



# Operational Guidelines

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# Mission

The Office of the Compliance Advisor/Ombudsman (CAO) is committed to enhancing the development impact and sustainability of International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) projects by responding quickly and effectively to complaints from affected communities and by supporting IFC and MIGA in improving the social and environmental outcomes of their work, thereby fostering a higher level of accountability.

## **The Operational Guidelines**

The Operational Guidelines set forth how the Office of the Compliance Advisor/Ombudsman will carry out its different roles. The guidelines are intended to clarify for all parties the way that the CAO will carry out its mandate.

## **Further Information about the CAO**

The CAO aims for maximum disclosure of reports, findings, and results of the CAO process by reporting results on our Web site. Our Operational Guidelines and all other public documents are available in print and online.

The home Web page and information on how to file a complaint are available in Arabic, Chinese (Mandarin), English, French, Portuguese, Russian and Spanish, in addition to other languages relevant to inform people potentially affected by IFC/MIGA projects about how to file a complaint.

The Operational Guidelines are available in Arabic, Chinese (Mandarin), English, French, Portuguese, Russian, and Spanish.

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

A list of terms is contained in the glossary at the end of this document.

CAO Web site: [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

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# Operational Guidelines

# 1. The CAO's Three Roles

## 1.1 The CAO's mandate, terms of reference, and Operational Guidelines

The Office of the Compliance Advisor/Ombudsman (CAO) is the independent recourse 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. The post was established in 1999. The mandate of the CAO is:

- To assist IFC and MIGA in addressing complaints by 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
- To enhance the social and environmental outcomes of IFC/MIGA projects (or projects in which those organizations play a role).

The CAO's mandate is spelled out in its terms of reference (TOR), which have been endorsed by the President of the World Bank Group. The terms of reference form the basis for these Operational Guidelines. The CAO's mandate provides a mechanism for individual(s), group(s) of people, or organization(s) that are affected by a project to lodge complaints. The terms of reference are available on the Internet (<http://www.cao-ombudsman.org>). Printed copies of the CAO's governing documents may be obtained from the Office of the Compliance Advisor/Ombudsman.

The Operational Guidelines set forth how the Office of the Compliance Advisor/Ombudsman will carry out its different roles. The guidelines are intended to clarify for all parties the way that the CAO will carry out its mandate, and to help people and communities gain access to the Office.

To carry out its mandate, it is essential that the CAO be able to work in flexible ways and retain its discretion. Thus while it is useful to have a procedural framework in the form of the Operational Guidelines that provides guidance to complainants and others (including the CAO), it is to be emphasized that the guidelines are not intended to unduly restrict the CAO.

The Office of the Compliance Advisor/Ombudsman (CAO) is headed by the Compliance Advisor/Ombudsman (CAO Vice President).

## 1.2 Description of the CAO's three roles

The CAO has three distinct roles:

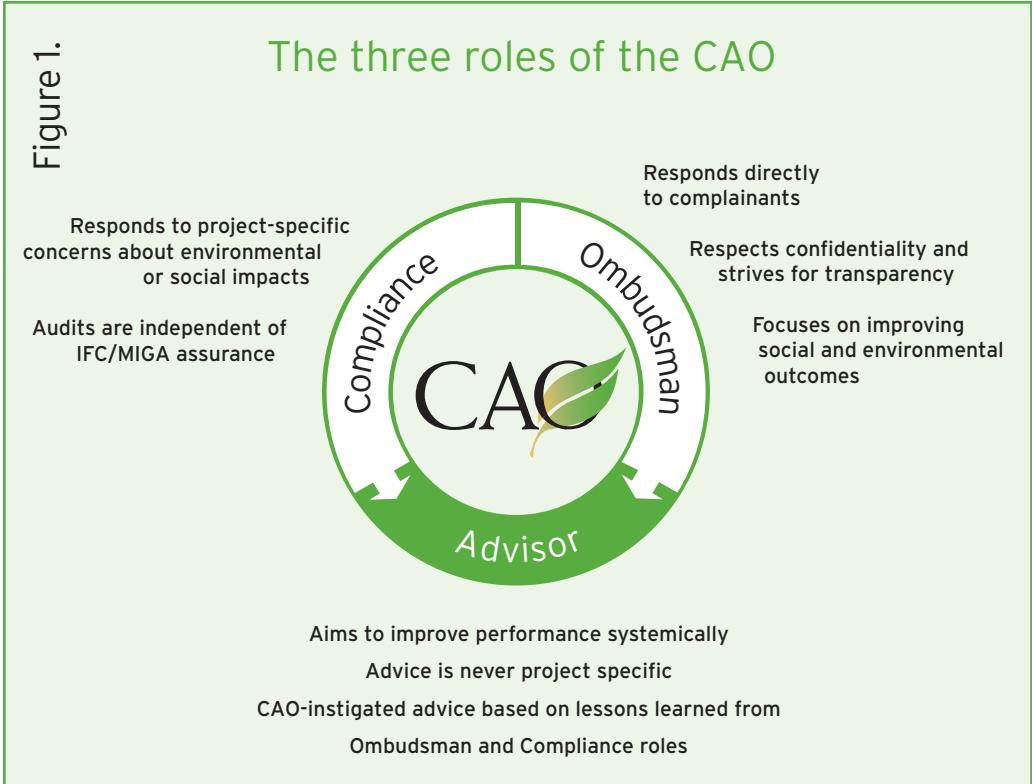
- **Ombudsman role (CAO Ombudsman):** Responding to complaints by individual(s), group(s) of people, or organization(s) that are affected by IFC/MIGA projects (or projects in which those organizations play a role) and attempting to resolve fairly the issues raised, using a flexible, problem-solving approach. The focus of the CAO ombudsman role is on helping to resolve complaints, ideally by improving social and environmental outcomes on the ground (see section 2).
- **Compliance role (CAO Compliance):** Overseeing audits of the social and environmental performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, guidelines, procedures, and systems (see section 3).
- **Advisory role (CAO Advisor):** Providing a source of independent advice to the President of the World Bank Group and the management of IFC and MIGA. The CAO Advisor will provide advice in relation to broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues. The emphasis is on improving performance systemically (see section 4).

The CAO Ombudsman responds directly to the concerns of individual(s), group(s) of people, or organization(s) affected by IFC or MIGA projects that lodge a complaint with the CAO (complainants). CAO activities under the CAO ombudsman role are always initiated in response to an external complaint. The CAO has established systems to protect the confidentiality of the complainant, if so requested. The principle of confidentiality applies to information provided to the CAO by any of the parties to a complaint.

The CAO compliance function will respond to issues raised by a complainant, when referred by the CAO Ombudsman, by the President of the World Bank Group, senior management of IFC/MIGA, or directly by the CAO Vice President (see section 3.3.1). Compliance appraisals and audits are initiated only in response to concerns regarding specific projects and their environmental or social impacts, as opposed to random auditing. CAO compliance audits are independent of IFC's and MIGA's internal audits, but are complementary to them.

The CAO advisory role, unlike the CAO ombudsman and CAO compliance roles, is not project-specific. It is aimed at improving performance systemically. The CAO will not give project-specific advice, as this could undermine the ability of the CAO to act as independent ombudsman or compliance auditor. However, in its advisory role, the CAO can offer advice on emerging or strategic issues and trends, policies, processes, or matters of principle. Advice will often be based on the lessons learned from CAO ombudsman and CAO compliance activities. A request for advice can be initiated by a number of different parties.

The three roles and the interfaces among them are illustrated in figure 1.



### 1.3 Independence and impartiality

The independence and impartiality of the CAO are of primary importance. 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 objective advice to the organizations to help them do their work better. Independence and impartiality foster the trust and confidence of sponsors, local communities, nongovernmental organizations (NGOs), and civil society generally. This trust and confidence are essential prerequisites for the CAO to be able to solve problems on the ground.

The CAO's independence and impartiality are reinforced in a number of structural ways:

- The CAO reports directly to the President of the World Bank Group and is not part of the line management structure of either IFC or MIGA.
- Staff of the Office of the CAO are recruited by the CAO.
- Staff are independent of the management structure of IFC and MIGA.
- The Office of the CAO is physically located in a secure area, and only CAO staff have direct access.
- The CAO Vice President and her or his staff exercise caution in becoming involved in internal processes within IFC and MIGA, which might compromise the neutrality of the position. This caution needs to be balanced against the requirements of the advisory role.

- CAO professional staff contracts restrict professional staff members from obtaining employment with IFC or MIGA for a period of two years after they end their engagement with the CAO.

If an employee of the Office of the CAO has a conflict of interest in relation to a particular complaint, that person will withdraw from involvement in responding to the complaint.

## Parameters of the CAO's Roles

**The broad mandate makes the three roles together very powerful. For example, although the CAO is not a judge, court, or the police, there are influential ways in which it can define issues to be addressed in a complaint, make creative and practical proposals for settling an issue, and encourage parties to engage in dialogue. Although the CAO cannot force external entities to change their behavior or abandon existing practices, it can call on the leverage of the IFC and MIGA in urging parties to adopt recommendations.**

**It is important that complainants should have realistic expectations about what the CAO can deliver in response to a complaint and that organizations which support complainants explain fully the opportunities opened up by CAO action and the limits on such action.**

## 1.4 Communication

The success of the CAO depends on the effectiveness of its communication with complainants, local communities, sponsors, IFC and MIGA staff members, and other stakeholders.

Although the CAO is responsive to the views of all those with an interest in a project, the CAO recognizes that local communities, minorities, and vulnerable groups often have the most to gain or lose from a project and are often the least well-equipped to convey their interests and concerns. The CAO also establishes direct relationships with sponsors. Both sets of relationships are critical to the success of the CAO's problem-solving approach.

The CAO seeks to enhance interactions with local communities in the following ways:

- Publishing these Operational Guidelines, the CAO's terms of reference, information brochures, and other materials in the predominant languages of the World Bank Group and making them available through the Office of the CAO, on the World Wide Web, and by other culturally appropriate means.
- Making information about the CAO and its objectives accessible within developing countries through World Bank Group contacts, sponsors, nongovernmental organizations, and other avenues.
- Meeting with local communities or their representatives, upon request, to provide information about the CAO's operations, including how to file a complaint.

- Communicating in the language of the communities affected by projects, when possible.
- Seeking advice of those with expert knowledge within countries and gathering local knowledge as a basis for interventions.
- Being responsive to locally specific factors affecting communities' abilities to participate in problem solving and to communicate openly.



The working language of the Office of the CAO is English. Complaints may be submitted in any language. Communication with the complainants, interim and final reports, settlements, and remedial plans are, when possible, translated into the language of the complainants and any other language the CAO deems necessary. These communications may also be presented in a more culturally appropriate manner.

## 1.5 Confidentiality and information disclosure

Information disclosure and confidentiality are both important to the CAO. Although confidentiality is important in some ombudsman cases, the disclosure of information is critical to the CAO's independence and impartiality. Disclosure is also important to achieving solutions, on some occasions.

The CAO's terms of reference limit the ability of the CAO to disclose information publicly on its own initiative. The CAO is bound by IFC and MIGA disclosure policies that require the confidentiality of certain business information to be respected during communications with parties. 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. The CAO will also respect complainant requests for confidentiality, including confidentiality of their identities, as described further in section 2.2.5.

Within the parameters of those constraints, the CAO makes every effort to ensure maximum disclosure of reports, findings, and results of CAO processes. The CAO may communicate directly with complainants and affected parties. CAO reports that present the CAO's conclusions on an investigation may be released to the public, but the CAO may not publish information received in the course of an investigation if the disclosure of that material is restricted under IFC or MIGA disclosure policies. The CAO will indicate publicly when it has restricted disclosure in response to a request from an affected party.

## 1.6 Reporting to the President and Board of the World Bank Group

The CAO periodically reports to the President of the World Bank Group, as required by the CAO's terms of reference of 1999. An annual report is provided to the Boards of the World Bank Group (the Board). The report is made publicly available. More detailed summaries may be provided to the President at periodic briefings. 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 Committee of Development Effectiveness (CODE), and conducts periodic technical briefings to supplement this information. This annual update to CODE is publicly available.

Although the CAO reports to the President, it also communicates with the Board on a regular basis and as requested. The CAO informs the President and Board when a complaint has been found eligible for assessment. The CAO reports the outcome of a CAO ombudsman assessment to the President and informs the Board. The CAO informs the Board of the findings of a compliance audit, after clearance from the President. The CAO remains available at all times to provide briefings to the Board at its request.

# Ombudsman Role



## 2. The Ombudsman Role

### 2.1 A problem-solving orientation

The CAO Ombudsman's main objective is to help resolve issues raised about the social and environmental impact of IFC/MIGA projects and improve outcomes on the ground. It is not possible to solve all problems, but the CAO's approach provides a process through which parties are more likely to find mutually satisfactory solutions. The aim is to identify problems, recommend practical remedial actions, and address systemic issues that have contributed to the problems, rather than to find fault.

In the exercise of the CAO ombudsman role, the CAO Ombudsman may receive and deal with complaints from individuals, group(s) of people, or organization(s) that believe they are, or may be, affected by the social and environmental impacts of IFC/MIGA projects.

### 2.2 Making a complaint

#### 2.2.1 Grounds for complaint

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

- Processes followed in preparation of a project.
- The adequacy of measures for the mitigation of social and environmental 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. If complaints raise issues of policy and do not relate to a specific project, the CAO may deal with the issues raised by the complaint in its advisory role (see section 4).

If, any time after completion of the assessment (see section 2.3), the CAO Ombudsman believes that resolution of the complaint is unlikely to be possible or that it would be an inefficient use of resources, the complainant will be advised of the reasons for the decision to conclude the ombudsman process. The case will then be transferred to CAO Compliance for appraisal (see section 3.3).

### **2.2.2 Who can make a complaint?**

Any individual, group, community, entity, or other party that believes it is affected—or potentially affected—by the social and/or environmental impacts of an IFC/MIGA project may make a complaint to the CAO Ombudsman. The CAO Ombudsman has discretion to determine whether to proceed with assessment and is guided by the criteria set forth in section 2.3.

Complaints may be made on behalf of those who believe they are affected by a project. If a complaint is made through a representative, the representative should clearly identify the people on whose behalf the complaint is made and provide explicit evidence of authority to represent them. If prospective complainants are from outside the country where the project is located, complaints should be lodged jointly with a local entity. The CAO Ombudsman will seek proof that the organization(s) or individual(s) representing the affected people has/have the authority to do so.

### **2.2.3 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 language policy of the CAO Ombudsman is covered in section 1.4.) Complaints should be sent by mail/post, fax, or electronic 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 may provide confidentiality of receipt of a complaint (see section 2.2.5).

### **2.2.4 What to include in a complaint**

There are no strict format requirements, but written complaints should include the following information:

- The complainant's name, address, and other contact information.
- If the person lodging the complaint is doing so as a representative of an affected person or community, the identity of those on whose behalf the complaint is made.
- Whether the complainant wishes that the identity of the complainants or any information communicated as part of the complaint be kept confidential (stating reasons).
- The identity and nature of the project.
- A statement of the way in which the complainant believes it has been, or is likely to be, affected by social or environmental impacts of the project.

In addition, it would be helpful for the CAO if the complainants provide as much information as possible on the following:

- What has been done by the complainant or affected parties to attempt to resolve the problem, including specifically any contact with IFC/MIGA personnel, 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. A model complaint letter is provided in appendix A. If the initial submission is not clear, the CAO will seek further information or clarification from the complainant. Potential complainants may also contact the CAO for clarification before lodging a complaint.

### **2.2.5 Confidentiality**

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

Complainants should be aware that other affected parties, including the sponsor and IFC or MIGA staff, will normally 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.

### **2.2.6 Time Lines for handling complaints**

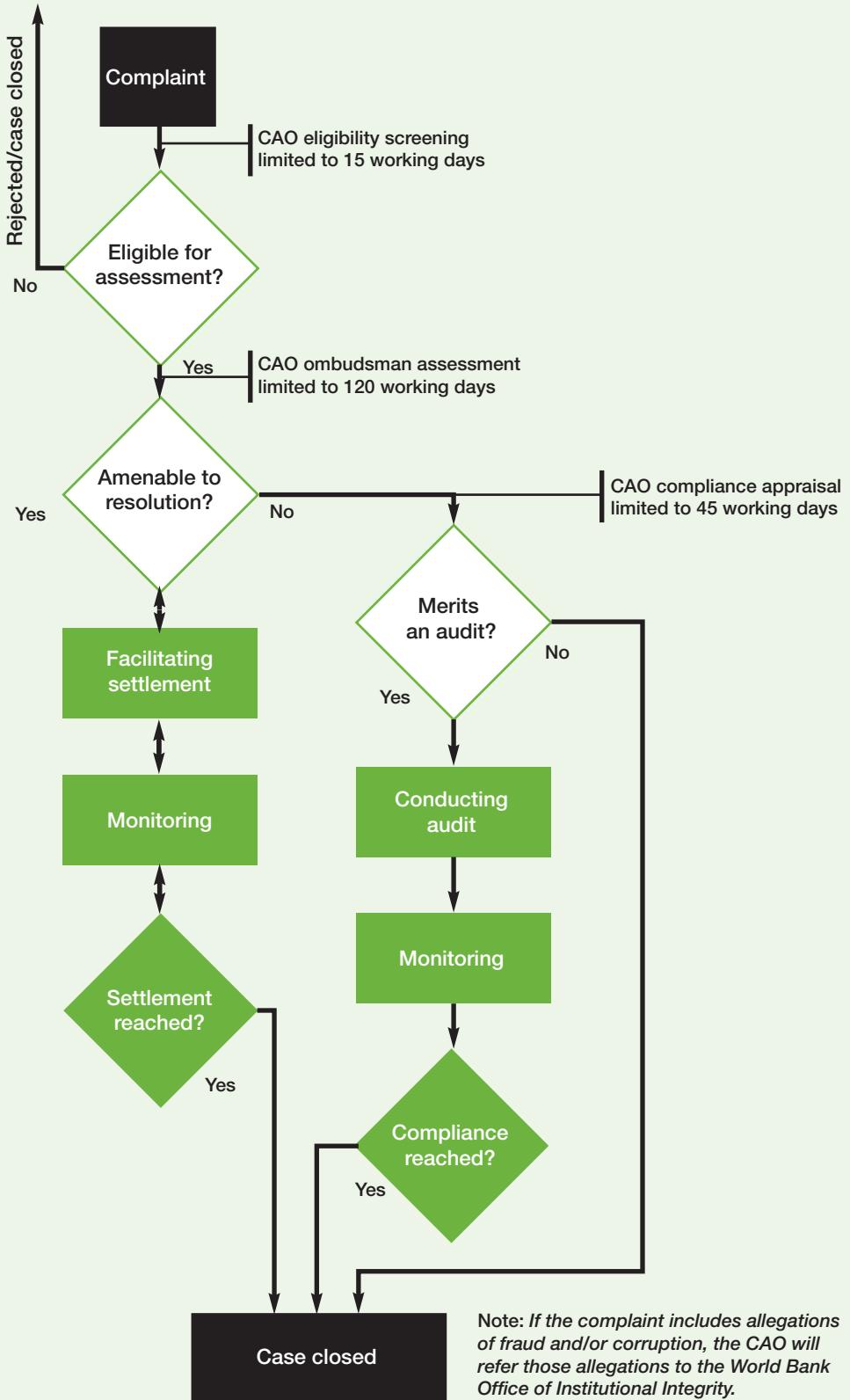
The general process that the CAO follows in addressing complaints is shown in figure 2. The CAO is committed to ensuring that complaints are handled in a timely and prompt manner. The handling of complaints will be tracked using internal systems; the general procedures outlined in figure 2 will be adhered to. If the nature of the complaint or special circumstances makes this impractical, the timeline for handling the complaint will be discussed and agreed upon between the CAO and the parties.

The following steps will normally be followed in response to a complaint that is received:

- **Step 1**      Acknowledgement of receipt, together with decision of whether to proceed (no more than 15 working days).
- **Step 2**      Assessment of potential for achieving resolution of the complaint (no more than 120 working days).
- **Step 3**      Decision: either continuation with the CAO ombudsman problem-solving role if the parties within the 120 working days have agreed on facilitation/mediation defined in a Memorandum of Understanding (MOU), or transfer to CAO Compliance for appraisal.

Figure 2.

## The CAO Process of Handling Complaints



- **Step 4** If continuation of CAO ombudsman process, then implementation of MOU through facilitation/mediation, joint-fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal.
- **Step 5** Monitoring and follow-up.
- **Step 6** Conclusion.

## 2.3 The process for receiving and assessing complaints

### 2.3.1 Eligibility screening

The CAO Ombudsman's first step after receiving a complaint will be to determine its eligibility for assessment. This process is expected to take no more than 15 working days. To be eligible for assessment, complaints must demonstrate that:

- The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
- The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
- The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

Complaints that are malicious or trivial or that have been generated to gain competitive advantage are ineligible. If the complaint includes allegations of fraud and/or corruption, the CAO will refer those allegations to the World Bank Office of Institutional Integrity. Complaints relating to procurement decisions of IFC and/or MIGA are not accepted.

### 2.3.2 Initial response and notification

#### *Notification for assessment*

When a complaint has been determined to be eligible, the CAO Ombudsman will notify the complainants, IFC/MIGA, the President of the World Bank Group, and the Board of the World Bank Group immediately in writing that the CAO Ombudsman will undertake an assessment of opportunities for collaborative settlement of the issues raised in the complaint. Such notification does not signify that the CAO endorses the complaint or concurs with the positions asserted; rather, it solely indicates that the CAO has determined that the complaint is eligible for assessment as described in section 2.3.1. The CAO will post on its Web site an announcement of complaints that meet the criteria listed above.

#### *Rejection*

If a decision is taken to reject the complaint, the CAO will close the file on the complaint and inform the complainant in writing of this decision, outlining the reasons. The CAO will also notify IFC/MIGA and the project sponsor.

### 2.3.3 Assessment

The purpose of the assessment is to clarify the issues and concerns raised by the complainant, to gather information on how other stakeholders see the situation, and to help the CAO Ombudsman and the stakeholders determine whether and how they might be able to resolve the issues raised in the complaint.

Key questions to be addressed in the assessment include:

- Who are the principal stakeholders that need to be consulted on the issues raised in the complaint (including project, customary or alternative approaches to dispute resolution)?
- What are their views on the issues raised in the complaint?
- What are their incentives to resolve and address the issues?
- What existing or new process might be most useful to the stakeholders to resolve the complaint (including project, customary or alternative approaches to dispute resolution)?
- How might the CAO Ombudsman best assist the stakeholders in this process?

Assessments will be carried out in a flexible manner and may include any combination of the following activities:

- Reviewing IFC/MIGA files.
- Meeting with the complainant, other affected people and communities, IFC/MIGA staff, sponsors, government officials of the country where the project is located, and representatives of local and international nongovernmental organizations.
- Visiting project sites. When planning a visit, the CAO Ombudsman will notify IFC/MIGA, the sponsor, complainants, and other relevant stakeholders of its plans.
- Holding public meetings in the project area.

The primary purpose of information gathering by the CAO Ombudsman during assessment is to determine whether and how the stakeholders could seek resolution of the issues. The CAO Ombudsman does not gather information in order to make a judgment on the merits of the complaint.

Based on the results of the assessment process, the CAO Ombudsman will either:

- a) Work with the stakeholders 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
- b) Determine that a collaborative resolution is not possible, in which case the CAO Ombudsman will refer the complaint to CAO Compliance for compliance appraisal (see section 3.3).

The assessment will conclude with a decision whether or not to proceed and a clear outline of the course of action proposed. The assessment will be completed within 120 working days of the date it was determined to be eligible for assessment. The Ombudsman will provide an assessment report (including agreements to proceed with a collaborative process or decisions to refer to CAO Compliance) to the stakeholders, the President and Board of the World Bank Group, and the public.

## 2.4 Assisting in the resolution of issues

### 2.4.1 Approaches to complaint resolution

The CAO Ombudsman and the stakeholders may use one or more of the following approaches to address issues:

#### *Facilitation and information sharing*

In many cases, the complaint will raise questions of fact regarding current or anticipated impacts of an investment. The CAO Ombudsman 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 complainant, sponsor, and other stakeholders to jointly agree on the questions to be investigated, the methods and resource people to be used to conduct the investigation, and the way that information generated from the investigation will be used by the stakeholders.

#### *Dialogue and negotiation*

Where communication among stakeholders has been limited or disrupted, the CAO Ombudsman may encourage the complainant, the sponsor, and other stakeholders to engage directly in dialogue and negotiation to address and resolve the issues raised in the complaint. The CAO Ombudsman may offer training and/or expertise to assist the stakeholders in this process.

#### *Conciliation and mediation*

Sometimes more formal problem-solving intervention by the CAO Ombudsman may be appropriate. This may take several forms, including simple conciliation proceedings conducted by the CAO Ombudsman and/or third-party mediation by specialists. Conciliation and mediation will be pursued only if it is acceptable to all parties.

### 2.4.2 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 affected. Agreements developed through these processes may include proposals for future action, such as a program of remedial action to be adopted by IFC/MIGA or the sponsor. The agreements should be specific regarding the objective, nature, and requirements. Incentives or disincentives, time-bound or otherwise, may form a part of any settlement agreement.

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

The CAO Ombudsman may conclude and close a complaint if a satisfactory settlement has been reached. The CAO Ombudsman will facilitate documentation of agreements and decisions. The CAO will notify the President and Board of the World Bank Group and the public of the outcome.

### **2.4.3 Confidentiality and disclosure**

Confidentiality is an important feature of the conciliation and mediation processes. Where requested, the CAO Ombudsman will hold all communications with those seeking assistance in strict confidences and take all reasonable steps to safeguard confidentiality.

Parties will be advised by the CAO if confidentiality is constraining the efforts to seek a satisfactory resolution.

All participants in a CAO Ombudsman process, in particular IFC/MIGA staff and the sponsor, need to feel confident that their open and frank participation in collaborative processes will not compromise their position if a compliance audit is subsequently undertaken. Therefore, in cases where the CAO Ombudsman transfers a complaint to CAO Compliance, confidential information received under the CAO ombudsman role will not be shared with the CAO compliance role, unless explicit permission to do so is provided by the relevant party/parties.

While protecting the confidentiality of information provided by stakeholders, the CAO will make available to the stakeholders, including IFC/MIGA, the President and Board of the World Bank Group, and the public its assessment reports. Assessment reports include summaries of key issues and the perspective of the stakeholders on those issues (generally in a non-attribution format) and agreements reached, or decisions to refer to CAO Compliance. Disclosure contributes significantly to the transparency of the ombudsman role and acts as a powerful incentive to comply with the agreements reached.

### **2.4.4 Action in the event that stakeholders do not reach an agreement**

Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO Ombudsman will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has closed the complaint and transferred it to CAO Compliance for appraisal.

### **2.4.5 Monitoring and follow-up**

The CAO Ombudsman will seek to ensure that the agreements between parties make provisions for review and monitoring. This may be achieved by setting mutually agreed time lines and indicators for achievement within the body of the agreement. The Ombudsman may also review implementation of its own recommendations by the sponsors, IFC/MIGA, and report to the President and inform the Board of the World Bank Group.

Any agreements reached by the parties, or CAO Ombudsman recommendations included in reports to the President, will usually contain a program and time lines for implementation. Monitoring of any changes made in response to agreements or recommendations should be integrated into the normal project management and monitoring of IFC/MIGA. The CAO Ombudsman will regularly monitor whether the agreements or recommendations have been implemented and publicly disclose these findings on the CAO's Web site in monitoring reports. Monitoring reports will also be shared directly with the complainants, as well as IFC/MIGA. The CAO may request that IFC/MIGA staff or other agencies on the ground provide assistance in monitoring implementation of agreements that relate to what happens on a project site.



The Ombudsman will notify the President and Board of the World Bank Group of its findings on implementation of its recommendations as required.

# Compliance Role



# 3. The Compliance Role

## 3.1 The purpose and emphasis of compliance auditing

CAO Compliance oversees project-level audits of the social and environmental performance of IFC/MIGA. The purposes of CAO auditing are to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement and thereby improve social and environmental performance.

The focus of compliance auditing is on IFC and MIGA, and how IFC/MIGA assured itself/ themselves of project performance. In many cases, however, it will be necessary to review the actions of the project sponsors and verify outcomes in the field, in assessing the performance of the project and implementation of measures to meet the relevant requirements.

## 3.2 Definitions and approach to compliance auditing

The working definition of compliance auditing adopted by CAO Compliance is as follows:

A compliance audit 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 audit criteria.

The audit criteria include IFC/MIGA policies, performance standards, guidelines, procedures and requirements whose violation might lead to adverse social or environmental consequences. Audit criteria may have their origin, or arise from, the 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.

The audit 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 audit process.

An outline of the approach to compliance auditing is illustrated in figure 2.

## 3.3 The compliance audit process

### 3.3.1 Initiating a compliance audit

A compliance audit may be initiated in response to any of the following circumstances:

- A request from senior management of IFC/MIGA or the President of the World Bank Group.
- A complaint transferred from the CAO Ombudsman where no resolution was possible.
- At the discretion of the CAO Vice President.

Requests from senior management or the President for a compliance audit will be made to the CAO in writing.



### 3.3.2 Types of compliance audits

The CAO will undertake only project-level compliance audits, not institutional or programmatic-level audits. This approach should ensure minimal overlap with the activities of environmental, social, and evaluation staff within IFC/MIGA or the audit work of the World Bank's Internal Audit Department.

If there are general concerns relating to the application of a policy, guideline, or procedure that may adversely affect social and environmental outcomes, these concerns might be addressed under the advisory role of the Office of the Compliance Advisor/Ombudsman (see section 4).

### 3.3.3 Appraising audit requests

Before undertaking a compliance audit, CAO Compliance will initiate an appraisal to determine whether a compliance audit should take place.

The purpose of the appraisal process is to ensure that compliance audits are initiated only for those projects that raise substantial concerns regarding social or environmental outcomes.

Appraisals are limited to the issues raised in the requests for a compliance audit, or for cases referred by the CAO Ombudsman, to issues related to the complaint.

CAO Compliance may seek clarifications during the appraisal, but will not accept an expansion of the scope defined in the request, or expansion away from issues related to the complaint and identified during the assessment by the CAO Ombudsman.

The time frame for appraisal is limited to 45 working days from the date CAO Compliance receives the case.

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

To insure thorough compliance auditing, it is inadvisable to prescriptively limit the conditions under which a compliance audit should take place. However, to guide the appraisal process, the CAO applies several basic criteria. These are framed as a series of questions to test the value of undertaking a compliance audit, and whether IFC/MIGA readily can document compliance:

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

In the context of compliance auditing within IFC/MIGA, the issue is whether:

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

CAO compliance appraisal or audits will consider how IFC/MIGA assured itself/themselves of compliance with national law, along with other audit criteria. 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.

In conducting the appraisal, CAO Compliance will hold discussions with the IFC/MIGA project team and other relevant parties to understand the validity of the concerns, which criteria IFC/MIGA used to assure itself/themselves of project performance, how IFC/MIGA assured itself/themselves of compliance with these criteria, and generally whether an audit is the appropriate response.

### **3.3.4 Disclosure of appraisal results and the decision to audit**

Once an appraisal is concluded, the Executive Vice President of IFC/MIGA and the President and the Board of the World Bank Group will be advised in writing, as will the relevant departmental directors or managers associated with the project. If an appraisal results from a complaint to the CAO Ombudsman, the complainant will also be advised in writing, and a summary of the results will be made public.

In the cases where the CAO Vice President initiates an audit, a memorandum explaining the rationale for the proposal to audit will be submitted to the Executive Vice President of IFC/MIGA. The final decision to conduct an audit will be taken in consultation with the Executive Vice President(s), but at the discretion of the CAO Vice President.

### 3.3.5 Developing terms of reference for compliance audits

For all audits, a terms of reference (TOR) will be prepared and submitted to the management of IFC/MIGA. A copy of the TOR will also be sent to the heads of all departments associated with the project. The TOR will specify:

- The objectives and scope of the audit.
- The specific audit criteria identified during appraisal.
- A brief description of the project to be audited.
- The approach to the audit, methods, and specific consultant tasks.
- A schedule for the audit tasks, identifying the time frame and reporting requirements.
- Guidance on the structure and format of reports to be submitted.

### 3.3.6 Staffing compliance audits

CAO staff are responsible for managing the audit. A compliance audit team may consist of external experts managed by the CAO. CAO staff are responsible for managing the audit process, determining the knowledge and skills required to undertake the audit, and hiring specialist expertise as appropriate.

The key considerations in hiring external experts for audit teams are competence, independence, and impartiality. The auditors will have a contractual obligation not to discuss the audit process or related findings without CAO approval.



### 3.3.7 Procedure for compliance auditing

The general approach to compliance auditing illustrated in figure 2 and described below will need to be adapted depending on the specific circumstances of the project being audited. In general, the audit process will include the following steps:

- **Step 1** Appraisal (45 working days).
- **Step 2** Developing terms of reference.
- **Step 3** Orienting the audit team, conducting an initial review of documents, and preparing audit protocols.
- **Step 4** Conducting on-site verification visits.
- **Step 5** Reporting.
- **Step 6** Monitoring and closure.

## 3.4 Confidentiality, reporting, and disclosure

### 3.4.1 Confidentiality and disclosure

The CAO is bound by the disclosure policies of IFC and MIGA, which require the confidentiality of certain business information to be respected. Within these constraints, there is a strong presumption in favor of disclosure in relation to all CAO activities, including reports and findings following compliance audits. Public disclosure of these reports generates public accountability for IFC and MIGA.

### 3.4.2 Report preparation

The audit report will be prepared under the direction of CAO Compliance. The report typically will include:

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

A draft audit report will be circulated to senior management of IFC/MIGA and all relevant departments for factual review and comment. Comments should be submitted in writing to the CAO within 15 working days of receipt by the departments.

Upon receiving comments from IFC/MIGA on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to the senior management of IFC/MIGA for a response. A notification will be posted on the CAO's Web site. IFC/MIGA has/have 15 days to submit a written response to the CAO. The audit report and any response from IFC/MIGA will then be forwarded to the Office of the President of the World Bank Group. The Office of the President will have no editorial input to the content of the audit report. The President may take the opportunity to discuss the audit findings with the CAO. Once the President is satisfied with the response by senior management of IFC/MIGA, the Office of the President will provide clearance for the audit report and the response. The President retains discretion over clearance. After clearance, CAO Compliance will share the audit report and the senior management response with the World Bank Group Board and will disclose both documents on the CAO Web site.



### **3.4.3 Monitoring and closure of audits**

In cases where IFC, MIGA, and/or project sponsors are in compliance, CAO Compliance will close the audit.

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

The CAO will make public the current status of all CAO compliance cases.

# Advisory Role



## 4. The Advisory Role

### 4.1. The origin and principles of the advisory role

#### 4.1.1 The origin of the advisory role

The CAO's terms of reference define the scope of the CAO advisory role to include advice to IFC and MIGA management and to the President of the World Bank Group on broader environmental and social issues related to policies, standards, procedures, guidelines, resources, and systems established to ensure adequate review and monitoring of IFC and MIGA projects.

#### 4.1.2 Principles that underpin the advisory role

A number of principles underpin the CAO advisory role:

- The CAO's advice aims to improve performance systemically.
- The CAO does not give project-specific advice, but can offer generic advice on emerging or strategic issues and trends, policies, processes, matters of principle, and the like.
- The provision of advice will be based on careful consideration of basic screening criteria.
- Whenever advice originates with the CAO, the advice will be derived from lessons learned from either the CAO ombudsman or CAO compliance roles.
- Advice is always given formally in writing, and disclosure of the advice is at the discretion of the CAO.
- Advisory activities must be consistent with, supportive of, and not prejudicial to the activities of the CAO ombudsman and compliance roles.

These principles are designed to ensure that the advisory role is supportive of the CAO ombudsman and compliance roles, and that the limited resources of the CAO are applied to the advisory role only where appropriate.

### 4.2 Initiating the advisory role and determining the scope of advice

#### 4.2.1 Initiating the advisory role

Advice may be initiated by or requested as follows:

- A request from senior management of IFC/MIGA, the President, or the Board of the World Bank Group.
- A request from any other department within IFC/MIGA: operational and other departments may also request advice from the CAO, either directly or through their respective senior management teams.
- At the instigation of the CAO Vice President: during the course of the CAO's Ombudsman or Compliance activities, systemic concerns may arise that may warrant advice (for example, regarding the application of a policy or guideline).

Requests for advice may begin with informal discussions but should be presented to the CAO in writing. Each request for advice will be subject to an appraisal process to determine whether it should be acted upon. A decision should normally be made within 10 working days of formal receipt of the request.

#### **4.2.2 Determining the objectives and scope of advice**

The specific objectives of advice will depend on the nature of the request, but will typically include either:

- Bringing about systemic improvements in environmental or social performance of IFC/MIGA by addressing deficiencies in systems, policies, guidelines, or procedures, or their interpretation or application.
- Helping IFC/MIGA understand how their environmental or social obligations may be met more effectively.



- Advancing the boundaries of environmentally or socially responsible behavior on the part of either IFC or MIGA by advising on emerging, strategic, or systemic issues or trends or processes.

The scope will also depend on the nature of the request. In general, the CAO will work iteratively with the initiator of the request to determine the scope of the advice. These understandings will be summarized in a memo. If more complex advisory activities are envisaged, a detailed Terms of Reference (TOR) or approach paper will be produced that clearly outlines the scope. Such TORs or approach papers may be subject to internal and/or external comment before being finalized, at the discretion of the CAO. TORs and approach papers will typically be developed iteratively between the requestor and the CAO, but the CAO will have ultimate responsibility for their content.

#### 4.2.3 Appraising requests for advice

The appraisal process is designed to ensure that advisory activities are undertaken after adequate consideration of the following factors:

- In giving advice, will the CAO be operating consistently with its mandate?
- Will the advice address strategic issues, trends, systemic issues, policies, guidelines, or procedures?
- Will the advice address matters that are not adequately dealt with by existing forms of institutional guidance or advice?
- Will the advice avoid addressing issues that relate to an individual project?
- Are there adequate resources (staff and financial) to respond effectively to the advisory request; and if not, will sufficient additional resources be allocated to the activity?



For an advisory request to be accepted, all relevant questions above should receive a positive response. In appraising requests for advice, discussions may take place with the requestor and others to better understand the origin of their concerns and to explore whether an advisory activity by the CAO is the appropriate response. Once a decision is reached, the initiator of the request will be advised in writing. Time lines for the advice will be specified in writing where possible. If the CAO declines to give advice, the reasons will be stated. If advisory requests are accepted, the President and IFC/MIGA senior management will be informed in writing.



## 4.3 The approach to the advisory role

### 4.3.1 Maintaining independent advice and staffing advisory activities

Independence is key to the provision of impartial and objective advice and requires that potential or actual conflicts of interest be avoided. If IFC/MIGA staff or interested and affected parties do not believe in the independence of external experts, they will derive little confidence from the resulting advice. In practice, this would mean that external experts should declare any past or current involvement with IFC or MIGA, to enable the CAO to determine any conflicts of interest on a case-by-case basis. In exceptional circumstances, the contractual arrangement between consultants and the CAO may impose time-bound restrictions on their future involvement with IFC or MIGA. IFC and MIGA staff will not participate in advisory activities, so as to ensure that the advice remains truly independent.

Some advisory activities will be undertaken internally, while others will involve the use of consultants. Advisory activities that are handled exclusively by CAO staff may either be led by the Compliance Advisor/Ombudsman himself or herself, or by ombudsman or compliance staff. If external consultant support is required, the advisory activity will be led by CAO staff, which will have responsibility for the advisory process and products. All external experts involved in advisory activities will be expected to sign binding confidentiality agreements before commencing their work.

#### 4.3.2 Balancing the need for transparency against the need to avoid project-specific advice

As a matter of principle, the Office of the Compliance Advisor/Ombudsman strives for maximum transparency across its three roles. However, this principle must also be balanced against the requirement, as stated in the terms of reference, to avoid project-specific advice. As a result, the CAO will not release any project-specific information related to its advisory activities. In practice, this means that:

- In cases in which advice stems from ombudsman activities or compliance audits on projects that have already been subject to some level of external disclosure by the CAO (and advice has originated with the CAO), the specific projects 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 generally not be identified in the advisory review or briefing report.



## 4.4 Confidentiality, reporting, and disclosure

### 4.4.1 Confidentiality and disclosure

The CAO is bound by the disclosure policies of IFC and MIGA. In exceptional circumstances, the CAO may accept an advisory role where, at the beginning, there is agreement that the final advisory memoranda or reports may not be disclosed. However, the CAO may exercise discretion as to whether or not to accept an advisory request under such constraints. In general, the presumption is in favor of disclosure: if not immediately, then within a reasonable time frame.

### 4.4.2 Report preparation and target audiences

All advice will take the form of an advisory memorandum or report. The time frame for reporting and comment will be agreed at the outset and confirmed in writing in either the terms of reference or approach paper or in a memorandum to the initiator of a request for advice. The target audiences for the advice will also be agreed in advance, both for internal and external audiences. Advisory memoranda or reports will be copied to the President of the World Bank Group and IFC/MIGA senior management, irrespective of who originated the request for advice. They may also be disclosed at the discretion of the CAO.

Whenever appropriate, advisory reports will first be sent to the President and copied to senior management and all relevant departments. Notification of submission to the President will be then posted on the CAO's Web site. Once the report has been reviewed by (and, as appropriate, discussed with) the President, the report will be disclosed on the CAO's Web site.

### 4.4.3 Monitoring and follow-up

Advisory recommendations will be integrated into the CAO's ongoing monitoring and evaluation activities. The CAO will monitor IFC's and MIGA's implementation of advisory recommendations and report to the President of the World Bank Group on an annual basis.



# Appendix A. Model Letter of Complaint to the CAO

To:  
Compliance Advisor/Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue NW  
Washington, DC 20433 USA  
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 action 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 affected 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 four 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 external accountability office for IFC and MIGA for environmental and social concerns.

**CAO VICE PRESIDENT** The head of the Office of Compliance Advisor/Ombudsman. Carries the title Compliance Advisor/Ombudsman.

**CAO ADVISOR** The CAO advisory function and staff.

**CAO COMPLIANCE** The CAO compliance function and staff.

**CAO OMBUDSMAN** The CAO ombudsman function 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.

**COMPLAINANT** 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, which 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.

**MEDIATION** Intervention by a neutral third party in a dispute or negotiation with the purpose of assisting the parties to the dispute in voluntarily reaching their own mutually agreed settlement.

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

**MOU** Memorandum of Understanding. Issued in the event of continuation of the CAO ombudsman process. The MOU spells out the understood agreements for facilitation/mediation, joint-fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goals.

**NGO** Nongovernmental organization or civil society organization.

**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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