Reform of the World Bank's Sanctions Process

Revised

I. Background of the Sanctions Committee: 1998 – 2001

1. The Bank's sanctions process was first formulated in a paper presented to the Executive Directors in July 1996,[1] and was implemented in a January 1998 Operational Memorandum.[2] Consistent with the Board paper and the Operational Memorandum, the President established a Sanctions Committee in November 1998 to review allegations of fraud or corruption[3] and to recommend to the President sanctions to be imposed on those firms or individuals found to have engaged in fraudulent or corrupt activities.[4] The Committee's membership currently consists of the Managing Director overseeing Operations (Chair), the Senior Vice President and General Counsel, and two other senior staff selected for their operational experience (one Regional Vice-President and the current Vice-President, Human Resources).

2. The July 1996 Board paper and the January 1998 Operational Memorandum established a framework for the operations of the Sanctions Committee. The policies contained in these two documents provided the basis for procedures subsequently adopted by the Committee. These procedures can be summarized as follows:

(a) Evidence of fraudulent or corrupt activities is compiled into a written report that also includes an explanation of the sanctions process. This report is called a "notice of debarment proceedings" as it serves to provide written notice of the allegations to the firm or individual concerned, as well as to explain the sanctions process. A subcommittee of the Sanctions Committee reviews the notice on behalf of the Committee to determine whether the evidence warrants that the allegations be sent to the firm or

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[1] Fraud and Corruption - Proposed Amendments in the Bank's Loan Documents for the Purpose of Making Them More Effective in the Fight Against Fraud and Corruption, dated July 11, 1996 [Board Paper R96-112/1].

[2] January 5, 1998 Operational Memorandum on Fraud and Corruption under Bank-Financed Contracts: Procedures for Dealing with Allegations against Bidders, Suppliers, Contractors, or Consultants.

[3] The Bank's definitions of fraud and corruption are contained in the Procurement Guidelines and the Consultants Guidelines. "Corrupt practice" is defined as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution," and "fraudulent practice" is defined as "a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

[4] The Committee is not involved in sanctioning staff or borrowers accused of such activities.

individual alleged to have engaged in fraudulent or corrupt activities.[5] If the Committee finds that the facts contained in the notice are sufficient to support the allegations made, the Committee issues the notice to the respondent firm or individual.

(b) Respondents are provided the opportunity to respond to the notice in writing within a certain period of time (at present, 60 working days). Respondents are also provided an opportunity to present their case orally, with legal counsel if they wish, at a hearing attended by the Committee.

(c) Based on the written documentation submitted and information received during the hearing, the Committee makes a recommendation to the President as to whether there is reasonably sufficient evidence that the respondents engaged in corrupt or fraudulent practices and, if so, the proposed sanction. To date, sanctions have included periods of ineligibility (limited or indefinite) to be awarded a Bank-financed contract, letters of reprimand, and requirements that the respondent institute training and integrity programs for its employees. The respondent and the Executive Directors representing the borrowing country concerned and the country of incorporation or citizenship of the respondent are notified of the Committee's recommendation when it is made.

(d) The President reflects on the recommendations of the Committee for a minimum of two weeks before issuing his decision. There is no appeal of the President's decision. Sanctions are posted on the Bank's external website.

II. The August 2001 Procedures

3. In August 2001, written procedures were issued for Sanctions Committee cases. These procedures (the "August 2001 Procedures") were finalized with the assistance of Mr. Richard Thornburgh[6] and issued after consultation with the Corporate Committee on Fraud and Corruption Policy. Management presented the August 2001 Procedures to the Audit Committee of the Board on October 5, 2001.

4. The August 2001 Procedures had three main objectives:

(a) to reflect certain institutional changes, including the creation of a department responsible for conducting fraud and corruption investigations and preparing the notices of debarment proceedings (the Department of Institutional Integrity ("INT"));

(b) to formalize practices previously followed by the Sanctions Committee; and

(c) to provide an improved process to respondents, including (i) a more uniform conduct of the Committee's hearings; (ii) a stricter definition of the contents of the record

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[5] The Committee labels firms and individuals alleged to have engaged in fraudulent or corrupt activities as "respondents." This term will be used for convenience throughout the remainder of this paper.

[6] Mr. Thornburgh is a former Under-Secretary General of the United Nations and a former Attorney General of the United States.

submitted to the Committee for review, and (iii) a more rigorous division of responsibilities between INT, the Committee and its Secretariat.

5. In addition, the August 2001 Procedures clarify the intent underlying a provision in the July 1996 Board paper regarding the review and investigation of incidents having occurred more than three years earlier. Because this provision was not intended to impose a statute of limitations precluding the Bank from investigating such allegations, the August 2001 Procedures grant the Director of INT the discretion to authorize investigations into allegations that occurred more than three years earlier. The effect of this is to allow the Director of INT to decide on a case-by-case basis whether a particular set of allegations is too old to investigate or whether it merits further inquiry due to other factors that raise important issues for the Bank.

6. Finally, in preparing the August 2001 Procedures, the Sanctions Committee recognized that the option provided in the January 1998 Operational Memorandum permitting respondents to cross-examine their accuser was, as a practical matter, impossible to implement. Respondents were not able to exercise this option because it required the consent of the accuser to be cross-examined. In practice, respondents were not able to obtain this consent, and so no accusers have submitted themselves for cross-examination. Hence, this option was not reflected in the August 2001 Procedures, and Management does not intend to re-introduce this practice in the contemplated revisions to these Procedures.

III. Experience to Date

7. Since its inception in November 1998, the Committee has dealt with thirty-two cases, the majority of them involving multiple respondents. In addition, there are five cases currently awaiting a hearing before the Committee and another 19 cases in earlier stages of the sanctions process. The Committee has offered "hearings" to all respondents, and a large majority of them have accepted the opportunity to make an oral presentation to the Committee.

8. To date, the Bank has declared 177 firms or individuals ineligible to participate in future Bank-financed procurement. Nine firms have received a letter of reprimand but remained eligible to participate in Bank-financed procurement. In 17 cases, the Committee decided not to sanction any respondent. Of the 177 debarments, 67 involved corruption (in some of these cases, fraud was also found). The remaining 110 debarments concerned fraud (including collusion among bidders). The debarments have ranged from a defined period of time (102 sanctions) to permanent ineligibility (75 sanctions). Debarments and reprimand letters are posted on the Bank's external website in order to ensure that the Bank's borrowers, as well as Bank staff, have easy access to such information when determining the eligibility of bidders for future Bank-financed contracts.

IV. Recommendations for Reforms of the Sanctions Process

9. Management's proposal to reform the sanctions process would introduce some significant changes to the existing process. The most significant changes include: (1) modification of the membership of the Sanctions Committee (to be renamed "Sanctions Board") to include both Bank staff and non-Bank staff, sitting in panels of three to decide cases; (2) establishment of a new staff position of "Evaluation and Suspension Officer" with the authority to issue temporary suspensions pending final resolution of cases on appeal to the Sanctions Board (the Evaluation and Suspension Officer's preliminary decisions would become final absent an appeal by the respondent or INT); and (3) introduction of measures to address a perceived need for lighter and more flexible sanctions, recognition of cooperation as a mitigating factor in sanctions determinations, and additional incentives to contractors to disclose voluntarily information about fraud or corruption in Bank-financed projects.

A. Structure of the Sanctions Process

10. As noted above, the current structure of the sanctions process is two-tiered, with a Sanctions Committee composed of senior Bank managers making recommendations to the President for decision. Management's proposal to change the sanctions process retains a two-tier process, but removes the President from a role in such cases. Instead, a new staff position of "Evaluation and Suspension Officer" ("Evaluation Officer") is introduced as the first tier of the process, though with limited authority, and a Sanctions Board, composed of Bank staff and non-Bank staff, functions as the second tier of the process. These two key reforms to the sanctions process are addressed below.

(1). Composition of the Sanctions Board

11. There are three possible options for the composition of the Sanctions Board: (1) a committee composed entirely of Bank staff such as the current Sanctions Committee; (2) a committee composed entirely of members from outside the Bank; and (3) a committee composed of a mix of Bank staff and members from outside the Bank. After examining the reasons which advocate for a change from the existing membership of the Committee (i.e., perceived conflicts of interest, potential external pressures, independence from the Bank), Management has decided to propose the third option.[7] Management believes that this option will benefit the process by providing the Committee with a combination of more independence and continued operational expertise in the procedures and guidelines associated with Bank-financed projects. As noted above, the Sanctions Committee would be renamed the Sanctions Board and would be reorganized to comprise seven members - three would be current Bank staff and four would be individuals who are not current Bank staff but are familiar with procurement matters, law, and Bank operations or operations of other international development banks.

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[7] This option is also supported by Mr. Thornburgh and Mr. André Faurès, a partner with Coudert Brothers LLP, Brussels. Both Mr. Thornburgh and Mr. Faurès were retained by the Bank to review the Bank's sanctions process and to provide recommendations for reforms to the process.

12. The Bank staff members would be senior staff with knowledge of Bank procurement and operational processes and who would not be perceived to have real or apparent conflicts of interest. They would be appointed by the President. The Sanctions Board members from outside of the Bank would be appointed by the Executive Directors based on a recommendation from the President, similar to the manner in which the members of the Administrative Tribunal are appointed.[8] Such members would not include former Bank staff or consultants. The Sanctions Board would be authorized to sit in panels of three to hear cases, with two members of each panel being drawn from the group of non-Bank staff members. New Sanctions Board Procedures would contain clear conflict of interest provisions to ensure a greater perception of independence of the body.

13. The President would select a chairman of the entire Sanctions Board from the Bank staff appointed as members of the Board. The chairman's role would include the designation of panels, the supervision of the Sanctions Board's Secretariat, and the administration of the Sanctions Board's budget. In addition, the chairman would be responsible for establishing guidelines to ensure the smooth functioning of the Board and the hearings held by Board panels. The chairman will be appointed for one non-renewable three-year term.

14. The new composition of the Sanctions Board would enhance the independence of this body. The Thornburgh report noted that the current Sanctions Committee has been the target of claims by respondents of conflicts of interest, which have detracted from support for the Committee's decisions. At the same time, under its new composition, the Sanctions Board would continue to benefit from the operational expertise of Bank staff members sitting on the panels. Given the complex nature of many Bank projects, the importance of maintaining such expertise on the Sanctions Board should not be underestimated.

Management proposal:

15. Management proposes to establish a Sanctions Board to comprise seven members – three current Bank staff and four individuals who are not current Bank staff. The Bank staff members would be appointed by the President, while the non-Bank staff members would be appointed by the Executive Directors based on a recommendation from the President. The Sanctions Board would be authorized to sit in panels of three, with two members of each panel being drawn from the group of non-Bank staff members.

(2). Disposition and Interim Suspension by the Evaluation and Suspension Officer

16. Currently, as noted above, a subcommittee of the Sanctions Committee must clear a proposed notice of debarment proceedings before it is issued to the respondent. Furthermore, there is no mechanism to suspend temporarily a respondent pending the

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[8] Article IV of the Administrative Tribunal's statute provides: "The members of the Tribunal shall be appointed by the Executive Directors of the Bank from a list of candidates nominated by the President of the Bank after appropriate consultation."

final outcome of the sanctions process. Management now proposes that a staff position of "Evaluation Officer" be created primarily for the purpose of making two initial determinations in the sanctions process: (1) whether the preponderance of evidence submitted by INT in a proposed notice of debarment proceedings leads to a finding that the respondent engaged in fraud or corruption, and (2) whether the respondent should be temporarily suspended from bidding on Bank-financed contracts pending the final outcome of the sanctions process. In addition, the Evaluation Officer would recommend a sanction to be imposed on the respondent, but this sanction would only become effective if the respondent elects not to challenge the allegations against it by appealing to the Sanctions Board. The Evaluation Officer would have the discretion to recommend a sanction that is different from the sanction proposed by INT in the notice of debarment proceedings, and it is the Evaluation Officer's recommendation that would become effective if the respondent did not appeal.

17. Thus, the Evaluation Officer's post would involve the following framework:

- First, the Evaluation Officer would receive a proposed notice of debarment proceedings from INT and determine whether there is sufficient evidence to issue the notice to the respondent.

- If the Evaluation Officer determines that this is the case, then he or she would issue the notice of debarment proceedings and recommend an appropriate sanction to be imposed on the respondent.

- Within a reasonable period of time, such as 45 working days from the date of issuance of the notice, the respondent would have an opportunity to explain in writing to the Evaluation Officer why, in its view, it should not be temporarily suspended from being eligible to participate in Bank-financed projects pending a final outcome of the proceedings.

- Following an additional period of time, such as 60 working days from the date of issuance of the notice, the respondent would be temporarily suspended unless the Evaluation Officer decides that suspension would not be appropriate.

- If the respondent decides to contest the allegations in the notice, the respondent files an answer to the allegations and the matter is placed before the Sanctions Board for its review and decision.

- Should the respondent decide not to contest the allegations within a specified period of time (e.g., the 60 working days), the temporary suspension would be automatically converted into the sanction recommended by the Evaluation Officer unless INT requested that the Sanctions Board review the proposed sanction.

- Finally, the Evaluation Officer may, after examining a respondent's answer to the allegations in the notice, recommend that INT reconsider whether the case

should proceed to the Sanctions Board. INT would retain the discretion to request that the case be submitted to the Sanctions Board for a decision.

18. The Sanctions Board will establish reasonable periods of time in new Sanctions Board Procedures for respondents and INT to file submissions in sanctions cases. The Sanctions Board may revise these time periods from time to time for future cases in light of experience gained with the new procedures.,. In any given case, and based upon a written request by a party, the Chairman of the Sanctions Board would have the discretion to increase the number of days for filings in pending cases as warranted by the circumstances of a specific case. It is noteworthy that these periods of time are not related to the time limitation proposed in paragraphs 28-31, *infra.* This new time limitation would not be subject to change without the approval of the Executive Directors.

19. The specific recommendation relating to the Evaluation Officer -- including the two distinct mechanisms of a first-tier review conducted by a Evaluation Officer and temporary suspension -- constitutes the most significant change to the current sanctions process. The main considerations underlying the recommendation with respect to temporary suspensions are that: (a) it would permit the Bank during the sanctions process -- which can be lengthy -- to restrict access to Bank-financed procurement of firms against which there is credible evidence of fraud or corruption; (b) it would reduce a respondent's incentive to use dilatory tactics and delay the proceedings while it received additional Bank-financed contracts; and (c) it would remove an incentive for a firm to contest the case at the Sanctions Board level solely for the purpose of delaying an inevitable declaration of ineligibility.

20. Furthermore, the initial review by the Evaluation Officer would potentially allow for the disposition of some cases without the necessity of a full hearing (thus decreasing the involvement by the Sanctions Board). Experience has shown that some respondents (such as shell companies bidding for Bank-financed contracts) do not challenge the allegations in the notice. Such firms would face debarment based on INT's investigative findings and the Evaluation Officer's review, without the further step of an additional examination by the Sanctions Board. Nevertheless, any firm or individual contesting the allegations would have the right to appear before the Sanctions Board.

21. The benefits of the proposal to create the Evaluation Officer position outweigh certain perceived risks, including the substantial amount of discretionary authority resting with one Evaluation Officer, the need for consistency of standards regardless of the size or reputation of the respondent, and the possible adverse financial, reputational, or other consequences on a respondent resulting from a temporary suspension. Management is proposing effective mechanisms to address these perceived risks: (a) respondents are entitled to make submissions in writing conveying their view to the Evaluation Officer before the Evaluation Officer imposes a temporary suspension; (b) respondents are entitled to the benefits of a two-tier review process, involving a *de novo* review by a Sanctions Board whose membership combines greater independence and expertise in Bank operations; and (c) respondents would have the possibility of avoiding potential adverse publicity resulting from a temporary suspension imposed on them by agreeing to

refrain from participating in Bank-financed procurement pending final resolution by the Sanctions Board. Otherwise, the suspension would be posted on the Bank's internal website[9] under a special category for temporary suspensions, a mechanism that would also, albeit to a lower degree, contain the risk of adverse publicity.

22. Management, while recognizing that the decision-making authority of such a Evaluation Officer would be substantial, is satisfied that the Evaluation Officer's authority would be balanced by the fact that his or her decision to impose a sanction would only become final if the respondent elects not to appeal to the Sanctions Board. Furthermore, the imposition of a temporary suspension would always be preceded by a determination made first by the Director of INT and subsequently by the Evaluation Officer that sufficient evidence exists to support the investigative findings of fraud or corruption. Management is also of the view that substituting a panel for the Evaluation Officer would substantially burden the proposed procedure and make it overly bureaucratic. Moreover, the proposed process is in line with best practices found in various national debarment rules that utilize an exclusion mechanism.[10]

23. Temporary suspension, in combination with the availability of review by the Sanctions Board, contributes to the objectives of fairness and administrative efficiency identified in Mr. Thornburgh's report both in terms of practical justification and of overall public purpose. Indeed, Management's proposed suspension mechanism provides the respondent with protection similar to or greater than equivalent administrative suspension mechanisms found under the domestic laws of some of the Bank's member countries.[11]

24. The Evaluation Officer would be appointed by the President and would report to the President. The Evaluation Officer's performance would be reviewed carefully on an annual basis given the importance of the position in the sanctions process. Selection criteria would include extensive knowledge of the Bank's operational policies, particularly in the area of procurement, as well as knowledge of and experience in the conduct of investigations, standards of proof and evidence, and legal issues relating to Bank operations. Management would also ensure that the Evaluation Officer has the necessary independence to make decisions on the cases investigated by INT and proposed for sanctioning, and that he or she does not have real or perceived conflicts of interest with respect to the cases that come under review. Management would take into account the need for a flexible deployment of resources, particularly in light of the fact that the caseload of the Evaluation Officer will be unpredictable and may not require a full-time

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[9] Such postings would be available to the Bank's borrowers through Client Connection. The intranet posting of temporary suspensions would include clear language that the Sanctions Board had not reached any finding of fraud or corruption with respect to the listed respondents.

[10] For example, the U.S. Federal Acquisition Regulations, the French Code des Marchés, the China Tendering and Bidding Law, and the Turkish Public Procurement Law all provide for an exclusion of bidders based on the determination of a single government officer; furthermore, such exclusion is publicly disclosed.

[11] See footnote 10 above.

commitment. Nevertheless, a deputy may be appointed to act on behalf of the Evaluation Officer when he or she is not available.

Management Proposal

25. Management therefore proposes that the Executive Directors approve the creation of a Evaluation Officer function with the authority to clear notices of debarment proceedings, to impose temporary suspensions, and, in the absence of a respondent's appeal to the Sanctions Board, to impose debarments as described in the preceding paragraphs.

(3). Final Decision on Imposition of Sanctions

26. The introduction of the Evaluation Officer position and a Sanctions Board composed of Bank staff and non-Bank staff eliminates the need for an additional review of sanctions cases by the President. The Sanctions Board's decisions would be final and not subject to review or appeal. The President would no longer play a role in the sanctions process, including in the voluntary disclosure program (described below in para. 39), other than to appoint the Bank staff who serve on the Sanctions Board. Mr. Wolfensohn has approved the proposal to remove the President from involvement in the sanctions process.

Management proposal:

27. Management proposes that under the new sanctions process, the Sanctions Board will have the authority to take decisions in cases without the involvement of the President of the World Bank.

B. Time Limitation

28. As noted in the discussion above, the August 2001 Procedures delegated to the Director of INT the discretion to determine whether or not to pursue allegations relating to events that occurred more than three years earlier. In his report, Mr. Thornburgh recommends that the Bank should not adopt any time limitation for sanctions cases. If the evidence before the Sanctions Board has met the standard of proof establishing that a respondent has engaged in fraudulent or corrupt practices, Mr. Thornburgh argues, it should not matter how long ago the incident occurred if the Bank wants to protect its funds from further misuse.

29. Some of the members of the Audit Committee expressed concern about the lack of a time limitation on sanctions cases and noted that almost all civil and criminal laws contain some form of time limitation. Management has considered the views of Mr. Thornburgh, the views of the Audit Committee members, and the practice of other international bodies.[12] In the end, Management has decided to propose a statute of limitations.

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[12] Neither the United Nations nor the European Commission impose time limitations on their investigations that may lead to the debarment of contractors.

30. Management's proposal is for a statute of limitations of ten years,[13] commencing from the final date of execution of the contract at issue and ending on the date when the Evaluation Officer submits a notice of debarment to the respondent. Because most fraud and corruption is purposefully concealed, Management has opted not to begin the statute of limitations from the date of the actual occurrence of such acts. Furthermore, Management's view is that the Bank should not adopt a commencement date tied to when the Bank "knew" or "became aware of" the alleged fraud or corruption. Such a commencement date would result in contentious and time-consuming disputes focused solely on when the Bank "knew" of allegations, rather than focusing on the more important issue of whether or not a respondent had engaged in fraud or corruption. For these reasons, Management has decided to focus on the more precise date of the last day of contract execution for the commencement of the statute of limitations.

Management proposal:

31. Management therefore proposes that the new sanctions process contain a ten-year time limitation commencing on the last date of execution of the contract involved.

C. Standard of Proof and Burden of Proof

32. Management proposes to replace the current standard of proof of "reasonably sufficient evidence" with the more descriptive standard of "more likely than not," in order to clarify the standard and achieve greater uniformity in its application. The "reasonably sufficient evidence" standard used by the Sanctions Committee is uncommon in both civil and criminal law. The August 2001 Procedures interpreted it to mean the same as the generally recognizable standard of "more likely than not" or "balance of probabilities," the usual standard in U.S. and U.K. civil cases (as opposed to "beyond a reasonable doubt," the standard of evidence used in criminal proceedings conducted in the U.S. and the U.K.).

33. Furthermore, Management proposes another clarification with respect to the burden of proof: INT should continue to have the burden of presenting sufficient evidence to meet the standard of proof. After INT has presented such evidence, however, the burden of proof will shift to the respondent to demonstrate why that respondent should not be sanctioned as a consequence of such behavior.

Management proposal:

34. Management proposes that the standard of proof in the sanctions process be changed to "more likely than not" so that the Sanctions Board would have to conclude on the basis of a preponderance of the evidence that the respondent engaged in fraud or corruption.

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[13] A ten-year time limitation is consistent with French Penal Code which contains a statute of limitations of ten years for criminal conduct.

D. Range of Possible Sanctions

35. To date, the Sanctions Committee has imposed a limited number of possible sanctions: a periods of ineligibility (limited or indefinite) to be awarded a Bank-financed contract, a letter of reprimand, and a requirement that the respondent institute training and integrity programs for its workers. Management now proposes that the types of sanctions available to the Evaluation Officer and the Sanctions Board be expanded to include: (1) conditional non-debarment, (2) temporary debarment with conditional release, and (3) restitution requirements. Under a conditional non-debarment, the Sanctions Board would require a respondent to undertake certain required acts (such as a compliance program), and failing to do so would result in the debarment of the respondent for a specified period of time. Under a temporary debarment with conditional release, on the other hand, a respondent would be declared ineligible for a stated period of time but would only become eligible again after that period if it had complied with the conditions of release (such as restitution to the borrower). Mr. Thornburgh has noted the desirability of having a broad range of sanctions. Indeed, this need for more flexibility has already led the Sanctions Committee to issue public letters of reprimand as another form of sanction. Management would establish guidelines to govern the application of sanctions by the Evaluation Officer and the Sanctions Board.

Management proposal:

36. Management proposes that the range of sanctions available to the Evaluation Officer and the Sanctions Board include: (1) debarment, (2) letters of reprimand, (3) the initiation and adoption of compliance programs, (4) conditional non-debarment, (5) temporary debarment with conditional release, and (6) restitution requirements. Management further proposes that, as is the case in the current Sanctions Committee Procedures, the identity of the sanctioned party as well as the sanction imposed be made public, including on the Bank's external website. As part of the INT Communications Strategy, which will shortly be submitted to the Executive Directors, Management will propose a further amendment to the World Bank Policy on the Disclosure of Information in order to address the disclosure of additional information related to sanctions.

E. Incentives for Cooperation and the Assessment of Aggravating and Mitigating Factors

37. Management notes that the current practice of taking into consideration a number of factors that may affect the sanction imposed upon a respondent should continue to be applicable under the new framework. Factors that could be either aggravating or mitigating include circumstances relating to the alleged acts, such as the pattern of a respondent's previous activities in Bank-financed projects, the degree of involvement of a particular respondent in the alleged act of fraud or corruption, whether or not corruption is involved (as opposed to only fraud), and the involvement of or bribery of Bank staff. In addition, aggravating or mitigating factors would include circumstances that relate to the respondent's conduct in the course of the Bank's investigation. For example, mitigating factors would include cooperation by the respondent in the Bank's investigation, and aggravating factors would include the destruction of evidence by the

respondent. The consideration of aggravating and mitigating factors would be designed to achieve the particular purpose to be served by the sanctioning process, i.e., debarment, general deterrence, specific deterrence, rehabilitation, and restitution.

38. Because of the limited nature of the Bank's ability to investigate allegations of fraud and corruption, Management considers that it is important and indeed necessary in appropriate situations to provide incentives to individuals and firms outside of the institution to cooperate with the Bank to allow the Bank to discharge its fiduciary responsibilities to its shareholders. The recognition of cooperation as a mitigating factor in sanctions determinations is an important tool that the Bank needs to consider. Management notes, however, that the sanction imposed on a respondent will only reflect the respondent's cooperation in those cases where the information provided -- the *quid pro quo* -- has been of real benefit to the Bank.

39. In order to facilitate investigations and the sanctions process, Management believes another important tool needed in the Bank's fraud and corruption work is to allow for the possibility of the negotiated resolution of sanctions cases through a voluntary disclosure program. The voluntary disclosure program would establish a process whereby INT would recommend to the Sanctions Board a lesser sanction to be agreed upon with the firm or individual participating in the program (the "participant") in exchange for information provided by the participant. That sanction would take into account the importance of the voluntary admissions made by the participant as well as additional evidence of fraud or corruption provided by the participant concerning third parties. Such a program would permit disclosures by firms or individuals of information relating to fraud or corruption in Bank-financed operations where the Bank had not previously received such information and was unlikely to have access to such evidence without the participant's cooperation. The principal objective of this proposal is to provide potential participants with an incentive to come forward voluntarily and to disclose important information to the institution about fraudulent and corrupt practices in Bank-financed operations. In exchange, participants would receive recognition for their cooperation in the form of a lesser sanction if the information is deemed to be credible and of value to the Bank. The Bank will develop a set of procedures to govern the voluntary disclosure program. Management will share these procedures with the Audit Committee and will implement the program only after consultations with the Audit Committee on the proposed procedures.

Management proposal:

40. Management proposes that the Evaluation Officer and the Sanctions Board be authorized to consider aggravating or mitigating factors in determining an appropriate sanction of respondents. Such factors will include circumstances relating to the alleged acts of fraud or corruption committed by a respondent as well as its conduct during the course of the Bank's investigation. Furthermore, Management proposes to adopt a voluntary disclosure program that permits firms or individuals to report fraud or corruption in Bank-financed contracts and to allow those firms or individuals to receive mitigation for their cooperation in the form of a lighter sanction.

F. Parties Subject to Sanctions

41. Based on its early experience, the Sanctions Committee found its authority too restricted when dealing with individuals who maintained indirect control over shell companies used to divert funds in Bank-financed projects. Management seeks Board approval for the Evaluation Officer and the Sanctions Board to impose sanctions on any individual or organization that at any time directly or indirectly controls or is controlled by a respondent. This would be both a more expansive and flexible reach of the Sanctions Board's jurisdiction than envisaged in the 1996 Board paper and the January 1998 Operational Memorandum, which automatically extends the reach of a debarment to "any firm that owns the majority of the accused firm's capital, or of which the accused firm owns the majority of the capital."[14] The August 2001 Procedures already provide that "the Committee may recommend to the President that an appropriate sanction be imposed on any individual or organization that, directly or indirectly, controls or is controlled by the Respondent."[15]

42. The rationale behind broadening the jurisdiction of the Sanctions Board is to prevent a debarred respondent (including its owners and officers in a controlling position) from creating a new firm in order to circumvent the consequences of a debarment decision.

Management proposal:

43. Management proposes that the parties subject to sanctions include any individual or organization that directly or indirectly controls, or is controlled by, a respondent.

G. Scope of Debarments

44. In the course of the July 23 Audit Committee meeting, one Committee member voiced a concern about the lack of applicability of the sanctions process to projects supported by Bank or IDA guarantees, as well as to MIGA's and IFC's activities. The Bank's sanctions process has been limited to IBRD loans and IDA credits.

45. The Bank and IDA will incorporate the appropriate provisions into their respective agreements for guarantee operations so that firms or individuals found to have engaged in fraud or corruption in connection with a project benefiting from such guarantees may be subject to the sanctions process. IFC and MIGA have submitted a separate paper to the Executive Directors on the sanctions process, a copy of which is attached. [Board Paper R2004-0025/1, IDA/R2004-0031/1, IFC/R2004-0031/1, MIGA/R2004-0010/1]

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[14] January 1998 Operational Memorandum at para. 5.

[15] August 2001 Procedures, Section 13(d).

Management proposal:

46. The Bank's sanctions process will be made applicable to IBRD and IDA guarantee operations, which will necessitate a minor revision of the Bank's procurement eligibility rules.

H. Change in Procurement Policies

47. Certain other reforms related to the changes to the sanctions process but of a more operational nature, such as amending the definitions of fraud and corruption[16] and increasing the Bank's access to bid and contract documentation,[17] have been reflected in the proposed revisions to the Procurement and Consultants Guidelines recently approved by the Board.

48. In the Audit Committee meeting, one member noted that the additional burden resulting from the requirement to increase the Bank's access to bidders' documentation will be essentially borne by client countries since it would be incumbent upon client countries' agencies to maintain a procurement record comprising all bids for a yet undetermined period of time. Any additional obligation placed on client countries, particularly under national competitive bidding which is governed by the borrower's specific procurement rules,[18] should be carefully examined with a view to striking the right balance between the interests of Borrowers on the one hand, and the interests of the Bank in gaining access to pertinent information on the other hand.

I. Cost Estimate

49. Management estimates the total cost of implementing the recommendations detailed above would be about $500,000 per year. This estimate includes the costs associated with (i) the Evaluation Officer and one support staff, (ii) Sanctions Board members chosen from within the Bank, (iii) Sanctions Board members who are not current Bank staff, and (iv) the Secretariat of the Sanctions Board.

Summary of Recommendations

50. On the basis of the foregoing and in summary, Management recommends adoption of the following reforms to the sanctions process:

a. Establishment of a Sanctions Board to comprise seven members – three Bank staff and four individuals who are not Bank staff. The Bank staff members would

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[16] See Guidelines: Procurement under IBRD Loans and IDA Credits and Guidelines: Selection and Employment of Consultants by World Bank Borrowers: Proposed Modifications [Board Paper R2003-0129; IDA/R2003-0152], paragraph 1.14.

[17] Id.

[18] National procurement laws generally do not include a requirement that public agencies should file losing bids once the bid protest period has elapsed.

be appointed by the President, while the non-Bank staff members would be appointed by the Executive Directors based on a recommendation from the President. The Sanctions Board would be authorized to sit in panels of three, with two members of each panel being drawn from the group of non-Bank staff members.

b. Introduction of an Evaluation Officer with the authority to clear notices of debarment proceedings to be sent to the respondents involved, to impose temporary suspensions on his or her own, and to recommend sanctions that will become effective if there is no appeal to the Sanctions Board.

c. Authorization for the Sanctions Board to take decisions in sanctions cases without the involvement of the President of the World Bank.

d. The introduction of a ten-year time limitation period commencing from the final date of contract execution and ending on the date when the Evaluation Officer submits a notice of debarment to the respondent. .

e. Revision of the standard of proof in the sanctions process to "more likely than not."

f. Expansion of the range of sanctions available to the Evaluation Officer and the Sanctions Board to include: (1) temporary or indefinite ineligibility, (2) letters of reprimand, (3) the initiation and adoption of compliance programs, (4) conditional non-debarment, (5) temporary debarment with conditional release, and (6) restitution requirements.

g. Publication of all sanctions and the identity of the sanctioned party.

h. Authorization for the Evaluation Officer and the Sanctions Board to consider aggravating or mitigating factors in determining an appropriate sanction of respondents, including circumstances relating to respondents' conduct during the Bank's investigations.

i. Adoption of a voluntary disclosure program that permits firms or individuals to report fraud or corruption in Bank-financed contracts and to allow those firms or individuals to receive recognition for their cooperation in the form of a lesser sanction through a negotiated resolution process.

j. Restatement of the parties subject to sanctions to include any individual or organization that directly or indirectly controls or is controlled by a respondent.

k. Application of the sanctions process to IBRD and IDA guarantee operations.

51. If the changes above are approved by the Executive Directors, Management will implement the recommended reforms to the sanctions process by revising and supplementing the August 2001 Procedures as necessary.

52. In addition, Management will proceed with the following specific work:

a. Preparation of new Sanctions Board Procedures to reflect the new process with an Evaluation and Suspension Officer and a Sanctions Board.

b. Preparation of conflict of interest guidelines for members of the Sanctions Board;

c. Preparation of Terms of Reference for the Evaluation Officer;

d. Preparation of sanctioning guidelines for the Evaluation Officer and the Sanctions Board to consider in imposing sanctions on respondents;

e. Preparation of a mechanism for temporary suspensions to be posted on the Bank's internal website pending a final resolution of respondents' cases before the Sanctions Board.

f. Preparation of guidelines for implementation of the Voluntary Disclosure Program.

53. Finally, Management intends to prepare a separate note to the Executive Directors on the detailed application of the Bank's sanctions process to the beneficiaries of IBRD and IDA guarantee agreements.

Reform of the World Bank's Sanctions Process

Revised

I. Background of the Sanctions Committee: 1998 – 2001

1. The Bank's sanctions process was first formulated in a paper presented to the Executive Directors in July 1996,[1] and was implemented in a January 1998 Operational Memorandum.[2] Consistent with the Board paper and the Operational Memorandum, the President established a Sanctions Committee in November 1998 to review allegations of fraud or corruption[3] and to recommend to the President sanctions to be imposed on those firms or individuals found to have engaged in fraudulent or corrupt activities.[4] The Committee's membership currently consists of the Managing Director overseeing Operations (Chair), the Senior Vice President and General Counsel, and two other senior staff selected for their operational experience (one Regional Vice-President and the current Vice-President, Human Resources).

2. The July 1996 Board paper and the January 1998 Operational Memorandum established a framework for the operations of the Sanctions Committee. The policies contained in these two documents provided the basis for procedures subsequently adopted by the Committee. These procedures can be summarized as follows:

(a) Evidence of fraudulent or corrupt activities is compiled into a written report that also includes an explanation of the sanctions process. This report is called a "notice of debarment proceedings" as it serves to provide written notice of the allegations to the firm or individual concerned, as well as to explain the sanctions process. A subcommittee of the Sanctions Committee reviews the notice on behalf of the Committee to determine whether the evidence warrants that the allegations be sent to the firm or

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[1] Fraud and Corruption - Proposed Amendments in the Bank's Loan Documents for the Purpose of Making Them More Effective in the Fight Against Fraud and Corruption, dated July 11, 1996 [Board Paper R96-112/1].

[2] January 5, 1998 Operational Memorandum on Fraud and Corruption under Bank-Financed Contracts: Procedures for Dealing with Allegations against Bidders, Suppliers, Contractors, or Consultants.

[3] The Bank's definitions of fraud and corruption are contained in the Procurement Guidelines and the Consultants Guidelines. "Corrupt practice" is defined as "the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution," and "fraudulent practice" is defined as "a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Borrower, and includes collusive practices among consultants (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

[4] The Committee is not involved in sanctioning staff or borrowers accused of such activities.

individual alleged to have engaged in fraudulent or corrupt activities.[5] If the Committee finds that the facts contained in the notice are sufficient to support the allegations made, the Committee issues the notice to the respondent firm or individual.

(b) Respondents are provided the opportunity to respond to the notice in writing within a certain period of time (at present, 60 working days). Respondents are also provided an opportunity to present their case orally, with legal counsel if they wish, at a hearing attended by the Committee.

(c) Based on the written documentation submitted and information received during the hearing, the Committee makes a recommendation to the President as to whether there is reasonably sufficient evidence that the respondents engaged in corrupt or fraudulent practices and, if so, the proposed sanction. To date, sanctions have included periods of ineligibility (limited or indefinite) to be awarded a Bank-financed contract, letters of reprimand, and requirements that the respondent institute training and integrity programs for its employees. The respondent and the Executive Directors representing the borrowing country concerned and the country of incorporation or citizenship of the respondent are notified of the Committee's recommendation when it is made.

(d) The President reflects on the recommendations of the Committee for a minimum of two weeks before issuing his decision. There is no appeal of the President's decision. Sanctions are posted on the Bank's external website.

II. The August 2001 Procedures

3. In August 2001, written procedures were issued for Sanctions Committee cases. These procedures (the "August 2001 Procedures") were finalized with the assistance of Mr. Richard Thornburgh[6] and issued after consultation with the Corporate Committee on Fraud and Corruption Policy. Management presented the August 2001 Procedures to the Audit Committee of the Board on October 5, 2001.

4. The August 2001 Procedures had three main objectives:

(a) to reflect certain institutional changes, including the creation of a department responsible for conducting fraud and corruption investigations and preparing the notices of debarment proceedings (the Department of Institutional Integrity ("INT"));

(b) to formalize practices previously followed by the Sanctions Committee; and

(c) to provide an improved process to respondents, including (i) a more uniform conduct of the Committee's hearings; (ii) a stricter definition of the contents of the record

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[5] The Committee labels firms and individuals alleged to have engaged in fraudulent or corrupt activities as "respondents." This term will be used for convenience throughout the remainder of this paper.

[6] Mr. Thornburgh is a former Under-Secretary General of the United Nations and a former Attorney General of the United States.

submitted to the Committee for review, and (iii) a more rigorous division of responsibilities between INT, the Committee and its Secretariat.

5. In addition, the August 2001 Procedures clarify the intent underlying a provision in the July 1996 Board paper regarding the review and investigation of incidents having occurred more than three years earlier. Because this provision was not intended to impose a statute of limitations precluding the Bank from investigating such allegations, the August 2001 Procedures grant the Director of INT the discretion to authorize investigations into allegations that occurred more than three years earlier. The effect of this is to allow the Director of INT to decide on a case-by-case basis whether a particular set of allegations is too old to investigate or whether it merits further inquiry due to other factors that raise important issues for the Bank.

6. Finally, in preparing the August 2001 Procedures, the Sanctions Committee recognized that the option provided in the January 1998 Operational Memorandum permitting respondents to cross-examine their accuser was, as a practical matter, impossible to implement. Respondents were not able to exercise this option because it required the consent of the accuser to be cross-examined. In practice, respondents were not able to obtain this consent, and so no accusers have submitted themselves for cross-examination. Hence, this option was not reflected in the August 2001 Procedures, and Management does not intend to re-introduce this practice in the contemplated revisions to these Procedures.

III. Experience to Date

7. Since its inception in November 1998, the Committee has dealt with thirty-two cases, the majority of them involving multiple respondents. In addition, there are five cases currently awaiting a hearing before the Committee and another 19 cases in earlier stages of the sanctions process. The Committee has offered "hearings" to all respondents, and a large majority of them have accepted the opportunity to make an oral presentation to the Committee.

8. To date, the Bank has declared ~~138~~177 firms or individuals ineligible to participate in future Bank-financed procurement. Nine firms have received a letter of reprimand but remained eligible to participate in Bank-financed procurement. In ~~seven~~17 cases, the Committee decided not to sanction any respondent. Of the ~~138~~177 debarments, ~~65~~67 involved corruption (in some of these cases, fraud was also found). The remaining ~~73~~110 debarments concerned fraud (including collusion among bidders). The debarments have ranged from a defined period of time ~~(66~~(102 sanctions) to permanent ineligibility ~~(72~~(75 sanctions). Debarments and reprimand letters are posted on the Bank's external website in order to ensure that the Bank's borrowers, as well as Bank staff, have easy access to such information when determining the eligibility of bidders for future Bank-financed contracts.

IV. Recommendations for Reforms of the Sanctions Process

9. Management's proposal to reform the sanctions process would introduce some significant changes to the existing process. The most significant changes include: (1) modification of the membership of the Sanctions Committee (to be renamed "Sanctions Board") to include both Bank staff and non-Bank staff, sitting in panels of three to decide cases; (2) establishment of a new staff position of ~~"Reviewing~~"Evaluation and Suspension Officer" with the authority to issue temporary suspensions pending final resolution of cases on appeal to the Sanctions Board (the ~~Reviewing~~Evaluation and Suspension Officer's preliminary decisions would become final absent an appeal by the respondent or INT); and (3) introduction of measures to address a perceived need for lighter and more flexible sanctions, recognition of cooperation as a mitigating factor in sanctions determinations, and additional incentives to contractors to disclose voluntarily information about fraud or corruption in Bank-~~Bank~~-financed projects.

A. Structure of the Sanctions Process

10. As noted above, the current structure of the sanctions process is two-tiered, with a Sanctions Committee composed of senior Bank managers making recommendations to the President for decision. Management's proposal to change the sanctions process retains a two-tier process, but removes the President from a role in such cases. Instead, a new staff position of ~~"Reviewing~~"Evaluation and Suspension Officer" ("Evaluation Officer") is introduced as the first tier of the process, though with limited authority, and a Sanctions Board, composed of Bank staff and non-Bank staff, functions as the second tier of the process. These two key reforms to the sanctions process are addressed below.

(1). Composition of the Sanctions Board

11. There are three possible options for the composition of the Sanctions Board: (1) a committee composed entirely of Bank staff such as the current Sanctions Committee; (2) a committee composed entirely of members from outside the Bank; and (3) a committee composed of a mix of Bank staff and members from outside the Bank. After examining the reasons which advocate for a change from the existing membership of the Committee (i.e., perceived conflicts of interest, potential external pressures, independence from the Bank), Management has decided to propose the third option.[7] Management believes that this option will benefit the process by providing the Committee with a combination of more independence and continued operational expertise in the procedures and guidelines associated with Bank-financed projects. ~~The~~As noted above, the Sanctions Committee would be renamed the Sanctions Board and would be reorganized to comprise seven members - three would be current Bank staff and four would be individuals who are not current Bank staff but are familiar with procurement matters, law, and Bank operations or operations of other international development banks.

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[7] This option is also supported by Mr. Thornburgh and Mr. André Faurès, a partner with Coudert Brothers LLP, Brussels. Both Mr. Thornburgh and Mr. Faurès were retained by the Bank to review the Bank's sanctions process and to provide recommendations for reforms to the process.

12. The Bank staff members would be senior staff with knowledge of Bank procurement and operational processes and who would not be perceived to have real or apparent conflicts of interest. They would be appointed by the President. The Sanctions Board members from outside of the Bank would be appointed by the Executive Directors based on a recommendation from the President, similar to the manner in which the members of the Administrative Tribunal are appointed.[8] Such members would ~~generally~~ not include former Bank staff or consultants. The Sanctions Board would be authorized to sit in panels of three to hear cases, with two members of each panel being drawn from the group of non-Bank staff members. New Sanctions Board Procedures would contain clear conflict of interest provisions to ensure a greater perception of independence of the body.

13. The President would select a chairman of the entire Sanctions Board from the Bank staff appointed as members of the Board. The chairman's role would include the designation of panels, the supervision of the Sanctions Board's Secretariat, and the administration of the Sanctions Board's budget. In addition, the chairman would be responsible for establishing guidelines to ensure the smooth functioning of the Board and the hearings held by Board panels. The chairman will be appointed for one non-renewable three-year term.

14. The new composition of the Sanctions Board would enhance the independence of this body. The Thornburgh report noted that the current Sanctions Committee has been the target of claims by respondents of conflicts of interest, which have detracted from support for the Committee's decisions. At the same time, under its new composition, the Sanctions Board would continue to benefit from the operational expertise of Bank staff members sitting on the panels. Given the complex nature of many Bank projects, the importance of maintaining such expertise on the Sanctions Board should not be underestimated.

Management proposal:

15. Management proposes to establish a Sanctions Board to comprise seven members – three current Bank staff and four individuals who are not current Bank staff. The Bank staff members would be appointed by the President, while the non-Bank staff members would be appointed by the Executive Directors based on a recommendation from the President. The Sanctions Board would be authorized to sit in panels of three, with two members of each panel being drawn from the group of non-Bank staff members.

(2). Disposition and Interim Suspension by the ~~Reviewing~~Evaluation and Suspension Officer

16. Currently, as noted above, a subcommittee of the Sanctions Committee must clear a proposed notice of debarment proceedings before it is issued to the respondent.

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[8] Article IV of the Administrative Tribunal's statute provides: "The members of the Tribunal shall be appointed by the Executive Directors of the Bank from a list of candidates nominated by the President of the Bank after appropriate consultation."

Furthermore, there is no mechanism to suspend temporarily a respondent pending the final outcome of the sanctions process. Management now proposes that a staff position of ~~"Reviewing"~~Evaluation Officer" be created primarily for the purpose of making two initial determinations in the sanctions process: (1) whether the preponderance of evidence submitted by INT in a proposed notice of debarment proceedings leads to a finding that the respondent engaged in fraud or corruption, and (2) whether the respondent should be temporarily suspended from bidding on Bank-financed contracts pending the final outcome of the sanctions process. In addition, the ~~Reviewing~~Evaluation Officer would recommend a sanction to be imposed on the respondent, but this sanction would only become effective if the respondent elects not to challenge the allegations against it by appealing to the Sanctions Board. The ~~Reviewing~~Evaluation Officer would have the discretion to recommend a sanction that is different from the sanction proposed by INT in the notice of debarment proceedings, and it is the ~~Reviewing~~Evaluation Officer's recommendation that would become effective if the respondent did not appeal.

17. Thus, the ~~Reviewing~~Evaluation Officer's post would involve the following framework:

- First, the ~~Reviewing~~Evaluation Officer would receive a proposed notice of debarment proceedings from INT and determine whether there is sufficient evidence to issue the notice to the respondent.

- If the ~~Reviewing~~Evaluation Officer determines that this is the case, then he or she would issue the notice of debarment proceedings and recommend an appropriate sanction to be imposed on the respondent.

- Within a reasonable period of time, such as 45 working days from the date of issuance of the notice, the respondent would have an opportunity to explain in writing to the ~~Reviewing~~Evaluation Officer why, in its view, it should not be temporarily suspended from being eligible to participate in Bank-financed projects pending a final outcome of the proceedings.

- Following an additional period of time, such as 60 working days from the date of issuance of the notice, the respondent would be temporarily suspended unless the ~~Reviewing~~Evaluation Officer decides that suspension would not be appropriate.

- If the respondent decides to contest the allegations in the notice, the respondent files an answer to the allegations and the matter is placed before the Sanctions Board for its review and decision.

- Should the respondent decide not to contest the allegations within a specified period of time (e.g., the 60 working days), the temporary suspension would be automatically converted into the sanction recommended by the ~~Reviewing~~Evaluation Officer unless INT requested that the Sanctions Board review the proposed sanction.

- Finally, the ~~Reviewing~~Evaluation Officer may, after examining a respondent's answer to the allegations in the notice, recommend that INT reconsider whether the case should proceed to the Sanctions Board. INT would retain the discretion to request that the case be submitted to the Sanctions Board for a decision.

18. ~~While Management intends to~~The Sanctions Board will establish reasonable periods of time in ~~the~~ new Sanctions Board Procedures for respondents and INT to file submissions in sanctions ~~cases, Management would, in light of the~~cases. The Sanctions Board may revise these time periods from time to time for future cases in light of experience gained with the new ~~procedure, review and adjust as needed the number of days which have been~~procedures.,. In any given ~~proposed in the report. On the other hand, because Management is seeking the approval of the Executive Directors~~ forcase, and based upon a written request by a party, the Chairman of the Sanctions Board would have the discretion to increase the number of days for filings in pending cases as warranted by the circumstances of a specific case. It is noteworthy that these periods of time are not related to the time limitation proposed in paragraphs 28-31, ~~*infra*, this~~*infra.* This new time limitation would not be subject to change without the approval of the Executive Directors.

19. ~~This~~The specific recommendation relating to the ~~Reviewing~~Evaluation Officer -- including the two distinct mechanisms of a first-tier review conducted by a ~~Reviewing~~Evaluation Officer and temporary suspension -- constitutes the most significant change to the current sanctions process. The main considerations underlying the recommendation with respect to temporary suspensions are that: (a) it would permit the Bank during the sanctions process -- which can be lengthy -- to restrict access to Bank-financed procurement of firms against which there is credible evidence of fraud or corruption; (b) it would reduce a respondent's incentive to use dilatory tactics and delay the proceedings while it received additional Bank-financed contracts; and (c) it would remove an incentive for a firm to contest the case at the Sanctions Board level solely for the purpose of delaying an inevitable declaration of ineligibility.

20. Furthermore, the initial review by the ~~Reviewing~~Evaluation Officer would potentially allow for the disposition of some cases without the necessity of a full hearing (thus decreasing the involvement by the Sanctions Board). Experience has shown that some respondents (such as shell companies bidding for Bank-financed contracts) do not challenge the allegations in the notice. Such firms would face debarment based on INT's ~~investigation and the Reviewing~~investigative findings and the Evaluation Officer's review, without the further step of an additional examination by the Sanctions Board. Nevertheless, any firm or individual contesting the allegations would have the right to appear before the Sanctions Board.

21. The benefits of the proposal to create the ~~Reviewing~~Evaluation Officer position outweigh certain perceived risks, including the substantial amount of discretionary authority resting with one ~~Reviewing~~Evaluation Officer, the need for consistency of standards regardless of the size or reputation of the respondent, and the possible adverse financial, reputational, or other consequences on a respondent resulting from a temporary

suspension. Management is proposing effective mechanisms to address these perceived risks: (a) respondents are entitled to make submissions in writing conveying their view to the ~~Reviewing~~Evaluation Officer before the ~~Reviewing~~Evaluation Officer imposes a temporary suspension; (b) respondents are entitled to the benefits of a two-tier review process, involving a *de novo* review by a Sanctions Board whose membership combines greater independence and expertise in Bank operations; and (c) respondents would have the possibility of avoiding potential adverse publicity resulting from a temporary suspension imposed on them by agreeing to refrain from participating in Bank-financed procurement pending final resolution by the Sanctions Board. Otherwise, the suspension would be posted on the Bank's internal website[9] under a special category for temporary suspensions, a mechanism that would also, albeit to a lower degree, contain the risk of adverse publicity.

22. Management, while recognizing that the decision-making authority of such a ~~Reviewing~~Evaluation Officer would be substantial, is satisfied that the ~~Reviewing~~Evaluation Officer's authority would be balanced by the fact that his or her decision to impose a sanction would only become final if the respondent elects not to appeal to the Sanctions Board. Furthermore, the imposition of a temporary suspension would always be preceded by a determination made first by the Director of INT and subsequently by the ~~Reviewing~~Evaluation Officer that sufficient evidence exists to support the investigative findings of fraud or corruption ~~exists~~. Management is also of the view that substituting a panel for the ~~Reviewing~~Evaluation Officer would substantially burden the proposed procedure and make it overly bureaucratic. Moreover, the proposed process is in line with best practices found in various national debarment rules that utilize an exclusion mechanism.[10]

23. Temporary suspension, in combination with the availability of review by the Sanctions Board, contributes to the objectives of fairness and administrative efficiency identified in Mr. Thornburgh's report both in terms of practical justification and of overall public purpose. Indeed, Management's proposed suspension mechanism provides the respondent with protection similar to or greater than equivalent administrative suspension mechanisms found under the domestic laws of some of the Bank's member countries.[11]

24. The ~~Reviewing~~Evaluation Officer would be appointed by the President and would report to the President. The Evaluation Officer's performance would be reviewed carefully on an annual basis given the importance of the position in the sanctions process.

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[9] Such postings would be available to the Bank's borrowers through Client Connection. The intranet posting of temporary suspensions would include clear language that the Sanctions Board had not reached any finding of fraud or corruption with respect to the listed respondents.

[10] For example, the U.S. Federal Acquisition Regulations, the French Code des Marchés, the China Tendering and Bidding Law, and the Turkish Public Procurement Law all provide for an exclusion of bidders based on the determination of a single government officer; furthermore, such exclusion is publicly disclosed.

[11] See footnote 10 above.

Selection criteria would include extensive knowledge of the Bank's operational policies, particularly in the area of procurement, as well as ~~some~~knowledge of and experience in the conduct of investigations, standards of proof and evidence, and legal issues relating to Bank operations. Management would also ensure that the ~~Reviewing~~Evaluation Officer has the necessary independence to make decisions on the cases investigated by INT and proposed for sanctioning, and that he or she does not have real or perceived conflicts of interest with respect to the cases that come under review. ~~Lastly,~~ Management would take into account the need for a flexible deployment of resources, particularly in light of the fact that the caseload of the ~~Reviewing~~Evaluation Officer will be unpredictable and may not require a full-time commitment. Nevertheless, a deputy may be appointed to act on behalf of the Evaluation Officer when he or she is not available.

Management Proposal

25. Management therefore proposes that the Executive Directors approve the creation of a ~~Reviewing~~Evaluation Officer function with the authority to clear notices of debarment proceedings, to impose temporary suspensions, and, in the absence of a respondent's appeal to the Sanctions Board, to impose debarments as described in the preceding paragraphs.

(3). Final Decision on Imposition of Sanctions

26. The introduction of the ~~Reviewing~~Evaluation Officer position and a Sanctions Board composed of Bank staff and non-Bank staff eliminates the need for an additional review of sanctions cases by the President. The Sanctions Board's decisions would be final and not subject to review or appeal. The President would no longer play a role in the sanctions process, including in the voluntary disclosure program (described below in para. 39), other than to appoint the Bank staff who serve on the Sanctions Board. Mr. Wolfensohn has approved the proposal to remove the President from involvement in the sanctions process.

Management proposal:

27. Management proposes that under the new sanctions process, the Sanctions Board will have the authority to take decisions in cases without the involvement of the President of the World Bank.

B. Time Limitation

28. As noted in the discussion above, the August 2001 Procedures delegated to the Director of INT the discretion to determine whether or not to pursue allegations relating to events that occurred more than three years earlier. In his report, Mr. Thornburgh recommends that the Bank should not adopt any time limitation for sanctions cases. If the evidence before the Sanctions Board has met the standard of proof establishing that a respondent has engaged in fraudulent or corrupt practices, Mr. Thornburgh argues, it should not matter how long ago the incident occurred if the Bank wants to protect its funds from further misuse.

29. Some of the members of the Audit Committee expressed concern about the lack of a time limitation on sanctions cases and noted that almost all civil and criminal laws contain some form of time limitation. Management has considered the views of Mr. Thornburgh, the views of the Audit Committee members, and the practice of other international bodies.[12] In the end, Management has decided to propose a statute of limitations.

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[12] Neither the United Nations nor the European Commission impose time limitations on their investigations that may lead to the debarment of contractors.

30. Management's proposal is for a statute of limitations of ten years,[13] commencing from the final date of execution of the contract at issue and ending on the date when the ~~Reviewing~~Evaluation Officer submits a notice of debarment to the respondent. Because most fraud and corruption is purposefully concealed, Management has opted not to begin the statute of limitations from the date of the actual occurrence of such acts. Furthermore, Management's view is that the Bank should not adopt a commencement date tied to when the Bank "knew" or "became aware of" the alleged fraud or corruption. Such a commencement date would result in contentious and time-consuming disputes focused solely on when the Bank "knew" of allegations, rather than focusing on the more important issue of whether or not a respondent had engaged in fraud or corruption. For these reasons, Management has decided to focus on the more precise date of the last day of contract execution for the commencement of the statute of limitations.

Management proposal:

31. Management therefore proposes that the new sanctions process contain a ten-year time limitation commencing on the last date of execution of the contract involved.

C. Standard of Proof and Burden of Proof

32. Management proposes to replace the current standard of proof of "reasonably sufficient evidence" with the more descriptive standard of "more likely than not," in order to clarify the standard and achieve greater uniformity in its application. The "reasonably sufficient evidence" standard used by the Sanctions Committee is uncommon in both civil and criminal law. The August 2001 Procedures interpreted it to mean the same as the generally recognizable standard of "more likely than not" or "balance of probabilities," the usual standard in U.S. and U.K. civil cases (as opposed to "beyond a reasonable doubt," the standard of evidence used in criminal proceedings conducted in the U.S. and the U.K.).

33. Furthermore, Management proposes another clarification with respect to the burden of proof: INT should continue to have the burden of presenting sufficient evidence to meet the standard of proof. After INT has presented such evidence, however, the burden of proof will shift to the respondent to demonstrate why that respondent should not be sanctioned as a consequence of such behavior.

Management proposal:

34. Management proposes that the standard of proof in the sanctions process be changed to "more likely than not" so that the Sanctions Board would have to conclude on the basis of a preponderance of the evidence that the respondent engaged in fraud or corruption.

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[13] A ten-year time limitation is consistent with French Penal Code which contains a statute of limitations of ten years for criminal conduct.

D. Range of Possible Sanctions

35. To date, the Sanctions Committee has imposed a limited number of possible sanctions: a periods of ineligibility (limited or indefinite) to be awarded a Bank-financed contract, a letter of reprimand, and a requirement that the respondent institute training and integrity programs for its workers. Management now proposes that the types of sanctions available to the ~~Reviewing~~Evaluation Officer and the Sanctions Board be expanded to include: (1) conditional non-debarment, (2) temporary debarment with conditional release, and (3) restitution requirements. Under a conditional non-debarment, the Sanctions Board would require a respondent to undertake certain required acts (such as a compliance program), and failing to do so would result in the debarment of the respondent for a specified period of time. Under a temporary debarment with conditional release, on the other hand, a respondent would be declared ineligible for a stated period of time but would only become eligible again after that period if it had complied with the conditions of release (such as restitution to the borrower). Mr. Thornburgh has noted the desirability of having a broad range of sanctions. Indeed, this need for more flexibility has already led the Sanctions Committee to issue public letters of reprimand as another form of sanction. Management would establish guidelines to govern the application of sanctions by the ~~Reviewing~~Evaluation Officer and the Sanctions Board.

Management proposal:

~~36.~~Management proposes that the range of sanctions available to the ~~Reviewing~~Evaluation Officer and the Sanctions Board include: (1) debarment, (2) letters of reprimand, (3) the initiation and adoption of compliance programs, (4) conditional non-debarment, (5) temporary debarment with conditional release, and (6) restitution requirements. Management further proposes that, as is the case in the current Sanctions Committee Procedures, the identity of the sanctioned party as well as the sanction imposed ~~all sanctions~~ be made public, including on the Bank's external ~~website.~~

36. website. As part of the INT Communications Strategy, which will shortly be submitted to the Executive Directors, Management will propose appropriate further amendments to the World Bank Policy on the Disclosure of Information in order to address the disclosure of additional information related to sanctions.

E. Incentives for Cooperation and the Assessment of Aggravating and Mitigating Factors

37. Management notes that the current practice of taking into consideration a number of factors that may affect the sanction imposed upon a respondent should continue to be applicable under the new framework. Factors that could be either aggravating or mitigating include circumstances relating to the alleged acts, such as the pattern of a respondent's previous activities in Bank-financed projects, the degree of involvement of a particular respondent in the alleged act of fraud or corruption, whether or not corruption is involved (as opposed to only fraud), and the involvement of or bribery of Bank staff. In addition, aggravating or mitigating factors would include circumstances that relate to the respondent's conduct in the course of the Bank's investigation. For example,

mitigating factors would include cooperation by the respondent in the Bank's investigation, and aggravating factors would include the destruction of evidence by the respondent. The consideration of aggravating and mitigating factors would be designed to achieve the particular purpose to be served by the sanctioning process, i.e., debarment, general deterrence, specific deterrence, rehabilitation, and restitution.

38. Because of the limited nature of the Bank's ability to investigate allegations of fraud and corruption, Management considers that it is important and indeed necessary in appropriate situations to provide incentives to individuals and firms outside of the institution to cooperate with the Bank to allow the Bank to discharge its fiduciary responsibilities to its shareholders. The recognition of cooperation as a mitigating factor in sanctions determinations is an important tool that the Bank needs to consider. Management notes, however, that the sanction imposed on a respondent will only reflect the respondent's cooperation in those cases where the information provided -- the *quid pro quo* -- has been of real benefit to the Bank.

~~39.~~In order to facilitate investigations and the sanctions process, Management believes another important tool needed in the Bank's fraud and corruption work is to allow for the possibility of the negotiated resolution of sanctions cases through a voluntary disclosure program. The voluntary disclosure program would ~~cases. The~~establish ~~negotiated resolution of sanctions cases would include~~ a process whereby INT would recommend to the Sanctions Board a lesser sanction to be agreed upon with the ~~respondent.~~firm or individual participating in the program (the "participant") in exchange for information provided by the participant. That sanction would take into account the ~~import of~~importance of the voluntary admissions made by the ~~respondent~~participant as well as additional evidence of fraud or corruption provided by the ~~respondent~~participant concerning third parties. Such a program would permit disclosures by firms or individuals of ~~potential~~information relating to fraud or corruption in ~~instances~~Bank-financed operations where the Bank had not ~~yet received allegations of fraud or corruption and~~ ispreviously received such information and was unlikely to have access to such evidence without evidence.the participant's cooperation. The principal objective of this proposal is to provide potential ~~respondents~~participants with an incentive to come forward voluntarily and to disclose important information to the institution about fraudulent and corrupt practices in Bank-~~Bank~~-financed operations. In exchange, ~~the potential respondents~~participants would receive recognition for their cooperation in the form of a ~~lighter~~lesser sanction if the information is deemed to be credible and of value to the Bank. The Bank will develop a set of procedures to govern the voluntary disclosures~~, including in cases where the respondent~~participant ~~bears some responsibility in the misuse of funds in Bank-financed projects.~~

39. projects.

40. program. Management will share these procedures with the Audit Committee and will implement the program only after consultations with the Audit Committee on the proposed procedures. adversarial previously established [See Board Paper R96-112/1]

Management proposal:

~~40.~~41. Management proposes that the ~~Reviewing~~Evaluation Officer and the Sanctions Board be authorized to consider aggravating or mitigating factors in determining an appropriate sanction of respondents. Such factors will include circumstances relating to the alleged acts of fraud or corruption committed by a respondent as well as its conduct during the course of the Bank's investigation. Furthermore, Management proposes to adopt a voluntary disclosure program that permits firms or individuals to report fraud or corruption in Bank-financed contracts and to allow those firms or individuals to receive mitigation for their cooperation in the form of a lighter sanction.

F. Parties Subject to Sanctions

~~41.~~42. Based on its early experience, the Sanctions Committee found its authority too restricted when dealing with individuals who maintained indirect control over shell companies used to divert funds in Bank-financed projects. Management seeks Board approval for the ~~Reviewing~~Evaluation Officer and the Sanctions Board to impose sanctions on any individual or organization that at any time directly or indirectly controls or is controlled by a respondent. This would be both a more expansive and flexible reach of the Sanctions Board's jurisdiction than envisaged in the 1996 Board paper and the January 1998 Operational Memorandum, which automatically extends the reach of a debarment to "any firm that owns the majority of the accused firm's capital, or of which the accused firm owns the majority of the capital."[14] The August 2001 Procedures already provide that "the Committee may recommend to the President that an appropriate sanction be imposed on any individual or organization that, directly or indirectly, controls or is controlled by the Respondent."[15]

~~42.~~43. The rationale behind broadening the jurisdiction of the Sanctions Board is to prevent a debarred respondent (including its owners and officers in a controlling position) from creating a new firm in order to circumvent the consequences of a debarment decision.

Management proposal:

~~43.~~44. Management proposes that the parties subject to sanctions include any individual or organization that directly or indirectly controls, or is controlled by, a respondent.

G. Scope of Debarments

~~44.~~45. In the course of the July 23 Audit Committee meeting, one Committee member voiced a concern about the lack of applicability of the sanctions process to projects supported by Bank or IDA guarantees, as well as to MIGA's and IFC's activities. The Bank's sanctions process has been limited to IBRD loans and IDA credits.

~~45.~~46. The Bank and IDA will incorporate the appropriate provisions into their respective agreements for guarantee operations so that firms or individuals found to have

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[14] January 1998 Operational Memorandum at para. 5.

[15] August 2001 Procedures, Section 13(d).

engaged in fraud or corruption in connection with a project benefiting from such guarantees may be subject to the sanctions process. IFC and MIGA have ~~indicated that they will prepare~~submitted a separate paper to the Executive Directors on ~~this subject.~~the sanctions process, a copy of which is attached. [Board Paper R2004-0025/1, IDA/R2004-0031/1, IFC/R2004-0031/1, MIGA/R2004-0010/1]

Management proposal:

~~46.~~47. The Bank's sanctions process will be made applicable to IBRD and IDA guarantee operations, which will necessitate a minor revision of the Bank's procurement eligibility rules.

H. Change in Procurement Policies

~~47.~~48. Certain other reforms related to the changes to the sanctions process but of a more operational nature, such as amending the definitions of fraud and corruption[16] and increasing the Bank's access to bid and contract documentation,[17] have been reflected in the proposed revisions to the Procurement and Consultants Guidelines recently approved by the Board.

~~48.~~49. In the Audit Committee meeting, one member noted that the additional burden resulting from the requirement to increase the Bank's access to bidders' documentation will be essentially borne by client countries since it would be incumbent upon client countries' agencies to maintain a procurement record comprising all bids for a yet undetermined period of time. Any additional obligation placed on client countries, particularly under national competitive bidding which is governed by the borrower's specific procurement rules,[18] should be carefully examined with a view to striking the right balance between the interests of Borrowers on the one hand, and the interests of the Bank in gaining access to pertinent information on the other hand.

I. Cost Estimate

~~49.~~50. Management estimates the total cost of implementing the recommendations detailed above would be about $500,000 per year. This estimate includes the costs associated with (i) the ~~Reviewing~~Evaluation Officer and one support staff, (ii) Sanctions Board members chosen from within the Bank, (iii) Sanctions Board members who are not current Bank staff, and (iv) the Secretariat of the Sanctions Board.

Summary of Recommendations

~~50.~~51. On the basis of the foregoing and in summary, Management recommends adoption of the following reforms to the sanctions process:

a. Establishment of a Sanctions Board to comprise seven members – three ~~current~~ Bank staff and four individuals who are not ~~current~~ Bank staff. The Bank staff members would be appointed by the President, while the non-Bank staff members would be appointed by the Executive Directors based on a recommendation from the President. The Sanctions Board would be authorized to sit in panels of three, with two members of each panel being drawn from the group of non-Bank staff members.

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[16] See Guidelines: Procurement under IBRD Loans and IDA Credits and Guidelines: Selection and Employment of Consultants by World Bank Borrowers: Proposed Modifications [Board Paper R2003-0129; IDA/R2003-0152], paragraph 1.14.

[17] Id.

[18] National procurement laws generally do not include a requirement that public agencies should file losing bids once the bid protest period has elapsed.

b. Introduction of ~~a Reviewing~~an Evaluation Officer with the authority to clear notices of debarment proceedings to be sent to the respondents involved, to impose temporary suspensions on his or her own, and to recommend sanctions that will become effective if there is no appeal to the Sanctions Board.

c. Authorization for the Sanctions Board to take decisions in sanctions cases without the involvement of the President of the World Bank.

d. The introduction of a ten-year time limitation period commencing from the final date of contract execution and ending on the date when the ~~Reviewing~~Evaluation Officer submits a notice of debarment to the respondent. .

e. Revision of the standard of proof in the sanctions process to "more likely than not."

f. Expansion of the range of sanctions available to the ~~Reviewing~~Evaluation Officer and the Sanctions Board to include: (1) temporary or indefinite ineligibility, (2) letters of reprimand, (3) the initiation and adoption of compliance programs, (4) conditional non-debarment, (5) temporary debarment with conditional release, and (6) restitution requirements.

g. Publication of all sanctions and the identity of the sanctioned party.

h. Authorization for the ~~Reviewing~~Evaluation Officer and the Sanctions Board to consider aggravating or mitigating factors in determining an appropriate sanction of respondents, including circumstances relating to respondents' conduct during the Bank's investigations.

i. Adoption of a voluntary disclosure program that permits firms or individuals to report fraud or corruption in Bank-financed contracts and to allow those firms or individuals to receive recognition for their cooperation in the form of a ~~lighter~~lesser sanction through a negotiated resolution process.

j. Restatement of the parties subject to sanctions to include any individual or organization that directly or indirectly controls or is controlled by a respondent.

k. Application of the sanctions process to IBRD and IDA guarantee operations.

~~51.~~52. If the changes above are approved by the Executive Directors, Management will implement the recommended reforms to the sanctions process by revising and supplementing the August 2001 Procedures as necessary.

~~52.~~53. In addition, Management will proceed with the following specific work:

a. Preparation of new Sanctions Board Procedures to reflect the new process with an Evaluation and Suspension Officer and a Sanctions Board.

b. Preparation of conflict of interest guidelines for members of the Sanctions Board;

~~b.~~c. Preparation of Terms of Reference for the ~~Reviewing~~Evaluation Officer;

~~c.~~d. Preparation of sanctioning guidelines for the ~~Reviewing~~Evaluation Officer and the Sanctions Board to consider in imposing sanctions on respondents;

~~d.~~e. Preparation of a mechanism for temporary suspensions to be posted on the Bank's internal website pending a final resolution of respondents' cases before the Sanctions Board.

f. Preparation of guidelines for implementation of the Voluntary Disclosure Program.

~~53.~~54. Finally, Management intends to prepare a separate note to the ~~Board~~Executive Directors on the detailed application of the Bank's sanctions process to the beneficiaries of IBRD and IDA guarantee agreements.

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R2004-0025/1
IDA/R2004-0031/1
IFC/R2004-0019/1
MIGA/R2004-0010/1

March 1, 2004

For meeting of
Board: Tuesday, March 9, 2004

FROM: Vice President and Corporate Secretary

Reform of the World Bank's Sanctions Process

Supplemental Note
(Anti-Fraud and Anti-Corruption Measures in IFC and MIGA Operations)

1. Attached is a supplemental note to the President's Memorandum and report enttitled "Reform of the World Bank's Sanctions Process", (R2004-0025[IDA/R2004-0031, IFC/R2004-0019,MIGA/R2004-0010]) which will be considered at the joint meeting of the Executive Directors of the Bank and IDA and the Boards of Directors of IFC and MIGA on **Tuesday, March 9, 2004**.

2. Questions on this note may be addressed to Mr. Coogan (ext. 35334) or Mr. Riopelle (ext. 85362) at IFC, and to Mr. Jones (ext. 80443) or Mr. Marchais (ext. 36140) at MIGA.

Distribution:

Executive Directors and Alternates
President
Bank Group Senior Management
Vice Presidents, Bank, IFC and MIGA
Directors and Department Heads, Bank, IFC and MIGA

Reform of the World Bank's Sanctions Process

Anti-Fraud and Anti-Corruption Measures in IFC and MIGA Operations

1. IFC and MIGA have been asked to describe their approach to anti-fraud and anti-corruption in light of the IBRD Board paper No. R2004-0025, dated February 19, 2004, regarding reform of the Bank's sanctions process, and to consider applying anti-corruption and anti-fraud measures uniformly among World Bank Group entities.

2. IFC and MIGA welcome the proposed reform of the IBRD's sanctions process as an opportunity to enhance and complement their own anti-fraud and anti-corruption programs, and to ensure consistency in the approach to fraud and corruption among World Bank Group entities. We have consulted with the World Bank, including the IBRD Legal Department and the Department of Institutional Integrity (INT), on the general procedures for accomplishing this effectively, given the differences in the mission and operations of WBG entities. Based on these consultations, we have developed an approach for handling allegations of fraud or corruption which we believe will be consistent with that of the IBRD's sanctions process, with certain operational details appropriately tailored to each entity's particular mission and operations. The IBRD Legal Department and INT concur with the approach which is set out below.

3. This paper describes: (1) IFC and MIGA's anti-fraud and anti-corruption programs; (2) certain key differences among IFC, MIGA and IBRD operations to take into account when establishing World Bank Group-wide anti-fraud and anti-corruption procedures; and (3) the proposed future approach by IFC and MIGA to the sanctions process.

I. IFC and MIGA Anti-Fraud and Anti-Corruption Programs

Comprehensive due diligence on background and integrity.

4. IFC and MIGA are keenly aware of the potential credit and reputational risks that would be posed by fraud or corruption in one of their projects, and are determined to guard against such risks. Before committing to a project, IFC and MIGA conduct due diligence as to sponsor and borrower background and integrity, as well as a thorough review of the project costs and economic fundamentals. IFC and MIGA routinely check with field offices, local financial institutions, local authorities, and other knowledgeable local actors to get the best information available on the reputation and integrity of the potential sponsors and borrowers. In addition, when appropriate, IFC and MIGA commission private investigations of the background of sponsors or borrowers. This due diligence is a powerful tool to help screen out companies and projects that might pose credit risks, reputational risks or corruption concerns, and it is generally in excess of normal practice for private sector financial institutions and investment insurers. Because of this extensive screening, IFC and MIGA are able to eliminate most problems at the front end, and accordingly have had very few cases of alleged fraud or corruption.

5. In May 2003, IFC began electronically matching its database of portfolio companies and pipeline projects against the World Bank's List of Debarred Firms, in order to screen out such companies. In addition, IFC has created an Anti-Money Laundering/Combating the Financing of Terrorism Unit to help further screen potential sponsors and client companies. Among other things, this unit has been building programs and procedures into its systems to automatically sweep IFC's databases of portfolio companies and pipeline projects against comprehensive international databases of suspect individuals and groups, persons with sensitive or political positions, and others as to whom additional due diligence or attention is required.

6. MIGA systematically uses check lists concerning the reputational risk of the sponsor, including the World Bank's List of Debarred Firms. MIGA can, and does, refuse to deliver a guarantee to any individual or company that has been involved in established cases of fraud or corruption in past MIGA or World Bank Group projects or under national anti-corruption schemes. MIGA has increased training and staff awareness of anti-fraud and anti-corruption issues.

7. IFC and MIGA are increasingly emphasizing the importance of sponsor scrutiny in project processing.

Contractual representations and warranties against fraud and corruption.

8. IFC uses anti-corruption representations and covenants in projects involving government concessions, awards through competitive bids, or important government permits or licenses. IFC is now expanding the use of such representations, warranties and covenants to cover all its new projects. These provisions give IFC the right to call a default and require immediate repayment of the loan in the event they are violated. They are a significant disincentive to sponsors or companies involving IFC in suspect or vulnerable projects.

9. MIGA's contracts of guarantee all contain standard clauses against fraud and money laundering, as well as clauses which require the holder of a guarantee, and the project enterprise, to comply with all the laws and regulations, including anti-corruption laws, of the host country. A violation of one of these provisions enables the Agency to terminate the contract with immediate effect and/or refuse to pay any compensation in the event of a claim.

10. When signing a MIGA contract, the holder of a guarantee also represents and warrants that it has not engaged in fraud and corrupt practices, and was not aware of the project enterprise engaging in such practices. Should it appear that the holder of the guarantee has breached one of these representations and warranties, the contract will be considered null and void **ab initio** by the Agency.

Investigation by the Department of Institutional Integrity (INT), if allegations of fraud or corruption arise in an IFC or MIGA project.

11. INT already has jurisdiction to investigate allegations of fraud or corruption in IFC and MIGA projects, as it does in other WBG operations. This would continue to be the case.

12. MIGA cooperates with INT in the area of training. The Department has organized seminars, and provided written material, for the benefit of MIGA staff. IFC already runs ethics courses for staff, and will invite INT to provide seminars and written material for IFC. IFC will increase training and staff awareness of anti-fraud and anti-corruption issues.

II. Key Differences Between IFC/MIGA and IBRD Business Models

IFC and MIGA do not require a public sanctions procedure in order to exclude companies that have engaged in fraud or corruption.

13. As noted above, IFC and MIGA aggressively screen projects in the due diligence phase, to weed out projects where fraud, corruption, or sponsor integrity or background might be an issue. IFC and MIGA rely on the strengths of their private sector business model, which combines the normal cost efficiency of the private sector with due diligence and management judgment, to have a decisive role in eliminating potential reputational problems. IFC and MIGA have the right to refuse to work with any individual or company. In this regard, the IFC/MIGA business model is fundamentally different than public procurement, where generally such discretion and due diligence is limited or difficult to exercise. In general, public procurement contracts must be awarded to the winning bidder, regardless of misgivings about the background or character of the winner. For this reason, in public procurement, formal sanctions with adequate publicity may be necessary.

14. IFC and MIGA are not aware of any private sector commercial or investment banks or political risk insurers that use formal sanctions hearings, appeals, rules of evidence and public debarment sanctions in order to avoid doing business with undesirable companies. Instead, private sector financial institutions and political risk insurers use due diligence and business judgment to avoid such counterparties. Notwithstanding these differences in business model, IFC and MIGA propose to adopt procedures that will ensure a consistent World Bank Group approach to the sanctions process.

Different Operations and Exposure

15. IFC and MIGA each operates in ways that are fundamentally different than the IBRD public procurement operations. IFC is a lender to or equity investor in private sector commercial businesses and funds. MIGA is a political risk insurer of loans or equity in private sector commercial businesses. Familiarity with lending, equity investing, and political risk insurance operations would be highly relevant to any inquiries into or evaluations of alleged fraud or corruption in IFC or MIGA projects, just as it is acknowledged that familiarity with public procurement is highly relevant to inquiries into or evaluations of such allegations in World Bank procurement.

16. Sanctions procedures that involve the public announcement of the sanctioned companies present litigation risks and other complexities. Defamation, interference with contract, and other complaints can be alleged. IFC operates as a party to commercial contracts, where characteristically IFC is subject to jurisdiction for litigation arising out of the contract. IFC contracts are governed by commercial laws, and IFC's counterparties are generally private sector players who may not hesitate to litigate to protect their interests. IFC must also take into account the interests of its B Loan participants.

17. MIGA's position also requires particular analysis. Like IFC, MIGA interacts with private sector players, in commercial contracts, in a great many jurisdictions. MIGA does not consent in its insurance contracts to court jurisdiction, but MIGA does consent to arbitration in accordance with MIGA's arbitration rules, applying general principles of law. Counterparties thus have a ready forum in which to bring claims. MIGA's actions, especially if they lead to contract termination or a refusal to pay compensation, may raise serious reputation risks. In particular MIGA has to be extremely vigilant not to be seen as unwilling to pay a claim. Rating Agencies have made it clear that insurers' willingness to pay claims is an essential rating element and that unwillingness on the part of an insurer to face its obligations in this respect, be it real or perceived, will lead to downgrading of its financial strength rating. This could have a serious impact on MIGA's future ability to do business. MIGA must also take into account the interests of its reinsurers.

18. Accordingly, any individual such as a Reviewing Officer, handling alleged fraud or corruption in IFC or MIGA matters, should be familiar with the fact patterns, legal contracting structure and potential liabilities in IFC and MIGA matters.

III. Proposed Future Approach

19. We propose an approach for handling allegations of fraud or corruption, which we believe is consistent with the sanctions procedures described in the IBRD Board paper No. R2004-0025. As in past practice, INT will continue to have jurisdiction to investigate allegations of fraud and corruption in IFC and MIGA projects, and IFC and MIGA will continue to cooperate with such investigations. Taking into account the special features of IFC and MIGA business, we believe that separate Reviewing Officers should be appointed for IFC and MIGA.

20. In general, the Reviewing Officers for IFC and MIGA will have similar functions to the Reviewing Officer in IBRD. It is not clear that the IFC and MIGA Reviewing Officers should have all of the functions of the IBRD Reviewing Officer. Given the differences in operations and exposures in IFC and MIGA, IFC and MIGA will need to put procedures in place to consider these issues. The selection criteria for the IFC and MIGA Reviewing Officers should include extensive knowledge of IFC or MIGA operations, as well as some experience in legal issues relating to IFC or MIGA operations. Considering the low number of IFC and MIGA projects with allegations of fraud or corruption in the past, it is likely that the Reviewing Officer function at IFC and MIGA will not require a full-time time commitment.

21. Following INT's report to IFC's and MIGA's Management and Reviewing Officers, any referral by the IFC or MIGA Reviewing Officer to the Sanctions Board would follow the sanctions process set out in IBRD Board paper No. R2004-0025. IFC and MIGA will work with INT to develop procedures to reflect the above arrangements.

Compliance with Sanctions Board decisions

22. If a company is debarred pursuant to the IBRD sanctions process (regardless of the World Bank Group entity out of which the Sanctions Board proceeding arises), IFC will not lend to or invest in such company, nor to any entity sponsored by such company, and MIGA will not provide guarantees to investors, or to investments in project enterprises, or reinsurance to insurers, or any other services, when such investors, project enterprises, insurers, or providers of services, have been debarred pursuant to the IBRD sanctions process. In view of the broad proposed range of sanctions discussed in the IBRD Board paper on sanctions reform, IFC and MIGA would similarly apply any lesser sanctions, provided in MIGA's case that these sanctions are compatible with its operational procedures. For instance, if a company is eligible for IBRD procurement subject to implementing an integrity program, then IFC could also invest in the company and MIGA could provide a guarantee to the company, subject to the same conditions. We will work with INT to draft written procedures in this regard.

23. As noted above, in May 2003 IFC began electronically matching its database of portfolio companies and projects in process against the World Bank's List of Debarred Firms, in order to screen out such companies.

24. Debarment by the IBRD's Sanctions Board as a result of a referral under a MIGA contract of guarantee will be considered a sufficient basis for termination of such contract, or for refusal to pay compensation in the event of a claim, in accordance with applicable contract provisions. Similarly, debarment by the IBRD Sanctions Board as a result of a referral under an IFC loan would be considered a sufficient basis for IFC to declare an event of default, in accordance with applicable contract provisions.

25. IFC's website will note that entities or individuals on the World Bank's List of Debarred Firms are not eligible for IFC loans or investments, and MIGA's website will note that they are not eligible for MIGA services.