

Date of issuance: June 21, 2016

**Sanctions Board Decision No. 86
(Sanctions Case No. 354)**

**IBRD Loan No. 7794-AR
Argentina**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment on the individual respondent in Sanctions Case No. 354 (the “Respondent”), together with any entity that is an Affiliate² directly or indirectly controlled by the Respondent, for a period of three (3) years beginning from the date of this decision. This sanction is imposed on the Respondent for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board met in a panel session on March 10, 2016, at the World Bank Group’s headquarters in Washington, D.C., to review this case. The panel was composed of J. James Spinner (Chair), Olufunke Adekoya, and Alison Micheli. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.³

2. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board’s consideration included the following:

- i. Notice of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)⁴ to the Respondent on March 31, 2015 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated December 22, 2014;

¹ In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). For the avoidance of doubt, the term “World Bank Group” includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section 1.01(a), n.1.

² The term “Affiliate” means “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” Sanctions Procedures at Section 1.02(a).

³ See Sanctions Procedures at Section 6.01.

⁴ Effective March 31, 2013, the EO’s title changed to “IBRD/IDA Suspension and Debarment Officer” (“SDO”). For consistency with the Sanctions Procedures, this decision refers to the former title.

- ii. Explanation submitted by the Respondent to the EO on April 30, 2015, and an English translation of a document included in the Explanation separately submitted to the EO on May 22, 2015 (together, the “Explanation”);
- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on August 31, 2015 (the “Response”); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on September 29, 2015 (the “Reply”).

3. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of six (6) years, after which period the Respondent may be released from ineligibility only if he has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer that (i) he has taken appropriate remedial measures to address the sanctionable practices for which he has been sanctioned; (ii) he has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics; and (iii) any entity that is an Affiliate directly or indirectly controlled by him has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective March 31, 2015, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;⁵ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁶ of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as “Bank-Financed Projects”)⁷ pending the final outcome of the sanctions proceedings. The Notice

⁵ For the avoidance of doubt, the scope of ineligibility to be awarded a contract will include, without limitation, (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 9.01(c)(i), n.16.

⁶ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section 9.01(c)(ii), n.17.

⁷ For the avoidance of doubt, the term “Bank-Financed Projects” includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

specified that the temporary suspension would apply across the operations of the World Bank Group.

5. As provided by Section 5.01(a) of the Sanctions Procedures, a respondent may contest INT's allegations and/or the EO's recommended sanction within ninety (90) days from the date on which the Notice is deemed to have been delivered to that respondent. Absent the Respondent's submission of a written response by the applicable due date,⁸ the EO issued a Notice of Uncontested Sanctions Proceedings and debarred the Respondent on July 2, 2015, pursuant to Section 4.04 of the Sanctions Procedures.

6. On July 20, 2015, the Respondent informed the Secretariat that he wished to contest the sanctions proceedings, but had been unable to respond earlier for health reasons. The Respondent requested a retroactive extension of time to file a Response by August 31, 2015. Upon the Sanctions Board Chair's grant of the Respondent's retroactive extension request on August 3, 2015, the Respondent was removed from the public debarment list and returned to temporary suspension.

II. GENERAL BACKGROUND

7. This case arises in the context of the Metropolitan Areas Urban Transport Project (the "Project"), which sought, among other objectives, to "improve the quality and performance of urban transport infrastructure and/or services in Metropolitan Areas" in the Republic of Argentina.

8. On December 10, 1997, IBRD entered into a loan agreement with Argentina for a loan of US\$200 million to finance the Buenos Aires Urban Transport Project ("PTUBA"). On November 26, 2007, IBRD and Argentina entered into another loan agreement for a loan of US\$100 million to provide additional financing for the PTUBA. On March 8, 2010, the project implementation unit (the "PIU") issued a request for proposals ("RFP") for a contract for consultant services for supervision of the implementation and continuous operation of a single electronic ticket system (the "Contract"). On April 19, 2010, the Respondent's company (the "Respondent's Firm"), acting jointly with three other companies (together, the "Consortium"), submitted a technical proposal for the Contract. On August 11, 2010, IBRD entered into another loan agreement (the "Third Loan Agreement") with Argentina for a loan of US\$150 million to further finance the Project and the Contract.

9. On December 16, 2010, the Consortium entered into a joint venture agreement for purposes of providing advisory services for the Contract (the "Consortium Agreement"). The Respondent was appointed as one of the Consortium's legal representatives. The Consortium was eventually awarded the Contract, which was signed on March 11, 2011. Both the Consortium Agreement and the Contract designated the Respondent as the "Project Manager." The Contract required that the Consortium submit monthly progress reports to certify its progress in implementation. On October 3, 2012, the PIU rescinded the Contract based on the

⁸ The Respondent's Response was originally due on July 1, 2015.

PIU's stated verification of "the falsity of substantial information submitted by the [Consortium] . . . [in] the Progress Reports" relating to the Consortium's personnel.

10. INT alleges that the Respondent engaged in fraudulent practices during the Contract's execution by providing false information to claim and bill for work done by two consultants (the "Consultants") who never rendered services under the Contract. INT alleges that the Respondent acted on behalf of the Respondent's Firm, but INT does not name the Respondent's Firm as a respondent in these proceedings. The record indicates that the Respondent's Firm was dissolved on October 21, 2014, prior to the initiation of sanctions proceedings.

III. APPLICABLE STANDARDS OF REVIEW

11. Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is "more likely than not" that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines "more likely than not" to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

12. Under Section 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

13. The alleged sanctionable practice in this case has the meaning set forth in the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) (the "October 2006 Consultant Guidelines"), whose definition of fraudulent practice appears in the Contract. The Sanctions Board has previously considered that where misconduct is alleged to have taken place entirely during contract execution, as in this case, the definitions of misconduct set out in the contract shall govern.⁹ While INT asserts that the applicable Guidelines would be those set out in the Third Loan Agreement and the RFP rather than the Contract, the definition of fraudulent practice set out in the October 2006 Consultant Guidelines would apply under all three documents in any event. Paragraph 1.22(a)(ii) of the October 2006 Consultant Guidelines defines the term "fraudulent practice" as "any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation."¹⁰

⁹ See Sanctions Board Decision No. 82 (2015) at paras. 13-14.

¹⁰ Footnote 18 of the October 2006 Consultant Guidelines provides that "'party' refers to a public official; the terms 'benefit' and 'obligation' relate to the selection process or contract execution; and the 'act or omission' is intended to influence the selection process or contract execution."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES**A. INT's Principal Contentions in the SAE**

14. INT alleges that the Respondent engaged in fraudulent practices during the execution of the Contract by knowingly or recklessly submitting monthly work progress reports and advance certificates that falsely claimed work done by the Consultants. Specifically, INT asserts that the Respondent knowingly misrepresented facts by falsely claiming in monthly reports that the Consultants were members of the Consortium's team, when in fact the Consultants never worked for the Consortium; and by invoicing for work that the Consultants never performed. Alternatively, INT contends that the Respondent acted recklessly when he reviewed at least three draft monthly reports indicating the involvement of the Consultants in the Contract, and failed to correct this misrepresentation.

15. INT asserts that aggravation is warranted for the Respondent's submission of multiple false claims during the execution of the Contract, his senior positions and centrality in the misconduct, harm to the Project, and his interference with INT's investigation. INT submits that it has not identified any mitigating factors.

B. The Respondent's Principal Contentions in the Explanation and the Response

16. The Respondent, who appears to have acted pro se in these proceedings, raises several arguments that appear to challenge the Bank's jurisdiction to pursue sanctions against him in relation to the Contract. For example, he asserts that the Respondent's Firm was merely a subcontractor and was not a party to the Contract. In addition, the Respondent raises evidentiary and procedural issues by claiming that INT acted improperly in failing to interview Bank employees and other relevant individuals, and in redacting names of witnesses from his evidence.

17. With respect to the merits of INT's allegations, the Respondent denies any liability. He asserts, for example, that the Respondent's Firm was merely a subcontractor to the Consortium that was not allowed to review or amend monthly reports and advance certificates submitted to the PIU. The Respondent denies signing any of the allegedly falsified documents, some of which appear to bear his signature or initials. Next, the Respondent presents a letter dated October 21, 2010, in which he appears to have informed the Bank's task team leader for the Project about the unavailability of "one of the technical staff." The Respondent moreover suggests that since the Bank, the PIU, and the Consortium all knew the employees of the Respondent's Firm, the PIU or the Bank should have questioned any apparently "fake" invoices from the Consortium. The Respondent also argues that the Respondent's Firm billed and was paid in Argentine pesos without specifying the names of particular staff, and received moderate revenue from the Contract. Lastly, the Respondent asserts that a sworn affidavit attesting to his innocence had been submitted to Argentine courts.

18. With respect to sanctioning factors, the Respondent requests mitigation on the basis of his cooperation with the investigation, his personal hardship, the dissolution of his company

and his lack of interest or ability to participate in any future Bank projects, and his own anticorruption efforts.

C. INT's Principal Contentions in the Reply

19. In reply to the Respondent's apparent challenge to the Sanctions Board's jurisdiction, INT maintains that the Respondent's Firm was a party to the Consortium throughout the relevant time period, and that the Respondent was legally bound by the Contract as validly signed. With regard to the Respondent's assertion that INT's investigation was deficient, INT contends that it has discretion as to whom to investigate or interview, and which questions it may decide to ask.

20. Reasserting its principal allegations in the SAE, INT disputes each of the Respondent's arguments on the merits. For example, INT maintains that the Respondent knew that the Consortium issued monthly reports and advance certificates claiming work performed by the Consultants, and failed to correct these misrepresentations even after he had learned that one of the two Consultants was unavailable and he had decided not to involve the other one in the Contract. Further, INT argues that while the Respondent claims that his signature in the advance certificates had been forged, he failed to provide INT with a signature sample to verify his claim. In addition, INT argues that the Respondent's assertions that the Respondent's Firm was paid in Argentine pesos and did not invoice for particular staff members are immaterial since the present case is not about the invoices given by the Respondent's Firm to the Consortium, but about the false information included in the monthly reports and advance certificates submitted to the PIU. Finally, INT submits that neither exculpation nor mitigation would be warranted based on the Respondent's submissions in the Argentine criminal proceedings, which applied a different standard of proof compared to the Bank's administrative sanctions proceedings.

21. INT opposes any mitigation on the basis of the Respondent's asserted cooperation, financial hardship, and health conditions.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

22. The Sanctions Board will first address the Respondent's apparent jurisdictional challenge, and then consider the evidentiary and procedural issues raised by the Respondent. The Sanctions Board will next consider whether it is more likely than not that the Respondent engaged in the alleged fraudulent practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. Jurisdiction

23. As noted above, the Respondent appears to have presented an implicit challenge to the Sanctions Board's jurisdiction to sanction him for the alleged misconduct under the Contract. In particular, he asserts that the Respondent's Firm participated merely as a subcontractor to the Consortium; neither he nor the Respondent's Firm was a party to the Contract because he did not sign the Contract; and any agreements between the Respondent's Firm and the other Consortium partners with respect to the Contract were rendered null and void by the partners'

transgressions and material breaches, as reflected in the Respondent's withdrawal letter dated July 31, 2011.

24. As a general matter, the Sanctions Board notes that it has previously rejected jurisdictional challenges by individual respondents who asserted that they were never personally in privity of contract with the Bank or the Borrower.¹¹ As the Sanctions Board has observed, "the Bank does not need the consent of or privity with a respondent to assert jurisdiction to sanction."¹²

25. In the present case, the record shows that while the Respondent did not personally sign the Contract, he signed the Consortium Agreement on behalf of the Respondent's Firm as a party to the Consortium. Further, the Consortium Agreement that he signed provides that "[a]ny two of the [Consortium's] Legal Representatives will jointly have sufficient authority" to bind the Consortium. Since the Contract was signed by two of the Consortium's designated legal representatives, the Contract appears to have been validly executed on behalf of all members of the Consortium, including the Respondent's Firm. Further, the Respondent's purported withdrawal letter dated July 31, 2011, does not appear to have validly released the Respondent's Firm from the Consortium. The Consortium Agreement provides that each party may withdraw from the Consortium "only by unanimous resolution of all its Parties, notifying its intention to the other Parties with at least sixty (60) days in advance, with the prior approval of the [PIU]." There is no indication in the record that the Respondent's letter dated July 31, 2011, was sent to or received by his Consortium partners, or that the PIU approved the withdrawal of the Respondent's Firm from the Consortium. Finally, the record shows that the Respondent's signature appears on a number of advance certificates submitted by the Consortium to the PIU after the date of this purported withdrawal letter. In these circumstances, the Sanctions Board considers that the Respondent fails to present a valid challenge to the Sanctions Board's jurisdiction to determine his potential liability and any applicable sanctions for the alleged misconduct under the Contract.

B. Evidentiary and Procedural Issues

26. As noted earlier, the Respondent challenges the adequacy of INT's investigation and evidence. First, the Respondent asserts that INT failed to investigate or interview particular Bank staff and other relevant individuals during the investigation, and suggests questions that he believes INT should have asked. The record, however, contains INT's transcripts and records of interview with all but one of the referenced individuals. For example, the record reflects INT's interview with the Bank's task team leader for the Project, which addressed most of the issues underlying the Respondent's suggested questions. More generally, the Sanctions Board

¹¹ See Sanctions Board Decision No. 64 (2014) at para. 28 (rejecting a jurisdictional challenge by the individual respondent, who asserted that he had not personally contracted with the Bank or signed an undertaking to be bound by the applicable Guidelines); Sanctions Board Decision No. 81 (2015) at paras. 15, 28-29 (rejecting a jurisdictional challenge by the individual respondent, who argued that he was not invited to and did not respond to the request for proposals in his individual capacity, and was therefore never personally in privity of contract with the Bank or the Borrower).

¹² Sanctions Board Decision No. 64 (2014) at para. 28; Sanctions Board Decision No. 81 (2015) at para. 29.

notes that the Sanctions Procedures do not require INT to interview all potentially relevant witnesses before initiating sanctions proceedings, or to ask all questions that a respondent may suggest. While an obvious gap in INT's evidence may raise questions about the sufficiency of the evidence in the record,¹³ the Sanctions Board does not observe an obvious gap in the scope of INT's investigation in this case, as the Respondent has asserted. Nor has the Respondent identified any potentially exculpatory or mitigating information that INT has in its possession, but has failed to disclose in accordance with Section 3.02 of the Sanctions Procedures.¹⁴

27. Second, the Respondent questions INT's redaction of certain names of witnesses in the SAE exhibits. Section 5.04(d) of the Sanctions Procedures provides that "INT, in its sole discretion, may redact particular parts or pieces of evidence presented to the Respondent or the Sanctions Board, by: (i) removing references to [World Bank Group] staff; and (ii) removing references to other third parties (together with other material that would permit such third parties to be identified), in cases where the identity of such parties is either not relevant or not germane to the case." Section 5.04(d) further provides that if the respondent challenges INT's redactions in its response, "the Sanctions Board shall review the unredacted version of such evidence to determine whether the redacted information is necessary to enable the Respondent to mount a meaningful response to the allegations against it."

28. In this case, the Sanctions Board does not find that the redactions concealed information necessary to enable the Respondent to mount a meaningful response to INT's allegations against him. The redactions consist of names of individuals appearing in INT's transcript of interview with the Respondent, whom the Respondent mentioned himself; names of World Bank Group staff; and names of other individuals who do not appear to have direct knowledge of the alleged misconduct and whose identities are not germane or relevant to the case. The Sanctions Board further notes that INT's redactions are inconsistent, with some redacted names left unredacted in other parts of the same document, such that the Respondent could have easily ascertained the identities of some of the individuals whose names were redacted. As the Sanctions Board has previously observed, an alternative redaction protocol may enhance consistency and transparency while maintaining appropriate confidentiality. For example, INT may consider replacing any redacted name with a specific descriptive or defined term or, where applicable, including a representation in the relevant pleadings to clarify that all instances of redaction relate to the same individual.¹⁵ In these circumstances, and consistent with past precedent, the

¹³ See Sanctions Board Decision No. 81 (2015) at para. 33 (noting with concern INT's failure to interview other key individuals, yet taking into account the sufficiency of the existing record to assess whether it is more likely than not that the respondents engaged in the alleged misconduct). See also Sanctions Procedures at Section 7.01 (providing that the Sanctions Board shall have discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered).

¹⁴ See Sanctions Procedures at Section 3.02 (requiring that INT "shall present all relevant evidence in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability").

¹⁵ See Sanctions Board Decision No. 60 (2013) at para. 53.

Sanctions Board considers that INT's redactions did not prevent the Respondent from mounting a meaningful response to the allegations against him.¹⁶

C. Evidence of Fraudulent Practices

29. In accordance with the definition of "fraudulent practice" under the October 2006 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in any act or omission, including a misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

1. Misrepresentation

30. INT alleges that the Respondent provided false information in the monthly reports and advance certificates submitted to the PIU regarding services that the Consultants had purportedly performed, but in fact had not rendered. The record indicates that the Respondent had proposed the participation of the Consultants in the Contract as "key staff" and had given their respective curriculum vitae to the Consortium. However, the record shows, and the parties do not dispute, that the Consultants did not participate in the Contract. Notwithstanding this fact, the Consortium's monthly reports and advance certificates indicated that the Consultants rendered services as "Technical Assistants" and billed for work purportedly done by them as "Foreign Personnel."

31. The Respondent denies the misrepresentation by arguing that the Respondent's Firm invoiced without specifying individual employees. The record does not contain any evidence of these supposed invoices issued by the Respondent's Firm. In any event, as INT has argued, the misrepresentations at issue are those contained in the monthly reports and advance certificates submitted to the PIU, and not the contents of any invoices purportedly issued by the Respondent's Firm to the Consortium. Nor does the record support the Respondent's argument that the Bank, the PIU, and the Consortium partners should have been able to identify any "fake" invoices because they knew who was working for the Respondent's Firm. The record does not contain any evidence that the Bank or the PIU had met the Consultants. In addition, interviews with the Consortium partners' representatives reveal that they had never seen or worked with the Consultants.

32. Considering the totality of the evidence, as in past cases of alleged false invoicing, the Sanctions Board finds that the monthly reports and advance certificates submitted by the Consortium to the PIU misrepresented the participation of the Consultants in the Contract so as to satisfy the first element of fraudulent practices.¹⁷

¹⁶ See *id.* at para. 52 (finding that redactions did not hinder the respondents' defense where the redactions inconsistently concealed the name of an individual who had been discussed in the respondents' interviews and identified in documents provided by the respondents).

¹⁷ See, e.g., Sanctions Board Decision No. 53 (2012) at paras. 30-31 (finding misrepresentation where the respondent submitted falsified invoices, timesheets, and status reports to overbill the PIU).

2. That knowingly or recklessly misled or attempted to mislead a party

33. INT asserts that the Respondent acted knowingly or recklessly in providing false information in the monthly reports and advance certificates submitted to the PIU.

34. The Sanctions Board first addresses INT's allegation that the Respondent acted knowingly in making false claims in the Consortium's monthly reports and advance certificates. The Sanctions Procedures recognize the Sanctions Board's discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.¹⁸ The Sanctions Board has previously found sufficient evidence of knowledge in cases of alleged fraud where the respondents and/or their employees could be presumed by inference to have acted knowingly based on their statements and/or indicia of falsity apparent to them.¹⁹

35. Here, the totality of the evidence supports a finding that it is more likely than not that the Respondent acted knowingly in submitting false information relating to the Consultants. First, as noted earlier, the record indicates that it was the Respondent who had direct contact with the Consultants, and proposed the inclusion of their names and respective curriculum vitae in the Technical Proposal. There is conflicting evidence as to whether the Respondent may have written a letter dated October 21, 2010, to notify the Bank's task team leader for the Project and the other Consortium partners about the unavailability of "one of the technical staff." The purported addressees have each denied receiving such communication from the Respondent. In any event, there is no indication that the Respondent specifically informed the PIU, the Bank, or the other Consortium partners that the two Consultants at issue either were unavailable or for other reasons were ultimately not hired under the Contract.

36. Further, the record reveals that after the date of the Respondent's purported notification letter of October 21, 2010, the Respondent had the opportunity to review at least seven advance certificates and at least three monthly reports claiming work done by the Consultants. With respect to the advance certificates, the Respondent's signature and initials appear on almost every page, suggesting that he had the opportunity to review their contents and specifically approve their submission to the PIU for payment. While the Respondent denies signing any of the advance certificates, he admits to having signed a few "cover sheets." Moreover, although the Respondent claims that his signature was forged, the record does not contain any evidence of forgery. The record reflects that INT had asked the Respondent to provide a signature sample to determine any forgery, but it does not show that the Respondent complied. With respect to the monthly reports, the record similarly supports a finding that the Respondent received the

¹⁸ Sanctions Procedures at Section 7.01.

¹⁹ See, e.g., Sanctions Board Decision No. 44 (2011) at para. 42 (finding that misrepresentations with respect to certain testing were made knowingly where the respondent "would have been aware it had not paid any testing fees"); Sanctions Board Decision No. 55 (2013) at para. 46 (finding that misrepresentations with respect to certain documents were made knowingly where the forged documents' falsity would have been readily apparent to the respondent firm's representative).

documents and thus should have been aware of the misrepresentations in them, but failed to make the necessary corrections.

37. As noted earlier, the Respondent claims in his defense that the Respondent's Firm was merely a subcontractor to the Consortium, and not a party that was allowed to review or amend any reports or certificates submitted to the PIU. As previously discussed,²⁰ however, the record shows that the Consortium Agreement identified the Respondent's Firm as a party to the Consortium, and named the Respondent as one of the Consortium's three legal representatives. In addition, the Consortium Agreement specifically identified the Respondent as the "Project Manager" tasked with the leadership of the team.

38. Given the finding that it is more likely than not that the Respondent acted knowingly in submitting false information relating to work purportedly rendered by the Consultants under the Contract, the Sanctions Board need not consider INT's alternative assertion that the Respondent acted recklessly in providing such false information.

3. To obtain a financial or other benefit or to avoid an obligation

39. The Sanctions Board finds that it is more likely than not that the Respondent's submission of falsified monthly progress reports and advance certificates was made in order to obtain a financial benefit and/or to avoid a contractual obligation. First, the record indicates that the Contract required the Consortium to submit monthly reports and advance certificates in order to obtain payment for services rendered. Accordingly, it appears that the misrepresentations overstating the work performed were made in order to obtain a financial benefit in the form of additional remuneration under the Contract. Based on the advance certificates on record, seven of which appear to have been signed by the Respondent, the Consortium billed a total of US\$194,700 for services that the Consultants never rendered. The Respondent asserts that the Respondent's Firm received "extremely moderate revenue" from the Contract, and indeed the record does not reveal whether the Respondent actually received the proceeds of the overbilling. Importantly, however, the applicable definition of fraudulent practice does not require that a respondent actually receive the intended financial or other benefit, but only that the respondent acted with the intention or goal of obtaining the benefit.

40. Second, the record suggests that the misrepresentations in the monthly reports and advance certificates may have been made in order to appear to comply with a contractual obligation, while in fact avoiding it. As the record reflects, the Consortium had bound itself under the Contract to employ the Consultants as specified "Foreign Personnel." The record does not reflect that this aspect of the Contract was subsequently amended or superseded. By including the Consultants' names in the monthly reports and advance certificates notwithstanding their non-participation in the Contract, it was made to appear that the Consortium was abiding by the original terms of the Contract even though it was not.

41. Finally, the Sanctions Board notes that the Respondent, in denying culpability, refers to a sworn affidavit that he says attests to his innocence before the Argentine courts. The record

²⁰ See *supra* at Paragraphs 9, 25.

in these sanctions proceedings does not reveal the circumstances of the Argentine proceedings, their outcome, or the courts' treatment of this affidavit. In any event, the Sanctions Board has previously observed that "national law standards and judgments are not binding on the Bank or the Sanctions Board's proceedings," and the scope of a respondent's liability for purposes of the Bank's administrative sanctions process may not be coextensive with the scope of the respondent's potential liability under national law.²¹ Rather, the Sanctions Board applies the standards set out in the Sanctions Board Statute, Sanctions Procedures, and other formal guidelines issued by the World Bank with respect to sanctions matters.²²

D. Determination of Sanctions

1. General framework for determination of sanctions

42. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section 8.01(b) of the Sanctions Procedures requires the Sanctions Board to select and impose one or more appropriate sanctions from the range of possible sanctions identified in Section 9.01. The range of sanctions set out in Section 9.01 includes: (i) reprimand, (ii) conditional non-debarment, (iii) debarment, (iv) debarment with conditional release, and (v) restitution or remedy. As stated in Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.

43. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.²³ The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.²⁴

44. The Sanctions Board is required to consider the types of factors set forth in Section 9.02 of the Sanctions Procedures, which provides a non-exhaustive list of considerations. In addition, the Sanctions Board refers to the factors and principles set out in the World Bank Sanctioning Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum of three years.

45. Should the Sanctions Board impose a sanction on a respondent, it may also, pursuant to Section 9.04 of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

²¹ Sanctions Board Decision No. 63 (2014) at para. 53.

²² Id.

²³ See Sanctions Board Decision No. 40 (2010) at para. 28.

²⁴ Sanctions Board Decision No. 44 (2011) at para. 56.

2. Factors applicable in the present case

a. Severity of the misconduct

46. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct and a central role in the misconduct as examples of severity.

47. *Repeated pattern of conduct:* INT submits that aggravation is warranted for the Respondent's submission of "multiple false claims during the execution of the Contract." The record demonstrates that while the monthly progress reports and the advance certificates were submitted monthly in a span of more than one year for the progress reports (April/May 2011–June 2012) and a year for the advance certificates (April 2011–March 2012), they all relate to the same Contract and were made pursuant to a single scheme. Accordingly, the Sanctions Board does not find these circumstances to present a repeated pattern of conduct that would warrant aggravation.²⁵

48. *Central role in the misconduct:* Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the "[o]rganizer, leader, planner, or prime mover in a group of 2 or more." INT asserts that aggravation is warranted for the centrality of the Respondent's role in the misconduct in this case. However, the Sanctions Board has declined to apply aggravation where the record does not suggest that any other party, apart from the respondent, participated in the misconduct.²⁶ In this case, INT does not address, and the record does not show, the involvement and potential culpability or responsibility of other actors, such as the Consortium partners, for the misconduct. Thus, the Sanctions Board declines to find that the Respondent played a central role in a group of two or more so as to warrant aggravation.

b. Magnitude of harm

49. Section 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the "magnitude of the harm caused by the misconduct" in determining a sanction. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or delay as an example of such harm. Here, the record indicates that the misconduct not only caused the PIU to pay for staff who never rendered services, but also resulted in the cancellation of the Contract. As discussed in Paragraph 39, the Consortium billed the PIU a total of US\$194,700 for work that the Consultants never performed. In addition, the PIU rescinded the Contract upon discovery and verification of "the falsity of substantial information submitted by the [Consortium] . . . [in] the Progress Reports" with

²⁵ See, e.g., Sanctions Board Decision No. 63 (2014) at para. 97 (declining to apply aggravation where the respondents made twelve corrupt payments "pursuant to a single scheme under the [c]ontract" over a period of time); Sanctions Board Decision No. 79 (2015) at para. 39 (declining to apply aggravation where the respondent submitted a false certificate in several bid packages for contracts under the same project, which bid packages appeared to have been prepared by the respondent in a single course of action).

²⁶ See Sanctions Board Decision No. 67 (2014) at para. 37.

respect to their personnel. In these circumstances and consistent with past cases,²⁷ the Sanctions Board finds aggravation clearly warranted for the harm to the Borrower and the Project.

c. Interference in the Bank's investigation

50. Section 9.02(c) of the Sanctions Procedures requires the Sanctions Board to consider any interference by the sanctioned party in the Bank's investigation. Section IV.C.1 of the Sanctioning Guidelines describes this factor as including "[d]eliberately destroying, falsifying, altering, or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation," as well as "acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information." In this case, INT contends that the Respondent deserves aggravation for interference because, according to INT, the Respondent ended all communication after his interview and did not provide INT with additional agreed documentation and a signature sample. The record shows that INT sent the Respondent six follow-up emails requesting several documents to aid its investigation, and the Respondent did not produce these documents. However, INT does not assert, and the record does not suggest, that the Respondent engaged in any overt acts that interfered with its investigation. Consistent with past precedent, the Sanctions Board declines to apply aggravation for interference in these circumstances.²⁸

d. Cooperation

51. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C.1 of the Sanctioning Guidelines suggests that cooperation may take the form of assistance with INT's investigation or ongoing cooperation "[b]ased on INT's representation that the respondent has provided substantial assistance in an investigation," with consideration of the "truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of [the] assistance." The record shows that the Respondent met with and agreed to be interviewed by INT at length. However, as discussed in Paragraph 50, the record indicates that the Respondent did not share the relevant documents and other information that INT repeatedly requested from him after his interview. Neither is there any evidence in the record to support the Respondent's claims that he provided INT access to the bank accounts of the Respondent's Firm or allowed INT to interview his accountants. Accordingly, the Sanctions Board finds that partial mitigation is warranted for cooperation.

²⁷ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 56 (applying aggravation for financial harm inherent in the respondent's overbilling of the implementing agency); Sanctions Board Decision No. 83 (2015) at para. 86 (applying aggravation for harm where the implementing agency terminated the contract due to concerns including the respondents' fraudulent practices).

²⁸ See Sanctions Board Decision No. 69 (2014) at para. 37 (declining to apply aggravation where INT did not allege that the respondent engaged in any overt acts that interfered with INT's investigation, and asserted only that the respondent refused to respond to INT's questions and failed to follow up with information).

e. Period of temporary suspension and debarment

52. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the length of temporary suspension and brief period of debarment served by the Respondent as discussed above in Paragraphs 5 and 6.

f. Other considerations

53. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider “any other factor” that it “reasonably deems relevant to the sanctioned party’s culpability or responsibility in relation to the Sanctionable Practice.”

54. *Seniority*: INT asserts that aggravation is appropriate because the Respondent “held senior positions as the Respondent’s Firm’s Director, and the Consortium’s Project Manager and Legal Representative.” The Sanctions Board has not previously applied aggravation for an individual respondent solely on the basis of the individual’s seniority in position. In previous cases finding misconduct by both a respondent entity and an individual respondent holding a senior position within the respondent entity, the Sanctions Board has considered the individual’s seniority in position as a potential aggravating factor only for the respondent entity (under “management’s role in misconduct”), and not for the individual respondent.²⁹ In this case, INT does not assert, and the record does not show, how the Respondent’s seniority in position per se is relevant to his own degree of culpability or responsibility so as to warrant aggravation. In these circumstances, the Sanctions Board declines to apply aggravation on this basis.

55. *Personal hardship and adverse financial consequences*: The Respondent asserts that “as a result of being the only innocent victim of an orchestrated plot,” he has suffered personal hardship; his health has deteriorated; he is able to work very little; and his company was destroyed. The Respondent further asserts that he has no desire or ability to participate in future Bank projects. Contrary to the Respondent’s claim that he is an “innocent victim,” the Sanctions Board finds him liable for fraudulent practices as set out above. Further, the Sanctions Board has previously declined to apply mitigation where the respondent claimed to have suffered financial losses from the contract and/or as a result of sanctions proceedings.³⁰ Finally, the Respondent has not shown how his other asserted personal hardships relate to his culpability or responsibility so as to warrant mitigation under Section 9.02(i) of the Sanctions Procedures. Accordingly, the Sanctions Board considers that mitigation is not warranted on the Respondent’s asserted grounds.

²⁹ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 125 (applying aggravation with respect to the respondent entities where the individual respondents, who were the director and co-owner of the respondent entities, participated in the misconduct).

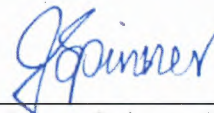
³⁰ See Sanctions Board Decision No. 56 (2013) at para. 86 (denying mitigation for a respondent firm’s asserted losses in contract execution, reimbursement delays, and alleged costs in investigating its own misconduct and cooperating with relevant authorities); Sanctions Board Decision No. 63 (2014) at para. 122 (denying mitigation despite the respondent firm’s assertion that it received no financial or other benefits from the contract and had instead incurred significant losses in its efforts to complete the work and through its temporary suspension).

56. *Claimed contributions and commitment to anti-corruption:* The Respondent asserts that he continues to campaign to find ways of eliminating corruption in the public sector and is now writing a book on this topic. However, the Respondent has not substantiated his claims with any evidence, or shown how his claimed efforts would be relevant to his culpability or responsibility for the fraudulent misconduct in the present case.

E. Determination of Liability and Appropriate Sanction

57. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate that he directly or indirectly controls, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, for a period of three (3) years beginning from the date of this decision. The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the October 2006 Consultant Guidelines.

58. The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks (“MDBs”) that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the “Cross-Debarment Agreement”) so that they may determine whether to enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.³¹



J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Alison Micheli

³¹ At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the “opt out” clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank’s external website (<http://go.worldbank.org/B699B73Q00>).