



Hughes Hubbard & Reed

Multilateral Development Bank Sanctions and Investigations Primer

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Introduction

Over the past two decades, multilateral development banks (MDBs) such as the World Bank Group (World Bank), African Development Bank Group (AfDB), Asian Development Bank (ADB), Inter-American Development Bank (IDB) and European Bank for Reconstruction and Development (EBRD) have put in place and actively enforced internal administrative sanctions systems designed to identify and punish corruption, fraud, collusion and other forms of misconduct on projects financed or administered by the MDBs.

These efforts are part of a wider commitment on the part of the MDBs to the global fight against corruption and are designed to prevent the misuse of bank funds and otherwise promote good governance on MDB-financed projects. The jurisdiction of these internal sanctions systems is contract based, meaning that contractors opt into these systems when they participate in MDB-funded or administered projects. The types of sanctions that can be imposed through these administrative systems include debarment (ineligibility to participate in projects funded by the MDB), conditional non-debarment (a requirement to implement various remedial measures to avoid debarment), restitution, reprimands and fines. The “baseline” sanction for many MDBs is a debarment for a minimum period of three years with release conditioned on the sanctioned party meeting certain specified conditions. The baseline sanction can be increased or decreased depending on various mitigating and aggravating factors.

Sanctions imposed by the MDBs often have far-reaching business and reputational consequences. For one thing, under the Agreement for Mutual Enforcement of Debarment Decisions between the World Bank, AfDB, ADB, IADB, and EBRD, debarments imposed by one signatory may be recognized by all of the others if certain minimum conditions are met. Sanctions lists are typically public, and sanctions decisions are often accompanied by a press release from the relevant MDB and picked up and reported on by other publications, potentially inflicting significant reputational damage on the sanctioned party. Moreover, it is now a common practice of most multinational contractors to review the MDBs’ sanctions lists as part of their compliance due diligence procedures. A sanction by an MDB may be considered to be a significant compliance red flag, even for business opportunities unrelated to an MDB. At a minimum, a sanctioned entity will likely be required to explain the circumstances of its sanctions to a new business partner and will be at a competitive disadvantage against other contractors. The MDBs also routinely refer matters to national authorities. As a result, it is possible that an MDB sanctions proceeding can lead to subsequent criminal or civil charges or lawsuits.

The sanctions systems established by the MDBs share many similarities, but each system also has its own unique characteristics. In the discussion below, we provide a high-level overview of the sanctions systems of the most active MDBs. We also discuss key takeaways from recent enforcement activity by these MDBs.

Overview of MDB Sanctions Regimes

WORLD BANK GROUP

The World Bank's sanctions regime is set out in the [Bank Procedure: Sanctions Proceedings and Settlements in Bank Financed Projects \(Sanctions Procedures\)](#) issued on June 28, 2016. Debarred entities and individuals are listed on the Bank's [Listing of Ineligible Firms and Individuals](#).

The World Bank's sanctions regime involves four main actors: the Integrity Vice Presidency (INT) is responsible for investigating potential misconduct and making initial charging decisions; the Office of Suspension and Debarment (OSD), led by the Chief Suspension and Debarment Officer (SDO), serves as the first level of review in sanctions proceedings; the Sanctions Board provides a final independent level of review in sanctions proceedings; and the Integrity Compliance Office (ICO)¹ ensures that sanctioned parties have met the conditions for release, which most often includes the implementation or improvement of an integrity compliance program consistent with the World Bank Group [Integrity Compliance Guidelines](#).

Data from the 2022 fiscal year (July 2021 through June 2022) demonstrates that each of these parties is actively involved in the World Bank's process:

- INT received 3,380 complaint submissions, opened 330 preliminary investigations, started 48 new cases and closed 31 existing investigations. INT also submitted 18 sanctions cases and 12 settlements to the OSD and three settlements to the IFC EO.
- The OSD reviewed 15 cases and 12 settlements, temporarily suspended 14 firms and six individuals, and sanctioned 11 respondents via uncontested determinations.
- The Sanctions Board published four decisions, resolving four contested cases against six respondents.
- The ICO sent 33 notices to newly sanctioned parties, informing them of their conditions for release, engaged with 81 sanctioned parties, determined that 22 entities had met their conditions for release and that one entity had met the conditions for converting its debarment into a conditional non-debarment.



¹ The ICO is formally part of INT, although it maintains a level of independence from colleagues involved in investigating misconduct.

INT

Investigations. INT investigates allegations of “Sanctionable Practices” on projects funded or administered by the World Bank. INT learns of potential Sanctionable Practices through various sources. Operational personnel working on specific projects may report suspicious circumstances or observed misconduct. INT may also receive tips from third parties such as government officials, competing bidders and contractors or follow-up on local press allegations of misconduct.

INT’s ability to investigate contractors, and the contractors’ obligation to cooperate, is based on the audit rights included in every bid for a contract on a World Bank-funded project. As a result of these audit rights, INT can require any contractor who has bid on a World Bank-funded contract to produce records and information related to the bid or execution of the contract. Failure to comply with an audit request may itself be considered a Sanctionable Practice.

INT will typically present the subject of an investigation (referred to as a “respondent”) with its initial findings in a Show Cause Letter and provide the respondent an opportunity to refute the allegations or provide additional relevant evidence. If INT concludes that there is sufficient evidence to substantiate the allegations, it will initiate sanctions proceedings by submitting a Statement of Accusations and Evidence to the OSD.

Settlements. In addition to formal sanctions proceedings, INT also routinely resolves investigations through negotiated settlement agreements. INT and respondents can enter into settlement discussions at any time prior to a final decision by the SDO or Sanctions Board.

Office of Suspension and Debarment

The SDO assesses the sufficiency of the evidence presented by INT and provides the first level of adjudication. Where the SDO determines that the Statement of Accusations and Evidence is supported by sufficient evidence, the SDO issues a Notice of Sanctions Proceedings to the respondent and recommends a sanction.

The recommended sanction set out in the Notice of Sanctions Proceedings becomes effective if the respondent does not contest the decision. The decision is then published on the World Bank’s website as an uncontested decision. Respondents may choose to contest the allegations or proposed sanction in the Notice of Sanctions Proceedings through two non-exclusive options. First, respondents may submit an Explanation to the SDO to provide additional information or evidence regarding the substance of the allegations or potential mitigating circumstances. After reviewing the Explanation, the SDO may either maintain the initial recommendation, revise the recommended sanction, or withdraw the Notice of Sanctions Proceedings altogether. Second, regardless of whether or not the respondent has submitted an Explanation, all respondents can appeal a decision by the SDO to the Sanctions Board.

Sanctions Board

The Sanctions Board is an independent administrative tribunal that serves as the final adjudicator in the World Bank's sanctions system. Since 2016, the Sanctions Board has consisted of five members and two alternatives, all of whom are external to the World Bank (i.e., not otherwise employed or appointed by the World Bank Group or any of its various arms). The Sanctions Board considers cases de novo and determines whether the evidence presented by INT as contested by the respondent supports the conclusion that it is "more likely than not" that the respondent engaged in Sanctionable Practices. The Sanctions Board may hold a hearing at the request of INT, the respondent, or at the discretion of the Chair of the Sanctions Board. Decisions of the Sanctions Board cannot be appealed except in narrowly defined circumstances, such as the discovery of new and potentially decisive facts, fraud in the proceedings, or clerical mistake.

ICO

Most debarments and certain other sanctions require the respondent to meet certain conditions prior to being reinstated. The most common condition is that the respondent implement a compliance program consistent with the principles described in the World Bank Integrity Compliance Guidelines. The ICO works with sanctioned entities in respect to any compliance obligations imposed through the sanctions process. The ICO may require a sanctioned entity to report periodically on the progress of its compliance efforts or may require it to engage an independent compliance monitor to assist in this process. Ultimately, the ICO determines whether entities have met their conditions for release from sanction.

AFRICAN DEVELOPMENT BANK GROUP

The African Development Bank's sanctions system is governed primarily by the [Sanctions Procedures of the African Development Bank Group](#) (Sanctions Procedures). The Office of Integrity and Anti-Corruption (PIAC) has primary responsibility for preventing and detecting potential misconduct by contractors on AfDB-funded projects. The AfDB also has a two-tier adjudicatory function comprised of the Sanctions Commissioner and the Sanctions Appeals Board. Debarred entities and individuals are listed on the Bank's [List of Debarred Entities](#). The AfDB's corporate compliance guidance is contained in its [Integrity Compliance Guidelines](#).



In 2021, PIAC opened 24 new investigations into sanctionable practices, completed 56 investigations, submitted eight findings of sanctionable practices to the Sanctions Commissioner, and entered into two negotiated settlement agreements. The Sanctions Commissioner issued determinations in seven matters, and the Sanctions Appeals Board issued one decision.

PIAC

Investigations. PIAC is divided into two divisions, PIAC. 1 (the integrity and prevention division), and PIAC.2 (the investigations division). PIAC. 2 is responsible for investigating potential sanctionable practices on AfDB-financed or administered projects and making initial charging decisions. PIAC learns of potential sanctionable practices through various sources both within and outside the AfDB, including its own staff, government and project officials and whistleblowers. If PIAC has concluded its investigation and determined to seek sanctions against a respondent, it will submit a Finding of Sanctionable Practices to the Sanctions Commissioner.

Settlements. At any time prior to the issuance of a final decision, PIAC and a respondent can also agree to resolve the allegations through a negotiated settlement. All settlement agreements must be approved by the AfDB General Counsel and the Sanctions Commissioner and summaries of settlement agreements are published on the AfDB's website.

Assessing Compliance Obligations. PIAC. 1 is responsible for determining whether sanctioned parties have met the conditions imposed on them for release from sanction imposed either through formal sanctions proceedings or settlements. Typical obligations imposed through sanctions proceedings and settlements include obligations to implement and report on integrity compliance programs consistent with the AfDB Integrity Compliance Guidelines. PIAC. 1 evaluates respondents' compliance efforts and makes the final determination on whether a respondent can be released from sanction.

Sanctions Office

The Sanctions Office is led by the Sanctions Commissioner and is the first-tier adjudicator for sanctions proceedings, reviewing the Findings of Sanctionable Practices submitted by PIAC. If the Sanctions Commissioner determines that the Findings of Sanctionable Practice supports a *prima facie* finding that the respondent has engaged in a Sanctionable Practice, the Sanctions Commissioner issues a formal Notice of Sanctions Proceeding to the respondent. After receiving the Notice of Sanctions Proceeding, the respondent is given an opportunity to respond to the allegations and the Sanctions Commissioner. The Sanctions Commissioners will then determine whether a preponderance of the evidence supports a finding of a Sanctionable Practice.

Sanctions Appeals Board

The Sanctions Appeals Board is the second-tier adjudicator of sanctions cases and hears appeals from decisions made by the Sanctions Office. The Sanctions Appeals Board consists of three members and three alternates, appointed for three-year terms. Four of the six members are external to the AfDB. The Sanctions Appeals Board reviews appeals de novo, and respondents may present new evidence and arguments not presented to PIAC or the Sanctions Commissioner. The Sanctions Appeals Board forwards a copy of all appeals to PIAC, and PIAC can submit a reply. The Sanctions Appeals Board has discretion to hold an oral hearing on

its own volition or may do so when requested by a respondent or PIAC. Like the Sanctions Commissioner, the Sanctions Appeals Board uses a preponderance of the evidence standard to determine whether respondents have engaged in Sanctionable Practices.

INTER-AMERICAN DEVELOPMENT BANK

The Inter-American Development Bank's sanctions system is governed primarily by its [Sanctions Procedures](#). The Office of Institutional Integrity (OII) investigates potential Prohibited Practices and makes initial charging decisions. The Sanctions Officer serves as the first level of review and the Sanctions Committee serves as the second level of review. Debarred individuals and entities are listed on the IDB's [Sanctioned firms and individuals list](#).



Data from the 2021 demonstrates that each of these parties is actively involved in the IDB's process:

- OII processed 121 complaints, and submitted six Statements of Charges and Evidence, three negotiated resolutions and one request for temporary suspension to the Sanctions Officer.
- The Sanctions Officer reviewed 15 Statements of Charges and Evidence implicating 43 respondents, issued 46 Notices of Administrative Action and 38 Determinations, imposing sanctions in 31 of these Determinations.
- The Sanctions Committee received 11 appeals from Determinations and issued 10 decisions, imposing sanctions in all 10 decisions.

OII

Investigations. OII investigates Prohibited Practices on IDB-financed and supported projects. If OII finds by a preponderance of the evidence that a respondent engaged in a Prohibited Practice, it presents a Statement of Charges and Evidence to the Sanctions Officer.

Settlements. OII and respondents may also enter into negotiated settlement agreements to resolve allegations of Prohibited Practices. Any such resolution, however, must take place before OII submits the Statement of Charges and Evidence to the Sanctions Officer. OII has indicated that it will generally only enter into negotiated settlement agreements in cases involving complex investigations where the respondents are willing to provide information to OII about the Prohibited Practices and systematic risks in the affected operations or significant Prohibited Practices of the respondent or other parties. This information is valued because it provides a full picture of the integrity risks facing IDB-financed projects.

Sanctions Officer

The Sanctions Officer acts as the primary adjudicator of IDB sanctions proceedings, determining whether or not the evidence supports the allegations of Prohibited Practices and determining an appropriate sanction. If the Sanctions Officer finds that the respondent engaged in one or more Prohibited Practices, it issues a Notice of Administrative Action, which contains a copy of the Statement of Charges, the findings of the Sanctions Officer, and relevant procedural documents. Respondents can accept the Sanctions Officer's findings and proposed sanction or submit a response. The Sanctions Officer then issues a Determination either dismissing the allegations or finding that a preponderance of the evidence supports a finding that the respondent engaged in a Prohibited Practice and imposing a sanction. Respondents can appeal decisions of the Sanctions Officer to the Sanctions Committee.

Sanctions Committee

The Sanctions Committee is the final adjudicatory body in the IDB's sanctions regime. The Sanctions Committee is comprised of three IDB staff members, four external members, and one alternate member who represents the Inter-American Investment Corporation, the IDB's private sector lending arm. The Sanctions Committee reviews appeals de novo using a preponderance of the evidence standard. Respondents submit their appeal to the Sanctions Committee and OII has the opportunity to submit a reply. There is no right to a hearing, but the Sanctions Committee may hold an oral hearing where it deems appropriate. Decisions of the Sanctions Committee are final and cannot be further appealed except in certain limited circumstances.

ASIAN DEVELOPMENT BANK

The Asian Development Bank's sanctions system is governed by its [Integrity Principles and Guidelines](#). The Office of Anticorruption and Integrity (OAI) serves the investigative function. The ADB also nominally has a two-tier adjudicatory system. The Integrity Oversight Committee (IOC) acts as the first level of review. The Sanctions Committee serves as an appellate body. Unlike the sanctions systems of the other MDBs, the ADB severely limits the second level of review (i.e., the Sanctions Committee). Respondents can only appeal a decision of the IOC to the Sanctions Committee if, within 90 days of the decision of the IOC, they have discovered new evidence that (i) was not known and could not have been known previously and (ii) the new evidence is relevant to whether the sanction is appropriate. As a result, the Sanctions Committee hears very few cases compared to second-tier adjudicators at other MDBs.



The ADB's system also has certain other unique characteristics. One particularly important characteristic is that first time debarments are typically not made public. Because they are not made public (i.e., not included on

ADB's Published Sanctions List), they are not eligible for cross debarment by other MDBs under the Agreement for Mutual Enforcement of Debarment Decisions. Those entities and individuals that are subject to public debarment, whether because it is a second time offense or a particularly egregious first time offense, are listed on the ADB's [Published Sanctions List](#).

The Asian Development Bank engaged in robust enforcement in 2021:

- OAI concluded 71 investigations, resulting in debarments for 150 firms and 30 individuals, reprimands for 12 firms and 5 individuals, and cautions for 17 firms and 11 individuals. OAI also reinstated 67 firms and 13 individuals that had previously been debarred.
- The IOC imposed sanctions on 41 firms and individuals.
- The Sanctions Appeals Committee considered only one appeal that was filed during the year, rejecting four others after finding that they failed to meet the requirements for consideration.

OAI

OAI is responsible for investigating potential Integrity Violations in projects financed or administered by the ADB. If OAI determines that a respondent has engaged in an Integrity Violation, it presents its findings to the respondent and allows the respondent an opportunity to present any relevant arguments and evidence. If OAI remains convinced that the respondent engaged in a violation, it will present its findings and proposed sanction to the respondent in a Notice of Findings. The respondent can then either accept the findings and proposed sanction or dispute the Notice of Findings. If the respondent disputes the findings or proposed sanction, OAI will seek a determination from the IOC. OAI will provide the IOC with a report of its investigation and all relevant documents and evidence, including any responses received from the respondent.

OAI is also responsible, together with the IOC, for determining whether sanctioned parties have met any conditions imposed on them through the sanctions process. Like the other MDBs, the most common condition for release is the adoption or improvement of an integrity compliance program. At the conclusion of the sanction period, OAI will assess whether the respondent has met any required conditions and submit a report to the IOC. If the IOC determines that a sanction should be extended, the respondent can appeal to the Sanctions Appeals Committee.

IOC

In instances where respondents contest OAI's findings or proposed sanction, the matter is submitted to the IOC for review. The IOC consists of three voting members, including one external member (not an employee of the ADB). The IOC makes decisions by majority vote. However, the external member must be a part of the majority decision. The IOC uses a preponderance of the evidence standard to determine if a respondent has engaged in an Integrity Violation.

Sanction Appeals Committee

According to the ADB's interpretation of the Integrity Principles and Guidelines, Respondents may only appeal decisions of the IOC to the Sanction Appeals Committee if the respondent discovers previously unknown relevant evidence within 90 days of the decision of the IOC. The Sanction Appeals Committee will consist of two to three ADB Vice Presidents, depending on the nature of the case and length of the sanction. Because an appeal to the Sanction Appeals Committee must be made within 90 days of notice of the IOC's decision, and the fact that appeals require previously unknown evidence, the Sanction Appeals Committee considers very few cases. The Sanction Appeals Committee considered only one case in each of 2021 and 2022.

OTHER MDB SANCTIONS REGIMES: HIGHLIGHTS

Other MDBs have also implemented similar sanctions regimes, including the EBRD and the Asian Infrastructure Investment Bank (AIIB).

European Bank for Reconstruction and Development: The EBRD's sanctions process is governed by its [Enforcement Policy and Procedures](#). The EBRD's investigative body is the Office of the Chief Compliance Officer, which has the authority to bring formal sanctions proceedings and enter into settlement agreements. The EBRD also has a two tiered adjudicatory system, with an initial review by the Enforcement Commissioner and secondary review by an Enforcement Committee. Entities and individuals debarred by the EBRD are listed in its [List of Ineligible Entities](#).

Asian Infrastructure Investment Bank: The AIIB's sanctions process is governed by the [Policy on Prohibited Practices](#). Investigations are conducted by the Investigations Officer authorized by the Director General of the Compliance, Effectiveness, and Integrity Unit. The AIIB has a two-tier sanctions regime: the Sanctions Officer acts as the first level of review, evaluating whether the evidence supports a finding of a Prohibited Practice and imposing an appropriate sanction, while Sanctions Panel acts as a secondary level of appeal. Entities and individuals debarred by the AIIB are listed on its Debarment List. Although the AIIB is not a party to the Agreement for Mutual Enforcement of Debarment Decisions, it has voluntarily decided to add to its [Debarment List](#) those entities debarred by other MDBs that would qualify for cross-debarment under the Agreement for Mutual Enforcement of Debarment Decisions.



Lessons from Recent Enforcement Activity

Each of the MDBs discussed above publishes annual reports on its enforcement activities. To varying degrees, the MDBs also publish descriptions of contested and uncontested sanctions proceedings. There are a number of important lessons for contractors that can be learned from recent enforcement activity by these MDBs. In the discussion below we set out some key takeaways for contractors that find themselves involved in an MDB sanctions proceeding or the early stages of an MDB inquiry.

Compliance is Key: MDB sanctions systems place significant emphasis on the importance of contractors adopting and implementing effective compliance programs. The World Bank Sanctions Procedures, for example, has made clear that adopting or improving an effective compliance program will be considered a significant mitigating factor when determining a potential sanction in an enforcement proceeding. The sanctions procedures of each of the other MDBs include similar provisions. The World Bank and African Development Bank have also published guidelines setting out their views on the components of effective integrity compliance programs: [WBG Integrity Compliance Guidelines](#); [AfDB Integrity Compliance Guidelines](#). Both banks have also established offices dedicated to evaluating corporate compliance efforts (ICO at the World Bank and PIAC.¹–Integrity and Prevention Division at the AfDB).

The World Bank’s Sanctions Procedures and the procedures of the other MDBs also make clear that the MDBs will consider the timing of the adoption or improvement of a compliance program when determining how much credit to award a contractor. While it is critical for companies to respond appropriately when misconduct is identified, respondents will receive less credit if it is apparent that the adoption or improvement of a compliance program was only undertaken to obtain mitigating credit. Contractors would thus be wise to implement compliance programs well before they are faced with allegations of misconduct.

Published decisions of the World Bank’s Sanctions Board and recent sanctions decision from other MDBs reinforce the importance that MDBs place on these efforts. In a decision from 2020, for example, the World Bank Sanctions Board awarded a significant reduction in the debarment period for a firm that demonstrated that it had in place a compliance program and took proactive measures to improve the program after learning of misconduct. The Sanctions Board made clear in its decision that the respondent was awarded this credit because its efforts to put in place and improve its compliance program were well documented and credible and appeared to reflect genuine efforts to reform.

Respond Appropriately to Identified Misconduct: Enforcement activities and specific guidance from the MDBs make clear that the actions that a respondent takes after identifying potential misconduct can have a significant impact on whether, and to what degree, such a respondent will ultimately be sanctioned. There are a number

of critical steps that companies should take if they identify potential misconduct on MDB-financed projects or are being investigated by an MDB:

- **Conduct a Thorough Internal Investigation:** It is critical that companies conduct thorough internal investigations into any suspected misconduct on MDB-financed projects. The MDBs award mitigating credit to respondents that conduct their own effective internal investigations. Conducting an internal investigation also allows a company to ensure that any misconduct can immediately be stopped, which is another mitigating factor that can reduce any potential sanction. Internal investigations also ensure that the company is aware of the circumstances and can otherwise respond appropriately both internally and to any MDB investigation. Precedent from the World Bank's Sanctions Board makes clear that the Board will grant significant mitigating credit to respondents that undertake thorough and documented internal investigations. On the other hand, the Sanctions Board has made clear that it will not award credit to respondents that cannot demonstrate that their internal investigations were credible and conducted by sufficiently experienced and independent personnel or external parties.
- **Cease Misconduct:** As noted above, respondents must ensure that they cease any misconduct as soon as it is identified. Respondents that act promptly to stop ongoing misconduct will receive mitigating credit, while those that do not act with the necessary urgency will not receive credit, even if they ultimately ensure that the misconduct stops.
- **Discipline Responsible Personnel:** Respondents will be awarded mitigating credit if they take appropriate remedial measures to address misconduct by personnel, including disciplinary measures and enhanced training. The timing of any disciplinary measures will be evaluated to determine whether the actions taken by the company reflect a genuine intention to reform or are instead a calculated step to reduce the severity of any subsequent sanction. Companies will need to ensure that the disciplinary measures are commensurate with any identified misconduct. While suspensions and enhanced training may be sufficient for personnel with a minor role in the misconduct or personnel who did not act intentionally, more stringent discipline is likely necessary where employees engage in egregious conduct, such as making bribe payments or falsifying documentation.
- **Undertake Other Remedial Measures:** Respondents will likewise want to undertake any other relevant remedial measures that make sense under the circumstances. This may include updating or improving their compliance programs, implementing enhanced controls related to the specific activities where the misconduct took place, or repaying

any funds that were obtained through fraudulent means. These types of remedial measures can, if undertaken in an appropriate and demonstrable manner, lead to mitigating credit in any subsequent sanctions proceedings.

Take the Initial Inquiry Seriously: The MDBs have a clear interest in ensuring that parties are cooperating with their investigations. Companies that cooperate in investigations can receive substantial mitigating credit in any resulting sanction proceeding. By contrast, companies that fail to cooperate may face increased sanctions and, depending on the circumstances, may face allegations of obstructive practices. Most damaging of all is when companies provide incomplete or false information to MDB audit requests.

Respondents will typically receive mitigating credit for cooperating with investigations if they provide information and documentation to investigators, participate in interviews, and are otherwise responsive to investigators' questions and requests. This does not mean that cooperation needs to be unlimited and that companies need to heed every demand from investigators no matter how burdensome. Rather, companies need to comply with the audit rights that they agreed to in the relevant contractual agreements and otherwise take a reasonable approach when responding to investigative demands.

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