

**Public Consultation on Draft IFC/MIGA
Independent Accountability Mechanism (CAO) Policy**

**EAST ASIA AND THE PACIFIC
BANGKOK¹ CONSULTATION**

**Virtual Stakeholder Meeting May 3rd, 2021
Facilitators' Report**

I. SUMMARY

In August 2020, IFC and MIGA Boards of Directors (“Boards”) released the report of the *External Review of IFC’s/MIGA’s Environmental and Social Accountability, including the Compliance Advisor Ombudsman’s (CAO) Role and Effectiveness* (the **External Review**). In response to recommendations from the External Review, the Boards tasked a Joint CAO/IFC/MIGA Working Group (the “Working Group”) to develop a draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy (“CAO Policy”).

The draft policy outlines the CAO’s purpose, mandate and functions; core principles; and governance and is available for public consultation between April 5 and May 19, 2021. The public consultation phase comprises nine virtual consultations sessions covering all regions of the world. The process also allows for written comments on the draft policy to be shared by email or using an online feedback form available on the dedicated website for the consultation process.

This report summarizes the outcomes of the session held for East Asia and the Pacific on May 3, 2021 at 10 am Bangkok time. The session was designed to obtain feedback from community members, civil society, private sector, and representatives of international finance institutions (IFIs) including their respective independent accountability mechanisms (IAMs). Twenty-one (21) participants attended the meeting.

The session was conducted in English by a team of professional facilitators, with support from note-takers. Members of the CAO/IFC/MIGA Working Group responsible for drafting the policy presented background on the process to date, the key elements of the draft CAO Policy, including enhancements to CAO’s processes, and next steps in the process toward finalizing the policy for approval by the IFC and MIGA Boards in June 2021². Participants were asked to provide their input and questions on the topics they wished to focus on. This report covers the comments and questions from participants and summarizes answers from members of the Working Group. The agenda for the session is attached as Annex I.

II. STAKEHOLDER FEEDBACK AND QUESTIONS

Using an anonymous Zoom poll, participants were asked to select the order in which they wished to discuss the different sections of the draft policy: 1) Purpose, Mandate, Functions and Core Principles

¹ The city corresponds to the location where the session would have taken place if it had been held in person rather than virtually.

² The presentation can be found and downloaded [here](#). IFC/MIGA also presented on other actions they are developing to [strengthen environmental and social accountability](#) as well as on their work program on [enabling remedial solutions](#).

(including Remedy); 2) Governance; 3) Eligibility of Complaints; 4) Assessment; 5) Dispute Resolution; 6) Compliance; 7) Advisory; 8) Threats and Reprisals; 9) Outreach; and 10) Access to Information and Disclosure.

The order of topics prioritized by the participants were:

- Compliance (64%)
- Dispute Resolution (57%)
- Purpose, Mandate & Functions, Core Principles (including Remedy) (43%)
- Eligibility of Complaints (43%)
- Threats & Reprisals (43%)
- Access to Information & Disclosure (43%)
- Governance (36%)
- Outreach (29%)
- Assessment (21%)
- Advisory (14%)

For each of the selected topics, a 15-minute space was opened to listen to stakeholder input and questions. Since participants had different levels of knowledge of, and exposure to CAO, for most part, the conversation followed a question and answer format. Though the focus was on the selected topics, related issues were also raised in the subsequent questions and inputs from stakeholders.

Compliance

Decision to investigate. A stakeholder wanted to clarify two aspects of the decision to investigate. While agreeing with the deferral option as a sound approach before proceeding to investigation, the stakeholder commented that Management should be required to present a detailed plan and a remedy framework to solve issues raised in the complaint within the six-month timeline, including how community input will be obtained. The stakeholder expressed support for keeping the decision to investigate at the discretion of CAO's DG and asked for clarification on what would constitute "exceptional circumstances" for review by the Board.

The Working Group responded to these two points by emphasizing the importance of considering the views of complainants before taking a decision on deferral. Other criteria include the severity of harm and Management response. With regards to Board review of the decision to investigate, the Working Group clarified that "exceptional circumstances" are described in the draft policy and the review can solely be based on specific technical eligibility criteria.

Dispute Resolution

Agreements and Compliance with Performance Standards. While expressing support of the changes proposed by the Draft Policy, a stakeholder commented that the CAO does not have sufficient power in the Dispute Resolution process to ensure that IFC clients sign agreements that ensure they fully meet IFC Performance Standards.

The Working Group responded by clarifying that while the process doesn't compel IFC/MIGA to participate, they may participate as observers or provide expertise on E&S from other projects. IFC or MIGA has never been a party to an agreement reached. The language in the draft policy indicates that the CAO will not support agreements contrary to the Performance Standards or national law. The Dispute Resolution function does not have the authority or mandate to review compliance of projects. DR processes mostly treat impacts and issues related to projects. If unsolved issues remain and

complainants believe the Performance Standards have not been properly applied, these issues would be moved to Compliance.

Purpose, Mandate and Functions, Core Principles (including Remedy)

Funding remedial actions. A stakeholder asked if there were new proposals for funding remedial actions included under this section. On the same issue, another stakeholder suggested that remedy be included in E&S clauses of lending contracts and that a remedy fund should be available in cases where significant losses have been experienced by affected communities. In this stakeholder's view, the argument that the remediation fund is too expensive or would entail business losses is unfounded, as peer institutions such as ADB have similar funds and have shown it can be done.

The Working Group clarified that besides the definition of remedy in CAO's draft Policy, IFC and MIGA are leading their own process for enabling remedial solutions, which will consider financial and non-financial options that will consider UNGPs and other frameworks. IFC and MIGA plan to conduct a separate stakeholder engagement process to finalize its framework. The first stakeholder responded that they were looking forward to reviewing the options paper.

Coordination of remedial solutions across IAMs. Stakeholders stated the need for coordination and harmonization of remedy frameworks when similar complaints regarding a project are submitted to accountability mechanisms of different IFIs supporting it. Stakeholders highlighted that lack of coordination has resulted in delays and limited remedy and one of them provided the Tata Mundra case as an example.

The Working Group affirmed that the draft policy includes provisions for cooperation with other IAMs. There is an MOU approach with other IAMs to share information, resources, and coordinate field visits. In terms of Compliance, IAMs have different standards and policy frameworks, so the investigation reports and Management Action Plans are often different. Available options for cooperation are likely to be assessed in IFC's / MIGA's "Issues and Options" paper. However, it is important to note that as frameworks are different, responses might vary.

Continuous learning. One stakeholder wanted clarity on how the CAO carries out its continuous learning process. The Working Group explained that the CAO consistently seeks stakeholder feedback from its cases to learn and enhance its effectiveness. Drawing on the CAO's experience, the Advisory function provides advice to IFC/MIGA and the Boards, so that they can systemically improve their environmental and social performance and reduce the risk of harm to people and the environment.

Eligibility of Complaints

Projects not yet approved by the Boards. Stakeholders expressed concern that projects that have not yet been approved are excluded from eligibility and suggest that the CAO should take pre-approval complaints on the basis that project documents/summaries are already disclosed and valid community concerns exist. A stakeholder explained that, based on experience in India and Indonesia, where projects haven't started yet but documents have been shared, there is often a mismatch between documents including the ESRS and what happens on the ground. A complaint would not be a call to pause projects, but would provide a basis for the CAO to help clarify issues on the ground. This also serves as a warning to the IFC / MIGA that issues exist. The stakeholder added that as mediator/facilitator, the CAO is in the best position to do that. A stakeholder asked how not accepting complaints regarding pre-approval projects would harmonize with other IAMs' practice of accepting complaints in this stage.

Another stakeholder asked for clarification on the process for handling pre-Board approval complaints and ensuring that Management takes them seriously. A suggestion was made that the Board be informed of the nature of a pre-approval complaint when the papers go to the Board.

The Working Group responded that the External Review strongly recommended that IFC and MIGA be more active in responding to complaints. IFC/MIGA have a commitment to Do-No-Harm and now have a Stakeholder Grievance Response team which is tasked with supporting project teams from the early stages of project preparation to address any concerns raised by communities. The External Review considered the practice of other IAMs in making recommendations and noted that complainants can still approach the CAO if the project is approved and IFC/MIGA's engagement efforts have not been sufficient.

Threats and reprisals

A stakeholder expressed support for the draft policy approach to this issue.

Access to Information and Disclosure, and Outreach

For the purpose of clarity these two topics were dealt with together.

A stakeholder had a question as to whether the policy speaks of improving access to information about the CAO process. The Working Group explained that the CAO collaborates with CSOs and local stakeholders to hold outreach events. It takes advantage of networks to make the CAO known. IFC/MIGA works with clients to ensure access to information and outreach at the project level.

Governance

Reporting line. A stakeholder commented that the change in reporting line is one of the major welcome changes and said that Tata Mundra and other Compliance cases need this change. Another stakeholder asked how the Governance policy strengthens the CAO process. The Working Group responded that the new reporting line will increase the distance from Management. It allows CAO to access the highest body of decision makers in the IFC/MIGA. Budget and DG appointment processes add independence to the CAO compliance process. Oversight of Management Action plans and approvals would give a greater focus to the process of developing those plans and getting an appropriate response.

DG's term limit. A stakeholder suggested that the term limit of the DG should be non-renewable to reduce the risk of the perception of overstaying or having incentives to seek extension. This is perceived as good practice of other IAMs like ADB's mechanism and the Inspection Panel. Necessary continuity and institutional knowledge is provided by technical staff.

General

A stakeholder enquired if the PowerPoint presentation used in the consultation meeting could be made available to participants and was informed that a similar one is available on the [dedicated website](#) for the consultation process.

III. NEXT STEPS

The Working Group closed the meeting reflecting on the issues raised and thanking participants for their contributions. In terms of next steps, the Working Group will carefully consider written and verbal feedback received during the consultation period as they finalize the draft CAO policy for consideration and approval by the IFC and MIGA Boards in June 2021. In addition to a summary report from each regional and global consultation meeting, a consolidated consultation report that summarizes feedback received during the public consultation period and indicates how feedback was addressed in the final CAO policy will be released.

ANNEX I: AGENDA

Agenda for Public Consultation Meetings on Draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy

Bangkok, May 3, 2021 – 10:00 AM

TIME	TOPIC
30 MINUTES	Welcome, background and purpose of the meeting Overview of cycle to complete new Policy and key changes to CAO's Operations brought about by the new Draft Policy Update on IFC/MIGA efforts on non-policy actions and enabling remedial solutions
85 MINUTES	Comments and Questions from Participants on Draft CAO Policy
5 MINUTES	Closing remarks and Next Steps