

Date of issuance: June 23, 2017

**Sanctions Board Decision No. 96
(Sanctions Case No. 386)**

**IDA Credit No. 3292-VN
IDA Credit No. 3953-VN
IDA Grant No. TF054523-VN
IDA Credit No. 5070-VN
Vietnam**

Decision of the World Bank Group¹ Sanctions Board finding insufficient evidence to conclude that it is more likely than not that the respondent entity (the “Respondent Firm”) and the two individual respondents (the managing director and a regional director of the Respondent Firm, hereinafter referred to as the “Respondent Managing Director” and the “Respondent Regional Director,” respectively) in Sanctions Case No. 386 engaged in the alleged corrupt practices.

I. INTRODUCTION

1. The Sanctions Board met in a panel session on March 16, 2017, at the World Bank Group’s headquarters in Washington, D.C., to review this case. The Sanctions Board was composed of J. James Spinner (Chair), Olufunke Adekoya, and Catherine O’Regan.

2. A hearing was held on the same day following requests from the Respondent Firm, the Respondent Managing Director, and the Respondent Regional Director (together, the “Respondents”), and in accordance with Article VI of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) participated in the hearing through its representatives, all attending in person. The Respondents were separately represented by outside counsel, also attending in person. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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

- i. Notice of Sanctions Proceedings issued by the World Bank’s Evaluation and Suspension Officer (the “EO”)² to the Respondents on November 24, 2015 (the

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 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.

“Notice”), appending the Statement of Accusations and Evidence (the “SAE”) presented to the EO by INT, dated October 5, 2015;

- ii. Explanation submitted by the Respondent Firm to the EO on January 25, 2016; Explanation submitted by the Respondent Managing Director to the EO on January 11, 2016; and Explanation submitted by the Respondent Regional Director to the EO on January 11, 2016;
- iii. Response submitted by the Respondent Firm to the Secretary to the Sanctions Board on April 28, 2016; Response submitted by the Respondent Managing Director to the Secretary to the Sanctions Board on April 25, 2016; and Response submitted by the Respondent Regional Director to the Secretary to the Sanctions Board on April 25, 2016; and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on June 28, 2016 (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 the Respondents, together with any entity that is an Affiliate³ directly or indirectly controlled by any of the Respondents. The EO recommended minimum periods of ineligibility of six (6) years for the Respondent Firm, and two (2) years each for the Respondent Managing Director and the Respondent Regional Director.

5. Effective October 15, 2014, pursuant to Article II of the Sanctions Procedures, which provides for temporary suspension prior to sanctions proceedings in certain circumstances, each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by any of the Respondents, 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 provider⁵ 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

³ 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).

⁴ For the avoidance of doubt, the scope of ineligibility to be awarded a contract will include, 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.

“Bank-Financed Projects”⁶). Upon submission of the SAE to the EO on October 5, 2015, the Respondents’ respective temporary suspensions were automatically extended pending the final outcome of these sanctions proceedings pursuant to Sections 2.04(b) and 4.02 of the Sanctions Procedures. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group.

II. GENERAL BACKGROUND

6. This case arises in the context of the Coastal Wetlands Protection and Development Project (the “CWPDP”) and the Forest Sector Development Project (the “FSDP”) (together, the “Projects”) in the Socialist Republic of Vietnam. The CWPDP sought to re-establish and improve certain coastal ecosystems in Vietnam, while the FSDP sought to enhance the contribution of forestry to rural poverty reduction and global environmental protection.

7. On February 24, 2000, the Bank and Vietnam entered into a development credit agreement to provide approximately US\$31.8 million to support the CWPDP. The CWPDP became effective on May 31, 2000, and closed on August 31, 2007. With respect to the FSDP, on April 4, 2005, the Bank and Vietnam entered into a development credit agreement and a trust fund agreement to provide approximately US\$39.5 million and US\$5.34 million, respectively, to support the project. On June 15, 2012, the Bank and Vietnam entered into a financing agreement to provide additional financing of approximately US\$30 million to support the FSDP. The FSDP became effective on August 4, 2005, and closed on March 31, 2015.

8. On January 24, 2001, the project implementation unit for the Projects (the “PIU”) issued a request for proposals (“RFP”) for a contract for consulting services for technical assistance for project implementation under the CWPDP (the “CWPDP Contract”). The CWPDP Contract was awarded to a firm (the “JV Partner”) – with which the Respondent Firm appears to have entered into a joint venture – in association with the Respondent Firm and two other entities. The CWPDP Contract was signed on October 15, 2002.

9. In November 2006, the PIU issued an RFP for a contract to provide consulting services for “Project Management / Package 1” (“FSDP Contract 1”). In December 2006, the PIU issued an RFP for a contract to provide consulting services for “Smallholder Plantation Forestry and Land Allocation and Management / Package 2” (“FSDP Contract 2,” together with FSDP Contract 1, the “FSDP Contracts”). The FSDP Contracts were awarded to a consulting firm (the “Consulting Firm”) that had acquired the JV Partner in 2004. The PIU and the Consulting Firm signed FSDP Contract 2 on October 1, 2007, and FSDP Contract 1 on October 21, 2007. The Consulting Firm and the Respondent Firm executed profit share agreements for each of the FSDP Contracts. Under these profit share agreements, the Consulting Firm was tasked with the preparation of project reports, while the Respondent Firm was assigned the mobilization and provision of all necessary personnel and resources, among other responsibilities.

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.

10. With respect to the CWPDP, INT alleges that the Respondents engaged in a corrupt practice by authorizing a primarily recreational “study tour” in 2004 for government officials in order to facilitate the payment of disputed invoices during the execution of the CWPDP Contract. INT further alleges that between July 2006 and January 2007, the Respondent Firm and the Respondent Managing Director engaged in a corrupt practice by approving and authorizing a recreational trip for a project director from the PIU (the “PIU Project Director”) to reward her for her support and use of influence in extending the CWPDP Contract.

11. With regard to the FSDP, INT alleges that the Respondent Firm and the Respondent Regional Director engaged in a corrupt practice by approving and authorizing payments to PIU officials, disguised as “study tours” in accounting records and as a “ghost” contract, for each of the FSDP Contracts.

12. For each of the allegations, INT attributes to the Respondent Firm the alleged actions of the Respondent Managing Director, the Respondent Regional Director, and the Respondent Firm’s country representative in Vietnam (the “Country Representative”). The parties do not dispute that, at all times material to the alleged misconduct, the Country Representative also acted as an agent of the JV Partner and the Consulting Firm.

III. APPLICABLE STANDARDS OF REVIEW

13. Pursuant to Section 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is “more likely than not” that the respondent engaged in a sanctionable practice. Section 8.02(b)(i) defines “more likely than not” to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

14. Under Section 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

15. This case involves multiple allegations of corrupt 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 CWPDP, the relevant development credit agreement and RFP reference the applicability of the World Bank’s Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, and January 1999) (the “January 1999 Consultant Guidelines”). The relevant RFP and the CWPDP Contract expressly set out a definition of corrupt practice

in accordance with the same version of the Guidelines. Therefore, the corruption allegations relating to the CWPDP are governed by the January 1999 Consultant Guidelines.

- ii. For the FSDP, the relevant financing agreement and the RFPs reference the applicability of the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, January 1999, and May 2002) (the "May 2002 Consultant Guidelines"). However, the relevant RFPs expressly set out definitions of corrupt practice in accordance with the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) (the "May 2004 Consultant Guidelines"). In accordance with the Bank's legal framework applicable to sanctions, as well as considerations of equity, the Sanctions Board has previously held that the standards agreed between the borrowing or recipient country and the respondent as set forth in the bidding documents or contract forms at issue shall take precedence over conflicting standards agreed between the borrowing or recipient country and the Bank.⁷ Further, the Sanctions Board has held that in cases where the bidding documents refer generally to a certain version of the Guidelines, but in their text set out definitions that accord with another version of the Guidelines, the latter definitions shall prevail as set out directly in the text.⁸ In these circumstances, the Sanctions Board considers that the corruption allegations relating to the FSDP are governed by the May 2004 Consultant Guidelines.

16. The applicable definitions of corrupt practice are set out below in the analysis of each of INT's allegations.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

17. *Corruption allegation 1:* INT alleges that the Respondents engaged in a corrupt practice by providing senior PIU officials with a recreational "study tour" in 2004 in order to influence their actions in the execution of the CWPDP Contract, including the payment of disputed invoices. According to INT, the Respondent Managing Director and the Respondent Regional Director knew of, and approved and authorized, the trip.

18. *Corruption allegation 2:* INT alleges that the Respondent Firm and the Respondent Managing Director engaged in a corrupt practice by providing the PIU Project Director with a recreational "study tour" to Australia in 2006 as a reward for the PIU Project Director's support

⁷ Sanctions Board Decision No. 59 (2013) at para. 11.

⁸ Sanctions Board Decision No. 87 (2016) at para. 16. See also Sanctions Board Decision No. 88 (2016) at para. 12.

and influence in extending the CWPDP Contract. INT alleges that the Respondent Managing Director knew of, and approved and authorized, the study tour.

19. *Corruption allegation 3:* INT alleges that the Respondent Firm and the Respondent Regional Director engaged in a corrupt practice by approving and authorizing payments or “marketing fees” to PIU officials. INT asserts that the Respondent Firm and the Respondent Regional Director made these payments, disguised by “study tours” and a “ghost” contract with a third party company associated with the PIU (the “Third Party Company”), in order to influence the award and execution of the FSDP Contracts.

20. *Sanctioning factors:* INT alleges past misconduct, management’s role, and involvement of public officials as aggravating factors for the Respondent Firm. INT asserts no aggravating factors with respect to the Respondent Managing Director and the Respondent Regional Director. INT submits as mitigating factors the Respondents’ voluntary corrective action and limited (but not minor) role in the misconduct, the Respondent Firm’s voluntary restraint, and the Respondent Managing Director’s and the Respondent Regional Director’s limited cooperation.

B. The Respondent Firm’s Principal Contentions in its Explanation and Response

21. *Corruption allegation 1:* The Respondent Firm argues that INT failed to prove that the provision of the study tour in 2004 constitutes a corrupt practice. The Respondent Firm argues that it had understood the study tour in 2004 to have been an educational trip to benefit the JV Partner’s/Consulting Firm’s business development, rather than a recreational tour. The Respondent Firm nevertheless denies any involvement in organizing the study tour and asserts that the JV Partner/Consulting Firm did not provide the Respondent Firm with details of the trip. Further, the Respondent Firm denies any intent to influence PIU officials or to provide the study tour *quid pro quo*. The Respondent Firm contends that it would be “nonsensical” for it to have agreed to pay US\$40,000 for a trip in order to be paid US\$56,000, which it was legally entitled to recover. In addition, the Respondent Firm asserts that the PIU paid the disputed invoices more than a year after the study tour in 2004 and that the officials who joined the trip had no power to authorize such payment.

22. *Corruption allegation 2:* The Respondent Firm argues that INT failed to prove that the study tour in 2006 constitutes a corrupt practice. The Respondent Firm claims no involvement in organizing this alleged trip and argues that its surrounding facts – its actual occurrence, financier, participants, and purpose – are unclear. The Respondent Firm also argues that, assuming that the PIU Project Director had participated in the alleged study tour in 2006, the Respondent Firm had no intent to influence her to extend the CWPDP Contract since she did not have the authority to either veto or approve the extension, with such authority being vested in multiple agencies, and the discussions on contract extension had begun as early as 2004.

23. *Corruption allegation 3:* The Respondent Firm argues that INT has presented no evidence to show that the Respondent Firm engaged in a corrupt practice in relation to the FSDP Contracts. The Respondent Firm asserts that INT failed to prove that the Respondent Firm had knowledge of the alleged corrupt scheme or that payments were in fact made to any public official. The

Respondent Firm argues that INT has not proven the Respondent Firm's involvement with the Third Party Company, the Third Party Company's status as a PIU-related company, and the payments of "marketing fees" for the FSDP Contracts.

24. *Sanctioning factors:* The Respondent Firm argues that the recommended sanction is disproportionate and would have unfair consequences. The Respondent Firm seeks mitigation for minor role, internal action against responsible individuals, effective compliance program, cooperation, voluntary restraint, passage of time, and adverse consequences of debarment.

C. The Respondent Managing Director's Principal Contentions in his Explanation and Response

25. *Procedural and evidentiary issues:* As a preliminary matter, the Respondent Managing Director raises various procedural and evidentiary issues, as well as due process violations, including (i) concerns regarding the EO's actions; (ii) "unlawful Show Cause process"; (iii) INT's "limited investigative efforts" and criminal referral; (iv) redactions, non-disclosure of certain exhibits, and inclusion of irrelevant material; and (v) unreliability of interview summaries and other documentary evidence.

26. *Corruption allegation 1:* The Respondent Managing Director admits to approving the study tour in 2004, but argues that it was contingent on the understanding that the trip was "educational and technical" in nature and for "capacity-building and client relationship purposes." He denies having had any intent to influence public officials to ensure payment of outstanding invoices. According to the Respondent Managing Director, the trip recipients had no role in the approval and payment of the invoices; the invoices were paid only a year after the study tour; and it "would not make business sense" to spend US\$40,000 on a study tour to recover US\$56,000, which was contractually owed to the company.

27. *Corruption allegation 2:* The Respondent Managing Director admits to approving the study tour in 2006, but argues that he gave his approval on the ground that the trip was technical in nature and arranged with a view to benefit contract implementation. He denies having had any intent to influence the PIU Project Director to extend the CWPDP Contract. The Respondent Managing Director asserts that the CWPDP Contract extension had already been discussed as early as 2004; the PIU Project Director was not a "key decision maker" with regard to the extension of the CWPDP Contract; and INT has failed to prove any improper intention on the Respondent Managing Director's part.

28. *Sanctioning factors:* The Respondent Managing Director argues that the recommended sanction is manifestly excessive; and seeks mitigation for his minor role, involvement in the Respondent Firm's implementation of a compliance program, voluntary restraint, voluntary corrective action, cooperation, period of temporary suspension served, adverse consequences of the temporary suspension and potential debarment, personal circumstances, passage of time, and proportionality.

D. The Respondent Regional Director's Principal Contentions in his Explanation and Response

29. *Procedural and evidentiary issues:* The Respondent Regional Director raises the following procedural and evidentiary issues: factual inaccuracies in the witnesses' records of interviews and "bad practice" in INT's conduct of interviews.

30. *Corruption allegation 1:* The Respondent Regional Director argues that the study tour in 2004 was educational and technical, and not predominantly recreational. The Respondent Regional Director also asserts that INT has not presented any evidence to support its contention that the study tour was intended to expedite the payment of disputed invoices. He contends that these invoices were paid only a year after the study tour, and that it does not make "commercial sense" to spend US\$40,000 on a study tour to get paid US\$56,000 worth of valid claims.

31. *Corruption allegation 3:* The Respondent Regional Director denies authorizing or having knowledge of the alleged payments to PIU officials for each of the two FSDP Contracts. While he admits to approving payments for a study tour and the Third Party Company, the Respondent Regional Director claims that he understood the study tour and the Third Party Company's services to be legitimate, rather than a disguise for payments to reward public officials who influenced the procurement process.

32. *Sanctioning factors:* The Respondent Regional Director argues that the recommended sanction is disproportionate and unfair. He seeks mitigation for his minor role, involvement in the Respondent Firm's implementation of a compliance program, cooperation, voluntary corrective action, period of temporary suspension served, record of general performance, good character and integrity, passage of time, and proportionality.

E. INT's Principal Contentions in the Reply

33. *Procedural and evidentiary issues:* INT asserts that the Respondent Managing Director and the Respondent Regional Director were given ample opportunity to be heard and that they initially refused to cooperate with the investigation. INT contends that it acted in accordance with the Sanctions Procedures, including its disclosure requirements; it already presented all exculpatory evidence; and the Respondent Managing Director failed to identify the documents and interviews of which he seeks disclosure. INT further argues that the alleged inaccuracy of the record of interview finds no support in the record.

34. *Corruption allegation 1:* INT argues that the Respondents were aware that the joint venture between the Respondent Firm and the JV Partner/Consulting Firm used "study tours" to pay public officials in return for the officials' support, and that there is no evidence that the JV Partner/Consulting Firm misled the Respondents. According to INT, the Respondents' arguments (that the disputed invoices were paid only a year after the study tour, and that financing the study tour in order to obtain the payment of a US\$56,000 invoice does not make economic sense) do not negate the existence of a quid pro quo arrangement. INT contends that the Respondents had other motives, such as "general good standing" with government officials and "future business for the JV companies"; and that the US\$56,000 invoice was only one of several disputed invoices.

35. *Corruption allegation 2:* INT argues that nothing in the record suggests that the study tour in 2006 was ever expected to contain any study, training, or business-related activity. INT asserts that the Respondent Firm's and the Respondent Managing Director's arguments (that prior discussions about extending the CWPDP Contract had taken place and that the PIU Project Director had no complete control over the extension) do not negate the fact that it was improper to reward the PIU Project Director for supporting the CWPDP Contract's extension.

36. *Corruption allegation 3:* INT argues that the record clearly shows that the Respondent Regional Director, on behalf of the Respondent Firm, knowingly approved payments to PIU officials. INT asserts that, even if the Respondent Regional Director then believed that a study tour took place, email correspondence with an employee of the Consulting Firm shows that the trip was an improper reward to officials for their support under the FSDP. INT, however, maintains that the study tour never took place, but only served to disguise corrupt payments.

37. *Sanctioning factors:* With respect to the Respondents' assertions that the recommended sanctions are disproportionate, INT asserts that the Respondents base their comparison mostly on cases resolved pursuant to settlements where the respondents were afforded significant credit for, *inter alia*, admitting to misconduct and cooperating with INT. INT argues that it is not the case here. INT further reiterates the aggravating and mitigating factors detailed in the SAE.

F. Presentations at the Hearing

38. At the hearing, INT argued that, with respect to the CWPDP Contract, the Respondents provided recreational "study tours" in order to garner public officials' support in matters relating to contract execution. INT asserted that while the Respondents claim to have believed that the study tours were legitimate and had no *quid pro quo* arrangement, the Respondents knew that the public officials had a "relevant measure of influence" in contract execution. With respect to its allegations in connection with the FSDP Contracts, INT argued that the Country Representative played a central role in the corrupt scheme by offering public officials bribe payments disguised as study tours. INT asserted that the Respondents generally seek to distance themselves from the Country Representative by attributing his actions in relation to both the CWPDP and the FSDP to the JV Partner/Consulting Firm, to whom the Respondent Firm loaned the Country Representative to act as the JV Partner's/Consulting Firm's agent. INT however argues that, during the period relevant to the allegations in relation to the CWPDP, the Respondent Firm had (i) publicly identified the Country Representative as its country manager in Vietnam; (ii) paid the Country Representative a fixed salary; and (iii) instructed the Country Representative to represent the Respondent Firm in meetings with the JV Partner/Consulting Firm. In relation to the FSDP Contracts, INT asserted that the Respondent Firm directly benefitted from the Country Representative's dealings through its profit share agreements with the Consulting Firm. INT added that the Respondent Firm exercised sufficient control over the Country Representative by preventing him from speaking to INT on matters involving the company. As for sanctioning factors, INT reiterated its arguments in the SAE and the Reply.

39. The Respondent Firm argued that neither the Consulting Firm's activities nor the Country Representative's actions could be attributed to the Respondent Firm. With respect to the study tour in 2004 under the CWPDP, the Respondent Firm denied any *quid pro quo* arrangement and

maintained that it had paid for half the costs of the study tour believing them to have been legitimate. As regards the alleged study tour in 2006 under the CWPDP, the Respondent Firm raised doubts as to whether a study tour had actually taken place, and pointed out that if there had been one, INT failed to prove that a quid pro quo arrangement had existed. With regard to the alleged corrupt payments under the FSDP, the Respondent Firm contended that nothing in the record links the Respondent Firm to the Consulting Firm's scheme or shows that the Respondent Firm was aware of any corrupt payments. As for sanctioning factors, the Respondent Firm argued that aggravation is not justified for past misconduct and involvement of management and public officials. Lastly, the Respondent Firm asserted mitigation for its minor role, cooperation, proportionality, and period of temporary suspension served.

40. In his presentation, the Respondent Managing Director asserted several procedural breaches that purportedly impact on the credibility, reliability, and completeness of the evidence. According to him, these breaches include, inter alia, INT's referral of the case to a national prosecutor even before the conclusion of INT's investigation, INT's redactions of potentially exculpatory evidence, INT's failure to corroborate or verify information, and the extension of the early temporary suspension. With respect to INT's corruption allegations, the Respondent Managing Director maintained that he had no knowledge that the study tours in 2004 and 2006 had been supposedly recreational in nature. He further asserted the existence of conflicting evidence in the record, especially in relation to the alleged study tour in 2006. With regard to sanctioning factors, the Respondent Managing Director argued that mitigation is warranted for voluntary restraint and the period of temporary suspension served. The Respondent Managing Director further contended that aggravation may not be applied for the alleged involvement of public officials, as the involvement of public officials is integral to the definition of corrupt practice and should not be considered as an aggravating factor.

41. For his part, the Respondent Regional Director argued that INT has not made out its allegations against him, considering (i) the uncertainties in the record as to the details of the study tours and corrupt payments; (ii) the exculpatory evidence presented; and (iii) his credibility. The Respondent Regional Director asserted that the emails on which INT relies to demonstrate his involvement in the alleged corrupt activities could have indeed raised red flags, but are nonetheless insufficient to prove his knowledge and intent. With respect to the CWPDP, the Respondent Regional Director maintained that when he approved the study tour in 2004 organized by the JV Partner/Consulting Firm, he understood it to have been legitimate and he had no intention to approve a trip that would have amounted to a bribe. With respect to the FSDP, the Respondent Regional Director argued that he approved payments for the study tours and the Third Party Company knowing them to be legitimate, rather than a disguise for corrupt payments to government officials. Finally, the Respondent Regional Director reiterated the mitigating factors that he had raised in his written submissions, highlighting that he has already served two years and five months on temporary suspension, which has greatly affected him.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

42. The Sanctions Board will first address the various procedural and evidentiary issues raised by the Respondent Managing Director and the Respondent Regional Director. The Sanctions Board will then consider whether it is more likely than not that the alleged sanctionable

practices occurred, and if so, which of the Respondents 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 the concerns regarding the EO's actions

43. The Respondent Managing Director asserts a range of concerns regarding the EO's actions, including the EO's (i) "review[of] her own decision to issue the [Notice]"; (ii) imposition of an early temporary suspension, and the extension thereof, prior to affording the Respondent Managing Director an opportunity to be heard; and (iii) failure to disclose materials relating to INT's application for the extension of the early temporary suspension.

44. The Sanctions Board finds that the above concerns regarding the EO's actions relate to conduct undertaken in accordance with the sanctions system as designed and implemented. As the Sanctions Board has previously observed, "[n]either the Sanctions Board Statute nor any provision of the Sanctions Procedures suggests the Sanctions Board's jurisdiction should encompass review of the legal adequacy of the general sanctions framework, as opposed to individual sanctions cases."⁹ Further, the Respondent Managing Director has failed to identify any fundamental inconsistencies or shortcomings in the Bank's sanctions framework that have resulted in a failure of due process in these proceedings before the Sanctions Board.¹⁰ The Sanctions Board thus finds that the Respondent Managing Director has failed to present a valid procedural challenge on the basis of the EO's asserted actions.

2. Determination on the conduct of INT's investigation

45. The Respondent Managing Director asserts a range of concerns regarding the conduct of INT's investigation, including the following: (i) INT's show-cause letters constitute a fishing expedition and an abuse of the obligation to conduct an objective inquiry, and exert undue pressure to enter into settlement negotiations; (ii) INT exerted limited investigative efforts, including the failure to interview witnesses and pursue leads; (iii) INT's criminal referral to domestic authorities abuses the Bank's immunity; (iv) INT conducted its interview with the Country Representative in an oppressive manner; and (v) INT relies on draft records of interviews reflecting almost the same statements across different witnesses. For his part, the Respondent Regional Director contends that INT interviewed the Country Representative in an unprofessional manner and relies on records, as opposed to transcripts, of interviews containing factual inaccuracies.

46. With respect to the show-cause letters, the Sanctions Board notes that, although the Sanctions Procedures do not require INT to issue show-cause letters prior to initiating sanctions proceedings, they also do not prohibit the issuance of such letters. The Sanctions Board notes that a show-cause letter would ordinarily inform respondents of the allegations against them, and

⁹ Sanctions Board Decision No. 55 (2013) at para. 26. See also Sanctions Board Decision No. 92 (2017) at para. 50.

¹⁰ Sanctions Board Decision No. 55 (2013) at para. 26.

give them an opportunity to respond to those allegations. A show-cause letter does not compel a response, however, and respondents may choose not to respond. The Sanctions Board therefore does not consider the complaints raised by the Respondent Managing Director to be of merit. It also finds nothing in the record in this case indicating that INT's issuance of show-cause letters materially prejudiced the Respondent Managing Director in the conduct of his defense. With regard to INT's investigative efforts, the Sanctions Board notes 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 INT has the discretion to determine its investigatory process to ensure that it meets its initial burden of proof in sanctions proceedings, and the Sanctions Procedures impose no duty on INT to interview all witnesses or pursue all leads. The only obligation imposed upon INT is that it must produce all exculpatory evidence in its possession. Taking into account the evidence and the arguments presented by INT and the Respondents, the Sanctions Board considers that the record is sufficient for it to make a determination on the potential liability of the Respondents. With respect to criminal referral to national authorities, the Sanctions Board notes that the sanctions framework provides for such referrals and, as discussed in Paragraph 44, the Sanctions Board's jurisdiction does not encompass review of the legal adequacy of the sanctions system.¹² As for INT's conduct of interviews, the Sanctions Board finds nothing in the record indicating that INT conducted its interview with the Country Representative oppressively or unprofessionally in a manner that would impact on the reliability of his testimony. Finally, as regards INT's reliance on records of interview, the Sanctions Board has previously held that summary records of interview lack the intrinsic accuracy of verbatim transcripts, particularly where – as here – there is no indication that the summaries were reviewed or signed by any of the interviewees to attest to their basic accuracy.¹³ The Sanctions Board takes this factor into consideration when weighing the probative value of the records of interviews in this case. Considering all the issues raised and the totality of the record, the Sanctions Board concludes that the Respondent Managing Director and the Respondent Regional Director have failed to present a valid procedural challenge with respect to the conduct of INT's investigation.

3. Determinations on the redaction challenge and the alleged disclosure of “irrelevant and prejudicial material”

47. The Respondent Managing Director challenges the redactions of records of interview with three employees of the Consulting Firm, asserting that these redactions were prejudicial, inconsistent, and unnecessary. The Respondent Managing Director also asserts that the record contains “irrelevant and prejudicial material” that addresses matters outside the scope of the allegations. The Respondent Managing Director argues that the inclusion of these materials serve no purpose other than to demonstrate a propensity to engage in misconduct or imply involvement in “wider alleged wrongdoing.” Following the Sanctions Board Chair's invitation, INT filed a

¹¹ Sanctions Board Decision No. 81 (2015) at para. 33; Sanctions Board Decision No. 92 (2017) at para. 50.

¹² Sanctions Board Decision No. 55 (2013) at para. 26; Sanctions Board Decision No. 92 (2017) at para. 50.

¹³ See e.g., Sanctions Board Decision No. 78 (2015) at para. 51; Sanctions Board Decision No. 81 (2015) at para. 32.

submission on November 15, 2016, providing comments on the Respondent Managing Director's redaction challenge.

48. Section 5.04(d) of the Sanctions Procedures provides that "INT, in its sole discretion, may redact particular parts or pieces of evidence presented to the Respondent or the Sanctions Board, by: (i) removing references to [World Bank Group] staff; and (ii) removing references to other third parties (together with other material that would permit such third parties to be identified), in cases where the identity of such parties is either not relevant or not germane to the case." Section 5.04(d) further provides that if the respondent challenges INT's redactions in its response, "the Sanctions Board shall review the unredacted version of such evidence to determine whether the redacted information is necessary to enable the Respondent to mount a meaningful response to the allegations against it." In this case, the Sanctions Board notes that the redacted information in the records of interview pertains to the corruption allegation in relation to the FSDP – an allegation that is not made against the Respondent Managing Director. Accordingly, the Sanctions Board does not find that the redacted information is necessary to enable the Respondent Managing Director to mount a meaningful response. Neither does the Sanctions Board find that the redacted portions of the records of interview are exculpatory in relation to any of the other Respondents.

49. With respect to the alleged "irrelevant and prejudicial material," the Sanctions Board has previously held 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."¹⁴ The Sanctions Board will not take into consideration evidence that is irrelevant and immaterial in reaching its decisions, and will not draw any inferences from such evidence.¹⁵ The Sanctions Board thus denies the Respondent Managing Director's request to exclude or expunge from the record the material that he describes as "irrelevant and prejudicial."

4. Determination on the disclosure requests

50. The Respondent Managing Director requests INT to disclose numerous documents, including a list of all the items that INT examined at the headquarters of the Respondent Firm, unused material that INT gathered that neither advances INT's case nor assists the Respondents, and documents presented to and produced by witnesses. INT argues that it had already presented all exculpatory evidence in its possession.

51. Section 7.03 of the Sanctions Procedures provides that "[e]xcept as expressly provided for in these Procedures, the Respondent shall have no right to review or obtain any information or documents in the Bank's possession." Section 3.02 of the Sanctions Procedures requires INT to "present all relevant evidence in INT's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability." The Sanctions Board notes that the

¹⁴ Sanctions Board Decision No. 92 (2017) at para. 45.

¹⁵ See Sanctions Board Decision No. 92 (2017) at para. 45.

Respondent Managing Director has not asserted, and the record does not indicate, that the requested evidence is exculpatory or mitigating in the sense of Section 3.02, or necessary to enable him to mount a meaningful response within the meaning of Section 5.04(d). Accordingly, the Sanctions Board finds that the Respondent Managing Director failed to raise a valid procedural challenge.

B. Evidence of Corrupt Practices

52. In relation to INT's first and second corruption allegations in connection with the CWPDP Contract, and in accordance with Paragraph 1.25(a)(i) of the January 1999 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondents (i) offered, gave, received, or solicited any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.

1. Corruption allegation 1: Alleged recreational study tour in 2004 in relation to the CWPDP

a. Giving a thing of value

53. The first element of corrupt practice requires a showing that a respondent gave a thing of value. The Sanctions Board has held that a "thing of value" for purposes of corrupt practice need not be in the form of money, as it can instead be some other type of benefit or advantage.¹⁶ In a recent case, the Sanctions Board found that the respondent gave a "thing of value" to a public official in the form of an entertainment trip.¹⁷ In the present case, INT alleges that the Respondents organized and paid approximately US\$40,000 for a primarily recreational study tour in 2004 to senior PIU officials, including the vice minister of the PIU (the "PIU Vice Minister") and the PIU Project Director. According to INT, the Respondent Managing Director knew of, condoned, and authorized the recreational elements of the study tour; and the Respondent Regional Director knew of and approved the costs of the study tour.

54. The Respondent Managing Director and the Respondent Regional Director both state that they approved at least one study tour in 2004 as a joint venture cost with the understanding that the trip was predominantly technical or educational, rather than recreational, in nature. In addition, the record contains testimonial evidence indicating that the Respondent Firm provided a trip in 2004 to PIU officials. For instance, the Country Representative stated during his interview with INT that he helped develop the itinerary of a study tour and joined one in Australia, where the PIU Vice Minister participated. Further, in an interview conducted by the Consulting Firm's counsel with the Consulting Firm's chief technical adviser and project manager for the CWPDP (the "Consulting Firm's CWPDP Manager"), he asserted that the joint

¹⁶ See Sanctions Board Decision No. 66 (2014) at para. 24 (finding that the respondent's predecessor gave a "thing of value" to a Bank staff member by acceding to the staff member's request that the respondent's predecessor hire his son); Sanctions Board Decision No. 78 (2015) at paras. 53-54 (finding that the respondent firm had provided a "thing of value" to a public official by hiring the official's daughter as an intern and then as a full-time employee).

¹⁷ Sanctions Board Decision No. 85 (2016) at para. 23.

venture arranged and paid for two study tours to Australia in 2004 worth approximately US\$40,000 for the PIU Vice Minister, the PIU Project Director, and other PIU officials. According to the Consulting Firm's CWPDP Manager, he personally organized one of the two trips, while the Country Representative organized the other.

55. Consistent with the testimonial evidence discussed above, the record contains contemporaneous documentary evidence indicating that the Respondent Managing Director and the Respondent Regional Director provided at least one trip for PIU officials in 2004. For example, minutes of a meeting held on December 3, 2004 (the "December 2004 Minutes") contain the following entries under the heading "Study-Tour": "New Vice-Minister will come," and "[o]riginally proposed a large technical component. Scaled down slightly, but still technical meetings in Brisbane and Melbourne." The December 2004 Minutes reflect the attendance of the Respondent Managing Director, the Respondent Regional Director, the Country Representative, and the Consulting Firm's CWPDP Manager.

56. On the basis of the Respondent Managing Director's and the Respondent Regional Director's acknowledgement of their approval of at least one study tour, and the evidence in the record, the Sanctions Board finds that the Respondent Managing Director and the Respondent Regional Director gave a thing of value to PIU officials in the form of a trip in 2004.

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

57. The second element of corrupt practice requires a showing that a respondent, in giving a thing of value to another party under the first element, acted with a purpose to influence the action of a public official in the selection process or in contract execution.¹⁸ INT asserts that the Respondents provided PIU officials with a primarily recreational study tour in 2004, "hoping and expecting" to facilitate the payment of disputed invoices under the CWPDP Contract. The Respondent Firm and the Respondent Regional Director deny that the study tour had been intended as a *quid pro quo*. The Respondent Managing Director argues that the study tour was for capacity-building and client relationship, and not for the payment of disputed invoices.

58. The Sanctions Board notes that providing study tours to public officials does not necessarily indicate intent to influence the public officials' actions, as study tours may well serve a legitimate, educational purpose in certain circumstances. However, the provision of a trip that is recreational, rather than educational or technical, in nature may support an inference of corrupt intent. The Sanctions Board held in a previous case that the respondent more likely than not offered a thing of value in order to influence the action of a public official in the procurement process where the record clearly demonstrated, *inter alia*, that the trip had been predominantly recreational.¹⁹ In this case, even if the Sanctions Board were to determine that the trip in 2004 was recreational – a finding that it need not reach – the evidence in the record is insufficient to show that the Respondent Managing Director and the Respondent Regional Director viewed the

¹⁸ Sanctions Board Decision No. 78 (2015) at para. 55.

¹⁹ Sanctions Board Decision No. 85 (2016) at paras. 25, 30-32.

trip as such. The record indicates that the Respondent Managing Director and the Respondent Regional Director had little input in the day-to-day operations of the CWPDP, including the planning of the trip in 2004; and that the Country Representative “very rarely” reported to the Respondents. The only contemporaneous evidence in the record indicating the Respondent Managing Director’s and the Respondent Regional Director’s knowledge of the trip is the December 2004 Minutes. As discussed in Paragraph 55 above, the December 2004 Minutes reflect the following entry under “Study-Tour”: “Originally proposed a large technical component. Scaled down slightly, but still technical meetings in Brisbane and Melbourne.” The Sanctions Board determines that this evidence is insufficient to find that the Respondent Managing Director and the Respondent Regional Director approved the trip with the view that it was to be recreational in nature, especially in the context of their limited involvement in the CWPDP.

59. In light of the above findings, the Sanctions Board concludes that the record is insufficient to find that it is more likely than not that the Respondent Managing Director and the Respondent Regional Director acted with corrupt intent. Accordingly, the Sanctions Board concludes that INT failed to discharge its burden to prove that it is more likely than not that the Respondent Managing Director and the Respondent Regional Director engaged in the alleged corrupt practice in relation to the CWPDP in 2004.

2. Corruption allegation 2: Alleged recreational study tour in 2006 in relation to the CWPDP

60. INT alleges that the Respondent Firm and the Respondent Managing Director provided the PIU Project Director with a recreational trip to Australia in 2006 as a reward for the PIU Project Director’s support and influence in extending the CWPDP Contract. INT asserts that the Respondent Managing Director knew of, condoned, and authorized the recreational elements of the study tour. The Respondent Firm contends that it was not involved in organizing the trip and that there is no clear understanding of the facts surrounding it. While the Respondent Managing Director admits to approving the trip in 2006 with the understanding that it had technical components and was intended to benefit contract implementation, he asserts that he cannot confirm whether the trip actually occurred because he did not personally organize it.

61. The record does not support a finding that it is more likely than not that the Respondent Managing Director provided the PIU Project Director with a study tour, let alone a recreational trip, in 2006. The record contains conflicting testimonies regarding this alleged trip. For instance, the Consulting Firm’s CWPDP Manager stated during his interview that the Country Representative “probably” organized a “study tour” in 2006 for the PIU Project Director and her husband to visit Australia. The Consulting Firm’s CWPDP Manager asserted that the trip did not have “any significant technical content programmed into it” and was instead “a recreational trip.” However, the Country Representative stated during his interview that, although the JV Partner/Consulting Firm had wanted to invite the PIU Project Director and other government officials for a study tour in 2006, the study tour never took place because the PIU Project Director did not accept the trip.

62. Further, contemporaneous documentary evidence in the record is insufficient to establish that the Respondent Managing Director provided a study tour in 2006. For example, copies of minutes of several meetings among the Respondent Managing Director, the Country Representative, and the Consulting Firm's CWPDP Manager suggest that a study tour may have taken place. However, the Sanctions Board accords limited weight to these incomplete, unsigned, and unconfirmed minutes of meetings, especially in light of the contradicting testimonial evidence discussed above, as well as the general lack of detail in the record as regards the purported study tour, including its specific date, place, purpose, and itinerary.

63. In light of the above, the Sanctions Board considers that the evidence in the record is insufficient to show that it is more likely than not that the Respondent Managing Director gave the PIU Project Director a thing of value in the form of a study tour in 2006. The Sanctions Board therefore need not consider whether the Respondent Managing Director acted with a purpose to influence the actions of a public official in contract execution.

3. Corruption allegation 3: Alleged bribe payments in relation to the FSDP

64. In accordance with the definition of corrupt practice under Paragraph 1.22(a)(i) of the May 2004 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent Firm and the Respondent Regional Director (i) offered, gave, received, or solicited directly or indirectly anything of value (ii) to influence the action of a public official in the selection process or in contract execution.²⁰

65. INT alleges that the Country Representative promised PIU officials the payment of US\$50,000 – disguised by invoices for “study tours” and a “ghost” contract with the Third Party Company – for each of the FSDP Contracts. INT alleges that the Respondent Regional Director was informed of, and eventually approved and authorized, the illegitimate payments. INT further alleges that the Respondent Regional Director was informed of the above-market payments to the Third Party Company, a purported “de facto” company of the PIU, as a reward to public officials who influenced the procurement process. INT attributes the acts of the Country Representative to the Respondent Firm, asserting that the Country Representative continued to act as the Respondent Firm's representative during the period relevant to the FSDP even though he worked more closely with the Consulting Firm as its agent. For purposes of analyzing the Respondent Firm's and the Respondent Regional Director's potential liability for the alleged acts of the Country Representative, the Sanctions Board will provisionally assume, but need not determine at this time, the sufficiency of the evidence to support INT's allegation that the Country Representative offered and made bribe payments to PIU officials.

66. Under the Bank's sanctions framework, liability for corrupt practices may extend beyond physical execution of corrupt acts, and may rest either on culpability for direct involvement (e.g., through instructions or orders, approval or guidance, or inferred authorization in cases of close

²⁰ The definition of “corrupt practice” in the relevant RFPs does not include the footnote defining the term “public official.”

supervision) or on responsibility for another party's actions (e.g., where there is a duty to supervise combined with deliberate non-intervention).²¹

67. *Culpability:* First, INT does not allege, and the record does not indicate, that the Respondent Regional Director instructed or ordered the Country Representative to offer or pay the alleged bribes. Indeed, the Country Representative stated during his interview that he received instructions from a manager of the Consulting Firm (the "Consulting Firm's Manager") regarding the "study tours," which are alleged to have been a mere disguise for bribe payments under the FSDP, without the knowledge or involvement of the Respondent Regional Director. Second, the record is insufficient to support a finding that the Respondent Regional Director approved or guided the Country Representative's alleged bribe payments. INT relies on email correspondence between the Consulting Firm's Manager and the Respondent Regional Director regarding invoices for a study tour for "some FSDP people, including ... some from the awards committee," and a contract with the Third Party Company. According to INT, the language of these emails indicates that the Respondent Regional Director was informed of, and approved and authorized, illegitimate payments as disguised by a "study tour" and a "ghost" contract. However, as discussed, the record indicates that the Respondent Regional Director lacked knowledge about the "study tours" under the FSDP. In addition, FSDP Contract 2 lists the Third Party Company as a sub-consultant, and the Country Representative stated that the Respondent Regional Director was not in direct contact with the Third Party Company. Thus, while red flags may be inferred from certain language in the emails, the evidence is insufficient to show on balance that the Respondent Regional Director approved the study tour and the contract with the Third Party Company knowing them to be a disguise for corrupt payments. Finally, the record does not provide a sufficient basis for an inference of authorization, as in instances where a respondent exercises close supervision over the business operations of a closely held company.²² INT concedes, and the record supports a finding, that the Respondent Regional Director had limited involvement in the day-to-day running of the FSDP that then discounts any inference of authorization on the basis of close supervision. Based on the foregoing considerations, the Sanctions Board finds that the record does not support holding the Respondent Regional Director culpable for direct involvement.

68. *Responsibility:* The Sanctions Board next considers whether the record shows that the Respondent Regional Director may be held liable for the Country Representative's alleged offer and payment of bribes. The Respondent Regional Director may be held responsible if he had a duty to supervise the Country Representative, knew of or was willfully blind to the Country Representative's alleged misconduct, and did not intervene.²³ On the basis of the Respondent Firm's organizational structure alone, it appears that the Country Representative was generally under the supervision of the Respondent Regional Director, who managed the region where the Country Representative operated. However, in the particular context of the FSDP – the project under which INT alleges the bribe payments to have occurred – evidence indicates that the Respondent Regional Director did not have a duty to supervise the Country Representative. For

²¹ Sanctions Board Decision No. 64 (2014) at para. 37.

²² Sanctions Board Decision No. 64 (2014) at para. 38.

²³ Sanctions Board Decision No. 64 (2014) at para. 39.

instance, the Country Representative functioned as an agent of the Consulting Firm during the period relevant to the FSDP, and the Respondent Regional Director had limited involvement in that project. Further, the FSDP profit share agreements show that the Consulting Firm was the “lead company” for the project; all personnel reported to the Consulting Firm; and management of the project rested with the Consulting Firm’s Manager. In addition, the Country Representative, the Consulting Firm’s Manager, and two other managers of the Consulting Firm all stated that the Country Representative acted on the instructions of the Consulting Firm’s Manager in relation to the FSDP. Considering the totality of the record, the Sanctions Board finds insufficient evidence to establish that the Respondent Regional Director had a duty to supervise the Country Representative. The Sanctions Board therefore need not address the remaining elements of responsibility, i.e., knowledge or willful blindness and non-intervention. Accordingly, the Sanctions Board finds that the record does not support holding the Respondent Regional Director responsible for the Country Representative’s alleged offer and payment of bribes to PIU officials in the guise of “study tours” and a “ghost” contract.

69. Based on the foregoing reasons, the Sanctions Board considers that the evidence in the record is insufficient to show that it is more likely than not that the Respondent Regional Director may be held liable for corrupt practices in relation to the FSDP. The Sanctions Board therefore need not consider whether the evidence in the record is sufficient to support INT’s corruption allegation with respect to the FSDP. The potential liability of the Respondent Firm is discussed in the following section.

C. The Respondent Firm’s Liability for the Acts of its Employees

70. 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.²⁴

71. In the present case, the record does not support a finding that it is more likely than not that the Country Representative acted within the course of his duties and with the purpose of serving the interests of the Respondent Firm. To the contrary, the record indicates that the Country Representative acted on behalf of the Consulting Firm in relation to the Projects. For instance, the Country Representative stated during his interview that he did not communicate his day-to-day activities to the Respondents. With respect to the CWPDP, the Country Representative stated that he reported regularly to the Consulting Firm’s CWPDP Manager, and that the Respondents were not privy to the details of the study tours under the CWPDP. With regard to the FSDP, the record indicates, and INT does not dispute, that the Country Representative spent more time working for the Consulting Firm as its agent than for the Respondent Firm. The Country Representative asserted that the Respondent Firm did not know, and the Consulting Firm’s Manager specifically instructed him not to inform the Respondent Firm, about the purported study tours that are alleged to have disguised bribe payments under the FSDP. The record therefore supports a finding that the Country Representative more likely acted

²⁴ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

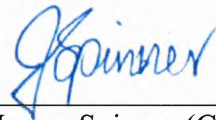
within the scope of his engagement as an agent of the JV Partner/Consulting Firm rather than as an employee of the Respondent Firm, and was motivated by the intent to serve the JV Partner/Consulting Firm rather than the Respondent Firm.

72. Further, with respect to the acts of the Respondent Managing Director and the Respondent Regional Director, as discussed in Paragraphs 59, 67-68, the record does not indicate that they knew the study tour in 2004 under the CWPDP and the alleged bribe payments in relation to the FSDP to be corrupt so as to attribute any corrupt intent or liability to the Respondent Firm. In addition, as discussed in Paragraphs 61-63, the record does not support a finding that the Respondent Managing Director gave a thing of value in the form of a study tour in 2006.

73. As a final observation, the Sanctions Board reiterates that INT has the initial burden to prove that it is more likely than not that the Respondents engaged in the alleged corrupt practices. While the record includes some evidence indicating that misconduct may have taken place, for the reasons set forth above, the Sanctions Board finds that the record, on balance, is insufficient to show that it is more likely than not that the Respondents engaged in the alleged sanctionable practices.

D. Termination of Sanctions Proceedings

74. Section 8.01(a) of the Sanctions Procedures requires that “if the Sanctions Board determines that it is not more likely than not that the Respondent engaged in a Sanctionable Practice, the proceedings shall be terminated.” Accordingly, the Sanctions Board declares that the sanctions proceedings against the Respondents in Sanctions Case No. 386, including the temporary suspensions imposed by the EO for the pendency of such proceedings, are hereby terminated.



J. James Spinner (Chair)

On behalf of the
World Bank Group Sanctions Board

J. James Spinner
Olufunke Adekoya
Catherine O'Regan