

Date of issuance: March 31, 2014

**Sanctions Board Decision No. 64
(Sanctions Case No. 122)**

**IDA Credit No. 3746-KH
IDA Grant No. H034-KH
Cambodia**

Decision of the World Bank Group¹ Sanctions Board finding insufficient evidence to conclude that it is more likely than not that the individual respondent in Sanctions Case No. 122 (the “Respondent”) engaged in the alleged corrupt practices.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session at the World Bank’s headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Ellen Gracie Northfleet, Catherine O’Regan, and J. James Spinner.

2. A hearing was held on May 29, 2013, at the request of the Respondent and in accordance with Article VI of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives attending in person. The Respondent participated in the hearing in person with outside counsel. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

3. In accordance with Section 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board’s consideration included the following pleadings as well as other submissions:

- i. Notice of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)² to the Respondent on October 25, 2011, and re-sent to the Respondent on August 22, 2012 (the “Notice”), appending the

¹ In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as amended through July 8, 2011 (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 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 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.

Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated February 24, 2010;

- ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on November 24, 2012 (the “Response”);
 - iii. Reply in Support of Notice of Sanctions Proceedings submitted by INT to the Secretary to the Sanctions Board on December 26, 2012 (the “Reply”);
 - iv. Supplemental Submission submitted by the Respondent to the Secretary to the Sanctions Board on May 16, 2013 (the “Respondent’s Supplemental Submission”);
 - v. Post-Hearing Submission submitted by the Respondent to the Secretary to the Sanctions Board on June 14, 2013 (the “Respondent’s Post-Hearing Submission”); and
 - vi. Comments on the Respondent’s Post-Hearing Submission submitted by INT to the Secretary to the Sanctions Board on August 6, 2013 (“INT’s Post-Hearing Comments”).
4. 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 Affiliate³ under the Respondent’s direct or indirect control. The EO recommended a minimum period of ineligibility of three (3) 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 Affiliate under the Respondent’s direct or indirect control has put in place an effective integrity compliance program acceptable to the Bank and has implemented this program in a manner satisfactory to the Bank.
5. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO further recommended in the Notice that two firms (“JV Partner A” and “JV Partner B”) and JV Partner A’s managing director (the “Managing Director”) each be debarred for a minimum period of four (4) years, subject to conditional release.
6. Effective October 25, 2011, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any Affiliate under his direct or indirect control, from eligibility to (i) be awarded contracts for Bank-financed or Bank-

³ In accordance with Section 1.02(a) of the Sanctions Procedures, 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.”

executed projects or programs governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (hereinafter collectively referred to as "Bank-Financed Projects"), and (ii) participate in new activities in connection with Bank-Financed Projects, pending the final outcome of the sanctions proceedings.

7. 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 of the date on which the Notice is deemed to have been delivered to that respondent. Absent the submission of a written response to the Sanctions Board by the Respondent, JV Partner A, JV Partner B, or the Managing Director within ninety days of the EO's recorded delivery of the Notice in November 2011, the EO's recommended sanctions entered into effect with respect to each of these parties, pursuant to Section 4.04 of the Sanctions Procedures, in February 2012.

8. In a letter received by the Sanctions Board Secretariat on August 16, 2012, counsel for the Respondent denied that the Notice had been effectively delivered to the Respondent, denied the allegations of misconduct on the Respondent's part, and requested "a re-hearing and re-consideration" in this case. The EO re-sent the Notice to the Respondent on August 22, 2012; removed the Respondent from the Bank's public debarment list; and reinstated the Respondent's temporary suspension pending the final outcome of these proceedings.

II. GENERAL BACKGROUND

9. This case arises in the context of the Provincial and Peri-Urban Water and Sanitation Project (the "Project") in the Kingdom of Cambodia. On June 18, 2003, IDA and Cambodia entered into a Development Financing Agreement for the Project. The Project's objective was to assist Cambodia's achievement of its Millennium Development Goals through implementation of its development plans with respect to public potable water supply and sanitation. The Development Financing Agreement required that all goods and works be procured in accordance with, inter alia, the provisions of Section I of the World Bank's Guidelines: Procurement under IBRD Loans and IDA Credits (January 1995, revised January and August 1996, September 1997, and January 1999) (the "January 1999 Procurement Guidelines").

10. On April 30, 2003, Cambodia's implementing agency for the Project (the "Implementing Agency") issued bidding documents for four contracts to design, build, and operate water supply systems. On August 25, 2003, a joint venture comprised of JV Partner A and JV Partner B (the "JV") bid on these four contracts. On January 2, 2004, the Implementing Agency issued bidding documents for six contracts under the Project to design, build, and lease water supply systems. Subsequently, on or before May 17, 2004, the JV bid on these six contracts. Of the total of ten contracts pursued by the JV, the relevant bid evaluation committees (the "BECs") ultimately recommended that seven contracts (collectively, the "Contracts") be awarded to the JV.

11. INT alleges that the Respondent engaged in corrupt practices by supporting, authorizing, and overseeing the JV's offer and payment of bribes, through JV Partner A and

the Managing Director, to officials of the Implementing Agency in connection with the award of the Contracts.

12. The record indicates that during the period of the alleged misconduct from April 2004 to March 2005, the Respondent was the chairman of JV Partner A, and the chief executive officer and managing director of JV Partner B. JV Partner A and JV Partner B were affiliated through a subsidiary of JV Partner B (the "Holding Company"), which held a majority of shares in JV Partner A.

III. APPLICABLE STANDARDS OF REVIEW

13. 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.

14. 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 the respondent's conduct did not amount to a sanctionable practice.

15. The alleged sanctionable practice in this case has the meaning set forth in the January 1999 Procurement Guidelines, which the Development Financing Agreement specified would govern the procurement of the Contracts, and whose definition of corrupt practice was replicated in the Contracts' bidding documents. According to Paragraph 1.15(a)(i) of these Guidelines, the term "corrupt practice" is defined as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

16. INT submits that it is more likely than not that the Respondent engaged in corrupt practices by knowingly supporting, authorizing, and overseeing the Managing Director's payment of bribes to government officials. To support its allegations, INT relies primarily on its records of interviews with the Managing Director and the Respondent. In particular, INT asserts that: (i) the Managing Director, acting on behalf of the JV, offered and paid bribes to officials of the Implementing Agency as "success fees"; (ii) the recipient government officials asked members of the BECs to afford preferential treatment to JV Partner A in relation to the Contracts; and (iii) the alleged payments were concealed in JV Partner A's accounting records and financial reports as "miscellaneous," "entertainment," or "other" expenses, and supported

with fabricated or inflated receipts from vendors. INT also asserts that the Respondent (i) acknowledged that he was “aware what businessmen had to do in Cambodia to earn a living,” but “prefer[red] not to know the details”; (ii) admitted that “very large” payments had been made, potentially to government officials to “help [the JV] get the job”; (iii) stated that he found a certain level of payments to be acceptable, but refused to authorize payments exceeding that amount; and (iv) had reviewed JV Partner A’s monthly financial reports and was aware of the “entertainment” expenses contained therein (as the Managing Director confirmed). According to INT, the Respondent therefore should have anticipated that a portion of the funds transferred from JV Partner B to JV Partner A would be used to pay bribes.

17. INT asserts that aggravation is warranted for the magnitude and severity of the misconduct, which involved multiple bribes paid to multiple officials to influence decisions on multiple contracts. INT states that mitigation may be warranted for cooperation as the Respondent admitted culpability when interviewed by INT.

B. The Respondent’s Principal Contentions in the Response

18. The Respondent first questions the jurisdiction of the Sanctions Board, as he “did not at any time enter into a contract with the World Bank Group in his personal capacity or sign an undertaking to be bound by the [January] 1999 Procurement Guidelines.” The Respondent also asserts, as a procedural matter, that the sanctions proceedings should be dismissed in light of delays that have materially compromised his right to present a defense under Section 8.02(b)(ii) of the Sanctions Procedures; that INT’s redactions in certain records of interviews prevent the Respondent from providing a meaningful response to INT’s allegations within the meaning of Section 5.04(d) of the Sanctions Procedures; and that the Sanctions Board should give little or no weight to INT’s records of interviews for reasons including the manner and timing of their conduct.

19. With regard to the merits of INT’s allegations, the Respondent denies liability for any bribes that may have been offered or paid. He contends that the Managing Director’s reported admissions of bribery are illogical and inconsistent with documentary evidence and other reported statements from the Managing Director; and that the Managing Director may have falsely admitted to paying bribes to justify “massive cost overruns” and “salvage . . . his business competency and reputation.” The Respondent asserts that he had no knowledge of the alleged corrupt payments, either from the Managing Director or from any review of JV Partner A’s financial documents; and that any cost overruns or fund transfers to JV Partner A from JV Partner B were authorized for legitimate uses and pursuant to JV obligations, without any awareness that the funds might be improperly used. The Respondent does not assert any mitigating factors that might apply in the event of liability.

C. INT’s Reply

20. In response to the Respondent’s motion to dismiss on the ground of delays, INT asserts that the SAE was timely submitted within the statute of limitations period set forth in Section 4.01(d)(i) of the Sanctions Procedures. With regard to the weight of its testimonial evidence, INT contends that its records of interviews represent the sum and substance of the

interviews and are the best evidence available in this case. INT states that the investigation pre-dated its internal policy requiring use of verbatim interview transcripts wherever practical.

21. On the merits of the case, INT contends that the Respondent's argument that the Managing Director admitted to corrupt practices in order to salvage his professional reputation "defies reasonable standards of logic and common sense," as the admissions were against the Managing Director's interests and led to his eventual debarment. INT also argues that the Respondent's asserted inability to recall inculpatory statements reportedly made to INT is a "convenient excuse" insufficient to refute INT's evidence.

D. The Respondent's Supplemental Submission

22. On April 25, 2013, the Sanctions Board partially granted the Respondent's request for unredacted versions of INT's records of interviews with the Managing Director and a Project official (the "Project Official"). In accordance with Sections 5.04(d) and 5.04(e) of the Sanctions Procedures, partially unredacted records of interviews were made available to the Respondent for in camera review, and the Respondent was given an opportunity to file an additional submission to comment on the newly available material. In the Respondent's Supplemental Submission of May 16, 2013, the Respondent principally asserts that (i) the evidence reviewed in camera reveals that corruption in relation to the Project reached the highest echelons of government, and the Managing Director's reported statements to INT were made in pursuit of the "political agenda" of discrediting a top official; (ii) the Respondent could not have knowingly authorized the payment of the alleged bribes because he did not recognize the newly revealed names of the purported recipients of the payments; and (iii) sanctions proceedings against the Respondent are inconsistent with the apparent absence of any enforcement actions against more culpable actors, such as officials directly involved in the alleged bribery.

E. Presentations at the Hearing

23. At the hearing, INT reiterated its views that the evidence reliably demonstrates that the Respondent knowingly authorized and funded corrupt payments, whose misclassification as entertainment expenses he could have observed and prevented as the head of the JV's operations and a majority owner of JV Partner A through his sole ownership of the Holding Company. In response to the Respondent's complaints regarding the conduct of his interview, INT asserted that it prefaced the interview with a standard warning as to potential consequences, and conducted the interview in a non-adversarial tone consistent with its standard practice. INT elaborated on its suggestion of aggravation in the SAE, noting harm to the Project and the involvement of public officials. INT also suggested that while the lapse of time since the alleged misconduct may warrant mitigation, any potential credit for cooperation should be considered in light of the Respondent's denials of earlier admissions.

24. The Respondent argued that INT failed to show that it was more likely than not that he was liable for the alleged corrupt practices, given the asserted gaps and inconsistencies in INT's evidence. The Respondent reiterated that he had no knowledge of the alleged corrupt payments or any specific expenses of JV Partner A, and had been aware only of general budget overruns. The Respondent asserted that he was only a minority shareholder of

JV Partner A through his position in JV Partner B, without any supervisory authority over the Managing Director or any responsibility for the acts of JV Partner A. Finally, the Respondent asserted that the informal tone of INT's interview caused him to underestimate the interview's legal nature and significance, and thus to forgo seeking the assistance of an interpreter or legal counsel at the time.

F. The Respondent's Post-Hearing Submission

25. During the hearing, the Sanctions Board Chair granted the Respondent's request for permission to submit additional evidence clarifying the Respondent's disputed ownership in JV Partner A at the time of the alleged misconduct. In his submission of June 14, 2013, the Respondent contests INT's assertion that he was the sole owner of the Holding Company (and consequently, the majority owner of JV Partner A) during the relevant period in 2004-2005, and asserts that he did not become the sole shareholder of the Holding Company until February 2009 (i.e., approximately four years after the last alleged corrupt payment was recorded in March 2005). The Respondent's Post-Hearing Submission also included additional arguments with regard to the Sanctions Board's jurisdiction.

G. INT's Comments on the Respondent's Post-Hearing Submission

26. With the Sanctions Board Chair's authorization, INT filed comments on the Respondent's Post-Hearing Submission. INT reasserted its earlier arguments regarding ownership of JV Partner A and contested the admissibility of the Respondent's new arguments with respect to jurisdiction.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

27. The Sanctions Board will first consider various preliminary and procedural matters raised by the Respondent. The Sanctions Board will then consider whether the record supports a finding that it is more likely than not that the Respondent engaged in corrupt practices.

A. Preliminary and Procedural Determinations

1. The Respondent's challenge to the Sanctions Board's jurisdiction

28. The Respondent questions the Sanctions Board's jurisdiction in his Response, asserting that he did not personally contract with the Bank or sign an undertaking to be bound by the January 1999 Procurement Guidelines. Under the sanctions framework, however, the Bank does not need the consent of or privity with a respondent to assert jurisdiction to sanction.⁴

29. In his Post-Hearing Submission, the Respondent presents additional arguments challenging the Sanctions Board's jurisdiction. In considering whether, as a matter of

⁴ See The World Bank Group's Sanctions Regime: Information Note (November 2011) at p. 20, available at: <http://go.worldbank.org/CVUUIS7HZ0>.

discretion, to admit or exclude the Respondent's additional arguments, the Sanctions Board Chair notes that the Respondent did not seek or receive authorization to submit post-hearing arguments on the issue of jurisdiction. Rather, the Sanctions Board Chair specifically authorized the parties to file post-hearing submissions only with respect to the issue of corporate ownership as described above in Paragraph 25. Nor do the Respondent's additional arguments on jurisdiction appear to rest on any newly available and material evidence. Finally, although the Respondent asserts that its additional arguments were prompted by statements made by INT at the hearing, INT merely responded to a Sanctions Board member's question regarding points raised in the Respondent's Response, and did not raise new issues that the Respondent could not have addressed earlier. In his discretion, and given that no material injustice will result, the Sanctions Board Chair therefore declines to accept the Respondent's additional jurisdictional arguments into the record.

2. The Respondent's motion to dismiss due to passage of time

30. In his Response, the Respondent moved to dismiss the proceedings on the ground of his inability to effectively present a defense under Section 8.02(b)(ii) of the Sanctions Procedures due to the passage of more than seven years between the last alleged corrupt payment in March 2005 and effective service of the Notice on the Respondent in August 2012. According to the Respondent, the procedural unfairness is exacerbated by the fact that the case against him is based on oral evidence and documentation that he is now unable to either verify or rebut. Considering that the issue of the degree to which the delays may have caused harm to the Respondent could best be considered upon full review of the merits, and noting that the allegations are not barred under the ten-year statute of limitations set out in Section 4.01(d)(i) of the Sanctions Procedures, the Sanctions Board determined that the passage of time would not warrant a summary dismissal.⁵ The parties were accordingly informed on April 25, 2013, of the Sanctions Board's determination to deny the motion to dismiss without prejudice to the Respondent's ability to present oral arguments at the hearing regarding the nature and impacts of any delays in the case.

3. The Respondent's challenge to INT's redactions under Section 5.04(d)

31. Section 5.04(d) of the Sanctions Procedures grants INT discretion to "redact particular parts or pieces of evidence presented to the Respondent or the Sanctions Board, by: (i) removing references to Bank staff; and (ii) removing references to other third parties (together with other material which 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) provides that where a respondent challenges such redaction 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." Finally, Section 5.04(d) provides that if the

⁵ See Sanctions Board Decision No. 50 (2012) at para. 25 (reviewing the case on the merits, despite the respondent's request to consider the allegations as void due to a five-year delay from the start of INT's investigation to the EO's issuance of the Notice, because the allegations were not barred under the ten-year statute of limitations set out in Section 4.01(d) of the Sanctions Procedures).

Sanctions Board finds the information to be necessary, “the unredacted version of the evidence in question will be made available to the Respondent in accordance with [Section 5.04(e)], and the Respondent shall be afforded an opportunity to comment thereon in an additional submission under Section 5.01(c).”

32. The Respondent here challenged INT’s redaction of certain information from INT’s records of interviews with the Managing Director and the Project Official, including information identifying the government officials who allegedly solicited or received bribes. Upon reviewing unredacted versions of INT’s records of interviews, the Sanctions Board found that INT’s redactions concealed certain information identifying the alleged bribe beneficiaries, which the Sanctions Board determined to be necessary to enable the Respondent to mount a meaningful response. Accordingly, the parties were informed on April 25, 2013, of the Sanctions Board’s determination that the Respondent should be afforded an opportunity to (i) review in camera unredacted versions of INT’s records of interviews with the Managing Director and the Project Official that would reveal information relating to the identities of the alleged bribe beneficiaries, provided that INT could, in its discretion, retain other redactions in certain sections that did not appear necessary to the Respondent’s meaningful response; and (ii) comment on the unredacted versions of these records of interviews in an additional submission under Section 5.01(c) of the Sanctions Procedures.

4. Weight of INT’s records of interviews and other evidence

33. The Respondent challenges the credibility of INT’s summary records of interviews and certain other documentary evidence, and asks that this evidence be given little or no weight. As provided under Section 7.01 of the Sanctions Procedures, “[f]ormal rules of evidence shall not apply” in the Bank’s sanctions proceedings. Rather, the Sanctions Board may consider “[a]ny kind of evidence” and exercise its “discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered,” including hearsay or documentary evidence. Considering all relevant factors within the framework of Section 7.01 and the Sanctions Board’s precedent as set out below, the Sanctions Board finds that INT’s evidence as reportedly obtained from the Respondent, the Managing Director, and the Project Official merits limited weight.

34. In assessing the weight of INT’s record of its interview with the Respondent, for example, the Sanctions Board takes into account that the record is a non-verbatim summary that does not appear to have been reviewed or signed by the interviewee to attest to its basic accuracy.⁶ The Respondent contends that he was given no opportunity to verify the record; and there is no evidence that INT gave him such opportunity. The Respondent also asserts that despite a level of English proficiency for business purposes, he is not “fully conversant” in English and therefore he did not understand the nuances of certain words or phrases used in INT’s interview as conducted in English. During the hearing, which was conducted in English with simultaneous interpretation, the Respondent further explained that he did not raise his lack of comprehension or request interpretation during INT’s interview because the informal

⁶ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 40.

tone and setting of the interview – which the record does not reveal to have been prefaced by adequate warning as to potential negative consequences, including sanctions – caused him to underestimate the potential legal repercussions of his statements. These circumstances warrant giving limited weight to the Respondent's reported inculpatory statements. Finally, the Sanctions Board considers the timing of INT's interview with the Respondent. As the Respondent's interview preceded three out of four interviews with the Managing Director, the Respondent had no opportunity to respond to any subsequent inculpatory statements or documentary evidence obtained from the Managing Director's later interviews with INT. The Respondent also credibly asserts that his ability to recall and explain apparently inculpatory statements reported in INT's record of his own interview is compromised by the passage of over six years from the interview in early 2006 until the EO's issuance of the Notice to the Respondent, and his preparation of a Response, in late 2012.

35. In assessing the weight of INT's evidence obtained from the Managing Director and the Project Official, the Sanctions Board notes that the records of INT's interviews with these individuals appear extremely condensed as compared to the actual length of the interviews. For example, INT's lengthy interviews with the Managing Director, which according to INT lasted approximately twelve hours spread over four occasions between December 2005 and February 2006, are summarized in seven pages without indication of which information or documents were provided at which interview. The Sanctions Board also takes into account the lack of indication that these interviewees confirmed, or were given the opportunity to verify, the accuracy of INT's records of their respective interviews.⁷ Further, the Sanctions Board considers the apparent direct involvement of both the Managing Director and the Project Official in the events surrounding the alleged misconduct, as such involvement may affect the credibility and weight of a witness's statements.⁸ Finally, the Sanctions Board ascribes limited weight to the documentation that INT describes as corroborating evidence from the Managing Director. Although authentication of all documentary evidence is not required and may not always be feasible, the Sanctions Board notes that authentication of the documents from the Managing Director would have been useful given the inconsistencies in the reported amounts of the alleged corrupt payments as described by the Managing Director and reflected in the documents. The record does not suggest that INT would have been prevented from authenticating the documents, had it chosen to do so.⁹

B. Evidence of Corrupt Practices

36. Subject to these comments with respect to the weight that it attaches to the evidence submitted by INT, the Sanctions Board next considers whether the evidence shows that it is more likely than not that the Respondent engaged in corrupt practices by supporting, authorizing, and overseeing the Managing Director's offer and payment of bribes on behalf of

⁷ Id.

⁸ See Sanctions Board Decision No. 41 (2010) at para. 32; Sanctions Board Decision No. 50 (2012) at para. 39.

⁹ See Sanctions Board Decision No. 41 (2010) at para. 45 (taking into account the absence of authentication, and the lack of clarification as to whether authentication would have been possible, in assessing the weight of challenged emails presented in support of allegations of corrupt practices).

the JV to public officials, as INT alleges. For purposes of analyzing the Respondent's potential liability for any corrupt payments, the Sanctions Board will provisionally assume, but need not determine at this time, the sufficiency of the evidence to support INT's assertion that the Managing Director offered and made such corrupt payments.

37. The January 1999 Procurement Guidelines' definition of "corrupt practice" as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution" does not explicitly provide for liability on the basis of support, authorization, and oversight of corrupt acts. However, a respondent cannot avoid liability simply by directing or empowering another party to make corrupt payments.¹⁰ Under the Bank's sanctions framework, liability for corrupt practices may extend beyond physical execution of corrupt acts, and may rest either on culpability for direct involvement (e.g., through instructions or orders, approval or guidance, or inferred authorization in cases of close supervision)¹¹ or on responsibility for another party's actions (e.g., where there is a duty to supervise combined with deliberate non-intervention).¹²

38. Considering all relevant evidence, the Sanctions Board finds that the record does not support holding the Respondent culpable for direct involvement. In other words, INT has not discharged its burden of proof on this point. First, the record does not indicate that the Respondent instructed or ordered the Managing Director to offer or pay the alleged bribes, or that he played any role in discussions to initiate the alleged corrupt arrangements. Second, the record does not demonstrate that it is more likely than not that the Respondent approved or guided the Managing Director's alleged misconduct. While INT alleges that the Respondent knew or at least reasonably anticipated that the Managing Director would pay bribes to government officials under the header of "entertainment" expenses, the record does not reveal that he was aware of or authorized the misuse of funds for corrupt purposes. In particular, the record does not credibly establish that the Respondent reviewed financial records reflecting improper "entertainment" expenses, as INT asserts; or that, if he had reviewed such records, he would have recognized the "entertainment" expenses as concealing corrupt payments. Third, the record does not support an inference of authorization as might apply where a respondent exercises close supervision over the business operations of a closely held company. Although the record reflects that the Respondent served as chairman of the board of JV Partner A and as chief executive officer and managing director of JV Partner B during the relevant time period, the record does not establish that the Respondent closely supervised the operations of the JV or the Managing Director. On these points, the Sanctions Board takes into account the contrast between the Respondent's detailed assertions in the present sanctions

¹⁰ See Sanctions Board Decision No. 63 (2014) at para. 69 (finding that a firm's involvement in planning, providing, and releasing funds for corrupt payments to public officials qualifies as a direct role in the corrupt payments, and therefore a sufficient basis for liability, regardless whether the firm's employees personally delivered specific payments to the officials).

¹¹ See Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases (No. 2010/1) (November 15, 2010; released to public by the World Bank Legal Vice Presidency in June 2013) at pp. 17-19.

¹² See id.; The World Bank Group's Sanctions Regime: Information Note (November 2011) at p. 20, available at: <http://go.worldbank.org/CVUUIS7HZ0>.

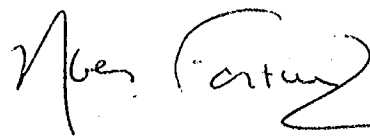
proceedings and the statements reported in summary fashion by INT from its interviews in 2005-2006.

39. Next, the Sanctions Board considers whether the record supports holding the Respondent responsible for the Managing Director's alleged offers and payments of bribes. The Respondent may be held responsible if he had a duty to supervise the Managing Director, knew of or was willfully blind to the Managing Director's alleged misconduct, and did not intervene. Considering the totality of the record, including contemporaneous documentation regarding the JV's organization as well as the parties' competing submissions as to the Respondent's roles and interests, the Sanctions Board finds insufficient evidence to establish that the Respondent had a duty to supervise the Managing Director. Again, the Board finds that INT has failed to discharge its burden of proof. The Sanctions Board therefore need not address the remaining elements of responsibility, i.e., knowledge or willful blindness and non-intervention.

40. For the reasons stated above, the Sanctions Board concludes that INT has not carried its burden of proof to show that the Respondent may be held liable for the alleged corrupt practices. This conclusion is without prejudice to the uncontested liability of the Managing Director, JV Partner A, and JV Partner B, who – as earlier noted – did not appeal INT's allegations or the EO's recommended sanctions to the Sanctions Board.

C. Termination of Sanctions Proceedings

41. Section 8.01(a) of the Sanctions Procedures requires that "if the Sanctions Board determines that it is not more likely than not that the Respondent engaged in a Sanctionable Practice, the proceedings shall be terminated." Accordingly, the Sanctions Board declares that the sanctions proceedings against the Respondent in Sanctions Case No. 122, including the temporary suspension imposed by the EO for the pendency of such proceedings, are hereby terminated.



L. Yves Fortier (Chair)

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