

EU'S FINANCIAL INTERESTS UNDER THREAT

NEW APPROACHES IN ASSESSING PROHIBITED PRACTICES RISKS IN PUBLIC PROCUREMENT



European Bank for Reconstruction and Development

Evgeny Smirnov

Senior Procurement Specialist



EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT
Role and Activities



What is EBRD?

European Bank for Reconstruction and Development

- International financial organisation established in 1991
- Capital base – EUR 30 billion
- Credit rating of AAA by Standard & Poor's, Moody's and Fitch

Shareholders of the Bank

Two international organisation and 64 countries



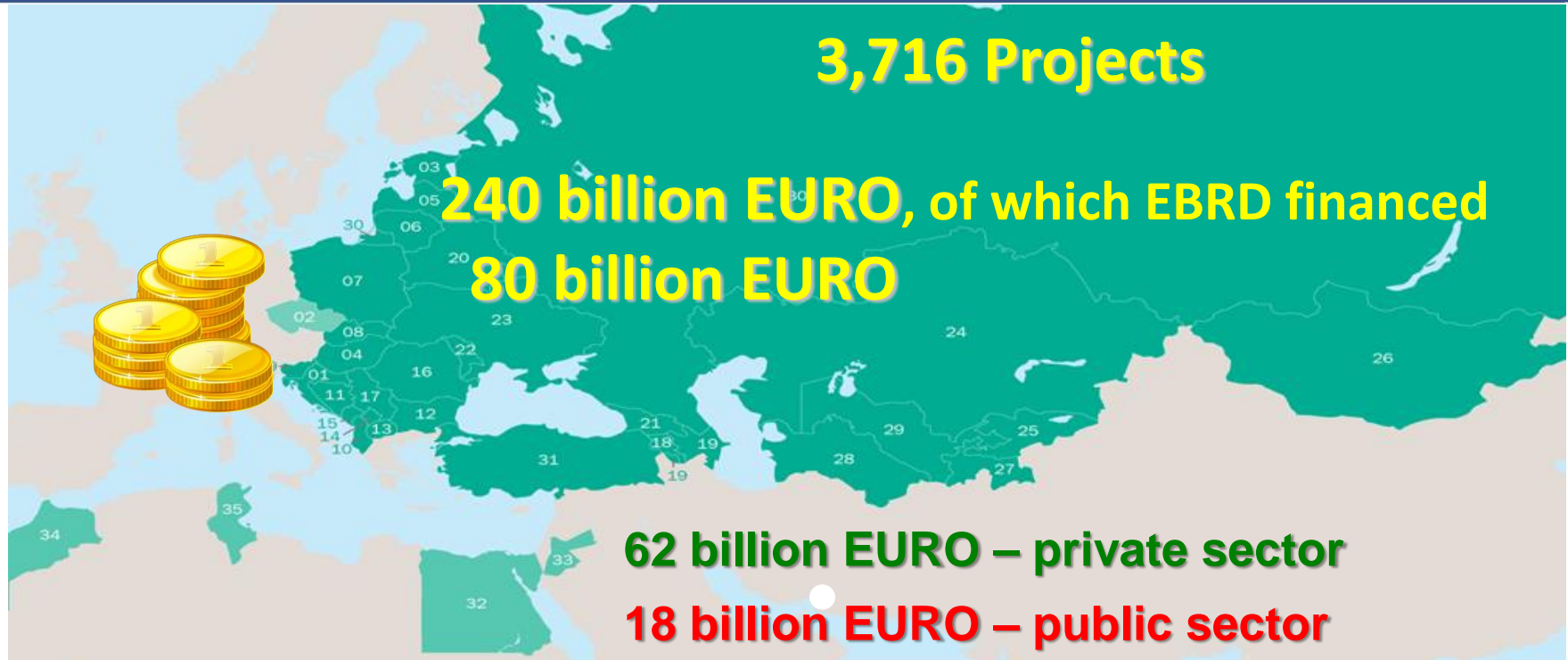
Mission

The Bank promotes transition to market economies in 34 countries from Central Europe to Central Asia, as well as in the SEMED region

The Bank promotes policy dialogues with regards to investment climate, business environment and policy matters



34 countries of operations



Countries of prospective EBRD operations

- Southern and eastern Mediterranean**
- 32 Egypt
 - 33 Jordan
 - 34 Morocco
 - 35 Tunisia

In 2011 the EBRD launched donor-funded activities in the southern and eastern Mediterranean (SEMED) region, in support of the countries which are undergoing important political and economic reforms.

EBRD countries of operations

- Central Europe and the Baltic states**
- 01 Croatia
 - 02 Czech Republic*
 - 03 Estonia
 - 04 Hungary
 - 05 Latvia
 - 06 Lithuania
 - 07 Poland
 - 08 Slovak Republic
 - 09 Slovenia

- South-eastern Europe**
- 10 Albania
 - 11 Bosnia and Herzegovina
 - 12 Bulgaria
 - 13 FYR Macedonia
 - 14 Kosovo
 - 15 Montenegro
 - 16 Romania
 - 17 Serbia

- Eastern Europe and the Caucasus**
- 18 Armenia
 - 19 Azerbaijan
 - 20 Belarus
 - 21 Georgia
 - 22 Moldova
 - 23 Ukraine

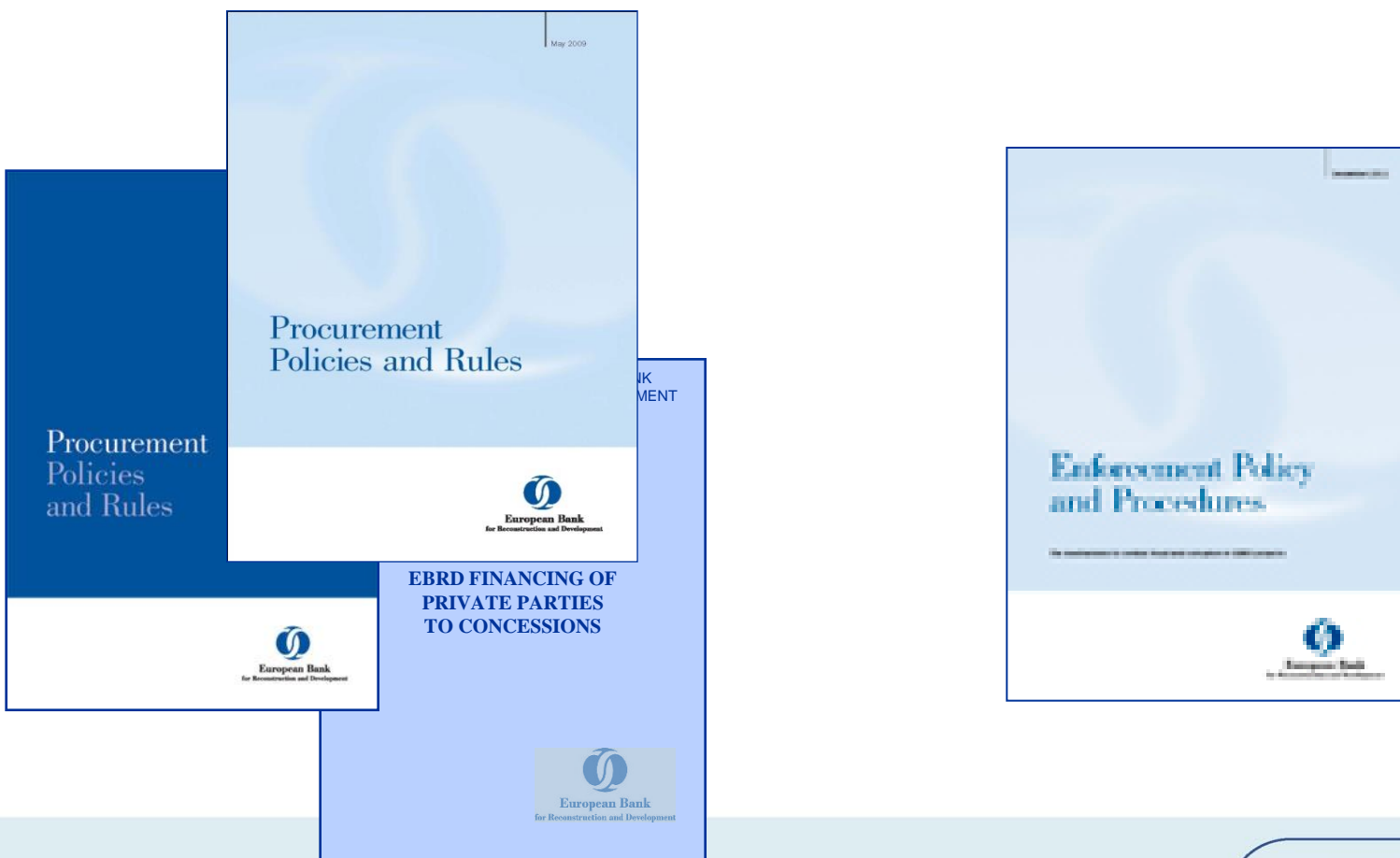
- Central Asia**
- 24 Kazakhstan
 - 25 Kyrgyz Republic
 - 26 Mongolia
 - 27 Tajikistan
 - 28 Turkmenistan
 - 29 Uzbekistan

- 30 Russia
- 31 Turkey

*as of the end of 2007, the EBRD no longer makes investments in the Czech Republic.



EBRD Policies



Main principles

- **ECONOMIC** use of resources
- **EFFICIENT** project implementation
- Project results shall be of due **QUALITY**
- **NON-DISCRIMINATORY** process
- **TRANSPARENT AND RESPONSIBLE** use of public funds

MIN (Risk) = MAX (Success)



Procurement principles

- Aligned with the Government Procurement Agreement of the World Trade Organisation
- Use of efficient procurement methods
- Fair and open international tendering – the norm
- Lack of quotes, limitations or preferences
- Clients are responsible for project implementation
- Compliance with the Environmental and Social Policies
- Prevention and fighting prohibited practices



Bank's approach in public procurement

- **Procurement – an integral part of project risk management**
Minimisation of risks – Maximisation of success
- **Coverage of the entire project cycle**
Procurement – part of project delivery strategy
- **Balanced risk distribution**
Use of standard tender documents and internationally recognised contract terms and conditions
- **Aim of evaluation – best value for money**
Evaluation factors usually are expressed in monetary terms
- **The key to success – people**
- **Assistance to the clients**
- **Prevention and fighting corruption**



The Client's role during implementation

Implement projects in line with agreements



The clients are responsible for all aspects of the procurement of contracts.

They invite, receive and evaluate tenders and awards contracts, which in all cases are concluded between the clients and the suppliers/contractors/consultants.

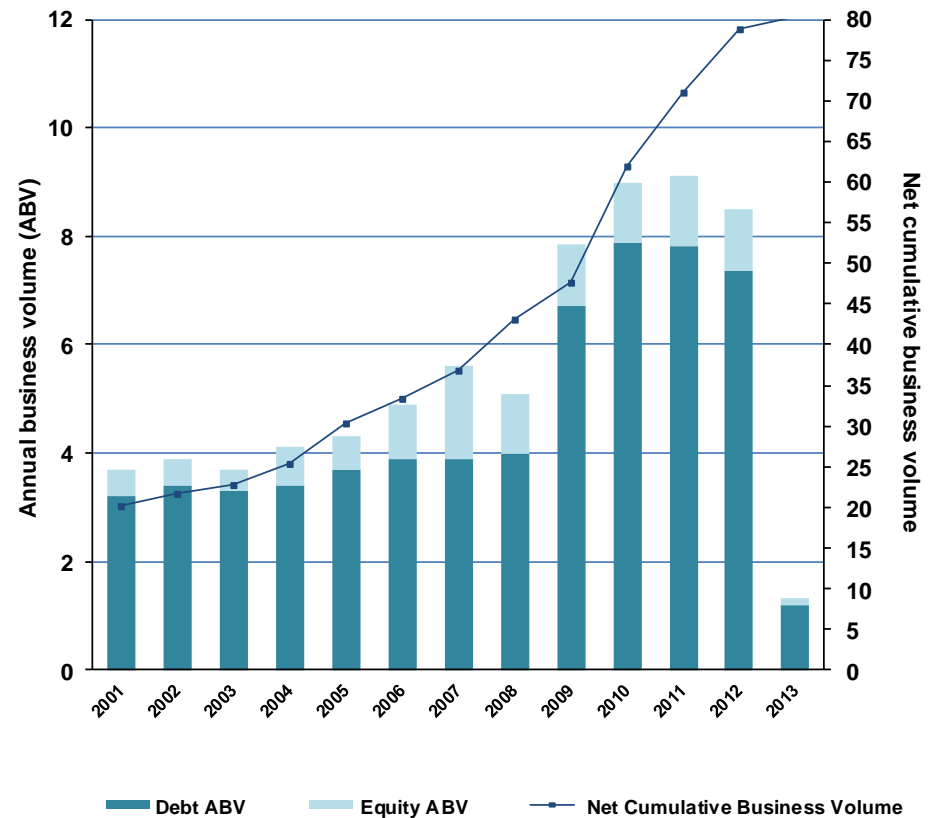
The Bank's role

- Advise clients
- Assist clients in the course of project implementation
- Ensure that the implementation is in line with agreements
- Review procurement actions
- Review complaints
- In private sector undertakes due diligence and monitors projects to ensure that fair market prices are obtained



Operational results of 2012

- In 2012 the Bank invested over €9.1 billion in 380 projects
- Debt - 85 per cent
Equity - 15 per cent



Investments in infrastructure

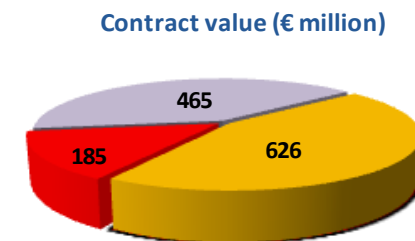
In 2012 the Bank's
public sector clients signed
about **200** contracts in the amount
of **1.3 billion EURO**



Key 2012 public procurement data

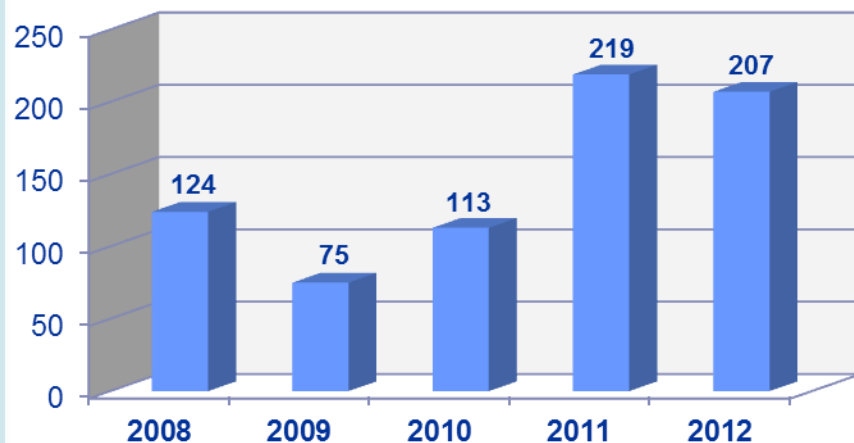
- A total of 207 contracts worth €1,276 million were signed, with EBRD's financing totalling €761 million, excluding contracts administered by the Nuclear Safety Department (NSD)
- 86 per cent of all contracts (95 per cent in value) were subject to the Bank's open tendering procedure
- 615 tenders from 45 countries were received on the Bank's financed contracts
- 43 contracts worth €72 million were signed under the Nuclear Safety and Decommissioning Funds managed by NSD

- Tenderers from Countries of Operations tendering in their own country
- Tenderers from Countries of Operations tendering in other Countries of Operations
- Tenderers from outside Countries of Operations



Five year dynamics

Number of Contracts



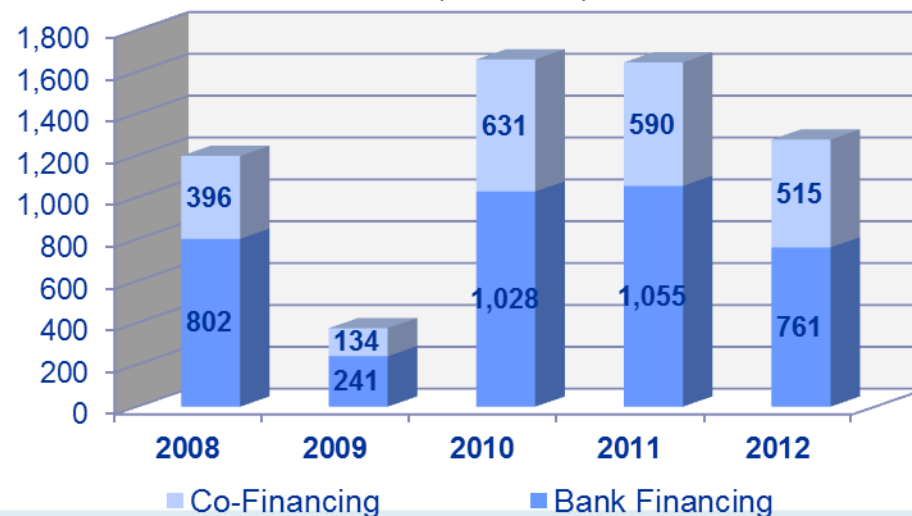
The highest total amount of contract value:

- Ukraine *€1.05 billion*
- Kazakhstan *€0.72 billion*
- Romania *€0.69 billion*
- Russian Federation *€0.57 billion*
- Bosnia and Herzegovina *€0.47 billion*

Public Sector

- Contracts *738*
- Total value *€6.15 billion*
- EBRD financed *€3.89 billion*

Value of Contracts
(€ million)



Examples of goods and works procured under the Bank's financed projects

- **Municipal infrastructure**

- Waterworks, pipelines, meters, pumping stations, wastewater treatment plants, incinerators, district heating networks, busses, trams, trolleybuses

- **Transport**

- Rail track maintenance equipment, locomotives, signalling systems, air traffic control and navigation equipment, motorways, management information systems, PMMR/OPRC



Examples of goods and works procured under the Bank's financed projects

- **Power and Energy Efficiency**

- Power transmission lines, transformer substations, distribution control systems, power stations, meters, energy efficiency equipment, generation plants, management information systems

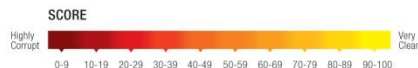
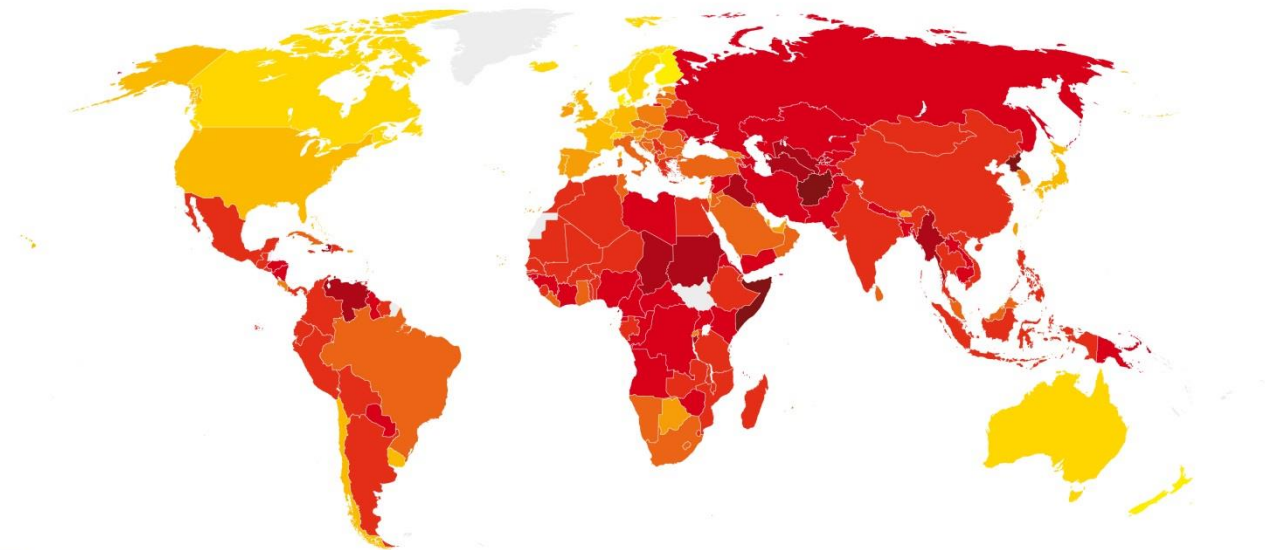
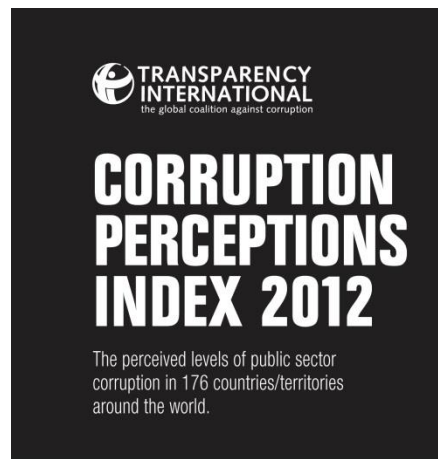
- **Natural Resources**

- Oil pipelines, gas pipelines, pumping stations, oil and gas terminals, storage reservoirs



Prohibited Practices

- **Coercive practice**
- **Collusive practice**
- **Corrupt practice**
- **Fraudulent practice**



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Beware of corruption



- Identification
- Prevention
- Monitoring and audit
- Liquidation

$$C = f \left(\frac{M \times A \times I}{R \times T \times E} \pm U \right)$$

where:

C Corruption
A Authority
R Responsibility
E Ethical Standards

M Monopoly
I Influence
T Transparency
U Undefined factors



Key considerations

- You need two to tango
- Key factors
 - ✓ Influence
 - ✓ Competence
 - ✓ Payment
- Every day the world gets more sophisticated and complex
- Every stage of a project shall be
 - ✓ Procurement planning/packaging
 - ✓ Preparation of prequalification and/or tender documents
 - ✓ Tendering process
 - ✓ Evaluation
 - ✓ Contract signing
 - ✓ Contract administration



People are the key

- ✓ The link to an intermediary or official
- ✓ Ability to commit the money
- ✓ Ability to follow through with payments

- ✓ Ability to manipulate the process directly (or indirectly)
- ✓ Ability to manipulate those who manipulates the process



Typical actions

Pre-tendering stage

- Inefficient contract packaging
- Tailored requirements
- Leaking/agreeing qualification/evaluation criteria
- “Short-listing fees”
- Unbalanced contract terms and conditions
- Identification of third parties for influence:
 - ✓ Agents
 - ✓ Direct link to high ranking officials
 - ✓ Dummy contractors
 - ✓ Contractors that provide genuine services at inflated cost



Typical actions

Tendering stage

- Delays with provision of information/documents
- Manipulation with proposals
- Using “duality” while evaluating tenders
- Leaking evaluation information
- Manipulating with/subjectivity in respect of the evaluation methodology interpretation
- Meeting with “preferred” tenderer(s)
- “Camomile” tender prices
- Withdrawal of proposals



Typical actions

Contract signing stage

Behind the stage negotiations

- ✓ Firming “commitments”
- ✓ Identification of ways “milking” the contract
- ✓ Putting forward controlled subcontractors
- ✓ Sudden changes to the circumstances



Typical actions

Contract implementation

- Variations, especially introducing new works, which have no rates in the contract
- Unforeseen changes to the circumstances
- Lowering quality
- Falsified documents
- Puppet supervisors
- Mock “tough negotiations”
- “Amicable” settlements
- Convenient adjudicators
- Lack of appetite to call guarantees for poor performance
- Unclear destiny of temporary works and equipment
- Vague subcontracting



MDB Mutual Enforcement

Cross-Debarment

An agreement among Multilateral Development Banks to mutually enforce each other's debarment actions, with respect to the harmonised sanctionable practices: *corruption, fraud, coercion, and collusion.*



Why mutual enforcement?

- New enforcement tool in fight against fraud and corruption
- Increases penalties for firms engaging in fraud and corruption
- Widens net to catch fraud and corruption worldwide
- Poses strong deterrent



Mutual Enforcement Agreement



- Agreement signed in Luxembourg on 9 April 2010 by Heads of MDBs
- **Not:** IMF and EIB
- Available at: <http://www.ebrd.com/downloads/integrity/Debar.pdf>



Who can be 'Cross-Debarred'?

- Entities or individuals
- Publicly debarred by any of the participating MDBs
- For a period of over a year
- Prohibited practices



Cross-debarment does not cover ...

- Actions of Government officials
- Sanctions imposed through recognition of national court decisions
- Sanctions of one year or less
- Undisclosed sanctions
- Sanctions issued under WB VDP Program



EBRD and Mutual Enforcement

- EBRD Sanction List available at:
<http://www.ebrd.com/pages/about/integrity/list.shtml>
- Currently EBRD applies mutual enforcement decisions made by other MDB's against 83 entities and 61 individuals



How to contact us

- Procurement Department
Tel: +44 20 7338 7598
Fax: +44 20 7338 7472
- Procurement opportunities via website:
<http://www.ebrd.com/pages/workingwithus/procurement.shtml>
- Project enquiries (*existing EBRD projects only*)
Tel: +44 20 7338 6372 / fax: +44 20 7338 7848
- General enquiries
Tel: +44 20 7338 6629 / fax: +44 20 7338 6101
- Publications
Tel: +44 20 7338 7553 / fax: +44 20 7338 6102





Благодаря много!
Thank you very much!

