

**Public Consultation on  
Proposed IFC/MIGA Approach to Remedial Action and  
Draft IFC Responsible Exit Principles**

**Multi-stakeholder consultation session  
Hybrid meeting March 3, 2023**

**Facilitators' Summary Report**

Following the release of the proposed IFC/MIGA *Approach to Remedial Action*; and the IFCs draft *Responsible Exit Principles* in February 2023, IFC/MIGA launched a global public consultation process to elicit comments and submissions on both documents.

The consultation period began with a hybrid Informational Session on February, 28 2023, and will conclude on April 13, 2023 after ten further virtual consultation sessions covering all global time zones; and compilation of all written comments and submissions received via email.

**Introduction:**

This Summary Report presents inputs and comments received during the Multi Stakeholder consultation meeting held on 3 March 2023 at 9:00 AM Washington DC time: from Civil Society Organizations (CSOs), Development Financial Institutions (DFIs), Independent Accountability Mechanisms (IAMs) as well as the private sector. The session was attended by 70 participants and conducted in English without interpretation.

The session was conducted by a team of professional facilitators. IFC and MIGA representatives provided presentations on the process to date, which covered background to the process; the documents themselves; and next steps towards finalising the documents for consideration by the **Committee on Development Effectiveness (CODE)** of the IFC/MIGA Board of Directors. The goal was to collect as many comments, reflections and recommendations from participants as possible, rather than engage in dialogue with IFC/MIGA.

This Summary is based on comprehensive notes taken during the meeting by a team of Note-takers. It is divided into themes, some of which may overlap, and inputs intersect. The final Report, at the end of the consultation period, will elaborate on the key points.

The session was divided into two parts: the proposed IFC/MIGA Approach to Remedial Action; followed by the draft IFC Responsible Exit Principles.

**A PROPOSED IFC/MIGA APPROACH TO REMEDIAL ACTION**

An anonymous Zoom poll was conducted, where participants were asked to prioritise the order in which they wished to discuss the different themes in the document. The order of priority to emerge from the poll was: 1) Scope of the Approach; 2) Roles and Responsibilities in the Remedial Ecosystem; 3) Preparation for Remedial Action; 4) Access to Remedial Action; 5) IFC Facilitation and Support for Remedial Action.

This Summary is divided into these five themes. Where inputs relate to multiple themes they are included where considered most relevant.

## 1. Scope of the Approach

- Participants commented that the Approach fails to meet the expectations of participants and participants both in its lack of detail and scope. Some participants expressed disappointment and outrage and stated that it is a complete failure and there is nothing new proposed in the document that IFC/MIGA is not already supposed to be doing.
- Participants commented that the Approach does not respond to the External Review, which was conducted by a high-level panel, including a former IFC President, and took more than a year to compile. Views were expressed that the External Review provided a set of comprehensive and constructive recommendations which would have gone a long way towards addressing the remedy gap. According to some participants, the Approach completely disregards all the recommendations made in the External Review, and asked why IFC/MIGA rejected those recommendations. It was suggested that the Approach be designed jointly with the **Compliance Advisor Ombudsman (CAO)** of the IFC, as recommended in the External Review.
- Overarching remarks that expectations that the Approach would create a comprehensive framework have not been met. One participant was specific in explaining the view that had the World Bank shared a document like this 6 years ago, it would have been welcomed; and that expectations now are that development institutions go further.
- There was a general recommendation made that concepts in the Approach, such as “harm”, in particular “severity of harm”, should be defined
- According to participants, the Approach fails to provide a clear framework for what remedial mechanisms or outcomes should look like. Some said that remedial action should be available in all cases, not just on an *ad hoc* basis, or in ‘exceptional circumstances’; and that in its current approach is not ‘holistic’. IFC/MIGA should explain why remedial action would be considered on a case-by-case basis, and what the criteria for ‘exceptional circumstances’ or such selection may be.
- Participants wanted concrete examples of successful remedial action that the Approach suggests is already being undertaken by IFC/MIGA, so that these experiences can be built on.
- ‘Enhancements’ was described as being too vague a concept. Participants said that the assessment of a borrower’s capacity to implement remedial action should not be classified as an ‘enhancement’, but should be embedded at the contracting phase.
- Some participants urged the IFC to consider consequences for ‘bad actors’ ie: clients who violate human rights and cause harm. These clients should not be awarded contracts in the future, which would have reputational consequences. One participant commented that the IFC should blacklist clients who do not comply with **IFC’s Environmental and Social Performance Standards (PS)**.
- A comment was made that the Approach is too focused on responsibility of the client and is weak on potential risks to communities. Communities often lack sufficient information around a development finance project, which can cause fear which can lead to conflict and mistrust. Participants commented that communities need to be more engaged in decision-making.

- Participants commented that the Approach should not be limited only to new or future projects but include existing and legacy harms from completed or ongoing projects.
- A question was asked about the risks arising from digital technologies. A recommendation was made that the scope of the Approach should be expanded to include this aspect.

## 2. Roles and Responsibilities in the Remedy Ecosystem

- Participants commented that the Approach is too vague and inadequately defines roles and responsibilities, and needs to delineate these more clearly. IFC/MIGA should provide examples of current roles and responsibilities in projects and show how these have enabled remedy and, if remedial action has not been provided, the Approach should be revised in response to this gap.
- A participant submitted that the prevention of harm and preparation for remedy in case of harm remains very important. IFC/MIGA should, in their view, clearly delineate roles and responsibilities, using concepts of linkage, contribution and cause.
- A participant sought to recognise that many, if not most, projects would not get off the ground without IFC involvement. Nevertheless, this does not relieve the IFC from responsibility for remedy and exit even where other financial institutions may have also invested.
- Participants commented that the Approach does not provide evidence, rationale or justification on what prevents it from embracing fully any contribution to harm. This was described as extremely disappointing for those currently involved in CAO dispute resolution processes, and many others who have been through compliance processes and are still waiting for remedy.
- The Approach states that IFC/MIGA does not expect to contribute to remedy. It falls short of expectations regarding IFC/MIGA responsibility to contribute directly, and seems to only acknowledge a situation where IFC/MIGA is 'linked' to harm, and not when IFC/MIGA may contribute to harm and should contribute therefore to remedy. The view was expressed that the Approach pushes responsibility onto the client while the IFC/MIGA cannot shed its responsibilities under international and domestic law.
- Several participants argued that the IFC/MIGA also bears responsibility for remedial action where they have contributed to harm, including where IFC/MIGA fails to comply with its own policies or conduct proper due diligence thereby contributing to the harm. The Approach was found to be missing on a situation where a client may be found to be non-compliant and harm has already happened, raising the question as to what IFC/MIGA might do to facilitate the remedy of such harm. According to the Approach, the client is responsible for providing remedial mechanisms, but the document lacks clarity on what this would actually look like in terms of both process and outcomes.
- A number of participants commented on IFC responsibility for remedial action where it contributed to harm. They argue that non-compliance with **Performance Standards** can contribute to harm, therefore IFC bears responsibility or becomes a contributor to harm and must take responsibility. IFC cannot push these responsibilities onto clients. IFC/MIGA should be the guarantor of compliance with the PS and thus provide remedy whenever the client is unable to do so. Two scenarios were cited as typical of a number of cases: where clients take no action, wrongly guided by the IFC/MIGA; and when clients fail to comply with the PS, and IFC/MIGA does not provide effective supervision.

IFC/MIGA's failure in this regard contributes to harm, so it has a responsibility to contribute to remedy as recommended by the External Review.

- Particular attention should be given to those cases in which the CAO has already found non-compliance. Participants felt that this responsibility should be extended to the 37 cases (referenced in the Approach) that went to compliance investigation and where IFC/MIGA were found to be non-compliant.
- Furthermore, participants commented that IFC/MIGA responsibility needs to apply to existing known harm.
- According to one participant, the issue of IFC liability frames the whole document, referencing paragraph 21. The IFC goes to great lengths to distance itself from liability and, in doing so, misunderstands the law. Maintaining this position is in fact more likely to put IFC at legal risk. A suggestion was made to this that IFC/MIGA should treat litigation risk as secondary, to be addressed through legal channels, not as a constraint on efforts to mitigate impacts.
- Comments were made about risk to communities, and that communities should enjoy the same protection from risk as do IFC clients. It was recommended that the community should be involved in remedy planning in all cases. Communities should be given a seat at the table in the contracting phase and should be recognised as having third party beneficiary rights. The Approach should address in detail when and how communities are to be involved in discussion and planning.
- Participants commented that the document does not determine the circumstances under which **Development Finance Institutions (DFIs)** need to step in and do more to provide certainty. They recommend reference to the **United Nations Business and Human Rights** approach around involvement and impact criteria.
- Participants commented that **Financial Intermediaries (FIs)** should be integrated into the Approach to Remedial Action as well as the Responsible Exit Principles. IFC should clarify how FIs will be expected to apply the Approach to their (sub)projects. In addition, it was argued that where FIs outsource projects to commercial banks or private equity funds they should have their own remedy frameworks in place and provide funds for remedy.

### 3. Preparation for Remedial Action

- Participants remarked that there is no reference in the proposed Approach to IFC/MIGA establishing a fund or funding mechanisms for remedy, such as a contingent liability fund, despite the External Review recommending the creation of a fund to which IFC/MIGA would contribute. Several participants recommended the establishment of a fund for remedial action.
- Participants commented that the IFC/MIGA should be the guarantor of Performance Standard compliance and thus provide remedy whenever the client is unable to do so. The IFC/MIGA should assume increased responsibility for a portion of **Environmental and Social (E&S)** harm risk and establish a fund or funding mechanism to support remedy in these circumstances.
- It was also submitted that such a funding mechanism/fund should be set up for exit and remedy from the start or outset of a project.
- It was commented by several participants that responsibility for risk mitigation starts at contracting and project approval phases, and that risk assessment and allocation of resources for remedy should be put in place at contracting and that remedial measures

should be included in contracts, based on existing IFC authorities. Risks of harm should be assessed and costed upfront, and resources put in place for remedy when things go wrong.

- Specifically, it was suggested that IFC/MIGA should look into mechanisms that could be used to address remedy in situations where clients pre-pay, such as taking a percentage of pre-payment for remedial measures.
- There was a recommendation made that the CAO could/should play a role in preparation for remedial action, for example: in drafting a second Approach.
- It was put forward that communities should have a stronger voice in discussions around their interests being addressed in implementation of remedial action, and therefore in its planning.
- A question was asked about why the IFC/MIGA takes a different approach to credit risks than to E&S risks.
- A participant commented that emergency response planning could be considered as a way to embed remedial action in projects.

#### **4. Access to Remedial Action**

- A number of comments were made about the inclusion of communities in project planning and establishment, and in access to remedial action. It was said that communities should be afforded the same protection from risk as do IFC/MIGA clients.
- The Approach says that it will facilitate access to and the extension of responsibility for remedial action to **Financial Intermediaries (FIs)** without stating any requirements or providing further detail. Participants commented that FIs should be taken into consideration and included in the Approach.

#### **5. Facilitation and Support for Remedial Action**

- The view was expressed that IFC/MIGA is best placed to take remedial action, and that these institutions already have all the legal powers they need to enforce remedy but do not use them.
- It was also raised that IFC/MIGA not let risks of litigation stand in the way of its responsibilities for remedial action, as this in itself risks IFC/MIGA liability.
- Not addressing legacy harms is considered not only unacceptable but a reputational risk for IFC/MIGA.
- It was also said that remedies other than purely financial remedies should be considered.

#### **6. General remarks on the proposed Approach**

- Following the External Review, there were expectations that IFC/MIGA would respond when non-compliance with Performance Standards were found. It was acknowledged that there have been changes in recent years with more E&S experts at IFC and MIGA. Nevertheless, the view persists among several participants that IFC/MIGA still fails to comply with its own policies and carry out due diligence. In particular, remedy for communities remains weak.

- Participants commented that if/where the IFC refers to legal theories, and risk of liability as a reason for not establishing a fund for provision of remedy, this needs to be explained and the legal theories declared.
- It was suggested that IFC/MIGA should support many of their statements in documents by sharing their benchmarking.

## **B DRAFT IFC RESPONSIBLE EXIT PRINCIPLES**

- A participant stressed that responsible exit is strongly linked to remedial actions, and that the two should be viewed together. It was recommended that two more principles be included: that responsible exit is related to remedy, and that exit cannot occur if remedy has not been provided.
- Participants commented that the IFC's decision to exit, and reasons for exiting, a project should be more transparent. Using project exit to release or avoid responsibility for remedy is not acceptable.
- A rule that will link specifically exit and remedy was recommended: if the IFC receives revenue at/from exit, this revenue should be held as a fund to compensate the community or pay for remedial actions.
- It was submitted that the IFC loses influence after exiting a project, and therefore exit should only happen if the Performance Standards have been complied with.
- Participants expressed the view that the IFC should commit to not exiting a project where there is an active CAO case unless they have the consent of the complainants in the community.
- Participants commented that planning for responsible exit must start at the beginning of a project, at the time of contracting. Communities should participate in exit planning, including detailed discussions, such that the process is transparent.
- Participants stated that zero tolerance policies should apply to reprisals against communities post exit.
- Comment was made that the Responsible Exit Principles should apply equally to FIs and the IFC. FIs should be integrated into both the Approach to Remedial Action and Responsible Exit Principles.

## **C CONSULTATION PROCESS on both the proposed Approach and draft Principles:**

- There was an acknowledgement that IFC/MIGA did a lot of work to produce the documents, and that their consulting at this early stage is a positive development.
- It was recommended that the structure of the consultation should have been made known to participants beforehand to help them prepare; and that the registration page and documents should be available in languages other than English.
- Some participants commented that there should be more opportunity for discussion between IFC/MIGA and interested parties.
- There was a request made that the IFC/MIGA respond to submissions before sending the final draft to CODE.
- Several participants further requested that, post CODE's initial review, second drafts of both the Approach to Remedial Action and the Responsible Exit Principles be made available and consulted on, and that the Board should not finalise any document without having received further review and comment.

- It was also requested that a more detailed (draft) document specifically on draft IFC Responsible Exit Principles should be published for consultation with all interested parties.
- It was also recommended that there should be direct interaction between participants and the IFC/MIGA experts during the consultation sessions, and not only one-way inputs and comments.