

## **MDB HARMONIZED PRINCIPLES ON TREATMENT OF CORPORATE GROUPS**

**Adopted: September 10, 2012**

**Amended: October 17, 2023**

These general principles should be read in conjunction with the harmonized General Principles and Guidelines for Sanctions and the Uniform Framework for Preventing and Combating Fraud and Corruption that have been agreed to among the Institutions. They are intended as guidance to the Institutions as they develop their own applicable policies and procedures, and are non-binding.

### **A. Who is sanctioned?**

1. Sanctions are imposed upon entities within corporate groups (and other forms of business organization, including partnerships) based on the facts of the case.
2. The sanctioned party is a person or entity with demonstrable responsibility for the prohibited practice or controlled by a party responsible for the prohibited practice. Control generally means the ability to direct, or to cause the direction of, the policies or operations of another entity. Control can also be economic or operational, and will be assessed based on certain indicia of control, as determined by the Institution.
3. Sanctions are generally applied to all entities controlled by the party responsible for the prohibited practice. When submitting a case for sanction, the Institution identifies the controlled entities, whenever reasonably practicable, and may also state that the sanction applies to any other such controlled entities that may be identified at a later stage. Failure to cooperate with the Institution as it seeks to identify any controlled entities may be considered an aggravating circumstance or a separate prohibited practice as determined by the Institution. The Institution may consider not imposing the sanction upon such controlled entities that are not directly or indirectly responsible for the prohibited practice, if it is demonstrated to the satisfaction of the Institution, *inter alia*, that application to the entities would be disproportionate, and that application is not reasonably necessary to prevent sanction circumvention.
4. Sanctions are only applied to entities controlling the party responsible for the prohibited practice, and/or to entities under common control with that party, if the Institution demonstrates their involvement in the sanctioned prohibited practice. Such involvement may be demonstrated, *inter alia*, through willful blindness, or individual or organizational failure to supervise.
5. In the case of acquisitions, mergers, reorganizations or other corporate events, there is a rebuttable presumption that successors and assigns are subject to any sanction imposed on their predecessors. The successor or assign may rebut this presumption by demonstrating that such application would be unreasonable. However, the business operations of the originally sanctioned entity may continue to be sanctioned.

6. An individual that is directly involved in a prohibited practice also may be named as a respondent and subject to sanctions, including debarment.

#### **B. What are the factors considered for sanctions?**

1. In accordance with the harmonized General Principles and Guidelines for Sanctions, the principle of proportionality, including aggravating and mitigating circumstances, guides the determination of the type and severity of the sanction. Although the same sanction usually is applied throughout a corporate group, different sanctions may be applied to different entities within a corporate group, particularly controlling entities and entities under common control, when appropriate.

#### **C. How can sanctions circumvention be prevented?**

1. An Institution may consider the risk of sanction circumvention when determining whether a sanction should be extended to a controlled entity, successor, or assign.

2. Where, after the imposition of a sanction on an entity or an individual, an Institution has made a *prima facie* case that:

a. a particular entity is controlled by, or is a successor or assign of, the sanctioned party, then there is a rebuttable presumption (as described in Sections A.3 and A.5) that the sanction applies to such entity. The sanction may be imposed through a specific process as determined by each Institution; or

b. the individual who is subject to a sanction is employed or engaged by an entity seeking or executing Institution-supported activities, then the Institution may: (i) require the entity to not allow the sanctioned individual to engage in projects financed by the Institution; or (ii) apply the sanction to the employing or engaging entity, for example, if it is controlled by the sanctioned individual.

#### **D. Who in corporate groups are cross-debarred?**

1. For purposes of cross-debarment, the only entities that are subject to cross-debarment pursuant to the Agreement for Mutual Enforcement of Debarment Decisions dated 9 April 2010, are those within a corporate group that the sanctioning institution individually identifies by name at any time.

#### **E. How can controlled entities, successors or assigns request to be released from sanction?**

1. The Institutions may provide a process by which direct or indirect controlled entities, successors or assigns can seek to be released from sanction on the basis of new material facts which: (i) occurred after the imposition of the sanctions, and (ii) are relevant to determining whether to continue to apply the rebuttable presumption described in Sections A.3 and A.5. When assessing a removal request, the Institution should give due consideration to the risks related to the circumvention of sanctions. In case of cross-debarments, removal requests must be made to the Institution that issued the original debarment decision.