Sanctions and debarment – the World Bank in 2012

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Thanks and ackowledgements to Ms Pascale Dubois, The World Bank's sanctions officer

What is the World Bank?

- International Financial Organization with 188 members established in 1944 – began operations in 1946
- Largest Multilateral Development Bank (MDB)
  - Other MDBs include the Asian Development Bank (ADB), the African Development Bank (AfDB), the European Bank for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IADB)
- Financial and technical assistance to developing countries
  - <u>IBRD</u>: Middle-Income Countries
    - Low-interest loans, guarantees, advisory services
  - <u>IDA</u>: Poorest Countries
    - Interest-free grants with nominal service charge
- $57.3 billion committed by the World Bank in FY 2011, distributed in credits, loans, grants, and guarantees

Articles of Agreement – No political considerations

- **Before 1997, corruption was never discussed**

- **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

The Articles of Agreement

- Section 10 show that Lord John Maynard Keynes and Assistant Secretary of the Treasury Harry Dexter White acknowledged the complexity of establishing an international organization that engages in government to government lending
- An unanticipated and unintended consequence was that the World Bank would make loans to dictators who used the financial support to prop up some of the most brutal authoritarian regimes in the world
- These autocrats would divert funds for political purposes, funds their friends and children, and flaunt their disdain for World Bank program objectives

Do the Articles forbid any work to improve governance

- Governance refers to political leaders' management of the economy
- In April 1991, Chief Counsel Ibrahim Shihata presented a paper to the Bank's Board of Executive Directors that outlined his interpretation of the Articles of Agreement and their relevance to questions of governance
- Thereafter, the World Bank made incremental progress of including governance in its lending decisions
- Embedded in these considerations is a right to debar firms and individuals who defraud, steal, or cheat the World Bank

A changing world

- End of Cold War, donor fatigue, and increasing attention to development effectiveness
- James Wolfensohn, the then President of the World Bank, delivered his “corruption as a cancer on development” speech in 1996
- OECD anti-bribery convention 1996 to ban bribery in international business transactions
- Board paper 1997 – slow start

Post 1997 reforms

- The Procurement and Consultant Guidelines were revised to include a new section on corruption
- In 1998, the Loan Administration Change Initiative (LACI) that placed greater responsibility on borrower governments to manage disbursements and provide further oversight
- Sanctions and debarment – contentious issues
- Hot line for autonomous reports
- Slow start – resistance and acceptance with the World Bank (Volker Report – 2007)

The costs of corruption

- Governments borrow funds from the World Bank, an organization owned and managed by sovereign governments
- Borrowers agree to ensure the loans are used for purposes intended
- Corruption has been linked to organized crime (money laundering) and terrorist organizations
- According to the Bank's Sanctions Officer, Ms Pascale Dubois, dishonest individuals and forms pay over $1 trillion in bribes
  - Since the world economy is just over $30 trillion, these bribes equal 3% of the world's economy
  - Corruption has been estimated to be a 20% tax on foreign investment

The Sanctions Process – INT

- Investigates allegations of corruption
- Prepares a “Statement of Accusations and Evidence”
- Submits Statement to the Evaluations and Suspension Officer

The Sanctions Process – the Evaluations and Suspension Office

- Reviews the Statement of Accusations
- Notifies the accused firm or individual
- Suspends the finance
- Makes a recommendation (the accused firm or individual may contest the charges)

The Sanctions Process – the Sanctions Board

- Receives the Evaluation and Suspension Officer's recommendation
- Reviews the evidence
- May choose to hold hearings
- Imposes a sanction (may or may not follow the recommendation)
- Decisions are final and not subject to appeal

Sanctions Board – structure

- Four external members appointed by Executive Directors and three Bank staff appointed by the President, all serving renewable 3-year terms
- Sanctions Board Chair is external; serves only one term as Chair
- Independent Secretariat
- Convenes 2-4 times/year for hearings and deliberations
- Reviews case 'de novo' based on pleadings, hearings, and publishes the identity of each sanctioned party, the sanctions imposed, and the full text of its decisions

If allegations of corruption are substantiated

- INT issues a report and transmits to management in the World Bank
  - Misprocurement leads to cancellation of contracts
- A report is sent to the client government
  - Government launched investigations and reprimands officials
- A public report edited and transmitted to donors
- A notice of sanctions proceedings
  - Sent by World Bank EO and forwarded to Sanctions Board

Sanctions – debarment

- Indefinite or fixed-term debarment (without conditions)
- Debarment with Conditional Release
- Conditional Non-Debarment
- Public Letter of Reprimand
- Restitution

- The default or “baseline” sanction is Debarment with Conditional Release.

What happens?

- First, a firm or individual may appeal within 90 days
- Second, if no appeal, or the appeal fails, debarment
- On December 7, 2010, Robert B. Zoellick stated: “cheat or steal from one of us, and you will be punished by all.”
- In the past decade, multilateral development banks have jointly debarred more than 1,100 fraudulent and corrupt entities.”

Impact of Cross-Debarment

- The company or firm is excluded from participating in MDB financed projects

- The World Bank Group finances over $50 bn a year (2011)
- The ADB - $695m (2011)
- The AfDB - $8.81 bn (2011)
- The EBRD – co-financed with bilaterals $14.58 bn (2011)
- The IADB - $12.136 (2010)

- Regardless of the exact amount a firm or individual engaged in theft, the debarment denies a considerable opportunities

Problems and difficulties – why do we care?

- Events in 2001 showed a link between corrupt proceeds and terrorism

- Dishonest individuals organize and dissolve shell companies when accused of corruption

- Change names or shift ownership to family members or clansmen

- Organized crime involvement in corruption