

Date of issuance: May 19, 2014

**Sanctions Board Decision No. 66  
(Sanctions Case No. 208)**

**PPIAF Trust Fund Grant No. TF023613  
Vietnam**

**Decision of the World Bank Group<sup>1</sup> Sanctions Board imposing a sanction of reprimand on the respondent entity in Sanctions Case No. 208 (the “Respondent”) by means of a formal letter of reprimand to be posted on the World Bank’s website for a period of three (3) months beginning from the date of this decision. This sanction is imposed on the Respondent for a corrupt practice.**

**I. INTRODUCTION**

1. The Sanctions Board met in a plenary session on December 4, 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. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing. Nor did the Sanctions Board Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.<sup>2</sup>

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

- i. Notice of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)<sup>3</sup> to the Respondent on December 11, 2012 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated July 25, 2012;

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<sup>1</sup> In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted April 15, 2012 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). For 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.

<sup>2</sup> See Sanctions Procedures at Section 6.01.

<sup>3</sup> 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.

- ii. Explanation submitted by the Respondent to the EO on January 8, 2013 (the "Explanation");
- iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on March 8, 2013 (the "Response");
- iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board on April 3, 2013 (the "Reply"); and
- v. Additional materials submitted by the Respondent to the Secretary to the Sanctions Board on April 22, 2013 (the "Respondent's Additional Submission").

3. Pursuant to Sections 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the EO recommended debarment with conditional release for the Respondent, together with any entity that is an Affiliate<sup>4</sup> directly or indirectly controlled by the Respondent. The EO recommended a minimum period of ineligibility of four (4) years, after which period the Respondent may be released from ineligibility only if the Respondent 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) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

4. Effective December 11, 2012, pursuant to Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>5</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>6</sup> of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate

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<sup>4</sup> 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."

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

<sup>6</sup> In accordance with Section 9.01(c)(ii), n.17, of the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its 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.

further in the preparation or implementation of any project or program financed by the Bank and governed by the Bank's Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines (referred to collectively as "Bank-Financed Projects") pending the final outcome of the sanctions proceedings.

## **II. GENERAL BACKGROUND**

5. This case arises in the context of the Vietnam Urban Water Supply Development Project (the "Project"). The Project was financed by a grant under the Public-Private Infrastructure Advisory Facility ("PPIAF") Trust Fund, for which the World Bank served as the executing agency. The Project's objectives included the expansion of piped water service to unserved district towns, beginning with pilot projects to test the viability of the planned approach in select district towns.

6. To prepare the pilot projects, a portion of the PPIAF Trust Fund grant was allocated for the procurement of a "technical, financial, environmental and social consulting firm." On September 24, 2002, the Bank issued a request for proposals (the "RFP") to five shortlisted consultants. Only one of the shortlisted consultants, a wholly state-owned enterprise in Vietnam (the "State-Owned Corporation"), submitted a bid by the deadline of October 18, 2002. On January 3, 2003, the Bank signed a contract with the State-Owned Corporation (the "Contract"), valued at the equivalent of approximately US\$97,000, and defined the period of performance as December 16, 2002, through December 1, 2003.

7. On January 20, 2004, the Bank approved a first extension of the Contract to expand the scope of work, extend the delivery date through February 28, 2004, and increase total remuneration to the State-Owned Corporation by the equivalent of approximately US\$26,100 upon the State-Owned Corporation's delivery of a final report approved by the Bank. On June 17, 2005, the Bank approved a second extension of the delivery date to December 5, 2005, at no additional cost to the Bank.

8. INT contends that the State-Owned Corporation engaged in a corrupt practice to influence the Contract's execution. INT alleges that the Respondent, a joint-stock entity created in January 2007 in Vietnam with majority state ownership, is the State-Owned Corporation's successor and therefore liable for the corrupt practice.

## **III. APPLICABLE STANDARDS OF REVIEW**

9. 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.

10. 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.

11. The PPIAF Charter specified that “[p]rocurement will, in all cases, be implemented in accordance with World Bank guidelines.” The Bank’s Administrative Manual Statement 15.00 (April 2002), which is applicable because the PPIAF Trust Fund grant was administered by the World Bank, stipulated that selection of consultants be governed by the version of the Bank’s consultant guidelines that was in force at the time of the relevant RFP’s issuance. Because the RFP in this case was issued on September 24, 2002, the alleged sanctionable practice has the meaning set forth in the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (published January 1997, and revised September 1997, January 1999, and May 2002) (the “May 2002 Consultant Guidelines”). Paragraph 1.25(a)(i) of the May 2002 Guidelines defines the term “corrupt practice” as “the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution.”

#### **IV. PRINCIPAL CONTENTIONS OF THE PARTIES**

##### **A. INT’s Principal Contentions in the SAE**

12. INT alleges that the Respondent, through its predecessor the State-Owned Corporation, received a request from a World Bank staff member (the “Staff Member”) to hire his son; and engaged in a corrupt practice by employing the Staff Member’s son as requested. INT contends that, in employing the Staff Member’s son, the Respondent gave “something of value” in order to influence, and did influence, the acts of the Staff Member as a public official in the Contract’s execution.

13. INT asserts that there are no aggravating factors in this case. INT suggests mitigation for the Respondent in light of the Staff Member’s “role in soliciting the employment offer,” noting his resignation from the Bank with a permanent bar to rehire.

##### **B. The Respondent’s Principal Contentions in the Explanation and the Response**

14. The Respondent does not dispute the alleged misconduct of the State-Owned Corporation. However, the Respondent denies any successor liability for the actions of the State-Owned Corporation, which the Respondent describes as having a different corporate identity, ownership, and management structure. The Respondent also asserts that INT’s allegations were belatedly filed almost nine years after the alleged misconduct and six years after responsible officials left the State-Owned Corporation.

15. With respect to sanctions, the Respondent contends that the EO’s recommendation of debarment with conditional release is too severe and “out of date,” and argues that any

sanction should be limited to an unpublished letter of reprimand. The Respondent asserts that it has not participated in any Bank-funded projects since the State-Owned Corporation's equitization and restructuring in 2007, and that it has been excluded from Bank-funded projects in Vietnam since INT's show-cause letter in April 2009. The Respondent also asserts that it has implemented remedial measures and an effective integrity compliance program. Finally, the Respondent claims that a debarment would harm its business and the reputations of its employees.

**C. INT's Principal Contentions in the Reply**

16. Noting that the Respondent does not contest the alleged sanctionable conduct of the State-Owned Corporation, INT rejects the Respondent's arguments that it cannot be held liable for the State-Owned Corporation's acts and that additional mitigating factors apply. First, INT asserts that the Respondent legally assumed the State-Owned Corporation's liabilities as a result of its position as the State-Owned Corporation's sole successor, and notwithstanding any asserted difference between the methods of appointing the Respondent's and the State-Owned Corporation's legal representatives. Second, INT rejects the Respondent's assertion that the sanctions proceedings were commenced belatedly, and submits that they were initiated within the ten-year statute of limitations under Section 4.01(d) of the Sanctions Procedures.<sup>7</sup> Finally, INT contends that the Respondent's claimed period of absence from involvement in Bank-funded projects does not warrant a reduction in any debarment period, and that the Respondent's claim of voluntary corrective action is not substantiated by details or evidence sufficient to warrant any mitigation.

**D. The Respondent's Additional Submission**

17. On April 22, 2013, the Respondent presented additional materials to support its claim of remedial measures and integrity compliance initiatives. The Sanctions Board Chair, in his discretion, admitted this submission into the record; and offered INT an opportunity to comment on the additional materials, which INT declined.

**V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS**

18. As a preliminary matter, the Sanctions Board notes that INT's designation of a majority state-owned entity as the Respondent, which INT alleges to be liable for the acts of the State-Owned Corporation in regard to the Contract, does not contradict the Bank's general policy that governments and government officials should not be sanctioned when acting in their official capacity, because this policy does not extend to state-owned

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<sup>7</sup> Section 4.01(d)(i) of the Sanctions Procedures provides that in cases brought under the Procurement or Consultant Guidelines where INT accuses the respondent of misconduct in connection with a contract, the EO shall close the matter as time-barred if the execution of the contract was completed more than ten years prior to the date that a Statement of Accusations and Evidence is submitted to the EO. In the present case, execution of the Contract was completed on June 5, 2006, approximately six years prior to INT's submission of the SAE to the EO on July 25, 2012.

enterprises that operate autonomously and are thus eligible to bid on Bank-financed contracts.<sup>8</sup>

19. Before considering whether the record supports a finding of corrupt practice and, if so, whether the Respondent may be held liable for the corrupt practice, the Sanctions Board will address a procedural matter with respect to INT's proposed restrictions on the Respondent's access to evidence. The Sanctions Board will then consider what sanctions, if any, should be imposed on the Respondent.

**A. INT's Proposed Restrictions on the Respondent's Access to Evidence**

20. INT proposed to restrict the Respondent's access to certain exhibits attached to the SAE, which INT provided only to the EO and the Sanctions Board (the "Withheld Exhibits"). In particular, INT proposed that copies of the Withheld Exhibits, which contain information relating to the Staff Member, should be made available to the Respondent only in camera and with redactions, and only if the Respondent requested access and the Staff Member provided his written permission.

21. 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, subject only to certain exceptions set out in Sections 5.04(c) through (e). In addition, Section 3.02 requires that INT present all relevant evidence in its possession that reasonably tends to be exculpatory or mitigating when submitting its Statement of Accusations and Evidence to the EO.

22. Considering the above standards, the Sanctions Board finds that the Withheld Exhibits do not appear to have any exculpatory or additional mitigating value beyond what INT concedes in the SAE with respect to the Staff Member's instigating role and later resignation. The Sanctions Board also notes that in response to the invitation to comment on INT's proposed access restrictions, the Respondent did not express any objection to the restrictions proposed; and confirmed that it did not wish to view the Withheld Exhibits. In these circumstances, the Sanctions Board is of the view that it does not need to consider INT's proposed restrictions on the Respondent's access to the Withheld Exhibits any further.

**B. Evidence of Corrupt Practice**

23. In accordance with the applicable definition of "corrupt practice" under the May 2002 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the State-Owned Corporation (i) offered, gave, received, or solicited any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.

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<sup>8</sup> See Advisory Opinion on Certain Issues Arising in Connection with Recent Sanctions Cases, No. 2010/1 at pp. 32-33, paras. 128-129 (Legal Vice Presidency of the World Bank, November 15, 2010), available at: <http://go.worldbank.org/CVUUIS7HZ0>.

1. Offering, giving, receiving, or soliciting any thing of value

24. INT alleges that the State-Owned Corporation acceded to the Staff Member's request to hire his son, and thereby gave a "thing of value" to the Staff Member. The Respondent concedes that the solicitation of employment and subsequent hiring took place. Multiple documents in the record reflecting statements by the Staff Member's son, the Respondent, and former staff of the State-Owned Corporation support a finding that the State-Owned Corporation employed the Staff Member's son from some time in 2003 to April 2005. Accordingly, the Sanctions Board finds that it is more likely than not that the State-Owned Corporation gave a "thing of value" to the Staff Member as INT alleges.

2. To influence the action of a public official in the selection process or in contract execution

25. INT alleges that the State-Owned Corporation employed the Staff Member's son with intent to influence the actions of the Staff Member, as a public official, in the Contract's execution. The record supports a finding, and the Respondent does not dispute, that the Staff Member was employed by the Bank during the period of alleged misconduct in 2003-2005. Although the May 2002 Consultant Guidelines do not define the scope of the term "public official,"<sup>9</sup> subsequent versions of the World Bank's Consultant Guidelines include a footnote confirming, consistent with the Bank's practice in earlier sanctions cases, that the term includes Bank staff.<sup>10</sup> Accepting the Bank's view that the footnote thus serves as a clarification of the pre-existing standard rather than an amendment, the Sanctions Board concludes that a member of the Bank's staff may be deemed a "public official" under the May 2002 Consultant Guidelines.

26. The record also supports a finding that the State-Owned Corporation acted with intent to influence the Staff Member's actions in the Contract's execution when it acceded to his request. The record reveals that representatives of the State-Owned Corporation had reason to believe that the Staff Member held influence with respect to the Contract's execution. For example, the State-Owned Corporation received and replied to official correspondence from the Staff Member in regard to the Contract. In addition, meeting records indicate the Staff Member's participation in negotiations between the State-Owned Corporation and the Bank for the original Contract and its first extension. Moreover, the record reveals, as INT asserts, that the State-Owned Corporation's expectations of influencing the Staff Member were met when the Staff Member supported the State-Owned Corporation's request to extend the Contract with additional remuneration. As the Sanctions Board has previously found, evidence that the desired influence actually materialized may bolster a showing of a respondent's intent, although it is not necessary for a finding of a corrupt practice.<sup>11</sup> In these circumstances, the Sanctions

<sup>9</sup> See May 2002 Consultant Guidelines at p. 10, para. 1.25(a)(i).

<sup>10</sup> See, e.g., May 2004 Consultant Guidelines at p. 12, n.15 (stating that in the context of the "corrupt practice" definition, the term "public official" includes World Bank staff).

<sup>11</sup> See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84.

Board finds that it is more likely than not that the State-Owned Corporation's employment of the Staff Member's son was intended to influence the Staff Member's actions in the Contract's execution.

27. Having found all elements necessary to establish a corrupt practice under the May 2002 Consultant Guidelines, the Sanctions Board concludes that it is more likely than not that the State-Owned Corporation engaged in a corrupt practice as alleged.

**C. The Respondent's Liability for the State-Owned Corporation's Misconduct**

28. Having concluded that it is more likely than not that the State-Owned Corporation engaged in a corrupt practice, the Sanctions Board will consider whether the Respondent may be held liable for the State-Owned Corporation's misconduct. INT asserts that the Respondent is the sole successor of the State-Owned Corporation and thus "assumes the predecessor company's liabilities." On the other hand, the Respondent asserts that due to changes in the State-Owned Corporation's identity and structure subsequent to the misconduct, the Respondent is "not quite a successor" to the State-Owned Corporation and is not appropriately named as a respondent in these sanctions proceedings.

29. The Sanctions Procedures do not define the term "successor," nor does the definition of "Respondent" under the Sanctions Procedures refer to "successor(s)."<sup>12</sup> The Sanctions Procedures address the application of sanctions to successors only in Section 9.04(c), which provides that "[a]ny sanction imposed shall apply to the sanctioned party's successors and assigns, as determined by the Bank." The Bank's general principles and presumptions in regard to sanctions and corporate groups include the principle that sanctions should be applied flexibly to avoid evasion, and the presumption that sanctions should be applied to successors and assigns.<sup>13</sup> Considering this framework, and consistent with past practice,<sup>14</sup> the Sanctions Board finds that the Respondent may be sanctioned for the State-Owned Corporation's misconduct if the record supports a finding that the Respondent is a successor to the State-Owned Corporation.

30. The record includes a 2007 government order by which the State-Owned Corporation was transformed into a joint-stock company, the Respondent, by issuance of capital shares, with the state retaining a fifty-one percent majority ownership; as well as a November 2006 ministry decision stating that the Respondent would receive all of the State-Owned Corporation's assets, capital, and employees. The record thus supports INT's assertion that the Respondent succeeded the State-Owned Corporation, albeit in an

<sup>12</sup> For the definition of "Respondent," see Sanctions Procedures at Section 1.02(a): "an entity or individual alleged to have engaged in a Sanctionable Practice and who has been designated as such in a Notice, or in a settlement agreement."

<sup>13</sup> See The World Bank Group's Sanctions Regime: Information Note (November 2011) at p. 21, available at: <http://go.worldbank.org/CVUUIS7HZ0>.

<sup>14</sup> See Sanctions Board Decision No. 53 (2012) (holding the named respondent liable for sanctionable practices carried out by its legal predecessor).



equitized and restructured form as the Respondent asserts. In these circumstances, the Sanctions Board finds the Respondent to be a successor liable to sanction for the State-Owned Corporation's misconduct.

**D. Sanctioning Analysis**

**1. General framework for determination of sanctions**

31. Where the Sanctions Board determines that it is more likely than not that the 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.

32. 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.<sup>15</sup> 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.<sup>16</sup>

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

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

**2. Factors applicable in the present case**

**a. Severity of the misconduct**

35. Section 9.02(a) of the Sanctions Procedures requires consideration of the severity of the misconduct in determining an appropriate sanction. Section IV.A of the Sanctioning

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<sup>15</sup> Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>16</sup> Sanctions Board Decision No. 44 (2011) at para. 56.

Guidelines identifies various types of severity, including management's role in the misconduct.

36. *Management's role in misconduct*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply “[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct.” The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's management or its predecessor's management personally participated in a corrupt or fraudulent arrangement.<sup>17</sup> Here, the Sanctions Board applies aggravation for the direct involvement of the State-Owned Corporation's then-director, as the record reflects that the director received the Staff Member's solicitation of employment and subsequently agreed to hire the Staff Member's son.

b. Minor role in misconduct

37. Section 9.02(e) of the Sanctions Procedures provides for mitigation “where the sanctioned party played a minor role in the misconduct.” Section V.A of the Sanctioning Guidelines proposes that this factor be applied to a “[m]inor, minimal, or peripheral participant.” Consistent with INT's representation, the record includes undisputed evidence of the Staff Member's direct solicitation of employment for his son, which arrangement does not appear to have been prompted or encouraged by the State-Owned Corporation. The Sanctions Board agrees with INT that mitigation is appropriate in these circumstances.

c. Voluntary corrective action

38. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a sanctioned party took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies a respondent's internal action against the responsible individual and its establishment or improvement and subsequent implementation of an effective corporate compliance program as some examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of the actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective actions.<sup>18</sup>

39. *Internal action against responsible individual*: Section V.B.2 of the Sanctioning Guidelines states that mitigation may be appropriate where “[m]anagement takes all appropriate measures to address the misconduct engaged in on its behalf, including taking appropriate disciplinary and/or remedial steps with respect to the relevant employee,

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<sup>17</sup> See, e.g., Sanctions Board Decision No. 50 (2012) at para. 61 (applying aggravation based on the personal involvement of the respondent's director and managing director in the corrupt payment scheme); Sanctions Board Decision No. 53 (2012) at para. 55 (applying aggravation based on the admitted participation of the respondent's management at the time of the fraudulent practices).

<sup>18</sup> See Sanctions Board Decision No. 45 (2011) at para. 72.

agent, or representative.” The Respondent asserts that it took remedial employment actions against high-level officials directly involved in the misconduct, and provides evidence that the State-Owned Corporation’s former director and deputy director were re-assigned. However, the Respondent does not provide evidence that these re-assignments were disciplinary in nature or taken in response to the misconduct concerned. To the contrary, the Respondent’s reply to INT’s show-cause letter describes the former director’s re-assignment as a promotion. On this record, the Sanctions Board does not find mitigation warranted for the Respondent’s asserted internal actions.<sup>19</sup>

40. *Effective compliance program:* Section V.B.3 of the Sanctioning Guidelines states that voluntary corrective actions may include the establishment or improvement and subsequent implementation of an effective compliance program. Although the Respondent asserts that it has “adopted and implemented an effective integrity compliance program in a manner satisfactory” to all of its clients, evidence submitted in support of this contention is limited to the Respondent’s performance awards, which do not reveal any integrity compliance program elements or initiatives. Accordingly, the Sanctions Board declines to apply mitigating credit under this factor.<sup>20</sup>

d. Cooperation

41. 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 of the Sanctioning Guidelines identifies a respondent’s assistance with INT’s investigation or ongoing cooperation, and admission or acceptance of guilt or responsibility as some examples of cooperation.

42. *Assistance or ongoing cooperation:* Section V.C.1 of the Sanctioning Guidelines suggests that cooperation may take the form of assistance with INT’s investigation or ongoing cooperation, with consideration of “INT’s representation that the respondent has provided substantial assistance” as well as “the truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of [the] assistance.” The record reflects that the Respondent replied to INT’s show-cause letter within two weeks, with an explanation and supporting documents. The Sanctions Board finds mitigation warranted on this basis.<sup>21</sup>

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<sup>19</sup> See, e.g., Sanctions Board Decision No. 56 (2013) at para. 67 (rejecting a respondent’s request for mitigation where the respondent failed to show the link between the asserted remedial actions and the misconduct at issue, or to demonstrate that it took “all appropriate measures” with respect to other involved personnel).

<sup>20</sup> See, e.g., Sanctions Board Decision No. 61 (2013) at para. 42 (denying mitigation where the respondents failed to demonstrate that the asserted measures to improve their bid preparation process had been adopted and implemented).

<sup>21</sup> See, e.g., Sanctions Board Decision No. 51 (2012) at para. 90 (applying mitigation on the basis of the respondent’s reply to INT’s show-cause letter).

43. *Admission or acceptance of guilt or responsibility:* Section V.C.3 of the Sanctioning Guidelines recognizes cooperation in the form of a respondent's admission or acceptance of guilt or responsibility. In the present case, the Respondent does not contest the underlying facts relating to the State-Owned Corporation's employment of the Staff Member's son, but disputes that the Respondent is now the appropriate subject for liability for any misconduct in this regard. The Sanctions Board has previously declined to grant mitigating credit for limited admissions that conceded to the events alleged but contested the respondent's own culpability or responsibility,<sup>22</sup> and follows the same approach now in denying additional mitigation for the Respondent under this factor.

e. Period of temporary suspension

44. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the EO's issuance of the Notice on December 11, 2012.

45. The Respondent additionally requests that the sanction recommended by the EO be revised in light of the Respondent's asserted constructive suspension from Bank-funded projects since INT's April 2009 show-cause letter. As the record contains no evidence to substantiate the Respondent's asserted exclusion prior to issuance of the Notice, however, no additional mitigating credit applies for the Respondent's claimed period of constructive suspension.<sup>23</sup>

f. Other potential considerations

46. Under Section 9.02(i) of the Sanctions Procedures, the Sanctions Board shall consider "any other factor that . . . the Sanctions Board reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

47. *Passage of time:* The Sanctions Board considers as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.<sup>24</sup> At the time of the EO's issuance of the Notice in December 2012, almost

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<sup>22</sup> See, e.g., Sanctions Board Decision No. 52 (2012) at para. 43 (where the respondent asserted that it was an innocent victim of circumstance and denied any responsibility); Sanctions Board Decision No. 55 (2013) at para. 82 (where the respondent attributed the misconduct to a rogue employee and denied culpability for any direct wrongdoing).

<sup>23</sup> See Sanctions Board Decision No. 45 (2011) at para. 69 (denying mitigation for the respondent's claimed but insufficiently substantiated period of constructive suspension).

<sup>24</sup> See, e.g., Sanctions Board Decision No. 48 (2012) at para. 48 (applying mitigation where sanctions proceedings were initiated almost three years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 53 (2012) at para. 65 (applying mitigation where sanctions proceedings were initiated almost ten years after the misconduct occurred and almost seven years after the Bank's awareness of the potential sanctionable practices).

eight years had passed since the State-Owned Corporation ceased employing the Staff Member's son in April 2005, and almost four years had elapsed since INT sent its April 2009 show-cause letter to the Respondent. Mitigation is therefore warranted on this ground.

48. *Adverse consequences of debarment:* The Respondent asserts that debarment would adversely impact its ongoing and prospective business operations, and harm the reputations of its staff. The Sanctions Board has previously rejected a respondent's request for mitigation in light of a sanction's expected impact on operations.<sup>25</sup> In addition, the Sanctions Board finds that a sanction's potential reputational impact on the Respondent's individual employees is not relevant to the Respondent's culpability or responsibility, and therefore does not warrant consideration under Section 9.02(i) of the Sanctions Procedures.

49. *Change in management/corporate identity:* The Respondent argues that it is distinct from the firm culpable for any sanctionable practice and asserts that the appropriate sanction, if any, would be an unpublished letter of reprimand. The Respondent provides detailed evidence of its equitization and restructuring. The Respondent also submits documentation establishing a change in the State-Owned Corporation's management subsequent to the misconduct, as the former director and deputy director were assigned to other positions outside the State-Owned Corporation in February and September 2006, respectively. Although the record indicates that two members of the State-Owned Corporation's Management Board have continued to serve as members of the Respondent's Board of Directors, INT does not assert, and the record does not indicate, that these individuals were involved in the misconduct. The Sanctions Board finds a degree of mitigation appropriate in these circumstances.<sup>26</sup>

50. *Record of general performance:* The Respondent asserts that it has received local recognition for successful completion of various consulting projects. Consistent with past precedent denying mitigation for a respondent's claimed record of general performance,<sup>27</sup> the Sanctions Board does not find the quality of the Respondent's performance in other consulting projects to warrant mitigation in the present case.

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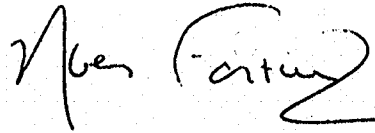
<sup>25</sup> See, e.g., Sanctions Board Decision No. 53 (2012) at para. 69 (finding that the respondent's arguments with respect to losses in revenue and impact on operations did not justify mitigation).

<sup>26</sup> See Sanctions Board Decision 6 (2009) at para. 7 (applying mitigation where the record lacked evidence to connect a respondent's current management with the misconduct); Sanctions Board Decision No. 53 (2012) at para. 66 (applying mitigation in view of the successive changes in the respondent's management since the misconduct that had occurred a decade earlier).

<sup>27</sup> See, e.g., Sanctions Board Decision No. 47 (2012) at para. 57; Sanctions Board Decision No. 60 (2013) at para. 139.

**E. Determination of Liability and Appropriate Sanction**

51. Considering the full record and all the factors discussed above, the Sanctions Board issues a formal letter of reprimand to the Respondent, which letter shall remain posted on the World Bank's website for a period of three (3) months, without prejudice to the Respondent's eligibility to participate in Bank-Financed Projects. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines.



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