

U4 Helpdesk Answer

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Overview of publicly available debarment lists suitable for ODA funded contracting

Debarment is an effective method to preclude sanctioned companies from becoming repeat offenders and acts as a deterrent. However, sanctions regimes differ considerably; for example, while multilateral banks have a criterion for sanctions based on collusive practices, they are absent in EU legislation. Nevertheless, public debarment lists that may prove useful in official development assistance (ODA) contracting have been listed in this answer. Further, certain points of note, especially concerning the importance of beneficial ownership registers in making blacklists effective, have been highlighted.

Caveat: the publicly available sanctions lists presented in this answer are not exhaustive. The lists deemed to be most suitable for ODA funded contracting have been included. Moreover, there remains a lack of consensus in terminology (sanctions/debarment/blacklists) across organisations. This answer refers to debarment lists that are based on entities known to indulge in corruption/fraud/misrepresentation.

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RELATED U4 MATERIAL

- ↗ [Using blacklisting against corrupt companies](#)
- ↗ [Multilateral development banks' integrity management systems](#)

Query

In light of the OECD recommendation 6.iv of the Council for Development Co-operation Actors on Managing Risks of Corruption, published in December 2016, to "Verify publicly available debarment lists of national and multilateral financial institutions during the applicant's selection process; include such lists as a possible basis of exclusion from applying for official development assistance (ODA) funded contracts", please provide:

- i) an inventory of publicly available debarment/sanction lists, and a short description of background, purpose, etc., and why they are/not suitable to consult in ODA funded contract application processes
- ii) any information on lists other donors consult in their due diligence/application process for ODA funded contracts
- iii) any other useful information to investigate what lists and why they should/not be consulted in the application process of ODA funded contracts to address risks of corruption and other irregularities, financing of terrorism, money laundering, etc.

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Background

One of the main priorities of governments or international institutions intending to award contracts or distribute limited available resources, especially public funds, is to ensure that the recipients are reliable and trustworthy. To this end, debarment, or the blacklisting of companies prohibited from partaking in future public procurement processes due to past misconduct, is finding its way into an increasing number of public procurement regimes around the world (Friton 2019).

When it comes to using such sanctions lists in tackling corruption in official development assistance¹ (ODA), the OECD Council for Development Co-operation Actors on Managing the Risk of Corruption have listed a few recommendations (OECD 2016):

- (6.iv) “verify publicly available debarment lists of national and multilateral financial institutions during the applicant’s selection process; (and) include such lists as a possible basis of exclusion from application to ODA funded contracts” (OECD 2016)
- (8.v) “allow sharing information on corruption events, investigations, findings and/or sanctions, such as debarment lists,

MAIN POINTS

- Debarment regimes send a signal that access to public procurement markets requires compliance with laws and regulations.
- There are several publicly available sanctions lists from sources such as, multilateral financial institutions (MDBs, such as World Bank), cross-debarment lists, United Nations, European Union, and national financial institutions in countries such as the United States and Japan.
- Beneficial ownership registers may prove of value in using blacklists effectively by sifting out the actual beneficial owner of a sanctioned company.
- Greater bilateral disclosure of information between development practitioners is required.

within the limits of confidentiality and/or other legal requirements, to help other international development agencies and other actors implementing aid to identify and manage corruption risks” (OECD 2016)

While debarment has gained prominence over the last two decades, the rules differ across jurisdictions and international organisations (Hjelmeng and Søreide 2014; Auriol and Søreide 2017). There is significant variation in, for example, the specific grounds for debarment: the World Bank debars suppliers found guilty of collusion, but this is not among the offences listed in the EU

¹ Official development assistance (ODA) is defined as government aid designed to promote the economic development and welfare of developing countries. Loans and credits for military purposes are

excluded. Aid may be provided bilaterally, from donor to recipient, or channelled through a multilateral development agency, such as the United Nations or the World Bank (OECD 2019; OECD 2020).

legislation (Hjelmeng and Søreide 2014). Auriol and Søreide (2017) also note that sanctioning regimes often have wide discretion when it comes to debarment instruments.

Moreover, sanctions regimes are a reactive apparatus focused on the supply side of corruption. Although, debarment is an effective method to preclude sanctioned companies from becoming repeat offenders and acts as a deterrent, it does not make it more difficult for other parties to commit a prohibited practice or help detect other violations (IDB 2016; Jenkins 2016).

Nevertheless, debarment structures, as they currently stand, send a signal that access to public procurement markets requires compliance with laws and regulations. Hence, such practices may well have a positive effect in the long run on overall integrity and productivity in public contracting (Auriol and Søreide 2017).

This answer highlights publicly available debarment lists that may be useful to consult in the application process for ODA funded contracts. It also mentions the challenges of due diligence in this landscape.

Publicly available debarment/sanctions list

Multilateral development banks (MDBs)

MDB information policies have become more accessible over the years. Due to their extraterritoriality in terms of legal jurisdictions, relevant legal constraints (such as national data protection laws) on the external disclosure of cases are minimal (Jenkins 2016). For the purpose of this

answer, debarment lists from the five major MDBs are mentioned.

These MDBs – the World Bank Group, Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IDB) and African Development Bank (AfDB) – have agreed certain criteria for the debarment of firms and individuals (Cross Debarment 2011; World Bank 2012). Such defined forms of harmonised sanctionable practices include (Cross Debarment 2011; World Bank 2012):

- corrupt practice: the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party
- fraudulent practice: any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation
- collusive practice: an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party (e.g. leaking of bid information, rigged specifications)
- coercive practice: impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party
- obstructive practice: deliberately destroying, falsifying, altering or concealing evidence for investigations or making false statements to investigators to materially impede a bank investigation into allegations; and/or threatening,

harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of the banks' inspection and audit rights.

Apart from these, common sanctionable practices, ADB, has further provisions for sanctions based on:

- abuse: defined as theft, waste or improper use of assets related to ADB related activity, either committed intentionally or through reckless disregard
- conflict of interest: defined as any situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations or compliance with applicable laws and regulations
- retaliation against whistleblowers or witnesses: defined as any detrimental act, direct or indirect, taken against a whistleblower or witness, or person associated with a whistleblower or witness

In issuing a sanction, AfDB summarises the common factors which the MDBs may consider. They are as follows (AfDB 2014; ADB 2015; World Bank 2012):

- responsibility of the entity
- the severity of the entity's actions
- the past conduct of the entity involving a sanctionable practice
- the magnitude of any losses caused by the entity
- the damage caused by the entity to the operations of the bank group, including the credibility of the procurement process

- the nature of the involvement of the entity in the sanctionable practice; any mitigating circumstances, including the intervening implementation of programmes to prevent and detect fraud or corruption or other remedial measures by the entity
- the period of temporary suspension already served by the entity
- the savings of the bank group's resources, or facilitation of an investigation being conducted, occasioned by the entity's admission of culpability or cooperation, including any voluntary disclosure, in the investigation's process
- breach of confidentiality of the sanctions proceedings
- sanctions imposed on the entity by other parties, including another international or multinational organisation, including another development bank
- any other factor that the sanctioning body deems relevant

Apart from these common bases for sanctioning, banks, such as the ADB and EBRD, have an explicit provision that, apart from their own sanction process and cross-debarment agreement, they may impose sanctions on entities which have failed to adhere to appropriate ethical standards by another third party, such as an international financial institution or legal or regulatory body (ADB 2015; EBRD 2017)

The range of sanctions imposed across MDBs are as follows (World Bank 2012; AfDB 2014; ADB 2015):

- Debarment with conditional release: this "baseline" or default sanction is to impose a minimum period of debarment after which the sanctioned party may be released from

debarment if it has complied with certain defined conditions. The conditions typically include the sanctioned party putting in place, and implementing for an adequate period, an integrity compliance programme satisfactory to the bank group. Sanctioned parties must apply for release and must provide evidence that they have met the conditions for release. Sanctioning authorities determine whether the conditions for release have been met. If the decision is negative, the sanctioned party has the right to appeal the decision.

- Debarment for a fixed term: in cases where no appreciable purpose would be served by imposing conditions for release, sanctioned parties may be debarred for a specified period of time, after which they are automatically released from debarment. This may occur, for example, in cases where a sanctioned firm already has a robust corporate compliance programme in place, the sanctionable practice involved the isolated acts of an employee or employees who have already been terminated, and the proposed debarment is for a relative short period of time (e.g., one year or less). At the opposite extreme, where there is no realistic prospect that the sanctioned party can be rehabilitated, it may be sanctioned permanently.
- Conditional non-debarment: under this sanction, the sanctioned party is not debarred provided they comply with certain defined conditions within a set timeframe. Determinations as to whether a sanctioned party has met the established conditions are made by the sanctioning authorities; they apply the same procedure as when reviewing whether a sanctioned party has met the conditions for release from

debarment. If the conditions of conditional non-debarment are not met, the sanctioned party is debarred for a defined period of time. Conditional non-debarment may be applied, for example, in cases where the sanctioned party has already taken comprehensive voluntary corrective measures and the circumstances otherwise indicate that it need not be debarred.

Conditional non-debarment may also be applied to parents and other affiliates of sanctioned parties in cases where the parent or affiliates were not engaged in misconduct, but where a systemic failure to supervise made the misconduct possible.

- Letter of reprimand: in some cases, debarment or even conditional non-debarment may be disproportionate to the offence. In such cases, and in other appropriate cases, a letter of reprimand is issued to the sanctioned party. A letter of reprimand may be issued, for example, in cases where an affiliate of the sanctioned party has been found to have some shared responsibility for the misconduct because of an isolated lapse in supervision, but the affiliate was not in any way complicit in the misconduct.
- Restitution: under this sanction, the sanctioned party is required to make restitution to the borrower of the bank or another party sufficient to, at a minimum, disgorge illicit profits, remedy harm done to the borrower of the bank group's funds or others, or to the public good or to undertake other remedial measures as may be stated.

AfDB also has provisions for “other sanctions”, which includes but is not limited to the total or

partial reimbursement of the costs associated with investigations and proceedings (AfDB 2014).

The Agreement on Mutual Enforcement of Debarment Decisions (2010) is an arrangement among the MDBs to mutually enforce each other's debarment actions, with respect to the commonly held sanctionable practices. While procedures of debarment differ with each MDB, and they conduct their own independent investigations, such a cross-debarment regime enhances consistency of sanctions across MDBs and harmonisation of due process and sanctioning standards. Moreover, cross-debarment multiplies the economic impact of a debarment on a firm or individual by foreclosing the possibility of the firm or individual winning contracts with the other MDBs – acting as a significant deterrent to firms engaging in corrupt practices (World Bank 2010; World Bank 2012).

A list of all cross debarred entities covering the five MDBs may be found [here](#).

Procedures at the MDBs:

World Bank

[World Bank's listing of ineligible firms and individuals](#) (publicly available on its website) is based on its fraud and corruption policy which may be sourced from its [procurement guidelines](#) and [consultant guidelines](#) (for projects before 1 July 2016), or through the [World Bank Procurement Regulations for Investment Project Financing Borrowers](#) (for projects after 1 July 2016) (World Bank 2020a). The bank maintains a sanctions procedure for debarring firms and individuals that

² The World Bank Group is comprised of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency

have been found to have engaged in fraud and corruption in bank group-financed projects (World Bank 2012).

The Integrity Vice President's office (INT) is the chief anti-corruption body of the World Bank Group (WBG). Sanctions processes are carried out via a two-tiered system. At the first level is the Office of Suspension and Disbarment (OSD), led by the World Bank's Chief Suspension and Debarment Officer (SDO) (World Bank 2020b). The OSD temporarily suspends the accused firm or individual in cases where there is sufficient evidence, and, if there is no appeal, imposes the final sanction (World Bank 2020b). The Sanctions Board, consisting of seven external judges, is an independent administrative tribunal that serves as the final decision maker in all contested cases of sanctionable misconduct occurring in development projects financed by the WBG² (World Bank 2020c).

After due process, the sanctions are imposed for specific periods on a case-by-case basis. Blacklisting takes place via (World Bank 2020a):

- an administrative process conducted by the Bank that permitted the accused firms and individuals to respond to the allegations
- cross-debarment in accordance with the Agreement for Mutual Enforcement of Debarment Decisions dated 9 April 2010 (See more on cross-debarment in the upcoming sections).

(MIGA) and the International Centre for the Settlement of Investment Disputes (ICSID). IBRD together with IDA are hereafter referred to as the 'Bank'.

African Development Bank (AfDB)

The African Development Bank Group comprises of the African Development Bank, the African Development Fund and the Nigeria Trust Fund.

The Integrity and Anti-Corruption Department (IACD) carries out independent investigations into allegations of sanctionable practices. It is led by a director who acts and receives all notices on behalf of IACD. The body submits its findings to the Sanctions Office (the first tier of the sanctioning procedure). In case of appeals against the sanction, the matter moves on to the Appeals Board (AfDB 2014).

AfDB's list of debarred entities may be found [here](#) and its sanctions procedure may be found [here](#).

Asian Development Bank (ADB)

The Office of Anticorruption and Integrity (OAI), is both the initial point of contact as well as the investigative office for allegations of integrity violations (ADB 2015). In cases where the party disputes the findings or proposed sanction, OAI shall bring the case to the Integrity Oversight Committee (IOC) (ADB 2015).

ADB's published sanctions list may be found [here](#) and its sanction procedure may be found [here](#).

European Bank for Reconstruction and Development (EBRD)

The Enforcement Commissioner is the first-tier decision maker in sanctioning entities found to have engaged in the pre-defined prohibited practices (EBRD 2017). Further, the Enforcement Committee receives and determines appeals from the Enforcement Commissioner's Decisions (EBRD 2017).

EBRD's ineligible entities list may be found [here](#) and its sanctions procedure [here](#).

Inter-American Development Bank

As per the IDB Group's Sanctions Procedures, the Sanctions Officer and Sanctions Committee may impose any sanction that it deems to be appropriate under the circumstances (IDB 2020).

The list of sanctioned firms and individuals for IDB may be found [here](#), and its sanctions system [here](#).

When it comes to sanctioning affiliates, including but not limited to subsidiaries and parent companies of firms and relatives of individuals, the sanctions depend on whether such affiliates are proven to be free from responsibility for the sanctionable practice, if the application of the sanctions would be disproportionate, or if the sanction would not be reasonably necessary to prevent evasion (ADB 2015; EBRD 2017).

Such debarment lists from MDBs, especially the lists mentioned in this section may be relevant to consult in the application process of ODA funded contracts. Firstly, ODA is often routed via MDBs (OECD 2020). Second, these lists are publicly available, regularly updated and cross-referenced (Cross Debarment 2011; World Bank 2020a; Cross Debarment 2011). Moreover, several bodies, including other regional development banks, such as Asian Infrastructure Investment Bank (AIIB) and KfW Development Bank (Germany), use the sanctions lists from such multilateral financial institutions (OECD 2017; AIIB 2020).

European Union (EU)

EU-wide debarment has so far been limited to procurement procedures conducted by the EU's own institutions. While several EU member states

have now established individual debarment regimes, a mandatory union-wide debarment system for firms and individuals is yet to be implemented. From an EU-wide perspective there is no cross-debarment (Friton 2019). The EU procurement directive of 2014 (Directive 2014/24/EU) as well as its predecessor, called for mandatory and facultative debarment (Hjelmeng and Søreide 2014).

Nevertheless, the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) prepares proposals for regulations on sanctions for adoption by the Council of the European Union (European Commission 2020b). The [EU sanctions map](#) provides comprehensive details of all EU sanctions regimes, including those adopted by the UN Security Council and transposed at EU level (European Commission 2020b). Such EU sanctions may target governments of non-EU countries, as well as companies, groups, organisations or individuals through the following measures (European Commission 2020b):

- arms embargoes
- restrictions on admission (travel bans)
- asset freezes
- other economic measures, such as restrictions on imports and exports

The [Early Detection and Exclusion System \(EDES\)](#), lists financial operators that are excluded from contracts financed by the EU budget or have been sanctioned for grave professional misconduct, criminal activities or significant deficiencies in complying with their obligations (European Commission 2020a).

The information on early detection/exclusion/financial penalty may stem from (European Commission 2020a):

- final judgment or final administrative decisions
- facts and findings from the Anti-fraud Office of the Commission (OLAF), the European Public Prosecutor's Office (EPPO), Court of Auditors, audits or any other check, audit or control performed under the responsibility of the competent authorising officer
- non-final judgments or administrative decisions
- decisions of the European Central Bank (ECB), the European Investment Bank (EIB), the European Investment Fund or international organisations
- cases of fraud and/or irregularity by national managing authorities under shared management
- cases of fraud and/or irregularity by delegated entities under indirect management

The grounds for exclusion are listed under article 136(1) of the financial regulation. They concern (European Commission 2020a):

- bankruptcy and insolvency situations
- non-payment of taxes or social security contributions
- grave professional misconduct
- fraud, corruption, participation in a criminal organisation, etc.
- serious breach of contract
- irregularities
- entities created with the intent to circumvent fiscal, social or other legal obligations (creation of shell companies)

Such sanctions lists from the EU may be beneficial to consult in ODA funded contracting, as they are consulted by development practitioners and NGOs

during the know your customer (KYC) and due diligence processes in both receiving and channelling funds (for example Camões, IP and KfW).

United Nations (UN)

ISIL (Da'esh) & Al-Qaida Sanctions List

The UN Security Council imposes individual targeted sanctions (an assets freeze, travel ban and arms embargo) upon individuals, groups, undertakings and entities resolution 2368(2017) (UNSC 2020).

The [sanctions list](#) currently contains the names of 261 individuals and 89 entities and was last updated on 10 September 2020. The ISIL (Da'esh) & Al-Qaida Sanctions Committee along with INTERPOL publishes the INTERPOL-United Nations Security Council Special Notices for listed entities. The committee also makes accessible a narrative summary of reasons for the listing (UNSC 2020).

The [criteria](#) for listing as per paragraphs 2 and 4 of resolution 2368 (2017) of the United Nations Security Council:

- participating in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of
- supplying, selling or transferring arms and related materiel to
- recruiting for or otherwise supporting acts or activities of Al-Qaida, ISIL, or any cell, affiliate, splinter group or derivative

The committee consider including new names based on submissions received from member states

(UNSC 2017). It is the onus of the member state(s) to provide a detailed statement of the case in support of the proposed listing which includes:

- specific information demonstrating that the individual/entity meets the criteria for listing
- details of any connection with a currently listed individual or entity
- information about any other relevant acts or activities of the individual/entity
- the nature of the supporting evidence (for example: intelligence, law enforcement, judicial, open source information, admissions by subject)
- additional information or documents supporting the submission as well as information about relevant court cases and proceedings

The committee also consider delisting requests submitted by member states or by petitioners through the Office of the Ombudsperson. The delisting request should explain why the individual or entity concerned no longer meets the criteria, and it is “strongly encouraged” that such requests be accompanied by official documentation supporting the request (UNSC 2017).

United Nations Development Programme (UNDP) entries to the UN ineligibility list

The chief procurement officer at the recommendation of the Vendor Review Committee (VRC) sanctions entities found to have engaged in proscribed practices (including fraud and corruption) in UNDP Procurement Actions. These decisions are based on the findings of the Office of Audit and Investigations (UNDP 2020).

The VRC may recommend any sanction that it considers appropriate under the specific

conditions, which include but are not limited to, censure, conditions on future contracts and debarment. This ineligibility may affect any entity or individual who directly or indirectly controls the debarred vendor, or any entity or individual that the debarred vendor controls or employs. Sanctioned vendors may apply to the VRC for rehabilitation after at least half of the sanctions period has passed (UNDP 2020).

The UNDP entries to the UN ineligibility list may be found [here](#).

UNOPS entries to the UN Ineligibility List

UNOPS has a zero-tolerance policy against vendors that engage in proscribed practices, as defined below (UNOPS 2020):

- corrupt practice: the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party
- fraudulent practice: any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- coercive practice: an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party
- collusive practice: an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party
- unethical practice: conduct or behaviour that is contrary to the conflict of interest, gifts and hospitality, post-employment

provisions or other published requirements of doing business with UNOPS

- obstruction: acts or omissions by a vendor that prevent or hinder UNOPS from investigating instances of possible proscribed practices

Sanctioning decisions are determined by the executive chief procurement officer at the recommendation of the VRC (UNOPS 2020).

The grounds for delisting include (UNOPS 2020):

- sanction expiration: it ought to be noted that the expiration of a sanction does not constitute automatic rehabilitation of the ineligible vendor
- rehabilitation upon expiration of a sanction: an ineligible vendor wishing to restore its business relationship with the agencies may request to have its eligible status rehabilitated
- rehabilitation prior to expiration of sanctions: ineligible vendors may also request rehabilitation when normally at least half of the sanction(s) term has expired, provided they can demonstrate that corrective measures have been put in place and have fully met or gone beyond the requirements of the corresponding agency's decision

Such a sanctions list may be relevant to ODA funded contracting to prevent unknowingly including a sanctioned vendor who may pose danger to the operations and compliance in an ODA funded project (Sum and Substance Ltd UK 2020). UN sanctions lists are also used by regional and multilateral financial institutions as well as international NGOs (OECD 2017).

Debarment lists from national financial institutions

United States

Suspension and debarment in the United States is based upon authority granted by a variety of statutes and regulations (Shaw and Totman 2015). The primary authority for the US system of suspension and debarment continues to be the Federal Acquisition Regulation (FAR) (Shaw and Totman 2015). Under the FAR, one of the primary differences between a suspension and a debarment, is the duration of the sanction. A suspension is usually a shorter, temporary period of exclusion. A debarment on the other hand is an “action taken by a debarring official to exclude a contractor from government contracting and government-approved subcontracting for a reasonable, specified period”. The term of a debarment must be “commensurate with the seriousness” of the cause (Shaw and Totman 2015).

The causes for debarment are as follows (Shaw and Totman 2015):

- fraud or a criminal offence in connection with a public contract or subcontract
- violating antitrust laws relating to an offer to perform a public contract
- embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws or receiving stolen property
- intentionally violating “made in America” product labelling regulations
- committing “any other offense indicating a lack of business integrity or business honesty that seriously and directly affects

the present responsibility of a government contractor or subcontractor”.

Also, even without a conviction or civil judgment, a debarment can be “based upon a preponderance of the evidence” of any of the following (Shaw and Totman 2015).:

- wilfully violating contract terms
- a history of poor contract performance
- violating drug-free workplace laws
- intentionally violating “made in America” product labelling regulations; committing certain unfair trade practices
- having delinquent federal taxes exceeding US\$3,000
- knowing failure by a principal to disclose certain types of misconduct

Once imposed, however, suspensions and debarments have a broad, government-wide impact. A suspension or debarment typically bars any type of procurement or non-procurement (for example: grants, cooperative agreements, loans, leases) business with the US government (Shaw and Totman 2015).

Where there is fraudulent, criminal, or other seriously improper conduct, such conduct can even be imputed to the contractor’s officers, directors, shareholders, partners, employees or other associates (and vice versa), where such parties participated in, knew of (or had reason to know of), approved of, or acquiesced to the conduct, thus making these entities and individuals subject to sanction as well (Shaw and Totman 2015).

The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury, on the other hand, administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries

and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction and other threats to the national security, foreign policy or economy of the country (US Department of Treasury 2020).

OFAC publishes lists of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups and entities, such as terrorists and narcotics traffickers designated under programmes that are not country-specific (US Department of Treasury 2020). They are as follows:

- [Specially Designated Nationals List](#)
- [Consolidated Sanctions List](#)
- [Additional OFAC Sanctions Lists](#)

Such lists may prove fruitful in ODA contracting as they are used by development agencies such as USAID in determining whether a contractor or grantee (or sub-contractor or grantee), US or non-US-based, does not appear on exclusion lists maintained by the US government (OECD 2017).

Japan

Japan International Cooperation Agency (JICA) imposes measures against persons or entities who are determined to have been engaged in corrupt or fraudulent practices in connection with contracts for the procurement of equipment, facilities or services necessary for projects of ODA loan and grant aid entered into between JICA and a country that receives such financial support projects and the country's agency that implements the projects (JICA 2014).

The criteria for debarment include:

- false statements in any of the procurement documents and related documents for the procurement contract
- negligent operations under the procurement contract
- breach of contract during the course of operations
- damage or injury to the public
- damage or injury to a person involved in the operation
- bribery
- violation of the anti-monopoly act
- bid rigging
- other wrongful or dishonest acts

In pursuing high ethical standards, JICA will:

- reject a proposal for an award if it determines that the bidder recommended for the award has engaged in corrupt or fraudulent practices in competing for the contract in question
- recognise a contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA loans if it at any time determines that the contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract funded with Japanese ODA loans or other Japanese ODA
- recognise a contractor as ineligible to be awarded a contract funded with Japanese ODA loans if the contractor or sub-contractor, who has a direct contract with the contractor, is debarred under the cross-debarment decisions by the MDBs. Such a period of ineligibility shall not exceed three years from (and including) the date on which the cross-debarment is imposed

According to a published list of cases from fiscal years 2012 to 2015, of 14 cases, penalties ranged from one month (five cases) to 36 months (one case), with an average length of 7.5 months. However, entities may be exempt from sanctions measures, or the debarment period may be shortened if they volunteer information about corrupt or fraudulent acts (OECD 2017).

JICA also publishes [anti-corruption guidance](#) for companies, individuals, NGOs and partner governments involved in ODA projects (OECD 2017).

At the end of the sanctioning period, JICA reviews the measures undertaken by the entity to rectify the cause of debarment as well as their compliance system, and then either extends or ends sanctions (JICA 2014).

Denmark

Danish law does not allow for the publication of debarment lists. Hence, each case of corruption is evaluated on its own merits to determine the most effective reaction. Reactions can vary, depending on the severity and the subject matter of the case, from strengthening control mechanisms and demanding disciplinary actions for specific individuals to terminating a partnership with an organisation, demanding the reimbursement of funds or involving law enforcement authorities. Often the response can be a combination of these (OECD 2017).

However, Denmark has a proactive approach to sharing and publicising information about suspected corruption in its development aid. With few exceptions due, for example, to sensitive information or security reasons, the majority of cases are reported on a public website by the Ministry to the National Audit Office (NAO). These

reports must be made as soon as the ministry can confirm that a reasonable suspicion exists, so publication in many cases takes place well before the final determination is reached (OECD 2017).

Commercial lists

Commercial lists such as the [Dow Jones Watchlist](#) and [World-Check](#) provide screening for anti-money laundering, know your customer and counter-terrorist financing compliance and due diligence (Dow Jones 2020 and World-Check 2020). The Dow Jones is a database covering politically exposed persons (PEPs), government sanctions and high-profile criminals (Dow Jones 2020).

Moreover, blacklists from stock exchanges, such as the one for the London Stock Exchange, may provide information on entities who have engaged in fraudulent or corrupt activities (for example, bid rigging) in certain countries or regions that might have scarce information on sanctionable data (RNS 2020).

Sharing information between development practitioners

Some development agencies share information on a case-by-case basis with other agencies that may be involved in the same country and sector or working with an organisation. For example, Australia's Department of Foreign Affairs and Trade (DFAT) Fraud Control and Anti-Corruption Plan states that "DFAT actively works with other major international donors to combat fraud and corruption". Thus, as part of this process DFAT maintains memoranda of understanding with key aid partners to assist in countering fraud and corruption through sharing information, including on specific fraud cases (OECD 2017).

Similarly, Norway's Ministry of Foreign Affairs reports that it has individual memoranda of understanding to share information with some agencies and one country. Differences in national laws, particularly with regard to confidentiality, explain some of the variations in information-sharing practices. Thus, aligning practice with regard to sanctions, and particularly to sharing information, may be more difficult than in some other areas (OECD 2017).

Moreover, organisations working in the context of delivering humanitarian aid also have their own "respective" lists such as the one maintained by United Nations Office for the Coordination of Humanitarian Affairs' (UNOCHA). However, while some humanitarian organisations have such lists they may only share this information with their peers based on personal relationships (Henze, Grünwald and Parmar 2020).

Challenges in due diligence

A 2006 U4 report stated that an unwillingness to debar on the basis of "strong evidence" (without a court order) was a significant challenge noted by Transparency International (Jennett 2006).

Moreover, sanction rules differ across jurisdictions and international organisations. There is significant variation in the specific grounds for debarment; for instance, the World Bank debars suppliers found guilty of collusion, but this is not among the offences listed in the EU legislation (Hjelmeng and Søreide, 2014).

While these challenges are being dealt with in different ways in different jurisdictions, i.e. Denmark releasing case information instead of debarment lists, and greater public availability of sanctions lists from multilateral financial

institutions such as the MDBs, other challenges in due diligence with regard to debarment regimes remain (OECD 2017).

Bilateral disclosure of information

According to Anti-corruption Task Team (ACTT), Development Co-operation Directorate of the OECD (2018), enabling effective joint donor responses to corruption is a complex task that requires careful management of potential tensions and trade-offs, between fiduciary or reputational risks and the attainment of development objectives, or between competing donor interests (OECD 2018).

The ACTT has come up with a guide on joint donor responses to corruption to foster the will to share information between agencies about corruption that may have been detected in their projects (OECD 2018). The guide, which calls for understanding and harmonising allegations as well as coordinating and communicating follow up actions, can be found [here](#).

Importance of beneficial ownership information

Several major investigations, such as the Panama and Paradise papers, have demonstrated how easy it is to set up and manage a legal entity without having to provide information about its beneficial owner (BO): the real, natural person who ultimately owns and controls the legal entity and on whose behalf transactions are conducted (Martini 2019).

Given how easy it is to set up such companies across various jurisdictions, when it comes to effectively using debarment lists, BO registers may prove to be of importance.

A beneficial ownership register collates information about the beneficial owner in a registry for storage and use by enforcement agencies, the private sector and, in some jurisdictions, the public. While the kind of information recorded varies by jurisdiction, civil society organisations recommend the following information should be recorded in the register: full name of the beneficial owner, date of birth, identification or tax number, personal and business address, nationality, country of residence and a description of how ownership or control is exercised (Van der Merwe 2020).

Having such information from BO registers could potentially identify other companies of sanctioned individuals (the beneficial owners) and may also act as a deterrent from such individuals starting other companies. BO registers may also be useful in helping development actors determine the identity of the intended recipient in cases where they provide support to private companies. For example, one EURODAD study found that 25% of European Investment Bank (EIB) funding went to companies with beneficial owners in secrecy jurisdictions (Kwakkenbos 2012). In addition, such registers could help to identify cases of fraud, which features as a common condition for debarment across both national and multilateral lists.

An example showcasing the importance of beneficial ownership information is as follows. In 2008, an ADB-funded loan project awarded a US\$1 million project management support contract to a Chinese firm. As part of that contract, the consulting firm was to oversee the procurement and construction of US\$20 million civil works activities. The contract was executed, although a satisfactory international team leader, the only international position ever filled on the contract, was not fielded until 18 months into the contract. The loan was closed and the project completion

report noted the consulting firm's shortcomings (ADB 2019).

In 2011, the same Chinese company submitted a proposal for a US\$3 million consulting contract to help the same implementing agency execute a new multiannual financial framework under a different loan. The company was shortlisted and subsequently recommended for award of the contract when OAI received information that a proposed national consultant was one of the project management unit staff and participated in the bid evaluation committee. The allegation also noted that the past work experiences presented by the company in both of its proposals were falsified (ADB 2019).

OAI's investigation found that the company misrepresented past work experience. Moreover, the company authorised an individual to act as a representative of the company, although the company was not at all involved in the contract awarded in 2008. Also, the bank account into which ADB paid the company for its services, which was located in Cyprus, was not associated with the company but with a Belize company using the same name, which was structured through a Cyprus shell company. Further inquiry to establish the complicity of the implementing agency is ongoing. However, the IOC has sanctioned the company for seven years and its "representative" indefinitely for misrepresenting the company's past work experience and misrepresenting the company's intended and actual involvement in the contract (ADB 2019).

Blacklisting effectively

Despite the presence of debarment rules in several jurisdictions, they are often applied unequally in practice (Hjelmeng and Søreide, 2014). Moreover,

certain clauses are included in procurement documents to avoid improper blacklisting, such as the right to provide a “supporting information” response where a party is being evaluated for sanctions. However, in practice, such clauses may have the potential to be used by entities that should be debarred to win contracts. For example: in ODA contracting, entities which are not “currently blacklisted” may still apply.

References

- African Development Bank Group (AfDB).
2014. [The sanctions procedures of the African Development Bank Group](#).
- Asian Development Bank (ADB). 2015. [Office of Anticorruption and Integrity: Integrity principles and guidelines](#).
- Asian Development Bank (ADB). 2019. [OAI case summaries 1998 up to 2019](#).
- Asian Infrastructure Investment Bank (AIIB).
2020. [Debarment list: Operational policies](#).
- Auriol, E. and Søreide, T. 2017. An Economic Analysis Of Debarment.
- Cross Debarment. 2011. [Agreement on mutual enforcement of debarment decisions](#).
- European Bank for Reconstruction and Development. 2017. [EBRD ineligible entities](#).
- European Commission. 2015. [Consolidated list of sanctions](#).
- European Commission. 2020. [Early Detection And Exclusion System \(EDES\)](#).
- European Commission. 2020. [Restrictive measures \(sanctions\)](#).
- Friton, P. 2019. International procurement developments in 2018 - Part II: Debarment in EU public procurement law - tentative progress or treading water?.
- Henze, N., Grünwald, F. and Parmar, S. 2020. [Operational review of exposure to corrupt practices in humanitarian aid implementation mechanisms in the DRC](#). Adam Smith International.
- Hjelmeng, E. and Søreide, T. 2014. [Debarment in public procurement: Rationales and realization](#).
- Inter-American Development Bank (IDB).
2016. [Office of Institutional Integrity and the Sanctions System: Annual report 2015](#).
- Inter-American Development Bank (IDB).
2020. [Sanctioned firms and individuals](#).
- Japan International Cooperation Agency (JICA).
2014. [Rules on measures against persons engaged in fraudulent practices, etc. in projects of ODA loan and grant aid \(provisional translation\)](#).
- Jenkins, M. 2016. [Multilateral development banks' integrity management systems](#). Transparency International.
- Jennett, V. 2006. [Using blacklisting against corrupt companies](#). U4.
- Kwakkenbos, J. 2012. [Private profit for public good? Can investing in private companies deliver for the poor?](#) EURODAD.
- Martini, M. 2019. [Who is behind the wheel? Fixing the global standards on company ownership](#). Transparency International.
- OECD. 2016. [Recommendation of the Council For Development Cooperation Actors on Managing Risks of Corruption](#).
- OECD. 2019. [Official development assistance \(ODA\)](#).
- OECD. 2020. [Official development assistance \(ODA\)](#).
- OECD. 2017. [2016 Recommendation of the Council for Development Co-Operation Actors on](#)

Managing the Risk of Corruption: Compendium of existing practices.

RNS. 2020. [Announcement competition council blacklist](#).

Shaw, S. and Totman, J. 2015. [Suspension & debarment strengthening integrity in international defence contracting](#). Transparency International UK.

Sum And Substance Ltd UK. 2020. [Understanding the UN sanctions list for more transparency and compliance](#).

United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA). 2018. [Nigeria Humanitarian Fund: Operational manual](#).

United Nations Security Council (UNSC). 2017. [Security Council Committee pursuant to resolutions 1267 \(1999\) , 1989 \(2011\), And 2253 \(2015\) concerning Isil \(Da’Esh\), Al-Qaida and associated individuals, groups undertakings and entities](#).

United Nations Security Council. 2020. [Sanctions list materials](#).

Van der Merwe, T. 2020. [Beneficial ownership registers: Progress to date](#). Transparency International.

World Bank. 2010. [The World Bank Group: Mutual enforcement of debarment decisions among multilateral development banks](#).

World Bank. 2012. [The World Bank Group’s sanctions regime: Information note](#).

World Bank. 2020a. [Office Of Suspension And Debarment](#).

World Bank. 2020b. [Procurement: World Bank listing of ineligible firms and individuals](#).

World Bank. 2020c. [World Bank Group Sanctions Board](#).

World-Check. 2020. [World-Check KYC screening & due diligence](#).

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PARTNER AGENCIES

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The U4 anti-corruption helpdesk is a free research service exclusively for staff from U4 partner agencies. This service is a collaboration between U4 and Transparency International (TI) in Berlin, Germany. Researchers at TI run the helpdesk.

The U4 Anti-Corruption Resource Centre shares research and evidence to help international development actors get sustainable results. The centre is part of Chr. Michelsen Institute (CMI) in Bergen, Norway – a research institute on global development and human rights.

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