Welcoming and Introductory Remarks were given by:

- Sandie Okoro, Senior Vice President and World Bank Group General Counsel; and
- Jamieson Smith, Acting Chief Suspension and Debarment Officer, World Bank.

Roundtable 1 – The Times They Are a Changing: Recent Trends and Developments in Suspension & Debarment

Speakers Present:

- (Moderator) Steven L. Schooner, Nash & Cibinic Professor of Government Procurement Law, The George Washington University Law School (USA)
- Roland M. Stein, Partner, Blomstein (Germany)
- Rodney Grandon, Managing Director, Government Services, Affiliated Monitors, Inc. (USA)
- Caroline Nicholas, Senior Legal Officer, UNCITRAL Secretariat, UN Office of Legal Affairs
- Olivier Waelbroeck, Director, Central Financial Service, DG Budget, European Commission

Session Summary:

In the first roundtable, the speakers examined recent trends in suspension and debarment, including whether these trends indicate that systems are “converging” in the same direction. On the numbers, most panelists could not comment on the specific number of suspension and debarment actions, but Mr. Grandon noted that at least in the US the number of actions per year is decreasing, which he believes is the result of greater expertise within industries regarding how to effectively implement controls.

The speakers also discussed settlements or deferred prosecution agreements (DPAs). Ms. Nicholas indicated that at least in the UK, the DPA is an important tool because it is not like a settlement agreement, as it requires supervision by a judge and could result in prosecution if conditions are not fulfilled. Mr. Stein noted that even after a DPA, there is still the question of whether exclusion will result. Mr. Waelbroeck noted that at the European Commission, the various agency decisions are reviewed by an independent centralized panel to ensure consistency and fairness.

The session ended with a discussion of UNCITRAL’s recent decision to remove suspension and debarment from its agenda. Mr. Stein pointed out that there is very little harmonization between different systems, at least internationally. Mr. Grandon noted that even in the US, there are areas of weaker harmonization. Mr. Waelbroeck believed that systems should try to harmonize, at least on the grounds, and pointed to the 2014 EU Procurement Directive in the EU intended to help achieve some level of harmonization in Europe. Ms. Nicholas noted that these statements supported the views of UNCITRAL’s member States that there was insufficient harmonization in the international arena, especially in terms of process, for UNCITRAL to add suspension and debarment provisions to their model procurement law.

Other questions addressed by the speakers included a discussion of the transparency of suspension and debarment proceedings and the resulting debarment list in each system, and whether more centralization creates a stronger and more fair and effective system.
Rountable 2 – Looking to the Future: Examining the Growth of National Suspension & Debarment Systems

Speakers Present:

- (Moderator) Sope Williams-Elegbe, Professor of Law, Stellenbosch University (South Africa)
- Alison Micheli, Lead Counsel, Procurement, Legal Vice Presidency, World Bank
- Maria Swaby, Suspension and Debarment Official, United States General Services Administration
- Michael Bowsher QC, Barrister (England, Northern Ireland & Republic of Ireland); Visiting Professor, King’s College London (UK)
- Stéphane Bonifassi, Partner, Bonifassi Avocats (France)

Session Summary:

In the second rountable, the speakers examined the growth of and challenges faced by national suspension and debarment systems. For example, Ms. Swaby, who consults with the Tunisian government, emphasized the culture and context surrounding the development of the Tunisian laws and structures on suspension and debarment. Mr. Bowsher, discussing the UK and the Republic of Ireland, stated that neither jurisdiction has a legally organized system of suspension and debarment, but that they have implemented the 2014 EU Procurement Directive. Additionally, emerging in the UK is a political system that uses the threat of exclusion to bring contractors into administrative discussions, leading to a “self-cleansing” process. Both Ms. Swaby and Mr. Bowsher discussed transparency within the systems as a common challenge.

The speakers also addressed questions related to cross-debarment and mutual recognition of debarment decisions. Mr. Bonifassi explained that France has not convicted any company for corruption of foreign public officials, but it likely will soon. He raised concerns with the EU Procurement Directive on mandatory exclusion under certain conditions, calling it a “ticking time-bomb.” Mr. Bowsher highlighted that a system of cooperation and cross-debarment across the borders of Northern Ireland and the Republic of Ireland is called for to address the challenges raised by corruption and organized crime on both sides of the border dividing these closely integrated economies.

Dr. Williams-Elegbe elaborated on the South African and Nigerian systems. She explained that there were no judicial or administrative debarments within the Nigerian system, although there are laws in place for debarment. Part of the reason for this is that there have been no criminal convictions for corruption in Nigeria. Dr. Williams-Elegbe further noted that while the South African debarment system had a few judicial debarments, these debarments were limited to corruption convictions within a public procurement context. However, South Africa has had about 1,200 administrative debarments between 2010 and 2017 throughout its nine provinces.

Ms. Micheli discussed what is required for the World Bank to recognize debarment decisions of its borrowers under its projects. Currently, Bank rules do not automatically require exclusion of a contractor from receiving Bank-financed contracts if the borrower’s system has debarred that contractor. The Bank may, however, recognize a national debarment provided several conditions are met, including whether the decision was based on a charge of corruption or fraud, whether there was due notice and an opportunity to be heard, the duration of debarment, and whether it was reasonable and not overly punitive.

The speakers also discussed the challenges created by a lack of harmonization and the difficulties of uniform enforcement across systems.
Roundtable 3 – Keeping an Eye on the Little Guy: Suspension & Debarment Perspectives of Small- and Medium-Sized Enterprises and Individuals

Speakers Present:

- (Moderator) Peter Trepte, Senior Research Fellow, Public Procurement Research Group, University of Nottingham (UK), Littleton Chambers (UK), Grayston & Company (Belgium)
- Lisa Miller, Integrity Compliance Officer, Integrity Vice Presidency, World Bank Group
- David Robbins, Partner, Crowell & Moring LLP (USA)
- Jessica Tillipman, Assistant Dean for Field Placement; Professorial Lecturer in Law, The George Washington University Law School (USA)
- John T. Boese, Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP (USA)

Session Summary:

In the third roundtable, the speakers discussed the extent to which the size of an entity is important in the suspension and debarment context. The speakers first distinguished between punitive and rehabilitative considerations in relation to size. For example, Mr. Robbins noted that the size of an entity is an important factor if the goal of suspension and debarment is to determine when the entity has rehabilitated and can return to the market, but not if punishment is the main goal. Ms. Miller commented that an important part of the World Bank Group’s (WBG) sanctions system is to protect the WBG from misconduct on WBG-financed projects and ensure that WBG funds are used for their intended purposes. To that end, Ms. Miller noted that rehabilitation also plays a key role. Ms. Tillipman noted the fundamental tension between promoting business activity and protection from bad actors.

The speakers also discussed the timing and role of rehabilitation and mitigation. Mr. Robbins commented that in his experience as a former acting Suspending and Debarring Official for the U.S. Air Force, the length of time between the wrongdoing and an exclusion decision, as well as the efforts of respondents to address the misconduct, played a significant role in evaluating whether a vendor could be trusted. Mr. Boese argued that from a practical viewpoint large entities have more resources and tend to be better equipped to perform the necessary rehabilitation and mitigation efforts, compared to many small- and medium-sized enterprises (SMEs) and individuals. At the same time, large entities bear the responsibility to supervise their supply chains, including subsidiaries and sub-contractors. On the other hand, SMEs are much more “nimble” and more able to circumvent a debarment decision by dissolving and reconstituting as a new legal entity.

Ms. Miller emphasized the importance of taking a tailored approach to evaluating integrity compliance efforts on the “back-end,” following sanction, in order to determine what will work in the particular context of SMEs and individuals. Ms. Tillipman commented that an effective approach to prevent wrongdoing on the “front-end,” prior to enforcement action, may be to establish a barrier to entry—however modest it may be—requiring potential contractors to create adequate safeguards before being allowed to bid on contracts.

In addition, the speakers addressed the particular challenges faced by SMEs and individuals that go through the suspension and debarment process. Mr. Boese described the process as a “near-death” experience and noted that it is very difficult for SMEs and individuals to fully understand the process. Ms. Tillipman noted that procedures should not only be transparent, but also easy to understand for entities that lack the resources typically available to large entities. Ms. Miller indicated that when evaluating integrity compliance conditions post-sanction, the WBG endeavors to make the process “user-friendly” for SMEs and individuals, while staying true to the principles of the WBG sanctions system and the WBG Integrity Compliance Guidelines.
Roundtable 4 – Moving Forward: Suspension and Debarment in the Development Context

Speakers Present:

- (Moderator) Jamieson Smith, Acting Chief Suspension and Debarment Officer, World Bank
- Cristopher R. Yukins, Lynn David Research Professor of Government Procurement Law, The George Washington University Law School (USA)
- Juan Gabriel Ronderos, Sanctions Officer, Inter-American Development Bank Group (IDB)
- Paul Kearney, Chief Counsel & Enforcement Commissioner, European Bank for Reconstruction and Development (EBRD)
- Akere Muna, Sanctions Commissioner, African Development Bank (AfDB)
- Giuliana Dunham Irving, Executive Secretary to the World Bank Group Sanctions Board

Session Summary:

The speakers first examined if a convergence of debarment systems is possible around a common model, with Professor Yukins emphasizing the utility of a convergence in process, especially in circumstances where a convergence in policy may be some way off. It was highlighted that the sanctions systems of Multilateral Development Banks (MDBs) have gradually and deliberately converged over the past decade, starting with the harmonization of sanctions definitions and continuing through various stages to a cross-debarment agreement and harmonized principles for sanctions and the treatment of groups. However, Mr. Kearney noted that the differing scopes of the MDBs’ missions and the scales of their sanctions activity may mean that a one-size-fits-all approach might be only a partial solution.

Addressing how different MDBs take into consideration the developmental impact in their investigative undertakings, Mr. Ronderos noted that all of the IDB’s sanctions activities are in line with its goal of protecting development funds and the intended beneficiaries of the project. Mr. Muna highlighted the frequent tensions between the fight against corruption and the implementation of a development project. MDB systems will remain incomplete as long as they are unable to address the demand side of bribery, namely the public officials. On this matter, Mr. Smith highlighted that the World Bank submits referrals to national authorities regarding public officials’ involvement in corruption cases. Ms. Dunham Irving mentioned that while development effectiveness is not a formal goal of the World Bank’s sanctions system’s policy, it can be an aggravating factor when customizing the sanction.

Speakers from the World Bank and IDB discussed applicable mitigating factors, such as effective compliance programs and voluntary corrective actions. However, Mr. Ronderos highlighted that compliance programs are not a popular tool in Latin American due to lack of capacity and experience. Mr. Smith noted that the US may require companies to have compliance programs in place before bidding for public contracts, but expressed skepticism that a similar approach would be functional in the context of MDB operations, given the lack of compliance programs in companies in most of the World Bank sanctions cases.

The speakers also discussed the MDBs’ differing approaches to settlements and compared these to the approaches pursued within other systems. While the IDB has recently started the practice of settlements, the World Bank and AfDB have accumulated significant experience. Mr. Ronderos emphasized that the concept of settlement is new in civil law jurisdictions, which creates access issues, especially for SMEs who usually cannot afford specialized lawyers and therefore do not have the capacity to take advantage of settlements. Mr. Smith mentioned that in the World Bank’s experience, the sanctions do not generally reflect a more favorable treatment for companies represented by specialized lawyers. Mr. Kearney underlined the need to ensure a level playing field and queried whether the publication of the terms of settlement would assist with this and with convergence generally. However, addressing the tension between transparency and confidentiality remains a challenge.

The discussion veered into the various types of sanctions, with restitution being deemed particularly problematic in terms of determining the amount and its recipient. The World Bank has been working on this issue and has yet to find a creative approach. Unlike other MDBs, the AfDB applies financial remedies and has established a Fund (the Africa Integrity Fund) aimed at financing anti-corruption related activities in Regional Member Countries. The speakers pondered the idea of using such funds to assist small companies with introducing compliance programs, or to compensate whistleblowers.