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Sanctions Board Decision No. 140
(Sanctions Case No. 762)

IBRD Loan No. 8460-VN
IDA Credit No. 5568-VN
Socialist Republic of Vietnam

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of conditional non-debarment on each of the respondents in Sanctions Case No. 762 (respectively, the “First Respondent” and the “Second Respondent”; together, the “Respondents”), together with certain Affiliates.² The Respondents 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 Respondents, together with said Affiliates, shall be automatically placed under debarment with conditional release for a minimum period of two (2) years. This sanction is imposed on the Respondents for fraudulent practices.

I. INTRODUCTION

1. The Sanctions Board convened as a panel composed of Eduardo Zuleta (Panel Chair), Rabab Yasseen, and Philip Daltrop to review this case. A hearing was held on May 5, 2023, at the World Bank Group’s headquarters in Washington, D.C., at the request of the Respondents and in accordance with Section III.A, sub-paragraph 6 of the Sanctions Procedures. The World Bank Group’s Integrity Vice Presidency (“INT”) and the Respondents participated in the hearing through their representatives attending in person. The Respondents were represented by members of senior management and external counsel. 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 Respondents on August 11, 2022

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 used interchangeably here 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 either of the Respondents. See infra Paragraphs 54, 67-68.



(the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);

- ii. Explanation submitted by the Respondents to the SDO on October 14, 2022 (the “Explanation”);
- iii. Response submitted by the Respondents to the Secretary to the Sanctions Board on December 28, 2022 (the “Response”); and
- iv. Reply submitted by INT to the Secretary to the Sanctions Board on March 6, 2023 (the “Reply”).

II. PROCEDURAL HISTORY AT THE FIRST TIER

3. *Issuance of Notice and temporary suspensions:* On August 11, 2022, 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 Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either Respondent, from eligibility³ with respect to any Bank-Financed Projects,⁴ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspensions would apply across the operations of the World Bank Group.

4. *SDO’s initial 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 each of the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either Respondent. For each Respondent, the SDO recommended minimum periods of ineligibility of three (3) years and nine (9) months, after which period each 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 (the “ICO”) that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned, and (ii) adopted and implemented integrity compliance measures as may be imposed by the ICO to address the sanctionable practices in a manner satisfactory to the Bank. The SDO applied aggravation for the repeated pattern of conduct. The SDO applied mitigation for the Respondents’ limited cooperation during the investigation.

5. *SDO’s final recommendations:* The Respondents jointly submitted an Explanation to contest the SDO’s finding of liability and recommended sanctions. Upon review of the Explanation, the SDO applied additional mitigation for the Respondents’ compliance program,

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).

assistance with the investigation, and voluntary restraint. Accordingly, pursuant to Section III.A, sub-paragraph 4.03(a)(ii) of the Sanctions Procedures, the SDO revised the recommended sanction to debarment with conditional release after a minimum period of ineligibility of two (2) years and seven (7) months for each Respondent.

III. GENERAL BACKGROUND

6. This case arises in the context of the Second Ho Chi Minh City Environmental Sanitation Project (the “Project”) in the Socialist Republic of Vietnam. The Project sought to improve wastewater services in a sustainable manner in selected areas of Ho Chi Minh City and increase awareness on sanitation. On March 12, 2015, Vietnam entered into a loan agreement with IBRD for US\$250 million (the “Loan Agreement”) and a financing agreement with IDA for an amount equivalent to Special Drawing Rights 135.3 million (approximately US\$ 186,222,861 at the time of signature) to support the Project. The Project became effective on July 10, 2015, and is expected to close on June 30, 2024.

7. One component of the Project is the construction of the Nhieu Loc Thi Nghe Wastewater Treatment Plant through a design, build, and operate contract (the “DBO”). The project management unit (the “PMU”) initially contracted the preparation of a reference design and bidding documents for the DBO tender to a consultant that was unable to complete all the assigned tasks. In July 2015, the PMU decided to select a new consultant for the remaining services and thus published a request for expressions of interest for consulting services for the finalization of bidding documents and procurement support for the DBO (the “Contract”). The First Respondent, the parent company, and its wholly-owned subsidiary in Vietnam, the Second Respondent, formed a joint venture and submitted an expression of interest, which the PMU evaluation committee selected. Prior to this Project, the Respondents had significant experience bidding for and implementing Bank-financed projects. On October 22, 2015, the PMU issued a request for proposals (“RFP”) to the Respondents. The Respondents submitted their technical and financial proposals on November 11, 2015, and signed the Contract on December 16, 2015. Under the Contract, the Respondents were tasked to review the feasibility study; assist with the prequalification process; complete bidding documents; and assist with the bidding process, bid evaluation, and the award and negotiation of the DBO.

8. INT alleges that the Respondents engaged in fraud by failing to disclose the First Respondent’s conflict of interest with a “major shareholder” (the “Shareholder”) that participated in the DBO tender. INT further alleges that the Respondents engaged in fraud by failing to disclose their engagement with, and payments to, two companies (respectively, the “First Consultant” and the “Second Consultant”; together, the “Consultants”) in relation to the Contract.

IV. APPLICABLE STANDARDS OF REVIEW

9. *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.

10. *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.

11. *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.

12. *Applicable definition of fraudulent practice:* The Loan Agreement references the World Bank’s Guidelines: Selections and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011, revised July 2014) (the “July 2014 Consultant Guidelines”). The RFP, however, references two different versions: (a) the July 2014 Consultant Guidelines and the World Bank’s Guidelines: Selections and Employment of Consultants under IBRD Loans and IDA Credits and Grants by World Bank Borrowers (January 2011) (the “January 2011 Consultant Guidelines”). The Contract indicates that the January 2011 Consultant Guidelines apply. The RFP and the Contract set out a definition of “fraudulent practice” consistent with the common definition reflected in the January 2011 and July 2014 Consultant Guidelines. In these circumstances, the allegations in this case have the meaning set forth in the January 2011 and July 2014 Consultant Guidelines. Paragraph 1.23(a)(ii) of these Guidelines defines a “fraudulent practice” as “any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation.” A footnote to this definition explains that the term “party” refers to a public official; the terms “benefit” and “obligation” relate to the selection process or contract execution; and the “act or omission” is intended to influence the selection process or contract execution.⁵

V. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT’s Principal Contentions in the SAE

13. *Fraud allegation 1:* INT alleges that, during the selection process and contract execution, the Respondents misrepresented the absence of a conflict of interest. INT argues that the Respondents listed the Shareholder in the First Respondent’s 2015 annual report as one of its major shareholders, knew or should have at least known that the Shareholder was a party to a joint venture participating in the DBO tender, and yet failed to disclose this actual or potential conflict.

⁵ January 2011 Consultant Guidelines at para. 1.23(a)(ii), n.20; July 2014 Consultant Guidelines at para. 1.23(a)(ii), n.20.



14. *Fraud allegation 2:* INT alleges that the Respondents failed to disclose fees paid or to be paid to the Consultants that the Respondents engaged to provide services related to the execution of the Contract.

15. *Sanctioning factors:* INT contends that aggravation is warranted for the repetition of fraudulent acts and harm to the Project. Although the Respondents provided some documentation, made their employees available for interview, and responded to INT's inquiries, INT asserts that any mitigation applied for cooperation should be considered in light of the Respondents' categorical denial of culpability despite evidence to the contrary.

B. The Respondents' Principal Contentions in the Explanation and the Response

16. *Fraud allegation 1:* The Respondents acknowledge that they did not make any conflict-of-interest disclosures. They argue that there was no conflict of interest because the Shareholder's 2.13% stake in the First Respondent did not confer power or control over the First Respondent and the Shareholder's financial success had no impact on the First Respondent's corporate interests. The Respondents argue that they did not knowingly or recklessly commit a misrepresentation, considering that there is no evidence that any of their relevant team members knew of the Shareholder's status as a shareholder, as none of these individuals were high-level members of management; and that the team leader was just a freelance consultant. In addition, the Respondents contend that the top ten shareholders of a publicly-traded company like the First Respondent could only be identified as of the record date; and that there is no evidence that anyone in the team could have concluded that a 2.13% share ownership was or could be perceived as a conflict of interest requiring disclosure.

17. *Fraud allegation 2:* The Respondents acknowledge that they hired the Consultants during their performance of the Contract. However, they contend that they did not need to disclose these contractual arrangements because the payments to the Consultants were neither commissions or gratuities nor fees related to the proposal or contingent on contract award and finalization. The Respondents maintain that their nondisclosure of the payments was not done knowingly, as there is no evidence that any of the employees who prepared the bidding documents were aware or had reason to believe that the payments to the Consultants should have been disclosed.

18. *Sanctioning factors:* The Respondents argue that the two allegations of misconduct on the same Contract do not constitute a repeated pattern. The Respondents also contend that aggravation based on harm to the Project does not apply, as the only conceivable harm resulted from the PMU's imprudent decision to terminate the Contract. The Respondents request mitigation for their cooperation with INT's investigation, compliance program, and voluntary restraint from bidding on Bank-financed projects.

C. INT's Principal Contentions in the Reply

19. *Fraud allegations 1 and 2:* With respect to the first allegation, INT asserts that the Respondents acted at least recklessly when they failed to disclose their conflict of interest, as no internal controls were in place to ensure that their employees make correct certifications. With respect to the second allegation, INT asserts that the Respondents knowingly, or at least recklessly,

engaged in a misrepresentation. Specifically, INT submits that the Respondents knew that they hired and intended to pay the Consultants even before bidding for the Contract. INT further argues that, at the very least, the Respondents knew of the risk of making false statements yet took no steps to address this risk. Concerning both fraud allegations, INT contends that the Respondents intended to influence the selection process and execution of the Contract, given that they might not have been awarded the Contract had they disclosed the relevant facts.

20. *Sanctioning factors:* INT argues that either the Respondents deserve aggravation for the repetition of their misrepresentations or the two separate fraudulent practices each merit its own base sanction. INT further maintains that the Respondents' conflict of interest prompted the PMU to mobilize a new consultant, delayed the DBO tender process, and exposed that process to financial and reputational harm. Finally, INT submits that the Respondents deserve mitigation for their voluntary restraint, cooperation, and compliance program.

D. Presentations at the Hearing

21. At the hearing, INT argued that the Respondents had ongoing obligations to disclose conflicts of interest and payments made to third parties. With respect to the first allegation, INT contended, *inter alia*, that the Respondents had a conflicting financial relationship with the Shareholder; it was crucial for the Respondents to be neutral and to be seen as neutral as they carry out their responsibilities under the Contract; and perception, rather than control, is the benchmark for ascertaining whether a relationship triggers a conflict-of-interest disclosure. With respect to the second allegation, INT asserted that the Respondents' total payments to the Consultants exceeded 10% of the Contract, yet the Respondents did not disclose these as commissions, gratuities, or fees paid to third parties. INT then argued that the Respondents engaged in these misrepresentations knowingly or at least recklessly as they did not seek any clarification from the Bank regarding the specific disclosure obligations. INT thereafter reiterated the aggravating and mitigating factors discussed in their written submissions. Finally, INT emphasized that enforcing disclosure obligations is critical given the Bank's limited means of imposing transparency.

22. The Respondents first argued that they did not have an obligation to disclose their relationship with the Shareholder. They underscored that the 2.13% shareholding in the First Respondent, at least as of June 2015, neither resulted in any material or personal relationship nor affected the Respondents' capacity to serve the best interests of its client. The Respondents also asserted that there was no financial relationship that could have been perceived as a conflict because no one knew of the Shareholder's position. According to the Respondents, the financial report that listed the Shareholder as one of the First Respondent's top ten shareholders alone cannot substitute for knowledge. The Respondents further contended that its staff cannot be deemed reckless as they checked for conflicts and found none to be disclosed. The Respondents next explained that they did not need to divulge their payments to the Consultants, as the disclosure obligation focused on success-based payments related to the finalization of the Contract. Pointing to the language of the Financial Proposal Submission Form ("Form FIN-1"), the Respondents submitted that the disclosure obligation pertained to payments conditioned upon contract award. Additionally, the Respondents argued that certain language in the Contract's general conditions suggests that contract execution pertains to the acts of signing and finalizing the Contract, rather than performing it. The Respondents maintained that, in any event, there is no evidence that the

services provided by the Consultants involved any of the scope of work in the RFP and the Contract. Lastly, the Respondents asserted that there is neither evidence of knowledge or recklessness nor any intent to fraudulently misrepresent these payments.

VI. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

23. The Sanctions Board will first address a preliminary procedural and evidentiary issue. The Sanctions Board will then consider whether it is more likely than not that the alleged fraudulent practices occurred and, if so, whether either of the Respondents may be held liable for each of the fraudulent practices. Finally, the Sanctions Board will determine what sanctions, if any, should be imposed on each of the Respondents.

A. Redaction Challenge

24. In their Response, the Respondents requested access to the unredacted versions of certain exhibits to the SAE to allow them to “review the full record.” Upon the Panel Chair’s invitation, INT filed a submission on March 10, 2023, pleading that the redactions fall squarely within the scope of the Sanctions Procedures and INT’s discretion. INT contends that the subject exhibits obscure names and email addresses of Bank staff and PMU officials, the position and team titles were left unredacted for context, and the Respondents fail to demonstrate why this type of information is necessary to meaningfully respond to INT.

25. On April 12, 2023, the Sanctions Board issued a determination denying the Respondents’ challenge to INT’s redactions. The Sanctions Board found that the redactions comply with the Sanctions Procedures, as they largely relate to names and email addresses of World Bank staff and the redacted information is not necessary to enable the Respondents to mount a meaningful defense. The Sanctions Board noted, and now reiterates, that it will weigh the evidence in this case in accordance with the Sanctions Procedures, including Section III.A, sub-paragraph 7.01 (“Forms of Evidence”), and Sanctions Board precedent.

B. Evidence of Fraudulent Practices

26. In accordance with the definition of “fraudulent practice” under the January 2011 and July 2014 Consultant Guidelines, INT bears the initial burden to prove that it is more likely than not that the Respondents (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.

1. Fraud allegation 1: Alleged misrepresentation of conflict of interest

a. Act or omission, including a misrepresentation

27. There is no dispute that the Respondents did not declare any conflict of interest during the selection process and contract execution, and that the Shareholder owned a 2.13% stake in the First Respondent at certain material times. The Respondents, however, claim that the Shareholder’s 2.13% ownership of shares did not give rise to a conflict of interest subject to disclosure.

28. The relevant provision in the RFP imposes a disclosure obligation covering “any situation of actual or potential conflict that impacts [the consultant’s] capacity to serve the best interest of its [c]lient.” The Contract contains a similar provision that encompasses “any situation of actual or potential conflict that impacts their capacity to serve the best interest of their [c]lient, or that may reasonably be perceived as having this effect.” The RFP, the Contract, and subsequent disclosure obligations at later stages of the procurement process for the DBO required written certifications with respect to actual, potential, or reasonably perceived conflicts of interest. These certifications are important to maintain the confidence of all parties and observers in the integrity of the procurement process and particularly the award process resulting from bid evaluations. It is essential that all parties involved in a bidding process and in undertaking bid evaluation have systems in place to identify, declare, and manage actual, potential, and reasonably perceived conflicts of interest.

29. The Sanctions Board interprets the disclosure obligations in the RFP and the Contract as encompassing not only situations that demonstrate actual or potential conflict of interest, but also those that may be reasonably perceived as affecting the Respondents’ capacity to serve the best interests of the PMU. These best interests include upholding the integrity of the procurement process by ensuring that all bidders, potential bidders, and other stakeholders and beneficiaries have confidence in the procurement process and that the process is transparent, impartial, and accountable.

30. The Respondents were tasked under the Contract to assist the PMU in the prequalification process, bidding, negotiation, and award of the DBO for a wastewater treatment plant in Vietnam. These tasks are very much part of the core business of the Respondents, which have extensive experience with such assignments, including Bank-financed projects. At relevant times, the Shareholder was the only shareholder that was not a financial institution or investment vehicle in the First Respondent’s publicly disclosed list of its top ten “Major Shareholders.” The Shareholder’s core business activities included implementing large contracts to design and build water and wastewater management systems. These circumstances thus created a risk of a reasonable perception on the part of third parties, such as other bidders or potential bidders, that the Respondents’ impartiality in carrying out their duties might be affected. Moreover, the Respondents’ failure to disclose the relationship deprived the PMU of the opportunity to take a view on the matter and to manage or mitigate the situation.

31. Because the Sanctions Board found that INT sufficiently established that the Respondents more likely than not committed a misrepresentation, the burden shifts to the Respondents to demonstrate that their nondisclosure did not amount to a misrepresentation. The Respondents argue in their defense that the Shareholder’s ownership of 2.13% of the First Respondent’s shares does not confer power or control over the First Respondent; that the Shareholder’s financial success had no impact on the First Respondent’s corporate interests; and that finding a conflict interest in this case would set an arbitrary and unworkable standard for Bank contracts. The Sanctions Board finds no merit in these arguments. First, the disclosure obligations under the RFP and the Contract are broad, encompassing actual, potential, or reasonably perceived conflicts of interest. The disclosure obligation is not triggered solely by the existence of control or impact on corporate interests. Second, the claim that the Respondents did not consider the Shareholder’s 2.13% shareholding as affecting their capacity to serve the best interests of the PMU is not

determinative. The Sanctions Board has previously held that a bidder's subjective assessment as to the impact of a conflict of interest does not determine whether such a conflict must be disclosed.⁶ As explained in the preceding paragraph, the disclosure obligation in this particular case was triggered by, inter alia, the nature of the Shareholder's core business activities and the Respondents' specific tasks under the Contract. Taken together, these circumstances may reasonably be perceived as affecting the Respondents' capacity to serve the best interests of the PMU. Finally, the Sanctions Board does not agree with the Respondents' supposition that finding an obligation to disclose under the circumstances of this case will result in an arbitrary and unworkable standard for the Bank. Given the sensitivity of the Respondents' role in the DBO tender process, best practices call for regular and continuous conflicts checks to avoid any appearance of potential bias. The Sanctions Board notes that disclosing the Respondents' potential reasonably perceived conflict of interest would not have automatically barred them from participating in the selection process for the Contract or from carrying out their duties thereunder. Rather, the disclosure would have provided the PMU and the Bank an opportunity to assess the situation and manage any risks with the view to upholding transparency in and the integrity of the tender process.

32. Based on the foregoing, the Sanctions Board finds that the Respondents more likely than not engaged in a misrepresentation when they failed to disclose their potential reasonably perceived conflict of interest.

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

33. 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.⁷ In this case, INT relies on two kinds of documentary evidence to impute knowledge on the Respondents: (a) the First Respondent's annual reports for 2015 and 2017 identifying the Shareholder as one of the First Respondent's "Major Shareholders" during those years; and (b) a risk assessment sheet internally circulated among the Respondents' staff listing the Shareholder as part of a joint venture whose bid the Respondents had to evaluate. The Sanctions Board does not find these documents sufficient to show that it was more likely than not that the Respondents knowingly engaged in a misrepresentation. For instance, the risk assessment sheet only identifies the Shareholder by name and does not show that the Respondents' staff and consultants were aware that they were going to evaluate a bid submitted by a shareholder of the First Respondent. Nevertheless, considering the record as a whole, the Sanctions Board finds sufficient evidence demonstrating that the Respondents acted recklessly when they failed to disclose their potential reasonably perceived conflict of interest with the Shareholder.

34. In assessing recklessness, the Sanctions Board has considered whether circumstantial evidence indicates that a respondent was, or should have been, aware of a substantial risk – such

⁶ Sanctions Board Decision No. 65 (2014) at para. 47.

⁷ Sanctions Procedures at Section III.A, sub-paragraph 7.01.

as harm to the integrity of the Bank's procurement process due to false or misleading bid documents – but nevertheless failed to act to mitigate that risk.⁸ With respect to disclosure obligations in particular, the Sanctions Board has held that a respondent's experience as a bidder and the apparent importance of the relevant disclosure requirement may support a finding that the omission of the disclosure was, at a minimum, reckless.⁹ The Sanctions Board has also found a respondent to have been at least reckless in omitting required information when the record showed no evidence of internal due diligence, discussion, or correspondence to suggest that the disclosure requirements had been considered closely.¹⁰ The import of these precedents applies here.

35. First, given the Respondents' vast experience in undertaking bid preparation and evaluation activities and in participating in Bank-financed projects, they should have been aware that it is critical to maintain the integrity of procurement and selection processes, and that fulfilling disclosure obligations carefully and truthfully contributes to that objective. Nonetheless, the Respondents failed to act to mitigate the risk of misrepresentation. For instance, the record contains INT's interview with the Respondents' team leader for the Contract (the "Team Leader"), who stated that he signed an ethics conduct statement to certify the absence of any conflicts of interest. The Team Leader asserted that he did so without reading or understanding the document properly, without being aware that he was signing it on behalf of the Second Respondent, without knowing the Respondents' relationships or conflicts of interest, and without the benefit of any internal discussion on the Shareholder's status and participation in the DBO tender. The Sanctions Board notes that, during the hearing, the Respondents asserted that the Team Leader did check for conflicts but did not find any. However, the testimony of the Team Leader is ambiguous as to whether the team checked for the Respondents' own conflicts or evaluated the DBO bidders' conflict-of-interest certifications during the prequalification stage.

36. Second, although the record supports a finding that the Respondents had a compliance program in place at the time of the misconduct, there is a lack of evidence to demonstrate that it included adequate internal controls, such as a simple conflict check process, which could have detected the potential perceived conflict of interest, or that it was operationalized at the local level so that all of the Respondents' staff and consultants were sufficiently made aware of company policies. The Sanctions Board notes that, when asked at the hearing about the Respondents' internal controls existing at relevant times during the misconduct, the Respondents gave a general response about the presence of some process, but failed to articulate specific measures that could have mitigated the risk of committing a misrepresentation.

37. Considering the totality of the evidence presented and the statements made at the hearing, the Sanctions Board finds that it is more likely than not the Respondents recklessly misled or

⁸ See, e.g., Sanctions Board Decision No. 51 (2012) at paras. 33-39; Sanctions Board Decision No. 117 (2019) at paras. 20-23.

⁹ Sanctions Board Decision No. 56 (2013) at para. 46; Sanctions Board Decision No. 60. (2013) at para. 98; Sanctions Board Decision No. 128 (2020) at para. 31.

¹⁰ Sanctions Board Decision No. 128 (2020) at para. 33.

attempted to mislead a party when it failed to disclose its potential reasonably perceived conflict of interest.

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

38. The Sanctions Board has consistently held that, where the record demonstrates that a misrepresentation was made in response to a tender requirement – as in the case of conflict-of-interest disclosures – the intent to obtain a benefit or avoid an obligation may be inferred.¹¹ As discussed in Paragraph 28, the RFP and the Contract contain similar language providing that a consultant’s failure to disclose an actual or potential conflict that impacts the consultant’s capacity to serve the best interest of the client, or that may reasonably be perceived as having this effect, may lead to consultant disqualification, contract termination, and/or Bank sanctions. Further, as discussed in Paragraph 30, the Respondents’ failure to disclose their potential perceived conflict of interest with the Shareholder deprived the PMU of the opportunity to consider the matter and to take appropriate action thereon.

39. On the basis of this record, and consistent with precedent, the Sanctions Board finds that it is more likely than not that the Respondents engaged in the misrepresentation with the intent to obtain a benefit.

2. Fraud allegation 2: Alleged misrepresentation of payments made to third parties

a. Act or omission, including a misrepresentation

40. The Respondents acknowledge and the record shows that they hired and paid the Consultants during the Respondents’ performance of the Contract and did not disclose these arrangements and payments. The RFP required the Respondents to “furnish information on commissions, gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Proposal and, if awarded, Contract execution.” Form FIN-1 specifically requested a list of “[c]ommissions and gratuities paid or to be paid . . . to an agent or any third party relating to preparation or submission of this Proposal and Contract execution, paid if [the Respondents] are awarded the Contract.” The Contract also contains a clause requiring disclosure of “any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract.” Despite these provisions, the Respondents stated in their Form Fin-1 that “[n]o commission or gratuities have been or are to be paid by us to agents or any third party relating to this Proposal and Contract execution.”

¹¹ See, e.g., Sanctions Board Decision No. 65 (2014) at para. 57 (finding that the non-disclosure of any conflicts of interest was more likely than not informed by the respondent’s desire to be considered eligible and to be selected for the contract); Sanctions Board Decision No. 83 (2015) at para. 60 (observing that the request for proposals required the disclosure of conflicts of interest; and that the director of the respondent made a statement about his concern that the rumored relationship between the sub-consultant and the Bank official, if known, could damage the proposal); Sanctions Board Decision No. 115 (2019) at para. 50 (finding that the non-disclosure of conflicts of interest was directly related to the stipulations in the bidding documents requiring conflict of interest disclosure that would otherwise lead to disqualification).

41. In their defense, the Respondents contend that they were not required to disclose their payments to the Consultants because these payments were not commissions or gratuities that relate to the proposal or contract execution, which pertains to the signing and finalization of the Contract rather than its performance. According to the Respondents, even if contract execution means contractual performance, the Consultants provided services that fell outside the scope of services under the Contract because these companies supported the Second Respondent and not the Contract. Finally, the Respondents submit that the Consultants were not subconsultants subject to the same disclosure.

42. The Sanctions Board has generally interpreted various disclosure obligations in procurement/selection documents and contracts quite broadly and has consistently rejected attempts by respondents to attribute narrow or specialized interpretations to certain terms.¹² Consistent with precedent, the Sanctions Board declines to adopt the Respondents' narrow reading of the disclosure obligations set out in the RFP and the Contract. First, both the RFP and the Contract make it clear that the disclosure obligation encompasses any fees made to any party in relation to proposal preparation or contract execution. The Respondents cannot separate and narrowly interpret the language in Form FIN-1 as relating only to "commissions and gratuities" from the more general instructions to consultants in the RFP, the similar broad language in the Contract, and the larger purpose of the disclosure obligation to help reveal and deter potentially corrupt relationships.¹³ Second, the Respondents' argument that contract execution is limited to contract signing and finalization is unpersuasive. The terms "execution of the contract" or "contract execution" appear elsewhere in the RFP and the Contract – such as the law applicable to services, replacement of key experts, and prohibition against fraud and corruption. The Sanctions Board finds that limiting the significance of these terms to contract signing and finalization would result in lacunae in meaning and interpretation. Third, the Respondents' own characterization of the scope of the Consultants' services as "the management of experts or other individuals during the life of the [Contract]" defeats their claim that their arrangements with the Consultants had no relation to the Contract. The record shows that the Consultants hired and managed experts who were essential in the Respondents' discharge of their functions under the Contract. Finally, the Respondents' argument that the Consultants were not subconsultants is of no consequence. As mentioned, the disclosure obligation relates to commissions, gratuities, or fees paid to any party.

43. Based on the foregoing, the Sanctions Board finds that it is more likely than not that the Respondents' failure to disclose their arrangements with and payments to the Consultants amounts to a misrepresentation.

¹² See, e.g., Sanctions Board Decision No. 114 (2018) at paras. 14, 33-34 (rejecting the respondents' narrow interpretation of the disclosure obligation relating to sub-consultants or associates based on a finding that, *inter alia*, the associate firm recruited experts (including the team leader) and thus performed substantive work and assumed a role encompassed by the disclosure requirements); Sanctions Board Decision No. 123 (2020) at paras. 12, 17 (rejecting the respondent's narrow interpretation of the disclosure requirement relating to ongoing works and contracts, highlighting that nothing in the bidding documents suggests that the respondent was allowed to exclude any contract based on the respondent's own assessment of the contract's financial impact).

¹³ See Sanctions Board Decision No. 88 (2016) at para. 27; Sanctions Board Decision No. 131 (2021) at para. 22; Sanctions Board Decision No. 136 (2022) at para. 43.

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

44. As discussed in Paragraph 34, the Sanctions Board has assessed a respondent's alleged recklessness based on circumstantial evidence indicating that the respondent was or should have been aware of a substantial risk. The Sanctions Board has measured a respondent's conduct against the common standard of "due care" that the proverbial "reasonable person" would exercise in the circumstances.¹⁴ In the context of Bank-financed projects, the standard of care should be informed by the Bank's procurement policies, as set out in the applicable Procurement or Consultant Guidelines and the standard bidding documents for the contract at issue.¹⁵ The Sanctions Board has previously found a respondent to have recklessly misrepresented payments made to an agent when it failed to seek clarification from the borrower, contrary to its obligation under the applicable Procurement Guidelines, on the meaning of the term "agent."¹⁶

45. Considering the above standards, the Sanctions Board finds that the Respondents acted recklessly when they failed to disclose payments made to the Consultants. In this case, the applicable standard of care is informed by the explicit requirements in the January 2011 and the July 2014 Consultant Guidelines, which mandate consultants to "seek clarification from the Borrower, in writing, within the period specified in the RFP for seeking clarifications" in the event that they find "any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive."¹⁷ These requirements communicate a heightened standard of care for those participating in Bank-financed projects, including the Respondents who have had significant experience in this area. Here, the Respondents acknowledge that there is an internal contradiction within the RFP as to the inclusion of "fees," and that they relied on the belief that Form FIN-1 takes precedence. The Respondents also offer a restrictive understanding of "contract execution" based on select narrow provisions in the RFP to the exclusion of others where the term is imbued with a much broader meaning. Indeed, the Respondents have devoted a substantial portion of their written and oral pleadings arguing the granular interpretation of certain terms. In the Sanctions Board's view, all of these demonstrate a level of ambiguity that should have prompted the Respondents to seek clarification from the PMU, as was their obligation under the applicable Consultant Guidelines. Yet the record does not reveal that the Respondents sought to clarify any of these terms at any time during the selection process or during contract execution. In their defense, the Respondents argued during the hearing that INT failed to offer any evidence proving whether or not the Respondents made any inquiries into the meaning of the subject provisions. The Sanctions Board notes that the burden of proving an affirmative defense rests on the Respondents, and they failed to do so in this case. Based on the foregoing reasons, the Sanctions Board finds that the Respondents failed to exercise the requisite degree of care under the circumstances.

¹⁴ See, e.g., Sanctions Board Decision No. 82 (2015) at para. 31; Sanctions Board Decision No. 88 (2016) at para. 31.

¹⁵ See, e.g., Sanctions Board Decision No. 82 (2015) at para. 31; Sanctions Board Decision No. 88 (2016) at para. 31.

¹⁶ Sanctions Board Decision No. 88 (2016) at para. 34.

¹⁷ January 2011 Consultant Guidelines at Appendix 3, para. 7; July 2014 Consultant Guidelines at Appendix 3, para. 7.

46. Accordingly, and consistent with precedent,¹⁸ the Sanctions Board finds that it is more likely than not that the Respondents recklessly misled or attempted to mislead a party when it failed to disclose payments made to the Consultants.

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

47. As noted in Paragraph 38, the Sanctions Board has consistently held that, where the record demonstrates that a misrepresentation was made in response to a tender requirement, the intent to obtain a benefit or avoid an obligation may be inferred.¹⁹ Here, the RFP and the Contract required disclosure of any “commission, gratuities, and fees” paid to any other party. The failure of the Respondents to make such disclosure with respect to the Consultants relates directly to the requirements under the RFP and the Contract.

48. On the basis of the evidence presented and consistent with precedent,²⁰ the Sanctions Board finds that it is more likely than not that the Respondents omitted to disclose the arrangements with and payments to the Consultants to obtain a financial or other benefit.

C. The Respondent Firms’ Liability for the Acts of Their Employees

49. The Sanctions Board has consistently held that an employer can 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.²¹ Where a respondent entity has denied responsibility for the acts of its employees based on a “rogue employee” defense, the Sanctions Board has considered any evidence presented regarding the scope and adequacy of the respondent entity’s controls and supervision at the time of the misconduct.²² The same standard is applied in the present case.

50. The record supports a finding that the Respondents’ employees engaged in misconduct in accordance with the scope of their duties and with the purpose of serving the interests of the Respondents. The record shows that the Respondents’ staff – both regular employees and consultants – tasked to prepare the technical and financial proposals and execute the Contract recklessly failed to make the necessary disclosures while in the performance of their duties and in the course of their employment. Nothing in the record suggests that any of these employees acted out of any motive other than to serve the Respondents’ interests. Further, the Respondents do not

¹⁸ See Sanctions Board Decision No. 88 (2016) at para. 34.

¹⁹ See, e.g., 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.

²⁰ See, e.g., Sanctions Board Decision No. 83 (2015) at para. 52; Sanctions Board Decisions No. 88 (2016) at para. 37; Sanctions Board Decision No. 92 (2017) at para. 72; Sanctions Board Decision No. 106 (2017) at paras. 25-27; Sanctions Board Decision No. 120 (2019) at para. 41; Sanctions Board Decision No. 131 (2021) at para. 28.

²¹ See, e.g., Sanctions Board Decision No. 55 (2013) at paras. 51-52, 55; Sanctions Board Decision No. 61 (2013) at para. 30.

²² See, e.g., Sanctions Board Decision No. 48 (2012) at para. 30; Sanctions Board Decision No. 55 (2013) at paras. 53-54.

present and the record does not provide any basis for a rogue-employee defense. In these circumstances, the Sanctions Board finds the Respondents liable for the misconduct carried out by its employees.

D. Sanctioning Analysis

1. General framework for determination of sanctions

51. 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.

52. 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.²³ 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.²⁴

53. 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.

54. 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. Plurality of sanctionable practices

55. As the Sanctions Board finds that the Respondents engaged in multiple counts of misconduct, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct." The Sanctioning Guidelines provide in relevant part:

²³ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

²⁴ See Sanctions Board Decision No. 44 (2011) at para. 56; Sanctions Board Decision No. 51 (2012) at para. 44; Sanctions Board Decision No. 63 (2014) at para. 92; and Sanctions Board Decision No. 65 (2014) at para. 65.

Where the respondent has been found to have engaged [in] factually distinct[] incidences of misconduct (e.g., corrupt practices and collusion in connection with the same tender) or in misconduct in different cases (e.g., in different projects or in contracts under the same project but for which the misconduct occurred at significantly different . . . times), each separate incidence of misconduct may be considered separately and sanctioned on a cumulative basis. In the alternative, the fact that the respondent engaged in multiple incidences of misconduct may be considered an aggravating factor under Section IV.A.1 [“Repeated Pattern of Conduct”] below. (emphasis in original)

56. Where respondents engaged in unrelated sanctionable practices, the Sanctions Board has considered the gravity of each allegation separately and determined that a distinct base sanction should be applied to each distinct count,²⁵ even where all counts of misconduct relate to the same project or contract.²⁶ By contrast, the Sanctions Board has applied aggravation where the counts of misconduct were closely interrelated.²⁷ The Sanctions Board finds that the Respondents engaged in two distinct fraudulent practices. Specifically, the Respondents’ failure to disclose their conflict of interest was unrelated to the Respondents’ failure to disclose payments to third parties. These misrepresentations relate to different types of information and disclosure obligations, and were not committed merely as a means of furthering the other fraudulent conduct. Accordingly, the plurality of sanctionable practices warrants multiplication, rather than aggravation, of the base sanction.

3. Factors considered in the present case

a. Severity of the misconduct

57. 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.

58. *Repeated pattern of conduct:* Section IV.A.1 of the Sanctioning Guidelines identifies a repeated pattern of conduct as one potential basis for aggravation. In past cases, the Sanctions Board has applied aggravation for repetition where the misconduct relate to separate bids,

²⁵ See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 118 (2019) at para. 80; Sanctions Board Decision No. 120 (2019) at para. 48.

²⁶ See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151 (applying cumulative sanctions where the respondents engaged in multiple distinct counts of misconduct, all relating to the same project); Sanctions Board Decision No. 97 (2017) at para. 66 (applying cumulative sanctions where the respondents engaged in fraudulent and corrupt practices relating to the same project and contract); Sanctions Board Decision No. 120 (2019) at para. 48 (applying cumulative sanctions where the respondent firm engaged in two separate and unrelated fraudulent practices relating to two different contracts under the same project).

²⁷ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143 (applying aggravation where the fraud was intended to prevent discovery of the corrupt practices, the investigation into which was later obstructed).

contracts, or projects, over a period of time.²⁸ By contrast, the Sanctions Board has declined to apply aggravation where the sanctionable conduct was attributed to a “single scheme”²⁹ or a “single course of action.”³⁰ INT asserts that the Respondents’ multiple misrepresentations occurred during various stages of the tender process, were spread across different documents, and spanned several years. The Respondents argue that the alleged fraudulent practices relate to the same contract and do not constitute a repeated pattern that warrants aggravation. As discussed in Paragraph 56, the Sanctions Board finds that the Respondents engaged in two distinct fraudulent practices that warrant multiplication of the base sanction for the Respondents. Thus, the remaining issue is whether the alleged repetitive misrepresentations within each type of fraudulent practice merits aggravation. The Sanctions Board finds that these misrepresentations exhibit a single scheme, rather than a repeated pattern of conduct. Therefore, the Sanctions Board declines to apply aggravation on this basis.

b. Magnitude of harm

59. *Degree of harm to the Project:* Section III.A, sub-paragraph 9.02(b) of the Sanctions Procedures requires the Sanctions Board to consider the magnitude of the harm caused by the misconduct. Section IV.B.2 of the Sanctioning Guidelines identifies the degree of harm to the project through poor contract implementation or delay as examples of such harm. The Sanctions Board has applied aggravation where the misconduct resulted in financial harm,³¹ or exposed the Bank or member country to serious operational and reputational risks.³² In the present case, INT argues that the Respondents’ conflict of interest delayed the procurement process, as the PMU had to mobilize another consultant upon learning of the misrepresentation three years after engaging the Respondents. The Respondents contend that it was the PMU’s own “hasty and uninformed response” to the Bank staff’s allegation of conflict of interest that caused harm to the Project. The Sanctions Board finds that the root cause of the PMU’s decision to hire another consultant and the delay in the DBO tender process was the Respondents’ failure to make a conflict-of-interest

²⁸ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 122 (misrepresentations in nine separate bids relating to different Bank-financed projects and contracts over several years); Sanctions Board Decision No. 72 (2014) at para. 56 (misrepresentations relating to two separate agency agreements in two bids, submitted more than two months apart, in connection with contracts under different projects); Sanctions Board Decision No. 98 (2017) at para. 57 (misrepresentations relating to the submission of two different security documents prompted by two unrelated requirements in the bid documents and the contract).

²⁹ 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).

³⁰ 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).

³¹ See, e.g., Sanctions Board Decision No. 53 (2012) at para. 56; Sanctions Board Decision No. 98 (2017) at para. 61.

³² See, e.g., Sanctions Board Decision No. 65 (2014) at para. 75; Sanctions Board Decision No. 69 (2014) at para. 35.

disclosure. The Sanctions Board moreover notes that the Respondents' failure to disclose their potential perceived conflict of interest in itself presented a risk of serious reputational harm to both the Bank and Vietnam.³³ The Sanctions Board thus applies aggravation with respect to the first fraudulent practice.

c. Voluntary corrective action

60. 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 of the Sanctioning Guidelines identifies several examples of voluntary corrective action that may warrant mitigation, with the timing, scope, and/or quality of those actions to be considered as potential indicia of the respondent's genuine remorse and intention to reform. A respondent bears the burden of presenting evidence to substantiate any claimed voluntary corrective action.³⁴

61. *Effective compliance program*: Section V.B.3 of the Sanctioning Guidelines states that mitigation may be appropriate where the record shows a respondent's "[e]stablishment or improvement, and implementation of a corporate compliance program." The Sanctions Board has granted mitigation where the respondent's asserted measures appeared to address the type of misconduct at issue, and/or at least some of the elements set out in the World Bank Group's Integrity Compliance Guidelines.³⁵ Conversely, the Sanctions Board has declined mitigation where the record contained no evidence that the respondent had in fact implemented compliance measures.³⁶ Here, the Respondents detail the components of their compliance program, which includes engaging corporate auditors, adopting a code of conduct, and carrying out compliance training among staff. INT agrees that some mitigation may be warranted for the Respondents' compliance program, but claims that there is no evidence that the Respondents enacted controls specifically designed to prevent the misconduct in this case. The Sanctions Board finds that the Respondents' compliance measures appear to meet some of the elements set out in the World Bank Group's Integrity Compliance Guidelines. However, it is not readily apparent how these measures squarely address the type of fraudulent practices at issue. The Sanctions Board notes that, at the hearing, the Respondents failed to identify a component of their compliance program – whether

³³ See Sanctions Board Decision No. 65 (2014) at para. 75 (finding that a reasonable perception of bias or corruption – which translates to a real risk of serious reputational harm to the Bank and borrower – may arise once it becomes public knowledge that a person, who has a business relationship with an entity that has been awarded a tender, was a member of the committee responsible for the award of the tender); Sanctions Board Decision No. 125 (2020) at para. 39 (finding a conflict of interest inherent in engaging a manufacturer's holding company to conduct the laboratory tests that determined the extent of insulators to be replaced by the same manufacturer, and further finding that this conflict of interest exposed the Bank and the borrower to operational and reputational risks).

³⁴ See, e.g., Sanctions Board Decision No. 106 (2017) at para. 39.

³⁵ See, e.g., Sanctions Board Decision No. 56 (2013) at para. 69 (finding that the asserted compliance measures addressed, at least in part, some of the elements suggested in the Integrity Compliance Guidelines); Sanctions Board Decision No. 71 (2014) at para. 94 (finding that the asserted compliance measures appeared to address most of the principles set out in the Integrity Compliance Guidelines).

³⁶ See, e.g., Sanctions Board Decision No. 45 (2011) at para. 74 (finding no basis to apply mitigation for the respondent's asserted willingness to pursue corporate measures, absent evidence of actual implementation); Sanctions Board Decision No. 85 (2016) at para. 44 (declining to apply mitigation where the record does not contain evidence of the respondent's asserted anti-bribery policy and related internal rules).

current or in place at the time of the misconduct – that deals specifically with disclosure obligations or the detection of actual or potential conflicts of interests. Nevertheless, the Sanctions Board acknowledges the Respondents’ recognition that their compliance program could be improved and their willingness to engage with the ICO on enhancing it. The Sanctions Board concludes that, on balance, some mitigation is appropriate under this factor. This finding is made based on the written record before the Sanctions Board, and therefore without prejudice to any future assessment that the ICO may conduct to more fully evaluate the adequacy and implementation of integrity compliance measures taken by the Respondents.

d. Cooperation

62. 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 from bidding on Bank-financed tenders as examples of cooperation.

63. *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 and/or ongoing cooperation, “[b]ased on INT’s representation that the respondent has provided substantial assistance in an investigation,” with consideration of the “truthfulness, completeness, reliability of any information or testimony, the nature and extent of the assistance, and the timeliness of assistance.” In this case, INT acknowledges that the Respondents provided documents, made employees available for interview, and responded to written inquiries. The Respondents argue that they fully cooperated with INT, highlighting that they made current and former personnel available for interviews and voluntarily provided the overwhelming majority of INT’s exhibits. The Sanctions Board acknowledges the extent of the Respondents’ cooperation and notes INT’s confirmation during the hearing about its substantial reliance on evidence that the Respondents voluntarily provided. The Sanctions Board thus grants mitigation under this factor.

64. *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 asserted restraint was corroborated by relevant evidence.³⁷ According to the Respondents, they communicated to INT on May 30, 2021, that they would immediately refrain from bidding on Bank-financed projects. INT agrees that mitigating credit should be given from May 30, 2021, up to the Respondents’ temporary suspension in August 2022. The Sanctions Board applies mitigation in this case where the record shows that the Respondents voluntarily restrained from bidding on Bank-financed tenders.

³⁷ See, e.g., Sanctions Board Decision No. 73 (2014) at para. 50; Sanctions Board Decision No. 79 (2015) at para. 51; Sanctions Board Decision No. 102 (2017) at para. 80.

e. Period of temporary suspension

65. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board considers the period of the Respondents' temporary suspensions since the SDO's issuance of the Notice on August 11, 2022.

f. Other considerations

66. *Passage of time:* The Sanctions Board has considered as a mitigating factor the passage of a significant period of time from the commission of the misconduct, or from the Bank's awareness of the potential sanctionable practices, to the initiation of sanctions proceedings.³⁸ This passage of time may affect the weight that the Sanctions Board attaches to the evidence presented, as well as the fairness of the process for respondents.³⁹ The fraudulent practices in this case occurred in 2015, and the Bank appears to have first become aware of potential misconduct in 2018. Accordingly, the Sanctions Board finds that mitigation is warranted for the passage of time.

E. Determination of Appropriate Sanctions

67. Considering the full record and all the factors discussed above, the Sanctions Board determines and declares that the Respondents, together with any entity that is an Affiliate directly or indirectly controlled by either of the Respondents, shall be placed under conditional non-debarment for a period of two (2) years beginning from the date of this decision. The Sanctions Board considers the sanction of conditional non-debarment to be appropriate given the totality of the circumstances underpinning the Respondents' fraudulent practices. Specifically, the Sanctions Board considers that given the circumstances detailed in Paragraphs 33-37 and 44-46 – in particular the Respondents' lack of oversight, inadequacy of internal controls, and insufficient operationalization of their compliance program throughout their corporate structure – the Respondents' misconduct is best addressed by the conditions stipulated below. In accordance with Section III.A, sub-paragraph 9.03 of the Sanctions Procedures:

- i. the First Respondent, as the parent company, shall be required to demonstrate within the prescribed period of non-debarment that it has (i) developed and implemented compliance measures designed to prevent, detect, investigate, and remediate the sanctionable practices for which it has been sanctioned, especially with respect to identifying and disclosing conflicts of interest; and (ii) adopted and implemented a mechanism to provide guidance to its corporate group, including its employees, consultants, and other business partners, on its compliance measures in a manner satisfactory to the World Bank Group.

³⁸ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 68 (2014) at para. 47 (applying mitigation where sanctions proceedings were initiated more than four and a half years after the misconduct had occurred and more than four years after the Bank had become aware of the potential misconduct).

³⁹ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.



- ii. The Second Respondent, as a wholly-owned subsidiary, shall be required to demonstrate within the prescribed period of non-debarment that it has (i) taken appropriate remedial measures to address the sanctionable practices for which it has been sanctioned; and (ii) adopted and implemented effective compliance measures in a manner satisfactory to the World Bank Group.

68. In the event that the Respondents fail to comply with these conditions within the prescribed period of non-debarment, the Respondents, 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;⁴⁰ (ii) be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider⁴¹ 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 Respondents may be released from ineligibility after a minimum period of two (2) years, counted from the expiration of the period of non-debarment, only if they have each demonstrated compliance with the conditions originally stipulated for non-debarment in Paragraph 67 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.⁴²

⁴⁰ 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.

⁴¹ 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.

⁴² 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)).



69. These sanctions are imposed on the Respondents for fraudulent practices as defined in Paragraph 1.23(a)(ii) of the January 2011 and July 2014 Consultant Guidelines.

Eduardo Zuleta (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

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