



**World Bank Administrative Tribunal**

**2014**

**Decision No. 486**

**CF,  
Applicant**

**v.**

**International Bank for Reconstruction and Development,  
Respondent**

**World Bank Administrative Tribunal  
Office of the Executive Secretary**

**CF,  
Applicant**

**v.**

**International Bank for Reconstruction & Development,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.

2. The Application was received on 18 March 2013 and, with the Tribunal's leave, an Amended Application was received on 29 April 2013. The Applicant was represented by Marie Chopra and Jeff Vockrodt of James & Hoffman, PC. The Bank was represented by David R. Rivero, Chief Counsel (Institutional Administration) and Robert E. Williams Jr., Counsel, Legal Vice Presidency. The Applicant's request for anonymity was granted on 25 February 2014. This judgment accordingly refers to the business entities involved by generic aliases and not by their real names. The Tribunal held oral proceedings on 26 February 2014.

3. The Applicant challenges the 12 September 2012 decision of the Vice President, Human Resources ("HRVP") to terminate his employment for misconduct.

**FACTUAL BACKGROUND**

4. The Applicant commenced employment with the Bank in February 1998 in the General Services Department ("GSD"). At the time of the contested decision, he was a Senior Project Manager, Grade Level GG. His primary responsibility was to work with the Bank's Regional Vice Presidencies to secure facilities for the Bank's Country Offices, including the acquisition of real estate and coordination of the design, construction and furnishing of office space.

5. The Applicant was responsible for managing the design and implementation of “large, complex, high visibility facilities projects” and was responsible for the selection of the necessary consultants and contractors. Over the thirteen years of his Bank employment, the Applicant dealt with more than 120 vendors—including landlords, consultants, contractors and suppliers—and managed more than 600 contracts in 34 countries valued at more than \$100 million. He consistently received high ratings for his performance, particularly for his work in countries with difficult working conditions. He spent an average of 136 days each year on mission.

6. On 18 June 2009, the Bank’s Integrity Vice Presidency (“INT”) received an anonymous complaint that the Applicant had committed misconduct through, among other things, contract irregularities, bid manipulation and collusion with Bank Group vendors. The anonymous complaint alleged: (i) that Construction group X, a company owned by the Applicant and his wife, had submitted bids to the World Bank; (ii) that the Applicant received kickbacks from vendors in Afghanistan; and (iii) that the Applicant owned real estate in Virginia, United States that was “beyond his means.” Attached to the complaint were hard copies of e-mails from the Applicant’s personal e-mail account.

7. On 24 June 2009, INT initiated a preliminary inquiry, pursuant to Staff Rule 8.01, para. 4.02, after which it concluded there was a sufficient basis to initiate an investigation. On 14 December 2010, INT sent the Applicant a Notice of Alleged Misconduct, pursuant to Staff Rule 8.01 (the “Section 8.01 Notice”).

8. The same day, the Applicant was placed on administrative leave pending completion of the investigation and INT started interviewing him. INT’s initial interviews with the Applicant concluded on 27 December 2010.

9. On 13 September 2011, INT provided the Applicant with a Supplemental Notice of Alleged Misconduct notifying him the investigation would be expanded into additional allegations.

10. On 30 September 2011, the Applicant submitted three written responses to the Section 8.01 Notice.

11. On 29 February 2012, INT offered to provide the Applicant a copy of its draft Final Report for his review and comment, on condition he sign a Non Disclosure Agreement (“NDA”). When the Applicant objected to INT’s requirement that he sign an NDA, INT told him he could instead review the report at its offices. The Applicant requested that INT permit him to make a decision on how to review the draft Final Report by 16 March 2012. This deadline passed without further notification from the Applicant and on 22 March 2012, INT informed the Applicant that the draft Final Report would be finalized “as is” for submission to the HRVP.

12. On 30 March 2012, INT submitted its Final Report of Investigation to the HRVP. The report concluded that, between 2000–2010, the Applicant “engaged in a pattern and practice of abuse of position, fraud, corruption, collusion, and conflicts of interest with nine Bank Group vendors and multiple external third parties,” that he had “made willful misrepresentations in his 2009 Financial Disclosure submission to the Office of Ethics and Business Conduct,” and that he had misappropriated “over US\$350,000 in Bank Group funds for the benefit of himself, his family members and friends.”

13. In a letter dated 12 September 2012 (the “Decision Letter”), the HRVP informed the Applicant that, based on his “independent review of INT’s findings in the Final Report inclusive of all supporting exhibits” there was “substantial evidence to support a finding that [the] Applicant engaged in misconduct as defined under Staff Rule 8.01.” The HRVP stated that the Applicant was shown by the investigative record to have, in material part,

- a. “abused [his] position by steering multiple Bank contracts, which were under [his] direct supervision, to Bank Group vendors with whom [he] had direct and/or indirect personal relationships and/or financial interests”;
- b. been “involved in a series of ... improper personal and financial relationships and fraudulent activities with Bank Group vendors which allowed [him] to misappropriate Bank Group funds for [his]

benefit and that of [his] family and friends” and that these actions “resulted in total losses to the Bank of at least \$350,000”;

- c. “steered contracts to companies the principals of which were: (i) [his] relative, the owner of [the “Kuwaiti engineering company”]; (ii) a friend and a classmate, Director of Operations in [the Kuwaiti engineering company]; (iii) [his] friend, the owner of [the “US engineering company”] and [the “US construction company”]; (iv) the wife of the latter, the president of [the US construction company]; (v) [his] friend, the owner of [the “Project management consulting company”]; (vi) his friend, the owner of [the “Shipping company”]; (vii) a managing partner in [the “Architecture firm”]; and (viii) the owner of [the “Virginia construction company”]”;
- d. “failed to disclose these relationships and/or disqualify [himself] from any involvement in procurement processes related to these Bank Group vendors with whom [he] had personal relationships”;
- e. “misused Bank Group funds that allowed [him] and others to benefit financially from Bank Group contracts” and “directed at least four Bank Group vendors ([the US engineering company], [the US construction company], [the “Decoration company”], [the Virginia construction company]) to transfer money to a personal bank account of [his] friend in Kuwait” and “personally benefitted when at least \$14,820 ... were diverted to a member of [his] family to offset part of [his] personal debt”;
- f. “inappropriately facilitated employment for his relatives, friends and acquaintances through Bank Group vendors engaged on projects that [he] managed” between 2006 and 2010;
- g. “engaged in private business activities outside the Bank Group with two Bank Group vendors ([the Architecture firm] and [the “Afghan construction company”]) soliciting contracts not related to Bank Group financed activities” and “failed to disclose these activities to the Bank Group”; and,
- h. “made willful misrepresentations in [his] 2009 Financial Disclosure submissions to the Office of Ethics and Business Conduct by omitting [his] and [his] wife’s financial and/or proprietary interests in two companies, [“Construction group X”] and [the Kuwaiti engineering company],” the latter of which was awarded two Bank contracts.

14. The Decision Letter also set out the HRVP’s conclusion that the allegation that the Applicant had abused his position by steering Bank Group contracts to a particular

engineering consulting company or that he engaged in a conflict of interest with the owner of that company “could not be substantiated.”

15. The Decision Letter went on to characterize the nature of the Applicant’s misconduct under Staff Rule 8.01, as, among other things, failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment; failure to observe procurement policies; failure to observe generally applicable norms of prudent professional conduct; failure to observe the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group; willful misrepresentation of facts intended to be relied upon; acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment and Staff Rules 3.01 through 3.04; misuse of Bank Group funds for personal gain of oneself or another in connection with Bank activities or employment; and, abuse of position in the Bank for personal gain of oneself or another.

16. The Decision Letter further notified the Applicant of the HRVP’s decision to terminate the Applicant’s employment with the Bank effective 16 September 2012 and to impose the additional disciplinary measures of a deduction of up to \$14,820 from any amounts payable on termination; ineligibility for future employment; and restricted access to the Bank Group’s buildings.

17. On 16 September 2012, the Applicant’s employment at the Bank was terminated.

18. In his Application, the Applicant seeks an “opportunity to set the record straight,” the reopening of the INT investigation with “new, unbiased” investigators, reinstatement to his former position and removal of all negative information relating to the INT investigation and the termination of his employment from his personnel files. He also seeks compensation for lost income since the date of termination of his employment and “not less than \$500,000” for the pain and suffering “caused by INT’s abusive treatment” and the “severe damage to his reputation.” He also seeks his attorneys’ fees and costs in the amount of \$44,426.58.

19. On 31 July 2013, the Bank filed a preliminary objection contending that the Applicant failed to file his Application within the 120-day time limit prescribed by Article II(2)(ii) of the Tribunal's Statute.

## THE CONTENTIONS OF THE PARTIES

### *The Bank's Main Contentions on the Preliminary Objection*

20. The Bank contends that the Applicant failed to file his Application within the time required by Article II(2)(ii) of the Tribunal's Statute. The Bank's position is that the event giving rise to the Application occurred on 12 September 2012, when the HRVP informed the Applicant that he had decided to terminate his employment. The Bank submits that the Applicant did not file within the 120-day filing deadline of 10 January 2013, nor by the 16 March 2013 deadline granted by the Tribunal following the Applicant's request for an extension of time to file.

### *The Applicant's Main Contentions on the Preliminary Objection*

21. The Applicant contends that the Respondent's jurisdictional objection is itself untimely, having been filed over two months after the Applicant's Amended Application was filed rather than within the 21 days permitted under Tribunal Rule 8. Under this Rule, the latest filing date for the objection would be 23 May 2013. The Applicant submits that "it is particularly shameful that the [Bank] charges [the Applicant] ... with being untimely by a matter of a few days while simultaneously making a request that is months out of time."

22. The Applicant says further that he made a timely request for an extension of time for the filing of his Application, making initial contact with the Tribunal's Executive Secretary on 8 January 2013 and making a formal request for an extension on 14 January 2013. By his calculation, 14 January was the due date for his Application, being 120 days from the date on which his employment was terminated. He contends that it is reasonable

to interpret Article II of the Tribunal's Statute as referring to the termination of the Applicant's employment, rather than the date on which he was notified that his employment would be terminated.

23. As to his compliance with the extended 16 March 2013 deadline for filing the Application, the Applicant points out that the date on which he filed his Application was the first business day after the 16 March deadline notified by the Tribunal and that the Tribunal confirmed this was the deadline in a 13 March 2013 e-mail reply to an inquiry from the Applicant's counsel.

24. The Applicant requests his legal costs for responding to what he calls the Bank's "utterly unjustified" jurisdictional challenge.

*The Applicant's Main Contentions on the Merits*

25. The Applicant denies "any wrongdoing of any sort." He specifically denies the allegations that he made a "willful misrepresentation" in his 2009 Financial Disclosure submission and that he misappropriated \$350,000 for the benefit of himself, his family members and friends. He contends that the findings in the INT Report are not supported by the facts, but are "incomplete and riddled with factual errors and misunderstandings" and are mostly based on "innuendo, 'circumstantial evidence' or unsupported assumptions."

26. The Applicant alleges that the copies of e-mail correspondence supporting the June 2009 complaint were "apparently illegally obtained by hacking" the Applicant's private e-mail account and argues that anything else obtained by investigators as a result of illegally obtained evidence is inadmissible.

27. He complains that while INT claims to have interviewed 36 unnamed witnesses, it only provided interview transcripts for 25 in its Final Report, and did not interview the Applicant's immediate manager or the Applicant's department colleagues, who would have had most knowledge about how contracts had been awarded. He asserts INT failed to



seek exculpatory evidence from those most familiar with the Applicant's work. The Applicant specifically complains that the INT Report includes "no transcript or other evidence" of information provided by his manager, and submits that it is "impossible to imagine" that an interview with his manager could have had "no evidentiary value."

28. The Applicant also complains that, because of the voluminous nature of the INT Report, it was completely impractical and unreasonable to review it in INT's offices and argues that he was entitled under the Staff Rules to receive a full copy of the draft report without having to sign an NDA. He states that he feared signing such an agreement "would restrict his ability to obtain exculpatory evidence and might have limited his ability to pursue legal options outside the Bank." He contends that INT's insistence that he sign an NDA violated Staff Rule 8.01.

29. He says further that he has been "severely hampered" in responding to the INT Report because of "very limited access to his Lotus Notes [e-mail] files." The Applicant states that he requested access to these documents in December 2010, but has "experienced repeated technical problems with the laptop computer provided by INT, DVDs provided by INT and encryption, which made the e-mails unreadable." He states that, when he was granted access on the Bank's premises on 16 April 2013, he discovered that everything before October 2008 was missing. He says that the lack of these documents "severely restricts" his ability to refresh his memory about "transactions conducted many years ago." He comments that it is "shameful" that the Bank "makes no attempt" to comment on the destruction of his Bank e-mail records pre-dating October 2008. This, he submits, is particularly shocking because INT had access to these records and they were relevant to an ongoing case. The Applicant argues that whereas INT was able to select e-mails from the now destroyed records, he is "unable to obtain the records necessary for him to prove his defenses."

*The Bank's Main Contentions on the Merits*

30. The Bank contends that the HRVP had a reasonable basis for concluding that the Applicant had engaged in serious misconduct. The Bank contends that INT followed all applicable Staff Rules, policies and procedures, observed all requirements of due process, and that nothing submitted by the Applicant controverts this. The Bank submits that the HRVP determined based on substantial evidence that the Applicant had committed misconduct. The Bank refers to *Koudogbo*, Decision No. 246 [2001] and argues that the proper issue for review by the Tribunal is not INT's investigative methodology, but whether the HRVP abused his discretion when, based on the INT Report, he determined that the Applicant had committed misconduct. The Bank further contends that, given the gravity of the Applicant's misconduct, the decision to terminate his employment was justified, prudent and proportionate.

31. The Bank also states that all due process requirements were observed. The Bank states that if, after interviewing a particular witness, INT concludes the interview has no evidentiary value—exculpatory or inculpatory—it will not become part of the investigative report. The Bank argues that the Applicant has no right to select the witnesses to be interviewed during INT's investigation and referring to *G*, Decision No. 340 [2005], submits that the Tribunal may not “micromanage” INT's investigation. The Bank asserts that the Applicant's manager had no information relevant to the allegations under investigation, due to the decision-making autonomy afforded the Applicant in his senior position. The Bank further asserts that since the Applicant chose not to review the draft INT Report, despite INT's efforts, and therefore, missed the opportunity to suggest that certain other individuals be interviewed, he cannot now argue that he should be informed about witness transcripts not included in the Final Report.

32. The Bank explains that INT conducted a review of over 100 contracts managed by the Applicant, obtained the Applicant's consent to review his personal bank accounts, reviewed financial information from bank accounts in Kuwait provided by the Kuwaiti Ministry of Justice at INT's request and authenticated the accuracy of copies of e-mails by

interviewing witnesses who were the authors or recipients of the e-mails and in some instances obtaining copies of the e-mails from those who received or sent them.

33. The Bank emphasizes that INT did not access the Applicant's personal e-mail account. The Bank points out that the Applicant is merely speculating when he suspects that his e-mail account was "hacked" or accessed by someone illegally. The Bank rejects the Applicant's contention that the "fruit of the poisonous tree" doctrine, a legal doctrine referred to in United States law, related to illegal evidence-gathering by government authorities, is relevant.

34. The Bank also notes that the Applicant was provided access to his Bank Lotus Notes e-mail account, as well as technical assistance, and a Bank laptop to review the documents, which has yet to be returned by the Applicant. It also states that the Bank did not have access to any e-mails that the Applicant did not, and referring to Administrative Manual Statement 12.10, states that it only had access to the standard two-year back up files retained by the Bank.

35. The Bank notes that the Applicant did not receive a copy of the draft INT Report only because he refused to sign the NDA that INT has used in all investigations since 2003 and refused to review the draft report at INT's office.

## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

### THE PRELIMINARY OBJECTION

36. The Bank objects to the Tribunal's jurisdiction in this case, contending that the Application was filed outside the time limit imposed by the Tribunal's Statute. Article II of the Statute, insofar as relevant to the matter at hand, provides that for an application to be admissible, except under exceptional circumstances, it must be "filed within one hundred and twenty days after ... the occurrence of the event giving rise to the application." The Bank submits that the filing deadline was 10 January 2013 counting from the 12 September 2012 Decision Letter.

37. The record shows that on 8 January 2013, the Applicant e-mailed the Tribunal with a request for a sixty-day extension of the time for filing his Application referring to “significant ... health issues” and “personal/family matters.” The Tribunal sought further information and evidence to support the Applicant’s request. This led to the Applicant’s more formal filing on 14 January 2013. But the fact remains his request was first received on 8 January 2013. Even if, for the sake of argument, the Bank is correct to assert a filing deadline of 10 January 2013, the Applicant submitted his request before this date.

38. The Bank also argues that the Applicant failed to file his Application by the 16 March extended filing deadline granted by the Tribunal. The Applicant points out that his Application was filed on the first business day after 16 March 2013 (which fell on a Saturday) and that, in response to the Applicant’s prior inquiry, the Tribunal confirmed that the deadline would fall on the next business day. The Tribunal’s established practice is to extend deadlines to the following business day when they fall on weekends or holidays. The preliminary objection is therefore devoid of merit and is dismissed.

#### THE SCOPE OF THE TRIBUNAL’S REVIEW IN MISCONDUCT CASES

39. The scope of review by the Tribunal in disciplinary cases is well-established. In *Koudogbo*, Decision No. 246 [2001], para. 18, the Tribunal stated that

its scope of review in disciplinary cases is not limited to determining whether there has been an abuse of discretion. When the Tribunal reviews disciplinary cases, it “examines (i) the existence of the facts, (ii) whether they legally amount to misconduct, (iii) whether the sanction imposed is provided for in the law of the Bank, (iv) whether the sanction is not significantly disproportionate to the offence, and (v) whether the requirements of due process were observed.”

40. It is also well-established, as stated in *Dambita*, Decision No. 243 [2001], para. 21, that:

In disciplinary matters, strict adherence to the Staff Rules is imperative and a conclusion of misconduct has to be proven. The burden of proof of misconduct is on the Respondent. The standard of evidence in disciplinary

decisions leading, as here, to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities.

THE ALLEGATION THAT EVIDENCE SUPPORTING THE COMPLAINT  
RECEIVED BY INT WAS OBTAINED ILLEGALLY

41. The Applicant contends that copies of e-mails supporting the June 2009 anonymous complaint to INT were “apparently illegally obtained by hacking” his private e-mail account. He argues that the Tribunal should apply “the fruit of the poisonous tree” doctrine established in the law of the United States such that anything else obtained by investigators is inadmissible.

42. The record shows that INT specifically sought to verify the authenticity of the e-mails it had received with the anonymous complaint, with their authors and recipients. Furthermore, while the Applicant has claimed that the e-mails are not authentic and have been manipulated, he has introduced no evidence to support these claims nor provided any further information notwithstanding his representations to INT that he would do so. Nor has he adduced evidence to support what he admits to be a speculative allegation that the impugned evidence was illegally obtained. The Tribunal also observes that the INT Report draws on evidence obtained from numerous sources.

43. In the circumstances, the Applicant’s contention that the copies of e-mails attached to the anonymous complaint and evidence subsequently obtained by INT’s investigators are inadmissible must be rejected. In any event, the Applicant has not attempted to establish the applicability of the “fruit of the poisonous tree” doctrine to the present proceedings. It is doubtful that such a position would be sustainable in light of the contrasting approaches of major legal systems to the admissibility of evidence where it is—unlike in the present case—established that such evidence was obtained by illegal means.

WHETHER THE FACTS ON WHICH THE DISCIPLINARY MEASURES  
WERE BASED HAVE BEEN ESTABLISHED

44. The Tribunal will now turn to consider whether the HRVP's factual findings have been established to the applicable standard of proof, that is, more than a mere balance of probabilities.

45. The HRVP's findings in this case relate to over 30 factually distinct allegations involving multiple Bank vendors over a period of ten years (2000–2010). The Tribunal has examined all of the factual findings of the HRVP as well as the Applicant's contentions in respect of them. In this judgment, the Tribunal will address only the most serious and well-supported findings against the Applicant to the extent necessary to determine whether they have been established and to reach a decision in respect of the remaining four elements of the Tribunal's scope of review. The Tribunal makes no findings in respect of other matters because to do so is not necessary for the disposition of this case.

46. The Tribunal notes that this case has been complicated somewhat by the fact that the HRVP's findings of misconduct are grouped into broad and sometimes overlapping categories. These do not correspond with the arrangement of the annexes supporting the INT Report. This is an unusually complex case and the Tribunal considers the INT investigation to have been thorough. That being said, INT may wish to consider whether its reports would be most helpful to the decision-makers examining them if, to the extent possible, supporting allegations and evidence were arranged in relation to the categories of misconduct alleged (as opposed to in relation to the specific entities or individuals involved.)

“STEERING” OF CONTRACTS TO CERTAIN VENDORS

47. The Decision Letter states that the investigative record showed the Applicant “abused [his] position by steering multiple Bank Group contracts ... to Bank Group

vendors with whom [he] had direct or indirect personal relationships and/or financial interests.” Specifically, the HRVP found that the Applicant

steered contracts to companies the principals of which were (i) [his] relative, the owner of [the Kuwaiti engineering company], (ii) a friend and a classmate, Director of Operations in [the Kuwaiti engineering company], (iii) [his] friend, the owner of [the US engineering company] and [the US construction company], (iv) the wife of the latter, the president of [the US construction company], (v) [his] friend, the owner of [the Project management consulting company], (vi) [his] friend, the owner of [the Shipping company], (vii) a managing partner in [the Architecture firm]; and (viii) the owner of [the Virginia construction company].

48. The INT Report indicates the versions of the relevant Staff Rules considered applicable to the allegations. These rules, however, focus on compliance with the Bank’s relevant rules and policies and do not directly address the so-called act of “steering.” Further to a request from the Tribunal, the Bank indicated that it understands “steering” to refer to

the act of directing contracts to a favored ... vendor, bidder or contractor without detection ... accomplished by, but not limited to ... : (1) *avoiding competition* through unjustified sole sourcing or direct contracting awards; (2) *favoring a certain bidder* by tailoring specifications and/or sharing of inside information; (3) *excluding qualified bidders* through restricted circulation of advertisements, biased evaluation processes and/or bid tampering and; (4) *avoiding detection of the schemes* by negotiating the removal of audit rights, using shell companies to disguise the official’s economic interest, and/or failing to make disclosures required under Bank policies and Staff Rules.

49. The Tribunal considers the essence of this to be the direction of contracts to a vendor, bidder or contractor by placing them in a position of unfair advantage, generally involving the violation of procurement policies and measures to avoid detection.

50. Paragraph 3.1 of the Bank’s Principles of Staff Employment states that the sensitive and confidential nature of much of the Bank’s work

requires of staff a high degree of integrity and concern for the interests of the Organizations. ... [S]taff members have a special responsibility to

avoid situations and activities that might reflect adversely on the Organizations, compromise their operations, or lead to real or apparent conflicts of interest. Therefore, staff members shall:

- a. discharge their duties solely with the interest and objectives of the Organizations in view ... ;
- b. ... not accept in connection with their appointment or service with the Organizations any remuneration, nor any benefit, favor or gift of significant value from any ... entities or persons [external to the Bank] ...
- c. ... not engage in any activity that is incompatible with the proper discharge of their duties with the Organizations. They shall avoid any action and, in particular, any ... personal gainful activity that would adversely or unfavorably reflect on their status or on the integrity, independence and impartiality that are required by that status.

51. In *AJ*, Decision No. 389 [2009], para. 46, the Tribunal explained:

Principle 3 of the Principles of Staff Employment requires staff members to serve the Bank with a high degree of integrity and loyalty. Every staff member has a special obligation to avoid situations and activities that might (i) reflect adversely on the Bank; (ii) compromise operations of the Bank; and (iii) lead to real or apparent conflicts of interest. The obligation is broad; its objectives are prohibitive as well as preventive. The Applicant had an obligation not to engage in real or apparent conflicts; he also had an obligation to avoid situations and activities that might “lead to real or apparent conflicts of interest.” Principle 3 obligates staff members to “discharge their duties solely with the interest and objectives of the [Bank] in view.” This singleness of purpose should not be compromised by other considerations, such as a staff member’s personal interest in a business relationship of the Bank. This is why the scope of Principle 3 is very broad. It prohibits not only conduct that is clearly wrongful but also conduct that leads to a possible appearance of impropriety.

52. The Bank’s Corporate Procurement and Procedures Manual (8<sup>th</sup> edn., February 2009) (“2009 Manual”) also provides some insight. Its stated objectives, at page 4, include ensuring the achievement of the “best total value” and the “impartial and equitable treatment of bidders” or as stated more fully:

The goal of the Bank Group’s procurement process is to ensure that best total value is achieved in the procurement of goods and services. Ensuring



the achievement of the best total value and the impartial and equitable treatment of bidders requires following four guiding principles that underlie the Bank Group's procurement process: (1) fairness, (2) transparency, (3) competition, and (4) value. These principles are employed globally in all procurements ... .

53. Annex A of the 2009 Manual ("Standards of Conduct") further provides:

The Bank Group's procurement activities must be conducted in a manner above reproach, with complete impartiality and with no preferential treatment. Transactions relating to the commitment of the Bank Group's funds require the highest degree of public trust and an impeccable standard of conduct. ... The Bank Group's procurement process must allow vendors to compete for the Bank Group's business on a fair, equal and transparent basis. ... During the pre-solicitation phase, staff must not allow vendor(s) access to information—whether technical, financial, or of any other nature—concerning a particular acquisition before such information is available to the business community at large.

54. Annex A further admonishes staff to "strictly avoid any real or apparent conflict of interest in the Bank Group's vendor relationships" including financial interests personally or through a close relative; and personal or professional interests including involvement in procurement processes involving any organization or enterprise that employs a staff member's close relative. It goes on to make clear that staff have a duty to disclose any real or apparent conflict of interest and disqualify themselves from any involvement in the selection process or management of vendor contracts.

55. Based on the foregoing, the Tribunal understands the allegation of "steering" to mean that the Applicant authorized the grant of contracts to certain vendors on the grounds of his personal relationships and/or financial interests, not "solely with the interests and objectives of the [Bank] in view." Thus, he allegedly placed certain vendors in a position of unfair advantage and breached the Bank's procurement policies.

56. The Tribunal notes that since February 2009, pursuant to paragraph 5.2 of the 2009 Manual, there has been no competition requirement in respect of contracts below \$50,000 for country office architectural, engineering, design or construction services.

57. The Applicant denies any wrongdoing and points out that of the \$4.9 million value of the contracts referred to in the INT Report, more than \$4.5 million was competitively bid through the Bank's procurement unit according to their formal process. He contends that if there were any irregularities when the procurement unit ran the process, he cannot be held responsible for them. He also states that the remaining \$400,000 of contracts questioned by INT were awarded following the Bank's Procurement Guidelines and were approved by his immediate manager and the Contract Officer assigned to each project. The Applicant asserts that he made no decisions relating to these procurements without the involvement and approval of others. He states that "[a]t no time did [he act] to benefit himself, his family or friends in violation of World Bank policies."

58. He also states that "[i]n rare instances when a contract needed to be awarded and work performed to meet the demands of The World Bank project priorities, and the urgency and/or magnitude required extraordinary actions, each of those instances was discussed with and approved by, [his] immediate manager ... and the assigned contracting officer." The Applicant refers to information provided by Mr. KA, former Contracts Officer (GSD), to INT, that on a project in Romania, "because of the urgency of the fire [damage to the Country Office] ... there were some shortcuts authorized by policy by the Director --- where they said, okay, just do it quickly."

59. The Tribunal will now examine some of the evidence specifically underlying the HRVP's findings, proceeding in the order in which it is set out in the annexes to the INT Report.

*Alleged steering to the Virginia construction company*

60. The HRVP found that the Applicant steered Bank contracts to the Virginia construction company, owned by Mr. AB.

61. The INT Report alleges that, in or around 2006–2007, the Applicant engaged the Virginia construction company, a construction company located in Virginia, USA, to act as

general contractor in the construction of his new home, also in Virginia. Seven months after completion of the house construction, on 4 February 2008, the Virginia construction company received its first Bank contract, authorized by the Applicant. INT found no evidence that the Applicant paid the Virginia construction company for services provided on his home. The Applicant states they provided no services requiring payment.

62. The Applicant told INT he did not engage the Virginia construction company as the general contractor for the construction of his new house and that while Mr. AB, the Virginia construction company's owner, recommended third party contractors and a superintendent, he did not provide any services requiring payment. He denies there was any arrangement by which the Virginia construction company would provide free services on the construction of his house in return for future Bank contracts, and says that he acted as the construction manager himself.

63. The Tribunal finds the witness evidence INT obtained from Mr. MB and Ms. NK to support the HRVP's finding. In particular, Mr. MB's recollection that at the request of the Applicant, he interviewed Mr. AB for the general contractor role; Mr. MB's understanding that Mr. AB subsequently took on this role; Mr. MB's recollection that Mr. AB was present on the construction site when Mr. MB visited a few times; and Mr. MB's recollection that he had not met anybody else who worked as the superintendent on the construction site. The Tribunal also finds the documentary evidence convincing. For example, a February 2006 e-mail from the Applicant to a commercial bank providing him a construction loan refers to the Applicant having agreed "the cost estimate & project time" with Mr. AB and "signed the construction contract accordingly." In November 2006, the Applicant received an e-mail from Mr. AB regarding the details of window design for the house. Local government records also appear to indicate that Mr. AB requested inspections of the Applicant's house on five occasions in July, August and November 2006, and July 2007.

64. On 3 January 2008, five months after completion of construction of the Applicant's house, the Virginia construction company was registered as a Bank Group vendor at the

Applicant's request. On 4 February 2008, the Applicant authorized a single-source contract to the Virginia construction company, to provide construction management services in the Bank's Kabul Country Office. The original \$28,800 value of the contract awarded to the Virginia construction company increased to \$47,156 after two subsequent change orders. On 4 February 2009, the Applicant authorized a second single-source contract for work on the Kabul Country Office to the Virginia construction company for \$48,752. On 30 June 2009, the Applicant authorized a third single-source contract for work on the Kabul Country Office to the Virginia construction company for \$49,854.

65. The Tribunal finds that the Applicant steered these three contracts to the Virginia construction company. While the Applicant and Mr. AB deny that the Virginia construction company acted as the general contractor on the Applicant's home, the Applicant admits he signed a construction contract with Mr. AB and Mr. AB admits that he represented himself as the general contractor. While they claim they did so only because the Applicant's commercial bank required him to have a general contractor to obtain a loan, the evidence is clear that Mr. AB had a significant level of involvement in the construction of the Applicant's house. Both the Applicant and Mr. AB admit the latter recommended contractors and a superintendent. Mr. AB admits that he visited the site and helped the superintendent on the project when needed. The Applicant also admits, and e-mails show, that Mr. AB advised on window design. Local government records indicate that he organized five official inspections of the home. Mr. AB's involvement was also sufficiently significant that Mr. MB, the architect, and Ms. NK, who asked the Applicant about it, understood that he was the general contractor.

66. Shortly after completion of the Applicant's new home, the Virginia construction company registered as a Bank Group vendor. The Tribunal finds that the record shows that the single-source contract awarded to the Virginia construction company on 4 February 2008, ultimately worth \$47,156, was related to the Applicant's personal and/or financial relationship with the Virginia construction company and was not awarded solely with the interests and objectives of the Bank in view. The Tribunal finds that the evidence also establishes that the single-source contracts awarded to the Virginia construction company

in February and June 2009 were related to the Applicant's personal and/or financial relationship with the Virginia construction company and that they were not awarded solely with the interests and objectives of the Bank in view.

67. The Tribunal considers that, had the Applicant had the Bank's interests solely in view, it would have been apparent to him, as an experienced project manager, that he should disclose his relationship with Mr. AB to the Bank. Mr. AB had, at minimum, provided significant assistance on the Applicant's personal construction project.

*Alleged steering to the US construction company*

68. The HRVP found that the Applicant steered contracts to the US construction company. The INT Report concludes that the Applicant steered a \$214,953 Bank contract, for the replacement of part of the Kabul Country Office severely damaged in a November 2007 car-bombing, to the US construction company.

69. The Applicant contends that INT provides no evidence for its claim that he "appeared" to have a financial interest in the US construction company and states that the allegation is untrue and without foundation. He points out that the selection of the US construction company for a contract in Afghanistan was done through a competitive sealed bid process, managed by a Procurement Officer with bids publicly opened in the Bank's Kabul Country Office. He states that the subsequent change order was reviewed and approved by GSD Procurement and that all expenses related to the change order are documented in the project file.

70. The US construction company is incorporated in the USA and also registered with the Afghanistan Investment Support Agency ("AISA"). According to AISA records, the US construction company is 90%-owned by Mr. AN, President, and 10%-owned by Ms. GH, Vice President and Mr. AN's wife. Mr. AN is also the owner of the US engineering company, which has received Bank contracts on projects managed by the Applicant since

2002. The INT Report refers to allegedly false statements made by the Applicant to INT to conceal his personal relationship with Mr. AN and Ms. GH.

71. E-mails exchanged between Mr. SA, Mr. AN and the Applicant in September 2008 indicate that there was a personal and/or financial relationship between them. In particular, a 24 September 2008 e-mail from the Applicant to Mr. AN and Mr. SA stated, "Dear [Mr. AN] and [Mr. SA], Hope everything is good, and fine from your end. I have not heard whether I should take the \$8000 (my share) to Kabul or give it to [Mr. AN] in Washington."

72. The Applicant told INT that he had not received and had no involvement in the 2008 e-mail exchange. He denied sending the 24 September e-mail. He suggested someone must have hacked his personal e-mail account and manipulated it, that he suspected a work colleague and that he would reveal his or her name in due course. He said he could think of no reason why Mr. AN and Mr. SA would copy him on correspondence involving the US construction company's business in Afghanistan.

73. Mr. SA, however, told INT that the 24 September 2008 e-mail from the Applicant was authentic and that it referred to a capital contribution to a company that would ship materials to Afghanistan, that he, Mr. AN and the Applicant wanted to establish. He told INT the company was never established because the Applicant was concerned the US engineering company and the US construction company might seek other Bank contracts.

74. On 11 January 2009, the Bank's bid evaluation committee opened three bids and sent the bid information to Mr. KA, former Contracts Officer (GSD) and the Applicant for evaluation. The US construction company's bid was the lowest.

75. On 22 January 2009, the US construction company was awarded a \$143,658 contract. The Applicant subsequently authorized four change orders totaling \$71,294.77 increasing the value of the contract by 49.6% to \$214,952.77.

76. The September 2008 e-mail correspondence referring to the US construction company's corporate registration in Afghanistan and an \$8,000 "contribution" from the Applicant—coupled with Mr. SA's evidence that the \$8,000 referred to in the Applicant's 24 September e-mail was a capital contribution to a joint corporate enterprise that was ultimately abandoned—establishes that there was a personal relationship and/or financial interest connecting the Applicant and the owner of the US construction company, Mr. AN. The reference to making a capital contribution in cash to the shipping company described by Mr. SA appears to indicate that the enterprise was at an advanced stage of planning and preparation.

77. The Tribunal also notes that the Applicant has not substantiated his claims that his personal e-mail account was hacked and manipulated, nor identified the party he suspected to be involved in such acts. The Tribunal weighs the detailed explanation of the 24 September e-mail that INT obtained from Mr. SA against the Applicant's speculations and concludes those speculations lack credibility.

78. As the Applicant allowed himself to remain involved in the procurement process notwithstanding the evidence of his advanced plans to establish a joint business with Mr. AN, the Tribunal concludes that the contract was not awarded solely with the interests of the Bank in view. While the US construction company's was the lowest bid, the Tribunal observes that the circumstances described conduce to the conclusion that an understanding between the Applicant and Mr. AN might have enabled the US construction company to make a low bid for the contract, knowing that the Applicant, as project manager, would later authorize change orders.

*Alleged steering to the Kuwaiti engineering company*

79. The HRVP found that the Applicant steered contracts to the Kuwaiti engineering company. The INT Report stated that the Applicant steered two Bank Group contracts with a total value of \$138,021 to the Kuwaiti engineering company, a vendor in which the Applicant's spouse had an undisclosed proprietary interest.

80. On 24 June 2009, the Kuwaiti engineering company was registered in Kuwait as a result of a name change by a predecessor company. The Kuwaiti engineering company is owned by Mr. HA, the Applicant's college classmate and, according to the Applicant in his testimony to the Tribunal, his wife's brother-in-law. The Applicant told INT that he contacted Mr. HA "like other graduates ... once a year" and that his family did not "socially ... interact" with Mr. HA's family.

81. When INT confronted him with receipts indicating he had bought plane tickets for Mr. HA and his family in or around August 2008, however, the Applicant admitted he was helping them in connection with a health condition of Mr. HA's youngest son. The Applicant told INT that Mr. HA reimbursed him for the tickets. Several e-mails to and from the Applicant's World Bank e-mail account indicate that the Applicant continued to assist Mr. HA's son, by seeking advice on his treatment from US-based physicians, in September and October 2009.

82. The Kuwaiti engineering company's Director of Operations is Mr. NH, the Applicant's high school classmate. Mr. NH appears to have an e-mail address with the same corporate domain name, incorporating part of the name of Construction group X and the Kuwaiti engineering company, used by the Applicant's wife.

83. Most critically, bank records indicate that the Applicant had a proprietary interest in the Kuwaiti engineering company in that, on 11 November 2009, his wife became an authorized signatory on its corporate bank account in Kuwait.

84. On 23 October 2009, the Applicant authorized a contract for design and construction management services for the Bank's Kuwait Country Office to the Kuwaiti engineering company worth \$43,404. The Applicant told INT that he had asked Mr. NH to have the Kuwaiti engineering company contract with the Bank so that an unrelated individual, Ms. SZ, could be paid for design and construction services she had already provided to the Bank. On 18 May 2010, the Kuwaiti engineering company was issued a change order worth \$6,442.



85. The Applicant told INT that due to an urgent need for a construction manager to manage the renovation of the Bank's Romania Country Office, he approached the Kuwaiti engineering company in late 2009. The Kuwaiti engineering company proposed to provide construction management services for \$80,000. The Applicant went on to explain that, Mr. KA, former Contracts Officer (GSD), insisted that the Bank solicit other proposals because contracts in excess of \$50,000 require competition. The Applicant stated that Mr. KA issued a solicitation to other companies but that the other bids received were higher than the Kuwaiti engineering company's bid. The Applicant stated that Mr. KA had "all the pricing" which he "kept ... confidential" and that Mr. KA had informed the Applicant that the Bank would proceed with the Kuwaiti engineering company as the lowest bidder.

86. The Applicant's statement that Mr. KA solicited the additional bids and kept the pricing information confidential is inconsistent, however, with the Applicant's e-mail to Mr. KA dated 7 January 2010. This e-mail stated that the Applicant himself had contacted three vendors and indicated the prices they had quoted, and that "it is determined that the Kuwaiti engineering company is the ... lowest responsive and responsible bidder."

87. On 14 January 2010, Mr. KA suggested that a price quote from a company with experience in Romania should also be obtained. The Applicant responded that he had contacted the three vendors "because [of] their familiarity with [B]ank procedures, and good track record on previous WB projects" and did not want to consider a new project manager who was unfamiliar with Bank procedures and had no track record, given the tight schedule. The Kuwaiti engineering company's project manager, however, subsequently turned out to be the son of the Applicant's cousin, the 26-year old Mr. BA, who had no experience in construction or Bank Group projects.

88. On 16 January 2010, Mr. KA received a quote from a company based in Virginia, which was higher than the Kuwaiti engineering company's quote. He therefore approved the selection of the Kuwaiti engineering company.

89. The Tribunal finds that the evidence of the Applicant's personal relationships with the Kuwaiti engineering company's principals, as well as his financial interest (through his wife) in the company, establishes that the Applicant authorized the Kuwait and Romania contracts to the Kuwaiti engineering company on the grounds of those personal relationships and/or financial interests and not solely with the interests of the Bank in view. Notwithstanding the Applicant's initial claim that he kept in touch with Mr. HA, the Kuwaiti engineering company's owner, once a year, he later admitted that he was helping him with an important personal matter (his son's medical condition). The evidence also establishes that Mr. NH, the Kuwaiti engineering company's Director of Operations, has a personal relationship with the Applicant. Most critically of all, bank records establish that the Applicant's wife became an authorized signatory on the Kuwaiti engineering company's corporate bank account on 11 November 2009, less than a month after the Kuwaiti engineering company registered as a Bank Group vendor on 14 October 2009.

*Alleged steering to the Project management consulting company*

90. The HRVP found that the Applicant steered contracts to the Project management consulting company. The INT Report concluded that the Applicant abused his position by steering two Bank contracts to the Project management consulting company, worth \$9,800 in total, when the sole role of the Project management consulting company was to provide employment and to bill for the work of Mr. GR, the Applicant's brother-in-law.

91. On 19 December 2006, the Project management consulting company, owned by Mr. DC, received a \$4,900 Bank contract for engineering services in Juba, Sudan. The Project management consulting company outsourced the work to Mr. GR.

92. On 19 March 2008, the Project management consulting company received a \$4,900 Bank contract for the design of electrical power distribution in the Kabul country office. This work was also outsourced to Mr. GR.

93. The Applicant told INT that a qualified person had been needed for the design of a water treatment plant for the Bank's Country Office in Juba. The Applicant stated that he asked Mr. DC, his friend and former business colleague, whether he could recommend someone and he recommended an individual with the same first name as Mr. GR. The Applicant told INT he could not remember that individual's last name and claimed that he not known him before he worked on the Project management consulting company contract.

94. In a subsequent INT interview, the Applicant claimed that Mr. GR was not the husband of his sister. When asked whether Mr. GS, a name by which Mr. GR is also known, was the husband of his sister, he said he was "not going to respond to that question." When asked whether Mr. GR was related to his sister, the Applicant stated that he did not know. The INT Report refers to the mortgage record of Mr. GS and the Applicant's sister for a property in Canada which includes the attestation that Mr. GS and the Applicant's sister "are spouses of one another." It also states that Mr. GS's business is registered at the same Canadian address and that Mr. GR is the registrant of an internet domain registration incorporating the name of that business.

95. Mr. DC confirmed to INT that he had a professional relationship with Mr. GR and that Mr. GR had undertaken the work on the Project management consulting company's contracts with the Bank. In response to INT's request, Mr. DC refused to provide payment records relating to the Project management consulting company's Bank contracts, noting that, as INT accepts, the three-year contractual audit period had expired since the last payment under the last contract.

96. In an 11 August 2011 e-mail, Mr. GR told INT that he was willing to assist INT but requested that their communications be in writing because he feared "tampering." INT subsequently asked Mr. GR for a secure e-mail address so that they could communicate confidential information related to the investigation, but received no further response from Mr. GR, despite sending a reminder e-mail.

97. The Applicant contends that the Project management consulting company, with its project management experience in more than twenty countries and extensive network of professionals, is uniquely qualified to identify resources to support projects and entirely suited for World Bank projects. He denies INT's claim that he "facilitated" the employment of Mr. GR and states that the Project management consulting company selected Mr. GR from its database of over 20,000 professionals because he was qualified and available and that the Project management consulting company was unaware that Mr. GR had any relationship to the Applicant. The Applicant states that it is true that he "introduced people and companies to one another" but that "this practice is both common and necessary to create a vital and integrated network of high-performing organizations and practitioners available to support World Bank projects ... . This was a normal and expected part of the job [the Applicant] was assigned to perform." The Applicant states that he received no financial or other benefit from these introductions and that INT's allegation is inconsistent with information INT received from Mr. DC, the owner of the Project management consulting company.

98. The Tribunal finds that the Applicant steered the contract to the Project management consulting company based on his personal relationships and/or financial interests and not solely with the Bank's interests in view. The Tribunal takes into consideration the Applicant's evasiveness when asked about the nature of his relationship with Mr. GR, as well as the fact that Mr. GR failed to reply to INT's follow up e-mails. The Tribunal further finds that the mortgage record, and associated evidence, referred to by INT establishes that Mr. GR, also known as Mr. GS, is the Applicant's brother-in-law.

INAPPROPRIATE FACILITATION OF EMPLOYMENT FOR RELATIVES, FRIENDS, AND  
ACQUAINTANCES THROUGH BANK VENDORS

99. In the Decision Letter, the HRVP upheld the allegation that the Applicant "inappropriately facilitated employment for [his] relatives, friends, and acquaintances through Bank Group vendors engaged on projects that [he] managed."

100. Pursuant to Principle 3 of the Principles of Staff Employment, the Applicant was obliged at all times to discharge his duties solely with the interest and objectives of the Bank in view, with a singleness of purpose uncompromised by other considerations. Not only clearly wrongful conduct is prohibited, but also conduct that leads to a possible appearance of impropriety. *See AJ*, Decision No. 389 [2009], para. 46.

101. The Tribunal also notes that the Bank's 2009 Corporate Procurement Policy and Procedures Manual, paragraph 2.11, states that Bank staff should maintain an arm's length relationship with contractor staff to ensure there is no appearance of employment of such staff by the Bank Group.

102. The Applicant denies the allegations that he inappropriately facilitated employment, stating that they are unsupported by evidence.

*Alleged inappropriate facilitation of employment of Ms. SZ*

103. The INT Report concludes that, in or around August 2008, the Applicant improperly hired and paid Ms. SZ, an architect, for design and supervision services for the construction of the Bank's Kuwait Country Office.

104. Ms. SZ told INT that, while she was working for a furniture retailer on the Country Office project, the Applicant asked her whether she could recommend a designer for tender document preparation, bid evaluation and site supervision, or if she could do the work herself. She agreed to perform the work personally. She stated that the Applicant paid her in two installments: half by wire-transfer and half in cash, which he personally handed to her. She recalled that the cash payment was the Kuwaiti Dinar equivalent of about \$1,750. Following her interview with INT, Ms. SZ produced personal bank account records showing that \$5,323 was transferred to her account on 26 January 2009 by the Decoration company, a Bank vendor at that time working on a Bank project in Beirut managed by the Applicant. She told INT she understood the transfer to be part payment of her fee.

105. The Applicant told INT that the construction of the Kuwait Country Office was a “fast-track project” that needed to be completed quickly in anticipation of a visit by the President of the Bank Group. He suggested that Ms. SZ do the design work and she accepted the offer, but wanted to do the work personally rather than on behalf of her then employer. The Applicant agreed to this and suggested she find a company to bill for her services. According to the Applicant, Ms. SZ was not able to find a company to bill for her services. He told INT that he therefore arranged for her to be hired through the Kuwaiti engineering company and that they paid her in cash.

106. However, the text of an apparent e-mail recovered from the hard drive of the Applicant’s Bank-owned computer, as well as a wire-transfer receipt dated 21 January 2009, indicate that the Applicant instructed Mr. AG, the owner of the Decoration company to transfer \$5,350 to Ms. SZ and that the Decoration company made this transfer on 21 January 2009. Although the Applicant told INT he could not remember requesting the Decoration company to make a payment, Mr. AG told INT that the Applicant had told him that the Bank had not yet set a budget for the Kuwait Country Office project, that Ms. SZ was pressuring the Applicant for payment and that he agreed to make the transfer as a favor to the Applicant. Mr. AG also stated that he wired the money to Ms. SZ as a “loan” and that she returned the money three weeks later through Western Union. He said he might still have a copy of the Western Union receipt and that he would try and produce it to INT. Despite a reminder, he did not do so.

107. The Tribunal finds that Ms. SZ’s bank records; the wire-transfer receipt; the text recovered from the Applicant’s Bank-owned computer; and Ms. SZ’s evidence that she received the other half of her payment in cash handed to her personally by the Applicant, establishes that the Applicant improperly hired and paid Ms. SZ. He plainly arranged for her to work on the Bank project with interests other than the Bank’s in view and failed to maintain an arm’s length relationship with her. As held below, he also authorized a fraudulent contract to the Kuwaiti engineering company enabling that company—in which the Applicant’s spouse had a proprietary interest as indicated by her signature authority

over its corporate bank account—to overcharge the Bank in respect of the services provided by Ms. SZ.

*Alleged inappropriate facilitation of employment of Mr. BA*

108. The INT Report concludes that the Applicant created “a sham construction management requirement [on] a Bank Group project in Romania for the sole purpose of employing a relative, [Mr. BA], who had no construction management qualifications” and “engaged in an undisclosed conflict of interest by improperly hiring his relative, [Mr. BA] ... on the Romania project, using [the Kuwaiti engineering company] as a front company.”

109. After initial denials that he had hired a relative, having been confronted with evidence by INT, the Applicant admitted that the construction “management” services were carried out by his cousin’s son, Mr. BA, that he had needed a job and that he had offered him this “temporary assignment” through the Kuwaiti engineering company. Mr. BA had no prior construction or construction management experience.

110. The Applicant told INT that he had decided to hire a construction manager because the project architect was “weak in communication.”

111. Mr. BT, the project architect, told INT that when Mr. BA resigned unexpectedly, his position remained unoccupied for two to three months until the Applicant brought in another person, Ms. MY, who worked on the project for about 25 days. Notwithstanding the two-month hiatus in the provision of services, the Applicant authorized payments to the Kuwaiti engineering company for the full amount of the contract.

112. The Tribunal finds that the Applicant inappropriately facilitated the employment of Mr. BA when he hired him. The Applicant made no disclosure of his personal relationship with Mr. BA to the Bank. By his admission, he hired Mr. BA because he needed a job, notwithstanding that he had no prior construction experience. It is plain the Applicant

arranged for Mr. BA to work on the Bank project with interests other than the Bank's in view, including his personal relationship with Mr. BA.

*Alleged inappropriate facilitation of employment of Ms. MY*

113. The INT Report concludes that the Applicant engaged in an undisclosed conflict of interest by personally hiring and improperly paying Ms. MY to take on the job previously performed by his relative on the Bank project in Romania.

114. Ms. MY told INT that she worked on the Romania project for approximately two weeks in early June 2010. She told INT that she knew the Applicant from, among other things, the time she lived in the Washington, DC area between 1990–2007. She said she unexpectedly met him in Kuwait, mentioned that she was between jobs and was looking for work, and the Applicant offered her a position as a “coordinator” on the renovation of the Bank's Bucharest Country Office.

115. She stated that the Applicant personally paid her, reimbursed her for her trip to Romania and per diem, and paid her hotel bill directly. She told INT that the Applicant had told her about a contractor to whom he purportedly sent her resume and which approved her for the project, but said she had never heard of the Kuwaiti engineering company or Mr. NH.

116. The Applicant told INT that Ms. MY was recommended by Mr. NH of the Kuwaiti engineering company, as a replacement for Mr. BA.

117. INT contacted the Kuwaiti engineering company's principals, Mr. HA and Mr. NH, by telephone. Both refused to meet with INT or submit to an audit of the Kuwaiti engineering company's records.

118. Taking into consideration the Kuwaiti engineering company's failure to cooperate with the Bank's investigators or to offer any evidence that their company engaged Ms.



MY, the Tribunal finds that the Applicant personally hired and paid Ms. MY for her work and paid for her accommodation. In doing so, he failed to maintain an arm's length relationship with her.

*Alleged inappropriate facilitation of employment of Mr. GR*

119. The INT Report concludes that the Applicant directed the Architecture firm, a Bank Group vendor, to hire his brother-in-law, Mr. GR, under at least two Bank contracts he managed and that he subsequently authorized payment of \$41,575 to the Architecture firm which the Architecture firm paid to Mr. GR.

120. The President of the Architecture firm, Mr. MB, told INT that he did not remember whether the Applicant introduced him to Mr. GR; that the Architecture firm had been looking for consultants to work with and that Mr. GR was fine; that, on both contracts, the Applicant negotiated Mr. GR's fee with him directly; and that the Architecture firm handled Mr. GR's work as "a direct pass-through, like any other reimbursable cost." Mr. MB explained, "We just took whatever invoices that [Mr. GR] had passed by and asked [the Applicant] is this what they agreed to." Mr. MB told INT that he did not know that Mr. GR was the Applicant's relative.

121. In the case of a project in Burundi, on 5 December 2006, the Architecture firm submitted an invoice for \$6,600 for engineering services in November 2006. The Applicant authorized the payment. On 7 December 2006, the Architecture firm transferred \$6,600 to a company owned by Mr. GR. In the case of a project in Lebanon, on 7 July 2008, due to project modifications, the Architecture firm submitted a request to the Applicant for a change order for \$19,253 of which \$9,975.09 was earmarked for Mr. GR's company. The Applicant authorized the change order. On 9 March 2009, in response to an inquiry from the Applicant asking the Architecture firm how much had been paid to Mr. GR's company, the Architecture firm confirmed the amounts wired. In total, the Architecture firm paid \$34,975.09 on the Beirut contract to Mr. GR's company.

122. The Tribunal finds that, when the Applicant negotiated Mr. GR's fee for work on Bank projects, the Applicant was in an actual conflict of interest because his undisclosed personal relationship with him made it impossible to negotiate with Mr. GR with the Bank's interest solely in view.

#### MISUSE OF BANK GROUP FUNDS FOR THE BENEFIT OF THE APPLICANT AND OTHERS

123. In the Decision Letter, the HRVP found that the Applicant

misused Bank Group funds that allowed [him] and others to personally benefit financially from Bank Group contracts [he] managed. [He] directed at least four Bank Group vendors ([the US engineering company], [the US construction company], [the Decoration company] and [the Virginia construction company]) that [he] project managed to transfer money to a personal bank account of [his] friend in Kuwait, who was not connected to these vendors. At the time, this friend was a principal of [the Kuwaiti engineering company], the company in which [the Applicant's] wife has an undisclosed financial interest through her signatory authority over a corporate account. [He] personally benefitted when at least \$14,820, proceeds from a Bank contract (Afghanistan project), were diverted to a member of [his] family to offset part of [his] personal debt.

124. The evidence relevant to these findings is considered below in the order in which it appears in the annexes to the INT Report.

#### *Alleged improper payments received from the Virginia construction company*

125. The INT Report concludes that the Applicant directed the Virginia construction company's owner, Mr. AB, to divert at least \$43,000, derived from the Virginia construction company's Bank contracts, to the personal bank account of the Applicant's friend, Mr. NH. The Applicant contends that the allegation is "wholly without merit."

126. In the text of a message recovered from the hard drive of the Applicant's Bank computer, the Applicant appears to provide Mr. NH's bank details to Mr. AB of the Virginia construction company stating "Hi, ["Mr. AB's first name"], this is the transfer

info.” When INT asked the Applicant about this message, he made no comment other than to confirm that “Mr. AB” was “the [the Virginia construction company] guy.”

127. When INT asked Mr. AB about it, he initially said he did not know Mr. NH, but when he was shown a copy of the message recovered from the Applicant’s Bank computer, he said that the request was related to “some company,” the name of which he said he could not identify. Mr. AB told INT that one of his “guys” sent money to Mr. NH, but he said he did not remember the details.

128. Between 28 June–23 September 2009, while the Virginia construction company was providing construction management services at the Bank’s Kabul Country Office, Mr. NH’s account records show three incoming transfers received from an abbreviation of the Virginia construction company’s name (which INT suggests refers to that company) and one from a person identified by his first name (which INT suggests refers to Mr. AB) amounting to a total of some \$43,000–44,000. The amounts of the three deposits made by an entity referred to by an abbreviation of the Virginia construction company’s name correspond to the amounts of invoices submitted by the Virginia construction company under the June 2009 Bank contract.

129. The Tribunal finds that the message recovered from the Applicant’s computer; Mr. AB’s confirmation that he recognized the request and that the Virginia construction company transferred funds to Mr. NH; and the transfers shown in Mr. NH’s account records which correspond to the amounts of invoices submitted to the Bank under the June 2009 contract, establish that the Applicant directed Mr. AB, the owner of the Virginia construction company, to make an improper payment of some \$43,000 to Mr. NH. The Tribunal notes that there is no evidence that Mr. NH had any business connection either with the Virginia construction company or the project on which the Virginia construction company was working in Afghanistan which might explain the transfers.

*Alleged improper payments received from Mr. MH*

130. The INT Report concludes that the Applicant received at least \$1,500 in improper payments from Mr. MH, the owner of the Shipping company, a Bank Group vendor.

131. In an e-mail dated 13 February 2009 from his personal e-mail account, the Applicant directed Mr. MH to “deposit \$450 today, and \$550 by next Tuesday” to the Applicant’s bank account through a bank branch located in Virginia.

132. The Applicant told INT that Mr. MH had not deposited the amounts indicated to his account. However, the Applicant’s bank statement indicates two deposits for \$450 and \$550 received on 13 and 17 February 2009 respectively at the bank branch located in Virginia. On 11 May 2009, a \$500 deposit was also received into the Applicant’s account.

133. The INT Report refers to a fragment of text recovered from the Applicant’s Bank-owned computer which refers to certain payments, the amounts of which correspond to the three deposits mentioned above. At the time of these transactions, Mr. MH was working on a Bank project in Kabul, Afghanistan, managed by the Applicant.

134. The Tribunal finds that the Applicant received these payments from Mr. MH. The Applicant’s unexplained denial that he received the amounts mentioned in the 13 February e-mail, as well as the lack of explanation for the payments and the fact that Mr. MH was contemporaneously working on a project managed by the Applicant, establishes that the payments were improper.

*Alleged fraudulent contract authorized to the US engineering company*

135. The INT Report concludes that the Applicant created a fraudulent contract for \$48,400 for the US engineering company to provide construction management services in the Kuwait country office and subsequently approved payment against invoices for services he knew had not been performed by the US engineering company.

136. The Applicant denies the allegation that the US engineering company was awarded contracts for services in Kuwait that were never performed. He states that the US engineering company in fact provided “very valuable” quality control and onsite project management services, preventing unstable construction, and that INT “severely” distorts the facts and context relating to this allegation. He asserts that the Kuwait project was established as a “high priority urgent project due to the deadlines created by the WB Regional VP” and that he “was under great time pressure” to complete the project by January 2009, did not know any local companies and thought that vendor registration would be too time consuming. The Applicant explains that there “were no identified Kuwaiti vendors available to support these immediate needs” and he “encouraged the use of existing vendors with a proven track record of performance.” INT points out, however, that other companies were able to obtain vendor registration within 6–8 days.

137. On 7 November 2008, the US engineering company received a single-source contract for \$48,400 authorized by the Applicant for construction management services in the Bank’s Kuwait Country Office. The scope of work required the construction manager to be present at the construction site full-time, six days a week. The US engineering company submitted three invoices for the work, equal to the full contract amount, all of which were reviewed and approved by the Applicant and paid by the Bank.

138. INT alleges, however, that the construction management services were in fact provided by a local architect, Ms. SZ, and the general contractor. Mr. AN of the US engineering company told INT that the US engineering company engaged a civil engineer, Mr. MA, to provide construction management services in Kuwait. He stated that Mr. MA’s resume might have been in the US engineering company files “in storage” and that he could not find an electronic copy. As for the records of payments to Mr. MA, Mr. AN stated that the information was “privileged” and could not be shared. He advised INT to contact Mr. MA directly at an e-mail address he supplied.

139. INT sent a message to Mr. MA at the e-mail address provided by Mr. AN. On 28 October 2011, INT received a reply in which Mr. MA stated that he worked for the US

engineering company in 2008 on a project for the office of the World Bank. On 31 October 2011, INT replied seeking further information but as of the date of the Final Report (30 March 2012) it had received no response.

140. The Applicant requested that the Tribunal strike from the record certain evidence provided by the Bank relating to Bank Group sanctions proceedings against the US engineering company. The Tribunal finds it unnecessary to refer to this evidence so it need not rule on the Applicant's request.

141. INT interviewed four witnesses who identified four individuals with the same first name as Mr. MA who worked on site, but none who had the same last name or who were employed by the US engineering company. The project architect, Ms. SZ, for example, told INT that all of her "coordination" was with the Applicant and the general contractor, and that, although she was on site about four times a week for a couple of hours on each visit, she observed no one else on site providing construction management services, except Mr. MF, a foreman who worked for one of the general contractor's sub-contractors. The Tribunal finds the evidence provided by the four witnesses detailed and credible.

142. The INT Report also notes that although the scope of work and duration of services in the US engineering company proposal was the same as for the construction administration services provided by the US engineering company in the Vienna country office, the proposed contract price of \$48,400 was four times the \$10,350 price proposed for the Vienna project. Mr. KA, former Contracts Officer (GSD), raised this issue with the Applicant in an e-mail on 7 November 2008 stating that "there is difference in the service now compared with the proposal ... the cost ... for this small job is inconsistent with the project size/effort ... please speak with [the US engineering company] and let me know." The same day the contract was awarded to the US engineering company at the \$48,400 figure.

143. The Tribunal finds that the Applicant authorized a contract for construction management services for the US engineering company and authorized payments of

\$48,400 to the US engineering company when he knew that the related services had already been provided by the local architect and the general contractor. The witness evidence casts significant doubt on the US engineering company's assertion that Mr. MA acted as the construction manager, particularly considering he would have been expected to be on site full-time, six days per week. The Tribunal can give little weight to the e-mail received from Mr. MA's purported e-mail account, given the brevity of the e-mail, the subsequent lack of response to INT's further inquiry, and the fact that a free e-mail account of this nature can be readily established.

*Alleged improper payments received from the US engineering company*

144. The INT Report concludes that proceeds from the US engineering company's fraudulent \$48,400 contract for construction management in Kuwait were diverted to the Applicant's friends, Mr. MH and Mr. NH. It further concludes that this created the opportunity for the Applicant to benefit personally from these funds given his personal relationships and financial connections with Mr. MH and Mr. NH.

145. Data recovered from the Applicant's Bank-owned computer appears to refer to the distribution of the \$48,400 received from the Bank contract awarded to the US engineering company for construction management services in the Kuwait country office, to the US engineering company and to "[Mr. MH's first name]." INT alleges that the reference to "[Mr. MH's first name]" is to Mr. MH, who is not employed or otherwise connected to the US engineering company, but is a friend of the Applicant.

146. Mr. NH's bank account records indicate that the US engineering company made two transfers to him corresponding to amounts paid to the US engineering company by the Bank in respect of the Kuwait contract (a total of \$29,800).

147. The Applicant states that because he was familiar with Kuwait due to his university studies there, he introduced vendors to various local people. He asserts that any payments

made by vendors to Mr. NH were not known to him and he received no financial or other benefit from making the introductions.

148. The Tribunal finds that the Applicant was involved in the diversion of funds to his friends, and personally benefitted from these funds himself, in view of the text recovered from the Applicant's hard drive, the Applicant's lack of explanation for it, and the fact that bank records show that the US engineering company made payments to Mr. NH corresponding to amounts paid to the US engineering company by the Bank in respect of the Kuwait construction management contract. The Tribunal notes that Mr. NH was a principal in the Kuwaiti engineering company, over whose corporate account the Applicant's Construcwife had signature authority. Furthermore, as examined in detail below, Mr. MH was a principal in a company ("Construction company X (Afghanistan)") associated with Construction group X, a company owned by the Applicant and his wife.

*Alleged improper payments received from the US construction company*

149. The INT Report concludes that the Applicant diverted at least \$45,028 in Bank contract funds, by way of change orders to the US construction company, to his friends Mr. MH and Mr. NH. It further concludes that the Applicant misappropriated \$14,820 of Bank contract proceeds to the bank account of his brother-in-law, Mr. GR, in partial payment of a debt owed by the Applicant to his sister.

150. Information recovered from the hard drive of the Applicant's Bank-owned computer appears to refer to a breakdown of funds from the first three change orders authorized by the Applicant and issued to the US construction company between 8 May–6 August 2009. The breakdown indicates amounts and dates of payments to two individuals identified by their first names. INT alleges that these names refer to Mr. MH, the Applicant's friend and the president and majority shareholder of Construction company X (Afghanistan), and Mr. NH respectively.



151. Bank account records indicate that on 16 April 2009, the US construction company deposited approximately \$14,820 into Mr. NH's account; and that the same day, Mr. NH transferred the same amount to the bank account of Mr. GS, also known as Mr. GR, the husband of the Applicant's sister. An e-mail from the Applicant's sister dated 3 June 2009 indicates that this amount was received by her to pay off what she refers to as "a loan" to the Applicant. The Applicant states that the reference to a "loan" is in fact to an amount he agreed to pay his sister in addition to her entitlement under Sharia law for the sale of a family property he and his siblings inherited in Jordan.

152. The information recovered from the Applicant's Bank-owned computer also refers to an "unclaimed change order to the US construction company" of "\$12,559.90 as of sep 30, 2009." This figure is \$5 less than the last change order request submitted by the US construction company on 26 June 2010 for "wall construction." On 7 December 2010, the Applicant authorized the request, not for wall construction, but as payment of "retention funds," although the contract did not provide for a retention fund.

153. The Tribunal finds that the Applicant diverted Bank contract funds to Mr. MH and Mr. NH, and benefitted himself in the sum of at least \$14,820, the amount transferred to his brother-in-law's bank account. In reaching this conclusion, the Tribunal accords weight to the information recovered from the Applicant's Bank-owned computer, the e-mail from the Applicant's sister, and Mr. NH's bank account records.

*Alleged improper payments received from the Decoration company*

154. The INT Report concludes that the Decoration company, a Lebanese construction company, made two deposits totaling the equivalent of \$29,216 to the bank account of Mr. NH while it was working on a \$1.55 million contract for the construction of the Bank Group's Country Office in Beirut, managed by the Applicant.

155. Mr. NH's bank account records show that on 30 April 2009, the Decoration company deposited an amount equivalent to \$29,216 into his account. On 3 May 2009, Mr.

NH made a transfer of an amount equivalent to \$9,500 in Kuwaiti Dinars to the bank account of Mr. GS, also known as Mr. GR, the Applicant's brother-in-law. Without the deposit from the Decoration company, Mr. NH would not have had sufficient funds in his account to make this transfer.

156. Information recovered from the Applicant's Bank-owned computer indicates that the Applicant directed the Decoration company to wire at least \$14,650 to Mr. NH's account.

157. An e-mail from the Applicant's sister indicates that the \$9,500 transfer to Mr. GS was in partial repayment of what his sister referred to as a "loan" extended by her to the Applicant.

158. The Tribunal finds that the Applicant diverted \$29,216 in Bank funds to Mr. NH and benefitted himself in the sum of at least \$9,500 by misappropriating that amount to his brother-in-law's bank account. The Tribunal places weight on the transfers from the Decoration company and to Mr. GS that appear in Mr. NH's bank records, the text recovered from the Applicant's hard drive and the e-mail from the Applicant's sister.

*Alleged inflation of Bucharest construction administration contract  
authorized to the Kuwaiti engineering company*

159. The INT Report concludes that the Applicant knowingly inflated the value of a contract to the Kuwaiti engineering company by providing for construction management services related to the renovation of the Romania Country Office at a cost of \$88,715, when no more than construction administration services were required.

160. On 21 January 2010, the Bank issued a contract for \$88,175 to the Kuwaiti engineering company for construction management services for the renovation of its Country Office in Bucharest.

161. The contract award followed a proposal solicitation by the Applicant at the insistence of Mr. KA, former Contracts Officer (GSD), because, since the contract was in excess of \$50,000, competition was required. However, e-mails from the Applicant to Mr. KA of 7 January 2010 and 14 January 2010, state that the Applicant only solicited and received proposals from the Kuwaiti engineering company, the US engineering company, and the Virginia construction company, all companies with which the Applicant had personal and/or financial relationships. Mr. KA himself subsequently solicited a proposal from a company based in Virginia, which came in at \$121,500, substantially higher than the Kuwaiti engineering company's and the US engineering company's quotes. In light of this, Mr. KA approved the selection of the lowest bidder, the Kuwaiti engineering company, and issued the contract.

162. According to both the Applicant and Mr. KA, construction management services require specific prior experience in construction and construction management. However, the Applicant told INT that all that was in fact needed on the project in Bucharest was a person to help the project architect communicate with the contractors, the Bank's Country Manager and others. The Tribunal accepts the evidence in the record that these tasks are more akin to construction administration services, which are less demanding and less costly than construction management services.

163. After initial denials that he had hired a relative, having been confronted with evidence by INT, the Applicant admitted that the construction "management" services were carried out by his cousin's son, Mr. BA, and that he had offered him this "temporary assignment" through the Kuwaiti engineering company. Mr. BA had no prior construction or construction management experience.

164. The project architect, Mr. BT, told INT that Mr. BA worked on the project for approximately three months and confirmed that his duties were of an administrative nature that did not require construction experience. Mr. BT told INT he would expect to pay \$1,500-2,000 per month for such services in Romania. Mr. BT told INT that when Mr. BA unexpectedly resigned, his position remained unoccupied for 2-3 months until the

Applicant brought in another person, Ms. MY, who worked on the project for about 25 days. Notwithstanding the two-month hiatus in the provision of services, the Applicant authorized payments to the Kuwaiti engineering company for the full amount of the contract.

165. Ms. MY told INT that the Applicant offered her a position as a “coordinator” on the Bucharest project, that her duties were less than those of a construction manager and she would have expected to receive higher pay had she been hired as a construction manager. She said the Applicant paid her the equivalent of approximately \$1,500 to \$2,000, and reimbursed her for her trip to Romania and per diem expenses and paid her hotel bill directly. Mr. KA, former Contracts Officer (GSD), reviewed Ms. MY’s CV and told INT that she did not have the necessary experience for a construction management position.

166. INT contacted the Kuwaiti engineering company’s principals, Mr. HA and Mr. NH, by telephone. Both refused to meet with INT or submit to an audit of the Kuwaiti engineering company’s records.

167. The Tribunal finds that the Applicant authorized a contract for construction management services when construction administration services were all that was required, thus inflating the value of the contract and enabling the Kuwaiti engineering company to overcharge the Bank. Both the project architect and Ms. MY recalled that the duties performed were administrative and not managerial. This is corroborated by the fact they were carried out by individuals who had no or, in Ms. MY’s case, insufficient, experience for a construction management position. Furthermore, after Mr. BA resigned, no one performed his duties for two to three months and notwithstanding this, the Applicant authorized payment of the full amount of the contract to the Kuwaiti engineering company. The Tribunal also takes into consideration the refusal of the Kuwaiti engineering company’s principals to cooperate with the Bank’s investigators.

*Alleged fraudulent contract authorized to the Kuwaiti engineering company*

168. The INT Report concludes that the Applicant created a \$43,404 fraudulent contract for the Kuwaiti engineering company and subsequently approved payment against invoices for services that he knew the company had not performed and which had in fact been performed by Ms. SZ. The Bank states that the fraudulent contract was intended “at a minimum [to] recover the funds [the Applicant] personally paid to [Ms. SZ],” but also gave the Kuwaiti engineering company, a company in which the Applicant’s wife had a financial interest as indicated by her signing authority over its bank account, the opportunity to receive unearned payments.

169. On 23 October 2009, the Applicant authorized a Bank contract to the Kuwaiti engineering company worth \$43,404 in local currency, for design and construction management services that had already been provided by Ms. SZ between August 2008–January 2009. On 18 May 2010, the Kuwaiti engineering company was issued a change order worth \$6,443 in local currency.

170. The Kuwaiti engineering company submitted four invoices between 8 November 2009–28 April 2010 referring to services performed by Ms. SZ. The Applicant approved each invoice. The Applicant told INT that he had asked his friend Mr. NH of the Kuwaiti engineering company to contract with the Bank so that Ms. SZ could be paid for services she had already provided.

171. The Applicant also told INT that he suggested to Mr. NH that he add a mark up of between 10–15%. He explained that if the contract for design and construction management services amount to more than 10–12% of the construction cost, there “would be an issue.”

172. As INT notes, the \$43,404 contract awarded to the Kuwaiti engineering company far exceeds the \$25,264 figure that would represent 12% of the \$210,532 construction contract. Ms. SZ told INT that she received no more than about \$10,000 for her work.

173. The Tribunal finds that the Applicant authorized a fraudulent contract. The Tribunal notes the Applicant's admissions that the contract was authorized to enable payments for services already provided, and that he authorized the Kuwaiti engineering company to add a profit element, notwithstanding the fact that it did no work in relation to the services. The Tribunal also notes that the contract price was substantially more than the 12% that would normally be expected for design and construction management services, and that Ms. SZ recalled she was paid around \$10,000 for her work, which is to say substantially less than the value of the contract awarded to the Kuwaiti engineering company.

174. The Tribunal recalls that the Applicant's wife had signing authority over the Kuwaiti engineering company's corporate bank account. The Tribunal also considers the 18 May 2010 change order, increasing the value of the contract by \$6,443, to be inconsistent with the Applicant's explanation that the contract was authorized to enable payment for services already provided.

*Alleged improper payments received from the Afghan construction company*

175. The INT Report concludes that the Applicant abused his position for personal gain by receiving at least \$2,500 from Mr. HS, the owner of the "Afghan construction company."

176. The INT Report refers to a fragment of text recovered from deleted files on the Applicant's Bank-owned computer hard drive. This appears to indicate payments received from Mr. HS, the owner of the Afghan construction company, by "[an abbreviation of Mr. HS's first name]." An e-mail of 15 February 2009 from the Applicant's World Bank e-mail account to Mr. RB (also known as Mr. MH) refers to an individual identified by Mr. HS's first name making a payment to Mr. RB. E-mails from Mr. RB to the Applicant's personal e-mail address, dated 27 May 2009 and 6 June 2009 refer to payments received from "[an abbreviation of Mr. HS's first name]" in the same amounts indicated in the fragment of text recovered from the Applicant's Bank-owned computer.

177. When asked about the 15 February 2009 e-mail, Mr. HS told INT that at the Applicant's request he lent the money to Mr. RB, but stated that the amount did not exceed \$1,000 and that it was on one occasion only. He stated that Mr. RB had returned the money. He could not explain the other e-mails or payments breakdown. He stated that he was not engaged in any outside business with the Applicant and never gave any money to him.

178. When asked about the e-mails from Mr. RB, the Applicant told INT that he was not prepared to comment on his personal e-mail account and that he did not recall any of the e-mails. He also stated that he was not aware of the expenditure breakdown in the e-mails or in the information recovered from his Bank-owned computer, and could not explain it. He told INT that he would investigate the matter, but has provided no further explanation.

179. The Tribunal finds that the text recovered from the Applicant's computer, the e-mails referring to payments from individuals identified by Mr. HS's first name and an abbreviation thereof, as well as the limited credibility of the explanation offered by Mr. HS, establishes the Applicant abused his position for personal gain by receiving at least \$2,500 from Mr. HS.

#### MISREPRESENTATIONS IN 2009 FINANCIAL DISCLOSURE SUBMISSION

180. In his Decision Letter, the HRVP concluded that the Applicant

made willful misrepresentations in [his] 2009 Financial Disclosure submission to the Office of Ethics and Business Conduct by omitting [his] and/or [his] spouse's financial and/or proprietary interests in two companies, [Construction group X] and [the Kuwaiti engineering company]. The latter was a beneficiary of two Bank Group contracts in the total amount of \$138,022, which were under [the Applicant's] direct supervision.

181. On 25 April 2010, the Applicant filed his 2009 Financial Disclosure submission (stating information as of 31 December 2009) indicating, among other things, that neither

he nor his immediate family members had proprietary interests in any businesses or held any positions outside of the Bank Group. The form instructions indicate “any proprietary interest, regardless of value, must be reported.”

*Construction group X*

182. The Applicant contends that Construction group X had ceased to exist at the time the Kuwaiti engineering company was established. He asserts he formed Construction group X in February 1997 and that he allowed its charter to expire after he first joined the World Bank in 1998. He further asserts that Construction group X was reincorporated in 2006 for the “sole purpose of acting as the general contractor/builder for construction” of his residence, so as to avoid any personal liability arising therefrom, and that no other work was performed by Construction group X until its corporate charter again expired in 2008. The Applicant contends that when he completed his 2009 Financial Disclosure, Construction group X was not in business.

183. Records relating to a bank account associated with Construction group X, obtained by INT, show no major financial activity for the company. There is evidence, however, that indicates that it was an active business concern in which the Applicant and his wife, along with Mr. MH, were involved.

184. In or around February 2009, the Applicant’s wife purchased a domain name registration, incorporating Construction group X’s name, and the Applicant informed Mr. MH of this by e-mail.

185. On 4 March 2009, the Applicant sent two e-mails to Mr. RB (also known as Mr. MH) including the By Laws of Construction group X and company information, identifying the Applicant and his wife as members of the Board of Directors.

186. On 24 March 2009, Mr. MH and the Applicant’s wife signed a letter on the letterhead of and on behalf of the board of directors of Construction group X, on which the



Applicant also serves, authorizing Mr. MH to act on the board's behalf in establishing an Afghan corporation (to be known as Construction company X (Afghanistan)) of which Mr. MH would be a 99% shareholder and referring to Mr. MH as "our current president."

187. Also, on 24 March 2009, the Afghanistan Investment Support Agency ("AISA") received fees of over \$700 for the licensing and advertisement of Construction company X (Afghanistan) and on 30 March 2009, the AISA issued a license to this entity.

188. On 1 April 2009, Mr. MH forwarded a copy of the license to the Applicant stating "Finally we are partners..." On 22 April 2009, the Applicant forwarded this e-mail to his wife.

189. In May 2009, Construction company X (Afghanistan) registered with the US Central Contractor Registration database, a requirement for businesses soliciting US government contracts, naming the Applicant's wife and Mr. MH as company contacts.

190. On 27 May and 6 June 2009, Mr. RB (also known as Mr. MH) e-mailed the Applicant "expenditure reports" in the form of spreadsheets, including an AISA licensing fee of \$800 (closely approximating the fee paid to AISA for the registration of Construction company X (Afghanistan)).

191. On 6 June 2009, Mr. MH asked in an e-mail to the Applicant "I am registering [an abbreviation of Construction company X (Afghanistan)'s name] as a WB vendor. I am using my home address and phone #. I need to register a bank acct. Should I use same one you provided?"

192. INT also obtained a business card provided by Mr. MH to a member of Bank staff in the Kabul Country Office. It states that Mr. RB is the president of Construction company X (Afghanistan) and includes a corporate e-mail and website address which is the same as that registered by the Applicant's wife in February 2009.

193. The Applicant told INT that he had never been a business partner, or discussed a partnership, with either Mr. MH or Mr. RB. He asserts that the authorization purportedly signed by his wife, authorizing Mr. MH to establish an associated company in Afghanistan, is fake.

194. In a written statement, Mr. MH told INT that he had never “had any affiliation with any company or entity that is owned by [the Applicant] or any of his family,” that Construction company X (Afghanistan) is a corporation he “created” in Kabul and has “no relation with” Construction group X.

195. The Tribunal finds that Construction group X was an active business concern in 2009, in which the Applicant and his wife were actively involved, and that the Applicant and his wife had an interest in the company which the Applicant wilfully misrepresented in his 2009 submission to the Bank’s Office of Ethics and Business Conduct.

*The Kuwaiti engineering company*

196. The Applicant denies that he has any connection with the Kuwaiti engineering company, and states that neither he nor his wife has any financial or proprietary interest in it. He states that Construction group X had ceased to exist at the time the Kuwaiti engineering company was established. He attributes the similarity between the names of the Kuwaiti engineering company and Construction group X to a “coincidence.”

197. As the Tribunal has already noted, the Kuwaiti engineering company is owned by Mr. HA and its Director of Operations is Mr. NH. The Applicant’s personal relationship and other connections with these individuals has been set out above, including the Applicant’s assistance with the medical condition of one of Mr. HA’s children, and that Mr. NH has an e-mail account with the same corporate domain name as the Applicant’s wife and received payments into his bank account from Bank vendors who worked on projects managed by the Applicant.

198. Furthermore, according to banking records obtained, since 11 November 2009, the Applicant's wife has been an authorized signatory on the Kuwaiti engineering company's corporate bank account in Kuwait, by virtue of a letter signed by the Kuwaiti engineering company's manager. The Applicant told the Tribunal he omitted to disclose his wife's signing authority over the Kuwaiti engineering company's bank account by "a simple oversight"; that it was an arrangement "for a short period when the owner" of the Kuwaiti engineering company, his wife's brother-in-law, was traveling; and that he did not understand the signing authority to be a financial interest within the meaning of the financial disclosure form.

199. The record is clear that in November 2009 the Applicant's wife became an authorized signatory over the Kuwaiti engineering company's corporate account. Weighing this together with the evidence of the Applicant's personal relationship and financial connections with the owner of the Kuwaiti engineering company and its Director of Operations, the Tribunal concludes the Applicant had a financial or proprietary interest (through his wife) in the Kuwaiti engineering company, which he wilfully misrepresented in his 2009 Financial Disclosure submission.

WHETHER THE FACTS ESTABLISHED CONSTITUTE MISCONDUCT,  
THE SANCTIONS IMPOSED ARE PROVIDED FOR IN THE LAW  
OF THE BANK AND ARE PROPORTIONATE

200. In his Decision Letter, the HRVP stated:

The established facts legally constitute misconduct under Staff Rule 8.01, namely:

- a. Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment (para 2.01 (a));
- b. Failure to observe procurement policies (para 2.01 (a));
- c. Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct (para 2.01 (b));

- d. Failure to observe the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group (para 2.01 (b));
- e. Willful misrepresentation of facts intended to be relied upon; (para 2.01 (b));
- f. Acts or omissions in conflict with the general obligations of staff members set forth in Principle 3 of the Principles of Staff Employment (i.e., staff members shall avoid any situation or activity that may reflect adversely on the Organizations, and shall conduct themselves at all times in a manner befitting their status as employees of an international organization) and Staff Rules 3.01 through 3.04; (para 2.01 (c));
- g. Misuse of Bank group Funds for personal gain of oneself or another in connection with Bank activities or employment (para 2.01 (d));
- h. Abuse of position in the Bank for personal gain of oneself or another (para 2.01(d)).

201. As the INT Report points out in regard to the specific conclusions reached in its annexes, certain Staff Rules were amended over time. The Tribunal considers, however, that each of the findings considered in this judgment amounts to a breach of Principle 3 of the Principles of Staff Employment. Corresponding Staff Rules require staff members to observe the Principles of Staff Employment. Each of the acts of misconduct considered here involves a lack of integrity, a lack of concern for the interests of the Bank and situations that reflect adversely on the Bank. Each compromises its operations, and leads to real or apparent conflicts of interest. Each involves a failure to observe generally applicable norms of prudent professional conduct.

202. There are also numerous instances of the Applicant acting under real or apparent conflicts of interest related to his personal relationships and financial interests. The Tribunal considers that, notwithstanding the Applicant's contentions, these went far beyond professional networking norms.

203. The most grave of the acts of misconduct—including the inflation of contract amounts, the authorization of contracts and payments for services that were not provided to the Bank, the arrangement of improper payments from Bank vendors and the misappropriation of contract funds paid to Bank vendors for the Applicant's own benefit and the benefit of others—plainly amount to repeated misuse of Bank funds and abuse of position for personal gain of the Applicant or others. The Tribunal also finds that there were willful misrepresentations in the Applicant's 2009 financial disclosure submission.

204. These matters are all the more serious given the Applicant's special responsibility as a staff member involved in procurement activity on behalf of the Bank. This special responsibility is expressly recognized in the current version of Staff Rule 3.01, paragraph 10.04, but, in any event, it is plainly apparent from Principle 3.

205. There is no doubt that the Applicant often worked under demanding conditions, in difficult working environments and under great time pressure. The Bank asked much of him. He spent much of each year away from his family, making this personal sacrifice and placing his personal safety at risk by working in conflict zones and other challenging environments. Clearly, the Bank valued his energy and ability. The Tribunal heard evidence that he was assigned to difficult projects in difficult circumstances because of his proven ability to deliver the results required by the Bank's leadership. It is also plain from his performance appraisals that he delivered highly satisfactory results, but those appraisals were apparently completed in ignorance of his failure to comply with Bank rules and policies. It is no defense for him to say that he completed his projects on budget and to the required specification when there appears to have been sufficient room in the budgets for him and his associates to reap improper benefits.

206. The Bank's mission to alleviate poverty and build prosperity demands that it be a model of integrity, transparency, competition and value in its procurement activities. The Bank also demands high standards of business and procurement conduct from corporations and individuals working on Bank-financed projects. It can demand no less of its own staff.

As the Bank points out, it is charged with the administration of public funds and accordingly, its staff members are placed in a position of public trust.

207. The Tribunal is satisfied that the facts established constitute misconduct. The sanctions imposed by the HRVP in this case are provided for under Staff Rule 8.01, paragraph 3.03. They are not disproportionate to the acts of misconduct that have been established.

#### WHETHER THE REQUIREMENTS OF DUE PROCESS WERE OBSERVED

208. The Applicant complains that INT failed to seek exculpatory evidence in that it failed to interview the Applicant's immediate manager or department colleagues. He argues it is "impossible to imagine" that an interview with his manager could have no evidentiary value. He also argues that he needs to know which other witnesses INT interviewed in order to ascertain whether those witnesses he considers essential were in fact interviewed, and that he is entitled to review the transcripts of their interviews. The Bank asserts that the Applicant's manager had no information relevant to the allegations under investigation, due to the decision-making autonomy afforded the Applicant in his senior position. During the oral proceedings, the Tribunal heard testimony from the Applicant's manager and the Bank's assertion was sustained.

209. In this regard, the Tribunal notes that INT's practice of not including the transcripts of some witness interviews in its reports is conducive to suspicions in the minds of investigated staff members, whether or not such suspicions have any basis in fact. Staff Rule 8.01, Annex A, paragraph C(3)(b) confirms that INT's investigative mandate is to obtain and evaluate all available evidence—both inculpatory and exculpatory—and paragraph C(3)(i) requires that staff members be provided with all evidence (including transcripts of witness interviews) contained in the draft INT Report, for their review and comment. INT's "Guide to the Staff Rule 8.01 Investigative Process" (August 2011), pages 23–24, recognizes that a subject staff member has the "right to review and respond *to all information and evidence that will be provided to the decision-maker*" and that this

includes all witness testimony “*material to the investigative findings*” (emphasis added). The Tribunal has previously held that due process does not necessarily require that a staff member receive transcripts of all witness interviews undertaken. See *Rendall-Speranza*, Decision No. 197 [1998], para. 61; *Arefeen*, Decision No. 244 [2001], para. 46. The Tribunal notes, however, that it is difficult to conceive of a situation in which INT would be entitled to withhold witness testimony that has any material relevance to the allegations. Exculpatory witness testimony will, in principle, always be material. The cases referred to above emphasize the requirement that subject staff members receive an adequate opportunity to respond to allegations made against them and to put forward their own evidence. The Tribunal is satisfied the Applicant had such an opportunity in the present case.

210. The Applicant also complains that it was impractical to review the INT Report at INT’s office and argues that INT breached Staff Rule 8.01 by requiring him to sign an NDA in order to receive a copy. He argues that the Staff Rules prescribe no basis for INT to so condition his review of the draft report. He states that INT’s invitation to review the draft report in its offices was “impractical given the sheer volume of the report and the gravity of the allegations” and was “an insincere effort designed to mitigate their violation” of policy and due process.

211. The Bank submits that the Applicant was not provided a copy of the draft INT Report only because he refused to sign the NDA used in all investigations since 2003 and additionally refused to review the draft Report at INT’s office. The Tribunal considers that requiring the subjects of investigations to sign an NDA is a reasonable exercise of a discretion possessed by the Bank, especially where review in the INT office (without signing an NDA) is an available alternative. As INT has explained in its submissions to the Tribunal, the option of signing an NDA and receiving a copy of the final report in draft was intended for the benefit of staff members who were previously only allowed to review it at INT’s office. The Tribunal considers that the Bank complied with its obligation to “provide a copy of the final report in draft for review and comment” to the Applicant when it offered him the opportunity to do so within the confines of the INT office without

signing an NDA. The Tribunal notes that whereas Annex A to Staff Rule 8.01 refers to a copy of the final report in draft being “provided to” the Applicant for “review and comment,” it refers to an NDA being required for him to “receive a copy” of the final report. The Tribunal considers that reference is made to the NDA in relation to the final report because it is anticipated that staff members will receive a copy for their records and to make them aware of any INT rebuttal to comments made by the staff member on the draft report. The “final report in draft,” however, is only to be “provided ... for review and comment,” an exercise which can be undertaken within the confines of INT’s office.

212. While the Tribunal recognizes the difficulty of examining a long and complex report at INT’s office, if the Applicant wished to take a copy for further scrutiny, he could have signed the NDA. He has not established any prejudice that would have befallen him had he done so.

213. Finally, the Applicant contends he had limited access to his World Bank e-mail records because of technical problems with the equipment provided to him by the Bank. He complains that his e-mails before October 2008 have been destroyed and that this restricts his ability to refresh his memory about transactions conducted many years ago. He suggests INT had access to the destroyed e-mails during the investigation.

214. The Bank contends that the e-mails were destroyed pursuant to the document retention policy in Administrative Manual Statement 12.10 and states that INT only had access to the standard two-year back up files retained by the Bank.

215. The Tribunal notes that very few, if any, of the findings in the INT Report rely upon uncorroborated pre-2008 e-mails. In response to the Tribunal’s request for information, the Applicant admitted that he had also had access to his pre-2006 Lotus Notes e-mails on his personal computer. His 10 February 2011 e-mail to INT also confirms that he had been able to access Lotus Notes files provided to him by INT. In all the circumstances of the present case, the Tribunal finds that the record discloses no breach of due process. This having been said, it is incumbent upon the Bank to ensure that a staff



member's e-mail records are safeguarded from destruction whenever a preliminary inquiry is launched in order that relevant correspondence is preserved to the maximum extent possible.

#### DECISION

The Application is dismissed.

/S/ Stephen M. Schwebel  
Stephen M. Schwebel  
President

/S/ Olufemi Elias  
Olufemi Elias  
Executive Secretary

At Washington, D.C., 28 February 2014