

THE WORLD BANK GROUP
SANCTIONS BOARD

Law Digest

December 2011



*Upholding the Rule of Law
in the Fights Against Corruption and Poverty*



Law Digest

December 2011

Upholding the Rule of Law
in the Fights Against Corruption and Poverty

© 2011 International Bank for Reconstruction and Development / International Development Association or

The World Bank
1818 H Street, NW
Washington, DC 20433
Telephone: 202-473-1000
Internet: www.worldbank.org

This work is a product of the staff of The World Bank. The findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of The World Bank, its Board of Executive Directors, or the governments they represent.

The World Bank does not guarantee the accuracy of the data included in this work. The boundaries, colors, denominations, and other information shown on any map in this work do not imply any judgment on the part of The World Bank concerning the legal status of any territory or the endorsement or acceptance of such boundaries.

Rights and Permissions

The material in this work is subject to copyright. Because The World Bank encourages dissemination of its knowledge, this work may be reproduced, in whole or in part, for non-commercial purposes as long as full attribution to this work is given.

Any queries on rights and licenses, including subsidiary rights, should be addressed to the Office of the Publisher, The World Bank, 1818 H Street NW, Washington, DC 20433, USA; fax: 202-522-2422; e-mail: pubrights@worldbank.org.

Cover photo courtesy of the World Bank Photo Library

TABLE OF CONTENTS

I.	President’s Introduction	5
II.	Note from the Sanctions Board Chair	7
III.	The Sanctions Board Members	9
IV.	The Sanctions Board in Historical Context	17
V.	The Sanctions Process	19
VI.	Sanctions Board Activity from 2007 to the Present	21
VII.	Law Digest	23
	For More Information about the World Bank Group’s Sanctions System, Debarments, and Governance and Anticorruption Strategy	91

Sanctions Board Secretariat

Elizabeth Lin Forder, Secretary to the Sanctions Board

Stephen William Simpson, Counsel

Togtokhbayar Ganzorig, Assistant to the Sanctions Board

Olivier Kraft, Legal Consultant

Allison Clark Ambrose, Legal Intern

President's Introduction



As a leading development institution in the global struggle against fraud and corruption, the World Bank Group is deeply committed to strengthening its comprehensive Governance and Anticorruption Strategy and setting tougher standards. The strategy encompasses a wide range of mechanisms and initiatives, all aimed at promoting a culture of integrity and addressing the devastating effects of fraud and corruption on poor people and development.

For more than 10 years, our sanctions system has played a crucial role within the Bank Group's anticorruption efforts. Sanctions protect Bank Group funds and member countries' development projects by excluding proven wrongdoers from our operations and financing. Sanctions also deter other participants or potential bidders in Bank Group-financed operations from engaging in fraud, collusion, or corruption. By holding companies and individuals accountable through a fair and robust process, the Bank Group's sanctions system promotes integrity and levels the playing field for those committed to clean business practices.

Being in the forefront of antifraud and anticorruption efforts among multilateral development institutions, the Bank Group has continually explored new structures and strategies to deal most effectively with allegations of fraud and corruption. These efforts led, for instance, to the establishment of the Sanctions Board in 2007 as a new and independent body providing final appellate review. Composed of a majority of external members since its establishment, the Sanctions Board has also been led by an external Chair since 2009. The Bank Group worked with the regional multilateral development banks to reach a groundbreaking agreement on cross-debarment in 2010. Those who cheat and steal from one will be debarred by all. Most recently, the Bank Group took a major step toward greater transparency and accountability by authorizing the publication of decisions in new sanctions cases initiated in 2011 and onward.

The release of the Sanctions Board's inaugural Law Digest is another milestone demonstrating the Bank Group's commitment to a fair and accountable sanctions process. By presenting the legal principles and core holdings set out in all past Sanctions Board decisions from 2007 to the present, the Law Digest is an invaluable resource for all stakeholders seeking to understand how the sanctions system works and what types of behavior will be sanctioned. Moreover, the case data set out in the Law Digest provide a concrete basis on which to begin to assess the activity of the Sanctions Board and sanctions system as critical components of the Bank Group's overall Governance and Anticorruption Strategy.

As his term as the World Bank Group's first external Sanctions Board Chair draws to a close, I wish to particularly thank Dr. Fathi Kemicha for his thoughtful leadership and dedicated service throughout these early years of the Sanctions Board. I further commend the other members of the Sanctions Board and the staff of the Sanctions Board Secretariat for their work in bringing this project to fruition.

Robert B. Zoellick
President, World Bank Group



Note from the Sanctions Board Chair



On behalf of the World Bank Group Sanctions Board, it is with great pride that I introduce the inaugural edition of the Sanctions Board's Law Digest. Over the past five years, a series of initiatives has strengthened the World Bank Group Sanctions Board as a more transparent, accountable, and independent body. A key component of these initiatives is the publication of this Law Digest.

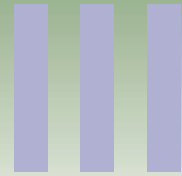
Since 2007, the Sanctions Board has had the opportunity to review and decide a diverse body of cases that have often presented difficult questions of law and fact. The Law Digest collects and describes those aspects of past decisions that illustrate the legal principles the Sanctions Board has applied. By publicly setting out the types of cases presented to date, and the legal principles that guide the Sanctions Board's decision-making, the Law Digest promotes transparency and consistency in the sanctions process, levels the playing field for all parties, and serves to educate the public and deter future wrongdoing.

The Law Digest initiative coincides with the Sanctions Board's mandate to publish all decisions for cases initiated in 2011 and beyond. Taken together, it is our hope that these publication initiatives will create valuable resources for those within the Bank Group, for those firms and individuals doing business with the Bank Group, and for our partners in the international community. More generally, we hope the publication of both the Law Digest and Sanctions Board decisions will make a significant contribution to the development of public international law in the context of antifraud and anticorruption frameworks and administrative sanctions.

Finally, I would like to commend the World Bank Group's Executive Directors and Senior Management for making fairness, transparency, and accountability key tenets of the Bank Group's sanctions reform agenda. I thank all the members of the Sanctions Board for their integrity, professionalism, and collegiality in helping to build the foundations of our juris-

prudence in the last five years since the Sanctions Board's establishment. I would also like to recognize the Sanctions Board Secretariat, whose dedicated staff and hard work have made these initiatives possible.

Dr. Fathi Kemicha
Sanctions Board Chair



The Sanctions Board Members

Dr. Fathi Kemicha

External Member and Chair

Dr. Fathi Kemicha, a Tunisian national, has served on the Sanctions Board since 2007 and as the Sanctions Board Chair since 2009. Dr. Kemicha is an attorney at law in France and Tunisia, with extensive experience in international arbitration for public and private entities. Among other notable representations, he has appeared as counsel to sovereign states in cases before the International Court of Justice.

Dr. Kemicha has been for the last ten years a member of the United Nations International Law Commission and serves on the Dubai International Arbitration Centre Board of Trustees and Executive Committee. He is also a member of the International Council for Commercial Arbitration, and acted as a Vice-Chairman of the International Chamber of Commerce Commission on Arbitration and the London Court of International Arbitration. Dr. Kemicha has been awarded the French Legion of Honour and the Order of Bahrain (First Class).

Dr. Kemicha holds a diploma in International Relations from the Institute of Political Studies – Paris (Sciences Po) and Ph.D. in International Law (with distinction) from the University of Paris I – Panthéon-Sorbonne. He has also been a Visiting Scholar at the Yale Law School.

Mr. Hassane Cissé

Internal Member

Mr. Hassane Cissé, a Senegalese national, has served on the Sanctions Board since 2007. Mr. Cissé has been the World Bank's Deputy General Counsel, Knowledge and Research, since 2009, in which capacity he provides intellectual leadership on strategic legal and policy issues facing the institution and leads the Bank's knowledge agenda on law, justice, and development.

In his prior position as the Bank's Chief Counsel for Operations Policy, Mr. Cissé contributed to the modernization and simplification of the Bank's legal and policy framework, and served as legal advisor on governance and anticorruption. Prior to joining the Bank, Mr. Cissé was Counsel at the International Monetary Fund.

Mr. Cissé obtained his LL.B. (High Hons.) from Dakar University in Senegal. He also holds an LL.M. degree from Harvard Law School as well as graduate law degrees (Hons.) from the Universities of Paris I – Panthéon-Sorbonne and Paris II – Panthéon-Assas, and a graduate degree in history from the University of Paris I – Panthéon-Sorbonne (High Hons.). Mr. Cissé is a member of the World Economic Forum Global Agenda Council on the Rule of Law.

Ms. Marielle Cohen-Branche

External Member

Ms. Marielle Cohen-Branche, a French national, has served on the Sanctions Board since 2007. Ms. Cohen-Branche has been a member of the French Court of Cassation since 2003. She has an extensive career in public service and serves as a member of the French Fiscal Litigation Committee, the Sanctions Commission for the French Stock Exchange Regulator, and the National Banking Mediation Committee. From 1978 to 2002, Ms. Cohen-Branche was a senior executive and legal manager at an international banking institution. Prior to her time in the private sector, she served as General Secretary of CEDIMOM, a non-governmental organization that assists European countries operating in developing nations.

Ms. Cohen-Branche graduated from Sciences Po, Paris, and earned an LL.M. from the University of Paris. For her distinguished national service, Ms. Cohen-Branche has been awarded the French Legion of Honour.

Ms. Cornelia Cova

External Member

Ms. Cornelia Cova, a Swiss national, has served on the Sanctions Board since 2007. Ms. Cova has been a Federal Penal Judge of Switzerland since 2007, the President of the Second Chamber of Appeals at the Federal Penal Court since 2008, and a substitute judge at the High Court of Administration in Zurich since 2010.

Ms. Cova has previously served as an Examining Magistrate in the Canton of Zurich, Switzerland, with the unit for International Assistance in Criminal Matters, as an Examining Magistrate for the District of Buelach, and as the Deputy Director of the Examining Magistrate's Office. As an Examining Magistrate, she has overseen complex international financial cases involving money laundering and corruption.

Ms. Cova received her law degree and LL.M. degree in International Business Law from the University of Zurich. Since 2003, she has been a Professor at Universidad Inca Garcilaso de la Geva in Lima, Peru. The Peruvian government has awarded her "Al Mérito por Servicios Distinguidos en el Grado de Gran Oficial," and the "Medalla del Ministerio Público" for her public service.

Ms. Patricia Diaz Dennis

External Member

Ms. Patricia Diaz Dennis, a U.S. national, has served on the Sanctions Board since 2007. Ms. Dennis was Senior Vice President and Assistant General Counsel for AT&T Inc. until she retired in 2008. She has served as a member of the National Labor Relations Board and as a commissioner of the Federal Communications Commission. In 1992, Ms. Dennis received a third presidential appointment as Assistant Secretary of State for Human Rights and Humanitarian Affairs.

Ms. Dennis has received numerous honors in recognition of her leadership in the legal and Hispanic communities. Long active in the Girl Scouts of the USA, Ms. Dennis served as Chair of its Board of Directors from 2005 to 2008.

Ms. Dennis holds a B.A. from the University of California at Los Angeles and a J.D. from Loyola University of Los Angeles.

Ms. Hoonae Kim

Internal Member

Ms. Hoonae Kim, a Korean national, has served on the Sanctions Board since 2007. Ms. Kim is currently Sector Manager for the World Bank's Agriculture and Environment

Program in the Middle East and North Africa Region covering twenty-two countries. Over her twenty-five year tenure in the World Bank Group, Ms. Kim has worked in over forty countries in four different regions both in the Bank and IFC, including transitional economies in Asia and Europe. Most recently, Ms. Kim managed the Bank's Sustainable Development Program in Vietnam, where her portfolio included urban development, water, transport, energy, agriculture, environment, and social development operations. Ms. Kim has also served on multiple World Bank Sector Boards and special committees, including the Diversity Committee.

Prior to joining the Bank, Ms. Kim worked in the private sector and at Cornell University. She was educated in Engineering and Economics at the University of California at Berkeley, McGill University, and Cornell University.

Mr. Hartwig Schafer

Internal Member

Mr. Hartwig Schafer, a German national, has served on the Sanctions Board since 2009. Mr. Schafer has over twenty years of experience in professional and managerial positions in the World Bank Group and at the European Commission. He is currently Director of Strategy and Operations in the World Bank's Sustainable Development Network Vice Presidency, in which capacity he oversees the World Bank's engagement in the areas of climate change, sustainable infrastructure, agriculture and food security, and coordinates external partnerships in the public and private sectors.

Previously, Mr. Schafer held the position of Director for Operations and Strategy in the Africa Regional Vice President's Office, where he oversaw implementation of the Africa Action Plan, with its focus on results and scaling up development impact across Sub-Saharan Africa. Earlier, he served as the Bank's Country Director for Malawi, Zambia, and Zimbabwe, and as Chief Administrative Officer for the Africa Region.

Mr. Schafer has a Ph.D. in Economics and M.A. and M.Sc. in Agricultural Economics.

International Finance Corporation (IFC) Alternate Members

Mr. Syed Babar Ali

External IFC Alternate

Mr. Syed Babar Ali, a Pakistani national, has served as a Sanctions Board alternate since 2007. Mr. Ali is a Pakistani entrepreneur, industrialist and philanthropist, and a former Finance Minister of Pakistan for Economic Affairs and Planning. Mr. Ali founded the Lahore University of Management Sciences, and from 1996 to 1999 served as International President of the World Wildlife Fund. He has received honors and awards from the Governments of Sweden, the Netherlands, and United Kingdom, including appointment to the Order of the British Empire in 1997. Mr. Ali received his bachelor's degree from Punjab University in Pakistan, and was awarded an honorary doctorate degree of laws from McGill University.

Mr. William Bulmer

Internal IFC Alternate

Mr. William Bulmer, a U.K. national, has served as a Sanctions Board alternate since 2007. Mr. Bulmer has over twenty years of finance experience in emerging markets and has led a broad spectrum of project, corporate, and equity financings. Following managerial positions in IFC's Infrastructure Department and Environment and Social Development Department, Mr. Bulmer currently serves as an Associate Director and the Global Head of Mining Investments at IFC. Mr. Bulmer was educated in the U.K. with a B.Sc. from the University of Reading and an MBA from Cranfield University.

Ms. Robin Glantz

Internal IFC Alternate

Ms. Robin Glantz, a U.S. national, has served as a Sanctions Board alternate since 2007. Ms. Glantz has a thirty-year career with IFC, working in various countries, regions and sectors, including general manufacturing and infrastructure, managing IFC's Oil and Gas Division, and managing a portion of IFC's Eastern Europe portfolio. She is currently a member of IFC's Credit Training Team. Ms. Glantz has a B.A. and M.A. in International Relations from the University of Pennsylvania and an MBA from Harvard Business School.

Mr. Rodrigo B. Oreamuno

External IFC Alternate

Mr. Rodrigo Oreamuno, a Costa Rican national, has served as a Sanctions Board alternate since 2007. Mr. Oreamuno was the First Vice President of the Republic of Costa Rica from 1994 to 1998, and has also served as Minister of the Presidency of the Republic, member of the Costa Rican Congress, Alternate Justice of the Supreme Court, and Legal Advisor for the Ministry of Foreign Affairs. Currently in private legal practice, Mr. Oreamuno specializes in commercial law, mergers and acquisitions, national and international arbitration, and international mediation. He received his law degree from the University of Costa Rica.

***Multilateral Insurance Guarantee Agency (MIGA)
Alternate Members*****Mr. Nabil Fawaz**

Internal MIGA Alternate

Mr. Nabil Fawaz, a Lebanese national, has served as a Sanctions Board alternate since 2007. Mr. Fawaz has almost twenty years of experience in the World Bank Group, including fifteen years in MIGA. He currently serves as Sector Leader for agribusiness, manufacturing, and services in MIGA's Operations Group. Before joining MIGA, Mr. Fawaz worked at IFC, where he focused on the development of financial markets in sub-Saharan Africa. Mr. Fawaz holds a master's degree in international management from the American Graduate School of International Management and a bachelor's degree from Arizona State University, with a concentration in finance.

Mr. Bernard Hanotiau

External MIGA Alternate

Mr. Bernard Hanotiau, a Belgian national, has served as a Sanctions Board alternate since 2007. Mr. Hanotiau, an attorney at law in Belgium and France, has held numerous leadership positions and memberships with leading international arbitration bodies, including the International Council for Commercial Arbitration Council and the Council of the International Chamber of Commerce Institute. Mr. Hanotiau has published and lectured extensively

on international commercial law and arbitration, and is a member of the editorial boards of numerous international law and arbitration publications. He received his Ph.D. from Louvain University, where he is a Professor of Law; and an LL.M. from Columbia University.

Mr. Anne van't Veer

External MIGA Alternate

Mr. Anne van't Veer, a Dutch national, has served as a Sanctions Board alternate since 2007. Mr. van't Veer is a former Secretary-General of the Berne Union. He has held management and board positions with multiple major financial institutions and corporations, as well as positions in the International Monetary Fund and the Ministry of Economic Affairs and Finance of the Netherlands. Mr. van't Veer studied macroeconomics and monetary theory in the Netherlands.

Mr. Daniel Villar

Internal MIGA Alternate

Mr. Daniel Villar, a U.S. national, has served as a Sanctions Board alternate since 2007. Mr. Villar currently serves as Lead Risk Management Officer in MIGA's Economics and Policy Group, where he is responsible for overseeing country risk analysis and the economic analysis of projects, and also leads MIGA's research team. His previous work experience includes positions in the World Bank, a major management consulting firm in the U.S., and a European multinational corporation. Mr. Villar received an MBA from INSEAD—Institut Européen d'Administration des Affaires, an M.A. in International Development from American University, and a B.A. in politics and government from the University of Maryland.

IV

The Sanctions Board in Historical Context

The World Bank Group established its first formal sanctioning body in 1998, when the Bank created a Sanctions Committee to review fraud and corruption allegations and recommend sanctions, including debarment, to the President. As originally constituted, the Sanctions Committee included five members, all internal Bank officials holding full-time senior management positions.

In 2002, the Bank engaged Mr. Richard Thornburgh, former Under-Secretary-General of the United Nations and former Attorney General of the United States, to review the Bank's sanctions process and advise as to the best practices followed by public international organizations. In response to Mr. Thornburgh's review and recommendations, the Bank began implementing a series of reforms to its sanctions process starting in 2004.

The Bank Group's sanctions reforms created a two-tier system designed for greater efficiency and independence. To replace the single review mechanism of the former Sanctions Committee, the reforms established (i) a first level of review by an internal Evaluation and Suspension Officer (EO) and (ii) a second level of review by a new independent body with a majority of external members called the Sanctions Board.

Under the Sanctions Board Statute, the Sanctions Board consists of seven members: four external members who must not have previously held or currently hold any appointment to the staff of the Bank Group, and who are familiar with procurement matters, law, dispute resolution mechanisms, or operations of development institutions; and three internal members selected from among senior Bank Group staff with knowledge of Bank procurement and/or operational processes. External members are appointed by the Bank's Executive Directors from a roster of candidates drawn up by the President of the Bank Group after appropriate consultation. Internal members are appointed by the President of the Bank Group. All members are appointed to renewable three-year terms.





Alternate external and internal members are similarly appointed to hear cases involving IFC, MIGA, or Bank guarantee projects.

The Sanctions Board was fully constituted and began reviewing cases in 2007. The first Sanctions Board Chair was selected by the President of the Bank Group from among its internal members. In 2009, the Executive Directors approved an amendment to the Sanctions Board Statute whereby, on the recommendation of the President, the Executive Directors would select a Sanctions Board Chair from among the four external members. This amendment

created the Sanctions Board as it stands today.

In September 2010, the Bank Group established an independent Sanctions Board Secretariat to provide dedicated legal and administrative support to efficiently manage the Sanctions Board's caseload, carry out research, and assist in preparing substantive opinions for publication.

To date, the sanctions process has led to the debarment of over 400 firms and individuals and the temporary suspension of over 150 firms and individuals.



The Sanctions Process

The World Bank Group has a two-tier system to review allegations of fraud, corruption, coercion, collusion, or obstructive practices in relation to Bank Group-financed projects, with the Sanctions Board as the final decision-maker in all contested cases.

Allegations of sanctionable misconduct are investigated by the Integrity Vice Presidency (INT), an independent investigative unit within the Bank Group. If INT finds evidence of sanctionable misconduct by a firm or individual (a “respondent”), it presents the case to an Evaluation and Suspension Officer (EO)—the first tier of review. The Bank Group has four EOs, with separate responsibilities for cases pertaining to: (i) the Bank; (ii) MIGA; (iii) IFC; and (iv) Bank guarantee projects. The EO evaluates whether the evidence presented by INT is sufficient to support a finding of sanctionable misconduct. If so, the EO issues a Notice of Sanctions Proceedings with a recommended sanction to the respondent, and may temporarily suspend the respondent from eligibility for new Bank Group-financed contracts pending the final outcome of the sanctions proceedings. Upon review of a respondent’s written explanation, the EO may withdraw the Notice of Sanctions Proceedings, reduce the recommended sanction, or lift the temporary suspension. If the respondent does not contest the allegations or the recommended sanction, the sanction recommended by the EO is imposed.

If the respondent chooses to contest INT’s allegations and/or the EO’s recommended sanction, the case is referred to the Sanctions Board, the second and final tier of review in the sanctions process. The Sanctions Board meets several times a year to review cases presented on appeal. The Sanctions Board may hold an administrative hearing in a case, where requested by INT or a respondent. In its deliberations, the Sanctions Board considers INT’s allegations and evidence as presented in the Notice of Sanctions Proceedings; the respondent’s arguments and evidence submitted in response to the Notice; INT’s reply brief; the parties’ presentations at a hearing, if applicable; and any other materials contained in the record. The Sanctions Board carries out a full





de novo review in each case. It is not bound by the recommendations of the EO or INT.

After completing its review, the Sanctions Board determines whether it is “more likely than not” that the respondent engaged in sanctionable misconduct. If so, the Sanctions Board imposes one or more of the following sanctions: reprimand, conditional non-debarment, debarment for a fixed or indefinite time period, debarment with conditional release, and/or restitution or other remedy. Sanctions may extend to a respondent’s affiliates, successors and assigns. The Sanctions Board’s de-

terminations of liability and sanctions are taken in accordance with the Sanctions Board Statute, the Sanctions Procedures, and Sanctions Board precedent. Decisions are final and non-appealable.

Sanctions imposed by the Bank Group are published on its website at www.worldbank.org/debarr. For all cases initiated prior to 2011, publication is limited to the identity of sanctioned parties, the nature of sanctions imposed, and the provisions under which the sanctions are imposed (e.g., for fraudulent, collusive, or corrupt practices). For cases initiated from 2011 onward, publication extends to the full text of Sanctions Board decisions, with factual background and legal analysis.

The Sanctions Board Statute, Sanctions Procedures, Sanctions Board decisions, and other information about the sanctions system may be found at www.worldbank.org/sanctions.

VI

Sanctions Board Activity from 2007 to the Present

Historically, the rate of appeal to the Sanctions Board has held relatively steady at slightly under half of all sanctions cases. As of October 31, 2011, 44 percent of all sanctions cases—each of which may involve more than one respondent—have resulted in at least one respondent’s appeal to the Sanctions Board.

The Sanctions Board has issued forty-five decisions from 2007 through October 31, 2011. This total includes twenty opinions in contested cases and twenty-five decisions giving effect to the EO’s recommended sanctions in uncontested cases.

Of the fifty-one respondents whose appeals were decided by the Sanctions Board through October 31, 2011, approximately 29 percent (15 respondents) received no sanction; 41 percent (21 respondents) received a debarment for a fixed or indefinite time period, without conditions for release; 24 percent (12 respondents) received a debarment with conditional early release (i.e., a maximum term of debarment with the possibility of a reduction should certain conditions, such as satisfactory implementation of an integrity compliance program, be met); and 6 percent (3 respondents) received a debarment with conditional delayed release (i.e., a minimum term of debarment with the possibility of an extension should certain conditions not be met). The Sanctions Board has not issued a letter of reprimand, imposed a conditional non-debarment, or required restitution or other remedy as a sanction.

The time elapsed between the date a response is filed to initiate an appeal, and the date the Sanctions Board issues a decision, has been approximately six to eight months. This time period includes a minimum of one month for INT to receive the response and file its reply brief; and time for the Sanctions Board to review the written record, hold a hearing if requested by either party, convene for deliberations, and prepare its decision.





To date, all of the cases presented to the Sanctions Board have related to alleged fraud, collusion, or corruption in connection with procurement in Bank-financed projects. Of the fifty-one respondents referred to above—a number of whom were alleged to have engaged in more than one type of sanctionable practice—approximately 75 percent (38 respondents) faced allegations of fraud; 51 percent (26 respondents) faced allegations of collusion; and approximately 47 percent (24 respondents) faced allegations of corruption. As of October 31, 2011, the Sanctions Board had not received any appeals presenting allegations of coercion or obstruction; a violation of the Bank’s Anticorruption Guidelines; or sanctionable practices in relation to IFC, MIGA, or Bank guarantee projects.

VII

Law Digest

The Law Digest summarizes for informational purposes the evolving case law of the Sanctions Board from its inception in 2007 through October 31, 2011. The Law Digest, as prepared by the Sanctions Board Secretariat and reviewed by Sanctions Board members, comprises two parts: Case Summaries and a Case Digest. The Case Summaries provide a brief synopsis of the allegations, outcome, and procedural framework for each case. The Case Digest entries illustrate the legal principles and considerations applied by the Sanctions Board based on the facts and circumstances presented in each case.

For further reference, the full text of Sanctions Board decisions in cases initiated on or after January 1, 2011, may be found at www.worldbank.org/sanctions. A current listing of all sanctioned parties may be found at www.worldbank.org/debarr.

Case Summaries	25
Case Digest	33
A. Sanctions Board Framework: Policy and Procedure	33
1. Scope of Authority	33
2. Sources of Law	34
3. Procedures	34
4. Requests for Reconsideration	35
B. Theories of Liability	37
C. Evidence	40
1. Weight and Sufficiency	40
2. Testimonial Evidence	43
3. Circumstantial Evidence	46
D. Sanctionable Practices	47
1. Collusion	47
a. Collusion: Definitions	47
b. Collusion: Elements	48
c. Collusion: Evidence	49

2. Corruption	52
<i>a. Corruption: Definitions</i>	52
<i>b. Corruption: Evidence</i>	53
3. Fraud	55
<i>a. Fraud: Definitions</i>	55
<i>b. Fraud: Elements</i>	56
<i>c. Fraud: Evidence</i>	57
E. Defenses	63
F. Sanctions	69
1. Determination of Sanctions	69
2. Aggravating and Mitigating Factors	79
<i>a. Severity of misconduct</i>	79
<i>b. Magnitude of harm</i>	80
<i>c. Interference in the investigation</i>	81
<i>d. Past history of misconduct</i>	82
<i>e. Minor role in the misconduct</i>	82
<i>f. Voluntary corrective actions</i>	83
<i>g. Cooperation</i>	86
<i>h. Other factors</i>	88

Case Summaries

Sanctions Board Decision No. 1 (2007): Respondents, two firms and five individuals identified as the firms' respective managers, were alleged to have engaged in corrupt and collusive practices as defined in Paragraphs 1.15(a)(i) and (ii), respectively, of the January 1999 Procurement Guidelines in relation to two Bank-financed health sector projects. Specifically, INT alleged the respondents had engaged in a collusive scheme resulting in their receipt of a disproportionately large number of contracts, and also engaged in extensive bribery of government officials and representatives to facilitate the award of contracts to their cartel. Considering the written record and the arguments presented at a hearing, the Sanctions Board concluded it was more likely than not the two firms had engaged in collusive practices, but the evidence was insufficient to find they had engaged in corrupt practices. The Sanctions Board debarred one firm for three years and the other for one year, together with any organization or individual who directly or indirectly controls either respondent, and any organization directly or indirectly controlled by either respondent. The Sanctions Board found the evidence insufficient to support a finding that any of the individual respondents had engaged in corrupt or collusive practices. As notified to the respondents upon initiation of the sanctions proceedings prior to the constitution of the Sanctions Board, the proceedings were administered under the Sanctions Committee Procedures dated August 2, 2001, except that the Sanctions Board served as the final decision-maker in the case.

Sanctions Board Decision No. 2 (2008): Respondents, a small/medium-sized firm and its director general, were alleged to have engaged in fraudulent practices as defined in Paragraph 1.15(a)(ii) of the September 1997 and January 1999 Procurement Guidelines in relation to two Bank-financed urban development projects. Specifically, INT alleged the respondents had submitted two forged advance payment guarantees to secure advance payments received under two contracts, and three forged bid securities to secure bids for three additional contracts. Considering the written record and the arguments presented at a hearing, the Sanctions Board concluded it was more likely than not the firm had engaged in fraudulent practices. The Sanctions Board debarred the firm, together with any organization or individual who directly or indirectly controls the respondent firm, and any organization directly or indirectly controlled by the respondent firm, for two years, which period would be extended for an additional three years if the firm failed to promptly put in place an effective corporate compliance program acceptable to the Bank and implement it in a manner satisfactory to the Bank. The Sanctions Board further found that, as a result of the individual respondent's close operational control over the firm and failure to put in place appropriate control mechanisms that would have prevented the fraudulent practices, the individual respondent, together with any organization directly or indirectly controlled by the individual respondent, should be

debarred for two years. The proceedings were governed by the Sanctions Procedures effective on October 15, 2006.

Sanctions Board Decision No. 4 (2009): Respondents, fourteen companies and the founder/president of one of those companies, were alleged to have engaged in corrupt, collusive, and other fraudulent practices, as defined in Paragraphs 1.15(a)(i) and (ii) of the January 1999 Procurement Guidelines, in connection with one or more rounds of bidding for two contracts under a Bank-financed transportation project. Specifically, INT alleged the respondents misrepresented facts to influence the procurement process for one or more procurement packages; participated in a collusive scheme, involving politicians and government officials, to direct awards to particular contractors in exchange for bribes, kickbacks and payments to designated losing bidders; and, through such collusive scheme, engaged in corrupt practices as either a principal or a secondary party. Considering the written record for all respondents, and the arguments presented at hearings for the two respondent companies that had requested hearings, the Sanctions Board concluded it was more likely than not that seven of the companies and the individual respondent had engaged in collusive practices, and imposed sanctions ranging up to indefinite debarment. The Sanctions Board did not find it was more likely than not that the remaining seven companies had engaged in collusive practices, or that any of the fifteen respondents had engaged in corrupt or other fraudulent practices separate from the collusion. The proceedings were governed by the Sanctions Procedures effective on October 15, 2006.

Sanctions Board Decision No. 5 (2009): Respondents, a parent company and its wholly owned and commercially dependent subsidiary, were alleged to have engaged in collusion constituting fraudulent practices, as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines, in relation to a Bank-financed project in the water, sanitation, and flood protection sector. Considering the written record and the arguments presented at a hearing, the Sanctions Board determined it was more likely than not the respondents had not engaged in a fraudulent practice in the form of collusion. The Sanctions Board therefore terminated the proceedings and lifted the temporary suspension of the respondents' eligibility to be awarded additional contracts or participate in new activities under Bank Group-financed or -executed projects. The proceedings were governed by the Sanctions Procedures effective on October 15, 2006.

Sanctions Board Decision No. 6 (2009): Respondent, a non-governmental organization, was alleged to have engaged in fraudulent practices, as defined in Paragraph 1.25(a)(ii) of the January 1999 Consultant Guidelines, in connection with a Bank-administered donor-funded grant to assist a borrower in the preparation and implementation of a program of institutional and structural reforms in the public administration, law, and justice sector.

Specifically, INT alleged the respondent had submitted a contract proposal containing a falsified curriculum vitae. Considering the written record and the arguments presented at a hearing, to which the respondent was invited but which it did not attend, the Sanctions Board concluded it was more likely than not the respondent had engaged in fraudulent practices. The Sanctions Board debarred the respondent, together with any organization or individual who directly or indirectly controls the respondent, and any organization directly or indirectly controlled by the respondent, for a period of two years; provided, however, that after one year the period of ineligibility may be reduced by up to one year if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented it in a manner satisfactory to the Bank. The proceedings were governed by the Sanctions Procedures effective on October 15, 2006.

Sanctions Board Decision No. 12 (2009): Respondents, a non-governmental organization and its director, were alleged to have engaged in fraudulent practices, as defined in Paragraph 1.25(a)(ii) of the January 1999 Consultant Guidelines, in connection with an education sector project financed by the Bank and a Bank-administered donor-funded grant. Specifically, INT alleged the respondents had submitted a contract proposal containing a falsified certificate of previous experience. Considering the written record and the arguments presented at a hearing, which the respondents declined to attend, the Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices. The Sanctions Board debarred each of the respondents, together with any organization directly or indirectly controlled by either respondent, for a period of three years. The proceedings were governed by the Sanctions Procedures as amended on December 22, 2008.

Sanctions Board Decision No. 27 (2010): Respondents, a non-governmental organization and its executive director, were alleged to have engaged in fraudulent practices, as defined in Paragraph 1.25(a)(ii) of the January 1999 Consultant Guidelines, in connection with an education sector project financed by the Bank and a Bank-administered donor-funded grant. Specifically, INT alleged the respondents had submitted a technical proposal containing a falsified certificate of previous experience. Considering the written record, the Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices. The Sanctions Board debarred each of the respondents, together with any organization or individual who directly or indirectly controls the respondent organization, and any organization directly or indirectly controlled by either of the respondents, for a period of three years. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 28 (2010): Respondents, a small/medium-sized enterprise and its chairman and chief executive officer, were alleged to have engaged in fraudulent prac-

tices, as defined in Paragraph 1.22(a)(ii) of the May 2004 Consultants Guidelines, in connection with a Bank-financed project in the finance sector. Specifically, INT alleged the respondents had submitted a contract proposal containing eight false and misleading statements regarding the respondent firm's experience. Considering the written record, the Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices. The Sanctions Board debarred each of the respondents, together with any organization or individual who directly or indirectly controls the respondent firm, and any organization directly or indirectly controlled by either of the respondents, for a period of four years. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 29 (2010): Respondent, a non-governmental organization, was alleged to have engaged in fraudulent practices, as defined in Paragraph 1.25(a)(ii) of the January 1999 Consultant Guidelines, in connection with an education sector project financed by the Bank and a Bank-administered donor-funded grant. Specifically, INT alleged the respondent had submitted a project proposal containing a forged experience certificate and the audit report of another entity in place of its own. Considering the written record, the Sanctions Board found it was more likely than not the respondent had engaged in fraudulent practices. The Sanctions Board debarred the respondent, together with any organization or individual who directly or indirectly controls the respondent, and any organization directly or indirectly controlled by the respondent, for a period of three years. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

10. **Sanctions Board Decision No. 30 (2010):** Respondents, a small/medium-sized firm and its former director, were alleged to have engaged in fraudulent practices, as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines, in connection with a Bank-financed transportation sector project. Specifically, INT alleged the respondents had submitted with their bids for two contracts a forged financial report containing five falsified financial statements. Considering the written record, the Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices. The Sanctions Board debarred each of the respondents, together with any organization or individual who directly or indirectly controls the respondent firm, and any organization directly or indirectly controlled by either of the respondents, for a two-year period subject to automatic extension for one additional year if the respondents failed to put in place an effective corporate compliance program acceptable to the Bank and to implement such program in a manner satisfactory to the Bank. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 31 (2010): Respondent, a non-governmental organization, was alleged to have engaged in fraudulent practices, as defined in Paragraph 1.25(a)(ii)

of the January 1999 Consultant Guidelines, in connection with an education sector project financed by the Bank and a Bank-administered donor-funded grant. Specifically, INT alleged the respondent had submitted a technical proposal containing a forged certificate of previous experience. Considering the written record and the arguments presented at a hearing, to which the respondent was invited but which it did not attend, the Sanctions Board concluded it was more likely than not the respondent had engaged in fraudulent practices. The Sanctions Board debarred the respondent, together with any organization or individual who directly or indirectly controls the respondent, and any organization directly or indirectly controlled by the respondent, for three years. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 36 (2010): Respondent, a large firm, was alleged to have engaged in fraudulent practices, as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines, in connection with a Bank-financed health sector project. Specifically, INT alleged the respondent had submitted a bid for a contract that contained two forged performance certificates. Considering the written record and the information and arguments presented at a hearing, the Sanctions Board concluded it was more likely than not the respondent had engaged in fraudulent practices. The Sanctions Board debarred the respondent, together with any organization the respondent directly or indirectly controls, for a period of three years; provided, however, that after two years the period of ineligibility may be reduced by up to one year if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented it in a manner satisfactory to the Bank. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 37 (2010): Respondent, a large firm, was alleged to have engaged in fraudulent practices, as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines, in connection with a Bank-financed health sector project. Specifically, INT alleged the respondent had submitted a bid for a contract that contained five forged performance certificates. Considering the written record, the Sanctions Board concluded it was more likely than not the respondent had engaged in fraudulent practices. The Sanctions Board debarred the respondent, together with any organization or individual directly or indirectly controlled by the respondent, for three years; provided, however, that after two years the period of ineligibility may be reduced by up to one year if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented it in a manner satisfactory to the Bank. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 38 (2010): Respondents, a large firm and its executive director, were alleged to have engaged in fraudulent practices as defined in Paragraph 1.15(a)(ii)

of the August 1996 Procurement Guidelines (in the case of the respondent firm) and January 1999 Procurement Guidelines (in the case of both respondents). Specifically, INT alleged the respondents had made multiple fraudulent misrepresentations, including through submission of false performance certificates, in bidding for multiple contracts under three Bank-financed health sector projects. Considering the written record, the Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices. The Sanctions Board debarred the respondent firm, together with any organization it directly or indirectly controls, for five years; provided, however, that after four years the period of ineligibility may be reduced by up to one year if the respondent firm has put in place an effective corporate compliance program acceptable to the Bank and implemented it in a manner satisfactory to the Bank. The Sanctions Board debarred the individual respondent, together with any organization the individual directly or indirectly controls, for a period of three years. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 39 (2010): Respondents, a small/medium-sized firm and its director, were alleged to have engaged in fraudulent practices, as defined in Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines, in connection with a project financed by a Bank-administered trust fund. Specifically, INT alleged the respondents had submitted a contract bid containing three forged manufacturer authorizations. Considering the written record, the Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices. The Sanctions Board debarred the respondents, together with any organization directly or indirectly controlled by either of the respondents, for a period of three years. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 40 (2010): Respondent, a small/medium-sized firm, was alleged to have engaged in collusion constituting a fraudulent practice, as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines, in connection with a Bank-financed water sector project. Specifically, INT alleged the respondent had coordinated bid prices with the other two firms bidding for the same small works tender to ensure the respondent would win the contract. Considering the written record, the Sanctions Board concluded it was more likely than not the respondent had engaged in collusion constituting a fraudulent practice. The Sanctions Board debarred the respondent, together with any organization the respondent directly or indirectly controls, for three years; provided, however, after two years the period of ineligibility may be reduced by up to one year if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented it in a manner satisfactory to the Bank. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 41 (2010): Respondents—a small/medium-sized firm and its president, owner, and sole shareholder—were alleged to have engaged in a corrupt practice in one Bank-financed project and fraudulent practices in multiple Bank-financed projects in the public administration, law and justice; energy and mining; and health sectors. Although INT had brought two separate cases alleging corrupt practices and fraudulent practices, the Sanctions Board addressed both cases in the same decision because of the overlapping parties and pleadings and the value of a holistic approach to the final determination of appropriate sanctions. Considering the written record and the arguments presented at the hearings, the Sanctions Board concluded it was more likely than not the respondents had engaged in corrupt practices as defined in Paragraph 1.15(a)(i) of the January 1999 Procurement Guidelines and fraudulent practices as defined in Paragraph 1.15(a)(ii) of the January 1999 Procurement Guidelines, Paragraph 1.14(a)(ii) of the May 2004 Procurement Guidelines, and Paragraph 1.14(a)(ii) of the October 2006 Procurement Guidelines. The Sanctions Board debarred the respondents, together with any organization directly or indirectly controlled by either of the respondents, for twelve years. The proceedings in both cases presented were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 43 (2011): Respondents debarred pursuant to Sanctions Board Decision No. 41 (2010) requested the Sanctions Board reconsider its previous decision and reduce the sanction imposed. In support of their request, the respondents asserted a number of facts, challenged INT's theory of the case, and alleged strategic errors by their representatives in the original proceeding. Noting the absence of directly controlling provisions for reconsideration under the Sanctions Board's framework, the Sanctions Board held that fundamental principles of fairness dictate that the rule of finality must on occasion yield in narrowly defined and exceptional circumstances. The Sanctions Board denied the respondents' request for reconsideration because it failed to present such circumstances. The proceedings were governed by the Sanctions Procedures as amended through May 11, 2009.

Sanctions Board Decision No. 44 (2011): Respondent, a large firm, was alleged to have engaged in fraudulent practices, as defined in Paragraph 1.15(a)(ii) of the September 1997 Procurement Guidelines, in connection with a Bank-financed transportation sector project. Specifically, INT alleged the respondent had made at least four knowing misrepresentations about the progress of its contract execution. Considering the written record, the Sanctions Board concluded it was more likely than not the respondent had engaged in fraudulent practices. The Sanctions Board debarred the respondent, together with any organization that the respondent directly or indirectly controls, for a period of three years. The proceedings were governed by the Sanctions Procedures as adopted September 15, 2010.

Sanctions Board Decision No. 45 (2011): Respondent, a large firm, was alleged to have engaged in collusive practices, as defined in Paragraph 1.14(a)(iii) of the May 2004 Procurement Guidelines, in connection with a Bank-financed transportation sector project. Specifically, INT alleged the respondent and another firm had utilized the respondent's subsidiary to prepare coordinated bids for a contract under the project. Considering the written record, the Sanctions Board concluded it was more likely than not the respondent had engaged in collusive practices. The Sanctions Board debarred the respondent, together with any organization that the respondent directly or indirectly controls, for three years; provided, however, that after two years of ineligibility, the period of ineligibility may be reduced by up to one year if the respondent has implemented an effective corporate compliance program in a manner satisfactory to the Bank. The proceedings were governed by the Sanctions Procedures as amended through June 25, 2010.

Case Digest

A. Sanctions Board Framework: Policy and Procedure

1. Scope of Authority

1. The Sanctions Board held it retains authority to request either party to submit additional written evidence or argument on matters raised in a sanctions proceeding before the Sanctions Board, including regarding the conduct of an INT investigation. Sanctions Board Decision No. 28 (2010) at para. 42.
2. Absent directly controlling provisions on a matter of Sanctions Board operations, namely the possibility of reconsideration of final decisions, the Sanctions Board has followed Article XI of the Sanctions Board Statute, which provides that in such circumstances the Sanctions Board shall follow the Sanctions Board Chair's instructions for the operation of the Sanctions Board; Article IV, which provides the Sanctions Board shall decide its own competence in the event of a dispute; and Article VII(2), which provides the Sanctions Board Chair may convene a plenary session when necessary to deal with a question of the Sanctions Board's competence under Article IV or any other matter warranting consideration by the full Sanctions Board. Sanctions Board Decision No. 43 (2011) at para. 6.
3. The fact lacunae exist in the Sanctions Board Statute and Sanctions Procedures is in itself unremarkable, as no statutory or procedural framework can anticipate and comprehensively address all conceivable scenarios or issues that may arise within a complex process. To the contrary, Article XI of the Statute recognizes lacunae are inevitable. The Sanctions Board has previously recognized its inherent authority to fill such a procedural gap. Sanctions Board Decision No. 43 (2011) at para. 12.
4. Where the respondent requested that the Sanctions Board instruct the Bank to provide a non-objection letter with respect to respondent's participation in other projects not germane to the proceedings, the Sanctions Board held that such a request exceeded the scope of the Sanctions Board's mandate and jurisdiction to determine whether the evidence supports the conclusion it is more likely than not a respondent has engaged in a sanctionable practice and, if so, to impose an appropriate sanction on the respondent. Sanctions Board Decision No. 45 (2011) at para. 70.

2. Sources of Law

5. Fundamental principles of fairness dictate that finality must on occasion yield in narrowly defined and exceptional circumstances. As the question of what sort of exceptional circumstances may justify reconsideration of a decision by the Sanctions Board is not addressed in the governing legal framework set out in the Sanctions Board Statute and Sanctions Procedures, the Bank's legislative history, or the Sanctions Board's own jurisprudence, the Sanctions Board may look to general principles of law, as demonstrated by leading international or national practice, to inform its analysis. Sanctions Board Decision No. 43 (2011) at para. 15.
6. Because the Sanctions Board Statute and Sanctions Procedures do not provide any basis on which to consider a national law framework as controlling in the Bank's sanctions proceedings, the scope of a respondent's liability under the Bank's administrative sanctions process may not be coextensive with the scope of its potential liability under national law. In the case presented, the Sanctions Board did not accept that national law principles, as the respondent asserted, would define the respondent's liability for the acts of its agent or affiliate. Sanctions Board Decision No. 45 (2011) at para. 46.

3. Procedures

7. The Sanctions Board significantly discounted the value of confidential testimonial evidence of corrupt practices when such testimony was given by the respondents' competitors and the evidence was withheld from the respondents in accordance with Section 7(c) of the Sanctions Committee Procedures without any clear statement from INT as to the basis for such withholding. In such circumstances, the Sanctions Board gave far lesser weight to the testimonial evidence than to the documentary and other evidence in the record. Sanctions Board Decision No. 1 (2007) at para. 7.
8. The Sanctions Board considered testimonial evidence of multiple witnesses: some of whom had been identified in the Notice of Sanctions Proceedings, some of whom were anonymous, and others whose identities had been withheld from the respondents as confidential pursuant to a previous determination under Section 8(3) of the applicable Sanctions Procedures. Sanctions Board Decision No. 4 (2009) at para. 3.
9. In a case involving multiple respondents alleged to have engaged in corrupt, collusive, and other fraudulent practices in relation to bidding under one Bank-financed project, the Sanctions Board granted requests by two respondent companies for separate hearings. Sanctions Board Decision No. 4 (2009) at para. 4.

10. Where INT had conditionally requested a hearing (i) only in the event that the Sanctions Board intended to impose a sanction less than that recommended by the Evaluation Officer, and (ii) unless the Sanctions Board should conclude that a conditional application was not permissible, in which case INT sought to request a hearing, the Sanctions Board held that such request did not constitute a valid request for a hearing under Section 10 of the applicable Sanctions Procedures and therefore could not be entertained. Sanctions Board Decision No. 4 (2009) at para. 13.
11. Where the response did not include a certification that the information contained therein was true, complete and correct, as required by Section 10(2) of the applicable Sanctions Procedures, the Sanctions Board admitted the response into the record, but considered the absence of the certification in determining the evidentiary weight to be given to the response. Sanctions Board Decision No. 27 (2010) at paras. 20–21; Sanctions Board Decision No. 39 (2010) at paras. 61–62.
12. The Sanctions Board held it retains authority to request either party to submit additional written evidence or argument on matters raised in a sanctions proceeding before the Sanctions Board, including regarding the conduct of an INT investigation. Sanctions Board Decision No. 28 (2010) at para. 42.
13. When there was evidence in the form of several certificates specifying the death of the respondent organization's former executive director, who had been named as an individual respondent, and no evidence or argument to the contrary, the Sanctions Board decided not to make any determination as to whether the former executive director had engaged in a sanctionable practice. Sanctions Board Decision No. 29 (2010) at para. 29.
14. Where two cases with separate Notices of Sanctions Proceedings involved the same two contesting respondents who filed a single response to appeal both cases, and INT filed a single reply brief for both cases, the Sanctions Board addressed both cases in a single decision in view of the overlapping parties and pleadings, and the value of a holistic approach to the final determination of appropriate sanctions. Sanctions Board Decision No. 41 (2010) at para. 8.

4. Requests for Reconsideration

15. Absent directly controlling provisions on a matter of Sanctions Board operations, namely the possibility of reconsideration of final decisions, the Sanctions Board has followed Article XI of the Sanctions Board Statute, which provides that in

such circumstances the Board shall follow the Sanctions Board Chair's instructions for the operation of the Sanctions Board; Article IV, which provides the Sanctions Board shall decide its own competence in the event of a dispute; and Article VII(2), which provides the Sanctions Board Chair may convene a plenary session when necessary to deal with a question of the Sanctions Board's competence under Article IV or any other matter warranting consideration by the full Sanctions Board. Sanctions Board Decision No. 43 (2011) at para. 6.

16. While the Sanctions Board Statute and Sanctions Procedures specify Sanctions Board decisions are final and without appeal, the specific preclusion of appeal does not prevent the Sanctions Board from reconsidering its own decisions. Sanctions Board Decision No. 43 (2011) at para. 11.
17. The Sanctions Board has emphasized the principle of finality as a fundamental aspect of any judicial or quasi-judicial process. Finality is essential to provide certainty to the parties and others with an interest in the proceedings; prevent re-litigation of claims already adjudicated; conserve judicial resources; and encourage respect for adjudicated outcomes (*res judicata*). For these reasons, the principle of finality is equally applicable to international administrative tribunal proceedings as to judicial proceedings. Further, as reflected by the repeated clause that Sanctions Board decisions "shall be final" in both Article XIV of the Sanctions Board Statute and Section 20(1) of the applicable Sanctions Procedures, the principle of finality explicitly applies to administrative proceedings before the Sanctions Board. Sanctions Board Decision No. 43 (2011) at para. 14.
18. Fundamental principles of fairness dictate that finality must on occasion yield in narrowly defined and exceptional circumstances. As the question of what sort of exceptional circumstances may justify reconsideration of a decision by the Sanctions Board is not addressed in the governing legal framework set out in the Sanctions Board Statute and Sanctions Procedures, the Bank's legislative history, or the Sanctions Board's own jurisprudence, the Sanctions Board may look to general principles of law, as demonstrated by leading international or national practice, to inform its analysis. Sanctions Board Decision No. 43 (2011) at para. 15.
19. In the context of a request for reconsideration, the Sanctions Board held a fact known to the respondents at the time of the original proceedings, but not timely introduced in those proceedings, is not a newly available fact that could constitute a type of exceptional circumstance meriting reconsideration of a final decision. Sanctions Board Decision No. 43 (2011) at paras. 25–26.

20. In the context of a request for reconsideration, the Sanctions Board held attempts to re-argue or re-litigate a case do not present the types of exceptional circumstances that merit reconsideration of a final decision. Sanctions Board Decision No. 43 (2011) at paras. 25–26.
21. Where the respondents’ request for reconsideration did not suggest fraud or other misconduct in the original proceedings, or any clerical mistake in the issuance of the original decision, the Sanctions Board held that the respondents’ failure to timely or effectively present previously available facts or related evidence to the Sanctions Board in the original proceedings would not warrant re-opening the case for reconsideration or revision. Sanctions Board Decision No. 43 (2011) at para. 27.

B. Theories of Liability

22. The Sanctions Board held an individual respondent, the director general of the respondent firm, responsible for the fraudulent misconduct of the firm, even where the record did not contain allegations or evidence the individual had personally committed the forgeries, where there was evidence the individual maintained close operational control over the small firm and had been in a position to put in place appropriate control mechanisms that would have prevented the fraudulent practices, but failed to do so. Sanctions Board Decision No. 2 (2008) at para. 5.
23. Where INT alleged that respondents had engaged in corrupt practices on the basis of their participation in a collusive scheme involving politicians and government officials—and asserted each respondent’s liability either as a principal in a joint bribery enterprise or as a secondary party who “aided and abetted” the principals to pay such bribes—the Sanctions Board held INT could not meet its burden of presenting evidence of corruption solely based on theories of culpability as a principal or secondary party participating in a collusive scheme, without providing sufficient evidence to support its claim the respondents had engaged in corrupt practices under the applicable definition in the Procurement Guidelines. Sanctions Board Decision No. 4 (2009) at para. 7.
24. The Sanctions Board found the respondent had failed to present any persuasive evidence demonstrating why it should not be held responsible for the actions of its personnel acting on its behalf under the doctrine of *respondeat superior*, noting (i) while the respondent admitted its personnel had forged the certificates and submitted them as part of the bid, the respondent claimed its inquiry was ongoing and that it did not know who within the organization had engaged in, or had been aware of, the forgeries; and (ii) the record did not include any evidence the respondent had

at any time implemented any controls reasonably sufficient to prevent or detect the alleged fraudulent practices. Sanctions Board Decision No. 36 (2010) at para. 39.

25. The Sanctions Board held a respondent firm liable for its employee's submission of a bid with forged documents under the doctrine of *respondeat superior*, despite the respondent's assertions the employee had acted alone and without authorization and was subsequently terminated from employment, where the record (i) showed the respondent had expressly authorized the employee to sign the tender documents and make all necessary correspondence in regard to the bid; and (ii) did not include any evidence the respondent had implemented any controls reasonably sufficient to prevent or detect the alleged fraudulent practices. Sanctions Board Decision No. 37 (2010) at paras. 41–42.
26. In reaching its decision that the respondents, a firm and its director, had engaged in fraudulent practices by submitting three forged manufacturer authorizations as part of a bid, the Sanctions Board found the respondents had not presented any evidence, with respect to a “rogue employee” defense or otherwise, demonstrating why they should not be held responsible for the actions of the firm's personnel acting on the firm's behalf under the doctrine of *respondeat superior*. The Sanctions Board noted the record (i) did not include any evidence the firm had at any time implemented controls reasonably sufficient to prevent or detect the fraudulent practices alleged; (ii) showed no basis to find the director was unaware of the lack of controls and resulting risks of submitting a bid including misrepresentations; and (iii) reflected the director had signed the firm's bid submission with a declaration, on behalf of the firm, that “we have examined and have no reservations to the Bidding Documents.” Sanctions Board Decision No. 39 (2010) at paras. 56–58.
27. In concluding it was more likely than not the respondents had engaged in a corrupt practice by making an improper payment to influence a public official in contract execution, the Sanctions Board found the totality of the evidence was sufficient to show the respondents' direct participation as principals and co-perpetrators in the corrupt arrangement. Accordingly, the Sanctions Board found it unnecessary to consider the potential applicability of alternative theories of secondary liability for the respondents. Sanctions Board Decision No. 41 (2010) at para. 84.
28. In concluding it was more likely than not the respondents had engaged in fraudulent practices by submitting forged bid securities and performance securities in at least ten instances spread over two periods, the Sanctions Board stated the record supported a finding of (i) direct liability for the individual respondent, who admittedly knew of the first set of forgeries, which the individual permit-

ted to continue, and of the continued risks leading to a second set of forgeries, which the individual did not act to prevent; and (ii) direct and/or vicarious liability for the respondent firm, which bore responsibility for the conduct of the individual respondent as its president, owner, and sole shareholder, and the acts of its other employees apparently acting within the scope of their authority and in the absence of any real supervision, training, or compliance regime. Sanctions Board Decision No. 41 (2010) at para. 85.

29. The Sanctions Board considered the respondent firm liable for the acts of its employee under the doctrine of *respondeat superior* where the respondent firm did not deny liability for the acts of an employee alleged to have engaged in fraudulent practices, and the record did not contain any evidence to show the firm had applied adequate controls or supervision to prevent or detect the types of misrepresentations the employee made on the firm's behalf. Sanctions Board Decision No. 44 (2011) at para. 52.
30. As a general principle, a respondent cannot avoid liability by carrying out through an agent or affiliate any conduct that would be sanctionable if carried out directly by the respondent. Sanctions Board Decision No. 45 (2011) at para. 41.
31. Where the respondent disclaimed responsibility for the acts of an agent who lacked a valid general power of attorney to represent the respondent at the time of the tender, the Sanctions Board rejected the respondent's position because the record contained a specific power of attorney, of undisputed authenticity, by which the respondent had specifically authorized the agent to participate and act on its behalf in the tender. Sanctions Board Decision No. 45 (2011) at para. 41.
32. A respondent cannot disclaim responsibility for a subsidiary within its scope of control merely because the respondent has declined to exercise that control. Sanctions Board Decision No. 45 (2011) at para. 42.
33. The Sanctions Board found that a respondent was in a position to exercise control over its subsidiary where the respondent was the largest of four shareholders in the subsidiary, with fifty percent of the subsidiary's shares and a representative on the subsidiary's board of directors; the respondent could have utilized the quorum requirement for shareholders' meetings to ensure its participation and voice in the subsidiary's operations; and a director of the respondent, who served as the respondent's representative on the subsidiary's board, stated that, in legal terms, the subsidiary could not act independently and without consulting the respondent. Sanctions Board Decision No. 45 (2011) at para. 42.

34. Where the record showed the respondent had been aware of past problems and potential conflicts of interest involving its authorized representative and subsidiary, the Sanctions Board found the respondent's failure to even attempt to monitor or enact any controls over its authorized representative and subsidiary with regard to the bid at issue could be considered "willful blindness." Sanctions Board Decision No. 45 (2011) at para. 44.
35. Because the Sanctions Board Statute and Sanctions Procedures do not provide any basis on which to consider a national law framework as controlling in the Bank's sanctions proceedings, the scope of a respondent's liability under the Bank's administrative sanctions process may not be coextensive with the scope of its potential liability under national law. In the case presented, the Sanctions Board did not accept that national law principles, as the respondent asserted, would define the respondent's liability for the acts of its agent or affiliate. Sanctions Board Decision No. 45 (2011) at para. 46.

C. Evidence

1. Weight and Sufficiency

36. The Sanctions Board significantly discounted the value of confidential testimonial evidence of corrupt practices when such testimony was given by the respondents' competitors and the evidence was withheld from the respondents in accordance with Section 7(c) of the Sanctions Committee Procedures without any clear statement from INT as to the basis for such withholding. In such circumstances, the Sanctions Board gave far lesser weight to the testimonial evidence than to the documentary and other evidence in the record. Sanctions Board Decision No. 1 (2007) at para. 7.
37. Where the respondents' response did not include a certification as required by Section 10(2) of the applicable Sanctions Procedures to attest "that the information contained therein is true, complete and correct to the best of the signer's knowledge after the exercise of reasonable due diligence in reviewing the matter and the records of the Respondent within Respondent's possession or control," the Sanctions Board admitted the response into the record, but considered the absence of the certification in determining the weight to be given to the response. Sanctions Board Decision No. 27 (2010) at paras. 20–21; Sanctions Board Decision No. 39 (2010) at paras. 61–62.
38. In evaluating testimonial evidence from representatives of the purported issuers of allegedly forged performance certificates, the Sanctions Board noted a prefer-

ence for interviewees to write their attestations of false document in their own words, rather than—as in the case presented—use prepared forms on World Bank letterhead including pre-typed text along with blanks to be completed in hand-writing. The Sanctions Board found sufficient additional evidence to support a finding of forgery, however. Sanctions Board Decision No. 37 (2010) at para. 43.

39. The Sanctions Board noted that the period of time—at least six years—that had elapsed between the date the alleged fraudulent practices came to the World Bank's attention and the initiation of the sanctions proceeding could, but did not necessarily, impact on the weight it attached to the evidence presented and also could impact on the fairness of the process for the respondents. Sanctions Board Decision No. 38 (2010) at para. 54.
40. In determining whether the respondent had engaged in collusion, the Sanctions Board held it was necessary to look not just at specific denials of collusive practices by certain witnesses, as pointed out by the respondent, but also at the totality of the evidence, including all statements made in the interviews, read in context and weighted for relative credibility. The Sanctions Board observed that initial denials of alleged participants in a collusive scheme must be read against the same witnesses' subsequent statements and apparent admissions once they have been confronted with documentary evidence of indicia of collusion. It cannot be expected or required that all participants in an alleged collusive arrangement will spontaneously and consistently admit the charges. Sanctions Board Decision No. 40 (2010) at para. 25.
41. In determining the appropriate weight to be accorded the testimonial evidence provided by interviews, the Sanctions Board noted the use of summary records of interview, which lack the intrinsic accuracy of verbatim transcripts, as well as lack of indication in the record that all such records of interview were reviewed or signed by the interviewees to attest to their basic accuracy. Sanctions Board Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34.
42. The Sanctions Board considered that an apparent inconsistency in a witness's statements regarding the amount of an alleged bribe must be viewed against the full context of what appeared to be such witness's detailed, candid admissions against self-interest, which were corroborated by contemporaneous documentation and other witnesses. Sanctions Board Decision No. 41 (2010) at para. 32.
43. Contemporaneous documentary evidence from multiple sources provided support for a finding that the respondents had paid a sum of money to a designated

account with the understanding the payment was for the benefit of a public official, identified in the wire transfer by first name, of the implementing agency identified in the wire transfer by its acronym. Although the respondents argued it would be illogical to document a corrupt payment by explicitly naming the official or agency in the payment records, the Sanctions Board did not find the respondents' argument so compelling as to automatically discredit the evidence of such documentation. While most parties engaged in corrupt practices may be expected to try to conceal evidence, the respondents' failure to do so consistently was not dispositive in light of all the evidence. Sanctions Board Decision No. 41 (2010) at para. 33.

44. The Sanctions Board noted that because the record did not appear to reflect authentication of all the email communications included in the record or whether, given the respondents' self-described practice of "very limited" email retention, authentication of the respondents' emails would have been possible at the time of the investigation, it would weigh the evidence provided by these email communications accordingly. Sanctions Board Decision No. 41 (2010) at para. 45.
45. Where the available documentary evidence of an alleged written misrepresentation was not fully legible in key phrases, the Sanctions Board found it could rely on a reasonable inference, taken in context, of the precise wording of the document, and the fact that the respondent did not dispute INT's characterization of the wording at issue. Sanctions Board Decision No. 44 (2011) at para. 27.
46. While the intrinsic accuracy of handwritten notes and meeting minutes would normally be an evidentiary concern where they served as the only evidence of an alleged oral misrepresentation, the Sanctions Board found that the content of an individual's oral statement in the case presented could be considered confirmed by the individual's follow-up letter of the same day. Sanctions Board Decision No. 44 (2011) at para. 28.
47. As the Sanctions Board has noted in past decisions, a summary record of interview prepared by INT—particularly a record not reviewed or confirmed as accurate by the interviewee—is not the best evidence of an oral statement. This would be particularly true of a party's apparent admission of potential misconduct, or elements thereof. In the case presented, the Sanctions Board nonetheless gave weight to the respondent's apparent admission of intent to influence contract execution as reflected in the record of interview, observing that a finding of such intent was supported by the documentary evidence of communications between the respondent and the borrower, and not contested by the respondent. Sanctions Board Decision No. 44 (2011) at para. 45.

2. Testimonial Evidence

48. The Sanctions Board significantly discounted the value of confidential testimonial evidence of corrupt practices when such testimony was given by the respondents' competitors and the evidence was withheld from the respondents in accordance with Section 7(c) of the Sanctions Committee Procedures without any clear statement from INT as to the basis for such withholding. In such circumstances, the Sanctions Board gave far lesser weight to the testimonial evidence than to the documentary and other evidence in the record. Sanctions Board Decision No. 1 (2007) at para. 7.
49. The Sanctions Board considered testimonial evidence of multiple witnesses: some of whom had been identified in the Notice of Sanctions Proceedings, some of whom were anonymous, and others whose identities had been withheld from the respondents as confidential pursuant to a previous determination under Section 8(3) of the applicable Sanctions Procedures. Sanctions Board Decision No. 4 (2009) at para. 3.
50. In reaching the conclusion it was more likely than not the respondent organization had engaged in fraud by submitting a falsified curriculum vitae (CV) as part of its contract proposal, the Sanctions Board relied primarily on the signed written statement of the individual whose CV had been submitted, stating the CV had been falsified, contained a forged signature, and had been submitted without the individual's consent; as well as the admission of the respondent's former executive director to having falsified and submitted the CV without the individual's consent. Sanctions Board Decision No. 6 (2009) at para. 6.
51. In concluding it was more likely than not the respondents had engaged in fraud by submitting a falsified certificate of previous experience as part of a contract proposal, the Sanctions Board relied primarily on the written statement of the organization purported to have issued the certificate, as well as the admissions of both the respondent organization and individual respondent that the certificate was false. Sanctions Board Decision No. 12 (2009) at para. 6.
52. The Sanctions Board considered the respondents' assertions of improper conduct by INT with respect to the interview of the individual respondent, who had complained of being interviewed at length, without understanding the questions due to lack of proper knowledge of English and lack of assistance from a qualified interpreter; being put under great duress to admit to fraud and corruption; and not being provided with minutes of the discussions for review and signing, thereby leading to various inaccuracies in INT's records of interview. The Sanctions Board found, however, that

the evidence in the record lacked sufficient probative value to support the respondents' assertions. Sanctions Board Decision No. 30 (2010) at paras. 17, 32.

53. In evaluating testimonial evidence from representatives of the purported issuers of allegedly forged performance certificates, the Sanctions Board noted a preference for interviewees to write their attestations of false document in their own words, rather than—as in the case presented—use prepared forms on World Bank letterhead including pre-typed text along with blanks to be completed in handwriting. The Sanctions Board found sufficient additional evidence to support a finding of forgery, however. Sanctions Board Decision No. 37 (2010) at para. 43.
54. The Sanctions Board found support for a finding of collusion where INT's records of interview indicated statements by representatives of two bidders—including the respondent—that could be construed to some degree as admissions of collusive arrangements. According to one record of interview, the respondent's representative started to admit a "verbal or gentleman's agreement" among the three bidders that because of the limited work opportunities in their small town, a winning bidder in one tender would either not participate in the next tender or deliberately give a higher price so as to lose. According to another record of interview, the representative of another bidder admitted to having known about the proximity in bid prices, and stated all three bidders had made a mistake and should have been more careful. Sanctions Board Decision No. 40 (2010) at para. 24.
55. In determining whether the respondent had engaged in collusion, the Sanctions Board held it was necessary to look not just at specific denials of collusive practices by certain witnesses, as pointed out by the respondent, but also at the totality of the evidence, including all statements made in the interviews, read in context and weighted for relative credibility. The Sanctions Board observed that initial denials of alleged participants in a collusive scheme must be read against the same witnesses' subsequent statements and apparent admissions once they have been confronted with documentary evidence of indicia of collusion. It cannot be expected or required that all participants in an alleged collusive arrangement will spontaneously and consistently admit the charges. Sanctions Board Decision No. 40 (2010) at para. 25; Sanctions Board Decision No. 45 (2011) at para. 34.
56. In determining the appropriate weight to be accorded the testimonial evidence provided by interviews, the Sanctions Board noted the use of summary records of interview, which lack the intrinsic accuracy of verbatim transcripts, as well as lack of indication in the record that all such records of interview were reviewed or signed by the interviewees to attest to their basic accuracy. Sanctions Board

Decision No. 40 (2010) at para. 26; Sanctions Board Decision No. 41 (2010) at para. 45; Sanctions Board Decision No. 45 (2011) at para. 34.

57. The Sanctions Board found that a record of general business cooperation among the three bidders, including acknowledgments by various representatives of the three firms of their close cooperation, and reference to the others as “partners” or “business colleagues” who would inform each other about “common business interests,” was neither a viable explanation for the proximity of bids in an allegedly collusive scheme, nor presumptive proof of collusion between the bidders. Sanctions Board Decision No. 40 (2010) at para. 27.
58. The Sanctions Board found the most direct, comprehensive support for the corruption allegations was provided by records of interview with a witness who described in detail the events and discussions involving an implementing agency official that led to an agreement for a corrupt payment; the modality for the actual transfer of funds by the respondents; and subsequent attempts to recover the payment after the contract at issue had been cancelled. The Sanctions Board considered that an apparent inconsistency in such witness’s statements regarding the amount of an alleged bribe must be viewed against the full context of what appeared to be the witness’s detailed, candid admissions against self-interest, which were corroborated by contemporaneous documentation and other witnesses. Sanctions Board Decision No. 41 (2010) at para. 32.
59. Although the Sanctions Board found INT’s records of interview with one witness appeared to corroborate the corruption allegations in several respects, it did not accept INT’s claim that such witness had provided “confirmation” that the given name indicated on the wire transfer for the alleged bribe referred to a particular government official. The Sanctions Board found no clear basis on which the witness might be considered to have particular knowledge as to whom the respondents intended to refer, particularly when the witness had specifically stated in the same interview that the identities of the project officials involved had not been disclosed to the witness. Sanctions Board Decision No. 41 (2010) at para. 39.
60. Where the record reflected that an INT interviewer incorrectly stated factual details at various points in some interviews, the Sanctions Board determined that, to the extent a witness appeared to have relied upon the interviewer’s misstatement of fact, the Sanctions Board would not credit that portion of the witness’s testimony prompted by such misstatement. Sanctions Board Decision No. 45 (2011) at para. 35.

61. In assessing the weight to accord to a witness's testimony, the Sanctions Board recognized certain weaknesses in the testimony, including an unsupported claim regarding past employment, but noted that the witness's statements in interviews over consecutive years appeared to have been largely consistent on the core allegation at issue. Sanctions Board Decision No. 45 (2011) at para. 36.
62. In assessing the weight to accord to the testimony of a witness whose statements showed more fundamental inconsistencies, the Sanctions Board noted it was not clear what inspired the witness's dramatic change of position, but observed that the witness's later admission of collusive behavior was more consistent with other testimonial and documentary evidence in the record. Sanctions Board Decision No. 45 (2011) at paras. 37–38.
63. The Sanctions Board considered it unsurprising that a witness alleged to have engaged in potential misconduct might originally resist admitting to the charges, contrary to his or her later admissions. It also noted, however, that unexplained inconsistencies between a witness's original detailed interview statements compared to his or her later admissions may be considered to affect the overall credibility of the witness's testimony. Sanctions Board Decision No. 45 (2011) at para. 38.

3. Circumstantial Evidence

64. The Sanctions Board gave primary weight to the circumstantial evidence of collusion uncovered by INT during the course of its review of procurement documentation associated with the projects at issue. Sanctions Board Decision No. 1 (2007) at para. 6.
65. The Sanctions Board considered particularly compelling the circumstantial evidence of identical pricing between the respondents in the same bid tender, finding the respondents had failed to provide an adequate explanation for the incident and this evidence supported the conclusion it was more likely than not the respondents had engaged in collusive practices. Sanctions Board Decision No. 1 (2007) at para. 6.
66. The Sanctions Board found circumstantial evidence of collusion where the record reflected an otherwise inexplicable degree of congruity across the bid prices contained in the three bids at issue, including a significant number of unit prices that were either identical or differed consistently by small, standardized amounts across the three bids; identical total bid prices in several sections of two bids (in-

cluding the respondent's bid); and insignificant variance between the total prices of all bids. Sanctions Board Decision No. 40 (2010) at para. 21.

67. The Sanctions Board found unpersuasive a respondent's attribution of similar bid prices to the fact of shared suppliers in a small market, observing that a simple commonality of suppliers—for which the respondent had not presented supporting evidence—would not explain the high degree of congruity across so many of the unit prices and total prices contained in the bids, nor the systematic small variations between prices. Sanctions Board Decision No. 40 (2010) at para. 21.
68. The Sanctions Board found evidence of collusion where the record showed physical similarities across bids indicating their shared preparation, including the use of identical envelopes with cover sheets using the same type font and style; the appearance of an identical computer file path number at the bottom of different bidders' documents; the same number of fields left blank; similar handwriting in particular fields; identical substantive and spelling errors; the use of common contact information; and the apparent re-use of bidding documents from one firm, whose name had been partially concealed with correction fluid, by another firm. Sanctions Board Decision No. 40 (2010) at para. 22.
69. The Sanctions Board found a record of general business cooperation among the three bidders, including acknowledgments by various representatives of the three firms of their close cooperation, and reference to the others as "partners" or "business colleagues" who would inform each other about "common business interests," was neither a viable explanation for the proximity of bids in an allegedly collusive scheme, nor presumptive proof of collusion between the bidders. The extent of general business cooperation among the three firms in itself neither proved nor disproved the alleged misconduct. Sanctions Board Decision No. 40 (2010) at para. 27.

D. Sanctionable Practices

1. Collusion

a. Collusion: Definitions

In cases brought under the January 1995 version of the Procurement Guidelines (revised January and August 1996, September 1997, and January 1999) or the January 1997 version of the Consultant Guidelines (revised September 1997, January 1999, and May 2002), the definition of collusive practice is subsumed within the following definition of fraudulent practice:

“Fraudulent practice” means a misrepresentation of facts in order to influence a [procurement/selection] process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among [bidders/consultants] (prior to or after [bid submission/submission of proposals]) designed to establish [bid] prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

The following definition of collusive practice applies to cases brought under the May 2004 versions of the Procurement or Consultant Guidelines:

“Collusive practices” means a scheme or arrangement between two or more [bidders/consultants], with or without the knowledge of the Borrower, designed to establish [bid] prices at artificial, non-competitive levels.

The following definition of collusive practice applies to cases brought under the October 2006, May 2010, or January 2011 versions of the Procurement or Consultant Guidelines, or under the October 2006 or January 2011 versions of the Anticorruption Guidelines:

“Collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.

b. Collusion: Elements

70. In reviewing a collusion case under the May 2004 Procurement Guidelines, the Sanctions Board did not accept that proof of the first element of the definition of collusion—that a scheme or arrangement existed between bidders—would obviate the need to prove the second, distinct element of the definition of collusion—that such scheme or arrangement was designed to set prices at artificial, non-competitive levels. Sanctions Board Decision No. 45 (2011) at para. 51.
71. In reviewing a collusion case under the May 2004 Procurement Guidelines, the Sanctions Board held that the required showing that a collusive scheme or ar-

rangement was “designed to establish bid prices at artificial, non-competitive levels” did not necessarily equate to a showing of “high” or “higher prices.” The Sanctions Board stated that the inquiry goes to the nature of the pricing, not the simple quantitative level of the prices. The mere fact that a final bid price may be low relative to the prices in other bids or a cost estimate should not inoculate the low bidder against a finding of collusion. Colluding bidders might well agree to submit relatively low prices that would have been even lower but for the collusion. Without a low enough bid, colluding bidders may destroy any chance the designated winner would win the contract. Conversely, independent bidders may legitimately submit higher prices for any number of reasons. A showing of high prices is therefore neither necessary nor sufficient to establish collusion. Sanctions Board Decision No. 45 (2011) at para. 51.

c. Collusion: Evidence

72. The Sanctions Board gave primary weight to the circumstantial evidence of collusion uncovered by INT during the course of its review of procurement documentation associated with the projects at issue. Sanctions Board Decision No. 1 (2007) at para. 6.
73. The Sanctions Board considered as particularly compelling the circumstantial evidence of identical pricing between the respondents in the same bid tender, finding the respondents had failed to provide an adequate explanation for the incident and this evidence supported the conclusion it was more likely than not the respondents had engaged in collusive practices. Sanctions Board Decision No. 1 (2007) at para. 6.
74. The Sanctions Board concluded it was more likely than not the respondents had engaged in collusive practices based on a record that included testimonial evidence from certain confidential and non-confidential witnesses, which the Sanctions Board considered compelling; as well as circumstantial evidence INT alleged to be indicia of collusion, including high bid prices, symmetrical relationships among bids, bids containing significant errors, “clusters” of bids, “strange and unnatural” bid prices, submission of fraudulent bid securities, and the inconsistent application of criteria within the prequalification process. Sanctions Board Decision No. 4 (2009) at paras. 3, 6.
75. The Sanctions Board determined it was more likely than not the respondents had not engaged in a fraudulent practice in the form of collusion, even though the Sanctions Board noted with appreciation the respondents’ acknowledgment that

their actions with respect to the underlying procurement were a mistake and not consistent with best bidding practices, and welcomed the respondents' commitment to putting in place corporate compliance procedures to make sure a similar mistake would not recur in future. Sanctions Board Decision No. 5 (2009).

76. The Sanctions Board found sufficient evidence of collusion constituting fraudulent practice under the January 1999 Procurement Guidelines where the record reflected: (i) an otherwise inexplicable degree of congruity across bid prices; (ii) other physical evidence of similarities across bids that indicated their shared preparation; (iii) confirmation by multiple witnesses that the same individual had been involved in the preparation of all bids in question, at least on an administrative level; and (iv) statements by representatives of the respondent and another bidder that provided some support for a finding of collusive practices between the firms. Sanctions Board Decision No. 40 (2010) at paras. 20–24.
77. The Sanctions Board found circumstantial evidence of collusion where the record reflected an otherwise inexplicable degree of congruity across the bid prices contained in the three bids at issue, including a significant number of unit prices that were either identical or differed consistently by small, standardized amounts across the three bids; identical total bid prices in several sections of two bids (including the respondent's bid); and insignificant variance between the total prices of all bids. Sanctions Board Decision No. 40 (2010) at para. 21.
78. The Sanctions Board found unpersuasive a respondent's attribution of similar bid prices to the fact of shared suppliers in a small market, observing that a simple commonality of suppliers—for which the respondent had not presented supporting evidence—would not explain the high degree of congruity across so many of the unit prices and total prices contained in the bids, nor the systematic small variations between prices. Sanctions Board Decision No. 40 (2010) at para. 21.
79. The Sanctions Board found evidence of collusion where the record showed physical similarities across bids indicating their shared preparation, including the use of identical envelopes with cover sheets using the same type font and style; the appearance of an identical computer file path number at the bottom of different bidders' documents; the same number of fields left blank; similar handwriting in particular fields; identical substantive and spelling errors; the use of common contact information; and the apparent re-use of bidding documents from one firm, whose name had been partially concealed with correction fluid, by another firm. Sanctions Board Decision No. 40 (2010) at para. 22.

80. The Sanctions Board found further evidence of collusion where the record reflected confirmation by multiple witnesses that the same individual had been involved in the preparation of all three bids in question, at least on an administrative level. The Sanctions Board found that while the use of shared administrative support by different bidders on a contract is not in itself a prohibited practice or *per se* proof of collusion under the January 1999 Procurement Guidelines, it tends to support a finding of collusion when viewed in conjunction with other evidence of extensive and substantive similarities across the bids in question. Sanctions Board Decision No. 40 (2010) at para. 23.
81. The Sanctions Board found support for a finding of collusion where INT's records of interview indicated statements by representatives of two bidders—including the respondent—that could be construed to some degree as admissions of collusive arrangements. According to one record of interview, the respondent's representative started to admit a "verbal or gentleman's agreement" among the three bidders that because of the limited work opportunities in their small town, a winning bidder in one tender would either not participate in the next tender or deliberately give a higher price so as to lose. According to another record of interview, the representative of another bidder admitted to having known about the proximity in bid prices, and stated all three bidders had made a mistake and should have been more careful. Sanctions Board Decision No. 40 (2010) at para. 24.
82. In determining whether the respondent had engaged in collusion, the Sanctions Board held it was necessary to look not just at specific denials of collusive practices by certain witnesses, as pointed out by the respondent, but also at the totality of the evidence, including all statements made in the interviews, read in context and weighted for relative credibility. The Sanctions Board observed that initial denials of alleged participants in a collusive scheme must be read against the same witnesses' subsequent statements and apparent admissions once they have been confronted with documentary evidence of indicia of collusion. It cannot be expected or required that all participants in an alleged collusive arrangement will spontaneously and consistently admit the charges. Sanctions Board Decision No. 40 (2010) at para. 25.
83. The Sanctions Board found a record of general business cooperation among the three bidders, including acknowledgments by various representatives of the three firms of their close cooperation, and reference to the others as "partners" or "business colleagues" who would inform each other about "common business interests," was neither a viable explanation for the proximity of bids in an allegedly collusive scheme, nor presumptive proof of collusion between the bidders. The extent of general business cooperation among the three firms in itself neither

proved nor disproved the alleged misconduct. Sanctions Board Decision No. 40 (2010) at para. 27.

84. The Sanctions Board found ample support for the uncontested allegation that the bids submitted by the respondent and another firm had been jointly prepared with coordinated bid prices where documentary evidence showed numerous identical errors and physical or other similarities, the bid securities for the respondent and the other firm had been transposed in each other's bid package without explanation, and key witnesses provided corroborating statements indicating joint preparation. Sanctions Board Decision No. 45 (2011) at paras. 30–33.
85. The Sanctions Board found evidence that two firms had previously worked on the same project, but did not work together in any direct fashion, was not, in and of itself, persuasive or direct evidence of likely collusion between the two firms in a later Bank-financed project. Sanctions Board Decision No. 45 (2011) at para. 39.

2. Corruption

a. *Corruption: Definitions*

The following definition of corrupt practice applies to cases brought under the January 1995 version of the Procurement Guidelines (revised January and August 1996, September 1997, and January 1999) or the January 1997 version of the Consultant Guidelines (revised September 1997, January 1999, and May 2002):

“Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the [procurement/selection] process or in contract execution.

The following definition of corrupt practice applies to cases brought under the May 2004 versions of the Procurement or Consultant Guidelines:

“Corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the [procurement/selection] process or in contract execution.

The following definition of corrupt practice applies to cases brought under the October 2006, May 2010, or January 2011 versions of the Procurement or Consultant Guidelines, or under the October 2006 or January 2011 versions of the Anticorruption Guidelines:

“Corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

b. Corruption: Evidence

86. The Sanctions Board significantly discounted the value of confidential testimonial evidence of corrupt practices when such testimony was given by the respondents’ competitors and the evidence was withheld from the respondents in accordance with Section 7(c) of the Sanctions Committee Procedures without any clear statement from INT as to the basis for such withholding. In such circumstances, the Sanctions Board gave far lesser weight to the testimonial evidence than to the documentary and other evidence in the record. Sanctions Board Decision No. 1 (2007) at para. 7.
87. Where INT alleged respondents had engaged in corrupt practices on the basis of their participation in a collusive scheme involving politicians and government officials—and asserted each respondent’s liability either as a principal in a joint bribery enterprise or as a secondary party who “aided and abetted” the principals to pay such bribes—the Sanctions Board held that INT could not meet its burden of presenting evidence of corruption solely based on theories of culpability as a principal or secondary party participating in a collusive scheme, without providing sufficient evidence to support its claim the respondents had engaged in corrupt practices under the applicable definition in the Procurement Guidelines. Sanctions Board Decision No. 4 (2009) at para. 7.
88. Based upon the totality of the evidence and arguments in the record, and in accordance with the applicable standards of review, the Sanctions Board concluded it was more likely than not the respondents had engaged in corrupt practices. The Sanctions Board’s findings rested primarily on INT’s records of interview with various witnesses, contemporaneous documentary evidence in the record, and the lack of credible countervailing arguments from the respondents. Sanctions Board Decision No. 41 (2010) at para. 31.

89. The Sanctions Board found the most direct, comprehensive support for the corruption allegations was provided by records of interview with a witness who described in detail the events and discussions involving an implementing agency official that led to an agreement for a corrupt payment; the modality for the actual transfer of funds by the respondents; and subsequent attempts to recover the payment after the contract at issue had been cancelled. The Sanctions Board considered that an apparent inconsistency in such witness's statements regarding the amount of the alleged bribe must be viewed against the full context of what appeared to be the witness's detailed, candid admissions against self-interest, which were corroborated by contemporaneous documentation and other witnesses. Sanctions Board Decision No. 41 (2010) at para. 32.
90. Contemporaneous documentary evidence from multiple sources provided support for a finding that the respondents had paid a sum of money to a designated account with the understanding the payment was for the benefit of a public official, identified in the wire transfer by first name, of an implementing agency identified in the wire transfer by its acronym. Although the respondents argued it would be illogical to document a corrupt payment by explicitly naming the official or agency in the payment records, the Sanctions Board did not find the respondents' argument so compelling as to automatically discredit the evidence of such documentation. While most parties engaged in corrupt practices may be expected to try to conceal evidence, the respondents' failure to do so consistently was not dispositive in light of all the evidence. Sanctions Board Decision No. 41 (2010) at para. 33.
91. The Sanctions Board found contemporaneous email correspondence between the respondents and their partner reflected their common understanding that a wire transfer was intended as a payment to an implementing agency and its official as direct recipients; and after the contract had been cancelled, they expected the implementing agency's officials to return the money sent by the respondents. Sanctions Board Decision No. 41 (2010) at para. 35.
92. The Sanctions Board found procurement records from a Bank-financed project reflected that the implementing agency official identified by INT as the recipient of a corrupt payment to influence contract execution indeed had official responsibilities and some discretionary authority regarding the contract, including an important role with regard to the contract's procurement, and thus might have been expected or understood by the respondents and others to be in a position to influence the contract's execution as well. Sanctions Board Decision No. 41 (2010) at para. 36.

93. The Sanctions Board cited as relevant evidence that the contemporaneous record included a copy of a “bill of acknowledgment,” apparently issued by an employee of the implementing agency after the contract at issue had been cancelled, by which the employee acknowledged owing the respondents the amount of money that INT had alleged was paid as a bribe. Sanctions Board Decision No. 41 (2010) at para. 37.
94. The Sanctions Board found additional support for INT’s corruption allegation in INT’s record of interview with a witness who described various discussions with the implementing agency official alleged to have requested the bribe, and the specific modalities by which the payment was made to the official and then—after cancellation of the contract at issue—partially returned to the respondents. Sanctions Board Decision No. 41 (2010) at para. 38.
95. Although the Sanctions Board found INT’s records of interview with one witness appeared to corroborate the corruption allegations in several respects, it did not accept INT’s claim that such witness had provided “confirmation” that the given name indicated on the wire transfer for the alleged bribe referred to a particular government official. The Sanctions Board found no clear basis on which the witness might be considered to have particular knowledge as to whom the respondents intended to refer, particularly when the witness had specifically stated in the same interview that the identities of the project officials involved had not been disclosed to the witness. Sanctions Board Decision No. 41 (2010) at para. 39.

3. Fraud

a. *Fraud: Definitions*

The following definition of fraudulent practice applies to cases brought under the January 1995 version of the Procurement Guidelines (revised January and August 1996, September 1997, and January 1999) or the January 1997 version of the Consultant Guidelines (revised September 1997, January 1999, and May 2002):

“Fraudulent practice” means a misrepresentation of facts in order to influence a [procurement/selection] process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among [bidders/consultants] (prior to or after [bid submission/submission of proposals]) designed to establish [bid] prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

The following definition of fraudulent practice applies to cases brought under the May 2004 versions of the Procurement or Consultant Guidelines:

“Fraudulent practice” means a misrepresentation or omission of facts in order to influence a [procurement/selection] process or the execution of a contract.

The following definition of fraudulent practice applies to cases brought under the October 2006, May 2010, or January 2011 versions of the Procurement or Consultant Guidelines, or under the October 2006 or January 2011 versions of the Anticorruption Guidelines:

“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.

b. Fraud: Elements

96. The Sanctions Board rejected the respondents’ argument that “detriment to the Borrower,” as required under the definition of fraudulent practices set out in the January 1999 Procurement Guidelines, is limited to tangible harms such as proven monetary losses. As a matter of law, the Sanctions Board found no support for such argument where the plain text of the Procurement Guidelines expresses no such restriction, and the Bank could easily have specified such a limitation had it intended to so limit the definition of sanctionable fraud. Further, to the extent other provisions of the Sanctions Procedures may be considered to have any relevance, and contrary to the respondents’ position, Section 19(5)(c) of the applicable Sanctions Procedures refers to both tangible and intangible harms as potential factors in the determination of appropriate sanctions. Accordingly, the Sanctions Board concluded the element of “detriment to the Borrower” may be satisfied by a showing of tangible or intangible harm. Sanctions Board Decision No. 41 (2010) at paras. 70–72.
97. Although there is no explicit standard of *mens rea*, whether “knowing or reckless” or otherwise, in the definition of fraudulent practices set out in the Procurement Guidelines prior to October 2006, the “knowing or reckless” standard may be implied under earlier definitions of fraudulent practices because the Bank’s legislative history reflects that the incorporation of this standard in October 2006 was intended only to make the pre-existing standard for *mens rea* explicit, not to ar-

ticulate a new limitation. Sanctions Board Decision No. 41 (2010) at paras. 74–75; Sanctions Board Decision No. 44 (2011) at para. 22.

c. Fraud: Evidence

98. In reaching the conclusion it was more likely than not the respondent firm had engaged in fraudulent practices by forging documents, the Sanctions Board relied primarily on a written statement from the documents' purported issuer that the documents had been forged, as well as oral and written admissions of the respondent firm's director general that a former employee had forged the documents. Sanctions Board Decision No. 2 (2008) at para. 4.
99. The Sanctions Board held an individual respondent, the director general of the respondent firm, responsible for the fraudulent misconduct of the firm, even where the record did not contain allegations or evidence the individual had personally committed the forgeries, where there was evidence the individual maintained close operational control over the small firm and had been in a position to put in place appropriate control mechanisms that would have prevented the fraudulent practices, but failed to do so. Sanctions Board Decision No. 2 (2008) at para. 5.
100. In reaching the conclusion it was more likely than not the respondent organization had engaged in fraud by submitting a falsified curriculum vitae (CV) as part of its contract proposal, the Sanctions Board relied primarily on the signed written statement of the individual whose CV had been submitted, stating the CV had been falsified, contained a forged signature, and had been submitted without the individual's consent; as well as the admission of the respondent's former executive director to having falsified and submitted the CV without the individual's consent. Sanctions Board Decision No. 6 (2009) at para. 6.
101. The Sanctions Board determined both a respondent organization and its director named as an individual respondent had engaged in fraudulent practices when the organization included in its contract proposal a falsified experience certificate, and the individual signed the contract proposal on the organization's behalf in the individual's capacity as director. In reaching this conclusion, the Sanctions Board relied primarily on the written statement of an organization purported to have issued the certificate, as well as the admissions of both respondents, that the certificate was false. Sanctions Board Decision No. 12 (2009) at para. 6.
102. The Sanctions Board determined it was more likely than not both a respondent organization and its executive director named as an individual respondent had

engaged in fraudulent practices when the respondents submitted a technical proposal including a certificate of prior experience that they knew at the time of submission to be incorrect. The Sanctions Board found they had engaged in this misrepresentation of fact to influence the selection process of the contract to the detriment of the borrower. Sanctions Board Decision No. 27 (2010) at para. 19.

103. Where the record indicated a respondent firm, acting through its chairman and chief executive officer who was named as an individual respondent, submitted a contract proposal containing information regarding the firm's experience that both respondents knew at the time of submission to be incorrect, the Sanctions Board found the respondents had engaged in a misrepresentation to bolster the firm's experience and influence the selection process for the contract, thereby engaging in a fraudulent practice. Sanctions Board Decision No. 28 (2010) at paras. 37–38.
104. Despite the respondent's claims including bona fide mistake and completion of all assignments in connection with the project at issue, the Sanctions Board found it was more likely than not the respondent had engaged in fraudulent practices by submitting a forged experience certificate and intentionally including the audit report of another entity in lieu of its own in support of a project proposal, thereby misrepresenting the respondent's experience and financial situation to influence the selection process. Sanctions Board Decision No. 29 (2010) at paras. 23, 31–33.
105. Despite the respondents' assertions that their use of allegedly fraudulent financial statements was an unintentional mistake that neither influenced the procurement process nor caused detriment to the borrower, the Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices when the respondent firm, and the individual respondent acting as the firm's authorized representative in signing the bids, engaged in a misrepresentation of fact by including a forged financial report with the firm's bids for two contracts, and did so to influence the procurement process to the detriment of the borrower. Sanctions Board Decision No. 30 (2010) at paras. 28–29.
106. Despite the respondent's assertions that it no longer had a relationship with its former executive director who had signed and submitted the technical proposal in an official capacity as executive director, and that it was not sufficiently aware of that individual's conduct as executive director, the Sanctions Board concluded it was more likely than not the respondent had engaged in fraudulent practices when it submitted a forged experience certificate as part of its technical proposal. Sanctions Board Decision No. 31 (2010) at paras. 14–15, 22–23.

107. In considering INT's assertion that representatives of each of the two purported issuers of performance certificates had confirmed by email that the certificates issued in their respective names were false, the Sanctions Board observed that the first issuer's email denying use of the respondent's equipment did not indicate whether the issuer may have used the referenced equipment previously, at the time the certificate was purportedly issued, or whether it had as a dealer provided the equipment to a third party; and the second issuer's email confirming that the supposed director's signature on the second certificate did not match the signature of any of its directors did not specify whether the allegedly forged signature may have matched that of any former director of the issuer at the time the certificate was purportedly issued. Sanctions Board Decision No. 36 (2010) at paras. 16, 18.
108. The Sanctions Board found it was more likely than not the respondent had engaged in fraud where the respondent's representative at the hearing stated, *inter alia*, that an employee had forged the two performance certificates in question and submitted them with the company's bid, although the company did not know who exactly had done so, and believed it must have been an overzealous employee who was acting under pressure and without understanding the implications of such conduct. Sanctions Board Decision No. 36 (2010) at paras. 26, 40.
109. The Sanctions Board found it was more likely than not the respondent had engaged in fraudulent practices by submitting a bid with forged performance certificates despite the respondent's claims that (i) the purported issuers of the certificates were in fact clients of the respondent; (ii) the respondent had fulfilled all of its obligations toward the issuers to their satisfaction; and (iii) it had duly performed on the contract awarded to it in response to the bid at issue. Sanctions Board Decision No. 37 (2010) at paras. 29, 44.
110. In evaluating testimonial evidence from representatives of the purported issuers of allegedly forged performance certificates, the Sanctions Board noted a preference for interviewees to write their attestations of false document in their own words, rather than—as in the case presented—use prepared forms on World Bank letterhead including pre-typed text along with blanks to be completed in handwriting. The Sanctions Board found sufficient additional evidence to support a finding of forgery, however. Sanctions Board Decision No. 37 (2010) at para. 43.
111. The Sanctions Board found sufficient evidence, other than standard attestations of false document, to support a finding of fraudulent practices where the record included (i) correspondence and/or transcripts of interview with representatives of the five named issuers of the allegedly forged performance certificates, each

denying issuance of the relevant certificate; (ii) evidence of physical discrepancies between the certificates submitted by the respondent and the type of certificates actually issued by the issuers; and (iii) the respondent's admission in the course of sanctions proceedings that an employee had falsified the certificates. Sanctions Board Decision No. 37 (2010) at paras. 14–24, 33, 43.

112. The Sanctions Board found the explanations submitted by the respondents insufficient to refute evidence in the Notice of Sanctions Proceedings or to demonstrate the legitimacy of the allegedly false performance certificates where the respondents asserted, among other points, that (i) a fire had destroyed most of its records, including proof of business relations with one of the purported issuers of the certificates; (ii) the lapse of over ten years between the bidding processes in question and the current sanctions proceedings, during which time key staff had left the employment of one of the purported issuers, cast question on the reliability of INT's evidence; and (iii) one of the purported issuers was motivated by business rivalry and its own problems with submitting false data to sponsor complaints against the respondents under false names. Sanctions Board Decision No. 38 (2010) at paras. 33–41, 52.
113. In finding the respondents had engaged in fraudulent practices by submitting false performance certificates as part of contract bids, and also caused to be submitted additional materials in connection with one bid which included one of the false performance certificates and an affidavit signed by the individual respondent swearing to the validity of such certificate, the Sanctions Board gave particular weight to interview records and signed statements from representatives of the certificates' purported issuers attesting that the performance certificates were false. Sanctions Board Decision No. 38 (2010) at para. 52.
114. The Sanctions Board found the Notice of Sanctions Proceedings contained sufficient evidence to demonstrate that one of the purported issuers of the performance certificates in question did not exist, where the Notice included a one-page field verification report from a firm visiting the purported issuer's stated address on behalf of INT, stating that the issuer did not exist there and referring to the statement of a neighboring shop owner at the stated address denying having seen or heard of the issuer at that address in the thirty-five years the neighbor had carried out business there. Sanctions Board Decision No. 38 (2010) at paras. 25, 52.
115. The Sanctions Board determined it was more likely than not the respondents, a firm and its director, had engaged in fraudulent practices by submitting three forged manufacturer authorizations as part of a bid, in a case where the record included

- (i) email correspondence and records of interview reflecting that representatives of the three manufacturers who had purportedly issued the authorizations had denied the authenticity of the documents; (ii) documentary evidence of discrepancies between the authorizations submitted by the respondents and the actual signature/-authorization of two of the manufacturers; and (iii) the respondents' admission in the course of sanctions proceedings that two of the authorizations had been altered. Sanctions Board Decision No. 39 (2010) at paras. 12–25, 36, 38, 59.
116. The Sanctions Board found it was more likely than not the respondents had engaged in fraudulent practices by submitting ten forged bank guarantees purportedly issued by two fictitious banking institutions where evidence in the record indicated the two banks used the same fictitious business address, which was actually the individual respondent's own home address; when INT inquired about the bank named in the first set of eight forged guarantees, relevant national authorities confirmed it was not registered with any of the relevant government agencies; and the respondents admitted to having submitted securities that were "manufactured internally" and "inaccurate" during the times in question. Sanctions Board Decision No. 41 (2010) at paras. 63–68.
117. Considering the element of "detriment to the Borrower" may be satisfied by a showing of tangible or intangible harm, the Sanctions Board found such standard to have been met where the respondents' use of forged bank guarantees served to distort the selection process; deprived the borrower in each instance of the benefits of a fair procurement process; caused borrowers to expend resources to review and evaluate the respondents' invalid bids; and, in those instances where the respondents ultimately received the contract, misled the borrowers to contract with a bidder willing to engage in unethical behavior. Sanctions Board Decision No. 41 (2010) at para. 72.
118. The Sanctions Board determined that the record supported a finding the respondents acted recklessly, at a minimum, if not knowingly, where the record reflected that they chose to operate with inexperienced and largely unsupervised students and interns as temporary "employees and volunteers"; created clear incentives for such personnel to take shortcuts to maximize bid output over accuracy or authenticity by using bid quotas and a "piecework" wage structure; and failed to take timely and appropriate compliance measures to mitigate the resultant risks, either before or after the first set of forgeries at issue. Sanctions Board Decision No. 41 (2010) at para. 76.
119. The Sanctions Board held that an individual respondent, as president, owner, and sole shareholder of the respondent firm, may properly be expected to have put

in place adequate procedures to ensure the accuracy of information in the respondent firm's bid submissions—each of which bore the individual respondent's name and signature—and may be considered reckless in failing to do so. Sanctions Board Decision No. 41 (2010) at para. 77.

120. The Sanctions Board found the individual respondent had acted with recklessness, if not actual knowledge of the misrepresentations, by permitting obviously forged bid securities to go out under the individual's signature, with each document clearly listing the individual's home address as the fictitious business address of the bank purportedly issuing the securities. Sanctions Board Decision No. 41 (2010) at para. 77.
121. The Sanctions Board found sufficient evidence to show misrepresentations of fact where the record contained contemporaneous third-party documentation contradicting the respondent's oral and written assertions regarding the status of contract execution. Sanctions Board Decision No. 44 (2011) at paras. 24–39.
122. The Sanctions Board found sufficient evidence that the respondent had made its misrepresentations knowingly where the various statements at issue appeared mutually inconsistent; and the respondent would have been aware of contradictory information, provided no evidence to support the claims made in its last statement, and did not deny it had made the alleged misrepresentations knowingly. Sanctions Board Decision No. 44 (2011) at paras. 40–43.
123. The Sanctions Board found sufficient evidence that the respondent's misrepresentations were made "in order to influence the execution of the contract," as required under the September 1997 Procurement Guidelines, where INT's record of interview indicated the respondent's representative had acknowledged the statements were meant to relieve pressure from the borrower for the respondent to fully satisfy contract requirements. Sanctions Board Decision No. 44 (2011) at para. 44.
124. The Sanctions Board found sufficient evidence of "detriment to the Borrower," as required under the September 1997 Procurement Guidelines, where evidence in the record indicated the misrepresentations at issue substantially complicated and delayed contract implementation and project closing, contributing to an unsatisfactory performance rating for the borrower; created a risk of physical damage to the project works; and caused the borrower to spend significant extra time and resources to ensure the respondent's performance under the contract. Sanctions Board Decision No. 44 (2011) at para. 46.

125. The Sanctions Board determined that multiple misrepresentations should be considered as one count of fraud insofar as they were made on the same subject matter and in the same manner, in quick succession, to the same interlocutors. Sanctions Board Decision No. 44 (2011) at para. 53.

E. Defenses

126. The Sanctions Board did not accept as a defense the respondent's assertions that its inclusion of incorrect documents in the project proposal was a matter of bona fide mistake, not fraud; and that it had left no assignment in connection with the project at issue incomplete or undone, and therefore caused no detriment to the borrower. Sanctions Board Decision No. 29 (2010) at paras. 23, 31–33.
127. The Sanctions Board did not accept as a defense the respondents' assertions that their use of the allegedly fraudulent financial statements (i) was not an intentional misrepresentation but rather an unintentional mistake, attributable to their lack of familiarity with the applicable procurement and accounting standards; (ii) did not influence the outcome of the procurement process, since the respondents claim they were in fact qualified and the lowest bidder; and (iii) did not cause any detriment to the borrower, since the respondents claim they successfully completed both contracts awarded to them on time and on budget and fully met quality standards. Sanctions Board Decision No. 30 (2010) at paras. 18–20, 28–29.
128. The Sanctions Board concluded it was more likely than not the respondents had engaged in fraudulent practices by submitting falsified financial statements as part of two bids despite the respondents' assertions that (i) there was no standard governing the valuation of company assets by the accounting or auditing profession in their country of nationality, nor any proper knowledge about commercial practices a company was required to follow; and (ii) because the auditors failed to include assets the respondents believed should have been included in the financial statements, the respondents believed they had to alter the statements to account for such assets. Sanctions Board Decision No. 30 (2010) at paras. 19–20.
129. The Sanctions Board considered the respondents' assertions of improper conduct by INT with respect to the interview of the individual respondent, who had complained of being interviewed at length, without understanding the questions due to lack of proper knowledge of English and lack of assistance from a qualified interpreter; of being put under great duress to admit to fraud and corruption; and not being provided with minutes of the discussions for review and signing, thereby leading to various inaccuracies in INT's records of interview. The Sanctions Board found,

however, that the record evidence lacked sufficient probative value to support the respondents' assertions. Sanctions Board Decision No. 30 (2010) at paras. 17, 32.

130. Despite the respondent's assertions that it no longer had a relationship with its former executive director who had signed and submitted the technical proposal in an official capacity as executive director, and that it was not sufficiently aware of that individual's conduct as executive director, the Sanctions Board found the respondent had not presented any evidence for a "rogue employee" defense or other defense demonstrating why the organization should not be held liable for the acts of its chief executive and authorized representative acting on its behalf under the doctrine of *respondeat superior*. The Sanctions Board noted the "continuity of management" in the organization from the time of the wrongdoing to the time of the sanctions proceedings, notwithstanding the executive director's resignation, and the absence in the record of any evidence that the executive director had taken responsibility for the fraudulent practice or that the executive director's resignation was the result of any punitive action taken by the organization in response to the wrongdoing. Sanctions Board Decision No. 31 (2010) at para. 24.
131. The Sanctions Board found the respondent had failed to present any persuasive evidence demonstrating why it should not be held responsible for the actions of its personnel acting on its behalf under the doctrine of *respondeat superior*, noting (i) while the respondent admitted its personnel had forged the certificates and submitted them as part of the bid, the respondent claimed its inquiry was ongoing and that it did not know who within the organization had engaged in, or had been aware of, the forgeries; and (ii) the record did not include any evidence that the respondent had at any time implemented any controls reasonably sufficient to prevent or detect the alleged fraudulent practices. Sanctions Board Decision No. 36 (2010) at para. 39.
132. The Sanctions Board found the explanations submitted by the respondents insufficient to refute evidence in the Notice of Sanctions Proceedings or to demonstrate the legitimacy of the allegedly false performance certificates where the respondents asserted, among other points, that (i) a fire had destroyed most of their records, including proof of business relations with one of the purported issuers of the certificates; (ii) the lapse of over ten years between the bidding processes in question and the current sanctions proceedings, during which time key staff had left the employment of one of the purported issuers, cast question on the reliability of INT's evidence; and (iii) one of the purported issuers was motivated by business rivalry and its own problems with submitting false data to sponsor complaints against the respondents under false names. Sanctions Board Decision No. 38 (2010) at paras. 33–41, 52.

133. The Sanctions Board noted that the period of time—at least six years—that had elapsed between the date the alleged fraudulent practices came to the World Bank’s attention and the initiation of the sanctions proceeding could, but did not necessarily, impact on the weight it attached to the evidence presented and also could impact on the fairness of the process for the respondents. Sanctions Board Decision No. 38 (2010) at para. 54.
134. In reaching its decision that the respondents, a firm and its director, had engaged in fraudulent practices by submitting three forged manufacturer authorizations as part of a bid, the Sanctions Board found the respondents had not presented any evidence, with respect to a “rogue employee” defense or otherwise, demonstrating why they should not be held responsible for the actions of the firm’s personnel acting on the firm’s behalf under the doctrine of *respondeat superior*. The Sanctions Board noted the record (i) did not include any evidence the firm had at any time implemented controls reasonably sufficient to prevent or detect the fraudulent practices alleged; (ii) showed no basis to find that the director was unaware of the lack of controls and resulting risks of submitting a bid including misrepresentations; and (iii) reflected the director had signed the firm’s bid submission with a declaration, on behalf of the firm, that “we have examined and have no reservations to the Bidding Documents.” Sanctions Board Decision No. 39 (2010) at paras. 56–58.
135. In finding the record did not include any evidence that the respondent firm had at any time implemented controls reasonably sufficient to prevent or detect the fraudulent practices alleged, the Sanctions Board noted (i) to the contrary, the respondents had asserted they relied on the honesty of their personnel because it was very difficult to control each person and their work; and (ii) although a basic “four-eye-principle”—that is, a review by someone other than the individual who forged each authorization—might have prevented the forged authorizations from being included in the bid, the firm did not appear to have such basic safeguards in place. Sanctions Board Decision No. 39 (2010) at para. 58.
136. The Sanctions Board rejected the respondent’s assertion that the proximity of the bids at issue was due to the bidders’ history of close cooperation, not to collusion, noting the record of general business cooperation among the three bidders was not a viable explanation for the proximity of the bids and did not disprove the alleged collusion. Sanctions Board Decision No. 40 (2010) at para. 27.
137. Contemporaneous documentary evidence from multiple sources provided support for a finding that the respondents had paid a sum of money to a designated account with the understanding the payment was for the benefit of a public official,

identified in the wire transfer by first name, of the implementing agency identified in the wire transfer by its acronym. Although the respondents argued it would be illogical to document a corrupt payment by explicitly naming the official or agency in the payment records, the Sanctions Board did not find the respondents' argument so compelling as to automatically discredit the evidence of such documentation. While most parties engaged in corrupt practices may be expected to try to conceal evidence, the respondents' failure to do so consistently was not dispositive in light of all the evidence. Sanctions Board Decision No. 41 (2010) at para. 33.

138. Where the respondents in a corruption case argued the payment in question was not a bribe but rather a legitimate payment to assist the respondent's partner in carrying out the "local component" of the contract, the Sanctions Board found the respondents' explanation unpersuasive because they offered no credible explanation why the partner organization, as the local partner and original party to the contract, would not be expected to finance the local component itself; or why a payment supposedly intended for the sole use of the partner would have been directed not simply to the partner's regular bank accounts, but rather to the implementing agency and another named individual through a third party's bank account. Sanctions Board Decision No. 41 (2010) at para. 41.
139. The Sanctions Board found that evidence in the record contradicted the respondents' overarching assertion they did not know or suspect at any time prior to INT's inquiries that a bribe had been requested or agreed to be paid to any official at the implementing agency. In particular, the Sanctions Board noted a record of interview in which the individual respondent recalled being informed that the local partner had made "other commitments" toward the implementing agency for "distribution of the profits" and understanding that the local partner had "made promises" to agency officials, perhaps even to win the contract in the first place. Sanctions Board Decision No. 41 (2010) at para. 42.
140. Where an individual respondent alleged to have engaged in corruption claimed naïveté and lack of business acumen, exacerbated by a language barrier, the Sanctions Board found these assertions lacked credibility given the individual's corporate and international development experience, advanced studies, personal background and longtime commitment to working in the region involved, which undercut the suggestion the individual was entirely ignorant of the business environment surrounding the contract and the alleged corruption. In terms of the claimed language barrier, the Sanctions Board further noted that the record indicated the respondents' local partner and the agency official involved were both able to, and did, communicate with the individual respondent about the contract and payment at issue in a

language in which the individual was fluent; and the respondents failed to explain why the individual did not use an interpreter during the visit to the project country, had the individual genuinely perceived a language barrier at the time. Sanctions Board Decision No. 41 (2010) at para. 43.

141. The Sanctions Board found unpersuasive the respondents' attempts to attack the credibility of INT's case by arguing they lacked any motive to make the alleged corrupt payment because the purported bribe payment was equal to or greater than their usual profit margin on such contracts. Noting the respondents' admission that their real motivation to work with the local partner on the contract was to gain that partner's assistance in executing the respondent firm's separate contract with another large international organization, which the respondents hoped would lead to more contracts, the Sanctions Board observed that the respondents had failed to address the countervailing possibility that they had an incentive to participate in the corrupt arrangement for the sake of other business opportunities. Sanctions Board Decision No. 41 (2010) at para. 44.
142. Despite the respondents' argument they would not have understood a "commission" to be necessary to facilitate the issuance of purchase orders under a contract—and therefore had no motive to make any payment to an official of the implementing agency, as INT had alleged—the Sanctions Board found the record contained credible evidence that the official demanded such payment and the respondents ultimately were willing to make, and made, the payment. Sanctions Board Decision No. 41 (2010) at para. 44.
143. The Sanctions Board rejected the respondents' argument that their use of admittedly forged bid and performance securities caused no "detriment to the Borrower" because they could have obtained and submitted legitimate bank guarantees, and performed adequately on the contracts they received. The Sanctions Board noted the record of the respondents' own previous admissions indicated they sometimes had difficulties obtaining bank guarantees. These admissions underscored that they used forgery to create documents they may not have been able to get legitimately, and to obtain contracting opportunities for which they had not been qualified, in the face of direct economic risk to the borrowers. Sanctions Board Decision No. 41 (2010) at paras. 70, 73.
144. The Sanctions Board found that the respondents' belated assertion that forged documents were prepared by a family member of the individual respondent supported placing even more responsibility for the forgeries on the individual respondent, because it made such individual's claim to have been entirely unaware

of the family member's *modus operandi* seem even less credible. In particular, the Sanctions Board noted the individual respondent's self-described discussions with the family member about creative alternatives to quickly obtain bid securities should have spurred more oversight from the individual respondent. Sanctions Board Decision No. 41 (2010) at para. 77.

145. In a fraud case involving multiple submissions of forged documents over a period of years, the Sanctions Board found the respondents' characterization of their conduct as having involved only a "small number" of "non-authentic" documents to be an unacceptable attempt to downplay the gravity of the respondents' misconduct. The Sanctions Board noted the respondents had used admittedly incomplete data to generate their calculations, and excluded from their figures what they admitted to have been a number of other defective documents submitted. Most importantly, the Sanctions Board found that such a number of fraudulent documents should be cause for alarm, not exculpation, as even a single instance of forgery would constitute sanctionable misconduct; and a dozen or more instances is extremely egregious. Sanctions Board Decision No. 41 (2010) at para. 78.
146. The Sanctions Board found no basis to excuse the respondents' fraudulent practices based on remedial efforts the respondents claimed to have taken or to have been preparing to take where (i) the respondents admitted to having no appropriate compliance regime in place before or during the first set of forgeries and still failed to take immediate corrective actions as soon as they learned of those forgeries; (ii) the record showed the manifest insufficiency and/or absence of the respondents' purported remedial measures from after the first set of forgeries through the second set of forgeries; and (iii) the respondents failed to timely submit any evidence to show remedial measures taken or planned more recently, up through the course of sanctions proceedings. Sanctions Board Decision No. 41 (2010) at paras. 79–82.
147. Where the respondents cited issuance of a company-wide directive instructing all personnel to desist from engaging in further forgeries as a remedial measure warranting exculpatory or mitigating consideration, the Sanctions Board noted that such a paper directive, unaccompanied by evidence of real systemic controls to ensure compliance, did not constitute adequate remedial measures and could not be invoked as a defense to liability. Sanctions Board Decision No. 41 (2010) at para. 81.
148. The Sanctions Board did not accept as a defense the respondent's claims that the works carried out under the contract at issue ultimately provided various political,

economic and other benefits to the borrower, as such assertions did not controvert the harm analysis by which the Sanctions Board concluded the respondent's fraudulent misrepresentations had caused detriment to the borrower in the process of contract execution. Sanctions Board Decision No. 44 (2011) at para. 50.

149. The Sanctions Board rejected the respondent's attempt to disavow the collusive behavior of its agent and subsidiary where the record showed the respondent (i) had specifically authorized the agent to represent it in the tender at issue; (ii) was in a position to exercise control over the subsidiary, even if it chose not to do so; and (iii) failed to monitor or enact any controls over its agent and subsidiary with regard to the bid, despite its awareness of past problems and potential conflicts of interest. Sanctions Board Decision No. 45 (2011) at paras. 41–44, 48.
150. The Sanctions Board rejected the respondent's suggestion that similar prices resulted from the use of a common subcontractor, rather than shared information, where the record showed a wide range of identical or systematically different unit prices extending far beyond the two types of items quoted by that subcontractor. Sanctions Board Decision No. 45 (2011) at para. 53.

F. Sanctions

1. Determination of Sanctions

151. In determining an appropriate sanction for collusive practices, the Sanctions Board may take into account the World Bank Sanctioning Guidelines to identify baseline sanctions for the substantive misconduct that reflect the Sanctions Board's determination of the degree of each respondent's responsibility for, and benefit from, the collusive scheme. Sanctions Board Decision No. 1 (2007) at para. 8.
152. The Sanctions Board determined that debarment for a period of three years was an appropriate sanction for the ringleader of a collusive scheme to obtain a disproportionately large number of contracts for the ringleader and its partner firm, and debarment for a period of one year was an appropriate sanction for the partner firm. For each respondent, the debarment extended to any organization or individual who directly or indirectly controls the respondent and any organization directly or indirectly controlled by the respondent. Sanctions Board Decision No. 1 (2007) at para. 8.
153. In a case involving the submission of five forged documents in relation to two Bank-financed projects, the Sanctions Board determined the appropriate sanction for the

respondent firm would be debarment for two years, which debarment would extend to any organization or individual who directly or indirectly controls the respondent firm and any organization directly or indirectly controlled by the respondent firm. This period would be extended for an additional three years if the firm failed to promptly put in place an effective corporate compliance program acceptable to the Bank and implement it in a manner satisfactory to the Bank. The Sanctions Board determined the appropriate sanction for the individual respondent, the director general of the respondent firm, would be debarment for a period of two years, which debarment would extend to any organization directly or indirectly controlled by the individual respondent. Sanctions Board Decision No. 2 (2008) at para. 6.

154. In determining sanctions, the Sanctions Board has been guided by the World Bank Sanctioning Guidelines in identifying a baseline sanction for the substantive misconduct, and then considered aggravating and mitigating factors relevant to the case. Sanctions Board Decision No. 2 (2008) at para. 7.
155. The Sanctions Board imposed a two-year debarment on the respondent firm, together with any organization or individual who directly or indirectly controls the respondent firm and any organization directly or indirectly controlled by the respondent firm, to be extended for an additional three years if the firm failed to promptly put in place an effective corporate compliance program acceptable to the Bank and implement it in a manner satisfactory to the Bank; and a two-year debarment for the individual respondent, together with any organization directly or indirectly controlled by the individual respondent. The Sanctions Board took into account as an aggravating factor that the fraudulent practices at issue involved multiple forgeries across two Bank-financed projects; and identified as mitigating factors the following: (i) the absence of financial loss caused to the projects; (ii) evidence that the contracts secured by the fraudulent advance payment guarantees had been successfully performed; (iii) the period of time—five years—that had elapsed from the date the fraudulent practices came to the notice of the Bank; (iv) the sanctions imposed on the respondent firm by the national executing agency implementing Bank-financed projects in that country (a one-year debarment and the required early repayment of advance payments); (v) the firm's self-imposed additional one-year exclusion from participation in such executing agency's bidding opportunities; (vi) the firm's voluntary exclusion from participating in Bank-financed procurements during the five-year period since the fraudulent practices came to the notice of the Bank; (vii) the firm's termination of the employee who committed the forgeries; and (viii) the firm's implementation of measures to prevent reoccurrence of such misconduct. Sanctions Board Decision No. 2 (2008) at para. 7.

156. In a case in which eight respondents were found to have engaged in a collusive scheme, the Sanctions Board imposed the most severe sanction, debarment for an indefinite period, on one company and its founder/president, together with any organization directly or indirectly controlled by either respondent, after taking into account, *inter alia*, the company's position as designated winner in the scheme and multiple witness statements identifying these respondents as the ringleaders in the scheme. The Sanctions Board considered as a further aggravating factor that the two respondents had engaged in multiple instances of misconduct, concluding that their conduct was sufficiently egregious as to warrant the most severe sanction. Sanctions Board Decision No. 4 (2009) at para. 8.
157. With respect to one of the designated winners in a collusive scheme, the Sanctions Board determined an appropriate sanction would be debarment for eight years for such respondent, together with any organization directly or indirectly controlled by the respondent, with the possibility that this period of ineligibility may be reduced or terminated by the Sanctions Board after five years if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented the program in a manner satisfactory to the Bank. In making this determination, the Sanctions Board took into account, *inter alia*, such respondent's position as a designated winner in the collusive scheme and considered as an aggravating factor that the respondent had participated in all rounds of bidding and was the designated winner in multiple rounds and for multiple contracts. Sanctions Board Decision No. 4 (2009) at para. 9.
158. With respect to two designated winners in a collusive scheme, the Sanctions Board determined an appropriate sanction would be debarment for six years for each respondent, together with any organization directly or indirectly controlled by either respondent, with the possibility that the period of ineligibility for either respondent may be reduced or terminated by the Sanctions Board after four years if the respondent has put in place an effective corporate compliance program and implemented the program in a manner satisfactory to the Bank. In making this determination, the Sanctions Board took into account, *inter alia*, the position of each of these respondents as a designated winner in the collusive scheme. Sanctions Board Decision No. 4 (2009) at para. 10.
159. With respect to one of the designated winners in a collusive scheme, the Sanctions Board determined an appropriate sanction would be debarment for five years for such respondent, together with any organization directly or indirectly controlled by the respondent, with the possibility that this period of ineligibility may be reduced or terminated by the Sanctions Board after three years if the respondent

has put in place an effective corporate compliance program and implemented the program in a manner satisfactory to the Bank. In making this determination, the Sanctions Board took into account, *inter alia*, the respondent's position as a designated winner in the collusive scheme, but also considered INT's representation that the respondent's cooperation had materially advanced the Bank's investigation. Sanctions Board Decision No. 4 (2009) at para. 11.

160. With respect to two of the designated losers in a collusive scheme, the Sanctions Board determined an appropriate sanction would be debarment for four years for each respondent, together with any organization directly or indirectly controlled by either respondent, with the possibility that the period of ineligibility for either respondent may be reduced or terminated by the Sanctions Board after two years if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented the program in a manner satisfactory to the Bank. In making this determination, the Sanctions Board took into account, *inter alia*, the position of each of these respondents as a designated loser in the collusive scheme. Sanctions Board Decision No. 4 (2009) at para. 12.
161. The Sanctions Board imposed a two-year debarment for fraudulent practices on the respondent, together with any organization or individual who directly or indirectly controls the respondent and any organization directly or indirectly controlled by the respondent, with the possibility that the period of ineligibility may be reduced or terminated after one year if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented the program in a manner satisfactory to the Bank. The Sanctions Board considered the following as mitigating factors: (i) the stepping down of the respondent's representative—its former executive director—who had taken responsibility for the fraudulent practice, and the lack of evidence connecting the respondent's current management with the misconduct; (ii) the absence of financial loss to the project at issue; and (iii) the lapse of a significant period of time—over four years—from the date the fraudulent practice came to the notice of the Bank, during which time the respondent represented it had not participated in Bank-financed procurements. Sanctions Board Decision No. 6 (2009) at para. 7.
162. After concluding it was more likely than not the respondent organization and its director named as an individual respondent had engaged in fraudulent practices when the organization included in its contract proposal a falsified experience certificate, and the individual signed the contract proposal on the organization's behalf in an official capacity as director, the Sanctions Board, considering both aggravating and mitigating factors, determined that debarment for three years

would be an appropriate sanction for each of the respondents, together with any organization directly or indirectly controlled by either respondent. Sanctions Board Decision No. 12 (2009) at para. 7.

163. After concluding it was more likely than not the respondent organization and its executive director named as an individual respondent had engaged in fraudulent practices by submitting a forged experience certificate as part of its technical proposal, the Sanctions Board, without express reference to aggravating or mitigating factors, determined that debarment for three years would be an appropriate sanction for each of the respondents, together with any organization or individual who directly or indirectly controls the respondent organization, and any organization directly or indirectly controlled by either of the respondents. Sanctions Board Decision No. 27 (2010) at para. 22.
164. Because the applicable Sanctions Procedures specifically provided the Sanctions Board, in determining an appropriate sanction, may consider a list of factors as well as “any other factor that the Sanctions Board or the Sanctions Board Panel deems relevant,” the Sanctions Board held it may consider such matters as the conduct of INT’s investigation. The Sanctions Board considered the respondents’ allegations of improper and inadequate conduct of the INT investigation, including racial motivation, but found that the evidence lacked sufficient probative value to support any of the assertions; and further noted the respondents had not availed themselves of the opportunity to provide live testimony at a hearing. The Sanctions Board therefore did not consider such claims relevant in determining the respondents’ culpability or an appropriate sanction. Sanctions Board Decision No. 28 (2010) at paras. 40–43.
165. After concluding it was more likely than not the respondents had engaged in fraudulent practices by submitting a contract proposal containing eight and misleading statements about the respondent firm’s experience, the Sanctions Board determined that an appropriate sanction would be debarment of each of the respondents, together with any organization or individual who directly or indirectly controls the respondent firm, and any organization directly or indirectly controlled by either of the respondents, for four years. Sanctions Board Decision No. 28 (2010) at para. 46.
166. When there was evidence in the form of several certificates specifying the death of the respondent organization’s former executive director, who had been named as an individual respondent, and no evidence or argument to the contrary, the Sanctions Board decided not to make any determination as to whether the former executive director had engaged in a sanctionable practice. Sanctions Board Decision No. 29 (2010) at para. 29.

167. After concluding it was more likely than not the respondent organization had engaged in fraudulent practices by submitting a project proposal containing a forged experience certificate and the audit report of another entity in lieu of its own, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent, together with any organization or individual who directly or indirectly controls the respondent, and any organization controlled by the respondent, for three years. Sanctions Board Decision No. 29 (2010) at para. 35.
168. In determining an appropriate sanction for the fraudulent practices carried out by respondents who had submitted with their bids for two contracts a forged financial report containing five falsified financial statements, the Sanctions Board took into account the respondents' claim of corrective measures. The Sanctions Board recognized the record did not include evidence of these measures, but considered the importance of encouraging the respondents to move forward in implementing a program of remedial action. The Sanctions Board determined that an appropriate sanction would be a two-year debarment for each of the respondents, together with any organization or individual who directly or indirectly controls the respondent firm, and any organization directly or indirectly controlled by either of the respondents; during which period the respondents would be required to promptly put in place an effective corporate compliance program acceptable to the Bank and to implement such program in a manner satisfactory to the Bank, or be automatically debarred for one additional year if the Sanctions Board were to determine that either of the conditions is not met. Sanctions Board Decision No. 30 (2010) at para. 31.
169. After concluding it was more likely than not the respondent had engaged in fraudulent practices by submitting a project proposal containing a forged experience certificate, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent, together with any organization or individual who directly or indirectly controls the respondent, and any organization directly or indirectly controlled by the respondent, for three years. Sanctions Board Decision No. 31 (2010) at para. 26.
170. After concluding it was more likely than not the respondent had engaged in fraudulent practices by submitting two forged performance certificates in a contract bid, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent, together with any organization directly or indirectly controlled by the respondent, for three years; provided, however, that after two years, the period of ineligibility may be reduced by up to one year if the respondent has put in place an effective corporate compliance program acceptable to the

Bank and implemented it in a manner satisfactory to the Bank. In determining an appropriate sanction, the Sanctions Board took into account as a mitigating factor the extent of the respondent's cooperation during the investigation, but not the eleventh-hour admissions of respondent's counsel at the hearing. Sanctions Board Decision No. 36 (2010) at paras. 41–42.

171. After concluding it was more likely than not the respondent had engaged in fraudulent practices by submitting a bid containing five forged performance certificates, and considering the respondent's cooperation in the investigation as a mitigating factor, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent, together with any organization or individual directly or indirectly controlled by the respondent, for three years; provided, however, that after two years the period of ineligibility may be reduced by up to one year if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented it in a manner satisfactory to the Bank. Sanctions Board Decision No. 37 (2010) at paras. 44–46.
172. After concluding it was more likely than not the respondent firm had engaged in fraudulent practices by submitting fourteen false performance certificates as part of its bids for twenty-four contracts under three Bank-financed projects, and also caused to be submitted additional materials in connection with one bid that included one of the false certificates and an affidavit signed by its executive director swearing to the validity of that certificate, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent firm, together with any organization it directly or indirectly controls, for a period of five years; provided, however, that after four years, the period of ineligibility may be reduced by up to one year if the respondent firm has put in place an effective corporate compliance program acceptable to the Bank and implemented the program in a manner satisfactory to the Bank. The Sanctions Board took into account as a mitigating factor the period of time—at least six years—that had elapsed between the date the alleged fraudulent practices came to the attention of the World Bank and the initiation of the sanctions proceeding. Sanctions Board Decision No. 38 (2010) at paras. 49, 53–55.
173. After concluding it was more likely than not the individual respondent had engaged in fraudulent practices by causing to be submitted one false performance certificate as part of a bid for the award of four contracts under one Bank-financed project, as well as additional materials including the same false performance certificate and a signed affidavit swearing to the validity of the false performance certificate, the Sanctions Board determined that an appropriate sanction would be debarment of the individual respondent, together with any organization di-

rectly or indirectly controlled by the individual respondent, for three years. The Sanctions Board took into account as a mitigating factor the period of time—at least six years—that had elapsed between the date that the fraudulent practices came to the attention of the World Bank and the initiation of the sanctions proceedings. Sanctions Board Decision No. 38 (2010) at paras. 50, 54, 56.

174. After concluding it was more likely than not that the respondents had engaged in fraudulent practices by submitting three forged manufacturer authorizations with its contract bid, the Sanctions Board determined that an appropriate sanction would be debarment of the respondents, together with any organization directly or indirectly controlled by either of the respondents, for three years. Sanctions Board Decision No. 39 (2010) at para. 63.
175. In determining an appropriate sanction, the Sanctions Board has considered the totality of the circumstances and all potential aggravating and mitigating factors. In the collusion case presented, such factors included that the respondent was the designated winner in the collusive scheme, even though it did not ultimately succeed in receiving the contract; the respondent's representative voluntarily submitted to an interview by INT, though did not specifically admit to the alleged collusion; and the collusive conduct of the respondent and the other bidders necessitated re-bidding and thus delayed the procurement of the contract at issue. Considering these factors, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent, together with any organization it directly or indirectly controls, for three years; provided, however, that after two years, the period of ineligibility may be reduced by up to one year if the respondent has put in place an effective corporate compliance program acceptable to the Bank and implemented this program in a manner satisfactory to the Bank. Sanctions Board Decision No. 40 (2010) at paras. 28–29.
176. To determine appropriate sanctions for each of the respondents in two related cases, the Sanctions Board has considered the totality of the circumstances, including the overall pattern of conduct by the respondents, their relative culpability compared to other sanctioned parties, and the extent to which the respondents cooperated in the underlying investigations in each case. Sanctions Board Decision No. 41 (2010) at para. 86.
177. Having concluded it was more likely than not the respondents had engaged in corrupt practices by making an improper payment to a public official to influence contract execution, the Sanctions Board determined that an appropriate sanction

would be debarment of each respondent, together with any organization either of the respondents directly or indirectly controls, for three years. Such sanction would be consistent with the uncontested three-year debarment imposed on the respondents' local partner. In terms of proportionality, the Sanctions Board found that although the respondents could be considered less culpable for the original corrupt arrangements, which the local partner admitted to playing the greater role in orchestrating, the respondents had cooperated less than their local partner in the course of the investigation and denied all culpability. The Sanctions Board did not consider the respondents' asserted mitigating factors applicable; nor did it consider a conditional non-debarment, as the respondents requested, to be an appropriate sanction given the seriousness of the matter and the nature of the respondents' involvement. Sanctions Board Decision No. 41 (2010) at para. 87.

178. After concluding it was more likely than not the respondents had engaged in fraudulent practices by submitting forged bid securities and performance securities in at least ten instances relating to eight projects in six countries over five years, and considering the nature, egregiousness and repetition of the misconduct, the Sanctions Board determined that an appropriate sanction would be debarment of each of the respondents, together with any organization either of the respondents directly or indirectly controls, for nine years. The nine-year term included three years for the base offense of forgery, an additional three years for the multiplicity of offenses in the first time period at issue, and another three years for the repeat offenses in a subsequent period. The Sanctions Board observed that the respondents' admission to the forgeries and provision of detailed and sometimes new inculpatory information to INT in the investigation would normally be considered as mitigating factors; but found that such cooperation must be counterbalanced against their persistent denials of culpability for any misconduct constituting fraudulent practices and their prolonged concealment of other material information regarding the origination of the forgeries. Finally, the Sanctions Board found the respondents' invocation of remedial measures as a mitigating factor unavailing given their repeated failures to implement such measures in the past, and their failure to submit any evidence of satisfactory implementation more recently. Sanctions Board Decision No. 41 (2010) at para. 88.
179. Considering a respondent's history of repeated forgery offenses, the Sanctions Board found no justification for the possibility of a conditional early release predicated on satisfactory compliance measures. Sanctions Board Decision No. 41 (2010) at para. 89.

180. Considering that the respondents were found to have engaged in corrupt and fraudulent practices in two factually unrelated cases, and considering the gravity of each type of misconduct on its own, the Sanctions Board determined that the sanctions for each offense should run consecutively. The Sanctions Board therefore imposed a twelve-year debarment on each respondent, together with any organization that either respondent directly or indirectly controls. Sanctions Board Decision No. 41 (2010) at paras. 89–90.
181. The Sanctions Board determined that multiple misrepresentations should be considered as one count of fraud insofar as they were made on the same subject matter and in the same manner, in quick succession, to the same interlocutors. Sanctions Board Decision No. 44 (2011) at para. 53.
182. The Sanctions Board considers the totality of the circumstances, including all potential aggravating and mitigating factors, to determine an appropriate sanction. The choice of sanction is not a mechanistic determination, but rather a case-by-case analysis tailored to the specific facts and circumstances presented. Sanctions Board Decision No. 44 (2011) at para. 56; Sanctions Board Decision No. 45 (2011) at para. 56.
183. As the Sanctioning Guidelines first published September 15, 2010, state they are not intended to be prescriptive in nature, they provide a point of reference to help illustrate, but not dictate, the types of considerations potentially relevant to a sanctions determination. Sanctions Board Decision No. 44 (2011) at para. 57; Sanctions Board Decision No. 45 (2011) at para. 57.
184. After concluding it was more likely than not the respondent had engaged in fraudulent practices by making both oral and written misrepresentations regarding the status of its contract execution, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent, together with any organization it directly or indirectly controls, for three years. Sanctions Board Decision No. 44 (2011) at para. 78.
185. After concluding it was more likely than not the respondent had engaged in collusive practices, the Sanctions Board determined that an appropriate sanction would be debarment of the respondent, together with any organization it directly or indirectly controls, for three years; provided that after two years, the period of ineligibility could be reduced by up to one year if the respondent has implemented an effective corporate compliance program in a manner satisfactory to the Bank. Sanctions Board Decision No. 45 (2011) at para. 75.

2. Aggravating and Mitigating Factors

a. Severity of misconduct

186. The Sanctions Board has considered as an aggravating factor that the fraudulent practices involved multiple forgeries across two Bank-financed projects. Sanctions Board Decision No. 2 (2008) at para. 7.
187. In determining a sanction for collusion, the Sanctions Board has considered a respondent's position as a designated winner in the collusive scheme as an aggravating factor. Sanctions Board Decision No. 4 (2009) at paras. 8–11.
188. In determining a sanction for collusion, the Sanctions Board has considered multiple witnesses' identification of the respondents as ringleaders in the collusive scheme as an aggravating factor. Sanctions Board Decision No. 4 (2009) at para. 8.
189. In determining a sanction for collusion, the Sanctions Board has considered the respondents' participation in multiple instances of misconduct as an aggravating factor. Sanctions Board Decision No. 4 (2009) at para. 8.
190. In determining a sanction for collusion, the Sanctions Board has considered the respondent's participation in all rounds of bidding and position as the designated winner in multiple rounds and for multiple contracts as an aggravating factor. Sanctions Board Decision No. 4 (2009) at para. 9.
191. The Sanctions Board did not adopt INT's asserted aggravating factor that the fraud involved forgery, which INT characterized as an act performed with forethought in which the damage to the integrity of the selection process is foreseeable and pervasive. Sanctions Board Decision No. 27 (2010) at para. 10; Sanctions Board Decision No. 29 (2010) at para. 18; Sanctions Board Decision No. 30 (2010) at paras. 15, 30; Sanctions Board Decision No. 31 (2010) at paras. 13, 25; Sanctions Board Decision No. 36 (2010) at paras. 21, 41; Sanctions Board Decision No. 37 (2010) at para. 31; Sanctions Board Decision No. 39 (2010) at para. 32.
192. The Sanctions Board did not adopt INT's asserted aggravating factor that the fraud consisted of two acts—the inclusion in the project proposal of both a forged experience certificate and the audit report of another entity—which INT characterized as demonstrating the lengths to which the respondents were willing to go to mislead the borrower and Bank. Sanctions Board Decision No. 29 (2010) at para. 18.

193. The Sanctions Board did not expressly apply any aggravating factors in a case where INT asserted as an aggravating factor the repetitive nature of the respondents' fraudulent acts, which involved three different forged manufacturer authorizations, each manipulated in a different way. Sanctions Board Decision No. 39 (2010) at para. 32.
194. The Sanctions Board has considered the respondent's role as the designated winner in a collusive scheme as an aggravating factor, even though the respondent did not ultimately succeed in receiving the contract. Sanctions Board Decision No. 40 (2010) at para. 28.
195. Where the Sanctions Board found it was more likely than not the respondent had repeated a certain misrepresentation three times, which qualified as one count of fraud, and subsequently made a distinct misrepresentation, which qualified as a second count of fraud, the Sanctions Board considered the repetitive nature of the first count of fraud as well as the separate second count as an aggravating factor under Section 9.02(a) of the applicable Sanctions Procedures. Sanctions Board Decision No. 44 (2011) at para. 61.

b. Magnitude of harm

196. In determining a sanction for fraudulent practices, the Sanctions Board has considered the absence of financial loss to the project as a mitigating factor. Sanctions Board Decision No. 2 (2008) at para. 7; Sanctions Board Decision No. 6 (2009) at para. 7.
197. The Sanctions Board has considered evidence of the successful performance of contracts secured by fraudulent advance payment guarantees as a mitigating factor. Sanctions Board Decision No. 2 (2008) at para. 7.
198. The Sanctions Board did not adopt INT's asserted aggravating factor of damage to the credibility of the procurement process. Sanctions Board Decision No. 27 (2010) at para. 10; Sanctions Board Decision No. 29 (2010) at para. 18; Sanctions Board Decision No. 31 (2010) at paras. 13, 25; Sanctions Board Decision No. 36 (2010) at paras. 21, 41; Sanctions Board Decision No. 37 (2010) at para. 31; Sanctions Board Decision No. 38 (2010) at para. 32.
199. The Sanctions Board did not specify the application of any mitigating factors in a case in which the respondent asserted it had left no assignment in connection

with the project incomplete or undone, and therefore caused no detriment to the borrower. Sanctions Board Decision No. 29 (2010) at para. 23.

200. The Sanctions Board did not expressly apply any aggravating factors in a case where INT asserted as an aggravating factor the respondents' receipt of the contract for which they had bid with the forged authorizations. According to INT, the respondents' receipt of the contract demonstrated that the fraudulent practices successfully deceived the tendering authorities, with the result that the government entered into a contract with a supplier whose goods were not properly certified and warranted by their manufacturers, and was left potentially exposed if the goods failed prematurely. Sanctions Board Decision No. 39 (2010) at para. 32.
201. The Sanctions Board has considered as an aggravating factor the fact that the collusive conduct of the respondent and other bidders necessitated re-bidding and therefore delayed the procurement process. Sanctions Board Decision No. 40 (2010) at para. 28.
202. In considering the "magnitude of the harm caused by the misconduct" under Section 9.02(b) of the applicable Sanctions Procedures, the Sanctions Board held it may consider evidence of "detriment to the Borrower," as required for a finding of fraudulent practices under the September 1997 Procurement Guidelines, as evidence of harm that would constitute an aggravating factor in the choice of sanctions. In the case presented, the substantial delays, risk of structural damage to contract works, and waste of the borrower's time and resources occasioned by the respondent's misrepresentations as to contract execution merited consideration as an aggravating factor even though the record showed that the respondent ultimately satisfied its contractual requirements—thereby capping, but not negating, the total damages. Sanctions Board Decision No. 44 (2011) at para. 63.
203. The Sanctions Board found that where evidence of collusion was so obvious as to emerge at the public bid opening itself, the resulting damage to the credibility of the procurement process was an aggravating factor under Section 19(5)(c) of the applicable Sanctions Procedures. Sanctions Board Decision No. 45 (2011) at para. 63.

c. Interference in the investigation

204. The Sanctions Board did not expressly apply any aggravating factors in a case where INT asserted as an aggravating factor that the respondents had provided false, contradictory and misleading explanations for their actions to the Bank's

investigators in an attempt to avoid or minimize their responsibility for their fraudulent practices. Sanctions Board Decision No. 38 (2010) at para. 32.

205. The Sanctions Board did not apply any aggravating factors in a case where INT asserted as an aggravating factor that the respondent firm, rather than admit wrongdoing, had steadfastly denied wrongdoing and offered implausible and incomplete defenses in its reply to INT's show-cause letter and subsequent correspondence. Sanctions Board Decision No. 39 (2010) at para. 33.

d. Past history of misconduct

206. The Sanctions Board declined to take into account any mitigating factors in a case in which the respondents asserted, among other mitigating factors, that it was a first offense. Sanctions Board Decision No. 30 (2010) at paras. 21, 30.
207. The Sanctions Board held that while a record of past sanctionable misconduct may merit treatment as an aggravating factor under Section 19(5)(d) of the applicable Sanctions Procedures, its absence is a neutral fact not warranting mitigation. Sanctions Board Decision No. 45 (2011) at para. 64.

e. Minor role in the misconduct

208. In determining a sanction for collusion, the Sanctions Board has taken into account a respondent's position as a designated loser in the collusive scheme as a mitigating factor. Sanctions Board Decision No. 4 (2009) at para. 12.
209. In determining a sanction for fraudulent practices, the Sanctions Board has considered as mitigating factors the fact that the respondent's representative who had taken responsibility for the fraudulent practice had stepped down from the executive director's position, and the lack of evidence connecting the respondent's current management with the misconduct. Sanctions Board Decision No. 6 (2009) at para. 7.
210. The Sanctions Board declined to give mitigating credit where the respondents asserted that a three-year debarment was not commensurate with the unintentional action by the company and its director; it was the first time the company had participated in a Bank-financed project and they had no professional help in understanding the requirements; they had no intent to harm any party; and it was a first offense. Sanctions Board Decision No. 30 (2010) at paras. 21, 30.

211. The Sanctions Board considered as a mitigating factor the respondent's more passive and limited role in a collusive scheme as compared to other parties in the scheme. Sanctions Board Decision No. 45 (2011) at para. 61.
212. The Sanctions Board noted that past precedent supported lesser sanctions for designated losers in a collusive scheme as compared to designated winners. The Sanctions Board considered, however, that no such mitigation was warranted where the designated loser would still profit from the scheme by virtue of its shareholding in another entity likely to receive work from the designated winner as a result of the scheme. Sanctions Board Decision No. 45 (2011) at para. 62.

f. Voluntary corrective actions

213. The Sanctions Board has considered a respondent firm's voluntary exclusion from participating in Bank-financed procurements during the five-year period since the fraudulent practices had come to the notice of the Bank as a mitigating factor. Sanctions Board Decision No. 2 (2008) at para. 7.
214. The Sanctions Board has considered the respondent firm's termination of the employee who committed the forgeries as a mitigating factor. Sanctions Board Decision No. 2 (2008) at para. 7.
215. The Sanctions Board has considered the respondent firm's implementation of measures to prevent reoccurrence of fraudulent practices as a mitigating factor. Sanctions Board Decision No. 2 (2008) at para. 7.
216. The Sanctions Board did not specify the application of any mitigating factors in a case in which the respondent asked the Bank to consider the circumstances under which the mistakes occurred, particularly the death of its former executive director; and committed to undertake, under its new executive director, corrective measures to improve its records management. Sanctions Board Decision No. 29 (2010) at para. 24.
217. The Sanctions Board declined to take into account any mitigating factors in a case in which the respondents asserted as mitigating factors that the respondent firm had enjoyed a reputation for efficient management and for transparency and ethics; learned lessons from the case; increased training and education; set up proper accounting systems; gained experience in preparing bids; taken steps to understand procurement matters; been entering into associations with foreign

companies to integrate best practices in its operating procedures; and adopted a code of ethics. The Sanctions Board specifically noted it had considered the respondents' claim of corrective measures, but recognized the record did not include evidence of such measures. Sanctions Board Decision No. 30 (2010) at paras. 21, 30–31.

218. The Sanctions Board did not accord mitigating treatment for remedial actions in a case where the respondent asserted it had asked the employee who allegedly forged the documents to resign after it learned of certain dishonest acts and behaviors by the employee, but the respondent did not state the nature of the dishonest acts at issue and the record did not specify when the respondent became aware of such acts. Sanctions Board Decision No. 37 (2010) at paras. 28, 45.
219. The Sanctions Board did not accord mitigating treatment for remedial measures in a case where the respondents stated that they would prevent recurrence of such mistakes in the future and that all bidding documents would be checked by the executive director (the individual respondent in the case); and INT asserted such statements could, at best, be taken into account for the purpose of mitigation, though they must also be weighed against countervailing evidence of the respondents' repeated forgeries, inconsistent explanations, and failure to acknowledge wrongdoing or show contrition. Sanctions Board Decision No. 38 (2010) at paras. 38, 44.
220. In determining an appropriate sanction for fraudulent practices, the Sanctions Board found that the issuance of a company-wide directive instructing all personnel to desist from engaging in further forgeries, unaccompanied by evidence of real systemic controls to ensure compliance, did not constitute the implementation of adequate remedial measures warranting mitigating consideration. Sanctions Board Decision No. 41 (2010) at paras. 81, 88.
221. In determining an appropriate sanction for fraudulent practices, the Sanctions Board rejected the respondents' invocation of more recent remedial measures to try to avoid or minimize their culpability for fraud, given what appeared from the record to be their persistent failures to timely establish and effectively utilize appropriate compliance measures to prevent and redress further irregularities, despite repeated claims to have taken all appropriate actions. Sanctions Board Decision No. 41 (2010) at para. 82.
222. The Sanctions Board declined to consider respondent's purported voluntary restraint from bidding on Bank-financed tenders as a mitigating factor where it

- did not submit any evidence to show a policy or practice of voluntary restraint from bidding prior to its temporary suspension. Sanctions Board Decision No. 44 (2011) at para. 66.
223. The Sanctions Board held that a respondent could not be credited for its “voluntary restraint”. Sanctions Board Decision No. 44 (2011) at para. 66.
224. The Sanctions Board found a respondent’s arguments for mitigation based on its cessation of fraudulent misconduct particularly unpersuasive where the record showed it persisted in further misrepresentations for several months after the date of its asserted internal directive to cease misconduct. Sanctions Board Decision No. 44 (2011) at para. 70.
225. The Sanctions Board rejected a respondent’s request for mitigation based on its internal action against the person responsible for the conduct where the respondent failed to specify and provide evidence of the measures it took, or show that it took those measures in response to the sanctionable practices at issue. Sanctions Board Decision No. 44 (2011) at para. 72.
226. The Sanctions Board did not apply mitigation for an effective compliance program where the respondent asserted only technical compliance with design or engineering standards, rather than any type of ethics or integrity compliance program. Sanctions Board Decision No. 44 (2011) at para. 73.
227. The Sanctions Board held that a respondent’s contractually obligated payment of liquidated damages to a borrower could not qualify as a “voluntary” corrective action for purposes of mitigation. Sanctions Board Decision No. 44 (2011) at para. 74.
228. The respondent bears the burden of presenting evidence to show the existence of voluntary corrective actions. Sanctions Board Decision No. 45 (2011) at para. 72.
229. The Sanctions Board may consider both the motivation and timeliness of a claimed corrective action in determining whether to treat such action as a mitigating factor. The Sanctions Board accorded no mitigating credit where the record indicated the respondent had decided to take the asserted corrective action before learning of the irregularities in the tender at issue, and then did not complete the corrective action until more than a year after learning of the irregularities. Sanctions Board Decision No. 45 (2011) at para. 73.

230. The Sanctions Board found no basis to consider the respondent's asserted willingness to pursue corporate compliance measures as a mitigating factor where the record contained no evidence to show it had in fact put controls in place to prevent future misconduct. Sanctions Board Decision No. 45 (2011) at para. 74.

g. Cooperation

231. The Sanctions Board considered the fact that the respondents extended a degree of cooperation to the Bank, including by providing substantial documentary information, as a mitigating factor. Sanctions Board Decision No. 1 (2007) at para. 8.

232. In determining an appropriate sanction for collusion, the Sanctions Board considered INT's representation that the respondent's cooperation had materially advanced the Bank's investigation as a mitigating factor. Sanctions Board Decision No. 4 (2009) at para. 11.

233. In determining appropriate sanctions for fraud, the Sanctions Board considered, as provided in Section 19(2)(d) of the applicable Sanctions Procedures, the extent of each respondent's cooperation during investigation and acknowledgment of incorrect information included in the fraudulent documents. Sanctions Board Decision No. 28 (2010) at para. 45.

234. In determining an appropriate sanction for fraud, the Sanctions Board considered as an aggravating factor the respondent's retraction, in its Response, of the previous admission in its reply to INT's show-cause letter to having submitted a forged experience certificate, which admission the Evaluation Officer had considered as a mitigating factor for the recommended sanction. Sanctions Board Decision No. 29 (2010) at para. 34.

235. In determining an appropriate sanction for fraudulent practices, the Sanctions Board considered as a mitigating factor the extent of the respondent's cooperation during the investigation, but not the admissions of the respondent's representative at the hearing. While admissions are encouraged during a sanctions proceeding and inform the Sanctions Board's assessment of a respondent's credibility, "eleventh-hour" admissions at a hearing do not warrant consideration as a mitigating factor because they are made at the final juncture of the sanctions process and therefore do not result in savings of Bank resources or facilitate the investigation. Sanctions Board Decision No. 36 (2010) at para. 41.

236. The Sanctions Board did not expressly limit the mitigating credit it provided for a respondent's efforts to cooperate in the investigation, despite INT's assertion that such factor might be discounted because the respondent's representatives had provided misleading information to INT in a meeting when they claimed that the certificates at issue were genuine. The Sanctions Board noted that, according to the transcript of INT's interview, it appears INT may not have informed the representatives of the subject of the interview until it was under way, and then INT showed them the two certificates at issue for the first time. The Sanctions Board observed it was not evident that either of the representatives would have had reason to doubt that the signatures included in those certificates were genuine, having just been shown the certificates and not having had an opportunity to check the company's records. Sanctions Board Decision No. 36 (2010) at paras. 20–21, 41.
237. In determining an appropriate sanction for fraudulent practices, the Sanctions Board took into account the respondent's cooperation in replying to INT's show-cause letter as a mitigating factor. Sanctions Board Decision No. 37 (2010) at para. 45.
238. Although INT had identified the respondent's admission of forgery in response to INT's show-cause letter as a specific demonstration of cooperation deserving mitigating treatment, the Sanctions Board did not expressly consider such admission as a mitigating factor. The Sanctions Board noted that the respondent's response to the show-cause letter disclaimed responsibility for an employee's unspecified dishonest acts and behavior without unambiguously admitting that the certificates in question had been forged. Sanctions Board Decision No. 37 (2010) at paras. 30, 32, 45.
239. In reaching its decision as to an appropriate sanction, the Sanctions Board took into account the respondent firm's cooperation during the investigation, noting that while there was no admission of culpability, the respondent firm had corresponded extensively with INT. Sanctions Board Decision No. 39 (2010) at para. 60.
240. The Sanctions Board did not apply any aggravating factors in a case where INT asserted as an aggravating factor that the respondent firm, rather than admit wrongdoing, steadfastly denied wrongdoing and offered implausible and incomplete defenses in its reply to INT's show-cause letter and subsequent correspondence. Sanctions Board Decision No. 39 (2010) at para. 33.
241. The Sanctions Board has considered the voluntary submission of respondent's representative to an INT interview as a mitigating factor, even though the representative did not specifically admit to the alleged collusion. Sanctions Board Decision No. 40 (2010) at para. 28.

242. In determining an appropriate sanction for corrupt practices, the Sanctions Board did not find the mitigating factors proposed by the respondents to be applicable, as the record did not support their claims they had fully cooperated in the investigation, been merely victims rather than wrongdoers, made best efforts at due diligence, and made only a good-faith error in judgment. Sanctions Board Decision No. 41 (2010) at para. 87.
243. In determining an appropriate sanction for fraudulent practices, the Sanctions Board found that although the respondents' admission to the forgeries and provision of detailed and sometimes new inculpatory information to INT in the investigation would normally be considered as mitigating factors, such cooperation must be counterbalanced against their persistent denials of culpability for any misconduct constituting fraudulent practices and their prolonged concealment of other material information regarding the origination of the forgeries. Sanctions Board Decision No. 41 (2010) at para. 88.
244. The Sanctions Board found grounds for mitigation due to the respondent's assistance in INT's investigation where INT noted it was able to conduct interviews on five occasions with various combinations of three of the respondent's officers; and INT asserted that although the three officers interviewed were somewhat evasive regarding the purpose and intent of the respondent's misrepresentations, they did provide candid information regarding the business context in which the respondent made such misrepresentations. Sanctions Board Decision No. 44 (2011) at para. 65.
245. The Sanctions Board recognized the respondent's record of cooperation as meriting a limited degree of mitigation where the parties agreed it had cooperated with the investigation, including by making its principals and representatives available for INT interviews; but the Sanctions Board noted it had never admitted culpability or responsibility for misconduct, either in the course of investigation or during the sanctions proceedings. Sanctions Board Decision No. 45 (2011) at para. 66.

h. Other factors

246. The Sanctions Board considered the period of time—five years—that elapsed from the date the fraudulent practices came to the notice of the Bank as a mitigating factor. Sanctions Board Decision No. 2 (2008) at para. 7.
247. In determining a sanction for fraudulent practices, the Sanctions Board considered as a mitigating factor the lapse of a significant period of time—over four

years—from the date the fraudulent practice came to the notice of the Bank, during which time the respondent represented it had not participated in Bank-financed procurements. Sanctions Board Decision No. 6 (2009) at para. 7.

248. The Sanctions Board took into account as a mitigating factor the period of time—at least six years—that had elapsed between the date the alleged fraudulent practices came to the World Bank’s attention and the initiation of the sanctions proceeding, noting that such passage of time could, but does not necessarily, impact on the weight the Sanctions Board attaches to the evidence presented and also could impact on the fairness of the process for the respondents. Sanctions Board Decision No. 38 (2010) at para. 54.
249. The Sanctions Board considered as a mitigating factor the substantial passage of time—six years—between the Bank’s receipt of notice of potential sanctionable practices and the issuance of a Notice of Sanctions Proceedings to the respondent. Sanctions Board Decision No. 44 (2011) at para. 77.
250. The Sanctions Board considered the respondents’ two-year de facto suspension from engaging in projects in the same country where the two projects at issue took place as a mitigating factor. Sanctions Board Decision No. 1 (2007) at para. 8.
251. The Sanctions Board considered as mitigating factors the sanctions imposed on a respondent firm by the national executing agency implementing Bank-financed projects in that country, through a one-year debarment and the required early repayment of advance payments; and the firm’s self-imposed additional one-year exclusion from participation in such executing agency’s bidding opportunities. Sanctions Board Decision No. 2 (2008) at para. 7.
252. The Sanctions Board considered the respondents’ asserted mitigating factors that the Bank had already effectively debarred the respondent firm for over two years and improperly requested a borrower in another project not to make payments of amounts purportedly due to the respondent firm, but found the evidence in the written record lacked sufficient probative value to support the assertions. In particular, the Sanctions Board observed that the documents submitted by the respondents as evidence did not appear to be originals or complete copies; were mostly undated; and had incomplete or no signatures or email sender/recipient identification. The Sanctions Board also noted that the respondents had not availed themselves of the opportunity to provide live testimony at a hearing. Sanctions Board Decision No. 28 (2010) at paras. 26–31, 44.

253. Although the Sanctions Board has previously considered the possibility of treating “constructive” or “de facto” debarment or suspension as a mitigating factor, the Sanctions Board rejected the respondent’s constructive suspension argument due to insufficient evidence that constructive suspension actually occurred. The Sanctions Board found the respondent had failed to provide evidence of actual bids submitted, correspondence concerning the Bank’s objection or non-objection to the award of a tender, or other evidence showing the respondent was denied contracts due to an illegitimate constructive suspension. Sanctions Board Decision No. 45 (2011) at para. 69.

For More Information about the World Bank Group's Sanctions System, Debarments, and Governance and Anticorruption Strategy

For information about the sanctions system, an electronic copy of the Law Digest, and access to published Sanctions Board decisions and EO determinations:

www.worldbank.org/sanctions

For a list of currently debarred firms and individuals:

www.worldbank.org/debarr

For the World Bank's Procurement Guidelines, Consultant Guidelines, and Anticorruption Guidelines:

Procurement Guidelines: <http://go.worldbank.org/1KKD1KNT40>

Consultant Guidelines: <http://go.worldbank.org/U9IPSLUDC0>

Anticorruption Guidelines: <http://go.worldbank.org/G81DJ33HF0>

For information about the World Bank Group's Governance and Anticorruption (GAC) Strategy:

www.worldbank.org/governance

Report Fraud, Corruption, or other Misconduct

To report allegations of fraud, corruption, or other misconduct in Bank Group-financed operations, contact the World Bank Integrity Vice Presidency's Fraud and Corruption Hotline:

Toll-free inside the U.S.: 1-800-831-0463

Collect call outside the U.S.: 1-704-556-7046

- Operated by an independent third party
- Open 24 hours a day
- Interpreters available
- Anonymous calls accepted

If your communication is particularly sensitive, INT recommends you mail it to:

PMB 3767
13950 Ballantyne Corporate Place
Charlotte, NC 28277
USA

Contact Information:

The World Bank Group Sanctions Board

1818 H Street, NW

Washington, DC 20433

USA

Phone: 1-202-473-6424

Fax: 1-202-522-3733

Email: sanctionsboard@worldbank.org