

Debarment due to irregularities committed in projects financed by the World Bank and IDB

Investments in Brazil

The Multilateral Development Banks (**MDB**), such as the [World Bank](#) and the Inter-American Development Bank (**IDB**), play an important role in promoting projects with great impact in Latin America, especially in Brazil. Of the total amount of \$77.1 billion in loans, grants and investments, the [World Bank's 2020 Annual Report](#) highlights a contribution of \$12.8 billion for Latin America and the Caribbean. Recently, the World Bank approved a \$1 billion grant [to support](#) the needs of individuals affected by COVID-19. A summary of ongoing projects, sectors and subjects can be found [here](#). The IDB has injected in Latin America a total of [\\$10.8 billion in 2019](#), of which \$1.5 billion in Brazil.

The MDB requires the countries to comply with several conditions. One is the requirement for a public procurement procedure that respects the rules determined by the MDB, especially those aimed at preventing irregularities such as corruption; fraud; collusion; coercion; and obstruction of justice.

Respect for these rules of conduct is essential. There are serious implications for a company found to be involved in irregularities in either the course of the public procurement or in the execution of the contract. After a due process inquiry, the company might be subject to sanctions imposed directly by the MDB.

Debarment

With no statute of limitations that restricts its investigative and sanctioning powers, the MDB may, at any time, initiate an investigation of a private company to determine any potential irregularities.

The MDB, respecting due process, such as the company's right of defence and appeal, has the power to prevent the company and all its subsidiaries from participating in any public project financed by the MDB. It should be emphasised that the MDB is not limited to strict and comprehensive probatory requirements in order to sanction an investigated company. It suffices that the MDB determines it was 'more likely than not' that the company committed a sanctionable practice for it to be found guilty and be sanctioned. The burden of proof is therefore reversed, leaving it to the company to prove that it did not commit any irregularity. This is because the MDB does not have the same investigative powers than those of a national authority, as it is not possible for it to request documents or hearings. To balance this lack of coercive power, an MDB will grant itself the right to restrict the access to its resources, even in circumstances of doubt.

The debarment with conditional release is the most common sanction. Typically the debarment is set for 2 to 3 years, and can be considerably higher. The sanction is made public, with the company's name published on the MDB's list ([World Bank](#) and [IDB](#)). Due to the [cross-debarment](#) agreement signed in 2010, most debarment sanctions of the World Bank or the IDB are usually extended to the following multilateral development banks: African Development Bank, Asian Development Bank and European Bank for Reconstruction and Development.

Throughout the debarment period, the company is obliged to comply with the conditions imposed by the decision, including to maintain an integrity system that is in accordance with the guidelines of the sanctioning bank. In general, the implementation of the system is controlled by an independent monitor, who will regularly report the results to the banks. Thus, the mere passage of time is not sufficient for the company to be able to recommence participation in projects financed by the MDB. All conditions determined by the bank or agreed between the parties in a negotiated resolution agreement must therefore be met.

Brazil as target of investigations

In the past few years, it is noticeable that the World Bank and the IDB have initiated investigation proceedings and sanctioned Brazilian companies, a trend that may increase in the coming months.

In view of the history of the MDB's investigation procedures, its propensity to focus efforts on a specific country and also on certain sectors is evident. Faced with reduced investigative capacity, in many cases the MDB will start a new investigation procedure with the information gathered from a previous one. The documents collected and the cooperation of the investigated companies generate a cascading effect on the MDB's investigative activities.

To better understand the scope and consequences of a debarment sanction, we analyse below the two most recent cases involving Brazilian companies, the first with an irregularity committed in Colombia and the second one in Brazil.

The Odebrecht case



FIRM NAME ▾	ADDRESS ▾	COUNTRY ▾	INELIGIBILITY PERIOD		GROUNDS ▾
			FROM DATE ▲	TO DATE ▾	
CONSTRUCTORA ODEBRECHT CHILE S.A.	AV. LIBERTADOR BERNARDO O'HIGGINS 292 OFICINA 21, SANTIAGO CENTRO, SANTIAGO DE CHILE	Chile	25-Sep-2019	01-Aug-2024	Cross Debarment: ID
CONSTRUCTORA NORBERTO ODEBRECHT DE COLOMBIA S.A.S.	CALLE 93 NO. 11A-28 OFICINA 301, BOGOTA	Colombia	25-Sep-2019	01-Aug-2024	Cross Debarment: ID
ODEBRECHT INDUSTRIAL, INC.	5100 WESTHEIMER RD, SUITE 135, HOUSTON, TX, 77056	United States	25-Sep-2019	01-Aug-2024	Cross Debarment: ID
CONSTRUTORA NORBERTO ODEBRECHT S.A. (Reg. No: 15.102.288/0001-82)*461	R. LEMOS MONTEIRO, 120, 9 ANDAR, BUTANTÃ, SÃO PAULO, CEP 05501 050	Brazil	29-Jan-2019	28-Jan-2022	Procurement Guidelines, 1.14(a)(ii), (iii)

Construtora Norberto Odebrecht S.A. (**Odebrecht**) was [debarred](#) in 2019, being prevented for a period of 3 years from participating in any public procurement financed by the World Bank and other development banks that are party to the cross-debarment agreement. All its subsidiaries in Colombia, Chile, Panama, Peru, Barbados, Angola, the United States, Luxembourg, Austria and the Cayman Islands were also included. The sanction was a result of fraudulent and collusive practices in the [Río Bogotá Environmental Recuperation and Flood Control Project](#) in Colombia. Odebrecht admitted to having paid undisclosed fees to commercial agents in the pre-qualification and bidding phases of the project in exchange for confidential information and to influence the project documentation. The sanction was reduced due to a settlement agreement, made possible by the company's extensive cooperation in the investigations and voluntary remedial actions. The company was required to commit to an integrity compliance programme consistent with the principles set forth in the [World Bank Group's Integrity Compliance Guidelines](#). As one of the conditions, an independent monitor will assess the execution of Odebrecht's compliance programme.

Andrade Gutierrez case



Title	Entity	Nationality	Country	From	To	Grounds	Source	IDB Sanction Type
Andrade Gutierrez Engenharia S.A.	Firm	Brazil	Brazil	Apr 23, 2020	Oct 22, 2022	Corruption	IDB	Debarment w/ conditional release
Constructora Andrade Gutierrez S.A. de C.V.	Firm	Mexico	Brazil	Apr 23, 2020	Oct 22, 2022	Corruption	IDB	Debarment w/ conditional release
Constructora Andrade Gutierrez S.A. de C.A.	Firm	Venezuela	Brazil	Apr 23, 2020	Oct 22, 2022	Corruption	IDB	Debarment w/ conditional release

More recently, in April 2020 the IDB [sanctioned](#) Andrade Gutierrez Engenharia S.A (**Andrade Gutierrez**) and its 11 subsidiaries, due to irregular practices committed in Brazil. The irregularities concerned the Estrada Nova Watershed Sanitation Programme (**PROMABEN**) and the Igarapes de Manaus Environmental and Social Programmes II, Supplemental and III (collectively **PROSAMIM**). The objectionable conduct under PROMABEN happened between 2011 and 2012, with the payment of fees amounting to 7% of all executed contracts, reaching an amount of US\$1.9 million. In PROSAMIM, the irregularities took place between 2009 and 2012, with the payment of fees of 5-10% of the value of each awarded contract, bringing the payments to a total of US\$47 million.

Andrade Gutierrez has been barred from participating in any government project funded by the IDB or any other development bank for 2 years and 6 months. The period has been reduced due to a negotiated resolution agreement and to the voluntary restriction on participation in projects financed by the IDB in the course of the investigation. During this period, the company must report on its compliance system through an independent monitor and continue its full cooperation with other IDB investigations, in order to ascertain any systemic risks to IDB-financed projects in the country.

Final remarks

Compliance is already a key consideration in Brazil. It is a daily and growing concern for companies to have structured and robust integrity systems that provide security to their shareholders and potential financiers. However, the same degree of attention is not granted to MDB compliance guidelines.

As this article seeks to demonstrate, MDB sanctions in response to irregularities can be severe, far-reaching and for an extended period of time. It is therefore critical to know what rules govern a public procurement financed by the World Bank or IDB. Knowing and adapting to the compliance guidelines of these international institutions not only helps to strengthen integrity systems, but may also mitigate a future sanction should irregular practices be detected. In cases of irregularities, it is essential to be aware of the benefits of self-reporting as well as the instruments for doing so, as well as the defence and cooperation mechanisms.

The importance of the subject is all the more urgent given the current circumstances in Brazil. As repeatedly indicated by the MDB, the conclusion of an agreement presupposes extensive cooperation by the company under investigation. This translates, broadly speaking, into bringing forward documents and naming all those involved in irregular acts. Hence, given the agreement signed between Andrade Gutierrez and IDB, it is not surprising that Brazil remains under the IDB's and the World Bank's scrutiny.

If you are interested in discussing other aspects of the investigation processes of multilateral development banks, we would be happy to continue the conversation. Through our work at BLOMSTEIN we are in daily contact with the subject, so do not hesitate to contact [Roland](#) or [Bruno](#).