



**World Bank Administrative Tribunal**

**2023**

**Decision No. 686**

**GW,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

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

**GW,  
Applicant**

**v.**

**International Finance Corporation,  
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Mahnoush H. Arsanjani (President), Marielle Cohen-Branche (Vice-President), Janice Bellace (Vice-President), Andrew Burgess, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.
2. The Application was received on 16 December 2022. The Applicant was represented by Nat N. Polito of the Law Offices of Nat N. Polito, P.C. The International Finance Corporation (IFC) was represented by David Sullivan, Deputy General Counsel (Institutional Affairs), Legal Vice Presidency. The Applicant's request for anonymity was granted on 1 May 2023.
3. The Applicant is challenging (i) the non-confirmation decision resulting in the termination of his employment and (ii) his performance rating of 2 for Fiscal Year 2021 (FY21).

#### FACTUAL BACKGROUND

4. The Applicant joined the IFC in July 2020 as a Senior Investment Officer.
5. According to the Applicant's Letter of Appointment (LOA), the Applicant's appointment was subject to a one-year probationary period, which could be extended by up to one additional year. The Applicant accepted the terms of the LOA on 26 June 2020, including to conduct himself in accordance with the Staff Code of Ethics and Staff Rules.
6. On 19 January 2021, the Applicant had a mid-year performance discussion with his Supervisor. The Supervisor summarized the conversation as follows:

- Felt management expectations [were] not very clear. Not sure how to move things forward with the [...] transaction [...]. It will help if Management could be clearer on expectations.
- Happy to work with talented people. Has issues with team members not following instructions carefully. Improving. Ask team members to redraft first drafts that some team members have taken personally. [...] Style is to give context first. Spends a lot of time drafting concept notes. Wants the team to understand his working style. There is now a chemistry in the team that has significantly improved the working environment. [...]
- Feedback for me. We have been straightforward with each other. When he joined the team did not have the impression that I trusted him. Stated that he realized that the onus was on him to make him trust me. Gave me a lot of space to me and the relationship has had room to develop and we now trust one another. [...]
- Feedback for [the Applicant]. Someone with tremendous courage, responsible and with strong intellectual and analytical capabilities. Take more leadership in the team by getting involved in more administrative task[s]. Give space to the juniors to make their own mistakes and think about the bigger picture when trying to tackle transaction[s].

7. On 11 February 2021, the Supervisor met with the Applicant to inform him that three female colleagues had reported the Applicant for using language they deemed to be sexist during a meeting. In the performance portal, the Supervisor recorded the check-in meeting as follows:

- Three female team members complained that [the Applicant] had used language in the team that were interpreted as being sexist.
- The expressions were “too many dicks in the room” and at time[s] referring to people being “horny” or “pregnant” when speaking to a person being excited about a deal or pushing forward a deal.
- It was also brought to my attention that when speaking indirectly about a female colleague [the Applicant] made reference insinuating that she would want to marry a “rich” man.
- I had a conversation with [the Applicant] about the expressions that he used and let him know that such language has no place in the team and that he should apologize to the team members for having said it.
- [The Applicant] agreed that such expressions are inappropriate and agreed to apologize to the three women in the team that had complained.

- [The Applicant] acknowledges having worked in a private equity shop [where] such language was common place but realizes that in this IFC environment such language is indeed inappropriate.
- [The Applicant] apologized to the three persons concerned. In a follow up conversations with the three person[s] one mentioned that [the Applicant] delivered a “sincere” apology, the other two were also satisfied with his apology and acknowledged they would be willing to continue to work with him should he stop using that language.

8. In the same check-in record, the Applicant commented as follows:

I hereby acknowledge the general feedback above. However, the facts and the context thereof, have not been captured accurately. Firstly, the positive feedback provided by the female colleagues who “complained” about the language I used, was not captured in the text above [...]. Secondly, I have no recollection of using the following words in my interaction with these colleagues; “horny” or “rich man”. [...] I have extended my apologies to the colleagues who I have made uncomfortable or offended by using that language and promised to never use it again.

9. On 12 February 2021, the Applicant had a performance discussion with his Supervisor and Co-supervisor. The Applicant summarized this conversation in the performance portal as follows:

- [The Applicant] described his first 6 months at IFC - enjoyed working with talented people and learned a lot throughout the journey, especially by interacting with industry specialists. However, the fact that he has not been able to process successfully transactions through CRM [Concept Review Meetings] has frustrated him, especially, when it comes to the transactions that he inherited from other departments and which came with a lot of history, he was not made aware of. [...]
- Supervisor [...] feedback to [the Applicant]: some of the project[s] [the Applicant] was staffed on are very complex such as the [...] Fund and required [the Applicant’s] skill and private equity experience. [The Supervisor] also acknowledged [the Applicant’s] valuable contribution and support on the [...] project and stated that if [the Applicant] had led the project there would have probably [been] significant progress made on the deal, as the transaction seems to be stuck at present.
- Co-supervisor [...] – [The Co-supervisor] stated that [the Applicant] should try to understand what types of transaction senior management are looking for, so that he can have more success at CRM than he has had [thus] far. [...] He added that [the Applicant] should not feel frustrated and that although [the Applicant]

has had little success at CRM thus far, it does not mean that his efforts are not being recognised. [The Co-supervisor] further stated that [the Applicant] must learn how the system works and try to be a bit patient and smart about the way he positions transactions. [The Co-supervisor] stated it is important to make sure that the feedback from management at CRM is well understood and that [the Applicant] should learn from it.

10. On 1 and 8 March 2021, IFC management held Talent Review meetings of staff, during which the Applicant was included in the “Attention Needed” category. The comments in the summary of that meeting were that “[the Applicant] has behavior and soft skills issues. He will be placed with a coach to support his transition into the IFC.”

11. On 13 March 2021, the Supervisor emailed the unit’s Senior Human Resources (HR) Business Partner indicating the following action plan: “We will provide [the Applicant] with a coach to help him adjust behaviors that [have] been counterproductive to successfully transitioning into the organization.” Between March 2021 and November or December 2021, the Applicant met with an Executive Coach on several occasions to help him integrate into the IFC’s workplace culture.

12. On 23 March 2021, the IFC issued a procedure entitled “Procedure: Probation, Confirmation, Non-Confirmation” (IFC Probation Procedure). Paragraph 8.3 of the IFC Probation Procedure states, “If the probationary period is extended before or during the annual performance evaluation cycle and the staff is eligible for a performance rating, the staff should receive a performance rating of 2 in line with the decision to extend probation.” The IFC Probation Procedure was published on the IFC’s HR webpage together with other policies and rules relevant to the probationary period and the performance management process, including World Bank Group (WBG) Directives and Staff Rules.

13. On 5 May 2021, the Applicant participated in a telephone meeting with a Director and other team members. According to the Director, he thereafter conveyed feedback on this interaction during the unit’s annual performance assessment meeting. At the request of the Supervisor and the Senior HR Business Partner, the Director summarized his feedback in writing on 8 September 2021, stating:

As I conveyed in our annual performance assessment meeting, I chaired a meeting [...] on an important and very visible [...] project [...]. [The Applicant] attended the meeting and it was my first interaction with him.

When he started speaking, his general attitude and demeanor [were] to treat me like I had no idea about the project or the subject. I think someone told him that I actually initiated the project. He was extremely condescending and arrogant. He then made statements about what he expects from the client, which was clearly a very authoritarian attitude. With that kind of attitude and approach, it was very easy to guess how he deals with clients who do not agree with him.

I came out of the meeting with a clear view that I would not want to work with or be a client of the staff. He was the closest to the most abject person I have interacted with at IFC, and I personally do not want to work with him again.

14. On 12 May 2021, the Applicant had a telephone meeting with the Executive Coach and his Supervisor. The Executive Coach took notes on the meeting and wrote, “Over the past month there has been an improvement in [the Applicant’s] disposition. Trust has been developing over the recent past.”

15. On 26 May 2021, the Applicant had a check-in conversation with his Supervisor, during which the Supervisor informed the Applicant that his probationary period would be extended for six months and that he would not receive a performance rating. The Applicant recorded this check-in conversation in the performance portal as follows:

[The Supervisor’s] feedback

- Positive feedback overall, significant improvement from last check-in, especially when it comes to [the Applicant’s] composure and communication.
- Can see the hard work [the Applicant] put through transactions as most of the deals coming through to CRM (as we are getting closer to the financial year) are led by [the Applicant].
- [The Applicant] overperformed on the task and work he has [...] carried out.
- [H]owever, I still feel he needs to improve a bit on his soft skills (delivery/tone) when interacting with others, especially with seniors. I advised that [the Applicant] should take a step back and think a bit more

about the message he is trying to convey before taking a stance as I have noticed that when he is passionate about something his delivery/tone may come out too strong on the person he is interacting with. [The Applicant] must also assess whether the moment is opportune to contradict or shar[e] an oppos[ing] view to those of senior people such as Directors, with whom he is interacting [...] at a particular point in time.

- Management has decided to extend [the Applicant's] probationary period by six (6) months, but [the Applicant] should not interpret this as a negative as his work performance has been very good.

[The Applicant's] response to the feedback

- [The Applicant] has welcomed the feedback; however, he questioned the extension of his probationary period. He feels such extension may imply that he underperformed.
- [The Applicant] said that he has withdrawn a lot when engaging with others as he fears that he will be reprimanded on what he says or the way he says it. This has adversely affected him as he feels he is losing his identity. [The Applicant] hopes that working with a coach will help him to overcome this fear.

16. In May and June 2021, the Applicant sought feedback from his colleagues, including two of the three women who reported the Applicant for using language they deemed to be sexist. The feedback he received on his technical skills was positive. The feedback he received on soft skills and behaviors was mostly positive, including the below excerpts from various feedback providers:

- I enjoy working with [the Applicant]. I am particularly impressed with his professionalism.
- [The Applicant] always [has] pertinent questions to ask to the clients to try to gauge the project and client engagement. However, [the Applicant] should try to be more on the listening side and be more receptive in the initial calls with clients to understand new concepts and new ideas [...].
- [The Applicant] shows compassion for others in the team and he is very respectful when handling sensitive issues with clients/potential clients. [The Applicant] is very good at managing expectations with clients. He communicates this very clearly and in a very straightforward manner making sure that everything is very clear and straight to the point.

- He has his own view on how to run the project but still asks for our opinion and listens to our point of view. Regarding relationship with clients, he is a professional and is good [at] leading discussions with high level executives.
- Working with [the Applicant] is very enriching. He is professional, methodical, precise in his approach and cares about the accuracy of the elements we present. [The Applicant] is a team player and does not hesitate to share his technical expertise with the team members for the good execution of the project as well as for simple mentoring. [The Applicant] is a good team leader and ensures that each team member has the opportunity to defend his or her point of view before making a final decision.
- While his way of expressing himself in case of disagreement with his interlocutor may sound sometimes a bit sharp, I have always found our conversations constructive and I have appreciated [the Applicant's] open-[mindedness], flexibility and willingness to listen to all team members' opinion (including more junior staff) and find compromises.

17. On 14 and 27 July 2021, the Applicant's department management met to review proposed performance ratings for staff, and the Applicant's performance rating was recorded as "Not rated" considering the extended probation period, and [...] management was advised to request guidance from the Case Management Unit."

18. On 16 August 2021, the Applicant's department management met with HR. During this meeting, the Applicant's department management and HR recognized that, in accordance with the IFC Probation Procedure, because the Applicant's probationary period had been extended, he would receive a performance rating of 2.

19. In an email to the Applicant and the Senior HR Business Partner, dated 8 September 2021, the Supervisor summarized his views on the Applicant's performance, which largely reiterated the feedback provided in the 26 May 2021 check-in record. The Supervisor also noted in this email that "[i]t was communicated to [the Applicant] that he would need to improve the behavior or this may result in non-confirmation."

20. On 28 September 2021, the following comments were submitted by the Supervisor in the Applicant's FY21 Annual Review:



Overall performance results for FY21 [were] good. [The Applicant] contributed positively to a number of projects that helped the team reach its goals [...]. In terms of origination, [...] and [...] stand out as a project that he developed from scratch and managed to put together a strong consortium of property developer, operator and financial investor in the name Ghana infrastructure; on [another] project, [the Applicant provided] much needed support to the team that drew from his previous professional experience.

His behaviors have been negatively affect[ing] his performance. An unfortunate incident involving a complaint by female members of the team in his use [of] language that was interpreted as sexist was also addressed through an apology to the members of the team and the use of an executive coach. A regional director recently wrote of his behavior citing "...his general attitude and demeanor [were] to treat me like I had no idea about the project or subject... He was extremely condescending and arrogant. He then made statements about what he expects from the client, which was clearly a very authoritarian attitude. With that kind of attitude and approach, it was very easy to guess how he deals with clients who do not agree with him."

[The Applicant] has explained that his working style comes from the private sector where one is encouraged to be direct. He confirmed that [he] had disagreements and not confrontations with the parties cited above and pointed to the positive feedback that he received from his feedback providers. The use of an executive coach has helped [the Applicant] but the behaviors need to be improved going forward. It was explained to [the Applicant] that how one behaves is just as determinant as how one performs in the organization.

21. In the Staff Comments section of the Applicant's FY21 Annual Review, the Applicant responded, stating:

As for my behavior, I believe there is always room to do better as [I] am not perfect, and I am currently learning behavioral strategies with my executive coach in order to better integrate the IFC culture.

22. On 15 October 2021, the Supervisor verbally informed the Applicant that he was recommending a performance rating of 2.

23. On 29 October 2021, the Supervisor verbally informed the Applicant that his appointment would not be recommended for confirmation.

24. On 3 November 2021, the Supervisor notified the Applicant in writing that he would be recommending to a Regional Director non-confirmation of the Applicant's appointment, stating:

I refer to our conversation on 29 October 2021 regarding your work contract at IFC and the forthcoming end of your probation period.

As discussed, I am recommending the non-confirmation of your WBG appointment to [the Regional Director]. As per our HR policies, you will have fourteen (14) calendar days to consult with HR or other colleagues and provide comments on this recommendation. Thereafter, this recommendation together with your comments will be submitted to [the Regional Director] for final decision. If [the Regional Director] approves this recommendation, i.e., non-confirmation of appointment, we will start a formal process to provide you with at least 60 days of notice that your position is not confirmed.

Staff [R]ule 7.01, section 07 describes the rules for ending employment through non-confirmation of appointment and allows for a severance payment equal to one month's net pay. Finally, as we also discussed, you may resign your appointment and avoid non-confirmation should you so choose.

From a personal standpoint, I wanted to thank you for the frank, open, and respectful discussion that we had on the matter, despite the obvious sensitivities.

25. On 16 November 2021, the Applicant acknowledged receipt of the Supervisor's communication and intention to recommend non-confirmation of his appointment.

26. On 23 November 2021, the Regional Director emailed the Applicant, stating:

In the past several months, your supervisor [...] has discussed with you behavioral issues in the workplace and ways in which your behavior was expected to improve. [The Supervisor] also advised you that if your behavior did not improve, your appointment would not be confirmed. Because no significant improvement has been noted, IFC has decided not to confirm your appointment. Please be informed that your employment with the World Bank Group will be terminated effective close of business January 22, 2022 in accordance with Staff Rule 7.01, Section 7.

*Internal remedies*Administrative Review

27. On 21 November 2021, the Applicant filed for Administrative Review of his FY21 Annual Review and performance rating.

28. On 23 March 2022, the Administrative Reviewer sent his report to the Regional Director, recommending that no change be made to the Applicant's performance rating of 2, concluding that the performance rating and the Supervisor's comments in the Applicant's FY21 Annual Review had "a reasonable and observable basis, and that management satisfied its obligations to the staff member and followed proper procedures with appropriate communication."

29. On 4 April 2022, the Regional Director informed the Applicant of his decision to affirm the Administrative Reviewer's findings in whole and confirm the Applicant's performance rating of 2.

Performance Management Review

30. On 4 April 2022, the Applicant submitted a request for his FY21 Annual Review and performance rating to be reviewed through Performance Management Review (PMR).

31. During the PMR proceedings, the Supervisor provided the following written testimony, which was included in the PMR report:

I personally witnessed these behaviors ["that created an atmosphere that went against our values of respect and teamwork"] shortly after his hiring when we worked on setting up team norms and procedures for delivering on the team agenda. During the meetings, [the Applicant] would monopolize the conversation with lines of questioning presented in an aggressive and confrontational tone. The effect was to shut down the other team member. In around October/November 2020, it was reported to me that [the Applicant] showed aggressive behavior during project meetings and joint team meetings. He would speak over colleagues and he was not receptive to colleagues' opinions, suggestions, and ideas to the point that he was

disruptive in meetings. It was reported that he would repeatedly use the expression “you are not understanding what I am saying” in an often patronizing tone when colleagues or clients were critical of his proposals or putting forward alternative ideas.

32. The PMR Reviewer interviewed the three female colleagues who had reported the Applicant in February 2021 for his use of inappropriate language during a meeting. The PMR report reflects that “[a]ll three indicated that their working relationships with [the Applicant] improved after the incident and that they had had positive relationships with him during the remainder of FY21.”

33. The PMR Reviewer also looked into the 5 May 2021 interaction between the Applicant and the Director. In the PMR report, the Applicant described the conversation he had with the Director as follows:

**The Director asked** “why do we need to have a pilot phase on the project?”

**[The Applicant] responded:** “the team view is that financing of the affordable housing projects by the private sector investors in Africa is still very much in its infancy as it is a new asset class, that’s why the team recommended a pilot phase to gauge private sector investors’ appetite for such asset class.” [Emphasis in original.]

**Director then interjected** stating that “affordable housing is not [a] new asset class and I have been involved in many affordable housing projects with IFC over the last 20 years or so...” the director further stated that he completed an affordable housing project in Mexico.

**[The Applicant] responded:** “I am sorry you misunderstood me. What I meant was....” (*got interrupted* and could not complete my argument). [Emphasis in original.]

**Director interjected:** “No! I did not misunderstand you....I think you misunderstood me...affordable housing is not a new asset class...I have initiated this project at IFC, and we do not need a pilot phase as there has been many affordable housing projects completed by other entities in Senegal in the past”. The Director went on and on and on about his experience at IFC on affordable housing projects.

**[The Applicant:]** I stayed quiet and never spoke again.

34. After reviewing the Applicant's description of the meeting, the PMR Reviewer interviewed other colleagues present at the 5 May 2021 meeting. He summarized the interviews as follows:

I interviewed four WBG staff members who participated in the meeting on May 5. Although they observed that [the Applicant] had made his point forcefully, all four stated that they did not consider his comments disrespectful or inappropriate for an internal meeting. I read [the Applicant's] description of the meeting [...] to each of the interviewees, and they all agreed that, to the best of their recollections, it corresponded generally to their memory of the meeting. I therefore conclude that [the Director's] comments were a disproportionately negative characterization of [the Applicant's] behavior during the meeting.

35. The PMR Reviewer noted that the Director "did not respond to two emails from me requesting an interview."

36. On 10 May 2022, the PMR Reviewer issued a recommendation to the Regional Vice President, Sub-Saharan Africa Department (Vice President). The PMR Reviewer found that management "exceeded its discretion in extending [the Applicant's] probation in May 2021" based on "a lack of evidence that [the Applicant's] performance had not met expectations during the period leading to the extension [...] and the contradictory messages in the communication notifying [the Applicant] of the extension." The PMR Reviewer further stated, "Since [the Applicant's] FY21 Performance Rating of 2 was based on the extension of his probation, [...] there was not a justifiable basis for the rating." In view of this finding, the PMR Reviewer recommended that (i) the Applicant's performance rating be changed to a 3; (ii) he be retroactively paid the salary he would have received until the end of his employment; and (iii) he be awarded three months' salary net of taxes "because of management's failure to act within its discretion and otherwise satisfy its obligations to [the Applicant]."

37. The PMR Reviewer also recommended various revisions to the Applicant's performance evaluation, namely:

If discussion of the issue concerning [the Applicant's] use of sexist language is retained in a revised review, reference to the affected parties' acceptance of [the Applicant's] apologies and their subsequent positive working relationships with him should be added;

The reference to a director's critical comments on [the Applicant's] behavior during a meeting should be removed from the review, in view of management's failure to advise [the Applicant] of these comments in a timely manner and the disproportionately negative nature of the comments; and

The review should be made more balanced by including reference to the positive feedback [the Applicant] received from twelve staff members through the feedback tool in the WBG's performance management system and his performance as chair of the [...] Committee.

38. On 8 June 2022, the Vice President notified the Applicant via email of his decision to accept the PMR Reviewer's recommendation to revise the Applicant's FY21 Annual Review "to make it more balanced." The Vice President further notified the Applicant of his decision to reject the remaining recommendations made by the PMR Reviewer. In explaining his decision to reject the remaining recommendations, the Vice President stated:

I have decided not to change your FY21 performance rating to 3 because the rating's definition provides that staff who receive such rating have met all their performance expectations; from the feedback you received, that was not the case.

Furthermore, I have decided not to authorize financial compensation to you, either in the retroactive payment of salary or in the compensation equal to three months of your final net salary, as doing so would be inconsistent with my decision to leave your performance rating unchanged.

Overall, I have concluded that Management did not exceed its discretion in evaluating your performance, and that proper feedback was given to you, following due process.

#### Peer Review Services

39. On 23 November 2021, the Applicant filed a request for Peer Review Services (PRS) to review the non-confirmation decision.

40. On 20 April 2022, the PRS Panel suspended the PRS proceedings to allow the PMR process to conclude.

41. On 30 September 2022, the PRS Panel issued its report, which concluded that

the WBG acted consistently with [the Applicant's] contract of employment and terms of appointment regarding the Non-Confirmation Decision. Specifically, the Panel found that the Non-Confirmation Decision had a reasonable and observable basis, and that the Non-Confirmation Decision did not violate [the Applicant's] due process guarantees. The Panel additionally found that management made the Non-Confirmation Decision in good faith.

42. The PRS Panel also “found that the provision of the warning of non-confirmation on September 8, 2021, rather than at an earlier date, did not rise to the level of a procedural irregularity or process violation that merits relief.”

43. In its report, the PRS Panel further stated that it “ultimately decided not to refer to the PMR Report in this Panel’s Report because it conducted its own fact-finding,” noting also that “PRS and PMR are two independent mechanisms.”

#### *The present Application*

44. On 16 December 2022, the Applicant filed this Application.

45. In the Application, the specific performance requested by the Applicant is “reinstatement and correction of his personnel files to reflect at least a 3 rating.” As compensation, the Applicant seeks

damages for [loss] of career opportunity, reputational damage as a result of defamatory accusations, inconvenience, emotional distress, and physical/mental stress, assessed as five [years’] net salary, and such other and further relief as this Tribunal deems just and appropriate under the circumstances, or, in the alternative, reinstatement to the position he held upon termination.

46. He further requests (i) “that the Bank removes his name from the list of staff that have been blacklisted as a result of termination,” and (ii) “a letter of excuse from [the] IFC or the Director who levelled defamatory claims against him.”

47. The Applicant claims legal fees and costs in the amount of \$36,632.00.

## SUMMARY OF THE CONTENTIONS OF THE PARTIES

***The Applicant's Contention No. 1***

*There was no rational basis for the probation extension or the non-confirmation decision*

48. According to the Applicant, there was “no reason” and nothing “on the record” regarding his performance that could warrant the extension of his probationary period.

49. In the Applicant's view, there is likewise no record that he violated the terms of his employment or underperformed in such a way as to justify the non-confirmation of his employment.

50. According to the Applicant, with respect to the inappropriate language used during the telephone call in February 2021, he made reasonable and good faith efforts to address the issue to the satisfaction of his Supervisor and colleagues, including coaching. In the Applicant's view, he was successful in his efforts because two of the three colleagues who reported his behavior gave him positive feedback subsequent to the incident. The Applicant maintains that any alleged issues with his conduct were therefore resolved at the time of the non-confirmation decision, and for this reason the Applicant believes the behavioral issues were fabricated and cannot be used to justify the non-confirmation decision.

51. With respect to the Director's complaint about the Applicant, namely that he found the Applicant to be “condescending and arrogant,” the Applicant contends that this complaint is fabricated, baseless, and defamatory. Furthermore, in the Applicant's view, the alleged complaint cannot be used to support the non-confirmation decision, because it was not immediately brought to the Applicant's attention. In support of this contention, the Applicant points to the fact that “the incident happened on May 5, 2021,” but that his Supervisor did not inform him of the complaint until 8 September 2021. To the Applicant, this delay demonstrates that the incident was not sufficiently serious as to warrant non-confirmation of his appointment.



***The IFC's Response***

*There is a reasonable and observable basis for the probation extension and the non-confirmation decision*

52. The IFC contends there is a reasonable and observable basis for the probation extension and the non-confirmation decision based on the Applicant's behavioral issues during the probationary period indicating he was not suitable for employment with the WBG.

53. The IFC avers that, in accordance with the Applicant's LOA, signed and accepted by the Applicant, his appointment was subject to a probationary period, the purpose of which was to assess his suitability for continued employment. According to the IFC, the Applicant was not suitable for continued employment, as evidenced by the numerous examples in the record of management's efforts to engage with the Applicant to address his unprofessional conduct in the workplace, with little success, over an extended period of time.

54. By way of example, the IFC points to the mid-year conversation held on 19 January 2021, wherein it was noted that the Applicant had "issues with team members not following instructions carefully," asked for redrafts from teammates in a manner that was "taken personally," and "[wanted] the team to understand his working style." In the IFC's view, these comments from the Supervisor demonstrate the Applicant's aggressive working style, and the Supervisor's advice during this meeting encouraged the Applicant to be tolerant and try to adapt to his environment.

55. In the IFC's view, the Supervisor's advice was not heeded, and the Applicant's behavior instead worsened. In support of this view, the IFC points to the Applicant's use of "crass and inappropriate language" in a meeting in early February 2021 that was the subject matter of complaints from three of the Applicant's colleagues. According to the IFC, because the Applicant was provided with training during his onboarding to impress upon him the WBG's values, it is difficult to believe that the Applicant did not know the use of rude and graphic language was inappropriate and unacceptable at the IFC. The IFC maintains that it was therefore problematic that the Applicant waited to apologize until his colleagues filed complaints and until he was instructed to apologize by the Supervisor. The IFC also maintains that it was problematic that the

Applicant remained defensive of his inappropriate behavior, excusing the behavior as something he had “been used to” in his prior jobs and affirming he felt it was “unjust/one-sided to interpret [...] only the negative feedback from the female colleagues.”

56. While the IFC acknowledges that the Applicant’s female colleagues accepted the Applicant’s apology, “that does not negate the impact of the negative behaviors – especially when coupled with additional behaviors that are not consistent with the World Bank [Group] values.”

57. The IFC contends that, despite consistent efforts from management, including coaching and mentorship, to help the Applicant transition into IFC culture and understand workplace values, the Applicant’s workplace behavior remained inappropriate, and the Applicant even proceeded to broaden the scope of his behavioral maleficence from initially just his teammates to later IFC senior staff.

58. To support this contention, the IFC first points to the Director’s email about his interaction with the Applicant on 5 May 2021, wherein the Director described the Applicant’s attitude as “condescending and arrogant,” expressed concern about the Applicant’s interactions with the IFC’s clients given his “very authoritarian attitude,” and stated that he would not want to work with the Applicant again.

59. The IFC next points to the feedback provided by the Supervisor on 26 May 2021, including that the Applicant “needs to improve a bit on his soft skills (delivery/tone) when interacting with others, especially with seniors,” that “his delivery/tone may come out too strong,” and that he should be more tactful in determining “whether the moment is opportune to contradict or shar[e] an oppos[ing] view to those of senior people.”

60. The IFC notes that, while the Applicant’s performance review acknowledged some positive feedback from colleagues, not all of the Applicant’s colleagues provided favorable feedback on the Applicant’s professional behavior. The IFC provides, for example, the feedback from a Senior Investment Officer who pointed out that “[the Applicant’s] way of expressing himself in case of disagreement with his interlocutor may sound sometimes a bit sharp.”

61. The IFC contends that, based on complaints from colleagues and feedback provided by the Supervisor and the Applicant's colleagues, there is a reasonable and observable basis for the decision to extend the Applicant's probation period.

62. The IFC maintains that it has an obligation to create a safe, welcoming environment for all its staff. In the IFC's view, the Applicant refused to adjust his behavior to the safe, welcoming workplace culture that the WBG is continuously striving to achieve.

63. The IFC contends that, by September 2021, the Applicant had still not made significant progress with respect to his soft skills and that during this month the feedback he received reflected that shortcoming, namely that his "behaviors have [...] negatively affected his performance" and that "he would need to improve [his] behavior or this may result in non-confirmation."

64. To the IFC, the Applicant's behaviors during his probationary period were incompatible not only with the WBG's values and culture but also with the position requirements of a Senior Investment Officer. In this respect, the IFC points to the Applicant's position description, which required "[e]xcellent people skills, openness to feedback, new ideas, and ability to guide, and motivate others." It further set two important duties: (i) to "[c]ollaborate with stakeholders and form partnerships with staff across IFC and the World Bank Group, sponsors, clients and other external parties to enable delivery of Upstream projects"; and (ii) to "[m]entor more junior staff working on Upstream activities." In the IFC's view, the Applicant's unprofessional behavior fell short of the position's requirement to build strong relationships within the organization and outside with clients.

65. In the IFC's view, the Applicant's technical performance was also lacking. In support of this contention, the IFC provided the performance evaluation of one staff member in a similar position together with a comparison chart demonstrating that this staff member produced more deliverables than the Applicant.

66. According to the IFC, despite the considerable resources invested to help the Applicant transition to the IFC's workplace environment, the Applicant fell short of demonstrating his

suitability for adapting to the WBG's culture. Based on what the IFC alleges to be a pattern of confrontational, lewd, and aggressive behavior, and in accordance with the Applicant's LOA, Principles of Staff Employment, applicable Staff Rules, and IFC Probation Procedure, the IFC decided to not extend the Applicant's appointment.

67. For the reasons given above, the IFC maintains that its decision not to confirm the Applicant's appointment had a reasonable and observable basis and was, therefore, a sound exercise of its managerial discretion.

***The Applicant's Contention No. 2***

*Management abused its discretion in rating his performance because there is no rational basis for the rating and the decision undermines the Internal Justice Services*

68. According to the Applicant, the Vice President's decision to reject the PMR Reviewer's recommendation should not stand because (i) there is no rational basis for the "unilateral" decision, and (ii) it undermines the Internal Justice Services (IJS).

69. The Applicant contends that there is no rational basis for the performance rating of 2. In support of this contention, the Applicant maintains that the Vice President did not provide "even an explanation as to the basis of the decision." The Applicant further maintains that the Vice President's decision appears to have been made without considering the Applicant's technical performance or the feedback he received from colleagues. To the Applicant, this lack of consideration demonstrates that there is no rational basis for the Vice President's decision, and that management therefore abused its discretion in rating his performance.

70. Next, the Applicant contends that the Vice President's decision should not be upheld because it undermines the IJS. In support of this contention, the Applicant states that the Vice President's decision "appears to have been made unilaterally" and fundamentally undermines the PMR process by ignoring the PMR recommendation without explanation. In the Applicant's view, the PMR Reviewer is tasked with conducting a thorough investigation, including interviewing witnesses and preparing an exhaustive report; therefore, "[i]f the PMR [R]eviewer may simply be

ignored, unscrupulous managers are free to make arbitrary decisions adversely impacting the careers of Staff members with impunity and against the IJS system in place to protect Staff.” The Applicant requests that this Tribunal “credit the PMR [R]eviewer, sending a clear message validating the PMR process.”

71. Last, the Applicant rejects the IFC’s mandate of an automatic performance rating of 2 in instances of probation extensions. The Applicant maintains that it is unclear where this rule is published and that, furthermore, he is entitled to a rating that is tied to his performance record “as opposed to a blanket rule.” In the Applicant’s view, such an automatic rating system, not tied to performance, “is against the Staff Rules and Tribunal precedent requiring a rational basis for performance ratings.”

### ***The IFC’s Response***

#### *The IFC followed institutional policies in the rating of the Applicant’s performance*

72. The IFC states that the IFC Probation Procedure mandates that, “[i]f the probationary period is extended before or during the annual performance evaluation cycle and the staff is eligible for a performance rating, the staff should receive a performance rating of 2 in line with the decision to extend probation.”

73. According to the IFC, because the Applicant’s probationary period was extended, and in accordance with the IFC Probation Procedure, the Supervisor did not have any discretion in this matter and simply followed the applicable procedure in giving the Applicant a performance rating of 2. In the IFC’s view, there was therefore a legal and reasonable basis to give the Applicant a performance rating of 2.

### ***The Applicant’s Contention No. 3***

#### *Management violated the Applicant’s due process rights, resulting in harm*

74. The Applicant contends his due process rights were violated during the performance rating process and the non-confirmation process, and that these due process violations resulted in harm.

75. According to the Applicant, the IFC violated his due process rights because his performance rating was set on 16 August 2021, before his performance evaluation meeting with his Supervisor, which took place on 8 September 2021. To the Applicant, this timeline demonstrates that the performance evaluation meeting “was just a formality and significantly lacked fairness, credibility and transparency, as Management had already made up its mind about [the Applicant’s] performance rating.”

76. The Applicant also maintains that the IFC failed to provide him with reasonable opportunity to correct any alleged deficiencies, because the non-confirmation decision came only five weeks after he was informed that he was getting a performance rating of 2.

77. The Applicant maintains that his Supervisor failed to give adequate warning of the possibility of non-confirmation. According to the Applicant, he did not have prior notice that his appointment would not be recommended for confirmation “until about eight (8) months after his successful 2021 mid-year [review].”

78. The Applicant further contends that there is “no record at all” of how the non-confirmation decision was reached and that, therefore, the IFC did not follow a fair and transparent procedure for the non-confirmation decision.

79. To the Applicant, the above due process violations made it such that he was unable to comment on and defend himself against allegations of unsatisfactory work.

80. The Applicant also maintains that he should be compensated for the harm caused by the Director’s “reckless and destructive communication” about the Applicant because it has tarnished his reputation, resulting in an inability to find employment “similar to what he enjoyed” at the IFC.

***The IFC's Response***

*The Applicant was afforded fair treatment and due process*

81. The IFC contends that the Applicant was afforded fair treatment and due process because he was given (i) adequate warning about criticisms of his performance that might ultimately result in a non-confirmation decision, and (ii) adequate opportunities to defend himself.

82. The IFC maintains that the Applicant was put on notice multiple times, both verbally and in writing, that his professional behavior needed significant improvement. The IFC further maintains that the Applicant was aware that he was on an extended probationary period and was provided with clear and specific notice that his unprofessional behavior may result in the non-confirmation of his appointment.

83. The IFC avers that the Applicant was treated fairly and provided with adequate guidance throughout his employment with the IFC, as evidenced by the nine months of “regular and personal guidance” from the Supervisor and Co-supervisor, the provision of executive coaching, and an extension of the probationary period to allow the Applicant additional time to meet his professional behavior goals.

84. The IFC also contends that the Applicant was given adequate opportunities to defend himself through the performance portal and feedback discussions. According to the IFC, the Applicant utilized these opportunities to communicate his views “on every instance his conduct was called into question, providing explanations for his behavior, defending his performance, justifying his outbursts and questioning the affirmations of other IFC staff, senior staff and even that of external clients.” The IFC notes that the Applicant also used the opportunity to request feedback from his colleagues to defend his performance.

85. The IFC notes that the only time the Applicant did not offer any defense of his behavior was after receiving written notice regarding the recommendation of non-confirmation of his appointment. The IFC maintains that the Applicant was explicitly informed that he had the

opportunity to defend himself as the Staff Rules prescribe but chose not to use the opportunity to let his opinion be known or make arguments to the decision-maker.

86. Finally, the IFC contends that the Applicant was informed of his rights at every turn, including the availability of different redress mechanisms in the IJS, and that the Applicant availed himself of these processes, again demonstrating that the Applicant has been heard.

### ***The Staff Association's Amicus Curiae Brief***

87. The Tribunal granted the Staff Association's request to act as *amicus curiae* and accepted its submission of a brief in support of the Application.

88. First, the Staff Association contends that there was a lack of consistency and coherency between the PMR and PRS processes in this case. In the Staff Association's view, it was disappointing for the PRS process to be delayed by three months only for the PRS Panel to then, "without explanation," ignore the PMR Reviewer's findings of fact.

89. Next, in the Staff Association's view, while the IFC has authority to issue separate rules that apply only to its staff and that may differ from those of other units of the WBG, those separate rules may not be inconsistent with the broader WBG Staff Rules. The Staff Association avers that the IFC's policy upon which the Applicant's performance rating of 2 is based is inconsistent with the WBG Staff Rules and should therefore be found invalid. The Staff Association finds it problematic that the IFC has not made any performance-based assertions in support of the Applicant's performance rating of 2, relying instead on the IFC Probation Procedure to support the automatic decision.

90. Last, the Staff Association contends that the non-confirmation decision is an abuse of discretion because the IFC cannot cite any behaviors or incidents occurring after 26 May 2021. To the Staff Association, this timeline establishes that, following the probation extension decision of 26 May 2021, the Applicant demonstrated that his performance was strong, and any behavioral concerns had long since been ameliorated.



## THE TRIBUNAL'S ANALYSIS AND CONCLUSIONS

## STANDARD OF REVIEW FOR NON-CONFIRMATION DECISIONS

91. Principle 4.1(c) of the Principles of Staff Employment states, "An appointment for more than a year shall normally commence with a probationary period to allow The World Bank or the IFC and the staff member to assess their suitability to each other."

92. Staff Rule 4.02 sets out the provisions governing the probationary period. According to paragraph 1.01 of that rule, "[t]he purpose of the probationary period is to assess the suitability of the World Bank Group Institution and the Staff to each other."

93. In *McNeill*, Decision No. 157 [1997], para. 30, the Tribunal stated:

The scope and extent of the review by the Tribunal of the Bank's decisions concerning confirmation or non-confirmation of appointment during or at the end of the probationary period rest on the basic idea that the purpose of probation is "the determination whether the employee concerned satisfies the conditions required for confirmation" (*Buranavanichkit*, Decision No. 7 [1982], para. 26), that is to say, in the language of Staff Rule 4.02, the determination whether the probationer is "suitable for continued employment with the Bank Group." The probationer has no right to tenure; pending confirmation his situation is essentially provisional and his future with the Bank depends on his suitability for permanent employment. The assessment of his suitability is a matter of managerial discretion, as the Tribunal has ruled in *Salle* (Decision No. 10 [1982]):

It is of the essence of probation that the organization be vested with the power both to define its own needs, requirements and interests, and to decide whether, judging by the staff member's performance during the probationary period, he does or does not qualify for permanent Bank employment. These determinations necessarily lie within the responsibility and discretion of the Respondent [...]. (para. 27).

It is, therefore, for the Bank to establish the standards which the probationer should satisfy. The Tribunal has determined that these standards

may refer not only to the technical competence of the probationer but also to his or her character, personality and conduct generally in so far as they bear on ability to work harmoniously and to good

effect with supervisors and other staff members. The merits of the Bank's decision in this regard will not be reviewed by this Tribunal except for the purposes of satisfying itself that there has been no abuse of discretion [...]. (*Buranavanichkit*, Decision No. 7 [1982], para. 26).

It is also for the Bank to determine, at the end of the probation or at any time during the probation, whether the probationer has proven either suitable or unsuitable for Bank employment and to terminate his employment whenever it concludes that he is unsuitable. As the Tribunal has repeatedly stated, it will not review the exercise by the Respondent of its managerial discretion unless the decision constitutes an abuse of discretion, is arbitrary, discriminatory, improperly motivated or carried out in violation of a fair and reasonable procedure.

94. The Tribunal stated in *Zwaga*, Decision No. 225 [2000], para. 32, that it

will not substitute its own judgment for that of the Respondent on the staff member's suitability for employment. In reviewing the Respondent's decision not to confirm the [a]pplicant's appointment, the Tribunal further notes that the concept of unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member.

#### SUITABILITY FOR CONFIRMATION AND CONTINUED EMPLOYMENT

95. According to the Applicant, there was "no reason" and nothing "on the record" regarding his performance that could warrant the extension of his probationary period. Moreover, the Applicant claims, there was no rational basis for the non-confirmation decision.

96. The IFC asserts that the Applicant's technical skills were not on par with his colleagues' technical skills and that his professional behaviors did not align with the WBG's workplace culture, demonstrating a reasonable and observable basis for the non-confirmation decision.

#### *Probation extension*

97. The Tribunal will first review the record of the Applicant's performance up to the point of the probation extension decision to determine whether the decision was an abuse of discretion,

arbitrary, discriminatory, improperly motivated, or carried out in violation of a fair and reasonable procedure.

98. The Tribunal observes the recorded summary of the 26 May 2021 check-in meeting between the Applicant and the Supervisor in which the Applicant was informed of the probation extension. In the check-in summary, the Supervisor stated that the Applicant “overperformed,” characterized his feedback on the Applicant’s performance as “[p]ositive feedback overall,” and commended the Applicant’s “significant improvement” in the areas of composure and communication.

99. Notwithstanding such positive comments, the Supervisor extended the Applicant’s probationary period by six months, noting that the Applicant “should not interpret [the extension] as a negative as his work performance has been very good.” The Tribunal observes that the Supervisor identified just one aspect of performance for the Applicant to improve upon “a bit,” namely, his “soft skills,” such as delivery and tone.

100. The Tribunal first notes that the Applicant himself was aware of the concerns about his delivery and tone, stating in the summary of the 26 May 2021 check-in meeting that “he has withdrawn a lot when engaging with others as he fears that he will be reprimanded on what he says or the way he says it.”

101. The record also demonstrates that the Applicant’s delivery, namely his use of inappropriate language, during a meeting in February 2021 was reported by three of his colleagues who deemed the language to be sexist. The record further indicates, however, that the incident of the Applicant’s use of inappropriate language appears to have been considered resolved at the point of the probation extension.

102. For example, in the summary of the 11 February 2021 check-in meeting between the Applicant and his Supervisor, the Applicant stated, “I have extended my apologies to the colleagues who I have made uncomfortable or offended by using that language and promised to never use it again.” The Supervisor also noted in that same check-in summary:

- [The Applicant] agreed that such expressions are inappropriate [...].
- [The Applicant] apologized to the three persons concerned. In a follow up conversations with the three person[s] one mentioned that [the Applicant] delivered a “sincere” apology, the other two were also satisfied with his apology and acknowledged they would be willing to continue to work with him should he stop using that language.

103. Moreover, the Tribunal observes, there is no mention of the February 2021 incident, nor any mention of challenges in the team dynamic stemming from the incident, indicated as a basis for the probation extension. The Tribunal therefore considers that the Applicant, in his apology, took responsibility for his actions during the February 2021 meeting and additionally notes that positive working relationships were thereafter restored.

104. The Tribunal next observes the Director’s feedback following an interaction between the Applicant and the Director during a group meeting conducted over the phone on 5 May 2021. The Director stated that the Applicant was “condescending,” “arrogant,” and “authoritarian” during the meeting. The Director further expressed concerns regarding how the Applicant’s workplace behaviors may affect client relations.

105. While the Tribunal acknowledges the Director’s stated perspective, it further considers that regard must be had to the perspective of the other four staff members who also participated in the meeting of 5 May 2021. According to the record, all four staff members confirmed the Applicant’s account of the meeting, as quoted in paragraph 33 of this judgment, to be accurate, and they unanimously “did not consider [the Applicant’s] comments disrespectful or inappropriate for an internal meeting.” The Tribunal considers the unanimous perspective of these staff members, more junior to the Director, to be of considerable value.

106. The Tribunal recalls that the PMR Reviewer, in accordance with Staff Rule 9.07, is a “neutral [r]eviewer,” and notes the PMR Reviewer’s conclusion that the Director’s comments “were a disproportionately negative characterization of [the Applicant’s] behavior during the meeting.”

107. The Tribunal is of the view that the record as a whole does not support the Director's perspective regarding the Applicant's delivery and tone during the 5 May 2021 phone meeting.

108. Next, the Tribunal will review the feedback provided to the Supervisor on 21 May 2021, prior to the probation extension, submitted by the Applicant's colleague who indicated that the Applicant's tone was "sharp." In reviewing the record, the Tribunal considers the context in which that feedback was provided, which states more fully:

I have enjoyed a lot working with [the Applicant] over the last few months on a joint [...] project [...]. I have appreciated his professionalism, his commitment, and his solution-oriented thinking to make progress on a particularly complex project. His excellent structuring skills and experience of the real estate sector have been a real asset for our project team. Thanks to his long-standing investment background in the private sector, [the Applicant] has a thorough understanding of the investment vehicle features needed to attract private investors.

While his way of expressing himself in case of disagreement with his interlocutor may sound sometimes a bit sharp, I have always found our conversations constructive and I have appreciated [the Applicant's] open-[mindedness], flexibility and willingness to listen to all team members' opinion (including more junior staff) and find compromises. He is a pleasant person and nice and efficient team mate to work with.

109. While the feedback provider does mention that the Applicant's delivery and tone "may sound sometimes a bit sharp," on balance, it is evident that this feedback provider had an overall positive impression of the Applicant's workplace behaviors, commending his "willingness to listen" and open-mindedness, and describing him as "pleasant," "nice," and someone with whom she enjoys working. The Tribunal therefore views the feedback received at the point of the probation extension to be, on balance, positive.

110. Having determined that (i) the Applicant successfully made amends for his use of inappropriate language during the February 2021 meeting, (ii) the Applicant's delivery and tone were not inappropriate during the 5 May 2021 meeting, and (iii) on balance, the feedback provided to the Supervisor regarding the Applicant's workplace behaviors was largely positive, the Tribunal considers most of the identified "soft skills" issues as largely resolved at the point of the probation extension.

111. The Tribunal is of the view that the contemporaneous record of the probation extension decision lacks specificity as to the aspects of the Applicant's past performance that justify the extension decision.

112. However, the Tribunal is mindful that the purpose of extending a probationary period, as stated in the Extension of Probationary Period form, is to "provide further opportunity to assess [the staff member's] overall suitability for employment with the World Bank Group."

113. With this purpose in mind, and considering the Applicant had some, albeit resolved, workplace behavior issues arise during the first several months of the probationary period, the Tribunal accepts that the IFC, in its discretion, decided to provide further opportunity to assess the Applicant's suitability for employment with the IFC.

114. That the probation extension was more of a precaution than a warning to the Applicant that his position was at risk for non-confirmation is further supported by the Supervisor's comment that the Applicant "should not interpret [the extension] as a negative as his work performance has been very good."

115. The Tribunal concludes that, in these circumstances, and specifically considering that "unsatisfactory performance as applied in the case of probation is broader than that of a confirmed staff member" (*Zwaga* [2000], para. 32), it will not set aside the probation extension decision.

#### *Non-confirmation*

116. The Tribunal has previously emphasized that the non-confirmation of a staff member's appointment "is a serious matter, which has grave consequences for a staff member's professional life." *FN*, Decision No. 632 [2020], para. 108. "It is not a decision to be taken lightly." *EV (Merits)*, Decision No. 599 [2019], para. 185.

117. Further, as the Tribunal stated in *Lysy*, Decision No. 211 [1999], para. 68:

A performance evaluation should deal with all relevant and significant facts, and should balance positive and negative factors in a manner which is fair to the person concerned. Positive aspects need to be given weight, and the weight given to factors must not be arbitrary or manifestly unreasonable.

118. In reviewing the non-confirmation decision, the Tribunal notes the IFC's assertions that (i) the Applicant's technical skills were not on par with his colleagues' technical skills and (ii) the Applicant's professional behaviors did not align with the WBG's workplace culture. The Tribunal will examine both assertions in turn.

### Technical skills

119. In its pleadings, the IFC provided the performance record of one other staff member on the Applicant's team, together with comparisons of this one staff member's measured outputs against those of the Applicant, to contest the Applicant's assertion that he was a good performer. The Tribunal considers this comparison to a single other staff member neither valid nor useful. The record does not show whether this staff member and the Applicant were similarly situated, whether both were on probation, and whether both worked on similar types of projects.

120. As to the IFC's assertion that the Applicant's technical skills fell short in comparison to other staff, the Tribunal observes that the record is replete with positive comments about the Applicant's technical performance.

121. The record reflects that fourteen feedback providers responded to the Applicant's requests for feedback and that these colleagues consistently identified the Applicant's strength in his technical abilities. Highlights from these feedback providers include the following comments:

- [The Applicant] is a team player and does not hesitate to share his technical expertise with the team members for the good execution of the project as well as for simple mentoring.
- His structuring and technical skills are very strong, which is a big asset in any project team and more generally for our [...] team. He reviewed my modeling work in several instances and provided detailed feedbacks through calls which has been extremely valuable for my skills development.

- [The Applicant's] experience in the sector is an asset to the team and the client.
- His excellent structuring skills and experience of the real estate sector have been a real asset for our project team. Thanks to his long-standing investment background in the private sector, [the Applicant] has a thorough understanding of the investment vehicle features needed to attract private investors.

122. The record reflects the Supervisor's view that the Applicant's technical skills were impressive, noting that the Applicant "overperformed" and that "most of the deals coming through [...were] led by [the Applicant]." The Supervisor further recognized that a notably "very complex" fund "required [the Applicant's] skill and private equity experience," "acknowledged [the Applicant's] valuable contribution and support on [a given] project," and "stated that if [the Applicant] had led the project there would have probably [been] significant progress made on the deal, as the transaction seems to be stuck at present."

123. The Tribunal notes that the Applicant's technical skills were not cited as a basis for, nor mentioned whatsoever in the notice of, the non-confirmation decision.

124. Given the evidence in the record, the Tribunal is not persuaded by the IFC's assertion that the Applicant's technical skills were not on par with those of his peers.

#### Professional behaviors

125. Having already considered the feedback provided to the Supervisor at the point of the probation extension decision, the Tribunal will now consider the feedback with respect to the Applicant's professional behaviors received by the Supervisor following the probation extension decision. Highlights from these feedback providers include the following comments:

- I enjoy working with [the Applicant]. I am particularly impressed with his professionalism. He always tries to provide insightful feedback to clients/colleagues, add value, structure projects in a better way, and support project team members.
- [The Applicant] shows compassion for others in the team and he is very respectful when handling sensitive issues with clients/potential clients.



- [The Applicant] is a good team leader and ensures that each team member has the opportunity to defend his or her point of view before making a final decision.
- When dealing with Clients, [the Applicant] communicates very clearly with them on what upstream is and has in fact been able to do that very well.
- One thing I especially appreciate working with [the Applicant] is that he fully involves all team members in the projects, including analysts. He has his own view on how to run the project but still asks for our opinion and listens to our point of view. Regarding relationship with clients, he is a professional and is good [at] leading discussions with high level executives.
- You [the Applicant] always have pertinent questions to ask to the clients to try to gauge the project and client engagement. However, you should try to be more on the listening side and be more receptive in the initial calls with clients to understand new concepts and new ideas [...]. You are a good leader on projects and take on accountability and responsibility of the projects overall. Thank you for your support throughout this year on difficult projects.

126. The Tribunal notes that the feedback providers appear to exhibit an almost unanimous opinion that the Applicant's workplace behaviors were appropriate, several even noting that his disposition, management style, and professionalism positively contributed to the collegial team environment, project outcomes, and client relationships.

127. However, the Tribunal considers the feedback that the Applicant "should try to be more on the listening side and be more receptive in the initial calls with clients" to be an identified area for suggested improvement. Recalling that "the weight given to factors must not be arbitrary or manifestly unreasonable" (*Lysy* [1999], para. 68), on balance, the Tribunal views the feedback overall to be positive.

128. The Tribunal is troubled by the fact that the Supervisor appears not to acknowledge or consider the feedback providers' views with respect to the Applicant's professional behaviors.

129. Following the probation extension, the record indicates that the Supervisor provided written feedback to the Applicant on two more occasions: first, through an email dated 8 September

2021 and, next, on 28 September 2021 through the Applicant's Annual Review. Neither occasion raises new incidents of behavioral issues.

130. The Tribunal observes that, of the four behavioral issues raised by the Supervisor in his 8 September 2021 email, three incidents occurred prior to the probation extension, namely, (i) the Applicant's "working style" during the first quarter of FY21, (ii) the February 2021 incident of inappropriate language, and (iii) the Director's feedback after an interaction with the Applicant on 5 May 2021. As to the fourth incident, a "disagreement with [a] client," the Tribunal notes that there are no dates or details provided in the email, nor were dates or details provided after the fact by the IFC in its pleadings, with respect to the alleged disagreement.

131. The Tribunal also observes that the Supervisor's comments in the Applicant's FY21 Annual Review, dated 28 September 2021, again cite the same incidents which occurred prior to the probation extension, namely:

His behaviors have been negatively affect[ing] his performance. An unfortunate incident involving a complaint by female members of the team in his use [of] language that was interpreted as sexist was also addressed through an apology to the members of the team and the use of an executive coach. A regional director recently wrote of his behavior citing "...his general attitude and demeanor [were] to treat me like I had no idea about the project or subject... He was extremely condescending and arrogant. He then made statements about what he expects from the client, which was clearly a very authoritarian attitude. With that kind of attitude and approach, it was very easy to guess how he deals with clients who do not agree with him."

132. The Tribunal notes that the feedback provided on 28 September 2021 is the most recent feedback in the record, and it cites just two incidents of professional behavior issues: (i) the Applicant's language used during the February 2021 meeting, and (ii) the Applicant's interaction with the Director on 5 May 2021.

133. The Tribunal has already determined that it is not persuaded by the allegation of the Applicant's inappropriate behavior during the 5 May 2021 meeting, which was contradicted by four other staff members who were present at that meeting (discussed above in paragraphs 104–107).

134. The Tribunal has likewise already determined that the Applicant made amends for his use of inappropriate language in February 2021 (discussed above in paragraphs 101–103).

135. Moreover, the Tribunal notes that following the probation extension, on 21 June 2021, the Supervisor received feedback on the Applicant’s professional behaviors from two of the three female colleagues who reported the Applicant’s inappropriate language use in February 2021. The feedback states in pertinent part:

[Female Colleague 1:] On all of the projects we have worked on together he has always provided his attention and time to explain the project to me. In addition, whenever I have not understood something, he has always made the time to teach me and provide many of his own workings and experience. He is extremely proactive on all of the projects and is also just as supportive and takes the pen many times on the Projects we have worked on together and provides guidance on what the project needs to address. [The Applicant] has on several instances allowed me to take the lead during meetings, I love this as this helps allows me to improve my soft skills.

[Female Colleague 2:] Professional behavior: There have been significant improvements in our interactions as we learnt to work together as a team over the last 10/11 months.

Rapport with the project team: You [the Applicant] always try to get everyone’s opinions and try to get people to intervene.

136. The Tribunal considers the feedback provided from these two colleagues to be overall positive. The Tribunal is also mindful that neither colleague raised the incident of the Applicant’s use of inappropriate language in February 2021, even though the Applicant specifically requested from these two colleagues feedback on his professional behavior. Instead, the Tribunal observes that one colleague described her positive interactions with the Applicant over the past several months and that the other acknowledged significant improvements in their interactions.

137. Additionally, the Tribunal observes the summary of the interviews between the PMR Reviewer and the three female colleagues, which states, “All three indicated that their working relationship with [the Applicant] improved after the incident and that they had had positive relationships with him during the remainder of FY21.”

138. Based on the record and the circumstances of this case, the Tribunal views reliance on the February 2021 incident as a basis for the non-confirmation decision to be unreasonable.

139. In examining the record, and noting that there are no incidents of behavioral issues cited following the provision of the performance objective to improve “a bit” on professional behavior skills, it is unclear to the Tribunal by what measure the Applicant failed to meet the performance objective set at the probation extension.

140. Nevertheless, on 3 November 2021, the Supervisor informed the Applicant that he would be recommending non-confirmation of the Applicant’s appointment. The Tribunal observes that there was no written basis for the recommendation included in this communication; rather, the basis for the non-confirmation decision was provided to the Applicant in writing only on 23 November 2021 in the email from the Regional Director, together with the notice of the decision not to confirm the Applicant’s appointment. The basis provided to the Applicant for the non-confirmation decision was as follows:

In the past several months, your supervisor [...] has discussed with you behavioral issues in the workplace and ways in which your behavior was expected to improve. [The Supervisor] also advised you that if your behavior did not improve, your appointment would not be confirmed. Because no significant improvement has been noted, IFC has decided not to confirm your appointment.

141. The Tribunal is not convinced by the provided basis for the non-confirmation decision. The IFC contends that the behavioral issues which occurred before the probation extension were so egregious as to warrant non-confirmation. The IFC nevertheless extended the probationary period to allow the Applicant’s behavior to improve, which it did. The Tribunal accepts that the decision of whether to confirm the Applicant’s appointment may be based on the entirety of the probationary period, including incidents that occurred prior to the extension of the probationary period. However, for the IFC, having decided to extend the probation, then to solely invoke behaviors occurring prior to the probation extension as the basis for the non-confirmation, in these circumstances, is unreasonable.

142. The Tribunal views as unfair the IFC's failure to take into account the Applicant's improved behavior and, thus, finds the IFC did not afford the Applicant a genuine opportunity during the probation extension to demonstrate his suitability for continued employment with the IFC.

143. Considering that the Applicant's behavioral issues were largely resolved at the point of the probation extension, and considering that no further incidents of behavioral issues are cited in the record after the probation extension, nor after the warning that failure to improve his behavior may result in non-confirmation, the Tribunal finds that the decision not to confirm the Applicant's appointment lacks a reasonable and observable basis.

#### THE APPLICANT'S PERFORMANCE RATING

144. The IFC relies on paragraph 8.3 of the IFC Probation Procedure to support its decision to assign the Applicant a performance rating of 2.

145. The Applicant maintains that he is entitled to a rating tied to his performance "as opposed to a blanket rule." The Staff Association agrees with the Applicant and further maintains that the IFC Probation Procedure should be found to be invalid because it "squarely conflicts with the [S]taff [R]ules which define ratings based on performance."

146. The Tribunal notes the terms in the Applicant's LOA, which, in relevant part, state that his appointment was "subject to the conditions of employment, including the Staff Rules and the relevant Procedures of the World Bank Group, presently in effect and as they may be amended from time to time." The record reflects a relevant amendment to the IFC's procedures on 23 March 2021, the date on which the IFC Probation Procedure was issued.

147. The Tribunal has consistently held that "the determination of the Bank [Group]'s policy falls within the discretionary ambit of the powers of the Bank [Group] and its governing institutions. It does not fall within the judicial reach of the Tribunal. The Tribunal does not have the authority to make or review policy established by the Bank [Group] or to 'override the Bank

[Group]’s considered judgment and to replace it with its own.” *BL*, Decision No. 446 [2010], para. 29, citing *Oinas*, Decision No. 391 [2009], para. 27. What the Tribunal does have is the power to review whether there has been non-observance of the contract of employment or terms of appointment of a staff member. *See BL* [2010], para. 29. In this respect, “[s]o long as the Bank [Group]’s resolution and policy formulation is not arbitrary, discriminatory, improperly motivated or reached without fair procedure, there is no violation of the contract of employment or of the terms of appointment of the staff member.” *Eindhoven*, Decision No. 23 [1985], para. 43.

148. Accordingly, the Tribunal will consider whether the IFC’s Probation Procedure is arbitrary, discriminatory, improperly motivated, or reached without fair procedure as applied in this case.

149. Paragraph 8.3 of the IFC Probation Procedure determines the performance rating to be imposed upon IFC staff members whose probationary periods are extended. It states:

If the probationary period is extended before or during the annual performance evaluation cycle and the staff is eligible for a performance rating, the staff should receive a performance rating of 2 in line with the decision to extend probation. No formal OTI [Opportunity to Improve] process is required, as the probation extension process serves the same purpose. In situations where the staff whose probation has been extended is otherwise eligible for a performance rating, but, due to extenuating circumstances, the Manager is not able to assess performance (e.g., medical circumstances, extended leave, etc.), a performance rating may be deferred and retroactively assigned before the start of the subsequent performance year (normally July 1).

150. The Tribunal notes that the IFC Probation Procedure makes explicit exception to the automatic application of a performance rating in “extenuating circumstances” in which a staff member’s performance cannot be fairly assessed, for example, due to “medical circumstances, extended leave, etc.” In other words, this procedure automatically assigns a performance rating of 2 to any IFC staff member whose probation is extended for performance-based reasons, in circumstances where performance can be assessed.

151. In response to an order from the Tribunal to produce information relating to the practice and policy of rating staff performance prior to the issuance of the IFC Probation Procedure, the IFC submitted testimony from a Senior HR Officer. According to the Senior HR Officer, one of

the purposes of the IFC Probation Procedure was to provide more detail to Staff Rule 4.02, the Staff Rule addressing probation, because it “was being interpreted inconsistently for performance management, and causing some difficult situations in non-confirmation cases.” By way of example, the Senior HR Officer noted that some managers wanted to assign performance ratings of 3 or above in circumstances where there was a probation extension, which sent a “conflicting message to be avoided.”

152. The Tribunal observes that the IFC Probation Procedure makes a number of references to the Staff Rules and notes that the stated purpose of the IFC Probation Procedure is not to replace the Staff Rules with conflicting procedures, but rather to be read and applied in addition to the Staff Rules. For example, the IFC Probation Procedure states at paragraph 1:

Staff Rule 4.02 sets forth provisions governing the probationary period served by staff when they enter employment with the World Bank Group. The purpose of the probationary period is to assess the suitability of the World Bank Group and the staff to each other. *Further to the Staff Rule*, these Procedures outline required and recommended actions to be taken during the probationary period and the process for confirmations, non-confirmations and/or extension of the probationary period. [Emphasis added.]

153. The Tribunal also recalls the WBG Procedure: Annual Pay Increases for Staff Ineligible for Performance Ratings (WBG Procedure), which is applicable to IFC staff members and addresses the procedure for awarding performance ratings to staff on probation in certain circumstances. It states at paragraph 3.07:

A Staff Member who has been on probation for six months or less as of the effective date of the annual pay increase is not eligible for a performance rating and receives an annual pay increase of zero (0.0) percent, unless an increase is needed to bring the salary to the minimum of the grade, in which case the salary is increased to the minimum of the grade.

In situations where the Staff Member on probation is otherwise eligible for a performance rating, but, due to extenuating circumstances, the Manager is not able to assess performance (e.g. medical circumstances, extended leave, etc.), a performance rating may be deferred and retroactively assigned before the start of the subsequent performance year.

154. The Tribunal observes that the Applicant was employed by the IFC for longer than six months during the performance assessment period, and that the application of the IFC Probation Procedure in the present case is not in conflict with the WBG Procedure or with any WBG Staff Rule addressing performance ratings. The Tribunal further notes that neither the Applicant nor the Staff Association has identified a specific rule, procedure, or principle holding higher authority than the IFC Probation Procedure with which the IFC Probation Procedure is in conflict.

155. In the instant case, the Tribunal is satisfied that the formation and application of the IFC Probation Procedure are not arbitrary, discriminatory, improperly motivated, or reached without fair procedure.

156. Given that the Tribunal has upheld the probation extension decision, it further finds the performance rating of 2 to be appropriately assigned in the circumstances of this case and in accordance with the IFC Probation Procedure.

#### WHETHER MANAGEMENT FAILED TO AFFORD THE APPLICANT DUE PROCESS

##### *Due process in the performance rating*

157. The Applicant contends that he was not afforded due process because his performance rating was determined before his performance evaluation conversation with the Supervisor. He further contends that the performance evaluation conversation significantly lacked fairness, credibility, and transparency, as management had already decided on the rating.

158. The Tribunal has previously found a lack of due process in circumstances in which a performance rating was set before the performance evaluation meeting could take place between the staff member and their supervisor. *See, e.g., FH*, Decision No. 624 [2020], para. 70. However, the Tribunal notes that this case can be differentiated based on the applicability of the new IFC Probation Procedure to the Applicant.



159. The Tribunal again recalls the IFC Probation Procedure, in effect at the time the Applicant received notice that his probation would be extended, which states, “If the probationary period is extended before or during the annual performance evaluation cycle and the staff is eligible for a performance rating, the staff should receive a performance rating of 2 in line with the decision to extend probation.” The policy was published on the IFC’s HR webpage together with other policies and rules relevant to the probationary period.

160. The Tribunal has repeatedly stated that “ignorance of the law is no excuse.” *See, e.g., Bredero*, Decision No. 129 [1993], para. 23; *Venkataraman*, Decision No. 500 [2014], para. 78; *CR*, Decision No. 511 [2015], para. 95. Further, in *Courtney (No. 3)*, Decision No. 154 [1996], para. 32, the Tribunal stated:

[T]he Respondent is not under an obligation to inform each staff member of his rights and duties under the Staff Rules which are published and disseminated precisely with the object of ensuring that all staff are kept informed.

161. In *BX*, Decision No. 470 [2013], para. 49, the Tribunal held:

The [a]pplicant would have been expected to know the Staff Rules in effect at the time of his appointment and as amended from time to time as clearly stipulated in his letter of appointment [...] particularly as these were readily available on the Bank’s intranet.

162. As in *BX*, here, the IFC Probation Procedure was published and readily available on the IFC’s HR webpage together with the relevant WBG Staff Rules, WBG Directives, IFC policies, and IFC procedures on probation and performance management. While it may have been good practice to alert staff members on probation to the new IFC Probation Procedure’s issuance, in the circumstances of the present case, the IFC was not obliged to inform the Applicant of his rights and duties under published and disseminated rules, policies, and procedures to which his appointment was subject, and as they may be amended from time to time.

163. The Tribunal considers that, based on the plain reading of the IFC Probation Procedure, the performance rating was automatically set at the point of the probation extension.

164. The Tribunal is concerned that management itself did not appear to be aware of the IFC Probation Procedure's issuance, as indicated by (i) the Supervisor informing the Applicant that he would not receive a performance rating, (ii) management's initial decision not to rate the Applicant, and (iii) the Supervisor's failure to inform the Applicant of the automatic implication the probation extension would have on the performance rating. However, the Tribunal observes that the salary increase associated with a performance rating of 2 is the same as that associated with an unrated performance and considers that these shortcomings are not so egregious as to warrant compensation in the present case.

*Due process in the non-confirmation decision*

165. Staff Rule 4.02, paragraph 4.02, sets out the requirements for the procedure to follow in instances of non-confirmation of an appointment. It states:

At any point during or at the end of the probationary period, the Staff's Manager may recommend to end a Staff's employment by non-confirmation of appointment. The written recommendation to not confirm is supported by prior written notice to the Staff concerning deficiencies in their performance, technical qualifications, or professional behaviors; reasonable guidance and opportunity to demonstrate suitability for the position, and warning that failure to do so may result in termination. The Staff is provided an opportunity to comment on the recommendation. The recommendation, together with any comments of the Staff, are submitted to the Manager's Manager (at Level GI or above) for decision, which is made in consultation with the Manager, Human Resources Business Partner/Manager and with notice to the Staff's Vice President. Termination procedures are specified in Paragraphs 7.01 through 7.05 of Staff Rule 7.01 "Ending Employment".

166. In *Salle* [1982], para. 50, the Tribunal emphasized the importance of due process because "[t]he very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected."

167. In *McNeill* [1997], para. 44, the Tribunal recognized that the WBG has a

duty to meet what the Tribunal has called “the appropriate standards of justice” (*Buranavanichkit*, Decision No. 7 [1982], para. 30). While the probationer has no right to be confirmed, he has the right to be given fair opportunity to prove his ability, and the Tribunal will review whether this right has been respected and whether the legal requirements in this regard have been met.

168. In *Samuel-Thambiah*, Decision No. 133 [1993], para. 32, the Tribunal recognized the elements of due process, in the context of probation, as follows:

First, the staff member must be given adequate warning about criticism of his performance or any deficiencies in his work that might result in an adverse decision being ultimately reached. Second, the staff member must be given adequate opportunities to defend himself.

169. The Tribunal will first determine whether the Applicant was given adequate warning of the deficiencies in his performance in accordance with Staff Rule 4.02, paragraph 4.02.

170. The Tribunal is troubled by the fact that the Director’s criticism of the Applicant’s performance was not shared with the Applicant in a timely manner so as to provide the Applicant with adequate warning about the criticism and adequate opportunity to defend himself. The Tribunal considers it is poor practice to memorialize such feedback months later.

171. Moreover, in *Venkataraman* [2014], para. 66, the Tribunal noted that, even where the applicant received feedback explicitly informing him of performance deficiencies, the “question, however, is whether the [a]pplicant was provided with warning that failure to demonstrate his suitability for the position may result in termination as required by the Staff Rule.” The Tribunal further explained that

not informing the [a]pplicant of the grave consequences of his failure to improve his performance may have denied him the opportunity to fully realize the seriousness of his situation and thereby increase his efforts to prove his suitability for continued employment. (*Id.*, para. 73.)

172. The Tribunal considers that the Applicant’s Supervisor had the opportunity to provide the Applicant with such a warning during the May 2021 check-in together with the notice of the

Applicant's probation extension. Instead, the Supervisor wrote in the May 2021 check-in summary:

Management has decided to extend [the Applicant's] probationary period by six (6) months, but [the Applicant] should not interpret this as a negative as his work performance has been very good.

173. The Tribunal observes that the Supervisor's statement altogether failed to warn the Applicant of the seriousness of his situation with respect to his suitability for continued employment. The Tribunal is not convinced that the above communication could reasonably be considered to have provided the Applicant the type of warning contemplated by Staff Rule 4.02, paragraph 4.02, namely, that failure to improve may result in termination.

174. The record indicates that the Applicant was expressly informed only in September 2021 that failure to improve his workplace behaviors may result in non-confirmation, just over a month before his appointment was recommended for non-confirmation.

175. The Tribunal concludes, based on the conflicting message from the Supervisor and the timing of the eventual explicit warning, that the Applicant was not provided with adequate warning of performance concerns as contemplated by Staff Rule 4.02, paragraph 4.02.

176. The Tribunal will next consider whether the Applicant was denied any meaningful opportunity to defend himself against the basis for the non-confirmation decision.

177. Staff Rule 4.02, paragraph 4.02, provides:

The Staff is provided an opportunity to comment on the [non-confirmation] recommendation. The recommendation, together with any comments of the Staff, are submitted to the Manager's Manager (at Level GI or above) for decision, which is made in consultation with the Manager, Human Resources Business Partner/Manager and with notice to the Staff's Vice President.

178. The Tribunal has emphasized the importance of affording staff members the opportunity to defend themselves prior to decisions being made which affect their employment. *See, e.g., FH* [2020], para. 67; *AI (No. 2)*, Decision No. 437 [2010], para. 60.

179. The Tribunal observes that, while the 3 November 2021 email from the Supervisor informing the Applicant of the recommendation for non-confirmation invited the Applicant to submit comments on the recommendation, it did not provide the written basis for the recommendation to which the Applicant could substantively reply.

180. When the Applicant was finally provided the written basis for the non-confirmation decision in the form of the Regional Director's email of 23 November 2021, the non-confirmation decision had already been made. The Tribunal observes that the non-confirmation of the Applicant's appointment was at this point a *fait accompli* and that any comments considered at this point may have borne little weight in affording "any realistic opportunity to affect the outcome." *Oraro*, Decision No. 341 [2005], para. 89.

181. The Tribunal recalls its decision in *Venkataraman* [2014], para. 75, in which the applicant was given the opportunity to respond to the bases for his non-confirmation only during the overall performance evaluation meeting, which occurred after the non-confirmation decision had been made. In that case, the Tribunal found that the Bank failed to afford the applicant a reasonable opportunity to respond effectively to the decision on non-confirmation before such decision was made, thus depriving him of the reasonable opportunity to remedy the defects in his work performance and to respond, in his own defense, to the decision on non-confirmation.

182. Likewise in *FN* [2020], para. 104, the applicant was not provided with a written reason for the decision not to confirm her appointment until a point at which the Tribunal considered it too late to have "any realistic opportunity to affect the outcome."

183. As with the applicants in *Venkataraman* [2014] and *FN* [2020], here, the Applicant was not afforded the opportunity to respond effectively to the reasons that led to his non-confirmation prior to the decision being made.

184. Noting the requirements of Staff Rule 4.02, paragraph 4.02, the Tribunal finds that the Applicant was not given a meaningful opportunity to defend himself against the basis for non-confirmation.

#### REMEDIES

185. In *CK*, Decision No. 498 [2014], para. 101, the Tribunal held that the

failure of the Bank to adhere to its own rules represents an irregularity which, when affecting the rights of a staff member, may merit compensation as one form of a remedy. In assessing compensation the Tribunal considers the gravity of the irregularity, the impact it has had on an applicant and all other relevant circumstances in the particular case.

186. The non-confirmation of a staff member's appointment is a serious matter, which has grave consequences for a staff member's professional life. It is not a decision to be taken lightly. In *Motabar*, Decision No. 351 [2006], paras. 58–59, the Tribunal concluded that, even where the decision of management not to confirm an applicant's appointment was determined to be based on facts and not arbitrary, an applicant would still be entitled to compensation if his or her treatment "fell far short of the standards of the Staff Rules and the [a]pplicant's due process rights."

187. The Tribunal recalls that "[t]he very discretion granted to the Respondent in reaching its decision at the end of probation makes it all the more imperative that the procedural guarantees ensuring the staff member of fair treatment be respected." *Salle* [1982], para. 50. In this respect, the Tribunal considers that the IFC's failures in this case served to deny the Applicant the opportunity to succeed during his probation. As these are serious procedural failures, the Tribunal concludes that the Applicant is entitled to compensation.

188. In *Liu*, Decision No. 387 [2008], the Tribunal found that management had abused its discretion in deciding not to confirm the applicant's appointment; however, it noted that reinstatement was not, at the time of the decision, practicable. It therefore concluded that "[r]easonable compensation in these circumstances should include payment corresponding to the

balance of time he would have served on the contract had his employment not been prematurely terminated.” *Id.*, para. 31.

189. In the present case, the Tribunal has found the following: (i) considering that the Applicant’s behavioral issues were largely resolved at the point of the probation extension, and considering that no further incidents of behavioral issues were cited in the record after the probation extension, nor after the warning that failure to improve his behavior may result in non-confirmation, the decision not to confirm the Applicant’s appointment lacked a reasonable and observable basis; and (ii) the IFC failed to provide the Applicant a meaningful opportunity to defend himself.

190. In determining compensation, the Tribunal takes into account the circumstances of this case, the gravity of the procedural irregularities and failures in due process, and the three-year term the Applicant would have served on the contract, at a minimum, had his appointment been confirmed.

## DECISION

- (1) The non-confirmation decision is rescinded. The IFC shall remove from the Applicant’s personnel file all records of the non-confirmation decision and include a copy of this judgment in the Applicant’s personnel file. The IFC shall reinstate the Applicant to a Senior Investment Officer position or similar, retroactive to 23 January 2022. In the event the IFC decides not to reinstate the Applicant, it shall compensate him for damages resulting from the non-confirmation decision in an amount equivalent to one and a half years’ net salary based on the last regular salary drawn by the Applicant;
- (2) The IFC shall pay the Applicant compensation in the amount of nine months’ net salary based on the last regular salary drawn for procedural irregularities and failures in due process;
- (3) The IFC shall pay the Applicant’s legal fees and costs in the amount of \$36,632.00; and
- (4) All other claims are dismissed.

/S/Mahnoush H. Arsanjani  
Mahnoush H. Arsanjani  
President

/S/ Zakir Hafez  
Zakir Hafez  
Executive Secretary

At Washington, D.C., 12 May 2023