THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: March 30, 2017

Sanctions Board Decision No. 92
(Sanctions Cases No. 347 and No. 387)

IBRD Loan No. 4834-IND
Indonesia

IDA Credit No. 4347-VN
Vietnam

IDA Credit No. 4474-VN
Vietnam

IDA Credit No. 4698-VN
Vietnam

IDA Credit No. 4900-VN
Vietnam

Decision of the World Bank Group[1] Sanctions Board imposing sanctions of debarment with conditional release on the respondent entity in Sanctions Cases No. 347 and No. 387 (the "Respondent Firm") and the individual respondent in Sanctions Case No. 387 (the managing director of the Respondent Firm, hereinafter referred to as the "Individual Respondent") (together, the "Respondents"), together with any entity that is an Affiliate[2] directly or indirectly controlled by each of the Respondents, with a minimum period of ineligibility of fourteen (14) years for the Respondent Firm and three (3) years and six (6) months for the Individual Respondent beginning from the date of this decision. These sanctions are imposed on the Respondent Firm for fraudulent and corrupt practices, and on the Individual Respondent for a fraudulent practice.

I. INTRODUCTION

1. The Sanctions Board met in a plenary session in September 2016, and January and March 2017 at the World Bank Group's headquarters in Washington, D.C., to jointly review Sanctions Cases No. 347 and No. 387 (the "Cases"). The Sanctions Board was composed of

[1] 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 the 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] 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." Sanctions Procedures at Section 1.02(a).

J. James Spinner (Chair), Olufunke Adekoya, Teresa Cheng, Catherine O'Regan, and Anne van't Veer.

2. Considering that the Respondents requested to join the Cases for hearing and deliberations and that the World Bank Group's Integrity Vice Presidency ("INT") raised no objections, the Sanctions Board determined that materials relating to the sanctions proceedings in each of the Cases would be made available to the Respondents in the other proceedings in accordance with Section 5.04(b) of the Sanctions Procedures. Written pleadings and evidence were therefore shared across the Cases. In addition, following the Respondents' request for a hearing, the Sanctions Board Chair convened a joint hearing in the Cases in accordance with Article VI of the Sanctions Procedures. The hearing was held on September 20, 2016. INT participated in the oral proceedings through its representatives attending in person. The Respondents were represented by external counsel and the Individual Respondent, all attending the hearing in person. The Sanctions Board deliberated and reached its decision in the Cases based on the written record and 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 in the Cases included the following:

From Sanctions Case No. 347

i. Notice of Sanctions Proceedings issued by the World Bank's Evaluation and Suspension Officer (the "EO")[3] to the Respondent Firm on August 3, 2015 (the "347 Notice"), appending the Statement of Accusations and Evidence (the "347 SAE") presented to the EO by INT, dated February 19, 2015;

ii. Explanation submitted by the Respondent Firm to the EO on October 26, 2015 (the "347 Explanation");

iii. Response submitted by the Respondent Firm to the Secretary to the Sanctions Board on February 29, 2016, and the submission of March 10, 2016, attaching English translations of foreign-language materials submitted with the Response of February 29, 2016 (together, the "347 Response"); and

iv. Reply submitted by INT to the Secretary to the Sanctions Board on April 18, 2016, addressing both of the Cases (the "Reply").

[3] 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.

From Sanctions Case No. 387

i. Notice of Sanctions Proceedings issued by the EO to the Respondents on August 3, 2015 (the "387 Notice"), appending the Statement of Accusations and Evidence (the "387 SAE") presented to the EO by INT, dated May 5, 2015;

ii. Explanation submitted by the Respondents to the EO on October 26, 2015 (the "387 Explanation");

iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on February 29, 2016 (the "387 Response"), and the submission of March 10, 2016, attaching English translations of foreign-language materials submitted with the Response of February 29, 2016 (together, the "387 Response"); and

iv. the 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 each of the Respondents in the Cases, together with any entity that is an Affiliate directly or indirectly controlled by either of them, with conditions for release specific to each of the Respondents, and minimum periods of ineligibility of eleven (11) years for the Respondent Firm in connection with the Cases, and eight (8) years for the Individual Respondent in connection with Sanctions Case No. 387.

5. Effective February 21, 2014, and pursuant to Article II of the Sanctions Procedures, which provides for temporary suspension prior to sanctions proceedings in certain circumstances, the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, was temporarily suspended from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[4] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[5] 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 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"[6]). Upon submission of the 347 SAE to the EO, the Respondent Firm's

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[4] 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, consultant, manufacturer or supplier, or service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section 9.01(c)(i), n.16.

[5] A nominated sub-contractor, consultant, manufacturer or supplier, or 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. Sanctions Procedures at Section 9.01(c)(ii), n.17.

[6] For the avoidance of doubt, the term "Bank-Financed Projects" includes activities financed through trust funds administered by the Bank to the extent governed by said Guidelines. Sanctions Procedures at Section 1.01(c)(i), n.3.

temporary suspension was automatically extended pending the final outcome of the sanctions proceedings pursuant to Sections 2.04(b) and 4.02 of the Sanctions Procedures.

6. Effective August 3, 2015, and pursuant to the 387 Notice and Section 4.02(a) of the Sanctions Procedures, the EO temporarily suspended the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Individual Respondent, from eligibility to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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 further in the preparation or implementation of any Bank-Financed Projects pending the final outcome of the sanctions proceedings in Sanctions Case No. 387. The 347 and 387 Notices specified that the temporary suspensions would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

7. INT's allegations of misconduct in the Cases relate to the following transportation and infrastructure projects (together, the "Projects"):

i. the Strategic Road Infrastructure Project (the "SRIP") in Indonesia;

ii. the Hanoi Urban Transport Development Project (the "HUTDP") in Vietnam;

iii. the Northern Delta Transport Development Project (the "NDTDP") in Vietnam;

iv. the Second Northern Mountains Poverty Reduction Project (the "2NMPRP") in Vietnam; and

v. the Haiphong Urban Transport Development Project (the "HPUTDP") in Vietnam.

8. The record reflects that the Respondent Firm submitted proposals for, and was subsequently awarded, contracts under each of the Projects (hereinafter referred to as the "SRIP Contract," the "HUTDP Contract," the "NDTDP Contract," the "2NMPRP Contract," and the "HPUTDP Contract," respectively; together, the "Contracts").

9. *Fraud allegations*: INT alleges two counts of fraud against the Respondent Firm and another count of fraud against both Respondents. According to INT, the Respondent Firm engaged in fraudulent practices by (i) billing for services that were not actually performed by one of its consultants under the 2NMPRP Contract; and (ii) failing to disclose its agency agreement with, and the commissions paid or to be paid to, a marketing agent (the "Marketing Agent") in relation to the SRIP Contract. INT further alleges that the Respondents engaged in fraudulent practices by misrepresenting the availability of two consultants to work on the SRIP Contract as key staff despite knowing that they were unavailable to participate.

10. *Corruption allegations*: INT alleges four counts of corruption against the Respondent Firm and another count of corruption against both Respondents. According to INT, the Respondent Firm, along with the Individual Respondent in one instance, made bribe payments

to officials of the implementation units for the Projects in order to influence the award and/or execution of the Contracts.

III. APPLICABLE STANDARDS OF REVIEW

11. 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.

12. 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.

13. The Cases involve diverse allegations of sanctionable practices that INT submits occurred at various times during and following the bidding and contract implementation processes. The Sanctions Board concludes that, for each of the Contracts, the alleged sanctionable practices are defined by the applicable version of the Bank's Consultant Guidelines as set out below.

i. For the SRIP, the relevant loan agreement provided that the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines") would apply, and the relevant request for proposals ("RFP") and the SRIP Contract contained definitions of the alleged sanctionable practices in accordance with that version of the Guidelines. Therefore, the fraud and corruption allegations relating to the SRIP Contract are governed by the May 2004 Consultant Guidelines.

ii. For the HUTDP and NDTDP, the relevant financing agreements provided that the May 2004 Consultant Guidelines would apply. However, the relevant RFP and Contracts contained definitions of corrupt practices consistent with the common definition in the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) (the "October 2006 Consultant Guidelines") and the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006, and May 1, 2010) (the "May 2010 Consultant Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the applicable standards in the event of such conflict shall be those agreed between the borrowing country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing country and the Bank.[7] Therefore, the corruption

[7] See, e.g., Sanctions Board Decision No. 67 (2014) at para. 10; Sanctions Board Decision No. 68 (2014) at para. 12.

allegations relating to the HUTDP and the NDTDP Contracts have the meaning set forth in the October 2006 and the May 2010 Consultant Guidelines.

iii. For the 2NMPRP, while the relevant financing agreement did not refer to a particular version of the Consultant Guidelines, the relevant RFP and the 2NMPRP Contract defined the alleged sanctionable practices in accordance with the October 2006 and the May 2010 Consultant Guidelines. Therefore, the fraud and corruption allegations relating to the 2NMPRP Contract have the meaning set forth in the October 2006 and the May 2010 Consultant Guidelines.

iv. For the HPUTDP, the relevant financing agreement provided that the May 2010 Consultant Guidelines would apply, and the RFP and the HPUTDP Contract defined corrupt practice in accordance with the same version of the Guidelines. Therefore, the corruption allegation relating to the HPUTDP Contract is governed by the May 2010 Consultant Guidelines.

14. The applicable definitions of fraudulent and corrupt practices are set out below in the Sanctions Board's analysis of each of INT's allegations.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. The Written Record in Sanctions Case No. 347

1. INT's principal contentions in the 347 SAE

15. *Fraud allegation 1*: INT alleges that the Respondent Firm engaged in a fraudulent practice in connection with the 2NMPRP Contract by submitting two invoices seeking payment for services purportedly rendered by a research assistant (the "Research Assistant") from January to July 2012 and from August to November 2012 when the Research Assistant was not recruited until at least September 2012. INT states that the Respondent Firm "has already admitted to this allegation and offered to reimburse the Bank for its loss."

16. INT does not allege any aggravating or mitigating factors.

2. The Respondent Firm's principal contentions in the 347 Explanation and the 347 Response

a. Contentions regarding procedural and evidentiary issues

17. As a preliminary matter, the Respondent Firm asserts that INT committed several "procedural and due process violations." According to the Respondent Firm, these violations include "prejudicially redact[ing] key exhibits," failing to redact or exclude irrelevant and prejudicial material in the record, failing to identify the authorship and provenance of certain evidence, failing to provide translated documents, and conducting a flawed investigation.

b. Contentions regarding the alleged fraudulent practice

18. *Fraud allegation 1*: The Respondent Firm admits that the invoices at issue contained inaccurate information that led to overbilling, but denies any "reckless or deliberate intention to

defraud the client." The Respondent Firm asserts that it did not instruct, encourage, or otherwise endorse the misrepresentation in the invoices. According to the Respondent Firm, its regional manager who signed the invoices (the "Regional Manager") was a "rogue employee" and the Respondent Firm was unable to detect any "illicit transactions" since the Respondent Firm's personnel in the Vietnam office "worked in conspiracy to disguise withdrawals made in whole or in part for personal gain."

c. Sanctioning factors

19. Although INT does not allege any aggravating factors in Sanctions Case No. 347, the Respondent Firm advances arguments in response to the aggravating factors alleged by INT in Sanctions Case No. 387. INT's allegations with respect to aggravating factors are discussed in Paragraph 29, while the Respondents' contentions regarding these allegations are discussed in Paragraph 35. With respect to mitigating factors, the Respondent Firm argues that mitigation is warranted for its offer to reimburse the Bank. The Respondent Firm asserts a number of other mitigating factors, which are identical to those that the Respondents assert in Sanctions Case No. 387, as discussed in Paragraph 36 below.

3. INT's principal contentions in the Reply

20. Although the Sanctions Board had not yet determined to join the Cases at the time of INT's filing of the Reply, INT chose to file a joint Reply for the Cases. The Reply is discussed in Paragraphs 37-38 below under Sanctions Case No. 387.

B. The Written Record in Sanctions Case No. 387

1. INT's principal contentions in the 387 SAE

a. Allegations of fraudulent practices

21. *Fraud allegation 2*: INT alleges that the Respondent Firm engaged in a fraudulent practice in connection with the SRIP Contract by failing to disclose its agency agreement with, and the commissions paid or to be paid to, the Marketing Agent. In support of this allegation, INT asserts, inter alia, that the Marketing Agent issued invoices to the Respondent Firm using his personal letterhead and that the Respondent Firm deposited its payments for the Marketing Agent's services to his personal bank account.

22. *Fraud allegation 3*: INT alleges that both Respondents engaged in a fraudulent practice by misrepresenting the availability of two consultants as key staff in order to qualify for, and ensure the signing of, the SRIP Contract. INT contends that employees of the Respondent Firm, upon instructions from the Individual Respondent, indicated in the technical proposal for the SRIP Contract the participation of the two consultants, and later confirmed their involvement during contract negotiations and contract signing, despite knowing that they would not be available. INT asserts that during INT's interview with the Individual Respondent, he admitted to the misrepresentation of the consultants' availability.

b. Allegations of corrupt practices

23. INT's primary contentions in relation to the corruption allegations derive from the Regional Manager's emails to the Individual Respondent on February 7, 2014, and April 4, 2014 (the "2014 Emails"), in which she described her payment of bribes to officials of the relevant project implementation units on behalf of the Respondent Firm and as authorized by the Individual Respondent.

24. *Corruption allegation 1*: INT alleges that the Respondent Firm engaged in corrupt practices by making bribe payments to the project manager for the SRIP Contract (the "SRIP Manager") in order to influence the award and execution of the SRIP Contract. INT contends that the Individual Respondent instructed the Regional Manager to deliver money to the Marketing Agent, who then gave it to the SRIP Manager. According to INT, the Marketing Agent admitted to this corrupt arrangement during his interview with INT.

25. *Corruption allegation 2*: INT alleges that the Respondent Firm engaged in corrupt practices by paying bribes to officials of the project implementation unit for the HUTDP (the "HUTDP PIU") in order to influence the award and execution of the HUTDP Contract. INT asserts that the Regional Manager regularly gave funds to the deputy director of one of the Respondent Firm's sub-consultants under the HUTDP Contract (the "Deputy Director"), who then delivered the money to the HUTDP PIU officials before the signing and during the execution of the HUTDP Contract. INT argues that the alleged bribe payments correspond to the amounts and timing of petty cash withdrawals made by the Regional Manager from the Respondent Firm's Vietnam office.

26. *Corruption allegation 3*: INT alleges that both the Respondent Firm and the Individual Respondent engaged in corrupt practices by paying bribes to officials of the project implementation unit of the NDTDP (the "NDTDP PIU") in order to influence the award and execution of the NDTDP Contract. INT asserts that the Regional Manager, with the knowledge and approval of the Individual Respondent, paid NDTDP PIU officials after contract signing, with the payments corresponding to the amount of petty cash withdrawals made around the same time by the Regional Manager from the Respondent Firm's Vietnam office.

27. *Corruption allegation 4*: INT alleges that the Respondent Firm engaged in corrupt practices by paying bribes to officials of the project implementation unit of the 2NMPRP (the "2NMPRP PIU") in order to influence the award and execution of the 2NMPRP Contract. INT asserts that there appears to have been a "pay-as-you-earn" arrangement between the Respondent Firm and the 2NMPRP PIU officials, as "transactions recorded in [the Respondent Firm's petty cash reports] at various stages of invoicing" support the Regional Manager's statement that bribes were paid in order to win the 2NMPRP Contract.

28. *Corruption allegation 5*: INT alleges that the Respondent Firm engaged in corrupt practices by paying bribes to officials of the project implementation unit of the HPUTDP (the "HPUTDP PIU") in order to influence the award of the HPUTDP Contract. According to INT, the timing and amounts of petty cash withdrawals made by the Regional Manager from the Respondent Firm's Vietnam office support her claims in the 2014 Emails that the Respondent Firm made improper payments to the HPUTDP officials.

c. Sanctioning factors

29. INT submits that aggravation is warranted for both Respondents for their obstruction of INT's investigation. INT also submits that aggravation is warranted for the Respondent Firm on account of the Individual Respondent's participation in the misconduct as director and co-owner of the Respondent Firm. With respect to mitigating factors, INT asserts that the Respondents' admission to some of INT's accusations may be considered in favor of the Respondents.

2. The Respondents' principal contentions in the 387 Explanation and the 387 Response

30. In their jointly submitted 387 Explanation and 387 Response, the Respondents present arguments addressing all of INT's allegations despite certain allegations being directed only against the Respondent Firm.

a. Contentions regarding procedural and evidentiary issues

31. The Respondents assert the same "procedural and due process violations" asserted by the Respondent Firm in Sanctions Case No. 347, as stated in Paragraph 17 above.

b. Contentions regarding the alleged fraudulent practices

32. *Fraud allegation 2*: The Respondents assert that there was no obligation for the Respondent Firm to disclose the participation of the Marketing Agent as "an agent in receipt of commission" in the technical proposal for the SRIP Contract because the Marketing Agent was an employee of the Respondent Firm's sub-consultant in the SRIP Contract (the "SRIP Sub-Consultant"). The Respondents argue that even if the Marketing Agent qualified as the Respondent Firm's agent, it "honestly held belief" that he was not an agent, and that the non-disclosure was neither intended nor able to influence the selection process in a manner favorable to the Respondent Firm.

33. *Fraud allegation 3*: The Respondents argue that the Individual Respondent was confident that he could secure the two consultants for the SRIP Contract since both consultants were known to initially express reluctance to participate in projects, but could eventually be persuaded. The Respondents deny that the Individual Respondent admitted to the misrepresentation, as the Respondent Firm "continuously had a clear expectation to reach agreement with both consultants," which expectation turned out to be an "honest mistake."

c. Contentions regarding the alleged corrupt practices

34. The Respondents argue that if improper payments were made to project officials, the Respondents did not have any knowledge and did not authorize such payments. The Respondents assert that they were unable "to detect illicit transactions" because the Respondent Firm's local staff in Vietnam "worked in conspiracy to disguise withdrawals made in whole or in part for personal gain." According to the Respondents, INT failed to show that the petty cash withdrawals from the Respondent Firm's Vietnam office were paid to project officials, considering that the Regional Manager could have withdrawn these amounts for her own benefit. With respect to the allegations of corruption in relation to the 2NMPRP Contract specifically, the Respondents

additionally assert that the purported pay-as-you-earn scheme is belied by the fact that the petty cash statements bear no corresponding entries for installment payments and the percentage of the payments compared to the invoice total is inconsistent.

d. Sanctioning factors

35. The Respondents dispute the application of aggravation for their alleged obstruction of INT's investigation on the ground that INT's evidence and witnesses are unreliable.

36. The Respondents seek mitigation for improved compliance measures at the Respondent Firm's Vietnam office; their cooperation with INT's investigation; the Respondent Firm's conduct of an internal investigation; the time served under temporary suspension; the Respondent Firm's record of good performance and genuine interest in achieving project objectives; the financial losses and reduction in the Respondent Firm's workforce since the commencement of INT's investigation; the passage of time since the alleged misconduct; and the excessiveness and disproportionality of the recommended sanctions.

3. INT's principal contentions in the Reply

37. In response to the Respondents' asserted "procedural and due process violations," INT emphasizes the administrative nature of its investigations and explains the provenance of certain evidence that the Respondents questioned. With respect to the Respondents' assertions regarding the inadmissibility of certain evidence and unreliability of witnesses, INT submits that the lack of clarity as to the motivation of some witnesses does not alter the fact that the actions uncovered in the evidence produced by these witnesses had occurred and constitute sanctionable practices. INT specifically asserts that, although the Regional Manager was not forthcoming during her interview with INT, she subsequently informed INT that the Respondents had contacted her and requested that she refrain from cooperating with the investigation. INT argues that apart from the Respondents' concerns about inadmissibility and provenance of certain evidence, they provide no additional substantive evidence to support their denial of INT's allegations.

38. Separately, INT asserts that it had informed the Respondents and their lawyers about the confidentiality of the settlement and sanctions processes. INT claims that aggravation is warranted for both Respondents on the basis of their violation of the confidentiality of sanctions proceedings by disclosing to a Danish arbitral tribunal (the "Danish Tribunal") and to other third parties excerpts of INT's transcripts of interview with several witnesses.

C. Presentations at the Joint Hearing

39. At the hearing, INT asserted that it followed the standards and processes required by the Bank for investigations and underscored the administrative nature of the proceedings. With respect to the merits of the Cases, INT argued that the Regional Manager acted as the Respondents' conduit for the payment to public officials. INT asserted that the Respondents allowed the Regional Manager to have great autonomy with limited controls and supervision, making the Respondents vicariously liable for the acts of their employees. INT also asserted that consultants of the Respondent Firm alerted the Respondents about the manner in which the Regional Manager was running the Vietnam office, but the Respondents ignored these concerns. According to INT, when the Respondents initiated a review of the management of the

Respondent Firm's Vietnam office, the Regional Manager threatened to expose the Respondents' corrupt system.

40. The Respondents argued that INT ignored its duty to conduct an impartial investigation, failed to disclose certain evidence, presented evidence with doubtful provenance, and made misrepresentations during settlement negotiations with the Respondents. The Respondents asserted that there was a lack of due process during the investigation, and consequently, the evidence presented by INT in the Cases should be rejected or accorded minimal weight. The Respondents further claimed that they made the mistake of trusting the Regional Manager, and contended that she had acted on her own, blackmailed the Respondents, and gave false evidence to INT. In addition, the Respondents disputed INT's allegation that they ignored concerns raised by the consultants in the Vietnam office with respect to the manner in which the office was run, and argued that they conducted an internal investigation as a result of the consultants' complaints.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

41. The Sanctions Board will first address the various procedural issues raised by the Respondents. The Sanctions Board will then consider whether it is more likely than not that the alleged sanctionable practices occurred, and if so, who may be held liable for each of the sanctionable practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Procedural and Evidentiary Matters

1. Determination on joinder and distribution of materials

42. As noted in Paragraph 2 above, considering that the Respondents requested to join the Cases for hearing and deliberations and that INT raised no objections, the Sanctions Board joined the Cases and approved the distribution of materials across the Cases in accordance with Section 5.04(b) of the Sanctions Procedures. In addition, the Sanctions Board Chair invited the Respondents to file additional written submissions limited to any new use of evidence from one case in the other case, and gave INT the opportunity to comment on the Respondents' submissions. The Respondents did not file any additional submissions.

2. Determinations on the Respondents' procedural and evidentiary requests

43. The Respondents argue in their Responses and subsequent submission that INT "prejudicially redacted key exhibits," and at the same time failed to redact or exclude from the record certain "irrelevant and prejudicial" material. The Respondents further argue that INT failed to identify the authorship and provenance of certain evidence, to provide fully translated documents, and to disclose certain evidence.

44. *Redaction challenge*: Following the Sanctions Board Chair's invitation of June 3, 2016, INT filed a submission on June 24, 2016, attaching unredacted versions of the exhibits that the Respondents had alleged to have been "prejudicially redacted." Accordingly, the Sanctions Board finds the Respondents' redaction challenge to be moot.

45. *Redaction of "irrelevant and prejudicial" material*: Following the Sanctions Board Chair's invitation of July 26, 2016, INT filed a submission on August 4, 2016. The Sanctions Board notes that no general requirement of relevance or materiality governs the admission of evidence under the Sanctions Procedures. Instead, Section 7.01 of the Sanctions Procedures provides that the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered. Evidence that is irrelevant or immaterial will not be taken into consideration by the Sanctions Board in reaching its decisions. The Sanctions Board accordingly denies the Respondents' request to redact or exclude from the record "irrelevant and prejudicial" material.

46. *Identification of authorship and provenance of evidence*: In its submission of June 24, 2016, INT asserted that the authorship and provenance of the evidence had already been identified in the lists of exhibits INT had attached to its SAEs. The Sanctions Board takes into account the parties' submissions and arguments on this matter and reiterates its discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

47. *Translation request*: In its submission of June 24, 2016, INT provided English translations of parts of exhibits that were originally in a foreign language. Noting that these translations are consistent with Section 5.02 of the Sanctions Procedures, the Sanctions Board considers the Respondents' translation request to be moot.

48. *Disclosure requests*: In its submission of June 24, 2016, INT asserted that it had already disclosed all documents shown to witnesses during interviews as exhibits to the 347 and 387 SAEs. As the record already contains the evidence that the Respondents seek disclosure of, and taking into account Section 7.03 of the Sanctions Procedures, the Sanctions Board denies the Respondents' disclosure requests.

3. Determinations on the Respondents' due process concerns

49. In addition to the range of procedural matters discussed above, the Respondents assert due process abuses relating to the conduct of INT's investigation. These assertions include the lack of opportunity to be heard prior to the imposition of temporary suspension; INT's use of pressure, threat, and intimidation; and INT's failure to interview and/or re-interview certain witnesses. INT submits that its methodology, procedures, and approach to its investigation are in the context of an administrative fact-finding process, where INT does not have the burden to prove a case beyond reasonable doubt or need to follow formal rules of evidence.

50. The Sanctions Board finds that the Respondents fail to substantiate any of their assertions regarding the conduct of INT's investigation. Moreover, the Respondents do not offer any explanation as to how INT's asserted conduct during the investigation might have impacted their ability to mount a meaningful response to INT's allegations.[8] With respect to the Respondents' assertion regarding the lack of opportunity to be heard prior to imposition of temporary suspension, the Sanctions Board notes that neither the Sanctions Board Statute nor any other aspect of the sanctions framework suggests that its jurisdiction encompasses review of the legal

[8] See Sanctions Board Decision No. 90 (2016) at paras. 19-20.

adequacy of the sanctions system, as opposed to individual sanctions cases.[9] The Sanctions Board also notes that the Respondent Firm did have the opportunity to file a preliminary explanation upon being placed under early temporary suspension – which it did not do. In addition, the Respondents had subsequent opportunities to be heard by responding to INT's show-cause letters and in response to the 347 and 387 Notices. With respect to INT's purported threat and intimidation, the Sanctions Board notes that the use of intimidation or threats is impermissible and may limit or annul the evidentiary weight of an individual's statements or admissions made in that context.[10] However, in the present Cases, the Respondents do not point to specific evidence of any undue or inappropriate pressures employed by INT which could impact the reliability of witness statements, and the record does not provide any basis for a finding of such undue pressure. As for INT's asserted failure to interview and/or re-interview certain witnesses, the Sanctions Board has previously stated that the Sanctions Procedures do not require INT to interview all potentially relevant witnesses before initiating sanctions proceedings and that a respondent is not entitled to demand that INT obtain and provide information that is not in INT's possession.[11] At the same time, where it becomes clear that a witness's evidence is doubtful as a result of evidence subsequently collected, then INT's failure to re-interview and put the new evidence to the witness might affect the weight to be attached to that witness's evidence. Taking into account the evidence and arguments presented by INT and the Respondents in the Cases, the Sanctions Board considers that the existing record is sufficient to assess whether it is more likely than not that the Respondents engaged in the alleged sanctionable practices. In these circumstances, and considering the totality of the record, the Sanctions Board concludes that the Respondents have failed to present a valid procedural challenge on the basis of INT's investigation.

4. Weight of certain evidence

a. Weight of the Regional Manager's testimonial and documentary evidence

51. The record in the Cases includes the 2014 Emails, in which the Regional Manager detailed various bribe payments she allegedly made on behalf of the Respondent Firm. The Respondents challenge the credibility of the Regional Manager, and question her specific claims in the 2014 Emails regarding the payment of bribes to public officials on behalf of the Respondent Firm and as authorized by the Individual Respondent. The Respondents argue that the Regional Manager gave contradicting statements; formed a company to take over the Respondent Firm's work (the "Regional Manager's Company"); has a business interest in the Respondent Firm's sub-consultant in the NDTDP Contract (the "NDTDP Sub-Consultant"); destroyed documents upon her resignation; and has links to organized crime. The Respondents also argue that the 2014 Emails are "a form of blackmail" by the Regional Manager to obtain money, discourage the Individual Respondent from pursuing action against her, and implicate

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[9] See Sanctions Board Decision No. 55 (2013) at para. 26.

[10] Sanctions Board Decision No. 60 (2013) at para. 60; Sanctions Board Decision No. 72 (2013) at para. 34 (both cases share the same respondents, who alleged that threat and intimidation were in the form of a threatening reference to the individual respondent's family and discouraging the individual respondent from seeking legal counsel).

[11] Sanctions Board Decision No. 81 (2015) at para. 33.

the Individual Respondent to shield herself from allegations of sanctionable practices. In response, INT contends that, although the Regional Manager was not forthcoming during the interview, she later explained that the Respondents had requested her to refrain from cooperating with INT in order to receive the full payment of the money that the Respondent Firm purportedly owed her.

52. In assessing the weight of witness statements, the Sanctions Board "takes into account 'all relevant factors bearing on the witness's credibility.'"[12] These factors may include unexplained and fundamental inconsistencies between multiple statements of the same witness;[13] the fact that the witness was a respondent's competitor;[14] the involvement of the witness in sanctionable practices;[15] and a conflict situation between a respondent and the witness, such as disagreements regarding the payment of salary and other benefits.[16] The Sanctions Board has held that while these factors may be considered or may discount such witness's testimony, these would not necessarily preclude its use.[17]

53. In the present Cases, the Sanctions Board takes into account the Regional Manager's denial during her interview with INT that she paid certain project officials despite having detailed these payments in the 2014 Emails; her admission to both the ownership of the Regional Manager's Company, which she claimed to have formed in the event that the Respondent Firm becomes bankrupt, and to the proposal and inclusion of the Regional Manager's Company as a sub-consultant without the Respondent Firm's knowledge; evidence in the record indicating that the Regional Manager gave money to public officials; and the conflict situation between the Regional Manager and the Respondents, who purportedly reneged on their obligation to pay her salary and other benefits. The Sanctions Board also takes into account that the record indicates that the Regional Manager resigned from the Respondent Firm and wrote the 2014 Emails only after the Respondent Firm began to suspect her of financial impropriety.

54. Taking into account all of the above considerations, the Sanctions Board accords very limited weight to the Regional Manager's testimonial and documentary evidence.

b. Weight of evidence provided by other former staff and consultants of the Respondent Firm

55. The record in the Cases contains testimonial and documentary evidence from the Respondent Firm's former staff and consultants that appear to corroborate the Regional Manager's assertions regarding the alleged corrupt practices. The Respondents seek to discredit these former staff and consultants, particularly the Respondent Firm's business assistant and

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[12] Sanctions Board Decision No. 71 (2014) at para. 54 (quoting Sanctions Board Decision No. 50 (2012) at para. 39).

[13] Sanctions Board Decision No. 45 (2011) at paras. 37-38.

[14] Sanctions Board Decision No. 50 (2012) at para. 39.

[15] Sanctions Board Decision No. 45 (2011) at para. 38; Sanctions Board Decision No. 50 (2012) at para. 39; Sanctions Board Decision No. 87 (2016) at para. 67.

[16] Sanctions Board Decision No. 71 (2014) at para. 54; Sanctions Board Decision No. 87 (2016) at para. 67.

[17] See Sanctions Board Decision No. 50 (2012) at para. 39; Sanctions Board Decision No. 71 (2014) at para. 54; Sanctions Board Decision No. 87 (2016) at para. 67.

administration assistant (respectively, the "Business Assistant" and the "Administration Assistant"), on the ground that their actions resulted either from intimidation by the Regional Manager or from a communal desire to harm the Respondents' reputation. The Respondents also challenge INT's use of these witnesses' statements as reliance on hearsay, and assail the documentary evidence that the witnesses provided to INT on the ground that the company's email server was purportedly hacked. INT argues that even though the witnesses' motivations are "not entirely clear," this does not alter the fact that the actions reflected in the documents the witnesses provided had occurred and constitute sanctionable practices.

56. The Sanctions Board takes into account the Business Assistant's admission that he is a co-owner of the Regional Manager's Company and the Administration Assistant's statement that she would submit a complaint in Vietnam against the Respondent Firm for corrupt practices if it does not pay her and other colleagues' salary and other benefits. Consistent with past precedent,[18] the Sanctions Board finds that the Business Assistant's business interest in the Regional Manager's Company and the conflict situation between the Administration Assistant and the Respondent Firm may discount the value of testimony provided by these witness, but do not preclude the use of their testimony.

57. Regarding hearsay evidence, the Sanctions Board notes that Section 7.01 of the Sanctions Procedures provides that "[f]ormal rules of evidence shall not apply" in the Bank's sanctions proceedings and that the Sanctions Board may consider "[a]ny kind of evidence" – including hearsay evidence – and exercise its "discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered."

58. With regard to the Respondents' allegation that the Respondent Firm's email server had been hacked, the record contains only an unsigned report drafted by its own staff regarding the probability that the Business Assistant "got illegal access to [the Individual Respondent's] mailbox." The Sanctions Board notes that the same report states that the "[i]ntruder did [not] send fake emails from [the Individual Respondent's] account." Further, the record does not include any other evidence, such as an independent report, suggesting any hacking or that any particular evidence had been obtained as a result thereof. Thus, the Sanctions Board finds no reason to preclude the use of evidence in the record on the basis of this alleged hacking.

59. The Sanctions Board will consider the weight to be attached to the testimonial and documentary evidence of Respondent Firm's former staff and consultants contained in the record in its discussion of the allegations against the Respondents.

B. Evidence of Fraudulent Practices

1. Fraud allegation 1: Alleged invoicing by the Respondent Firm for work not performed by the Research Assistant in connection with the 2NMPRP Contract

60. In accordance with Paragraph 1.22(a)(ii) of the October 2006 Consultant Guidelines and the May 2010 Consultant Guidelines, INT bears the initial burden to show that it is more likely

[18] See Sanctions Board Decision No. 50 (2012) at para. 39; Sanctions Board Decision No. 71 (2014) at para. 54.

than not that the Respondent Firm (i) engaged in any act or omission, including a misrepresentation (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.

a. Misrepresentation

61. INT alleges and the record reveals that the Respondent Firm invoiced for work purportedly done by the Research Assistant from January to November 2012, when he only started working for the Respondent Firm at the earliest in September 2012. The Respondent Firm admit that the invoices contained inaccurate information that lead to overbilling. The record reveals that the invoices that the Respondent Firm sent to the 2NMPRP PIU claimed payment for work that the Research Assistant carried out from January to July 2012, and from August to November 2012. However, the Respondent Firm and the Research Assistant signed a contract only on September 7, 2012. Further, contemporaneous email evidence reveals that the Research Assistant rendered services only from September 2012.

62. In light of the above, the Sanctions Board finds that it is more likely than not that the invoices submitted by the Respondent Firm's employees misrepresented the services rendered by the Research Assistant.[19]

b. Made knowingly or recklessly

63. While the Respondents admit the existence of inaccurate information in the invoices, they contend that it was due to an accounting error rather than a reckless or deliberate intention to defraud. The Respondents also argue that if the Regional Manager and the Administration Assistant made deliberate misrepresentations, such misrepresentations were made without the Respondents' instruction, encouragement, or endorsement.

64. The record indicates that the Regional Manager and the Administration Assistant knew exactly when the Research Assistant joined the 2NMPRP Contract, but nevertheless invoiced for services he purportedly rendered eight months before he had started working. For instance, the Regional Manager and the Administration Assistant asked the Research Assistant for his curriculum vitae on September 4, 2012. The Regional Manager, on behalf of the Respondent Firm, then signed the contract with the Research Assistant on September 7, 2012. Despite facilitating the process for the Research Assistant to commence working for the Respondent Firm in September 2012, the Administration Assistant prepared and the Regional Manager signed the invoices claiming payment for work that the Research Assistant supposedly rendered beginning January 2012. Accordingly, the totality of the evidence supports a finding that it is more likely than not that the Respondent Firm's employees knowingly misrepresented the period of work actually performed by the Research Assistant under the 2NMPRP Contract.

[19] See Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 90 (2016) at para. 30.

c. To obtain a financial or other benefit

65. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that a misrepresentation was material to a respondent's remuneration under the contract.[20] The record indicates that the 2NMPRP Contract specifically required the Respondent Firm to submit itemized statements and invoices showing amounts payable for each month in order to receive payment. In response to this requirement, the Respondent Firm submitted false invoices for work purportedly performed by the Research Assistant from January to November 2012. On the basis of this record, and consistent with past precedent,[21] the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees misrepresented the Research Assistant's period of work under the 2NMPRP Contract in order to obtain a financial benefit.

2. Fraud allegation 2: Alleged non-disclosure by the Respondent Firm of commissions paid or to be paid in connection with the SRIP Contract

66. The succeeding sections relating to the SRIP Contract analyze INT's fraud allegations in accordance with Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines. Under this definition of "fraudulent practice," INT bears the initial burden to show that it is more likely than not that the Respondent Firm (i) made a misrepresentation or omission of facts (ii) that was knowing or reckless (iii) in order to influence the selection process or the execution of the 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.[22] 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.[23] Accordingly, the Sanctions Board has held that the "knowing or reckless" standard may be implied under pre-October 2006 definitions.[24]

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[20] See Sanctions Board Decision No. 83 (2015) at para. 63 (finding misrepresentation to have been made in order to influence contract execution where the director of one the respondents' predecessors submitted a falsified receipt to support the predecessor's reimbursement for expenses incurred during contract execution); Sanctions Board Decision No. 86 (2016) at para. 39 (finding misrepresentation to have been made in order to obtain a financial benefit where the respondent provided false information in monthly reports and advance certficiates to obtain remuneration under the contract for work puportedly done, but in fact not rendered, by consultants).

[21] Sanctions Board Decision No. 82 (2015) at para. 36 (finding that the submission of misleading data sheets, which were specific deliverables warranting payment under the contract, was made in order to obtain a financial benefit in the form of remuneration for contracted work); Sanctions Board Decision No. 86 (2016) at para. 39 (finding that the submission of monthly reports and advance certificates, which were specific deliverables warranting payment under the contract, that contained false information was made in order to obtain a financial benefit).

[22] See, e.g., World Bank's 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).

[23] Sanctions Board Decision No. 41 (2010) at para. 75.

[24] Id.

a. Misrepresentation or omission of facts

67. INT alleges that the Respondent Firm entered into a verbal agency agreement with the Marketing Agent, but failed to disclose this agency relationship and the agency commissions paid or to be paid to the Marketing Agent. The Respondents argue that there was no obligation to declare the Marketing Agent's participation as an agent in receipt of commission since he was an employee of the SRIP Sub-Consultant.

68. The RFP provides that consultants "shall furnish information on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal and during execution of the assignment if the Consultant is awarded the Contract." The Financial Proposal Submission Form ("Fin-1 Form"), appended to the RFP, provides a place for the bidder to make such a disclosure, or alternatively instructs bidders to certify the following: "No commissions or gratuities have been or are to [be] paid by us to agents relating to this Proposal and Contract execution." In addition, Section 1.11.3 of the SRIP Contract states that the Bank "will require the successful Consultants to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract." These provisions, which required disclosure of commissions and fees paid or to be paid to agents in the course of the selection process and execution of the SRIP Contract, created an initial and ongoing disclosure obligation.

69. The record indicates that the Respondent Firm entered into a commission agent agreement with the Marketing Agent. INT's transcript of interview with the Marketing Agent indicates that he entered into an oral agreement with the Individual Respondent for "marketing" purposes. The Marketing Agent claimed that he acted as an agent of the Respondent Firm and communicated with the project implementation unit for the SRIP (the "SRIP PIU"), helped the Respondent Firm to meet the "client" after the pre-bid meeting and before contract award to discuss technical concerns and "the growth of the project." The Marketing Agent further stated that he helped the Respondent Firm win the SRIP Contract. For this, the Marketing Agent asserted that he himself – as opposed to the SRIP Sub-Consultant – received payment from the Respondent Firm in the form of a "success fee." The record shows that invoices for the Marketing Agent's activities were issued in his name, and payments were instructed to either be made in cash or deposited to his personal account, rather than to the SRIP Sub-Consultant.

70. Contrary to its disclosure obligations under the provisions discussed in Paragraph 68 above, the Respondent Firm did not disclose its payments to the Marketing Agent. The record includes the Fin-1 Form in which the Regional Manager affirmed on behalf of the Respondent Firm that "[n]o fees, gratuities, rebates, gifts, commission or other payments were paid or to be paid by us to agents relating to this Proposal, if we are awarded the Contract." In addition, the Respondents do not assert, and the record does not indicate, that the Respondent Firm made any disclosure of its payments to the Marketing Agent at any time. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees made

a misrepresentation in affirming that the Respondent Firm paid no commissions or gratuities to agents in connection with the SRIP Contract.[25]

b. Made knowingly or recklessly

71. The record indicates that the Respondent Firm's employees knowingly affirmed that the Respondent Firm did not pay commissions to the Marketing Agent. As discussed in Paragraph 69 above, the Marketing Agent stated that he helped the Respondent Firm win the SRIP Contract, for which the Respondent Firm paid him a "success fee." The Respondents, however, claim that the Marketing Agent's "efforts to progress the bid" for the SRIP Contract formed part of his regular duties and responsibilities as the marketing director of the SRIP Sub-Consultant, rather than as the Respondent Firm's agent. Yet, invoices for the Marketing Agent's activities were issued in his name and the Respondent Firm made payments directly to his bank account. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees acted knowingly in failing to disclose the commissions that the Respondent Firm paid to the Marketing Agent.

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

72. The Sanctions Board has previously found sufficient evidence of intent to influence the procurement process where the record showed that misrepresentations had been made in response to a tender requirement.[26] As discussed above in Paragraph 68, the RFP, Fin-1 Form, and the SRIP Contract required the Respondent Firm to disclose any commissions or gratuities paid or to be paid to agents in connection with the proposal and the SRIP Contract. The Regional Manager's affirmative representation on the Fin-1 Form that the Respondent Firm paid no commissions or gratuities to agents, and the failure of the Respondent Firm's employees to make any such disclosure at any time, relate directly to the requirements under the relevant RFP and the SRIP Contract. In these circumstances, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees engaged in a misrepresentation in order to influence the selection process for the SRIP Contract.

3. Fraud allegation 3: Alleged misrepresentation by the Respondents regarding the availability of two consultants in connection with the SRIP Contract

a. Misrepresentation or omission of facts

73. The record supports INT's allegation that employees of the Respondent Firm, including the Individual Respondent, misrepresented the availability of two consultants as key staff under the SRIP Contract. The record contains separate emails sent in July 2009 from each of the

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[25] See Sanctions Board Decision No. 83 (2015) at para. 50 (finding misrepresentation where the respondents' predecessor failed to disclose its agency agreement with, or subsequent payments to, its marketing consultant by certifying the absence of an agency agreement and commission in its Fin-1 Form, and by not making any such disclosures at any time).

[26] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52.

consultants to the Regional Manager and a director of the Respondent Firm (the "Director"). In their individual emails, the first consultant (the "First Consultant") stated that he is unavailable due to prior commitments; while the second consultant (the "Second Consultant") stated that he is not prepared to spend time in Indonesia, where the SRIP Contract was to be implemented. Despite these July 2009 emails, the Respondent Firm's technical proposal for the SRIP Contract, submitted on August 14, 2009, reflected the participation of both consultants. Further, the Second Consultant and the First Consultant emailed the Regional Manager in October 2009 and July 2010, respectively, reiterating their inability to participate in the SRIP Contract. Notwithstanding the consultants' unavailability, the Individual Respondent signed the SRIP Contract on behalf of the Respondent Firm on December 13, 2010, confirming both consultants' purported involvement. When INT asked the Individual Respondent about his confirmation of the consultants' participation in the SRIP Contract despite the consultants having expressed their unavailability, the Individual Respondent remarked: "That's a mistake that should not have happened. I apologize."

74. On the basis of this record, and consistent with past precedent,[27] the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees, including the Individual Respondent, misrepresented the availability of the consultants to participate in the SRIP Contract.

b. Made knowingly or recklessly

75. The Respondents argue that they continuously had a clear expectation to reach agreement with both Consultants, and that this "honest mistake" does not equate to fraudulent intent.

76. The record reflects that the Respondent Firm's employees, including the Individual Respondent, knowingly proposed and confirmed the participation of the two consultants despite being aware of their unavailability. As discussed in Paragraph 73, the Individual Respondent knew that the proposal of the consultants was "a mistake that should not have happened." While the Respondents claim an "honest mistake" owing to the consultants' supposed propensity to initially express reluctance, this is not a case where the consultants ambiguously communicated hesitation. Rather, as noted in Paragraph 73 above, the consultants explicitly conveyed their unavailability – not mere reluctance – in the months leading up to the signing of the SRIP Contract. In addition, six months before contract signing, the Regional Manager flagged to the Individual Respondent and the Director the need to replace the consultants. Despite acknowledging the consultants' unavailability, the Respondent Firm's staff proposed, and the Individual Respondent still confirmed, the consultants' participation in the SRIP Contract. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees, including the Individual Respondent, knowingly misrepresented the availability of the two consultants.

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[27] Sanctions Board Decision No. 81 (2015) at para. 38 (finding that the individual respondent made a misrepresentation where the respondents certified during contract negotiations the availability of the team leader, who had already informed them beforehand of his unavailability for the contract); Sanctions Board Decision No. 86 (2016) at paras. 30-32 (finding that the respondent misrepresented the participation of consultants in the contract by providing false information in the monthly reports and advance certificates to bill for services that the consultants never rendered).

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

77. The record indicates that the Respondent Firm's employees, including the Individual Respondent, misrepresented the availability of the consultants in order to secure the award of the SRIP Contract. The Second Consultant stated in an email in July 2009 to employees of the Respondent Firm that "if we use [the Individual Respondent's] philosophy about first winning a project [then] I have no problem having my cv on the proposal." Further, in June 2010, the procurement committee assessed the Respondent Firm as having "proposed [a] very good Team leader" (the Second Consultant), for which category the Respondent Firm received the maximum score. Thus, when the Respondent Firm's employees went into contract negotiations with the SRIP PIU a month later, they were aware of the Second Consultant's value in their proposal and knew that replacing him specifically, or requesting replacements more generally, could affect the Respondent Firm's chances of securing the SRIP Contract. In these circumstances, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees, including the Individual Respondent, misrepresented the availability of the two consultants in order to influence the selection process for the SRIP Contract.

C. Evidence of Corrupt Practices

1. Corruption allegation 1: Alleged bribe payments by the Respondent Firm in connection with the SRIP Contract

78. As noted above, the relevant loan agreement for the SRIP provided that the May 2004 Consultant Guidelines would apply to the SRIP. Paragraph 1.22(a)(i) of these Guidelines defines the term "corrupt practice" as "the offering, giving, receiving, or soliciting of, directly or indirectly, any thing of value to influence the action of a public official in the selection process or in contract execution," and footnote 15 thereto qualifies the term "public official" as including World Bank staff and employees of other organizations taking or reviewing procurement decisions. The definitions of "corrupt practice" reflected in the relevant RFP and the SRIP Contract are non-standard, i.e., a definition different from those appearing in any version of the potentially applicable Guidelines. Specifically, the definition in the RFP does not include footnote 15, while the definition in the SRIP Contract does not include the element of "giving" and footnote 15. The Sanctions Board does not consider these deviations to be material under the circumstances so as to indicate an intentional departure from the May 2004 Consultant Guidelines. Accordingly, the Sanctions Board determines that the definition in the May 2004 Consultant Guidelines is applicable. In accordance with Paragraph 1.22(a)(i) of these Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent Firm (i) offered, gave, received, or solicited directly or indirectly any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.

a. Offering or giving a thing of value directly or indirectly

79. The first element of corrupt practice requires a showing that a respondent offered or gave a thing of value. The recipient of the thing of value under this first element of the definition need not be – though may be – the public official who is the intended target of influence under the

second element of corrupt practices as discussed below at Paragraphs 83-85.[28] Thus, "corrupt practices" encompass situations where a respondent pays another party, either public or private, to exert influence over a public official acting in the procurement process or contract execution.[29]

80. INT alleges that the Respondent Firm, acting through the Regional Manager and the Marketing Agent, made improper payments to the SRIP Manager through the Marketing Agent. The Respondent Firm denies giving or instructing anyone to make payments to public officials and argues that the Regional Manager's cash withdrawals, which cannot be attributed to the SRIP Contract, may have been for her personal gain.

81. The record supports a finding that the Respondent Firm's employees made payments to public officials in connection with the SRIP Contract. During his interview with INT, the Marketing Agent stated that he received US$10,000 from the Regional Manager and that he then gave the money to the SRIP Manager in December 2011. This admission is consistent with the Regional Manager's statement in the 2014 Emails that "I bring cash USD10,000 and take out of master card to fly to Jakarta and transferred twice to [the Marketing Agent] so he gave to [the SRIP Manager]." In addition, the record contains evidence of a petty cash withdrawal from the Respondent Firm's account dated December 20, 2011, in the amount of US$10,000 issued in the Regional Manager's name with the following notation: "Advance to go to Indonesia from 21 Dec 2011."

82. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Regional Manager, through the Marketing Agent, gave a thing of value to the SRIP Manager.

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

83. The record supports a finding that the Respondent Firm's employees acted with intent to influence the SRIP Manager's actions as a public official with respect to the execution of the SRIP Contract. Evidence reveals that employees of the Respondent Firm were aware of the SRIP Manager's position of authority over the SRIP and his specific role in the execution of the SRIP Contract.[30] The SRIP Manager signed the SRIP Contract as "Project Manager," with the Individual Respondent signing, on behalf of the Respondent Firm, directly below the SRIP Manager's name. In addition, the Respondent Firm's employees specifically addressed the Respondent Firm's December 2011 invoice to the SRIP Manager for his approval.

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[28] See Sanctions Board Decision No. 60 (2013) at para. 65.

[29] Id.

[30] See, e.g., Sanctions Board Decision No. 78 (2015) at para. 56 (finding that a respondent entity acted with intent to influence a public official's actions in the procurement process where the record revealed, inter alia, that employees of the respondent entity were aware that the public official was in a position of authority over the project and that the public official held influence with respect to the tender processes for the contracts at issue); Sanctions Board Decision No. 87 (2016) at para. 104 (finding that one of the respondent entities acted with the required intent where the record revealed that the recipient of the bribes was a public official in a position of authority with respect to the project and that the employees of that respondent entity were aware of his involvement in the project and his reponsibilities related to project finances).

84. The timing of the corrupt payment made to the SRIP Manager further supports the conclusion that the Respondent Firm's employees acted with corrupt intent.[31] In particular, the Regional Manager's cash withdrawal dated December 20, 2011, was given to the Marketing Agent for delivery to the SRIP Manager within days of the Respondent Firm's submission of its December 2011 invoice to the SRIP Manager. Consistent with the corrupt arrangement, the SRIP Manager approved the Respondent Firm's December 2011 invoice. As the Sanctions Board has previously observed, evidence that the desired influence actually materialized may bolster a showing of the respondent's intent to influence, even though it is not necessary for a finding of corrupt practices.[32]

85. In light of the above, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees gave a thing of value to the SRIP Manager with a purpose to influence his actions in the execution of the SRIP Contract.

2. Corruption allegation 2: Alleged bribe payments by the Respondent Firm in connection with the HUTDP Contract

86. The succeeding sections relating to the HUTDP, the NDTDP, the 2NMPRP, and the HPUTDP Contracts analyze INT's corruption allegations under the October 2006 and May 2010 Consultant Guidelines, whose common definitions of "corrupt practice" appear in the relevant RFPs and contracts. In accordance with the definitions of corrupt practice under these Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent Firm (i) offered, gave, received, or solicited directly or indirectly anything of value (ii) to influence improperly the actions of another party.

a. Giving a thing of value directly or indirectly

87. INT alleges that the Regional Manager paid bribes of at least US$50,000 to HUTDP PIU officials. According to INT, the Respondent Firm regularly gave funds to the Deputy Director of one of the Respondent Firm's sub-consultants under the HUTDP Contract who then delivered the money to HUTDP PIU officials. The Respondent Firm argues that if payments were made to project officials, either through the Regional Manager or other parties, the Respondents did not have any knowledge of, and did not authorize, such payments.

88. The record supports a finding that the Regional Manager gave funds to the Deputy Director to pay HUTDP PIU officials. The Respondent Firm's petty cash reports for May and August 2012 include entries containing notations earmarking funds for the Deputy Director and the HUTDP Contract. During INT's separate interviews with the Administration Assistant and Business Assistant, both confirmed some of these transactions. The Administration Assistant stated in her interview that the Regional Manager had asked her to withdraw money to give to

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[31] See, e.g., Sanctions Board Decision No. 78 (2015) at para. 57 (finding that the timing of the corrupt act relative to the procurement processes at issue supported the conclusion that the respondent entity acted with the required intent); Sanctions Board Decision No. 87 (2016) at para. 104 (finding that the timing of the corrupt payments relative to the signing of a contract and the submission of a bid supported the conclusion that the employees of the respondent firm acted with the required intent).

[32] See, e.g., Sanctions Board Decision No. 50 (2012) at para. 45; Sanctions Board Decision No. 60 (2013) at para. 84; Sanctions Board Decision No. 78 (2015) at para. 56; Sanctions Board Decision No. 87 (2016) at para. 104.

the Deputy Director for the HUTDP Contract. She further stated that the Deputy Director had inquired whether the Respondent Firm has enough cash flow to pay "the client" US$20,000 in order to obtain a desired amendment to the HUTDP Contract. The Administration Assistant also stated that the Deputy Director had requested the Respondent Firm to prepare US$1,000 to give as a gift to the director of the HUTDP PIU for their meeting on a HUTDP Contract amendment. The Business Assistant stated that the Regional Manager paid HUTDP PIU officials "through the channel of the Deputy Director." The petty cash reports and the testimonial evidence from the Administration Assistant and Business Assistant thus corroborate the Regional Manager's claims in the 2014 Emails that she had paid HUTDP PIU officials several times through the Deputy Director. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees gave a thing of value to HUTDP PIU officials.

b. To influence improperly the actions of another party

89. The record supports a finding that the Respondent Firm's employees acted with the intent to influence the HUTDP PIU officials' actions with respect to the award and execution of the HUTDP Contract.[33] As discussed in the previous paragraph, the Administration Assistant stated that the Deputy Director had asked about the Respondent Firm's capacity to pay "the client" and had requested the Respondent Firm to prepare a cash gift for the director of the HUTDP PIU, both for the purpose of obtaining an amendment to the HUTDP Contract.

90. In addition, the timing of the petty cash withdrawals from the Respondent Firm's account further supports the conclusion that the Respondent Firm's employees acted with corrupt intent.[34] The Respondent Firm's petty cash report for May 2012 contains an entry dated May 4, 2012, identifying the Deputy Director as the recipient. This withdrawal was a month before the signing of the HUTDP Contract. In addition, the Respondent Firm's petty cash report for August 2012 contains an entry dated August 1, 2012, identifying the Deputy Director as the recipient of funds for the HUTDP Contract. This withdrawal was less than three weeks before the HUTDP PIU submitted the Respondent Firm's report that allowed the Respondent Firm to submit its first invoice.

91. In light of the above, the Sanctions Board finds that it is more likely than not that the Respondent Firm's employees gave a thing of value to HUTDP PIU officials with a purpose to improperly influence their actions in the award and execution of the HUTDP Contract.

3. Corruption allegation 3: Alleged bribe payments by the Respondents in connection with the NDTDP Contract

92. INT alleges that the Regional Manager, with the knowledge and approval of the Individual Respondent, made bribe payments to NDTDP PIU officials in 2012 and 2013. The Respondents argue that if the Regional Manager or other parties made improper payments to

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[33] See Sanctions Board Decision No. 78 (2015) at paras. 56-57.

[34] See, e.g., Sanctions Board Decision No. 78 (2015) at para. 57 (finding that the timing of the corrupt act relative to the procurement processes at issue supported the conclusion that the respondent entity acted with the required intent); Sanctions Board Decision No. 87 (2016) at para. 104 (finding that the timing of the corrupt payments relative to the signing of a contract and the submisison of a bid).

project officials, the Respondents did not have any knowledge of, and did not authorize, such payments. The Respondents also assert that the Regional Manager could be behind any corrupt arrangement, especially given that she is believed to have a commercial interest in the NDTDP Sub-Consultant.

93. For the reasons set out in Paragraphs 51-54 above, the Sanctions Board does not find the Regional Manager's uncorroborated assertions or the 2014 Emails alone to be sufficient to establish INT's allegations of misconduct against the Respondents. INT asserts that entries in the Respondent Firm's petty cash reports for November 2012 and February 2013 support the Regional Manager's claim in 2014 Emails that the Respondents paid NDTDP PIU officials. However, the entries in the petty cash reports only indicate the purchase of US dollars for the Regional Manager and do not further suggest any payments to NDTDP PIU officials. In addition, while INT contends that the Business Assistant confirmed these payments to public officials, his testimony during INT's interview lacks detail and information to adequately corroborate the Regional Manager's assertions in the 2014 Emails. The record contains no other indication of the purpose or ultimate recipient of the petty cash withdrawals. Finally, the Sanctions Board accords limited weight to other evidence submitted by INT in support of this allegation on account of the evidence's doubtful provenance and authenticity. In these circumstances, the Sanctions Board concludes that INT has failed to discharge its burden of proof to show that the Respondents made payments to NDTDP PIU officials.

94. In light of the above, the Sanctions Board finds that it is not more likely than not that the Respondents engaged in the alleged corrupt practice in connection with the NDTDP Contract. The Sanctions Board therefore need not consider whether the Respondents acted with a purpose to influence improperly the actions of another party

4. Corruption allegation 4: Alleged bribe payments by the Respondent Firm in connection with the 2NMPRP Contract

95. INT alleges that the Regional Manager made bribe payments to 2NMPRP PIU officials through a pay-as-you-earn arrangement. The Respondents argue that if the Regional Manager or other parties made improper payments to project officials, the Respondents did not have any knowledge of, and did not authorize, such payments. The Respondents claim that the Regional Manager could have diverted funds to herself.

96. As discussed above, the Sanctions Board does not find the Regional Manager's uncorroborated assertions or the 2014 Emails alone to be sufficient to establish INT's allegations of misconduct against the Respondents. INT asserts that entries in the Respondent Firm's petty cash reports for May 2012, November 2012, December 2012, and February 2013 support the Regional Manager's claim in the 2014 Emails that she made a "special deal" of paying public officials in order to obtain the 2NMPRP Contract. However, these entries in the petty cash reports indicate the purchase of US dollars for the Regional Manager and do not additionally suggest any payments to 2NMPRP PIU officials. INT does not present, and the record does not contain, any other evidence that would support INT's alleged pay-as-you-earn arrangement or the Regional Manager's asserted "special deal." In these circumstances, the Sanctions Board concludes that INT has failed to discharge its burden of proof to show that the Respondent Firm made payments to 2NMPRP PIU officials.

97. In light of the above, the Sanctions Board finds that it is not more likely than not that the Respondent Firm engaged in the alleged corrupt practice in connection with the 2NMPRP Contract. The Sanctions Board therefore need not consider whether the Respondent Firm acted with a purpose to influence improperly the actions of another party.

5. Corruption allegation 5: Alleged bribe payments by the Respondent Firm in connection with the HPUTDP Contract

98. INT alleges that the Regional Manager made bribe payments to HPUTDP PIU officials. The Respondents argue that if the Regional Manager or other parties made improper payments to project officials, the Respondent Firm did not have any knowledge of, and did not authorize, such payments. The Respondents also assert that the Regional Manager could have diverted funds to herself, especially given that the Regional Manager's Company acted as the Respondent Firm's sub-consultant in the HPUTDP Contract.

99. As discussed above, the Sanctions Board does not find uncorroborated evidence from the Regional Manager sufficient to establish INT's allegations of misconduct against the Respondents. INT asserts that entries in the Respondent Firm's petty cash reports for June 2013 and August 2013 support the Regional Manager's claim in the 2014 Emails that she paid the "[c]lient" twice in 2013 in relation to the HPUTDP Contract. However, these entries in the petty cash reports indicate the purchase of US dollars for the Regional Manager and do not additionally suggest any payments to HPUTDP PIU officials. INT does not present, and the record does not contain, any other evidence that would support the alleged payments to HPUTDP PIU officials. In these circumstances, the Sanctions Board concludes that INT has failed to discharge its burden of proof to show that the Respondent Firm made payments to HPUTDP PIU officials.

100. In light of the above, the Sanctions Board finds that it is not more likely than not that the Respondent Firm engaged in the alleged corrupt practice in connection with the HPUTDP Contract. The Sanctions Board therefore need not consider whether the Respondent Firm acted with a purpose to influence improperly the actions of another party.

D. The Respondent Firm's Liability for the Acts of Its Employees

101. In past cases, the Sanctions Board has concluded that an employer could be found liable for the acts of its employees under the doctrine of respondeat superior, considering in particular whether the employees acted within the course and scope of their employment, and were motivated, at least in part, by the intent of serving their employer.[35] Where a respondent entity has denied responsibility for the acts of its employees based on a rogue employee defense, the Sanctions Board has considered any evidence presented regarding the scope and adequacy of the respondent entity's controls and supervision at the time of the misconduct.[36]

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[35] See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

[36] See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

102. In the present Cases, the record supports a finding that the Individual Respondent acted within the scope of his duties and on behalf of the Respondent Firm when he proposed and/or instructed the inclusion of the two consultants in the technical proposal and the SRIP Contract. With respect to the Regional Manager, while the Respondents invoke a "rogue employee" defense and argue that the Regional Manager acted on her own, the record supports a finding that she acted in the course and scope of her employment and was motivated, at least in part, by the intent of serving the Respondent Firm's interests in securing and executing the contracts at issue in the Cases. The record does not support a finding that, at the time of the sanctionable practices, the Respondent Firm had adequate corporate policies and controls in place, which the Regional Manager circumvented or willfully ignored. Instead, the Respondents admit the existence of weaknesses in the Respondent Firm's accounting procedures. Further, an audit commissioned by the Respondent Firm in its Vietnam office in February 2014 revealed the absence of any review or audit since 2010, and the existence of several issues in the company's accounting and expenditures at the time of the corrupt practices. Thus, the Sanctions Board considers the Respondent Firm's controls and supervision to have been inadequate to prevent or detect the types of misconduct in the Cases.[37]

103. Accordingly, the Sanctions Board finds the Respondent Firm liable for fraudulent and corrupt practices, as carried out by its employees.

E. Sanctioning Analysis

1. General framework for determination of sanctions

104. 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.

105. As reflected in Sanctions Board precedents, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[38] 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.[39]

106. The Sanctions Board is required to consider the types of 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

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[37] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 72 (finding one of the respondent firms liable for the acts of its employees where the employees acted within the scope of their duties and were motivated by the respondent firm's interests, and where the record did not support a finding of adequate corporate controls at the time of the misconduct).

[38] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

[39] Sanctions Board Decision No. 44 (2011) at para. 56.

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 a minimum period of three years.

107. 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. Plurality of sanctionable practices

108. As the Sanctions Board finds that the Respondent Firm engaged in fraudulent and corrupt practices, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct":

> Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct *(e.g.,* corrupt practices and collusion in connection with the same tender) or in misconduct in different cases *(e.g.,* in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.I ["Repeated Pattern of Conduct"] below. (emphases in original)

109. The Sanctions Board has held that in cases where the respondents had engaged in sanctionable practices in factually unrelated cases – where, inter alia, the projects, contracts, and allegations of misconduct were all different – the Sanctions Board considered the gravity of each case on its own and determined that the sanctions in the two cases should run on a cumulative basis.[40] In contrast, the Sanctions Board has previously held that the plurality of sanctionable practices warrants aggravation, rather than multiplication, where the respondent engaged in two different but interrelated sanctionable practices.[41] In the present Cases, the record reflects that each count of misconduct was distinct from, and not merely a means of furthering, the other counts of misconduct. For instance, the Respondent Firm invoicing for work not performed by the Research Assistant, misrepresenting the availability of two consultants, and failing to disclose the commissions paid to the Marketing Agent all involve unrelated facts. The Respondent Firm's fraudulent misrepresentations are likewise distinct from its corrupt practices. Accordingly, the

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[40] See, e.g., Sanctions Board Decision No. 41 (2010) at para. 89 (finding that the respondents engaged in sanctionable practices in two factually unrelated cases); Sanctions Board Decision No. 87 (2016) at para. 151 (finding that the respondents engaged in different sanctionable practices, with each count of misconduct being distinct from, and not merely a means of furthering, the other counts of misconduct).

[41] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143 (applying aggravation where the various sanctionable practices for which the respondents were found liable were closely interrelated); Sanctions Board Decision No. 72 (2014) at para. 67 (applying aggravation where the individual respondent engaged in interrrelated corrupt and fraudulent practices).

Sanctions Board concludes that the plurality of sanctionable practices in the Cases warrants multiplication, rather than aggravation, of the base sanction for the Respondent Firm.

3. Factors applicable in the Cases

a. Severity of the misconduct

110. Section 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies a repeated pattern of conduct, central role, and management's role in the misconduct as examples of severity.

111. *Repeated pattern of conduct*: In past cases, the Sanctions Board has applied aggravation where misconduct related to multiple contracts and/or projects.[42] As discussed in Paragraphs 108-109 above, the Sanctions Board has found that the Respondent Firm engaged in factually distinct types of sanctionable practices with respect to three different contracts. Thus, the Respondent Firm's plurality of sanctionable practices warrants multiplication, rather than aggravation, of the base sanction.

112. *Central role in the misconduct*: Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the "organizer, leader, planner, or prime mover in a group of 2 or more." As discussed above in Paragraph 76, the Respondent Firm's employees – including the Individual Respondent, the Director, and the Regional Manager – knew of the consultants' unavailability to participate in the SRIP Contract. Despite this, the record reflects that the Individual Respondent proposed and later confirmed the participation of two consultants in the SRIP Contract. The Sanctions Board thus finds that aggravation is warranted for the Individual Respondent for his central role in the fraudulent practice related to the SRIP Contract.

113. *Management's role in the 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 the misconduct involved a respondent's director and a respondent's co-owner,[43] or a respondent's director and managing director.[44] INT asserts that aggravation is warranted for the participation of the Individual Respondent in the fraudulent and corrupt misconduct. The record indicates that at the time of the sanctionable practices in the Cases, the Individual Respondent was the managing director and co-owner of the Respondent Firm, while the Regional Manager was in charge of the Respondent Firm's entire operations in Southeast Asia. Accordingly, the Sanctions Board finds that aggravation is

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[42] Sanctions Board Decision No. 4 (2009) at paras. 6, 9 (applying aggravation where the respondent participated in a collusive scheme involving multiple rounds of bidding under several contracts); Sanctions Board Decision No. 60 (2013) at para. 122 (applying aggravation for repetition where corrupt conduct related to multiple Bank-financed contracts under multiple projects); Sanctions Board Decision No. 72 (2014) at para. 56 (applying aggravation for repetition where corrupt payments related to two contracts under the same project).

[43] Sanctions Board Decision No. 60 (2013) at para. 125.

[44] Sanctions Board Decision No. 50 (2012) at para. 61.

warranted for the Respondent Firm for the involvement of the Individual Respondent and the Regional Manager in the fraudulent and corrupt practices found to have occurred in the Cases.

b. Interference in the Bank's investigation

114. Section 9.02(c) of the Sanctions Procedures requires that "interference by the sanctioned party in the Bank's investigation" be considered in determining a sanction. Under Section IV.C.1 of the Sanctioning Guidelines, interference with the investigative process includes "making false statements to investigators in order to materially impede a Bank investigation" and "acts intended to materially impede the exercise of the Bank's contractual rights of audit or access to information." The Sanctions Board has previously applied aggravation on this ground where the respondent's employees made false statements to INT and destroyed or tampered with documents.[45]

115. In Sanctions Case No. 387, INT asserts that the Respondents obstructed INT's investigation by instructing witnesses not to cooperate with INT's investigation, or by simply not responding to INT's requests for interview. The Respondents argue that INT's decision not to pursue obstruction as a stand-alone allegation in the 387 SAE, despite having been alleged in one of the show-cause letters, indicates INT's acknowledgment that the allegation is weak and cannot be proven against the Respondents. The record includes the Regional Manager's emails to INT in March 2014, in which she claimed that the Respondent Firm approached her and tried to make her non-cooperation with INT a condition for the complete payment of her salary and other benefits. The Business Assistant told INT during his interview that the Respondent Firm had instructed him to "stay away" and to not respond to any calls from the Bank. In addition, during his interview with INT, the Respondent Firm's former program officer claimed that the Individual Respondent had instructed him to feign illness and to go home during INT's visit to the Respondent Firm's Vietnam office. In these circumstances, the Sanctions Board finds that the Respondents interfered with INT's investigation so as to warrant aggravation.

c. Voluntary corrective action

116. Section 9.02(e) of the Sanctions Procedures provides for mitigation where the sanctioned party took voluntary corrective action. Section V.B of the Sanctioning Guidelines identifies several examples of voluntary corrective actions that may warrant mitigation, with the timing, scope, and/or quality of those 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 action.[46]

117. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has previously granted mitigation on this ground upon a finding that a respondent's asserted

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[45] Sanctions Board Decision No. 63 (2014) at para. 102.

[46] Sanctions Board Decision No. 45 (2011) at para. 72.

compliance measures appeared to address the type of misconduct at issue[47] and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines.[48] Conversely, the Sanctions Board has declined to afford mitigation in cases where there was no evidence in the record that the respondent had in fact implemented compliance measures,[49] or where the respondent did not present sufficient evidence to show that the asserted measures were designed or implemented so as to reduce the risk of the type of misconduct at issue.[50]

118. In these Cases, the Respondents contend that the Respondent Firm is "in the process of implementing new procedures to improve the way business is administered in [its] Vietnam [office] and to strengthen oversight." However, the Respondents do not provide any documentation to demonstrate the establishment or implementation of any compliance program. Accordingly, the Sanctions Board declines to apply mitigation on this basis.

119. *Restitution or financial remedy*: Section V.B.4 of the Sanctioning Guidelines states that mitigation may be appropriate "[w]hen the respondent voluntarily addresses any inadequacies in contract implementation or returns funds obtained through the misconduct." The Sanctions Board has previously granted mitigation on this ground where a respondent offered damages to demonstrate its willingness to take responsibility for the acts of its legal predecessor,[51] and where a respondent voluntarily completed work under the contract and waived the balance of the contract price.[52] In Sanctions Case No. 347, the Respondent Firm claims that it offered to reimburse the Bank for overbilling. However, the Respondent Firm itself admits that its offer of reimbursement relates to a different incident of overcharging that does not form part of the allegation in the Sanctions Case No. 347. Accordingly, the Sanctions Board declines to apply mitigation under this factor.

d. Cooperation

120. 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

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[47] See, e.g., Sanctions Board Decision No. 71 (2014) at para. 94.

[48] See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69 (finding that the asserted compliance measures addressed, at least in part, some of the elements suggested in the Integrity Compliance Guidelines); Sanctions Board Decision No. 71 (2014) at para. 94 (finding that the asserted compliance measures appeared to address most of the principles set out in the Integrity Compliance Guidelines).

[49] See, e.g., Sanctions Board Decision No. 75 (2014) at para. 31 (declining to apply mitigation where the respondent provided no evidence that asserted compliance measures were implemented).

[50] See, e.g., Sanctions Board Decision No. 69 (2014) at para. 39 (declining to apply mitigation where the respondent provided no details or corroborating evidence to support a finding that the asserted measures were designed or implemented so as to address the type of misconduct presented in that case); Sanctions Board Decision No. 75 (2014) at para. 31 (declining to apply mitigation where the respondent provided limited details about its compliance measures and presented no evidence that the measures were in fact implemented so as to reduce the risk of the type of misconduct at issue in that case).

[51] See Sanctions Board Decision No. 53 (2012) at para. 62.

[52] See Sanctions Board Decision No. 78 (2015) at para. 82.

Guidelines identifies a respondent's assistance with INT's investigation, internal investigation, and admission or acceptance of guilt or responsibility as examples of cooperation.

121. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides 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," with consideration of the "truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance." In past cases, the Sanctions Board has granted mitigation where a respondent met with INT on several occasions and provided relevant information and documentation,[53] or replied to INT's show-cause letter and follow-up inquiries.[54] The Sanctions Board has granted limited mitigation where a respondent corresponded with INT and made relevant personnel available for interviews but also impeded the Bank's exercise of audit rights, without credible justification, so as to constitute interference with INT's investigation.[55]

122. The Respondents assert that they have cooperated with INT. The record reflects that the Respondents provided documentary evidence to INT, including inculpatory evidence as relied upon by INT in the 387 SAE. During INT's audit of the Respondent Firm's offices in Vietnam and Indonesia, the Respondents provided INT with access to the Respondent Firm's computers and documents, and allowed its staff to be interviewed. Further, the Respondents timely replied to INT's show-cause letters. In light of the above, and considering the totality of the record, the Sanctions Board finds that some mitigation is warranted for the Respondents' cooperation in the course of INT's investigation, despite the separate finding of interference warranting aggravation as discussed in Paragraph 115 above.

123. *Internal investigation*: Section V.C.2 of the Sanctioning Guidelines refers to cooperation where a respondent has "conducted its own, effective internal investigation of the misconduct and relevant facts relating to the misconduct for which it is to be sanctioned and shared results with INT." In determining whether and to what extent an internal investigation warrants mitigating credit, the Sanctions Board considers whether the investigation was conducted thoroughly and impartially by persons with sufficient independence, expertise, and experience; whether the respondent shared its investigative findings with INT during INT's investigation or as part of the sanctions proceedings; and whether the respondent has demonstrated that it followed up on any investigative findings and recommendations.[56]

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[53] Sanctions Board Decision No. 53 (2012) at para. 58.

[54] See, e.g., Sanctions Board Decision No. 37 (2010) at para. 45.

[55] See, e.g., Sanctions Board Decision No. 56 (2013) at paras. 61-62, 73 (applying limited mitigation for cooperation where the respondent corresponded with INT and made relevant personnel available for interviews, but also resisted, on unconvincing grounds, INT's requests for information pre-dating the contract's signature); Sanctions Board Decision No. 87 (2016) at paras. 141-144 (finding that some mitigation is warranted for the respondents' cooperation despite the separate finding of interference through false statements warranting aggravation.

[56] See, e.g., Sanctions Board Decision No. 74 (2014) at para. 43; Sanctions Board Decision No. 77 (2015) at para. 56; Sanctions Board Decision No. 83 (2015) at para. 97.

124. In these Cases, the Respondents assert that the Respondent Firm conducted an internal investigation, which preceded INT's investigation. According to the Respondents, they received emails tagged "Make It Right," which were circulated to inform the Respondent Firm's headquarters that the Regional Manager had set up her own company and had siphoned funds away from the Respondent Firm's contracts. Upon receiving these emails, the Respondents contend that they engaged outside counsel to investigate the claims therein, and requested an auditing firm to conduct an audit of the Respondent Firm's Vietnam office. While the record includes correspondence between the Respondent Firm and outside counsel, the record is not clear as to whether outside counsel did in fact carry out an investigation. Nevertheless, the internal audit – which was conducted by a reputable, external auditing firm – appears to have probed the circumstances surrounding the corrupt misconduct in Sanction Case No. 387. The results of the audit were shared during these proceedings and the Respondent Firm appears to have followed up on its investigative findings and recommendations. Accordingly, the Sanctions Board finds that mitigation is justified under this factor.

125. *Admission/acceptance of guilt/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, with the condition that early admissions or acceptance should be given more weight than admissions or acceptance coming later in the investigation or sanctions proceedings. The Sanctions Board has declined to grant mitigation under this factor where the respondent conceded to the events alleged but contested the respondent's own culpability or responsibility.[57] In the present Cases, INT contends that mitigation is warranted for the Respondents' admission to some of the accusations in Sanctions Case No. 387. While INT does not assert any mitigating factors in Sanctions Case No. 347, INT nevertheless states that the Respondent Firm has admitted to the allegation of fraud in that case. In their Responses, however, the Respondents deny having admitted to any of the allegations in the Cases. Specifically, the Respondent Firm states in the 347 Response that its admission is limited only to the inaccuracy of the information that led to overbilling, and does not extend to any reckless or deliberate intention to defraud. Similarly, in the 387 Response, the Respondents deny having made any admissions. The Sanctions Board concludes that mitigation is not warranted in these circumstances.

e. Periods of temporary suspension

126. Pursuant to Section 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account that the Respondent Firm has been suspended since February 21, 2014, pursuant to Article II of the Sanctions Procedures, which provides for early temporary suspension by the EO prior to sanctions proceedings; and that the Individual Respondent has been temporarily suspended since the EO's issuance of the 387 Notice on August 3, 2015.

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[57] 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); Sanctions Board Decision No. 61 (2013) at para. 47 (where the respondent only acknowledge the forgery, but such acknowledgement did not extend to acceptable of own culpability or responsibility).

f. Other considerations

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

128. *Disclosure of the record to third parties*: Section 13.06 of the Sanctions Procedures provides in relevant part that:

> Neither the Respondent (including any Affiliate thereof) nor the Bank shall disclose to, or discuss with, any third party any part of the record, or information relating thereto, except as follows:
>
> (a) The Respondent may disclose any part of the record in its possession in accordance with these Procedures (i) to legal counsel engaged for the purpose of representing or advising the Respondent in the proceedings to which the record relates, and discuss the case with such counsel, *provided* that such counsel agrees that it shall not disclose to, or discuss with, any third party any part of the record, or information relating thereto; (ii) as required by an order of any court of competent jurisdiction, including pursuant to any procedure for the discovery of documents in proceedings before such court; or (iii) pursuant to any law or regulation having the force of law to which the Respondent is subject. Except as provided in (i) above, the Respondent shall provide INT and the Evaluation Officer or the Sanctions Board, as the case may be, with reasonable prior notice of any such disclosure.

129. According to this provision, any violation, whether by a respondent (including any affiliate) and/or counsel, shall be (i) an aggravating factor in determining an appropriate sanction if the violation is brought to the attention of the EO or the Sanctions Board during sanctions proceedings, and (ii) a separate basis for sanction if the violation comes to light after the conclusion of sanctions proceedings.[58] In the present Cases, INT asserts that aggravation is warranted for the Respondents' unauthorized disclosures of certain evidence in the record to the Danish Tribunal and other third parties. The Respondents admit to disclosing to the Danish Tribunal INT's transcript of interview with a former consultant of the Respondent Firm – an exhibit in Sanctions Case No. 387 – without having provided INT, the EO, or the Sanctions Board with any prior notice. The Sanctions Board considers that disclosures to a court or tribunal for bona fide purposes would ordinarily fall within the exceptions provided in Section 13.06(a), subparagraphs (ii) and (iii), but that such disclosures require reasonable prior notice to the EO or the Sanctions Board. The Respondents' failure to give reasonable prior notice to the EO or the Sanctions Board of their disclosure to the Danish Tribunal and third parties was thus contrary to the Respondents' obligations under Section 13.06(a) of the Sanctions Procedures. However, the Sanctions Board notes that there is nothing on the record that suggests that the disclosure in Sanctions Case No. 387 was not for bona fide purposes or was otherwise improper. The Sanctions Board also notes that the Respondents admitted to the disclosure after the fact, and that the Respondents provided notice for their subsequent disclosures. In the circumstances, the Sanctions Board concludes that the failure to give prior notice of the disclosure constituted a violation of

[58] Sanctions Procedures at Section 13.06(b).

Section 13.06, but not a flagrant one. The Sanctions Board has taken the violation into account in calculating the appropriate sanction in this case, but has not imposed material aggravation for it.

130. *Passage of time*: The Sanctions Board has previously considered 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.[59] This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.[60] In the present Cases, the Respondents assert that four to six years have passed since the misconduct. At the time of the EO's issuance of the 347 and 387 Notices in August 2015, approximately one year and eight months had elapsed from the time that the Bank apparently became aware of the Respondents' potential involvement in the fraudulent and corrupts practices. In these circumstances, the Sanctions Board declines to apply mitigation under this factor.

131. *Adverse consequences of debarment*: The Respondents argue that the Respondent Firm has already suffered financial losses and a reduction in its workforce since the commencement of INT's investigation. The Respondents also assert that a cross-debarment would end the Respondent Firm's operations and prohibit the Individual Respondent from exercising his profession. Consistent with past precedent, the Sanctions Board does not find mitigation to be justified for the negative effects of debarment on the Respondents.[61]

132. *Proportionality*: The Respondents argue that the EO's recommended sanctions are manifestly excessive and disproportionate. The Respondents also compare the sanctions with those imposed on respondents that had settlement agreements, including one involving "a large multinational company and serial offender" that was given advantageous settlement terms. As previously noted, the Sanctions Board determines appropriate sanctions on a case-by-case basis,[62] taking into account the totality of the circumstances and all potential aggravating and mitigating factors for each respondent.[63] Further, in a past case involving multiple respondents, the Sanctions Board declined to consider the sanctions agreed between settling parties to bear upon its own determination of contested sanctions for respondents, noting that the final sanctions in settlements may be shaped by considerations extrinsic to the sanctioned party's relative culpability or responsibility for misconduct.[64] Consistent with that past case, the Sanctions Board

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[59] See, e.g., Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where the Notice of Sanctions Proceedings was issued more than four and a half years after the sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct); Sanctions Board Decision No. 78 (2014) at para. 54 (applying mitigation where sanctions proceedings were initiated more than four years after the misconduct and more than four years after the Bank's awareness of the potential sanctionable practices).

[60] See Sanctions Board Decision No. 50 (2012) at para. 71.

[61] See, e.g., Sanctions Board Decision No. 53 (2012) at para. 69; Sanctions Board Decision No. 79 (2015) at para. 56.

[62] Sanctions Board Decision No. 44 (2011) at para. 56.

[63] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

[64] Sanctions Board Decision No. 56 (2013) at para. 82.

declines to consider the outcome of INT's settlement with other respondents to bear upon its determination of sanctions for the Respondents.

133. *Record of general performance*: The Respondents assert that they have always provided project deliverables and have held a genuine interest in achieving project objectives. Section 9.02(i) of the Sanctions Procedures expressly limits the Sanctions Board's sanctioning analysis to considerations reasonably relevant to a respondent's own culpability or responsibility for the sanctionable practice. The Respondents fail to establish the relevance of their arguments under this framework. Consistent with past precedent,[65] the Sanctions Board declines to apply any mitigating credit on this basis.

F. Determination of Liability and Appropriate Sanctions for the Respondents

134. Considering the full record and all the factors discussed above, the Sanctions Board:

i. determines that the Respondent Firm, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent Firm, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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 further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of fourteen (14) years, the Respondent Firm may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent Firm for fraudulent practices as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines, the October 2006 Consultant Guidelines, and the May 2010 Consultant Guidelines; and corrupt practices as defined in Paragraph 1.22(a)(i) of the May 2004 Consultant Guidelines, the October 2006 Consultant Guidelines, and the May 2010 Consultant Guidelines.

ii. determines that the Individual Respondent, together with any entity that is an Affiliate directly or indirectly controlled by him, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider 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 further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of three (3) years and six (6) months, the Individual Respondent may be released from ineligibility only if all entities that he directly or indirectly controls have, in accordance with Section 9.03 of the

[65] See, e.g., Sanctions Board Decision No. 60 (2013) at para. 139; Sanctions Board Decision No. 72 (2014) at para. 68.

Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Individual Respondent for fraudulent practice as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultant Guidelines.

135. The ineligibility of the entity and individual debarred pursuant to the present decision shall extend across the operations of the World Bank Group. The Bank will also provide notice of these declarations 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[66]

J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Teresa Cheng
Catherine O'Regan
Anne van't Veer

[66] 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).