THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: May 30, 2012

Sanctions Board Decision No. 50
(Sanctions Case No. 117)
IBRD Loan No. 4721 - TH
Thailand

Decision of the World Bank Group Sanctions Board declaring the respondent entity in Sanctions Case No. 117 ("Respondent"), together with any entity that is an Affiliate[1] Respondent directly or indirectly controls, ineligible (i) to be awarded a contract for any Bank-financed or Bank-executed project or program governed by the Bank's Procurement Guidelines, Consultant Guidelines or Anti-Corruption Guidelines (hereinafter collectively referred to as "Bank-Financed Projects"),[2] (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider[3] of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, after a minimum period of ineligibility of five (5) years, Respondent 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. The ineligibility shall extend across the operations of the World Bank Group.[4] The Bank will also provide notice of this declaration of ineligibility to the other multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so they may determine whether to enforce the

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[1] In accordance with Section 1.02(a) of the World Bank Sanctions Procedures as adopted January 1, 2011 (the "Sanctions Procedures"), the term "Affiliate" means "any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank."

[2] As in the Sanctions Procedures, the terms "World Bank" and "Bank" are here used interchangeably to refer to both the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"). See Sanctions Procedures at Section 1.01(a), n.1.

[3] In accordance with Section 9.01(c)(i), n.14 of the Sanctions Procedures, a nominated sub-contractor, consultant, manufacturer or supplier, or service provider is one which has been: (i) included by the bidder in its prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

[4] In accordance with Section 1.02(a) of the Sanctions Procedures, the term "World Bank Group" means, collectively, IBRD, IDA, the International Finance Corporation ("IFC") and the Multilateral Investment Guarantee Agency ("MIGA"). The term includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes ("ICSID").

declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[5] This sanction is imposed on Respondent for corrupt practices as defined in Paragraph 1.25 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"). The period of ineligibility shall begin on the date this decision issues.

I. INTRODUCTION

1. The Sanctions Board met in plenary session on December 7, 2011, at the World Bank's headquarters in Washington, D.C., to review this case. The Sanctions Board was represented by Fathi Kemicha (Chair), Hassane Cissé, Marielle Cohen-Branche, Cornelia Cova, Patricia Diaz Dennis, Hoonae Kim and Hartwig Schafer.

2. A hearing was held at the request of the World Bank's Integrity Vice Presidency ("INT") in accordance with Article VI of the Sanctions Procedures. INT participated in the hearing through its representatives. Respondent declined to participate in the hearing. Following the hearing, the Sanctions Board deliberated and reached its decision based on the written record and the arguments and evidence 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 ("EO") to Respondent, one of its consortium partners ("Consortium Partner A"), and Consortium Partner A's Executive Director on June 15, 2011 (the "Notice"), appending the Statement of Accusations and Evidence (the "SAE") presented to the EO by INT;

ii. Explanation submitted by Respondent to the EO, dated July 19, 2011 (the "Explanation");

iii. Response submitted by Respondent to the Secretary to the Sanctions Board, dated September 16, 2011 (the "Response"); and

[5] 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 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).

iv. Reply in Support of Notice of Sanctions Proceedings, submitted by INT to the Secretary to the Sanctions Board, dated November 2, 2011 (the "Reply").

4. Pursuant to Section 4.01(c), Section 9.01 and Section 9.04 of the Sanctions Procedures, the EO recommended in the Notice that Respondent (together with any Affiliate Respondent directly or indirectly controls) be declared ineligible (i) to be awarded a contract for any Bank-Financed Projects, (ii) to 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) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects; provided, however, after a minimum period of ineligibility of six (6) years, Respondent may be released from ineligibility only if it has, in accordance with Section 9.03 of the Sanctions Procedures, demonstrated to the Bank Group's Integrity Compliance Officer it has complied with the following conditions: (a) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (b) put in place an effective integrity compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank.

5. Effective June 15, 2011, Respondent (together with any Affiliate Respondent directly or indirectly controls) was temporarily suspended from eligibility to be awarded additional contracts for Bank-Financed Projects or participate in new activities in connection with Bank-Financed Projects pending the outcome of this sanctions proceeding.

6. Pursuant to Section 4.01(c), Section 9.01 and Section 9.04 of the Sanctions Procedures, the EO further recommended in the Notice that Consortium Partner A and its Executive Director (together with any Affiliate either of them directly or indirectly controls) each be debarred for a minimum period of seven (7) years, subject to conditional release. Neither Consortium Partner A nor its Executive Director submitted a written response to the Sanctions Board in accordance with Section 5.01(a) of the Sanctions Procedures to contest INT's accusations or the EO's recommended sanction. Pursuant to Section 4.04 of the Sanctions Procedures, the sanctions recommended by the EO against Consortium Partner A and its Executive Director therefore entered into force as of September 20, 2011.[6]

II. GENERAL BACKGROUND

7. This case arises in the context of the Thailand Highways Management Project (the "Project"), by which the Kingdom of Thailand (the "Borrower") sought to enhance the efficiency, productive use and management of its road network. On December 16, 2003, IBRD and the Borrower entered into a loan agreement for the Project (the "Loan Agreement"). The Loan Agreement required all consulting services be procured in accordance with, inter alia, the provisions of Section I of the May 2002 Consultant Guidelines regarding fraud and corruption.

[6] EO Determination in Sanctions Case No. 117 (September 20, 2011). Published determinations issued by the EO are available at http://go.worldbank.org/G7EO0UXW90.

8. In November 2004, the Borrower's implementing agency for the Project (the "Implementing Agency") issued a request for proposals (the "RFP") to provide consulting services for the development and implementation of a central roads database system, bridge management system, and road maintenance management system (the "Contract"). The RFP also specified application of the May 2002 Consultant Guidelines and its provisions regarding fraud and corruption. The Implementing Agency sent the RFP to six shortlisted consultants, including a consortium consisting of Respondent, Consortium Partner A, and a third firm ("Consortium Partner B") (collectively, the "Consortium").[7] The RFP specified the Implementing Agency would evaluate each bidder's technical and financial proposals for the Contract, then generate each bidder's total score based eighty percent on the technical proposal and twenty percent on the financial proposal. The bidder with the highest total score would be recommended for award of the Contract.

9. In December 2004, the Consortium submitted a proposal signed by a representative of Consortium Partner B. In February 2005, the Implementing Agency submitted a Technical Evaluation Report ("TER") to the Bank for its review and approval. The TER gave the Consortium the highest technical score of all bidders, by three points out of a hundred. After a series of consultations with the Bank, the Implementing Agency revised the TER and resubmitted it to the Bank in August 2005. The changes did not affect the Consortium's high score, but did change the second-highest score so as to widen the gap between the Consortium and the second highest scorer to a difference of 5.6 points. After the Bank accepted the TER, the Implementing Agency opened the sealed financial proposals in September 2005. Although the Consortium submitted the third-lowest financial proposal, it had the highest overall score – leading the bidders in second and third places by 2.8 and 3.6 points, respectively – because of the eighty/twenty weighting of technical and financial scores.

10. In October 2005, the Implementing Agency recommended the Contract's award to the Consortium. The Implementing Agency and Consortium began Contract negotiations in January 2006. Discussions among the Consortium members as to their internal arrangements, including allocation of Contract funds among the members, continued at the same time. The Contract was scheduled for signing in June 2006. Shortly before the scheduled signing date, however, Consortium Partner B asked to postpone the signing. In July 2006, Consortium Partner B informed the Implementing Agency it would not proceed with the Contract.

11. INT alleges Respondent engaged in corrupt practices by (i) offering (and agreeing) to pay Implementing Agency officials seventeen percent of the total Contract price to influence the Consortium's technical score; and (ii) soliciting (although not convincing) Consortium Partner B also to participate in such corrupt payment.

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[7] The Consortium's description in the RFP and its Contract proposal named as a fourth member the road directorate of another national government. Consortium Partner B's representatives stated they used the road directorate's name with the expectation that directorate staff would be seconded to work with Consortium Partner B on the Contract, if awarded; but the road directorate never became active in the Contract proposal or negotiations, and had no knowledge of the matters at issue here.

III. APPLICABLE STANDARDS OF REVIEW

12. Section 8.02(b)(i) of the Sanctions Procedures requires the Sanctions Board to determine whether the evidence presented by INT, as refuted by a respondent, supports the conclusion it is "more likely than not" such 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 the respondent engaged in a sanctionable practice. As set forth in Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight and sufficiency of all evidence offered; formal rules of evidence do not apply.

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

14. The alleged sanctionable practice in this case has the meaning set forth in the May 2002 Consultant Guidelines, which governed the selection of consultants under the Loan Agreement and RFP. Paragraph 1.25 of these Guidelines defines the term "corrupt practice" as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution."

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

15. INT argues it is more likely than not Respondent engaged in corrupt practices by offering (and agreeing) to pay, and soliciting funds to pay, seventeen percent of the Contract price to public officials to influence the Consortium's technical score during the selection process. INT relies primarily on the following assertions:

i. At a meeting in April 2006, Consortium Partner A's Executive Director informed Consortium Partner B's representative that "there was a commitment" to pay Implementing Agency officials seventeen percent of the Contract as a "management fee," with the fee to be paid "proportionally by the partners." Although Consortium Partner B's representative resisted the proposal, a director of Respondent attending the meeting (the "Director") remained silent – showing Respondent's agreement to participate in the bribe.

ii. At a meeting in June 2006, when the payment was again discussed among Consortium members, Respondent's Managing Director (the "Managing Director") pressured Consortium Partner B's representatives to keep their "commitment" and participate in the payment scheme. This constitutes solicitation of a bribe, as well as further proof of Respondent's own agreement to take part in the bribe.

iii. When Consortium Partner B declined to pay a share of the bribe, Consortium Partner A tried to renegotiate the allocation of Contract funds to shift THB 10 million from Consortium Partner B (which would have been the latter's proportional share of the seventeen percent "management fee") to Consortium Partner A and Respondent, without any change to the scope of services performed by each firm. Respondent's Director was aware of the proposed reallocation and did not object – again showing Respondent's agreement to take part in the scheme.

16. INT asserts as aggravating factors the sophistication and scope of the corrupt scheme, the involvement of public officials, the participation of Respondent's management through the Managing Director and Director, and harm to the Project in the form of delays and extra costs. INT asserts no mitigating factors apply.

B. Respondent's Principal Contentions in the Explanation and Response

17. Respondent denies it engaged in any corrupt practices, and challenges the conduct of INT's investigation and sufficiency of INT's evidence. Respondent primarily contends:

i. The delay of almost five years from INT's investigation to the issuance of the Notice shows unfair treatment, and should void INT's accusations and the EO's Notice.

ii. INT fails to present credible or specific evidence Respondent was involved in, or knew of, any corrupt arrangements to which the other Consortium members might have agreed. For example, the Director's silence signaled lack of English comprehension, not assent; the Managing Director's comment about keeping commitments was misreported and taken out of context; and the other Consortium members' negotiations over fund allocation took part without Respondent's involvement. Further, INT's key witnesses – all current or former staff of Consortium Partner B – are unreliable.

iii. Respondent had only a fixed minor share of the Contract (THB 14 million of THB 100 million), and a normal profit margin of five to ten percent in its projects. The Implementing Agency was already its long-time, existing customer. Thus Respondent had no incentive to pay seventeen percent to Implementing Agency officials as alleged.

iv. Under the laws of Thailand, only a company's directors, as set out in the company's Articles of Association, can legally bind the company. Respondent's Articles of Association provide the company may be legally bound only if two authorized directors sign and affix the company's seal to a commitment. As that did not happen here, Respondent was not bound and cannot be considered a participant in the alleged arrangement.

v. Finally, INT gave Respondent no opportunity to refute the evidence against it. When INT approached Respondent and interviewed the Managing

Director in July 2006, INT did not explain the accusations or show any evidence. INT did not even have evidence directly referencing Respondent until later, when it interviewed Consortium Partner B's representatives in August 2006. After that, INT did not contact Respondent again.

18. Regarding aggravating factors, Respondent argues its management was not involved in the alleged misconduct because the Managing Director attended only one meeting and did not know the details of the dispute between the other Consortium partners. Further, Respondent states the Director's participation in the Project was limited to technical aspects and began before he became a director. As for mitigating factors, Respondent asserts it conducted an internal investigation after receiving the Notice.

C. INT's Reply

19. In its Reply, INT argues Respondent has failed to meet the shifted burden of proof to show its conduct did not amount to a sanctionable practice. INT's main contentions are:

i. Respondent's argument the Director's English skills were inadequate to have understood Consortium Partner A was committing Respondent's funds to pay a bribe lacks credibility. Respondent would not have given sole responsibility over the Contract to the Director if he could not handle such matters in English, given that Consortium Partner B could negotiate only in English and the Contract documentation was in English.

ii. Respondent's assertion its Managing Director was generally advocating that people who make commitments need to keep them, and not specifically attempting to convince Consortium Partner B to endorse payments on this Contract, is unpersuasive. The Managing Director's comments followed Consortium Partner A's detailed description of how all the bidders had their own relationships with Implementing Agency officials and all had made commitments to influence their technical scores for the Contract.

iii. Because Consortium Partner A attempted to renegotiate the share of Contract funds for both Consortium Partner A and Respondent, and Respondent saw but never objected to such reallocation proposals, it is likely Respondent had agreed to finance part of the commitment. Otherwise, Consortium Partner A's Executive Director would have solicited funds only for his own firm.

20. With respect to sanctioning factors, INT argues the EO's recommended sanction of debarment with the possibility of release after six years is appropriate because Respondent fails to counter INT's asserted aggravating factors; and any mitigation based on Respondent's internal investigation or INT's delays would be unjustified.

D. Presentations at the Hearing

21. In its oral presentation, INT recapped its arguments why the Sanctions Board should construe the Director's silence as an admission; find INT's key witnesses credible;

and reject Respondent's assertions the Director and Managing Director did not understand what was being discussed in the meetings at issue. In response to questions from the Sanctions Board, INT addressed, among other matters, the scope and length of the investigation; acknowledged the nearly five-year delay could be considered a mitigating factor, although INT asserted the delay did not in fact harm Respondent or affect the relevance of the case; and stated it sought only one sanction for what it viewed as distinct but related acts of offering and soliciting.

22. As Respondent declined to attend the hearing, the Sanctions Board considered the issue of one-party hearings in the context of Article VI of the Sanctions Procedures, which governs hearings. Section 6.01 provides INT or a respondent may request the Sanctions Board hold a hearing. It does not require the other party agree to such request, nor does it foresee the other party may object to such request. The Procedures do not identify any discretion on the part of the Sanctions Board or Sanctions Board Chair to decline to hold a hearing once a party has requested one. Rather, Article VI clearly presumes that when one or more of the parties has requested a hearing, the Sanctions Board will convene one.

23. Consistent with this framework, the Sanctions Board has in several past cases proceeded with hearings without participation from respondents who either failed to respond to a hearing notice, or responded but declined to attend.[8] The Sanctions Board observes certain procedural safeguards in such cases. Where the Secretary has, after consulting with the Sanctions Board Chair, provided the parties reasonable notice of the hearing date, time and location, as required by Section 6.01 of the Sanctions Procedures; and further offered the use of remote conferencing facilities where appropriate, consistent with Article XII, Section 3 of the Sanctions Board Statute; and a party has nevertheless declined to attend or failed to timely respond to the notice of the hearing, the Sanctions Board may proceed with the hearing without such party's participation. In such circumstances, the party may be considered to have been afforded adequate notice and opportunity to be heard, and waived its participation in oral argument.

24. In the present case, Respondent received reasonable notice of the hearing date, time and location; and was offered audio or video conferencing facilities to enable remote participation, if preferred. When Respondent declined to attend, the Secretary corresponded further with Respondent – who appeared to be acting pro se and to lack familiarity with the Sanctions Board's procedures – to provide information regarding the sanctions process, including the hearing, and encourage it to attend. INT was informed of Respondent's decision not to participate, and stated it did not wish to withdraw its hearing request. Respondent was informed the hearing could proceed without its participation, but reaffirmed its decision not to attend. Respondent did not suggest any obstacles prevented it from participating. Rather, it indicated it chose not to attend because it had provided all facts and evidence in its written submissions; believed the case was tainted by INT's bias against Respondent; and questioned the utility of a hearing. The Sanctions Board therefore conducted the hearing with participation from INT only.

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[8] See Sanctions Board Decision No. 6 (2009) (the respondent did not respond); Sanctions Board Decision No. 12 (2009) (the respondent declined to attend); Sanctions Board Decision No. 31 (2010) (the respondent did not respond).

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

25. The Sanctions Board addresses, as a threshold matter, Respondent's contention the SAE and Notice should be considered void due to what Respondent considers an unjustified and prejudicial delay of almost five years from the start of INT's investigation to the issuance of the Notice. As the allegations are not barred under the ten-year statute of limitations set out in Section 4.01(d) of the Sanctions Procedures, the Sanctions Board shall review the case on its merits. At the same time, the Sanctions Board considers any delays to the extent they may affect the relevance, materiality, weight, and sufficiency of evidence offered; or the determination of appropriate sanctions, if any.[9] With regard to Respondent's assertion the five-year delay compromised its ability to gather evidence for its defense, for example, the Sanctions Board will take this factor into account where the record shows the passage of time may have limited a particular witness's ability to recollect events or Respondent's ability to obtain specific relevant documents. Respondent also argues it was not fair to require Respondent to file its Explanation within thirty days and its Response within ninety days of delivery of the Notice, after over three years had passed from INT's investigation to its submission of the SAE, and almost two more years then passed before the EO issued the Notice to Respondent. Respondent did not avail itself of the option to request any extensions of time for its written submissions, however, as provided under Sections 4.02(b) and 5.02(b) of the Sanctions Procedures. Accordingly, Respondent's arguments of prejudice in its submission deadlines lack foundation.

26. Turning to the merits, the Sanctions Board considers first whether Respondent's Director and Managing Director engaged in corrupt practices by (i) offering to pay a seventeen percent "management fee" to public officials of the Implementing Agency to influence the technical evaluation of the Consortium's proposal and/or (ii) soliciting Consortium Partner B's participation in that payment scheme. Next, the Sanctions Board considers whether Respondent may be held liable for any such corrupt practices carried out by its Director or Managing Director. Finally, the Sanctions Board considers what sanctions, if any, should be imposed on Respondent.

A. Evidence of Corrupt Practices

27. In accordance with the accusations in the SAE and the definition of corrupt practices under the May 2002 Consultant Guidelines, INT bears the initial burden to show Respondent's Director and Managing Director engaged in (i) the offering of any thing of value or (ii) the soliciting of any thing of value (iii) to influence the action of a public official in the selection process for the Contract.

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[9] See, e.g., Sanctions Board Decision No. 38 (2010) at para. 54 (noting the passage of time may impact on the weight the Sanctions Board attaches to the evidence presented, and also may impact on the fairness of the process for the respondents); Sanctions Board Decision No. 44 (2011) at para. 77 (considering as a mitigating factor the substantial passage of time – six years – between the Bank's receipt of notice of potential sanctionable practices and the initiation of sanctions proceedings).

1. "Offering of any thing of value"

28. INT's asserted evidence that Respondent offered an improper payment to Implementing Agency officials rests primarily on what Respondent's Director and Managing Director said, or did not say, in meetings and negotiations with its Consortium partners. While no one piece of evidence, considered on its own, would be sufficient to meet INT's burden of proof, the Sanctions Board finds the cumulative weight of evidence supports a finding it is more likely than not Respondent's representatives agreed to take part in improper payments to Implementing Agency officials.

29. INT relies first on the report of one of Consortium Partner B's representatives, as summarized in INT's record of interview, regarding discussions of the bribery scheme at an April 2006 meeting. Consortium Partner B's representative reportedly stated Consortium Partner A's Executive Director told him "there was a commitment" to pay Implementing Agency officials seventeen percent of the Contract as a "management fee," with the fee to be paid "proportionally by the partners." INT alleges the Director who attended the meeting on behalf of Respondent remained silent, and this silence shows Respondent agreed to participate in the bribe. Respondent does not deny the Director attended the meeting and remained silent, but denies the silence showed assent to any bribe.

30. Under Section 7.01 of the Sanctions Procedures, the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence – which includes the Director's alleged admission-by-silence. In some circumstances, silence may indicate a party's assent or acquiescence.[10] In other circumstances, silence may reflect a lack of agreement, engagement, trust or comprehension. In determining the import of a party's silence, the Sanctions Board considers whether the silent party heard and understood what was being said; and whether the silence in response to what was being said was, under the circumstances, so unnatural as to amount to implied acquiescence.[11]

31. Here, Respondent denies its Director heard and understood the reported discussion, which took place in the Implementing Agency's canteen. The record does not provide any information about the physical setting of the meeting to indicate whether the Director was likely to have heard the discussion. On the other hand, the record does not suggest the other meeting participants had difficulty communicating in that setting.

32. The record does not clearly establish the Director's level of English comprehension. The parties agree the discussion was in English, which Respondent asserts the Director does not understand well. On this point, INT cites the belief of Consortium Partner B's representative who attended the April 2006 meeting that the

[10] See, e.g., Cour de Cassation (France), 1st Civ. Chamber, May 24, 2005, Bull. Civ. No. 233, Appeal No. 02-15188 (finding that while silence does not in itself amount to acceptance, other circumstances may permit giving it the meaning of an acceptance).

[11] See Weinstein's Evidence ¶ 801(d)(2)(B)[01], at 801-202 n.15 ("In all cases ... the burden is on the proponent to convince the judge that in the circumstances of the case a failure to respond is so unnatural that it supports the inference that the party acquiesced in the statement.").

Director "understood what was being said in the discussions." The Sanctions Board agrees with Respondent that this reference is not persuasive evidence. The relevant section of INT's record of interview with Consortium Partner B's representative does not reflect he offered, or INT asked for, any objective basis or specific reasons for his belief. Such omission is striking when the record of interview shows Consortium Partner B's representatives told INT the Director never spoke in any of their meetings – raising the question how well they could assess his listening comprehension. More on point, however, is the evidence Respondent entrusted the Director to represent the firm in business matters conducted in English, including all communications with Consortium Partner B's representatives for the Contract. Such arrangements undercut Respondent's argument the Director's English was too limited for him to understand the Consortium partners' discussion.[12]

33. Respondent further asserts the Director's silence in the April 2006 meeting was not unnatural. This assertion finds support not only from separate statements of Respondent's Director and Managing Director, but also from Consortium Partner B's representatives. The latter described the Director as never speaking in their Contract discussions, and stated the Director instead would rely upon others such as Consortium Partner A's Executive Director or Respondent's Managing Director to speak out in meetings conducted in English. Besides emphasizing the Director's limited fluency in English, Respondent also argues the Director "did not have much to discuss in the meeting" because he was mainly focused on technical issues; he was not a director at the time; he deferred to Consortium Partner A as playing the leading role between them; and in any event, Respondent's portion of the Contract was already fixed at THB 14 million. The Director's silence could be considered unnatural, however, if he had heard and understood the gist of the discussion to refer to an improper payment scheme that would reduce Respondent's fixed share by seventeen percent, and if such scheme was not acceptable to Respondent. The Director remained silent both in the immediate discussion and thereafter, when he might have found another way to raise objections, in English or otherwise.

34. Standing alone, the Director's silence in the April 2006 meeting would not suffice to show it is more likely than not Respondent agreed to take part in a corrupt payment. That silence appears more significant, however, when viewed together with evidence of the Managing Director's statements in a June 2006 meeting, and – most importantly – the Director's continued silence during email negotiations for the potential reallocation of Contract proceeds.

35. Respondent does not deny that during a late June 2006 meeting of the Consortium partners, the Managing Director stated that companies must follow through on their commitments and also that, in certain places in Thailand, though not Bangkok, those who do not keep such commitments would be killed. Citing its record of interview with Consortium Partner B's representatives, INT asserts the Managing Director's statement

[12] See Sanctions Board Decision No. 41 (2010) at para. 43 (rejecting a "language barrier" defense and finding the respondent firm and its president had engaged in corrupt practices where the record showed the president was able to communicate with the partner firm and an agency official about the contract and payment at issue, without using an interpreter).

followed a detailed discussion of how each bidder for the Contract had made commitments to Implementing Agency officials to influence the technical scores. Thus, according to INT, the Managing Director's statement was both a way to pressure Consortium Partner B's representatives to keep their "commitment" to participate in the agreement (constituting solicitation of a bribe, as discussed below), as well as further proof of Respondent's own agreement to take part in the bribe. Respondent asserts the Managing Director joined the meeting only briefly; knew there was some kind of dispute over a prior agreement, but did not know what the disagreement concerned; and intended his comment not as any kind of threat, but only as a general exhortation to honor obligations. INT's record of interview with the Managing Director in July 2006, however, indicates the Managing Director at that time acknowledged to INT he knew the conflict related to competing versions of the internal agreement among Consortium members.

36. The record shows the key point of conflict on the Consortium members' internal arrangements at that time was whether the allocation of Contract funds could be changed to increase the share for Consortium Partner A and Respondent by approximately THB 10 million. This amount corresponds to the share of the "management fee" Consortium Partner B would have paid proportionate to its share of Contract funds: seventeen percent of its approximately THB 60 million of the Contract would be approximately THB 10 million. INT alleges this reallocation was intended to enable Consortium Partner A and Respondent to meet their commitment to pay a full seventeen percent of the Contract's value to Implementing Agency officials, even if Consortium Partner B would not agree to pay directly. Notably, the proposed reallocation did not correspond to any change in the division of Contract work, which the Consortium partners had originally agreed would govern the split of funds.

37. Respondent's Director was copied on several competing versions of the internal agreements exchanged by email in the course of May and June 2006 between Consortium Partner A and Consortium Partner B, highlighting the dispute over allocation of funds. In late May 2006, for example, Consortium Partner A's Executive Director sent an email to Consortium Partner B, copying Respondent's Director and stating, "[a]ccording to previous discussion," the share of Respondent and Consortium Partner A should be approximately THB 46 million instead of THB 36 million. Consortium Partner B quickly responded to challenge the THB 10 million increase. As Respondent's Managing Director later told INT, it was the Director's responsibility to handle details of the internal agreement, including the split of funds, on behalf of Respondent. Yet the Director remained silent throughout this and subsequent exchanges between the other Consortium partners on the topic. Respondent does not assert the Director's level of English comprehension was an issue with respect to the email correspondence on these figures. Over the extended period of the email exchanges on fund allocation, he would presumably have had the opportunity to seek translation or clarification if needed. The Sanctions Board finds this persistent silence – in the face of repeated attempts to make unexplained reallocations that happen to correspond to the amount of the alleged improper payment at issue – is more likely than not a sign Respondent had agreed to the payment scheme.

38. Respondent challenges the credibility of INT's primary witnesses, who were all current or former officials of Consortium Partner B. Respondent asserts Consortium

Partner B's representatives were more likely than Respondent to have made improper commitments with Consortium Partner A; one representative in particular had a close and possibly improper prior relationship with the Implementing Agency; and another, who perceived Respondent and Consortium Partner A as competitors, misstated facts and names regarding the matter. INT asserts the witnesses are credible because they refused to go forward with the improper payment scheme, even at the expense of losing the Contract; and denies they misstated any material facts.

39. In assessing the weight of witness statements, the Sanctions Board takes into account all relevant factors bearing on the witness's credibility, including whether the witness is a business competitor and whether such witness may have been involved in any sanctionable practices. The fact that testimony comes from a competitor may discount its value, depending on the circumstances, but will not necessarily preclude its use.[13] Similarly, a witness's own involvement in the misconduct at issue should be considered, but it would not necessarily preclude use of that witness's testimony or even primary reliance upon it, where appropriate.[14]

40. In this case, the possibility that Consortium Partner B's representatives may have had prior improper arrangements with Implementing Agency officials or viewed Respondent as a competitor calls for extra scrutiny of their reliability as witnesses. Importantly, their statements find corroboration elsewhere in the record. Contemporaneous documentary evidence – such as handwritten meeting notes taken by the representative of Consortium Partner B during the April 2006 meeting that show "17% MF" for "management fee" discussions, and email correspondence – corroborates these witnesses' characterizations of meeting discussions and internal negotiations. In addition, the Sanctions Board does not find material errors or inconsistencies in the key witnesses' reported statements. On the other hand, documentation of their testimony is largely limited to INT's summary record of interview. As the Sanctions Board has held before, the appropriate weight to be accorded such evidence must take into account that summary records of interview lack the intrinsic accuracy of verbatim transcripts, particularly where – as here – there is no indication the summary was reviewed or signed by any of the interviewees to attest to its basic accuracy.[15] Further, INT's approach of interviewing several of Consortium Partner B's representatives together may compromise the candor of each individual's testimony, and does not permit for cross-checking of each witness's

[13] See Sanctions Board Decision No. 1 (2007) at para. 7 (significantly discounting the value of testimonial evidence of corrupt practices when given by the respondents' competitors and withheld from the respondents as confidential evidence).

[14] See, e.g., Sanctions Board Decision No. 41 (2010) at para. 32 (finding the most direct, comprehensive support for the corruption allegations came from records of interview with a witness who described in detail the events and discussions with an implementing agency official that led to an agreement for a corrupt payment, with the witness's own involvement; and considering an apparent inconsistency in the witness's statements regarding the bribe amount must be viewed against what appeared to be the witness's detailed, candid admissions against self-interest, which were corroborated by contemporaneous documentation and other witnesses).

[15] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34.

separate statement against other witnesses' statements. The Sanctions Board considers all these factors in assessing the appropriate weight to give the evidence from Consortium Partner B's representatives.

41. Considering the cumulative weight of testimonial and contemporaneous documentary evidence presented regarding the Director's silence at the April 2006 meeting, the Managing Director's June 2006 comment that parties should keep their commitments or risk harm, and the Director's continued silence through May and June 2006 in the face of Consortium Partner A's attempts to reallocate Contract proceeds in the amount of the disputed "management fee," the Sanctions Board finds it more likely than not the Director's persistent silence and the Managing Director's statement reflected Respondent's prior agreement to offer a seventeen percent fee to public officials.

2. "Soliciting of any thing of value"

42. As set out earlier, INT bases its allegation of solicitation on the Managing Director's admitted statement in the June 2006 meeting on the need to honor commitments, which INT asserts was a way to pressure Consortium Partner B's representatives to participate in the bribery scheme – thus constituting solicitation of a bribe. Considering all evidence presented, including the Managing Director's acknowledgment he knew the purpose of his participation in the June 2006 meeting was to resolve the continued conflict among Consortium members over their internal arrangements, the Sanctions Board finds it more likely than not the Managing Director attempted to pressure Consortium Partner B's representatives into participating in the improper payment scheme.

43. The question is whether one firm's pressure on another firm to make improper payment to public officials may constitute "soliciting" under the applicable definition of corrupt practices. A bribe-taker may obviously solicit a bribe; the issue is whether a fellow bribe-payer may also qualify as "soliciting." Here, INT does not allege Respondent's Managing Director sought payment for himself or Respondent so that they could influence the actions of public officials. Rather, INT alleges the Managing Director solicited Consortium Partner B to join in a payment to public officials to influence such officials' actions.

44. The Sanctions Board finds such conduct may be considered as "soliciting" within the meaning of the May 2002 Consultant Guidelines. As noted earlier, the May 2002 Consultant Guidelines define a corrupt practice as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution." Nothing in the applicable definition specifies that one must solicit payment for oneself, or that the soliciting party must be the party with influence. Thus the definition may be read to include both the act of soliciting something for oneself in exchange for exerting improper influence,[16] as well as the act of soliciting or

[16] While public officials are not subject to sanction under the Bank's sanctions system, a party with influence to trade need not be a public official so long as it is someone with sufficient access to, and ability to influence, a public official. This "trading in influence" interpretation is consistent with other anticorruption frameworks such as the United Nations Convention Against Corruption, which at

enticing another to give something to a third party in exchange for the third party's improper influence.[17]

3. "To influence the action of a public official in the selection process"

45. The record shows it is more likely than not the seventeen percent payment to Implementing Agency officials was intended to influence their selection process for the Contract. INT's record of interview with Consortium Partner B's representatives describes Consortium Partner A's detailed explanation in the June 2006 meeting of how each bidder for the Contract had made commitments to Implementing Agency officials to influence the technical scores. The record moreover shows the Consortium's high technical score was in fact determinative to the Consortium's lead position in the selection process. While evidence the desired influence actually materialized is not necessary to establish this element of corrupt practices, it may bolster a showing of the intent to influence, which is all that is required.

46. Respondent argues it had no financial incentive to pay a seventeen percent fee to secure the Contract, as INT alleges, as such fee would be greater than Respondent's normal profit margin of five to ten percent; Respondent had a fixed minor share of the Contract for only THB 14 million; and the Implementing Agency was already Respondent's long-time customer. In contrast, Respondent asserts, Consortium Partner B would have had incentive to pay such fee, even if it meant less profit on the immediate Contract, because Consortium Partner B "had a major share" of the Contract and wanted to expand its business in Thailand.

47. The Sanctions Board does not find Respondent's incentive argument a persuasive defense. Respondent does not present evidence of its claimed general profit margin, nor does it specify the expected margin on the Contract at issue. In any event, as the Sanctions Board has recognized, and as Respondent itself asserts with respect to Consortium Partner B, a bidder's financial calculations may go beyond the immediate contract to take into account other interests.[18] According to INT's record of interview with Consortium Partner B's representatives, Respondent and/or Consortium Partner A "stat[ed] they would never receive work from [the Implementing Agency] again" if they retracted the payment commitment.

Article 18 defines trading in influence as, inter alia, the "solicitation . . . by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that . . . the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage."

[17] Black's Law Dictionary, for example, defines the phrase "solicitation of a bribe" as "[t]he crime of asking or enticing another to commit bribery." Black's Law Dictionary (9th ed. 2009).

[18] See Sanctions Board Decision No. 41 (2010) at para. 44 (in rejecting the respondents' argument they had no incentive to pay the alleged 10-20% bribe because their expected profit margin was only 10-15%, noting the respondents did not present evidence to substantiate their claimed profit margin; and, in any event, the record showed their real motivation in pursuing the contract was not the immediate profit, but the prospect of assistance on a separate contract).

48. Respondent also argues its Director and Managing Director could not have sought in 2006 to influence the technical evaluation of Contract proposals because any such influence would necessarily have been exerted earlier, before the Implementing Agency concluded its technical evaluations in August 2005 – which was before the Director became involved in the Project, and before the Managing Director even began working for Respondent. Considering the full record, the Sanctions Board does not find this argument persuasive. INT's record of interview with Consortium Partner B's representatives shows "a commitment" had been mentioned from the "very beginning" of the bidding process; and that even before the Consortium submitted its Contract proposal in December 2004, Consortium Partner A and Respondent had proposed to increase their share of Contract funds in an amount that would have enabled them to pay for the bribe. This evidence indicates the original agreement to pay for favorable treatment was in place before the technical scoring occurred; and even if delivery of payment was to follow later, the agreement to pay actually preceded, and presumably motivated, the scoring in favor of the Consortium. Whether or not the Director and Managing Director were personally involved from the inception of these plans, their later participation may be viewed as part of the same scheme to exchange payment for influence.

49. For the reasons set out above, the Sanctions Board concludes the evidence shows it is more likely than not Respondent's representatives engaged in corrupt practices by offering and soliciting an improper payment to influence public officials in the selection process for the Contract.

B. Respondent's Liability for the Acts of the Director and Managing Director

50. The record shows the Director and Managing Director held two of five positions on Respondent's board of directors, and acted within the course and scope of their duties in representing Respondent's interests with respect to the Contract proposal and Consortium discussions. Respondent asserts it cannot be held liable for any improper commitments of the Director or Managing Director undertaken in the course of such duties, however, because under the laws of Thailand and Respondent's Articles of Association, the company may be bound only if two authorized directors sign and affix the company's seal to a written commitment – which did not happen here.

51. Respondent fails to carry its burden of proof to show it is not responsible for the conduct of its officers and employees acting on behalf of the firm and in the scope of their authority. Those who engage in sanctionable practices may understandably seek to use informal and surreptitious means to carry out their misconduct. A firm's liability cannot be limited to only those official acts it has formally adopted in accordance with internal and local law requirements. More generally, as the Sanctions Board has previously stated, the Sanctions Board's Statute and Sanctions Procedures do not provide any basis on which to consider a national law framework as controlling in the Bank's sanctions proceedings; and the scope of a respondent's liability under the Bank's administrative sanctions process may not be coextensive with the scope of its potential liability under national law.[19]

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

Accordingly, the laws of Thailand and requirements under Respondent's Articles of Association do not preempt Respondent's liability in this case.

52. For the reasons set out above, the Sanctions Board finds Respondent liable for the corrupt practices it finds were more likely than not carried out by the Director and Managing Director.[20] The Sanctions Board therefore must determine an appropriate sanction or sanctions.

C. Determination of Appropriate Sanctions

1. General framework for determination of sanctions

53. Where the Sanctions Board determines it is more likely than not 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 possible sanctions set out in Section 9.01 are: (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.

54. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.[21] The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented.[22]

55. 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 Guidelines (the "Sanctioning Guidelines"). While the Sanctioning Guidelines themselves state they are not intended to be prescriptive in nature, they provide a point of reference to help illustrate the types of considerations potentially relevant to a sanctions determination. They further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after three years.

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

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[20] See Sanctions Board Decision No. 41 (2010) at para. 85 (finding direct and/or vicarious liability for the respondent firm, which bore responsibility for the conduct of the individual respondent who was the firm's president, owner and sole shareholder).

[21] See Sanctions Board Decision No. 40 (2010) at para. 28.

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

2. Factors applicable in the present case

57. Section 9.02 of the Sanctions Procedures identifies a number of factors potentially relevant in this case, which the Sanctions Board addresses in turn below.

a. Severity of the misconduct

58. Section 9.02(a) of the Sanctions Procedures requires consideration of "the severity of the misconduct" in determining a sanction. Section IV.A of the Sanctioning Guidelines cites a repeated pattern of conduct, sophisticated means, management's role in the misconduct, and the involvement of public officials as some factors that may be relevant in assessing severity.

59. Repeated pattern of conduct: The Sanctions Board considers Respondent's related acts of offering and soliciting to be two distinct acts within one course of conduct, which merit a single sanction with aggravation for repetition.

60. *Sophisticated means:* Section IV.A.2 of the Sanctioning Guidelines suggests aggravation may be warranted for sophisticated means based on, inter alia, the degree of planning involved and the number and type of people or organizations involved. INT asserts the sanction merits an increase under this factor because the scheme involved multiple parties in an agreement to pay, and solicitation of funds to pay, a kickback of nearly one-fifth of the total Contract price. The Sanctions Board does not find the payment scheme was so sophisticated or complex as to warrant aggravation on this ground.

61. *Management's role in misconduct:* Section IV.A.4 of the Sanctioning Guidelines suggests aggravation should apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The personal involvement of Respondent's Director and Managing Director in the payment scheme through direct participation in meetings and negotiations justifies an increased sanction.

62. *Involvement of public officials:* Section IV.A.5 of the Sanctioning Guidelines suggests aggravation should apply "[i]f the respondent conspired with or involved a public official . . . in the misconduct." INT requests an increase on this ground because the Consortium would have paid Implementing Agency officials THB 17 million in exchange for favorable technical scores. The record, however, does not establish Respondent specifically "conspired with or involved" a public official in the scheme so as to warrant departing from the baseline.

b. Magnitude of harm caused by the misconduct

63. Section 9.02(b) of the Sanctions Procedures requires consideration of "the magnitude of the harm caused by the misconduct" in determining a sanction. INT specifically asserts Respondent's misconduct caused delay, additional administrative costs and harm to the selection process, and resulted in Consortium Partner B's refusal to sign the Contract.

64. The Sanctions Board finds aggravation warranted by harm to the Project. The record indicates the payment scheme succeeded in influencing the Consortium's technical and total scores, thereby steering the Contract to the Consortium and away from other potentially qualified bidders; and caused the Implementing Agency to expend time and resources to negotiate with the Consortium for final Contract award – all of which was wasted when Consortium Partner B withdrew from the Consortium immediately prior to the scheduled Contract signing, nine months after the Implementing Agency had recommended the award to the Consortium and six months after it had commenced negotiations with the Consortium. The Sanctions Board has previously recognized such types of harm as justifying aggravation.[23]

c. Cooperation

65. Section 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent "cooperated in the investigation or resolution of the case." Section V.C of the Sanctioning Guidelines suggests cooperation may take the form of assistance with INT's investigation, an internal investigation, acceptance of responsibility, or voluntary restraint.

66. Respondent requests mitigation for having conducted an internal investigation after receiving the Notice issued by the EO. The record shows Respondent created an Investigating Committee of three directors who questioned the Director and Managing Director involved, and issued its written conclusions. The Investigating Committee found no explicit evidence to support INT's accusations against Respondent, but suggested: (i) the Director and Managing Director should be disciplined by written warnings, as both should have been more careful in performing their work; (ii) the company should put in place clear policies on collaboration with other parties and internal agreements; and (iii) the company should contact the World Bank, disclose its investigation, respond to the Notice and seek clarification regarding the process and purpose of settlements. INT argues Respondent's investigation was merely preparatory defense work, was highly limited and non-independent, and simply accepted the statements of the Director and Managing Director at face value.

67. The Sanctions Board does not find cooperation warranting mitigation in these circumstances. The internal investigation was not undertaken by persons with sufficient independence from the individuals under investigation or the matter at issue. Rather, the Investigating Committee was composed of the three other directors who sat on Respondent's board together with the Director and Managing Director. There is no evidence these individuals had the necessary expertise and experience to conduct a thorough and impartial investigation. Nor does Respondent show any concrete results from the Investigating Committee's inquiry. While the Investigating Committee suggested written warnings for the Director and Managing Director, and policy improvements for the

[23] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28 (aggravation for delay caused by the respondent's collusive practices, which necessitated re-bidding and delayed the procurement process); Sanctions Board Decision No. 44 (2011) at para. 63 (aggravation for "waste of the Borrower's time and resources" caused by the respondent's fraudulent practices).

company, Respondent does not present any evidence it adopted these suggestions, let alone implemented them.[24] Finally, Respondent does not admit to any sanctionable misconduct.

d. Period of temporary suspension already served

68. Section 9.02(h) of the Sanctions Procedures requires the sanctions determination to take into account the period of temporary suspension already served by the sanctioned party. Respondent has been temporarily suspended since the EO's issuance of the Notice on June 15, 2011.

e. Other considerations

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

70. *Proportionality:* The Sanctions Board is not bound by the EO's recommended sanctions.[25] Nor could it be, given that the EO's determinations follow different standards and procedures, and are based on a more limited record than is developed on appeal. For the sake of proportionality, however, the Sanctions Board's determination of sanctions for contesting respondents may take into account the EO's recommended sanctions as imposed on non-contesting respondents in the same matter.[26] In this case, Consortium Partner A and its Executive Director did not contest the EO's recommended sanctions of debarment with the possibility of conditional release after seven years, which took effect from September 20, 2011. The Sanctions Board considers a lesser sanction appropriate for Respondent in view of its lesser role in the misconduct compared to Consortium Partner A and its Executive Director, who appear to have taken the lead in orchestrating the scheme.

71. *Passage of time:* In past decisions, the Sanctions Board has considered as a mitigating factor the passage of significant time from when the Bank became aware of potential sanctionable misconduct, to the point of sanctions proceedings.[27] Such passage of time may impact on the weight the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.[28] Here, the Sanctions Board considers as a mitigating factor that approximately five years elapsed from when the Bank became aware of the allegations in June 2006 to the issuance of the Notice in June 2011.

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[24] See Sanctions Board Decision No. 45 (2011) at para. 74 (no basis to consider the respondent's asserted willingness to pursue future corporate compliance measures as a mitigating factor, where the record showed no evidence it had in fact put such controls in place).

[25] Sanctions Procedures, Section 8.01(b).

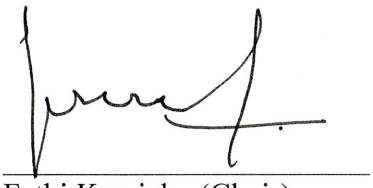
[26] See Sanctions Board Decision No. 41 (2010) at para. 87.

[27] See, e.g., Sanctions Board Decision No. 6 (2009) at para. 7 (giving mitigating credit for several reasons including the lapse of over four years since the fraudulent practices had come to the Bank's attention).

[28] See Sanctions Board Decision No. 38 (2010) at para. 54.

3. Determination of appropriate sanction for Respondent

72. Considering the full record and all the factors discussed above, the Sanctions Board hereby determines Respondent, together with any entity that is an Affiliate Respondent directly or indirectly controls, shall be, and hereby declares it is, ineligible (i) to be awarded a contract for any Bank-Financed Projects, (ii) to be a nominated subcontractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract, and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, after a minimum period of ineligibility of five (5) years, Respondent 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. The ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of this declaration of ineligibility to the other MDBs that are party to the Cross-Debarment Agreement so 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. This sanction is imposed on Respondent for corrupt practices as defined in Paragraph 1.25 of the May 2002 Consultant Guidelines. The period of ineligibility shall begin on the date this decision issues.



Fathi Kemicha (Chair)

On behalf of the
World Bank Group Sanctions Board

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