

Date of issuance: January 11, 2018

**Sanctions Board Decision No. 107<sup>1</sup>**

**Decision of the World Bank Group<sup>2</sup> Sanctions Board denying the request for reconsideration (the “Request for Reconsideration”) of Sanctions Board Decision No. 100 (2017) (the “Original Decision”), as filed by the Respondent in Sanctions Case No. 330.**

**I. INTRODUCTION**

1. The Sanctions Board met in a panel session in November 2017 to review the Request for Reconsideration filed by the Respondent with regard to the Original Decision. The Sanctions Board was composed of J. James Spinner (Chair), Ellen Gracie Northfleet, and Catherine O’Regan.
2. The Sanctions Board deliberated and reached its decision on the Request for Reconsideration based on the entirety of the record, which included the following:
  - i. the Request for Reconsideration submitted by the Respondent to the Secretary to the Sanctions Board on October 31, 2017;
  - ii. comments on the Request for Reconsideration submitted by the World Bank Group’s Integrity Vice Presidency (“INT”) to the Secretary to the Sanctions Board on November 9, 2017 (“INT’s Comments”);
  - iii. the additional submission submitted by the Respondent to the Secretary to the Sanctions Board on November 18, 2017 (the “Respondent’s Additional Submission”);

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<sup>1</sup> Note from the World Bank’s Legal Vice Presidency: On January 7, 2016, the World Bank Sanctions Procedures as adopted on April 15, 2012 (the “Sanctions Procedures”) were re-adopted and retrofitted as “Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects” (the “2016 Sanctions Procedures”). On June 28, 2016, the 2016 Sanctions Procedures were issued on the Policy and Procedure Repository of the World Bank. At the time of the issuance of the Notice of Sanctions Proceedings (the “Notice”) to the respondent entity in Sanctions Case No. 330 (the “Respondent”) on March 30, 2016, the applicable procedures made available to the Respondent were the Sanctions Procedures. The so-called “retrofit” of the sanctions framework, initiated in 2014, aimed at codifying and reconstructing the normative architecture of the World Bank’s sanctions system. The structure and numbering of the sections and paragraphs under the 2016 Sanctions Procedures was changed, without affecting the content of the rules of the Sanctions Procedures applicable to this case.

<sup>2</sup> In accordance with Section 1.02(a) of the Sanctions Procedures, the term “World Bank Group” means, collectively, the International Bank for Reconstruction and Development (“IBRD”), the International Development Association (“IDA”), the International Finance Corporation (“IFC”), and the Multilateral Investment Guarantee Agency (“MIGA”). The term “World Bank Group” includes the guarantee operations of IBRD and IDA, but does not include the International Centre for the Settlement of Investment Disputes (“ICSID”). As in the Sanctions Procedures, the terms “World Bank” and “Bank” are here used interchangeably to refer to both IBRD and IDA. See Sanctions Procedures at Section 1.01(a), n.1.

- iv. the additional comments submitted by INT to the Secretary to the Sanctions Board on November 29, 2017 (“INT’s Additional Comments”);
- v. the Original Decision as issued on October 26, 2017; and
- vi. the record previously considered in the proceedings in Sanctions Case No. 330.

## **II. GENERAL BACKGROUND**

3. In the Original Decision, the Sanctions Board imposed on the Respondent a sanction of debarment with conditional release with a minimum period of ineligibility of two (2) years.<sup>3</sup> In that decision, the Sanctions Board found the Respondent liable for a fraudulent practice for making misrepresentations in expense claims, and supporting those expense claims with forged documents, in connection with a Bank-financed contract in the Republic of India.<sup>4</sup> On October 31, 2017, the Respondent filed the Request for Reconsideration.

## **III. APPLICABLE STANDARDS OF REVIEW**

4. The statutory and procedural framework that governed the original proceedings in Sanctions Case No. 330 includes the World Bank Group Policy: Statute of the Sanctions Board as publicly issued on October 18, 2016 (the “Statute”) and the Sanctions Procedures. Both the Statute and the Sanctions Procedures provide that Sanctions Board decisions “shall be final and without appeal.”<sup>5</sup> However, the Sanctions Board has previously recognized that fundamental principles of fairness dictate that finality must yield in narrowly defined and exceptional circumstances.<sup>6</sup> Examples of such narrowly defined and exceptional circumstances may include the discovery of newly available and potentially decisive facts, fraud or other misconduct in the original proceedings, or a clerical mistake in the issuance of the original decision.<sup>7</sup> In contrast, mere attempts to re-argue or re-litigate a case, or respondents’ failure to timely or effectively present previously available facts or related evidence to the Sanctions Board, either on the advice of legal counsel or for other reasons, do not warrant reconsideration.<sup>8</sup>

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<sup>3</sup> Sanctions Board Decision No. 100 (2017) at para. 63.

<sup>4</sup> Id. at Sections V(B)-V(C).

<sup>5</sup> The Statute provides that Sanctions Board decisions “shall be final and without appeal.” See Statute at Section III, sub-paragraph 13(ii). The Sanctions Procedures provide that Sanctions Board decisions “shall be final and without appeal, and shall be binding on the parties to the proceedings.” See Sanctions Procedures at Section 8.03.

<sup>6</sup> See, e.g., Sanctions Board Decision No. 57 (2013) at para. 8 (citing Sanctions Board Decision No. 43 (2011) at paras. 14-15).

<sup>7</sup> See, e.g., Sanctions Board Decision No. 84 (2015) at para. 9.

<sup>8</sup> See, e.g., id.

#### **IV. PRINCIPAL CONTENTIONS OF THE PARTIES**

##### **A. The Respondent's Principal Contentions in the Request for Reconsideration**

5. The Respondent requests reconsideration of the Original Decision with respect to one aggravating factor and four mitigating factors. With respect to the aggravating factor, the Respondent argues that, in making its finding on that factor, the Sanctions Board relied on a post-hearing submission filed by INT (the "Post-Hearing Submission"), which was not served on the Respondent. The Respondent requests access to the Post-Hearing Submission and asserts that reconsideration of the aggravating factor is necessary "in the interest of equity, justice and fair play." Regarding the mitigating factors, the Respondent submits that, in a past case, the Sanctions Board provided a post-hearing opportunity for the respondent to submit additional evidence in support of mitigation. The Respondent asserts that the Sanctions Board did not provide such an opportunity to the Respondent in similar circumstances, thereby violating fundamental principles of fairness. The Respondent concludes by requesting a "personal hearing" on this matter.

##### **B. INT's Principal Contentions in Its Comments**

6. INT submits that the arguments presented by the Respondent rest on factual errors and do not meet the minimum requirements for reconsideration. With respect to the aggravating factor in question, INT argues that, contrary to the Respondent's assertion, the Sanctions Board Secretariat did in fact send a copy of the Post-Hearing Submission to the Respondent. INT further argues that, even if the Respondent had not received the Post-Hearing Submission, reconsideration would not be warranted because the Respondent would not have been prejudiced in that situation. Regarding the mitigating factors identified by the Respondent, INT argues that the Sanctions Board did give the Respondent an opportunity to submit additional mitigating evidence. According to INT, the Respondent's argument on mitigating factors "is really an implied appeal to file further belated evidence, styled as a reconsideration request."

##### **C. The Respondent's Principal Contentions in Its Additional Submission**

7. The Respondent contends that the factual basis for its argument on the aggravating factor is that – regardless of whether the Sanctions Board Secretariat sent the Post-Hearing Submission – the Respondent's counsel never received it. In addition, the Respondent disputes INT's argument that the Respondent would not have been prejudiced in the event that the Respondent had not received the Post-Hearing Submission.

##### **D. INT's Principal Contentions in Its Additional Comments**

8. INT submits that the Respondent does not request reconsideration based on newly-discovered facts or evidence, misconduct in the original proceedings, or clerical error. Rather, according to INT, the Respondent seeks to relitigate certain aggravating and mitigating factors, which the Respondent had multiple opportunities to discuss during the sanctions process, and did so extensively.

## **V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS**

9. The Sanctions Board will first address the procedural matter raised by the Respondent. The Sanctions Board will then address whether the Respondent has presented evidence of exceptional circumstances that would warrant reconsideration of the Original Decision.

### **A. Procedural Matter**

10. As noted in Paragraph 5 above, the Respondent requests a “personal hearing” on this matter. The Sanctions Board denies this request. The Sanctions Board considers that the Sanctions Procedures do not contemplate hearings in the context of requests for reconsideration and that the record here is sufficient for the Sanctions Board to reach a determination on the present Request for Reconsideration.

### **B. Exceptional Circumstances Warranting Reconsideration**

11. For the reasons set out below, the Sanctions Board does not find any exceptional circumstances that would justify reconsideration of the Original Decision.

12. First, the Respondent seeks reconsideration of a certain aggravating factor. The Respondent argues that, in making its finding on that factor, the Sanctions Board relied on the Post-Hearing Submission, which was not served on the Respondent.<sup>9</sup> As a factual matter, the Sanctions Board Secretariat did send the Post-Hearing Submission to the Respondent’s counsel by email. Following receipt of the Request for Reconsideration, the Sanctions Board Secretariat confirmed through a World Bank information technology engineer that the email attaching the Post-Hearing Submission was successfully delivered to the server used by the Respondent’s counsel. In any event, even if the Respondent did not receive the Post-Hearing Submission, reconsideration of the Original Decision would not be warranted on this basis. As INT argues, the Respondent would not have been prejudiced by a failure to receive the Post-Hearing Submission. The Post-Hearing Submission reflects INT’s comments on additional evidence and arguments that the Respondent had submitted after the close of the written record in the original proceedings, but prior to the hearing (the “Additional Evidence”). The Sanctions Board Chair authorized the Additional Evidence in his discretion, and he provided the parties with the opportunity to address the Additional Evidence at the hearing. Consistent with past practice,<sup>10</sup> the Sanctions Board Chair also permitted INT to submit post-hearing written comments on the Respondent’s Additional Evidence. In accordance with Section 5.01(c) of the Sanctions Procedures and past practice, the Respondent was not invited to file a reply to INT’s Post-Hearing Submission, which largely reiterated arguments that INT had made at the hearing. The pleading process must end once the parties have been given a fair and adequate opportunity to respond to one another’s contentions. In the Sanctions Board’s view, that stage has been reached

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<sup>9</sup> The Respondent also asserts in relation to the aggravating factor that the Sanctions Board did not consider two documents that the Respondent had submitted. This assertion is factually incorrect as the Sanctions Board did consider those documents, and the entirety of the record, in reaching its decision in the original proceedings.

<sup>10</sup> See, e.g., Sanctions Board Decision No. 72 (2014) at paras. 29, 32.

here, as each of the parties was provided with opportunities to present arguments, in writing and orally, on the Additional Evidence. In these circumstances, the Sanctions Board finds that the Respondent has not shown an exceptional circumstance warranting reconsideration of the aggravating factor in question.

13. Second, the Respondent seeks reconsideration of certain mitigating factors. The Respondent submits that, in a past case, the Sanctions Board provided a post-hearing opportunity for the respondent to submit additional evidence in support of mitigation, and that fundamental principles of fairness have been violated here as the Sanctions Board did not provide such an opportunity to the Respondent in similar circumstances. The Sanctions Board does not accept this argument. The Respondent did not request a post-hearing opportunity to supplement its evidence on mitigating factors, and the Respondent was provided with numerous opportunities to address mitigating factors throughout the original proceedings. Indeed, the Respondent addressed mitigating factors in the Explanation, the Response, the Additional Evidence as authorized by the Sanctions Board Chair in his discretion, and at the oral hearing. In addition, the Sanctions Board has previously rejected this type of request for reconsideration, holding that a respondent's failure to timely or effectively present previously available facts or related evidence to the Sanctions Board, either on the advice of legal counsel or for other reasons, does not warrant reconsideration.<sup>11</sup> Accordingly, the Respondent has not shown an exceptional circumstance warranting reconsideration of the mitigating factors it identified.

14. Finally, the Request for Reconsideration does not show any newly available and potentially decisive fact, fraud or other misconduct in the original proceedings, clerical mistake in the issuance of the Original Decision, or any other exceptional circumstance that would warrant reconsideration.

15. Considering the applicable standards of review and the record presented, and for all of the reasons discussed above, the Sanctions Board hereby denies the Respondent's Request for Reconsideration.



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J. James Spinner (Chair)

On behalf of the  
World Bank Group Sanctions Board

J. James Spinner  
Ellen Gracie Northfleet  
Catherine O'Regan

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<sup>11</sup> See, e.g., Sanctions Board Decision No. 43 (2011) at para. 27. See also Sanctions Board Decision No. 84 (2015) at para. 9.