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Congress of the United States House of Representatives

April 12, 2016

Dr. Jim Yong Kim
President
The World Bank Group
1818 H Street NW
Washington, D.C. 20433

Re: International Finance Corporation Conflicts of Interest Policy

Dear President Kim:

I write to express my concern that the International Finance Corporation (IFC) is not adequately monitoring and managing the conflicts of interest created when it takes an equity stake in water corporations where it also acted as a water sector adviser. As the Ranking Member of the Monetary Policy and Trade Subcommittee of the House Financial Services Committee, which is tasked with oversight of the World Bank Group (WBG), I am increasingly uneasy with water resource privatization in developing countries and do not believe that the current ring-fencing policies separating the investment and advising functions of the IFC are adequate. I would respectfully urge the WBG and IFC to cease promoting and funding privatization of water resources, including so-called “public-private partnerships” (PPPs) in the water sector, until there has been a robust outside evaluation of the IFC’s conflicts policy and practices and an opportunity for additional congressional hearings on the subject.

When the IFC was first established in 1956, it was prohibited from purchasing corporate equity to avoid conflicts of interest. However, in 1961, the IFC’s Articles of Agreement were amended with a provision that permitted equity financing.¹ The IFC maintains that the conflicts are managed by a “Chinese wall” that prohibits “its advisory services from sharing information with its lending arm.”² Therefore, I am alarmed by IFC reports that claim it has “aligned,” “combine[d],” or “integrated” its investments and advisory services (“buy side” and “sell side”).³ This suggests to me that the “Chinese wall” is not adequately mitigating the conflict between the IFC’s advisory and financing activities. In fact, a water

¹ *Articles of Agreement, Article III - Operations*, INT’L FIN. CORP.,

http://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new/ifc+governance/articles/about+ifc+-+ifc+articles+of+agreement+-+article+iii (last modified June 27, 2012).

² Stella Dawson, *Activists Urge World Bank to Disinvest from Private Water Companies*, THOMPSON REUTERS FOUNDATION (October 3, 2104, 12:54 GMT), <http://news.trust.org/item/20131003125451-xompv>.

³ INT. FIN. CORP., IFC ANNUAL REPORT 2014 (2014),

http://www.ifc.org/wps/wcm/connect/0edb7a004572ddb38bb6bb9916182e35/AR2014_Report.pdf?MOD=AJPERES; IFC, *Partner of Municipalities for a Successful [sic] Introduction of the Private Sector in Waste Management Services*, INT. FIN. CORP. (April 2015), <http://www.slideshare.net/NALED/capital-summit-2015-ifc-partner-of-municipalities-for-a-successfull-introduction-of-the-private-sector-in-waste-management-services> (Capital Summit 2015, Belgrade).

privatization arrangement in Manila, Philippines, (where the IFC was both adviser and investor) has resulted in a contentious dispute between an IFC investee corporation and the Philippines government over utility rates and corporate profits deemed excessive by Philippine regulators and international arbitrators.

In the late 1990s, the IFC advised on and facilitated the large-scale privatization of Manila's water system. This ultimately led to the creation of two private corporations in 1997, Manila Water Company (MWC) and Maynilad. The IFC-brokered arrangement seemingly favored MWC, as that corporation took only 10 percent of the pre-existing utility's debt and assumed the service area with better existing infrastructure.⁴ The IFC then took an equity stake in MWC only.⁵ MWC raised rates by 845 percent,⁶ eventually leading to Manila's regulatory body rejecting another rate increase.⁷ MWC responded to the rejection of the rate increase by bringing the Manila regulator into arbitration at the International Chamber of Commerce (ICC).⁸ The ICC arbitration panel rejected MWC's rate hike, but MWC filed another arbitration case at the Permanent Court of Arbitration in Singapore and petitioned the Philippines' Department of Finance for financial remediation for lost profits.⁹ As part-owner of MWC, the IFC is now aligned with MWC and its aggressive pursuit of arbitration to charge utility rates that support levels of compensation exceeding the maximum 12 percent rate of return legal for Philippine utilities.¹⁰

I would be less troubled with the structure of the Manila deal and the subsequent arbitration if I had full confidence that both were not products of the improper mingling of the advisory and investment functions. As a strong believer in the mission of the World Bank, I have become increasingly concerned that its role as adviser and investor in the MWC deal may now be creating reputational risk for the WBG as the MWC aggressively positions itself at odds with the people and government of the Philippines.

The implications of this conflict of interest go beyond Manila, as the IFC has promoted the Manila case as a flagship model to be emulated around the world,¹¹ including in Africa,¹² where it has led to IFC

⁴ Jude Esguerra, *The Corporate Muddle of Manila's Water Concessions: How Rules, New Roles: Does PSP Benefit the Poor?* WATERAID & TEARFUND (2003), http://www.wateraid.org/documents/plugin_documents/pspmanila.pdf; INT'L FIN. CORP., SUMMARY OF PROJECT INFORMATION, PROJECT NUMBER 11232, IFC Projects Database, <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/710a2eb406002edc852576ba000e23e4?opendocument> (last visited March 24, 2016).

⁵ INT'L FIN. CORP., SUMMARY OF PROJECT INFORMATION, PROJECT NUMBER 25321, IFC Projects Database, <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/050652ac3b2056c3852576c10080cd0b?opendocument> (last visited March 24, 2016); INT'L FIN. CORP., SUMMARY OF PROJECT INFORMATION; PROJECT NUMBER 22621, IFC Projects Database, <http://ifcext.ifc.org/ifcext/spiwebsite1.nsf/2bc34f011b50ff6e85256a550073ff1c/8c26a1534a226766852576ba000e25ef?opendocument> (last visited March 24, 2016).

⁶ House of Representatives, Republic of the Philippines, "House Resolution 109: A Resolution Directing the House Committees on Oversight and Government Enterprises and Privatization to Initiate a Comprehensive Review and Investigation into the Metropolitan Waterworks And Sewerage System (MWSS) Contracts of Water Concessionaires Maynilad Water Services Inc. and Manila Waters Inc. and Make Immediate Recommendations to Address the Current Water Shortage," July 28, 2010, <http://www.anakpawis.net/wp-content/plugins/downloads-manager/upload/HR%20109%20-%20review%20of%20MWSS%20contracts.pdf>.

⁷ *In Re: Rate Rebasing Determination for Manila Water Company, Inc. for Charging Years 2013-2017; Resolution No. 13-009-CA*, 2013.

⁸ *Manila Water Concession Agreement*, PUBLIC-PRIVATE PARTNERSHIP IN INFRASTRUCTURE RESOURCE CENTER (1997), <http://ppp.worldbank.org/public-private-partnership/library/manila-water-concession-agreement>; Euan Paulo C. Añonuevo, *Manila Water Files Dispute with MWSS before Int'l Body*, INTERAKSYON (Sept. 24, 2013, 2:27 PM), <http://interaksyon.com/business/71403/manila-water-files-dispute-with-mwss-before-intl-body>.

⁹ *Manila Water Seeks P79B Compensation from Gov't*, RAPPLER (April 24, 2015, 9:26 AM), <http://www.rappler.com/business/industries/90966-manila-water-seeks-compensation-ph-government>; *Manila Water Presses for Indemnity*, BUSINESS WORLD ONLINE (Dec. 10, 2015, 11:27:00 PM), <http://www.bworldonline.com/content.php?section=TopStory&title=manila-water-presses-for-indemnity&id=120063>.

¹⁰ *Manila Electric Company v. Public Service Commission*, 18 SCRA 651, 665-666 (1966).

¹¹ INT'L FIN. CORP., PUBLIC-PRIVATE PARTNERSHIP STORIES: PHILIPPINES: MANILA WATER (2010), http://www.ifc.org/wps/wcm/connect/3f64d180498391a5856cd7336b93d75f/PPPStories_Philippines_ManilaWater.pdf?MOD=AJPERES.

¹² *Accelerating Access to Water and Sanitation in Sub-Saharan Africa: Scaling Up Private Sector Participation*, WATER AND SANITATION PROGRAM, <http://www.wsp.org/FeaturesEvents/Calendar/accelerating-access-water-and-sanitation-sub-saharan-africa> (last visited April 5, 2016). Note: direct, easily

advisory contracts in Benin and Mozambique¹³ and informed a widely opposed privatization scheme in Lagos, Nigeria.¹⁴ MWC, with IFC support, has expanded internationally, with a growth focus in Vietnam, Indonesia, and other regional markets. It is therefore important that the WBG address my concerns and take a renewed evaluation and analysis of its conflicts policy. For these reasons, I would urge the WBG, including the IFC, to cease promoting privatization of water resources until there has been a robust outside evaluation of the IFC conflicts policy and practices.

I appreciate your attention to this issue and look forward to hearing back from you.

Sincerely,



Gwen Moore
Ranking Member
House Financial Services Subcommittee on Monetary Policy and Trade

Cc:

Philippe Le Houérou
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The Honorable Jacob Lew
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navigable link to explicit promotion of the Manila case at the Dakar conference has since been removed, but PDFs and further evidence are available upon request.

¹³ INT'L FIN. CORP., BENIN WATER SYSTEMS: SUMMARY OF ADVISORY SERVICES PROJECT INFORMATION, IFC Projects Database, <https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/d011bd56046289dc85257b6000260169/ae14bbf648e9722185257c680069e471?opendocument> (last visited March 24, 2016); INT'L FIN. CORP., MOZAMBIQUE WATER TRANSACTION ADVISORY, SUMMARY OF ADVISORY SERVICES PROJECT INFORMATION, IFC Projects Database, <https://ifcndd.ifc.org/ifcext/spiwebsite1.nsf/d011bd56046289dc85257b6000260169/451eb062c0d49e7b85257bc1005cc69e?opendocument> (last visited March 24, 2016).

¹⁴ John Vidal, *Water Privatisation: A Worldwide Failure?*, THE GUARDIAN (Jan. 30, 2015), <http://www.theguardian.com/global-development/2015/jan/30/water-privatisation-worldwide-failure-lagos-world-bank>; Adeola Akinremi, *Nigeria: U.S. Congressional Black Caucus Expresses Concern Over Water Privatisation in Lagos*, ALL AFRICA (June 18, 2015), <http://allafrica.com/stories/201506181172.html>.