

World Bank Sanctions and Enforcement: Why You Need to Be Prepared

May 27, 2014



THE
WORLD
BANK

GIBSON DUNN



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MCLE Certification Information

- Most participants should anticipate receiving their certificate of attendance in 3 to 4 weeks following the webcast.
- Virginia Bar members should anticipate receiving their certificate of attendance in 6 weeks following the webcast.
- Questions regarding MCLE information should be directed to Jeanine McKeown (National Training Administrator) at 213-229-7140 or jmckeown@gibsondunn.com.

Presentation Overview

- Introduction
- Presentation
- Questions and Answers
- Wrap-up

The Panel



Moderator: **F. Joseph Warin** is Co-Chair of Gibson Dunn's White Collar Defense and Investigations practice and former AUSA in Washington, D.C. Mr. Warin has counseled numerous companies regarding World Bank investigations, and is currently serving as World Bank post-settlement counsel to several companies.



Mamta Kaushal is Advisor to the Director of Operations, The World Bank's Office of the Integrity Vice Presidency (INT). On the Director's behalf, Ms. Kaushal oversees INT's process of settling cases with companies that seek alternate resolution to matters that would otherwise go through the Bank's full sanctions proceedings process. Ms. Kaushal also manages INT's referral process, through which the Bank engages with national authorities on cases of potential or mutual interest.



Michael S. Diamant is a partner in Gibson Dunn's Washington, D.C. office with expertise in internal investigations and corporate compliance, and broad white collar defense experience representing corporations and corporate executives facing criminal and regulatory charges. Recent engagements have included negotiating resolutions with The World Bank and aiding clients in myriad post-settlement interactions with the Bank.



Glenn T. Ware is a Principal, International Anti-corruption, Corporate Intelligence and Strategic Threat Management with PricewaterhouseCoopers in Washington, D.C. He was previously with The World Bank as Chief Investigative Counselor. His practice focuses on anti-corruption and governance matters, corporate intelligence investigations, World Bank sanctions, and managing the diverse threat spectrum confronting multinational actors in emerging markets.



Topics to Be Discussed

- 
- The Growing Role of The World Bank
 - How The World Bank Defines and Investigates Sanctionable Conduct
 - Types and Consequences of Sanctions
 - Negotiated Resolution Agreements
 - The World Bank's Expectations for Your Corporate Compliance Program
 - The Intersection of the FCPA and World Bank Sanctions
 - Mitigating the Risk of Being Sanctioned

The World Bank Group



THE WORLD BANK

The World Bank Group, headquartered in Washington, D.C., is one of the primary sources of financial and technical assistance to developing countries.

The World Bank defines itself “not as a bank in the ordinary sense, but [as] a unique partnership to **reduce poverty and support development**.”

The World Bank includes the IBRD and the IDA, while The World Bank Group also includes the IFC, MIGA, and the ICSID.



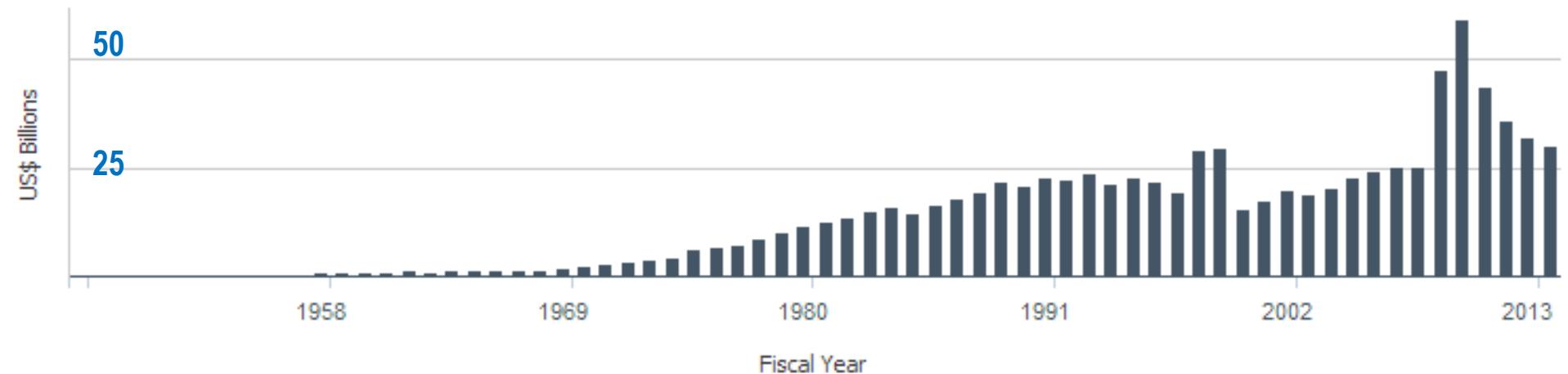
The World Bank and other Multilateral Development Banks (MDBs) are institutions created to finance and support development efforts.



The “World’s Banks”

Billions in money committed annually to projects in the developing world:

Lending Commitments by Year



Source: The World Bank, Projects and Operations (May 2014), <http://www.worldbank.org/projects>.



“The challenge of development: abject poverty surrounded by corruption.”

*Sanjay Pradhan, World Bank Vice President for Change, Knowledge and Learning,
TEDGlobal 2012, October 2012*

Risk and Reward

Top ten recent recipients of World Bank financing:

FY13 Top Borrower	Millions (\$USD)
1. Vietnam	1,982
2. Bangladesh	1,567
3. Ethiopia	1,115
4. Nigeria	1,015
5. India	948
6. Pakistan	744
7. Kenya	615
8. Tanzania	606
9. Democratic Republic of Congo	532
10. Myanmar	520

The World Bank's Fiduciary Duty

Its Articles of Agreement require the Bank to ensure that the proceeds of loans are used *for the purposes for which the loan was granted*. Thus, the Bank has a fiduciary duty to prevent fraud and corruption in Bank-funded projects.

Former President James D. Wolfensohn's 1996 "Cancer of Corruption" speech created momentum to *fight corruption* in Bank-funded projects.



"Let's not mince words: in the developing world, corruption is Public Enemy #1. We will never tolerate corruption and I pledge to do all in our power to build upon our strong fight against it."

Sanctionable Practices

1. Corruption
2. Fraud
3. Collusion
4. Coercion
5. Obstruction

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WORLD BANK SANCTIONS PROCEDURES

As adopted by the World Bank as of April 15, 2012

ARTICLE I INTRODUCTORY PROVISIONS

Section 1.01. Legal Basis and Purpose of these Procedures.

(a) *Fiduciary Duty.* It is the duty of the World Bank,¹ under its Articles of Agreement, to make arrangements to ensure that funds provided by the Bank are used only for their intended purposes. In furtherance of this duty, the World Bank has established a regime for the sanctioning of firms and individuals that are found to have engaged in specified forms of fraud and corruption in connection with Bank-Financed Projects (as hereinafter defined, "Sanctionable Practices"). This regime protects Bank funds and serves as a deterrent upon those who might otherwise engage in the misuse of the proceeds of Bank financing.

(b) *Approval by Executive Directors.* The Executive Directors of the Bank approved, on July 9, 2004 and August 1, 2006, certain recommendations pertaining to the reform of the World Bank sanctions regime, including the adoption of a two-tier sanctions process conducted by an Evaluation Officer and the World Bank Group Sanctions Board.² The Executive Directors of the Bank approved the mutual enforcement of debarment decisions among multilateral development banks on March 19, 2010. The Executive Directors of the Bank further approved, as of October 28, 2010, the expansion of the sanctions regime to include cases involving fraud and corruption in connection with the Bank's corporate procurement. The aforementioned reforms are embodied in these Procedures.

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² The Executive Directors also endorsed, on August 1, 2006, the establishment of a Voluntary Disclosure Program (VDP). For information regarding the VDP, please go to www.worldbank.org/vdp.

“A ‘**corrupt practice**’ is the offering, giving, receiving or soliciting, directly or indirectly, of 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 to influence 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.”

“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 ‘**corrupt practice**’ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of **another party**.¹

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Implemented in 2006 as an additional Sanctionable Practice.

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The Integrity Vice Presidency (INT)

- The World Bank Group created the Department of Institutional Integrity in 2001, which was elevated to a Vice Presidency in 2008
- Detects, investigates and seeks sanctions with respect to allegations of fraud and corruption in Bank-funded activities, as well as allegations of misconduct involving Bank staff
- Reports directly to the President
- Approximately 90 total staff from around the world with backgrounds including legal, law enforcement, and forensic accounting



Leonard McCarthy
Integrity Vice President



Stephen Zimmermann
INT Director of Operations

The Integrity Vice Presidency (INT)

In Fiscal Year 2013:

- **449** preliminary inquiries opened
- **89** new investigations opened
- **42** referrals made to countries and MDBs
- **8** Negotiated Resolution Agreements

Of 86 cases still under investigation:

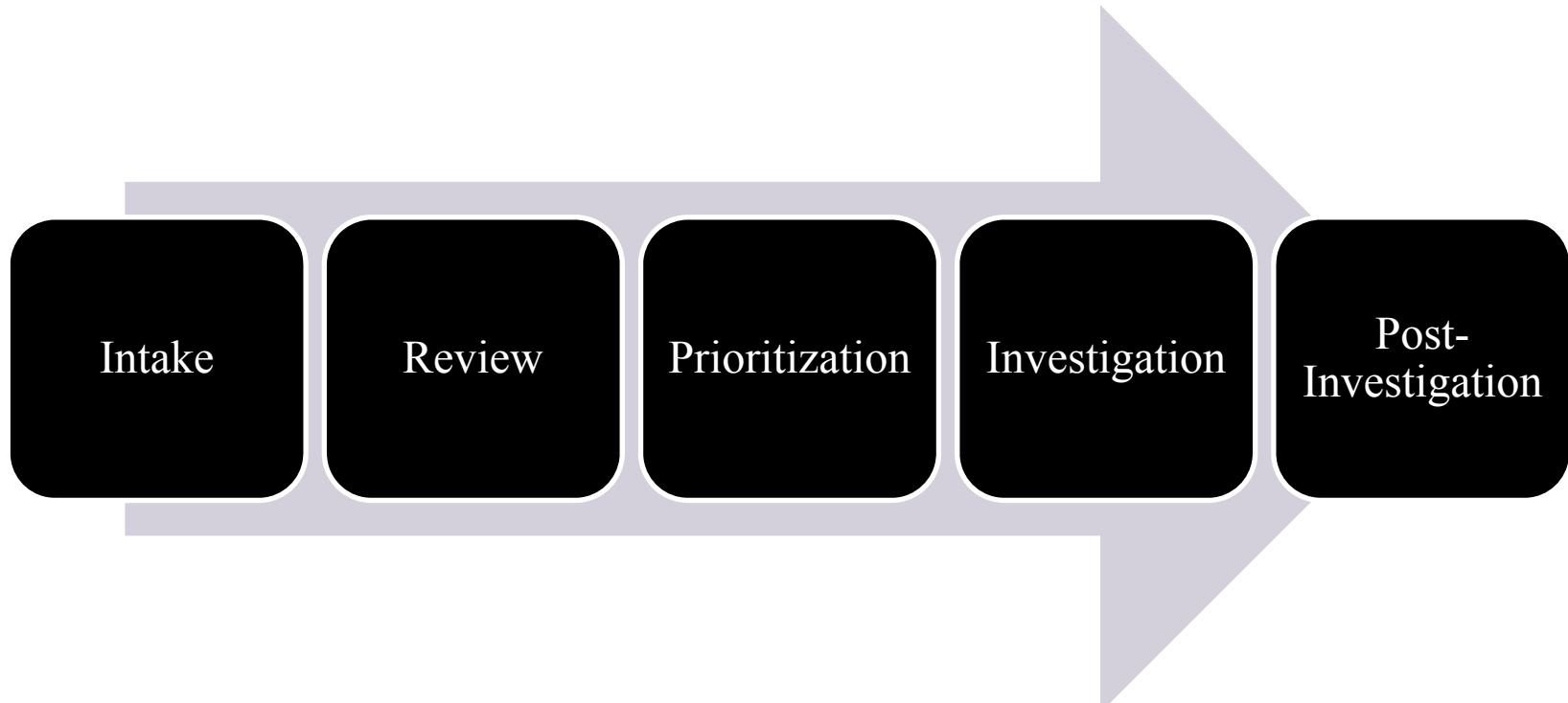
- **41** involve corruption
- **35** involve fraud
- **10** involve collusion

New Cases Opened by Sector, FY13

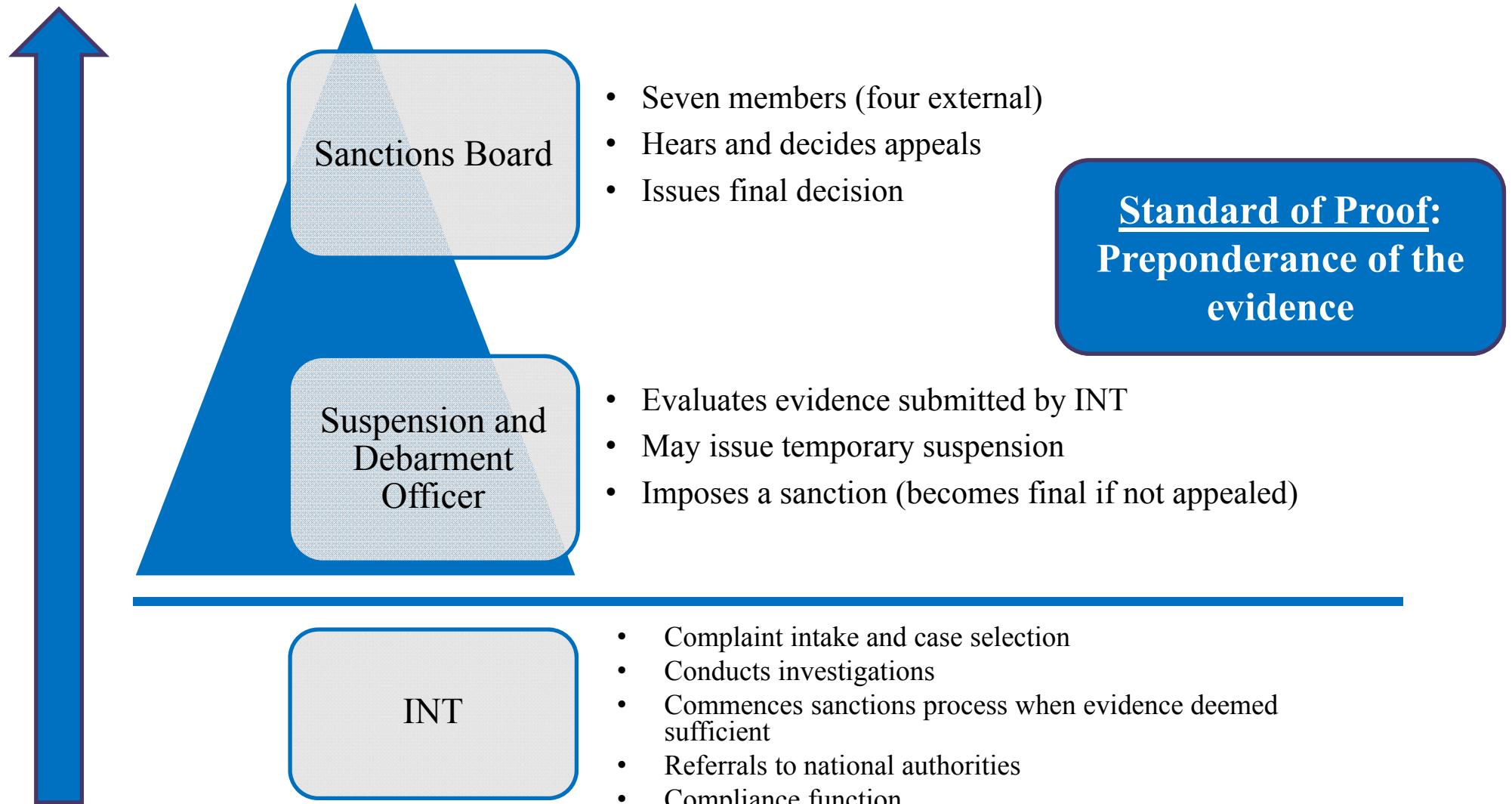
TRANSPORT	20
HEALTH, NUTRITION & POPULATION	17
WATER	15
AGRICULTURE & RURAL	12
PUBLIC SECTOR GOVERNANCE	9
ENERGY & MINING	7
NO SECTOR	5
EDUCATION	3
FINANCIAL & PRIVATE SECTOR DEVELOPMENT	1



INT'S INVESTIGATIVE PROCESS



Sanctions: A Two-Tier Process



Range of Sanctions

1. Reprimand
2. Conditional Non-Debarment
3. Debarment
4. Debarment with Conditional Release
5. Restitution

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(b) *Approval by Executive Directors.* The Executive Directors of the Bank approved, on July 9, 2004 and August 1, 2006, certain recommendations pertaining to the reform of the World Bank sanctions regime, including the adoption of a two-tier sanctions process conducted by an Evaluation Officer and the World Bank Group Sanctions Board.² The Executive Directors of the Bank approved the mutual enforcement of debarment decisions among multilateral development banks on March 19, 2010. The Executive Directors of the Bank further approved, as of October 28, 2010, the expansion of the sanctions regime to include cases involving fraud and corruption in connection with the Bank's corporate procurement. The aforementioned reforms are embodied in these Procedures.

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Range of Sanctions

Reprimand: The sanctioned party is reprimanded in the form of a formal “Letter of Reprimand” of the sanctioned party’s conduct.

Conditional Non-Debarment: The sanctioned party is not debarred but is required to comply with certain defined conditions within a set time frame. If the conditions are not met, the party is debarred for a defined period of time.

Debarment: In cases where no appreciable purpose would be served by imposing conditions for release, sanctioned parties may be debarred either indefinitely or for a specified period of time.

Debarment with Conditional Release: The “baseline” or default sanction is to impose a minimum period of debarment of three years, after which the sanctioned party may be released if it has complied with certain defined conditions.

Restitution: 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.

Negotiated Resolutions

ARTICLE XI SETTLEMENTS

Section 11.01. Stays of Proceedings.

- (a) At any time during sanctions proceedings, INT and one or more Respondents, acting jointly, may request the Evaluation Officer for a stay of proceedings for the purpose of conducting settlement negotiations.

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Reform of the Sanctions Regime. The Executive Directors of the World Bank approved, on July 9, 2004 and August 1, 2006, recommendations pertaining to the reform of the sanctions regime, including the adoption of a new sanctions process conducted by an Evaluation and Sanctions Board. The Executive Directors of the World Bank Group Sanctions Board. The Executive Directors of the World Bank Group Sanctions Board approved the mutual debarment decisions among multilateral banks on March 19, 2010. The Executive Directors of the World Bank further approved, as of October 28, 2010, the expansion of the sanctions regime to include cases involving fraud and corruption in connection with the Bank's corporate procurement. The aforementioned reforms are embodied in these Procedures.

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Facts and Figures

Sanctions System and Results, FY09–FY13

	FY09	FY10	FY11	FY12	FY13
Sanctions Cases Submitted to OSD by INT [∞]	39	43	27	25	33
Sanctions Cases (NoSPs or NoTSs) Issued by OSD to Respondents*	10	29	33	33	25
Negotiated Resolution Agreements Submitted to OSD by INT [^]	N/A	N/A	11	16	8
Firms and Individuals Temporarily Suspended by OSD	32	51	55	60	41
Firms and Individuals Sanctioned	13	45	34	84	47

∞ Office of Suspension and Debarment (OSD) formerly the Office of Evaluation and Suspension (OES).

* NoSPs: Notices of Sanctions Procedures; and, NoTS: Notices of Temporary Suspension.

^ Negotiated Resolution Agreements (Settlements) were first put into effect in FY11.



“When you put your fingers in the meat grinder of corruption, the whole body goes.”

*Huguette Labelle, Chair, Board of Transparency International,
INT 2013 Annual Report*

Impact of Sanctions

- Ineligibility to be awarded a contract, be a nominated service provider to an eligible firm, receive the proceeds of any Bank loan, or otherwise “participate further in the preparation or implementation of any Bank-Financed Project”
- Sanctions can extend to affiliates/subsidiaries
- Cross-debarment by other MDBs
- Referrals to national authorities and possible debarment/prosecution
- Mandatory cooperation provisions in settlements with the DOJ
- Negative publicity
- Compliance monitor

Sanctions are Public

.org/external/default/main?theSitePK=84266&contentMDK=64069844&menuPK=116730&pagePK=64148

Is Manage... GDCNet Google iDesktop 1 iDesktop 2 iDesktop 3 OWA VoIP Manager Communicat

The Bank may also apply other actions to firms and individuals that do not result in debarrment. For the current list, see [Table 2: Other Actions](#).

To report allegations of fraud and corruption in Bank-financed projects, please contact the [Integrity Vice Presidency](#).

Table 1: Debarred & Cross-Debarred Firms & Individuals

Note: To obtain the best results when performing a search, it is advised that only a portion of the firm/individual name be entered. This allows for the greatest chance of seeing all sanctioned entities with names close to or exactly as those being searched. For example, to search for:

C.V. ABCD, enter ABCD;
ABCD Engineers SRL, enter ABCD or ABCD Engineers; or
ABCD Royal Consulting Co., enter ABCD, or ABCD Royal, or Royal Consulting

Please also avoid accentuated characters and generic terms such as: Ltd.; Limited; Corp.; etc.

Debarred Firms and Individuals

Name:	Country:	GO	Reset			
Firm Name	Address	Country	Ineligibility Period	From	To	Grounds
D.A. CONSTRUCTION LIMITED*198	HOUSE NO. 1, 114 ROAD, OFF II ROAD, 1ST AVENUE (A.P. FILLING STATION END), GWARINPA II, P.O. BOX 4824, GARKI, ABUJA	Nigeria	06-MAY-2014	05-MAY-2017		Procurement Guidelines, 1.14(a)(ii)
ALBERT MWANSA	NO 5 VILLA TOBAGO, EDISON CRESCENT, FLAT 4, 2157, SUNNINGHILL (JOHANNESBURG)	South Africa	05-MAY-2014	16-MAR-2019		Cross Debarment: AfDB

Sanctions are Public

World Bank bans two Indian entities for fraudulent practices

“Savoir Soft Solutions Private Ltd, based out of Noida, and one individual . . . from Cuttack have been barred from participating in any Bank-financed contract, according to latest information from the World Bank.

The ban on Savoir Soft Solutions is for four years starting from March 19, 2014.”

—Indian Express 5/11/2014

World Bank Sanctions Russian Company “OOO Armada Center” and “OAO Armada” for Fraudulent Practices Impacting an Environmental Project in Russia

“The World Bank Group announced the debarment of OOO Armada Center . . . for a period of two years. Additionally, OOO Armada Center’s parent company OAO Armada received a letter of reprimand for failure to supervise its subsidiary. Both companies were sanctioned for fraudulent practices for the failure to disclose a conflict of interest in a proposal submitted by OOO Armada Center.”

—World News 5/6/2014

World Bank Punishes Units of Alstom SA for Bribery

“The World Bank has temporarily blacklisted and fined two subsidiaries of the French engineering company Alstom SA after the companies allegedly offered bribes to gain a power-plant contract in Zambia a decade ago.”

—The Wall Street Journal 2/23/2011

World Bank Slaps Crown Agents with Temporary Debarment

“The World Bank announced Oct. 19th a . . . debarment against The Crown Agents for Overseas Governments and Administration Ltd. and its affiliates. . . follow[ing] an investigation . . . which showed that . . . the U.K. company misrepresented the availability of a key consultant on an awarded contract under a bank-executed contract.”

—Inside Development 3/19/2011

Cross-Debarment

- April 2010 agreement among AfDB, ADB, EBRD, IADB, and WBG
- Applies to public debarments over one year
- Each MDB “may pursue independent debarment proceedings for separate sanctionable practices . . . which may result in concurrent, consecutive or subsequent periods of debarment”



AGREEMENT FOR MUTUAL ENFORCEMENT OF DEBARMENT DECISIONS

PREAMBLE

The African Development Bank Group¹, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group² and the World Bank Group³ (each a “Participating Institution”, collectively the “Participating Institutions”):

Membership in the International Financial Institutions Anti-Corruption Task Framework for Preventing and Combating Fraud and Corruption, dated “Uniform Framework”) and attached hereto as Annex A.

of paragraph 5 of the Uniform Framework that:

member institutions of the IFI Task Force has a distinct mechanism for sanctioning violations of its respective anti-corruption policies,”

on of these enforcement actions would substantially assist in deterring corrupt practices,” and

of establishing a system for mutual recognition of enforcement actions decisions of paragraph 5 of the Uniform Framework.”

¹ The African Development Bank Group consists of the African Development Bank, the African Development Fund and the African Development Fund for少发达国家. The African Development Bank and the African Development Fund are public international development banks. The African Development Fund is a fund administered by the African Development Bank pursuant to a trust agreement.

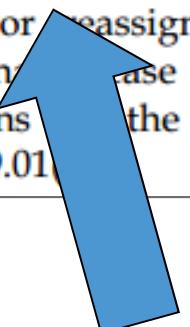
² The Inter-American Development Bank Group consists of the Inter-American Development Bank (IDB), the International Investment Bank (IIB) and the Multilateral Investment Fund (MIF), which cooperate on operations in Latin America and the Caribbean countries. The IDB and the IIB are public international organizations. The MIF is a private, non-bank financial institution and is a fund under the administration of the IDB. Each has a distinct legal status, governance structure and assets.

³ The World Bank Group is comprised of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID).

Reinstatement

Conditional Release

(d) **Debarment with Conditional Release.** The sanctioned party is subject to ineligibility as outlined in Section 9.01(c) and is released from debarment only if the sanctioned party demonstrates compliance with certain remedial, preventative or other conditions for release, after a minimum period of debarment. Conditions may include (but are not limited to) verifiable actions taken to improve business governance, including the adoption or improvement and implementation of an integrity compliance program, restitution, and/or disciplinary action against or reassignment of employees. Debarment with conditions shall also result in extension across the operations of the World Bank Group as outlined in Section 9.01.



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Integrity Compliance Office (ICO)

- In September 2010, INT created an Integrity Compliance Office
- Currently includes two Integrity Compliance Officers
- The ICO monitors integrity compliance by sanctioned companies and also decides whether the compliance conditions for release from debarment have been satisfied

Integrity Compliance Guidelines

1. Prohibition of Misconduct
2. Responsibility
3. Program Initiation, Risk Assessment and Reviews
4. Internal Policies
5. Policies re: Business Partners
6. Internal Controls
7. Training & Communication
8. Incentives
9. Reporting
10. Remediate Misconduct
11. Collective Action

Intersection with National Enforcement

- The World Bank regularly makes referrals to national enforcement authorities.
- Settling FCPA allegations with the DOJ requires cooperation with other enforcement entities and MDBs:
 - FCPA investigations can lead to subsequent World Bank investigations and sanctions
 - The U.K. Serious Fraud Office has a similar relationship with World Bank enforcement vis-à-vis the U.K. Bribery Act

The FCPA and MDBs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.
DIEBOLD, INCORPORATED,

Defendant.

CASE NO. 5:13CR464
JUDGE OLIVER
13 OCT 22 W B: 17
COURT CLERK
NORTHERN DISTRICT OF OHIO
FILED

DEFERRED PROSECUTION AGREEMENT

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.

Defendant Diebold, Incorporated (the "Company"), by its undersigned representatives, company's Board of Directors, and the United States District of Ohio and the United States Department of Justice, collectively, the "Department"), enter into this deferred (""). The terms and conditions of this Agreement are as follows:

Agreement and Acceptance of Responsibility

Agrees and agrees that the Department will file the attached

two-count criminal Information in the United States District Court for the Northern District of Ohio charging the Company with one count of conspiracy, 18 U.S.C. § 371, to violate the Foreign Corrupt Practices Act anti-bribery provisions, 15 U.S.C. § 78dd-1, and books and records provisions, 15 U.S.C. § 78m, and one count of violating the books and records provisions of the Foreign Corrupt Practices Act books, 15 U.S.C. §§ 78m(b)(2), 78m(b)(5), and 78ff(a). In so doing, the Company: (a) knowingly waives its right to indictment on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, 18

The FCPA and MDBs

Government  World Bank

World Bank Group Debars Limited Liability Company Siemens (OOO Siemens) for Engaging in Fraud and Corruption in a World Bank-Financed Project in Russia

Press Release No:2009/168/EXC

Contact:

In Washington: Dina Elnaggar
Delnaggar@worldbank.org
202-473-3245

WASHINGTON, November 30, 2009 –The World Bank today announced that it has debarred Limited Liability Company Siemens (OOO Siemens), a Russian subsidiary of Siemens AG, for having engaged in fraudulent and corrupt practices in relation to a World Bank-financed project.

Limited Liability Company Siemens (OOO Siemens) has been debarred for 4 years in connection with violations committed prior to 2007. The findings resulted from an investigation by the World Bank's Integrity Vice Presidency into fraudulent and corrupt practices under the Bank-financed "Moscow Urban Transport Project".

This debarment followed a comprehensive [settlement](#) that was agreed between the World Bank Group and Siemens AG on July 2, 2009. The settlement arose out of a World Bank investigation and the company's acknowledgment of past misconduct in its global business:-

For more information on the Siemens [settlement](#), please visit: www.worldbank.org/integrity

Case Study: A Tale of Two Publishers

- In July 2012, The World Bank debarred Oxford University Press East Africa Limited and Oxford University Press Tanzania Limited for a three-year period following the discovery of improper payments made to procure contracts for the provision of textbooks.
- A coordinated effort with the U.K. Serious Fraud Office led to the publisher being ordered to pay £1.89 million “in recognition of sums it received which were generated through unlawful conduct.”
- Leonard McCarthy, INT Vice President, commended the company for its cooperation with the investigation and willingness to change its corporate practices to enhance its compliance program.
- Another British publishing company, MacMillan, was debarred for six years following the discovery that it had given bribes related to an education project in Sudan. A Serious Fraud Office investigation resulted in the company being ordered to pay over £11 million. MacMillan’s debarment could have been and was reduced to three years after it satisfied its conditions for release from debarment.



Mitigating the Risk of Being Sanctioned

1. Building the ark before the flood: What can a company do before there is a problem?
2. What can a company do when The World Bank is exercising its audit rights in Bank-funded projects?
3. What can a company do during an INT investigation?
4. How can a company best evaluate whether to self report, cooperate or settle?