

Date of issuance: April 5, 2021

**Sanctions Board Decision No. 133
(Sanctions Case No. 669)**

**IDA Credit No. 3831-DRC
Democratic Republic of Congo**

Decision of the World Bank Group¹ Sanctions Board imposing a sanction of debarment on the individual respondent in Sanctions Case No. 669 (the “Respondent”), together with certain Affiliates,² for a period of ineligibility of eight (8) years. This debarment shall be added to the period of debarment previously imposed on the Respondent in Sanctions Board Decision No. 125 (2020). The sanction in this case is imposed on the Respondent for corrupt practices.

I. INTRODUCTION

1. The Sanctions Board convened in February 2021 as a panel composed of Cavinder Bull (Panel Chair),³ Maria Vicien Milburn, and Eduardo Zuleta to review this case. Neither the Respondent nor the World Bank Group’s Integrity Vice Presidency (“INT”) requested a hearing in this matter. Nor did the Panel Chair decide, in his discretion, to convene a hearing. Accordingly, the Sanctions Board deliberated and reached its decision based on the written record.⁴

2. In accordance with Section III.A, sub-paragraph 8.02(a) of the Sanctions Procedures, the written record for the Sanctions Board’s consideration included the following:

- i. Notice of Sanctions Proceedings issued by the World Bank’s Suspension and Debarment Officer (the “SDO”) to the Respondent on May 29, 2020 (the “Notice”), appending the Statement of Accusations and Evidence (the “SAE”) submitted by INT to the SDO (undated);

¹ In accordance with Section II(y) of the World Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects, issued on June 28, 2016 (the “Sanctions Procedures”), the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). The term “World Bank Group” includes Bank Guarantee Projects and Bank Carbon Finance Projects, but does not include the International Centre for Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section II(x).

² Section II(a) of the Sanctions Procedures defines “Affiliate” as “any legal or natural person that controls, is controlled by, or is under common control with, the Respondent, as determined by the Bank.” The sanction imposed by this decision applies only to those Affiliates that are directly or indirectly controlled by the Respondent. See infra Paragraph 44.

³ See Sanctions Procedures at Section II(s).

⁴ See Sanctions Procedures at Section III.A, sub-paragraph 6.01.

- ii. Response submitted by the Respondent to the Secretary to the Sanctions Board on August 28, 2020 (the “Response”);
- iii. Reply submitted by INT to the Secretary to the Sanctions Board on October 14, 2020 (the “Reply”);
- iv. Additional submission filed by the Respondent with the Secretary to the Sanctions Board on October 21, 2020 (the “Additional Submission”); and
- v. Comments on the Additional Submission filed by INT with the Secretary to the Sanctions Board on November 6, 2020 (“INT’s Comments”).

3. On May 29, 2020, pursuant to Section III.A, sub-paragraphs 4.01 and 4.02 of the Sanctions Procedures, the SDO issued the Notice and temporarily suspended the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, from eligibility⁵ with respect to any Bank-Financed Projects,⁶ pending the final outcome of these sanctions proceedings. The Notice specified that the temporary suspension would apply across the operations of the World Bank Group. In addition, pursuant to Section III.A, sub-paragraphs 4.01(c), 9.01, and 9.04 of the Sanctions Procedures, the SDO recommended in the Notice the sanction of debarment with conditional release for the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent. The SDO recommended a minimum period of ineligibility of four (4) years, running consecutively with the initial period of five (5) years and six (6) months that commenced on February 25, 2020, pursuant to Sanctions Board Decision No. 125 (2020). The SDO recommended that after the cumulative debarment period of nine (9) years and six (6) months, the Respondent may be released from ineligibility only if he 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 that (i) he has taken appropriate remedial measures to address the sanctionable practice for which the Respondent has been sanctioned; (ii) he has completed training and/or other educational programs that demonstrate a continuing commitment to personal integrity and business ethics; and (iii) any entity that is an Affiliate directly or indirectly controlled by the Respondent has adopted and implemented an effective integrity compliance program in a manner satisfactory to the Bank.

II. GENERAL BACKGROUND

4. This case arises in the context of the Southern African Power Market Project Phase I (the “Project”) in the Democratic Republic of Congo (the “Borrower”) that sought to develop an efficient regional power market in the Southern African Development Community to create conditions for accelerated investments in the power sector, increase competition, and foster

⁵ 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.

⁶ 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).

regional economic integration. On January 21, 2004, IDA and the Borrower entered into a development credit agreement (the “Credit Agreement”) for the approximate equivalent of US\$178.6 million to support the Project. On the same day, IDA entered into a project agreement (the “Project Agreement”) with the Project’s implementation unit (the “PIU”) setting out, *inter alia*, terms for the execution of the Project. The Project became effective on May 17, 2004, and closed on September 30, 2016.

5. On December 13, 2004, the PIU entered into two Bank-financed consultant service agreements (the “Consultant Agreements”) with a firm (the “Consultant”) for the latter to render various services relating to the Project, including the conduct of feasibility studies, the development of technical specifications, and the provision of assistance to the PIU during the tender process. The Respondent, who was employed as an engineer with the Consultant at that time, was named the “Project Manager” under each of the Consultant Agreements.

6. The record reflects that an aerial inspection services firm (the “Contractor”) was awarded the following contracts under the Project:

- a. a fixed remuneration contract for the detailed diagnostics of existing corridor overhead lines signed in June 2009 (“Contract 1”);
- b. a flat-rate remuneration contract to provide assistance to the PIU during the execution of the contract for the installation and rehabilitation of existing lines signed in June 2010 (“Contract 2”); and
- c. a work order for light detection and ranging survey and data processing issued in August 2013 (“Contract 3”).

7. INT alleges that the Respondent engaged in corrupt practices by soliciting and receiving payments from the Contractor through companies affiliated with the Respondent in exchange for his assistance in relation to Contracts 1, 2, and 3.

III. APPLICABLE STANDARDS OF REVIEW

8. *Standard of proof:* Pursuant to Section III.A, sub-paragraph 8.02(b)(i) of the Sanctions Procedures, the Sanctions Board determines whether the evidence presented by INT, as contested by a respondent, supports the conclusion that it is “more likely than not” that the respondent engaged in a sanctionable practice. Section III.A, sub-paragraph 8.02(b)(i) defines “more likely than not” to mean that, upon consideration of all the relevant evidence, a preponderance of the evidence supports a finding that the respondent engaged in a sanctionable practice.

9. *Burden of proof:* Under Section III.A, sub-paragraph 8.02(b)(ii) of the Sanctions Procedures, INT bears the initial burden of proof to present evidence sufficient to establish that it is more likely than not that a respondent engaged in a sanctionable practice. Upon such a showing by INT, the burden of proof shifts to the respondent to demonstrate that it is more likely than not that its conduct did not amount to a sanctionable practice.

10. *Evidence:* As set forth in Section III.A, sub-paragraph 7.01 of the Sanctions Procedures, formal rules of evidence do not apply; and the Sanctions Board has discretion to determine the relevance, materiality, weight, and sufficiency of all evidence offered.

11. *Applicable definition of corrupt practice:* The Credit Agreement stated that consultants' services shall be governed by the provisions of the Project Agreement. The Project Agreement, in turn, provided that the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, revised September 1997, January 1999, and May 2002) (the "May 2002 Consultant Guidelines") would govern the procurement of consultants' services. The Consultant Agreements contained a non-standard definition of "corrupt practice" (i.e., a definition different from those appearing in any version of the potentially applicable Guidelines) and did not refer to World Bank Group sanctions. The Sanctions Board does not consider the deviations in the definition of corrupt practice under the Consultant Agreements to be material under the circumstances so as to indicate an intentional departure from the May 2002 Consultant Guidelines.⁷ As the Consultant Agreements incorporate a definition of corrupt practice in accordance with the same version of the Guidelines referenced in the Project Agreement, and taking into account that the Sanctions Board has in the past considered as applicable a definition appearing in a contract that did not refer to World Bank Group sanctions,⁸ the Sanctions Board determines that the alleged corrupt practices in this case has the meaning set forth in the May 2002 Consultant Guidelines. Paragraph 1.25(a)(i) of these Guidelines defines "corrupt practice" as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution." Although the May 2002 Consultant Guidelines do not define the scope of the term "public official," subsequent versions of the World Bank's Consultant Guidelines include a footnote stating that the term includes "employees of other organizations taking or reviewing procurement or selection decisions."⁹ The Sanctions Board has previously held that this footnote serves as a clarification of the pre-existing standard rather than an amendment.¹⁰ Accordingly, the Sanctions Board determines that an employee of an organization taking or reviewing procurement or selection process decisions may be deemed a "public official" under the May 2002 Consultant Guidelines.

IV. PRINCIPAL CONTENTIONS OF THE PARTIES

A. INT's Principal Contentions in the SAE

12. INT alleges that the Respondent solicited and received from the Contractor payments that were made through a company associated with the Respondent (the "First Company") and a company owned by the Respondent's wife (the "Second Company") as a reward for the Respondent's support and in order to provide further assistance to the Contractor under the Project. INT asserts that the Respondent supported the Contractor by drafting and translating proposals and contracts, and pushing for further business for the Contractor under the Project. INT argues that a

⁷ See Sanctions Board Decision No. 92 (2017) at para. 78.

⁸ Sanctions Board Decision No. 100 (2017) at para. 12.

⁹ See, e.g., the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004) at p. 12, n.15; the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers (May 2004, revised October 1, 2006) at p. 8, n.17.

¹⁰ Sanctions Board Decision No. 66 (2014) at para. 25.

multiplication of the base sanction is warranted, as the accusations in this case are factually distinct from those in Sanctions Case No. 477/Sanctions Board Decision No. 125 (2020). Further, INT submits that aggravation is warranted on the basis of the Respondent's use of sophisticated means and his central role in the misconduct. INT also contends that, although the Respondent agreed to be interviewed by INT and responded to the show-cause letter, he failed to show the type of candor and cooperation that would warrant mitigation.

B. The Respondent's Principal Contentions in His Response

13. The Respondent asserts that he voluntarily provided assistance to the Contractor out of a "moral obligation" to ensure the safety of the Contractor's staff and guarantee the success of the Project. He denies soliciting or receiving payments in exchange for his services. He nevertheless maintains that the Contractor made payments to the First Company – which he denies owning – to reimburse security costs incurred. Further, the Respondent argues that the Contractor proposed payments to the Second Company in exchange for his wife's services in relation to the Contractor's wind turbine project, and not as compensation for his past assistance. The Respondent does not address sanctioning factors.

C. INT's Principal Contentions in the Reply

14. According to INT, it is undisputed that the Contractor made payments to the First Company and the Second Company, and that the Respondent "provided extraordinary support" to the Contractor. In addition to reiterating arguments in the SAE regarding the Respondent's solicitation of payments, INT asserts that the Respondent's solicitation of a business opportunity for his wife's company – even if deemed legitimate – is a "thing of value" since he profited directly from it while he was providing significant assistance to the Contractor. Separately, INT argues that the Respondent was aware that his relationship with the Contractor conflicted with his position of authority, and that he took steps to conceal the payments through false and backdated contracts.

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

15. The Respondent reiterates that he carried out tasks that were beyond his responsibilities for the sake of the Project's success. He asserts that he "never asked to be paid illicit money."

E. INT's Principal Contentions in Its Comments on the Additional Submission

16. Upon the Sanctions Board Chair's invitation to comment, INT asserts that the Additional Submission deserves no weight, and reflects how the Respondent disputes clear documentary and testimonial evidence.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

17. The Sanctions Board will first consider whether it is more likely than not that the Respondent engaged in the alleged corrupt practices. The Sanctions Board will then determine what sanction, if any, should be imposed on the Respondent.

A. Evidence of Corrupt Practices

18. In accordance with the definition of “corrupt practice” under the May 2002 Consultant Guidelines, INT bears the initial burden to show that it is more likely than not that the Respondent (i) offered, gave, received, or solicited any thing of value (ii) to influence the action of a public official in the selection process or in contract execution.¹¹

1. Soliciting or receiving any thing of value

19. INT alleges that the Respondent solicited and received payments from the Contractor through contracts with the First Company, which is associated with the Respondent; and the Second Company, which is owned by the Respondent’s wife. INT moreover argues that the contract between the Contractor and the Second Company is itself a “thing of value,” which the Respondent solicited and received from the Contractor. The Respondent asserts that the Contractor reimbursed incurred security costs through the First Company, which the Respondent denies owning; and that the Contractor proposed payments to the Second Company for the assistance provided by the Respondent’s wife in connection with the marketing of the Contractor’s wind turbines, and not for any of the Respondent’s services.

a. *The First Company*

20. The record reveals that the Respondent solicited and received a payment from the Contractor. The record contains a copy of an agreement dated May 2009 between the Contractor and the First Company, under which the First Company was tasked to provide “logistic support” for a remuneration of EUR15,000 (the “First Company Contract”). Also included in the record is an invoice dated February 2010 in the amount of EUR15,000 issued by the First Company to the Contractor. During his interview with INT, the Contractor’s former director (the “Contractor’s Director”) explained the circumstances surrounding the First Company Contract and the related invoice. Specifically, the Contractor’s Director asserted that, after the Contractor had performed its tasks under Contract 1 sometime in June or July 2009, the Respondent approached him requesting EUR15,000 as payment for the Respondent’s assistance. According to the Contractor’s Director, the Respondent asked that the payment be made through the First Company, which the Contractor understood to be the Respondent’s company; the Respondent requested that the payment be made by way of the First Company Contract, which the Respondent had drafted and backdated to May 2009; and the Contractor paid the invoice in its equivalent amount in US Dollars. The Sanctions Board gives sufficient weight to these statements, which the Contractor’s Director made against his interest.

21. The Respondent denies soliciting or receiving any payment from the Contractor through the First Company, and maintains that he is not the owner of the First Company and the payment to the First Company was for legitimate purposes. The Sanctions Board is not convinced. As noted above, the Sanctions Board accords significant weight to the testimony provided by the Contractor’s Director that the First Company was in fact the Respondent’s. Further, the Sanctions Board finds the Respondent’s statements regarding the nature of services provided by the First

¹¹ May 2002 Consultant Guidelines at para. 1.25(a)(i).

Company and his involvement in the First Company Contract to be conflicting. In his response to INT's show-cause letter, the Respondent asserted that the EUR15,000 "was used exclusively for the payment of the local services to be rendered to [the Contractor] by local resources," and that he "had no participation in this issue." In the Response, however, the Respondent acknowledges that he took care of the Contractor's security, which he "could not do . . . via the [Consultant's] local network," and that the Contractor later compensated the costs incurred through the First Company. In any event, the Sanctions Board finds neither of these justifications to be supported by the record. For one, the contract price lacks any credible basis, considering evidence showing that the Respondent simply dictated the price, and that EUR15,000 is strikingly inconsistent with the cost of logistics services then prevailing in the market. The Sanctions Board also finds it suspect that the amount in the invoice that supposedly reflects legitimately incurred costs corresponds exactly to the price of the First Company Contract. While there is a work task sheet attached to the invoice, the listed activities are vague and do not seem to relate to any type of security services. No other detailed breakdown of expenses or any other supporting documents appear in the record. Finally, apart from the testimony provided by the Contractor's Director, other testimonial evidence in the record belies the Respondent's assertions that the First Company Contract was for legitimate logistics or security services. For instance, the Contractor's helicopter technician, who had been on the field during the implementation of Contract 1 (the "Contractor's Technician"), told INT during his interview that (i) he had never heard of the First Company; (ii) the Contractor's joint venture partner for Contract 1 (the "JV Partner") had subcontracted logistics services to a different firm; and (iii) he would have known the First Company had it indeed performed the services under the First Company Contract. In addition, the Contractor's Chief Executive Officer (the "Contractor's CEO") told INT during his interview that he had never heard of the First Company, and that the JV Partner handled all the logistics work under Contract 1. The Sanctions Board notes that the Contractor's CEO later made a contradictory statement in the Contractor's response to INT's show-cause letter, asserting that the First Company provided local security and logistics personnel. The Sanctions Board, however, gives little weight to this subsequent statement, as the testimony of the Contractor's CEO during INT's interview was given with candor and spontaneity, while his response to the show-cause letter was prepared after being informed of potential allegations of misconduct.¹²

22. Considering the totality of the evidence, the Sanctions Board finds that it is more likely than not that the Respondent solicited and received a payment from the Contractor through the First Company.

b. *The Second Company*

23. The record contains documentary evidence indicating that the Respondent solicited and received a thing of value from the Contractor. For instance, the Contractor and the Second Company entered into an agreement dated January 2013 for the latter to develop business relations and gain new market shares with respect to the former's wind turbine business for an annual remuneration of EUR40,000 (the "Second Company Contract"). On November 30, 2013, the Respondent sent the Contractor's Director an email (the "November 2013 Email") attaching a draft copy of the Second Company Contract and asking him to "please have a look at this." Three

¹² See Sanctions Board Decision No. 111 (2018) at para. 37.

days after, the Contractor's Director replied, "[i]t seems OK." The record likewise contains several invoices issued by the Second Company and paid by the Contractor between December 2013 to October 2014, including one for the sum of EUR26,000 issued on December 23, 2013. In an email sent by the Respondent's wife to the Respondent in January 2015, she attached a spreadsheet of the Second Company's income and expenses in 2013 showing a transfer of EUR27,370 from the Second Company to the Respondent on December 23, 2013.

24. The Sanctions Board further considers the testimony of the Contractor's Director, who asserted during his interview with INT that: (i) the Respondent prepared and backdated the Second Company Contract to January 2013; (ii) the Contractor's Director knew that the Respondent's wife owned the Second Company; (iii) apart from marketing the Second Company's wind turbines, the invoices issued by the Second Company and paid by the Contractor were for the Respondent's assistance in preparing the offer and contracts, liaising with the PIU, logistics, and translations; and (iv) at least two invoices for US\$24,700 and US\$26,750 were specifically meant for the Respondent.

25. The Respondent does not dispute that his wife owns the Second Company, but contends that he did not offer the Second Company's services to the Contractor. Rather, he asserts that the Contractor's Director had asked him for his wife's assistance in relation to the Contractor's wind turbine business and only later in 2014 did the Contractor's Director propose payments. The Sanctions Board finds the Respondent's defense unconvincing. First, as discussed above, the November 2013 Email that the Respondent sent to the Contractor's Director with a draft copy of the Second Company Contract suggests the Respondent's solicitation. Yet, the Respondent does not provide any explanation to refute the implication of this correspondence. Second, the Respondent himself concedes that the Second Company transferred money to him, initially explaining that it was for "turnover balancing for tax/insurance purposes," and later on claiming that it was to reduce his wife's profits. The Sanctions Board finds that neither of these justifications disprove the Respondent's receipt of a sum of money from the Second Company at a time when the Second Company Contract was in effect, and close to the issuance and subsequent payment of the Second Company's invoices to the Contractor. Lastly, even assuming that the Second Company Contract was purely for the marketing of the Contractor's wind turbines, it still is considered a thing of value that, based on the November 2013 Email and the testimony of the Contractor's Director, the Respondent solicited and received from the Contractor on his wife's behalf. As the Sanctions Board's precedent makes clear, a "thing of value" for purposes of corrupt practice need not be in the form of money, as it can instead be some other type of benefit or advantage.¹³

26. For all the reasons discussed above, the Sanctions Board finds that the evidence in the record is sufficient to show that it is more likely than not that the Respondent solicited and received a thing of value from the Contractor through the First Company and the Second Company.

¹³ See, e.g., Sanctions Board Decision No. 66 (2014) at para. 24 (finding that the respondent's predecessor gave a "thing of value" to a Bank staff member by acceding to the staff member's request that the respondent's predecessor hire his son); Sanctions Board Decision No. 78 (2015) at paras. 53-54 (finding that the respondent firm had provided a "thing of value" to a public official by hiring the official's daughter as an intern and then as a full-time employee).

2. To influence the action of a public official in the selection process or in contract execution

27. INT alleges that the Respondent solicited and received payments from the Contractor as a reward for his support in relation to Contracts 1, 2, and 3; and in order for the Contractor to receive further assistance from the Respondent under the Project. The Respondent acknowledges that he provided certain types of assistance to the Contractor, such as drafting contracts, invoices, and bank guarantees; taking over “most of the communication interface” with the PIU; and organizing local security and logistics. However, he claims that he provided these services out of a “moral obligation” to ensure the success of the Project, and not in exchange for any payment.

28. Based on the definition under the May 2002 Consultant Guidelines, the second element of corrupt practice requires an analysis of whether the Respondent – as a public official taking or reviewing selection or procurement process decisions, including with respect to Contracts 1, 2, and 3 – solicited a commission to influence his own behavior in the execution of the Bank-financed Consultant Agreements. An inference of corrupt intent may be drawn from evidence that the Respondent solicited a thing of value from a third party potentially interested in a procurement or selection process, in which he played a significant role as the Project Manager pursuant to the Bank-financed Consultant Agreements.¹⁴

29. The Respondent admits to providing the Contractor with services that went beyond the scope of his responsibilities as Project Manager. For instance, he acknowledges that the Contractor bid for Contract 1 only because he “encouraged them to do so in the first instance.” As discussed in Paragraph 20, the Respondent approached the Contractor’s Director after the Contractor had performed its tasks under Contract 1 to request a payment of EUR15,000 through the First Company Contract. Then, shortly after the Respondent drafted a proposal for the Contractor in connection with Contract 2, the First Company issued an invoice for EUR15,000. Further, several emails between March 2012 and 2013 show that the Respondent drafted correspondence for the Contractor requesting the PIU to increase the monthly rates and reimbursable costs under Contract 2; and the Respondent pushed for the Contractor to get Contract 3, which the Contractor obtained in August 2013. The Respondent later sent the November 2013 Email, and the Second Company started issuing invoices a month after. As the Sanctions Board has held in past cases, the timing of an alleged corrupt act relative to certain steps in the selection or procurement process or contract execution may support a conclusion that the respondent acted with the required intent.¹⁵ Accordingly, the Sanctions Board finds that it is more likely than not that the Respondent acted with the intent to influence his own actions in the execution of the Consultant Agreements when he solicited and received payments from the Contractor.

B. Sanctioning Analysis

1. General framework for determination of sanctions

30. 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

¹⁴ Sanctions Board Decision No. 78 (2015) at paras. 65-66.

¹⁵ Sanctions Board Decision No. 78 (2015) at para. 57; Sanctions Board Decision No. 108 (2018) at para. 35.

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.

31. 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.¹⁶ 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.¹⁷

32. 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 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.

33. 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

34. In cases involving multiple counts of misconduct, the Sanctions Board considers Section III of the Sanctioning Guidelines regarding "Cumulative Misconduct," which provides in relevant part:

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)

35. 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

¹⁶ See, e.g., Sanctions Board Decision No. 40 (2010) at para. 28.

¹⁷ See Sanctions Board Decision No. 44 (2011) at para. 56.

should be applied to each distinct count.¹⁸ By contrast, the Sanctions Board has applied aggravation rather than a separate sanction for multiple sanctionable practices where the counts of misconduct were closely related.¹⁹ In any event, the Sanctions Board assesses the applicability of plurality only in cases that are presently before its consideration. Here, INT asserts that a multiplication of the base sanction is warranted for the Respondent's factually distinct misconduct in Sanctions Board Decision No. 125. The Sanctions Board does not find plurality to be applicable where the Respondent's other misconduct relates to a case already adjudicated, pursuant to which he was already sanctioned. Applying a distinct base sanction in this case for the misconduct in Sanctions Board Decision No. 125 would effectively result in sanctioning the Respondent twice for the same misconduct.

3. Factors considered in the present case

a. Severity of the misconduct

36. 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 repeated pattern of conduct, sophisticated means, and central role in the misconduct as examples of severity.

37. *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 where the misconduct related to separate bids, contracts, or projects, over a period of time.²⁰ In this case, the record shows that the Respondent's solicitation and receipt of payments from the Contractor through the First Company and the Second Company were made in relation to different contracts and occurred over the course of more than five years. Accordingly, the Sanctions Board applies aggravation under this factor.

38. *Sophisticated means*: Section IV.A.2 of the Sanctioning Guidelines states that this factor may include "the complexity of the misconduct (e.g., degree of planning, diversity of techniques applied, level of concealment); the number and type of people or organizations involved; whether the scheme was developed or lasted over a long period of time; [and] if more than one jurisdiction was involved." The Sanctions Board has previously considered the level of "forethought and planning" evident in the misconduct.²¹ The Sanctions Board has thus applied aggravation where

¹⁸ See, e.g., Sanctions Board Decision No. 87 (2016) at para. 151; Sanctions Board Decision No. 118 (2019) at para. 80.

¹⁹ See, e.g., Sanctions Board Decision No. 60 (2013) at para. 143; Sanctions Board Decision No. 115 (2019) at para. 63.

²⁰ 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 different bid requirements).

²¹ See, e.g., Sanctions Board Decision No. 77 (2015) at para. 49 (applying aggravation where the respondent's false claims of experience were highly detailed and contained specific references to actual development projects and their implementing or financing entities); Sanctions Board Decision No. 100 (2017) at para. 47 (finding that the fraudulent scheme of submitting two false interim payment certificates supported with forged invoices was not so sophisticated or complex to warrant aggravation).

the misconduct involved “a variety of tactics,” including the use of an intermediary to make bribe payments.²² In this case, INT asserts that aggravation should be applied, as the Respondent “employed a high degree of planning and diverse tactics to avoid detection.” The Respondent does not address this factor. Considering that the record shows that the Respondent devised the backdated contracts with the First Company and the Second Company to conceal receipt of the payments that he had solicited from the Contractor, the Sanctions Board applies aggravation for the Respondent’s use of sophisticated means.

39. *Central role in the misconduct:* Section IV.A.3 of the Sanctioning Guidelines states that this factor may apply to a respondent who acted as the “organizer, leader, planner, or prime mover in a group of 2 or more.” Here, INT contends that aggravation is warranted because the Respondent initiated the corrupt arrangement, took advantage of the Contractor’s lack of experience and language skills, and used his position to push for decisions favorable to the Contractor. The Respondent does not address this factor. Consistent with precedent,²³ the Sanctions Board finds aggravation to be warranted in this case where the Respondent initiated the corrupt arrangement by soliciting, and thereafter receiving, payments from the Contractor.

b. Cooperation

40. *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, the record reflects that the Respondent participated in two interviews conducted by INT and responded to INT’s show-cause letter. While such type of cooperation may warrant mitigation, the Sanctions Board gives due consideration to INT’s representation that the Respondent provided implausible denials and assertions unsupported by documentation. The Sanctions Board acknowledges the Respondent’s limited cooperation, but does not consider his conduct during the investigation to be the type of cooperation that warrants full mitigating credit.

²² See, e.g., Sanctions Board Decision No. 95 (2017) at para. 40 (applying aggravation where the corrupt misconduct used a variety of tactics, including receipt of confidential bid information from a public official, use of an alias by the public official, and the use of an intermediary to make a payment to a public official’s bank account); Sanctions Board Decision No. 118 (2019) at para. 83 (applying aggravation where the misconduct involved a variety of tactics, including the manipulation of technical specifications for the contract, formulation of the PIU’s responses to competitor inquiries, solicitation of bribe payments for a public official, and use of a company affiliated with the individual respondent to receive solicited funds).

²³ See, e.g., Sanctions Board Decision No. 70 (2014) at para. 31 (applying aggravation with respect to the individual respondent, who initiated and made the improper payment to the public official); Sanctions Board Decision No. 78 (2015) at para. 76 (applying aggravation with respect to the individual respondent, who initiated the corrupt scheme by soliciting employment for her daughter).

c. Period of temporary suspension

41. Pursuant to Section III.A, sub-paragraph 9.02(h) of the Sanctions Procedures, the Sanctions Board takes into account the period of the Respondent's temporary suspension since the SDO's issuance of the Notice on May 29, 2020. However, the Sanctions Board notes that the entire period of the Respondent's temporary suspension in this case is subsumed under his debarment pursuant to Sanctions Board Decision No. 125 (2020). Accordingly, the Sanctions Board declines to apply additional mitigation for the same period of ineligibility in the present case.²⁴

d. Other considerations

42. Under Section III.A, sub-paragraph 9.02(i) of the Sanctions Procedures, the Sanctions Board may consider "any other factor" that it "reasonably deems relevant to the sanctioned party's culpability or responsibility in relation to the Sanctionable Practice."

43. *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.²⁵ 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.²⁶ As discussed in Paragraphs 20 and 23, the solicitation and receipt of payments occurred in 2009-2010 for the payments to the First Company, and in 2013-2014 for the payments to the Second Company. The Sanctions Board further notes that, based on the record, the Bank appears to have first become aware of potential misconduct in March 2015. The Sanctions Board thus applies mitigation on this basis.

C. Determination of Appropriate Sanction

44. Considering the full record and all the factors discussed above, the Sanctions Board determines that the Respondent, together with any entity that is an Affiliate directly or indirectly controlled by the Respondent, shall be, and hereby declares that he is, ineligible to (i) be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner;²⁷ (ii) be a

²⁴ See Sanctions Board Decision No. 72 (2014) at para. 62.

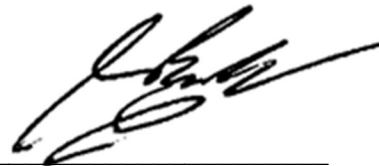
²⁵ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71 (applying mitigation where sanctions proceedings were initiated approximately five years after the Bank's awareness of the potential sanctionable practices); Sanctions Board Decision No. 63 (2014) at para. 116 (applying mitigation to multiple respondents where sanctions proceedings were initiated more than five (and up to nine) years after the misconduct, and more than five (and up to eight) 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 sanctionable practices had occurred and more than four years after the Bank had become aware of the potential misconduct).

²⁶ See, e.g., Sanctions Board Decision No. 50 (2012) at para. 71; Sanctions Board Decision No. 83 (2015) at para. 102.

²⁷ A respondent's ineligibility to be awarded a contract includes, without limitation, (i) applying for pre-qualification, 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.

nominated sub-contractor, consultant, manufacturer or supplier, or service provider²⁸ 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 for a period of eight (8) years. The debarment period shall be added to the period of debarment previously imposed on the Respondent in Sanctions Board Decision No. 125 (2020). The ineligibility shall extend across the operations of the World Bank Group. This sanction is imposed on the Respondent for corrupt practices as defined in Paragraph 1.25(a)(i) of the May 2002 Consultant Guidelines.

45. The Bank will also provide notice of these declarations 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 declarations of ineligibility with respect to their own operations in accordance with the Cross-Debarment Agreement and their own policies and procedures.²⁹



Cavinder Bull (Panel Chair)

On behalf of the
World Bank Group Sanctions Board

Cavinder Bull
Maria Vicien Milburn
Eduardo Zuleta

²⁸ 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 pre-qualification 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.

²⁹ 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”).