

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.

Table of contents

1. Overview of the three roles of the CAO	
1.1 Introduction	2
1.2 Outline of the three roles	2
1.3 Independence and impartiality	4
1.4 Communication	5
1.5 Information disclosure and confidentiality	6
1.6 Reporting to the President and annual reporting	6
1.7 Relationship with IFC and MIGA boards	7

The Ombudsman role

2. Overview of the Ombudsman role	
2.1 Introduction	9
2.2 Grounds for a complaint	9
2.3 Who can make a complaint?	10
2.4 Lodging a complaint	10
2.5 What to include in a complaint	10
2.6 Confidentiality	12
2.7 Timelines for complaint handling	12
3. Receiving and assessing complaints	
3.1 Acknowledgment of receipt	13
3.2 Appraisal and acceptance (or otherwise)	13
3.3 Assessment	14
4. Responding to complaints	
4.1 Action in response to a complaint	16
4.2 Conclusion and closure	18
4.3 Monitoring and follow-up	18
4.4 Confidentiality and disclosure	19

The Compliance role

5. Overview of the Compliance role	
5.1 Introduction and purpose of compliance auditing	21
5.2 Principles that underpin compliance auditing	21
5.3 Definitions and outline approach	22
6. Initiating and scoping compliance audits	
6.1 Triggering a call for a compliance audit	24
6.2 Appraising audit requests	24
6.3 Types of compliance audits	25
6.4 Determining the objectives and scope of the compliance audit	25
6.5 Developing TOR for compliance audits	26
6.6 Staffing compliance audits	27

7. Approach to compliance auditing	
7.1 Meeting the project team	28
7.2 Initial document review	28
7.3 Preparation of audit protocols	29
7.4 Conducting on-site audits	29
7.5 Confidentiality of the audit process	30

8. Reporting, confidentiality, and disclosure	
8.1 Report preparation	31
8.2 Confidentiality and disclosure	32
8.3 Monitoring and follow-up	33
8.4 Use of information obtained through an Ombudsman process	33

The Advisory role

9. Overview of Advisory role	
9.1 The origin of the Advisory role	35
9.2 Principles that underpin the Advisory role	35
9.3 Project specific advice	36

10. Initiating and scoping advice	
10.1 Determining the objectives and scope of advice	37
10.2 Initiating the Advisory role	37
10.3 Appraising requests for advice	38

11. Approach to Advisory role	
11.1 Staffing advisory activities	39
11.2 The limits to transparency and the Advisory role	39

12. Reporting, confidentiality, and disclosure	
12.1 Report preparation and target audiences	40
12.2 Confidentiality and disclosure	40
12.3 Monitoring and follow-up	40

Annex 1	
Model letter of complaint to CAO	41

Glossary	42
-----------------	----



Operational Guidelines



1. Overview of the three roles of the CAO

1.1 Introduction

The IFC/MIGA Compliance Advisor/Ombudsman (CAO) is an independent post, which 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 and lateral ways and retain its discretion.

1.2 Outline of the three roles

The CAO has three distinct roles:

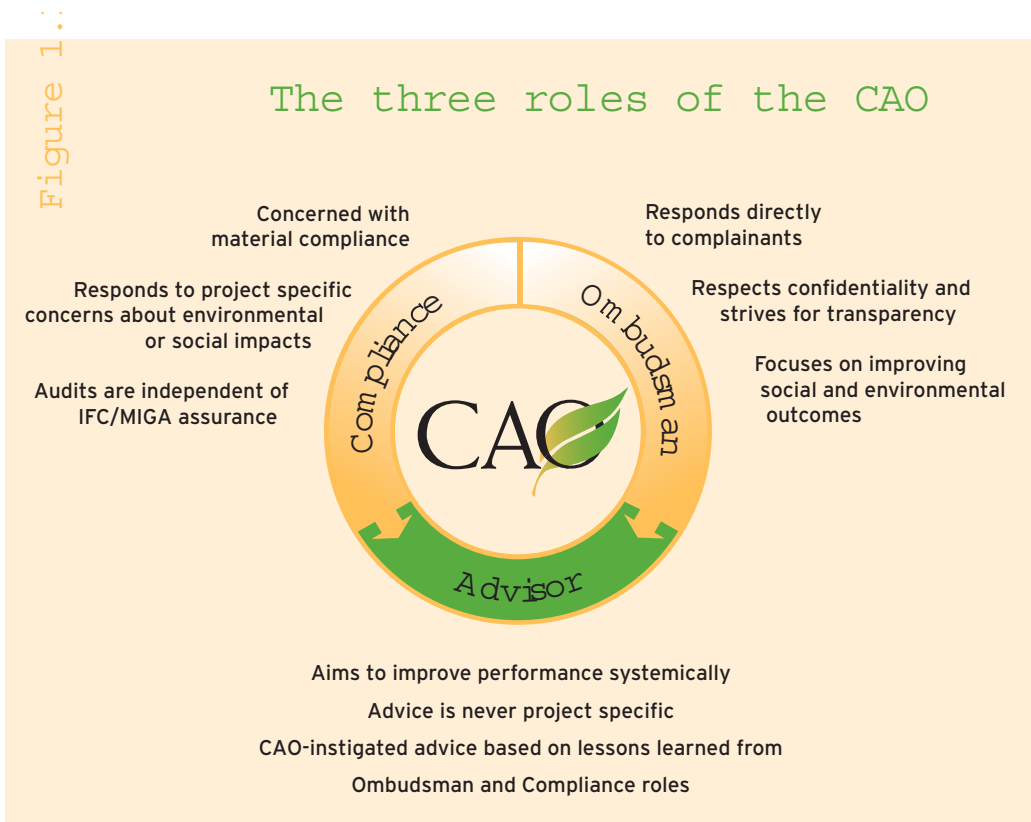
- **The Ombudsman role:** Responding to complaints by persons who are affected by projects and attempting to resolve fairly the issues raised, using a flexible problem-solving approach.
- **The Compliance role:** Overseeing audits of IFC's and MIGA's social and environmental performance, particularly 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 role** responds directly to the concerns of persons affected by IFC or MIGA projects and 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 respects 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 role** may either respond to issues raised in a complaint to the Ombudsman, if the CAO deems that an audit is appropriate or be initiated by the President, Senior Management of IFC or MIGA, or directly by the CAO. The emphasis is on enhancing material compliance. Audits are initiated only in response to concerns regarding the environmental or social impacts of specific projects, as opposed to random auditing. The CAO audits are independent of, but complementary to, IFC's and MIGA's internal assurance efforts.

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 1.1.



1.3 Independence and impartiality

The independence and impartiality of the CAO are of primary importance. The CAO must not be 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,¹ 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 and is not part of the line management structure of either IFC or MIGA.
- Staff of the Office of the CAO are recruited by the CAO.
- Staff are independent of the management structure of IFC and MIGA.
- The Office of the CAO is physically located in a secure area (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.

Parameters of the CAO's Roles

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 adopt recommendations.

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

¹ These Operational Guidelines use the term 'sponsor' to refer 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.

1.4 Communication

The success of the CAO will significantly depend on the effectiveness of the CAO's communication with complainants, local communities, sponsors, IFC and MIGA staff members, and other stakeholders.

Although the CAO is open and responsive to the views of all those with an interest in a project, the views of local communities, minorities and vulnerable groups must be heard clearly. Generally, these are people with the most to gain or lose from a project and are often the least well equipped to convey their interests and concerns. The CAO will also need to establish direct relationships with sponsors. Both sets of relationships will be critical to the success of CAO's problem-solving approach.

The CAO will seek 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 within countries 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.

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 will, where practicable, be 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

The issues of information disclosure and confidentiality are sensitive ones for the CAO. Although confidentiality is important in some aspects in the Ombudsman's role, the disclosure of information is an important way to reinforce 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 will make an effort to ensure maximum disclosure of reports, findings, and results of the CAO process. 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.

In many cases, there is no reason why disclosure of the CAO's reports should not be full and complete (subject to any limitations imposed at the request of an affected party). The CAO will develop protocols for information disclosure with IFC and MIGA management that satisfy the approach to information disclosure presented earlier in this document.

The CAO will maintain confidentiality in relation to information received in the course of receiving or responding to a complaint when requested.



1.6 Reporting to the President and annual reporting

In addition to the reporting requirements relating to the three roles of the CAO, the CAO will also report to the President periodically as required by the CAO's terms of reference of 1999. An annual report will be 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 will be to provide an overview of the activities of the Office of the CAO and monitor the implementation of recommendations.

1.7 Relationship with IFC and MIGA boards

Although the CAO reports to the President, the CAO will also communicate with the boards of IFC and MIGA on a regular basis and as requested. The CAO's annual report will be provided to the boards of IFC and MIGA and periodic technical briefings will be conducted to supplement this information. After the CAO has completed the complaint handling process and reported the outcome to the President, the CAO will provide a briefing to the board upon request. The CAO will inform the board of IFC or MIGA of the findings of a compliance audit after the findings are discussed with the President and provide briefings on request.

Ombudsman Role



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 is not possible to solve all problems, but the CAO's approach provides a process through which parties are more likely to find mutually satisfactory solutions. 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 actions, and address systemic issues that have contributed to the problems, rather than to find fault.

In the exercise of the Ombudsman role, the CAO may receive and deal with complaints from persons who are affected (or are likely to be affected) by the social and environmental impacts of projects. The following steps will normally 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, investigation
- **Step 5:** Conclusion and closure
- **Step 6:** Monitoring and follow-up

The flow chart in Figure 2.1 outlines the process the CAO will adopt in addressing complaints.

2.2 Grounds for complaint

Complaints may relate to any aspect of the planning, implementation or impact of projects including:

- Processes followed in preparation of a project.
- The adequacy of measures for the mitigation of social and environmental impacts of the project.
- Arrangements for involvement of affected communities, minorities, and vulnerable groups in the project.
- The manner in which the project is implemented.

The grounds on which a complaint may be made have been widely defined to encourage those with concerns about a project to seek redress. Complaints may also deal with issues of policy. 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 the CAO believes that problem-solving approaches or investigation are not appropriate or that it would be an inefficient use of resources, the CAO may discontinue investigation and conclude the complaint process. The complainant will be advised of the reasons for the CAO's decision to conclude the complaint process.

2.3 Who can make a complaint?

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

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

2.4 Lodging a complaint

Complaints should be submitted in writing and may be presented in any language. The CAO will attempt to respond in the language of the complaint where possible. The language policy of the CAO 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.

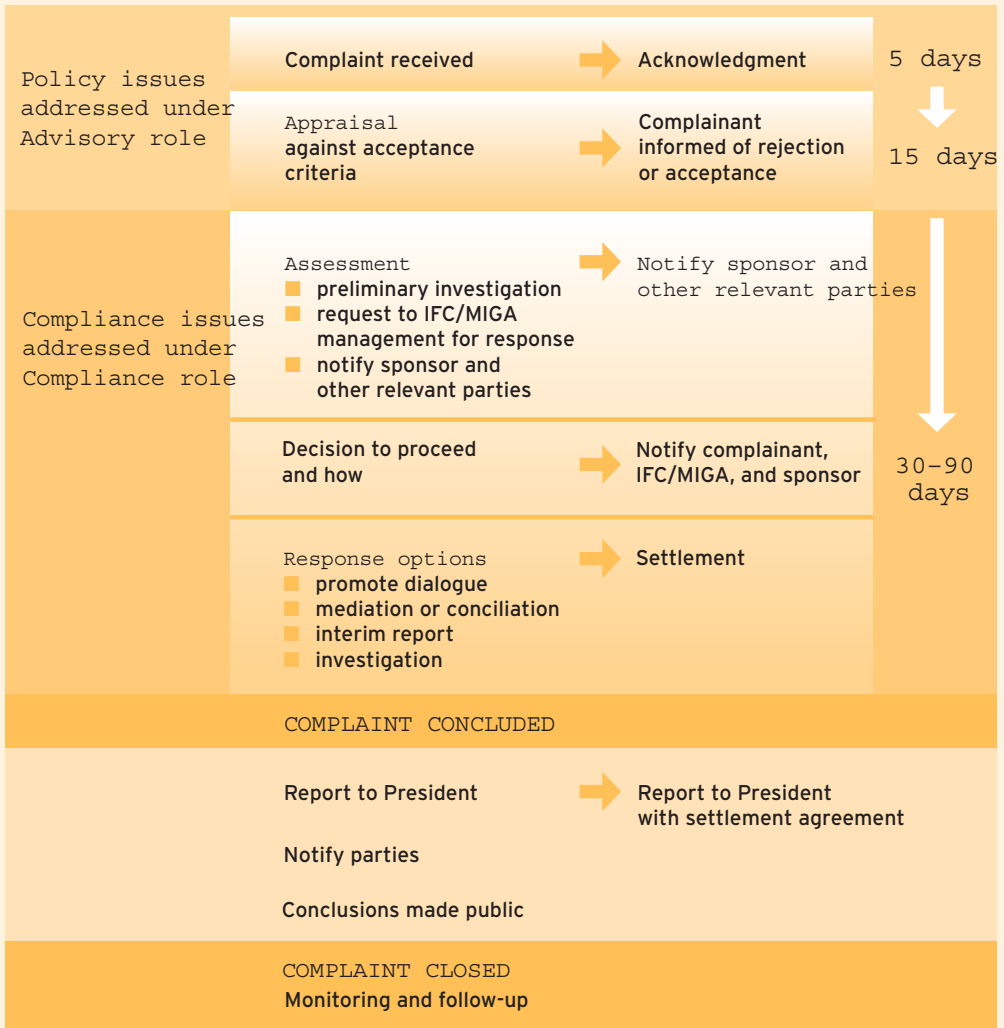
2.5 What to include in a complaint

There is no strict requirement to comply with a specific format, but written complaints should preferably 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 her or his (or its) identity or any information communicated as part of the complaint be kept confidential (giving reasons).

Figure 2.1

Flow chart of complaint handling



- The identity and nature of the project, including the name of the sponsor, whether the project is an IFC or a MIGA project, and the identity of any personnel involved.
- A clear statement of the way in which the complainant has 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.
- If the problem has been partly resolved, what aspects remain to be settled.

- 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.)

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 before formally accepting or rejecting the complaint. 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 complaints at an early stage. Any information that complainants do not wish to be disclosed should be identified to the CAO from the start.

2.7 Timelines for complaint handling

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 standards outlined in the Figure 2.1 will be adhered to. If the nature of the complaint or special circumstances attending it makes this impractical, the timeline for handling the complaint will be discussed and agreed upon between the CAO and the complainant.

3. Receiving and assessing complaints

3.1 Acknowledgement of receipt

An early acknowledgement of receipt of all complaints will be sent to the complainant, normally within five working days of receipt by the CAO.

3.2 Appraisal and acceptance (or otherwise)

It is the CAO's decision whether a complaint is within its mandate and, if so, whether it should be accepted. The CAO will appraise the complaint to determine whether it should be accepted. This decision will normally be made within 15 working days of receipt of the complaint. The CAO may contact the complainant during appraisal to clarify issues in the complaint.



In making a decision to accept or reject a complaint the CAO will be guided by the following criteria:

- Complaints must demonstrate that the complainant (or those whom the complainant has authority to represent) has been affected or is likely to be affected by actual or potential social and/or environmental impacts on the ground.
- The complaint must relate to an aspect of the planning, implementation, or impact of an IFC or MIGA project.
- There must be sufficient and specific grounds for the complaint.
- Complaints must be genuine. Complaints that are malicious or trivial or that have been generated to gain competitive advantage will not be accepted.

Notification of acceptance

Complaints that are accepted will be registered on a database and given an identifying number. They will be listed on the CAO website. Complainants will be notified immediately in writing once a complaint has been accepted for assessment, and the CAO will discuss and agree with them the anticipated timing for conclusion of the assessment.

Rejection

If a decision is taken to reject the complaint, the CAO will close the file on the complaint and inform the complainant in writing of this decision, outlining the reasons. The CAO

annual report and website will contain basic information on the number and nature of complaints received and rejected.

3.3 Assessment

Once a complaint is accepted, the CAO will undertake a preliminary investigation in order to assess the complaint and determine how it should be handled. The assessment should conclude with a decision whether or not to proceed and a clear outline of the course of action proposed. An assessment will normally be completed between 30 and 90 working days of the decision to accept the complaint.

When a complaint is accepted for assessment, the CAO will immediately refer it to the relevant IFC or MIGA management with a request for information, comment, and proposed

action. Management should respond within 20 working days of the CAO's request. This normally takes the form of a meeting followed by a request in writing.

At the same time that management is requested to provide information and a response, the sponsor and any other relevant parties will be notified that a complaint has been lodged. The nature of the notification will vary depending on whether there has been a request for confidentiality by the complainant.

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 is located, and representatives of local and international nongovernmental organizations.
- Visiting project sites.
- Holding public meetings in the project area.

Decision to proceed and courses of action

A critical decision to be taken in assessing a complaint is whether it should be further dealt with under the Ombudsman role. Although a complaint may be accepted, the CAO has the discretion after assessment to determine that no further action would be beneficial. In these circumstances, the CAO would conclude the complaint process and inform the complainant and other relevant parties. In some circumstances, the issues raised in the complaint may form the basis for a compliance audit or may be the subject of advice to the IFC



or MIGA management, in which case the complainant will be informed of how any remaining issues will be addressed.

If, as a result of the assessment, a decision is made to proceed further, the CAO will determine which of the options for action should be followed. The initial and primary emphasis is on classic problem-solving approaches such as facilitation, mediation, and negotiation. There will also be occasions when the CAO determines that a complaint is most appropriately addressed through the conduct of an investigation of the facts that gave rise to the complaint. An investigation would normally conclude with a finding. An assessment may conclude that a compliance audit is appropriate in order to bring clarity to some unresolved issues that have been raised in a complaint.

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 CAO's intervention could have positive results.

Notification of assessment

The CAO'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 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. Responding to complaints

4.1 Action in response to a complaint

The course of action adopted by the CAO in responding to a complaint will depend on its nature, complexity and urgency. Where a problem-solving approach is used, the following broad avenues of approach might be adopted:

- Promoting dialogue among the complainant, sponsor, IFC and/or MIGA in an effort to stimulate a self-generated solution among the parties.
- Conciliation or mediation facilitated either by the Office of the CAO or a third party at the request of and under the direction of the Office of the CAO.
- Investigation by the Office of the CAO.
- Interim recommendations for action to address serious or time-bound issues.



Promoting dialogue and self-generated solution

During the early stages of complaint handling, the major focus of the CAO's attention will be on determining whether a mutually acceptable solution is possible, rather than on identifying fault or apportioning responsibility. Self-generated solutions are the most likely to be sustainable. The CAO will encourage parties to seek such solutions before considering other more formal approaches to complaint resolution. In some cases, self-generated solutions may flow from management initiatives proposed during the assessment of the complaint.

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 CAO and third-party mediation by specialists in this work. Conciliation and mediation will only be pursued if it is acceptable to all parties.

In arriving at a negotiated settlement, it will sometimes be important for the CAO to ensure that local interests other than the complainant and sponsor are part of the solution, if it is likely that the solution will affect such interests.

Settlement agreement

The major objective of problem-solving approaches will be to reach a settlement on a basis that is acceptable to the parties most likely to be affected. Settlements should usually be in a written form. The President will be informed of the outcome in a report.

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 usually be specific regarding the objective, nature, and requirements. Incentives or disincentives, time-bound or otherwise, may form a part of any settlement agreement.

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 mediation process be kept confidential. It is recognized that some parties may be prepared to enter into a settlement agreement only on the basis that specific elements of the agreements not be disclosed. The disclosure of settlement agreements is covered in section 4.4.

Further investigation

When problem-solving approaches described above reach an impasse or are dependent on additional information, the CAO may undertake further investigation. The purpose of an investigation is to provide the CAO with adequate information either as a basis for promoting dialogue or arranging for conciliation or mediation or for making recommendations to the President. The CAO will determine in each case the extent of the investigation that should be carried out.

Investigations will be carried out in a flexible manner, and may include the following activities:

- Researching IFC or MIGA files (to supplement information obtained during the assessment of the complaint).
- Further meetings with the complainant, other affected people and communities, IFC or MIGA staff, sponsors, government officials of the country where the project is located, and representatives of local and international nongovernmental organizations.
- Additional visits to project sites.
- Holding public meetings in the project area.
- Requesting written or oral submissions on specific issues from any source.
- Hiring experts to research specific issues relating to the complaint.

4.2 Conclusion and closure

The CAO may conclude and close a complaint at any time if a satisfactory settlement has been reached or the CAO considers that further investigation or problem-solving approaches are not likely to be useful or productive. When the complaint process is concluded, the complainant will be advised of the CAO's decision and the reasons for it, and the CAO will report to the President.

Reporting

Reports will take a different form depending on the manner in which the complaint was resolved. If a complaint is resolved by the parties, the report to the President will describe the process followed; and a copy of the agreement, if it is in writing, will be attached. The complainant, IFC or MIGA management and the sponsor will be provided with the CAO's report.

If problem-solving approaches or investigation of the complaint have not resulted in a settlement by the parties, the CAO has two courses of action available:

- Report to the President that attempts to resolve the problem have not been successful and that no action by IFC or MIGA (or other parties) to address the problem was possible
- Report to the President and make recommendations about future action on the part of IFC or MIGA (or other parties), which might address the issues raised by the complaint

Reports of the CAO following an investigation will be communicated to the President, the complainant, and IFC or MIGA management and disclosed to the public. The application of IFC and MIGA disclosure policies is discussed in section 1.

Where non-compliance issues have emerged in the course of the Ombudsman investigation, the CAO may decide to undertake a compliance audit. The conduct of compliance audits is covered in section 5-8. Policy issues may similarly be dealt with in the exercise of the CAO's Advisory role (sections 9-12).

4.3 Monitoring and follow-up

The CAO 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 indicators for achievement within the body of the agreement.

The recommendations included in reports to the President will also usually contain a program and timelines for implementation. Monitoring of any changes made in response to the recommendations should be integrated into IFC's or MIGA's normal project management and monitoring. The CAO will monitor whether the recommendations have been implemented, to the extent that this is practicable. 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.

4.4 Confidentiality and disclosure

Information received during mediation and negotiations

The role of an Ombudsman as it has developed around the world requires that priority be given to confidentiality of the process, but not of the product. The principle of confidentiality has a practical justification: there is more likely to be an open and flexible attitude toward problem solving if negotiation processes are conducted with a reasonable level of confidentiality. Open and honest dialogue between the parties is more likely if those with different interests can speak more freely.

Communication with the CAO in the course of negotiation and mediation processes will be regarded as privileged. Similar constraints apply to the communication of confidential business information in the conduct of investigations, conciliation, and mediation.

Disclosure of reports

There is a presumption in favor of disclosure of the CAO's reports to the President. Disclosure contributes significantly to the transparency of the Ombudsman role and acts as a powerful incentive to comply with the agreements reached.

If the CAO determines that an agreement, or elements of it, must be kept confidential in order for a satisfactory settlement to be reached, the CAO will negotiate release of the agreement in a form that is acceptable to the parties. In some cases, the CAO's report may contain a description of the problem raised, the process used, and the outcome achieved without identifying the parties, the project, or its location.

Compliance Role



5. Overview of the Compliance role

5.1 Introduction and purpose of compliance auditing

The CAO's Terms of Reference define the Compliance role as:

Overseeing audits of IFC's and MIGA's social and environmental performance, both overall and in relation to sensitive projects, to ensure compliance with policies, guidelines, procedures, and systems.

At its most basic, the Compliance role is concerned with independently assessing the application of relevant Safeguard Policies and related guidelines and procedures to determine whether IFC and MIGA are in compliance. But if the audit identifies social and environmental conditions that are contrary to the intent behind the Safeguard policies, the audit is also fundamentally concerned with enhancing social and environmental outcomes. Although this approach may depart from the traditional more narrow definition of compliance auditing, it is consistent with the CAO's mandate.

The primary focus of compliance auditing will be on IFC and MIGA, but the role of the sponsor may also be considered, as will the influence of other parties or factors on ensuring or hindering compliance.

5.2 Principles that underpin compliance auditing

There are a number of principles that underpin the Compliance role:

- The objective is to foster adherence to (and promote more positive interpretation of) policies, guidelines, and procedures, and to promote wider understanding of how compliance may enhance social and environmental outcomes.
- For a compliance audit to be initiated there must be concerns about the application of policies and guidelines to a specific project, its impacts, or unanticipated adverse social or environmental outcomes.
- A major thrust in the work of IFC and MIGA's environmental and social specialists is to ensure sponsor compliance with applicable policies 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.
- If auditing identifies noncompliance, the emphasis will be on promoting constructive solutions and avoiding recurrences rather than punitive measures aimed at individual staff.

- Although compliance auditing will address procedural and systemic aspects, it must not lose sight of the intent of either the policy provisions or staff in their interpretation of these provisions.

These principles are designed to ensure that the Compliance role remains focused on enhancing social and environmental outcomes, while ensuring that the Safeguard Policies, related guidelines, and procedures are interpreted correctly.

5.3 Definitions and outline approach

The working definition of compliance auditing² adopted by the CAO is as follows:

A compliance audit is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the audit criteria.

The **audit criteria** applicable to IFC would include the environmental and social Safeguard Policies, 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 obligations regarding international law), and 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 Safeguard Policies and guidelines are identified in the agency's procedures.

The **audit evidence** is the verifiable information, records, or statements of fact that are used to determine whether the audit criteria have been met. This will typically be based on a review of documents, interviews, observation of activities and conditions, or other appropriate means. The verification of evidence is an important part of the audit process.

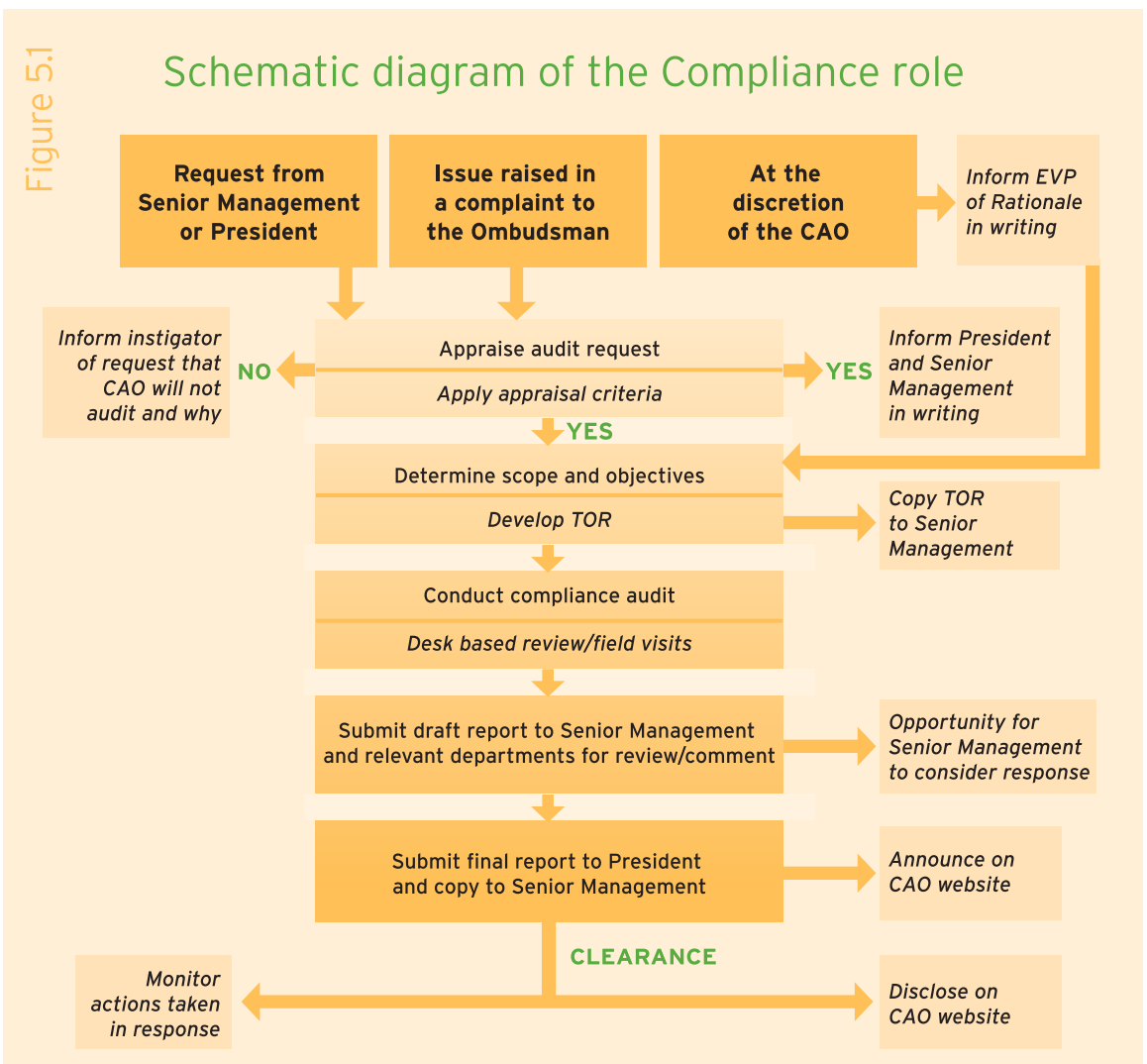
An outline of the approach to compliance auditing is illustrated in Figure 5.1. This envisages:

- Assessing a number of possible triggers that might initiate a compliance audit.
- Applying a series of tests to determine whether an audit is justified or appropriate as the basis of a decision to proceed.
- Scoping the audit and selecting the audit team.
- Conducting the audit.
- Reporting and disclosure.

Additional guidance on each of these steps is given in subsequent sections, which explain how compliance audits will be conducted. The following important concepts are integral to this approach:

- **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.

These concepts have been integrated into the approach outlined in Figure 5.1 and described in more detail in sections 6-8.



6. Initiating and scoping compliance audits

6.1 Triggering a call for 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.
- **An issue raised in a complaint to the Ombudsman:** If compliance issues are raised or uncovered during the course of an Ombudsman assessment of a complaint, this may prompt the CAO to initiate a compliance audit.
- **At the discretion of the CAO:** During the normal course of the CAO's activities, concerns may arise regarding a specific project that justify the conduct of a compliance audit.

Requests for a compliance audit should be notified to the CAO in writing by the President or Senior Management. Each request for a compliance audit will be subject to an appraisal process to determine whether it should be acted upon. A decision will normally be made within 10 working days of receipt of the request.

6.2 Appraising audit requests

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

Although it is inadvisable to prescriptively limit the conditions under which a compliance audit should take place, some basic criteria or conditions should apply to audit appraisal. 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 Safeguard Policy provisions (or other audit criteria) may not have been adhered to?
- Is there evidence (or perceived risk) of adverse social and environmental outcomes that indicates that Safeguard Policy provisions, etc., whether or not complied with, have failed to provide an adequate level of protection?
- Is there evidence (or perceived risk) of adverse social and environmental outcomes where Safeguard Policy provisions (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 Safeguard Policy, 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 Safeguard Policies (or other audit criteria) to future projects?

In appraising requests, discussions will take place with the project team and other relevant parties to help better understand the validity of the concerns and to explore whether an audit is the appropriate response. Once a decision is reached, the President and Executive Vice President of either IFC or MIGA will be advised in writing. If an audit results from a complaint to the Ombudsman, the complainant will also be advised in writing. If a decision is taken to proceed, all relevant staff—including the Investment Officer or Portfolio Officer, Underwriter, Participations Officer (where other financial institutions have participated in an IFC loan), lawyer, technical specialist, environmental and social specialists, and relevant Departmental Directors or Managers associated with the project to be audited—will be notified in writing.

If the CAO exercises discretion to initiate a compliance audit, a memorandum explaining the rationale for the proposal to audit will be submitted to the Executive Vice President of IFC or MIGA. The final decision to audit will be taken in consultation with the Executive Vice President, but at the discretion of the CAO.

6.3 Types of compliance audits

Only project-level compliance audits will be undertaken by the CAO. 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).

6.4 Determining the objectives and scope of the compliance audit

The audit objectives will include:

- Developing a full understanding of the circumstances that gave rise to the audit (both immediate and underlying causes).
- Conducting a systematic, documented verification process to objectively evaluate compliance with specified audit criteria (Safeguard Policies, guidelines, etc.).

- Recommending remedial measures or other actions to enhance social and environmental outcomes and ensuring ongoing compliance with the audit criteria.

The scope will be determined by developing an initial understanding of the causal factors that gave rise to adverse social or environmental impacts. This should always include the immediate as well as the underlying causes. This may mean that the application of a single Safeguard Policy or related guideline to the project becomes the focus of the audit. More typically, a range of policies and guidelines might fall within the scope of an audit.



In most instances, project-specific audits will require a site visit and in-depth review of the appraisal process, related documents, management systems, procedural controls, and any other information that may be material to the audit.³

The scope of a compliance audit will not necessarily differ depending on the audit trigger; i.e. audits initiated in response to an Ombudsman complaint will have the same scope as audits initiated by other means. However, there may be differences in reporting and disclosure requirements (see section 8).

6.5 Developing TOR for compliance audits

For all audits, a Terms of Reference (TOR) will be prepared and submitted to IFC's or MIGA's management for information. A copy of the TOR will also be sent to the heads of all departments of project team members. The TOR will specify:

- The objectives and scope of the audit.
- 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, timescales, and reporting requirements.
- Guidance on the structure and format of reports to be submitted.

³ The definition of what is 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 Safeguard 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 Safeguard Policy provisions.

Departures from the TOR by the audit team (including the tasks, methodology, allocated days, and reporting schedules) will be accepted only in exceptional circumstances and by prior agreement with the Office of the CAO.

6.6 Staffing compliance audits

A compliance audit will always involve staff of the CAO, who will at a minimum be responsible for managing the audit process, but CAO staff will usually actively participate in the audit process. CAO staff will also be responsible for 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**. An audit team will usually comprise between one and three experts.

Competence

Competence would be determined on the basis of experience with audit principles and procedures; the audit criteria (Safeguard Policies, etc.); IFC or MIGA's review, clearance, and approval processes; and the environmental, social, and technical issues relevant to the audit. Additional considerations include report writing skills, professional standing, and respect of peers. Direct experience with IFC or MIGA's review, clearance and approval procedures must be balanced with the need for independence.

Independence and impartiality

Independence is key to the provision of impartial and objective advice and requires that potential or actual conflicts of interest be avoided. If IFC or MIGA staff or interested and affected parties do not believe in the independence of external experts, they will derive little confidence from the resulting audit report. In practice, this would normally mean that external experts should not have provided non-audit services to the project being audited, and any historical or current involvement with the project sponsor must be declared. In addition, they should not have provided non-audit services for IFC or MIGA project team members in the previous 12 months, and they should declare any historical or current involvement with IFC or MIGA.

IFC and MIGA staff will not participate in compliance audits to ensure the independence of the audit process. This is consistent with accepted industry practice that audit team members should not be accountable to those with responsibility for the projects, policies, or procedures being audited. The CAO will make a judgment on independence and competence on a case-by-case basis. Over time, the CAO will maintain a roster of suitable external experts. All external experts involved in compliance auditing will be expected to sign binding confidentiality agreements before commencing their work.

7. Approach to compliance auditing

The approach to compliance auditing illustrated in Figure 5.1 and described below will need to be adapted depending on the specific circumstances of the project being audited.

7.1 Meeting the project team

As early as possible in the audit process, the audit team should convene a meeting with the project team. The purpose of this meeting is to:

- Introduce the audit team members to the project team(s) and establish lines of communication with both the project team members and sponsor(s), as appropriate.
- Review the audit objectives and scope with the project team(s) as specified in the TOR and consistent with the provisions of section 6.4 above.
- Review the applicable audit criteria that should fall within the scope of the audit with the project team(s).
- Ensure that the audit team benefits from the direct experience of the project team and to provide a basis for constructive cooperation.
- Identify sources of audit evidence against which compliance with the audit criteria will be determined. These might typically include key documents produced internally at various stages in the project cycle, reports or other documents submitted by the sponsor prior or subsequent to project approval, or other information from the project files.
- Identify key staff of the project sponsors, affected community representatives, or other relevant stakeholders.

Subsequent to the meeting with the project team, more detailed follow-up conversations may be required with project team members (or consultants who have worked on the project) prior to a site visit.

7.2 Initial document review

The audit team should undertake a detailed review of audit evidence (gathered in the first meeting, subsequent interviews, and relevant documents) prior to any visits to project sites. The objectives and scope of the audit (including related audit criteria) should then be revisited and revised if appropriate. In exceptional circumstances, this review stage may indicate that a visit to the site in question is neither justified nor likely to reveal additional pertinent information.

The initial review should make a distinction between verifiable information and that which cannot readily be verified and identify its potential significance; i.e. might it be material to determining compliance or not? One of the purposes of site visits is to ensure that material information obtained during the course of discussions and review of relevant documents is verified to the extent possible.

7.3 Preparation of audit protocols

Prior to any site visit, an audit protocol should be prepared and agreed with the Senior Specialist Compliance. The protocols should identify the applicable audit criteria and related specific requirements and identify a series of questions designed to elicit audit evidence to establish whether the criteria have been met.

They should also identify where particular efforts may be necessary to verify information gathered during the project team meeting(s) and initial documentary review.

The Investment Officer/Portfolio Officer/Underwriter should be responsible for initial written notification to the sponsor (copied to the CAO) of any proposed site visit. They should make it clear that the visit is part of IFC or MIGA's internal compliance audit function to provide assurances that Safeguard Policies (and related audit criteria) are being complied with. The focus is therefore primarily on IFC or MIGA as opposed to the sponsor, although the audit process will also explicitly consider social and environmental outcomes. The letter should identify the intention of the audit team to interview representatives of affected communities or other relevant stakeholders, as appropriate. The final audit protocol should be shared with the sponsor prior to the site visit.



7.4 Conducting on-site audits

Site visits will normally last no more than one to two working weeks. The site visit should begin with an opening meeting. The purpose of this meeting is to:

- Introduce the audit team members to key members of the sponsor's staff with responsibility for the environmental and social aspects that fall within the scope of the audit and establish lines of communication.
- Advise sponsor's staff of the audit objectives and scope and the applicable audit criteria and provide a basis for constructive cooperation.
- Identify sources of audit evidence against which compliance with the audit criteria will be determined.

Thereafter, the audit team will collect audit evidence through interviews, review of documents, sampling programs and monitoring data, review of records of consultations, and observation of on-site and off-site activities, as appropriate. Wherever possible, all evidence should be verified or identified as non-verifiable. Any other limitations associated with the audit evidence should be considered, and the significance of these limitations recorded.

The audit team should review the audit evidence *while on site* to determine whether there are non-compliances with the audit criteria. Where apparent non-compliances are identified, the immediate and underlying causes should be fully explored with the emphasis on constructive solutions. This will involve consideration of the formal and informal organizational and management policies and practices that may have contributed to the non-compliance, both within the sponsor's organization and the IFC and/or MIGA.

The audit team should also determine causality where no non-compliances are identified, but where adverse social or environmental outcomes are apparent. This is consistent with the mandate of the CAO to enhance social and environmental outcomes. All non-compliances or instances of adverse social or environmental outcomes and related causal factors should be clearly documented.

Where appropriate, the audit team should independently meet with local community representatives or other relevant organizations. Guidance may be sought from the sponsor and from IFC/MIGA staff on potential consultees, but the audit team should independently determine whom to consult. All such meetings should be conducted in the absence of IFC or MIGA or sponsor staff. Wherever practicable, independent arrangements should be made for travel to, from, and around the site.

7.5 Confidentiality of audit process

The auditors will have a contractual obligation not to discuss the audit process or related findings with local or international press or media.

Given that the IFC or MIGA rather than the sponsor is the primary focus of the audit, the audit team's primary responsibility is to report their findings to the CAO. Nonetheless, a closing meeting should be held with the sponsor's nominated point of contact to discuss the initial audit findings. This should be confined to factual matters as opposed to a discussion of conclusions or recommendations and will provide an opportunity to the sponsor to identify factual inaccuracies or areas of disagreement, which should be corrected or resolved wherever practical.

8. Reporting, confidentiality, 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 non-verifiable.
- 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.
- Recommendations for corrective actions.
- Any other relevant findings or conclusions.

Unless otherwise authorized by the CAO, a draft report of a compliance audit will be submitted within 15 working days of a site visit. A draft audit report will be circulated to Senior Management and all relevant departments for factual review and comment within 10 working days of receipt by the CAO, unless quality assurance by the CAO indicates that substantial revisions to the original report are required. Comments should be submitted in writing to the CAO within 10 working days of receipt by the departments. This will also give Senior Management an opportunity to begin to consider its response to the audit findings.

The recommendations on corrective action may deal with practical, policy, or procedural matters. The final report will be sent to the President and copied to Senior Management and all relevant departments, and notification of submission to the President will be posted



on the CAO website. Once the findings of the compliance audit have been discussed with the President, the CAO will inform the Board of either IFC or MIGA of the findings and will disclose them on the CAO website.

If other financial institutions have participated in an IFC loan, the final report will be sent to loan participants. If IFC has acted as environmental and social liaison among multiple co-lenders, 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.

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.

In cases where compliance audits reveal non-compliances that relate to the performance of the sponsor or the insured and the finding is based on information provided by the sponsor to IFC or MIGA, or where a complaint deals with material provided on a confidential basis by the complainant, the release of elements of the reports will be negotiated on a case-by-case basis. If disclosure has the potential to obstruct or hinder the enhancement of outcomes on the ground, the presumption in favor of disclosure will have to be reconciled with the CAO's mandate to enhance social and environmental outcomes.

8.3 Monitoring and follow-up

Audit recommendations accepted by the President should be integrated into the ongoing monitoring of the project by IFC and/or MIGA management. The CAO will monitor the implementation of the recommendations and report to the President on an annual basis.

8.4 Use of information obtained through an Ombudsman process

In some cases a complaint to the CAO may give rise to a compliance audit. During the assessment stage of a complaint, Ombudsman staff may determine that the best course of action is for an audit to be conducted. In other cases, they may determine that an audit may be an important contribution to an ongoing process such as mediation. In such circumstances, 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 problem-solving approaches will not compromise their position if a compliance audit is subsequently undertaken. Confidential information received under the Ombudsman role will be regarded as privileged if and when a compliance audit follows.

Advisory Role



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 safeguard policies, procedures, guidelines, resources, and systems established to ensure adequate review and monitoring of IFC and MIGA projects, as well as project-specific advice to IFC's or MIGA's environmental and social staff. Subsequently, practice has evolved, and the Advisory role has been refined and formalized to limit it more narrowly than was originally envisaged. Perhaps most notably, the CAO determined that it would not give project-specific advice. This evolution in practice is reflected within these Guidelines.

An outline of the approach to the Advisory role is illustrated in Figure 9.1. 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

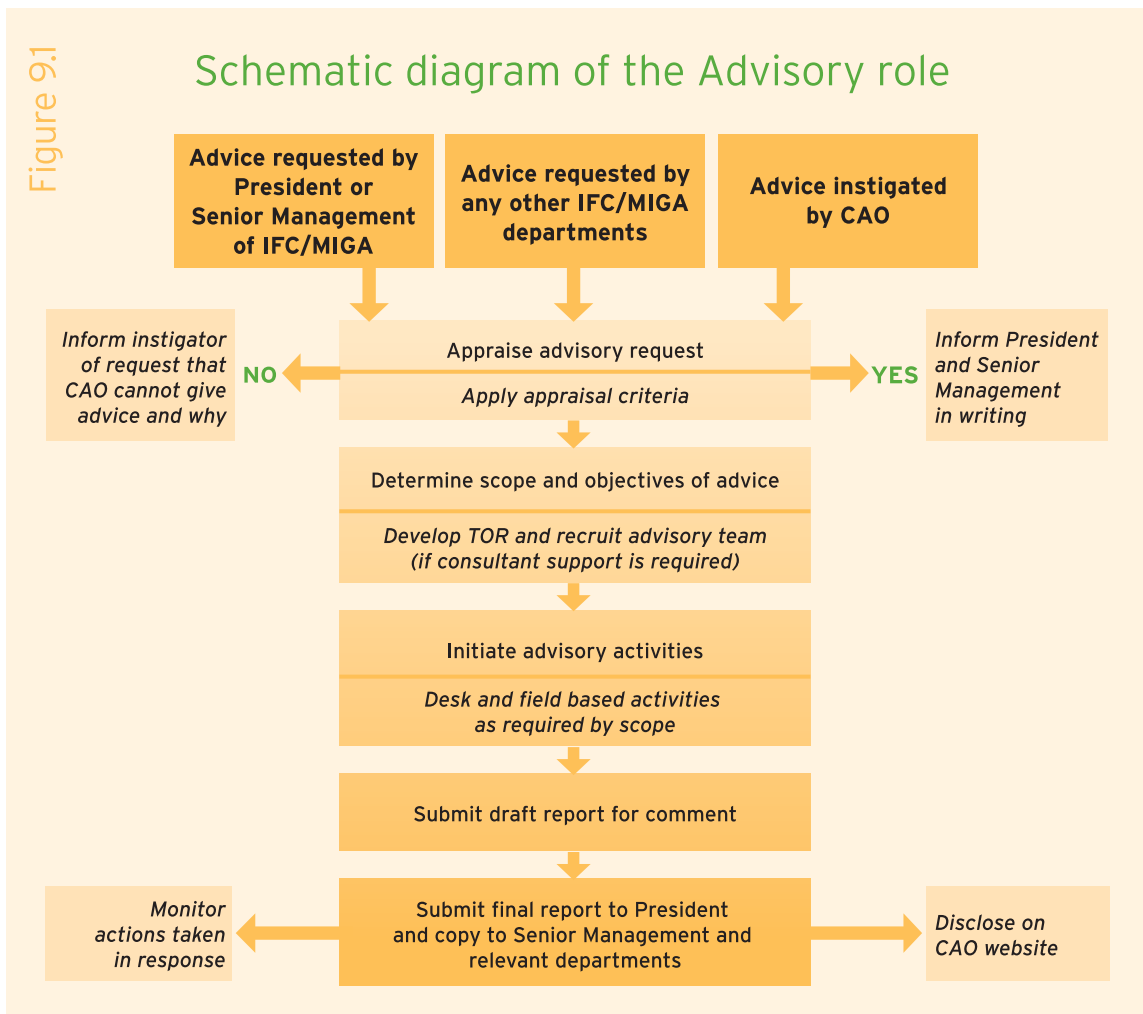
There are a number of basic principles that underpin the Advisory role:

- 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, which includes the overall implications for resources.
- 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.

9.3 Project-specific advice

The CAO will not give project-specific advice. Any prior involvement in a project (irrespective of the nature of the involvement) has the potential to undermine the CAO as a wholly impartial and independent ombudsman or compliance auditor. Therefore, the CAO will refrain from attending project briefings or other project-related meetings. Requests for project-specific advice will also be routinely declined, as will informal conversations about specific projects. Furthermore, the CAO will also not undertake visits to any projects unless these are directly related to an ombudsman, compliance, or advisory activity. The only exception will be visits undertaken as part of the induction or development of CAO staff. This will not preclude the CAO from giving more generic advice on issues that are of direct relevance to current and future projects, provided that requests are framed as wider policy or process-related questions, etc.



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?
- 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 field-based 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, 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: 1 202 522 7400
Email: 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, 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.

NGO

Nongovernmental organization.



2121 Pennsylvania Avenue, NW
Washington, DC 20433
Telephone: 202 458 1973
Facsimile: 202 522 7400
Email: cao-compliance@ifc.org
www.cao-ombudsman.org



MULTILATERAL INVESTMENT
GUARANTEE AGENCY
WORLD BANK GROUP