

Date of issuance: May 2, 2014

**Sanctions Board Decision No. 65
(Sanctions Case No. 173)**

**IBRD Loan No. 4769-RU
Russian Federation**

Decision of the World Bank Group¹ Sanctions Board:

- i. imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 173 (the “Respondent”), together with any entity that is an Affiliate² directly or indirectly controlled by the Respondent, with a minimum period of ineligibility of two (2) years beginning from the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.**
- ii. imposing a sanction of reprimand on the entity named in Sanctions Case No. 173 as an Affiliate controlling the Respondent (the “Named Affiliate”) by means of a formal letter of reprimand to be posted on the World Bank’s website for a minimum period of six (6) months beginning from the date of this decision, and until the Named Affiliate has met conditions as specified below. This sanction is imposed on the Named Affiliate for its responsibility for the Respondent’s fraudulent practice.**

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on May 30, 2013, 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, Denis Robitaille, and J. James Spinner.

2. A hearing was held at the request of the Respondent and the Named Affiliate (together, the “Contesting Parties”) and in accordance with Article VI of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the

¹ In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted January 1, 2011, and amended 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 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.”

hearing through its representatives attending in person. The Respondent and the Named Affiliate participated through their respective officers attending in person, and were jointly represented by outside counsel, who also attended the hearing in person. 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:

- i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")³ to the Respondent and the Named Affiliate on October 17, 2011 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT, dated June 14, 2011;
- ii. Explanations submitted respectively by the Respondent and the Named Affiliate to the EO on December 9, 2011;
- iii. Responses submitted respectively by the Respondent and the Named Affiliate to the Secretary to the Sanctions Board on May 30, 2012;
- iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board on July 2, 2012 (the "Reply");
- v. Supplemental Response submitted jointly by the Contesting Parties to the Secretary to the Sanctions Board on February 19, 2013 (the "Supplemental Response"); and
- vi. Supplemental Reply submitted by INT to the Secretary to the Sanctions Board on April 4, 2013 (the "Supplemental Reply").

4. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarments with conditional release for the Respondent and the Named Affiliate, together with Affiliates that either entity directly or indirectly controls. The EO recommended minimum periods of ineligibility of four (4) years for the Respondent and two (2) years for the Named Affiliate, after which each may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group's Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned and (ii) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank.

³ 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.

5. Effective October 17, 2011, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent and the Named Affiliate, together with any Affiliates that either entity directly or indirectly controls, to (i) be awarded contracts for Bank-financed or Bank-executed projects and programs governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects") and (ii) participate in new activities in connection with Bank-Financed Projects pending the final outcome of these proceedings.

II. GENERAL BACKGROUND

6. This case arises in the context of the Russian National Hydromet Modernization Project (the "Project"), which aimed to improve the capacity of the Russian Federation's Federal Service for Hydrometeorology and Environmental Monitoring ("RHM") to provide meteorological and hydrological services, and to mitigate environmental risks to life and the economy from unfavorable weather conditions.

7. On August 11, 2005, IBRD and the Russian Federation (the "Borrower") entered into a loan agreement (the "Loan Agreement") to provide US\$80 million for the Project. The Loan Agreement required all consultants' services to be procured in accordance with Sections I and IV of the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"). The Loan Agreement stated that the Borrower would carry out the Project through RHM with assistance from the Bureau of Economic Analysis (the "BEA"), a non-commercial foundation established pursuant to the law of the Borrower. In accordance with the Loan Agreement, the Borrower subsequently entered into an agency agreement with the BEA specifying the BEA's responsibilities with respect to the Project's implementation, including procurement, financial management, and disbursements. Overall responsibility for the Project's implementation and management was conferred on a committee established by RHM (the "Project Management Committee" or "PMC") and composed of representatives of the Borrower and the BEA.

8. On March 20, 2008, the BEA issued a request for proposals (the "RFP") to shortlisted consultants, including the Respondent, to provide consultants' services under a contract to design an automated system (the "Contract"). The Respondent submitted a proposal (the "Proposal") in response to the RFP and was awarded the Contract. On August 21, 2008, the Respondent and the BEA signed the Contract, valued at the equivalent of US\$162,000.

9. Financial statements of the Named Affiliate indicate, and the Responses submitted by the Named Affiliate and the Respondent confirm, that the Respondent was wholly owned by the Named Affiliate at the time of the Contract's selection process and execution. In addition, the record shows that one of the members of the Named Affiliate's Board of Directors (the "Director") simultaneously served with the BEA at that time. INT asserts that the Director's relationship with the Respondent through his position on the Named Affiliate's Board of Directors, combined with the Director's concurrent involvement in the selection process for the Contract as the BEA's representative on the PMC, created a conflict of interest for the Respondent that caused the Bank to declare misprocurement in November 2009. INT alleges that the Respondent engaged in a fraudulent practice by failing to disclose this conflict of interest in its Proposal, as required by the May 2004 Consultant Guidelines and the RFP, and

that the Named Affiliate should be sanctioned under Section 9.04 of the Sanctions Procedures for failing to supervise the Respondent.

III. APPLICABLE STANDARDS OF REVIEW

10. 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.

11. 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.

12. The alleged sanctionable practice in this case has the meaning set forth in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines, which defines the term “fraudulent practice” as “a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract.” This definition does not include an explicit mens rea requirement, such as the “knowing or reckless” standard adopted by the Bank from October 2006 onward.⁴ However, the legislative history of the Bank’s various definitions of “fraudulent practice” reflects that the October 2006 incorporation of the “knowing or reckless” standard was intended only to make explicit the pre-existing standard for mens rea, not to articulate a new limitation.⁵ Accordingly, the Sanctions Board has held that the “knowing or reckless” standard may be implied under pre-October 2006 definitions.⁶

13. Under Section 9.04(a) of the Sanctions Procedures, when a sanction is imposed on a respondent, appropriate sanctions may also be imposed on Affiliates of the respondent, subject to conditions set out below in Paragraph 59.

⁴ See, e.g., Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, rev. October 2006) at para. 1.22(a)(ii) (defining “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”) (emphasis added).

⁵ Sanctions Board Decision No. 41 (2010) at para. 75.

⁶ Id.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

14. INT alleges that the Respondent engaged in a fraudulent practice by knowingly or at least recklessly failing to disclose a conflict of interest when submitting the Proposal and later executing the Contract. INT asserts that the May 2004 Consultant Guidelines prohibited the Borrower from hiring consultants that had a business relationship with a staff member of the project implementation unit involved in contract-related processes, and that the RFP required a consultant to disclose any actual or potential conflict of interest. INT alleges that, notwithstanding these requirements, the Respondent failed to disclose its business relationship with the Director, who was simultaneously on the Named Affiliate's Board of Directors and involved in the selection process for the Contract as a member of the PMC. INT notes the existence of an opinion issued by a ministry of the Borrower (the "Ministry Opinion"), which finds that there was no conflict of interest in another matter involving the Director and another subsidiary of the Named Affiliate. INT asserts that the Ministry Opinion is not dispositive in the present case, which involves different facts and standards. INT also asserts that the Respondent acted in order to influence the selection process, as it likely would not have been awarded the Contract if it had disclosed its conflict of interest.

15. INT asserts that the Named Affiliate may be sanctioned under Section 9.04(a) of the Sanctions Procedures based on the Named Affiliate's duty to supervise the Respondent and failure to ensure disclosure of the Respondent's conflict of interest. INT claims that the Named Affiliate coordinated its subsidiaries' participation in tenders, was more likely than not involved in the Respondent's participation in the tender for the Contract, and was aware of the Respondent's conflict of interest and the disclosure requirements specified in the May 2004 Consultant Guidelines and the RFP.

16. INT asserts that aggravation is warranted for the harm caused to the Project, as the Bank had to declare misprocurement and cancel a portion of the funds issued to the Borrower in accordance with the Loan Agreement. INT states that it did not identify any mitigating factors.

B. Principal Contentions of the Respondent and the Named Affiliate in their Explanations and Responses

17. The Respondent denies that it engaged in a fraudulent practice, as it had no business relationship with the Director and therefore no conflict of interest to disclose. Even assuming that such a relationship existed between the Respondent and the Director, the Respondent contends that any conflict would not have been "significant and evident" given the Director's limited role in the Contract's selection process as only one of many PMC members, without decision-making authority. In contesting the existence of a conflict of interest, the Respondent also relies on the Ministry Opinion and on a written statement attached to the Responses in which the Director declares that he "did not have any power to give orders or instructions to subsidiaries of [the Named Affiliate]." The Respondent claims that INT did not establish that the Respondent had the intent to influence the Contract's selection or execution, or that the

alleged relationship affected the Respondent's ability to fulfill its obligations under the Contract.

18. The Named Affiliate denies that it may be sanctioned under Section 9.04(a) of the Sanctions Procedures, and claims that under Russian law, i.e., the domestic law of the Borrower and the law under which the Contesting Parties were established, it did not have a duty to supervise the disclosure of any conflict of interest by the Respondent. The Named Affiliate asserts that it does not centrally coordinate its subsidiaries' participation in tenders, and that the Contract did not require the Named Affiliate's approval as its value fell below the applicable threshold. The Named Affiliate also asserts that it acted in good faith and took all available measures in accordance with Russian law and business practice.

19. The Respondent and the Named Affiliate assert that the evidence does not support any aggravation, and that their cooperation with INT merits mitigating credit.

C. INT's Principal Contentions in its Reply

20. INT asserts that the Bank's legal framework, rather than Russian law, governs a determination as to the existence of a conflict of interest and the Respondent's liability for non-disclosure of any such conflict. INT argues that the Director's involvement in the Contract's selection and supervision processes was sufficient to create a conflict of interest, regardless of his decision-making authority on the PMC. INT also argues that the Director's written statement attached to the Responses is not reliable because it is inconsistent with statements made during his earlier interview with INT, in which the Director indicated that he had raised the issue of a potential conflict of interest with the Chairman of the Board of the Named Affiliate.

21. INT contends that the Named Affiliate, as the parent entity of an integrated group of firms with a common procurement department, had a duty to implement policies and procedures to prevent and detect fraud. INT asserts that the record does not contain evidence of any such controls within the corporate group. It additionally asserts that, while Russian law does not require active supervision of subsidiaries, Russian law does not preclude such supervision. Citing to Sanctions Board precedent, INT argues that, as a general principle, an entity cannot escape liability for a subsidiary within its scope of control merely because it chose not to exercise that control.

D. The Contesting Parties' Principal Contentions in their Supplemental Response

22. In their Supplemental Response, submitted with the Sanctions Board Chair's authorization pursuant to Section 5.01(c) of the Sanctions Procedures, the Contesting Parties jointly reiterate their challenges to INT's allegations that the Respondent engaged in a fraudulent practice by failing to disclose a conflict of interest as required, and that the Named Affiliate is liable for the Respondent's non-disclosure.

23. In addition to arguments presented in earlier submissions, the Contesting Parties assert that, prior to the Director's appointment to the Board of Directors of the Named Affiliate, and

annually thereafter, the BEA confirmed that no conflict of interest resulted from the Director's dual roles. According to the Contesting Parties, INT was provided with a copy of the BEA's initial confirmation, but failed to include it in the record. The Contesting Parties assert that, in any event, the Respondent effectively fulfilled any potential obligation to disclose its business relationship with the Director, as information about the membership of the Named Affiliate's Board of Directors was available to the public, and the Respondent identified itself as a subsidiary of the Named Affiliate in the Proposal. The Contesting Parties argue that, should the Sanctions Board determine that the Respondent had an obligation to disclose its business relationship with the Director, and failed to do so, such failure would not in itself constitute a fraudulent practice. Rather, according to the Contesting Parties, the Respondent acted in good faith and, at most, "there may have been an unintended oversight." In addition, the Contesting Parties claim that, at the time of the relevant facts, they both "had in place *and followed* a robust compliance program and oversight processes which comported with international standards and Russian law" (emphasis in original).

24. With respect to the conduct of INT's investigation, the Contesting Parties assert that new evidence attached to the Supplemental Response reveals INT's "flagrant disregard for its procedural obligations." According to the Contesting Parties, INT misrepresented and misattributed statements in its records of interviews ("ROIs"), which are less reliable than the affidavits attached to the Supplemental Response. The Contesting Parties also assert that INT failed to seek and discuss exculpatory evidence.

E. INT's Principal Contentions in its Supplemental Reply

25. INT asserts that the Supplemental Response is largely duplicative of earlier submissions, and challenges the reliability of affidavits appended to the Supplemental Response. In addition, INT asserts that the affidavits indicate that the Respondent knew of the Director's dual roles at the BEA and the Named Affiliate, yet did not consider the possibility of a conflict of interest, and therefore acted at least recklessly. INT also asserts that the availability of public information on the Director's dual roles is "hardly sufficient to put all relevant authorities on notice." In any event, according to INT, the Respondent failed to fulfill the RFP's express requirement for disclosure of conflicts of interest.

26. INT claims that the Named Affiliate, as the only entity controlling the Respondent, "possesses supervisory responsibility" for the Respondent regardless of any asserted policy to forgo involvement in subsidiaries' transactions below a certain value threshold. INT also contends that the Named Affiliate's claims regarding the existence of a compliance program are not supported by adequate documentary evidence regarding the program's timing and implementation.

27. INT rejects the Contesting Parties' allegations that INT conducted the investigation improperly. Among other points, INT asserts that it did not withhold any evidence falling within the scope of Section 3.02 of the Sanctions Procedures, and, more specifically, that it was never provided with a copy of the BEA's letter referred to by the Contesting Parties. INT argues that the Contesting Parties' allegations are baseless attempts at distraction that warrant aggravating treatment or a reduction of any mitigation granted under Section 9.02(e).

F. Presentations at the Hearing

28. INT emphasized that the rule prohibiting conflicts of interest is a preventive tool against fraud and corruption, and asserted that the obligation to disclose any actual or potential conflict of interest should not be read narrowly. INT reasserted that the Director's role within the PMC created a clear conflict of interest, and that the Respondent acted knowingly or at least recklessly in failing to disclose this conflict in the Proposal. INT further reiterated that the Named Affiliate was aware of the Respondent's conflict of interest but did not take any preventive measures, and should therefore be sanctioned for its failure to supervise its subsidiary. INT argued that no mitigation should be granted in light of the Contesting Parties' temporary suspension, given that the Contesting Parties themselves caused delays in the proceedings by filing additional submissions and requesting extensions of time.

29. The Contesting Parties reiterated arguments made in their written pleadings regarding the absence of a conflict of interest; public information about the Director's position on the Named Affiliate's Board of Directors; and the Named Affiliate's policy, based on national law, of reviewing its subsidiaries' contracts only when valued above a certain threshold. The Contesting Parties additionally argued that even assuming that a conflict of interest should have been, but was not, disclosed by the Respondent, the evidence presented by INT would not be sufficient to establish the requisite intent to defraud on the Respondent's part.

30. The Respondent explained that, at the time of the relevant facts, it had a quality control system developed according to internal procedures and bidding requirements, and that its legal department had not detected any conflict of interest in the context of the Proposal. INT replied that this claim was not supported by evidence and, in any event, did not affect a finding of recklessness as the Respondent's General Director knew of the Director's position on the Named Affiliate's Board of Directors and took no measures to prevent or address the conflict of interest. The parties also addressed the conduct of INT's investigation.

V. THE SANCTIONS BOARD'S ANALYSIS AND DISCUSSION

31. The Sanctions Board will first address various procedural issues raised by the parties in the course of the proceedings. The Sanctions Board will then consider whether (i) it is more likely than not that the Respondent engaged in a fraudulent practice by failing to disclose a conflict of interest and (ii) the Named Affiliate may be held liable for the Respondent's alleged misconduct as the Respondent's controlling entity. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent and/or the Named Affiliate.

A. Procedural Determinations

1. The Named Affiliate's request for *in camera* review of evidence

32. The Named Affiliate submitted to the Sanctions Board a request for in camera review of two exhibits that INT had identified as available only for in camera review pursuant to Section 5.04(e) of the Sanctions Procedures. The Sanctions Board requested that INT explain its request to restrict access to the evidence in question, noting that Section 5.04(a) of the

Sanctions Procedures sets a default presumption that copies of all written submissions and evidence should be provided to all parties to the proceedings. In response, INT asserted that the exhibits contained unsubstantiated allegations against individual Bank staff. Noting that redaction of the names of relevant staff should suffice to address INT's concerns, and also considering that the exhibits consisted of correspondence to and from the Named Affiliate, the Sanctions Board denied INT's request for an in camera restriction under Section 5.04(e). INT accordingly submitted redacted copies of the two exhibits to the Sanctions Board Secretariat, which transmitted the redacted exhibits to the Contesting Parties prior to the submission of their separate Responses and their joint Supplemental Response.

2. Reliability of evidence submitted by the parties

33. The Contesting Parties assert that the ROIs submitted by INT constitute third-party reflections, which are less reliable than the signed witness affidavits attached to the Contesting Parties' Supplemental Response. INT counters that the ROIs are more reliable than the affidavits submitted in this case because the ROIs, which were prepared contemporaneously with INT's interviews, "were not influenced by a preordained investigative outcome"; whereas the affidavits relied upon by the Contesting Parties were prepared several years later, only after the sanctions proceedings had begun, and do not appear to be original recollections of events. INT also states that it sought but did not receive the interviewees' permission to record its interviews, with the exception of one interview that was recorded and for which INT provided a transcript.

34. While the record includes a transcript of one interview for which the interviewees agreed to be recorded, INT's summary ROIs of the remaining interviews do not indicate that INT sought or was denied permission to record these interviews verbatim, as INT claims, or that it gave the interviewees the opportunity to review the summaries subsequently prepared by INT investigators. When assessing the weight to be given to these summaries, the Sanctions Board takes into account, consistent with past precedent, that summary ROIs lack the intrinsic accuracy of verbatim transcripts, particularly where – as here – there is no indication that the ROIs were reviewed or signed by any of the interviewees to attest to their basic accuracy.⁷ Similarly, the Sanctions Board considers all relevant factors in assessing the reliability and weight of the affidavits submitted by the Contesting Parties. In particular, the Sanctions Board notes that the affidavits were prepared almost five years after the alleged misconduct, in the course of the present sanctions proceedings.

3. Other contentions submitted by the Contesting Parties

35. The Contesting Parties raised a number of other concerns regarding the conduct of INT's investigation, some of which were withdrawn at the hearing. In respect of those which were not withdrawn, the Sanctions Board finds that the Contesting Parties have failed to substantiate their claims. In particular, the Contesting Parties fail to support their assertion that INT breached its obligation under Section 3.02 of the Sanctions Procedures, which requires

⁷ See Sanctions Board Decision No. 50 (2012) at para. 40.

INT to timely present all relevant evidence in its possession that would reasonably tend to exculpate a respondent or mitigate a respondent's culpability. For instance, the Contesting Parties do not substantiate their claim that INT had in its possession, but failed to present, a copy of a letter from the BEA that, according to the Contesting Parties, confirmed the absence of a conflict of interest and constituted exculpatory evidence.

B. Evidence of Fraudulent Practice by the Respondent

36. In accordance with the definition of fraudulent practice under the May 2004 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence a selection process or the execution of a contract.

1. Misrepresentation or omission of facts

37. In the present case, the disclosure requirement that the Respondent allegedly failed to satisfy is addressed in both Paragraph 1.9 of the May 2004 Consultant Guidelines, and Paragraph 1.6 of the RFP that was distributed to the Respondent.

38. Paragraph 1.9 of the May 2004 Consultant Guidelines ("Conflict of Interest") provides in relevant parts that:

"Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the Borrower.

...

(c) Relationship with Borrower's staff: Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the Borrower's staff (or of the project implementing agency's staff, or of a beneficiary of the loan) who are directly or indirectly involved in any part of: (i) the preparation of the TOR [terms of reference] of the contract, (ii) the selection process for such contract, or (iii) supervision of such contract may not be awarded a contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Bank throughout the selection process and the execution of the contract."

39. The RFP includes the above provisions of the May 2004 Consultant Guidelines regarding the prohibition of conflicts of interest, as well as the following disclosure requirement:

"Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect."

40. In order to determine whether the Respondent made a misrepresentation or omission of facts, the Sanctions Board will consider whether the Respondent (i) had an actual or

potential conflict of interest (ii) that was subject to a disclosure obligation, and, if so, (iii) whether the Respondent disclosed such conflict of interest.

a. Actual or potential conflict of interest

41. INT asserts that the Director, as a member of the Named Affiliate's Board of Directors, had a business relationship with the Respondent. According to INT, this relationship created a conflict of interest because the Director was concurrently involved in the selection process for the Contract as a member of the PMC.

42. The Contesting Parties challenge INT's allegations and assert that consideration should be given to the Ministry Opinion, which found no indication of a conflict of interest in a similar situation; and to Russian law, according to which membership on a joint stock company's board of directors does not per se create a business relationship with the company's subsidiaries. However, as the Sanctions Board has previously held, (i) the Sanctions Board Statute and Sanctions Procedures do not provide any basis on which to consider a national law framework as controlling in the Bank's sanctions proceedings, and (ii) the scope of a respondent's liability under the Bank's administrative sanctions process may not be coextensive with the scope of its potential liability under national law.⁸ In addition, as INT notes, the Ministry Opinion was based on different standards and on a distinguishable set of facts that did not involve the Respondent or the Project.

43. In light of the above, the Sanctions Board considers below whether the record supports a finding that the Respondent had a business relationship with the Director, and that the Director was involved in relevant activities relating to the Contract.

44. *Whether the Respondent had a business relationship with the Director:* The record reveals, and the Contesting Parties do not dispute, that the Director was a member of the Board of Directors of the Respondent's parent company, i.e., the Named Affiliate, during the Contract's selection process, award, signature, and initial execution. The Named Affiliate's financial statements further reveal that the Respondent was wholly owned and controlled by the Named Affiliate during the relevant time period. On the basis of this record, the Sanctions Board finds sufficient evidence to support the conclusion that the Respondent had a business relationship with the Director. Contrary to the Contesting Parties' assertions, this finding does not require a showing that the Director had the ability to influence the Respondent's day-to-day operations, or that his participation in the Named Affiliate's options program qualified as "remuneration."

45. *Whether the Director was involved, directly or indirectly, in relevant activities relating to the Contract:* The aforementioned provisions of the May 2004 Consultant Guidelines and the RFP broadly encompass direct or indirect involvement in "any part of" TOR preparation, the selection process, or supervision of the Contract. The record reveals, and the parties do not contest, that the Director served with the BEA at the time of the relevant facts. The documented scope of the BEA's obligations relating to the Project's implementation included

⁸ See Sanctions Board Decision No. 45 (2011) at para. 46; Sanctions Board Decision No. 50 (2012) at para. 51.

assisting RHM with TOR preparation and managing contract execution. Although the parties disagree as to the nature and significance of the Director's role in relation to the PMC and the Contract, PMC meeting minutes indicate the Director's attendance as a BEA representative at meetings during which the PMC approved the TOR for the Contract, issued the shortlist of firms including the Respondent, issued the technical and financial evaluation report for the Contract, and presented first-stage and final reports on the Respondent's performance on the Contract. The record also demonstrates that the Director acted on behalf of the BEA in signing the RFP, the notification of Contract award, and the final Contract.

46. In light of the above evidence, the Sanctions Board concludes that the Director was "directly or indirectly involved" in the Contract's TOR preparation, selection, or supervision. Considering this involvement, and the Respondent's business relationship with the Director, the Sanctions Board concludes that the Respondent had a conflict of interest with respect to the Contract.

b. Existence of a disclosure obligation

47. As noted above, the RFP required bidders to disclose those situations of actual or potential conflict of interest that impact, or may reasonably be perceived to impact, their capacity to serve the Borrower's best interest. The Respondent asserts that it did not consider its relationship with the Director to impact its capacity to implement the Contract. However, the Sanctions Board notes that a bidder's subjective assessment as to the impact of a potential conflict of interest does not determine whether such a conflict must be disclosed. In this case, the Respondent's relationship with the Director fell specifically under one of the categories of conflicts of interest identified under the May 2004 Consultant Guidelines and the RFP as rendering the Respondent presumptively ineligible for hire under the Project. In addition, given the Director's role in the selection process, the conflict at issue was substantial both in perception and in reality. Accordingly, the Sanctions Board concludes that the Respondent had an obligation to disclose its conflict of interest.

c. Failure to disclose

48. INT alleges that, during the Contract's selection and execution processes, the Respondent failed to disclose its relationship with the Director as required under the May 2004 Consultant Guidelines and the RFP. While the Contesting Parties do not deny that the Proposal omitted to expressly mention the Respondent's relationship with the Director, they assert that information about the Director's positions with both the Named Affiliate and the BEA was publicly available, and that the Respondent therefore fulfilled its disclosure obligation by identifying itself as a subsidiary of the Named Affiliate in its Proposal. However, the Sanctions Board finds unpersuasive and dismisses the Contesting Parties' argument that since the Director's position on the Named Affiliate's Board of Directors was a matter of public information, the Respondent may be considered to have fulfilled its specific disclosure obligation in regard to the Contract.

49. In light of the above, the Sanctions Board concludes that the Respondent failed to comply with its obligation to disclose its conflict of interest under the RFP. The Proposal therefore contained a misrepresentation or omission of facts.

2. Made knowingly or recklessly

50. INT alleges that the Respondent acted knowingly or at least recklessly in failing to disclose its conflict of interest. The Contesting Parties assert that if the Respondent had an obligation to disclose any business relationship with the Director, any failure to do so was merely a good-faith mistake.

51. 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. The Sanctions Board has found respondents to have been at least reckless in submitting fraudulent materials when the record has shown that they were aware or, based on apparent red flags, should have been aware of a risk of submitting fraudulent documents, but failed to apply control mechanisms designed to prevent or detect such fraudulent submissions at that time.⁹

52. Citing to the Director's reported interview statement that he knew the Respondent's General Director, and the exchange of correspondence between the Director and the Respondent's General Director during the selection process, INT asserts that the Respondent was aware of the conflict of interest. According to INT, the Director also expressed the view that the Named Affiliate's subsidiaries knew of his responsibilities with the Named Affiliate by mid-2008, i.e., before the Contract was awarded to the Respondent.

53. The Respondent contests the accuracy of the Director's reported interview statements as relayed by INT. More specifically, the Respondent asserts that its General Director and the Director knew each other strictly within the scope of the Project-related documentation exchanged, and that the General Director was therefore not aware of the Director's concurrent responsibilities at the Named Affiliate. The Respondent also asserts that, contrary to INT's record of the Director's statements, the Director did not say that the Named Affiliate's subsidiaries were aware of his responsibilities, or of a potential conflict of interest.

54. The record reveals that in the course of the bidding process, the Respondent received several documents that had been signed by the Director on behalf of the BEA, including the Contract, which was counter-signed by the Respondent's General Director, and the RFP. In addition, the Contesting Parties argue that the Director's membership on the Named Affiliate's Board of Directors was a matter of public information. Accordingly, it may be inferred that the Respondent was itself aware that the Director was on the Board of Directors of the Respondent's parent company, the Named Affiliate. The Sanctions Board therefore concludes that it is more likely than not that the Respondent was aware of the Director's dual roles.

55. With respect to the consequent disclosure obligation, the Sanctions Board finds that the Respondent should have been aware of a substantial risk that any non-disclosure might be considered a fraudulent omission affecting the integrity of the Contract's selection process.

⁹ See, e.g., Sanctions Board Decision No. 47 (2012) at para. 27; Sanctions Board Decision No. 61 (2013) at para. 26.

This risk should have been apparent to the Respondent given the Director's dual roles and the RFP's explicit requirement to disclose conflicts of interest stemming from this type of situation. While the Respondent contests the existence of any business relationship with the Director, it acknowledges, in its Explanation, the "absence of clarity" as to whether it had a business relationship with the Director and states that in these circumstances "it would have been reasonable . . . to request a professional legal opinion on the best practices with regard to the information disclosure in similar cases." Yet it appears from the record that the Respondent did not take adequate measures in response to this objective risk, and that any control measures in place at the time of the Proposal's preparation were not commensurate with the risk of a conflict of interest. Accordingly, the Sanctions Board concludes that the Respondent acted at least recklessly in omitting to disclose its relationship with the Director in the Proposal. Preventing, disclosing, and resolving such conflicts of interest, both actual and perceived, is critical to ensuring the integrity of the selection process.

3. In order to influence a selection process or the execution of a contract

56. INT asserts that the Respondent's alleged omission was made in order to influence the selection process for the Contract because, had the Respondent disclosed its relationship with the Director, it likely would not have been awarded the Contract. According to INT, this is confirmed by the Bank's decision to declare misprocurement after the conflict at issue was uncovered.

57. The Sanctions Board finds that the Respondent's non-disclosure of any conflicts of interest was more likely than not informed by the Respondent's desire to be considered eligible and to be selected for the Contract. In accordance with Paragraph 1.9 of the May 2004 Consultant Guidelines, a conflict of interest arising from a business relationship with a member of the project implementing agency's staff directly or indirectly involved in relevant activities relating to the contract would render a consultant ineligible unless the conflict of interest were "resolved in a manner acceptable to the Bank throughout the selection process and the execution of the contract."

58. As the Sanctions Board has found all elements of fraudulent practice proven under the applicable standards, the Sanctions Board concludes that the record supports a finding of fraudulent practice.

C. The Named Affiliate's Liability for the Fraudulent Practice

59. The application of sanctions to a respondent's controlling Affiliates is not a default presumption in sanctions proceedings. Under the sanctions framework, "Sanctions are applied to entities controlling the Respondent . . . only if a degree of involvement in sanctioned misconduct has been shown, or if such application is reasonably necessary to prevent evasion."¹⁰ Sanctions may be imposed based on a finding of either (i) culpability for direct involvement (e.g., through instructions or orders, approval or guidance, or inferred

¹⁰ The World Bank Group's Sanctions Regime: Information Note (November 2011) (the "Information Note") at p. 21, available at: <http://go.worldbank.org/CVUUJIS7HZ0>.

authorization in cases of close supervision)¹¹ or (ii) responsibility (e.g., where there is a duty to supervise combined with deliberate non-intervention).¹² As INT does not assert, and the record does not suggest, that the Named Affiliate may be held culpable for direct involvement in the Respondent's fraudulent practice, the Sanctions Board shall determine whether the Named Affiliate may alternatively be held responsible for the Respondent's misconduct. In making this determination, the Sanctions Board considers whether the Named Affiliate had a duty to supervise the Respondent, was aware of or willfully blind to the Respondent's misconduct, and failed to intervene to prevent or address the misconduct.

60. *Duty to supervise:* The Sanctions Board concludes that the Named Affiliate had a duty to supervise the Respondent with respect to the risk of conflicts of interest stemming from the Director's membership on the Named Affiliate's Board of Directors. Not only do the Contesting Parties concede that the Respondent was a subsidiary controlled by the Named Affiliate, but in this instance, it was the Named Affiliate itself that created the situation leading to the conflict of interest by appointing the Director to its Board of Directors, while the Director concurrently held a position with the BEA. While the Contesting Parties assert that the Contract did not meet the criteria requiring the Named Affiliate's review under national law or internal procedures, national law cannot be considered as controlling in the present proceedings, as discussed above in Paragraph 42, and the Named Affiliate could not avoid its duty to supervise merely by opting not to exercise any supervision.¹³

61. *Awareness or willful blindness:* It is more likely than not that the Director himself, through his position at the BEA, was aware of the disclosure requirement in the RFP, which he signed, and of the Respondent's Proposal. In addition, while denying any interactions with the management of the Named Affiliate's subsidiaries, the Director states in his affidavit that he was generally aware of the Named Affiliate's business units and knew of the Respondent. Accordingly, the Sanctions Board finds that it is more likely than not that, when he learned of the Respondent's Proposal, the Director knew that the Respondent was a subsidiary of the Named Affiliate. Based on the Director's own dual roles and awareness of the Respondent's Proposal, the Sanctions Board concludes that it is more likely than not that the Named Affiliate, through the Director, had knowledge of the Respondent's failure to disclose its conflict of interest.

62. *Failure to intervene or to address the misconduct:* As INT alleges, the record indicates that the Named Affiliate did not take adequate measures to prevent or address the misconduct at issue. In particular, the measures that the Named Affiliate claims to have taken to publicize the appointment of the Director to its Board of Directors were insufficient to inform its subsidiaries of the potential conflict of interest stemming from this appointment. In addition,

¹¹ See Sanctions Board Decision No. 64 (2014) at para. 37. See also Sanctions Board Decision No. 49 (2012) at paras. 19-31 (applying a sanction to an affiliate under common control with the respondent where the affiliate was found to have been directly involved in the misconduct).

¹² See Sanctions Board Decision No. 64 (2014) at para. 37.

¹³ See Sanctions Board Decision No. 45 (2011) at para. 42 (finding that a company cannot disclaim responsibility for a subsidiary within its scope of control merely because it declined to exercise such control).

the Named Affiliate did not take any measures to address the Respondent's specific conflict of interest in respect of the Contract.

63. Based on the above findings, the Sanctions Board concludes that the Named Affiliate shall be held responsible for the Respondent's fraudulent practice.

D. Sanctioning Analysis

1. General framework for determination of sanctions

64. 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.

65. 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.¹⁴ 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.¹⁵

66. The Sanctions Board is required to consider the factors set out 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. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

67. As noted earlier, 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.

2. Factors applicable in the present case

a. Severity of the misconduct

68. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies various types of severity, including a repeated pattern of conduct and management's role in the misconduct.

¹⁴ See Sanctions Board Decision No. 40 (2010) at para. 28; see also Sanctions Board Decision No. 41 (2010) at para. 86.

¹⁵ Sanctions Board Decision No. 44 (2011) at para. 56.

69. *Repeated pattern of conduct:* The Sanctions Board has previously considered a respondent's extended period of misconduct in applying aggravation under this factor.¹⁶ In the present case, the Sanctions Board takes into account that the Respondent omitted to disclose the conflict of interest throughout the selection process and execution of the Contract, and that the conflict was only uncovered in the context of the Bank's review of another project involving the Named Affiliate. With respect to conflicts of interest arising from a business relationship with a member of the project implementing agency's staff, as presented here, Paragraph 1.9(c) of the May 2004 Consultant Guidelines specifically required that the conflict be resolved in a manner acceptable to the Bank throughout the selection process and the execution of the contract. Accordingly, the Sanctions Board finds aggravation appropriate for the Respondent's ongoing failure to disclose the conflict of interest.

70. *Management's role in misconduct:* Section IV.A.4 of the Sanctioning Guidelines suggests that aggravation should apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct."

71. INT asserts that the Respondent's General Director knew the Director, and therefore knew or must have known about the business relationship between the Director and the Respondent. The Contesting Parties dispute INT's assertion and argue, based on the affidavits of the Director and the Respondent's General Director, that INT's ROIs misrepresent testimonial evidence in this regard. The record reveals that the Respondent's General Director, acting on the Respondent's behalf, submitted the Respondent's expression of interest and its Proposal for the Contract, and signed the Contract. The record also includes a letter signed by the Director in his capacity as the BEA's Executive Director notifying the Respondent's General Director of the Contract's award. While the Respondent's General Director asserts in his affidavit that he did not personally know the Director at that time, the Sanctions Board finds that it is more likely than not that he knew or should have known of the Director's membership on the Named Affiliate's Board of Directors, which the Contesting Parties assert was a matter of public information. By submitting the Respondent's Proposal and signing the Contract without ensuring disclosure of the conflict of interest, the Respondent's General Director may be considered to have participated in the fraudulent omission so as to warrant aggravation for the Respondent.

72. In addition, the Sanctions Board considers the involvement of the Director, who simultaneously served on the Named Affiliate's Board of Directors and the BEA's selection committee for the Contract. In particular, the Sanctions Board notes that the Director, despite his awareness of the Respondent's conflict of interest, nevertheless signed the RFP, the notification of the Contract's award sent to the Respondent, and the final Contract. Based on the Director's failure to address the actual and perceived conflict of interest arising from his business relationship with the Respondent, the Sanctions Board finds aggravation warranted under this factor for the Named Affiliate.

¹⁶ See Sanctions Board Decision No. 53 (2012) at para. 53; Sanctions Board Decision No. 56 (2013) at para. 55.

b. Magnitude of the harm caused by the misconduct

73. Section 9.02(b) of the Sanctions Procedures requires consideration of the magnitude of the harm caused by the misconduct. As examples of such harm, Section IV.B of the Sanctioning Guidelines refers to poor contract implementation and delay, as well as harm to public safety or welfare.

74. The Contesting Parties assert that there is no evidence of damage to the Project. They claim that, to the contrary, the Respondent successfully completed its part of the Project, and received “letters of honors for its completion from its end users.” However, the Contesting Parties did not specify the content or provide copies of such letters.

75. On the other hand, the record confirms INT’s assertion that the misconduct caused the Bank to declare misprocurement and to cancel a portion of the Loan when the conflict of interest was uncovered. Non-disclosure of a conflict of interest of the sort at issue in this case presents a real risk of serious reputational harm to the Bank and the borrower. Once it becomes public knowledge that a person who has a business relationship with an entity that has been awarded a tender was a member of the committee responsible for the award of the tender, a reasonable perception of bias or corruption in the procurement or selection process may well arise – a perception that the Bank, quite rightly, seeks to avoid. In these circumstances, the Sanctions Board finds aggravation warranted for the significant harm caused by the Respondent’s misconduct.

c. Voluntary corrective action

76. Section 9.02(e) of the Sanctions Procedures provides for mitigation “where the sanctioned party . . . took voluntary corrective action.” Section V.B.3 of the Sanctioning Guidelines identifies the establishment or improvement, and implementation, of a corporate compliance program as an example of voluntary corrective action, with the timing, scope, and quality of the action 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 show voluntary corrective action.¹⁷

77. In the present case, the Contesting Parties assert that they have had a “demonstrated commitment to compliance,” evidenced by “a robust compliance program and oversight processes which comported with international standards and Russian law” and include “anti-corruption and conflict-specific precautionary measures.” However, the evidence that the Contesting Parties provide in support of such assertion does not demonstrate the type of integrity standards, training, or controls as would prevent or address the type of misconduct alleged here. Nor does the record reveal a code of ethics or comparable document with a clearly articulated and visible prohibition of fraud, corruption, and other misconduct; evidence of appropriate employee training and communication to educate staff and reinforce standards;

¹⁷ See, e.g., Sanctions Board Decision No. 51 (2012) at paras. 51, 86; Sanctions Board Decision No. 52 (2012) at para. 39; Sanctions Board Decision No. 53 (2012) at para. 59.

or sufficient reporting and remediation procedures.¹⁸ Overall, the evidence and arguments presented fail to demonstrate measures that warrant mitigation under this factor.

d. Cooperation

78. 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 states that mitigation may be appropriate for assistance and/or ongoing cooperation “[b]ased on INT’s representation that the respondent has provided substantial assistance in an investigation, including voluntary disclosure, the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.”

79. The Contesting Parties request mitigation on the basis of their asserted cooperation. INT requests that any mitigating credit for cooperation be tempered due to the Contesting Parties’ unsubstantiated allegations that INT engaged in misconduct and procedural violations, as well as the Contesting Parties’ failure to provide all requested documents and to make all requested staff available for interviews.

80. The record reveals that the Contesting Parties made several of their respective high-level staff members available for interviews with INT, although INT asserts that the Named Affiliate’s representatives did not answer questions that INT had provided in advance of the interview. In addition, the Sanctions Board takes into account the Contesting Parties’ continued denial of responsibility. Accordingly, the Sanctions Board finds limited mitigation warranted on these grounds.¹⁹

81. With respect to INT’s contention that any mitigation for cooperation should be further limited due to the Contesting Parties’ allegations regarding the conduct of INT’s investigation, the Sanctions Board notes first that the Contesting Parties indicated at the hearing that they had decided not to pursue some of the initial allegations presented in the Responses. With regard to the contentions submitted in the Supplemental Response, the Sanctions Board does not find the allegations to reveal an uncooperative posture that should affect the level of mitigating credit warranted for the Contesting Parties’ cooperation.

e. Period of temporary suspension already served

82. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party.

¹⁸ See generally World Bank Group Integrity Compliance Guidelines, available at: http://siteresources.worldbank.org/INTDOI/Resourses/IntegrityComplianceGuidelines_2_1_11web.pdf.

¹⁹ See, e.g., Sanctions Board Decision No. 45 (2011) at para. 66 (applying a limited degree of mitigation where the respondent made its principals and representatives available for INT interviews, but did not admit culpability or responsibility for misconduct); Sanctions Board Decision No. 51 (2012) at para. 90 (applying a limited degree of mitigation where the respondent cooperated with INT’s investigation by replying to INT’s show-cause letter, but did not accept responsibility for misconduct).

The Contesting Parties have each been temporarily suspended since the EO's issuance of the Notice on October 17, 2011. The Sanctions Board also takes into account, however, that the duration of the sanctions proceedings, and therefore of the temporary suspension, was substantially prolonged due to successive requests submitted by the Contesting Parties, including multiple requests for extensions of time, a request to postpone a hearing that had been scheduled for December 2012, and a request to make an additional written submission under Section 5.01(c) of the Sanctions Procedures.

f. Other potential considerations

83. *Allegations of improper conduct against INT*: INT submits that the Contesting Parties' "willingness to falsely malign INT" may present grounds for aggravation pursuant to Section 9.02(i) of the Sanctions Procedures. For the reasons set out above in Paragraph 81, and taking into account that the Contesting Parties' contentions in the Supplemental Response do not appear to fall under the scope of Section 9.02(i), which refers to factors that "the Sanctions Board . . . reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice," the Sanctions Board finds no aggravation warranted on this ground.

84. *Scope of sanctions*: Under Section 9.04(a) of the Sanctions Procedures, when a sanction is imposed on a respondent, appropriate sanctions may also be imposed on any of its Affiliates. The Information Note presents four rebuttable presumptions to guide the application of sanctions to corporate groups or entities.²⁰ First, where the respondent is a corporate entity, sanctions presumptively apply to the respondent entity as a whole unless the respondent demonstrates that only an identifiable division or business unit is responsible, and application to the entire entity is not reasonably necessary to prevent evasion.²¹ Second, any sanction imposed shall apply to all entities controlled by a respondent, unless the respondent demonstrates that the entities are free of responsibility for the misconduct, and that application to the entities would be disproportional and is not reasonably necessary to prevent evasion.²² Third, sanctions are applied to entities controlling the respondent and to entities under common control only if a degree of involvement in the sanctioned misconduct has been shown, or if such application is reasonably necessary to prevent evasion.²³ Fourth, sanctions are also applied to successors and assigns of the sanctioned respondent unless the successor or assign demonstrates that such application would violate the above-mentioned principles underlying the application of sanctions to corporate groups.²⁴

²⁰ The World Bank Group's Sanctions Regime: Information Note (November 2011) at p. 21, available at: <http://go.worldbank.org/CVUUIS7HZ0>.

²¹ Id.; see also Sanctions Board Decision No. 55 (2013) at para. 87.

²² Information Note at p. 21.

²³ Id.

²⁴ Id.

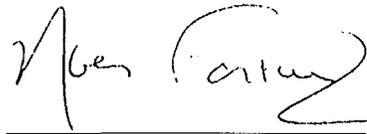
85. Absent any argument from the Contesting Parties with respect to the first two presumptions, any sanction imposed on the Respondent shall apply to the Respondent as a whole, as well as to all entities controlled by the Respondent. With respect to the third presumption, the Sanctions Board finds in this case that the Named Affiliate can be held responsible for the sanctionable practice at issue, as discussed above in Section V.C, and therefore concludes that a sanction shall be imposed on the Named Affiliate as an entity controlling the Respondent under Section 9.04(a) of the Sanctions Procedures. Consistent with the fourth presumption, the Sanctions Board notes that any sanction imposed on the Respondent may be applied to the Respondent's successors and assigns, subject to the principles for the application of sanctions to corporate groups as set out in the Information Note and any relevant provisions of the Sanctions Procedures.

E. Determination of Liability and Appropriate Sanctions for the Respondent and the Named Affiliate

86. Considering the full record and all the factors discussed above, the Sanctions Board:
- i. 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 a contract for any Bank-Financed Projects, (ii) be a nominated subcontractor, consultant, manufacturer or supplier, or service provider²⁵ 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 to participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of two (2) years, the Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented adequate policies to prevent and address conflicts of interest. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines. The 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 declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and

²⁵ In accordance with Section 9.01(c)(i), n.14 of the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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.

- procedures.²⁶ The period of ineligibility shall begin on the date this decision issues.
- ii. issues a formal letter of reprimand to the Named Affiliate, which letter shall remain posted on the World Bank's website without prejudice to the Named Affiliate's eligibility to participate in Bank-Financed Projects, provided, however, that after a minimum period of six (6) months beginning from the date of this decision, the letter of reprimand may be removed only if the Named Affiliate has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented adequate policies to prevent and address conflicts of interest. This sanction is imposed on the Named Affiliate pursuant to Section 9.04(a) of the Sanctions Procedures.



L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

L. Yves Fortier
Hassane Cissé
Ellen Gracie Northfleet
Catherine O'Regan
Denis Robitaille
J. James Spinner

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 external website (<http://go.worldbank.org/B699B73Q00>).