a prospective settlement.

ENDNOTES

[1] Michael S Diamant is a partner and Pedro G Soto is an of counsel at Gibson, Dunn & Crutcher LLP.

[2] See, e.g., the World Bank Annual Report 2023, p. 6 ('From July 2022 to June 2023, support from the Bank Group for developing countries totaled $122.9 billion'); the Inter-American Development Bank Annual Report 2023, p. 7 ('In 2023, the Inter-American Development Bank (IDB) approved 92 sovereign- guaranteed loan projects for $12.7 billion in total financing.'); the Asian Development Bank Annual Report 2023, p. 2 ('We delivered a strong program of support to our [developing member countries], committing $23.6 billion in loans, grants, equity investments, guarantees, and technical assistance, including $3.8 billion for non[-]sovereign operations. We worked with our dedicated partners to mobilize an additional $16.4 billion in cofinancing.').

[3] For example, the 10 largest projects funded by the World Bank since 1 January 2023 through to 15 October 2024 are in markets identified by Transparency International's Corruption Perception Index as ranking poorly in perceptions of corruption. These markets are Zambia, Indonesia, Bangladesh, Nepal, Tunisia, Georgia, Vietnam, Serbia and Kazakhstan.

[4] In fiscal year 2023, the World Bank's Integrity Vice Presidency (INT) reported receiving '4,646 complaint submissions'. World Bank Sanctions System Annual Report for Fiscal Year 2023, at p. 2. While other MDBs have smaller portfolios, they nonetheless receive substantial numbers of complaints for investigation. See Asian Development Bank's Office of Anticorruption and Integrity Annual Report 2023, at p. 3 (noting that it 'received 196 new complaints' in fiscal year 2023).

[5] See, e.g., World Bank Sanctions System Annual Report for Fiscal Year 2023, at p. 2. (In fiscal year 2023, the World Bank determined that 292 of the complaints it received were 'actionable' and opened 64 new 'external investigations.')

[6] For example, the World Bank reported that in fiscal year 2023, INT made 12 referrals – eight detailed referrals and four summary notification letters – to 11 different recipient countries.

[7] See 'Strengthening fight against fraud and corruption – INTERPOL and the Integrity Vice Presidency of the World Bank group join forces' (INTERPOL Press Release, 1 October 2010), available at https://www.interpol.int/en/News-and-Events/News/2010/Strengthening-fight-against-fraud-and-corruption-INTERPOL-and-the-Integrity-Vice-Presidency-of-the-World-Bank-group-join-forces.

[8] MDB General Principles for Settlements (adopted 8 July 2021), at p. 3.

[9] See the Agreement for Mutual Enforcement of Debarment Decisions of 9 April 2010.

[10] The most prominent and active of these investigative offices is INT. Other MDBs have their corresponding offices, such as the Inter-American Development Bank's Office of Institutional Integrity and the Asian Development Bank's Office of Anticorruption and Integrity.

[11] See, e.g., Inter-American Development Bank Sanctions Procedures (2023), at § 10.5 ('Privileged Materials') (noting that '[n]otwithstanding any other provision of these Procedures, communications between an attorney (or a person acting at the direction of an attorney) and a client for the purpose of providing or receiving legal advice ("attorney-client communications") and writings reflecting the mental impressions of an attorney or other person acting in anticipation of legal proceedings ("attorney work product") shall be privileged and shall be exempt from disclosure.)'.

[12] See, e.g., World Bank Group, Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects (30 Nov. 2023), Rule 8.2(b)(i) ('Standard of Proof'); Sanctions Procedures of the African Development Bank Group (2023), Rule 7.8 ('Determination by the Sanctions Commissioner'); Inter-American Development Bank, Office of the Sanctions Officer and Sanctions System (noting '[i]n a Determination, the [Sanctions Officer] issues a decision explaining whether the preponderance of evidence supports the allegation that the Respondent engaged in a prohibited practice').

[13] Pursuant to the harmonised definitions in the Uniform Framework for Preventing and Combating Fraud and Corruption signed by several MDBs, '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.' See Cross Debarment Information Sheet, available at https://thedocs.worldbank.org/en/doc/559661553716781733-0240022019/original/ CrossDebarmentBrief32719.pdf.

[14] Formally, the Agreement for Mutual Enforcement of Debarment Decisions of 9 April 2010.

[15] Cross Debarment Information Sheet, available at https://thedocs.worldbank.org/en/doc/559661553716781733-0240022019/original/ CrossDebarmentBrief32719.pdf.

[16] Cross Debarment Information Sheet, available at https://thedocs.worldbank.org/en/doc/559661553716781733-0240022019/original/ CrossDebarmentBrief32719.pdf.

[17] Cross Debarment Information Sheet, available at https://thedocs.worldbank.org/en/doc/559661553716781733-0240022019/original/ CrossDebarmentBrief32719.pdf.

[18] Specifically, this includes the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank Group, International Monetary Fund, Inter-American Development Bank Group and World Bank Group.

[19] MDB General Principles for Settlements of 8 July 2021, at p. 1 (noting that '[t]hese Principles are intended as guidance for the respective institutions and are non-binding.').

[20] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2. Notably, '[w]hile [the Asian Development Bank] does not negotiate settlements, it does adopt the majority of the principles as part of its proposed debarments.' id. at p. 1.

[21] MDB General Principles for Settlements (adopted 8 July 2021), at p. 1.

[22] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2.

[23] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2.

[24] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2.

[25] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2.

[26] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2.

[27] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2.

[28] MDB General Principles for Settlements (adopted 8 July 2021), at p. 2.

[29] MDB General Principles for Settlements (adopted 8 July 2021), at p. 3.

[30] See, e.g., World Bank Group Sanctioning Guidelines, at p. 2.

[31] See, e.g., World Bank Group Sanctioning Guidelines, at p. 3.

[32] See, e.g., World Bank Group Sanctioning Guidelines, at p. 2 (explaining that restitution is to be used 'in exceptional circumstances').

[33] See, e.g., World Bank Group Sanctioning Guidelines, at p. 2.

[34] See, e.g., World Bank Group Sanctioning Guidelines, at p. 2.

[35] See, e.g., World Bank Group Sanctioning Guidelines, at p. 2.

[36] See, e.g., World Bank Group Sanctioning Guidelines, at p. 2.

[37] See, e.g., World Bank Group Sanctioning Guidelines, at p. 1.

[38] See, e.g., World Bank Group Sanctioning Guidelines, at p. 2.

[39] MDB Harmonized Principles on Treatment of Corporate Groups (adopted 10 September 2012).

[40] MDB Harmonized Principles on Treatment of Corporate Groups, ¶ A.1.

[41] MDB Harmonized Principles on Treatment of Corporate Groups, ¶ A.2.

[42] MDB Harmonized Principles on Treatment of Corporate Groups, ¶ A.3.

[43] MDB Harmonized Principles on Treatment of Corporate Groups, ¶ A.4.

[44] MDB Harmonized Principles on Treatment of Corporate Groups, ¶ A.4.

[45] World Bank Group Sanctioning Guidelines, at p. 4.

[46] World Bank Group Sanctioning Guidelines, at p. 5.

[47] World Bank Group Sanctioning Guidelines, at p. 5.

[48] World Bank Group Sanctioning Guidelines, at p. 5.

[49] World Bank Group Sanctioning Guidelines, at p. 5.

[50] World Bank Group Sanctioning Guidelines, at p. 5.

[51] World Bank Group Sanctioning Guidelines, at p. 5.

[52] World Bank Group Sanctioning Guidelines, at p. 6.

[53] World Bank Group Sanctioning Guidelines, at p. 6.

[54] World Bank Group Sanctioning Guidelines, at p. 3.

[55] World Bank Group Sanctioning Guidelines, at p. 3.

[56] World Bank Group Sanctioning Guidelines, at p. 3.

[57] World Bank Group Sanctioning Guidelines, at p. 3.

[58] See, e.g., ***World Bank Group v. Wallace***, 2016 SCC 15, [2016] 1 S.C.R. 207 (Supreme Court of Canada).

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