

OVERSEAS PRIVATE INVESTMENT CORPORATION

- 1. TITLE:** Problem-solving and Compliance Review Procedures
- 2. PURPOSE:** This administrative order establishes the Office of Accountability's problem-solving and compliance review procedures.
- 3. SCOPE:** This administrative order is applicable to all OPIC employees, both full-time and temporary, and contractors.
- 4. DEFINITIONS:**
 - 4.1. Problem-solving authority is authority to review and attempt to resolve outstanding complaints of local communities relating to the impacts of an OPIC-supported project on such communities, with or without allegations of non-compliance on the part of OPIC.
 - 4.2. Local community is defined as any individual, group, community, entity or other party affected or likely to be affected by an OPIC-supported project, including local representatives where the representative clearly identifies the people s/he represents, and explicit evidence of the representative authority is provided to OPIC. The term also includes non-local representatives where there is clear evidence that there is no adequate or appropriate representation in the country where the project is located, and where explicit evidence of representative authority is provided to OPIC.
 - 4.3. Compliance review authority is authority to investigate and report on complaints regarding OPIC's compliance with its governing statutes, rules, policies and procedures, related to environmental, social, worker rights and human rights effects of an OPIC-supported project. These statutes, rules, policies and procedures include sections 231 (n), 231A, 237(m), 239(g) and 239(i) of the Foreign Assistance Act of 1961, as amended, OPIC Environmental Handbook – February 2004, and such additional policies and procedures environmental, social, worker rights and human rights as may be adopted by OPIC in the future.
- 5. RESPONSIBILITIES:**
 - 5.1. The Director, Office of Accountability, is responsible for exercising problem-solving and compliance review authorities in accordance with applicable laws and regulations, Board resolutions and directives.

6. TEXT:

6.1. Problem-solving

6.1.1. A Request for Problem-solving Consultation (Problem-solving Request) may be filed with the Office of Accountability by the following Problem-solving Requesters:

- member/s of the local community who are, or are likely to be, materially, directly and adversely affected by an OPIC-supported project, and those documented as their authorized representatives; or
- the project sponsor.

6.1.2. Problem-solving Requesters may ask that their identity be kept confidential, but anonymous requests for consultation will not be accepted.

6.1.3. Suggested content to be included in a Problem-solving Request is listed in Annex A.

6.1.4. The Office of Accountability's response to a Problem-solving Request will proceed in five stages: (1) decision to accept or reject the Problem-solving Request; (2) preliminary assessment to determine how to handle the Problem-solving Request; (3) action in response to the Problem-solving Request; (4) report; and (5) monitoring.

6.1.5. On receipt of a Problem-solving Request, the Director, Office of Accountability, will determine whether to accept or reject the Problem-solving Request, guided by the following criteria:

- the Problem-solving Request is filed by: (a) member/s of the local community who are, or are likely to be, materially, directly and adversely affected by an OPIC-supported project and there is *prima facie* evidence of such material, direct and adverse effects, or (b) the project sponsor;
- any representatives' authority to represent the local community or sponsor, and the extent of that authority, are documented and verified;
- the Problem-solving Requesters have made good faith efforts to resolve the issues with the other project stakeholders, whether sponsor or local community, and/or OPIC staff; and
- the Problem-solving Request relates to a project for which OPIC has clearly indicated interest in financing the project.

Such interest would commence when a commitment letter or insurance contract is issued, and end with financial completion or final disbursement.

- 6.1.6 The Office of Accountability will notify Problem-solving Requesters whose Problem-solving Request is accepted and will discuss with them the anticipated timing for conclusion of the assessment. The Office of Accountability will inform Problem-solving Requesters whose Problem-solving Request is rejected in writing, outlining the reasons. The Office of Accountability's annual report and website will provide basic information on the number and nature of Problem-solving Requests received, accepted and rejected.
- 6.1.7. Once a Problem-solving Request is accepted, the Office of Accountability will immediately notify relevant parties that a Problem-solving Request has been lodged, and will conduct a preliminary assessment to determine how the Problem-solving Request should be handled. A preliminary assessment may include researching OPIC files; meetings with the Problem-solving Requester, other affected people and communities, OPIC staff, sponsors, government officials of the country where the project is located and representatives of local and international NGOs; and project site visits. This preliminary assessment will ordinarily be completed within 30-40 working days of the decision to accept the Problem-solving Request. The Office of Accountability will refer the Problem-solving Request to relevant OPIC management with a Problem-solving Request for information and comment. Management should respond within 15 working days of this Problem-solving Request.
- 6.1.8. If, in the course of conducting a preliminary assessment, facts indicate a need to review whether OPIC's participation in the project complied with its environmental, social, worker rights or human rights policies and procedures, the Director will send a memo to the President & CEO (P&CEO), indicating the potential issues and recommending that the P&CEO request a Compliance Review.
- 6.1.9 The Office of Accountability intends to use two primary methods to achieve the objectives of its problem-solving authorities:
- promote dialogue among the Problem-solving Requester and sponsor in an effort to stimulate a self-generated solution. Participation of parties in dialogue will be voluntary; and
 - mediation conducted by Office of Accountability and/or third-party mediation specialists. Participation of parties in mediation will be voluntary.

- 6.1.10. In the event there is an impasse in the dialogue or mediation or additional information is required, the Office of Accountability may undertake further information gathering activities to be able to provide adequate information to promote dialogue, arrange for mediation, or make recommendations to the P&CEO. The Director, Office of Accountability may terminate the use of problem-solving authority at any time, if it is clear, that problem-solving is unlikely to produce positive results.
- 6.1.11. The Office of Accountability will report results of the problem-solving action to the P&CEO. If the parties have resolved the problem, the report will describe the process followed and attach a copy of the agreement, if it is in writing. If attempts to resolve the problem have not been successful, the report will so advise the P&CEO.
- 6.1.12. The filing and acceptance of a Problem-solving Request does not suspend or otherwise affect the processing or implementation of a project.
- 6.1.13. The Office of Accountability will monitor any changes made in response to the problem-solving action, to the extent practicable.

6.2 Compliance Review

- 6.2.1. A Request for a Compliance Review (Compliance Request) may be filed with the Office of Accountability by the following Requesters:
- member/s of the local community with concerns about the environmental, social, worker rights or human rights impacts of an OPIC-supported project, which may indicate that OPIC may not have followed its relevant policies;
 - OPIC's P&CEO; or
 - OPIC' Board of Directors.

The final Compliance Review Report will be disclosed on OPIC's website within fifteen business days of its submission to the P&CEO.¹

- 6.2.2. Requesters may ask that their identity be kept confidential, but anonymous requests for Compliance Review will not be accepted.
- 6.2.3. Suggested content to be included in a Request is listed in Annex B.
- 6.2.4. The Office of Accountability's response to Compliance Review Requests will proceed in four stages: (1) decision to accept or reject

¹ Added July 17, 2009 pursuant Decision Memorandum 7-17-09.

Compliance Request; (2) compliance audit; (3) draft and final reports; and (4) audit follow-up.

- 6.2.5. On receipt of a Compliance Request, the Director, Office of Accountability, will determine whether to accept or reject the Compliance Request for further action, guided by the following criteria:
- the Request is filed by: (a) member/s of the local community with concerns about adverse environmental, social, worker rights or human rights impacts of an OPIC-supported project, which may indicate a failure of OPIC to follow its relevant policies; (b) P&CEO; or (c) OPIC's Board;
 - any representatives' authority to represent the local community, and the extent of that authority, are documented and verified; and
 - the Compliance Request relates to a project for which OPIC has executed a financial agreement or insurance contract with the sponsor, and maintains a contractual relationship with the project.
- 6.2.6. The Director, Office of Accountability will submit a memorandum explaining the rationale for the decision to accept or reject the Compliance Request to the P&CEO. The final decision to audit will be taken in consultation with the P&CEO. The Requester, the sponsor and all relevant staff will be notified in writing.
- 6.2.7. Once a Compliance Request is accepted, the Director, Office of Accountability will refer it to the relevant OPIC departments with a request for comments and information. Management should respond within 15 working days of this request. The Office of Accountability may also meet with other relevant parties to better understand the concerns raised in the Compliance Request, and to explore whether an audit is the appropriate response.
- 6.2.8. A compliance audit will always involve Office of Accountability staff, who will, at a minimum, be responsible for managing the audit process, and will ordinarily actively participate in the audit process. OPIC staff and external experts who have provided non-audit services to OPIC in the previous 12 months will not participate in compliance audits, to ensure the independence of the audit process. The auditors will have a contractual obligation not to discuss the process or related findings with outside parties, including local or international media.
- 6.2.9. Once an audit is initiated, the Office of Accountability will have access to information and assistance from a variety of sources including:

- OPIC staff and records. Any interviews of OPIC staff will be conducted in accordance with personnel law (Title 5 USC 7114(a));
- technical consultants. The Office of Accountability may arrange to have outside expert technical advice provided, in cases where the Office of Accountability does not have all the expertise it considers necessary to make a determination in the specific audit;
- the Requester. The Office of Accountability should normally consult with the Requester, who may provide any supplemental information that s/he believes is relevant to the audit.

- 6.2.10. The audit will examine whether OPIC has complied with relevant policies in the course of approval and monitoring of an OPIC-supported project. The findings of the Office of Accountability will be set forth in a report for the P&CEO, which will take into account all relevant facts that may have an impact on the audit, and conclude with the Office of Accountability's findings on whether OPIC has complied with all relevant policies. The report will provide the P&CEO a basis for deciding whether OPIC has failed to comply with relevant policies, and any preventive or corrective action should be taken. Information typically included in a Compliance Review Report is outlined in Annex C.
- 6.2.11. The draft report will be circulated to OPIC management and all relevant departments for factual review and comment. Comments should be submitted in writing to the Office of Accountability within 15 working days of receipt by the departments.
- 6.2.12. The final report will be sent to the P&CEO, with copies to all vice presidents. Once the findings of the audit have been discussed with the P&CEO, the Office of Accountability will inform the Requesters of a summary of findings and post the summary of findings on OPIC's website.
- 6.2.13. The filing and acceptance of a Compliance Request does not suspend or otherwise affect the processing or implementation of a project. The Compliance Review process is not a judicial process designed to establish guilt or innocence or to adjudicate fault or apportion blame among the various parties involved. It is not within the Office of Accountability's mandate to audit actions of any party other than OPIC, such as sponsors, government or local authorities, to allocate responsibility for any adverse effects among OPIC, the sponsor or other parties, or to assess the substance, adequacy, suitability or effectiveness of OPIC's policies. Rather, Compliance Review is an audit and fact-

finding process that helps increase OPIC's accountability and effectiveness.

- 6.2.14. The Office of Accountability will monitor implementation of any recommendations made by the P&CEO in response to an audit and report to the P&CEO on an annual basis.

6.3 Disclosure and Confidentiality

- 6.3.1. The Office of Accountability will establish a Registry to provide information on the status of processing of Problem-solving and Compliance Requests. Information provided will include: the fact that a Request has been filed; whether it has been accepted or rejected, or whether additional information has been requested; a record of each significant procedural action taken by the Office of Accountability; and notice that the process has been completed. The Registry will be accessible to the public via OPIC's website.

- 6.3.2. Subject to OPIC's disclosure policy, summaries of the following documents will be made publicly available: Requests for Problem-solving or Compliance Review, provided that the Requester may ask that his/her identity remain confidential; Reports prepared at the end of Problem-solving; final Reports of compliance audits. Periodic status of problem-solving consultations, audits and annual reports on operations of Office of Accountability, including Requests received, consultations and audits conducted and their results will also be publicly available. This information will be disclosed via OPIC's website and in coordination with the Office of External Affairs.

- 6.3.3. Information identified by OPIC's disclosure policy and/or by OPIC, a sponsor, co-financier or relevant government as confidential or sensitive may not be disclosed. Identities of OPIC personnel, OPIC personnel records and personnel information shall always remain confidential to the agency. Confidential information provided to the Office of Accountability in the course of mediation and audit will remain confidential.

7. **AUTHORITY:** OPIC Board Resolution (04)33 dated September 20, 2004; Directive 05-02, Office of Accountability (02/17/2005).

8. **EFFECT OF OTHER INTERNAL RULES:**

- 8.1 None.

By Order of the Acting President & Chief Executive Officer

Ross J. Connelly

Date

Office of Primary Responsibility: Office of the President

Annex A

Suggested information to be included in a Problem-solving Request

Requests for consultation must be written in English or the native language of the Requesters, and should include the following information:

- The Requester's identity and contact information.
- The identity, contact information and credentials of any representative, and evidence of the nature and scope of the representative authority.
- Whether the Requester wishes his/her identity and/or information provided to the Office of Accountability to be kept confidential, giving reasons.
- The nature and location of the project that is the subject of the Request for consultation, the identity of the project sponsor, and whether the project is supported by OPIC.
- A clear statement of the way in which the Requesters have been or are likely to be affected by the project.
- A succinct statement of efforts to resolve the problem, including the identity of the parties involved in, and relevant times of, those efforts, and specifically any contact with the sponsor, OPIC or the government.
- A precise statement of how the Requesters would like to see the problem resolved.
- Any other relevant facts (any supporting documents or relevant materials should be attached).

Annex B

Suggested information to be included in a Compliance Review Request

Requests for Compliance Review should be written in English or the native language of the Requesters, and should include the following information:

- The Requester's identity and contact information.
- The identity, contact information and credentials of any representative, and evidence of the nature and scope of the representative authority.
- Whether the Requester wishes his/her identity and/or information provided to the Office of Accountability to be kept confidential, giving reasons.
- The nature and location of the project that is the subject of the Request, the identity of the project sponsor, and whether the project is supported by OPIC.
- A clear statement of evidence (or perceived risk) of adverse environmental, social, worker rights or human rights outcomes attributed to the project.
- If possible, identification of the OPIC statutes, policies, guidelines or procedures related to environmental, social, worker rights or human rights impacts that have not been complied with.

Annex C

Contents of Compliance Review Report

- Executive summary of findings;
- Summary of the Request and Management's Response;
- Description of the Office of Accountability's methodology and scope of the investigation (policies against which the investigation is conducted);
- Office of Accountability's findings on whether OPIC complied with all relevant environmental, social, worker rights and/or human rights policies.