

AFRICAN DEVELOPMENT BANK GROUP



THE INDEPENDENT REVIEW MECHANISM



IRM Resolution

September 2014

(Proposed Amendments)

BOARDS OF DIRECTORS

**Resolution B/BD/2010/10 []/2014 – F/BD/2010/04 []/2014
Amending Resolution B/BD/2004/9/2010/10 – F/BD/2004/7/2010/04
Instituting concerning the Independent Review Mechanism**

Adopted at the 831st Meeting- [] of the Board of Directors of the Bank and the
765th []
Meeting of the Board of Directors of the Fund, 16th June 2010 [] 2014

THE BOARDS OF DIRECTORS,**HAVING REGARD** to the:

- (i) Agreement Establishing the African Development Bank (the "Bank"), in particular Articles 1 (Purpose), 2 (Functions), 4 (Structure), 8 (Special Fund), 13 (Ordinary and Special Operations), 32 (Board of Directors: Powers), 52 (Judicial Proceedings) and 53 (Immunity of Assets and Archives);
- (ii) Agreement Establishing the African Development Fund (the "Fund") in particular Articles 2 (Purpose), 14 (Use of Resources), 26 (Board of Directors: Functions), 31 (Relationship with the Bank), 43 (Legal Process), 44 (Immunity of Assets) and 45 (Immunity of Archives); and
- (iii) Agreement Establishing the Nigeria Trust Fund (the "NTF") in particular Articles I (Establishment and Purpose), II (Utilization of Resources), III (Administration of the Fund); IV (Operating Principles); XV and (Immunities, Exemptions and Privileges);

CONSIDERING Management's Proposals ~~on the Amendment of Resolution B/BD/2004/9 – F/BD/2004/7 on the Establishment of an Inspection Function, contained in Document ADB/BD/WP/2010/08 – ADF/BD/WP/2010/09, ADB/BD/WP/2010/08/Add.1 – ADF/BD/WP/2010/09/Add.1 and ADB/BD/WP/2010/08/Add.2 – ADF/BD/WP/2010/09/Add.2 relating to the Second Review of the Independent Review Mechanism contained in Document ADB/BD/WP/2014/[] – ADF/BD/WP/2014/[]~~ and the recommendations contained therein; [KG1]

NOTING the ~~importance of~~ importance of ~~establishing~~ enhancing the capabilities of ~~thea~~ mechanism through which persons adversely affected by projects financed by the Bank, the Fund and the NTF and other Special Funds administered by the Bank (the "Bank Group") can request the Bank Group to comply with its own policies and procedures;

COGNISANT of the need to provide detailed rules governing the establishment, procedures and administration of such a mechanism in order to ensure its effective performance;

HEREBY RESOLVE AS FOLLOWS:

Establishment

1. There is established an independent compliance review and problem-solving mechanism (hereinafter called the "Independent Review Mechanism") which shall have the powers and shall function as stated below.

Composition of the Independent Review Mechanism

2. The Independent Review Mechanism (IRM) shall consist of a Compliance Review and Mediation Unit ("CRMU") and a roster of experts (the "Roster of Experts").
3. The CRMU shall be an Organizational Unit of the Bank established in accordance with a Resolution of the Board of Directors of the Bank Group, and shall be the focal Unit of the IRM. The activities of the CRMU shall be managed by an Organizational Unit Head designated as the 'Director, CRMU' (the "Director") who shall be appointed by the President with the concurrence of the Boards of Directors (the "Boards") for a five year term renewable once. The Director shall not have worked for the Bank in any capacity for five (5) years prior to his/her appointment, and shall not work for the Bank in any capacity after his/her appointment for a period of three (3) years after the expiry of his/her term following each term of office ~~served~~.
4. The Roster of Experts shall comprise three (3) individuals (the "Expert(s)") selected in accordance with the Bank's procurement rules applicable by the Bank and Fund to the selection of consultants and appointed by the Boards on the recommendation of the President. The Experts shall be nationals of the member states of the Bank or State participants in the Fund selected on the basis of their knowledge and experience of development in Africa and the operations of multilateral development Banks.
5. The Experts shall be appointed to the Roster of Experts for a non-renewable term of five (5) years each, ~~except that at the inception of IRM, with the exception of the first three (3) Experts who shall be appointed by lot as follows: one for three (3) years, one for four (4) years and one for five (5) years.~~ If an Expert's term expires, at the time the Expert is engaged in a compliance review, the Expert's term shall be extended for such period as may be necessary to enable the Expert to complete writing the compliance review report with which such Expert is engaged at the time of expiration, unless the Boards decide otherwise. On the recommendation of the President, in consultation with the members of the Roster

of Experts, the Boards shall appoint a Chairperson of the Roster of Experts each time a member of the Roster of Experts is replaced.

6. Executive Directors, Alternate Executive Directors, ~~Advisers, Assistants~~Senior Advisers and Advisers to Executive Directors, any Officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster of Experts until two (2) years have elapsed since the end of their service ~~to the Bank or the Fund~~with the Bank. If an Expert is called upon to work for the IRM during his or her term, the Expert shall not be entitled to work for the Bank or the Fund (either as staff member, ~~Bank officer, Executive Director, Alternate Executive Director~~Elected Officer, Senior Adviser, Assistant or Adviser to an Executive Director or Consultant) for a period of two (2) years after the expiry of his or her term.
7. An Expert shall disclose any conflict of interest or potential conflict of interest that may affect his or her participation in a matter before the IRM and shall be disqualified from participation in the hearing and investigation of any request related to a matter in which he/she has a personal interest or had significant involvement in any capacity.
8. Experts on the Roster of Experts shall be remunerated for work carried out and shall be expected to work on a full-time basis when appointed to serve on a compliance review panel. They shall be guaranteed a minimum of 12 working days per annum. Once they have been assigned an IRM ~~work~~matter, Experts shall receive remuneration at a level to be determined by the Boards, upon the recommendation of the President. The payment shall be the equivalent of what is paid by other MBDs for similar officials as adjusted by the Bank Group's Boards from time to time. They shall be reimbursed for their travel and expenses on the same basis as provided in the Bank's Group's Travel Policy for senior management staff. ~~The new remuneration system and rates shall be applicable to contracts with Experts appointed to the Roster as of the date of entry into force of this amended Resolution.~~
9. In the performance of their functions, Experts shall be officials of the Bank enjoying the privileges and immunities accorded to Bank officials, and shall be subject to the requirement about exclusive loyalty to the Bank and the prescription in Article 38 of the Agreement establishing the African Development Bank and Article 21 of the Agreement establishing the African Development Fund against interference in the political affairs of member states.
10. An Expert may be removed from the Roster of Experts at any time, by a decision of the Boards, for cause. If an Expert appointed to a compliance review panel resigns or is otherwise unable to complete such assignment, the Director shall make a recommendation to the Boards, through the President, on a proposed course of action to ensure the prompt completion of the compliance review.

Powers of the Independent Review Mechanism

11. The IRM shall receive requests from persons adversely affected by a project financed by a Bank Group entity. Such requests shall be presented to the CRMU by two or more persons (such as, community of persons, an organization, association, society or other grouping of individuals) ("Requestors") or by a qualified representative of the affected persons (as defined in the Operating Rules and Procedures) who demonstrate that their rights or interests have been or are likely to be directly affected by the failure of the relevant Bank Group entity to comply:

- (i) ~~In~~ the case of a sovereign guaranteed project financed by any of the Bank Group entities, with any of its operational policies and procedures in respect of the design, appraisal and/or implementation of such project; and
- (ii) ~~In~~ the case of a private sector or non-sovereign guaranteed project financed by any of the Bank Group entities, with the social and environmental policies and safeguards of such projects.

~~The~~ alleged non-compliance may include situations where the Bank Group entity ~~is~~ alleged to have failed in its follow-up on the borrower's obligations under ~~loan agreements~~ under a financing agreement entered into with an entity of the Bank Group with respect to the applicable policies and procedures.

~~12. The~~ CRMU shall ensure that before a request for compliance review or problem-solving is treated, the request has been dealt with by the Management of the Bank and Management has failed to demonstrate that it has followed, or is taking adequate steps to follow the relevant policies and procedures. ~~The~~ CRMU shall also satisfy itself that the alleged violation of the relevant policies and procedures is not frivolous, and is of a material ~~character~~ nature.

~~12.~~

Function of the Independent Review Mechanism

13. The IRM shall perform ~~both compliance review, and~~ problem-solving, compliance review and advisory functions.

The problem-solving function shall be undertaken by CRMU and used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in resolving the underlying issues. Such problem-solving techniques may include independent fact-finding, mediation, conciliation, dialogue facilitation, and ~~may include the~~ best customary practices.

The compliance review function will be undertaken by the IRM Panel of Experts and will, in the case of Bank Group-financed sovereign guaranteed projects, focus on issues of non-compliance by an institution within the Bank Group with any of

its operational policies and procedures in respect of the design, implementation or supervision of such project, and, in the case of private sector and/or non-sovereign guaranteed Bank Group-financed projects, on compliance with the Bank Group's agricultural, education, health, gender, good governance and environmental policies.

The advisory function shall be authorized when the President and/or the Boards feel that projects, programmes, policies and procedures of the Bank Group can benefit from the accumulated experience of the IRM and support efforts of staff and Management to strengthen the social and environmental impact of the projects funded by the Bank Group's. The advisory function will be carried out to provide independent opinion on non-project related systemic issues, and technical advice on any non-operational program of the Bank Group. The advisory function will consist of Advisory services provided by CRMU and Spot-check advisory reviews of project compliance by the IRM Experts.

14. The IRM shall be activated when the CRMU accepts the complaint (the "Request") after it is satisfied that all requisite criteria have been fulfilled. In considering Requests under paragraph 11 above, the CRMU shall not receive:
- (i) Complaints relating to actions which are within the responsibility of other parties, including the borrower or potential borrower, and which do not involve any action or omission on the part of the relevant Bank Group entity;
 - (ii) Complaints against procurement decisions by the Bank Group or a borrower of a Bank Group entity from suppliers of goods and services financed by or expected to be financed by a Bank Group entity under a financing agreement, or from losing tenders for the supply of any such goods and services, which will continue to be addressed under existing procedures;
 - (iii) Complaints about fraud or corruption;
 - (iv) Complaints about matters before the Administrative Tribunal of the Bank;
 - (v) Complaints about matters before other judicial review or similar bodies;
 - (vi) Frivolous or malicious complaints, or complaints motivated by an intention to gain competitive advantage;
 - (vii) Requests related to matters over which the CRMU, a Panel, the President or the Boards has /have already made a recommendation or reached a decision after having received and reviewed a Request, unless justified by clear and compelling new evidence or circumstances not known at the time of the prior Request;

- (viii) Complaints relating to the adequacy or unsuitability of Bank Group policies or procedures;
 - (ix) Complaints relating to private sector or other non-sovereign guaranteed projects except in instances of an alleged breach of the agricultural, education, health, gender, good governance or environmental policies of the Bank Group.
 - (x) Complaints filed more than 12 months after the physical completion of the project concerned or more than 12 months after the final disbursement under the loan or grant agreement or the date of cancellation of the disbursement amount; and
 - (xi) Complaints regarding Human Rights violations, other than those involving social and economic rights involving alleging any action or omission on the part of a Bank Group entity.
15. The IRM shall seek the advice of the Bank's General Counsel ~~and Legal Department~~ on matters related to the Bank Group's rights and obligations with respect to a Request under consideration.

Procedures

16. Requests shall be in writing and shall state all the relevant facts including the harm suffered by or threatened to affected parties by the alleged act or omission of the Bank Group entity in contravention of its applicable policies and procedures. The Requests should to the extent possible explain the steps already taken to deal with the issue, as well as the nature of the alleged actions or omissions and shall specify the actions taken to bring the issue to the attention of Management and Management's response to such action.
17. The Director shall conduct a preliminary review to determine whether a Request is a *bona fide* request within fourteen (14) days of the receipt of the Request. The Director shall promptly inform the Boards, the President and the operational departments responsible for the project upon registering a Request that is determined to be eligible for either a compliance review or a problem-solving exercise.
18. Within twenty-one (21) days of being notified of a Request, Management shall provide ~~the~~ CRMU with evidence that it has complied, or intends to comply with the Bank Group's relevant policies and procedures. If there is no response from Management within twenty-one (21) days, the Director of CRMU shall notify the Boards and the President accordingly and send a copy to Requestors.
19. ~~The~~ CRMU may request clarification from Management on its response and set a time for the receipt of ~~the~~ any additional information sought. Within twenty-one (21) days of receiving Management's additional response or the expiry of the time

limit for receipt of the additional response, the CRMU shall undertake and conclude a problem-solving exercise or together with the IRM Experts determine the eligibility of the Request for a compliance review. If the Request is found eligible, the Director and the IRM Experts shall make a recommendation for a compliance review to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards. In case of a deadlock in determining eligibility, the Director of CRMU shall have the casting vote.

20. If the Director determines that a Request may be handled through a problem-solving exercise, he or she shall invite all relevant parties to participate in the exercise. The Director may use a variety of problem-solving techniques including best customary practices in the problem-solving exercise including, without limitation, mediation, conciliation, dialogue and facilitation.
21. If a problem-solving exercise is not successfully concluded within a period of three (3) months from commencement or by consent of the parties, the Director may recommend such remedial action as he or she deems appropriate to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards. Such recommendation may include the undertaking of an assessment of eligibility of a compliance review for the relevant project by the Director and the Experts.
22. Where the Director determines, following the conclusion of a problem-solving exercise or otherwise, that there is prima facie evidence the affected parties have been harmed or threatened with harm by a Bank Group-financed project due to the failure to follow the relevant policies and procedures of a member of the Bank Group, the Director and the IRM Experts shall, within thirty (30) days of such determination assess the eligibility of
the Request for a compliance review. If determined eligible, they shall submit a report recommending a compliance review of the relevant project to: (a) the Boards of Directors; or (b) the President, with a copy to the Boards, if the Request relates to a project that has not been approved by the Boards. The recommendation shall include draft Terms of Reference of the compliance review which shall be undertaken by the Panel comprising the three IRM Experts, and if considered necessary, complemented with consultant specialists in the relevant fields of expertise.
23. In considering a recommendation for a compliance review, the Boards of Directors or the President, as the case may be, shall either: (a) approve the recommendations(s) on a 'no-objection' basis; or (b) remit the request to the Director and the IRM Experts to reassess the recommendation regarding the draft Terms of Reference with a new recommendation, if any, being submitted to the President or the Boards as the case may be. Any decision by the President on the recommendations of the Director concerning a compliance review shall be immediately communicated to the Boards.
24. The Panel shall conduct the compliance review in accordance with the approved Terms of Reference. The Experts on the Panel shall each have one (1) vote and

decisions of the Panel ~~should~~ shall be taken by consensus, but where a ~~division~~ difference of views exist, the decisions shall be taken by simple majority of the Panel members. ~~The~~ CRMU shall provide administrative and technical support to the Panel.

25. The Panel shall report its findings and recommendations to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards. The Boards, or the President, as the case may be, shall decide whether or not to accept the findings and recommendations of the Panel. Any decision by the President shall be immediately copied to the Boards.
26. The findings and recommendations of the Panel shall be based only on facts relevant to the Request and shall be impartial. The Panel may not recommend the award of compensation or any other benefits to any person, entity or government beyond that which may be expressly contemplated in a relevant Bank Group policy.

26bb. The advisory function will be triggered either upon receipt by CRMU of a request for advice or technical opinion from the President and/or the Boards, or upon approval by the President and/or the Boards of a proposal submitted by the Director of CRMU for such advisory service. Spot-check advisory reviews of project compliance will be undertaken using the following the procedure: (i) At the beginning of each calendar year, CRMU shall, in consultation with the Bank Management, select at least two (2) high-risk (with potential environmental and social impacts) projects for which the Review Panel will conduct spot-checks on Bank Group's compliance with its policies and procedures. (ii) Once the projects have been selected, CRMU shall submit information detailing the aspects in which the projects have potential environment and social impacts to the Boards for approval on a no-objection basis, of an advisory review of each project. Such recommendation shall include simplified Terms of Reference for the Review Panel, a time frame of not more than 12 months, and the estimated budget for the advisory reviews.

Reports

27. The Director shall ~~within thirty thirty (330) days of the conclusion of the problem-solving exercise~~ prepare, ~~within thirty thirty (330) days of the conclusion of the problem-solving exercise,~~ a report on the exercise and its outcome and shall provide the report to the parties in the problem-solving exercise, to the Boards and to the President. Interim progress reports may be submitted by the Director to the Boards and the President for information.
28. The Panel shall report its findings and recommendations of the compliance review within thirty (30) days of the conclusion of a compliance review to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards, and to the requestors.

28 bb. The Director of CRMU will submit reports on advice and technical opinions provided to the President and/or the Boards.

29. ~~The~~ CRMU, or the person(s) otherwise charged with the responsibility, may monitor the implementation of any solution agreed upon in a problem-solving exercise or any remedial changes to the relevant Bank Group's policies or procedures or to the implementation of the relevant Bank Group-financed project. Such persons shall submit the monitoring report, for consideration, to the Boards, or to the President where the Request relates to a project that has not been approved by the Boards. Any monitoring report to the President shall be immediately copied to the Boards.
30. Subject to the provisions of the Bank Group's Disclosure and Access to Information Policy, the reports of the CRMU and the Panel and the decisions of the Boards and the President on all Requests shall be communicated to the Requestors and all other interested parties and shall be made public by the Bank Group.
31. The Director shall prepare, in consultation with the Experts, an annual report describing the activities of the IRM/CRMU during the preceding year. The annual report shall be submitted to the Boards and to the Boards of Governors for information. The annual report shall be published by the Bank Group.

Review

32. The Boards shall review the experience of the IRM established by this in conformity with the provisions of Resolutions Resolution B/BD/2004/9 – F/BD/2004/7 after three (3) years from the date of the effectiveness of the IRM, which date shall be that of the appointment of the Director, thereafter the Boards shall review the IRM every four (4) years, or as otherwise decided by the Boards.

Operating Rules and Procedures

33. The Boards have approved the 2014 amendments ed-to the Operating Rules and Procedures of the Compliance Review and Mediation Unit of the Independent Review Mechanism, which shall complement the operational provisions contained in this Resolution.

Entry into Force

34. This Resolution shall become effective on the date of its adoption by the Boards of Directors of the Bank and Fund.