THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 10, 2013

Sanctions Board Decision No. 57

Decision of the World Bank Group Sanctions Board denying a request for reconsideration of Sanctions Board Decision No. 49 (2012) (the "Original Decision"), as filed by the respondent entity in Sanctions Case No. 130 ("Respondent") and the entity named in Sanctions Case No. 130 as Respondent's Affiliate under common control (the "Named Affiliate").

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on December 5, 2012, at the World Bank's headquarters in Washington, D.C., to review a request for reconsideration filed by Respondent and the Named Affiliate with regard to Sanctions Board Decision No. 49 (2012), by which the Sanctions Board debarred Respondent and the Named Affiliate with conditional release after a minimum period of two years for fraudulent practices in Sanctions Case No. 130. The Sanctions Board was represented by L. Yves Fortier (Chair), Marielle Cohen-Branche, Patricia Diaz Dennis, Catherine O'Regan, Denis Robitaille, and Randi Ryterman.

2. The Sanctions Board deliberated and reached its decision on the request for reconsideration based on the written record, which included:

i. the request for reconsideration submitted by Respondent and the Named Affiliate to the Secretary to the Sanctions Board on July 9, 2012 (the "Request for Reconsideration" or "Request");

ii. comments on the Request for Reconsideration submitted by the World Bank Group's Integrity Vice Presidency ("INT") to the Secretary to the Sanctions Board on November 30, 2012 ("INT's Comments"); and

iii. the written record previously considered by the Sanctions Board in the original proceedings in Sanctions Case No. 130 and the Original Decision.

II. APPLICABLE STANDARDS OF REVIEW

3. The statutory and procedural framework that governed the original proceedings in Sanctions Case No. 130, and likewise governs the present Request for Reconsideration, includes the Sanctions Board Statute as revised September 15, 2010 (the "Statute"), and the Sanctions Procedures as adopted January 1, 2011 (the "Sanctions Procedures").

4. Both the Statute and the Sanctions Procedures speak to the finality of Sanctions Board decisions. Article XIV of the Statute provides that the Sanctions Board's decisions "shall be final and without appeal." Section 8.03(a) of the Sanctions Procedures states that each Sanctions Board decision "shall be final and shall take effect immediately." Neither the

Statute nor the Sanctions Procedures address whether the Sanctions Board itself may elect to reopen or reconsider its own decisions. They contain no provisions expressly permitting or prohibiting such reconsideration.

5. In the absence of directly controlling provisions for reconsideration, it is necessary to look to Article XI of the Statute. Article XI reads in full: "In all matters not addressed in this Statute, the Code of Conduct or the Sanctions Procedures or any formal guidelines issued by the Bank in respect of sanctions proceedings, the Sanctions Board shall follow the instructions of the Sanctions Board Chair for the operation of the Sanctions Board." Article IV further provides, "In the event of a dispute as to whether the Sanctions Board has competence over a particular matter, the Sanctions Board shall decide whether it has the authority to handle such matter under this Statute." Finally, Article VII(2) provides, "A plenary session may be convened by the Sanctions Board Chair . . . when it is necessary to deal with . . . a question of [the Sanctions Board's] competence under Article IV, or any other matter warranting consideration by the full Sanctions Board."

6. Consistent with the above statutory provisions, the Sanctions Board Chair convened a plenary session in an earlier case to determine the Sanctions Board's competence to review requests for reconsideration, and the applicable standards for any such review. As then reflected in Sanctions Board Decision No. 43 (2011), the Sanctions Board observed that the specific preclusion of appeal under the Statute and Sanctions Procedures does not necessarily prevent the Sanctions Board's own reconsideration of its decisions.[1] No statutory or procedural framework can be expected to anticipate and comprehensively address all conceivable scenarios or issues that may arise.[2] To the contrary, as the Statute recognizes, lacunae are inevitable; and the Sanctions Board may assert authority, consistent with Article XI of the Statute and the instructions of the Sanctions Board Chair, to fill procedural gaps.[3]

7. As also set forth in Sanctions Board Decision No. 43, the Sanctions Board has emphasized the principle of finality as a fundamental aspect of any judicial or quasi-judicial process, including international administrative tribunal proceedings.[4] Finality is essential to provide certainty to the parties and others with an interest in the proceedings, prevent re-litigation of claims already adjudicated, conserve judicial resources, and encourage respect for adjudicated outcomes (res judicata).[5] As reflected in the repeated clause that Sanctions Board decisions "shall be final" in both Article XIV of the Statute and Section 8.03(a) of the Sanctions Procedures, the principle of finality explicitly applies to proceedings before the Sanctions Board.[6]

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[1] Sanctions Board Decision No. 43 (2011) at para. 11.

[2] Id. at para. 12.

[3] Id.

[4] Id. at para. 14.

[5] Id.

[6] Id.

8. At the same time, as the Sanctions Board has recognized, fundamental principles of fairness dictate that finality must on occasion yield in narrowly defined and exceptional circumstances.[7] In the absence of guidance on how to define such exceptional circumstances under the Statute and Procedures, the Bank's legislative history, or the Sanctions Board's previous jurisprudence, the Sanctions Board looked to general principles of law, as demonstrated by leading international and national practice, to inform its analysis as set out in Sanctions Board Decision No. 43.[8] Considering such general principles and practice, the Sanctions Board concluded that a final decision may be reconsidered only in exceptional circumstances such as the discovery of newly available and potentially decisive facts, fraud or other misconduct in the original proceedings, or a clerical mistake in the issuance of the original decision.[9] Mere attempts to re-argue or re-litigate a case, or respondents' failure to timely or effectively present previously available facts or related evidence to the Sanctions Board, either on the advice of legal counsel or for other reasons, do not warrant reconsideration.[10]

III. THE PARTIES' PRINCIPAL CONTENTIONS

9. Respondent and the Named Affiliate ask the Sanctions Board to "clarify" the Original Decision in order that the two-year minimum period of debarment of Respondent and the Named Affiliate be calculated to have begun with their temporary suspension on April 11, 2011, instead of the date of the Original Decision's issuance on May 30, 2012. The Request for Reconsideration principally asserts the following:

i. Calculating the debarment period to begin on the date of the Original Decision would base the final period of debarment upon the duration of the Sanctions Board's proceedings, which Respondent and the Named Affiliate describe as "entirely fortuitous."

ii. Calculating the debarment period to begin on the date of the Original Decision would "effectively penalize" Respondent and the Named Affiliate for exercising their right of appeal to the Sanctions Board.

iii. The Original Decision contains no indication that the Sanctions Board wished to increase the two-year debarment recommended by the World Bank's Evaluation and Suspension Officer (the "EO").[11]

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[7] Id. at para. 15.

[8] Id. at paras. 15-24.

[9] Id. at paras. 25-27.

[10] Id. at paras. 26-27.

[11] Effective March 31, 2013, the EO's title changed to "IBRD/IDA Suspension and Debarment Officer" ("SDO"). For consistency with the Sanctions Procedures and the pleadings in this case, this decision refers to the former title.

10. In INT's Comments, INT asserts there is no basis to grant the Request for Reconsideration, as Respondent and the Named Affiliate do not raise any facts that fall within the category of exceptional circumstances previously described by the Sanctions Board. INT adds that, in any event, the Original Decision appears to have taken into account as a mitigating factor the period of temporary suspension served by Respondent and the Named Affiliate.

IV. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

11. Considering the Respondent and Named Affiliate's request for clarification as a request for reconsideration under the standards set out in Sanctions Board Decision No. 43, the Sanctions Board does not find exceptional circumstances warranting reconsideration of the Original Decision. The Request for Reconsideration does not show any newly available and potentially decisive fact, fraud or other misconduct in the original proceedings, or clerical mistake in the issuance of the Original Decision.

12. First, the record does not support the Request's suggestion of error in the calculation of the original sanction. As expressly stated in the Original Decision, and pursuant to Section 9.02(h) of the Sanctions Procedures and Sanctions Board precedent, the Sanctions Board determined the appropriate sanction in the original proceedings only after taking into account the period of temporary suspension already served by Respondent and the Named Affiliate since April 11, 2011.[12] The final two-year minimum debarment period, beginning with the date of issuance of the Original Decision on May 30, 2012, accordingly factored in that Respondent and the Named Affiliate had been suspended for approximately one year.

13. As reflected in the Sanctions Board's past decisions, the Sanctions Board's consistent practice has been to commence any debarment period from the date of issuance of its decision. Notably, the Sanctions Board has made one exception to its practice where it considered that the parties' own prior consensus on a specific sanction would support an earlier commencement date.[13] The original proceedings against Respondent and the Named Affiliate did not suggest any comparable basis to make an exception, and the Sanctions Board accordingly did not choose to depart from its standard practice in the Original Decision.

14. Second, the Sanctions Board recognizes that a temporary suspension period may be significantly prolonged by a respondent's exercise of the right of appeal. The impact of such extension is mitigated, to the extent possible, through the Sanctions Board's consideration of the temporary suspension period in each case. While such mitigation may be insufficient where the record would support a sanction even shorter than the duration of the relevant proceedings – or where the record does not support a finding of liability – the original proceedings here did not present such circumstances.

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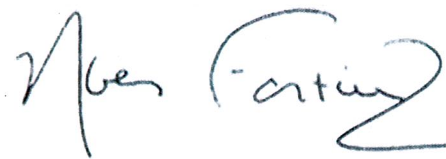
[12] Sanctions Board Decision No. 49 (2012) at para. 41.

[13] See Sanctions Board Decision No. 51 (2012) at paras. 47, 59 (beginning one-year debarment period from the earlier point at which INT and the respondents had expressly agreed upon a one-year minimum sanction).

15. Third, the Request lacks merit in its suggestion that the Sanctions Board must expressly flag any intended departure from the EO's recommended sanction. As stated in the Original Decision, and in accordance with Section 8.01(b) of the Sanctions Procedures, the Sanctions Board is not bound by the EO's recommendations.[14] The Sanctions Board instead determines an appropriate sanction on a case-by-case basis, considering the totality of the circumstances and all potential aggravating and mitigating factors.[15] The Sanctions Board's final determination, resting on the full appeals record, may differ from the EO's recommendation without the need to explain or characterize its de novo judgment as a departure from the EO's recommended sanction.

16. Considering the applicable standards of review and the record presented, the Sanctions Board hereby denies the Request for Reconsideration.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
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[14] Sanctions Board Decision No. 49 (2012) at para. 32.

[15] Id. at para. 33.