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World Bank Group Issues Sanctions System Annual Report for 2019: Key Highlights

On October 10, 2019, the World Bank Group issued its second joint Sanctions System Annual Report for Fiscal Year 2019 ("Report"), which addresses the World Bank's efforts to investigate and adjudicate allegations of misconduct in projects financed by the World Bank. This alert provides, first, a brief overview of the World Bank Group's Sanctions System, followed by a discussion of the key highlights from the Report, as supplied by the Sanctions Board, the Integrity Vice Presidency ("INT") and the Office of Suspension and Debarment ("OSD").¹

At bottom, Enforcement and adjudication efforts remain strong. In Fiscal Year 2019, the World Bank completed 47 investigations, imposed temporary suspensions on 34 firms and individuals, and formally sanctioned 53 entities, including through settlements. Accordingly, all entities and individuals working under World Bank-financed contracts should be certain to understand their rights and obligations under the World Bank Group's rules and take proactive measures to ensure compliance and, if required, availability of a robust defense under the Sanctions Procedures.²

OVERVIEW OF THE WORLD BANK GROUP'S TWO-TIER SANCTIONS SYSTEM

Briefly, the World Bank uses a system of administrative sanctions ("Sanctions System") against firms and individuals who are alleged to have engaged in fraud, corruption, coercion, collusion or obstruction (collectively, "Sanctionable Practices") in connection with projects funded by the World Bank. Under the current Sanctions System, there are five possible sanctions: Debarment, Debarment with Conditional Release, Conditional Non-Debarment, Public Letter of Reprimand, and Restitution.³

The Sanctions System has two tiers. The World Bank's investigative and prosecutorial arm, INT, investigates allegations of Sanctionable Practices and determines whether there is sufficient evidence to substantiate the



allegations. If so, INT will refer the matter (along with all the evidence collected during its investigation) to the OSD, which is the first tier of the two-tier Sanctions System.⁴

Tier 1: Suspension and Debarment Officer Review Process

OSD is led by the World Bank's Chief Suspension and Debarment Officer ("SDO"), who, in accordance with the World Bank's Sanctions Procedures, reviews the evidence referred by INT and determines whether it is sufficient to support a finding that the alleged Sanctionable Practices occurred. If the SDO believes that there is sufficient evidence, it will issue a Notice of Sanctions Proceedings ("Notice") to the entity alleged to have engaged in the Sanctionable Practices ("Respondent"). The Notice contains the allegations and evidence submitted by INT and will also contain a recommended sanction.⁵ Upon issuance of the Notice, the Respondent may be temporarily suspended from eligibility for new contracts financed by the World Bank.⁶

Once a Respondent receives the Notice, they have three choices, which are not mutually exclusive:

1. Do not contest the allegations or the recommended sanction, allowing the sanction recommended by the SDO to be imposed⁷;
2. Contest the allegations and/or the sanction directly to the SDO in the form of an Explanation within 30 days of receiving the Notice⁸;
3. Contest the allegations and/or the recommended sanction in the form of a Response directly to the Sanctions Board within 90 days.⁹

Tier 2: Sanctions Board Process

The Sanctions Board is the second tier of the two-tier Sanctions System. The Sanctions Board will hear a case only upon either (1) a Respondent's request, or (2) at the discretion of the Sanctions Board Chair.¹⁰ Nearly all Sanctions Board hearings are held at the request of a Respondent contesting the SDO's recommended sanction and/or findings related to the allegations.

The Sanctions Board reviews each case *de novo*, and it is not bound by the SDO's recommendations. The Sanctions Board will consider (1) INT's allegations and evidence as attached to the Notice; (2) the Respondent's arguments and evidence submitted in response to INT's allegations and evidence; (3) INT's reply brief; (4) the parties' presentations at a hearing; and (5) other additional materials, if any, contained in the record.¹¹

The Sanctions Board will determine whether it is "more likely than not" that the Respondent engaged in a sanctionable practice, and if so, it will impose a sanction, which may also extend to a Respondent's affiliates, successors and assigns. Decisions of the Sanctions Board are final and non-appealable.¹²

2019 ENFORCEMENT STATISTICS AND HIGHLIGHTS

Within this framework, the October 2019 Report sets forth the following statistics and highlights regarding recent activity:

INT Statistics

- INT received 2,461 complaints¹³
- 1,969 of the complaints resulted in no further action taken by INT
- 106 of the complaints were forwarded to other World Bank Group units and 2 were forwarded outside of the World Bank Group
- 384 of the complaints resulted in Preliminary Investigations¹⁴



- INT began 49 new investigations
- 47 investigations were completed, of which 36 were Substantiated¹⁵
- INT submitted 37 cases to OSD
- INT made 42 referrals to national authorities
- INT entered into 16 settlements

OSD Statistics and Highlights

- OSD temporarily suspended 24 firms and 10 individuals
- 19 firms/individuals did not appeal and were automatically sanctioned
- Approximately 77% of cases and settlements reviewed by the OSD involved at least one accusation of a fraudulent practice¹⁶
- 14% of cases and settlements contained at least one allegation of collusion¹⁷
- 12% cases contained an allegation of corruption¹⁸
- 4% contained an allegation of an obstructive practice¹⁹.

Sanctions Board Statistics and Highlights

- 14 firms/individuals were sanctioned by the Sanctions Board
- The Sanctions Board published 9 of its decisions, setting out in detail the Sanctions Board's analysis and conclusions with respect to the merits of INT's allegations and respondents' defences. The 9 decisions further analyze evidentiary and procedural disputes, as well as factors relevant to the determination of a sanction.²⁰
- In only 4% of the cases heard by the Sanctions Board did the Board determine that INT failed to present sufficient evidence to support at least part of their allegations against the respondent.

WORLD BANK GROUP'S ABILITY TO HANDLE COMPLEX AND MULTI-JURISDICTIONAL INVESTIGATIONS

Also in the October 2019 Report, INT reiterated its focus and ability to handle complex cases, highlighting three investigations in particular:

The Rio Bogota Environmental Recuperation and Flood Control Project

INT reviewed a total of 1.8 million emails in five languages, interviewed over 75 witnesses and conducted 8 forensic audits in respect of the Rio Bogota Environmental Recuperation and Flood Control Project. The investigation resulted in a three-year debarment of Construtora Norberto Odebrecht S.A., the Brazilian subsidiary of Odebrecht S.A.²¹ Two additional settlements²² were reached with subsidiaries of Veolia Water Technologies.²³ All three companies were sanctioned for fraudulently and collusively failing to disclose fees paid to commercial agents during tender prequalification and bidding processes. INT is continuing to negotiate settlements and seek sanctions against other companies involved in this project.

Hanoi Urban Transport Development Project²⁴

Six companies and one individual were separately sanctioned following three Sanction Board decisions and one settlement for collusive, fraudulent, corrupt and obstructive practices relating to the US\$ 304 million Hanoi Urban Transport Development Project that closed in 2016. In February 2019, the World Bank debarred Cadpro Jsc., with the



possibility of conditional release after 9 years and 9 months. The individual was debarred for 4 years and 6 months.²⁵ INT is in the process of seeking sanctions against additional entities involved in the project.²⁶

Bangladesh Access to Services Project²⁷

The World Bank sanctioned three companies and one individual for collusive, corrupt and obstructive practices in respect to a US\$ 96.6 million identification system for enhancing access to a services project in Bangladesh. The main supplier for the contract was debarred under a settlement agreement in 2017. The main supplier admitted improper payments to its subcontractor, Tiger IT Bangladesh Ltd, and its principal who solicited payments to influence public officials. The World Bank debarred Tiger IT with the possibility of conditional release after a minimum period of 9 years and 6 months. The individual was also debarred for 6 years and 6 months.²⁸

CONCLUSION

The Report makes clear that investigations and enforcement activity by the World Bank Group continue with greater efficiency, effectiveness and collaboration than ever before. With guidance from counsel who understand and are experienced with the World Bank's Sanctions System—at both the project-finance bidding and sanctions-defense stages—companies involved in projects financed by the World Bank can minimize the risk of World Bank enforcement action and, perhaps, Cross Debarment with other multilateral development banks and referral of the conduct to national authorities. To protect anticipated returns, companies working on World Bank-funded projects would be wise to seek the advice of appropriate counsel—at an early stage—to avoid and mitigate risks associated with such work.

In addition to the authors listed above, we would also like to thank Nikhil Markanday, a Partner in our London office and David Wulfert, an Associate in our Washington, DC office – both of whom were instrumental in writing this alert and are key members of our Multilateral Development Bank Practice.

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

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¹ The INT, established in 2001, has issued annual reports since 2004. However, beginning in 2018, the World Bank Group began issuing joint reports with INT, the Sanctions Board and OSD.

² Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects (2016) ("Sanctions Procedures").

³ Sanctions Procedures at Section 9.

⁴ Sanctions Procedures at Section 3.

⁵ The SDO has further authority to recommend sanctions on affiliates of the Respondent.

⁶ Sanctions Procedures at Section 4.

⁷ Sanctions Procedures at Section 4.04.

⁸ Sanctions Procedures at Section 4.02.

⁹ Sanctions Procedures at Section 5. If a Respondent submits an Explanation and is not satisfied with the results following the SDO's review, the Respondent may then file a Response and request an administrative hearing from the Sanctions Board.

¹⁰ Sanctions Procedures at Sections 5 and 8.

¹¹ Sanctions Procedures at Section 8.

¹² Sanctions Procedures at Section 8.02.

¹³ Of the complaints that resulted in preliminary investigations in FY19, 18.5% came from World Bank staff and 81.5% from non-Bank sources, including contractors or other bidders, concerned citizens, government officials, employees of NGOs, and other multilateral development banks.

¹⁴ A Preliminary Investigation will be opened only if INT determines that the complaint relates to one or more sanctionable practices and involves a World Bank-supported contract.

¹⁵ If INT finds sufficient evidence to conclude that it is more likely than not that the alleged conduct, or other sanctionable conduct, occurred, then the matter is deemed substantiated.

¹⁶ Any act or omission, including any misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation. Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, Section 1.23 (January 2011, Revised July 2014).

¹⁷ An arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party. Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, Section 1.23 (January 2011, Revised July 2014).

¹⁸ The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party. Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, Section 1.23 (January 2011, Revised July 2014).

¹⁹ Either (a) deliberately destroying, falsifying, altering, or concealing evidence material to an investigation or making false statements to investigators in order to materially impede a WBG investigations 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 an investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of the World Bank Group's contractual rights of audit or access to information. Selection and Employment of Consultants under IBRD Loans and IDA Credits & Grants by World Bank Borrowers, Section 1.23 (January 2011, Revised July 2014).

²⁰ FY19 Sanction Board opinions relate to IBRD and IDA financed projects in Ukraine, the Philippines, Vietnam, Bangladesh, Ghana, Kenya, and Nicaragua – and cover development projects on transportation, trade, technology, oil and gas, environment, and health sectors.

²¹ <https://www.worldbank.org/en/news/press-release/2019/01/29/world-bank-group-announces-settlement-with-brazilian-subsi-dary-of-odebrecht>

²² <https://www.worldbank.org/en/news/press-release/2019/05/29/world-bank-group-announces-debarment-of-french-and-brazilian-subsi-daries-of-veolia-water-technologies>

²³ OTV, a French water engineering company and Veolia Water Technologies Brasil Ltda a Brazilian water treatment technology company.

²⁴ <https://www.worldbank.org/content/dam/documents/sanctions/sanctions-board/2018/nov/Sanctions-Board-Decision-No.-115.pdf>

²⁵ <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board/brief/issuance-of-sanctions-board-decision-no-115-02252019-173754>

²⁶ WBG Sanctions System Annual Report FY19 at p21.

²⁷ <https://www.worldbank.org/content/dam/documents/sanctions/sanctions-board/2018/nov/Sanctions%20Board%20Decision%20No.%20118.pdf>

²⁸ <https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board/brief/issuance-of-sanctions-board-decision-no-118-04242019-182650>