THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: December 24, 2015

Sanctions Board Decision No. 84

Decision of the World Bank Group[1] Sanctions Board denying a request for reconsideration of Sanctions Board Decision No. 4 (2009), as filed by a respondent entity and the individual respondent in Sanctions Case No. 73 (respectively, the "Respondent Firm" and "Respondent Owner" and collectively, the "Respondents").

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on June 2, 2015, at the World Bank Group's headquarters in Washington, D.C., to review a request for reconsideration filed by the Respondents with regard to Sanctions Board Decision No. 4 (2009) (the "Original Decision"). In the Original Decision, the Sanctions Board debarred the Respondents for an indefinite period of time for collusive practices in Sanctions Case No. 73.[2] The Sanctions Board members who considered the present request for reconsideration are J. James Spinner (Chair), Olufunke Adekoya, L. Yves Fortier,[3] Ellen Gracie Northfleet, and Catherine O'Regan.

2. In accordance with Article XI of the Sanctions Board Statute, the Sanctions Board Chair exercised his discretion to call a hearing in this matter. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in person. The Respondents were represented by the Respondent Owner and outside counsel.

3. The Sanctions Board deliberated and reached its decision on the request for reconsideration based on the written record and the arguments presented at the hearing. The written record for the Sanctions Board's consideration included the following:

i. the request for reconsideration submitted by the Respondents to the Secretary to the Sanctions Board on December 12, 2014 (the "Request");

ii. comments on the Request submitted by INT to the Secretary to the Sanctions Board on January 14, 2015 ("INT's Comments");

iii. the parties' additional submissions on the Sanctions Board's jurisdiction and the possibility of an oral hearing in this matter, filed in April-May 2015;

iv. the written record previously considered by the Sanctions Board in the original proceedings in Sanctions Case No. 73; and

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[1] In accordance with the World Bank Sanctions Procedures as adopted October 15, 2006 (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"). See Sanctions Procedures at Article I(a), n.1 and Article II, Section 1, n.10. As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both IBRD and IDA. See id. at Article I(a), n.1.

[2] Sanctions Board Decision No. 4 (2009).

[3] Mr. Fortier presided over the hearing and deliberations in this matter as Sanctions Board Chair. His term as the Chair and a member of the Sanctions Board ended on September 30, 2015.

v. the Original Decision, as issued to the Respondents on January 12, 2009.[4]

4. The Respondents also filed a "Supplemental Clarificatory Explanation" on January 30, 2015, in reply to INT's Comments, which reasserted the Respondents' primary contentions in the original Request. Noting that this additional submission was not invited or authorized by the Sanctions Board Chair and does not present newly available material evidence, the Sanctions Board Chair declines to admit this document into the record.

II. GENERAL BACKGROUND

5. The Original Decision described the Respondent Firm and the Respondent Owner as "ringleaders" involved in multiple instances of misconduct and noted the Respondent Firm's role as a designated winner in a collusive scheme.[5] On this basis, the Sanctions Board concluded that the Respondents' conduct "was sufficiently egregious as to warrant the most severe sanction."[6]

III. APPLICABLE STANDARDS OF REVIEW

6. The statutory and procedural framework that governed the original proceedings in Sanctions Case No. 73 includes the Sanctions Board Statute as issued in December 2006 (the "Statute") and the Sanctions Procedures as adopted on October 15, 2006.

7. Both the Statute and the Sanctions Procedures speak to the finality of Sanctions Board decisions. Article XIV of the Statute provides that the Sanctions Board's decisions "shall be final and without appeal." Section 16(1) of the Sanctions Procedures states that each Sanctions Board decision "shall be final and shall take effect immediately." Neither the Statute nor the Sanctions Procedures address whether the Sanctions Board itself may elect to reopen or reconsider its own decisions. They contain no provisions expressly permitting or prohibiting such reconsideration.

8. In the absence of directly controlling provisions for reconsideration, Article XI of the Statute provides: "In all matters not addressed in this Statute, the Sanctions Board Conflict of Interest Guidelines, or the Sanctions Procedures, the Sanctions Board shall follow the instructions of the Sanctions Board Chair for the operation of the Sanctions Board." Article IV further provides: "In the event of a dispute as to whether the Sanctions Board has competence over a particular matter, the Sanctions Board shall decide whether it has the authority to handle such matter under this Statute." Finally, Article VII, Section 2, reads in relevant part as follows: "A plenary session may be convened by the Sanctions Board Chair when . . . it is necessary to deal with . . . a question of [the Sanctions Board's] competence under Article IV, or any other matter warranting consideration by the full Sanctions Board."

9. Consistent with the above statutory provisions, and at the instruction of the Sanctions Board Chair, the Sanctions Board first considered the applicable standards for requests for reconsideration in Sanctions Board Decision No. 43 (2011), as later summarized in Sanctions

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[4] Sanctions Board Decision No. 4 (2009).

[5] Id. at para. 8.

[6] Id.

Board Decisions No. 57 (2013) and No. 58 (2013). The Sanctions Board there emphasized the principle of finality as a fundamental aspect of any judicial or quasi-judicial process, while at the same time recognizing that fundamental principles of fairness dictate that finality must, on occasion, yield in narrowly defined and exceptional circumstances.[7] Looking to general principles of law, as demonstrated by leading international and national practice, the Sanctions Board concluded that a final decision may be reconsidered only in exceptional circumstances such as the discovery of newly available and potentially decisive facts, fraud or other misconduct in the original proceedings, or a clerical mistake in the issuance of the original decision.[8] Mere attempts to re-argue or re-litigate a case, or respondents' failure to timely or effectively present previously available facts or related evidence to the Sanctions Board, do not warrant reconsideration.[9]

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. The Respondents' Principal Contentions in the Request

10. The Respondents request a review of the Original Decision and relief in the form of a "lifting or reduction" of the Bank's sanctions of indefinite debarment, or any "[o]ther reliefs consistent with equity and justice."

11. The Respondents assert three primary bases for their Request.

i. The sanctions of indefinite debarment are "not sustainable," given that the Sanctions Board had found the Respondents culpable under a narrower range of allegations than the World Bank's Evaluation and Suspension Officer (the "EO")[10] had applied, but imposed greater sanctions than the EO had recommended for all of the original counts of alleged misconduct combined.

ii. The sanctions of indefinite debarment are "grossly excessive and disproportionate" to the misconduct found in the Original Decision, if considered under the "Unified Sanctioning Guidelines" published in 2010, which should be applied retroactively.

iii. The sanctions of indefinite debarment are not in proportion with "the supervening array" of Sanctions Board decisions in recent years, which have all imposed lighter sanctions, even in cases of more egregious misconduct.

12. As secondary considerations, the Respondents assert that the "ringleader-of-cartel" theory underlying their original sanctions "was rendered inherently unreliable" by subsequent evidence and multiple national investigations; and that the Respondents merit a reprieve from

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[7] See, e.g., Sanctions Board Decision No. 57 (2013) at paras. 7-8 (citing Sanctions Board Decision No. 43 (2011) at paras. 14-15).

[8] See, e.g., id. at para. 8 (citing Sanctions Board Decision No. 43 (2011) at paras. 15-27).

[9] See, e.g., id. (citing Sanctions Board Decision No. 43 (2011) at paras. 26-27).

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

their sanctions given their "[r]edeeming [r]ecord" since the Original Decision and the stigma from the indefinite debarment.

B. INT's Principal Contentions in its Comments

13. INT opposes reconsideration of the Original Decision, asserting that the Respondents' claims in the Request do not meet the threshold of "exceptional circumstances." With respect to the Respondents' primary bases for the Request, INT submits that:

i. any discrepancies between the EO's recommended sanctions and the Sanctions Board's final decision do not constitute a basis for reconsideration, as the Sanctions Board's review is conducted de novo;

ii. any discrepancies between the Original Decision issued in 2009 and the Bank's subsequent Sanctioning Guidelines do not constitute an exceptional circumstance meriting reconsideration, because the Original Decision was issued in accordance with the sanctioning framework applicable at that time; and

iii. any discrepancies in outcome between the Original Decision and subsequent Sanctions Board decisions do not constitute an exceptional circumstance meriting reconsideration, because calculations of an appropriate sanction are case- and fact-specific, and it is not clear that lighter sanctions would be imposed on the Respondents if Sanctions Case No. 73 were to be decided anew in 2015.

14. INT asserts that arguments regarding the Respondents' role in the collusive scheme, as set out in the Request, "substantially mirror" the Respondents' submissions in the original proceedings, which have already been considered by the Sanctions Board. With respect to the Respondents' claim that new witness statements and evidence from post-debarment investigations appear to undermine the Sanctions Board's original finding of collusion, INT states that the availability of this evidence in 2009, paired with the Respondents' choice to file the request only in late 2014, "disqualif[ies] it as an exceptional circumstance." INT additionally submits that the Respondents' asserted "redeeming record" does not constitute an exceptional circumstance and that the Sanctions Board consciously did not provide for conditional release from the debarment imposed by the Original Decision.

15. In conclusion, INT submits that the Sanctions Board should deny the Request. INT also asserts, however, that if the Sanctions Board may nevertheless decide that this case merits reconsideration, then any reconsideration should take into account all the accusations presented in the original proceedings, "to ensure the seriousness of the Respondents' misconduct is thoroughly examined."

C. The Parties' Principal Contentions in Additional Submissions

16. Upon preliminary review of the above submissions, the Sanctions Board Chair invited the parties on April 22, 2015, to clarify whether they would request a hearing in this matter. On April 27, 2015, the Respondents expressed their desire to participate. On April 29, 2015, INT objected to a hearing as "at least premature." INT first questioned the Sanctions Board's "authority to reconsider its previous decisions," and suggested that this authority may be more

appropriately left to World Bank Group Management or the Integrity Compliance Officer (the "ICO"). INT next questioned the basis for convening a hearing on a request for reconsideration, asserting that Article VI of the Sanctions Procedures limits the use of hearings to accusations against a respondent. INT also sought clarification on "the purpose and nature of the proposed oral hearing." INT reiterated its view that if the hearing was intended to assess whether the Respondents should be released from debarment, INT should have "the opportunity to address all the accusations presented in the original Notice of Sanctions Proceedings to ensure that the seriousness of the Respondents' conduct is properly evaluated."

17. At the Sanctions Board Chair's invitation, the Respondents filed an additional submission on May 15, 2015, which stated that (i) the Sanctions Board's jurisdiction to entertain requests for reconsideration had been established in Sanctions Board Decisions No. 43 (2011) and No. 57 (2013); (ii) the presence or absence of exceptional circumstances was to be decided independently by the Sanctions Board; and (iii) the issue of whether to conduct an oral hearing was "well within the competence" of the Sanctions Board, given its authority to consider the matter at issue.

18. The Respondents' submission of May 15, 2015, additionally commented that the Sanctions Board was not precluded from seeking the "counsel or suggestion" of the ICO on the disposition of the Request, and asked for "the lifting or reconsideration of the indefinite debarment sanction," without prejudice to the original finding of collusion or the possible "institution of a Compliance Program consistent with the World Bank Group Integrity Guidelines."

D. Presentations at the Hearing

19. At the hearing convened by the Sanctions Board Chair, the Respondents reiterated that they did not wish to "re-litigate the case." Rather, the Respondents asserted that they intended only to request that the current sanctions framework, which they view as including the 2010 Sanctioning Guidelines and the subsequent array of Sanctions Board decisions, be applied to revise their sanctions of indefinite debarment. The Respondents argued that, under the current sanctions framework, the misconduct at issue in the Original Decision would not garner a sanction of indefinite debarment. In support of this contention, the Respondents asserted that the 2010 Sanctioning Guidelines require consideration of a number of mitigating factors applicable to the Respondents and state that indefinite debarment may be imposed only on respondents beyond rehabilitation. They further asserted that, following the Original Decision, the Sanctions Board imposed much lighter sanctions in cases of more egregious misconduct than that attributed to the Respondents. The Respondents additionally claimed that their inquiries regarding possible participation in a hearing during the original proceedings were not answered during those proceedings, which prevented them from mounting a more vigorous defense.

20. INT reiterated its view that the Respondents had not presented evidence of any exceptional circumstances to warrant reconsideration of the Original Decision. With respect to the Respondents' arguments based on the 2010 Sanctioning Guidelines, INT argued that the Guidelines were not retroactive, did not present a change beneficial to the Respondents, and provided only guidance rather than mandatory rules for sanctioning. INT further submitted that

the Respondents' Request on this basis, five years after publication of the 2010 Sanctioning Guidelines, was not timely. With respect to the Sanctions Board's jurisdiction, which INT had challenged in its additional written submission of April 29, 2015, INT amended its position to acknowledge the Sanctions Board's jurisdiction to consider requests for reconsideration. However, INT submitted that any possible application of the lex mitior principle to final decisions and the review of a respondent's potential for rehabilitation and release were matters better suited to consideration by World Bank Group Management or the ICO, respectively.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

21. The Sanctions Board first addresses the jurisdictional issues raised by the parties. The Sanctions Board then considers the merits of the Respondents' Request.

A. Jurisdiction

22. Noting the standards of review set out in Paragraphs 6-9 above, the Sanctions Board affirms its authority to consider the Respondents' Request for Reconsideration and reaffirms, as a general matter, its authority to consider respondents' requests for reconsideration of final Sanctions Board decisions. The Sanctions Board also confirms that the specific examples of exceptional circumstances introduced in Sanctions Board Decision No. 43 (2011) do not constitute an exhaustive list,[11] even though the range of eligible circumstances will necessarily remain narrow, consistent with that decision's reference to "narrowly defined and exceptional circumstances."[12]

23. The Sanctions Board further observes that nothing in the sanctions framework explicitly limits the possibility of hearings to cases in the process of an original appeal. INT asserts that the only known basis for any hearing is Article VI of the Sanctions Procedures, which, according to INT, limits the use of hearings to addressing accusations against a respondent. However, the Sanctions Board notes that the applicable Sanctions Procedures, which address hearings in Article V and evidence in Article VI, do not purport to define all circumstances in which a hearing may be convened. Accordingly, and considering the issues presented in relation to the Request, the parties were informed on May 18, 2015, of the Sanctions Board Chair's determination to call a hearing in this matter, pursuant to his discretion under Article XI of the Sanctions Board Statute.

B. Merits of the Request

24. The Sanctions Board does not find exceptional circumstances warranting reconsideration of the Original Decision. The Request does not appear to claim or present any evidence of fraud in the original proceedings, or evidence of a clerical error in the Original Decision as might justify reconsideration. Instead, the Request refers to potential evidence of a recantation by a witness and requests that several other factors not identified in Sanctions Board Decision No. 43

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[11] See, e.g., Sanctions Board Decision No. 62 (2014) at para. 12 (considering whether the respondent's request presented "other types of exceptional circumstances").

[12] Sanctions Board Decision No. 43 (2011) at para. 15.

(2011) be considered as "exceptional circumstances" warranting reconsideration as a matter of fundamental fairness. The Sanctions Board addresses each of these points below.

1. *Discrepancy with the EO's recommended sanctions*

25. The Respondents assert that the Sanctions Board's imposition of indefinite debarments for collusion is "excessive" in light of the EO's recommendation of debarments for eight years, with the possibility of conditional early release after five years, for a combination of collusion, other fraud, and corruption. INT opposes consideration of any discrepancy between the EO's recommendation and the Sanctions Board's final decision, asserting that the Sanctions Board conducts its review de novo.

26. Section 15(2)(d) of the Sanctions Procedures explicitly states that "[i]n determining the appropriate sanction, the Sanctions Board . . . shall not be bound by the recommendation of the Evaluation Officer." Nor do the Sanctions Procedures provide that the EO's recommendation serve as a baseline or reference point for the Sanctions Board's sanctions analysis. Rather, the Sanctions Board has long emphasized the case-specific and de novo nature of its review, which rests on a full appeals record that may be quite different from the more limited record initially considered by the EO.[13] For these reasons, the Sanctions Board in Decision No. 57 (2013) rejected the argument that reconsideration was warranted because the original decision did not indicate an intent to go above the EO's recommended sanction.[14] The Sanctions Board likewise finds that any "discrepancy" between the Original Decision and the EO's recommended sanctions against the Respondents fails to constitute an "exceptional circumstance" as may warrant reconsideration here.

2. *Retroactive application of later sanctioning guidelines*

27. The Respondents argue that, consistent with a "well-entrenched doctrine rooted in fundamental fairness," new rules "beneficial to the accused" should be applied with retroactive effect. In support of this argument, the Respondents refer primarily to domestic cases favoring retroactive application of "supervening rules beneficial to the accused." The Respondents also cite to the International Covenant on Civil and Political Rights, which stipulates that criminal offenders shall benefit from favorable changes to the law providing for lighter criminal penalties.[15]

28. The World Bank Group's sanctions framework identifies general legal principles as a useful and legitimate source of law for the sanctions regime within certain parameters.[16] As the

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[13] See, e.g., Sanctions Board Decision No. 57 (2013) at para. 15 ("The Sanctions Board's final determination, resting on the full appeals record, may differ from the EO's recommendation without the need to explain or characterize its de novo judgment as a departure from the EO's recommended sanction.")

[14] See id.

[15] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 at Article 15, available at: http://www.refworld.org/docid/3ae6b3aa0.html.

[16] See The World Bank Group's Sanctions Regime: Information Note (November 2011) (the "Information Note") at p. 15, available at: http://go.worldbank.org/H X66HN8060.

Sanctions Board has previously observed, no statutory or procedural framework can be expected to anticipate and comprehensively address all conceivable scenarios or issues that may arise within a complex process, and the fact that lacunae exist in the Statute and the Sanctions Procedures is itself unremarkable and inevitable.[17] The Sanctions Board consequently considered the governing rules and procedures of other international administrative tribunals and leading national practice in identifying potential bases for reconsideration.[18]

29. However, the sanctions framework also cautions against the "retroactive application of norms" as a general matter.[19] The Respondents have not identified any Sanctions Board precedent, provisions of the sanctions framework, or international law that would support this principle of beneficial retroactivity in a comparable context and beyond the close of proceedings in a given case. The unlimited retroactive application of new norms potentially favorable to respondents after the conclusion of sanctions proceedings, as the Respondents seek, would entirely undermine finality. Nor could Respondents point to any international law rule or precedent that stipulates that the principle of lex mitior requires new rules to be applied to finalized cases. Finally, it is not apparent, as a factual matter, whether the Respondents would have received lighter sanctions under the 2010 Sanctioning Guidelines. Accordingly, the Sanctions Board declines to consider the Bank's adoption of the 2010 Sanctioning Guidelines as an exceptional circumstance warranting reconsideration of the Original Decision as issued in 2009.

3. *Proportionality with the Sanctions Board's subsequent decisions*

30. The Respondents assert that the Original Decision's incongruence with the "supervening array of sanctions decisions" presents an exceptional circumstance warranting reconsideration. The Respondents specifically submit that the sanctions of indefinite debarment seem "grossly disproportionate" in light of the Sanctions Board's published decisions, "all uniformly imposing lighter penalties even in more egregious cases." The Respondents also assert that, in cases decided by the Sanctions Board after the Original Decision, a "finding of collusion merited [a] lesser debarment period than the other sanctionable practices." INT disputes this argument, noting that "[s]anctions calculations are case- and fact-specific decisions and it is not clear at all that, were this case to be decided today, a different sanction would be imposed on [each of the Respondents]."

31. The Sanctions Board need not decide at this time whether gross disproportionality of a sanction may be an accepted ground for reconsideration, as the Sanctions Board does not find any evidence that the Respondents' sanctions as imposed by the Original Decision were in fact grossly disproportionate. Past cases of collusion cited by the Respondents relate to substantially different fact patterns, none of which involved a collusion scheme as extensive as that at issue in the Original Decision. In Sanctions Case No. 73, INT accused the Respondents of playing a leading role in a collusive arrangement, which INT termed a "cartel," that involved several public

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[17] Sanctions Board Decision No. 43 (2011) at para. 12.

[18] See, e.g., id. at paras. 15-24.

[19] Information Note at p. 15.

figures and government officials as well as at least fifteen bidders. INT specifically alleged that the Respondents sought to systematically manipulate the public procurement process in the Philippines construction sector by using bribes, kickbacks, payments to designated losing bidders, and intimidating tactics in order to direct contract awards to particular contractors.[20] In the Original Decision, the Sanctions Board acknowledged having imposed "the most severe sanction," and noted that it took into account as aggravating factors the Respondents' roles as ringleaders involved in multiple instances of misconduct, and the Respondent Firm's position as a designated winner in the collusive bidding arrangement.[21] The Original Decision did not recognize any mitigating circumstances for either of the Respondents. In contrast, collusion cases decided by the Sanctions Board after the Original Decision involved the one-time coordination of bids between two or three bidders and included at least one mitigating factor for each respondent.[22]

4. *Newly available and potentially decisive facts*

32. The Respondents deny the roles of "ringleaders" in the collusive scheme attributed to them in the Original Decision, asserting that original witness testimony was not credible and has been contradicted by developments and other witness statements following the Respondents' sanction. INT responds that the Respondents' arguments "substantially mirror" their claims in the original proceedings.

33. The Sanctions Board notes that the Respondents' current arguments regarding the credibility and weight of INT's evidence have some similarities to the Respondents' contentions in the original proceedings. The Respondents appear to raise new arguments insofar as they assert that one witness recanted his testimony after the Original Decision and that numerous post-debarment investigations in the Philippines did not find a sufficient basis to sustain the "cartel story." However, the Request does not provide any evidence of the asserted recantation or timeline of post-debarment determinations in the Philippines. The Sanctions Board therefore finds that the Respondents have not furnished any newly available and potentially decisive evidence as would warrant reconsideration of the Original Decision.

5. *The Respondents' record of performance*

34. The Respondents assert that a permanent debarment is fundamentally unfair in light of the Respondents' "redeeming record" of good behavior and an outstanding track record of performance. The Respondents refer in particular to a large-scale investigation and debarment of eighty-nine contractors by the Philippine government for misconduct in bidding and contract

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[20] Sanctions Board Decision No. 4 (2009) at para. 2.

[21] Id. at para. 8.

[22] Sanctions Board Decision No. 40 (2010) (imposing a three-year debarment for collusion, with the possibility of conditional early release after two years, where the Sanctions Board found that the respondent had coordinated prices with two other bidders during a single selection process and subsequently cooperated with INT during its investigation); Sanctions Board Decision No. 45 (2011) (imposing a three-year debarment for collusion, with the possibility of conditional early release after two years, where the Sanctions Board found that the respondent colluded with one other bidder during a single selection process, played a passive role in the collusive arrangement, and cooperated with INT during its investigation.)

execution, asserting that the Respondent Firm "is not one of them." INT argues that a redeeming record does not fit within the scope of exceptional circumstances set out in Sanctions Board Decision No. 57 (2013). The Sanctions Board has previously declined to find a respondent's post-debarment record of performance to justify a request for reconsideration.[23] In the present case, the Sanctions Board similarly declines to consider the Respondents' asserted business record since the original debarment as an exceptional circumstance warranting reconsideration of the Original Decision.

6. *Reputational and financial impact of the original sanctions*

35. The Respondents submit that the stigma of the indefinite debarment has harmed the Respondents' reputations and deprived them of business opportunities. The Sanctions Board has previously rejected the expected impact of a sanction on a respondent's operations or the reputations of its individual employees as a basis for either mitigation[24] or reconsideration of a final decision.[25] In this case, the Sanctions Board similarly rejects the asserted reputational and financial impact of debarment as an exceptional circumstance warranting reconsideration of the Original Decision.

7. *Conduct of the original proceedings*

36. The Respondents assert that, during the original proceedings in Sanctions Case No. 73, the Respondent Firm "timely and properly" reserved the right to a hearing in its Response, and the Respondents sent inquiries to the then Secretary to the Sanctions Board, who did not respond, regarding the mechanics of the hearing and the possible distribution of additional materials. The Respondents claim that the absence of a reply to their inquiries regarding a hearing prevented them from mounting a more vigorous defense.

37. The record reflects that while the Respondent Owner's Response in Sanctions Case No. 73 did not mention a hearing, the Respondent Firm's Response stated that the Respondent Firm reserved "the privilege to request a hearing . . . predicated on the [Respondent Firm's] need . . . to fully clarify and familiarize itself on matters relating to procedures and processes in Board hearings." The Respondent Firm stated that it would inform the Sanctions Board of its "decision on the reservation" at a later point in time. The Sanctions Procedures stipulate that the request for a hearing "shall be made in the Respondent's Response or in INT's Reply."[26] The Notice of Sanctions Proceedings in Sanctions Case No. 73 also explicitly provided that "the request for a hearing must be made in the Respondent's Response. . . . If no such request for a hearing is made by a Respondent or INT, the Sanctions Board will review the case and render its decision on the basis of the existing record without a hearing."

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[23] Sanctions Board Decision No. 62 (2014) at paras. 7(ii) and 9.

[24] Sanctions Board Decision No. 66 (2014) at para. 48.

[25] See, e.g., Sanctions Board Decision No. 80 (2015) at para. 18.

[26] Sanctions Procedures at Section 10.

38. In these circumstances, the Sanctions Board finds that an asserted "reservation of the privilege to request a hearing" does not constitute a request envisioned in Section 10 of the Sanctions Procedures and therefore did not entitle the Respondent Firm to a hearing. The Sanctions Board notes with regret that the Respondents' inquiries regarding hearing participation and distribution of additional materials were not addressed during the original proceedings. However, the Sanctions Board finds no evidence of a failure of due process that would constitute an exceptional circumstance warranting reconsideration of the Original Decision.

39. For all the reasons stated above, the Sanctions Board hereby denies the Respondents' request for relief in the form of reconsideration or reprieve.

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
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