

World Bank Debarment: Another consequence of bribery Asian companies need to know

In addition to the widely publicized penalties, prison terms, and the associated costs of investigation and defense, another less well-known consequence of bribery is debarment from contracting on projects funded by the World Bank. Not only does the debarment affect a company's ability to bid for the multi-million dollar projects in emerging markets funded by the World Bank, a company may also be cross-debarred from projects financed by other multilateral development banks ("**MDBs**") and may appear as a "blacklisted" company on due diligence checklists even after the debarment period. For the last two years, companies and individuals in the Asian region were hit harder with sanctions than any other region.

When bidding on a World Bank project, a company should be aware that it becomes subject to the contractual anti-corruption measures between the bank and the borrowing country or company, including audit rights, lower evidentiary standards, and non-appealable decisions. The practical consequences of this additional penalty are explained in detail below.

The World Bank

The World Bank offers low-interest loans, grants, equity investments and guarantees to projects in developing countries, investing a total of USD65.6 billion in 2014. Five of the top ten recipient countries were in Asia. In order to prevent the diversion of funds from development projects, conduct that would ultimately hinder the World Bank's goal of reducing poverty, the World Bank has put in place a comprehensive set of administrative sanctions for corrupt, fraudulent, collusive and coercive practices.

World Bank Debarment

The World Bank's Procurement Guidelines, Consultant Guidelines and Anti-Corruption Guidelines (together, the "**Guidelines**")¹ provide for the sanctioning of firms and individuals who are found to have engaged in, among other things, corrupt practices in the procurement of goods and services, the selection of consultants, the execution of resulting contracts, and the use of loan proceeds in connection with World Bank financed projects.

¹ World Bank Sanctioning Guidelines; <http://siteresources.worldWorld Bank.org/EXTOFFEVASUS/Resources/WorldWorld BankSanctioningGuidelines.pdf>.

The default sanction applied by the World Bank is to impose a minimum period of debarment of three years (but with an early release if specific conditions have been met), during which the concerned firm or individual (the respondent) is ineligible to be awarded a World Bank-financed contract or to participate in World Bank-financed activities. Other possible sanctions include a letter of reprimand to the respondent, a conditional non-debarment (conditions include, for example, putting in place a compliance program), a fixed-term or indefinite debarment, or restitution. If a borrower has failed to abide by its obligations under the Anti-Corruption Guidelines or has been sanctioned under another project, the World Bank may also suspend disbursement of a loan or require early repayment.

The term "corrupt practice" is defined broadly in the Guidelines as offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party. Another "sanctionable practice" is obstruction during an investigation or the exercise of the World Bank's inspection and audit rights. The practice does not have to succeed or be completed.

Parties that May Be Sanctioned

The Procurement and Consultant Guidelines cover all actors involved in World Bank-financed procurement, including consultants and their agents, personnel, sub-contractors, sub-consultants, service providers or suppliers, regardless of whether they are a party to or even aware of the World Bank involvement.

The Anti-Corruption Guidelines cover any recipient of loan proceeds. The term "recipient of loan proceeds" is interpreted broadly, including all persons or entities which 1) receive loan proceeds for their own use (e.g. "end users"), 2) are responsible for the deposit or transfer of loan proceeds or 3) take or influence decisions regarding the use of loan proceeds. Sanctions can be applied even for conduct during the application process, irrespective of the bid result. A review of the World Bank contract terms is advisable before bidding. It is important to note that affiliates, successors, and assigns of sanctioned parties may also be sanctioned. Additionally, a debarred entity is ineligible to be a nominated sub-contractor, consultant, supplier or service provider of an otherwise eligible firm. Therefore, a company bidding for a World Bank project should ascertain that no debarred parties are included in its pre-qualification application or bid.

The Debarment Process

A two-tiered, quasi-judicial administrative process provides protection of the World Bank's funds while enabling the respondent to respond to allegations of misconduct. However, the process is not fully transparent as court proceedings, lower evidentiary standards apply, national laws are inapplicable, and there are few published precedents. Thus, the process must be approached carefully and with guidance from practitioners with specialized experience.

The World Bank's Department of Institutional Integrity ("**INT**") investigates and determines whether there is sufficient evidence of misconduct. If so, either a settlement is reached or the case is referred to a Suspension and Debarment Officer ("**SDO**"), the first tier of the review process. The SDO evaluates the evidence to determine whether the respondent engaged in the alleged sanctionable practice. Depending on the findings, an SDO may issue a Notice of Sanctions Proceedings with the allegations and recommended sanction, which results in an automatic temporary suspension of the respondent from bidding on World Bank financed contracts. The respondent may then contest the allegations or recommended sanction or submit, in which case the recommended sanction is imposed.

If the respondent does contest the Notice, the case is passed on to the World Bank Sanctions Board, the second tier. The Board, consisting of three members of the World Bank and four external members, determines whether it is "more likely than not" that the sanctionable practice occurred, and in the event of an adverse finding, imposes a sanction. The decision of the board is a final non-appealable decision.

Cross-Debarment and Cross-Referral

Pursuant to the 2010 Agreement for Mutual Enforcement of Debarment Decisions, a decision barring an entity from participating projects funded by a signatory MDB can also lead to debarment by the other MDBs, including the Asian Development World Bank. Although the MDBs have discretion, they generally recognize a World Bank debarment decision and 582 entities have been cross-debarred.

Moreover, the INT also makes referrals to the host government's criminal authorities.

Recent Examples

Recent debarment decisions show the importance of this sanction in corruption decisions.

On February 22, 2012, Alstom Hydro France, Alstom Network Schweiz AG. and their affiliates were debarred for three years and paid USD9.5 million to the World Bank after acknowledging having engaged in sanctionable practices. Alstom made an improper payment of EUR110,000 to a former government official for consultancy services during the Zambia Power Rehabilitation Project, financed by the World Bank. On February 23, 2015, Alstom SA was removed from the World Bank's sanctions list following the fulfilment of its conditions for release.

On April 17, 2013, the World Bank announced the debarment of SNC-Lavalin Inc., a subsidiary of the Canadian SNC-Lavalin Group, and over 100 affiliates for a period of 10 years. SNC-Lavalin had conspired to pay bribes and make misrepresentations in connection with two projects in Bangladesh.

On February 4, 2015, the Louis Berger Group, Inc., a US engineering and professional services group was debarred for one year, for its corrupt payments to Vietnamese officials under two World Bank financed projects

Conclusion

When a company considers a bid for a project with World Bank financing, it must ensure that its procedures can withstand the scrutiny of an INT audit. If an issue is uncovered, careful handling of the World Bank review process is critical as there is only one opportunity to get it right and getting it wrong can be devastating.

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