

Regulation on the rise:

As the global rally against anti-corruption heats up, is your company ready?

After years of slipping through the cracks and operating under the radar, shady dealings have recently been exposed by klieg lights, called out by a media now attentive to a global flurry of anti-corruption measures such as the landmark UK Bribery Act 2010. The recently enacted regulation ups the anti-corruption ante as the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) generate a growing number of Foreign Corrupt Practices Act (FCPA) cases and subsequent settlements.



Just as they closely monitor DOJ, SEC, and the UK's Serious Fraud Office (SFO) developments, compliance officers and general counsels also should remain focused on the activities of multilateral development banks (MDBs), which have been aggressively investigating corruption cases and other misconduct and refining their sanctions procedures.

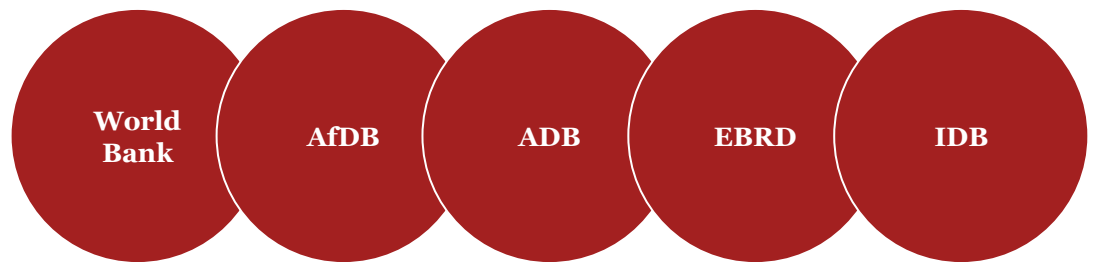
Those in the compliance world who fail to take note of MDBs' emergence as a global anti-corruption force may find themselves confronting sanctions and debarment, which could lead to domestic civil and criminal actions and Madoff-like levels of reputational damage.

Several recent MDB developments indicate the wisdom of proactive precaution and enhanced due diligence for compliance officers and general counsels in industries involved with MDB-financed projects.

Cross-debarment

The World Bank and other MDBs have developed a uniform framework for preventing and combating global corruption and have standardized definitions of corruption and other misconduct.

Bank leaders adopted a cross-debarment process in April 2010, signing the Agreement for Mutual Enforcement of Debarment Decisions. The upshot: Since July 1, 2011, debarment in Asia can mean debarment from Africa to Albuquerque and points globally, exacerbating companies' woes should they skimp on due diligence.



MDBs implemented cross-debarment through the Agreement for Mutual Enforcement of Debarment Decisions.

The World Bank in particular has been stepping forward swiftly to harmonize its anti-corruption approaches, issuing more than 450 sanctions for fraud, corruption, and collusion since 1999; increasing debarments five-fold in recent years; and changing the landscape of the broader anti-corruption regulatory environment.

It's the oldest and largest MDB donor; others include the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), and the Inter-American Development Bank (IDB).

The World Bank's recently revised Sanctions Procedures and Sanctions Board Statute expanded the jurisdiction of its sanctions regime and eliminated some procedural gaps; its legal department later released the Information Note on the Bank's Sanctions Regime to provide insight into these revisions. ^{1 & 2}

Criminal referrals

MDBs are also collaborating with domestic regulators and law enforcement to rein in activities that run afoul of domestic laws such as the FCPA and the UK Bribery Act, cooperating on investigations, sharing evidence, and referring their findings across borders.

Companies can find themselves at risk of violating MDB anti-corruption contractual obligations and guidelines and facing criminal charges under relevant anti-corruption laws. This can include civil cases seeking recovery of criminal proceeds and administrative bans against bidding for and winning government contracts. In FY11, the World Bank alone made 40 investigative referrals to national law enforcement authorities.

MDB cooperation also extends beyond well-known regulatory bodies such as the DOJ, SEC, and SFO. The World Bank has made referrals to authorities across Africa, Asia, and Latin America, leading to arrests of public officials in Indonesia and halting the award of government contracts in Ethiopia.¹

International Corruption Hunters Alliance

The World Bank recently hosted more than 200 members of the International Corruption Hunters Alliance for its second forum on international corruption issues. Representing countries from around the globe, the Alliance used the occasion to develop an international enforcement strategy that would transcend MDB cross-debarment and track and resolve bribery and fraud cases that reach across borders.

Domestic anti-corruption officials, the private sector, international organizations based in Europe, international financial institutions, and Transparency International also participated, in an effort to advance the efficiency and effectiveness of investigations and enforcement actions and outline future anti-corruption strategies.²

The new Alliance will work together to catalyze partnerships and opportunities to step up bribery prosecutions, share investigative information, increase efforts to collect and return illegal proceeds, develop mechanisms to monitor and disclose results and step up efforts to fight fraud and corruption.

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¹ The World Bank, *Integrity Vice Presidency Annual Report Fiscal Year 2011*, available at http://siteresources.worldbank.org/INTDOII/Resources/588889-1316720250792/INT_AR_FY11_web.pdf.

² The World Bank News & Broadcast, *Corruption Hunters Rally for Action Against Fraud*, Dec. 6, 2010, available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22783187~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

The Guidelines reflect leading anti-corruption standards as put forth by:

- *FCPA enforcement guidance*
- *US Sentencing Guidelines*
- *UK Ministry of Justice Guidance on the Bribery Act*
- *Transparency International's Business Principles for Countering Bribery*
- *ICC Rules of Conduct to Combat Extortion and Bribery*
- *World Economic Forum's Partnering Against Corruption Initiative (WEF-PACI) - Principles for Countering Bribery*
- *United Nations Convention Against Corruption*
- *2010 OECD Good Practice Guidance on Internal Controls, Ethics and Compliance*

Standing above sanctions

Parties operating with MDB funding are under a contractual obligation to abide by the anti-corruption provisions for procurement and contractors as delineated in the policies and guidelines of individual MDBs; for those facing sanctions, further direction is also available in The World Bank's Integrity Compliance Guidelines. Developed by the Bank's integrity compliance officer to advise sanctioned parties on implementing effective compliance programs as a condition for release from debarment, the Guidelines cover:

- Prohibition of misconduct
- Responsibility
- Program initiation
- Risk assessment and reviews
- Internal policies
- Policies regarding business partners
- Internal controls
- Training and communication
- Incentives
- Reporting
- Remediating misconduct
- Collective action³

<p>What are some major shifts in the global anti-corruption community?</p>	<ul style="list-style-type: none"> • Increasing number of MDB investigations and enforcement actions; • More sanctions being imposed by all MDBs through cross-debarment; • Higher volume of criminal referrals and parallel investigations by domestic regulators and law enforcement; and • More cooperation within the global anti-corruption community.
<p>Where do MDBs get their information?</p>	<ul style="list-style-type: none"> • MDB joint venture partners; • Company whistleblowers; • Competitors; • Nongovernmental organizations and civil society watchdogs; and • Other MDBs and law enforcement partners.
<p>Do you see yourself here?</p>	<p>Companies acting as sponsors, contractors, bidders, suppliers, consultants or their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers in projects that involve:</p> <ul style="list-style-type: none"> • MDB loans or grants; • International Finance Corporation investments; or • Multilateral Investment Guarantee Agency political risk guarantees.

³ The World Bank, *Debarment with Conditional Release & Integrity Compliance*, available at http://siteresources.worldbank.org/INTDOII/Resources/Integrity_Compliance_Guidelines.pdf.

Increasing risk means enhancing due diligence

Companies should strategically address today's array of DOJ, SEC, SFO, and MDB compliance requirements, mindful of the anti-corruption movement's cross-border regulatory and institutional reach and the consequences of falling out of step with today's expectations. Due diligence program shortcomings and a lax institutional attitude toward compliance will not likely go on unnoticed in these integrity-intent times. Losing focus can cost multiple MDB sanctions and domestic civil and criminal actions.

A serious enterprise-wide commitment to compliance, supported by resources such as the Integrity Compliance Guidelines, can help you prepare to navigate today's compliance requirements and protect your brand and bottom line.

In an era of increasing investigations, enforcement actions, and cohesion throughout the anti-corruption community, compliance officers and general counsels should take steps to confirm that their compliance programs are strong enough to detect and derail any corruption that might creep into their corridors.

As MDBs and others advance their anti-corruption efforts, companies should stay fully and firmly focused and position themselves to handle these changes with the aplomb that comes from reliance upon robust, effective due diligence tools. In today's environment, compliance programs need to go beyond merely satisfying the requirements of domestic regulators. They also will need to align with the demands of MDBs and an expanding global anti-corruption regulatory regime.

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