THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: March 25, 2019

Sanctions Board Decision No. 116
(Sanctions Case No. 576)

IBRD Loan No. 8195-UA
Ukraine

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 576 (the "Respondent"), together with certain Affiliates,[2] with a minimum period of ineligibility of one (1) year and five (5) months beginning from the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board convened in February and March 2019, as a panel composed of Olufunke Adekoya (Panel Chair), Ellen Gracie Northfleet, and Mark Kantor to review this case. Neither the Respondent nor the World Bank, Group's Integrity Vice Presidency ("INT") requested a hearing in this matter. Nor did the Panel Chair[3] decide, in her discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.[4]

2. In accordance with Section III.A, sub-paragraph 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 Suspension and Debarment Officer (the "SDO") to the Respondent on May 2, 2018 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") submitted by INT to the SDO (undated);

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[1] In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (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"). The term "World Bank Group" includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for 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 II(x).

[2] Section II(a) of the Sanctions Procedures defines "Affiliate" as "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank." The sanctions imposed by this decision apply only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraph 34.

[3] Sanctions Procedures at Section II(s).

[4] See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on August 7, 2018 (the "Response");

iii. Reply submitted by INT to the Secretary to the Sanctions Board on September 6, 2018 (the "Reply"); and

iv. Additional submission filed by INT with the Secretary to the Sanctions Board on October 30, 2018 ("INT's Additional Submission").

3. On May 2, 2018, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility[5] with respect to any Bank-Financed Projects,[6] pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO recommended a minimum period of ineligibility of one (1) year and eight (8) months, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer (the "ICO") that it has (i) taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of the Second Road and Safety Improvement Project (the "Project") in Ukraine (the "Borrower"), which sought to improve the condition, quality, and/or traffic safety of certain road corridors and sections across the Borrower's territory. On October 11, 2012, IBRD entered into a loan agreement with the Borrower to provide US$450 million for the Project (the "Loan Agreement"). On the same day, the Borrower entered into a sub-loan agreement with the Project's Implementation Unit (the "PIU") to sub-lend the IBRD funds. The Project became effective on December 24, 2012, and is scheduled to close on June 30, 2020.

5. On June 20, 2016, the PIU issued bidding documents (the "Bidding Documents") for a contract to complete certain construction works under the Project (the "Contract"). On August 12, 2016, the Respondent submitted a bid for the Contract (the "Bid"). In February 2017,

[5] The full scope of ineligibility effected by a temporary suspension is set out in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

[6] The term "Bank-Financed Projects" encompasses an investment project or a program for results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

the PIU issued a bid evaluation report finding the Bid not responsive and recommending a competitor of the Respondent as the winner.

6. INT alleges that the Respondent engaged in a fraudulent practice by knowingly submitting 48 forged vehicle registration certificates (the "Certificates") as part of the Bid, in response to a specific request for clarification from the PIU.

III. APPLICABLE STANDARDS OF REVIEW

7. *Standard of proof*: Pursuant to Section III.A, sub-paragraph 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 III.A, sub-paragraph 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.

8. *Burden of proof*: Under Section III.A, sub-paragraph 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.

9. *Evidence*: As set forth in Section III.A, sub-paragraph 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.

10. *Applicable definition of fraudulent practice*: Both the Loan Agreement and the Bidding Documents provided that the World Bank's Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the "January 2011 Procurement Guidelines") would apply. Paragraph 1.16(a)(ii) of these Guidelines defines "fraudulent practice" as "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 footnote to this definition explains that the term "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.[7]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

11. INT alleges that the Respondent's staff engaged in a fraudulent practice by knowingly submitting the forged Certificates as part of the Bid, in response to a specific request for clarification from the PIU. In support of this allegation, INT submits evidence including written statements from a representative of the purported issuer of the Certificates, denying the

[7] January 2011 Consultant Guidelines at para. 1.16(a)(ii), n.21.

authenticity of these documents and asserting various indicia of falsity therein. INT argues that the Respondent should be accorded some mitigation for conducting an internal investigation.

B. The Respondent's Principal Contentions in its Response

12. The Respondent admits to the allegation and takes responsibility for the fraudulent practice. Based on asserted findings of an internal investigation, the Respondent submits that two low-level employees falsified the Certificates, and that its Deputy Chairman (the "Deputy Chairman") presented these documents to the PIU without verifying their authenticity.

13. The Respondent seeks a lesser sanction than that recommended by the SDO. Specifically, the Respondent requests mitigation for: (i) cooperation with INT's investigation; (ii) internal investigation; (iii) admission; (iv) minor role in the misconduct; (v) internal action against the responsible individuals; (vi) voluntary restraint; and (vii) development of compliance measures and controls.

C. INT's Principal Contentions in the Reply

14. INT contends that the sanction recommended by the SDO is adequate and that no further mitigation is warranted.

D. INT's Additional Submission

15. Following the Reply, the Respondent submitted a letter and supplemental documents directly to INT, asserting certain corporate changes. In its Additional Submission, INT forwards such documents to the Secretary to the Sanctions Board, and argues that the Respondent's stated corporate changes do not affect the Respondent's culpability or the appropriate sanction. Pursuant to Section III.A, sub-paragraph 5.01(c), of the Sanctions Procedures, the Sanctions Board Chair admitted INT's Additional Submission into the record and invited the Respondent to provide comments in response. The Respondent declined to do so.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

16. The Sanctions Board will first address the uncontested allegation and the Respondent's acceptance of responsibility and liability for a fraudulent practice. Subsequently, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. The Respondent's Liability for a Fraudulent Practice

17. In accordance with the definition of "fraudulent practice" under Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondent (i) engaged in an 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.

18. The Sanctions Board observes that the parties agree, and the record demonstrates, that the Respondent engaged in a fraudulent practice as alleged in the SAE. Specifically, the pleadings and

evidence establish that: (i) the Respondent's staff made a misrepresentation by submitting the falsified Certificates to the PIU; (ii) at least two of the responsible employees acted knowingly by personally fabricating the documents in question; and (iii) this misrepresentation related to a tender eligibility requirement and was made in response to a direct inquiry from the PIU – namely, a request that the Respondent provide proof of ownership of certain equipment listed in one of the bidding forms. The Respondent does not contest that it is liable for the acts of its employees and expressly accepts responsibility for the misconduct at issue. Accordingly, the Sanctions Board finds that the Respondent engaged in, and is liable for, a fraudulent practice.

B. Sanctioning Analysis

1. General framework for determination of sanctions

19. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 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 III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 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 III.A, sub-paragraph 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

20. 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.[8] 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.[9]

21. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 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 period of three years.

22. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section III.A, sub-paragraph 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

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[8] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

[9] See Sanctions Board Decision No. 44 (2011) at para. 56.

2. Factors considered in the present case

a. Minor role in the misconduct

23. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent played a minor role in the misconduct. Section V.A of the Sanctioning Guidelines proposes that this factor be applied "if no individual with decision-making authority participated in, condoned, or was willfully ignorant of the misconduct." In the past, the Sanctions Board has applied some mitigation where a low-level employee knowingly submitted falsified documents as part of the respondent firm's bid, and management failed to supervise him.[10] Here, the Respondent asserts, and INT concedes, that none of the Respondent's employees with decision-making authority was involved in the misconduct. Accordingly, both parties support mitigation on this basis. As discussed at Paragraph 18 above, the Sanctions Board has found that the Respondent is liable for the conduct of the two junior employees, who personally prepared the forged Certificates and thereby knowingly acted to mislead the PIU. While the record also indicates that the Deputy Chairman exercised inadequate supervision and controls, there is no evidence that he or other high-level staff affirmatively participated in, condoned, or were willfully ignorant of the junior employees' actions and intent. In these circumstances, the Sanctions Board finds that mitigation is appropriate under this factor.

b. Voluntary corrective action

24. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.[11]

25. *Internal action against responsible individuals*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where "[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee, agent, or representative." The Sanctioning Guidelines add that "[t]he timing of the action may indicate the degree to which it reflects genuine remorse and intention to reform, or a calculated step to reduce the severity of the sentence." The Sanctions Board has previously granted mitigation to various degrees where the record included documentary evidence that the respondent undertook internal disciplinary

[10] See Sanctions Board Decision No. 46 (2012) at paras. 36-37 (applying mitigation where the record showed that the respondent firm exercised inadequate supervision and controls but did not indicate that the respondent firm's management affirmatively participated in, condoned, or was willfully ignorant of the conduct of a low-level employee who signed and submitted fraudulent documents with the bid).

[11] See, e.g., Sanctions Board Decision No. 106 (2017) at para. 39.

action against participants in the misconduct.[12] In this case, the Respondent submits that it terminated the individuals who were "most culpable" for the misconduct, i.e., the two junior employees. INT asserts that these individuals were terminated based on uncertain factual grounds, because the credibility of the Respondent's internal investigation is questionable. In addition, INT argues that the record does not show that the Respondent implemented adequate measures with respect to the Deputy Chairman. INT submits that the Respondent deserves "minimal credit" for this internal action. The record includes certificates of termination of the junior employees, dated approximately two months after the Respondent received INT's show cause letter, and one month after the Respondent concluded its internal investigation identifying these individuals as responsible for the forgery. However, there is no evidence that the Respondent undertook timely and appropriate remedial action with respect to the Deputy Chairman. To the contrary, the record indicates that the Respondent initially suspended the Deputy Chairman based on the outcome of the internal investigation, only to reinstate him within ten days. The Sanctions Board finds that such disciplinary measures merit limited mitigation, particularly in light of the Respondent's inadequate action with respect to the Deputy Chairman.

26. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has previously declined to apply mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures;[13] or where the evidence did not demonstrate the type of measures that would prevent or address the type of misconduct at issue.[14] Here, the Respondent requests mitigation based on its assertions that: (i) it is "pursuing the development and implementation of a compliance program with an international consulting company;" (ii) it has designed controls to prevent similar misconduct in the future; and (iii) it has "invited" counsel to provide training on anti-corruption matters and Bank procurement guidelines. INT opposes mitigation on these grounds, arguing that the Respondent's assertions are vague and unsubstantiated. The only evidence of the Respondent's purported corrective actions is a one-page outline of the aforementioned consulting company's terms of reference, containing general descriptions of tasks and objectives. In light of this record, the Sanctions Board declines to apply any mitigation.

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[12] See, e.g., Sanctions Board Decision No. 48 (2012) at paras. 43-44 (applying mitigation where the record included documents showing that the implicated employees were demoted or reprimanded and had their bonuses withheld for two years, and that the respondent intended to implement specific corrective action to prevent similar misconduct in the future); Sanctions Board Decision No. 63 (2014) at para. 106 (applying some mitigation where the record showed that the respondent undertook provisional measures against all employees involved but lacked evidence as to final employment actions taken).

[13] See, e.g., Sanctions Board Decision No. 45 (2010) at para. 74 (finding no basis to apply mitigation for the respondent's asserted willingness to pursue corporate measures, absent evidence of actual implementation); Sanctions Board Decision No. 85 (2016) at para. 44 (declining to apply mitigation where the record does not contain evidence of the respondent's asserted anti-bribery policy and related internal rules).

[14] See Sanctions Board Decision No. 65 (2014) at para. 77; Sanctions Board Decision No. 69 (2014) at para. 39.

c. Cooperation

27. Section III.A, sub-paragraph 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 of the Sanctioning Guidelines identifies a respondent's assistance with INT's investigation, an internal investigation, admission or acceptance of guilt or responsibility, and voluntary restraint from bidding on Bank-financed projects as examples of cooperation.

28. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance with INT's investigation or ongoing cooperation, "[b]ased on INT's representation that the respondent has provided substantial assistance" as well as "the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." The Sanctions Board has previously granted mitigation under this factor where a respondent met with INT on several occasions and provided relevant information and documentation,[15] or replied to INT's show cause letter and follow-up inquiries.[16] In the present case, the Respondent requests, and INT supports, mitigation based on the Respondent's cooperation with INT's investigation. The record shows that the Respondent replied to INT's show cause letter and complied with subsequent requests for information – including with respect to matters ultimately not included in the SAE. Consistent with precedent, the Sanctions Board finds that mitigation is warranted under this factor.

29. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts . . . and shared results with INT." In examining this sanctioning factor, the Sanctions Board has considered whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; whether the respondent shared its findings with INT during INT's investigation or as part of the sanctions proceedings; and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[17] For example, the Sanctions Board has applied mitigation where the respondent conducted the internal investigation promptly and shared a detailed report with INT. Conversely, the Sanctions Board has declined to apply mitigation where a respondent provided INT with a two-page summary of its investigation, without additional corroboration for its findings or evidence of the thoroughness and impartiality of the inquiry and qualifications of the investigator. In this case, the Respondent requests mitigating credit for its asserted internal inquiry. INT submits that "little, if any, mitigation" is warranted, because the investigation was belated, lacked independence, and is insufficiently corroborated. The record reveals that the Respondent conducted an internal investigation and reported a summary of its findings to INT within one month of receiving the show cause letter. However, the Respondent did not provide any evidence to support its conclusions or demonstrate the independence and qualifications of the investigative team. On the basis of this record, the Sanctions Board finds that limited mitigation is appropriate.

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[15] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 58; Sanctions Board Decision No. 92 (2017) at para. 122.

[16] See, e.g., Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 92 (2017) at para. 122.

[17] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56; Sanctions Board Decision No. 83 (2015) at para. 97.

30. *Admission/acceptance of guilt/responsibility*: Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. In considering whether admissions warrant mitigation, the Sanctions Board has looked to the timing of admissions as well as their scope (i.e., whether an admission related only to the conduct alleged or also accepted responsibility).[18] For example, the Sanctions Board has granted limited mitigation where the respondent admitted to certain facts without accepting responsibility for misconduct during the investigation, but fully conceded to the allegations in the response.[19] Here, the Respondent requests, and INT supports, mitigation based on the Respondent's admissions of wrongdoing. In the response to the show cause letter, the Respondent admits that the Certificates were fabricated and identifies the responsible individuals, but also describes the conduct as "mistakes" and suggests that the Respondent may have been the victim of "fraudulent efforts to hurt the company['s] image and reputation." In the Response, the Respondent concedes that submitting the falsified Certificates constituted a sanctionable practice and expressly accepts guilt for the forgery, but falls short of taking responsibility for the Deputy Chairman's conduct. Accordingly, the Sanctions Board finds that the Respondent's admissions merit limited mitigation.

31. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines provides for mitigation where a respondent has voluntarily refrained from bidding on Bank-financed tenders pending the outcome of an investigation. In past cases, the Sanctions Board's decision to apply or deny mitigation on these grounds has depended on whether or not the respondents' asserted voluntary restraint was corroborated by relevant evidence.[20] In addition, the Sanctions Board has consistently declined to apply mitigation for the respondent's voluntary restraint once its temporary suspension started.[21] Here, the Respondent submits that it has refrained from bidding on four Bank-financed contracts and is "pursuing [to] withdraw" its bids on three others. INT opposes any mitigation on this basis. The Sanctions Board observes that the Respondent has failed to corroborate any of its claims. In addition, the record shows that the bidding period for the cited tenders either began or continued after the Respondent had been temporarily suspended, and that at least one of the bids that the Respondent is assertedly "pursuing [to] withdraw" was submitted after the Respondent received INT's show cause letter. In these circumstances, the Sanctions Board declines to accord any mitigation.

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[18] See, e.g., Sanctions Board Decision No. 99 (2017) at paras. 33-34.

[19] See Sanctions Board Decision No. 105 (2017) at para. 30 (observing that the respondent (i) during the investigation, admitted to the solicitations in question but did not accept responsibility for any corrupt conduct, and (ii) in the response, conceded that he engaged in the actions alleged by INT).

[20] See Sanctions Board Decision No. 73 (2015) at para. 50 (denying mitigation where the respondent did not provide evidence of a policy or practice of voluntary restraint); Sanctions Board Decision No. 102 (2017) at para. 80 (applying mitigation where the respondent provided contemporaneous evidence of its withdrawal from nine bids).

[21] See Sanctions Board Decision No. 44 (2011) at para. 66 (finding that a respondent cannot be credited for voluntary restraint once its temporary suspension has started).

d. Period of temporary suspension

32. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the Respondent's period of temporary suspension. The Respondent has been suspended since the issuance of the Notice on May 2, 2018.

e. Other considerations

33. *Change in management/corporate identity*: Under Section III.A, sub-paragraph 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." The Sanctions Board has previously applied mitigation where the record demonstrated a corporate "restructuring" and changes in the respondent's management, particularly with respect to individuals involved in the misconduct.[22] By contrast, the Sanctions Board has declined to apply mitigation where the respondent underwent a reorganization since the misconduct, but the record did not show or was inconclusive regarding changes in ownership, control, or management.[23] In the present case, without expressly requesting mitigation, the Respondent submits that it undertook certain corporate changes, including by restructuring its business organization and electing a new management board. The Respondent also maintains that its current management is committed to enhancing controls and optimizing reporting lines. INT argues that the asserted changes do not affect the Respondent's culpability or the appropriate sanction. The record includes copies of the Respondent's updated articles of association and commercial and tax registration certificates, which indicate, inter alia, that the Respondent has adopted a new name and address, and reorganized its business lines. The Sanctions Board finds that such corporate changes have no bearing on the Respondent's culpability or responsibility for the sanctionable practice at issue. Accordingly, no mitigation is warranted on these grounds.

C. **Determination of Appropriate Sanctions**

34. 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 directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[24] (ii) be a

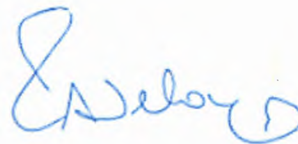
[22] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 66 (observing that the respondent underwent several changes in management, and that the record does not include evidence of the involvement of current management in the misconduct); Sanctions Board Decision No. 66 (2014) at para. 49 (observing that two managers continued to serve on the respondent's board after the asserted changes, but the record does not indicate that these individuals were involved in the misconduct).

[23] See, e.g., Sanctions Board Decision No. 83 (2015) at para. 104 (observing that the record reflected corporate structural changes, but no changes in ownership since the misconduct, and that the record was not clear as to the scope of changes in management).

[24] A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated 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 III.A, sub-paragraph 9.01(c)(i), n.14.

nominated sub-contractor, consultant, manufacturer or supplier, or service provider[25] 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, provided, however, that after a minimum period of ineligibility of one (1) year and five (5) months beginning from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group, including by providing tailored ethics and compliance training to its management personnel and, in particular, the Deputy Chairman. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

35. The Respondent's ineligibility shall extend across the operations of the World Bank Group. 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[26]



Olufunke Adekoya (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Olufunke Adekoya
Ellen Gracie Northfleet
Mark Kantor

[25] A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification 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 III.A, sub-paragraph 9.01(c)(ii), n.15.

[26] 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 website (http://go.worldbank.org/B699B73Q00).