Chapter 16
The Fight Against Corruption: The World Bank Debarment Policy

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16.1 Introduction

Since the mid-1990s, officials in international donor agencies and multilateral banks have increasingly perceived that good governance and efforts to reduce corruption are critical elements of development effectiveness. This sentiment crystalized after the then president of the World Bank, James Wolfensohn, delivered his oft-cited "cancer of corruption" speech at the 1996 Bank-Fund Annual Meetings in Hong Kong. As a result of that speech, governance and fighting corruption moved from the margins and became a critical part of project formulation, technical assistance, and lending instruments delivered by bilateral and multilateral organizations to low and middle-income countries. Although the issue remained controversial, officials at the World Bank debated what should be done when evidence demonstrated that individuals or firms had defrauded projects, embezzled project funds, engaged in

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misprocurement, or sought to impede or mislead audits or investigations. The decision was made to use a blacklisting mechanism called debarment. This choice was a difficult one to make; however, compliance with the 1944 Articles of Agreement left officials in the World Bank without any choice in how to respond to the allegations of corruption in its projects.

Development agencies have integrated efforts to control corruption in their lending, technical assistance, and post-conflict reconstruction operations. Still, the sensitive question of sanctions remains open for discussion, and despite efforts to ensure due diligence and probity in World Bank projects, the problem of how to deter dishonest behavior has been the subject of numerous discussions and position papers. In 2010, the then president of the World Bank Robert Zoellick articulated a new policy of cross debarment with the principle, "Steal and cheat from one, get punished by all." All multilateral development banks (MDBs)—the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IADB)—thereafter adopted a policy that if one bank determined that a firm or individual had engaged in a sanctionable offense, then they would all debar that individual or firm. This harmonization of policy was a major step forward in the definition of new norms for sanctioning international corruption.

This chapter traces the evolution of thinking since the late 1990s among multilateral donors concerning governance, anticorruption, and debarment. It notes that a consensus has emerged, to the effect that corruption indicates poorly defined rules, a lack of transparency, and the absence of accountability. This chapter explores how rules, norms, and sanctions have emerged from this harmonization of policies. It also notes that although institutions gain credibility over considerable periods of time, the increasing number of firms the World Bank has debarred from participation in its projects demonstrates that the initiative launched in 1997 has gained considerable traction.

In making this argument, the chapter first considers the Articles of Agreement negotiated at the Bretton Woods meetings and signed by each of the 188 member countries of the World Bank. Having discussed the Articles of Agreement, the chapter turns to the process by which the concept of governance was first conceived and then integrated into World Bank programs. The purpose of this brief discussion is to demonstrate that the integration of governance into World Bank lending and technical assistance programs was incremental, and represented a shift in how the organization conducts its business. Third, the chapter analyzes the sanctions process, a two-tiered procedure that has a number of consequences. These consequences include both a deterrent effect and punishment for errant firms and individuals. To make this analysis, the chapter considers how allegations of corruption have contributed to a definition of the sanctions process. Finally, the chapter assesses the effectiveness of sanctions with a critical sense of the difficulties inherent in fighting corruption in the private sector.

Table 16.1 IBRD and IDA portfolios fiscal year (FY) 2008–2012 (US$ million). (Source: World Bank, Annual Report 2012 available at http://issuu.com/world.bank.publications/docs/annual_report_2012_en/14#print)

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
IBRD (*N*=93)	US$ 13.5	US$ 32.9	US$ 44.2	US$ 26.7	US$ 20.6
IDA (*N*=81)	US$ 11.2	US$ 14.0	US$ 14.6	US$ 16.3	US$ 14.8
Total	US$ 24.7	US$ 46.9	US$ 58.8	US$ 43.0	US$ 35.4

16.1.1 What is the World Bank?

In July 1944, delegates from 44 countries assembled for 3 weeks at the United Nations Monetary and Financial Conference in Bretton Woods, New Hampshire. Under the stewardship of none other than Lord John Maynard Keynes and Harry Dexter White, delegates debated and approved the creation of the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF). These organizations commenced operations in 1946, on the basis of several key principles. Firstly, international finance would rest on the gold standard with the dollar as the de facto currency of international exchange. Secondly, exchange rates would be "fixed but adjustable," with substantial changes made only when faced with serious disequilibrium. Thirdly, the IMF would serve as the lender of last resort for governments experiencing balance-of-payment crises (Boughton 2006, pp. 6–7). Finally, the newly created financial organizations would have distinct roles; the IMF would correct balance-of-payment disequilibria and the IBRD would fund economic development (Skidelsky 2009, p. 116). This system has endured, and at the present time the World Bank Group includes the IBRD, the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the International Development Association (IDA).

The World Bank is an international financial organization that has 188 members. In terms of the size of its staff, its portfolio, and the extent of its operations, the World Bank is the largest MDB, vastly overshadowing other MDBs, including the ADB, AfDB, EBRD, and IADB. Finance for economic development is through either the IBRD, for middle-income countries, or the IDA, for low-income countries. Whereas the IBRD offers loans to middle-income countries, the IDA provides credits to the 81 poorest countries in the world, whose people live on an average annual per capita income of less than US$ 1,175. The World Bank's lending portfolio therefore includes financial and technical assistance to middle and low-income countries.

Since it is the largest MDB, the World Bank provides funding for the governments of its numerous member states. It functions largely as a cooperative; governments join the World Bank and their membership entitles them to borrow from the IBRD or to receive credits from the IDA. This particular structure resembles, in some important aspects, the lending decisions in American banks during the early nineteenth century, in which a small cadre of directors made decisions on loans that were often extended to the members (shareholders) of the bank (Lamoreaux

1991, p. 162). This management structure meant that the principal shareholders in the bank would decide upon the recipients of loans among themselves. Membership as determined by shareholdings was the crucial criterion. The insider lending evident in these practices reduced information asymmetries and, therefore, reduced the associated costs. It stands as a testimony to Harry Dexter White's influence at Bretton Woods that banking practices originally present in US firms were part of the procedures adopted by the IMF and IBRD. White's impact demonstrated that the growing influence of American political and economic power was a key element at the Bretton Woods meetings, as much as the drive to internalize information about the credit worthiness of its members and thereby reduce its costs (Boughton 1998).

The organization that Keynes and White created grew to become one of the world's major aggregations of development finance. As Table 16.1 displays, the combined portfolios of the IBRD and the IDA amount to substantial sums of finance for borrower governments. Although the sums reflect the volatility in international finance, the fact that governments of middle and low-income countries take loans and credits that disburse over years, means that the aggregate sums which the World Bank disburses shape growth.

16.2 Governance and Anticorruption: The Articles of Agreement

Work to reduce corruption in World Bank projects converged and, in some respects, collided with the Articles of Agreement that established the IBRD and, later, the other organizations that constituted the World Bank Group. Convergence was evident in the language concerning specific uses of funds. Keynes and White recognized the complexity of establishing an international organization that engaged in government-to-government lending. Hence, they drafted Articles which stipulated that the World Bank should provide funds for development, meaning that the money loaned to member governments should improve the living conditions of their citizens. According to Sect. 1 of the Articles of Agreement (below), the bank loans funds for the benefit of the client government's citizens. Delegates to the Bretton Woods meetings debated these particular stipulations about the intended purpose of the IBRD's lending operations:

SECTION 1. Use of Resources

a. The resources and the facilities of the Bank shall be used exclusively for the benefit of members with equitable consideration to projects for development and projects for reconstruction alike.
b. For the purpose of facilitating the restoration and reconstruction of the economy of members whose metropolitan territories have suffered great devastation from enemy occupation or hostilities, the Bank, in determining the conditions and terms of loans made to such members, shall pay special regard to lightening the financial burden and expediting the completion of such restoration and reconstruction.

Over time it became evident that development assistance funds, whether in the form of grants, credits, or loans, are fungible (Dollar and Pritchett 1998). When donor agencies supplement fiscal budgets with development assistance, political leaders have unfortunate incentives to reduce their appropriations to that sector by the amount of the donor's assistance, and to use the funds for other purposes, including allocations for cronyism and politically driven investments (e.g., military spending). Efforts to ring-fence IBRD loans or IDA credits have therefore encountered resistance from leaders of borrower governments, who need to use fiscal revenues to satisfy political demands.

Prior to 1997, the immediate question was whether the misappropriation of funds by borrower governments constituted a breach of contract, as stipulated in Sect. 1 of the Articles of Agreement. However, World Bank officials consciously avoided any use of the term "corruption." They dismissed the problem with assertions that everything they did for borrower governments created greater efficiency, and thereby reduced opportunities for malfeasance. When faced with observations that in some borrower governments, corruption was both pervasive and persistent, senior officials would shrug and say that corruption was an internal police affair and was therefore beyond the World Bank's mandate. Inaction was the unfortunate consequence.

The Articles of Agreement specifically prohibited staff members from making lending decisions on the basis of political considerations. Negotiations among delegates at Bretton Woods had at times been quite testy, especially over language which the Soviet delegate, M. S. Stepanov, considered to be problematic.[1] This explicit interdiction placed on any political considerations in decisions regarding lending or programmatic assistance shows that Keynes and White realized that the financial organizations which emerged from the accord signed at Bretton Woods would have to be unambiguously apolitical. Hence, they assented to the language included in Sect. 10 (below) of the Articles, which states that political considerations are irrelevant in lending decisions:

> SECTION 10. Political Activity Prohibited
> The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article I.

Although this interdiction on political considerations seemed sensible at the time, an unanticipated and unintended consequence was that the World Bank would make loans to authoritarian governments whose leaders would use this financial support to prop up their brutal regimes. As Dollar and Pritchett show, the revenues from multilateral support enabled autocrats to divert funds for political purposes, to reward their supporting coalitions, to support their families in lavish style, and to otherwise ignore the World Bank's program objectives. In negotiations over different projects, the prohibition on politics compelled World Bank officials to negotiate loans with the knowledge that their counterparts across the table were agreeing to conditions which they had neither the ability nor the political will to respect.

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[1] Minutes from the meetings at Bretton Woods are available in their entirety online. See Historic Documents and Memorabilia, Center for Financial Stability, http://www.centerforfinancialstability.org/brettonwoods_docs.php, accessed 16 July 2013.

The difficulties facing the reduction of inefficient behavior included the perverse incentives that drove lenders and borrowers in multilateral finance. Two different goals converged: World Bank officials, under pressure to either make loans or credits or see their careers languish, were willing to accept the assurances given by client governments that they would accept specific conditions. The national representatives were then under fiscal pressure to agree to conditions they could never honor. This was an equilibrium that continued until 1997, when the World Bank recognized that governance failures and corruption impeded development effectiveness.

The World Bank first presented governance as a development issue in a 1989 monograph entitled *Sub-Saharan Africa: From Crisis to Sustainable Growth* (World Bank 1989). This publication prompted an internal review of the concept, to determine whether it diverged from the World Bank's Articles of Agreement. In April 1991, Chief Counsel Ibrahim Shihata presented a paper to the World Bank's Board of Executive Directors which outlined his interpretation of the Articles of Agreement, and their relevance to questions of governance (Shihata 1991). This document traced the concept of governance back to its first usage in documents published in the Africa Region (AFR) and its subsequent employment in other areas of World Bank lending operations and technical assistance.

Shihata's exhaustive paper uses a wealth of materials to interpret the political clause in the World Bank's Articles of Agreement to "establish a legally sound framework for treating the issue of governance in the bank's work." Shihata repeatedly emphasizes that the World Bank may under no circumstances take political factors, events, or actions into consideration when assessing a government's eligibility for credit. The paper implies that whereas the Articles of Agreement expressly forbid a denial of credit based on political variables, an offer of credit which promotes incentives that lead to positive political change would be in compliance with the intentions of the Bretton Woods Agreements. Within 2 years of Shihata's paper, the World Bank had identified public-sector management, accountability, transparency, and building the institutions conducive for the rule of law as the four key areas of intervention for the improvement of governance. Under this conceptualization, the rule of law emerged as an "all-embracing concept" that was crucial for development (World Bank 1992, p. 28). Despite these changes in thinking about governance, the anticorruption initiative met with stiff resistance from both World Bank staff and borrower governments.

16.3 Governance and Corruption as Development Issues

According to the World Bank, corruption is the abuse of public position for personal gain. It is a form of behavior that indicates a breakdown in the rules, norms, and enforcement mechanisms in a public sector. Governance refers to the exercise of political power in the management of a country's economic and social resources for development. Good governance indicates that transparency and accountability are present in policy deliberations and implementation. Transparency means that debates about laws, policies, regulations, and legal texts are made available to the public. Citizens are aware of actions taken by the officials to whom they have delegated powers. Accountability implies that elected and appointed officials are answerable to a higher authority for their actions. The responsibilities of this higher authority include the elimination of impunity and the empowering of an independent judiciary capable of enforcing basic elements of the rule of law. Increasingly, development specialists recognize that the links between and interdependence of transparency and accountability are crucial attributes of good governance.

The application of governance as an organizing concept to explain efficiency in governments reflects an advance in thinking about development effectiveness. Anticorruption efforts were evident in the Organisation for Economic Co-operation and Development (OECD)'s anti-bribery convention, which extended many of the provisions in the US Foreign Corrupt Practices Act (FCPA) and criminalized the payment of bribes by national corporations to foreign officials. Further impetus came in September 1997 when the World Bank's board approved "Helping Countries Combat Corruption: The Role of the World Bank," which identified corrupt practices as a development issue and proposed a set of policies to reduce its incidence (World Bank 1997).

The first priority was to prevent corruption in World-Bank-financed projects. Hence, language was inserted into the World Bank's procurement codes in order to explicitly strengthen the anticorruption clauses. The Procurement and Consultant Guidelines were revised to include a new section on corruption. Loan disbursement procedures were reinforced, through the Loan Administration Change Initiative (LACI), which placed greater responsibility on borrower governments to manage disbursements and reinforce oversight. The Board of Governors approved the LACI reforms in July 1998. These operational assessments of borrowers' project financial management systems constituted a crucial step in the integration of the 1997 initiative into the World Bank's operations. Procurement reform and loan disbursement preceded initiatives in project preparation, analytic exercises, programmatic lending, and project appraisal, integrated by the Bank into its lending and non-lending programs through the Operational Core Service (OCS) Network. OCS became a formal vice-presidency in 1999, and worked on strengthening the control and prevention of corruption and fraud in bank projects. It collaborated with the Bank's audit department to ensure that due diligence was exercised in bank-funded projects.

Recognition that internal controls cannot fully ensure due diligence and probity in World Bank projects led to the creation of an oversight committee, a sanctions committee, and a hotline to receive reports of alleged incidents of corruption. The hotline was set up to accept calls 24 hours a day, with multilingual operators. At first, a selected number of managing directors sat on the Sanctions Committee. This committee had a mandate to investigate allegations of malfeasance in Bank-financed projects. If the Sanctions Committee determined that there was sufficient evidence of wrongdoing, it would publicize the names of individuals and firms found to have engaged in corrupt practices.

Officials working on the anticorruption initiative began to investigate a number of cases rapidly. In the first 2 years of the operation of this initiative (1998–2000), the World Bank investigated approximately 120 cases and debarred 14 firms, with sanctions ranging from a 3-year period to permanent status. To deter firms from engaging in sanctionable offenses, the World Bank formulated and publicized corporate codes of conduct for businesses bidding on projects. Embedded in these codes of conduct is a right to debar firms and individuals who defraud, steal, or cheat the World Bank. These reforms encountered resistance from staff members, which hindered their acceptance within the World Bank.

16.3.1 The Costs of Corruption

Once the informal silence that had veiled the issue of corruption had lifted, development practitioners inside the World Bank acknowledged that corruption was a high-cost behavior. A number of studies appeared that showed that governments which tolerated rampant venality suffered substantial losses in fiscal revenues (Shleifer and Vishny 1993). Systemic corruption fed into a cycle in which lost tax revenues deepened fiscal shortages and the inability to pay civil servants a living wage (Rose-Ackerman 1999). Worse, reputational costs were apparent in persistent misbehavior and in foreign investors' avoidance of markets known for their uncertainty (Tirole 1992; Mauro 1995). In effect, systemic corruption lowered rates of economic growth and the political system's perceived legitimacy.

International donors face a dilemma when they commence operations in circumstances of poor governance and systemic corruption. First, governments borrow funds from the World Bank, an organization owned and managed by sovereign governments. Borrowers are contractually obligated to use the loans for purposes intended. However, because revenues are fungible, as discussed above, project funds do not always have the intended impact. There may be incentives for political leaders to divert fiscal expenditures from sectors financed by multilateral banks. In the worst-case scenario, firms or individuals with links to the governing elite engage in graft, procurement fraud, or any of a number of illegal activities which divert funds provided by the World Bank finance. In low-income countries, these acts have a negative impact on the effectiveness of development assistance.

Corruption in low-income countries is a serious drag on their prospects for sustainable growth. This problematic behavior has been linked to organized crime (money laundering) and terrorist organizations. According to the World Bank's Sanctions Officer, Ms. Pascale Dubois, dishonest individuals and firms are responsible for over US$ 1 trillion in bribes and embezzled funds, as a result of corruption. The world economy stands at just over US$ 30 trillion, and these bribes amount to 3 % of this total. Even viewing these figures as rough estimates, it is evident that corruption constitutes a 20 % tax on foreign investment, which is a major impediment to global economic growth. Understandably, the major powers concur that international corruption, especially in World-Bank-funded projects, needs to be reduced to as close to zero as is economically feasible.

16.4 The World Bank's Sanctions Process

The World Bank provides development finance to middle and low-income countries through concessionary lending, credits, guarantees, and advisory services. As it became increasingly apparent that World Bank projects were not immune from dishonest behavior, initiatives were taken to minimize the incidence of such behavior in lending. After its initial strategy had been approved, the World Bank moved to establish the Integrity Vice Presidency (INT) and an independent sanctions board. Senior officials of the World Bank are appointed to these offices. Since their managers are staff members, their investigations are internal to the organization. However, their reports and decisions have a direct impact upon the external firms that participate in World Bank projects.

16.4.1 The Integrity Vice Presidency: Structure and Role

The first line of defense against corruption in World Bank projects is the INT. As an investigative unit, INT includes a staff of attorneys, accountants, and development specialists. A vice-president manages the overall operations undertaken by INT. Below the VP, INT engages a director of operations, lead specialists, investigators, and communications officers. In FY 2012, the investigation branch included 75 individuals, of whom 64 were investigators and specialists; the remainder included support staff. That year, INT received 110 complaints, resulting in 79 external investigations into alleged incidents of collusion (12), corruption (40), and fraud (27). Finally, an Independent Advisory Board provides crucial oversight of INT. The Independent Advisory Board assembles distinguished individuals who have been internationally active in anticorruption work.

16.4.1.1 The Sanctions Process: Integrity Vice Presidency

When INT receives complaints of corruption in projects for which the World Bank provides funding, it examines these complaints in order to determine whether the gravity of the alleged offense merits a formal investigation. If the offense is of a gravity that merits sanctions, INT forwards the materials from its investigation to World Bank staff members. The expectation is that World Bank's operational staff will undertake actions to reduce the opportunities for corruption that may have formed the basis of a complaint. However, if INT staff members determine that the complaint is valid, and that the transgressions violate one of the five World Bank sanctionable actions, an investigation is opened. The five sanctionable offenses are the following:

1. Offers, gifts, receipt, or solicitation of anything of value to influence improperly the actions of another party
2. Fraudulent practices such as misrepresentation that mislead or attempt to mislead a party to obtain financial or other benefit or to avoid an obligation
3. Collusive practices between two or more parties to achieve an improper purpose or influence the actions of another party
4. Coercive practices which either threaten or harm any party in order to influence the actions of that party
5. Obstructive practices which include deliberately destroying, falsifying, altering, or concealing evidence that pertains to an investigation into fraudulent, corrupt, coercive, or collusive practices or acts to impede the World Bank's right to audit or access information about performance on funded projects[2]

When INT first looks into allegations of corruption, it prepares a "Statement of Accusations and Evidence," announcing to both the concerned firm and World Bank staff members that an investigation has been launched. Two specific types of investigation are common—internal and external. Internal investigations involve World Bank staff members who are alleged to have been engaged in some form of illegal activity in a World Bank project. External investigations are inquiries into allegations of fraud, corruption, collusion, coercion, and/or obstruction by a firm or individual engaged on a World Bank project. A standard of proof is that a misdeed is "more likely than not" to have occurred.

When the evidence assembled during an investigation fails to substantiate the allegations, INT issues a report to that effect. However, if an investigation substantiates allegations of corruption, INT issues a public report that it transmits to the World Bank's senior management. In the event of misprocurement, a report is sent to the client government and the World Bank cancels all contracts. In principle, the client government then launches its own investigations and either reprimands or prosecutes the officials involved in dishonest activities. Within the World Bank, an investigation that substantiates allegations of corruption prompts INT to transmit a notice of sanctions proceedings to the Evaluations and Suspension Officer and the Sanctions Board. Between FY 2011 and 2012, INT increased its rate of substantiated investigations from 46 to 52 %, and the number of new cases increased from 73 to 81. Finally, when INT investigations substantiate allegations of sanctionable offenses, INT submits a statement to the Evaluations and Suspension Officer.

[2] See "Guidelines on Preventing and Combatting Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants," The World Bank, http://siteresources.worldbank.org/INTRUSSIANFEDERATION/Resources/ibRD_IDA_AnticorruptionGuidelines.pdf, accessed 16 July 2013.

16.4.1.2 The Sanctions Process: Structure and Role

The sanctions process begins with INT and then, when allegations of fraud and corruption are substantiated, the Evaluations and Suspension Office and Sanctions Board get involved. The Evaluations and Suspension Office receives and reviews INT's Statement of Accusations. It notifies the accused firm or individual of the investigation and accusations. Once the Evaluations and Suspension Office takes this step, it suspends all finance from going to the individual or firm. On the basis of its review of the evidence, the Evaluations and Suspension Office makes a recommendation. The accused firm or individual has a right to contest the charges. The firm or individual may be summoned to hearings, at the discretion of the Evaluations and Suspension Office. On the basis of a review of the evidence and/or hearings, the Evaluations and Suspension Office forwards the evidence to the World Bank's Sanctions Board, which has the power to impose a sanction. Upon reviewing the evidence, the Sanctions Board may or may not follow the Evaluations and Suspension Officer's recommendation. Crucially, once the Sanction Board makes a decision, this decision is final and is not subject to appeal.

16.4.1.3 The Sanctions Board

The World Bank's Sanctions Board comprises seven members. Four of these are internationally distinguished individuals appointed by executive directors. The remaining three members are World Bank staff, appointed by the president. All Sanctions Board members serve renewable 3-year terms. Presiding over the Sanctions Board is an external member, who serves one term as chair. An independent secretariat coordinates the Sanctions Board's agenda. This agenda includes hearings and deliberations that occur 2–4 times a year. At these hearings, the Sanctions Board reviews cases "de novo," based on pleadings and hearings. It oversees the publication of its decisions, and these include the identity of each sanctioned party, the sanctions imposed, and the full text of decisions reached.

16.4.1.4 Sanctions: Debarment

For international firms that are contractors on World-Bank-funded projects, the prospect of debarment carries high costs in terms of lost income and damage to the firm's reputation. Given the potential severity of the possible sanctions, the Sanctions Board is careful in meting out punitive actions for corrupt firms and individuals. This care is evident in decisions that utilize different sanctions and methods to mitigate reputational damages. Regardless of potential damages, when evidence demonstrates egregious levels of corruption, the Sanctions Board has used the instrument of debarment to eliminate or suspend dishonest firms or individuals from participation in World Bank projects. When the outcome is debarment from MDB projects, the excluded individual or firm faces significant losses.

Sanctions vary according to the severity of the offense committed and the evidence presented by INT and the Evaluations and Suspension Office. The sanctions impose different costs on the concerned firms and individuals. Sanctions, as displayed below, have variable severity:

- Indefinite or fixed term
- Debarment with conditional release
- Conditional non-debarment
- Public letter of reprimand
- Restitution

Debarment may be indefinite or fixed term (without conditions). This is the most punitive action which the Sanctions Board imposes. When a firm or individual has engaged in a flagrant form of fraud or corruption, indefinite debarment excludes the entity from multilateral funded projects (see below on cross debarment). Next in punitive severity is Debarment with Conditional Release, which sets forth specific actions which must be undertaken by the individual or firm before the World Bank releases them from debarment. In these circumstances, the individual or firm must show evidence of the actions it has taken to prevent further incidents of sanctionable misbehavior. In the case of indefinite/fixed-term and conditional release debarment, the Sanctions Board publishes the names of the firms or individuals, the sanction they receive, and the period of debarment.

However, if the evidence neither demonstrates clearly illegal actions nor exonerates the firm or individual, the Sanctions Board may recommend Conditional Non-debarment. Again, the firm or individual is publicly identified, but sanctions are withheld. In less serious cases, the Sanctions Board may issue a Public Letter of Reprimand to state that a firm or individual may be implicated in a case of corruption. This public identification does not come without cost, for firms and individuals implicated in a letter of reprimand are at a disadvantage when competing for international contracts. The final sanction is that the firm or individual must make restitution for the costs associated with its questionable behavior. Restitution is nothing less than the reimbursement of costs associated with the firm's or individual's dishonest actions; it removes any illicit profits gained by corruption. Of these five sanctions, the default or "baseline" sanction is Debarment with Conditional Release.

16.4.1.5 Cross Debarment

In 2010, the multilateral banks adopted a policy that stipulated any firm or individual who defrauds one or another MDB will be debarred by all the others. The process often begins with a complaint to INT, the firm or individual receives notice of the Sanctions Board's decision. The firm or individual is given a ninety-day period in which to appeal against the sanction. If the firm or individual does not appeal, or if the appeal fails, debarment begins. The costs of debarment increased significantly after 7 December 2010, when World Bank President Zoellick announced a new policy of cross debarment. His proclamation was “cheat or steal from one of us, and you will be punished by all” (cross debarment). Cross debarment is applicable to firms and individuals implicated in trying to influence improperly the actions of another party, engaging in fraudulent practices, colluding with another party to gain advantage, coercing another actor, or trying to conceal illegal activity that might prejudice an investigation into their acts. These “sanctionable offenses,” occurring over the past decade, have led MDBs to jointly debar more than 1,100 fraudulent and corrupt entities.

The impact of cross debarment is significant for the firm or individual concerned. Firstly, multilateral banks prohibit the individual, company, or firm excluded from participating in projects which they finance. In 2011, the sums invested by the individual banks were substantial—the World Bank group alone financed over US$ 50 billion and the other MDBs invested a combined total of over US$ 30 billion. Moreover, since most multilateral finance is disbursed in tranches, phased disbursement means that the loans and credits approved in any given year influence the financing of low and middle-income countries for extended periods of time. Hence, regardless of the precise amount the various banks disburse in a given year, a firm or individual subject to debarment loses considerable opportunities.

16.5 Analysis: Sanctions and Development Effectiveness

After the Cold War ended, multilateral banks and development agencies came under increasing pressure to demonstrate a return on their investments in low and middle-income countries. Governments, particularly those which were members of the OECD, articulated a demand for development effectiveness, or that aid recipient governments should use funds from donor agencies for the allocated purposes. In this regard, the anticorruption initiative, which gained international momentum after 1997, represented a significant shift. A second significant event was the September 2001 attack on the USA. After that event, corruption and illegal transfers of funds through money laundering were highlighted as acts which facilitated terrorist organizations. Corrupt regimes were vulnerable to rebellion and collapse. As a number of states in Africa descended into civil war, many identified corruption as a causal factor. Finally, corruption has enabled international criminal organizations to capture weak states in Latin America and Africa from which they are able to engage in drug smuggling, the illegal arms trade, and human trafficking. Without question, the sanctions process faces clear challenges in reducing corruption in multilateral-financed projects.

One problem is that individuals who own firms which are subjected to World Bank INT investigations have incentives to simply dissolve the firm, create a new company, and reengage in corrupt activities. The use of shell companies is not uncommon. Individuals may register a firm in an offshore location, give the company an untraceable name, open numbered bank accounts (also in offshore sites), and then engage in dishonest transactions. This practice affords a disreputable person the means to engage in any of the sanctionable offenses. If this company comes under investigation, it can be dissolved and another established. It is conceivable that the practice of linking firms and numbered bank accounts to specific individuals may be effective in limiting the strategy of opening and closing shell companies. The problem is complicated further when dishonest people use immediate and extended family members to serve as their front owners.

Dishonest individuals make their profits by staying one step ahead of law enforcement agencies. Given the sums available through multilateral finance, the attraction for international organized crime is clear. These organizations seek to acquire profits through fraudulent practices, coercion, and intimidation. Controlling criminal organizations is problematic. Worse, some individuals abuse their positions to demand bribes from contractors engaging in a project, such as occurred during the Lesotho Highlands Water Project. In this case, Lahmeyer International, a German firm, was found guilty of bribing Masupha Sole, the Lesotho Highlands Development Authority Chief Executive. The Sanctions Committee debarred Lahmeyer for 7 years, and subsequently investigated and debarred a number of other firms in relation to this project.

Despite multiple criticisms, the sanctions process at the World Bank provides a means for international organizations to limit the capacity of political leaders to encourage corrupt behavior; it has removed a possible source of funding for semi-formal terrorist organizations; it has brought greater stability to post-conflict reconstruction economies; and international criminal organizations learn that their capacity to engage in dishonest transactions may be short-lived. In effect, a consequence of the sanctions process has been an increase in transparency and accountability and, perhaps, an improvement in development effectiveness.

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