Anti-Corruption Policies: Eligibility and Debarment Practices at the World Bank and Regional Development Banks

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In the 1990s, the World Bank and the regional development banks, including the African Development Bank (AFDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IADB), began to seriously address the issue of corruption and its relationship to development in their procurement practices. Taking advantage of their virtually unmatched leverage with borrower governments and multinational corporations, these multilateral lending institutions now use their procurement practices as a means of deterring corruption. The policies adopted and enforced by each institution seek to eliminate opportunities for corruption associated with their operations and to tie their lending to progress in combating corruption.

I. The World Bank

Policies instituted by the World Bank provide a multifaceted approach to using, in a meaningful way, the Bank’s procurement practices as a means of deterring fraud relating

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1. What is commonly referred to as the “World Bank” is officially known as the World Bank Group. The World Bank Group is composed of five closely-associated institutions: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Center for Settlement of Investment Disputes (ICSID). While separate procedures may be associated with each of these institutions, each follows the same basic pattern. As a result, reference is made to the World Bank, as opposed to each institution, when discussing the anti-corruption procedures associated with these institutions.
to the projects supported or funded by the World Bank. More than mere platitudes are involved. Well-defined enforcement mechanisms are in place and being actively employed to address allegations of fraud, corruption, and other improprieties.

Severe sanctions requiring debarment or “blacklisting” by the World Bank have been imposed in a multitude of cases. In addition to being subject to sanctions imposed by other institutions, the public nature of the sanctions imposed by the World Bank holds the prospect of exposing an individual or entity to scrutiny in the country where the sanctioned conduct occurred as well as being accessible to an organization that may contemplate engaging the individual or entity or financing a project with which they may be involved.

An individual or entity can be found ineligible or debarred, either indefinitely or for a stated period of time, when it is determined that the individual or entity engaged in corrupt or fraudulent practices in competing for, or in executing, a contract financed by the World Bank. Debarment by the World Bank may also result in ineligibility for procurements at other multilateral lending institutions, as well as before government agencies in a growing number of countries.

Issues relating to fraud and corruption are now critical to the procurement process. A proposal will be rejected if it is determined that the bidder or consultant considered for the award of a contract engaged in corrupt or fraudulent practices in competing for the contract. The portion of a loan allocated to a contract for goods, works, or services can be cancelled if a determination is made that representatives of the borrower or executing agency engaged in corrupt or fraudulent practices during the procurement or selection process.


Similar steps are possible in cases of fraud or corruption in the actual execution of a contract or project awarded or financed by the World Bank. The World Bank can appoint auditors to inspect the accounts and records of suppliers, contractors, or consultants related to the performance of a contract. Procedures for reporting allegations anonymously and protecting whistleblowers have also been implemented.

A. Anti-Corruption Policies and Guidelines

The World Bank's procurement rules and the rules for the selection of consultants include language specifically addressing fraud and corruption. A vendor must be found to be responsible in order to be eligible to bid on a World Bank contract. An individual or entity's integrity is among the critical factors in determining responsibility. Debarment by the World Bank, a World Bank member government, or an international organization can be the basis for a finding of non-responsibility. The commission of an "act or offense indicating a lack of integrity or honesty" or the serious violation of a World Bank contract may also serve a basis for a finding of non-responsibility.

A vendor may be suspended pending a determination of responsibility. A non-responsibility determination applies to "all affiliates of the vendor." A finding of non-responsibility must be based on evidence "that it is more likely than not that the vendor is not a responsible vendor." A preponderance of evidence is required to support the "finding that the vendor is not a responsible vendor." The period or extent of ineligibility may be reduced or eliminated with "newly discovered material information," a "bona fide change in ownership or management," "measures taken by the vendor to become responsible," or other reasons deemed to be appropriate.

6. Procurement Guidelines, supra note 4, § 1.14; Consultant Guidelines, supra note 4, § 1.22.
7. Procurement Guidelines, supra note 4, § 1.14, ¶ (e); Consultant Guidelines, supra note 4, § 1.22, ¶ (e).
9. Procurement Guidelines, supra note 4, § 1.14, ¶ (b); Consultant Guidelines, supra note 4, § 1.22, ¶ (b).
11. Id. ¶ 3.1.
12. Id. ¶¶ 3.1(g) and 3.2.
13. Id. ¶¶ 3.1(f) and (i). Refusal to cooperate with a World Bank audit or investigation can also be a basis for a finding of non-responsibility. Id. ¶ 3.1(j).
14. Id. ¶ 4.1.
15. Id. ¶ 5.4.
16. Id. ¶ 5.5.
17. Id.
18. Id. ¶ 6.2(b)(i).
19. Id. ¶ 6.2(b)(iii).
20. Id. ¶ 6.2(b)(iv).
21. Id. ¶ 6.2(b)(v). One commentator raised concerns that the process for rejecting a vendor is not as well developed as that relating to a debarment. Sope Williams, The Debarment of Corrupt Contractors from World Bank-Financed Contracts, 36 PUB. CONT. L. J. 277, 289-94 (2007).

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Legal agreements for each project incorporate by reference the World Bank’s Anti-Corruption Guidelines. The Anti-Corruption Guidelines outline the obligations of borrowers and recipients “to prevent and combat fraud and corruption” in projects financed by the World Bank. Borrowers and recipients are required to take “all appropriate measures to prevent and combat fraud and corruption.” “[T]imely and appropriate action” is required when cases of fraud and corruption arise.

The Anti-Corruption Guidelines are broad in scope. They extend to fraud and corruption committed, or attempted, by recipients of loan proceeds in connection with the use of World Bank loan proceeds. The phrase “recipients of loan proceeds” applies to individuals or entities receiving loan proceeds for their own use, serving as fiscal agents for the deposit or transfer of loan proceeds, or making or influencing decisions regarding the use of loan proceeds. The “use of loan proceeds” includes diverting loan proceeds for ineligible expenditures or influencing, through fraud or corruption, a decision as to the use of loan proceeds.

B. INVESTIGATION OF QUESTIONABLE CONDUCT

The Integrity Vice Presidency (INT) at the World Bank investigates allegations that an individual or entity is engaged in questionable conduct in conjunction with a World Bank-financed project. The INT’s jurisdiction is not limited to the procurement process. It extends to fraud and corruption in the use of World Bank loan proceeds in conjunction with World Bank-financed investment projects as well. The jurisdiction also extends to “non-compliance with the [World] Bank’s third-party audit rights and deliberate obstruction of [World] Bank investigations into fraud and corruption.”

1. Nature of Conduct Subject to Investigation

Sanctionable Misconduct investigated by the INT includes fraud, corruption, coercion, collusion, and obstructive conduct. The conduct need not be completed or succeed in

23. Id. attachment ¶ 9(a)(ii).
24. Id. attachment ¶ 1.
25. Id. attachment ¶ 2.
26. Id. attachment ¶ 9(c). Even before the onset of an investigation, this includes immediately reporting “any allegations of fraud and corruption that come to its attention.” Id. attachment ¶¶ 9(b), 10(b).
27. Id. attachment ¶¶ 7-10.
28. Id. attachment ¶ 5. It does not matter whether the fiscal agent is a beneficiary of the loan proceeds. Id.
29. Id. attachment ¶ 4.
30. E.g., Sanctions Procedures, supra note 3, at pt. I, ¶ (c); Anti-Corruption Guidelines, supra note 22, attachment ¶¶ 4-5, 9-10.
31. Sanctions Procedures, supra note 3, at pt. I, ¶ (c); Anti-Corruption Guidelines, supra note 22, attachment ¶¶ 4-5, 9-10.
32. Anti-Corruption Guidelines, supra note 22, at 4; see also Sanctions Procedures, supra note 3, at 3.
order to be sanctionable. Each form of misconduct has a unique definition under the World Bank’s guidelines.

a. Corrupt Practice

A “corrupt practice is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.” It does not matter whether the offer was accepted or received or whether “the purpose of the payment was achieved.” As the definition implies, both active and passive bribery are prohibited. “[T]he definition of corrupt practice is not limited to the prohibited activity during the procurement process but extends to bribery during the execution of the contract.” Bribery may also be employed to prompt lax enforcement of contract clauses or requirements relative to a multitude of issues such as a delay, the quality of a product, or the use of subcontractors.

Classic examples of corrupt practices may include bribing officials to be chosen or placed on the “short list” or to obtain confidential information relating to the factors that will be critical to the selection process. This can include situations where an individual or entity is awarded a government contract financed by the World Bank and a kickback of some sort is offered or directed toward the government official who steered the contract to the individual or entity.

b. Fraudulent Practice

A “fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.” In general, any material misrepresentation or omission of material information constitutes a fraudulent practice. A negligent or innocent misrepresentation or omission does not constitute a violation. The action must be taken

34. E.g., id. at 9.
35. E.g., id. at 5.
36. E.g., id. at 9.
37. Williams, supra note 21, at 287.
38. Id. (citing MARIO A. AGUILAR ET AL., PREVENTING FRAUD AND CORRUPTION IN WORLD BANK PROJECTS: A GUIDE FOR STAFF 9 (2000)).
39. This included situations where improper benefits were made to World Bank staff and where a company participated in a joint venture with World Bank staff while also conducting business with the World Bank.
42. “To act, ‘knowingly or recklessly,’ the fraudulent actor must either know that the information or impression being conveyed is false, or be recklessly indifferent as to whether it is true or false. Mere inaccuracy in such information or impression, committed through simple negligence, is not enough to constitute a fraudulent practice.” Anti-Corruption Guidelines, supra note 22, at 5, note 10.

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knowingly or in a manner "recklessly indifferent as to whether [the information] is true or false."\textsuperscript{43}

One example of a fraudulent practice would be a situation where the credentials or expertise of a consultant were misrepresented in order to meet the criteria to be selected as part of a procurement associated with the World Bank.\textsuperscript{44} This could include misrepresenting experience or facts in proposals or falsifying or forging documents in support of proposals.\textsuperscript{45} Other examples include "financial misrepresentations, the falsification of contract implementation information and accounting records, the tender of misleading bids, malicious frontloading of contract prices, overbilling, and the alteration of invoices or other supporting documents."\textsuperscript{46} It also extends to "any document-based change designed to manipulate or alter procurement or contractual outcomes."\textsuperscript{47} Withholding information about material conflicts of interest could also fall within this category.

c. Collusive Practice

A "collusive practice is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party."\textsuperscript{48} A typical example of a collusive practice is where an individual or entity works with other individuals or entities to manipulate the system to achieve an improper result.\textsuperscript{49} A collusive practice also includes situations where an individual or entity works with others to steer a contract award to a particular individual or entity.\textsuperscript{50}

Stifling competition can be a collusive practice. Manipulating the requirements for a request for proposal so as to exclude others would be an example of collusion, as would situations where parties work in tandem to actively and maliciously impede others from having an opportunity to bid on a potential contract.\textsuperscript{51} A collusive practice can be an arrangement among possible suppliers wherein they agree, before bids are submitted, on a price over and beyond what is competitive and decide who among their number will sub-

\textsuperscript{43} Id.
\textsuperscript{44} Id. at 6-7.
\textsuperscript{47} Id.
\textsuperscript{48} Anti-Corruption Guidelines, supra note 22, at 8.
\textsuperscript{50} Anti-Corruption Guidelines, supra note 22, at 8.
\textsuperscript{51} Id.
mit the winning bid, still artificially high, while the other suppliers submit extremely high bids (that have no chance of winning).  

52 In such a situation, the proceeds may be shared among the suppliers or possibly through a rotation system to facilitate the bids of other suppliers.  

53 d. Coercive Practice  

A “coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.”  

54 An example of a coercive practice is taking steps that may prevent a competing bidder from submitting a timely bid.  

55 Another example is exerting undue pressure on decision makers.  

56 e. Obstructive Practice  

An “obstructive practice” is  

(i) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a [World] Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or any combination of the foregoing, or (ii) acts intended to materially impede the exercise of the [World] Bank’s contractual rights of audit or access to information.  

57 One example is a situation where a company that has been awarded a World Bank-financed contract fails to respond to a request by the World Bank to review its records.  

58 2. Investigatory Process  

If the INT finds evidence of Sanctionable Misconduct, it presents the case to a Sanctions Evaluation and Suspension Officer (EO)—the first step in the adjudicatory process.  

59 The EO evaluates “whether there is sufficient evidence to support a finding” that someone has engaged in a sanctionable practice.  

60 If the EO determines that proceeding with the adjudicatory process is not appropriate, the EO notifies the INT and does not issue

52 Williams, supra note 21, at 288 (citing ROBERT KLITGAARD, CONTROLLING CORRUPTION ch. 6 (1988)).  

53 Id.; see Press Release, World Bank, Timor-Leste: World Bank Sanctions Companies in School Project (Nov. 22, 2004), available at http://go.worldbank.org/QEQ0NUNJ00 (companies debarred for colluding to divide different lots of furniture by deciding which company would have the lowest bid).  

54 Anti-Corruption Guidelines, supra note 22, at 7.  

55 Id.  

56 Id. at 7-8.  

57 Id. at 7, 9. One example is a situation where a company that has been awarded a World Bank-financed contract fails to respond to a request by the World Bank to review its records. Id. attachment ¶ 7(e).  

58 Id. at 9.  

59 Generally, as long as substantive issues are not addressed, the EO may be approachable relative to providing clarification or answering questions concerning procedural aspects of the process. Sanctions Procedures, supra note 3, § 1(1).  

60 Id. § 9(1).  

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the notice.61 The INT may resubmit a proposed notice to the EO after making appropriate amendments. 62 If the alleged sanctionable practice took place more than ten years prior to the issuance of the notice by the EO, the matter must be closed.63

If the EO determines that sufficient evidence exists, the EO issues a “Notice of Sanctions Proceedings.”64 The Notice specifies the allegations,65 summarizes the facts constituting the sanctionable practice,66 identifies the evidence that the INT intends to present along with any exculpatory evidence,67 and includes a recommended sanction.68 If a Notice is issued, a temporary suspension automatically goes into effect with all of the components of the World Bank Group, unless the EO determines sixty days after the submission of an explanation that a suspension should not take effect.69

If, after the submission of an explanation, the EO determines that there is insufficient evidence to support a finding that a sanctionable practice took place, the EO may withdraw the Notice and the proceedings may be closed.70 The INT retains the right to resubmit an amended proposed Notice on the basis of additional information not contained in the original notice.71 If a Notice of Sanctions Proceedings is issued and the respondent, the individual or entity subject to the recommended sanctions, does not contest the allegations, the recommended sanctions become final.72

3. Hearings Process

If the respondent contests the allegations made by the INT or the recommended sanctions, or both, the case is referred to the World Bank's Sanctions Board—the second step in the adjudicatory process.73 The Board, comprised of three members of World Bank staff and four external members, considers the evidence against the respondent, along with any response from the respondent, before making a final decision.74 The Sanctions Board

61. Id. § 9(2).
62. Id.
63. Id. § 9(1)(b).
64. Id. § 9(3).
65. Id. § 7(1).
66. Id. § 7(2).
67. Id. § 7(3).
68. Id. § 7(4).
69. Id. § 9(6).
70. Id. § 9(9).
72. Sanctions Procedures, supra note 3, § 9(9); see Press Release 2009/200/INT, supra note 49 (sanctions recommended by the EO in the notice imposed upon the failure of Dongsung Construction Co. Ltd. to contest the allegations).
73. See Sanctions Procedures, supra note 1, at pt. I, ¶ (b).
Chair in a particular case may designate a smaller, three-person Sanctions Board Panel, composed of two external members and one World Bank staff member.\textsuperscript{75}

Written submissions to the EO and Sanctions Board are permitted as part of the sanctions process.\textsuperscript{76} Sensitive evidence may be withheld where the Sanctions Board or Sanctions Board Panel determines that "there is a reasonable basis to conclude that revealing the particular evidence might endanger the life, health, safety, or well-being of a person" or constitute a violation of the terms of the Voluntary Disclosure Program.\textsuperscript{77}

The INT or the respondent may request a hearing.\textsuperscript{78} The INT is represented by a person from its office.\textsuperscript{79} The respondent may be "self-represented" or represented by someone authorized by the party.\textsuperscript{80} The hearing and submissions of the parties are confidential and not available or open to the public.\textsuperscript{81} The presentations are informal and limited to arguments and evidence in written submissions.\textsuperscript{82} No live witness testimony is permitted unless requested by the Sanctions Board or Sanctions Board Panel.\textsuperscript{83} Only the Sanctions Board or Sanctions Board Panel may question the witness.\textsuperscript{84}

Formal rules of evidence do not apply in these proceedings.\textsuperscript{85} "Any form of evidence may form the basis of arguments presented."\textsuperscript{86} In addition, "[h]earsay evidence or documentary evidence shall be given the weight deemed appropriate."\textsuperscript{87} Purpose, intent, and knowledge may be inferred from circumstantial evidence.\textsuperscript{88} "A party's refusal to answer, or failure to answer truthfully or credibly, may be construed against [the] party."\textsuperscript{89} Communications subject to the attorney-client privilege or the attorney work product doctrine are protected and not subject to disclosure.\textsuperscript{90}

The decision of the Sanctions Board or Sanctions Board Panel is based upon the written submissions and any arguments made at a hearing.\textsuperscript{91} The standard of proof is whether the evidence "supports the conclusion that it is more likely than not that the Respondent engaged in a Sanctionable Practice."\textsuperscript{92} "More likely than not" means that "a preponderance of the evidence supports a finding that the respondent engaged in the Sanctionable Practice."\textsuperscript{93}
The INT has the burden of proof to establish that “it is more likely than not that the respondent engaged in the Sanctionable Practice.” If the INT successfully establishes the Sanctionable Practice, the burden of proof shifts to the respondent “to demonstrate that it is more likely than not” that the conduct did not amount to a Sanctionable Practice. If the respondent establishes that the conduct did not amount to a Sanctionable Practice, the proceedings are terminated. The INT may reinstitute the process “if evidence not available at the time of filing of the [original] notice is subsequently obtained.”

4. Sanctions

The sanctions imposed by the Sanctions Board or Sanctions Board Panel are not bound by the recommendation of the EO. The sanctions imposed may fall into five basic categories:

1. Public Letter of Reprimand, which is issued to the sanctioned party.
2. Debarment, “which means that the sanctioned party is barred, effective immediately, from participating in [World] Bank projects, either indefinitely or for a period of time.”
3. Conditional Non-Debarment, which means that the sanctioned party is told that they will be debarred unless they comply with certain conditions, i.e., doing certain things to make sure that fraud and corruption does not happen again, such as putting in place an ethics program, and/or making up for the damage caused by their actions, such as restitution.
4. Debarment with Conditional Release, “which means that the sanctioned party is debarred until the specified conditions have been complied with.”
5. Restitution, “which means paying back the ill-gotten gains to the government or to the victim of the fraud and corruption.”

The Sanctions Board or Sanctions Board Panel may impose one or more sanctions, including cumulative sanctions. The sanctions may be imposed on any individual or entity that, “directly or indirectly, controls or is controlled” by the party charged. Among the factors that may be considered in the imposition of sanctions are: the “egregiousness and severity” of the conduct; the degree of active conduct on the part of the party charged; the magnitude of the losses or damages; the past history of sanctioning; the past history of non-compliance; and the party’s cooperation or lack thereof.

94. Id. § 19(2)(b).
95. Id.
96. Id. § 19(2)(c).
97. Id.
98. Id. § 19(2)(d).
100. Id.
101. Id.
102. Id. at 14; see Press Release 129/2007/INT, supra note 71 (Lahmeyer International’s debarment to be reduced by four years if Lahmeyer International “puts in place a satisfactory corporate compliance and ethics program and cooperates fully . . . in disclosing any past misconduct . . .”).
104. Sanctions Procedures, supra note 3, §§ 19(3)(f), (g).
105. Id. § 19(4).
106. Id. § 19(5)(a).
107. Id. § 19(5)(b).
able conduct; breach or attempted breach of refraining voluntarily from seeking or obtaining World Bank financing, contracts, or awards pending the outcome of sanctions proceedings; mitigating circumstances such as cooperation in investigation; and the period of temporary suspension already served.

5. Disclosures

The sanctioned party’s identity and sanctions imposed are publicly disclosed. Information obtained from the sanctions proceedings may be provided to governmental authorities, international organizations, or other development banks. Disclosure can occur before determining the culpability of an individual or entity. No prior notice is required, nor is there a means of precluding such disclosures. Limitations on disclosures to governments or international organizations may be imposed if “there is a reasonable basis that revealing the information might endanger the life, health, safety, or well-being of a person” or violate an understanding associated with the Voluntary Disclosure Program (VDP).

C. Voluntary Disclosure Program

The World Bank established the VDP as a means for an individual or entity to take remedial action by addressing conduct that might: (1) otherwise pose an impediment to securing opportunities through the World Bank; or (2) lead to the imposition of sanctions for current projects with the World Bank. Except for those under active investigation by the World Bank, individuals and entities may participate in the VDP if they have been a party to, or involved in, projects or contracts financed or supported by a member of the World Bank Group.

In exchange for their full cooperation, VDP participants avoid debarment for disclosed past misconduct, their identities are kept confidential, and they may continue to compete for Bank-supported projects. This agreement extends to the conduct of current or former officers, employees, or agents of the entity involved in the disclosed misconduct.

108. Id. § 19(5)(c).
109. Id. § 19(5)(d).
110. Id. § 19(5)(e).
111. Id. § 19(5)(f); see Press Release 129/2007/INT, supra note 71 (lack of cooperation with World Bank investigating officials was acknowledged as a factor in the sanctions imposed in the debarment proceedings against Lahmeyer International GmbH).
112. Sanctions Procedures, supra note 3, § 19(5)(h).
113. Id. § 21; see Ineligible Firms, supra note 2 (listing firms ineligible to do business with the World Bank Group).
114. Sanctions Procedures, supra note 3, §§ 22(1)-(3).
115. Id. §§ 12(3), 18.
117. Id. ¶ 5.1.2 (including the IBRD, the IDA, the IFC, and the MIGA).
118. Id. ¶ 3-4.
119. Id. ¶ 4 ("The Bank will not seek the Participant’s debarments for its, or its current or former officers’, employees’, or agents’ involvement in disclosed Misconduct that occurred prior to the Participant joining the VDP.").
Participants enter the VDP by agreeing to a non-negotiable, standardized set of "Terms and Conditions." The World Bank will debar, for a period of ten years, any participant that continues to engage in misconduct or otherwise materially violates the VDP Terms and Conditions.

Under the VDP, participants commit to: (1) not engage in misconduct in the future; (2) disclose to the World Bank the results of an internal investigation into conduct subject to sanction by the World Bank involving projects or contracts financed or supported by the World Bank; and (3) implement a comprehensive internal compliance program. A compliance monitor approved by the World Bank observes the compliance program for three years and reports annually to the World Bank.

A VDP participant conducts an internal investigation of all its contracts related to the World Bank that were signed—or in effect—in the five years before entering the VDP. The participant reports the results of its investigation to the World Bank, and the World Bank verifies the completeness and accuracy of that investigation. The World Bank then shares selected disclosures with member countries, World Bank management and staff, and other stakeholders through reports carefully redacted to keep the VDP participant's identity confidential.

Participants in the VDP program pay most, if not all, of the costs associated with the VDP process. In most situations the costs can be expected to be substantial because there are significant expenses associated with conducting an internal investigation, designing and implementing necessary compliance programs or taking other remedial measures, and engaging a compliance monitor.

D. MEMBER GOVERNMENTS AND GOVERNMENT OFFICIALS

Member governments and government officials are not sanctioned by the World Bank. If the fraud or corruption involved “takes place within a government,” efforts are made by the World Bank to address the problem with the government. If resolution is not possible through those efforts, the World Bank can take action “under its legal agreement with the country.” Depending on the circumstances, disbursement of a loan may
be suspended or undisbursed loan amounts cancelled.130 Even early “repayment of the loan” may be required.131

II. Regional Development Banks

Regional development banks have, in large part, followed the World Bank’s anti-corruption practices,132 policies, and procedures addressing corrupt and fraudulent practices.133 Thus, their policies and procedures are largely modeled on the World Bank.134 Indeed, language consistent with the World Bank’s language, relative to fraud and corrupt practices, was added to their procurement guidelines.135 Hotlines and other means of reporting violations have also been implemented.136

10. Id. (showing these circumstances may include when a determination is made by the World Bank that fraud or corruption has occurred in connection with the loan proceeds, and the borrower, which can be a member country, fails to take timely and appropriate action; that the borrower, which is not a member country, has been sanctioned under another project; or when the borrower or another recipient of loan proceeds failed to abide by the Anti-Corruption Guidelines).

11. Id.

12. See Williams, supra note 21, at 278–79 (making one major distinction between the World Bank and the regional development banks is the absence of a well-established equivalent of the World Bank’s VDP).


In 2006, the leaders of the AFDB, ADB, EBRD, IADB, World Bank, European Investment Bank Group (EIB), and International Monetary Fund (IMF) established a task force to work toward a consistent and coordinated approach to corruption associated with the activities and operations of their institutions.\textsuperscript{137} Adopting standardized definitions of sanctionable conduct developed by the World Bank was among the first steps.\textsuperscript{138} The leaders also agreed to develop common principles and guidelines for investigations.\textsuperscript{139}

In addition to encouraging member institutions to exchange relevant information,\textsuperscript{140} efforts are being undertaken to determine how enforcement actions taken by one institution can be given greater support by the other institutions.\textsuperscript{141} Participants in a project financed by member institutions are required to disclose any sanction imposed on them.\textsuperscript{142} Investment decisions must include enhanced efforts to identify beneficial ownership, criminal history, investigations or sanctions by regulatory bodies, and civil litigation involving allegations of financial misconduct.\textsuperscript{143}

Recently, the multilateral development banks, as well as the EIB and IMF, agreed to the implementation of a cross-debarment regime among the multilateral development banks.\textsuperscript{144} In principle, debarment at one of the participating multilateral development banks will now automatically extend to the other participating multilateral development banks. The implications of sanctions imposed by one of the multilateral development banks are thereby dramatically enhanced.

### III. Conclusion

The reach of the anti-corruption policies of the multilateral lending institutions cannot be overstated. Even entities that neither seek nor anticipate pursuing opportunities through the multilateral lending institutions may be affected. Failure to bring their business practices into compliance with these policies may bear on an individual's or entity's ability to secure business opportunities through others, whether as a subcontractor or in another capacity.\textsuperscript{145}


\textsuperscript{138} Id.

\textsuperscript{139} Id. at 2.

\textsuperscript{140} Id.

\textsuperscript{141} Id.

\textsuperscript{142} Id. at 2-3.

\textsuperscript{143} Id. at 2.


\textsuperscript{145} These policies are essentially the same as the policies being implemented by private entities throughout the world as a result of the Foreign Corrupt Practices Act of 1977 and the various anti-bribery conventions. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78m, 78dd-1 to -3, 78 ff (2010).
The absence of an effective compliance program can also adversely impact more traditional settings where, as a matter of practice, individuals and entities may only work with entities that have instituted effective compliance programs. A compliance program recently implemented to qualify for a business opportunity will seldom be deemed to be as credible as a compliance program that has been implemented and actively enforced over a period of time. As a result, whether in line with the Foreign Corrupt Practices Act or anti-bribery legislation implemented by other countries, an effective compliance program has the added benefit of enhancing an entity’s ability to secure, either directly or indirectly, opportunities with multilateral lending institutions.146

146. As an example, on July 2, 2009, the World Bank Group announced "a comprehensive settlement with Siemens AG in the wake of the company's acknowledged past misconduct in its global business and a World Bank investigation into corruption in a project in Russia involving a Siemens subsidiary." Press Release, World Bank Group, Siemens to Pay $100m to Fight Corruption as Part of World Bank Group Settlement, 2009/001/EXT (July 2, 2009), available at http://go.worldbank.org/WXRNSDVi40. The settlement included a commitment by Siemens to pay $100 million over fifteen years to support anti-corruption work, an agreement of up to a four-year debarment for Siemens' Russian subsidiary, and a voluntary loss of the right to bid on World Bank-financed projects for a two-year period. All of Siemens' consolidated subsidiaries and affiliates were subject to the debarment.

The resolution with the World Bank followed a series of international investigations and legal proceedings related to fraud or corruption in Siemens' operations. Id. In December 2008, Siemens settled related allegations made by U.S. and German authorities. The allegations addressed by the World Bank Group were fundamentally the same as those being investigated by U.S., German, and other enforcement officials. If Siemens had held an effective anti-bribery compliance program, many if not most of the underlying reasons for the investigations would never have arisen.