

**Revision of CAO Operational Guidelines**  
**Center for Human Rights and Environment (CEDHA)**  
**7 February 2007**



Suggested changes to the Revised CAO Operational Guidelines dated 3 November 2006 are included in this document as [underlined blue script](#).

Suggestions center around the following:

1. Establishing stronger links between the CAO and IFC / MIGA board, the ultimate decision making body for IFC / MIGA.
2. The ability to communicate issues to the Board immediately prior to decisions on projects which have been subject to any of the CAO functions, especially where recommendations have been overlooked or compliance unfulfilled.
3. The ability of the CAO to review IFC / MIGA / the President's response to its recommendations made by all three CAO functions.
4. Clarifying the interaction between open cases at international law or other national tribunals with the role the CAO and decisions made by IFC / MIGA.
5. Strengthening the CAO's role with ensuring compliance with international law, host country legal requirements and additional legal actions relative to IFC / MIGA projects.
6. Establishing clear separation of the roles of Ombudsman and Compliance Auditor, with this language to be used rather than the 'CAO'.
7. Stronger language to define minimum standard procedure for the CAO, whilst retaining flexibility and innovation to promote solutions to disputes and compliance of applicable policies, procedures, safeguards, recommendations.
8. The necessity for clear procedures regarding projects that languish in noncompliance of findings made by the Compliance Auditor, recommendations made by the Ombudsman and implementation of other agreements such of MOUs. These procedures relate to periodic reporting on updates of steps (or lack there of) by the IFC / MIGA towards compliance and implementation.
9. The ability for concerned persons or parties to file complaints to the Compliance Auditor relative to environmental damage.

Prepared for CEDHA by  
David Barnden: [david@cedha.org.ar](mailto:david@cedha.org.ar)

# DRAFT

## Revised Operational Guidelines

November 3, 2006  
Office of the Compliance Advisor/Ombudsman  
International Finance Corporation/  
Multilateral Investment Guarantee Agency

2

**DRAFT: 3 November 2006 – NOT FOR PUBLIC RELEASE**

[

Insert **Figure 2: Advisory Procedure**]

### CAO OPERATIONAL GUIDELINES

#### Mission

The Office of the Compliance Advisor/Ombudsman 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.

#### 1. Overview of the three roles of the CAO

##### 1.1 Introduction

The IFC/MIGA Compliance Advisor/Ombudsman (CAO) is an independent post that reports directly to the President of the World Bank Group. The post was established in 1999. Its mandate is to assist the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) in addressing complaints by people affected by projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of projects in which these organizations play a role.

The CAO's terms of reference have been endorsed by the President of the World Bank Group and form the basis for these Operational Guidelines. They provide persons who are affected by a project with the chance to lodge complaints. The terms of reference are available on the Internet (<http://www.cao-ombudsman.org>), and copies may be obtained from the Office of the CAO.

The Operational Guidelines set forth how the Office of the CAO will carry out its different roles. The guidelines are intended to clarify for all parties the way the CAO will carry out its mandate and to help people and communities gain access to the Office. Although it is useful to have a procedural framework that provides guidance to complainants and others (including the CAO), it is emphasized that the Guidelines are not intended to unduly restrict the CAO. It is important that the CAO be able to work in flexible ways and retain its discretion.

##### 1.2 Outline of the three roles

The CAO has three distinct roles:

- The Ombudsman role: Responding to complaints by persons who are affected by projects and attempting to resolve fairly the issues raised, using a flexible problemsolving approach.
- The Compliance role: Overseeing audits of IFC's and MIGA's social and environmental performance, particularly in relation to sensitive projects, to ensure compliance with policies, guidelines, procedures, and systems.
- The Advisory role: Providing a source of independent advice to the President and the management of IFC and MIGA. The CAO will provide advice in relation to broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues.

The Ombudsman responds directly to the concerns of persons affected by IFC or MIGA projects who lodge a complaint with the CAO (complainants). CAO activities under the Ombudsman role are always initiated in response to an external complaint. The focus of the Ombudsman role is on helping to resolve complaints, ideally by improving social and environmental outcomes on the ground. The CAO **has established systems to protect** the confidentiality of the complainant, if so requested, and the principle of confidentiality applies to information provided to the CAO by any of the parties to a complaint.

The Compliance auditor **will** respond to issues raised:

- in a complaint to the Ombudsman, if the CAO deems that an audit is appropriate;
- by the President, Senior Management of IFC or MIGA;
- directly by the CAO (see Section 6);
- directly by the project sponsor; or
- directly by persons affected by the project
- complaints relative to serious environmental damage raised by other concerned parties

Eliminado: may either

Eliminado:

Eliminado: ¶

Eliminado: be initiated

Eliminado: ¶

Eliminado: , or

Eliminado: .

The emphasis is on enhancing material compliance. **Compliance appraisals and audits** are initiated only in response to concerns regarding the environmental or social impacts of specific projects, as opposed to random auditing. CAO **compliance** audits are independent of, but complementary to, IFC's and MIGA's internal assurance efforts. The CAO will comment on IFC / MIGA compliance with recommendations and progression of compliance raised in audits.

Unlike the Ombudsman and Compliance roles, the Advisory role 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, it 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 Ombudsman or Compliance activities. A request for advice can be initiated by a number of different parties.

The three roles and the interfaces between them are illustrated in Figure 1.

*Figure 1 Process Flow Chart*

Eliminado: *Chart*

Changes to Flow Chart:

**Monitoring of MOU:** Ombudsman has ability to comment on the implementation and compliance of MOU. Where appropriate, CAO can revert case to Ombudsman or Compliance Auditor where issues arise in implementation and performance of MOU / Settlement Agreement.

**Monitoring of Compliance:** CAO has the ability to comment on the progression of compliance, and ability to comment on President / Board / IFC / MIGA response to recommendations by Ombudsman and Compliance Auditor to bring parties to agreement or project back into compliance. The CAO has the discretion to comment when case is either open and closed.

**Cased Closed:** CAO have discretion to reopen case.

### 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 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, communicating to and advising the President, IFC / MIGA board, and IFC and MIGA staff. The CAO is not part of

Eliminado: and

the line management structure of either IFC or MIGA.

- Staff of the Office of the CAO is recruited by the CAO.
- Staff is independent of the management structure of IFC and MIGA.
- The Office of the CAO is physically located in a secure area (within the same building as IFC), and only CAO staff have direct access.
- The CAO and her or his staff exercise caution in becoming personally 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.

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. There are some important limitations to the CAO's powers, but 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 outside bodies to change their behavior or abandon existing practices, it can call on the leverage of the IFC and MIGA in urging parties to **engage in joint problem solving or to adequately address areas of non-compliance.**

It is important that complainants 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, **we recognize 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. Similarly, local communities, minorities and vulnerable groups do not generally receive adequate information on how they may be affected by the project. The CAO also **establishes** direct relationships between those who have an interest in the project and its sponsors.

Eliminado: with

Both sets of relationships **are** critical to the success of 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 the World Bank Group contacts, sponsors, nongovernmental organizations, and other avenues.
- Where possible, communicating in the language of the communities affected by projects.
- Seeking advice of those with expert knowledge and gathering local knowledge as a basis for interventions.
- Being sensitive to the locally specific factors affecting communities' abilities to participate in problem solving and to communicate openly.
- Ensuring that MIGA / IFC adopts CAO recommendations aimed at resolving stakeholder concerns.

Eliminado: within countries

These and other measures have been amplified in the CAO's communications strategy. 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**, where practicable, 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 Information disclosure and confidentiality

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

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.

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 its 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.

Disclosure of the CAO's reports shall be full and complete (subject to reasonable limitations imposed at the request of an affected party).

### 1.6 Reporting to the President and annual reporting

The CAO reports to the President periodically as required by the CAO's terms of reference of 1999. An annual report is provided to the boards of IFC and MIGA, and 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 Office of the CAO and monitor the implementation of recommendations. Reports and communications will be considered by the President who will advise the IFC / MIGA board. The response of the President and IFC / MIGA to implementation of recommendations will be evaluated by the CAO. Where noncompliance exists cases will remain open and periodic reporting continue until the CAO and stakeholders are satisfied with the outcome.

CAO recommendations are enforceable and will be disclosed to the public. All recommendations made by the CAO must be addressed in their entirety by the President and the IFC / MIGA Board.

### 1.7 Relationship with IFC and MIGA boards

Although the CAO reports to the President, it also communicates with the boards of IFC and MIGA on a regular basis and as requested. The CAO provides an annual report to the Board Committee of Development Effectiveness (CODE) and periodic technical briefings are conducted to supplement this information. After the CAO has completed the complaint handling process and reported the outcome to the President, the CAO also provides a briefing to the board. The CAO informs the board of IFC or MIGA of the findings of a compliance audit after the findings are discussed with the President and provides briefings on request. The CAO comments on the adequacy and effectiveness of responses to recommendations made in all of its three roles where a case may be closed or open. Where unresolved issues exist the CAO will provide a briefing to the board of IFC or MIGA and the President ten working days prior to the scheduled board decision on a project following request by interested parties.

Eliminado: the

Eliminado: upon request.

Eliminado: ¶

Eliminado: ¶

The CAO has discretion to inform the Board of pertinent matters when it sees fit.

## 2. Overview of the Ombudsman role

### 2.1 Introduction

The Ombudsman role is the most innovative of the three roles of the CAO, in terms of the evolution of external accountability within multilateral financial institutions. The Ombudsman's main objective is to help resolve issues raised about the social and environmental impact of projects and improve outcomes on the ground. It may not be possible to solve all problems, but the CAO's approach provides a process through which parties are more likely to find mutually satisfactory solutions. Generally speaking, the focus of the Ombudsman role is on what is going to happen in the future, rather than what has happened in the past. The aim is to identify problems, recommend practical remedial

Eliminado: is

actions, and address systemic issues that have contributed to the problems,

Eliminado: ,

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

Step 1: Acknowledgement of receipt

Step 2: Appraisal and acceptance (or otherwise)

Step 3: Assessment

Step 4: Action in response: facilitation/mediation.MOU, joint fact finding

Step 5: Monitoring and follow-up

Step 6: Conclusion and/or closure

Step 7: Ongoing monitoring of implementation of MOU or recommendations where applicable.

In the exercise of the Ombudsman role, the CAO may receive and deal with complaints from persons who are, or potentially are, affected by the social and environmental impacts of projects.

Eliminado: rather than to find fault.

### 2.2 Grounds for complaint

Complaints may relate to any aspect of the planning, implementation or impact of 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.

• Noncompliance with CAO recommendation or incomplete implementation of MOU.

• Not taking into account / not responding / ignoring CAO recommendation.

• Repeat noncompliance with IFC / MIGA policies, safeguards, procedures, best practice etc.

The grounds on which a complaint may be made have been widely 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 sections 9–12).

If, after examination of all alternatives, 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, and the case will be transferred to CAO Compliance for appraisal.

### 2.3 Who can make a complaint?

Any individual, group, community, entity, or other party affected, or potentially affected by the social and/or environmental impacts of an IFC or MIGA project may make a complaint to the Ombudsman. The Ombudsman has discretion to determine whether to proceed with assessment and is guided by the criteria set forth in section 3.2.

Eliminado: CAO.

Eliminado:

Eliminado: CAO

Complaints may be made on behalf of those 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 persons affected normally reside, complaints should be lodged jointly with a local entity. The Ombudsman will seek proof that the organization or individual(s) representing the affected people has the authority to do so.

Eliminado: project is located

Eliminado: CAO

### 2.4 Lodging a complaint

Complaints should be submitted in writing and may be presented in any language. The Ombudsman will attempt to respond in the language of the complaint. (The language policy of the Ombudsman is covered in Section 1.4 above.) 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 Ombudsman will provide confirmation of receipt of a complaint.

Eliminado: CAO

Eliminado: CAO

## 2.5 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 (giving reasons).
- The identity and nature of the project, including the name of the sponsor, whether the project is an IFC or a MIGA project, and where possible the identity of any personnel involved.
- A clear statement of the way in which the complainant perceives to have been, or is likely to be, affected by social or environmental impacts of the project.
- What has been done to attempt to resolve the problem, including specifically any contact with IFC or MIGA personnel, the sponsor, or host government.
- What aspects of a problem remain unsettled.
- Where noncompliance with IFC or MIGA environmental and social policies, guidelines, or procedures is involved, which policies, guidelines, or procedures are said 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 precise 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.)

Eliminado: j

On request, the CAO will provide guidance on how to lodge a complaint. Annex 1 shows a model complaint letter. 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.

## 2.6 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 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. Any information that complainants do not wish to be disclosed should be identified to the CAO from the start, and a process for handling the complaint will be agreed with the complainant.

## 2.7 Timelines for complaint handling

Figure 1 outlines the process CAO adopts in addressing complaints. The CAO is committed to ensuring that complaints are handled in a timely and prompt manner. Complaint handling will be tracked using internal systems; the general procedures outlined in the Figure 1 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 as a minimum will be followed in response to a complaint that is received. The CAO will prioritise cases and advance timelines where project approval or serious social and environmental impacts are imminent:

Eliminado: normally

Step 1: Acknowledgement of receipt together with decision of whether to proceed (5 working days)

Step 2: Assessment of potential for achieving resolution of the complaint (assessment will be as soon as possible, 120 working days is the maximum)

Eliminado: ¶

Step 3: Decision: either continuation with Ombudsman problem solving role or transfer to compliance for appraisal

Step 4: If continuation of Ombudsman process then definition of a Memorandum of Understanding for facilitation/mediation joint-fact finding or other agreed resolution process leading to a Settlement Agreement where appropriate  
Step 5: Monitoring and follow-up  
Step 6: Conclusion

### 3. Receiving and assessing complaints

#### 3.1 Eligibility screening

The Ombudsman's first step after receiving a complaint will be to determine its eligibility for assessment. This process is expected to take up to five 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 CAO's mandate to address environmental and social impacts of IFC/MIGA investments;
- The complainant (or those whom the complainant has authority to represent) would be or have been affected if the social and/or environmental impacts raised in the complaint occurred.

Complaints will also be accepted regarding situations where Ombudsman recommendations or MOU agreement have been ignored or not implemented.

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 the IFC or MIGA are not accepted.

#### 3.2 CAO Initial Response and Notification

##### Notification for Assessment

CAO will post on its website an announcement of complaints that meet the criteria listed above. CAO will notify the complainants and other potential stakeholders immediately in writing that CAO will undertake an assessment of opportunities for collaborative settlement of the issues raised in the complaint.

##### 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. CAO will also notify IFC/MIGA and the project sponsor.

#### 3.3 Assessment

The purpose of the assessment is to assist the Ombudsman and the stakeholders to 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 stakeholders?
- What are their views on the issues raised in the complaint?
- What are their incentives to resolve and address the issues?
- What process might be most useful to the stakeholders to resolve the complaint?
- What is the background history of the issue based on fact finding, including concurrent actions at international tribunals or national courts?
- What actions or events have led to the complaint?
- What are the wider political, diplomatic and social issues that surround the complaint?
- How might Ombudsman best assist the stakeholders in this process?

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 of receipt. The Ombudsman will provide an assessment report (including agreements to proceed with a collaborative process or decisions to refer to Compliance) available to the stakeholders, the President of the World Bank, IFC and MIGA Board and the public.

Based on the results of the assessment process, the 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

Eliminado: CAO

Comentario: This is considered incorporated within the decision 'whether to proceed, see 2.7.

Eliminado: fteen

Eliminado: CAO

Eliminado: ¶

Eliminado: CAO

Eliminado: CAO

Eliminado: CAO

identified during the assessment,  
or

b) Determine that a collaborative resolution is not possible, consult the complainant about the scope of the complaint and direct the Compliance Auditor to undertake an appraisal of the complaint (see Section 6.1 of the Operational Guidelines).

Eliminado: by the CAO Compliance auditor

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

- Researching IFC or MIGA files.
- Meetings with the complainant, other affected people and communities, IFC or MIGA staff, sponsors, government officials of the country where the project and/or complainants are located, and representatives of local and international nongovernmental organizations.
- Visiting project sites.
- Holding public meetings in the project area.

Eliminado: is

In deciding whether to address the complaint through the Ombudsman role and in determining the relative priority to attach to a complaint and what course of action to follow, the CAO will take account of the following factors:

- The threat of irreversible harm if complainants' concerns are not addressed in a timely manner.
- The seriousness of the issues or policy violations alleged.
- The number of people or communities (potentially) affected by the complaint and the seriousness of the environmental and/or social impacts.
- The phase reached in project approval and implementation. (Projects further along in approval or implementation may require a higher priority.)
- The centrality of the issues raised by the complaint to the CAO's overall mandate.
- The likelihood that the Ombudsman's intervention could have positive results.

### **3.4 Notification of assessment**

The Ombudsman's decision at the conclusion of the assessment will specify the course of action to be adopted; the timetable for implementing the course of action will be discussed and agreed upon with the complainant. A copy of the assessment report will be provided to the complainant and other relevant parties, including IFC or MIGA management and the sponsor of the project. The President and IFC/MIGA Board will be informed at this stage. If the complainant has not precluded it, the text of the complaint may be included in the assessment.

## **4. Assisting in resolution of issues**

### **4.1 Approaches to complaint resolution**

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

Eliminado: CAO

#### **Facilitation and information sharing**

In many cases, the complaint will raise questions of fact, regarding current or anticipated impacts of an investment. The Ombudsman may be able to assist complainants to obtain information or clarifications that result in resolution from the perspective of complainants.

Eliminado: CAO

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 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. CAO may offer training and/or expertise to assist the stakeholders in this process.

Eliminado: CAO

#### **Conciliation and mediation**

Sometimes more formal problem-solving intervention by the CAO may be appropriate.

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

Eliminado: CAO

#### 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 identified in the assessment, in a way that is acceptable to the directly affected parties. 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, timebound or otherwise, may form a part of any settlement agreement.

Eliminado: ¶

In pursuit of settlement, the Ombudsman will not support agreements which would be coercive to one or more parties; are contrary to IFC or MIGA policies; or would violate domestic laws of the parties or international law. Violations to domestic or international law refers to the sponsor, IFC / MIGA, the host country and any other legal persons which are or may facing actions relative to the project. The Ombudsman will not prejudice outcomes, yet it will advise where there may be a risk of legal noncompliance and recommend that parties act to realign themselves with applicable law.

Eliminado: CAO

The Ombudsman may conclude and close a complaint if a satisfactory settlement has been reached. The Ombudsman will facilitate documentation of agreements, decisions and changes in written policies and procedures. The Ombudsman will inform the World Bank President, IFC / MIGA board and the public of the outcome.

**Comentario:** Note that noncompliance of domestic or international law is not limited to the host country due to the applicability and influence of extraterritorial proceedings relative to the project. This allows the CAO to take into account the full scope of issues surrounding a project.

#### 4.3 Confidentiality

Confidentiality is often an important feature of conciliation and mediation processes. Parties will sometimes require that the information they disclose in the course of a collaborative process be kept confidential. CAO will respect the confidentiality of information provided by stakeholders during a collaborative process. Communication with the CAO in the course of a collaborative process will be regarded as privileged. All participants in an ombudsman process, in particular IFC or 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 Ombudsman transfers a complaint to Compliance, confidential information received under the Ombudsman role will be regarded as privileged and will not be shared with the Compliance function.

Eliminado: CAO

Eliminado: CAO

Eliminado: CAO

Eliminado: ¶

Eliminado: and Disclosure

#### 4.4 Disclosure

Disclosure contributes significantly to the transparency of the Ombudsman role and acts as a powerful incentive to comply with the agreements reached. While protecting the confidentiality of information provided by stakeholders, CAO will make available to the stakeholders and the public its assessment reports, reports on agreements reached, reports on monitoring and follow up, and decisions to refer to Compliance. The Ombudsman is able to disclose material, findings or commentary to the President and IFC / MIGA Board any time at its discretion.

**Eliminado:** Disclosure contributes significantly to the transparency of the Ombudsman¶ role and acts as a powerful incentive to comply with the agreements reached.

Eliminado: 4

Eliminado: CAO

Eliminado: CAO

Eliminado: CAO

#### 4.5 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 timeframe, the Ombudsman will first seek to assist the stakeholders in breaking through impasse. If this is not possible, the Ombudsman will notify the stakeholders that it is closing the complaint and will refer it to Compliance for appraisal. The Ombudsman will report to the public and to IFC/MIGA its decision to refer the complaint to Compliance and provide commentary on the actions of IFC / MIGA to the public, stakeholders, the board, the President and IFC / MIGA.

Eliminado: 5

#### 4.6 Monitoring and follow-up

The Ombudsman will seek to ensure that the agreements between parties make provisions for review and monitoring. This may be achieved by setting mutually agreed timelines and

Eliminado: CAO

indicators for achievement within the body of the agreement. [The Ombudsman may also review the implementation of the agreement by the IFC / MIGA / sponsors and report findings to the President and the Board. Likewise, the Ombudsman can review compliance or consideration of its own recommendations by the sponsors, IFC / MIGA and report to the President and the Board.](#)

Any agreements reached by the parties, or CAO recommendations included in reports to the President [and the board](#), will usually contain a program and timelines for implementation. Monitoring of any changes made in response to [agreements](#) or recommendations should be integrated into IFC's or MIGA's normal project management and monitoring. The [Ombudsman](#), will monitor [and publicly disclose](#) whether the [agreements](#) or recommendations have been implemented, to the extent that this is practicable. [Where implementation is incomplete, the Ombudsman may recommend additional measures or request definitive action from IFC / MIGA / the President.](#)

Eliminado: CAO

[If implementation of or compliance with an agreement is incomplete, details will be published in CAO Annual Report. The Ombudsman will communicate to the President and Board of Directors its findings on implementation as required. Where a project is scheduled to be brought to the board for approval and implementation issues exist a report will be provided to the board ten working days prior to a board decision on the project.](#)

The CAO may request that IFC or MIGA staff or other agencies on the ground provide assistance in monitoring implementation of agreements that relate to what happens on a project site.

## 5. Overview of the Compliance role

### 5.1 Introduction and purpose of compliance auditing

CAO oversees project-level audits of the social and environmental performance of IFC and MIGA. The purposes of CAO auditing are

- to ensure compliance with policies, standards, guidelines, procedures, and
- conditions for IFC and MIGA involvement [as applicable to the IFC / MIGA and project sponsor](#);
- to improve social and environmental performance.

The primary focus of compliance auditing will be on IFC, MIGA and project sponsors. [The Compliance Auditor](#), may also consider the influence of other parties or factors on ensuring or hindering compliance. [If auditing identifies noncompliance, the emphasis will be on promoting constructive solutions and avoiding recurrences.](#)

Eliminado: CAO

### 5.2 Definitions and outline approach

The working definition of compliance auditing adopted by the [Compliance Auditor](#), 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.

Eliminado: AO

The audit criteria applicable to IFC include the environmental and social [policies](#), [performance standards](#), guidelines (including those outlined in the World Bank Group's Pollution Prevention and Abatement Handbook and additional IFC Environment, Health, and Safety Guidelines), procedures, host country legal and regulatory requirements ([including actions in national courts](#)), [international legal obligations \(for nation states, IFC, MIGA, sponsors and other legal personalities associated with the project\)](#), [all other legal actions relative to the project](#) and

Eliminado: ¶  
(including international legal obligations),

conditionality applied to a loan or guarantee (some of which may have its origins in the Environmental Assessment or Environmental Management Plan). The audit criteria for MIGA are broadly similar, and the applicable environmental and social [policies](#) and guidelines are identified in the agency's procedures.

**Comentario:** Compliance Auditor should take into account ALL legal actions relative to a project. This sentence aims to include all potential actions, including those in national courts outside the host country.

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.

Eliminado:

An outline of the approach to compliance auditing is illustrated in Figure 1.

## 6. Initiating and scoping compliance audits

### 6.1 Initiating a compliance audit

A compliance audit might be called for in response to any of the following circumstances:

- A request from Senior Management or the President: If Senior Management or the President have concerns regarding a project, they may request that a compliance audit be conducted.
- A complaint transferred from the Ombudsman where no resolution was possible: CAO compliance will appraise the project for an audit of the issues raised in the complaint.
- At the discretion of the CAO Vice President: During the normal course of the CAO's activities, concerns may arise regarding a specific project that justify the conduct of a compliance audit
- At request by stakeholders or concerned persons or parties (see below)
- At request by stakeholders or CAO discretion relative to compliance with international law or project compliance with laws in any other jurisdiction.

Since a compliance audit is concerned with social and/or environmental impacts or the potential thereof, persons or parties not directly affected or likely to be affected by a project are able to lodge a claim with regards to environmental impacts, given that the social damage is not a prerequisite for noncompliance. These persons or parties may be located any where in the world and not necessarily linked with the project. Where environmental damage and social damage coincides, it is advised that complaints be lodged as one, and that the Ombudsman first address the possibility of resolution of the complaint.

Requests for a compliance audit should be made to the CAO in writing. Each request for a compliance audit will be subject to an appraisal process to determine whether it should be acted upon. Compliance audits will be limited to the scope of the complaint, however complainants may discuss complaints with the Ombudsman before submission to the Compliance Auditor. When the Ombudsman refers a complaint to Compliance, complainants will be consulted on the scope of the complaint.

Eliminado: t.

### 6.2 Appraising audit requests

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

Although it is inadvisable to prescriptively limit the conditions under which a compliance audit should take place, CAO applies several basic criteria through audit appraisal.<sup>1</sup> These are framed as a series of questions to test the value of undertaking a compliance audit:

- Is there evidence (or perceived risk) of adverse social and environmental outcomes that indicates that **Social and Environmental Sustainability** Policy provisions (or other audit criteria) may not have been adhered to?
- Is there evidence of risk of significant adverse social and environmental outcomes that indicates that **Social and Environmental Sustainability Policy** provisions, standards, guidelines, etc., whether or not complied with, have failed to provide an adequate level of protection?<sup>2</sup>
- Is there evidence (or perceived risk) of significant adverse social and environmental outcomes where **Social and Environmental Sustainability Policy** provisions, standards (or other audit criteria) were not thought to be applicable but perhaps should have been applied?
- Is there evidence that the application of some aspect of a policy, standard, guideline or procedure resulted in adverse social and environmental outcomes?
- Can the cause of adverse social and environmental outcomes not be readily identified and corrected through the intervention of the project team without a detailed investigation of the underlying causes or circumstances?
- Could a compliance audit yield information or findings that might better inform the application of policies (or other audit criteria) to future projects?

In answering these questions, the appraisal will declare a position on the following:

Eliminado: consider

Causal factors are critical — The causal factors that give rise to adverse social and environmental outcomes are critical to understand, irrespective of whether all applicable policies, guidelines, etc., are interpreted correctly.

- Multiple causation is often prevalent — Adverse environmental or social impacts often result from a combination of circumstances or conditions, rather than a single isolated cause.
- Immediate as well as underlying causes typically apply — In addition to the immediate causes of adverse environmental or social outcomes (such as a ruptured chemical storage tank), the underlying causes that created the pre-conditions for the adverse outcomes must also be understood.
- Underlying causes are typically systemic — Underlying causes are often the result of formal and informal organizational and management policies, practices or systems, rather than the actions of individuals.

1 As noted above, for complaints referred by the Ombudsman, Compliance appraisal will be limited to issues raised in the complaint.

2 The definition of what is “significant” or “material” is an important consideration in financial auditing and relates to information to which most investors would attach importance in making investment decisions. In the context of compliance auditing within IFC/MIGA, at issue is whether (i) the actual social or environmental outcomes are consistent with or contrary to the intent behind policy provisions or (ii) the failure to address social or environmental issues as part of the review process resulted in outcomes that are contrary to the intent behind policy provisions.

- A major thrust in the work of IFC and MIGA’s environmental and social specialists is to ensure sponsor compliance with applicable policies, standards and guidelines. The application of professional judgment is integral to this work.
  - The occurrence of unanticipated adverse social or environmental outcomes is not necessarily indicative of noncompliance but does justify a considered assessment of the underlying causes that may help prevent a recurrence.
- In conducting the appraisal, CAO will hold discussions with the project team and other relevant parties to understand the validity of the concerns and to explore whether an audit is the appropriate response.

**Comentario:** We recommend to expand on how the Compliance function determines the intent of policy decisions, such that intent is based on best practice, international law standards and achieving the best social and environmental outcomes. There is a risk that the intent of policy decision be represented by a desire to enact minimal environmental and social safeguards in order to streamline process and maximize returns for sponsors at the expense of stakeholders and the environment.

### 6.3 Disclosure of Appraisal Results and Decision to Audit

Once an appraisal is concluded, the Executive Vice President of either IFC or MIGA will be advised in writing, as will the relevant Departmental Directors or Managers associated with the project to be audited. If an audit results from a complaint to the Ombudsman, the complainant will be consulted by the Ombudsman on the scope of the complaint prior to lodgment, and complainants will be advised in writing on appraisal results. A summary of the results will be made public.

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

- Eliminado: also
- Eliminado: , and a
- Eliminado:
- Eliminado: ¶

### 6.4 Types of compliance audits

Only project-level compliance audits will be undertaken by the CAO, **not institutional or programmatic-level audits.** This approach should ensure minimal overlap with the activities of environmental, social, and evaluation staff within IFC and 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 CAO (see sections 9-12).

The compliance audit will recommend remedial measures or other actions to enhance social and environmental outcomes and ensuring ongoing compliance with the audit criteria.

### 6.5 Developing TOR for compliance audits

For all audits, a Terms of Reference (TOR) will be prepared and submitted to the management of IFC or MIGA for information. 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 timing, and reporting requirements.
- Guidance on the structure and format of reports to be submitted.

#### 6.6 Staffing compliance audits

A compliance audit team will consist of external experts managed by the CAO. CAO staff will be 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 with local or international press or media.

#### 7. Procedure for compliance auditing

The approach to compliance auditing illustrated in Figure 1 and described below will need to be adapted depending on the specific circumstances of the project being audited. The audit process will include, but not be limited to, the following steps:

Step 1: Appraisal (45 working days)

Step 2: Developing TOR

Step 3: Orientation of the audit team, initial document review and preparation of audit protocols

Step 4: Conducting on-site audits

Step 5: Reporting

Step 6: Monitoring and closure

Eliminado: In general

Eliminado: t

#### 8. Confidentiality, reporting and disclosure

##### 8.1 Report preparation

The audit report will be prepared under the direction of the CAO and would typically include:

- An executive summary of the findings.
- A description of the underlying concerns that gave rise to the audit.
- A brief description of the project, policy, guideline, or procedure that was being audited and the sites visited.
- The objectives and scope of the audit.
- The criteria against which the audit was conducted, the date of the audit, and the period covered.
- The findings of the audit with respect to non-compliances and any adverse social and environmental outcomes and the extent to which these are verifiable or nonverifiable.
- An assessment of the causal factors.
- Matters on which there is a difference of opinion among the project team, the sponsor, and the audit team.
- Any other relevant findings or conclusions.

A draft audit report will be circulated to Senior Management 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.

On receipt of comments from IFC or MIGA on the consultation draft, CAO will finalize the report. The final report will be submitted to IFC or MIGA's Senior Management for a response. A notification will be posted on the CAO's web site. IFC or MIGA have 15 days to submit a written response to the CAO. The audit report and any response from IFC or MIGA will then be forwarded to the Office of the President. 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 Senior Management response, the Office of the President will

provide clearance for the audit report and the response. After clearance, the Compliance Auditor will share the audit report and Senior Management response with the Board and will disclose both documents on the CAO web site. The Compliance Auditor will comment on the response to the audit by Senior Management and the President when asked by complainants, and will publish this on the CAO website. The CAO may declare the case closed or open depending on the response to the audit by IFC / MIGA and the President. Where compliance is incomplete, the Compliance Auditor will continue to monitor the situation.

Eliminado: AO

If other financial institutions have participated in an IFC loan, the final report will be sent to loan participants. Where Equator Principle Financial Institutions have or will participate, the final report will be sent to the Equator Principle secretariat. If IFC has acted as environmental and social liaison among multiple co-lenders, complainants will be notified and disclosure to those financial institutions concerned with the environmental and social aspects of the project may occur on a case-by-case basis, as appropriate.

Eliminado:

Eliminado: ¶

Eliminado: ,

Eliminado: ¶

## 8.2 Confidentiality and disclosure

The CAO is bound by the disclosure policies of IFC and MIGA. 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.

Participants in an ombudsman process, in particular IFC or MIGA staff and the sponsor, need to feel confident that their open and frank participation in collaborative processes sponsored by the Ombudsman will not compromise their position if a compliance audit is subsequently undertaken. Therefore, in cases where the Ombudsman transfers a complaint to the Compliance Office, confidential information received under the Ombudsman role will be regarded as privileged. The Ombudsman function will not share this information with the audit team or Compliance Specialists.

## 8.3 Monitoring and closure of audits

In cases where IFC, MIGA and/or project sponsors are in compliance, or are noncompliant and resolve the compliance issue by the time CAO issues its audit report, CAO will close the audit and publish reasons.

In cases where IFC, MIGA and/or project sponsors are not in compliance and provide an action plan and timetable for achieving compliance, CAO will monitor progress, and close the audit after verification.

Eliminado: normally

The CAO will undertake the following procedure for continual monitoring of progress compliance and implementation of recommendations from the Compliance, Advisor or Ombudsman functions:

- Updates on compliance for all projects with outstanding compliance issues to provided to the President and MIGA / IFC Board in each quarterly report
- The CAO will advise the President to suspend IFC and MIGA involvement in projects that are associated with outstanding claims at international tribunals and in host country or other country courts. Note that these actions may not directly involve the World Bank Group nor the project sponsor, but will be material in compliance of host country obligations with regard to a project.
- Updates on developments in open cases at international tribunals and national courts will be given to the President. Where open cases exist, the CAO will invite the President to comment on how IFC / MIGA is minimising risk of liability for staff responsible for project approval.
- If IFC / MIGA proceeds with a project associated with action at international tribunal or national courts, the CAO will invite the President to submit a commentary explaining the World Bank Group's position with regard to unresolved issues at international law, and to create an action plan to avoid complicity under the relevant international and national legal standards.
- In accordance with IFC / MIGA procedures, policies, guidelines etc and respect for international and domestic legal obligations, a compliance audit will remain open until all legal issues are resolved.
- The CAO will automatically open or re-open a compliance audit where international tribunals or national courts, in the host country or any other country, are dealing with a case which directly or indirectly involves the project.

- [CAO Annual report will include a review of the World Bank Group's progress on compliance where incomplete compliance has been previously identified.](#)
- [CAO Annual report will provide commentary on the response of the President, or World Bank Group to the CAO Final Report. The CAO will have the discretion to reopen a case or communicate further with the President or IFC / MIGA board without a further complaint by stakeholders.](#)

## **9. Overview of the Advisory role**

### **9.1 The origin of the Advisory role**

The CAO's Terms of Reference defined the scope of the Advisory role broadly, to include advice to management on policies, standards, procedures, guidelines, resources, and systems established to ensure adequate review and monitoring of IFC and MIGA projects. The CAO does not give project-specific advice.

An outline of the approach to the Advisory role is illustrated in Figure 2. This envisages:

- Exploring a number of possible ways to instigate a CAO advisory activity.
- Assessing whether the advisory activity is justified or appropriate.
- Scoping the advisory activity and selecting the team.
- Conducting the advisory activity.
- Reporting and disclosure.

Additional guidance that explains how the Advisory role will be conducted in practice is given below.

### **9.2 Principles that underpin the Advisory role**

There are a number of basic principles that underpin the 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, etc.
- The provision of advice will be based on careful consideration of basic screening criteria.
- Whenever advice is instigated by the CAO, the advice will be derived from lessons learned from either the Ombudsman or 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 Ombudsman and Compliance roles.

These principles are designed to ensure that the Advisory role is supportive of the Ombudsman and Compliance roles of the CAO, and that the limited resources of the CAO are applied to the Advisory role only where appropriate.

## **10. Initiating and scoping advice**

### **10.1 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 through addressing deficiencies in systems, policies, guidelines, or procedures or their interpretation or application.
- Helping IFC or MIGA understand how their environmental or social obligations may be more effectively met.
- 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, which 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.

## 10.2 Initiating the Advisory role

Advice may be initiated by or requested as follows:

- A request from Senior Management, the President, or the Board: The President, Senior Management teams, and boards of IFC or MIGA may request advice from the CAO.
- A request from any other department within IFC and 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: During the course of the CAO's Ombudsman or Compliance activities, systemic concerns may arise (for example, regarding the application of a policy or guideline) that may warrant advice. Requests for advice may begin with informal discussions but should be notified 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 the request's formal receipt.

## 10.3 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?

21

- 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, giving timelines for the advice where possible. If the CAO declines to give advice, the reasons will be stated. If advisory requests are accepted, the President and Senior Management will be informed in writing.

If the CAO exercises discretion to provide advice, it must be derived from the lessons learned from the Ombudsman or Compliance roles.

## 11. Approach to Advisory role

### 11.1 Staffing advisory activities

It is anticipated that some advisory activities will be undertaken in house, whereas others will involve the use of consultants. Advisory activities that are handled exclusively by CAO staff may either be led by the CAO, or by ombudsman or compliance staff. If external consultant support is required, the advisory activity will be led by CAO staff, who 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.

Independence is key to the provision of impartial and objective advice and requires that potential or actual conflicts of interest be avoided. If IFC and 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 historical 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.

### **11.2 The limits to transparency and the Advisory role**

As a matter of principle, the Office of the CAO strives for maximum transparency across its three roles. However, this principle must also be balanced against the avoidance of 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 the advice is instigated by 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 or MIGA projects, the individual projects will generally not be identified in the advisory review or briefing report.

The latter point reflects the fact that, although advice may benefit from desk- or fieldbased reviews of projects, these projects may well have a high standard of social and environmental performance. The rationale for looking at a project in an advisory capacity may be to learn from positive experiences rather than learn about what went wrong. The focus is also on IFC and MIGA's policies, standards, procedures, etc., not on the sponsors. So the anonymity of individual projects helps to ensure the cooperation of IFC and MIGA's sponsors, as well as avoiding the potential for CAO advice to be interpreted as being project-specific.

## **12. Reporting, confidentiality, and disclosure**

### **12.1 Report preparation and target audiences**

All advice will take the form of an advisory memorandum or report. These will be prepared by, or, where consultants are involved, under the direction of CAO staff. The timescales for reporting and comment will be agreed at the outset and confirmed in writing in either the TOR 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 and 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 website. Once the report has been reviewed by (and, as appropriate, discussed with) the President, the report will be disclosed on the CAO's website.

### **12.2 Confidentiality and disclosure**

The CAO is bound by the disclosure policies of IFC and MIGA (but as stated previously, within these constraints there is a strong presumption in favor of disclosure). In exceptional circumstances (such as in dealing with highly sensitive issues), advisory memoranda or reports may not be disclosed at the request of the President or Senior Management. However, the CAO would still 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.

### **12.3 Monitoring and follow-up**

Advisory recommendations will be integrated into the ongoing monitoring and evaluation activities of the CAO. The CAO will monitor the implementation of such recommendations by IFC and MIGA and report to the President on an annual basis.

**ANNEX 1: Model Letter of Complaint to CAO**

To:

Compliance Advisor/Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue, NW Washington, DC 20433 USA  
Fax: 202 522 7400

Email: [cao-compliance@ifc.org](mailto:cao-compliance@ifc.org)

I/we \_\_\_\_\_, lodge a complaint concerning the \_\_\_\_\_ project. This complaint is made on behalf of \_\_\_\_\_ (ignore if not applicable).

I/we live in the area known as \_\_\_\_\_ (shown on the attached map). I/we can be contacted through the following address, telephone and fax numbers, email:

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

The basis of the complaint is as follows:

1 A description of the name, location, and nature of the project is as follows:

2 The IFC and/or MIGA is involved with the project (as applicable):

3 The project sponsor is:

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

5 The following action has been taken by me/us to try to resolve these issues:

6 The name(s) of any contact person(s) at the IFC and/or MIGA are:

7 I/we have had contact with the following other person(s) in attempting to resolve these issues: (where possible please attach copies of correspondence)

8 The following are details of policies, **standards**, guidelines or procedures of the IFC or MIGA that have not been complied with: (include this information only if you wish or are able to.)

9 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 to focus on problem-solving approaches.)

10 Any other relevant facts to support this complaint are:

Attach copies of any relevant documents and other material.

## **GLOSSARY**

### **CAO**

Office of the Compliance Advisor/Ombudsman, IFC and MIGA external accountability office for environmental and social concerns.

### **CODE**

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

### **Complainant**

Individual, group of people, or organization that lodges a complaint with the CAO.

### **IFC**

International Finance Corporation, agency 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.

### **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, agency 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 on investment promotion.

### **MOU**

[Memorandum of Understanding](#)

### **NGO**

Nongovernmental organization.

### **Sponsor**

The term 'Sponsor' refers primarily to the project sponsor of an IFC or 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. These may include the borrower of IFC funds or the recipient of IFC equity, the investor covered by a MIGA guarantee and/or the entity implementing the project in question.