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World Bank Battles Corruption Through New Voluntary Disclosure Program

Approximately 10 years after former World Bank Group President James Wolfensohn's famous "cancer of corruption" speech, the World Bank under Paul Wolfowitz has added another arrow to its anti-corruption quiver. Specifically, on August 1st, the World Bank board of executive directors formally launched a new, proactive Voluntary Disclosure Program (VDP). The VDP allows World Bank contractors to identify, investigate and rectify privately, and without the specter of debarment from World Bank programs, conduct that otherwise would be sanctionable by the World Bank's Sanctions Committee. Through the VDP, the World Bank has enabled the private sector to self-police and join the global fight against corruption, and, more importantly, to avoid joining the more than 330 companies on the World Bank's debarment "black list." The VDP is managed by the Bank's Department of Institutional Integrity, which investigates allegations of fraud and corruption in World Bank-financed projects and staff misconduct, and develops proactive measures for early detection and prevention of corruption.

Overview of the VDP—The VDP is open to all World Bank Group-funded activities, including those of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation and the Multilateral Investment Guarantee Agency. Program participants commit to certain Terms and Conditions requiring them to (1) cease corrupt practices and commit to not engage in misconduct in the future; (2) disclose to the Bank the results of an internal investigation into past fraudulent, corrupt, collusive or coercive acts in Bank-financed or -supported projects or contracts; and (3) implement a robust "best practices" internal compliance program

monitored by a Bank-approved third party for three years. In exchange for these commitments and full cooperation, VDP participants avoid debarment for disclosed past misconduct, they may continue to compete for and participate in Bank-supported projects, and their identities are kept confidential.

Operation of the VDP—The VDP is entirely voluntary and, for eligible parties, essentially consists of an agreement between the participant and the World Bank to a set of standardized, non-negotiable Terms and Conditions. The VDP allows a participant to investigate and provide a disclosure on the previous five years (or more) of contract performance. The VDP consists of multiple stages, including (a) entrance, (b) investigation and disclosure, and (c) compliance and monitoring. These stages are discussed in greater detail below.

Entering the VDP: Eligible candidates, i.e. companies involved in World Bank Group activities that are not under active investigation in any relevant jurisdiction, may initiate entry into the VDP by submitting an Entry Request Form. Available on the World Bank Web site, www.worldbank.org/vdp, the form includes company information such as firm name, address and other basic information, as well as the contact person for the program. The form can be submitted electronically or in paper form.

Upon initial review, the Bank sends the prospective participant a Background Data Sheet requesting additional information about the prospective participant's corporate structure, including details on affiliates, holding companies and the like. This data sheet also asks for office locations and areas of operation, products or services offered, and whether the applicant has been investigated in any national jurisdiction. Finally, it requests information on any affiliation with the Bank or its staff.

In reviewing the data sheet, the Bank confirms eligibility and invites the company to join the program. Within 30 days, the Bank will arrange a preliminary meeting with the applicant to discuss VDP terms, programmatic elements, details of the requested internal investigation and any concerns regarding participation. The World Bank, at its discretion or upon receipt of a

timely written request and showing of good cause from the participant or the compliance monitor, may extend any deadlines.

Next, the prospective participant is asked to accept the VDP standard Terms and Conditions. The Terms and Conditions, which generally cannot be negotiated or modified, set forth the program's scope and operation, the participant's duties and responsibilities during the investigation and disclosure phase, the participant's obligations regarding future compliance, and the penalty—debarment for 10 years—for breach. The company becomes an active VDP participant when it signs the form.

Investigation and Disclosure Obligations: Upon entry into the program, the participant must conduct an internal investigation and disclose any activity subject to sanctions by the World Bank Sanctions Committee. The VDP also requires the participant to disclose any sanctionable misconduct by other firms or individuals of which the participant is or becomes aware.

To begin the investigation and disclosure process, the participant must, within 30 days of accepting the Terms and Conditions, provide the Bank a list of all contracts within the previous five years related to Bank projects. The participant also may include older contracts. Within 30 days of receiving the list, the World Bank will either accept the list or inform the participant of amendments it wishes to make. Within 60 days of the list's approval, the participant must categorize each contract as "tainted" or "untainted." The Bank will sample untainted contracts to verify proper classification and, within 90 days of receiving the list and with the participant's cooperation, will review and approve tainted contracts needing investigation by the participant.

During this review period, the participant must develop a plan for investigating tainted contracts. This internal investigation plan must conform to the World Bank's Internal Investigation and Report Protocol and be approved by the Bank. The protocol generally requires the participant to identify, secure and retain all documentation needed for the internal investigation. The protocol also directs the review of relevant documentation, including, but not limited to, correspondence, e-mails, memoranda, requests for proposals, proposals, contracts, agency or sales-representative agreements, joint-venture agreements, payment documentation, bank statements, performance reports and all other documentation requested by the Bank. Further, the protocol requires interviews

of anyone—including current and former officers, directors, employees, representatives, agents or contractors—who may have general or direct knowledge of the misconduct to be disclosed. These interviews will be conducted in the presence of two witnesses and documented. Finally, the protocol directs that the investigative report be prepared and submitted in a particular manner. The Terms and Conditions provide that the internal investigation shall be completed within six months.

Upon completion of the internal investigation and submission of the investigative report, the World Bank, or an independent party retained by the Bank at the participant's expense, will verify the report. The VDP requires participants to cooperate fully with the verification process, which generally includes a review of no more than 30 percent of the tainted contracts identified. This process may include additional contracts if the initial verification is not satisfactory. The VDP anticipates that the process, though extendable, will be completed within 12 months.

Compliance and Monitoring: With the initiation of the internal investigation and within 60 days of acceptance of the Terms and Conditions, the participant shall submit to the World Bank copies of current corporate compliance and ethics programs, and related internal controls. The participant also must improve its compliance program based on lessons learned during the internal investigation and recommendations from the Bank. The VDP requires the resulting compliance program to conform to international best practices derived from compliance measures published by the International Chamber of Commerce, the World Economic Forum, Transparency International and other anti-corruption authorities. Specifically, the program directs the prohibition of sanctionable conduct, including corrupt payments, coercion, collusion and fraud, and extends compliance to third parties such as agents, intermediaries and joint ventures. The VDP also addresses gifts, hospitality and charitable contributions, and requires strict financial controls, recordkeeping and auditing.

After implementation of the compliance program and verifying the investigative report, the VDP requires the participant to engage, at its own expense, a Compliance Monitor to conduct three annual reviews and submit to the World Bank a monitoring report on the participant's status and progress. The Compliance Monitor must be independent and acceptable to the World Bank. The participant is required to cooperate and provide full access for the purposes of the monitoring

report. In addition, the monitor will make scheduled and unannounced visits to the participant or any affiliate. The World Bank reserves the right to extend the monitoring beyond three years if certain sanctionable conduct not subject to the 10-year debarment continues. The participant will not be deemed to have violated VDP terms and conditions if the misconduct occurs because any employee, agent or representative deliberately violates the participant's or relevant affiliates' policies for personal benefit and attempts to conceal the misconduct or delay its discovery by management. However, the participant must notify the Bank of the misconduct and take appropriate measures to address the misconduct, including disciplinary or remedial action toward the individual if it or any of its affiliates learn of or has reason to suspect such a situation.

VDP Perceptions and Realities—Although the VDP is new, it has received attention in the press and in legal and development communities. Considering this interest, a few points are worth clarifying.

Off the Hook?: The program provides the right to continue working on World Bank projects in exchange for disclosure of past wrongs and commitment to future anti-corruption compliance. Specifically, by joining the VDP, contractors with less-than-perfect pasts will not end up on the Bank's debarment black list. However, if a participant is found in material violation of the Terms and Conditions, it faces mandatory public 10-year debarment through a proceeding before the Bank's sanctioning body. This debarment provision is triggered if the participant:

- engages in misconduct that is sanctionable by the Bank (e.g., fraud, corruption, collusion and coercion);
- conceals or destroys information demonstrating misconduct;
- fails to properly report past or current misconduct;
- does not implement a compliance program;
- fails to hire and cooperate fully with an independent compliance monitor; or
- fails to mitigate or remove any disclosed imminent threats to human health or safety.

The World Bank retains the right to impose the debarment for any misconduct committed while in, but discovered or reported after termination from, the VDP.

While debarment results from breach of the Terms and Conditions, participation in the VDP does not waive the Bank's right to exercise any available

contractual remedies. Further, program participation does not provide immunity from prosecution in any jurisdiction. The World Bank may promise not to impose administrative sanctions (i.e., debarment), but it cannot prevent the national departments or ministries of justice from enforcing their national anticorruption (bribery, fraud, kickback, etc.) laws if such authorities independently investigate the participant's activities.

Confidentiality: Under the World Bank's sanctions procedures, companies debarred from Bank projects are listed publicly on the Bank's Web site. National anti-corruption enforcement authorities may request, and will be provided, information on these debarments. On the other hand, anything provided to the Bank for purposes of the VDP is confidential. For example, if the U.S. Department of Justice requests information on companies suspected of violating the U.S. Foreign Corrupt Practices Act, the World Bank will not disclose VDP participant data. The VDP's confidentiality policy is a result of the need to protect the participant's physical safety. Namely, the World Bank does not have a "witness protection" program or other resources to protect or otherwise defend those companies or individuals who participate in the VDP.

Costs and Benefits: There are clear benefits of participating in the World Bank VDP. Primary among these are freedom from the stigma of public debarment and the opportunity to "clean up your own house." The continuation of the revenue stream of World Bank-funded contracts and avoiding negative publicity from an anticorruption investigation are also strong positives. However, the VDP imposes significant costs that should be considered. First, fees for attorneys, other experts and assistants during the investigation, and the costs of preparing the disclosure report and devising the compliance program are at the participant's expense. The cost burden of investigation verification is on the participating company as well. Likewise, the participant must pay all costs associated with the compliance monitoring.

Therefore, while there are definite benefits to the VDP, the overall cost of participation is considerable. The World Bank, however, may provide participants with up to 50 employees with technical expertise to help them meet program obligations. Assistance may include performing the internal investigation, drafting the investigation report, and developing and monitoring implementation of the compliance program. Smaller companies' participation costs likely will be lower because less work is involved in the investigation and verification phases.

Conclusions—Born of the World Bank’s desire to combat corruption globally and the private sector’s desire to self-police and correct past sanctionable conduct, the VDP is an important new tool for the Bank’s Department of Institutional Integrity and the Bank as a whole. Contractors, through the VDP, may come to the Bank with a full disclosure, make amends for past misconduct, fortify compliance capabilities and maintain their ability to participate in World Bank programs without debarment or publicity. In turn, the World Bank has a mechanism for reducing and addressing corruption—which studies show stifles development—so that development resources may be better used. The VDP is a win for the private sector, a win for the World Bank and a win for international development.



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