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Independent Development Evaluation  
African Development Bank

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## Comparative Review of Sanctions Practices across Multilateral Development Banks

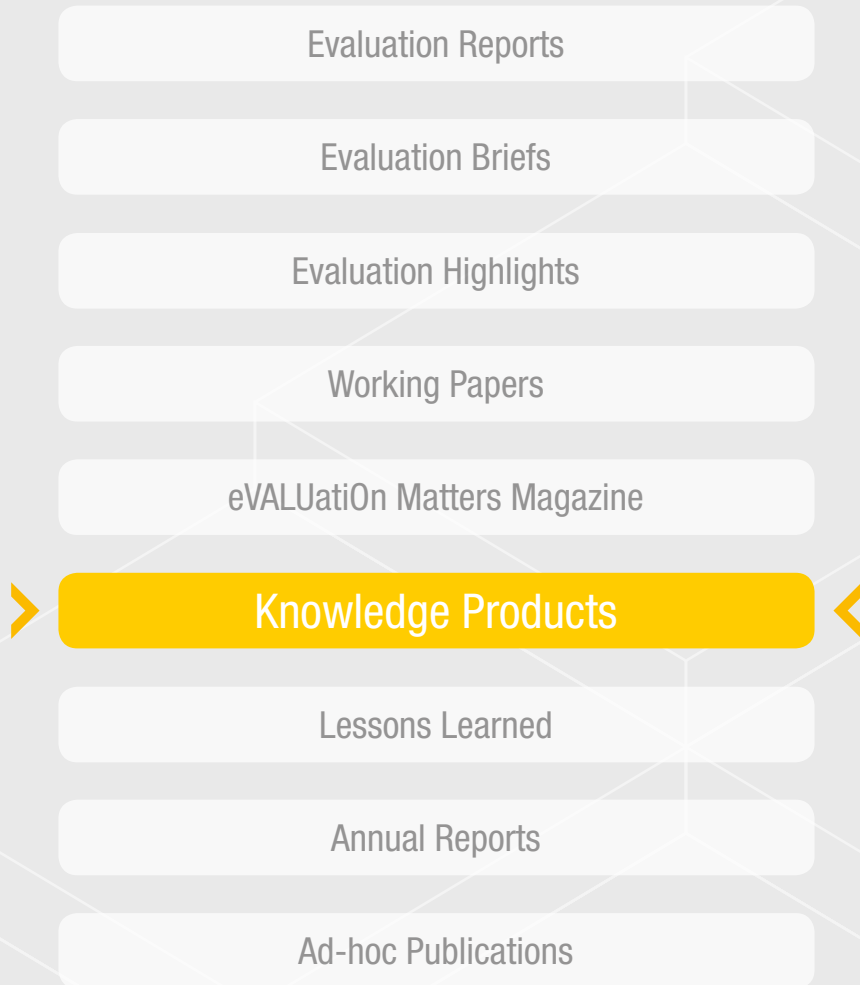
Executive Summary



AFRICAN DEVELOPMENT BANK GROUP

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# Executive Summary

## Introduction

Independent Development Evaluation at the African Development Bank Group was asked by the Board of Executive Directors to conduct a comparative review of the sanctions systems of the five multilateral development banks (MDBs) participating in cross-debarment for fraud, corruption, and other sanctionable practices: namely, the African Development Bank (AfDB), Asian Development Bank (AsDB), European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IDB), and the World Bank Group (WBG). The broad objectives of the review are to assess the sanctions experience to date at these MDBs and apply the lessons learned to assist the AfDB in its own sanctions practice, with the ultimate goal of promoting integrity and combating fraud and corruption in future development operations.

## Key findings

- While the MDBs have harmonized basic features of their sanctions regimes in furtherance of cross-debarment, significant differences remain and in some respects are growing between their respective sanctions policy frameworks, organization, and procedures. For example, the MDB sanctions systems vary in their range and definitions of sanctionable practices, the composition and roles of their sanctions units, independence provisions and reporting lines, and allocated resources.
- In MDB sanctions proceedings to date, the vast majority of allegations have been fraud, followed by collusion and corruption in much smaller numbers, and rarely other allegations such as coercion or obstruction. The majority of respondents at most MDBs are firms rather than individuals, with a substantial proportion apparently small and medium enterprises (SMEs). The MDBs vary significantly in terms of their cumulative and current caseloads, length of formal sanctions proceedings, and use of settlements. The overall proportion of settlements to formal sanctions cases has increased dramatically in recent years. Use of a standardized protocol for settlements within or across institutions may help to streamline sanctions processes, enhance consistency, and mitigate concerns of unequal treatment for different types of respondents.
- In terms of broader effectiveness, many interviewees expressed the belief that sanctions are an effective way to protect development operations and deter misconduct. Other interviewees raised concerns as to whether MDB sanctions systems risk becoming overly formal and legalistic, are excessively punitive and reactive, or are intrinsically handicapped by the exemption of government officials from sanctions proceedings. There is a lack of data across MDBs to show the broader impact of sanctions on operations, respondents' behavior, or industry practices or perceptions. Considering the goals of general deterrence and development effectiveness, MDBs may benefit from more systematic analysis across investigations and sanctions cases to mine data, identify systemic vulnerabilities and red flags, strengthen preventive work with operations staff and other stakeholders, and seek to evaluate the impact of sanctions.
- In terms of outcomes, the range of available sanctions is largely harmonized across MDBs, and debarments of various types constitute the vast majority of sanctions to date. Yet a

closer look shows that the use of specific types of debarments or other sanctions and conditionalities varies substantially across and sometimes within MDBs. One evident area of concern is how few respondents subject to debarment with conditional release seek to meet the conditions required to regain eligibility. The low rate of compliance raises questions as to the general effectiveness of conditional sanctions as a tool intended to change behavior; the fairness of essentially indefinite debarments for many respondents; and the risk of anticompetitive effects from a continually expanding pool of debarred contractors and consultants.

- With respect to the use of monetary sanctions specifically, restitution is recognized as an available sanction across all MDBs, but rarely used in practice; while financial penalties or fines are currently accepted and used only by the AfDB. Some interviewees supported the use of fines as an appropriate way to deter misconduct and fund integrity initiatives, particularly where the monies are segregated and managed through a dedicated trust fund with independent oversight. However, the concept of an integrity trust fund established with financial penalties has not received wide support. Many interviewees expressed strong concerns about the use of fines in principle and in practice, including questions of legal authority to impose punitive fines under an administrative system; potential conflicts of interest for integrity units negotiating fines through settlements; whether the monies involved are potential proceeds of corruption and should be returned to the affected countries; the appearance that wealthy respondents are buying their way out of more costly debarments; potential inequities for smaller respondents who cannot afford to pay substantial fines; and the challenges of appropriately calculating, managing, and using fines.

- MDB sanctions systems vary widely in their degree of transparency and dissemination of information. The identities of currently debarred parties are generally published on the MDB web sites, with the exception of first-time debarments by the AsDB. Several MDBs, including the AfDB, publish the reasoning behind sanctions decisions in brief synopsis form. To date, only the WBG's sanctions appeals board has published fully reasoned opinions. In cases of settlements, limited to no information is publicly disclosed. As noted in interviews, greater transparency and outreach across MDB sanctions systems has the potential to bolster credibility and accountability and enable greater deterrence and general awareness-raising.

- With respect to knowledge sharing and coordination across MDB sanctions systems, mechanisms for information sharing exist but could be enhanced. In particular, improvements could be made to better coordinate matters of cross-debarment – e.g., to ensure consistent, timely notifications of eligible debarments and updates on existing debarments with conditional release. More broadly, MDB integrity and sanctions units alike have benefited from periodic meetings and exchanges as well as more informal bilateral consultations as needed.

### Items for AfDB consideration

In considering which items to prioritize, the AfDB may wish to consider the areas of greatest institutional sensitivity or reputational risk (e.g., the items pertaining to use of settlements and fines); the areas of greatest long-term impact (e.g., the items pertaining to staffing, integrity compliance, metrics and effectiveness indicators, and prevention); and avenues for increased knowledge-sharing (e.g., the publication of legal opinions in AfDB cases and leadership on other potential knowledge-sharing initiatives across MDBs).

With respect to sanctions system mandate and organization, the AfDB may wish to:

- support the harmonization of additional definitions of sanctionable practices to the extent possible, including a standardized definition of obstruction with suitable treatment of materiality and intent;
- further enhance its formal safeguards of independence for sanctions officials by clarifying the performance-based renewal provision for Sanctions Appeals Board members, as well as limits on removal for the Sanctions Commissioner and Sanctions Appeals Board members;
- consider using joint periodic reports from the integrity and sanctions units to the Executive Directors to provide a comprehensive overview of activities, trends, and policy issues; and
- review whether its integrity and sanctions functions have the right resources, including sufficient qualified investigators and litigation experts in the integrity unit; whether excessive responsibility is vested in specific consultant staff; and whether sanctions board or other vacancies are filled in a timely fashion.

With respect to the use and efficiency of the sanctions process, the AfDB may wish to:

- consider tracking the diversity of respondents in the sanctions process, and taking additional steps to make all phases of sanctions proceedings fair and accessible to different types of respondents (e.g., respondents of different nationalities as well as SMEs and individual respondents who may benefit from published practical guidance in relevant languages or possible pro bono representation by outside counsel);

■ issue its own written guidelines for the use of settlements – including clear published guidance for the determination of eligibility, voluntariness, and appropriate sanctions in the settlement context – and consider whether core settlement guidelines could or should be harmonized across the MDBs in future;

■ pursue a more proactive, prevention-focused approach that looks beyond individual sanctions cases to better identify areas of systemic vulnerability and red flags, and find longer-term solutions to address recurring types of misconduct (which initiatives may include strengthening engagement between integrity/sanctions and operations staff and other relevant stakeholders); and

■ encourage other MDBs to build on the data collected for this report and continue tracking common data points for future reference and comparative analysis across MDBs, and also develop and apply more meaningful metrics and effectiveness indicators beyond numbers of cases and debarments (e.g., by gauging awareness and perceptions of operations staff, the private sector, or implementing agencies; assessing the degree of enforcement of debarments or other sanctions; and documenting any changes in procurement or operations as a result of sanctions matters).

With respect to sanctions outcomes (including debarment and conditionalities), the AfDB may wish to:

- consider developing its own detailed sanctioning guidelines, supported by additional guidance or consultations across units as appropriate, to promote greater consistency of approach and proportionality of outcomes within its sanctions system;

- consider whether to support harmonization of integrity compliance guidelines across the MDBs, consider how best to ensure that compliance matters are handled by an independent office or officer free of potential or perceived conflicts of interest, and continue promoting peer-to-peer support for SMEs or other respondents needing extra compliance support; and
- consider the potential long-term consequences of the application of indefinite debarments with conditional release – whether they may be imposed directly by the AfDB in future or are already imposed through cross-debarments initiated by other MDBs to date – particularly for SMEs and individual respondents less likely to engage and successfully demonstrate compliance.

With respect to the use of penalties or other monetary sanctions, the AfDB may wish to:

- formulate clear guidelines for the calculation and use of any monetary sanctions under its sanctions system – including restitution, fines, or other payments – and consider whether to support harmonization of such guidelines across MDBs;
- recognizing the full range of opinions among MDBs for use of financial penalties beyond restitution, consider the appropriate lifespan and governance structure for the Africa Integrity Fund, including whether the Fund should be extended or expire at the end of its initial 6-year term; and
- to the extent that the AfDB continues to use financial penalties, continue best efforts to mitigate concerns of potential legal challenge, reputational risk, conflicts of interest (including potential perceived conflicts for the integrity unit), inequity for small respondents, and the potential to undermine cross-debarment.

With respect to transparency to external stakeholders/partners, the AfDB may wish to:

- consider publishing fully reasoned legal opinions from the Sanctions Appeals Board in the interests of promoting greater transparency and accountability in formal sanctions proceedings and developing an accessible body of jurisprudence;
- develop a clear protocol to govern the publication of settlements for more consistency and with enough information to bolster accountability and deterrence;
- continue its targeted outreach efforts, drawing upon the combined knowledge and resources of the integrity and sanctions units, to ensure that relevant information is not only published but also effectively transmitted to key populations; and
- support the possibility of a global publication to serve as a one-stop shop for all MDB sanctions decisions and news.

With respect to coordination across the MDBs, the AfDB may wish to:

- support existing knowledge-sharing mechanisms such as annual meetings and more frequent teleconferences, and consider proposing that the annual meetings of 1st tier sanctions offices and 2nd tier sanctions appeals boards become a joint event with plenary and separate sessions; and
- explore with other MDBs the possibility of a restricted-access joint IT platform to facilitate sharing of case statistics and decisions across MDBs and timely coordination on cross-debarment matters.



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## About this Publication

This publication features findings and recommended best practices from a comparative review of sanctions practices across five Multilateral Development Banks participating in cross-debarment for fraud, corruption, and other sanctionable practices. The comparative study was conducted by Independent Development Evaluation at the African Development Bank and featured the Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, the World Bank Group and the African Development Bank.

The objectives of the review were (i) to assess the sanctions experience of these Multilateral Development Banks to date; and (ii) to apply the lessons learned to assist the African Development Bank in its own sanctions practice. The ultimate goal is to promote integrity and combat fraud and corruption in future development operations.

The review utilized a mixed-methods approach combining multiple sources of qualitative and quantitative information. The report presents comparative data and analysis of Multilateral Development Banks' sanctions regimes in terms of their mandate and organization; overall use and efficiency; outcomes including debarments and conditionalities; use of penalties or other monetary sanctions; and transparency to external stakeholders and partners, as well as practices related to coordination and knowledge sharing across Multilateral Development Banks.

Only the Executive Summary of the report has been made public.



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