



Annex 1: Nature of INT investigations and limitation

External and internal investigations

RAID understands that INT conducts both external (relating, in the context of this submission, to counterparties, those who have engaged with counterparties, and affiliates in IFC projects) and internal investigations (concerned with integrity of the World Bank Group's own operations, which includes IFC).

RAID also understands that external investigations, when complaints are substantiated, will result in a Final Investigations Report (FIR) provided to the World Bank Group President. The FIR may, in turn, result in referral reports to relevant national authorities if laws may have been violated and the publication of redacted reports.

External INT investigations finding that firms or individuals have engaged in fraudulent, corrupt, collusive, coercive or obstructive practices in connection with IFC projects would engage IFC Sanctions Procedures, which could ultimately lead to debarment.

RAID's submission to INT relates both to the corrupt conduct of Gertler and associated companies used as special purpose entities in the "DRC corruption scheme", as described by the US authorities, and to IFC's handling of matters before, during and after Gertler's interventions. It is, of course, for INT to determine the extent to which it carries out internal, as well as external, investigations. While RAID has no knowledge of misconduct by individual staff members, we understand that internal investigations will consider misconduct such as that "related to, or arising from, allegations involving fraud or corruption (e.g., attendant conflicts of interest)". RAID's primary concern is the integrity of IFC as an institution.

Limitation period

RAID understands that it is only in respect of external investigations that lead to referral via a Statement of Accusations and Evidence to IFC under its Sanctions Procedure that are subject to a limitation period. Hence, in respect of internal investigations or external investigations that produce FIRs, but which are not referred for consideration under the Sanctions Procedure, such limitation does not apply.

RAID is, however, seeking an investigation into Gertler and associated entities that could result in debarment and remedial action. Based on our understanding that the limitation period applies "if the accusations in the Statement of Accusations and Evidence pertain to a Sanctionable Practice that took place more than ten- (10) years prior to the date on which the Statement of Accusations and Evidence was submitted to the IFC Evaluation Officer" and that "[t]he date of a Sanctionable Practice shall be deemed to be the date on which the last constituent act or element of the Sanctionable Practice occurred", RAID believes:

- The participation of Gertler and associated entities in that part of the "DRC corruption scheme" relating to the corrupt acquisition of First Quantum's Kolwezi Project falls within

this limitation period. The US authorities refer to “[t]hroughout the period of DRC Partner's [Gertler's] acquisition of Kolwezi Tailings..., DRC Partner continued to make corrupt payments” giving examples of such payments made on or about 23 December 2009 and 5 January 2010; and to “[o]n or about August 20, 2010, Mining Company 1 [ENRC] acquired 50.5 percent of Company B [Camrose]” for up to \$575 million “including \$50 million in cash...for DRC Partner to ‘use on the ground’ to corruptly acquire Kolwezi Tailings.” These corrupt payments are all key constituent acts, notwithstanding that there may be later constituent acts. First Quantum, together with IFC, finally reached a US\$1.25 billion out of court settlement with the Congolese Government and ENRC in January 2012. On the basis of the Kolwezi project alone, limitation is no bar to IFC implementing its Sanctions Procedure in respect of Gertler.

- In the case of Africo's Kalukundi Project, while the US court identifies one conspiracy to corruptly acquire the concession beginning in early 2007, it is clear that Gertler and his co-conspirators, having effectively gained control of Africo on 12 June 2008, continued with the “DRC corruption scheme”, selling a 50.5% holding in Camrose to ENRC on 20 August 2010 and the remaining 49.5% on 10 December 2012 to realise proceeds. As such, the last constituent act or element of the Sanctionable Practice clearly falls within the 10-year period.

Notwithstanding that any internal investigation into IFC's actions is not subject to limitation, IFC remained invested in Africo until 22 September 2009. Based on RAID's reading of the IFC Sanctions Procedures, there is no express requirement that the last constituent act or element of the Sanctionable Practice must fall within the period of IFC's actual investment. Indeed, such a requirement would undermine the effectiveness of the sanctions regime, given that Sanctionable Practices, or at least their full scope, may not be discoverable until completed. In any event, RAID understands that IFC's restitution rights would have arisen at the time of OZ Africa's September 2016 guilty plea, extending the relevant period during which IFC had material rights arising from its original investment in Africo through to that date.