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I. INTRODUCTION

1. It is well established that corruption and similar wrongful practices negatively impact development effectiveness and constitute a major impediment to inclusive and sustainable growth. That is why International Financial Institutions, including the African Development Bank Group (the “Bank Group” or the “Bank”), have, many years ago, decided to make governance and the fight against corruption a cross-cutting objective in the financing of their activities. The objective is to ensure that corrupt practices do not undermine the effectiveness of their efforts to reduce poverty and foster economic and social progress, by diverting to other ends, resources earmarked for project financing.

2. Convinced that a unified and coordinated approach is critical to the success of their efforts to fight corruption, International Financial Institutions decided to adopt a harmonized strategy against corruption. They have, since September 2006, agreed on a Uniform Framework for Preventing and Combating Fraud and Corruption,1 by adopting a set of principles on the development of standardized definitions for corrupt practices, the adoption of common guidelines for investigations, the adoption of integrity due diligence principles, mutual support and recognition of mechanisms and measures established by each institution.

3. Building on this momentum, five Multilateral Development Banks (MDBs), including the African Development Bank Group, the Asian Development Bank ("AsDB"), the European Bank for Reconstruction and Development ("EBRD"), the Inter-American Development Bank ("IDB") Group and the World Bank Group signed on 9 April 2010, the Agreement for Mutual Enforcement of Debarment Decisions ("Mutual Debarment Agreement"). This Agreement establishes a framework under which each participating institution will apply the debarment sanctions taken by other signatory institutions in accordance with the terms and conditions set by the Agreement.

4. To this end, each institution shall ensure that its internal anti-corruption mechanism includes basic principles such as the adoption of harmonized definitions of Sanctionable Practices, adherence to investigation guidelines, the implementation of a process separating the investigation, decision-making, and appeals functions, the respect of due process, the adoption of a common standard of proof and the principle of proportionality of sanctions.

5. The Bank Group’s “sanctions system” was instituted in 2012, following reforms to harmonize the Bank’s anti-corruption rules and processes with the principles and terms of the Mutual Debarment Agreement.

6. The sanctions system was formally established by Resolution B/BD/2012/06 of the Board of Directors of the Bank on 5 July 2012, which approved recommendations made in the Proposal for the Implementation of a Sanctions Process within the Bank Group.2

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1 The Uniform Framework is based on findings of a Working Group established by the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the International Monetary Fund, the Inter-American Development Bank Group, and the World Bank Group. It was adopted by the leaders of these institutions.

7. This corporate change led to the establishment of a two-tier process, with a decision-making body, the Sanctions Office, and an appellate body, the Sanctions Appeals Board, for sanctioning corrupt practices and other similar acts committed in the context of corporate procurement or Bank-financed projects. More specifically, the sanctions system is designed to debar from Bank Group-financed operations companies and individuals accused of corruption who have been found culpable of wrongdoing only after having gone through the due process requirements. This process ensures that the accused parties are treated fairly and given a chance to exercise their right of defense. The sanctions system has been operational since August 2013.

8. This annual report is the second of its kind since the sanctions system was instituted. It was prepared in accordance with Paragraph 2(h) of the Terms of Reference of the Sanctions Commissioner (“SC”) and Paragraph 2(c) of the Terms of Reference of the Sanctions Appeals Board as contained in Annex I and Annex III of the Proposal for the Implementation of a Sanctions Process as mentioned in Paragraph 6 above. The provisions require the Sanctions Commissioner and the Sanctions Appeals Board to present an annual activity report to the Board of Directors.

9. The 2015 annual report will cover the period from 1 January to 31 December 2015. After this introduction (I), the activity report recapitulates information on the organization and functioning of the Sanctions System (II) and outlines activities performed as of December 2015 by Sanctions Office (III) and the Sanctions Appeals Board (IV), before concluding (V).
II. GENERAL PRESENTATION OF THE SANCTIONS SYSTEM

10. The Sanctions Office (“SANO”) serves as the first instance of adjudication of the Sanctions System. SANO receives, reviews and makes a determination with regard to allegations of Sanctionable Practices submitted by the Integrity and Anti-Corruption Department (“IACD”). The Sanctions Appeals Board (“SAB”), in the second and final instance, receives and determines appeals against sanctions decisions made by the SANO. These two bodies are separate, independent and autonomous entities within the Bank, with their own administrative budgets.

11. The structure, duties and operating rules of the sanctions system bodies are primarily outlined by the aforementioned Proposal for the Implementation of a Sanctions Process within the Bank which includes the Terms of Reference of the actors of its structures, and by the Bank’s Sanctions Procedures of 18 November 2014. These documents govern the administrative process by which the Bank determines whether or not to sanction parties alleged to have engaged in “Sanctionable Practices” in connection with Bank-financed or administered projects or the Bank’s corporate procurement.

12. The concept of “Sanctionable Practice(s)” refers to the five terms defined in the table on the following page, which the Bank adopted based on a harmonized approach with other International Financial Institutions, signatories to the Mutual Debarment Agreement.

A. Structure and Functions of the Sanctions Office

1. Actors of the Sanctions Office

13. SANO is headed by a Sanctions Commissioner (“SC”), and, in his/her absence, by the Alternate Sanctions Commissioner. The SC and Alternate SC are external experts chosen for their competence in the legal and anti-corruption fields. They are appointed by the Bank’s Board of Directors on the recommendation of the Bank’s President, for a period of three years, renewable once. The SC and the Alternate SC are required to discharge their functions independently and must respect and maintain the confidentiality of the sanctions proceedings. They must consider each case fairly, impartially and with due diligence and shall recuse themselves or may be recused from any case in which they have actual, potential or perceived conflict of interest.

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3 Sanctions Procedures were issued on 12 August 2013. They were subsequently amended on 18 November 2014.

4 The current incumbents were appointed by Resolution B/BD/2013/02, adopted by the Board of Directors of the Bank on 11 February 2013. They were sworn in on 14 May 2013.
14. The SC is assisted by the Secretary to the Sanctions Office (“SSO”), a staff member appointed by the Bank President, who is also bound by the obligation of independence and confidentiality. The SSO reports functionally to the SC and administratively to the Bank’s First Vice-President/COO. The SSO is assisted by an Administrative Assistant.

15. The SSO provides assistance and support to the SC in various ways, including in the decision-making process, particularly by preparing a written brief on all aspects of a case, by drafting notifications, notices and sanctions decisions, following determination by the SC. The SSO is responsible for the day-to-day management of SANO, notably by preparing and monitoring the budget and drafting the annual report, for receiving submissions and making notifications to IACD and Respondents, and for advising Respondents on procedure.

DEFINITIONS OF SANCTIONABLE PRACTICES

**Corrupt practice:** The offering, giving, receiving or soliciting, directly or indirectly, of anything of value to improperly influence the actions of another party.

**Fraudulent practice:** Any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

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

**Coercive practice:** Impairing or harming, or threatening to directly or indirectly impair or harm any party or the property of the party, in order to improperly influence the actions of a party.

**Obstructive practice:** (i) Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigations or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation or (ii) Acts intended to materially impede the exercise of the Bank’s inspection and audit rights under the Procurement Rules or other Financing Agreement.

2. Functions of the Sanctions Office

16. The SC has three main functions: consider and make a determination with regard to Sanctions Cases, Requests for Temporary Suspension, and Settlement Agreements received from IACD. He/she generally comes to the Bank headquarters to perform his functions, but may also examine cases from a distance.

i) **Consideration of Sanctions Cases:** The SC’s role with regard to Sanctions Proceedings consists in determining whether or not there is sufficient evidence to support IACD’s findings against the parties alleged to have engaged in Sanctionable Practice(s), and in such a case, impose one or more sanction(s) which will be selected from the range of sanctions identified in the Sanctions Procedures and summarized in the table overleaf.

Sanctions System-Annual Report 2015
The base sanction is a 3-year debarment period that may be increased or decreased, based on the existence of mitigating or aggravating circumstances to be considered by the SC and the SAB. This determination is made upon consideration of the evidence, facts and arguments presented by IACD and counter-evidence and arguments eventually presented by the party alleged to have engaged in Sanctionable Practice(s) (being referred to as the “Respondent”). The sanctions process is outlined in the flowchart attached as Annex 1.

ii) Consideration of Requests for Temporary Suspension: IACD may, before concluding an ongoing investigation, request that the subject of an investigation be temporarily suspended from eligibility to participate in Bank-financed Projects and to be awarded new contracts, if IACD believes that continuous eligibility would cause imminent financial or reputational harm to the Bank Group. The SC will consider the request and grant such temporary suspension if the evidence supports a finding of a Sanctionable Practice for which an appropriate sanction would be no less than a one (1) year debarment.

iii) Consideration of Negotiated Settlement Agreements: IACD and the Respondent may enter into a Negotiated Settlement Agreement and are requested to submit a signed copy of such Agreement to the SC for review and clearance. The role of the SC in reviewing Settlement Agreements is limited to ensuring fairness, transparency and credibility of such Agreement, and to verify that the Respondent entered into the agreement freely and fully informed of its terms and without duress. The agreement cleared by the SC becomes effective and binding on the parties.

Sanctions System-Annual Report 2015
B. Composition and Functions of the Sanctions Appeals Board and Secretariat

1. Actors of the Sanctions Appeals Board

17. The Sanctions Appeals Board (SAB) is made up of six members. Three members are substantive members and the other three are alternate members. Four of the members of the SAB are external experts chosen for their expertise in the fight against fraud and corruption and two members are chosen from among Bank management staff. The SAB is presided by a Chairperson, chosen among the external substantive members. Members of the SAB are appointed by the Board of Directors on the recommendation of the President of the Bank for 3-year terms, renewable once. SAB members are required to perform their functions in total independence and to observe the confidentiality of the appeals proceedings. They must ensure fairness, transparency, and due diligence in the discharge of their functions, and shall recuse themselves or may be recused from any case in which they have an actual, potential or perceived conflict of interest.

18. The SAB is assisted by the Secretary to the Sanctions Appeals Board (“SABS”), appointed by the Bank President from amongst staff. The SABS is independent and must also observe the obligation of confidentiality. The SABS reports functionally to the SAB Chairperson and administratively to the Bank President. The SABS is assisted by an administrative assistant.

19. The SABS receives and prepares appeal documents and notices relating to decisions made by the SC and transmits to the concerned parties (IACD and Respondents) all documents and notifications required in connection with the appeal. He/she schedules all SAB meetings and hearings in conjunction with the SAB Chair. He/she equally prepares for each case a dossier recording all actions taken in connection with an appeal and keeps members of the SAB informed about all aspects of the case as well as legal issues arising. He/she takes part in hearings, deliberations and meetings of the SAB, prepares and updates records at the request of the Chair. Under the supervision of the SAB Chair and members, the SABS also prepares the annual report for submission to the Board of Directors of the Bank, Statutes, SAB internal regulations, and the Code of Conduct for SAB members. Lastly, the SABS supervises staff of the SAB, prepares and runs the budget of the SAB, and performs all other duties related to the running of the SAB.

2. Functions of the Sanctions Appeals Board

20. The SAB is the second tier (appellate level) of the Bank’s Sanctions System. It is mandated to consider and make final decisions on appeals of sanctions decisions made by the SC. Decisions taken by the SC are not binding on the SAB. As such, when a case is referred on appeal, the SAB carries out a full "de novo" review of the matter and makes decisions on the basis of a written record without a hearing and the parties have no right to a hearing. However, the SAB may, at its discretion, organize hearings as it deems necessary.

21. The Bank’s sanctions process is administrative in nature. As such, when examining appeal cases, the SAB determines “if it is more probable than not” that the accused party was involved in Sanctionable Practices if the SAB deems that there is enough evidence to support the allegations. If so, SAB makes a final sanctions decision (among the applicable sanctions listed above) against the party found to have committed wrongdoing. The parties (the Respondent and the IACD) are notified of the decision, which is then published on the Bank’s website.
III. SANCTIONS OFFICE ACTIVITIES

22. In 2015, a total of four missions were undertaken to examine cases referred by the IACD, including three (3) missions in Abidjan by the SC, and a trip to Yaoundé, the place of residence of the Sanctions Commissioner, conducted by the SSO. Sanctions Proceedings Cases and a Negotiated Settlement Agreement were examined at the Bank’s Headquarters and in Yaoundé. A single Negotiated Settlement Agreement was negotiated remotely by the SC. No request for temporary suspension was submitted by the IACD in 2015.

A. Sanctions Cases Examined

23. In 2015, SANO examined nine (9) Sanctions Cases, seven of which were carried over from 2013 and 2014. Two new Sanctions Cases were submitted by the IACD in March and May 2015.

24. The Sanctions Cases carried over from 2013 and 2014 were in different stages of proceedings and resulted in the following actions:
   - Requests for Clarifications and return of the files to the IACD in six cases;
   - A request for Clarifications to Respondents in one case;
   - Notices of Sanctions Proceedings\(^5\) in two cases;
   - Determination of Insufficient Evidence in two cases;
   - Sanctions Decisions in two cases, one of which was a 3-year debarment for 2 Respondents and the other, a 2-year debarment sanction for 2 Respondents.

One case was dismissed by the SC after the IACD failed to locate the firm or confirm its existence to enable the issuance of a Notice of Sanctions Proceedings.

25. New cases recorded in 2015 resulted in:
   - Requests for Clarifications and return of the files to the IACD in two cases;
   - Notices of Sanctions Proceedings in two cases;
   - A Sanctions Decision in one case. The SC decided in this case:
     o to withdraw the Notice for insufficient evidence against one Respondent;
     o to sanction another Respondent for a 5-year debarment period; and
     o to grant a stay of proceedings for the purpose of conducting settlement negotiations, at the request and for the benefit of two other Respondents.

26. As of 31 December 2015, three cases were pending, awaiting respectively: 1) the transmission of the Respondent’s address to SANO; 2) the submission of revised Findings to SANO; and 3) the Response of Respondents.

27. Regarding the typology of the nine cases handled in 2015, five cases were related to fraudulent practices, two to fraudulent and collusive practices, and two to corrupt practices. An overview of the cases examined is presented in the table on the following page.

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\(^5\) A Notice of Sanctions Proceedings is issued when the SC finds prima facie evidence of Sanctionable Practice(s).
## Sanctions Cases Considered in 2015

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Alleged Sanctionable Practice(s)</th>
<th>Respondents</th>
<th>Prima facie determination</th>
<th>Final determination/ Decision</th>
<th>Observations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case 1/Report/2</td>
<td>Fraudulent practice - Submission of forged Bank guarantees to influence the execution of contract</td>
<td>A firm and an individual</td>
<td>Notice of Sanctions Proceedings.</td>
<td>Sanction: 3 years debarment for the 2 Respondents and completion of an integrity programme for the firm.</td>
<td>Case closed  This case was referred to the SAB</td>
</tr>
<tr>
<td>Case 2/Report/1</td>
<td>Fraudulent practice - Submission of forged diploma in order to influence the procurement process for the recruitment of a consultant</td>
<td>A firm</td>
<td>Notice of Sanctions Proceedings.</td>
<td></td>
<td>Case pending IACD inability to locate the Respondent.</td>
</tr>
<tr>
<td>Case 4/Report/1</td>
<td>Fraudulent practice - Misrepresentation of facts in order to acquire consulting services through a non-competitive process.</td>
<td>A firm and an individual</td>
<td>-</td>
<td></td>
<td>Case closed due to difficulty to locate the firm and confirm its existence.</td>
</tr>
<tr>
<td>Case SN/2014/01</td>
<td>Corrupt practice – Offering of gifts and other favours to Bank staff to influence their decisions on disbursement and payment.</td>
<td>A firm</td>
<td>Request for clarification and return of file to IACD.</td>
<td></td>
<td>Case pending</td>
</tr>
<tr>
<td>Case SN/2014/02</td>
<td>Fraudulent practice – Submission of incorrect information and invalid VAT Registration Certificate to influence the procurement process.</td>
<td>A firm</td>
<td>Notice of Sanctions Proceedings.</td>
<td>Sanction: 2-year debarment</td>
<td>Case closed  This case was referred to the SAB</td>
</tr>
<tr>
<td>Case SN/2014/03</td>
<td>Fraudulent and collusive practices – Misrepresentation of capacity and qualifications to perform a contract assignment - Fraudulent alteration of contracts with the assistance of a Bank staff member.</td>
<td>Two firms and an individual</td>
<td>Dismissal for lack of sufficient evidence.</td>
<td></td>
<td>Case closed</td>
</tr>
<tr>
<td>Case SN/2014/04</td>
<td>Fraudulent and collusive practices - Misrepresentation of facts, concealment of the intention to assign a contract to an unqualified contractor to bid in a tender.</td>
<td>Two firms</td>
<td>Dismissal – Shared responsibility with the Bank.</td>
<td></td>
<td>Case closed</td>
</tr>
<tr>
<td>Case SN/2015/01</td>
<td>Corrupt practice – Offering of an amount of money and gift to a construction project supervisor to influence the procurement process</td>
<td>Two firms and two individuals</td>
<td>Notice of Sanctions Proceedings.</td>
<td>- 5-year debarment for 1 Respondent - Withdrawal of Notice for 1 Respondent - Stay of proceedings – Negotiated Settlement underway for 2 Respondents</td>
<td>Case closed</td>
</tr>
<tr>
<td>Case SN/2015/02</td>
<td>Fraudulent practice – Submission of false references in order to qualify for a bid and be awarded a contract</td>
<td>A firm and an individual</td>
<td>Notice of Sanctions Proceedings.</td>
<td></td>
<td>Case pending</td>
</tr>
</tbody>
</table>
B. Negotiated Settlement Agreements

28. In 2015, SANO formally recorded two Negotiated Settlement Agreements for which the SC gave its clearance. The two negotiated agreements were signed to sanction corrupt practices. In the first case, the corrupt practices were perpetrated by a Canadian multinational corporation that made illegal payments to public officials to obtain contracts for road construction supervision in Uganda and Mozambique. The negotiated settlement agreement provides for the payment of a fine of CAD$ 1.5 million, the reimbursement of costs related to investigations amounting to CAD$ 365,000, and conditional non-debarment for 2 years and 10 months.

29. In the second case, the corrupt practices were committed by a consortium that paid bribes to two South African companies with political connections to obtain political support for the award of a contract. The parent company, a Japanese multinational corporation, has agreed to pay financial compensation of US$ 12.5 million, the sum of US$ 2 million in reimbursement of investigations costs, and US$ 4.5 million to cover costs of scheduled future investigations. The Agreement also provides for a conditional debarment of 12 months for the two subsidiaries, members of the consortium.

Negotiated Settlement Agreements Considered in 2015

<table>
<thead>
<tr>
<th>Case</th>
<th>Sanctionable Practice</th>
<th>Respondents</th>
<th>Sanctions</th>
</tr>
</thead>
</table>
| Road construction project in Uganda and Mozambique | Corrupt Practice: Illicit payments to public officials with the aim of obtaining road construction supervision contracts | One Canadian multinational firm on behalf of one of its subsidiaries       | • Fine: CAD$ 1.5 million  
• Cost reimbursement: CAD$ 365,000  
• 2 years and 10 months conditional non-debarment |
| Medupui – Power Plant Project in South Africa     | Corrupt Practice: Payment of bribes to companies with political connections, to ensure political support for the award of a contract. | One Japanese multinational firm on behalf of a consortium of two subsidiaries | • Financial damages: US$ 12.5 million;  
• Reimbursement of costs: US$ 2 million;  
• Coverage of future costs: US$ 4.5 million; and  
• 12 months conditional debarment for the 2 subsidiaries. |

C. Other Sanctions Office Activities

30. Apart from the review of sanctions cases and Negotiated Settlement Agreements, the Sanctions Office, in the first quarter of 2015, drafted the rules for the implementation of Sanctions Procedures, namely, the Charter of the Sanctions Office, and the Guidelines for the Disclosure of Sanctions Decisions. The Office also amended the Guidelines on Constructive and Substituted Delivery and Submission of Notices and Other Materials prepared the previous year.
31. Lastly, in conjunction with the Corporate Information Management and Methods (CIMM) Department and the SAB Secretariat, SANO designed the Sanctions System’s web pages on the Bank’s website.

32. With regard to exchange missions, the Sanctions Commissioner participated in the second edition of the Rebranding Africa Forum which took place from 16 to 18 October 2015 in Brussels, Belgium, organized by the Pan-African Magazine *Notre Afrik*. The meeting aimed at bringing together political figures, experts, academic professions, financial institutions, entrepreneurs, investors and development partners around the theme: "Invest in Africa, Act for Africa." The SC made an inaugural presentation on: "Governance in Africa at a Crossroads."

33. The Sanctions Commissioner and the Secretary to the Sanctions Office took part in the Third Colloquium on Suspension and Debarment, as well as in the annual meeting of first-tier offices of the MDBs Sanctions Systems which took place at the World Bank in Washington D.C., in the USA, on 16 and 17 December 2015, respectively. The Third Colloquium provided an opportunity for the SC to comment on the effectiveness of suspensions and debarments and on how to measure the effectiveness during a panel discussion. The annual meeting of first-tier offices of sanctions systems enabled the SC and SSO to share their concerns and experience with colleagues of the World Bank and the EBRD on issues related to settlement agreements and the presentation of sanctions cases.

34. Lastly, the Alternate Sanctions Commissioner undertook a mission to Abidjan in May 2015, to attend the Bank Group’s 2015 Annual Meetings. SANO took this opportunity to inform the Alternate SC about the procedures in force, the working methods, and the status of cases determined or pending.

IV. SANCTIONS APPEALS BOARD AND SECRETARIAT ACTIVITIES

35. In August 2015, two appeals were lodged to the Sanctions Appeals Board pursuant to sanctions decisions taken by the SC. These are the first cases filed with the SAB since the establishment of the SAB Secretariat in December 2013. In both cases, the SC imposed a sanction of temporary debarment.

<table>
<thead>
<tr>
<th>Cases Pending Appeal</th>
<th>Alleged Sanctionable Practice(s)</th>
<th>Respondents</th>
<th>SC Sanctions Decision</th>
<th>Appeal to SAB</th>
</tr>
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<tbody>
<tr>
<td>Case 1/Report/2</td>
<td>Fraudulent Practice - Submission of forged Bank Guarantees to influence the execution of contract.</td>
<td>A firm and an individual</td>
<td>Sanction: 3 years debarment for the 2 Respondents and completion of an integrity programme for the firm.</td>
<td>Case appealed in August 2015</td>
</tr>
<tr>
<td>Case SN/2014/02</td>
<td>Fraudulent Practice – Submission of incorrect information and invalid VAT Registration Certificate to influence the procurement process.</td>
<td>A firm</td>
<td>Sanction: 2-year debarment</td>
<td>Case appealed in August 2015</td>
</tr>
</tbody>
</table>

Appeals Cases Introduced in 2015
36. In 2015, the SAB Secretariat (SABS) established, maintained, and strengthened ties with counterparts in the four other signatory institutions of the Mutual Debarment Agreement, namely; the World Bank Group, the IDB Group, the EBRD, and the AsDB. The SAB Secretary participated as a member of the network of Secretaries to the Appeals Sanctions Boards in various knowledge management and information sharing activities aimed at standardizing and harmonizing best practices in the enforcement of the Mutual Debarment Agreement, including participating in quarterly conference calls and other meetings with counterpart secretaries from the other signatory organizations.

37. In May 2015, at the behest of the IDB sanctions secretary, the SABS traveled to Washington, DC to deliver a presentation of the Bank’s sanctions system to the IDB’s Sanctions Committee.

38. In September 2015, the SABS participated in the 33rd Cambridge International Symposium on Economic Crime at the University of Cambridge, United Kingdom, at the invitation of the EBRD sanctions secretary and took part in a discussion panel on Multilateral Development Banks (MDB) Sanctions Systems. This panel’s discussions resulted in the drafting of an article on MDB sanctions systems published in October 2015 in the “Company Lawyer” magazine in the United Kingdom.

39. In October 2015, the SABS and two SAB members took part in the annual meeting of MDB secretariats of Sanctions Appeals Boards in Geneva, Switzerland at the headquarters of the Global Fund, which participates in MDB sanctions board meetings as an observer.

V. CONCLUSION

40. The two organs of the Bank’s sanctions system established in 2013, namely, the Sanctions Office and the Sanctions Appeals Board, are today fully operational. The two organs have found their place in the Bank’s organization chart and effectively play their roles. They have also built fruitful ties with their counterparts in sister organizations, signatories to the Mutual Debarment Agreement, to progressively harmonize MDB rules of procedures and sanctions.

41. However, there is still a need to internally finalize, in conjunction with the GECL, the drafting of certain legal instruments to govern the functioning of these offices, namely, the Statutes and Code of Conduct of the Sanctions Appeals Board, the Sanctions Office Charter, as well as certain operational guidelines to regulate the sanctions process and procedures.

42. Lastly, it will be necessary in future to develop cooperation and coordination between the various actors of the Bank’s Sanctions System (IACD, SANO and SABS) so as to train Bank staff members involved in the implementation and execution of Bank-financed projects and programmes, and staff of project executing and coordinating agencies in Regional Member Countries, with the objective of (i) better preventing cases of corrupt practices and other associated practices in operations financed with Bank resources; and (ii) enhancing the visibility of the Sanctions Office and Sanctions Appeals Board.
ANNEXES
ANNEX I

TEMPORARY SUSPENSION (Before investigations are concluded)

The Integrity and Anti-Corruption Department (IACD) submits a Request for Temporary Suspension (TS) to the Sanctions Commissioner (SC).

The SC reviews the Request to determine if the requirements for TS are fulfilled and if there is sufficient evidence to support a finding of Sanctionable Practice (SP) and a debarment decision of 1 year or longer.

If the requirements are fulfilled and the evidence sufficient, the SC issues a Notice of Temporary Suspension to the Respondent for a period of 12 months.

If the requirement are fulfilled and the evident is not sufficient, the SC will not issue the Notice of TS. IACD may submit a revised Request for TS.

Respondent may contest the TS by submitting an Objection to the TS within 40 days of receipt to the SC.

The SC considers the parties’ arguments and may decide to terminate or uphold the TS.

If the SC decides to uphold the TS, the Respondent cannot appeal that decision.

If IACD does not submit and Application for Renewal of the TS, the suspension lapse at the end of the period prescribed in the Notice of TS.

If the SC decides to uphold the TS, the issue is closed. IACD cannot appeal the decision.

IACD may present to the SC, an Application for Renewal of TS no later than 1 month before the end of the TS. The SC considers the Application within 10 days of receipt. SC’s decision may not be appealed against.

1st Tier – SANO SANCTIONS PROCEEDINGS

IACD submits a Finding of Sanctionable Practices (FoSP) to the SC.

SC reviews FoSP to determine whether evidence is sufficient to support prima facie finding of SP.

If SC determines that evidence is sufficient, SC issues a Notice of Sanctions Proceedings (NSP) to the Respondent.

If SC determines that evidence is not sufficient, SC issue a Determination of Insufficient Evidence. The Case is close. IACD may submit a revised FoSP to the SC.

Respondent may contest the allegations by submitting a Response to the SC within 60 days of receipt of the FoSP.

If Respondent does not submit a Response, SC makes a determination solely on the basis of evidence provided by IACD and imposes a sanction on the Respondent.

If Respondent submits a Response, SC determines, within 30 days, on the basis of evidence and arguments presented, whether it is more likely than not that Respondent engaged in the alleged SP.
If evidence is sufficient, SC takes a Sanctions Decision and imposes one or more sanctions to Respondent.

If evidence is not sufficient, or if there is manifest error, SC withdraws the Notice. The Case is close. IACD may submit a revised FoSP.

Respondent refers the matter before the Sanctions Appeals Board (SAB) within 25 days of notification. The Sanctions Decision will not enter into force.

Respondent does not refer the matter before the Sanctions Appeals Board (SAB) within 25 days of notification. The Sanctions Decision is final and will enter into force.

The respective sanctions, the identity of the sanctioned party, the SP sanctioned and a summary of the Sanctions Decisions will be published.

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The case is brought before SAB by the Appeal presented to the Secretary to the Sanctions Appeals Board (SABS).

SABS forwards the Appeal to IACD within 5 days of receipt or within reasonable time, in exceptional circumstances.

IACD may submit a Reply within 30 days of receipt of the Appeal.

Le SABS forwards IACD’s Reply to the Respondent within 5 days of receipt or within reasonable time, in exceptional circumstances

Respondent may submit a Rebuttal within 15 days of receipt of the Reply if IACD provides new evidence or arguments in the Reply.

SAB may consider the Case on the basis of the Record. Parties have no right to an oral hearing. However, SAB may decide to hold a hearing.

SAB holds closed deliberations

If evidence is sufficient to conclude that it is more likely than not that Respondent engaged in the alleged SP, SAB takes a Final Decision and imposes sanction(s) on the Respondent. The Decision is final and binding on the parties.

The respective sanctions, the identity of the sanctioned party, the SP sanctioned and a summary of the Sanctions Decisions will be published.

If the evidence is not sufficient, SABS prepares a written document recording SAB’s finding and the closure of the proceedings and delivers it to the parties.
ANNEX II

TERMS OF REFERENCE FOR THE SANCTIONS COMMISSIONER

1. General Responsibilities

The Sanctions Commissioner ("SC") shall be the head of the Sanctions Office (the "SANO") and shall exercise its functions independently. As a pilot phase for the initial three (3) years, the SC and the alternate SC shall be external experts appointed by the Executive Directors of the Bank on the recommendation of the President. The SANO is a critical component in ensuring an efficient, effective and fair sanctions process. The SC has authority to issue Notices of Sanctions Proceedings to Respondents and to impose sanctions.

2. Operational Responsibilities

(a) The SC shall be assisted by a Secretary to the Sanctions Office at PL4 level and an administrative assistant.

(b) The SC reviews the evidence of a Sanctionable Practice as presented by IACD and determines, upon consideration of all the facts and arguments presented whether there is sufficient evidence to support IACD’s finding.

(c) The SC will then notify IACD on whether or not there is sufficient evidence to support a finding that the Respondent is engaged in a Sanctionable Practice.

(d) If the SC determines that the evidence is sufficient to support the finding of a Sanctionable Practice, then he/she shall issue a Notice of Sanctions Proceedings (the “Notice”) to the Respondent and notify the Chair of the Sanctions Appeals Board (SAB) and the Director of IACD. The Respondent may contest the allegations in a written Response. The SC will issue a Decision after consideration of the facts and arguments presented.

(e) If the Respondent informs the SAB through the Sanctions Appeals Board Secretary (SABS) that it desires to contest the allegations and/or the sanction prescribed by the SC in the Decision, the matter will be referred to the SAB for its review and final decision.

(f) If the Respondent does not inform the SAB that it desires to contest the allegations or the sanction decided by the SC, the SC’s Decision shall become final and the sanction will be imposed.

(g) The SC shall respect and maintain the confidentiality of the sanctions proceedings and shall be recused in cases where the SC may have an actual or perceived conflict of interest.

(h) The SC shall report annually to the Board of Directors on the work of the SANO.

(i) Rules and Procedure and the Code of Conduct for the SANO shall be developed by the Bank in consultation with the SC.
(j) The SC shall be held harmless from any losses, costs, damages or liability to which the SC may be subject as a result of claims by third parties resulting from any function exercised within the scope of the present terms of reference and his/her assignment contract, except those resulting from the gross negligence or willful misconduct by the SC.
1. General Responsibilities

The Secretary to the Sanctions Office (the “SSO”) shall exercise her/his functions independently. She/he shall be appointed by the President of the Bank and report functionally to the Sanctions Commissioner (“SC”) and administratively to the First Vice-President/COO. The SSO shall be appointed from among the staff of the Bank to assist the SC. The SC shall supervise the work of the SSO.

2. Operational Responsibilities

The SSO shall be assisted by an administrative assistant. The SSO:

(a) Will receive findings as evidence of the Sanctionable Practice from IACD.

(b) Will prepare such evidence and will brief the SC on all aspects of a case;

(c) Will be responsible for transmitting all documents and making all notifications required in connection with the case.

(d) Will make for each case a dossier which shall record all actions taken in connection with such case and the dates thereof.

(e) Shall respect and maintain the confidentiality of the sanctions proceedings.
ANNEX IV

The Sanctions Appeals Board (“SAB”) reviews and makes final decisions on appeals cases and performs other detailed functions and responsibilities as set forth in the sanctions process. The Sanctions Appeals Board is comprised of six (6) members, three (3) of which are substantive and three (3) which are alternate. Four (4) of the Sanctions Appeals Board members are external to the Bank and are chosen among leading experts in the field of Anti-corruption, and two (2) other members are chosen among senior Bank staff.

The Sanctions Appeals Board members are appointed by the Bank Board of Directors on recommendation of the President of the Bank.

The Sanctions Appeals Board will utilize a “de novo” process and generally render its decision on the basis of the written record without a hearing and the parties have no right to a hearing. However, the Sanctions Appeals Board may, in its discretion, hold such hearings as it deems necessary.

The Sanctions Appeals Board is responsible for:

(a) Determining whether the evidence is sufficient to support a finding that a Respondent has engaged in a Sanctionable Practice in connection with a Bank Group-financed operations;

(b) Making final decisions on appropriate sanctions in cases of Sanctionable Practice(s) in connection with a Bank-Group financed operations;

(c) Reporting annually to the Board on the work of the Sanctions Appeals Board; and

(d) Developing its own rules, procedures and code of conduct.
ANNEX V

TERMS OF REFERENCE FOR
THE SANCTIONS APPEALS BOARD SECRETARY

The Sanctions Appeals Board Secretary (the “SABS”) exercises her/his functions independently. The SABS is appointed among the Bank staff members by the President of the Bank. Administratively, the Secretary to the Sanctions Appeals Board reports to the President of the Bank and functionally to the President of the Sanctions Appeals Board (“SAB”). The Secretary to the Sanctions Appeals Board assists the Sanctions Appeals Board in its duties.

Functionally, the Secretary to the Sanctions Appeals Board:

(a) Receives Notices of Sanctions Proceedings addressed to the Respondent and as issued by the Sanctions Office (SANO);

(b) Receives and prepares Notices of Appeal from decisions made by the Sanctions Commissioner (SC);

(c) Responsible for transmitting all documents and making all notifications required in connection with the appeal;

(d) Will brief the Sanctions Appeals Board members on all aspects of a case during its deliberation;

(e) Schedules all Board meetings and hearings of the Sanctions Appeals Board;

(f) Prepares a file for each case in which all actions taken in connection with an appeal and the dates thereof are recorded;

(g) Attends hearings and meetings of the Sanctions Appeals Board, prepares and keeps minutes as instructed by the Chair;

(h) Respects and maintains the confidentiality of the sanctions proceedings; and

(i) Accomplishes any miscellaneous duties and tasks in connection with the management of the Sanctions Appeals Board.
Mr. Akere Tabeng MUNA, Sanctions Commissioner

Mr. Akere MUNA is a Cameroonian national and Barrister-at-Law with 34 years of experience in the multifaceted practice of law and possesses various other skills and experiences. He is founder and former President of Transparency International (TI) Cameroon. In 2007-2008, he was a member of the independent High-Level Audit Panel of the African Union. From 2008 to 2014 he was President of the African Union’s Economic, Social and Cultural Council. He is a former President of the Pan African Lawyers Union (2005-2014) and former President of the Cameroon Bar Association. He is a former member of the International Monetary Fund Advisory Group for Sub-Saharan Africa. In January 2010, he was elected as member of the Panel of Eminent Persons, which oversees the African Peer Review process, and thereafter, he was appointed Chairperson of the Panel. He is a Member of the Governing Board of the Africa Governance Institute and a Member of the High Level Panel on Illicit Financial Flows from Africa. He was actively involved in the TI working group that helped draft the AU Convention on Preventing and Combating Corruption, and authored a guide to the Convention. He was elected Vice-Chair of TI’s Board in 2005 and again in 2008 and 2011. Since 2014, he serves as Chair of the International Anti-Corruption Conference Council.

Maître Mahmoud BOUSBIA-SALAH, Alternate Sanctions Commissioner

Maître BOUSBIA-SALAH is an Algerian national, a Lawyer, Consultant and Expert in Investment and Public Procurement Law, with over 40 years of experience; he is also a Member of Algeria’s Chamber of Commerce and Industry. He is the Managing Partner of one of Algeria’s premier law firms specialized in advising on foreign investments and market entry into Algeria and in the past he has been the Advisor to the Algerian Prime Minister charged with overseeing the drafting of legal instruments necessary for enhancing Algeria’s economic reform. Maître BOUSBIA-SALAH was also a Secretary General in the Algerian Ministry of Transport and a Director at the Algerian Presidency of the Republic.

Ms. Marie Lydie BILE-AKA, Secretary to the Sanctions Office

Marie Lydie BILE-AKA holds this position since December 2013. Prior to her appointment, she performed in various capacities in the Bank: Board Proceedings Officer in the General Secretariat (SEGL), Acting Secretary to the Staff Appeal Committee (APCU), and Legal Consultant for the Legal Services Department (GECL). Before joining the Bank, she worked with the Law Firm Adjé-Assi-Métan and as Chief of Cabinet of the Ministry of Economic Infrastructure in Abidjan. Ms. BILE-AKA holds a Maîtrise en Droit Privé from the University of Abidjan, and a Master in International and Comparative Law (LL.M.) from The George Washington University, Washington, D.C. She is an Ivorian national.
Professor Mark PIETH, External Member and Chairperson

Professor Mark PIETH is a Swiss national. He has been a Professor of Law and Criminology at the University of Basel since 1993, as well as Head of Section of the Economic and Organized Crimes Section at the Swiss Federal Office of Justice. He has also chaired the OECD Working Group on Bribery in International Business Transactions as well served on the United Nations Independent Inquiry Committee into the Iraq Oil-for Food Program and the World Bank Integrity Advisory Board.

Ms. Susan RINGLER, External Substantive Member

Ms. Susan RINGLER is an American national, whose career achievements have included serving as General Counsel for the Independent Inquiry Committee investigating the UN Oil-for-Food Program in Iraq; creating and implementing a global anti-corruption program for the ITT Corporation; Investigating fraud and corruption and developing best practices in World Bank-financed projects; Developing a criminal justice reform program on behalf of the American Bar Association in Russia; as well as serving as Federal Prosecutor for the State of Maryland in the United States.

Judge El Hadji Malick SOW, External Alternate member

Judge Malick SOW is a Senegalese national, who has served as an Appellate judge at the national level, and at the international level, notably in the UN Special Tribunal for Sierra Leone charged with judiciary investigations and adjudication of criminal cases; Mission Leader in the Senegalese Ombudsman’s Office where he settled conflicts between banks and their clients as well as coordinated the Ombudsman’s study concerning corrupt and other malpractices in banks in Senegal. He has also served as Technical Advisor in the Senegalese Ministry of Justice and as Board Member of the National Debt Recovery Authority, where he handled cases of corrupt and other malpractices in liquidated banks.

Mr. Andres RIGO, External Alternate member

Mr. Andres RIGO is Spanish national, who has been Acting Vice President and General Counsel of the World Bank Group; Deputy General Counsel for Operations at the World Bank Group; and currently serves as an external Member of the Sanctions Committee of the Inter-American Development Bank, a Judge at the Administrative Tribunal of the IMF, and a member of the ICSID Panels of Arbitrators and Conciliators as well as the WTO Panel of Experts, among other functions.

Mr. Anthony ODUKOMAIYA, Internal Substantive member

Mr. Anthony ODUKOMAIYA is currently Director of the Financial Control Department of the Bank. Prior to his appointment to his current position, he was Division Manager of the Division responsible for financial reporting within the Financial Control Department. Before
joining the Bank, Mr. ODUKOMAIYA held the positions of Semi-Senior and then Senior Manager with Deloitte & Touch, Nigeria from 1981 to 1991. He is a Fellow of the Institute of Chartered Accountants of Nigeria. He is a citizen of Nigeria.

Mr. Desiré VENCATACHELLUM, Internal Alternate member

Mr. Desiré VENCATACHELLUM is currently Director of the Operational Policies Department at the Bank. He served as Director of the Development Research Department between January 2011 and February 2012. He joined the Bank as Principal Research Economist in September 2005, and was promoted to Lead Research Economist in April 2008. Prior to joining the Bank, he was Full Professor of Economics at HEC Montréal, Université de Montréal. He holds a PhD. in Economics (Queen’s University, Canada) and a Magistère Ingénieur-Économiste (Université d’Aix-Marseille II, France). Mr. VENCATACHELLUM is a citizen of Mauritius.

Ms. Mariam DIAWARA, Secretary to the Sanctions Appeals Board

Mariam DIAWARA was appointed to her current position in December 2013. Prior to Ms. DIAWARA’s appointment as Secretary to the Sanctions Board, she served in the Bank’s Legal Department (GECL) in various capacities: Chief Legal Counsel, Litigation, Principal Legal Counsel and Legal Consultant. Before joining the Bank, Ms. DIAWARA worked as a lawyer at several law firms in Paris, France, and also managed her own Paris-based private law practice for seven (7) years. Ms. DIAWARA holds several degrees in law, including: “Certificat d’aptitude à la profession d’avocat” of Paris Bar, “Diplôme de l’Institut de Droit des Affaires (IDA)” from University of Paris II (Assas), “Diplôme d’Etudes Supérieures Spécialisées (DESS) en Administration Internationale” from University of Paris II (Assas), “Mastère spécialisé en Droit des Affaires Internationales et Management” from “Ecole Supérieure des Sciences Economiques et Commerciales” (ESSEC) of Paris. Ms. DIAWARA is a licensed attorney and a member of the Bar in France (Paris) and Mali (Bamako).

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i Ms. RINGLER was appointed for a non-renewable period of two (2) years which ended in May 13, 2015.

ii Mr. ODUKOMAIYA retired from the Bank at the end of September 2015.