

# **OPERATIONAL GUIDELINES FOR THE OFFICE OF THE IFC/MIGA**

## **COMPLIANCE ADVISOR/OMBUDSMAN**

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# OPERATIONAL GUIDELINES FOR THE OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN

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## Introduction

I am pleased to be able to introduce the Operational Guidelines for the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA) Compliance Advisor/Ombudsman (CAO).

The Office of the CAO is an independent office reporting directly to the President of the World Bank Group. The post of Compliance Advisor/Ombudsman was established in 1999. The mandate is to assist the IFC and MIGA to address complaints of 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 institutions play a role.

The CAO has three roles:

- responding to complaints by persons who are affected by projects and attempting to resolve the issues raised, using a flexible, problems solving approach
- providing independent advice to the President and senior management of the IFC/MIGA
- overseeing audits of IFC's and MIGA's social and environmental performance, both on systemic issues and in relation to sensitive projects.

These Operational Guidelines set out how the CAO will carry out the different roles. They are a product of an intensive and wide-ranging multi-stakeholder consultation process conducted across the world. The process brought together input of IFC and MIGA management, sponsors and private sector groups; international, regional and national non-government organizations; and representatives of those affected by IFC/MIGA projects in the past.

These Guidelines have a strong focus on the CAO's 'Ombudsman role'. In this capacity, the CAO will be responding to complaints by those who are affected, or likely to be affected, by the social or environmental impacts of projects. Complaints will be appraised to determine if they meet certain criteria intended to ensure that complaints are from affected people and are genuine. Once a complaint has been accepted, it will be assessed to determine how the CAO should respond to the complaint. In some cases, this will mean an emphasis on problem solving. In other cases, fact-finding will be most important.

The CAO's independence and the breadth of mandate from IFC and MIGA mean that the CAO should prove to be a powerful force in bringing together local people, project sponsors and the IFC and MIGA to improve development outcomes. However, it will not be possible for the CAO to resolve all problems that occur on all projects. The capacity of the CAO to make outside bodies change their behavior depends the leverage of the IFC and MIGA in urging parties to adopt its recommendations. This leverage will vary from project to project. The size and nature of the IFC or MIGA involvement and the extent to which that involvement is still active determines the leverage they can exercise. Where

IFC is a minority shareholder and/or where monies are almost all drawn down, for example, the leverage will be less.

I hope that the Operational Guidelines will help all those with an interest in the CAO's work to understand the processes that the CAO will apply to the three roles. The Guidelines are once basic component of a range of publications and other information tools that will help people to access and use the office of the CAO easily and effectively. Information on the office, on how to access our functions, on our work and on the reports and conclusions we draw will be posted on our web site and available in print form, both in English and other languages.

It is clear that good environment and social practice is the key to good business and that corporate social responsibility is essential for more sustainable and equitable development. I hope that the work of the CAO will play an important role in promoting this message. Equally, good environmental and social practice depends on open dialogue. I welcome any questions, comments or ideas on how we can improve our process or communication.

Meg Taylor  
Compliance Advisor/Ombudsman  
April 2000

# **Section 1      Overview of the roles of the Compliance Advisor/Ombudsman**

## **Background**

1.1.1 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) to address 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.

1.1.2 The CAO has three distinct roles:

- (1) Responding to Complaints by persons who are affected by projects and attempting to resolve the issues raised using a flexible, problem solving approach (the Ombudsman role).
- (2) Providing a source of independent advice to the President and the management of IFC and MIGA. The CAO will provide advice both in relation to particular projects and in relation to broader environmental and social policies, guidelines, procedures, resources and systems (the Advisory role).
- (3) 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 (the Compliance role).

1.1.3 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 that people who are affected by a project can lodge Complaints. The terms of reference are available on the Internet ([www.ifc.org/cao](http://www.ifc.org/cao)) and copies may be obtained from the Office of the CAO.

## **Approach**

1.2.1 The Operational Guidelines set out how the CAO will carry out her or his different roles.

1.2.2 Section 2 of the Guidelines outlines how the Ombudsman role will be carried out. Section 3 sets out how Complaints can be lodged, section 4 explains the procedures for acceptance and assessment of a Complaint, and section 5 describes investigation of and responses to a Complaint. Section 6 sets out how the CAO will carry out the Compliance role, section 7 outlines how the Advisory role will operate and section 8 describes the CAO's reporting responsibilities.

1.2.3 The Operational Guidelines are intended to clarify for all parties the way the CAO will carry out her or his mandate and to help people and communities to access the Office. Although it is important 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 should be able to work in flexible and lateral ways and retain her or his discretion to do so.

## Independence and impartiality

1.3.1 The independence and impartiality of the CAO are of the utmost 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,<sup>1</sup> local communities, non-government organizations and civil society generally. This trust and confidence are essential prerequisites for the CAO to be able to solve problems on the ground.

### *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 she or he 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, she or he 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.

1.3.2 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 CAO may directly recruit consultants and specialists from outside the World Bank Group to assist in performing the functions of the Office.
- 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 and the very real benefits in being able to identify potential problems with projects early in their evolution.

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<sup>1</sup> 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.

1.3.3 Where a member of the Office of the CAO, including the CAO her- or himself, has a conflict of interest in relation to a particular Complaint, that person will withdraw from involvement in responding to the Complaint. However, a conflict on the part of one staff member will not necessarily preclude the Office from involvement.

## Communication

1.4.1 The success of the CAO will depend a great deal on the effectiveness of the CAO's communication with complainants, local communities, sponsors, IFC and MIGA staff members and other stakeholders. The most difficult issues arise in communicating effectively with local communities, who may not always have access to means of communication, financial or logistic resources, or an organizational structure to speak on their behalf.

1.4.2 While 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. These are generally the people with the greatest 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 for the CAO's problem-solving approach to be successful.

1.4.3 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, non-government organizations and other avenues.
- Where possible, engaging in communication 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' ability to participate in problem solving and to communicate openly.

These and other measures are to be amplified in the CAO's communications strategy.

1.4.4 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, agreements, settlements and remedial plans will, where practicable, be translated into the language of the complainants and any other language the CAO deems necessary. They may also be presented in another, more culturally appropriate manner.

## **Information disclosure and confidentiality**

1.5.1 The linked questions of information disclosure and confidentiality are sensitive ones for the CAO. While confidentiality is important in some aspects of the Ombudsman role, disclosure of information is an important way to reinforce independence and impartiality. Disclosure is also important, on some occasions, to achieving solutions.

1.5.2 The CAO's terms of reference limit the ability of the CAO to publicly disclose information on her or his 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.

1.5.3 Within the parameters of those constraints, the CAO will endeavor to ensure maximum disclosure of reports, findings and results of the CAO process. The CAO may communicate directly with complainants and affected parties. Reports of the CAO that set out her or his conclusions on an investigation may be publicly released, 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.

1.5.4 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 set out above.

1.5.5 The CAO will maintain confidentiality in relation to information received in the course of receiving or responding to a Complaint, where that is requested by a party.

## Section 2 The Ombudsman Role

### Introduction

2.1.1 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*

2.1.2 The flow chart in Annex 1 outlines the process the CAO will adopt in addressing Complaints. Steps 1, 2 and 3 are described in detail in section 3 of these Operational Guidelines. Steps 4, 5 and 6 are described in section 4.

### Timelines for Complaint handling

2.1.3 The CAO is concerned to ensure that Complaints are handled in a timely and expeditious manner. Complaint handling will be tracked using internal systems, and the timelines set out below will be followed except where the nature of the Complaint or special circumstances attending it make this impracticable. Complainants and other interested parties will be informed how long they can expect the process to take.

#### *What is the Ombudsman role?*

The Ombudsman role is the most innovative of the roles of the CAO. Its main objective is to help resolve issues raised about the social and environmental impact of projects. It will not be possible to solve all problems, but the Ombudsman approach can provide a context and a process through which parties are more likely to find a mutually satisfactory solution. Generally speaking, the focus of the Ombudsman will be on what is going to happen in future, rather than what has happened in the past. The aim is to identify problems, recommend practical remedial action and address systemic issues that have contributed to the problems, rather than to find fault.

### Choosing the right approach

2.1.4 In circumstances where the CAO believes that problem-solving approaches or investigation are not appropriate, or would be an inefficient use of resources, she or he may discontinue investigation and conclude the Complaint process. The CAO may decide to deal with advisory or compliance issues even though the Complaint has been closed. The complainant will be advised of the reasons for the CAO's decision to conclude the Complaint process.

## **Who can make a Complaint?**

2.2.1 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 out in section 3.2 below.

2.2.2 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, bodies that are not domiciled in the country where the project is located should lodge Complaints jointly with a body that operates locally. The CAO may seek to satisfy her- or himself that the body representing the affected people has authority to do so.

### **Confidentiality**

2.2.3 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.

2.2.4 Complainants should be aware that other affected parties including the sponsor and IFC or MIGA staff will usually be informed about the substance of Complaints at an early stage. Any information that complainants do not wish to be disclosed should be identified to the CAO at the outset.

## **Lodging a Complaint**

2.3.1 Complaints should be in writing. Complaints may be submitted 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, fax, 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 inside cover of these Operational Guidelines.

## **Grounds for Complaint**

2.4.1 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.

2.4.2 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. Where 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 her or his Advisory role.

## **What to include in a Complaint**

2.5.1 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 her or his (or its) identity or any information communicated as part of the Complaint to be kept confidential (giving reasons).
- The identity and nature of the project, including the name of the sponsor, whether the project is an IFC project or a MIGA one, and the identity of any personnel involved.
- A clear statement of the way in which the complainant has 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.
- Where the problem has been partly resolved, what aspects remain to be settled.
- Where non-compliance 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 claimant to specify particular policies, guidelines or procedures, but some may wish to do so.)
- A precise statement of results which 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.)

2.5.2 The Office of the CAO will provide guidance on lodging a Complaint where assistance is sought. If the initial papers are not sufficiently clear or comprehensive, the CAO may 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.

## **Section 3 Receiving and assessing Complaints**

### **Step 1: Acknowledgement of receipt**

3.1.1 An early acknowledgement of receipt of all Complaints should be sent to the complainant, normally within five days of receipt by the CAO.

### **Step 2: Appraisal and acceptance (or otherwise)**

3.2.1 It is the CAO's decision whether a Complaint is within her or his mandate and, if so, whether it should be accepted. The CAO will appraise the Complaint to determine whether it should be accepted. This decision should normally be made within 15 working days of the Complaint being received.

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

- Complaints must demonstrate that the complainant (or those whom the complainant has written 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, trivial or which have been generated to gain competitive advantage will not be accepted.

#### ***Registration and notification of acceptance***

3.2.3 Complaints that are accepted will be registered on a database and given an identifying number. The CAO will ensure that Complaints are dealt with in a timely way through the use of a tracking system. Complainants will be notified immediately once a Complaint has been accepted for assessment, and informed of the anticipated timing for conduct and conclusion of the assessment.

#### ***Rejection***

3.2.4 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 will contain statistics on the number and nature of Complaints received and rejected.

### **Step 3: Assessment**

3.3.1 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 within 30 working days of the decision to accept the Complaint.

3.3.2 When a Complaint is accepted for assessment, the CAO will immediately refer it to the relevant IFC and/or MIGA management with a request for information and comment and proposed action. Management should respond as soon as possible, certainly within 20 working days of the CAO's enquiry.

3.3.3 At the same time that management is requested to provide information and a response, the sponsor and any other relevant interested 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.

### ***Decision to proceed and courses of action***

3.3.4 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 investigation would be profitable. 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 be the subject of advice to the IFC or MIGA management or may form the basis for a compliance audit, in which case the complainant will be informed of how any remaining issues will be addressed.

3.3.5 If the CAO decides as a result of the assessment to proceed further, she or he will determine which of the options for action should be followed. The initial and primary emphasis is on the 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.

3.3.6 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 factors such as the following:

- The numbers of people or communities potentially affected by the Complaint and the seriousness of the environmental and/or social impacts.
- The threat of irreversible harm if complainants' concerns are not addressed in timely manner.
- The phase reached in project approval and implementation (projects further along in approval or implementation may require a higher priority).
- The seriousness of the issues or policy violations alleged.
- 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**

3.3.7 The CAO's decision at the conclusion of the assessment will specify the course of action to be adopted and the timetable to be followed in implementing it. A copy of the assessment will be provided to the complainant and other relevant parties, including IFC or MIGA management and, where appropriate, the sponsor of the project. On occasion the President may be informed at this stage. Where the complainant has not precluded it, the text of the Complaint may be included in the assessment.

## **Section 4 Investigating and responding to Complaints**

### **Step 4: Action in response to a Complaint: facilitation, mediation and investigation**

4.1.1 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:

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

#### ***Promoting dialogue and self-generated solutions***

4.1.2 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***

4.1.3 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 where it is acceptable to all parties.

4.1.4 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 such a solution will affect them.

#### ***Settlement agreements***

4.1.5 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, where appropriate. The President will be informed of the outcome in a report.

4.1.6 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. They should usually be specific regarding the objective, nature and contents of any plan or planned further action. Incentives or disincentives, time-bound or otherwise, may form a part of any agreement.

### **Confidentiality**

4.1.7 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 agreement not be disclosed. The disclosure of settlement agreements is covered later in this section.

### **Further Investigation**

4.1.8 Where problem-solving approaches described above do not appear to have produced a solution, the CAO may decide to conduct a further investigation. The purpose of an investigation is to provide the Ombudsman 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.

4.1.9 Investigations will be carried out in a flexible way, and may include the following:

- 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 non-governmental organizations.
- Visiting 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.

## **Step 5: Conclusion and closure**

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

## **Reporting**

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

4.2.3 If problem-solving approaches or investigation of the Complaint have not facilitated a settlement by the parties, the CAO has two courses of action available:

- (1) Report to the President that attempts to resolve the problem have not been successful and that no action by IFC or MIGA (or any other parties) to address the problem is possible.
- (2) 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.

4.2.4 Reports of the CAO following an investigation will be communicated to the President, the complainant, IFC or MIGA management and disclosed to the public. The application of IFC and MIGA disclosure policies is discussed in section 1. Section 8 discusses the CAO's relationship with the IFC and MIGA boards.

4.2.5 In addition to reporting to the President on the outcome of the Complaint, the CAO may also provide advice to IFC management or the President about issues raised by the complaint. Where non-compliance issues have emerged in the course of the Ombudsman investigation, the CAO may decide to undertake a compliance audit following the closure of the Complaint process. Policy issues may similarly be dealt with by the CAO in the exercise of her or his Advisory role. The conduct of compliance audits is covered in section 5.

## **Step 6: Monitoring and follow-up**

4.3.1 The CAO will seek to ensure that the agreements between parties make provision for review and monitoring. This may be achieved by setting mutually agreed time lines and indicators for achievement within the body of the agreement.

4.3.2 The recommendations included in reports to the President will also usually contain a program and timetable for implementation. Monitoring of compliance with any changes made in consequence of the recommendations should be undertaken as part of normal project management and monitoring. The CAO will undertake monitoring of whether the recommendations have been implemented, to the extent that this is practicable. The CAO may request IFC or MIGA staff or other agencies on the ground to provide assistance in monitoring implementation of agreements that relate to what happens on a project site.

## **Confidentiality and Disclosure**

### ***Information received during mediation and negotiations***

4.4.1 The role of an Ombudsman as it has developed around the world requires that priority to be given to confidentiality of process, but not of 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.

4.4.2 Communication with the Ombudsman 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***

4.4.3 There is a presumption in favor of disclosure of the reports of the Ombudsman 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.

4.4.4 Where 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.

## **Section 5 Compliance audit role**

5.1.1 Compliance audits may be triggered by Ombudsman investigations or undertaken on a case-by-case basis at the request of management or on the CAO's own initiative.

5.1.2 Where compliance issues are raised in the course of an Ombudsman investigation, the major focus of the CAO will in the first instance be for these to be corrected. In these situations it may be appropriate for the CAO to also provide advice to the President on the manner in which the compliance failure occurred, and how recurrences might be avoided, without actually undertaking a compliance audit.

5.1.3 As noted above formal compliance audits will take place separately from the Complaint process, although the complainant will be informed that the compliance audit is to be undertaken and of the outcome.

5.1.4 The purpose of a compliance audit is to determine whether IFC and/or MIGA staff, and in some cases the sponsor, have complied with IFC and MIGA social and environmental policies, guidelines and procedures. It is recognized that the nature of environmental and social policies, guidelines and procedures is such that they are often susceptible to different interpretations. A compliance audit would not normally seek to set aside an otherwise reasonable interpretation or judgement. However, it will nevertheless be important to draw attention to situations where reasonable interpretations have led to undesirable outcomes and make recommendations about them.

### **Reporting of compliance audits**

5.2.1 Findings of a compliance audit will be conveyed to the President in a report. They may contain recommendations on corrective action as well as policy and procedural matters. 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 their implementation. The CAO will inform the Board of either IFC or MIGA of the findings of a compliance audit after the findings have been discussed with the President.

### **Confidentiality and disclosure**

5.3.1 There is a strong presumption in favor of disclosure in relation to reports and findings following compliance audits. Public disclosure of these reports generates public accountability for IFC and MIGA.

5.3.2 In cases where non-compliance relates to the performance of the sponsor, and the finding is based on information provided by the sponsor to IFC or MIGA, or where the complaint deals with material provided on a confidential basis by the complainant, the release of the reports will be negotiated on a case-by-case basis. In some instances sponsors may agree to publish the information on the basis that speculation about what has given rise to a finding of non-compliance is more likely to be damaging to the company's reputation than open disclosure of the facts and circumstances.

### ***Use of information obtained during Ombudsman investigation***

5.3.3 In some cases, a Complaint may be handled through the Ombudsman role, and then later be the subject of a compliance audit. Parties to the 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. Information received in the course of mediation and negotiation will be regarded as privileged if and when a compliance audit follows. It may be appropriate in some cases for compliance audits to be undertaken by third parties without access to privileged material.

## **World Bank Inspection Panel**

5.4.1 On occasion, the CAO may receive Complaints relating to projects that are jointly financed by IFC or MIGA and the World Bank. A Complaint concerning these projects may also be lodged with the World Bank Inspection Panel which investigates requests specifically related to projects funded by the World Bank.

5.4.2 In situations where there are Complaints to both the World Bank Inspection Panel and the CAO, the CAO will coordinate and cooperate with the Inspection Panel where appropriate. Some of the problem-solving approaches adopted by the CAO may not correspond directly with the functions of the Inspection Panel, but it may be nevertheless be appropriate for the CAO to work together with the Panel.

## **Section 6      Advisory role**

6.1.1    The CAO's Advisory role may be performed at the request of the President or IFC's or MIGA's management, or on the CAO's own initiative. The Advisory role provides an important way to address potential problems early in the evolution of a project. This role will probably be most usefully performed in an informal way, through regular information exchange between the Office of the CAO and staff of IFC and MIGA.

6.1.2    Staff of IFC or MIGA may access the Office of the CAO. With time, as this role is exercised more frequently, it may be appropriate to develop protocols for the manner in which staff should access the services of the Office of the CAO. The CAO is able to provide advice at all stages of project preparation and implementation, but will not act as a clearinghouse for new projects. The provision of advice should not be interpreted as an overall endorsement for any project.

### **Policy advice**

6.2.1    An important byproduct of the CAO's handling of issues arising from the Ombudsman and Compliance roles will be to comment on the adequacy of existing policies and their application in practice. Some Complaint investigations may raise policy issues and concerns that are common to a number of projects. In this situation, the CAO may draw on the findings of a specific investigation to inform subsequent consideration of the adequacy or otherwise of those policies.

### **Disclosure**

6.3.1    Advice provided will usually take the form of periodic summaries and policy memoranda submitted to the President. Their general tenor and content may be noted in the Ombudsman's annual reports. The disclosure of advisory documents is at the discretion of the CAO.

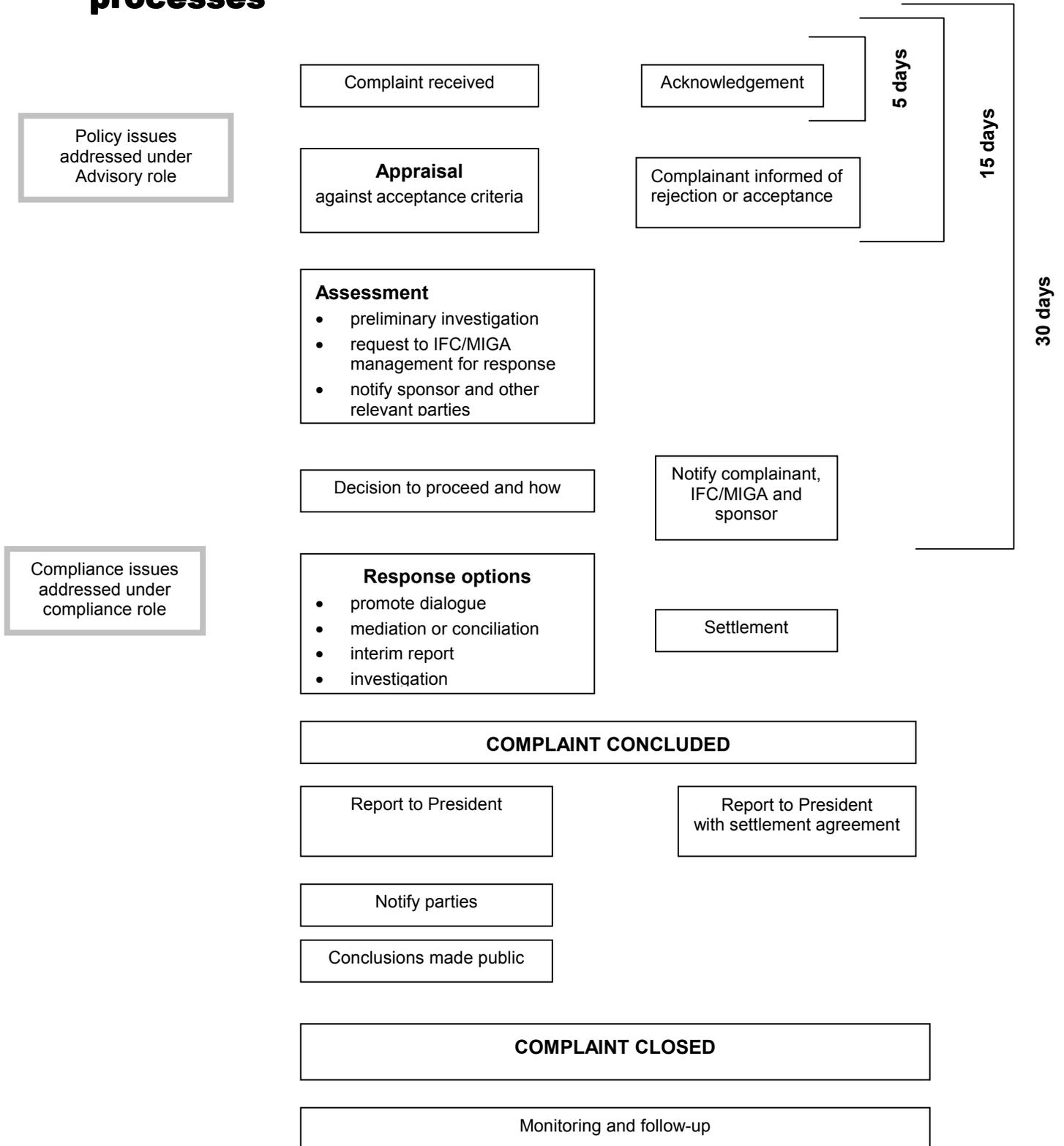
## **Section 7      Periodic reporting by CAO to President and Annual Reporting**

7.1.1    In addition to reporting on the conclusion of specific Complaints, the CAO will also report on a periodic basis, as required by the CAO's terms of reference. 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 intervals. 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 endorsed recommendations.

## **Section 8      Relationship with IFC and MIGA Boards**

8.1.1    While the CAO reports to the President, the CAO will also communicate with the Boards of IFC and MIGA on a regular and as-requested basis. 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 either IFC or MIGA of the findings of a compliance audit after the findings are discussed with the President.

# Annex One: Flow chart of complaint handling processes



## Annex two: Model letter of complaint to CAO

### *Persons wishing to complain*

To: Compliance Adviser/Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue NW  
Room F5K-292  
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.

Date:

Signature(s):