SANCTIONS BOARD | WORLD BANK GROUP
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Sanctions Board Decision No. 138
(Sanctions Case No. 693)

IDA Credit No. 5026-LR
IDA PPA No. V1080
Republic of Liberia

Decision of the World Bank Group[1] Sanctions Board imposing a sanction of conditional non-debarment on the respondent entity in Sanctions Case No. 693 (the "Respondent"), together with certain Affiliates.[2] The Respondent must comply with the conditions of non-debarment within two (2) years from the date of this decision. In case of non-compliance within this prescribed period, the Respondent, together with said Affiliates, shall be automatically placed under debarment with conditional release for a minimum period of two (2) years and nine (9) months. This sanction is imposed on the Respondent for a corrupt practice.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of Maria Vicien Milburn (Chair), Michael Ostrove, and Adedoyin Rhodes-Vivour to review this case. A hearing was held on June 8, 2022, at the World Bank Group's headquarters in Washington, D.C., at the request of the Respondent and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. The World Bank Group's Integrity Vice Presidency ("INT") participated in the hearing through its representatives attending in person. The Respondent was represented by its officers attending in person and via video conference from the World Bank Group's offices in Monrovia, Liberia. The Sanctions Board deliberated and reached its decision based on the written record and the arguments presented at the hearing.

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 2, 2021 (the "Notice"),

[1] 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).

[2] 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 Paragraphs 42, 48-50.

appending the Statement of Accusations and Evidence (the "SAE") submitted by INT to the SDO on May 21, 2021;

ii. Explanation submitted by the Respondent to the SDO on November 1, 2021;

iii. Response submitted by the Respondent to the Secretary to the Sanctions Board on January 3, 2022 (the "Response");

iv. Reply submitted by INT to the Secretary to the Sanctions Board on January 28, 2022 (the "Reply");

v. Additional submission filed by the Respondent with the Secretary to the Sanctions Board on February 6, 2022 (the "Respondent's Additional Submission"); and

vi. Additional submission filed by INT with the Secretary to the Sanctions Board on March 15, 2022 ("INT's Additional Submission").

II. PROCEDURAL HISTORY AT THE FIRST TIER

3. *Issuance of Notice and temporary suspension*: On June 2, 2021, 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[3] with respect to any Bank-Financed Projects,[4] 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.

4. *SDO's recommendations*: 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 four (4) years and three (3) months, after which period the Respondent may be released from ineligibility only if the Respondent 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 (the "ICO") that the Respondent has (i) taken appropriate remedial measures to address the sanctionable practices for which the Respondent has been sanctioned; and (ii) adopted and implemented, in a manner satisfactory to the Bank, integrity compliance measures as may be imposed by the ICO to address the sanctionable practices. The SDO applied aggravation for the Respondent's repeated pattern of corruption and for the involvement of the Respondent's senior management in the misconduct. The SDO applied limited mitigation for the Respondent's cooperation. The Respondent subsequently submitted an Explanation to contest the SDO's finding

[3] 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.

[4] 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).

of liability and the recommended sanction. The SDO declined to withdraw the Notice or revise the recommended sanction.

III. GENERAL BACKGROUND

5. This case arises in the context of two projects in the Republic of Liberia (the "Recipient"): (i) the Integrated Public Financial Management Reform Project ("Project 1"), which sought to improve budget coverage, fiscal policy management, financial control, and oversight of government finances; and (ii) the Integrated Public Financial Management Reform Project II ("Project 2"), which sought to improve public resources management and accountability (together, the "Projects"). On March 20, 2012, IDA entered into a financing agreement with the Recipient to provide an amount equivalent to Special Drawing Rights ("SDR") 3.2 million (approximately US$4.92 million at the time of signature) for Project 1 ("Financing Agreement 1").[5] On July 26, 2017, IDA entered into an advance agreement with the Recipient to provide a project preparation advance in the amount of US$3.86 million for Project 2 ("Financing Agreement 2").[6] The Projects were implemented by the same project implementation unit (the "PIU") under the Recipient's Ministry of Finance and Development Planning (the "Ministry").

6. Between May 2013 and December 2017, the Ministry awarded several contracts to the Respondent through direct negotiations under the Projects (the "Contracts"). The Contracts governed the supply of goods and services relating to government data center sites. Specifically, the Contracts included: (i) an agreement to provide equipment and related maintenance services, dated May 21, 2013 ("Contract 1"); (ii) a purchase order of equipment, dated October 27, 2015 ("Contract 2"); (iii) an agreement for maintenance services, dated December 22, 2015 ("Contract 3"); (iv) a purchase order of equipment, dated January 26, 2016 ("Contract 4"); (v) an agreement for maintenance services, dated May 2017 ("Contract 5"); and (vi) an agreement for maintenance services, dated December 2017 ("Contract 6").[7]

7. INT alleges that the Respondent engaged in a corrupt practice by making improper payments to a public official (the "Public Official") in exchange for his influence in the procurement or execution of Contracts 2-6.

IV. APPLICABLE STANDARDS OF REVIEW

8. *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.

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[5] Financing Agreement 1 references a trust fund agreement whereby IDA would act as an administrator of grant funds to be provided by the Swedish International Development Cooperation Agency ("SIDA") and the United States Agency for International Development ("USAID") to assist the Recipient in financing Project 1 (the "Trust Fund Grant Agreement"). The record does not include a copy of the Trust Fund Grant Agreement.

[6] Together with Financing Agreement 1, hereinafter referred to as the "Financing Agreements."

[7] Contracts 1-5 were procured and financed under Project 1. Contract 6 was procured and financed under Project 2.

9. *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.

10. *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.

11. *Applicable definitions of corrupt practice*: Financing Agreement 1 provided that the World Bank's Guidelines: Procurement of Goods, Works and Non-consulting Services under IBRD Loans and IDA Credits & Grants by World Bank Borrowers (January 2011) (the "January 2011 Procurement Guidelines") would govern the procurement of goods and services under Project 1. Financing Agreement 2 provided that the World Bank's Procurement Regulations for Borrowers under Investment Project Financing (July 2016) (the "July 2016 Procurement Regulations") would govern the procurement of goods and services under Project 2. The available Contracts procured under Project 1 either defined "corrupt practice" consistent with the January 2011 Procurement Guidelines or were silent on the applicable standards.[8] The Contract procured under Project 2[9] defined "corrupt practice" in accordance with the July 2016 Procurement Regulations. In these circumstances, the Sanctions Board will review the allegations in this case based on the definitions set forth by the January 2011 Procurement Guidelines and the July 2016 Procurement Regulations. Both documents define "corrupt practice" as "the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party."[10] The definition in the January 2011 Procurement Guidelines also contains a footnote explaining that the term "another party" refers to "a public official acting in relation to the procurement process or contract execution" and that the term "public official" includes "World Bank staff and employees of other organizations taking or reviewing procurement decisions."[11]

V. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

12. INT alleges that the Respondent made two corrupt payments to the Public Official: (i) a payment of US$2,000 in or around October 2015 ("Payment 1"), and (ii) a payment of US$1,000 in May 2016 ("Payment 2") (together, the "Payments"). INT contends that, in exchange for the Payments, the Public Official improperly influenced the procurement or execution of Contracts 2-6, including by ensuring the acceptance of equipment deliveries, facilitating the processing of invoices, and inducing the single-sourcing of contracts and orders in favor of the Respondent. INT submits that aggravation is warranted for the repeated pattern of corruption and

[8] Contracts 1 and 3 mirror the definition of "corrupt practice" set out in the January 2011 Procurement Guidelines. Contracts 2 and 4 are silent. The record does not contain a copy of Contract 5.
[9] Namely, Contract 6.
[10] January 2011 Procurement Guidelines at para. 1.16(a)(i); July 2016 Procurement Regulations, Annex IV, at para. 2.2(a)(i).
[11] January 2011 Procurement Guidelines at para. 1.16(a)(i), n.20.

for the involvement of the Respondent's senior management in the misconduct. In addition, INT argues that any mitigation earned for cooperation should be offset by the Respondent's denials of responsibility and knowledge of the misconduct despite substantial inculpatory evidence.

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

13. The Respondent concedes that the Payments were made. However, the Respondent claims no corrupt intent and denies any responsibility for this conduct. According to the Respondent, the Payments constituted legitimate personal loans from the Respondent's Vice President of Administration (the "Vice President") to the Public Official, which the Vice President mistakenly recorded in the Respondent's corporate documents. The Respondent maintains that the Vice President was not authorized to make payments to the Public Official on behalf of the company. The Respondent adds that its Chief Executive Officer (the "CEO") and Chief Operating Officer (the "COO") only learned of the Payments through INT's investigation. The Respondent also appears to deny having a need to influence the Public Official's actions in relation to the Contracts. For example, the Respondent asserts that the Public Official had limited authority over the Projects, and that the Respondent's sole-sourcing was justified because the Respondent was the only suitable provider of the goods and services in question. The Respondent opposes the application of any aggravating factors and maintains that it cooperated fully with INT, despite the Respondent's perception that the conduct of INT's investigation was unfair.

C. INT's Principal Contentions in the Reply

14. INT reiterates that the Public Official was in a position to influence the Respondent's business under the Projects. INT contends that the Vice President made the Payments on behalf and for the benefit of the Respondent, and that the Respondent bears responsibility for this conduct. INT also submits that even if the Payments were personal loans, they would still constitute a thing of value, and the circumstances would still reflect the Vice President's intent to "curry favor" with the Public Official and influence his actions in favor of the Respondent. Separately, INT argues that its investigation was conducted properly.

D. The Respondent's Principal Contentions in Its Additional Submission

15. Consistent with Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the Chair authorized, in her discretion, the Respondent's filing of its Additional Submission. The Respondent reaffirms the position that it is not responsible for the Vice President's conduct. The Respondent argues that the Payments could not have been made using corporate funds because the Respondent runs a "cashless system" and the underlying transactions are not reflected in the company's operating bank account. The Respondent also reiterates that the Contracts were awarded and implemented properly and without the Public Official's influence. In addition, the Respondent reasserts its complaints relating to INT's investigation.

E. INT's Principal Contentions in Its Additional Submission

16. Consistent with Section III.A, sub-paragraph 5.01(c) of the Sanctions Procedures, the Chair invited INT to submit written comments on the Respondent's Additional Submission. INT

reiterates its previous arguments and asserts that its investigation was conducted consistent with the Bank's public guidance on integrity audits.

F. Presentations at the Hearing

17. INT contended that, at the time of the Payments, the Public Official held a senior role under the Projects, with direct responsibilities over procurement, supervision of contracts, and approval of invoices. According to INT, evidence shows that the Vice President made the Payments with the purpose to influence the Public Official in relation to the Contracts, and that the Respondent is liable for this misconduct. INT argued that nothing in the record supports the theory that the Payments were personal loans from the Vice President. INT added that, in any case, such loans would still constitute a corrupt practice under the applicable standards.

18. The Respondent contended that it was awarded the Contracts out of legitimate business needs. The Respondent criticized INT for relying on the Vice President's testimony to prove that the Payments were made, while simultaneously dismissing the Vice President's explanations as to his intent. The Respondent maintained that the Vice President's conduct violated company policy and that the Respondent's management did not sanction, condone, or know of the Payments prior to INT's investigation. The Respondent asserted that its management had since implemented remedial actions against the Vice President, including by demoting him from his administrative role and removing him as an authorized signatory on the company's bank account.

VI. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

19. The Sanctions Board will first address the preliminary procedural matters identified in this case. The Sanctions Board will then consider whether it is more likely than not that the alleged corrupt practice occurred and, if so, whether the Respondent may be held liable for the misconduct. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on the Respondent.

A. Preliminary Matters

20. Without expressly raising a procedural challenge, the Respondent submits complaints relating to the conduct of INT's investigation and the present proceedings. Specifically, the Respondent asserts that: (i) INT discouraged the Respondent's use of legal counsel; (ii) INT's allegations in the show-cause letter differed from those in the SAE; and (iii) the Respondent was not provided a copy of the Public Official's interview with INT. INT contends that: (i) it did not object to the involvement of legal counsel in its investigation of the Respondent; and (ii) the allegations in the SAE take into account the available evidence and the Respondent's reply to the show-cause letter. INT does not address the Respondent's assertion that it did not receive a copy of the Public Official's interview.

21. The Sanctions Board observes that: (i) the record includes no evidence that INT discouraged the Respondent's use of legal counsel; (ii) the show-cause letter is part of INT's investigation and its findings are subject to change prior the commencement of sanctions proceedings; and (iii) the record, as issued to the Respondent, includes a copy of the Public Official's interview with INT. Accordingly, the Sanctions Board finds no unfairness or

fundamental procedural flaw that affected the Respondent's ability to mount a meaningful response to INT's allegations.

B. Evidence of Corrupt Practice

22. In accordance with the definitions of "corrupt practice" under the January 2011 Procurement Guidelines and the July 2016 Procurement Regulations, INT bears the initial burden to show that it is more likely than not that the Respondent (i) offered, gave, received, or solicited, directly or indirectly, anything of value (ii) to influence improperly the actions of a public official in relation to the procurement process or contract execution.

1. Giving, directly or indirectly, anything of value

23. INT submits that the Respondent gave a thing of value to the Public Official in the form of money, i.e., the Payments. The Respondent concedes that the Payments were made but denies any responsibility for this conduct.

24. Consistent with INT's allegation, the Respondent's financial records indicate that the Public Official received Payment 1 in or around October 2015, and Payment 2 in May 2016. Such records include:

i. *For Payment 1*: A copy of Contract 2, dated October 27, 2015, bearing a handwritten note that reads "pd" followed by "pd [Public Official's first name] 2k on this project."

ii. *For Payment 2*: Files pertaining to another contract, bearing a handwritten note that reads "5/5/2016 [Public Official's first initial and last name] credited $1,000 USD to be deducted on future project."

25. During an interview with INT, the Vice President admitted that he made the handwritten notes in question, and that these notes reflected two payments of US$2,000 and US$1,000, respectively, from himself to the Public Official. It should be noted that the Vice President denied any impropriety – as addressed in Paragraph 31 below. However, the Vice President's admission of the Payments, together with the documentary evidence described above and the Respondent's factual concessions, supports a conclusion that the Payments were made. Accordingly, the Sanctions Board finds that it is more likely than not that the Respondent's staff gave a thing of value to the Public Official.

2. To influence improperly the actions of a public official in the procurement process or contract execution

26. INT submits that the Respondent made the Payments in order to influence improperly the Public Official in the procurement or execution of Contracts 2-6 – including to ensure the acceptance of equipment deliveries, facilitate the processing of invoices, and induce the PIU's contracting with the Respondent. The Respondent maintains that the Payments constituted personal loans from the Vice President, who acted without corrupt intent and out of a "desire to help" the Public Official. In addition, the Respondent appears to deny having a need to influence

the Public Official, asserting that the Public Official had limited authority over the Projects and that the Contracts were awarded legitimately and irrespective of the Public Official's actions.

27. As an initial matter, the Sanctions Board finds that, at the time of the alleged misconduct, the Public Official served as a public official within the meaning of the applicable definitions. The record shows that the Public Official held a position of authority over the Projects – including as a Bank-financed consultant between June 2013 and February 2019, and as acting director of the Ministry's technology unit in March 2016. Documentary evidence including the Public Official's Bank-financed consultant agreements, his resume, and minutes of PIU meetings, indicates that the Public Official: (i) oversaw all processes related to information and communications technology under the Projects; (ii) worked with procurement officials on "developing specifications and requirements documents for technical procurement processes" and writing "justifications for no objection from World Bank;" and (iii) participated in the evaluation of bids and negotiation of contracts under the Projects. Consistent with this evidence, the Public Official described his role to INT as the "technical head of this project" and the "most senior technical person in the [Ministry]," with responsibilities including determining or supervising the technical requirements of contracts and serving on bid evaluation panels. In addition, the Respondent itself acknowledges that the Public Official was the Ministry's "point of contact" for the Projects and "the person authorized to receive and sign-off on reports, invoices and work orders" and "verify that the work performed, services provided, or goods supplied match . . . the invoice."

28. Having established the Public Official's responsibilities and authority over the Projects, the Sanctions Board examines whether the Payments were made with corrupt intent. The Sanctions Board notes that, under the sanctions framework, INT can make a prima facie case of corrupt intent by showing that a transaction had an improper purpose, either through direct evidence or, more typically, based on a reasonable inference from objective facts.[12] Such objective facts may include, for example, a course of dealing, specific acts of the respondent, or other circumstantial evidence.[13] Upon such a showing by INT, the burden shifts to the respondent to prove, as an affirmative defense, that the transaction in question had a legitimate purpose.[14]

29. In the past, the Sanctions Board has consistently found sufficient evidence of intent where a respondent gave something of value to a public official who was in a position to influence the respondent's interests, and the outcome sought by the respondent actually materialized.[15] In addition, the Sanctions Board has inferred corrupt intent where the public official was in a position of authority over the respondents and the circumstances of the payment indicated impropriety – even though the specific purpose of influence was unclear.[16]

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[12] See, e.g., Sanctions Procedures at Section III.A, sub-paragraph 7.01; Advisory Opinion at paras. 53, 65; Sanctions Board Decision No. 118 (2019) at para. 61.

[13] Id.

[14] See Sanctions Procedures at Section III.A, sub-paragraph 8.02(b)(ii); Advisory Opinion at paras. 65, 66.

[15] See, e.g., Sanctions Board Decision No. 78 (2015) at para. 56; Sanctions Board Decision No. 66 (2014) at para. 26; Sanctions Board Decision No. 86 (2016) at paras 30, 32.

[16] See Sanctions Board Decision No. 110 (2018) at para. 25 (finding that INT sufficiently proved its prima facie case of corrupt intent where evidence showed that the respondents were aware that the public official was in a position of authority over the project at issue and held specific influence over their business interests).

30. Consistent with these standards, the Sanctions Board finds that INT has discharged the burden to prove that the Payments were made with corrupt intent. Notably, as examined in Paragraphs 24-25, the Respondent's own financial records provide direct evidence of a connection between the Payments and the Respondent's business interests. Moreover, the timing and circumstances of each transaction further indicate an improper course of dealing between the Respondent and the Public Official. Specifically, the record reflects the following:

i. *For Payment 1*: The Vice President recorded Payment 1 on the Respondent's copy of Contract 2, specifically noting that the corresponding amount (i.e, US$2,000) was paid to the Public Official "on this project." Contract 2 was executed in October 2015 and paid by the Ministry in December 2015. Contemporaneous correspondence reveals that, before confirming that the Ministry had released the payment under Contract 2, the Respondent's staff repeatedly wrote to the Public Official to complain about apparent delays in the processing of the invoice – which suggests the Public Official's ability to influence this matter. In addition, documentary evidence shows that, during the same period, the Public Official was involved in the negotiations of Contract 3, which was awarded to the Respondent in December 2015. Considering the Public Official's role and responsibilities, this evidence supports an inference that the Vice President made Payment 1 in order to influence the execution of Contract 2 and the award of Contract 3 in favor of the Respondent.

ii. *For Payment 2*: The Vice President recorded Payment 2 in the Respondent's corporate files, specifically noting that the corresponding amount (i.e., US$1,000) was credited to the Public Official in May 2016 so as "to be deducted on future project." Subsequently, the PIU awarded Contracts 5 and 6 to the Respondent – respectively, in May 2017 and December 2017. Documentary evidence shows that the Public Official was involved in the negotiations of Contract 6 and was in a position to influence the award of Contract 5. In these circumstances, it may be reasonably inferred that Contracts 5 and 6 constitute the "future project" which Payment 2 was intended to influence. Alternatively, even without regard to a specific purpose of influence, this evidence shows that the Respondent's business interests were subject to the Public Official's authority and influence, and that Payment 2 was made in connection with the Public Official's functions – which sufficiently supports a prima facie finding of corrupt intent.[17]

31. As INT has established a prima facie case of corrupt intent, the burden now shifts to the Respondent to demonstrate that the Payments had a legitimate purpose. The Respondent relies on the Vice President's statements to INT indicating that the Payments were of a personal nature and had a legitimate purpose. Specifically, the Vice President maintained that these transactions constituted loans from himself – in his individual capacity – to the Public Official, which the Public Official later repaid. The Sanctions Board does not find this theory credible, as it is inconsistent with the Vice President's own notes – which appear in the Respondent's corporate files and explicitly connect the Payments to present and future business opportunities. During the

[17] See Sanctions Board Decision No. 110 (2018) at para. 25.

hearing, upon direct questioning by the Sanctions Board, the Respondent was unable to explain such inconsistencies or to provide any additional information or evidence in support of this defense. Moreover, this theory stands wholly uncorroborated by the Public Official, other witnesses, or documentary evidence. Accordingly, the Respondent fails to substantiate the assertion that the Payments had a legitimate purpose.[18]

32. As noted above, the Respondent also appears to deny having the need to influence the Public Official in relation to the Contracts. For instance, the Respondent maintains that the Ministry had a genuine necessity for the goods and services in question and that the Respondent was the only company qualified to provide them. In addition, the Respondent challenges the Public Official's ability to exercise the alleged influence, asserting, for example, that the Public Official lacked authority to approve certain payments or make final decisions in the procurement process for Contract 6. The Sanctions Board is not persuaded by these arguments. As examined in Paragraphs 27 and 30, documentary and testimonial evidence reveals that the Public Official played a key role in the procurement processes under the Projects, and that he was directly involved in the negotiations of at least two of the relevant contracts (i.e., Contracts 3 and 6). Even if the Sanctions Board were to accept that the Respondent was the PIU's only choice of vendor and that the Public Official's powers were limited, the applicable standards do not require proof that the Public Official's influence was determinative or necessary to achieve the desired outcome,[19] or that this outcome was based on his decision alone.[20] What simply needs to be shown – as the record in fact shows here – is that the Respondent's staff intended to influence the Public Official's actions in connection with a Bank-financed contract.

33. In light of the above, the Sanctions Board finds that it is more likely than not that the Respondent's staff made the Payments with the requisite intent.

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

34. The Sanctions Board has consistently held corporate respondents vicariously liable for the acts of their owners, staff, and authorized representatives under the doctrine of respondeat superior.[21] In reaching these determinations, the Sanctions Board has considered in particular whether the representatives in question acted within the course and scope of their employment and were motivated, at least in part, by a purpose to serve the respondent company.[22] Conversely, the Sanctions Board has declined to hold a respondent firm liable where the record

[18] As the Sanctions Board has previously observed, an assertion must have an evidentiary basis in the record, or it remains a mere assertion and not a substantiated fact. See, e.g., Sanctions Board Decision No. 61 (2013) at para. 41; Sanctions Board Decision No. 63 (2014) at para. 50; Sanctions Board Decision No. 115 (2019) at para. 46; Sanctions Board Decision No. 124 (2020) at para. 24, n.8.

[19] See Sanctions Board Decision No. 63 (2014) at para. 64 (rejecting the respondents' argument that a joint venture could not have actually influenced the selection process because it was the sole responsive bidder and its proposal was the lowest-priced; observing that the issue is whether the respondents intended to influence, not whether the desired influence ultimately materialized or was decisive).

[20] See Sanctions Board Decision No. 125 (2020) at para. 30 (finding that the applicable definition of corrupt practice does not require showing that the respondent – a public official – provided an undue advantage to a private party based on his decision alone, only that the respondent intended to influence his own behavior in the execution of his consultant contract).

[21] See, e.g., Sanctions Board Decision No. 31 (2010) at para. 24; Sanctions Board Decision No. 113 (2018) at para. 33.

[22] See, e.g., Sanctions Board Decision No. 55 (2013) at para. 51; Sanctions Board Decision No. 78 (2015) at para. 61.

did not show – to the required standard – that the individuals who directly engaged in the misconduct were acting on behalf of the respondent firm[23] or as the respondent firm's duly authorized officers or employees.[24] Additionally, the Sanctions Board has recognized that respondent firms may be exempted from liability where they can prove that their staff acted in contravention of specific corporate policies (i.e., the "rogue employee defense").[25]

35. Here, the Respondent denies responsibility for the Vice President's actions in question, arguing that: (i) the Vice President was acting in his personal capacity; (ii) the Vice President was not authorized to make payments to the Public Official on behalf of the Respondent; (iii) the Payments could not have been made using company funds; (iv) the Respondent's management did not sanction, condone, or know of the Payments prior to INT's investigation; and (v) the Vice President's conduct violated company policy (i.e., the Vice President was a "rogue employee"). The Respondent also asserts that, as a remedial measure, the Vice President was demoted from his administrative role and removed as an authorized signatory on the Respondent's bank account. INT contends that the Respondent is liable for the Vice President's conduct because the Vice President was acting within the course and scope of his employment. INT also argues that the "rogue employee" exception does not apply because the Respondent failed to substantiate its assertions and admittedly lacked proper controls over the Vice President's activities.

36. The record supports a finding that the Vice President made the Payments in accordance with the scope of his duties and with the purpose of serving the interests of the Respondent. Testimonial and documentary evidence, including the Respondent's factual concessions and the COO's statements to INT, demonstrates that the Vice President's functions included handling the Respondent's finances, accounts, payments, and record keeping, as well as performing lower-level administrative tasks. The record also shows that, consistent with these responsibilities, the Vice President made the Payments for the benefit the Respondent. For example, as addressed in Paragraphs 24, 25, 30, and 31, the Vice President admitted to documenting the Payments in the Respondent's corporate files, and his handwritten notes explicitly connected these transactions to the Respondent's business interests. Contrary to the Respondent's assertions, nothing in the record supports the theory that the Vice President was acting in his personal capacity. In these circumstances, it is immaterial whether the Vice President was specifically authorized to make the Payments or whether he used company funds to execute them. As the Sanctions Board has previously held, under the doctrine of respondeat superior, a respondent firm may be held liable

[23] Sanctions Board Decision No. 96 (2017) at para. 71 (finding that the individual in question was not acting on behalf of the respondent firm; that the individual was acting as agent on behalf of a third party – the respondent firm's JV partner; and that the individual's manager had specifically instructed him not to disclose the conduct in question (provision of study tours) to the respondent firm).

[24] Sanctions Board Decision No. 73 (2014) at paras. 7, 36 (where an individual accused of misconduct (misrepresentation in a bid, through an agent/signatory) appeared to be representing three different companies – including the respondent firm, which he owned; and the record was unclear as to whether the misconduct in question related to the respondent firm).

[25] See, e.g., Sanctions Board Decision No. 37 (2010) at para. 42; Sanctions Board Decision No. 47 (2012) at para. 33; Sanctions Board Decision No. 55 (2013) at paras. 53, 54; Sanctions Board Decision No. 68 (2014) at paras. 29, 30; Sanctions Board Decision No. 92 (2017) at paras. 101, 102; Sanctions Board Decision No. 95 (2017) at para. 33; Sanctions Board Decision No. 126 (2020) at para. 41.

for the acts of its employees regardless of whether the respondent firm authorized, approved, directed, or knew of the employees' misconduct.[26]

37. With respect to the Respondent's "rogue employee" defense, the Sanctions Board notes that the burden of proof lies with the Respondent.[27] Under Sanctions Board precedent, for this exception to apply, the record must show that the respondent firm had implemented internal controls reasonably sufficient to prevent or detect the sanctionable practices at issue; that the employee nevertheless evaded such controls; and that the respondent firm meaningfully disciplined the employee for the misconduct.[28] In the present case, the Respondent fails to meet this burden. While the Sanctions Board acknowledges the remedial actions implemented by the Respondent, the record includes no evidence of any internal controls, adequate supervision, or specific company policies purportedly breached by the Vice President. In fact, the Respondent's own statements reflect insufficient financial and accounting controls. For example, the Respondent submits that the Vice President had a "practice of scrabbling [sic] notes on pieces of papers, on his desk, on folders, on documents;" that "most of time he cannot remember many details;" and that he had previously used his own personal funds to make advance payments to the Respondent's lead engineer. The Respondent claims to have addressed these shortcomings by using external accountants to prepare the Respondent's tax filings, and by reprimanding and training the Vice President. However, such measures do not constitute meaningful oversight – as demonstrated by evidence that the Payments were explicitly recorded in the Respondent's own financial documents and remained undetected until INT's investigation.

38. In light of the above, and considering the totality of the evidence, the Sanctions Board finds that the Respondent is liable for the corrupt practice at issue.[29]

D. Sanctioning Analysis

1. General framework for determination of sanctions

39. 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 are: (a) reprimand; (b) conditional non-debarment; (c) debarment; (d) debarment with conditional release; and (e) restitution. As stated in

[26] See, e.g., Sanctions Board Decision No. 46 (2012) at para. 29; Sanctions Board Decision No. 48 (2012) at para. 29; Sanctions Board Decision No. 55 (2013) at para. 52; Sanctions Board Decision No. 63 (2014) at para. 71.

[27] See, e.g., Sanctions Board Decision No. 126 (2020) at para. 41; Sanctions Board Decision No. 137 (2022) at para. 47.

[28] See, e.g., Sanctions Board Decision No. 37 (2010) at para. 42; Sanctions Board Decision No. 47 (2012) at para. 33; Sanctions Board Decision No. 55 (2013) at paras. 53, 54; Sanctions Board Decision No. 68 (2014) at paras. 29, 30; Sanctions Board Decision No. 92 (2017) at paras. 101, 102; Sanctions Board Decision No. 95 (2017) at para. 33; Sanctions Board Decision No. 126 (2020) at para. 41.

[29] See Sanctions Board Decision No. 68 (2014) at para. 31 (refraining from assessing the respondent's liability under the principles of agency for the broker's forgery of bid securities).

Section III.A, sub-paragraph 8.01(ii) of the Sanctions Procedures, the Sanctions Board is not bound by the SDO's recommendations.

40. 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.[30] 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.[31]

41. 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.

42. 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. Severity of the misconduct

43. Section III.A, sub-paragraph 9.02(a) of the Sanctions Procedures requires the Sanctions Board to consider the severity of the misconduct in determining the appropriate sanction. Section IV.A of the Sanctioning Guidelines identifies various examples of severity that may merit aggravation.

44. *Repeated pattern of conduct*: Section IV.A.1 of the Sanctions Guidelines lists the respondent's repeated pattern of conduct as an aggravating factor. In past cases, the Sanctions Board has applied aggravation for repetition where the misconduct related to separate bids, contracts, or projects, over a period of time.[32] By contrast, the Sanctions Board has declined to apply aggravation where the sanctionable conduct was attributed to a "single scheme"[33] or a

[30] See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28; Sanctions Board Decision 135 (2022) at para. 38; Sanctions Board Decision No. 136 (2022) at para. 53; Sanctions Board Decision No. 137 (2022) at para. 50.

[31] See Sanctions Board Decision No. 44 (2011) at para. 56; Sanctions Board Decision 135 (2022) at para. 38; Sanctions Board Decision No. 136 (2022) at para. 53; Sanctions Board Decision No. 137 (2022) at para. 50.

[32] See, e.g., Sanctions Board Decision No. 133 (2021) at para. 37 (where the respondent solicited and received payments from a contractor through two different companies, in relation to different contracts, over the course of more than five years).

[33] See, e.g., Sanctions Board Decision No. 63 (2014) at para. 97 (declining aggravation for repetition where respondents made multiple corrupt payments pursuant to a single scheme under the same contract).

"single course of action."[34] Here, INT argues that this factor applies because the Respondent made two separate corrupt payments in relation to many different contracts over a period of several months. The Respondent opposes aggravation on this basis. The record indicates that the Respondent's corrupt conduct did not constitute a single course of action, as the Payments related to different contracts, had separate purposes, and occurred several months apart. The Sanctions Board finds that aggravation is warranted for the Respondent in these circumstances.

45. *Management's role*: Section IV.A.4 of the Sanctioning Guidelines states that this factor may apply "[i]f an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the misconduct." The Sanctions Board has previously applied aggravation on this basis where high-level members of a respondent entity's management personally participated in the misconduct.[35] In considering potential aggravation under this factor, the Sanctions Board has assessed the seniority of staff positions on a case-by-case basis.[36] Here, INT alleges that the Respondent's senior management was involved in the misconduct, as the Vice President personally made and recorded the Payments in the Respondent's corporate books. The Respondent asserts that, despite what his title may suggest, the Vice President did not perform a senior role in the company and was rather tasked to perform a gamut of administrative responsibilities. Assessing the record on a balance of probabilities, the Sanctions Board finds that it is not more likely than not that the Vice President served as a high-level member of the Respondent's management. Accordingly, the Sanctions Board declines to apply aggravation under this sanctioning factor.

b. Cooperation

46. *Assistance and/or ongoing cooperation*: 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.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." The Sanctions Board has consistently granted mitigation for cooperation where respondents met with INT on several occasions and provided relevant information and documentation,[37] or replied to INT's show-cause letter and follow-up

[34] See, e.g., Sanctions Board Decision No. 79 (2015) at para. 39 (declining aggravation where a respondent included the same false documents in several bid packages under the same project, which bid packages appeared to have been prepared by the respondent in a single course of action before the bids were submitted in two batches in the same week); Sanctions Board Decision No. 117 (2019) at para. 33 (declining aggravation where a respondent twice submitted the same set of false documents that related to the same bidding requirement under two related contracts under the same project); Sanctions Board Decision No. 120 (2019) at para. 50 (declining aggravation for repetition where the respondent submitted a set of several falsified documents in connection with two different bids under the same project).

[35] See, e.g., Sanctions Board Decision No. 66 (2014) at para. 36 (applying aggravation for the direct involvement of the director of the respondent's predecessor where the record reflected that the director received and subsequently acceded to a Bank staff member's solicitation of employment for his son); Sanctions Board Decision No. 78 (2015) at para. 77 (applying aggravation for the involvement of the respondent firm's chief executive officer in the corrupt arrangement).

[36] See, e.g., Sanctions Board Decision No. 97 (2017) at para. 71.

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

inquiries.[38] In the present case, the record shows, and INT acknowledges, that the Respondent provided documents, made staff available for interviews, and responded to INT's show-cause letter. This notwithstanding, INT argues that any credit for such cooperation should be offset by the Respondent's repeated denials of responsibility despite substantial evidence to the contrary, and the Respondent's apparent attempt to recant the Vice President's admission in its response to the show-cause letter. The Respondent contends that it cooperated fully with INT's investigators, and denies having attempted to recant the Vice President's admissions. Considering the record as a whole, the Sanctions Board finds that some mitigation is warranted for the Respondent's cooperation.

c. Period of temporary suspension

47. 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 2, 2021.

E. Determination of Appropriate Sanction

48. Considering the full record and all the factors discussed above, the Sanctions Board determines and declares that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be placed under conditional non-debarment for a period of two (2) years beginning from the date of this decision. In accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures, the Respondent shall be required to demonstrate within this period that it has (i) taken appropriate remedial measures to address the sanctionable practice for which it has been sanctioned; and (ii) adopted and implemented effective compliance measures in a manner satisfactory to the World Bank Group.

49. In the event that the Respondent fails to comply with these conditions within the prescribed period of non-debarment, the Respondent, together with said Affiliates, shall be automatically declared ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;[39] (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider[40] 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. The Respondent may be released from ineligibility after a minimum period of two (2) years and nine (9) months, counted from the expiration of the period of non-debarment, only if it has demonstrated compliance with

[38] See, e.g., Sanctions Board Decision No. 37 (2010) at para. 45; Sanctions Board Decision No. 51 (2012) at para. 54; Sanctions Board Decision No. 52 (2012) at para. 42.

[39] A respondent's ineligibility to be awarded a contract includes, without limitation (i) applying for prequalification, expressing interest in a consultancy, and bidding, either directly or as a nominated sub-contractor, 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.

[40] 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 prequalification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower. Sanctions Procedures at Section III.A, sub-paragraph 9.01(c)(ii), n.15.

the conditions originally stipulated for non-debarment in Paragraph 48 above, in accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures. This ineligibility shall extend across the operations of the World Bank Group. The Bank will also provide notice of the corresponding 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 enforce the declaration of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.[41]

50. This sanction is imposed on the Respondent for a corrupt practice as defined in Paragraph 1.16(a)(i) of the January 2011 Procurement Guidelines and Annex IV, Paragraph 2.2(a)(i) of the July 2016 Procurement Regulations.

Maria Vicien Milburn (Chair)

On behalf of the
World Bank Group Sanctions Board

Maria Vicien Milburn
Michael Ostrove
Adedoyin Rhodes-Vivour

[41] 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)").