



World Bank Administrative Tribunal

2020

Decision No. 638

**FQ,
Applicant**

v.

**International Finance Corporation,
Respondent**

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

**FQ,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 30 October 2019. The Applicant was represented by Peter C. Hansen and J. Michael King of the Law Offices of Peter C. Hansen, LLC. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Administration), Legal Vice Presidency. The Applicant's request for anonymity was granted on 2 November 2020.

3. The Applicant challenges the decision of the Vice President, Human Resources (HRVP) that he committed misconduct and asserts that the disciplinary sanctions imposed on him are barred by the statute of limitations in Staff Rule 8.01, paragraph 3.03. The Applicant also asserts that the investigation of the Integrity Vice Presidency (INT) was procedurally flawed and violated his due process rights.

FACTUAL BACKGROUND

4. The Applicant joined the World Bank Group (WBG) at the headquarters (HQ) in Washington, D.C., on 2 January 2013 as an Extended-Term Consultant (ETC) in the Independent Evaluation Group (IEG). According to Staff Rule 4.01, paragraph 2.01(h), an ETC appointment is a "full-time appointment at the equivalent of grade GE or above for a minimum of one year, renewable for a second year, subject to a lifetime maximum of two years for all Extended Term appointments." This is to be contrasted with a Short-Term Consultant (STC) position.

5. According to the Bank's ETT/ETC Summary of Benefits and Important Notes for HQ Staff, in addition to their annual salary, staff members on ETC contracts are eligible for various benefits, including annual leave of two personal days for each full month of service; medical insurance; life insurance; workers' compensation insurance; and termination payment of 15% of their final salary for each year and a fraction of a year of ETC service.

6. Prior to joining the WBG, the Applicant worked as a Senior Environmental Specialist for the Department of the Environment of the District of Columbia in Washington, D.C., between 2006 and 2009. From 2009 to 2012, he worked as a Long-Term Consultant and Senior Environmental Officer for the African Development Bank (AfDB). On 3 December 2012, the Applicant requested and was granted Leave Without Pay from the AfDB for two years commencing on 16 January 2013 and ending on 17 January 2015. It would appear from his WBG personnel records that, for a period of two weeks, the Applicant was employed, contemporaneously, by both the WBG and the AfDB.

7. The Applicant's ETC contract was extended, initially, from 2 January 2014 to 1 January 2015 and, again, from 2 January 2015 to 1 January 2016. The Applicant's responsibilities as an ETC included (i) preparation of environmental and social review reports; and (ii) supporting management in preparing inputs to environmental studies and IEG comments on documents pertaining to environmental and social matters.

8. In accepting his position with the WBG in 2013, the Applicant signed a Letter of Appointment in which he certified that he had "received, reviewed, and [understood] the World Bank Group's Staff Principle 3 General Obligations of Staff Members and Staff Rules 3.01–3.03."

9. From 14 to 16 January 2013, the Applicant attended an orientation course for new staff members. On 16 January 2013 between 10:40 a.m. and 12:00 noon, the Applicant attended a session on ethics and integrity presented by the Office of Ethics and Business Conduct (EBC) and INT on fraud, corruption, and conflicts of interest.

10. On 18 January 2013, approximately two weeks after joining the Bank as a full-time ETC staff member, the Applicant registered with the Virginia State Corporate Commission an advisory firm named the Center for Environment & Development (CED) which would “provide energy, environmental, health, safety, risk, social consulting services and sustainability related services.” The Applicant served as CED’s Managing Director and Lead Environmentalist.

11. On 25 January 2013, the Applicant completed a mandatory course in the Bank entitled “Living Our Values: Introductory Course on the Code of Conduct.” This course included topics on conflicts of interest, outside business activities, and General Principles of Staff Employment.

The Regional Joint Project and the Applicant’s outside business activities

12. The Regional Joint Project (Joint Project) is a regional energy project designed within the framework of the Eastern Africa Power Pool (EAPP) to develop power system interconnections within the EAPP member countries, specifically, Ethiopia, Kenya, Rwanda, Tanzania, and Uganda. The Joint Project became effective in 2013. The Joint Project is financed by the WBG, AfDB, French Development Agency, Japan International Cooperation Agency, and local governments, and consists of three phases, which in turn have several components and sub-components.

13. Between 2013 and 2014, the Applicant, through CED, provided services to an Ethiopian consulting firm. Such services included conducting an environmental, health, and safeguard assessment for a project financed by the Ministry of Health in Ethiopia, and preparation of an environmental impact assessment for the Kenya–Tanzania Transmission Line (Kenya–Tanzania project) a component of the Joint Project. This component was financed by the Japan International Cooperation Agency, national governments, and the African Development Fund which is a part of the AfDB. CED acted as a subcontractor for the Ethiopian consulting firm on the Kenya–Tanzania project.

14. In 2013 or 2014, the Applicant met a representative of Company X at a workshop held at the Ethiopian Electric Power Corporation, which the Applicant attended in his personal capacity and not as a World Bank staff member.

15. On 29 September 2014, the Applicant, through CED, entered into a consultancy agreement with a Bosnian firm. This agreement concerned components of the Joint Project for which the Bosnian firm would participate as a bidder while CED would supply information and market analysis, as well as assistance with the preparation of tender documents. The agreement noted that CED would receive a commission of 2% of the value of any contracts awarded to the Bosnian firm.

16. In September 2014, the Applicant prepared, on behalf of CED, two other consultancy agreements with a Chinese company and its agent. Both agreements related to the Joint Project and provided for commissions to be paid to CED should contracts be awarded to the Chinese company and its agent.

17. In January 2015, the Applicant prepared a draft agreement on behalf of CED with the Bosnian firm on the Mombasa–Nairobi Transmission Project, a project financed by the AfDB and unrelated to the Joint Project.

18. On or about 13 August 2015, the Applicant sent a memorandum to Company X with the subject “Ethiopia-Kenya Power Systems-Interconnection project.” The Applicant detailed efforts CED had made in representing Company X.

19. In August 2015, while still an ETC at the Bank, the Applicant applied for an Environmental Specialist position in IEG. In the Personal History Form (PHF) the Applicant responded “No” to the question: “If hired, do you plan to have any outside employment or engage in any other professional activities (paid or unpaid)?” In addition, there was no mention of the Applicant’s position as CED’s Managing Director and/or Lead Environmentalist either in the PHF or the curriculum vitae (CV) which he had submitted.

20. On 8 September 2015, the Applicant created a draft agreement between CED and a Turkish company concerning contracts under the Joint Project. The agreement provided that CED would receive a commission of 3.5% of the total contract value if the Turkish company bid and won the contracts.

21. On 16 September 2015, the Applicant created a draft agreement between CED and a French company, which stated that the French company would bid for certain contracts under the Joint Project and CED would receive a commission of 3% of the value of the contracts awarded to the French company as payment for its services.

22. On the same day, INT initiated a preliminary inquiry into allegations of misconduct by the Applicant based on information obtained during an investigation into sanctionable practices by Company X. The Applicant was unaware of the preliminary inquiry during this time. According to the IFC, "INT promptly requested [the] Applicant's personnel file from HR [Human Resources] as well as his leave records, and also sent a query to EBC to ask whether [the] Applicant had made disclosures to EBC with respect to any outside activities."

23. On 30 September 2015, the Applicant began a two-year term employment contract as an Environmental Specialist in IEG. This term contract was scheduled to end on 29 September 2017.

24. On 26 October 2015, CED entered into a consultancy agreement with Company X, memorializing their prior, unremunerated engagement. The agreement stated that CED would assist Company X in securing contracts related to the Joint Project, specifically, the sale of insulators manufactured by Company X. For these services CED would receive a commission of 7.2% of the value of the sales.

25. On 2 November 2015, INT submitted a request and justification memorandum to senior management to access the Applicant's WBG electronic and telephone records.

26. On 4 November 2015, the Applicant prepared a draft consultancy agreement between CED and a Spanish company concerning a project that was not part of the Joint Project. It was financed by the AfDB.

27. On 1 April 2016, the Applicant began working as a Senior Environmental Specialist at the International Finance Corporation (IFC). This promotion from Environmental Specialist to Senior Environmental Specialist was secured by the Applicant through a competitive reassignment process. At the time of his reassignment to the position of Senior Environmental Specialist, the Applicant's term contract had been extended until 28 September 2019. Thereafter, his term contract was further extended, and it was due to end on 28 September 2020.

28. On 30 April 2016, the Applicant formally dissolved his advisory firm, CED.

29. On 11 May 2016, INT submitted a second request and justification memorandum to senior management to access the Applicant's electronic and telephone records.

30. On 20 May 2016, INT informed Company X that it was aware that a Bank Group staff member had provided services to Company X.

31. On 28 May 2016, the Applicant sent an email to the President and CEO of Company X with the subject "Termination of Contract." The email stated:

This is to notify you that in accordance with the terms and provisions of Article 7.2 of the Contractual Agreement [...], effective immediately I have decided to terminate the above written contract.

Due to a very recent change in my employment status with the International Organization, I am and will not be able to represent [Company X]. OR any other Company.

Hence, as a sole proprietor of CED, I have also filed the necessary paperwork to notify local agencies to terminate business licenses or permits.

32. On 1 June 2016, the legal counsel for Company X responded to the Applicant's email with a request for clarification on a number of matters, including details of the "very recent change in

[his] employment status with the International Organization” and of his awareness of any conflict of interest policy forbidding him from representing Company X during his employment at IEG.

33. On 17 June 2016, the Applicant provided the requested clarification. Of relevance, he stated that, with reference to the Joint Project, “the World Bank fund will only be used for the Converter Stations. CED’s [*sic*] was fully aware from the beginning that the World Bank fund will not be used for the transmission lines.” Regarding any conflict of interest policy, the Applicant stated:

I was not aware of the existence of any policy within IEG that was forbidding me to represent [Company X] as a business development consultant. As a matter of fact, if I knew there was a conflict of interest, I would not have signed the contract with [Company X]. Also, I have made it clear to [Company X’s] Compliance Review Unit during the compliance review process that I have been working with IEG as a Consultant and submitted my resume accordingly. As of today, there was a zero transaction performed between CED, myself and [Company X] either in cash or kind.

Notice of Alleged Misconduct and the Decision of the HRVP

34. On 19 October 2016, INT provided the Applicant with a written Notice of Alleged Misconduct and interviewed him on the same day. During the interview, INT showed the Applicant the Notice of Alleged Misconduct and two binders of eleven annexes totaling one thousand one hundred and eleven (1,111) pages. According to the Applicant, he was not permitted to take the binders out of the interview room. The Applicant was interviewed by INT for two hours until the first break, after which the Applicant requested an adjournment. The interview resumed on 21 and 24 October 2016.

35. On 12 December 2016, INT provided the Applicant with a copy of the Notice of Alleged Misconduct and the supporting annexes. The Notice of Alleged Misconduct informed the Applicant that INT was conducting investigations into allegations that, “while employed as an Extended Term Consultant (ETC) and then as a Term staff member of the World Bank Group,” the Applicant engaged in misconduct by

- a. Failing to disclose to the World Bank Group your proprietary and/or financial interests in outside business entities, including, but not limited to, the Center for Environment and Development (CED) as required under the Staff Rules 3.01 and 3.03;
- b. Willfully misrepresenting facts intended to be relied upon by omitting your proprietary and/or financial interests in outside business entities, including, but not limited to, CED, when you completed mandatory World Bank Group pre-employment documentation in connection with your employment with the World Bank Group; and
- c. Soliciting and/or receiving kickbacks in the form of facilitation payments through outside business entities, in which you have proprietary and/or financial interests, from multiple companies, including [Company X], [the Bosnian firm], [the French company], [the Chinese company], participating in a bidding process on a joint World Bank Group and African Development Bank Group energy project in Africa.

36. On 20 February 2017, the Applicant submitted a written response to the Notice of Alleged Misconduct and annexes thereto.

37. On 5 December 2017, the Bank issued a press release announcing Company X's debarment for two years with conditional release in relation to "sanctionable misconduct under the Southern Africa Power Market Project (SAPMP) in the Democratic Republic of Congo (DRC). The project was designed to improve the infrastructure for generating and transmitting electricity in the DRC."

38. In the spring of 2018, INT received information from Company X regarding its work with CED. INT also requested information from the Bosnian firm, the Turkish company, and the French company regarding the Applicant.

39. On 2 April 2019, INT sent the Applicant a draft copy of its final investigation report (Draft Report).

40. On 30 April 2019, the Applicant's counsel submitted a memorandum entitled "Response to INT Draft Report." In this memorandum, the Applicant's counsel challenged, *inter alia*, the timeliness of the misconduct findings, asserting that the statute of limitations contained in Staff

Rule 8.01, paragraph 3.03, applied to prevent the imposition of disciplinary measures against the Applicant. Paragraph 3.03 states:

Depending on the circumstances of the case, one or more of the following disciplinary measures may be taken by the Bank Group when misconduct is determined to have occurred, provided the determination is made within three years from the date the misconduct is discovered, except that no time limitation will apply to a determination of misconduct for which mandatory termination is to be imposed [...].

41. On 30 May 2019, following several email exchanges between the Applicant's counsel and INT investigators, INT communicated to the Applicant's counsel that, given that the 30 April 2019 memorandum did not address the substance of the findings in the Draft Report, the Applicant was granted an additional amount of time within which to file a response to the substance of the Draft Report.

42. On 14 June 2019, the Applicant's counsel submitted a memorandum entitled "Second Response to INT Draft Report."

43. On 31 July 2019, INT submitted its Final Report to the HRVP.

44. On 18 October 2019, the Applicant received an email from an HR Specialist notifying him that the HRVP had made "a final determination in this matter." The email to the Applicant stated that "[w]e would like to provide you the signed decision letter and, to this end, are proposing a meeting for you to attend with my manager, [Human Resources Development Corporate Operations (HRDCO)] (copied here), and myself next week."

45. On the same day, the Applicant responded indicating his availability for a meeting, stating, "I would however appreciate if we can make the meeting early next week or share the decision letter via email."

46. On 21 October 2019, the HR Specialist responded that she would email the Applicant the signed decision letter "soonest."

47. On 23 October 2019, the Applicant was copied on an email from the WBG’s “Leave and Attendance System,” which noted that his contract was to be terminated on 31 October 2019.

48. The following day, 24 October 2019, the Applicant’s counsel sent an email to the Manager, HRDCO requesting that the decision letter be sent, immediately, to the Applicant by email. The Applicant’s counsel pointed out that the decision letter had not yet been sent to the Applicant and that he had received a “disturbing” notice of the termination of his employment.

49. On 24 October 2019, the Manager, HRDCO responded, apologizing for any confusion on the part of his office, and attached a copy of the decision letter.

50. According to the decision letter, which was dated 18 October 2019, INT’s investigation revealed that

(i) between 2013 and 2014, through CED, [the Applicant] provided consulting services to the [Ethiopian consulting firm] under the AfDB-financed component of a regional energy project (the “Joint Project”), which was also partly financed by the Bank Group, receiving at least USD \$800,000 in payments,

(ii) between 2013 and 2016, through CED, provided consulting services on a commission basis to [Company X], [the Bosnian firm],[the French company], and [the Turkish company], all of which were participating in AfDB-financed tenders under the Joint Project,

(iii) in 2014, through CED, attempted to secure commission-based contracts with [the Chinese company], which was participating in AfDB-financed tenders under the Joint Project, and [the Chinese company’s] agent, [...], and

(iv) in 2015, through CED, attempted to secure commission-based contracts with [the Bosnian firm], [Company X], and [the Spanish company] on three other, unrelated AfDB-financed projects.

In sum, INT found sufficient evidence to substantiate that, through [the Applicant’s] undisclosed privately-owned company, CED, [the Applicant] engaged in for-profit activities with multiple companies participating in tenders financed by the AfDB, including on the Joint Project, which was also co-financed by the Bank Group, in violation of the Bank Group Staff Rules, Principles of Staff Employment, and generally applicable norms of prudent professional conduct.

51. However, the HRVP's decision also noted:

On the other hand, INT could not substantiate that [the Applicant] received payments on the consultancy agreements [he] signed or attempted to sign with the aforementioned companies, except on the agreement with [the Ethiopian consulting firm]. Additionally, there was no evidence that [the Applicant], directly or indirectly, bid for or received payments in relation to Bank Group-financed contracts.

52. The HRVP informed the Applicant that "these established facts legally constitute misconduct under Staff Rule 8.01, namely" the following:

- a) Paragraph 1.01(c) – Fraud, corruption, coercion, collusion, or offering, receiving or soliciting bribes, kickbacks or other (*e.g.*, in kind) personal benefits involving Bank Group financed/supported operations or corporate procurement;
- b) Paragraph 2.01(a) – Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;
- c) Paragraph 2.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- d) Paragraph 2.01(b) – Failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group;
- e) Paragraph 2.01(b) – Willful misrepresentation of facts intended to be relied upon; and
- f) Paragraph 2.01(c) – 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 3.06 (*e.g.*, staff members shall conduct themselves at all times in a manner befitting their status as employees of an international organization and 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, and staff members have a special responsibility to avoid situations and activities that might reflect adversely on the [Bank Group], compromise [its] operations, or lead to real or apparent conflicts of interest; also staff members are restricted in the degree to which they may accept paid employment or otherwise provide services for another organization during their [Bank Group] employment).

53. The HRVP took note of the following mitigating factors, namely, that the Applicant informed INT that he did not collect “substantial commissions, and actually, turned down reimbursements that were offered to [him].” The HRVP also took note of the Applicant’s statement that he was “seeking alternative career options through CED to ensure that [he] could care for [his] family.” However, the HRVP stated that he was “incredulous that [the Applicant] listed CED on [his] curriculum vitae to [Company X] but not to the Bank Group, and that [he] reportedly had no knowledge of certain consultancy agreements despite evidence to the contrary, specifically, forensic data showing that [he] created drafts of some of the agreements and email exchanges between [him] and representatives of some of the companies wherein [he] discuss[ed] terms of the agreements.”

54. The HRVP considered as aggravating factors that the Applicant “failed to provide records requested by INT or documents to support [his] position.” In addition, the HRVP stated that “through CED, [the Applicant] claimed and received approximately USD \$860,000 for [his] consultancy services to [the Ethiopian consulting firm], including on the AfDB-financed component of the Joint Project, while [he was] employed as an ETC at the Bank Group.” According to the HRVP, even assuming that the Applicant did not collect all the commissions, the evidence shows that he “made extensive efforts to secure private contracts with several companies while [he was] an ETC as well as when [he] became a Term Staff Member.” The HRVP’s letter stated that the Applicant’s contract was to be terminated effective 1 November 2019.

55. On 30 October 2019, the Applicant submitted this Application before the Tribunal. He challenges the HRVP’s decision of 18 October 2019 and asserts that the charges and disciplinary sanctions against him are barred by the statute of limitations in Staff Rule 8.01, paragraph 3.03. The Applicant also asserts that the INT investigation was procedurally flawed and violated his due process rights.

56. The Applicant seeks specific performance in the form of “rescission of the HRVP’s final decision and of reinstatement with full back pay and benefits.” The Applicant also seeks “three years’ compensation for violations of due process, moral and intangible injuries, and compensation for long-term stress and psychological oppression,” as well as all “other just and appropriate relief,

including any additional relief claimed in the due course of this case.” The Applicant seeks legal fees and costs in the amount of \$48,207.50.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Main Contention No. 1

The IFC failed to discharge its burden of proof, and the misconduct findings cannot be substantiated

57. Without conceding his position that the charges and disciplinary measures are time-barred, the Applicant contends that the IFC has failed to substantiate the misconduct findings. In particular, the Applicant avers that (i) the Bank Group was not involved in any of the Applicant’s outside activities; and (ii) the Tribunal must carefully test the IFC’s statements “given their unreliability.”

58. Regarding the Applicant’s outside activities, the Applicant asserts that it is “flatly incorrect and willfully prejudicially misleading” to state, as the IFC does, that he “engaged in outside business activities related to a project co-financed by the Bank Group and attempted to conceal those activities through false statements.” The Applicant points out that the IFC admits that the Applicant’s “[alleged] misconduct does not relate to components financed by the Bank Group, but to components financed by other development institutions, including the African Development Bank, and national governments.”

59. The Applicant appeals to the Tribunal to test the IFC’s factual allegations “because the IFC bears the burden of proof.” He states that the IFC falsely claims that he personally received \$860,000.00 for activities “mostly” related to the Joint Project. He submits that there is no evidence of any such receipt and he has consistently denied receiving such amount as well as denying any connection between the projects in which he was involved and the Bank Group. Furthermore, the Applicant challenges the IFC’s contention that he received a commission from Company X when the IFC has failed to proffer evidence of his having received such a commission. He submits that he has no legal duty to prove that he did not do so.

60. Finally, the Applicant restates the assertions made during the INT investigation in his response to the Notice of Alleged Misconduct and his Second Response to the Draft Report. Specifically, the Applicant maintains that (i) there is no evidence that he sought to conceal CED from the Bank Group given that he publicly registered CED; (ii) he neither obtained, nor ever sought to obtain, personal benefits from his connection to the WBG and was never paid by any of the private parties with whom he discussed possible business; (iii) the record does not reveal any apparent conflict of interest; (iv) he did not exploit or abuse his WBG employment for personal gain; (v) he cannot be charged for conduct that did not happen; and (vi) the IFC has not produced evidence to support its findings.

The IFC's Response

The facts supporting a finding of misconduct were established

61. The IFC maintains that the Applicant engaged in outside business activities related to a project that was co-financed by the Bank Group without seeking the approval of the Outside Interests Committee (OIC) as required by Staff Rule 3.02, paragraph 3.09. The IFC asserts that the Applicant did so even though he was made aware of the relevant rules which he had acknowledged when he signed his employment contracts. The IFC states that the Applicant concedes that he did not seek the approval of the OIC. The IFC underscores the fact that the Applicant had attended training sessions presented by INT and EBC on fraud, corruption, and conflicts of interest, and took a mandatory course on the Bank Group's Code of Conduct. The Applicant proceeded to solicit business from Company X, a company interested in becoming a supplier under the Joint Project. He provided services to several firms involved in the Joint Project, seeking commissions based on the value of any contracts awarded. These firms were providing goods and services for components of the Joint Project which were co-financed by his former employer, the AfDB, and he received information about the Joint Project directly from the task manager at the AfDB.

62. According to the IFC, the Applicant, additionally, attempted to conceal his business activities from the Bank Group through false statements. It points to the fact that the Applicant did not disclose the existence of his firm in his resume or in his employment history application form when he applied for positions within the Bank Group in August 2015 and 2016.

63. As to the payments the Applicant invoiced for his consulting services, the IFC disputes the Applicant's contention that INT failed to show that he had actually received payments under his commission-based agreements. It points to admissions made by the Applicant in his interview with INT. In the IFC's view, the Applicant "conveniently ignores the fact that he invoiced \$860,000 for other services, in addition to the commissions that he sought from various firms." The IFC contends that the evidence shows that the Applicant "engaged in unauthorized outside activities in contravention of the Staff Rules, and those activities are not contingent on [the] Applicant receiving payments or even entering into legally binding agreements." As to the Applicant's legal duty, the IFC points out that an INT investigation is administrative in nature and that a staff member has a duty to cooperate in an investigation as prescribed in Staff Rule 8.01, paragraph 4.06. To the IFC, the facts established constitute misconduct.

The Applicant's Main Contention No. 2

The charges and disciplinary measures against the Applicant are barred by the statute of limitations

64. The Applicant asserts that the IFC's charges of misconduct are based on discoveries of alleged misconduct made over three years ago and are barred under Staff Rule 8.01, paragraph 3.03, which, according to the Applicant, establishes that any "determination of disciplinary measures other than 'mandatory termination' must be 'made within three years of the date that the misconduct is discovered.'" The Applicant asserts that no offense requiring mandatory termination has been substantiated or alleged and that the HRVP "quietly concedes" that "there was no evidence that [the Applicant], directly or indirectly, bid for or received payments in relation to Bank Group-financed contracts."

65. The Applicant asserts that the *dies a quo*, from which the time limit began to toll, was 16 September 2015 when INT first discovered the alleged misconduct. In his submission, the IFC's claim that the *dies a quo* was the Applicant's first interview on 19 October 2016 does not conform with the plain reading of the text of Staff Rule 8.01, paragraph 3.03. The Applicant states that the Staff Rule sets the "*dies a quo* at the 'discovery' of alleged misconduct." Thus, to the Applicant,

“when INT discovered [the Applicant’s] connection with [Company X] on September 16, 2015, the clock began to tick. It stopped ticking on September 16, 2018, more than a year ago.”

66. The Applicant further maintains that, even adopting the IFC’s *dies a quo*, the HRVP still acted after the statute of limitations had barred his actions. The Applicant observes that the Notice of Alleged Misconduct was dated 17 October 2016 while the HRVP’s decision was dated 18 October 2019 – “at least a day out of time, even leaving aside the fact that the so-called ‘Notice’ presented 1,111 pages of earlier-made ‘discoveries’ by INT’s investigators.” The Applicant asserts that “the IFC had three (3) years to avoid missing its own declared, idiosyncratic deadline, and still missed it.” The Applicant contends that the IFC may not ignore its own law because it proves inconvenient. The Applicant submits that “[d]eadlines matter, as many a failed Tribunal applicant has found. The IFC is bound by its own law. All of the charges and sanctions against [the Applicant] are barred by the statute of limitations.”

67. Finally, the Applicant asserts that INT willfully and with *mala fides* withheld the dates of its discoveries even while “casually ignoring” the Applicant’s warning in his 30 April 2019 response that the statute of limitations “was advancing day by day.”

The IFC’s Response

The decision to discipline the Applicant was timely

68. According to the IFC, the Applicant is wrong to state that the “date the misconduct is discovered” is the date on which INT obtained information about his business activities – 16 September 2015. It submits that the correct interpretation of Staff Rule 8.01, paragraph 3.03, is the date on which the staff member received the Notice of Alleged Misconduct. The IFC claims that this interpretation is consistent with the Tribunal’s jurisprudence in *V*, Decision No. 378 [2008], and *BN*, Decision No. 451 [2011]. The IFC also asserts that the Bank Group has consistently considered the date on which the staff member receives the Notice of Alleged Misconduct to be the relevant date for determining timeliness and that this practice “makes sense” for at least two reasons.

69. First, to the IFC, “it is exceedingly difficult, if not impossible, to determine a literal date of discovery of misconduct.” According to the IFC, it would not be feasible for the Bank Group “to attempt to review the record to determine when sufficient facts had been identified that could constitute misconduct. The date on which the staff member receives the Notice of Alleged Misconduct is easily determinable to avoid these issues.” The IFC states that the second reason is to “ensure that a staff member does not have to endure the stress of an investigation and looming discipline indefinitely.”

70. To the IFC, the *dies a quo* is 19 October 2016 – the date upon which the Applicant attended an interview with INT and was presented with the Notice of Alleged Misconduct. Since the HRVP’s decision was made on 18 October 2019, the determination as to which sanctions to impose was made within the three-year time limit requirement of Staff Rule 8.01, paragraph 3.03.

The Applicant’s Main Contention No. 3

The sanctions imposed were significantly disproportionate

71. The Applicant contends that his actions concern a limited period of outside, mostly unremunerated, commercial activities without prior clearance by the OIC while he was a consultant. The Applicant observes that the Bank Group allowed “EC1” Extended-Term Consultants to engage in “self-employment for profit” with only a senior manager’s approval, even though they were full-time Bank employees. Furthermore, the Applicant notes that the OIC has given permission for, *inter alia*, a managerial role in a family business. The Applicant contends that he was unaware of the distinctions between EC1 and EC2 Extended-Term Consultants and that he is being treated unfairly for failing to seek leave from the OIC. He asserts that his conduct was wrong only because of his failure to consult the OIC and not because it was wrong *per se*.

72. The Applicant submits that he voluntarily ended his commercial activities “long before INT confronted him.” He asserts that he regretted his actions and that both INT and the HRVP recognized that he had cooperated with the investigation. Referring to the Tribunal’s judgment in *CT*, Decision No. 512 [2015], the Applicant seeks leniency, noting that he has worked for the Bank Group for nearly seven years and that this was the only complaint of any kind raised against him.

The Applicant contends that nothing he did violates Principle 3 of the Principles of Staff Employment as he did not engage in “personal gainful activity that would adversely or unfavorably reflect on [his] status or on the integrity, independence and impartiality that are required by that status.” The Applicant further asserts that there was no overlap between his IFC duties and his private activities. To the Applicant, his conduct was less severe in scope and degree than the conduct at issue in *CT* [2015].

73. The Applicant’s request for leniency is further based upon “(1) his patent unwillingness to compromise the IFC; (2) his unprompted formal ending of his outside activities – which had in fact drawn to a close by November 6, 2015 [...] as his IFC career gelled and he could reliably support his family and his special-needs child; (3) his turning down of a vast commission from [Company X] to avoid any apparent conflict of interest with his new Operations role; and (4) the fact that the IFC faults him largely for hypothetical acts that he never carried out.” The Applicant also contends that he was poorly trained on the Bank Group’s ethics rules and, given his background as a “non-native English speaker from a country [...] lacking U.S.-style concepts of relevance in this area,” he was not aware of his obligations.

74. The Applicant contends that the “interests of the Organization” do not justify discipline in this case. Termination would reflect “an untethered reading of Principle 3 indistinguishable from a private-sector firing of an at-will employee. IFC law does not allow such ‘business decisions.’” The Applicant submits that even a broad reading of Principle 3 does not “give the IFC *carte blanche* to fire its staff members, or excuse arbitrary and capricious behavior by the IFC toward a staff member.” *See AJ*, Decision No. 389 [2009], para. 46.

75. The Applicant contends that the IFC kept him *in situ* handling sensitive IFC operations and actively employed “in good stead” for more than four years while his outside activities were officially examined and judged between September 2015 and October 2019. To the Applicant, the “IFC demonstrably viewed its ‘interests’ as being to keep him *in situ*.” The Applicant submits that he was clearly deemed not to pose a threat to the IFC’s interests on account of the alleged outside activities given that he was not placed on administrative leave. The Applicant maintains that the “sudden determination in October 2019 that [he] had to be fired immediately for alleged offenses

dating back to 2013 – 2015 was wholly incongruent with the IFC’s entrustment of its sensitive interests to [the Applicant] during the enormously long course of his misconduct case.”

The IFC’s Response

The sanctions imposed were reasonable and proportionate to the Applicant’s conduct

76. The IFC justifies the sanctions imposed, contending that the Applicant’s misconduct was “serious, and it was carried out over a long period of time.” It began almost immediately after he joined the Bank Group, continued for more than three years, and ended only after INT had notified Company X that it was aware that Company X had hired a Bank Group staff member as an agent. The IFC states that the Applicant implies that he “innocently” overlooked an approval process. However, to the IFC, no approval would have been granted for his activities. The IFC further contends that the Applicant “profited from the public funds of national governments and the African Development Bank under a project that included components financed by the Bank Group.” To the IFC, the amounts involved were significant, and the misconduct was not a “minor mistake, or one-time event, but a series of activities carried out over several years.” The IFC contends that there was a significant reputational risk to the Bank Group because of the Applicant’s activities since the appearance of acting like a local agent can present more significant corruption risks.

77. The IFC asserts that the HRVP considered the following as aggravating factors in the Applicant’s case: (i) the Applicant claimed and received through his firm \$860,000.00 for consultancy services, including for services related to the Joint Project; (ii) the Applicant made extensive efforts to secure contracts with several companies while a staff member of the Bank Group; and (iii) the Applicant failed to provide documents requested by INT or other documents to support his position.

78. The IFC maintains that the HRVP took into account all the factors set out in Staff Rule 8.01, including mitigating factors, and decided that the Applicant’s misconduct warranted the sanctions issued.

The Applicant's Main Contention No. 4

INT's investigation was procedurally irregular and violated his due process rights

79. The Applicant contends that INT conflated its preliminary inquiry with an investigation before notifying him and that it willfully withheld the Notice of Alleged Misconduct from him for many months. He maintains that INT acted in a “wrongfully sloppy manner” and “relied on bare assumptions of *mala fides*, when accusing [him] of wrongdoing.”

80. Referring to Staff Rule 8.01, paragraph 4.02, the Applicant states that a preliminary inquiry is aimed at finding whether “sufficient evidence [exists] to warrant further proceedings.” The Applicant observes, relying on Staff Rule 8.01, paragraph 4.03, that he had a right to be notified in writing of the alleged misconduct at the onset of the investigation. He contends that the “so-called” Notice of Alleged Misconduct was accompanied by two binders containing “dozens of carefully organized and reviewed exhibits – *i.e.*, the fruits of a fulsome investigation of [his] mostly aborted business initiatives.” The Applicant states that he was not permitted to remove these two binders from the interview room and that they were only provided to him along with the “Notice,” on 12 December 2016, ten days after he retained counsel. To the Applicant, the “so-called ‘Notice’ package resembled a Draft Report in scale and accusatory import.” The Applicant states that, despite having Company X’s evidence on 15 September 2015, INT did not alert him then that a sufficient basis existed for a full investigation; rather it conducted a “massive investigation without telling [him] for more than a year.” The Applicant contends that “INT’s willful disregard for procedure has led to INT’s finding alleged misconduct running through 2015 and into 2016, long after [he] should have been put on notice of any questions about his conduct.”

81. The Applicant further contends that more than two years passed quietly after he filed his response to the Draft Report “with all appearances in later months being that – due to the running of the statute of limitations – the Bank Group had decided not to pursue [the Applicant’s] case any further.” He submits that, compared to the “vast trove of materials obtained by INT” prior to the Notice of Alleged Misconduct, the new materials assembled subsequently were “few in number, of marginal relevance, and in nearly all cases previously in the Bank Group’s possession or otherwise available to it.”

82. Regarding the conduct of the investigation, the Applicant contends that INT recklessly claimed that he authored documents despite a lack of reliable evidence, and faults him for not “formally terminating” CED’s arrangements with various entities even though no “‘formal termination’ notice was necessary since the terms of the respective agreements already provided for ‘formal termination.’”

The IFC’s Response

There were no due process violations or procedural irregularities

83. According to the IFC, the Applicant’s due process rights were observed, and the investigation was conducted in the proper manner. Regarding the Applicant’s assertion that INT conflated the preliminary inquiry with an investigation, the IFC refers to Staff Rule 8.01, paragraph 4.02, which provides that a preliminary inquiry “may be undertaken if necessary to determine whether there is sufficient evidence to warrant further proceedings.” The IFC claims that INT promptly began its preliminary inquiry after obtaining information about potential misconduct by the Applicant. The IFC states that, since this inquiry was conducted in parallel with INT’s investigation into Company X, INT had to “consider the implications for its investigation into [Company X] and the risk of collusion, including evidence tampering.”

84. The IFC further maintains that INT’s preliminary inquiry was not a “full investigation” in its scope as INT “only collected information from HR and EBC, accessed [the] Applicant’s computer and email, and requested information from [Company X].” According to the IFC, the review of the Applicant’s computer files and emails “was extensive and included an examination of his computer’s hard drive, including files that the Applicant had attempted to delete, and searches of his emails using different search terms.”

85. To the IFC, its preliminary inquiry was “appropriately limited and sought only to establish whether there was sufficient evidence to institute a formal investigation.” The IFC contends that the Applicant was notified once INT had “determined that there was sufficient evidence to initiate a formal investigation and INT had determined that the risk of collusion was reasonably limited.”

THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

SCOPE OF THE TRIBUNAL'S REVIEW

86. The case law confirms that the Tribunal's scope of review in disciplinary cases extends to an examination of the following matters: (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 significantly disproportionate to the offence; and (v) whether the requirements of due process were observed. *See CH*, Decision No. 489 [2014], para. 22; *CG*, Decision No. 487 [2014], para. 38; *CF*, Decision No. 486 [2014], para. 39; *CB*, Decision No. 476 [2013], para. 31; *AB*, Decision No. 381 [2008], para. 53; *Koudogbo*, Decision No. 246 [2001], para. 18; *Mustafa*, Decision No. 207 [1999], para. 17; *Carew*, Decision No. 142 [1995], para. 32.

87. As was held in *M*, Decision No. 369 [2007], para. 54, the Tribunal must "naturally ensure that a disciplinary measure falls within the legal powers of the Bank." This, however, does not mean that the Tribunal, itself, is an investigative agency. The Tribunal

simply takes the record as it finds it and evaluates the factfinding methodology, the probative weight of legitimately obtained evidence, and the inherent rationale of the findings in the light of that evidence. The judicial function cannot be reduced to a mechanical formula. Decisions will perforce be fact-specific; the ideal of perfect and general predictability must give way, to some degree, to the individual discernment of those called upon to judge a given case.

88. The Tribunal has held that the burden of proof in misconduct cases lies with the respondent organization. It has also stipulated on several occasions that there must be substantial evidence to support the finding of facts which amount to misconduct. *See, e.g., FG*, Decision No. 623 [2020], para. 67; *EZ*, Decision No. 601 [2019], para. 69; *P*, Decision No. 366 [2007], paras. 33–34; *Arefeen*, Decision No. 244 [2001], para. 42. In other words, the "standard of evidence in disciplinary decisions leading [...] to misconduct and disciplinary sanctions must be higher than a mere balance of probabilities." *Dambita*, Decision No. 243 [2001], para. 21.

89. The Applicant has restricted his Application to four limbs: (i) a challenge of the findings of misconduct; (ii) the application of the statutory limitation in Staff Rule 8.01, paragraph 3.03; (iii) the proportionality of the imposed sanctions if upheld; and (iv) allegations of due process violations and procedural irregularity. The Tribunal will, thereby, limit its analysis to these elements.

(i) Existence of the facts and whether they legally amount to misconduct

90. It is undisputed that the Applicant publicly registered his advisory firm, CED, in 2013 and that he held the position as its sole proprietor concurrently with his employment at the WBG until April 2016 when he dissolved CED. The uncontroverted facts are that the Applicant, through CED, solicited and entered into several consultancy agreements with at least five organizations involved in components of the Joint Project. The parties agree that the components in question were not financed, directly, by the Bank Group. It is recalled that the Joint Project is a regional energy project co-financed by the Bank Group, the AfDB, and several other development institutions, as well as national governments. The IFC acknowledges that the “Applicant’s misconduct does not relate to components financed by the Bank Group, but to components financed by other development institutions, including, the African Development Bank, and national governments.”

91. Furthermore, it is undisputed that the Applicant signed and certified that he had “received, reviewed, and [understood]” Principle 3 of the Principles of Staff Employment and Staff Rule 3.01–3.03. Additionally, the record reveals that the Applicant did not disclose, either in his PHF or in his CV, which were submitted in 2015 for his term appointment with IEG, any information about his business activities in CED. It is also uncontroverted that, on the 2015 PHF, the Applicant responded in the negative to the question: “If hired, do you plan to have any outside employment or engage in any other professional activities (paid or unpaid)?”

92. Finally, it is also uncontested that, through CED, the Applicant engaged in outside business activities without the approval of the OIC. Such approval was required by the version of Staff Rule 3.02, paragraph 3.01, in effect at the relevant time. Staff Rule 3.02, paragraph 3.01, provides:

Staff members are restricted in the degree to which they may accept paid employment or otherwise provide services for another organization, whether as an employee, director, partner or otherwise, during their Bank Group employment. The Staff Member is responsible for ensuring that any such employment or service allowable under this Rule is compatible with Principle 3, “General Obligations of Staff Members,” under the “Principles of Staff Employment,” and is permitted under local law. If a staff member has any doubt whether these requirements are met, s/he shall seek the advice of the Office of Ethics and Business Conduct (EBC) and, where required, the approval of the Outside Interests Committee (the “Committee”).

93. Having thus established the facts, the Tribunal will now assess whether these facts legally amount to the misconduct found. It is recalled that the HRVP found that the Applicant (i) failed to disclose and seek approval from the OIC for his outside business activities; (ii) made willful misrepresentations by omitting his ownership of CED in his pre-employment documentation; and (iii) engaged in personal gainful activity involving public funds of another international financial institution. The HRVP categorized the Applicant’s conduct as misconduct pursuant to the following provisions of Staff Rule 8.01:

- a) Paragraph 1.01(c) – Fraud, corruption, coercion, collusion, or offering, receiving or soliciting bribes, kickbacks or other (*e.g.*, in kind) personal benefits involving Bank Group financed/supported operations or corporate procurement;
- b) Paragraph 2.01(a) – Failure to observe Principles of Staff Employment, Staff Rules, and other duties of employment;
- c) Paragraph 2.01(b) – Reckless failure to identify, or failure to observe, generally applicable norms of prudent professional conduct;
- d) Paragraph 2.01 (b) – Failure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group;
- e) Paragraph 2.01(b) – Willful misrepresentation of facts intended to be relied upon; and
- f) Paragraph 2.01(c) – 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 3.06 (*e.g.*, staff members shall conduct themselves at all times in a manner befitting their status as employees of an international organization and 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, and staff members have a special responsibility to avoid situations and activities that might reflect adversely on the [Bank Group], compromise [its] operations, or lead to real or apparent conflicts of interest; also staff members are restricted in the degree to which they may accept paid employment or otherwise provide services for another organization during their [Bank Group] employment).

94. The Applicant contends that the IFC has failed to discharge its burden of proof and that he cannot be charged for “hypothetical wrongdoing that did not actually take place.” He maintains that he did not act in bad faith nor was there any real or apparent conflict of interest. In his view, the conduct he engaged in fell within the scope of activities permitted by the OIC. The Applicant asserts that he did not make false claims about CED and that he could not have concealed CED from the Bank — it was a publicly registered entity for most of his time at the Bank Group.

95. The IFC contends that the Applicant concedes his failure to seek and receive approval from the OIC prior to engaging in outside business activities. It points out that the Applicant’s outside business activities were not permitted by Staff Rule 3.02, paragraphs 3.01–3.08. In addition, the IFC submits that the Applicant sought to conceal those business activities by failing to mention them on several occasions.

The Misconduct of Failing to Obtain Approval for Outside Business Activities

96. The Tribunal observes that the Applicant neither sought nor obtained approval of the OIC prior to engaging in outside business activities. He has conceded this point, and the record contains no evidence to the contrary. The Tribunal is satisfied that the Applicant, by conducting outside business activities without OIC prior approval, acted in violation of Staff Rule 3.02, paragraph 3.01, which required him to obtain prior approval.

97. It is incumbent upon staff members to demonstrate a personal professionalism and a commitment to organizational ethics. Principle 3.1 of the Principles of Staff Employment imposes upon them certain general obligations. It provides:

The sensitive and confidential nature of much of their work requires of staff a high degree of integrity and concern for the interests of the Organizations. Moreover, as

employees of international organizations, staff 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 and in so doing shall be subject to the authority of the President and responsible to him;

b. respect the international character of their positions and maintain their independence by not accepting any instructions relating to the performance of their duties from any governments, or other entities or persons external to the Organizations unless on secondment to them or employed by them while on leave of absence from The World Bank or the IFC. Staff members shall 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 such governments or other entities or persons, nor shall they, while in the service of The World Bank or the IFC, accept any medal, decoration or similar honor for such service. Staff members may retain reemployment rights or pension rights acquired in the service of another organization;

c. conduct themselves at all times in a manner befitting their status as employees of an international organization. They shall 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 public pronouncement or 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; and

d. observe the utmost discretion in regard to all matters relating to the Organizations both while they are staff members and after their service with the Organizations has ended. In particular they shall refrain from the improper disclosure, whether direct or indirect, of information related to the business of The World Bank or the IFC.

98. In explaining the scope of obligations under Principle 3, the Tribunal observed in *AJ* [2009], para. 46, that

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 [a]pplicant 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.

99. Furthermore, as noted above, Staff Rule 3.02, paragraph 3.01, to which the Applicant was subject as an employee on ETC and term appointments, provides that “Staff Members are restricted in the degree to which they may accept paid employment or otherwise provide services for another organization, whether as an employee, director, partner or otherwise, during their Bank Group employment.” Paragraphs 3.04–3.05 of Staff Rule 3.02 enumerate the employment activities for which permission is not required. Notably, the Applicant’s admitted business activities do not fall within the scope of these exempted activities. Even where outside activities are permitted, it is always the staff member’s responsibility to ensure that “any such employment or service allowable under this Rule is compatible with Principle 3, ‘General Obligations of Staff Members,’ under the ‘Principles of Staff Employment,’ and is permitted under local law.” Staff Rule 3.02, paragraph 3.01.

100. Of relevance is Staff Rule 3.02, paragraph 3.09, which states:

Except as otherwise provided in paragraphs 3.01–3.08 of this Rule, any other type of self-employment or the performance of services for any other entity requires prior approval by the World Bank Group Chief Ethics Officer, EBC, who generally does not approve a request to engage in self-employment for profit or to perform any paid services for any outside private entity, whether as employee, director, partner or otherwise, of a Staff Member holding an appointment at grade GF or above, or an ungraded position, or Extended Term Consultants at level EC2 or above who is providing full-time service to the Bank Group.

101. By virtue of this provision and the Applicant’s appointment type (ETC level EC2), not only was he required to seek prior approval from the Chief Ethics Officer through the OIC, but such approval of his outside business activities, if granted, would also, clearly, have been an exception to the rule against engagement in self-employment for profit and, certainly, such a grant could not have been presumed. The IFC submits, categorically, that such approval would not have been

granted. At the outset of his career at the Bank, the Applicant was an ETC at level EC2, and he was subsequently appointed on a term contract at grade level GG. The Applicant's defense that he was poorly trained and did not understand "Western conceptions" of conflicts of interest is unconvincing for several reasons. First, the record shows that, prior to joining the WBG, the Applicant had worked in government institutions in the United States as well as in regional finance organizations, notably the AfDB. These institutions have rules and regulations concerning conflicts of interest that are similar to those of the WBG. Moreover, the Tribunal observes that, during the staff orientation process, the Applicant had received specific training provided by INT and EBC on fraud, corruption, and conflicts of interest. He had also completed the mandatory course on the Bank's Code of Conduct which, as already noted, included topics on conflicts of interest and outside business activities. Given the close proximity in time (two days) between his completion of this course and his registration of his advisory firm, the Tribunal attributes little weight to the Applicant's claim that he did not understand the concept of a "conflict of interests" when information in relation to this topic must have been fresh on his mind.

102. The Tribunal recalls that neither malice nor guilty purpose is necessary to establish misconduct pursuant to the Staff Rules. Indeed, it observes that ignorance of the Bank's legal policy, in itself, constitutes misconduct under Staff Rule 8.01, paragraph 2.01(b). This rule provides that misconduct may include a "[f]ailure to know, and observe, the legal, policy, budgetary, and administrative standards and restrictions imposed by the Bank Group." *See, e.g., EK*, Decision No. 573 [2017], para. 73; *Koudogbo* [2001], para. 31. The Tribunal is satisfied that the Applicant, in failing to comply with the provisions of the Staff Rules governing concurrent external employment activities, failed to observe "generally applicable norms of prudent professional conduct," which, in itself, constitutes misconduct under Staff Rule 8.01, paragraph 2.01(b).

103. The Tribunal further considers that the Applicant's conduct constituted a failure to observe the Principles of Staff Employment, Staff Rules, and other duties of employment, which is required by Staff Rule 8.01, paragraph 2.01(a). He failed either to know or to observe the legal, policy, and administrative standards and restrictions imposed by the Bank Group (paragraph 2.01(b)); and he engaged in acts or omissions that were in conflict with the general obligations of staff members as

set forth in Principle 3 of the Principles of Staff Employment and Staff Rules 3.01–3.06 as referenced therein. These obligations require that staff

conduct themselves at all times in a manner befitting their status as employees of an international organization and 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, and staff members have a special responsibility to avoid situations and activities that might reflect adversely on the [Bank Group], compromise [its] operations, or lead to real or apparent conflicts of interest.

Whether the record contains evidence to substantiate a finding that the Applicant committed misconduct under Staff Rule 8.01, paragraph 1.01(c) and paragraph 2.01(b)

104. The Tribunal will now assess whether the established facts constitute misconduct pursuant to Staff Rule 8.01, paragraph 1.01(c) and paragraph 2.01(b). Under these provisions, misconduct may include the following:

Staff Rule 8.01, paragraph 1.01(c) – Fraud, corruption, coercion, collusion, or offering, receiving or soliciting bribes, kickbacks or other (*e.g.*, in kind) personal benefits involving Bank Group financed/supported operations or corporate procurement.

Staff Rule 8.01, paragraph 2.01(b) – Willful misrepresentation of facts intended to be relied upon.

The Misconduct of Solicitation of Personal Benefits

105. The Tribunal observes that no finding was made in respect of any fraud, corruption, coercion, collusion, or the offering, receipt, or solicitation of bribes or kickbacks on the part of the Applicant. Whereas the initial allegation which gave rise to INT’s preliminary inquiry referred to “kickbacks,” it is important to underscore that no such finding in this regard was made nor did the HRVP make his disciplinary decision based on such an allegation. Care must be taken to avoid conflating allegations with facts. *See FG [2020]*, para. 104.

106. The relevant segment of Staff Rule 8.01 which applies to the Applicant's situation and in respect of which a finding was made is set out in paragraph 1.01(c), namely, the solicitation of personal benefits involving Bank Group–financed/supported operations. Here, there is no doubt that, through CED, the Applicant did solicit and receive a personal financial benefit in exchange for the performance of consultancy services for organizations that were involved in the tendering process of the Joint Project. The fact that the Applicant restricted himself to components of the Joint Project that were funded by entities other than the World Bank does not absolve him of his overall responsibility to avoid solicitation of personal benefits that involve Bank-supported operations. The WBG's involvement, in any way, with the Joint Project was sufficient, in itself, to signal to the Applicant that he, as a WBG staff member, ought not to engage in personal, financial, or business activities in connection with that project or any components thereof. In this regard, the Tribunal recalls that he was obliged to prioritize the WBG's interests above his own personal gain and to protect the integrity and reputation of the WBG. By engaging in personal business activities that came within the ambit of the Joint Project, the Applicant risked creating significant reputational damage to the WBG by creating the appearance of a conflict of interest. In this regard, the Tribunal underscores that, having regard to the mission and objectives of the Organization, all staff members play a vital role in ensuring that conflicts of interest and the appearance of such conflicts form no part of the Organization's culture. Whereas the parties dispute the precise amount which the Applicant earned from his outside business activities, the Applicant admits, and the transcript records, that he received \$300,000.00 from CED's consultancy services to the Ethiopian consulting firm that was involved in the Joint Project. Accordingly, the Tribunal finds that the Applicant breached Staff Rule 8.01, paragraph 1.01(c), insofar as it relates to the solicitation of personal benefits involving Bank-supported operations.

The Misconduct of Willful Misrepresentation

107. The Tribunal now turns to Staff Rule 8.01, paragraph 2.01(b), willful misrepresentation of facts intended to be relied upon. In *CG* [2014], para. 54, the Tribunal laid out INT's explanation of the elements of willful misrepresentation as follows:

[A] staff member: (1) made a statement or omission of fact; (2) intended to be relied upon for the action of another; (3) such statement or omission was false, incorrect, or misleading; and (4) such statement or omission was made willfully.

108. According to INT, “the legal definition of [a] willful act is one which is intentional, conscious and directed towards achieving a purpose.” *Id.*, para. 55.

109. The IFC maintains that the Applicant committed the misconduct of willfully misrepresenting facts intended to be relied upon by omitting to disclose his proprietary and financial interests in CED when he completed and submitted mandatory WBG pre-employment documentation. In paragraph 42 of the Final Report, INT states:

Under WBG rules, [the Applicant] was required to disclose his private business dealings and had multiple opportunities to do so. However, in each instance he failed to do so. First, in January 2013, while an ETC, [the Applicant] failed to consult with EBC prior to establishing his private business CED. Then, in August 2015, when [the Applicant] applied for a WBG term position, which he ultimately received, he omitted in his CV and his HR Personal History Form (“PHF”) that he founded and owned CED. In fact, according to his PHF, [the Applicant] did not have any outside employment or engagement in paid or unpaid professional activities. Further, when [the Applicant] applied for a WBG term position with [the IFC], which he ultimately received on April 1, 2016, he similarly failed to disclose to the WBG that he was engaged in outside business activities.

110. INT concluded that the evidence was

clear and convincing that [the Applicant], while a full-time employee of the WBG, as an ETC and term staff, engaged in outside for-profit business activities through his company CED. [The Applicant] failed to disclose his proprietary and financial interests in CED to the WBG. Moreover, [the Applicant] willfully misrepresented facts intended to be relied upon by the WBG by omitting his proprietary and financial interests in CED when he completed and submitted mandatory WBG pre-employment documentation in connection with his WBG employment.

111. To explain his failure to disclose his outside business activities, the Applicant stated that these omissions were the result of “poor judgment.” The Applicant asserts that, as an ETC, he did not believe that he was under an obligation to disclose his outside business activities to the WBG. He further claims that his private business with CED was not in conflict with his WBG duties and did not have an impact on WBG operations.

112. The Applicant's contention that his failure to disclose his business activities was based on an innocent mistake is not persuasive. The Tribunal finds it remarkable that the Applicant had created one CV for submission to the WBG and a second, but different, CV for Company X with disclosure of his CED activities being reserved for the latter. Having reviewed the totality of the record, the Tribunal is persuaded that the Applicant knowingly withheld information about CED from his 2015 application documentation. These documents included his PHF, on which he had indicated that "if" he were to be hired he would not engage in paid or unpaid outside activities, and his CV which contained no reference whatsoever to CED. The Applicant contends that, as soon as he commenced his position as Senior Environmental Specialist, he then became aware of the potential of a conflict of interest. Given his employment background, his grade level (GG), and his expertise, the Tribunal finds it implausible that the Applicant became aware of his professional and ethical obligations as a staff member only upon being competitively reassigned as a Senior Environmental Specialist. In considering the notion of "willfulness" in the context of misrepresentation, the Tribunal recalls that the Bank's investigative proceedings are administrative and not adjudicative or criminal in nature. Thus, the level of willfulness and intentionality required to come within Staff Rule 8.01, paragraph 2.01(b), is not equivalent to the *mens rea* of criminal intent. Having reviewed the record as a whole, the Tribunal is satisfied that the Applicant had the requisite intent to misrepresent the reality of his situation when he withheld information about CED from his application materials and failed to disclose CED during his employment at the Bank Group.

113. Having completed its review of the misconduct findings against the Applicant, the Tribunal upholds the finding that the Applicant committed misconduct in violation of Staff Rule 8.01, paragraphs 1.01(c), 2.01(a), 2.01(b), and 2.01(c) in the manner described above.

(ii) Whether the imposition of disciplinary sanctions on the Applicant is barred by the three-year time limit in Staff Rule 8.01, paragraph 3.03

114. The Tribunal will now assess whether Staff Rule 8.01, paragraph 3.03, prevents the imposition of disciplinary sanctions on the Applicant. Staff Rule 8.01, paragraph 3.03, provides:

Depending on the circumstances of the case, one or more of the following disciplinary measures may be taken by the Bank Group when misconduct is determined to have occurred, provided the determination is made within three years from the date the misconduct is discovered, except that no time limitation will apply to a determination of misconduct for which mandatory termination is to be imposed:

- a. Oral or written censure;
- b. Suspension from duty with pay, with reduced pay, or without pay;
- c. Restrictions on access to the Bank's premises;
- d. Restitution, compensation or forfeiture payable to the Bank Group from a staff member's pay or benefits, or through a reduction or elimination of a salary increase in respect of a prior year in which it is later determined misconduct occurred, either to penalize a staff member or to pay the Bank Group for losses attributable to misconduct;
- e. Removal of privileges or benefits, whether permanently or for a specified period of time;
- f. Reassignment;
- g. Assignment to a lower level position;
- h. Demotion without assignment to a lower level position;
- i. Ineligibility for promotion, whether permanently or for a specified period;
- j. Reduction in future pay, including the withholding of future pay increases;
- k. Termination of appointment; and
- l. Loss of future employment and contractual opportunities with the Bank Group.

115. The Tribunal notes that the parties are in dispute as to when the three-year period begins to run as referred to in the following clause in Staff Rule 8.01, paragraph 3.03:

Depending on the circumstances of the case, one or more of the following disciplinary measures may be taken by the Bank Group when misconduct is

determined to have occurred, provided the determination is made within three years from the date the misconduct is discovered [...].

116. The Applicant contends that the relevant date for the purpose of calculating the three-year time limit is the date that INT first discovered the alleged misconduct. In his view, the “clock began to tick” when INT first discovered his connection with Company X on 16 September 2015 and, on this basis, he submits that the statutory limitation period expired on 16 September 2018. If he is wrong in this regard, the Applicant contends that, even applying the IFC’s own calculation of the *dies a quo* (that is, 19 October 2016), the HRVP’s misconduct determination and disciplinary sanctions were still out of time. The Applicant observes that the Notice of Alleged Misconduct was dated 17 October 2016 and was presented to him on 19 October 2016 while the HRVP’s decision was dated 18 October 2019 and was received by the Applicant on 24 October 2019. If time runs from the date of the Notice of Alleged Misconduct (17 October 2016), then more than three years had passed before the misconduct determination was made (see reference thereto in the email of 18 October 2019). If time runs from receipt of the Notice (19 October 2016), then more than three years had passed before the date of receipt of the misconduct determination and the imposition of sanctions (24 October 2019).

117. According to the IFC, the date the misconduct is discovered is the date that the staff member was served the Notice of Alleged Misconduct. To the IFC, that date was 19 October 2016 when the Applicant attended his first interview with INT and *received* the Notice of Alleged Misconduct. The IFC states that, since the HRVP’s decision was made on 18 October 2019, the determination as to which sanctions to impose had been made within the three-year time limit requirement of Staff Rule 8.01, paragraph 3.03.

118. Although both parties refer to the Tribunal’s jurisprudence in support of their respective positions, the Tribunal has yet to pronounce, definitively, on the commencement of the limitation provision referred to in Staff Rule 8.01, paragraph 3.03. This is the first time the Tribunal is asked to address the calculation of the three-year limitation period.

119. The Tribunal notes that, with respect to the start date (*dies a quo*) of the three-year limitation, the IFC has referred to its consistent practice of more than ten years wherein it calculates

the three-year bar as commencing on the date a staff member receives the Notice of Alleged Misconduct. It has also explained the reasons for such practice in its pleadings before the Tribunal:

[T]he Bank Group consistently considers the date on which a staff member receives the Notice of Alleged Misconduct to be the relevant date for determining timeliness. This practice is evident from *BN*, Decision No. 451 [2011], in which the Bank Group refrained from disciplining a staff member and explicitly stated that this was because “more than three years have elapsed since you were given the notice of misconduct” (*BN*, para. 11). This practice by the Bank Group makes sense for at least two reasons.

First, it is exceedingly difficult, if not impossible, to determine a literal date of discovery of misconduct. A preliminary inquiry and investigation may involve multiple subjects and allegations, and facts may shift over time as new information is uncovered. It would not be feasible for the Bank Group to attempt to review the record to determine when sufficient facts had been identified that could constitute misconduct. The date on which the staff member receives the Notice of Alleged Misconduct is easily determinable and avoids these issues.

Second, an important reason for the time limit in Staff Rule 8.01 is to ensure that a staff member does not have to endure the stress of an investigation and looming discipline indefinitely. A staff member who is the subject of an investigation will not become aware of the investigation until the staff member receives the Notice of Alleged Misconduct, and the staff member would, therefore, not endure the stress of an investigation and looming discipline before this point. Accordingly, for this reason too, the date on which a staff member receives the Notice of Alleged Misconduct is the most appropriate date for calculating the time limit under Staff Rule 8.01.

120. The Tribunal has acknowledged the Bank’s adherence to its asserted practice, even in circumstances where such practice has not been of benefit to the Bank. In *BN* [2011], the Tribunal noted “that the [a]pplicant benefitted from the [Bank’s] delay because by the time the new HRSVP made his decision, *three years had passed since the [a]pplicant had received the Notice of Alleged Misconduct.*” *Id.*, para. 76. (Emphasis added.) In that case, the Bank, adhering to its own asserted practice, did not impose disciplinary sanctions on the applicant despite its finding of misconduct because the Bank considered itself outside of the prescribed time limits under Staff Rule 8.01.

121. The Tribunal again acknowledged the Bank’s asserted practice regarding the time limitations imposed by Staff Rule 8.01 in the case of *V* [2008]. In *V*, the Tribunal noted in para. 45 that “[t]he [a]pplicant was informed of the termination on 21 September 2005, well within the time

period established under Staff Rule 8.01. In the [a]pplicant's case, *the misconduct was discovered in September 2003, when he was provided with the Notice of Alleged Misconduct.*" (Emphasis added.)

122. The Tribunal observes that it is a well-settled principle that the practice of the IFC can create a legal relationship between the IFC and its staff. The Tribunal in its first judgment in *de Merode*, Decision No. 1 [1981], stated, "The practice of the organization may [...] become part of the conditions of employment." *Id.*, para. 23. This Tribunal has, in the past, upheld certain actions of the Bank as valid because such actions were consistent with the asserted practice of the Bank. In *BO*, Decision No. 453 [2011], the President of the Bank intervened at a late stage in the selection process. The Applicant claimed that this intervention was improper. The Tribunal concluded that "the President's action did not violate any rules of the Bank and was consistent with its prevailing practice, especially with regard to appointment of staff at higher levels." *Id.*, para. 62. In other cases, the Tribunal has ruled against the Bank because it had departed from its own asserted practice. *See e.g.*, *DO*, Decision No. 546 [2016].

123. Moreover, the established practice of an organization may be considered when interpreting legal instruments of that organization. *See Cissé*, Decision No. 242 [2001], para. 23. In the instant case, the Tribunal is called upon to interpret the Staff Rule of the IFC.

124. In view of the above, the Tribunal is satisfied that the IFC has demonstrated that it has established and followed a consistent practice for at least ten years which, for the purposes of calculating the three-year limitation referred to in Staff Rule 8.01, paragraph 3.03, regards the start date as commencing on the date a staff member receives the Notice of Alleged Misconduct. The Tribunal considers that neither the IFC's practice nor its reasoning therefor is unreasonable. In view of such established practice, for the purposes of interpreting Staff Rule 8.01, paragraph 3.03, the Tribunal accepts the IFC's position and concludes that, in this case, the start date of the limitation period commenced on 19 October 2016 when the Applicant received the Notice of Alleged Misconduct.

125. The next issue to be determined is when the three-year limitation period expired in this case, that is, when the *dies a quem* occurred for the purposes of the three-year limitation period.

126. The Tribunal observes the IFC's emphasis on the date of *receipt* of a Notice as being the critical date for the purpose of establishing the *dies a quo*. It also found that the IFC has established a consistent practice in this regard and that it has argued in support of such practice, in this case, for the purpose of the commencement of the limitation period. Bearing this practice and the IFC's contentions in mind, the Tribunal considers that the IFC cannot purport to follow or argue, persuasively, in favor of a different practice when it comes to calculating the expiry date of the limitation period. If the start date commences on the day of the Applicant's *receipt* of the Notice of Alleged Misconduct, then consistency and logic require that the end date must also be the date of *receipt* by the Applicant of the notice of the sanction to be imposed. In this case, the Applicant formally received such notice on 24 October 2019.

127. The IFC's rationale for the date of receipt of Notice as being the start date applies, with equal force, to the date of receipt of notice of sanction being the end date for the purpose of the limitation period. The IFC has submitted that "[t]he date on which the staff member receives the Notice of Alleged Misconduct is 'easily determinable' and avoids the potential for issues or disputes arising." That same reasoning holds true for determining that the end date should also be the date of receipt by the Applicant of the sanction to be imposed. That date can also be easily verified by both parties. Moreover, a draft Notice of Alleged Misconduct may contain, on its face, a particular date but such a draft may be circulated for consideration by various investigative and other personnel within the organization at different stages without the date thereon being changed on each occasion of it having been considered. Thus, the date specified on a Notice may not, in fact, reflect, accurately, the date when the final terms of such a Notice were actually agreed upon and "signed off" by the Organization. In this regard, a significant degree of speculation could be involved in guessing when, precisely, deliberations had actually been completed in respect of the decision to send a staff member a Notice of Alleged Misconduct.

128. The same logic applies with respect to a notice of sanction. A draft notice of sanction may contain a particular date and may be circulated among HRVP colleagues without that date being

revised when the deliberations have been completed and the HRVP “signs off.” As the HRVP does not always clearly specify a date when he or she actually signs a sanction letter, a similar exercise in speculation could be involved in trying to ascertain when the deliberation process in respect of sanction had been completed. Determining the “end date” of the limitation period by reference to the date when the sanction was received by the Applicant obviates the necessity for such speculation and is a date that can be verified easily by both parties.

129. The second reason the IFC provides for its practice of starting the date from the date the Applicant received the Notice of Alleged Misconduct is as follows: “A staff member who is the subject of an investigation will not become aware of the investigation until the staff member receives the Notice of Alleged Misconduct, and the staff member would, therefore, not endure the stress of an investigation and looming discipline before this point.”

130. Once again, the same reasoning applies if the end date is calculated from the date of receipt by the Applicant of the notice of sanction or the decision letter. In this case, on 18 October 2019, the office of the HRDCO informed the Applicant only that a final determination had been made by the HRVP. However, the office of the HRDCO did not inform the Applicant of the content of that determination. Understandably, the Applicant was under stress in this state of unknowing. Because the Applicant did not, in fact, know what the HRVP had decided on 18 October 2019, he then contacted his counsel. His counsel requested immediate release of the decision letter by sending an email on 24 October. It was only after the Applicant’s counsel had taken such a step that the Applicant received the decision letter and was apprised of the contents thereof.

131. Moreover, the Tribunal observes that, in fact, it has been the IFC’s practice to accept that the *dies a quem* occurs on the date upon which a staff member receives a notice of sanction or a decision letter. The practice was recognized, implicitly, by the Tribunal in *V* [2008], para. 45, wherein it stated, “*The [a]pplicant was informed of the termination on 21 September 2005, well within the time period established under Staff Rule 8.01. In the [a]pplicant’s case, the misconduct was discovered in September 2003, when he was provided with the Notice of Alleged Misconduct.*” (Emphasis added.)

132. The Tribunal recalls that, on 18 October 2019, the Applicant was notified by email in the following terms:

Please be advised that the HR Vice President has made a final determination in this matter. We would like to provide you the signed decision letter and, to this end, are proposing a meeting for you to attend with my manager, [HRDCO] (copied here), and myself next week.

133. The IFC submits that, on 18 October 2019, it had thus told the Applicant that “a final determination” had been made. In the IFC’s view the word determination is also mentioned in paragraph 3.03 of Staff Rule 8.01. For this reason, it contends that the end date or *dies a quem* should be regarded as being 18 October 2019.

134. However, the Tribunal considers that the email of 18 October 2019 must be read in context and, particularly, in the specific context of paragraph 3.03 of Staff Rule 8.01. Paragraph 3.03 states, “Depending on the circumstances of the case, one or more of the following disciplinary measures may be taken by the Bank Group *when misconduct is determined to have occurred*, provided the determination is made within three years from the date the misconduct is discovered [...]” (Emphasis added.) The Tribunal observes that there is nothing on the face of the email *per se* to indicate that a determination of misconduct had been made by HRVP, let alone a determination as to the sanction. It stated only that a final determination had been made.

135. The Tribunal finds that the three-year period must be calculated having regard to the overall context of Staff Rule 8.01. Staff Rule 8.01 sets out the various stages of disciplinary proceedings in the context of a staff member receiving notice. Under Staff Rule 8.01, the IFC, specifically INT, begins an investigation when the staff member is notified of alleged misconduct and the IFC ends the disciplinary proceedings when the staff member is notified of the sanction letter or decision letter. Staff Rule 8.01 describes various stages as follows:

Notification of Alleged Misconduct

4.03 Where it is determined that there is a sufficient basis to merit an investigation, *the staff member will be notified* in writing of the alleged misconduct at the onset of the investigation.

[...]

Notification of Decision on Misconduct

4.12 *A staff member will be notified by the decision-maker of the disciplinary measures that will be taken, the reasons for their imposition, and the right to appeal the decision to the Bank Group Administrative Tribunal. (Emphasis added.)*

136. In view of the foregoing, the Tribunal is satisfied that the three-year limitation period is to be calculated in a manner that is consistent with the respective stages referred to in Staff Rule 8.01. Receipt of notice is central to the stages referred to therein. Nowhere in such stages is any reference made to the date contained upon or specified in any particular letter or notice. In this case, the Tribunal is called upon to determine the commencement and the end date of a specific limitation period in the context of disciplinary proceedings being brought against a staff member. The Tribunal considers that the critical date in respect of which legal significance attaches is the date when a notice is received by a person affected thereby. The IFC, correctly, attached no significance to the date referred to in the Notice of Alleged Misconduct but focused rather on the date when the Notice was brought to the Applicant's attention. In the same vein, the Tribunal considers that the relevant end date for the purpose of calculating whether there was compliance with the three-year limitation period was the date upon which the Applicant received the notice of sanction or decision letter.

137. The Tribunal has concluded that, for the purposes of calculating the three-year limitation period in this case, the effective date of commencement of that period was 19 October 2016 when the Applicant received the Notice of Alleged Misconduct. By the time he received the notice of sanction on 24 October 2019, the three-year limitation period had expired by almost a week. The Tribunal finds that, by sending the notice of sanction on 24 October 2019, the IFC failed to observe the requisite limitation period imposed by Staff Rule 8.01, paragraph 3.03. The disciplinary sanction imposed upon the Applicant was, therefore, time-barred.

(iii) The proportionality of the disciplinary sanctions

138. Having determined that the HRVP's disciplinary sanctions are time-barred, the Tribunal considers that it is, therefore, unnecessary to assess the proportionality of the disciplinary sanctions imposed. The Tribunal will address, in the remedies section of this judgment, whether, having regard to all the circumstances of this case, any remedies should accrue to the Applicant based on the IFC's imposition of sanctions after the limitation period had expired.

(iv) The existence of procedural irregularities and whether the requirements of due process were observed

139. The Applicant contends that INT conflated its preliminary inquiry with an investigation and acted in a "wrongfully sloppy manner," relying on "bare assumptions of *mala fides*, when accusing [him] of wrongdoing." Having upheld the finding that the Applicant committed misconduct, the Tribunal will now consider the allegations of procedural irregularities and violations of the Applicant's due process rights.

140. Pursuant to Staff Rule 8.01, paragraph 4.03, once "it is determined that there is a sufficient basis to merit an investigation, the staff member will be notified in writing of the alleged misconduct at the *onset* of the investigation." (Emphasis added.)

141. Staff Rule 8.01, paragraph 4.05, provides that the person conducting a preliminary inquiry or an investigation may

- a. Call upon any staff member for the production of documents believed to have probative value;
- b. Interview any staff member who is believed to have knowledge of the events in question; and
- c. Consult persons believed to have, or materials believed to contain, information of probative value to the investigation.

142. The Tribunal has consistently held that an investigation into a disciplinary matter is administrative and not adjudicatory in nature. *See, e.g., Arefeen* [2001], para. 45; *Rendall-Speranza*, Decision No. 197 [1998], para. 57. In addition, “compliance with all technicalities of a judicial process is not necessary, if it is conducted fairly and impartially.” *CB* [2013], para. 43. The criteria for due process were elaborated in *Kwakwa*, Decision No. 300 [2003], para. 29:

[T]he due process requirements for framing investigations of misconduct in the context of the World Bank Group’s relations with its staff members are specific and may be summarized as follows: affected staff members must be [apprised] of the charges being investigated with reasonable clarity; they must be given a reasonably full account of the allegations and evidence brought against them; and they must be given a reasonable opportunity to respond and explain.

143. The record shows that the Applicant was provided with the basic requirements of due process – he was provided with a detailed Notice of Alleged Misconduct and the opportunity to respond to the allegations through interviews and written responses. Nonetheless, the IFC’s due process obligations do not end there. Pursuant to Staff Rule 8.01, paragraph 4.03, INT was required to inform the Applicant at the onset of the investigation once it had determined that there existed a sufficient basis to merit further proceedings. The Applicant does not challenge the initiation of the preliminary inquiry as it is indeed “prudent for INT to take preparatory steps before launching a full-fledged investigation.” *CH*, Decision No. 489 [2014], para. 72. However, he does challenge the length of the investigation and delays throughout the process.

144. The Tribunal considers that INT’s preliminary inquiry was extensive. During its thirteen-month preliminary inquiry, INT (i) gathered over a thousand pages of documentary evidence of the Applicant’s misconduct; (ii) discreetly accessed and reviewed the Applicant’s WBG electronic and telephone records on two occasions; (iii) discreetly monitored the Applicant’s emails and telephone calls on an ongoing basis for three months; (iv) informed Company X that it was aware that it had received services from a Bank Group staff member; and (v) obtained from Company X email communications between the Applicant and the company concerning CED’s agent agreement with Company X.

145. Throughout this period, as it expressed in its justification memoranda of 2 November 2015 and 11 May 2016, INT already had a reasonable basis to believe that the Applicant had committed misconduct. However, INT did not initiate an investigation until October 2016 when it contacted the Applicant and conducted an interview. The IFC contends that INT's preliminary inquiry was "appropriately limited and sought only to establish whether there was sufficient evidence to institute a formal investigation." IFC further asserts that the Applicant was notified once INT had "determined that there was sufficient evidence to initiate a formal investigation and INT had determined that the risk of collusion was reasonably limited." These contentions are not entirely persuasive. By the time INT launched an investigation, it already had in its possession the vast amount of evidence it would use to support its findings as set out in its Final Report.

146. The Tribunal recalls that in *D*, Decision No. 304 [2003], an INT investigator testified before the Appeals Committee that, once the applicant's emails were scrutinized and "these showed that the [a]pplicant had forwarded bank information to Mr. S, evidencing 'some financial relationship between these two,' 'that would conclude the preliminary inquiry phase.'" *Id.*, para. 64. In the present case, INT possessed information evidencing a financial relationship between the Applicant and Company X as early as 2 November 2015. By 11 May 2016, INT had in its possession evidence of additional agreements the Applicant had entered into with other organizations.

147. The Tribunal takes note of the IFC's contention that it was concerned about the risk of collusion that might arise if it informed the Applicant too early. The Tribunal also takes into account that this was a complicated investigation which was conducted simultaneously with INT's investigation into Company X. Notification to the subject of a preliminary inquiry may be delayed if "there is a reasonable risk that material witnesses may be intimidated by the subject" or "there is a reasonable risk that physical or documentary evidence may be tampered with or destroyed by the subject." *BB*, Decision No. 426 [2009], para. 81. The IFC informed Company X in May 2016 that it was aware of Company X's relationship with the Applicant. The IFC has not explained why, if there was a legitimate risk of collusion, INT waited five additional months before formally notifying the Applicant in October 2016 of its launch of an investigation into his alleged misconduct.

148. In any preliminary inquiry a balance must be struck between launching an investigation too hastily and prolonging an inquiry to the extent that the subject's due process rights may be violated. While it is not the function of the Tribunal to micromanage INT's activities, it does consider that what is required of an investigative body "is not that every inquiry be a perfect model of efficiency, but that it operates in good faith without infringing individual rights." *G*, Decision No. 340 [2005], para. 73. Although "staff members are not normally consulted during the preliminary inquiry because this stage of the investigative process involves the gathering of sufficient evidence" (*N*, Decision No. 362 [2007], para. 23), there is no provision in the Staff Rules expressly precluding contact with the subject of a preliminary inquiry until the onset of an investigation. As was held in *D* [2003], para. 65, "a staff member who is the subject of a preliminary inquiry should be informed of that fact at the earliest reasonable moment." It is worth reiterating that "[e]arly notice – short of a formal Notification of Misconduct – can provide an opportunity to the subject to respond to the charges, to explain his suspect behavior, to inform the investigators, and so better to focus and expedite (and perhaps conclude) the preliminary inquiry." *Id.*

149. The Applicant has raised further claims of due process violations and procedural irregularity concerning the delays and overall length of time taken to conclude the investigation and issue the HRVP's decision. The Tribunal stated in *L*, Decision No. 353 [2006], para. 31, that it "is not persuaded that a lengthy investigation is *per se* an interference with due process if the investigation is reasonably proportionate to the complexity of the facts of the case." The Tribunal observes that there were significant delays in the investigation such as the two-year gap between the Applicant's written comments on the Notice of Alleged Misconduct and the Applicant's receipt of INT's Draft Report. Considering that the bulk of the evidence substantiating INT's findings was already in its possession at the time of its preliminary inquiry, the IFC has not explained the reasons for the delays. In the absence of a plausible explanation in this regard, the Tribunal considers that the delay was inordinate. That said, however, it also observes that the delays did not cause the Applicant any prejudice in that he was able to remain in his position and amend his practices, accordingly. *See AD*, Decision No. 388 [2008], para. 72.

150. Finally, some of the facts in the case give rise to certain concerns. There was, for example, an unexplained delay of almost two months between the date the Notice of Alleged Misconduct was shown to the Applicant at his first interview (19 October 2016) and the date upon which a copy of the Notice and the annexes of evidence were given to him (12 December 2016). The IFC does not deny the Applicant's assertion that he was prevented from taking the binders of evidence out of the interview room. This delay in providing the Applicant with important documentary evidence has not been explained by the IFC. *See Cissé* [2001], para. 37. Furthermore, there was additional delay in issuing the HRVP's decision letter. Five days after being told he would receive the letter "soonest" the Applicant remained "in the dark" as to his fate and, quite inappropriately, discovered that his contract was to be terminated through an automated HR email.

151. Regardless of the complexity or otherwise of disciplinary findings, the Tribunal recalls that the respondent organization is required to treat staff fairly pursuant to Principles 2.1 and 9.1 of the Principles of Staff Employment. *See G* [2005], para. 78; *D* [2003], paras. 61 and 65; *Rendall-Speranza* [1998], para. 57. The fact that a staff member is guilty of misconduct does not leave him/her "bereft of rights." *AJ* [2009], para. 155.

REMEDIES

152. Having reviewed the substance of the Applicant's claim, the Tribunal will now assess what remedies, if any, are warranted. The Tribunal recalls that the Applicant committed misconduct not only in his failure to seek approval from the appropriate authorities for his outside business activities but also by his willful misrepresentation (by omission) of his financial interests through CED. Furthermore, the Applicant committed misconduct by soliciting and receiving personal financial gain from Bank-supported projects. The Applicant admitted to receiving \$300,000.00 from CED's relationship with the Ethiopian consulting firm. Despite the dispute over whether he, in fact, received sums in the region of \$800,000.00, the Tribunal finds that the amount of \$300,000.00 is, in itself, significant. While the disciplinary sanctions are rescinded due to the expiry of the relevant time limits, the Applicant's serious misconduct must be weighed in the balance when assessing whether any remedies are warranted.

153. The fact that the Tribunal has set aside the disciplinary sanctions imposed on the Applicant cannot be construed in any manner as a failure on the part of the Tribunal to appreciate the gravity of the misconduct involved. It is no more than recognition of the fact that time limits are important and must be respected. The statute of limitations, in this case, was not observed, and the proceedings were punctuated by periods of delay for which no justification has been proffered. In disciplinary cases, the Tribunal must “naturally ensure that a disciplinary measure falls within the legal powers of the Bank” (*M* [2007], para. 54), and “[i]n disciplinary matters, strict adherence to the Staff Rules is imperative” (*Dambita* [2001], para. 21).

154. The Tribunal considers that the acts of misconduct at issue in this case are substantial and recalls that the HRVP’s findings in respect thereof have not been set aside. These are serious matters involving financial gain in violation of the Staff Rules and impinging upon the integrity of the Organization. Considering the record as a whole, and the fact that the Applicant was enriched by his violations of the Staff Rules, the Tribunal declines to award the reliefs and compensation sought by the Applicant. In the specific circumstances of this case, the Tribunal considers that its judgment, in itself, constitutes sufficient just satisfaction for the IFC’s failure to comply with Staff Rule 8.01, paragraph 3.03. The Tribunal’s declaration hereunder that the HRVP’s decision regarding the imposition of a disciplinary sanction be rescinded is, therefore, the sole and appropriate remedy in this case.

DECISION

- (1) The disciplinary sanctions are hereby rescinded;
- (2) The findings of misconduct are upheld;
- (3) The IFC shall include a copy of this judgment in the Applicant’s personnel file;
- (4) The Applicant’s request for legal fees and costs is denied; and
- (5) All other claims are dismissed.

/S/ Andrew Burgess

Andrew Burgess
President

/S/Zakir Hafez

Zakir Hafez
Executive Secretary

At Washington, D.C., * 16 November 2020

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.