



World Bank Group¹ Settlements: How Negotiated Resolution Agreements Fit Within the World Bank Group's Sanctions System

The Purpose and Scope of World Bank Group Sanctions

The World Bank Group's (WBG's) Articles of Agreement require the member institutions to ensure that its funds are used solely for their intended purposes. The WBG's sanctions system is one way that the WBG fulfills this fiduciary obligation by enabling the institution to impose administrative sanctions against those entities found to have engaged in misconduct on WBG-financed activities. The system provides an administrative mechanism for deciding whether a party found to have engaged in a sanctionable practice² should remain eligible to receive WBG-financed activities while providing that party with basic due process.

The WBG's investigative process and sanctions system are not criminal procedure mechanisms, but rather internal administrative mechanisms set up to ensure the funds entrusted to the WBG are used for their intended purposes.

The WBG's sanctioning jurisdiction extends only to the entities (firms, NGOs, or individuals) that participate in or seek to participate in WBG-financed activities. The WBG cannot sanction the public officials of member country governments; those issues are handled through the WBG's Integrity Vice Presidency's (INT's) referral reports and bilateral engagements with relevant authorities. Misconduct allegations against WBG staff are handled through a separate administrative process from the Bank's sanctions process.

The WBG sanctions five types of misconduct: fraud, corruption, collusion, coercion, and the obstruction of INT investigations. As the nature and severity of misconduct vary from case to case, the sanctions system permits the imposition of a variety of sanctions: letters of reprimand, conditional non-debarment, debarment for a fixed period of time, debarment with conditional release, permanent debarment and financial remedies. Debarments greater than one year in length are subject to cross-debarment by other multi-lateral development banks (MDBs).³

¹ The WBG is comprised of 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).

² The WBG has five sanctionable practices: fraud, corruption, collusion, coercion and obstruction. More information about the sanctionable practices and the sanctions system can be found at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNITS/EXTOFFEVASUS/0,,menuPK:3601066~pagePK:64168427~piPK:64168435~theSitePK:3601046,00.html>

³ The MDBs consist of the following: the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the WBG. The Agreement for Mutual Enforcement of Debarment Decisions (the Cross-debarment Agreement) that was signed on April 9, 2010 can be found at [http://lnadbg4.adb.org/oai001p.nsf/0/F77A326B818A19C548257853000C2B10/\\$FILE/cross-debarment-agreement.pdf](http://lnadbg4.adb.org/oai001p.nsf/0/F77A326B818A19C548257853000C2B10/$FILE/cross-debarment-agreement.pdf). Further information about cross-debarment can be found at www.crossdebarment.org.

The Sanctions Process

Sanctions cases begin with an INT investigation into possible misconduct under a WBG-financed activity. INT investigations generally involve the collection and analysis of project, tender, and contract documents and information, as well as interviews with involved persons and, in some cases, physical site inspections.

INT does not have law enforcement powers. Rather, INT relies on the audit and inspection rights provided in WBG-financed contracts and in tender documents for WBG-financed activities. In recognition of INT's limited powers, the sanctions system admits all forms of evidence, although the decision-maker decides what weight to give to each piece of evidence. Witness evidence is provided through transcripts or written records of interview. The WBG's Sanctions Procedures permit the Sanctions Board to hear from and question witnesses during oral hearings.

When an INT investigation concludes that a party has engaged in a sanctionable practice, INT prepares a Statement of Accusations and Evidence (SAE) that details INT's evidence and findings, explains why INT has concluded that such findings constitute a sanctionable practice, and identifies the aggravating and mitigating factors as identified in the WBG Sanctioning Guidelines⁴ that INT considers relevant to a sanctions determination. If INT has found evidence indicating that a sanctionable practice has occurred but continues to investigate related matters, INT can seek an Early Temporary Suspension of a party's eligibility to receive Bank-financed contracts pending the completion of the remaining investigative work.

The sanctions system follows a two-step process. In step one, INT submits its SAE to the appropriate Evaluation and Suspension Officer (EO),⁵ who reviews it to determine whether, in the EO's view, INT has presented evidence sufficient to conclude that a party (called a "Respondent") engaged in a sanctionable practice. As the sanctions system is an administrative proceeding, sanctions cases are decided on a preponderance of the evidence, or "more likely than not," standard. INT bears the burden of proving that the Respondent engaged in a sanctionable practice. Upon that showing, the burden shifts to the Respondent to prove that it did not engage in such a practice.

If the EO finds sufficient evidence, s/he issues a Notice of Sanctions Proceedings (the Notice) to the Respondent, recommends a sanction, and temporarily suspends the Respondent's eligibility to receive WBG-financed contracts. The Respondent may then file: (i) an Explanation, due in 30 days of delivery of the Notice, explaining why the case should be withdrawn or its temporary suspension lifted; and/or (ii) a Response, due in 90 days of delivery of the Notice, contesting the case.

If the Respondent does not contest the case, the EO automatically imposes the recommended sanction and, since September 2011, publicly posts its determination. If the Respondent contests the case, the matter proceeds to step two and moves to the WBG's Sanctions Board. The Sanctions Board is a seven-member body comprised of eminent jurists from different jurisdictions (four members—the external members) and senior Bank staff (three members—the internal members) that

⁴ The World Bank Sanctioning Guidelines can be found at:
<http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/WorldBankSanctioningGuidelines.pdf>

⁵ For IBRD and IDA projects, the EO is the Bank's Suspension and Debarment Officer (the SDO). MIGA, IFC and the Bank's investment projects guaranteed by the World Bank (known as partial risk guarantees or PRGs) each have a separate EO from IBRD and IDA.

is chaired by an external member. The Respondent may contest the case solely on written pleadings, or may request an oral hearing before the Sanctions Board. INT may file a Reply in support of its case, and may request an oral hearing if the Respondent does not do so.

As of December 2011, the Sanctions Board publishes fully-reasoned, written decisions for all of its cases. The first full decisions were posted on May 30, 2012. The Sanctions Board also has issued a Digest of past decisions to provide a public record of its jurisprudence to date. INT separately issues press releases when the WBG sanctions a Respondent. The sanctions process, itself, is confidential.

The Settlement Option

Negotiated resolution agreements (NRAs), or settlements, are intended to be an efficient mechanism to resolve investigations without relying on full sanctions proceedings. Settlements can save the WBG considerable resources, while providing certainty of result for the party under investigation. Settlements will generally lead to quicker and more efficient resolution of investigations, as well as provide the WBG with an opportunity to acquire invaluable information through the cooperation of the party under investigation. Finally, settlements promote a forward leaning approach by generally requiring sanctioned firms to implement adequate compliance programs.

The settlement process begins with the premise that every subject of an INT investigation has a right to consider the option of settlement. A settlement may be pursued at any stage of an investigation or sanctions proceeding; however a case is more likely to end in settlement before sanctions proceedings commence. Prior to launching formal sanctions proceedings, the subject of an INT investigation is generally advised of the WBG's settlement process. Whenever a subject expresses an interest in pursuing a negotiated resolution, that subject is provided with a standardized Term Sheet. This document outlines the key terms that every NRA should contain.

Before commencing settlement negotiations, INT must be satisfied that the particular case warrants a negotiated resolution in lieu of pursuing a traditional sanctions proceeding. The criteria that INT considers when determining whether to settle a particular case include the following:

- Whether an accused party has admitted culpability;
- Whether settlement will result in resource savings to the WBG;
- Whether an accused party has agreed to cooperate or is cooperating with INT's investigation;
- Whether an accused party has taken corrective measures or has shown that it will no longer be a significant fiduciary risk to the WBG.

Additional measures are taken to ensure that all subjects, both large and small, represented or unrepresented, who enter into a settlement agreement do so voluntarily and of their own free will. To this end, the WBG has created an affidavit that must accompany each NRA. This affidavit certifies that the party understands the Sanctions Procedures and the World Bank Sanctioning Guidelines and further understands that it is not obligated to enter into the NRA and does so of its own free will.

Once the accused party signs and executes an NRA, it must be cleared by the WBG's General Counsel and then signed by the Integrity Vice President. The final review of an NRA rests with the EO who reviews the terms of the agreement to confirm that the sanction agreed to is broadly consistent with the Bank's Sanctioning Guidelines and to confirm that the party entered into the agreement freely and fully informed of its terms and free of duress. Only after the EO completes his/her review does the agreement become binding and is the sanction imposed. At that time or an agreed upon point in time thereafter, the sanction is imposed and a press release announcing the basic terms of the NRA is published. As per standard NRA terms, the Respondent then is required to work closely with INT to meet its cooperation obligations and with the WBG's Integrity Compliance Officer (ICO) on its compliance obligations, which are tailored to the size and circumstance of the particular Respondent. Sanctions imposed through settlements are implemented identically to any sanction imposed through the traditional sanctions process, including the application of cross-debarment.