

CROSS-DEBARMENT: AN INSTRUMENT TO FIGHT CORPORATE CORRUPTION AND FRAUD BY MULTILATERAL DEVELOPMENT BANKS AGAINST NIGERIAN COMPANIES AND INDIVIDUALS.
7th Dec. 2021

Introduction

The World Bank and other Multilateral Development Banks (“MDBs”) have always shown concern about the prevalence of corruption among contracting institutions, globally. Corruption was placed firmly on the agenda of MDBs in 1996, when former World Bank president, James D. Wolfensohn, described corruption as a “cancer” that “diverts resources from the poor to the rich, increases the cost of running businesses, distorts public expenditures and deters foreign investors¹.” Other MDBs have followed suit, by developing a range of mechanisms to address corruption².

The World Bank and other regional MDBs first established cross-punitive policies against corruption in the early 2000s. On February 18, 2006, the World Bank, International Monetary Fund, European Investment Bank Group, and the four regional development banks formed an Anti-Corruption Task Force and agreed to work toward a “consistent and harmonized approach to combat corruption” and to better coordinate their efforts³. This was through the Joint International Financial Institutions (IFI) Anti-Corruption Task Force’s September 2006 Uniform Framework for Preventing and Combating Fraud and Corruption (“Uniform Framework”). Key elements of the harmonized approach include standardized definitions of sanctionable practices and an agreement to share information in connection with investigations of such conduct.

In April 2010, these participating organizations took a more proactive step by agreeing to enforce the debarment decisions of any other participating MDB where, among other criteria, the terms of the debarment exceed one year, and the underlying debarment decisions are made public. The

¹ World Bank Chief Charges Corruption. 1 October 1996
<<https://www.upi.com/Archives/1996/10/01/World-Bank-chief-charges-corruption/4876844142400/>>
accessed 23 November 2021.

² President James D. Wolfensohn on Strategic Issues of the World Bank Group, Transition, Vol. 7, Nos. 9-10 (Sept.-Oct. 1996), <<http://www.worldbank.org/html/prddr/trans/so96/art3.htm>>

³ Preamble to the Uniform Framework for Preventing and Combating Corruption and Fraud.
<https://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Uniform_Framework_for_Combatting_Fraud_and_Corruption.pdf> accessed 20 November 2021

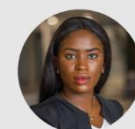
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initial debarment decision must be made based on conducts falling within the harmonized definitions of sanctionable practices in the Uniform Framework. The heads of the MDBs signed the Agreement for Mutual Enforcement of Debarment Decisions. The agreement stipulated that any entity debarred by one MDB will be sanctioned for the same conduct by the other signatories.

What is Cross-Debarment and How Does it Work?

First, debarment is the state of being excluded from enjoying certain possessions, rights or practices and the act of prevention by legal means. For example, companies can be debarred from contracts due to allegations of fraud, mismanagement, and similar improprieties⁴. Firms, individuals, and non-governmental organizations can be debarred.

Cross-debarment, by extension, is when organizations and agencies agree to mutually exclude others based on debarment by affiliates. Put differently, a decision by any of the signatories to debar a firm or individual found to have engaged in misconduct i.e., a sanctionable practice, will be enforced by others. The MDBs agreed to “cross-bar” companies and individuals found to have engaged in misconduct, termed “Sanctionable Practices”. This includes conducts giving rise to **corruption, fraud, coercive practices or collusion**. The sanctions will be applied to all entities and subsidiaries of the defaulting party. In addition, the sanctions will apply to any successors and assigns that are involved in any mergers, acquisitions or reorganizations with the sanctioned and/or debarred entity. The presumption of the transferability of the sanctions may be rebutted by the successor or assign showing that the transfer of such sanctions would be unreasonable. In this piece, cross-debarment is the recognition of debarment decisions by signatories to the Agreement for Mutual Enforcement of Debarment Decisions on the same terms as the initial decision. The signatories are termed “Participating Institutions”. The Participating Institution that makes an initial debarment decision is the “Sanctioning Institution”.

Each of the Participating Institutions may pursue independent debarment proceedings for separate sanctionable practices by the same entity or individual already debarred by the Sanctioning Institution, resulting in concurrent, consecutive or subsequent periods of debarment for the entity or individual.

The Uniform Framework defines a corrupt practice as “the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party⁵”—a definition that includes private actors.

Conditions and Process for Cross Debarment

A debarment decision will be eligible for cross debarment if it (i) is for fraud, corruption, collusion or coercion (ii) is public (iii) is for more than one year, (iv) is not based on a decision of national or other international authority, (v) the decision was based in whole or in part on a Sanctionable Practice and (vi) the decision was made within ten years of the date of commission of the Sanctionable Practice.⁶

⁴ <[202-10.pdf \(coconino.edu\)](#)> accessed 15 November 2021

⁵ Paragraph 1 of the Uniform Framework.

⁶ <[Quick Brief: Cross Debarment \(worldbank.org\)](#)> accessed 14 November 2021

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After it has debarred an entity, a MDB sends a Notice of Debarment to the other signatories. The notice shall include (a) the names of the entities or individuals sanctioned, (b) the sanctionable practice(s) found to have been committed, and (c) the terms of the debarment or modification.

Upon receipt of the notice, the other signatories will enforce such decision as soon as practicable, subject to the following conditions:

- i. The decision was based, in whole or in part, on finding of a commission of one or more of the sanctionable practices defined in the Uniform Framework under one or more of the four harmonized definitions (that is, fraudulent, corrupt, coercive, or collusive practices);
- ii. The decision is made public by the Sanctioning Institution;
- iii. The initial period of debarment exceeds one year;
- iv. The decision was made after the Agreement on Cross-Debarment has entered into force with respect to the Sanctioning Institution;
- v. The decision by the Sanctioning Institution was made within ten years of the date of the commission of the sanctionable practice; and
- vi. The decision of the Sanctioning Institution was not made in recognition of a decision made in a national or other international forum⁷.

The periods of debarment and any modifications are determined solely by the Sanctioning Institution. Each signatory may pursue debarment proceedings for separate sanctionable practices by the same entity or individual already debarred by the Sanctioning Institution, which may result in concurrent, consecutive or subsequent periods of debarment for the entity or individual. A signatory may decide not to enforce a cross-debarment by the Sanctioning Institution where such enforcement would be inconsistent with its legal or other institutional considerations and, in such case, will promptly notify other signatories of such decision⁸. The effective date of a decision is the date a IFI recognizes a Sanctioning Institution’s debarment decision on the same terms as the initial sanction was made. Effective Date may slightly differ from the initial date of sanction. This may be due to administrative reasons, including the delay in the receipt of notice of sanction decision and internal consideration of legal and institutional reasons.

What sanctions are applied?

There is a harmonized definition of sanctionable (prohibited) practices among the IFIs, and these are: Fraudulent Practices, Corrupt Practices, Coercive Practices and Collusive Practices.

The level of culpability and responsibility are important factors to consider in determining the type and severity of sanctions imposed on a respondent or other entity subject to a sanction. Different sanctions can be applied to different entities in a corporate group including the imposition of fines and debarment for a defined period of years.

Debarment of Nigerian Companies and Individuals by the Participating MDBs

⁷ Coordinating the Fight against Fraud and Corruption: Agreement on Cross-Debarment among Multilateral Development Banks by Stephen S Zimmermann and Frank A Jr. Fariello. Available at:

< https://elibrary.worldbank.org/doi/abs/10.1596/9780821388631_CH07 > accessed on 10 November 2021.

⁸ Paragraph 7 of the Agreement for Mutual Enforcement of Debarment Decisions. Available at < [Debar.pdf \(ebrd.com\)](#) > accessed 12 November 2021

The participating MDBs have at different times, imposed sanctions on individuals of their member countries including Nigeria. The African Development Bank blacklisted about 40 Nigerian firms and individuals for engaging in corrupt practices between 2017 and 2021⁹. While some of the debarment decisions were made by the AfDB, others were made by the World Bank Group, and recognised by other multilateral organisations including the AfDB under their cross-debarment policy.

The AfDB said the firms and individuals were debarred “for coercive, collusive, corrupt, fraudulent, or obstructive practices under its sanctions system or adopted under the Agreement for Mutual Enforcement of Debarment Decisions from other global lenders.” Due to the debarment, the firms and individuals are not eligible to engage in projects financed or implemented by the AfDB. The debarment decisions are for all stated to be for a definite period of time.

The World Bank also blacklisted 18 Nigerian individuals and firms for engaging in corrupt practices, fraud, and collusive practices in its 2021 Sanction System Report recently published in October 2021¹⁰. Upon the recognition of this decision by other participating IFIs, the sanctioned individuals and firms will be similarly backlisted and cross debarred by other MDBs.

What are the effects of Cross-debarment on Defaulting Companies and Individuals?

Cross-debarment has made it more difficult for corrupt individuals and entities to do business with MDBs. It multiplies the deterrence factor of a single sanction and allows participating institutions to make the most of limited investigative resources. The increased transparency and uniformity of the sanctions process helps bidders have a better understanding of what’s expected of them.

For contractors who heavily rely on funding by MDBs, Cross-debarment represents a significant loss in credibility if they are debarred. This impacts a debarred company’s ability to generate revenue. Therefore, entities that form consortiums in a bid to winning MDBs’ contracts, need to perform a due diligence check on their partners. Fraudulent practices of one partner will inevitably lead to a disqualification of the whole joint venture and an investigation, during which temporary sanctions can be applied to all consortium members. By law, debarment itself does not serve as a form of punishment, but instead it only excludes contractors who have been found to be in breach of contractual obligations or any obligations of a similar nature, as well as been convicted for the sanctionable practices.

Conclusion

In recent times, there has been increase in the effort to tackle global corruption by several supranational organizations and international/regional financial institutions. One of such deterrence instruments for combating corruption and fraud is “Cross-debarment”. This instrument is designed by the MDBs to punish and deter corrupt persons and their companies/corporations

⁹ AfDB List of Debarred Entities. Available at : <<https://www.afdb.org/en/projects-operations/debarment-and-sanctions-procedures>> accessed on 21 November 2021.

¹⁰ World Bank Group Sanctions System FY21 < <https://documents1.worldbank.org/curated/en/284891634566178252/pdf/World-Bank-Group-Sanctions-System-FY21.pdf> > accessed 22 November 2021

from continuing illicit and anti-development practices. Unfortunately, some Nigerian companies and persons have been caught in the web of corrupt practices and fraud by MDBs. These companies and persons have been cross debarred. We hope that companies and individuals dealing with MDBs will imbibe the culture of transparency and honesty that will be transferred to local business transactions in their respective countries. For failure to comply with the rule will attract severe financial deterrence – especially for persons and companies that rely solely on businesses with the MDBs. Indeed, the former World Bank President, Robert B. Zoellick, was right to have described the extant cross-debarment agreement as “Steal and cheat from one, get punished by all.”¹¹

¹¹ World Bank Group President Robert B. Zoellick Remarks for International Corruption Hunters Alliance dated December 7, 2010

<<https://www.worldbank.org/en/news/speech/2010/12/07/world-bank-group-president-robert-b-zoellick-remarks-international-corruption-hunters-alliance>> accessed 23 November 2021

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