At the request of the World Bank’s Audit Committee, the Legal Vice Presidency (LEG) is undertaking a review of the World Bank Group sanctions system. The Review is being conducted in two phases. Phase I focuses on the implementation of the various reforms that have been implemented since the newly configured sanctions process began operations in 2007, the impact of the regime on Bank operations, and the legal adequacy of the system in light of current developments in national and international law.

Phase II will address the larger, first-principles issues of the overall efficiency and effectiveness of the system—i.e., whether the system as a whole is meeting its objectives of excluding corrupt actors and deterring fraud and corruption in Bank Group operations, at an appropriate cost to the Bank Group.

A preliminary Phase I report was discussed with the Audit Committee on Friday, March 22, 2013 in executive session.

In preparing the report, the LEG review team undertook extensive consultations with the Bank’s Integrity Vice Presidency (INT), the Office of Evaluation and Suspension (OES), the Sanctions Board Secretariat (SBS) and other relevant Bank Group staff, as well as members of the Sanctions Board (SB), the Independent Advisory Board (IAB) and, for benchmarking purposes, staff at other multilateral development banks (MDBs) and the United Nations. The work of the LEG review team was overseen by a Steering Committee, chaired by the Bank Group General Counsel and including a Managing Director, the Vice President, OPCS, the General Counsel, IFC, and the Deputy General Counsel for Operations, IBRD/IDA.

Here are some of the review team’s main findings and recommendations:

**Overall Assessment of the Sanctions System.** After a slow first few years, the system as a whole has been heading in a positive direction since early 2010; this trend has accelerated since early 2011. The picture is one of steady improvement in processing times, coupled with increasing output in terms of sanctions imposed. Notwithstanding this overall positive picture, the review team recommended steps to further improve the overall performance of the system, including: acceleration of the rollout of an system-wide automated case management system; a study of quality controls across the system; the adoption of performance standards; possible use of panels by the Sanctions Board (SB) rather than plenary sessions for cases that do not pose novel issues; expansion of SB membership to include additional alternates to facilitate quorums; and a resequencing of the first tier of sanctions proceedings before the Evaluation and Suspension Officer (EO).
Implementation of Other 2004 Reforms and the 2006 Reforms. Beyond the establishment of the current structure of the sanctions process, further reforms to the sanctions regime were made in both 2004 and in 2006, including the adoption of additional forms of sanction, the adoption of new and harmonized definitions of sanctionable practices, the expansion of the regime beyond IBRD/IDA procurement to include any sanctionable practices in connection with the use of loan proceeds as well as an additional expansion to include private sector operations.

The implementation of these reforms has produced mixed results, with limited use of the expanded authorities and jurisdiction that the 2004 and 2006 reforms provided for. The review team recommended some steps to try to improve the track record in these areas, including: development of clear criteria for the use of restitution/remedy and other steps to explore ways to make more flexible use of a broader range of sanctions to enhance proportionality; further study to identify the reasons for and solutions to the lack of cases outside IBRD/IDA procurement, including more extensive use of proactive tools such as Detailed Implementation Reviews, forensic audits and spot audits, using a risk-based approach; and continued efforts by INT to seek alliances with national authorities to leverage its limited investigatory tools. There also may be some room for expanding INT’s investigatory tool set.

Implementation of the 2009-2010 Reforms. The 2009-2010 period brought a further set of reforms to the sanctions regime designed to address some vulnerabilities that Bank Group staff had identified both at the front and back ends of the sanctions process, as well as to enhance the transparency and effectiveness of the system. These reforms included the introduction of suspension prior to the commencement of sanctions proceedings, also known as ‘early temporary suspension’ (ETS), the publication of EO final determinations and SB decisions, adoption of debarment with conditional release as the ‘baseline’ sanction and the related establishments of an Integrity Compliance Office (ICO), a formal mechanism for settlement of sanctions cases, and development of enhanced guidance on the treatment of corporate groups. Also during this period, following a recommendation by a panel led by Paul Volcker, the SB transitioned from internal to an external chairpersonship. In April 2010, the Bank entered into an agreement with four other MDBs (AfDB, AsDB, EBRD and IDB) for the mutual recognition of their debarment decisions. These reforms were definitively incorporated into the sanctions process through the issuance of new Sanctions Procedures and related internal guidance in January 2011.

The overall track record so far for the implementation of the 2009-2010 reforms is positive, with the notable exceptions of ETS, which has been little used until recently, and debarment with conditional release, which has been plagued by a lack of engagement by debarred parties with the ICO outside the settlement context. The review team recommended that a number of steps be considered to improve this track record, including: a concerted effort to identify ways to mainstream the use of ETS; revision of the corporate groups guidance in the
Sanctions Manual to provide greater clarity on a number of points, in particular to provide specific guidance on the treatment of SMEs; reinforcing the procedural safeguards and enhancing transparency of settlements, subjecting settlement negotiations before commencement of sanctions proceedings to a notional timeframe, and giving consideration to making voluntary undertaking or ETS a condition to entering into major settlement negotiations; and revisiting the designation of debarment with conditional release as the ‘baseline’ sanction, in particular in smaller cases involving individuals and SMEs.

**Operational Issues.** Consultations with staff highlighted a number of ways in which the sanctions system creates issues for Bank operations, particularly procurement. The review team identified two key issues: (1) the inability of the Bank and its cofinancers to mutually and fully recognize their respective debarment lists as a basis for ineligibility, as well as the Bank’s limited ability to permit borrowers to apply their national debarments as a basis for ineligibility, and (2) the under-use of ETS to help reduce fiduciary risks for the Bank while a firm is under investigation.

The review team recommended a number of measures be considered to address the operational issues arising from the sanctions system, including: permitting the Bank to refer to third-party debarments as a basis for ineligibility; adding ineligibility for joint cofinancing as a basis for ineligibility of expenditure under Bank financing; reviving discussions with UN and other IOs, as well as bilateral donors, on cross-debarment arrangements similar to those already in place with other MDBs; extending the reach of current application of borrower debarment systems to international competitive bidding (ICB) and removing and/or reinterpreting the current requirement that the borrower system be “judicial” in nature; exploring ways to further strengthen internal controls to prevent disbursements to or on account of suspended or debarred parties, listing all known sanctioned or suspended affiliates by name on the debarment and suspension lists and studying ways to make this more effective through disclosure requirements on sanctioned parties; and clarifying the language in the Bank’s procurement policies and standard bidding documents (SBDs) regarding the impact of debarments on eligibility.

**Legal Adequacy.** The review team found that the Bank’s sanctions regime appears to meet, and in some cases exceed, fundamental principles under general notions of due process and the emerging doctrine of global administrative law (GAL). The fairness and transparency of the system has been considerably enhanced over the years through reforms like the transition to external chairpersonship of the SB, publication of SB and EO decisions and the issuance of public information notes about the system, including publicly available Sanctioning Guidelines.

There remain some areas for improvement. GAL principles would also call for more transparency and participation in the Bank’s process for making sanctions policy. The review
team recommended that the Bank Group consider the following measures to further strengthen the fairness and transparency of the sanctions system:

- The first tier of sanctions proceedings (i.e., the ‘EO Stage’) should be resequenced so that OES review constitutes a decision-making process that allows Respondents to provide their pleading prior to the EO taking a decision.

- EO decisions, including ETS determinations, should be subject to review by the SB, at the request of either Respondents or INT.

- The independence of all SB members and of the EO should be enhanced by providing them with six-year, non-renewable terms with prior removal only on the grounds now applicable to external SB members. The terms of SB members should be staggered so that turnover is more gradual than at present.

- The Bank Group should make the SB an all-external body, with appropriate measures to mitigate the loss of expertise currently provided by its internal members, for example, by naming MDB retirees to the SB and providing the SB with access to Bank staff for expert advice.

- Future changes in sanctions policy should be subject to external consultation in the same manner as the Bank undertakes when making changes to operational policy, including through posting on the external website and, if resources allow, face-to-face consultation with key stakeholders.

- For the sake of fairness and to create more ‘equality of arms’ among contending parties, the system should strive for the maximum transparency possible. Among other things, the full legal and policy framework for the sanctions system, including the Sanctions Manual and Advisory Opinions of the General Counsel, should be publicly disclosed, as should the reasoning behind EO determinations if/when they become final decisions.

- The Bank Group should study ways to make the system more accessible to small and medium-sized enterprises (SMEs) and individuals who lack the means to engage legal counsel, without incurring undue cost. Among options to consider would be the creation of ‘know your rights’ literature for Respondents, increased use of ‘plain English’ in sanctions proceedings, providing for Respondent participation in hearings by videoconference or other virtual means. A simplified procedure and rules for smaller cases would be more manageable for less sophisticated Respondents, as well as providing for greater efficiency.
‘Right-Sizing’ the Bank Group’s Approach to F&C Issues in Operations. The review team recommended that the Bank look to expand its ‘toolkit’ of approaches to deal with fraud and corruption issues in its operations beyond the current choice of sanctions proceedings, settlements or the Voluntary Disclosure Policy (VDP). Available options would range from informal, operational approaches to deal with minor infractions in real-time all the way to full-blown, formal sanctions proceedings with robust due process to deal with major cases that are likely to be heavily litigated. A clear framework—both in terms of criteria and decision-making—would need to be developed to inform the choice of approach according to the nature of the problem, the need for immediate action and other relevant factors.

Non-Engagement of SMEs. The review team found a pattern of non-engagement by SMEs in the system. As noted above, more than half of Respondents, most of them SMEs, are sanctioned ‘by default’ because they do not respond in any way to Notices of Sanctions Proceedings. Moreover, only a fraction of debarred parties have responded to overtures from the ICO concerning the conditions for their release from debarment outside the context of settlements. Without reaching out to actual Respondents, the review team could only make educated guesses at the reasons behind this pattern of non-engagement. It does seem apparent, however, that the system has an ‘SME issue’ that merits further study.

Next Steps. Following discussion with the Audit Committee, LEG was tasked with finalizing Phase I of the Review and developing an Action Plan for the implementation of its recommendations, as soon as possible. The finalization process will include consultations with external stakeholders. Phase II of the Review will be undertaken externally, after allowing time for finalization and implementation of the Phase I recommendations.

For questions and comments, please contact Frank A. Fariello (ffariello@worldbank.org).