

Date of issuance: March 8, 2021

**Sanctions Board Decision No. 131  
(Sanctions Case No. 671)**

**IDA Credit No. 5727-MM  
Republic of the Union of Myanmar**

**Decision of the World Bank Group<sup>1</sup> Sanctions Board imposing a sanction of debarment with conditional release on the respondent entity in Sanctions Case No. 671 (the “Respondent”), together with certain Affiliates,<sup>2</sup> with a minimum period of ineligibility of one (1) year and four (4) months beginning from the date of this decision. This sanction is imposed on the Respondent for a fraudulent practice.**

**I. INTRODUCTION**

1. The Sanctions Board convened in February 2021, as a panel composed of Mark Kantor (Panel Chair), Adedoyin Rhodes-Vivour, and Rabab Yasseen to review this case. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing in this matter. Nor did the Panel Chair<sup>3</sup> decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.<sup>4</sup>

2. In accordance with Section III.A, sub-paragraph 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 Suspension and Debarment Officer (the “SDO”) to the Respondent on June 24, 2020 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);

---

<sup>1</sup> In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (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”). The term “World Bank Group” includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for 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 II(x).

<sup>2</sup> Section II(a) of the Sanctions Procedures defines “Affiliate” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraph 43.

<sup>3</sup> See Sanctions Procedures at Section II(s).

<sup>4</sup> See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

- ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on July 31, 2020 (the “Response”); and
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on August 31, 2020 (the “Reply”).

3. On June 24, 2020, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility<sup>5</sup> with respect to any Bank-Financed Projects,<sup>6</sup> pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO recommended a minimum period of ineligibility of two (2) years and three (3) months, after which period the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, demonstrated to the World Bank Group’s Integrity Compliance Officer that it has (i) taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned and (ii) adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

## **II. GENERAL BACKGROUND**

4. This case arises in the context of the National Electrification Project (the “Project”) in the Republic of the Union of Myanmar (the “Recipient”), which sought to increase access to electricity in the country and to provide an immediate and effective response in case of an emergency. On November 3, 2015, IDA entered into a financing agreement with the Recipient to provide Special Drawing Rights (“SDR”) 286.9 million (approximately US\$400 million) for the Project (the “Financing Agreement”). The Project became effective on December 9, 2015, and it is scheduled to close on September 30, 2021.

5. In March 2018, the agency responsible for implementing the Project (the “Project Implementing Unit” or the “PIU”) issued bidding documents (the “Bidding Documents”) for contracts for the “Supply, Installation and Maintenance of Solar PV Systems for Households and Public Facilities,” which included a total of five lots (the “Contracts”). On May 11, 2018, the Respondent, as the lead partner in a joint venture with another company (the “Joint Venture” or the “JV”), submitted bids for the Contracts.

---

<sup>5</sup> The full scope of ineligibility effected by a temporary suspension is set out in the Sanctions Procedures at Section III.A, sub-paragraphs 4.02(a) and 9.01(c), read together.

<sup>6</sup> The term “Bank-Financed Projects” encompasses an investment project or a program for results operation, for which IBRD or IDA (as the case may be), whether acting for its own account or in the capacity as administrator of trust funds funded by donors, has provided financing in the form of a loan, credit or grant and governed by the Bank’s Procurement Guidelines, Consultant Guidelines, or Anti-Corruption Guidelines. See Sanctions Procedures at Section II(e).

6. INT alleges that the Respondent knowingly engaged in a fraudulent practice by falsely stating that it had not hired an agent in connection with the Contracts – when it had in fact hired an individual (the “Individual”) as its agent and agreed to pay him 5% of the net profits of the Contracts should the Respondent win the Contracts.

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

7. *Standard of proof:* Pursuant to Section III.A, sub-paragraph 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 III.A, sub-paragraph 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.

8. *Burden of proof:* Under Section III.A, sub-paragraph 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.

9. *Evidence:* As set forth in Section III.A, sub-paragraph 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

10. *Applicable definition of fraudulent practice:* The Financing Agreement provided that the World Bank’s Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011, revised July 2014) would govern procurement under the Project. However, the Bidding Documents referred to the World Bank’s Guidelines: Procurement of Goods, Works, and Non-Consulting Services under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the “January 2011 Procurement Guidelines”) and defined “fraudulent practice” in accordance with these Guidelines. Consistent with the Bank’s legal framework applicable to sanctions, as well as considerations of equity, the standards applicable in the event of such a conflict shall be those agreed between the borrowing or recipient country and the respondent as governing the particular contract at issue, rather than the standards agreed between the borrowing or recipient country and the Bank.<sup>7</sup> Therefore, the alleged fraudulent practice in this case has the meaning set forth in the January 2011 Procurement Guidelines. Paragraph 1.16(a)(ii) of these Guidelines defines a “fraudulent practice” as “any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” A footnote to this definition explains that the term “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or

---

<sup>7</sup> See Sanctions Board Decision No. 59 (2013) at para. 11.

contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.<sup>8</sup>

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

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

11. INT alleges that the Respondent made a knowing misrepresentation by falsely stating that it had not agreed to pay “commissions and gratuities” to an “agent or any other party” in connection with the JV’s bid for the Contracts or “commissions, gratuities, or fees with respect to the bidding process or execution of the Contract,” despite its disclosure obligations. INT contends that, in relation to a separate matter, the Respondent acknowledged that it had engaged the Individual to assist the Respondent with preparing its bids for the Contracts. INT further contends that an agreement between the Respondent and the Individual (the “Cooperation Agreement”) shows that the Individual agreed to assist the Respondent with relevant works under the Contract in exchange for 5% of net profits. INT argues that the Respondent’s misrepresentation “was made in response to an express tender requirement and, therefore, in order to influence the tender and obtain the Contracts.”

12. According to INT, there are no aggravating factors in this case. INT submits that mitigation is warranted for the Respondent because INT identified the misrepresentation in the Respondent’s bids through the Respondent’s own acknowledgement.

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

13. The Respondent submits that INT misunderstood that the Individual was its agent and that he would help the Respondent “facilitate the bidding process or execute the Contract.” According to the Respondent, the Individual’s role was as “an independent intermediary to introduce [the Respondent] to certain suppliers instead of as an agent.” The Respondent contends that it contracted with the Individual “to realize the supplier’s responsibility in ensuring the authenticity of the qualification and have a good advance preparation for the Bid and the Project” – but that the Individual had no employment relationship with the Respondent and “worked independently under his own name and took responsibility for his own action.” The Respondent further contends that the Individual had “no relationship with this bidding process and the bidding contract” and that the Individual “confirmed to [the Respondent] on his honor that he had no relationship with the World Bank or the owner.”

14. While the Respondent does not specifically raise sanctioning factors, it refers to its corporate compliance measures and its contributions to development and social responsibility.

##### **C. INT’s Principal Contentions in the Reply**

15. INT argues that the Bidding Documents required disclosure of any commissions or fees to agents or any other party and, as such, “the emphasis is on the need to disclose whether a commission was paid or was to be paid *at all*, not *to whom* it was paid” (emphasis in original).

---

<sup>8</sup> January 2011 Procurement Guidelines at para. 1.16(a)(ii), n.21.

INT further submits that, while it does not argue that the Individual was employed by the Respondent, the Respondent still engaged the Individual in a relationship to deliver services for a commission, and the Bidding Documents required disclosure of that relationship.

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

16. The Sanctions Board will first consider whether it is more likely than not that the Respondent engaged in the alleged fraudulent practice. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

### **A. Evidence of a Fraudulent Practice**

17. In accordance with the definition of “fraudulent practice” under the January 2011 Procurement Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) engaged in any act or omission, including a misrepresentation, (ii) that knowingly or recklessly misled, or attempted to mislead, a party (iii) to obtain a financial or other benefit or to avoid an obligation.<sup>9</sup>

#### **1. Act or omission, including a misrepresentation**

18. As noted in Paragraph 11 above, INT alleges that the Respondent falsely stated that it had not hired an agent or other party in connection with the Contracts or agreed to pay “commissions, gratuities, or fees with respect to the bidding process or execution of the Contract” – when it had in fact hired the Individual as its agent and agreed to pay him 5% of the net profits of the Contracts. The Respondent disputes that the Individual was its agent and that it made any misrepresentation.

19. In March 2018, the PIU issued the Bidding Documents. The “Instructions to Bidders” provided that “[t]he Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.” This provision, which required disclosure of commissions and gratuities to be paid to agents or any other party, created an ongoing obligation of disclosure.

20. The record reveals that, prior to submitting the JV’s bids for the Contracts, the Respondent engaged the Individual for works in connection with the Contracts. On March 27, 2018 – over a month before the JV submitted its bids – the Respondent and the Individual entered into the Cooperation Agreement. Although the Cooperation Agreement does not specifically reference the Bidding Documents or the Contracts, the record contains clear evidence that the works and related payments contemplated in the Agreement were in connection with the Contracts. For example, on April 11, 2019, in response to INT’s show-cause letter in relation to a separate matter, the Respondent explained, *inter alia*, that it engaged the Individual in connection with the Contracts based on the Individual’s experience with suppliers in the photovoltaic industry. Contemporaneous communications between the Respondent’s employees and the Individual further establish this connection. Notably, the Cooperation Agreement provided, *inter alia*, that the Individual would assist the Respondent with “finding suppliers, reviewing relevant documents . . . , providing professional advice[] and handling the supplier business relationships” in relation to “the projects

---

<sup>9</sup> January 2011 Procurement Guidelines at para. 1.16(a)(ii).

in photovoltaic field domestic and overseas.” In exchange, the Respondent would pay the Individual “5% of the net profit” in the event that the Respondent “wins the bid.” The Cooperation Agreement further provided that, “[d]uring the execution of the project, [the Individual] shall assist [the Respondent] in relevant works. [The Individual] shall be paid in portion to the service provided[.]” The Respondent and the Individual entered into the Cooperation Agreement before the Respondent submitted the JV’s bids for the Contracts.

21. Contrary to its disclosure obligation under the provision discussed in Paragraph 19 above, the Respondent did not disclose its arrangement with the Individual. On May 11, 2018, the Respondent, as lead partner of the JV, submitted the JV’s bids for the Contracts. In response to the JV’s requirement to disclose information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid and whether it had paid, or would pay, “commissions, gratuities, or fees with respect to the bidding process or execution of the Contract,” the JV stated in each of its bids: “None.” These facts support a finding that it is more likely than not that the JV’s bids, as signed and submitted by the Respondent’s employee, contained the misrepresentation as alleged by INT.

22. For the following reasons, the Sanctions Board is not persuaded by the Respondent’s defense that it was not required to disclose its arrangement with the Individual because the Individual was not its agent or employee, but rather, an “independent intermediary.” First, consistent with its jurisprudence,<sup>10</sup> the Sanctions Board declines to adopt the narrow reading of the term “agents” implicit in the Respondent’s arguments. This is because a key purpose of the disclosure requirement established in the Bidding Documents is to “help reveal and deter potentially corrupt relationships in Bank-Financed Projects.”<sup>11</sup> As the Sanctions Board has previously observed “the risk of corrupt relationships arises not only when a principal-agent relationship exists between a bidder and a third party, but whenever a bidder pays a commission or gratuity to a third party in relation to the contract.”<sup>12</sup> A narrow reading of the term “agents” would be inconsistent with this underlying purpose of the disclosure obligation. In any case, whether the Individual acted as an “independent intermediary” or as the Respondent’s “agent,” the Respondent still would have been obligated to disclose its agreement with the Individual. Under the clear language of the Bidding Documents, the Respondent was obligated to disclose commissions, gratuities or fees to be paid to “agents or *any other party*” – and the Individual was, as a matter of fact, such a “party.”

23. In these circumstances, the Sanctions Board finds the evidence sufficient to support a finding that the Respondent’s staff made a misrepresentation in the JV’s bids for the Contracts.

2. That knowingly or recklessly misled, or attempted to mislead, a party

24. INT argues that, despite being aware of its obligation to disclose its commitment to pay its agent, the Respondent knowingly misrepresented in the JV’s bids that it had no arrangement with

---

<sup>10</sup> See Sanctions Board Decision No. 88 (2016) at para. 27.

<sup>11</sup> Id.

<sup>12</sup> Id.

any agent. As noted above, the Respondent argues that the Individual was not an agent and disputes that it had an obligation to disclose its relationship with him.

25. The Sanctions Procedures recognize the Sanctions Board’s discretion to infer knowledge on the part of a respondent from circumstantial evidence; and state broadly that any kind of evidence may form the basis of conclusions reached by the Sanctions Board.<sup>13</sup> The Sanctions Board has previously found that respondents made a knowing misrepresentation where the director of the respondent’s predecessor firm negotiated and signed an agreement with a marketing consultant, knew that the agreement established a commission agent relationship – yet failed to disclose this relationship and the commissions paid despite the firm’s obligation to do so.<sup>14</sup>

26. In the present case, evidence shows that an authorized employee of the Respondent entered into the Cooperation Agreement with the Individual pursuant to which the Respondent agreed to pay the Individual “5% of net profit” in exchange for services in connection with the Contracts. Evidence also shows that an authorized employee of the Respondent submitted the JV’s bids, which contained the misrepresentation discussed above. The misrepresentation was made in response to the clear disclosure obligation set out in the Bidding Documents. This evidence indicates that the Respondent had actual knowledge of (i) its agreement with the Individual, (ii) the disclosure obligation set out in the Bidding Documents, and (iii) the misrepresentation made in the JV’s bids.

27. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent’s employees acted knowingly in making the misrepresentation in the JV’s bids for the Contracts.

3. To obtain a financial or other benefit or to avoid an obligation

28. The Sanctions Board has previously found sufficient evidence of intent to obtain a financial or other benefit or to avoid an obligation where the record showed that misrepresentations (including failures to disclose required information) were made in response to a tender requirement.<sup>15</sup> The Sanctions Board reached this finding “[i]rrespective of the bid requirement’s actual significance, and the subjective assessment thereof by a bidder.”<sup>16</sup> Here, the Bidding Documents required bidders to disclose “information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.” In response to the requirement to disclose whether it had paid, or would pay, such sums, the Respondent’s employee stated in each of the JV’s bids: “None.”

---

<sup>13</sup> Sanctions Procedures at Section III.A, sub-paragraph 7.01.

<sup>14</sup> Sanctions Board Decision No. 83 (2015) at para. 51.

<sup>15</sup> See, e.g., Sanctions Board Decision No. 74 (2014) at para. 29; Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decision No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para. 72; Sanctions Board Decision No. 99 (2017) at paras. 23-25; Sanctions Board Decision No. 106 (2017) at paras. 25-27; Sanctions Board Decision No. 114 (2018) at paras. 41-42; Sanctions Board Decision No. 120 (2019) at para. 41.

<sup>16</sup> Sanctions Board Decision No. 99 (2017) at para. 25.

29. On the basis of this record, the Sanctions Board finds that it is more likely than not that the Respondent's employees made the misrepresentation in each of the bids in order to win the Contracts and to secure a financial benefit for the Respondent from the Contracts.

**B. The Respondent's Liability for the Acts of its Employees**

30. 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.<sup>17</sup>

31. In the present case, the record supports a finding that the Respondent's employees engaged in the fraudulent practice in accordance with the scope of their duties and with the purpose of serving the interests of the Respondent. For instance, the record reflects that an authorized representative of the Respondent signed the JV's bids for the Contracts. Each of the bids contained the misrepresentation as alleged by INT. The record also shows that an authorized representative of the Respondent signed the Cooperation Agreement setting out the role of the Individual and the related compensation for his services. There is no indication in the record that these individuals acted for any purpose other than serving the Respondent, i.e., to obtain a financial benefit for the Respondent in relation to the Contracts. Moreover, the Respondent does not present, and the record does not provide any basis for, a rogue employee defense. Accordingly, the Sanctions Board finds the Respondent liable for the fraudulent practice carried out by its employees.

**C. Sanctioning Analysis**

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

32. Where the Sanctions Board determines that it is more likely than not that a respondent engaged in a sanctionable practice, Section III.A, sub-paragraph 8.01(ii) 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 III.A, sub-paragraph 9.01. The range of sanctions set out in Section III.A, sub-paragraph 9.01 includes: (a) reprimand; (b) conditional non-debarment; (c) debarment; (d) debarment with conditional release; and (e) restitution. As stated in Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

33. As reflected in Sanctions Board precedent, the Sanctions Board considers the totality of the circumstances and all potential aggravating and mitigating factors to determine an appropriate sanction.<sup>18</sup> The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented in each case.<sup>19</sup>

---

<sup>17</sup> See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52; Sanctions Board Decision No. 68 (2014) at para. 30; Sanctions Board Decision No. 102 (2017) at para. 59.

<sup>18</sup> See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

<sup>19</sup> See Sanctions Board Decision No. 44 (2011) at para. 56.



34. The Sanctions Board is required to consider the types of factors set forth in Section III.A, sub-paragraph 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 Group Sanctioning Guidelines (the “Sanctioning Guidelines”). While the Sanctioning Guidelines themselves state that they are not intended to be prescriptive in nature, they provide guidance as to the types of considerations potentially relevant to a sanctions determination. The Sanctioning Guidelines further suggest potentially applicable ranges of increases or decreases from a proposed base sanction of debarment with the possibility of conditional release after a minimum period of three years.

35. Where the Sanctions Board imposes a sanction on a respondent, it may also, pursuant to Section III.A, sub-paragraph 9.04(b) of the Sanctions Procedures, impose appropriate sanctions on any Affiliate of the respondent.

2. Factors considered in the present case

a. Voluntary corrective action

36. *Effective compliance program*: Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where the respondent took voluntary corrective action. Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent’s “[e]stablishment or improvement, and implementation of a corporate compliance program” and reflects “genuine remorse and intention to reform.” While the parties do not specifically raise this factor, the Respondent states in the Response that its “own internal management rules ban[] any wrongful actions in our business development.” The Respondent includes in the record its Employee Handbook, a PowerPoint presentation ostensibly demonstrating the Respondent’s corporate culture, and code of conduct/anticorruption documents from the Respondent’s partners. Considering the record as a whole, including that the record does not indicate any improvement to the Respondent’s corporate compliance program since the time of the misconduct (or a commitment to do so), the Sanctions Board declines to grant mitigation under this factor.

b. Cooperation

37. Section III.A, sub-paragraph 9.02(e) of the Sanctions Procedures provides for mitigation where a respondent “cooperated in the investigation or resolution of the case.” Section V.C of the Sanctioning Guidelines identifies a respondent’s assistance with INT’s investigation and voluntary restraint as examples of cooperation.

38. *Assistance and/or ongoing cooperation*: Section V.C.1 of the Sanctioning Guidelines provides that mitigation may be appropriate for assistance with INT’s investigation or ongoing cooperation, “[b]ased on INT’s representation that the respondent has provided substantial assistance” as well as “the truthfulness, completeness, [and] reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” Here, INT submits that mitigation is warranted for the Respondent because INT identified the misrepresentation in the JV’s bids through a disclosure by the Respondent. The record includes

the letter in which the Respondent made this disclosure to INT. On the basis of this record, the Sanctions Board finds that mitigation is warranted for the Respondent.

39. *Voluntary restraint*: Section V.C.4 of the Sanctioning Guidelines advises that voluntary restraint from bidding on Bank-financed tenders pending the outcome of an investigation may be considered as a form of assistance and/or cooperation. In past cases, the Sanctions Board's decision to apply or deny mitigation on these grounds has depended on whether or not the respondents' asserted voluntary restraint was corroborated by relevant evidence.<sup>20</sup> In addition, the Sanctions Board has consistently declined to apply mitigation for the respondent's voluntary restraint once its temporary suspension started.<sup>21</sup> In the present case, the record indicates that by August 8, 2019 – soon after INT issued the show-cause letter in relation to the Respondent's arrangement with the Individual and over ten months before the Respondent's temporary suspension – the Respondent voluntarily restrained from bidding on any Bank-financed tenders. On the basis of this record, the Sanctions Board finds that mitigation is warranted for the Respondent.

c. Period of temporary suspension

40. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the SDO's issuance of the Notice on June 24, 2020.

d. Other considerations

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

42. *Respondent's contributions to development and social responsibility*: The Respondent submits that under its "guidance of 'Common Interests,' [the Respondent] hopes to help" developing countries to "develop in a way suitable for themselves." According to the Respondent, it "works out sustainable solutions that mitigate poverty and promote[s] common prosperity" in developing countries. The Respondent also submits that it "displays a strong social responsibility," stating, *inter alia*, that it has helped countries in the areas of infrastructure, education and medical treatments; donated thousands of masks, gloves, and protective clothing in light of COVID-19; and sponsored "various NGO activities," such as a forum raising awareness of environmental issues. Consistent with past precedent declining to grant mitigating credit for respondents' claimed record of general performance and contributions to development work, the Sanctions Board finds no mitigation warranted on these grounds under the current sanctions framework.<sup>22</sup>

---

<sup>20</sup> See Sanctions Board Decision No. 73 (2014) at para. 50 (denying mitigation where the respondent did not provide evidence of a policy or practice of voluntary restraint); Sanctions Board Decision No. 102 (2017) at para. 80 (applying mitigation where the respondent provided contemporaneous evidence of its withdrawal from nine bids).

<sup>21</sup> See Sanctions Board Decision No. 44 (2011) at para. 66 (finding that a respondent cannot be credited for voluntary restraint once its temporary suspension has started).

<sup>22</sup> See, e.g., Sanctions Board Decision No. 60 (2013) at para. 139; Sanctions Board Decision No. 93 (2017) at para. 104; Sanctions Board Decision No. 117 (2019) at para. 45.

**D. Determination of Appropriate Sanction**

43. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that it is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;<sup>23</sup> (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider<sup>24</sup> of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) receive the proceeds of any loan made by the Bank or otherwise participate further in the preparation or implementation of any Bank-Financed Projects, provided, however, that after a minimum period of ineligibility of one (1) year and four (4) months beginning from the date of this decision, the Respondent may be released from ineligibility only if it has, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, adopted and implemented an effective integrity compliance program in a manner satisfactory to the World Bank Group. This sanction is imposed on the Respondent for a fraudulent practice as defined in Paragraph 1.16(a)(ii) of the January 2011 Procurement Guidelines.

44. The Respondent's 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 multilateral development banks ("MDBs") that are party to the Agreement for Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement") so that they may determine whether to

---

<sup>23</sup> A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for pre-qualification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(i), n.14.

<sup>24</sup> A nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider (different names are used depending on the particular bidding document) is one which has been: (i) included by the bidder in its pre-qualification 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 III.A, sub-paragraph 9.01(c)(ii), n.15.

enforce the declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.<sup>25</sup>

  
Mark Kantor (Panel Chair)

On behalf of the  
World Bank Group Sanctions Board

Mark Kantor  
Adedoyin Rhodes-Vivour  
Rabab Yasseen

---

<sup>25</sup> At present, the MDBs that are party to the Cross-Debarment Agreement are the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, and the World Bank Group. The Cross-Debarment Agreement provides that, subject to the prerequisite conditions set forth in the Cross-Debarment Agreement, unless a participating MDB (i) believes that any of the prerequisite conditions set forth in the Cross-Debarment Agreement have not been met or (ii) decides to exercise its rights under the “opt out” clause set forth in the Cross-Debarment Agreement, each participating MDB will promptly enforce the debarment decisions of the other participating MDBs. More information about the Cross-Debarment Agreement is available on the Bank’s website <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board#3> (see “Background and Reference Documents” section, item titled “Agreement for Mutual Enforcement of Debarment Decisions (April 9, 2010)”).