

International Trade Alert

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World Bank's Integrity Vice President (INT) Releases Annual Report for Fiscal Year 2016

On October 7, 2016, the Integrity Vice President (INT) of the World Bank Group (the "Bank") released its annual report for fiscal year 2016 (the "Report"). In the Report, INT provides insight into the Bank's efforts to combat fraud, corruption, and other sanctionable practices in bank-funded projects through its enforcement activities in the preceding fiscal year. These enforcement activities include investigations into allegations of sanctionable activities committed by firms, individuals, agents and Bank staff; and the imposition of sanctions, such as debarment (i.e., ineligibility for a Bank financed contract, either permanently or for a designated period of time). The Report is a helpful document that provides parties participating in contracts involving Bank financing with insight into the types of investigations handled by the Bank, the investigation and sanctions process the Bank follows, and investigation and enforcement priorities for the coming year.

The Report reveals that the Bank will continue to investigate and enforce corrupt and fraudulent practices involving Bank-funded activities. While the overall number of new investigations declined from 99 in fiscal year 2015 to 64 in fiscal year 2016, we expect continued aggressive investigation and enforcement by INT in the coming year. Moving forward in 2017, we anticipate that the Bank is likely to become more actively involved in collaboration with national enforcement authorities, will seek to pursue complex cases and cases involving undisclosed agents, and may increase attention to Negotiated Resolution Agreements (NRAs) to expedite investigations of misconduct.

This client alert provides (a) background on INT investigations and enforcement activities, (b) highlights from the Report and (c) statistics for fiscal year 2016.

A. Background on INT Investigations and Enforcement Activities

INT Investigations

INT receives complaints from sources all around the world. In FY16, 37 percent of complaints were received from Bank staff, while the remaining 63 percent came from external sources. Upon receiving a complaint, INT assesses whether the complaint alleges one of five sanctionable practices (fraud, corruption, collusion, coercion and obstruction) and involves a Bank-supported project. If the complaint meets these criteria, INT may open an investigation into the misconduct, depending on the seriousness of the allegations and the existence of corroborating evidence. Such investigations may be either "external" (i.e., involving external actors involved in Bank-financed projects) or "internal" (i.e., involving Bank staff).

Through the investigation, INT evaluates whether the alleged conduct occurred. If INT determines that **it is more likely than not** that the firm and/or individuals engaged in one or more of the five Bank's sanctionable practices, the matter is deemed "substantiated." When INT substantiates a case, it produces

a Final Investigation Report, which is provided to the president of the World Bank Group and commences the sanctions process.

Sanctions

When INT finds sufficient evidence to substantiate a sanctionable practice, it commences the sanctions process by preparing a Statement of Accusations and Evidence. This statement is referred to the Bank's Suspension and Debarment Officer (SDO) for review. Decisions to sanction a firm or individuals are made through a two-tier process involving SDOs (who are independent from INT) and the Bank Sanctions Board.

SDOs review the referral in the first instance and determine whether INT has submitted sufficient evidence to support a finding. If so, they recommend a sanction via a Notice of Sanctions Proceedings. Typically, the firm or individual is temporarily suspended and has 90 days to challenge the decision at the Sanctions Board. During the first 30 days after receipt of the Notice, the firm or individual may also submit an explanation to the SDO as to why the notice should be withdrawn (e.g., due to manifest error or insufficiency of evidence) or the recommendation sanction revised. If they fail to challenge or submit an explanation, the recommended sanction becomes final. If they challenge the recommendation, the matter is referred to the Sanctions Board, which will consider the case and may conduct a hearing.

Additional information regarding the Bank's sanctions system can be found [here](#).

B. Highlights from the Report

Collaboration with National Enforcement Agencies

One of the key highlights from the Report involves the Bank's role in collaborating with national enforcement agencies in combating corruption and fraudulent practices in Bank-sponsored projects. To this end, INT draws attention to the Bank's victory in *World Bank Group v. Wallace*, a case before the Supreme Court of Canada. In that matter, INT voluntarily shared information obtained during an investigation with Canadian authorities, who then used the information received to obtain judicial authorization for a wiretap. The subsequent investigation by Canadian authorities led to criminal charges against four individuals who subsequently challenged the wiretap authorizations, resulting in a lower court order requiring disclosure of INT records and validation of subpoenas. The Supreme Court overturned the lower court's order, finding that the Bank's privileges and immunities precluded production of internal records or testimony of INT investigators.

In the Report, INT cites this decision as support for its ability to collaborate with national law enforcement authorities on anticorruption investigations. For INT, such collaborative activities are critical for information-sharing and building global partnerships to combat illegal activities in Bank-sponsored projects. Accordingly, the Bank notes that as a priority in 2017, it will continue to build partnerships with law enforcement authorities and explore ways to work with law enforcement "as early as feasible" in the investigative cycle.

Focus on Complex Cases

INT also describes in the Report its plans to continue to focus in 2017 on “complex cases” that typically involve multiple alleged violators across multiple jurisdictions, widespread schemes and significant Bank funds at risk, and that often have the ability to negatively impact development activities across a whole sector.

As an example of a complex case resolved in 2016, INT highlights the 22½-year debarment of the Ukrainian company Information Computer Systems CJSC (Incom). This case involved a corrupt and collusive scheme to rig contracts worth approximately \$43 million. A prominent issue that factored into the severity of the penalty was the company’s repeated attempts to obstruct INT’s investigation, which INT highlights as a deterrent to other companies seeking to obstruct an ongoing investigation.

Focus on Agents and Commissions Paid to Agents

Eliminating corrupt agents and commissions paid to agents continues to be a key focus for INT. To this end, it views the elimination of corrupt agents as a tool to reduce corruption by making “bribes much harder to pay.” The Report notes that six of the investigations from 2016 revealed payments made to “undisclosed agents” who had intentions of making payments to government officials in order to influence the bid process. The practice of not disclosing agents therefore presents a red flag for INT, given that such relationships are frequently used to conceal corrupt payments made on behalf of the company and manipulation of contract awards.

Preference for Negotiated Resolution Agreements

Firms and individuals under investigation by INT have the option of settling the matter through a Negotiated Resolution Agreement (NRA). Entering into an NRA may be a preferable option for both the investigation target and the Bank, since NRAs save resources and time and provide certainty to all parties involved.

In 2016, INT entered into a record 18 NRAs with companies that acknowledged misconduct and committed to implementing the Bank’s Integrity Compliance Guidelines (see [here](#)). This signals a strong preference for NRAs moving forward, which INT notes “can expedite the outcome of an ongoing investigation, prompt companies to self-report issues, and in some instances provide for restitution.”

Investigations of Bank Staff

In 2016, INT pursued 45 cases related to allegations of fraud and corruption implicating Bank staff or vendors, 23 of which were new cases opened during the year. INT substantiated misconduct in seven staff cases, which highlighted issues of fraud, corruption, collusion, abuse of position, conflicts of interest and steering of contracts to select bidders. Following the conclusion of two of the seven cases, two staff were permanently barred from rehire, and disciplinary decisions are pending in the remaining five cases. INT also cleared 11 staff of alleged misconduct in six unrelated cases. The Report states that “[t]he substantiated misconduct highlights issues with abuse of position for personal gain and conflicts of interest associated with concurrent employment for the Bank Group (as STCs) and giving select bidders a

competitive advantage through undue disclosure of confidential information, steering of contracts, fraud, collusion, corruption, misuse of WBG and donor funds for personal gain.”

Conditioning Release of Debarment on Compliance Enhancement

For the past six years, the Bank has made release from its de-barment conditional on an entity’s demonstrated ability to implement internationally recognized principles set out in the Bank’s Integrity Compliance Guidelines. In most instances, sanctioned entities must, among other things, adopt robust compliance programs. Companies sanctioned with conditional release that do not demonstrate an improved integrity posture remain ineligible to participate in Bank projects. The Integrity Compliance Office released 20 companies from the debarment list following their satisfactory implementation of compliance programs and fulfilling other conditions of their sanctions.

C. Statistics for FY 2016

- **Investigations:** In 2016, INT reviewed and opened 279 preliminary inquiries, of which 64 were selected for full investigation, a decrease from the 99 new investigations opened in FY15. The FY16 investigations covered 60 projects in 36 countries. In total, INT substantiated investigations that involved 43 projects and 124 contracts worth about \$633 million, resulting in 58 sanctioned entities.
- **Debarment:** The Report published information concerning 55 cases that resulted in debarment in 2016. The length of, and grounds for, the debarment are as follows:

| Length of Debarment | Misconduct | Total # |
|---------------------|------------------------------------|---------|
| 22½ years | Collusion, Corruption, Obstruction | 1 |
| 96-132 months | Corruption, Collusion | 5 |
| 60-72 months | Collusion | 4 |
| 48 months | Fraud, Corruption | 6 |
| 36 months | Fraud, Corruption | 15 |
| 24-30 months | Fraud, Corruption (some) | 9 |
| 18 months | Fraud | 5 |
| 12 months | Fraud | 10 |

Note that, although “obstructive practices” may not have been formally charged in cases except for Income (22½ years), it remains the case that obstructive conduct in the audit, even if not charged, is sometimes highlighted in press releases and tends to increase the length of debarment. Additionally, in the past year,

instances of fraud or corruption were generally treated less seriously than conduct involving, or also including, instances of collusion and obstruction.

Separately, there were 10 vendors debarred in 2016—all ranging from three to four years involving companies from the United States, Iraq, Afghanistan, Kuwait and Lebanon.

Additionally, as a signatory to the Agreement of Mutual Recognition of Debarments signed on April 9, 2010, the Bank honors certain debarments instituted by the other multilateral development bank signatories (typically, those debarments in excess of 12 months). In 2016, the Bank honored 38 cross-debarments, including four permanent debarments.

- **Referrals to National Authorities:** INT made 30 referrals to government authorities in 2016 for further criminal investigation into the identified conduct. This is an increase from the 21 referrals made in 2015.
- **Timing of Investigations to Conclude:** INT considers a case closed once a Final Investigation Report has been submitted to the relevant operation staff of the Bank for comments. Of the 87 investigations closed in 2016, 53 percent were closed within 12 months and 85 percent were closed in less than 18 months. The average duration of all investigations completed in 2016 was 12 months. By the end of 2016, however, INT had 13 investigations open longer than 18 months.

Contact Information

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