

## **SANCTIONS PROCEDURES** **OF THE INTER-AMERICAN DEVELOPMENT BANK**

### **APPLICABILITY**

These Sanctions Procedures (“Procedures”)\* are to be followed in connection with allegations of fraud and corruption in Projects (defined below) of the Inter-American Development Bank (the “Bank”), the Inter-American Investment Corporation (the “Corporation”), and the Multilateral Investment Fund (the “Fund”, and collectively with the Bank and the Corporation, the “Bank Group<sup>1</sup>”). The proceedings set forth herein are referred to as “Sanctions Proceedings.”

Parties subject to these Procedures include: (i) any party to a Project (defined below), whether by virtue of a contract with the Bank or the Corporation or with other parties in connection with a Project, including, *inter alia*, borrowers, bidders, suppliers, contractors, consultants, applicants, concessionaries and financial intermediaries; and (ii) private sector borrowers, sponsors and investee companies with respect to Projects under consideration or executed as Non-Sovereign Guaranteed (NSG) operations of the Bank or by the Corporation, including operations financed by the Fund.

### **PROHIBITED PRACTICES**

- 2.1** The Bank Group requires all parties executing, bidding for, or in any way participating in a Project to adhere to the highest ethical standards as defined in the policies of the Bank, the Corporation and the Fund and the terms and conditions of the corresponding agreements (if applicable). A “Project” means any activity financed by a member of the Bank Group either with its own resources or with the funds of others, or an activity executed by the Bank or Corporation, including corporate procurement.
- 2.2** The practices defined in this Section 2.2 are prohibited (each, a “Prohibited Practice”). A Prohibited Practice is any corrupt practice, fraudulent practice, coercive practice, collusive practice or obstructive practice in a Project by parties thereto as such terms are defined below:

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\* These Sanctions Procedures are effective for matters referred to the Case Officer, as provided herein, on or after April 1, 2011.

<sup>1</sup> The Bank Group consists of the Bank, the Fund and the Corporation which cooperate on operations in their developing member countries. Each of the Bank and the Corporation are public international organizations. The Fund is a fund under the administration of the Bank. Each has a distinct legal status, governance structure and assets. These Procedures shall apply to allegations concerning each member of the Bank Group and, where the context requires, reference to the Bank shall be understood to include all such members.

- (a) A “*corrupt practice*” is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
- (b) A “*fraudulent practice*” is 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;
- (c) A “*coercive practice*” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (d) A “*collusive practice*” is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; and
- (e) An “*obstructive practice*” is (a) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or making false statements to investigators in order to materially impede a Bank Group 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 (b) acts intended to materially impede the exercise of the Bank’s inspection and audit rights.

### **3. INVESTIGATION AND COMMENCEMENT OF SANCTIONS PROCEEDINGS**

- 3.1 Investigation by the Office of Institutional Integrity.** The Office of Institutional Integrity (“OII”) is responsible for investigating allegations of Prohibited Practices.
- 3.2 Case Officer.** The President shall appoint a Case Officer (the “Case Officer”), who shall not be a member of the Sanctions Committee (the “Committee”), to serve as provided in these Procedures.
- 3.3 Referrals to the Case Officer.** If, as a result of an investigation, the Chief of the OII believes that a preponderance of the evidence supports a finding of a Prohibited Practice, the OII shall present to the Case Officer a Preliminary Notice of Administrative Action (a “Preliminary Notice”). For purposes of these Procedures, a “preponderance of the evidence” means that it is more likely than not that the Respondent (defined below) has engaged in a Prohibited Practice.
- 3.4 Preliminary Notice of Administrative Action.** A Preliminary Notice shall:

- 3.4.1** identify each party alleged to have engaged in a Prohibited Practice (each, a “Respondent”);
  - 3.4.2** state the alleged Prohibited Practice;
  - 3.4.3** summarize the facts relevant to the basis for the allegation of the occurrence of a Prohibited Practice;
  - 3.4.4** attach all evidence relevant to the determination of a sanction then available to the OII (except as otherwise provided in Sections 7.2 to 7.5, inclusive);
  - 3.4.5** attach all exculpatory or mitigating evidence in the possession of OII (except as otherwise provided in Sections 7.2 to 7.5, inclusive); and
  - 3.4.6** incorporate any other information that the OII deems material to the Preliminary Notice, if any.
- 3.5** **Review of Preliminary Notice by the Case Officer.** The Case Officer shall review the Preliminary Notice and determine whether a preponderance of the evidence supports a finding that the Respondent has engaged in a Prohibited Practice. The Case Officer may: (i) choose not to proceed with a matter as provided in Section 3.6; (ii) proceed with issuance of a Notice (defined below) pursuant to Section 3.7; and/or (iii) refer a matter to other units of the Bank Group pursuant to Section 11.5.
- 3.6** **Determination of Insufficient Evidence.** If, in consultation with the Chairperson of the Committee, the Case Officer determines that the Preliminary Notice does not, by a preponderance of the evidence, support a finding that the Respondent engaged in a Prohibited Practice, the Case Officer shall not issue a Notice, and shall notify the Chief of the OII in writing of the decision and the basis of such decision, and further proceedings on such matter shall be concluded. For purposes hereof, allegations of a Prohibited Practice that occurred more than ten (10) years prior to the submission of the corresponding Preliminary Notice to the Case Officer shall be deemed to not be supported by a preponderance of the evidence and therefore shall not be contained in an Notice issued pursuant to Section 3.7.
- 3.7** **Issuance of Notice.** If the Case Officer determines that the Preliminary Notice does, by a preponderance of the evidence, support a finding that the Respondent engaged in a Prohibited Practice, the Case Officer shall prepare a Notice of Administrative Action (a “Notice”), send the Notice to the Respondent, and notify the Secretary of the Committee (the “Secretary”) and the Chief of the OII in writing.

- 3.8 Notice of Administrative Action.** A Notice (i) shall include all the information set forth in a Preliminary Notice pursuant to Section 3.4; and (ii) shall:
- 3.8.1** state the findings of the Case Officer and the sanction recommended by the Case Officer (a “Recommended Sanction”);
  - 3.8.2** if applicable, provide for a Temporary Suspension pursuant to Section 3.11, including an explanation of the basis therefore;
  - 3.8.3** explain that the Respondent has an opportunity to respond to the Committee and that failure to respond shall have the effect provided for in Section 3.13;
  - 3.8.4** state that the Bank Group may impose any of the sanctions described in Section 10.2; and
  - 3.8.5** append a copy of these Procedures, as then in effect.
- 3.9 Delivery of Notice.** The Case Officer shall send the Notice by registered mail or other means that will provide evidence of delivery. If a Respondent refuses delivery of the Notice, the Case Officer may deem the date of such refusal as the date of receipt of the Notice by the Respondent for the purposes hereof. If a Respondent’s address is unknown or fictitious, the Case Officer shall use his or her best efforts to cause the Respondent to receive the Notice, shall determine whether the Respondent has received the Notice and, if applicable, shall determine the date of receipt of constructive notice by the Respondent. For purposes hereof, “constructive notice” shall refer to the presumption that the Respondent has knowledge of the issuance of the Notice by virtue of publication and/or other efforts to notify the Respondent.
- 3.10 Recommendation of Sanction.** The Notice issued by the Case Officer shall include a Recommended Sanction to be imposed on the Respondent from among the range of possible sanctions set forth in Section 10.2. Such Recommended Sanction shall be effective (and, therefore, a “Sanction”) with respect to a Respondent in the event such Respondent (i) fails to submit a Response, or (ii) otherwise admits culpability in writing to the Secretary of the Committee and fails to submit a Response to contest the level of the Recommended Sanction. The effective date of the Sanction shall be the earlier of the expiration of the period provided in Section 5.2 or the date of the admission of culpability under Section 6.1, as the case may be. If the Recommended Sanction becomes a Sanction pursuant to this Section 3.10, the Secretary shall prepare a Decision (as defined in Section 5.3) recording the implementation of the Sanction, and the Sanction shall be reported as provided in Section 10.5 and Section 11.
- 3.11 Temporary Suspension.** Upon the recommendation of the Bank or the Corporation, as applicable, at the time of the issuance of a Notice to a

Respondent, the Case Officer may, in consultation with the Chairperson of the Committee, temporarily suspend the Respondent from eligibility to be awarded additional contracts for Projects pending a final outcome of the Sanctions Proceedings set forth herein (a “Temporary Suspension”) if failure to do so could reasonably cause imminent financial or reputational harm to the Bank Group. In the event that a Temporary Suspension is so imposed, the Respondent may include in his Response filed under Section 5.2 below, an Opposition to Temporary Suspension as described in Section 5.3 below. Such Temporary Suspension may also be imposed either before or after the issuance of the Notice with the recommendation of the Bank or the Corporation, as applicable, and in consultation with the Chairperson of the Committee, and notice of such Temporary Suspension to the Respondent will indicate the 60-day period to file an Opposition to Temporary Suspension which, if filed, shall be considered by the Committee.

- 3.12 Submission of a Response.** The Respondent may submit a Response to the Secretary of the Committee and appeal the Notice to the Committee as provided in Section 5.2.
- 3.13 Failure to Submit a Response.** If the Respondent fails to submit a Response in accordance with the deadline set forth in Section 5.2 herein, the allegations set forth in the Notice will be deemed to be admitted and the Recommended Sanction provided in such Notice shall become effective with respect to such Respondent as provided in Section 3.10.
- 3.14 Conflicts of Interest.** The Case Officer shall be subject to the same provisions concerning conflicts of interest, recusal, and other employment with respect to the disposition of cases that are applicable to the members of the Committee as provided in Article X of the Sanctions Committee Charter provided in Annex A hereto (the “Committee Charter”). In the event of recusal, the Case Officer shall so advise the President, who shall temporarily appoint an alternate Case Officer for the corresponding case.

#### **4. SANCTIONS COMMITTEE**

- 4.1 Composition of the Committee.** The composition of the Committee and provisions relating to the internal procedures and administration thereof is provided for in the Committee Charter.
- 4.2 Scope of Responsibilities.** The Committee is responsible for, following the delivery of a Notice by the Case Officer under Section 3.9, and the submission of pleadings under Section 5: (i) determining whether a preponderance of the evidence supports a finding that a Respondent engaged in a Prohibited Practice; and (ii) imposing a Sanction on a Respondent determined by the Committee to have engaged in a Prohibited Practice.

**4.3 Secretary to the Committee.** The President shall appoint a Secretary to the Committee, who shall not be a member of the Committee. Among other duties provided herein, the Secretary shall receive all submissions and communicate with the parties on behalf of the Committee. The submission of any documents to the Committee shall require receipt by the Secretary and delivery shall be effective as of the date of such receipt.

## **5. SUBMISSIONS TO THE COMMITTEE**

**5.1 Submissions to the Committee.** The submissions to the Committee shall consist of the Record described in Section 8.1, which includes the primary submissions of each of the OII and the Respondent, as follows: (i) the Notice; (ii) a Response by the Respondent under Section 5.2; (iii) a Reply by the OII under Section 5.4; and (iv) a Surreply by the Respondent under Section 5.5.

**5.2 Respondent's Response to the Notice.** The Respondent may submit written materials to the Secretary of the Committee presenting arguments and evidence in response to the Notice (the "Response") within sixty (60) calendar days following receipt of the Notice. The Response may contest the finding of a Prohibited Practice, the level of the Recommended Sanction, or both.

**5.3 Respondent's Opposition to Temporary Suspension.** The Respondent may appeal the Temporary Suspension to the Committee in the materials included in the Response filed under Section 5.2 (such appeal to a Temporary Suspension, an "Opposition to Temporary Suspension"). An Opposition to Temporary Suspension shall explain in writing why the Respondent believes that, notwithstanding the evidence set forth in the Notice, the Respondent should remain eligible to be awarded additional contracts for Projects, pending a final decision (the "Decision") by the Committee. The Opposition to Temporary Suspension shall be considered by the Committee upon receipt of the Response and prior to consideration of the full record and the Committee may, in its discretion, cancel the Temporary Suspension.

**5.4 OII's Reply.** A copy of the Response shall be forwarded by the Secretary to the OII. The OII may submit additional written materials presenting arguments and evidence in reply to the arguments and evidence set forth in the Response (the "Reply") within twenty (20) calendar days after receipt by the OII of the Response. The Reply shall be limited to support arguments and evidence offered in the Notice and/or in rebuttal to the Response.

**5.5 Respondent's Surreply.** A copy of the Reply shall be forwarded by the Secretary to the Respondent. The Respondent may submit additional written materials presenting arguments and evidence in reply to the arguments and evidence set forth in the Reply (the "Surreply") within twenty (20) calendar days after receipt of the Reply by the Respondent. The Surreply shall be limited to

support arguments and evidence offered in the Response and/or in rebuttal to the Reply.

- 5.6 Additional Materials.** If new evidence becomes available to either the OII or the Respondent after the submission of written materials — but prior to a Decision — that party may submit such new evidence together with a brief explanation of the significance of such evidence to the Secretary which the Committee may, in its discretion, consider in rendering its Decision. The Committee also may (i) request clarifications and further evidence from either the Respondent or the OII; and (ii) authorize either the OII or the Respondent to submit additional arguments and evidence responding to any submissions by the other party pursuant hereto, no later than such date and time as the Committee may, in its discretion, reasonably determine. Also, the Secretary shall, prior to a Decision, provide to the Committee the contents of the Record of any related proceeding or other case before the Committee involving the same Respondent. Any materials provided to the Committee pursuant to this Section 5.6 shall be “Additional Materials” for purposes hereof.
- 5.7 Certification.** All submissions by a Respondent shall contain a certification, signed by an individual Respondent or an authorized officer of a Respondent entity, that the information contained therein is truthful and correct to the best of the signer’s knowledge, information and belief, formed after such inquiry which is reasonable under the circumstances.
- 5.8 Language.** All written materials submitted to the Committee shall be in one of the official languages of the Bank, except that exhibits and attachments shall be submitted in their original language with the relevant sections translated into one of the official languages of the Bank.
- 5.9 Recordkeeping.** The Secretary shall maintain such records as may be necessary and appropriate for the functioning of the Committee.
- 5.10 Extensions of Time.** Upon request and for good cause shown, the Chairperson of the Committee may, as a matter of discretion, grant reasonable extensions of the deadlines set forth herein, including for submission of the Response and any Additional Materials pursuant to Section 5.6. The parties have no automatic right to the extension of any deadline.
- 5.11 Computation of Time.** Unless stated otherwise, the term “days” as used in these Procedures means calendar days, including weekends and holidays. If the last day of any period of time prescribed by these Procedures falls on a weekend or on another day on which the Bank’s Headquarters in Washington, D.C. is not officially open for business, the period shall run until the end of the next day on which the Bank’s Headquarters is officially open for business.

## 6. ADMISSIONS OF CULPABILITY

- 6.1 Admissions.** A Respondent may admit all or part of any allegation set forth in the Notice without prejudice to its right to contest other allegations, or any part thereof, or to present evidence or arguments regarding mitigating circumstances pursuant to Section 6.2.
- 6.2 Mitigating Circumstances.** The Respondent may present evidence and arguments regarding mitigating circumstances, including admissions and the implementation of programs by the Respondent to detect or prevent fraud or corruption or any agreement with the Bank or Corporation regarding the allegations or otherwise relevant to the Sanctions Proceedings. Such evidence and arguments shall be submitted with the written submissions set forth in Section 5 herein and in accordance with the corresponding deadlines.

## 7. DISTRIBUTION OF MATERIALS

### 7.1 Distribution of Submissions to the Committee.

- (a) Except as otherwise provided in Sections 7.2 to 7.6, inclusive, the Secretary shall cause copies of the contents of the Record as defined in Section 8.1 to be delivered to the OII and the Respondent (if such materials are not already in the possession of the OII or the Respondent) promptly after their submission to the Committee.
- (b) Notwithstanding any other provision of these Procedures, the Respondent shall not have the right to review or obtain any other information or documents in the possession of either the Bank or the Corporation. In particular, the Respondent shall not have the right to discover the identity of any individual who has provided information to the Bank or the Corporation and who has specifically requested that his or her identity be kept confidential.

**7.2 Distributions of Submissions to Respondent.** Except as otherwise provided in Sections 7.3 to 7.6, inclusive, all evidence presented to the Committee by the OII, including all relevant evidence in the Secretary's possession that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability, shall ordinarily be provided to the Respondent.

**7.3 Distribution of Submissions to Others.** The Secretary shall, at the direction of the Chairperson of the Committee, provide materials submitted to the Committee: (i) to other Respondents in Sanctions Proceedings involving related allegations, facts, or matters; (ii) to other Bank Group units and such other offices as may be necessary for the performance of their duties; (iii) to other Bank Group units as appropriate pursuant to Section 11.5; and (iv) to other parties as part of referrals pursuant to Sections 11.2, 11.3 or 11.4. In determining whether to direct the distribution of such materials, the Chairperson of the Committee shall consider,



among other things, the standard for disclosing exculpatory materials set forth in Section 7.2 and the standard for withholding sensitive materials set forth in Section 7.4. Any further distribution of such materials shall be in the discretion of the Committee.

- 7.4 Sensitive Materials.** Notwithstanding any other provision of these Procedures, each of the OII, the Case Officer and the Secretary, in the performance of their respective functions, may withhold particular evidence or information from disclosure to a Respondent upon a determination that there is a reasonable basis to conclude that (i) revealing the evidence or information might endanger the life, health, safety, or well-being of any person or entity; or (ii) such evidence or information is otherwise sensitive or confidential. In exercising this function, the Case Officer and the Secretary shall consult with the Chairperson of the Committee.
- 7.5 Privileged Materials.** Notwithstanding any other provision of these Procedures, communications between an attorney (or a person acting at the direction of an attorney) and a client for the purpose of providing or receiving legal advice (“attorney-client communications”) and writings reflecting the mental impressions of an attorney or other person acting in anticipation of legal proceedings (“attorney work product”) shall be privileged and shall be exempt from disclosure.
- 7.6 Advisors to the Committee.** The Committee shall have the authority to obtain the services of legal advisors and other advisors to assist in its deliberations. When doing so, all communications with such other parties shall be deemed to be privileged to the Committee and shall be exempt from disclosure.

## **8. PROCEEDINGS OF THE SANCTIONS COMMITTEE**

- 8.1 Contents of the Record.** The record to be considered by the Committee (the “Record”) shall consist solely of the following: (i) the Notice; (ii) the Response; (iii) the Reply; (iv) the Surreply; and (v) Additional Materials to be considered by the Committee pursuant to Section 5.6. The Record shall be confidential and not disclosed except as expressly provided in these Procedures.
- 8.2 Evidence.** The arguments presented to the Committee and conclusions reached by the Committee may be based on any kind of admissible evidence. The Committee shall have discretion to determine: (i) that certain evidence is inadmissible; and, (ii) if not so determined to be inadmissible, the relevance, materiality, weight, and sufficiency of evidence. The rules of evidence of a Bank member country or comparable authority shall not apply.
- 8.3 Hearings.** The Committee may make its Decision on the basis of the Record without a hearing and the parties shall have no right to a hearing. Notwithstanding, the Committee may, in its discretion, hold such hearings as it

deems appropriate. In such case, the Committee shall determine the nature, length and form of any such hearing.

- 8.4 Closed Deliberations.** No representative of the OII or the Respondent may be present during any part of the Committee's deliberations. Any records concerning the Committee's deliberations shall be confidential.

## **9. DETERMINATIONS BY THE SANCTIONS COMMITTEE**

- 9.1 Determination.** After receiving the Record, the Committee shall consider whether a preponderance of evidence supports a finding that the Respondent engaged in a Prohibited Practice.

- 9.2 Finding of Insufficient Evidence.** If the Committee finds that a preponderance of the evidence does not support a finding that the Respondent engaged in a Prohibited Practice, the Sanctions Proceedings shall be closed.

**9.2.1 Closure of Sanctions Proceedings.** In such cases, the Secretary shall prepare a written document recording the Committee's finding and the closure of the Sanctions Proceedings, which the Secretary shall promptly deliver to the Case Officer, the OII, and the Respondent.

**9.2.2 Request to Reopen by the OII.** The OII may request that a closed matter be reopened for reconsideration only on the basis of newly discovered facts which by due diligence could not have been discovered prior to closure of the Sanctions Proceedings. Such request shall be submitted to the Committee no later than thirty (30) days following the discovery of such new facts, and in no event may be filed later than one (1) year from the closure of the Sanctions Proceedings. Upon receipt of such request, the Committee will decide, in its discretion, whether to reopen the matter for further proceedings as it determines appropriate.

- 9.3 Finding of Sufficient Evidence.** If the Committee finds that a preponderance of the evidence supports a finding that the Respondent engaged in a Prohibited Practice, the Committee shall prepare a Decision summarizing the Committee's findings and imposing a Sanction on the Respondent. The Decision shall be final and shall take effect immediately, without prejudice to any action taken by any government under applicable law.

- 9.4 Voting.** All determinations of the Committee shall be made in accordance with the procedures set forth in the Committee Charter.

## **10. IMPOSITION OF SANCTIONS**

- 10.1 Selection of Sanctions.** Upon a finding that the Respondent engaged in a Prohibited Practice, the Case Officer or the Committee, as applicable, may decide

upon a Sanction or combination of Sanctions as set forth in Section 10.2. In determining a Sanction, the Committee shall not be bound by the Recommended Sanction.

**10.2 Range of Possible Sanctions.** The possible Sanctions that may be selected by the Case Officer or the Committee are as follows. The imposition of any Sanction may be public or private. Any Sanction may be imposed in addition to other Sanctions. The Sanctions listed in this Section 10.2 shall not include determinations of management action for Projects and other activities in execution.

**10.2.1 Reprimand.** A reprimand is a formal letter of censure of the Respondent's behavior.

**10.2.2 Debarment.** Debarment is a declaration that a Respondent is ineligible, either permanently or for a stated period of time, to be awarded and/or participate in additional contracts for Projects.

**10.2.3 Conditional Non-Debarment.** Conditional Non-Debarment is a declaration that a Respondent is required to comply with certain remedial, preventative or other measures as a condition to avoid debarment from additional contracts for Projects. Failure by such Respondent to comply with such measures in the prescribed time period may result in automatic debarment under the terms provided in the Decision.

**10.2.4 Debarment with Conditional Release.** Debarment with Conditional Release is a declaration that a Respondent is subject to debarment subject to a conditional release under which such debarment shall be terminated upon compliance with conditions set forth in the Decision.

**10.2.5 Other Sanctions.** Other Sanctions may be recommended or imposed as deemed appropriate by the Case Officer, or the Committee, as applicable, including, but not limited to, the restitution of funds, and the imposition of fines representing reimbursement of the costs associated with investigations and proceedings contemplated herein.

**10.2.6 Sanctions of Other Institutions.** The Sanctions provided for herein shall be independent of and without prejudice to the recognition by the Bank or the Corporation of the sanctions of other institutions, the decision of other institutions to recognize Sanctions of the Bank and/or the Corporation, or the taking of any other actions including the approval of any other policies on the part of the Bank or the Corporation related to procurement and the eligibility of counterparties to participate in activities financed by the Bank, the Corporation or the Fund.

**10.3 Parties Subject to Sanctions.** The Case Officer may recommend, and the Committee may impose, appropriate Sanctions on any individual, entity or firm that, directly or indirectly, owns or controls a sanctioned Respondent, is owned or controlled by a sanctioned Respondent, or is under common ownership or control with a sanctioned Respondent, whether, in the case of an entity or firm, such entity or firm is in existence at the time the Sanctions are imposed or is formed at a later date during the period that the Sanctions remain in effect. Sanctions may also be imposed under this provision on the officers, employees, affiliates or agents of a sanctioned Respondent. Indicia of control include, but are not limited to, the possession, direct or indirect, of the power to direct the management and policies of a business concern, organization or individual, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, or common use of employees. Any firm, entity or individual identified as subject to Sanction under this provision shall also be listed as a Respondent in a Notice and given an opportunity to respond to the Notice as provided herein.

**10.4 Factors Affecting Choice of Sanctions.** The Case Officer and the Committee may consider the following factors:

- 10.4.1** the egregiousness and severity of the Respondent's actions;
- 10.4.2** the past conduct of the Respondent involving a Prohibited Practice;
- 10.4.3** the magnitude of any losses caused by the Respondent;
- 10.4.4** the damage caused by the Respondent to the operations of the Bank Group, including the credibility of the procurement process;
- 10.4.5** the quality of the evidence against the Respondent;
- 10.4.6** the nature of the involvement of the Respondent in the Prohibited Practice;
- 10.4.7** any mitigating circumstances, including the intervening implementation of programs to prevent and detect fraud or corruption or other remedial measures by the Respondent;
- 10.4.8** the savings of Bank Group resources, or facilitation of an investigation being conducted by the OII, occasioned by the Respondent's admission of culpability or cooperation in the investigation process;
- 10.4.9** sanctions imposed on the Respondent by other parties, including another international or multinational organization, including another development bank; and
- 10.4.10** any other factor that the Case Officer or the Committee deems relevant.

- 10.5 Distribution of Decision.** The Decision shall be delivered to, *inter alia*: the Case Officer; the OII; the Respondent; the Board of Directors of the Bank or the Corporation, or Donors Committee of the Fund, as appropriate, including the Executive Director of the Bank or the Corporation, or Representative of the Fund, as appropriate, representing the relevant borrowing country and the country of the Respondent.
- 10.6 Requests to Reopen by Respondent.** The Respondent may request that the matter be reopened for reconsideration only on the basis of newly-discovered facts which by due diligence could not have been discovered prior to the issuance of the Decision. Such request shall be submitted to the Committee no later than thirty (30) days following the discovery of such new facts, and in no event may be filed later than one (1) year from the issuance of the Decision. Upon receipt of such request, the Committee will decide, in its discretion, whether to reopen the matter for further proceedings as it determines are appropriate. The Respondent has no automatic right to reconsideration.

## **11. DISCLOSURE**

- 11.1 Disclosure of Decisions.** If a Sanction (other than a private reprimand) is imposed on a Respondent, information concerning the identity of each sanctioned party, the Prohibited Practice, the findings of the Sanctions Committee and the Sanction imposed may be disclosed by the Bank and the Corporation to borrowers, other international and multinational organizations, governmental authorities and such other parties, including the public, as deemed appropriate by the Bank or the Corporation.
- 11.2 Referral to Governmental Authorities.** If the Case Officer or the Chairperson of the Committee believes that the laws of any country may have been violated by a Respondent, the Case Officer or the Secretary upon the direction of the Chairperson of the Committee, may at any time recommend to the President of the Bank that the matter be referred to appropriate governmental authorities. The Case Officer or the Secretary may make or direct the OII to make available to the President such information relating to the suspected violation as the Case Officer or the Chairperson of the Committee shall deem appropriate for referral. Such a referral shall be without prejudice to any referrals that may be made by members of the Bank Group in the independent exercise of their authority.
- 11.3 Disclosure to Affected International Organizations.** If the Case Officer or the Committee determines that there may be evidence of a violation of the policies of another international or multinational organization, including another development bank, the Case Officer or the Secretary, upon the direction of the Chairperson of the Committee, may at any time make, or direct the OII to make, such evidence available to that organization.

**11.4 Reciprocal Disclosure.** The Case Officer or the Secretary may at any time make available materials submitted to the Case Officer or the Committee to another international or multinational organization, including another development bank, or to an agency of a member government, pursuant to the terms of agreements to make similar information available from its own files to the Bank Group.

**11.5 Referral to Other Units of the Bank Group.** If the Case Officer or the Committee determines that a Respondent may have committed a procedural irregularity or an act of wrongdoing other than a Prohibited Practice in connection with a Project, the Case Officer, or the Secretary upon the direction of the Committee, may refer the matter to the appropriate Bank Group unit for further possible action.

## **12. GENERAL PROVISIONS**

**12.1** These Procedures are adopted to guide the exercise of discretion by the Bank Group, and do not in themselves confer any rights or privileges to any party. The Bank reserves the right to alter, amend, supplement, or revise these Procedures, with or without notice. In addition, members of the Bank Group may adapt, modify, waive, suspend or terminate these Procedures and suspend or temporarily suspend any party from eligibility to be awarded contracts, in particular cases as circumstances warrant at any time without notice.

**12.2** Nothing in these Procedures shall be considered to alter, abrogate, or waive the immunities and privileges as set forth in the Agreement Establishing the Inter-American Development Bank, the Agreement Establishing the Inter-American Investment Corporation, the Agreement Establishing the Multilateral Investment Fund II, or in applicable national or international law, regulation or other authority.

**12.3** Notwithstanding any other provision of these Procedures, the sharing of information contemplated herein shall be subject to the limitations of the policies of disclosure of and access to information of the Bank and the Corporation, other policies governing the Bank, the Corporation or the Fund concerning the use and confidentiality of information, the contractual obligations of the Bank and the Corporation with outside parties, and to other relevant considerations in such policies and contracts.

**12.4** These Procedures do not apply to investigations of governmental entities, investigations concerning Bank Group employees and other officials whose relationships with the Bank Group are governed by Codes of Conduct of the Bank, the Corporation or the Fund, or to other cases where management determinations are required to protect the interests of the Bank Group.

## SANCTIONS COMMITTEE CHARTER

### ARTICLE I

This Sanctions Committee Charter (this “Charter”) shall govern the Sanctions Committee (the “Committee”) of the Inter-American Development Bank (the “Bank”), the Inter-American Investment Corporation (the “Corporation”) and the Multilateral Investment Fund (the “Fund”, and collectively with the Bank and the Corporation, the “Bank Group”).

### ARTICLE II

The Committee shall review allegations of Prohibited Practices, make decisions, and perform other functions and responsibilities as set forth in the Sanctions Procedures of the Bank Group (the “Sanctions Procedures”). Defined terms used therein shall have the same meaning as in this Charter.

### ARTICLE III

1. The Committee shall be composed of seven members (each, a “Member”). All Members shall possess the professional experience and integrity necessary to qualify them as Members.
2. Three Members of the Committee shall be appointed by the President from among Bank Group staff (each, an “Internal Member”). Four Members of the Committee shall be appointed by the President from outside the Bank Group (each, an “External Member”). External Members must not currently hold any appointment as an employee of the Bank Group (including consultants and other professionals subject to similar contracts with the Bank Group). All Members shall be citizens of one of the member countries of the Bank.
3. For purposes of considering cases involving Corporation activities, one alternate member shall be appointed by the President from among Corporation staff, as nominated by the General Manager of the Corporation (the “Alternate Member”).
4. External Members shall be appointed for one five-year non-renewable term. Internal Members shall be appointed for one three-year non-renewable term. Of the seven Members initially appointed, the President shall designate the terms of two External Members as four years and the term of one Internal Member as two years. All subsequent terms of External Members shall be five years, and of Internal Members shall be three years.
5. In the event that a Member resigns from the Committee prior to the end of his or her term, the President shall appoint a successor to complete the term. If such successor is appointed within one year before the expiration of the term, such successor shall be eligible to be appointed for one successive term.

#### **ARTICLE IV**

1. The President shall appoint a Chairperson and Vice Chairperson from among the Members of the Committee.
2. The Chairperson shall direct the work of the Committee, represent the Committee in all administrative matters, assign Panels as provided in Article VI, and preside at all sessions of the full Committee.
3. If the Chairperson is unable to act or attend a session of the full Committee, the Vice Chairperson shall act as Chairperson.

#### **ARTICLE V**

1. Attendance of at least five Members, including a majority of each of Internal Members and External Members, is required to constitute a quorum of the full Committee.
2. A session of all Members may be convened by the Chairperson when, in the opinion of the Chairperson, the complexity of a case requires such a session or when it is necessary to address a question affecting the operation of the Committee or any other matter warranting consideration by the full Committee.

#### **ARTICLE VI**

1. Unless a particular case or cases are deemed by the Chairperson to involve exceptional circumstances that merit consideration by the full Committee, the Chairperson shall appoint a panel comprising two External Members and one Internal Member (a "Panel") to hear and determine each case pursuant to the Sanctions Procedures. The Chairperson shall also designate a Panel Chair from amongst the Members of the Panel. If a case involves a Corporation activity, the Alternate Member shall serve as the staff Member of the Panel considering the case.
2. Attendance of all three Panel Members is required to constitute a quorum of a Panel.
3. The Chairperson shall organize the work program of a Panel in consultation with its Members and shall schedule meetings as needed.
4. References herein and in the Sanctions Procedures to the Committee shall be deemed to include references to a Panel, as appropriate in each context.

#### **ARTICLE VII**

The compensation of External Members and expenses of the Committee shall be borne by the Bank Group.



## **ARTICLE VIII**

1. The Committee and Panels shall hold their sessions at the principal office of the Bank, unless the Chairperson or Panel Chair, as the case may be, considers that the efficient conduct of the proceedings warrants holding sessions elsewhere. Any one or more, or all, Members of the Committee or a Panel may participate in a session by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence at a session.
2. Committee and Panel proceedings, including hearings and deliberations of the Committee or a Panel, as the case may be, shall be confidential and shall not be open to the public.

## **ARTICLE IX**

1. Each Member shall have a vote of equal authority, whether acting in a full Committee or in a Panel.
2. Decisions of the full Committee shall be taken by the favorable votes of at least five Members, including a majority of each of the Internal Members and of the External Members.
3. Decisions of a Panel shall be taken by a majority (i.e., two Members) and shall be deemed to constitute a decision of the Committee.
4. In taking decisions, all Members shall act independently and shall not answer to or take instructions from Bank Group management, members of the Board of Executive Directors, member governments or any other entity or individual.

## **ARTICLE X**

1. Members shall promptly advise each of the Chairperson and the Secretary of the Committee of any conflict of interest concerning the performance of their duties for the Committee, and shall recuse themselves from consideration of any related matter. Such a conflict of interest would be present if a Member or an immediate family member has any personal interest, including a financial interest, position of employment or other affiliation, in any matter that is under consideration by the Committee. The term “immediate family member,” for purposes of this provision shall mean a spouse, domestic partner, child, parent, parent-in-law or sibling.
2. A Member shall not participate in a Sanctions Proceeding and shall recuse him or herself from any matter involving a Project, loan or other transaction wherein the Member has directly or significantly participated in the Member’s current position, previous employment, or any other capacity.
3. A Member shall not, for two years after the end of the Member’s term, accept any kind of employment, consultancy or interest in any firm that has been a Respondent in a Sanctions Proceeding in which the Member has participated.

4. A Member shall be disqualified to appear as an attorney, agent or representative of any Respondent in a Sanctions Proceeding before the Committee for a period of two years following the end of such Member's term.

5. External Members shall not accept employment with the Bank Group or provide the Bank Group with services in connection with any Project, transaction or initiative on behalf of the Bank Group for a period of two years following the end of such Member's term.

6. A Member shall be required to observe the confidentiality and sensitivity of all information to which the Member has access as a Member of the Committee, and shall not use or disclose to any third party any information obtained as a result of membership in the Committee, except to the extent such information is also made publicly available by the Bank Group or otherwise used or disclosed with the prior written consent of the Bank. A Member shall not make any public statements with respect to any past, present or future case or investigation under the Sanctions Procedures without the prior written consent of the Bank.

7. A Member shall, in the discharge of the Member's functions, be guided solely by the merits of the case without regard to other considerations.

8. The provisions of this Article X shall also apply to the Secretary of the Committee except that in Article X, Section 1, the Secretary shall inform the Chairperson of the Sanctions Committee of any conflict.