



Operational Guidelines

May 2012

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Mission

The CAO's mission is to serve as a fair, trusted, and effective independent recourse and accountability mechanism, and to improve the environmental and social accountability of the International Finance Corporation (IFC) and Multilateral Guarantee Agency (MIGA).

The Operational Guidelines

These Operational Guidelines set forth how the CAO will carry out its different roles. The Operational Guidelines were first issued in 1999, when the CAO was founded, and are periodically updated.

Further Information about the CAO

The CAO aims for maximum disclosure of reports, findings, and results of a CAO process by reporting results on its Web site. These Operational Guidelines and all other public documents are available in print and on the CAO's Web site at www.cao-ombudsman.org. They are available in Arabic, Chinese (Mandarin), English, French, Portuguese, Russian and Spanish, in addition to other languages as relevant, to inform people affected, or potentially affected, by IFC/MIGA projects about how to lodge a complaint.

Information related to CAO cases is available in English and, when possible, in the local language(s) relevant to the complainants.

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1. Overview of the CAO

1.1 The CAO's Mandate, Terms of Reference, and Operational Guidelines

The Office of the Compliance Advisor Ombudsman (CAO) was created in 1999 by the World Bank Group as the independent recourse and accountability mechanism of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) for environmental and social concerns. The CAO is an independent post that reports directly to the President of the World Bank Group, in the President's capacity as both President of the institution and as Chairman of its Board of Directors. The mandate of the CAO is to:

- Address complaints from people affected by IFC/MIGA projects (or projects in which those organizations play a role) in a manner that is fair, objective, and constructive; and
- Enhance the environmental and social outcomes of IFC/MIGA projects (or projects in which those organizations play a role).

The CAO's Terms of Reference (TOR), which have been endorsed by the President of the World Bank Group, establish the CAO's mandate and forms the basis for these Operational Guidelines. The CAO's mandate provides a mechanism for any individual or group or group of individuals, to lodge a complaint about the social or environmental aspects of an IFC/MIGA supported project. The Terms of Reference are available on the CAO's Web site. Printed copies of the CAO's governing documents may be obtained from the CAO Office.

The CAO Office is headed by the CAO Vice President, who is appointed by the President of the World Bank Group for an agreed term subject to an independent selection process involving representatives from civil society and the private sector.

To carry out its mandate, it is essential that the CAO be able to work in a flexible manner and retain its discretion. While these Guidelines provide a procedural framework to inform the CAO, complainants, and those engaged in a CAO process, they are not intended to unduly restrict the CAO.

The CAO has no authority with respect to judicial processes. The CAO is not an appeals court or a legal enforcement mechanism, nor is the CAO a substitute for international courts systems or court systems in host countries.

1.2 Independence and Impartiality

The CAO strives to be an independent, transparent, credible, accessible, and equitable mechanism that provides a predictable process.

The CAO is not identified with or beholden to any sector or interest. Independence from the line management of IFC and MIGA enables the CAO to provide advice to deliver on its mandate. CAO's independence and impartiality also encourages the trust and confidence of project sponsors, communities, nongovernmental organizations (NGOs), and civil society generally. Trust and confidence are prerequisites for the CAO to be able to operate according to its mandate.

The CAO reinforces its independence and impartiality in a number of ways:

- The CAO Vice President is appointed by the President of the World Bank Group following a recruitment process with the participation of civil society and private sector representatives.
- CAO staff are recruited by the CAO Vice President.
- CAO staff contracts restrict specialists and staff above that level, from obtaining employment with IFC or MIGA for a period of two years after they end their engagement with the CAO. The CAO Vice President is restricted for life from obtaining employment with the World Bank Group.
- The CAO office is physically located in a secure area, and only CAO staff have direct access.
- The CAO Vice President and her/his staff exercise caution in becoming involved in internal processes within IFC/MIGA, which might compromise the neutrality of the Office. However, the CAO may also request staff of the World Bank Group to provide assistance throughout the course of its work on a case.
- To avoid any conflicts of interest, the CAO maintains its independence and impartiality by not giving project-specific advice to IFC/MIGA.

The credibility of CAO staff and consultants under its employ is critical to the CAO's work. If a CAO staff or consultant has a conflict of interest in relation to a particular case, that person will withdraw from involvement in that case. In exceptional circumstances, contractual arrangements for CAO consultants may impose time-bound restrictions on their future involvement with IFC or MIGA.

1.3 The CAO's Three Roles

The CAO has three complimentary roles over which the CAO Vice President maintains discretion:

- **Dispute Resolution role:** In responding to complaints, the CAO attempts to resolve the issues raised using a flexible, collaborative, problem-solving approach. The focus of the CAO's Dispute Resolution role is on accessing directly those individuals and/or communities affected by the project and helping them, the sponsor, and other relevant stakeholders resolve complaints, ideally by improving environmental and social outcomes on the ground (see section 3).
- **Compliance role:** The CAO oversees compliance investigations of the environmental and social performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving environmental and social performance (see section 4).
- **Advisory role:** The CAO is a source of independent advice to the President of the World Bank Group and the senior management of IFC and MIGA. Advice is based on insights gathered from the CAO's dispute resolution and compliance interventions and is focused on broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues based on the experiences gained through its case work, with the goal of fostering systemic improvements in IFC/MIGA (see section 5).

1.4 Confidentiality and Information Disclosure

Confidentiality and information disclosure are critical to the CAO's independence and impartiality, and important tools in achieving effective outcomes. As such, the CAO recognizes and protects a party's right to confidentiality. Any information disclosure will respect confidentiality requests from a party.

As articulated in its Terms of Reference, the CAO is bound by IFC and MIGA disclosure policies that require the confidentiality of certain business information to be respected during communications with a party. The CAO is also bound by the Staff Rules of the World Bank Group, which require staff to treat information with discretion and not to disclose information improperly. Furthermore, while CAO reports related to a case may be released publicly, the CAO may not publish information received from parties in the course of a case if disclosure of that material is restricted under IFC or MIGA disclosure policies.

The CAO cannot accept anonymous complaints. However, requests for confidentiality by a party will be safeguarded by the CAO, including confidentiality of identities and agreements. The CAO will indicate publicly when it has restricted disclosure of information in response to such a request from a party. Once the CAO has deemed a complaint to be eligible, other affected stakeholders, including IFC/MIGA, typically will be notified about the complaint.

In cases where CAO Dispute Resolution transfers a case to CAO Compliance, confidential information received during the dispute resolution process will not be shared with CAO Compliance, unless explicit permission to do so is provided by the relevant parties. This is to ensure that participants can engage openly and frankly during the dispute resolution process without compromising their position should a compliance audit be conducted subsequently by the CAO.

Within the parameters of these constraints, the CAO makes every effort to ensure maximum disclosure of reports, findings, and outcomes. This includes reports and findings from its dispute resolution processes, compliance investigations, and advisory work, as well as CAO annual reports.

1.5 Reporting to the President and Informing the Board of the World Bank Group

The CAO reports to the President of the World Bank Group, as established in the CAO's Terms of Reference, and provides quarterly reports and briefings as requested. The CAO informs the World Bank Group Board (the Board) of its activities through case and annual reports, which are all publicly available. The primary focus of these reports is to provide an overview of the activities of the CAO and monitor the implementation of recommendations.

The CAO also provides an annual update to the World Bank Group Board's Committee on Development Effectiveness (CODE), and offers periodic technical briefings to supplement this information. In addition, CAO provides CODE with a Management Action Tracking Record (MATR) report, which annually records actions taken by IFC/MIGA in response to the CAO's recommendations and findings.

Although the CAO reports to the President, it also communicates with the Board on a regular basis and as requested. Regarding its case work, the CAO shares the following information with the President and the Board:

- The determination that a complaint has been found eligible
- The outcome of a CAO assessment and dispute resolution conclusion reports
- The outcome of CAO compliance appraisals and investigations.

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2. Complaints Process

2.1 Lodging a Complaint

2.1.1 Grounds for complaint

Complaints may be made by those who believe they are affected, or potentially affected, by the social and/or environmental impacts of an IFC/MIGA project.

Complaints may relate to any aspect of the planning, implementation, or impact of IFC/MIGA project, including but not limited to:

- Processes followed in the preparation of a project.
- The adequacy of measures to mitigate environmental and social impacts of the project.
- Arrangements for involvement of affected communities, minorities, and vulnerable groups in the project.
- The manner in which the project is implemented.

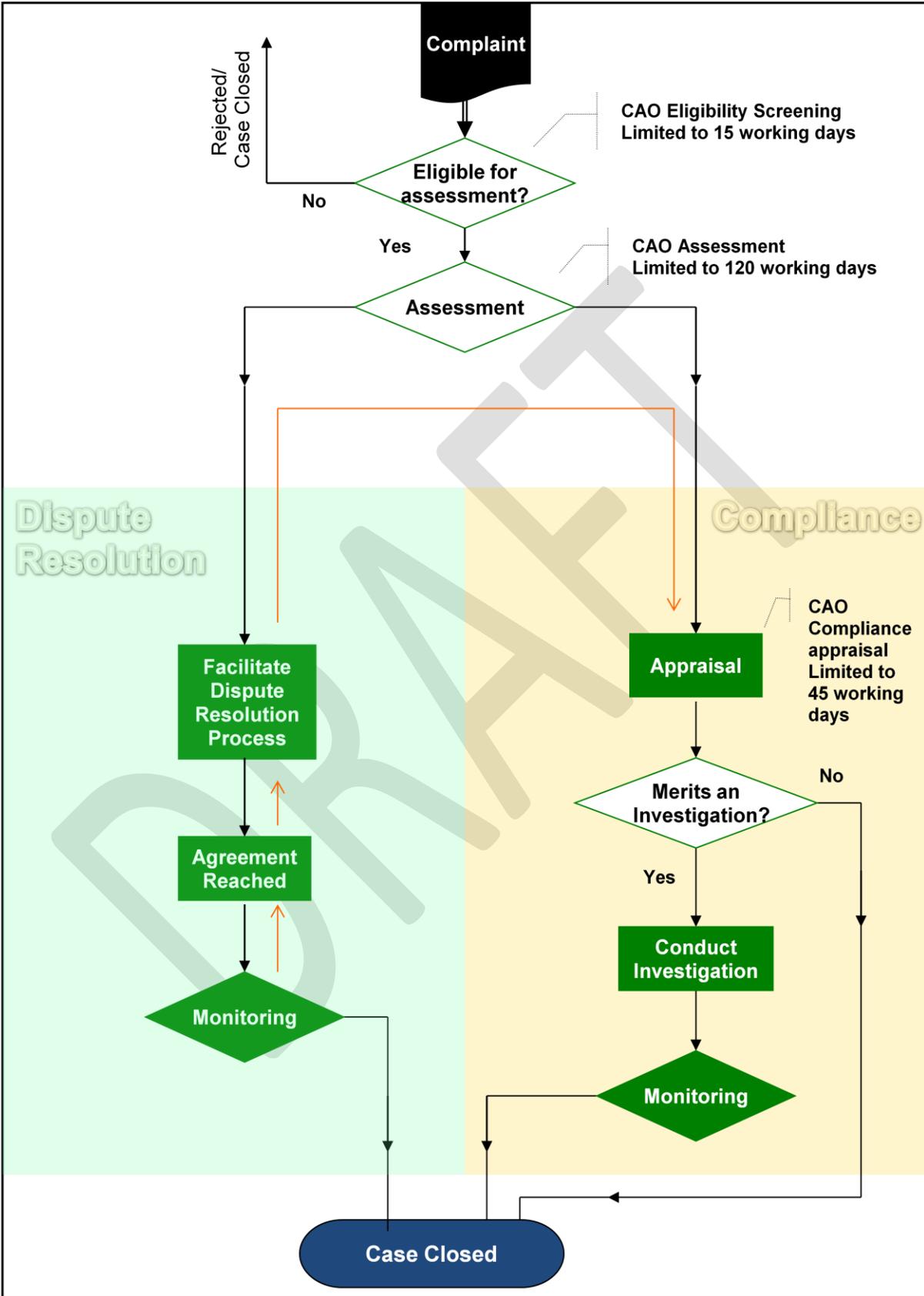
The grounds on which a complaint may be made have been broadly defined to encourage those with concerns about a project to seek redress.

2.1.2 Who can lodge a complaint?

Any individual, or group of individuals that believes it is affected, or potentially affected, by the social and/or environmental impacts of an IFC/MIGA project may lodge a complaint with the CAO.

If a complaint is lodged by a different organization on behalf of those affected, the organization should clearly identify the people on whose behalf the complaint is made, and provide explicit evidence of authority to present the complaint on their behalf. The CAO will seek proof that those affected have granted such an authorization.

Figure 1. The CAO Process of Handling Complaints



2.1.3 Lodging a complaint

Complaints should be submitted in writing and may be presented in any language. The CAO will attempt to respond in the language of the complaint. (The CAO's language policy is covered in section 6.) Complaints should be sent by mail/post, fax, or e-mail or delivered to the Office of the CAO in Washington, DC. The full address of the Office of the CAO appears on the back cover of these Operational Guidelines. The CAO will provide confidentiality upon receiving a complaint if requested to do so by the complainants (see section 1.4).

2.1.4 What to include in a complaint

There are no formal requirements for lodging a complaint with the CAO, but complaints should include the following information:

- The complainant's name(s), address, and other contact information.
- If the party lodging the complaint is doing so on behalf of an affected person or community, they must identify on whose behalf the complaint is made. They must also present evidence that they have been requested present the complaint on behalf of the project affected people.
- Whether the complainant wishes that their identity or any information communicated as part of the complaint should be kept confidential (stating reasons).
- The identity and nature of the IFC/MIGA project.
- A statement of the way in which the complainant believes it has been, or is likely to be, affected by environmental and/or social impacts of the project.

In addition, complainants may wish to provide additional information on the following:

- What has been done by the complainant to attempt to resolve the problem, including specifically any contact with IFC/MIGA staff, the sponsor, or host government?
- What aspects of a problem remain unsettled?
- Where noncompliance with IFC/MIGA environmental and social policies, guidelines, or procedures is thought to have occurred, which policies, guidelines, or procedures are thought to have been violated? There is no requirement for a complainant to specify particular policies, guidelines, or procedures, but some may wish to do so.
- A clear statement of results that the complainant views as the most desirable outcome of the process.
- Any other relevant facts (any supporting documents or other relevant materials should be attached).

On request, the CAO will provide guidance on how to lodge a complaint, without providing advice regarding the substance of the complaint. A model complaint letter is provided in appendix A. If the initial submission is not clear, the CAO will seek additional information or clarification from the complainant. Potential complainants may also contact the CAO for clarification before lodging a complaint.

2.2 Eligibility Screening

The first step taken by the CAO after receiving a complaint is to screen it against the CAO's eligibility criteria. The CAO expects the eligibility screening to take no more than 15 working days from acknowledgement of receipt of the complaint. The CAO's eligibility decision is procedural, and does not constitute a judgment on the merits of the substance of the complaint.

2.2.1 Eligibility criteria

The CAO will deem the complaint eligible if:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA projects.
3. The complainant(s) is/are, or may be, affected by the social and/or environmental impacts raised in the complaint.

Complaints deemed by the CAO to be malicious, or generated to gain competitive advantage, are ineligible for assessment. If the complaint includes allegations of fraud and/or corruption, the CAO will refer those allegations to the World Bank Department of Institutional Integrity (INT). Furthermore, if a complaint includes allegations pertaining to an IBRD/IDA project, the CAO will inform the World Bank Inspection Panel about the complaint. The CAO does not accept complaints relating to IFC/MIGA procurement decisions.

2.3 Assessment

Once the CAO determines a complaint eligible, it will conduct an assessment of the complaint to:

- Develop a thorough understanding of the issues and concerns raised in the complaint
- Engage with local communities and IFC sponsors
- Identify the additional stakeholders relevant to the complaint
- Explain to the stakeholders the different roles of the CAO
- Determine which CAO role the parties seek to initiate.

The CAO's assessment of the complaint does not entail any judgment on the merits of the complaint.

The CAO will carry out assessments in a flexible manner, which may include any combination of the following activities:

- Reviewing IFC/MIGA files
- Meeting with the complainant(s), IFC/MIGA staff, sponsors, government officials of the country where the project is located, and representatives of local and international nongovernmental organizations, and other stakeholders
- Visiting project sites
- Holding public meetings in the project area.

The assessment of a complaint will be carried out by CAO dispute resolution experts.

The outcomes of the CAO assessment process will determine whether the Dispute Resolution or Compliance which role is triggered.

- The CAO will work through its Dispute Resolution role to produce an explicit agreement on a process for addressing the issues raised in the complaint, and other issues that may have been identified during the assessment, *or*
- The CAO will work through its Compliance role to initiate an appraisal to determine if an investigation of IFC's/MIGA's involvement in the project is warranted.

The CAO will complete the assessment within 120 working days of the date a complaint was determined eligible for assessment. The CAO will provide an assessment report to the parties, the President and Board of the World Bank Group, and the public.

The assessment report will include the following elements:

- A broad summary of the information gathered during the assessment
- The decision of the parties to pursue a dispute resolution process or compliance appraisal
- No judgments on the merit of the complaint.

If at any time after the completion of the assessment, the CAO believes that resolution of the case is unlikely to be possible through a dispute resolution process or that it would be an inefficient use of resources, the complainant will be advised of the reasons for the decision to conclude the Dispute Resolution process. The case will then be transferred to Compliance for appraisal.

2.4 Timelines for Handling a Complaint

The CAO is committed to ensuring that complaints are handled in a timely and prompt manner. The CAO will track its handling of complaints using internal systems, following the general process outlined in figure 1. If the nature of the complaint or special circumstances requires more flexibility, the timeline for handling the complaint will be reviewed by the CAO in consultation with the parties.

The following steps will normally be followed by the CAO when a complaint is received:

Step 1 Acknowledgement of receipt

Step 2 Eligibility screening and decision whether the complaint meets the criteria for further assessment by the CAO (15 working days)

Step 3 Assessment (120 working days) to:

- Develop a thorough understanding of the issues and concerns raised in the complaint;
- Engage with local communities and IFC sponsors;
- Identify the additional stakeholders relevant to the complaint;
- Explain to the stakeholders the different roles of the CAO
- Determine which CAO the parties seek to initiate

Step 4

a) Dispute Resolution: If the parties agree to seek joint resolution to the issues, a mutually agreed process will be designed and implemented. Where the issues are resolved by agreement between the parties, the process goes to monitoring/close out (step 5). If at any point in this process parties no longer wish to pursue dispute resolution, the case is transferred to Compliance.

b) Compliance: If the parties seek a compliance route, a two-step approach is initiated. The first step is a compliance appraisal. If the appraisal determines that a compliance investigation is not warranted, the CAO will close the case. Otherwise, the CAO will proceed to the second step, and conduct a compliance investigation. The CAO makes all appraisal and investigation reports public.

Step 5 Monitoring and follow-up.

Step 6 Conclusion of the CAO's involvement.

3 The Dispute Resolution Role

3.1 Principles of and Approach to Dispute Resolution

Engaging in a dispute resolution process is a voluntary decision, and can be achieved only through consensus between the affected people and sponsor, at a minimum. The main objective of CAO's Dispute Resolution role is to help resolve issues raised about the social and/or environmental impacts of IFC/MIGA projects and improve outcomes on the ground. As a nonjudicial, nonadversarial, neutral forum, the CAO's approach provides a process through which parties may find mutually satisfactory solutions. This role facilitates an approach that ensures equitable treatment of participants in a dispute resolution process.

The CAO recognizes that local communities, minorities, and vulnerable groups often have much to gain or lose from a project. The CAO also recognizes that it is precisely these groups of people who will live with the impacts and benefits of the project, and therefore will have an ongoing relationship with the sponsor. As such, the CAO seeks to work directly with the project affected community.

3.2 Assisting in the Resolution of Issues

3.2.1 Approaches to dispute resolution

The CAO and the parties may use a number of different approaches in attempting to find resolution of the issues. Each approach will be chosen in consultation with the parties, and may include:

Facilitation and information sharing

In many cases, the complaint will raise questions of fact regarding current or anticipated impacts of a project. The CAO Dispute Resolution team may be able to help complainants obtain information or clarifications that result in resolution from the perspective of complainants.

Joint fact-finding

Joint fact-finding is an approach that encourages the parties to jointly agree on the issues to be investigated; the methods, resources, and people that will be used to conduct the investigation; and the way that information generated from the investigation will be used by the parties.

Dialogue and negotiation

Where communication among parties has been limited or disrupted, the CAO Dispute Resolution team may encourage the parties to engage directly in dialogue and negotiation to address and resolve the issues raised in the complaint. The CAO Dispute Resolution team may offer training and/or expertise to assist the parties in this process.

Mediation and conciliation

At times more formal problem-solving intervention by the CAO Dispute Resolution team may be appropriate. Mediation involves the intervention by a neutral third party in a dispute or negotiation with the purpose of assisting the parties in voluntarily reaching their own mutually agreement. In conciliation, the third party neutral may make recommendations to the participants in the conciliation process.

3.2.2 Reaching and documenting agreements

The major objective of problem-solving approaches will be to address the issues raised in the complaint—and any other significant issues relevant to the complaint identified during the assessment or the problem-solving process—in a way that is acceptable to the parties. The agreements should be specific regarding the objective, nature, and requirements. Incentives or disincentives, time-bound or otherwise, may form a part of any agreement.

In pursuit of resolution, the CAO will not support agreements that would coerce one or more parties, be contrary to IFC/MIGA policies, or violate domestic laws of the parties or international law.

3.2.3 Monitoring and follow-up

Where the parties have reached agreement regarding the issues raised in the complaint, the CAO will assist the parties to monitor implementation of those agreements. This may be achieved by setting mutually agreed timelines and indicators for achievement within the body of the agreement.

Any agreements reached by the parties, will usually contain a program and timelines for implementation. The CAO Dispute Resolution team will monitor whether the agreements have been implemented, and publicly disclose the outcomes on the CAO's Web site.

3.2.4 Conclusion

Upon the implementation of a monitored agreement, and/or when the Dispute Resolution team transfers to CAO Compliance, the CAO releases a conclusion report that summarizes core process steps, outcomes, as well as the rationale for closing the complaint on the Dispute Resolution side.

4 The Compliance Role

4.1 The Purpose and Emphasis of Compliance Appraisals and Investigations

CAO Compliance oversees compliance appraisals and investigations of the environmental and social performance of IFC/MIGA at the project level. The focus of CAO Compliance is on IFC and MIGA, not their sponsor. The CAO assesses how IFC/MIGA assured itself/themselves of the performance of the project. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for the CAO to review the actions of the sponsor and verify outcomes in the field.

When conducting compliance appraisals and investigations, the CAO will consider how IFC/MIGA assured itself/themselves of compliance with national law, along with other compliance investigation criteria.

CAO Compliance role follows a two-step approach. The first step is a compliance appraisal. The second is a compliance investigation.

4.2 The Compliance Appraisal Process

4.2.1 Initiating a compliance appraisal

Compliance appraisals of IFC/MIGA projects are initiated in response to any of the following circumstances:

- A request from the CAO Vice President
- A program designed and approved by the CAO Vice President
- A request from the President of the World Bank Group or senior management of IFC/MIGA.

Compliance appraisals of IFC/MIGA projects are also initiated in response to complaints when:

- The outcome of the CAO assessment process determines that the Compliance role should be triggered.
- CAO Dispute Resolution transfers a case to CAO Compliance.

The purpose of the appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA. The scope of the appraisal will be defined by issues raised in the complaint and identified during the CAO assessment phase, or as defined in the request for appraisal by the CAO Vice President, or President, or IFC/MIGA senior management.

In those cases where the CAO Vice President initiates a compliance appraisal, a memorandum explaining the rationale for the proposal to investigate will be submitted to the President, IFC/MIGA senior management, and the CAO will also inform the Board of the World Bank Group.

While the CAO does not place prescriptive limits on the conditions under which a compliance appraisal should take place, the CAO applies several basic criteria to guide the process. These

criteria test the value of undertaking a compliance investigation, as the CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, the CAO will hold discussions with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response.

4.2.2 Disclosure of appraisal results

Once the CAO concludes an appraisal, it will advise the Executive Vice President of IFC/MIGA, the President, and the Board of the World Bank Group in writing. If an appraisal results from a case transferred from CAO's Dispute Resolution role, the complainant will also be advised in writing, and a summary of the appraisal results will be made public.

In the event that the CAO Compliance determines that the issues do not meet the appraisal criteria for a compliance investigation, the CAO will close the case.

4.3 Definitions and approach to compliance investigations

The CAO's working definition of a compliance investigation is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

The compliance investigation criteria include IFC/MIGA policies, Performance Standards, guidelines, procedures, and requirements whose violation might lead to adverse environmental and/or social outcomes. Compliance investigation criteria may have their origin, or arise from, environmental and social assessments or plans, host country legal and regulatory requirements (including international legal obligations), and the environmental, social, health, or safety provisions of the World Bank Group, IFC/MIGA, or other conditions for IFC/MIGA involvement in a project.

The compliance investigation will typically be based on a review of documents, interviews, observation of activities and conditions, or other appropriate means. The verification of evidence is an important part of the compliance investigation process.

4.4 The Compliance Investigation Process

4.4.1 Initiating a compliance investigation

Compliance investigations are initiated upon the completion of an appraisal that determines whether the issues presented in the request for a compliance investigation, or issues related to the complaint, meet the appraisal criteria for conducting an investigation. While CAO Compliance may seek clarifications during the investigation, it will not accept an expansion away from the scope identified in the appraisal report, and defined in the Terms of Reference for the compliance investigation (see 4.4.3 below). Should additional issues or concerns emerge during an investigation, these will be subject to a separate appraisal at the decision of the CAO Vice President.

4.4.2 CAO compliance investigations

When CAO Compliance conducts compliance investigations of IFC/MIGA, at issue is whether:

- The actual environmental and/or social outcomes are consistent with, or contrary to, the desired effect of the policy provisions
- The failure to address environmental and/or social issues as part of the review process resulted in outcomes that are contrary to the desired effect of the policy provisions.

4.4.3 Developing Terms of Reference for compliance investigations

When conducting a compliance investigation, the CAO will disclose a Terms of Reference to the management of IFC/MIGA. The Terms of Reference will specify:

- The objectives and scope of the investigation
- The specific investigation criteria identified during appraisal
- A brief description of the project to be investigated
- The approach to the investigation, methods, and specific consultant tasks
- A schedule for the investigation tasks, identifying the timeframe and reporting requirements.

4.4.4 Staffing for compliance investigations

The CAO is responsible for managing the compliance investigation process, determining the knowledge and skills required to undertake the compliance investigation, and hiring specialists with appropriate expertise to form a compliance panel.

The key considerations the CAO takes into account when hiring external panelists for compliance investigations are expertise, independence, and impartiality. The panelists will have a CAO-specific confidentiality requirement in addition to the general confidentiality provisions provided by World Bank Group contracts.

4.4.5 Report preparation and disclosure

The compliance investigation report will be prepared under the direction of CAO Compliance specialists. The report will typically include:

- An executive summary of the findings

- A brief description of the project
- A description of the underlying issues that gave rise to the investigation
- The objectives and scope of the investigation
- The criteria against which the investigation was conducted
- The findings of the investigation with respect to noncompliance and any adverse environmental and/or social outcomes, including the extent to which these are verifiable.

A draft compliance investigation report will be circulated to IFC/MIGA senior management and all relevant IFC/MIGA departments for factual review and comment. IFC/MIGA comments should be submitted in writing to the CAO within 20 working days of receipt by IFC/MIGA.

Upon receiving comments from IFC/MIGA on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC/MIGA senior management for official response. A notification will be posted on the CAO's Web site. IFC/MIGA has/have 20 working days to submit a written response to the CAO. The CAO will forward the compliance investigation report and the IFC/MIGA response to the President of the World Bank Group. The President has no editorial input to the content of the compliance investigation report, but may take the opportunity to discuss the investigation findings with the CAO.

Once the President is satisfied with the response by IFC/MIGA senior management, the President will provide clearance for the investigation report and the response. The President retains discretion over clearance. After clearance, the CAO will disclose the investigation report and the IFC/MIGA response to the World Bank Group Board. The CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's Web site, and in cases where the investigation was initiated by a complaint, share the documents with the complainants.

4.4.6 Monitoring and closure of compliance investigations

In cases where IFC/MIGA is/are found to be in compliance, the CAO will close the investigation.

In cases where IFC/MIGA is/are found to be out of compliance, the CAO will keep the compliance investigation open and monitor the situation until actions taken by IFC/MIGA assure the CAO that IFC/MIGA is back in compliance. The CAO will then close the compliance investigation.

The CAO makes public the current status of all compliance cases.

5. The Advisory Role

5.1 The Origin and Principles of the Advisory Role

5.1.1 The origin of the advisory role

The CAO's Terms of Reference define the scope of CAO's Advisory role to include advice to the President and IFC/MIGA on broader environmental and social issues related to policies, standards, guidelines, procedures, resources, and systems established to improve the performance of IFC/MIGA projects. Lessons learned from CAO advisory work may also be used by external audiences to improve the social accountability and performance of the private sector.

5.1.2 Principles that underpin the advisory role

A number of principles underpin CAO's Advisory role:

- The CAO's advice aims to improve IFC/MIGA performance systemically.
- The CAO does not give advice on specific projects, thereby preserving its independence and impartiality should the project(s) be subject to a subsequent CAO process.
- The CAO provides advice on broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic concerns.
- CAO advice is derived from experience gained through its dispute resolution and compliance work.
- CAO advice is given formally in writing, and disclosure of the advice is at the discretion of the CAO Vice President.

5.2 Initiating the Advisory Role and Determining the Scope of Advice

5.2.1 Initiating the advisory role

Advice is initiated by the CAO Vice President, and is triggered in the following ways:

- Through lessons learned from CAO's Dispute Resolution and Compliance roles
- At the discretion of the CAO Vice President to the World Bank Group President on systemic and critical issues relating to the CAO's casework
- A request from the President, IFC/MIGA senior management, or the Board.

Each formal written request for advice will be reviewed by the CAO Vice President, who will determine whether advisory work should be initiated.

The CAO informs IFC/MIGA senior management when it initiates advisory work and when it responds to a request for advice. Upon the initiation or request for advice, the CAO will produce a Terms of Reference or approach paper, which it shares with IFC/MIGA senior management for comments and suggestions. The CAO always issues its advice in writing which may take different forms, including Advisory Notes and memoranda.

5.2.2 Determining the objectives and scope of advice

The specific objectives of the advisory work will depend on the nature of the request, but will typically include:

- Bringing about systemic improvements in environmental and/or social performance of IFC/MIGA by addressing deficiencies in systems, policies, guidelines, or procedures, or the interpretation or application thereof
- Helping IFC/MIGA understand how their environmental and/or social obligations may be met more effectively
- Advancing the boundaries of environmentally and/or socially responsible behavior on the part of IFC/MIGA by advising on emerging, strategic, or systemic issues or trends or processes
- Advancing the boundaries of environmentally and/or socially responsible behavior in the private sector through lessons derived from CAO cases.

The CAO will produce a Terms of Reference or approach paper that clearly outlines the scope of advice.

5.2.3 Screening criteria for requests for advice

Requests for advice are screened by the CAO to ensure that advisory work is undertaken only after all of the following criteria have been met:

- The advice will be consistent with the CAO's mandate to address environmental and social concerns
- The advice will address strategic issues, trends, systemic issues, policies, guidelines, or procedures of IFC/MIGA
- The advice will address matters that are not adequately dealt with by existing forms of IFC/MIGA guidance or advice
- The advice will not be project-specific.

5.3 The Approach to the Advisory Role

5.3.1 Transparency, effectiveness, and information disclosure

As a matter of principle, the CAO strives for maximum transparency across its three roles. However, this principle must be balanced against the objective to maximize the effectiveness of the advice within the institutions of IFC/MIGA.

CAO's Advisory role will not disclose any project related to information not already publicly disclosed by CAO's Dispute Resolution and Compliance roles. To that end:

- In cases where the advice stems from CAO dispute resolution activities or compliance investigations on projects that have already been subject to some level of external disclosure by the CAO, the specific project that triggered the advice may be referred to in publicly disclosed documents.
- In cases in which advice is publicly disclosed and has been based on lessons learned from a number of IFC/MIGA projects, the individual projects will not be identified in the Advisory Note.

5.3.3 Monitoring and follow-up

Advice will be integrated into the CAO's monitoring and evaluation activities. The CAO monitors IFC's/MIGA's implementation of advice and reports its findings to the President.

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6. Communications and Outreach

The accessibility of the CAO depends on effective communications with potentially affected people, civil society organizations, IFC/MIGA clients, IFC/MIGA staff, and other stakeholders. The CAO takes a proactive approach to raising awareness about the Office among these stakeholders to ensure that they know of the CAO's existence, understand its mission and mandate, and are familiar with how the CAO works to address complaints about IFC/MIGA projects.

The CAO seeks to enhance interactions with its stakeholders in the following ways:

- Publishing the CAO Operational Guidelines, CAO's Terms of Reference, information brochures, and other materials in the official languages of the World Bank Group (Arabic, Chinese (Mandarin), English, French, Russian, Spanish, and Portuguese), and additional languages where deemed necessary, and making these documents available in hard copy, online, and by other culturally appropriate means.
- Meeting with potentially affected people and their representatives, upon request.
- Disseminating information about the CAO in the markets where IFC/MIGA does/do business through civil society organizations, World Bank Group offices, partner independent accountability mechanisms, the business community, academia, and other institutions.
- Conducting outreach to local, national, and international civil society and other stakeholders, to provide information about the CAO's work.
- Seeking advice from experts with in-country and/or regional knowledge to improve the CAO's communications with stakeholders and the CAO's overall accessibility to potentially affected people.
- Being responsive to local constraints that may impede peoples' ability to access the CAO's services and/or participate in a CAO process.

The working language of the CAO is English, but the CAO works to facilitate communications with its stakeholders in any language, including the submission of complaints and publication of CAO reports and materials. All publicly disclosed CAO reports relating to complaints—including assessment reports, agreements, compliance appraisals and investigations, and conclusion reports—are translated into the local language of the relevant complainants. Where deemed necessary, the CAO will translate these materials into additional local languages and present them in a culturally appropriate manner.

Appendix A. Model Letter of Complaint to the CAO

Office of the Compliance Advisor Ombudsman
 International Finance Corporation
 2121 Pennsylvania Avenue NW
 Washington, DC 20433 USA
 Tel: + 1 202-458-1973
 Fax: +1 202-522-7400
 e-mail: cao-compliance@ifc.org

I/we, _____, lodge a complaint concerning
 the _____ project, located in _____.

This complaint is made on behalf of _____ (ignore if not
 applicable).

I/we live in the area known as _____ (show on an attached
 map if possible). I/we can be contacted through the following address, telephone and fax
 numbers, and e-mail:

 Street address

 Mailing address (if different from street address)

 Country

 Postal Code

 Telephone

 Fax

 e-mail

I/we do not wish our identity to be disclosed (ignore if not applicable).

I/we have been, or are likely to be affected by social or environmental impacts of the project in
 the following way(s):

If possible, please provide the following information:

- A description of the name, location, and nature of the project (provide a map, if possible).
- A description of the actions taken by me/us to try to resolve these issues (include dates or time frame, if possible).
- A list of other person(s) contacted by me/us in attempting to resolve these issues (attach copies of correspondence, if possible).

- Any other relevant facts to support this complaint.

In addition, please answer the following question:

- I/we would like to see this complaint resolved in the following way: (The CAO cannot guarantee to help the complainant achieve this result, but this information will help focus on problem-solving approaches.)

Attach copies of any relevant documents and other material.

Note: The CAO will keep the identity of complainants confidential if requested to do so, but will not accept anonymous complaints. Material may also be submitted on a confidential basis to support a complaint and will not be released without the consent of the party that submitted it.

Complainants should be aware that other parties, including the sponsor and IFC or MIGA staff, will usually be informed about the substance of the complaint. Complainants should identify to the CAO from the start any information that complainants do not wish to be disclosed. A process for handling the complaint will be agreed with the complainant.

GLOSSARY

Board

There are five Boards of Executive Directors representing the four institutions of the World Bank Group. The CAO interacts with two Boards: those of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). The Executive Directors serving on these Boards are usually the same.

CAO

The Office of the Compliance Advisor Ombudsman, the independent recourse and accountability mechanism for IFC and MIGA for environmental and social concerns.

CAO Vice President

The head of the Office of the Compliance Advisor Ombudsman.

CAO Advisor

The CAO advisory role and staff.

CAO Compliance

The CAO compliance role and staff.

CAO Dispute Resolution

The CAO dispute resolution role and staff.

CODE

Committee on Development Effectiveness, a committee of the Board of Directors of the World Bank Group with the mandate of monitoring and assessing the effectiveness of the World Bank Group in fulfilling its mission of reducing poverty.

Complaint

Individual(s), group(s) of people, or organization(s) that lodge a complaint with the CAO.

IFC

International Finance Corporation, a member of the World Bank Group that promotes growth in the developing world by financing private sector investments and

providing technical assistance and advice to governments and businesses. IFC provides both loan and equity finance for business ventures in developing countries.

MIGA

Multilateral Investment Guarantee Agency, a member of the World Bank Group that encourages foreign direct investment in developing countries by providing guarantees to foreign investors against loss caused by noncommercial risks. MIGA also provides technical assistance to promote foreign investment.

NGO

Nongovernmental organization or civil society organization.

Project IFC and/or MIGA business activities including activities where specific physical elements, aspects, and facilities likely to generate risks and impacts have yet to be identified. This includes aspects from the early developmental stages through the entire lifecycle (design, construction, commissioning, operation, decommissioning, closure or post closure) of a physical asset, investments, advice, or other business activity

Sponsor

The term “sponsor” refers primarily to the project sponsor of an IFC/MIGA project. However, the term is used broadly to refer to the party that is most appropriate to address the issues raised in the complaint, including the borrower of IFC funds or the recipient of IFC equity, the investor covered by a MIGA guarantee, and/or the entity that is implementing/has implemented the project in question.

Terms of Reference

Define the terms for a specific task, clarifying the scope, limitations, tasks, and objectives.

Working Days

Working days are Monday to Friday excluding holidays, as defined by the World Bank Group. The number of working days stated in the Operational Guidelines exclude time needed for translation, which can take several working days, depending upon the language.

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