

**Internal Review of CAO Terms of Reference,
Operational Guidance and Operational Practices**

FINAL REPORT

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Executive Summary

I. Purpose of the Review

This Internal Review of the Office of the Compliance Advisor/Ombudsman (CAO) was commissioned by the CAO Vice President, to assist the Office in its ongoing efforts to improve CAO's operational effectiveness and institutional sustainability. The Review had three main goals:

1. Assess the alignment among CAO's Terms of Reference, Operational Guidelines and operational practices, in light of experience since the current Operational Guidelines went into effect in 2007, and recommend changes to provide greater clarity strengthen operational effectiveness, and contribute to institutional independence and sustainability;
2. Assess trends in IFC and MIGA portfolios and operations, and recommend ways that CAO should respond to those trends to remain effective as a recourse for stakeholders affected by the environmental and social impacts of IFC and MIGA-supported investments, and as an independent advisor on ways to strengthen IFC and MIGA social and environmental performance;
3. Assess the Office's performance management practices and systems and recommend improvements to strengthen them.

II. Review Methodology

The Internal Review was conducted by a three-person consultant team familiar with CAO's history and current operations, and with professional expertise relevant to CAO's Compliance, Advisory and Ombuds functions. The Internal Review Team (IRT) interviewed CAO staff, a limited number of CAO consultants, and a limited number of IFC and MIGA counterparts. The IRT also reviewed a wide range of documents related to CAO's TOR, governance, Operational Guidelines and practices. The IRT presented its preliminary findings to the CAO VP and to the full staff for discussion, prior to preparing this final report.

III. Major Findings and Recommendations

A. CAO's Terms of Reference and Governance

1. CAO's Independence and Impartiality

The Office has established and maintained its independence and impartiality through effective leadership and skillful practice. The TOR and Operational Guidelines do not fully reflect current governance arrangements and practices that protect the independence and impartiality of the office, and are silent on several significant issues that should be codified to further strengthen CAO's independence and impartiality.

Recommendations: It is now time to revise the TOR and Operational Guidelines to codify the good practices that have evolved, by amending and expanding provisions in the TOR and Operational Guidelines on

- The independence of the CAO
- The principles that underpin the CAO's work
- Governance and reporting lines, and advisory bodies
- The appointment, term and grounds for removal of the CAO Vice President
- Budget approval

B. CAO's Operational Guidelines and Operational Practices

1. Clarity of Operational Principles and Guidelines

The Office's three major functions (Ombuds, Compliance and Advisory) operate at a high level of professionalism, largely due to the quality of individual staff. However, the current Operational Guidelines do not provide clear principles and standards to guide the operational practice of the three functions.

Recommendation: Amend the Operational Guidelines pertaining to each function, and develop supplementary written guidance for each function, articulating the principles and standards that guide practice. However, do not allow written guidance to substitute for or undermine the critically important role of professional judgment applied to the specifics of cases and issues.

2. Seeking more consistent compliance review while maintaining the effectiveness of problem-solving

The Office has set the goal of strengthening the consistency of compliance review in individual cases and at a thematic level, while safeguarding the effectiveness of Ombuds-supported collaborative problem solving. To date, it has not resolved

the question of what modifications to current guidance and practice would best achieve this goal.

Recommendations: Amend the Operational Guidelines and modify operational practices to achieve this goal. Specifically:

- Amend the Operational Guidelines to make it clear that eligibility assessment is the responsibility of the CAO as a whole, not of the Ombuds function **only**.
- Require IFC and MIGA to allow unrestricted and free access to documents (and staff) that are related to the project/investment as of the day of eligibility determination, backed by a letter from the Office of the President to IFC and MIGA EVPs confirming this requirement.
- Amend the Operational Guidelines to allow the transfer of specific issues from problem solving to compliance review.
- Clarify in the Operational Guidelines that the Vice President has the final authority to determine whether and when a complaint, or an issue within a complaint, should transfer from Ombuds to Compliance, and specify the key criteria that will guide the VP's decisions on transfers.
- Test the use of the CAO VP's authority to undertake a thematic compliance appraisal in response to concerns raised in complaints, by undertaking an Advisory review of a set of projects in a "high risk" area identified by CAO, in consultation with the Office of the President, and with IFC and/or MIGA.
- Test the use of parallel Ombuds assessment and Compliance appraisal processes, with a determination by the VP on how to proceed based on the results of both processes, to see how parallel processing affects CAO's ability to balance problem-solving and compliance review goals in response to complaints.

3. Areas for improvement in each function's operating practices

The operational practices of each function are sound. Each function, however, could strengthen its operational effectiveness by modifying practice in some areas.

Recommendations: Under the leadership of the VP, each function should seek improvements in current practices:

- The Ombuds function should clarify how it balances the mandates to provide recourse to affected communities and to provide impartial assistance to stakeholders; work with the VP to seek more constructive engagement of IFC and MIGA senior management in problem-solving when appropriate; and achieve

greater consistency in meeting the 120 day deadline for assessment

- The Compliance function should proactively seek to address IFC, MIGA and external stakeholder misperceptions of its role and process, in collaboration with CAO's communications and outreach function
- The Advisory function should define and systematize the process it uses to identify IFC and MIGA environmental and social performance issues for Advisory work and undertake assessments of those issues (including the option to undertake thematic compliance reviews); and should have dedicated staff and budget to support its work.

C. IFC and MIGA trends and Implications for CAO

1. Growth in IFC's intermediary portfolio and advisory services

In the past several years, IFC has dramatically expanded the share of financial intermediary investments in its portfolio, has created the Asset Management Company as a new resource mobilization tool; and has expanded its use of Advisory services in several sectors. Review of these investments by IFC's social and environmental specialists is uneven. These trends raise questions about IFC's ability to ensure that its investments, investment vehicles and advisory services comply with IFC's social and environmental standards. They also raise questions about the ability of stakeholders experiencing environmental or social impacts from the end uses of IFC funds or advice to identify IFC's role in investments, let alone seek recourse through CAO.

Recommendation: CAO should build on its excellent advisory document, *Review of IFC's Policy and Performance Standards for Social and Environmental Sustainability*, which identifies these trends and makes recommendations to IFC on strengthening its systems for social and environmental performance management. Specifically, CAO should continue to track IFC management responses to its recommendations, and should consider undertaking periodic review of FI investments, advisory services and AMC activities for social and environmental compliance.

2. Decentralization Initiatives

IFC is undertaking a decentralization initiative, with more staff placed in field offices around the world. MIGA has established a hub in Asia. These initiatives may reduce opportunities for field-based staff to learn about CAO; it may also increase the ability of some field staff to influence sponsor responses to complaints.

Recommendation: CAO should increase the interaction between its staff and IFC and MIGA counterparts in regional offices, for awareness raising, discussion of issues and interaction on specific complaints, guided by an overarching communications and outreach strategy, and taking advantage of opportunities to “piggyback” on CAO field work.

3. MIGA frontier underwriting and advisory services

MIGA is increasing underwriting in post-conflict and fragile states, with potentially higher environmental and social risks, and less MIGA ability to conduct due diligence. MIGA also provides technical assistance to MIGA clients on social and environmental risk management for investments in Africa, with potential positive impacts but also potential risks from advising in environments with weak client capacity and/or commitment.

Recommendation: MIGA senior management has indicated an interest in intensified CAO advice to MIGA on its environmental and social due diligence and performance management. CAO should explore ways that it can provide targeted advice to MIGA management, whether through formal review, less formal discussion and documentation, or both.

D. CAO Operating Standards and Systems

1. Organizational Leadership and Systems

CAO functions very effectively as a small, highly motivated and disciplined team at all levels of seniority and across all functions. However, the Office is heavily dependent on its incumbent VP and staff for its effectiveness. There is unfortunately no guarantee that future staff will all be of the same caliber.

Recommendation: The Office should create a more robust set of organizational systems for planning, resource allocation, quality assurance, communications, and succession planning. Setting up these systems now will reduce the risk of unevenness in the quality of CAO’s future operations, especially as and when there is significant staff turnover.

2. Planning and Budgeting

CAO currently has a somewhat ad hoc and reactive planning and budgeting process.

Recommendation: Use a consistent annual strategic planning process to set operational objectives for the Office and its major functions; to determine budget and human resource requirements; and to underpin CAO’s budget requests.

3. Quality Assurance Standards and Systems

CAO currently has limited documentation of the standards that each of its functions seeks to meet in its work, and limited monitoring and evaluation systems to assess performance against standards. However, the current monitoring and evaluation survey forms implicitly reflect fairly clear standards for Ombuds and Compliance practice.

Recommendation: Define standards of performance for each of CAO's functions, and strengthen monitoring and evaluation systems to assess performance.

4. Communications and Outreach Strategy

CAO has recognized the need for communications and outreach, brought on staff to support that function, and undertaken a number of activities in this area. However, there is not yet a strong communications and outreach strategy.

Recommendation: Articulate, agree and resource a risk-assessed communications and outreach strategy (covering written, verbal and internet media); and introduce agreed upon protocols and criteria in the CAO to ensure the effectiveness of this key function going forward.

5. Succession Planning

There will inevitably be turnover at the senior levels of the CAO. It is therefore important to take steps now to strengthen the office and ensure that the lessons learned from its pioneering work are built into the CAO "DNA."

Recommendation: CAO should strengthen professional development planning and support for upcoming managers and supervisors; codify some key practices that currently depend entirely on professional judgment (as recommended above for each function); and ensure that CAO knowledge, lessons learned and insights are captured in the database for use by future staff.

1 Introduction

1.1 Background on CAO

This report is the product of an independent internal desk review of the CAO governance, operations, terms of reference, and guidelines in the context of current practice and the current business trends in the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). The desk review was conducted by three consultants hired by CAO to provide independent analysis on these matters.¹

The CAO is an independent accountability mechanism established in 2000 to respond to people and communities that are directly or potentially affected by social and environmental impacts of IFC/MIGA projects. The CAO reports directly to the President of the World Bank, and is independent from line management.

The CAO has a mandate to:

- Assist IFC and MIGA in addressing complaints by people affected by IFC/MIGA projects (or projects in which those organizations play a role) in a manner that is fair, objective, and constructive, and
- Enhance the social and environmental outcomes of IFC/MIGA projects (or projects in which those organizations play a role).²

The CAO has three distinct roles that include an ombudsman, compliance and advisory function:

- ✓ The ombudsman's main objective is to help resolve issues raised about social and environment impacts of IFC/MIGA projects and to improve outcomes on the ground. The aim is to identify problems, recommend remedial actions, and address systemic issues, rather than find fault.³
- ✓ The Compliance office oversees project level audits of the social and environmental performance of IFC/MIGA. The purpose of CAO auditing is to ensure compliance with IFC/MIGA policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, and thereby improve social and environmental performance.⁴
- ✓ The Advisory Role is to provide advice to the World Bank President and IFC/MIGA management on broader environmental and social issues relating to policies, standards, procedures, guidelines, resources and systems established to ensure adequate review and monitoring of IFC/MIGA projects.⁵

¹ The consulting team included David Fairman, Graham Joselyne, and Lori Udall.

² 2007 CAO Operational Guidelines, Page 4, Section 1.1.

³ 2007 CAO Operating Guidelines, Page 11, Section 2.1.

⁴ 2007 CAO Operating Guidelines, Page 21, Section 3.1

⁵ 2007 CAO Operating Guidelines, Page 28, 4.1

Since its establishment, the CAO has received 123 complaints from affected individuals and communities, plus single requests from IFC/MIGA EVP, from World Bank President and the CAO VP. The three requests from management were compliance requests. Out of the total complaints, 50 were not eligible, one was withdrawn, 72 went to the Ombudsman, and 22 went to Compliance for appraisal. Of those appraised, 14 were closed after appraisal and audits were conducted for 8 complaints.

1.2 Internal Review Terms of Reference and Backdrop

Since 2000, the CAO has had two external reviews of its operations.⁶ This is the first internal review by outside experts. These external review reports explored the effectiveness and impact of the CAO as well as operational and management issues.

Since the last review in 2006, there have been a number of business trends, particularly in IFC, such as a move away from project investments to significant growth in the percentage of work coming from the financial intermediary sector, creation of an asset management subsidiary, and significant increase in IFC advisory services. IFC is also planning decentralization over the next few years. MIGA's main trend is in providing guarantees in more fragile and post-conflict countries than it did previously. As a result, CAO wishes to re-assess its own mandate and terms of reference to ensure that it is robust and current enough to respond to IFC /MIGA trends and the resulting environmental and social challenges.

The Terms of Reference for the internal review are to help CAO ensure its robustness in meeting IFC/MIGA trends; and to

- ✓ Assess whether the CAO is satisfying its role as an accountability mechanism for the IFC/MIGA;
- ✓ Assess the alignment of the CAO mandate, TOR and operational guidelines as contrasted with current practice;
- ✓ Identify potential ways to strengthen the functions of the office and strengthen overall governance and operations (see Appendix III).

In addition to the IFC/MIGA trends, the backdrop for this internal desk review is a proposal in the Board Committee on Governance and Executive Directors Administrative Matters (COGAM) for an external review of the oversight and accountability units in the World Bank Group.⁷ Preliminary to the external review, the five units (Inspection Panel (IPN), CAO, Integrity Vice President (INT), Internal Audit Vice-Presidency (IAD), and the Independent Evaluation Group (IEG) worked

⁶ Ben Dysart, Tim Murphy, and Antonia Chayes, "Beyond Compliance? An External Review Team Report on the Compliance Advisor/Ombudsman Office of IFC/MIGA" 2003, And Warren Van Wicklin, Jill Shankleman, and Roger Batestone, "A Retrospective Analysis of CAO Interventions Trends, Outcomes and Effectiveness" 2006.

⁷ World Bank, Committee on Governance and Executive Directors Administrative Matters; Proposal for an External Review of the Oversight and Accountability Units, June 21, 2010.

together to conduct a Self Assessment that resulted in a document that compares the units and considers areas of improvement.⁸

1.3 Methodology

The methodology for the review included interviews with the CAO Vice President, staff, and consultants and interviews with a limited number of key IFC/MIGA staff as well as liaison staff (past and present) in the Office of the Vice President. While the scope of the IRT report does not consider impact, the IRT felt it was necessary to interview a sampling of IFC/MIGA staff to obtain some feedback and perceptions from inside the institution.

The CAO team also reviewed internal documents including CAO mandate and TOR, three sets of operational guidelines, Reports to CODE, Annual Reports, a sampling of Ombudsman and Compliance case documents, project closeout reports, advisory reports, and consultants reports on CAO (McDowell, Wildau/Armstrong, Fairman). The IRT also held a brainstorming session with the CAO VP and senior staff and a wrap up session where the IRT presented its key findings and recommendations.

1.4 IRT Statement on CAO

The IRT believes that the CAO is a state of the art accountability mechanism that has served its stakeholders for 10 years with integrity, independence and distinction. The CAO has a unique structure and is on the cutting edge of what IAMs have to offer. The IRT offers the findings and recommendations in this report to assist the CAO in improving an already excellent structure and organization.

1.5 Organization of the Report

Section 2 of this report provides analysis of CAO's mandate and terms of reference in the context of governance issues, and makes recommendation for language changes in the TOR. The section covers principles of independence, reporting lines, and advisory bodies, appointment, qualifications, terms and removal of the CAO VP, and the CAO's budget determination.

Section 3 of the report discusses updating and clarifying the CAO's operational guidelines and guidance for each function. It includes overall guiding principles for the CAO, and guidance for the Ombuds, Compliance and Advisory functions.

Section 4 analyses CAO operations under the current guidelines, including the division of labor among the CAO's three functions, sequencing of the functions, and findings for all three functions under the current guidelines.

Section 5 explores the trends in IFC and MIGA business lines and operations, and implications for the CAO.

Section 6 discusses strengthening CAO's organizational systems for sustainability.

Section 7 provides concluding remarks.

⁸ Five Accountability Units, Self Assessment of Oversight and Accountability Units, August 12, 2010.

2 Mandate and TOR: origins and content

The CAO's mandate and TOR were developed by the World Bank President's office in 1999 as the founding documents of the CAO, before the appointment of the CAO VP. The TOR provides the authority under which the CAO operates. The TOR has four sections: rationale for the creation of the CAO and mandate of the CAO; scope of work; organization of the CAO; and the CAO VP's qualifications.

The TOR specify that CAO's work will be project based, which reflects the time period in the late 1990's when IFC was primarily doing project investment work. The mandate and the TOR generally portray the CAO as being an arm and partner of the IFC/MIGA instead of an independent office. For example, the TOR notes that the CAO is "an additional pillar in building a credible and responsive structure to ensure that projects are environmentally and socially sound and enhance IFC's and MIGA's contribution to sustainable development." ⁹

The scope of work section generally lays out the foundation for the development and mandate of the three distinct CAO roles. The organization section deals with the CAO VP appointment and removal, reporting lines, terms, budget, and communication with IFC/MIGA; however, the language is primarily in the conditional and subjunctive, and is not definitive on these issues. The CAO VP qualifications include (but are not limited to): a successful record of dealing with a broad range of stakeholders, understanding of private sector, knowledge of environmental and social issues, and solid academic background.

Generally the TOR lack clear statements about the CAO's relationship to affected people and communities, or about what makes the CAO unique or different from the other oversight functions in the World Bank Group. This may reflect the newness of the accountability mechanism concept at the time, particularly for the private sector. The TOR have not been revised for ten years, and so does not reflect any trends in the IFC/MIGA or best practices of the international accountability mechanisms.

2.1 Clarifying CAO's Independence and Authority in the TOR

The independence of the CAO, as reflected in its TOR, governance, Operating Guidelines and operational practices, is of critical importance for the credibility, impartiality and long-term sustainability of the Office. There is concern among some CAO staff and the IRT that critical aspects of CAO governance and operations that reinforce independence are not yet formalized and codified. There is also concern that the mandate and TOR only address project investments and therefore may not be as relevant in the current investment climate since the IFC is moving away from projects and into financial intermediaries, advisory services and other non-project instruments. Good practice - and a mark of functional maturity - is that the mandate and TOR undergo routine review and revision to ensure that they stay

⁹ CAO Terms of Reference, page 1, para 3.

current and recognize the changes demanded by stakeholders, and the environment in which the CAO has or will operate.

IRT recommends that the CAO discuss and revise the mandate and the TOR with the President's office, at an appropriate time, and with particular attention to the following issues.

2.1.1 Principles of independence

Recommendation 2.1.1.1: As a governing document, the TOR should articulate:

- a. The requirement for CAO to be independent and objective – and what this means.
- b. The guiding principles that CAO follows to enhance transparency, introduce certainty, and ensure internal consistency.
- c. CAO's authority to use its advisory role proactively based on its experience, to examine and advise on emerging environmental and social issues in IFC's and MIGA's work (e.g. environmental and social issues that may arise from new IFC/MIGA business models, products or areas of operation);
- d. That its greatest value lies in its relationship with affected communities, civil society and the NGO community rather than only the IFC/MIGA;
- e. That the CAO retains the right to consult and confer with NGOs and civil society on activities and core functions;
- f. That it recognizes and differentiates itself from other oversight functions in the World Bank Group some of whom post-date the establishment of the CAO function, or where the missions of these functions have altered over time (i.e. IP, IEG, IAD, INT); and
- g. That it is authorized to have ready and full access to IFC/MIGA staff and documentation in order to fulfill its mandate.

Recommendation 2.1.1.2: IRT also recommends that the mandate and TOR no longer use the word 'project,' to describe the CAO's scope of work, but rather use the language that IFC is currently using, "investment activities," so as not to limit in any way the CAO's ability to serve stakeholders in a new business environment with new products and new E&S challenges. It may also be beneficial to specify that CAO's scope also covers activities under the IFC Asset Management Company and trust funds where IFC/MIGA are trustees, and advisory services.

2.1.2 Reporting Lines and Advisory Bodies

Reporting to the World Bank President and CODE: The CAO VP reports to the President in his/her dual capacity as Chair of the World Bank Group Board and chief

executive of the World Bank Group.¹⁰ This reporting arrangement ensures that CAO is independent from IFC and MIGA line management. CAO also reports annually to Committee on Development Effectiveness (CODE). CODE has made beneficial suggestions that enhance CAO's effectiveness and over time, a relationship has been built. CODE is now requesting formal meetings twice per year.

A recent IEG report on the World Bank Group safeguard policies and performance standards, suggests that the CAO compliance function report to the Board, while the rest of the office continue reporting to the President.¹¹ CAO is comfortable with the current reporting line and does not believe a change is warranted because there has not been interference with CAO independence in the last ten years. The CAO VP suggests that if there was a threat to CAO's independence from the President's office, she would then take the issue to the Board.

There is evidence that the direct relationship with the Office of the President allows the CAO to position itself to have maximum impact and quick decision making. For example, during the Wilmar Complaint, the President's decision to put a moratorium on palm oil investments pending a Bank wide review was a prompt decision that, in all likelihood, would not have occurred in the Board, due to its slow moving and often politicized nature.

Recommendation 2.1.2.1: The current reporting lines appear to be serving the office of the President and CAO well. IRT recommends maintaining the current reporting arrangement, without a direct reporting line from CAO to the full Board of the World Bank Group. IRT also recommends that CAO continue its reporting and relationship with CODE as well as developing relationships with other Board members who may not serve on CODE.

CAO Strategic Advisors Group: The CAO is unique among the IAMs in that it has a Strategic Advisors Group (SAG) comprised of advisors from private sector, civil society and dispute resolution practitioners. The SAG is an ad hoc advisory group that meets twice per year to discuss and provide advice on current issues and cases important to the CAO. There is nothing in the CAO guidelines about the process or functioning of the SAG. Recently there has been discussion in CAO and the SAG on whether this advisory body should have terms of reference and become more formalized. However no final decision has been made.¹²

Recommendation 2.1.2.2: The IRT recommends formalizing the SAG by developing a terms of reference, adding a section in the guidelines about the purpose of the SAG

¹⁰ By comparison, the Inspection Panel reports to the Board. At the ADB, the Special Project Facilitator (dispute resolution function) reports to the President while the Compliance Panel reports to the Board.

¹¹ IEG, Safeguards and Sustainability Policies in a Changing World, June 29, 2010, page 46, section 2.64

¹² A draft terms of reference has been prepared but not discussed by the strategic advisors.

and providing a more detailed explanation of the SAG in CAO Annual Reports. In the guidelines CAO should underscore that the CAO VP reserves the right to choose SAG members independently from IFC/MIGA management and the Board.

2.1.3 Appointment, Qualifications, Term and Removal of the CAO Vice President

Appointment: The TOR stipulates that the President appoints the CAO VP. The process and practice for appointing the first CAO VP in 2000 was much more participatory than appears in the TOR. President James Wolfensohn formed a search committee that included three civil society representatives and three private sector representatives. The group was tasked with advertising, interviewing and selecting the final two candidates to recommend to the President. The fact that there were civil society representatives on the committee, and that the process was participatory gave the CAO external legitimacy that it may not have had if the process had been secretive or held closely by the Office of the President. This selection process has not been codified or formalized, and hence the appointment process is open to interpretation when the recruitment of a new CAO VP takes place.

Recommendation 2.1.3.1: The **CAO VP** appointment process should be codified in the TOR drawing from the best practice when the CAO was created.

Qualifications: The TOR qualifications for the role of CAO VP include the same qualifications as most other IAMs, except that the TOR does not specifically require that the CAO VP be independent from Bank management. Also there is no prohibition on working for the IFC/MIGA or World Bank group prior to or after the appointment.¹³ If, in the future, the IFC/MIGA appointed a CAO VP directly from working at the World Bank Group, this would affect the impartiality and credibility of the CAO. At the least, the outside stakeholder perception of the CAO office could be undermined.

Recommendation 2.1.3.2: To protect CAO independence, IRT suggests revision of the TOR to specifically require that the CAO VP be chosen from outside the World Bank Group, and a permanent prohibition on working at the World Bank group following appointment.

Removal of CAO VP: Currently the TOR state that the CAO VP can be removed if the President “determines that the Ombudsman can no longer exercise the function with the required level of independence and authority.” (TOR, Page 3). By contrast, Inspection Panel, EBRD and ADB Panel members can only be removed “for cause.”¹⁴ This language implies that there would have to be specific wrongdoing in order to

¹³ The current CAO VP employment contract states that she cannot work at the World Bank Group following her tenure at CAO. See also prohibitions on work before and after serving at Inspection Panel, ADB and AfDB.

¹⁴ See IBRD, IDA Resolution, Composition of the Panel, No. 93-10, section 8.

remove a panel member, and provides a stronger standard of proof than the subjective decision that the TOR provides for the World Bank President. The IRT finds that the CAO VP position is not protected by the current language and has the potential for removal without the President's office substantiating a claim of wrongdoing.

Recommendation 2.1.3.3: Best practice would encourage a higher standard of proof for removal such as “for cause” in the TOR. Another option would be a requirement that the Board concurs with the President's request for removal.

Term Limits: The TOR does not specify term limits for the CAO VP. The TOR states “the appointment would be for a period of 3 to 5 years, renewable by mutual consent.” In practice, the only CAO VP has served for the entire period since the inception of the CAO. By comparison, Inspection Panel members and ADB serve for one five year period, without possibility of renewal, although AfDB Panel Director can serve for five years with one five year renewal. The longevity of the current CAO VP has been an advantage considering the complexity of setting up and developing the CAO office. However, good practice suggests that CAO VP term limits would clarify the overall appointment process in the future.

Recommendation 2.1.3.4: The pros and cons of term limits, and term length, should be considered when revising the TOR. The practice of other IAMs should be factored into CAO's discussion of term limits.

2.1.4 CAO Budget Determination

According to the TOR, the budget should be determined by the President. One of the key reasons for this provision is to demonstrate CAO's independence from management. In practice, the CAO has dealt with the IFC budget committee to request its budget, including the Ombudsman contingency fund. The budget proportion that is funded by MIGA is also subject to negotiation with its management.

The CAO indicates that-- to date-- this has not presented a problem, and that CAO has always received requested increases, even when the rest of IFC has had cutbacks. There has not been analysis to date on the pros and cons of dealing directly with the President's office on budget requests versus dealing with the budget committee. The costs of the CAO and other mechanisms are a recurring topic and line of questioning coming from management and the Board, which could put pressure on the CAO's budget in the future.

Recommendation 2.1.4: The TOR requires the President to approve the CAO resource budget. The IRT suggests that the CAO return to the TOR requirement as a matter of good practice.

3 Updating and Clarifying the CAO's Operational Guidelines and Guidance for Each Function

The current Operational Guidelines are a significant improvement on previous working arrangements. They have guided the CAO function – and its stakeholders – since their introduction in 2007. However, in the light of operating experience since that date in all of the Ombudsman, Compliance and Advisory functions; and the way that the IFC/MIGA business models are evolving, IRT has several findings and recommendations for reviewing and revising the Operational Guidelines.

3.1 CAO Guiding Principles

Principles are a way of communicating to stakeholders what they should expect when they interact with the CAO. They are the foundation for communicating broadly its standards of operation as well as how it seeks to be held accountable. No overarching CAO Principles have been articulated even though the current Operational Guidelines imply a principled approach to its operations. In the Guidelines only Advisory has articulated its principles. Ombuds and Compliance also have principles specific to the nature of their work, and the Operational Guidelines should articulate them.

Recommendation 3.1.1: (1) Articulate overarching CAO Principles and ensure that all Operational Guidelines flow out of the Principles. (2) Articulate Principles for each of the three major functions, within the Operational Guidelines, and, where necessary, in supplemental guidance for intra-office use.

Codifying good practice while maintaining flexibility: The Operational Guidelines should specify, to the degree necessary, how staff will operationalize the principles in their work. It is especially important to clarify decision making criteria governing CAO's operations. This codification will help to ensure that the CAO's operations become more certain and consistent over time. However, the codification of good practice should leave substantial room for professional judgment and contextualization to the specifics of individual cases and situations.

The following are areas where it may be useful for CAO to codify its principles and practices:

- a. **Multiple Accountabilities of the CAO:** The CAO has at least four core constituencies, and it is arguably accountable in a different way to each, along the following lines:
 1. Complainants, to whom it provides recourse through opportunities for collaborative problem-solving, as well as review of IFC and MIGA compliance with social and environmental policies and standards.
 2. The World Bank Group President and Board, to whom it provides independent review and advice.

3. The management of IFC and MIGA, to whom it provides advice on ways to improve environmental and social performance.
4. The global constituency of non-governmental organizations with an interest in improving the social and environmental performance of IFC and MIGA.

Currently, the Operational Guidelines are ambiguous on these constituencies and accountabilities.

Recommendation 3.1.2: CAO should define the stakeholders to whom it is accountable, and the nature of its accountability to each, as a guiding Principle underpinning its Operational Guidelines.

- b. **Standards of Performance and Measures of Effectiveness:** The Operational Guidelines are silent as to what ‘standards’ apply to CAO’s work. Considering that the CAO focuses on IFC and MIGA compliance with their performance standards, it is reasonable to expect CAO to articulate its own performance standards, and to measure itself against those standards. At present, the level of performance is basically left to the individual staff or consultant to determine - with some input from CAO supervisors.

Recommendation 3.1.3: the Operational Guidelines should articulate for each CAO function, the required standards of performance.

- c. **Forward-looking Focus:** The TOR are specific as to CAO’s responsibility for being forward-looking (especially the Advisory function). This is amplified in a letter from the President where it is stated that the Advisory Role in particular should be used for strategic purposes and to act as an early warning system for IFC and MIGA activities.¹⁵ The Operational Guidelines do not articulate well enough this demand or how it will be done.

Recommendation 3.1.4: Articulate the CAO’s forward-looking role in the Operational Guidelines, with specific reference to the Advisory Role.

- d. **Consistency and Completeness in Describing the Work of CAO:** The Operational Guidelines describe the work of CAO differently from its TOR and Annual Report. Consistency and completeness across all its publications promotes credibility and reliability.

Recommendation 3.1.5: Ensure that the Operational Guidelines describe the work of the CAO exactly as do the (revised) TOR and other reports and publications from the CAO.

- e. **Conflicts of Interest:** the Operational Guidelines are silent as to where conflicts of interest among the CAO functions may arise – or how they are

¹⁵ Letter from James D Wolfensohn to the EVPs of MIGA and IFC, December 12, 2002.

addressed and resolved. Because conflicts do arise and the CAO exists, in part, to resolve such issues externally, there is value in being transparent about how those conflicts are resolved within CAO.

Recommendation 3.1.6: Include provisions for resolving conflicts of interest among the three CAO functions in the Operational Guidelines. Those provisions could reference the CAO's primary accountabilities, and clarify how CAO prioritizes among them in situations where they may conflict.

- f. **CAO Staffing:** Under the Operational Guidelines, CAO staff are recruited by the CAO VP. There is also a two year cooling off period before staff can go back to work for IFC/MIGA. However, there is no indication as to whether staff may be recruited directly from IFC or MIGA without a cooling off period. There may be a strong argument for making judgments on a case by case basis about potential conflict of interest in hiring staff, depending on the position from which a staff person would be coming, and the position s/he would be assuming in CAO.

Recommendation 3.1.7: CAO should clarify whether it makes conflict of interest determinations case by case when hiring staff, or whether it has any blanket requirements such as a cooling off period.

In addition to these findings and recommendations on CAO-wide principles and guidance, we also recommend further development of written guidance for each of CAO's three functions, both within the Operational Guidelines and in supplementary, intra-office documents.

3.2 Guidance for the Ombuds Function

CAO staff and IFC and MIGA counterparts generally share the view that compared to operations in the 2004-2006 period, operations under the current Operational Guidelines have improved the perceived impartiality of the Ombuds function as a neutral problem-solving mechanism. There is greater clarity among CAO staff on the distinction between stakeholder assessment and compliance fact finding, and on the importance of communicating this distinction to complainants, sponsors, IFC and other stakeholders during the assessment process.

At the same time, there are nuanced but possibly important distinctions between the views and practices of the Ombuds team and some of the language in the TOR and Operational Guidelines.

3.2.1 Principles Guiding Ombuds Practice

Impartiality and commitment to provide recourse: While recognizing the value of an impartial, non-judgmental stance, some CAO staff express the view that they have a responsibility to provide recourse to potentially affected communities. In this view, CAO is sometimes the only viable recourse for affected communities; in these cases, some staff feel that the Ombuds function has a primary responsibility to provide recourse, and a secondary responsibility to provide impartial assistance to sponsors and to IFC in addressing complaints.

Within the field of conflict resolution, there is a range of views on the ethical and the practical implications when those playing an impartial problem-solving role also see an important role for themselves in assisting particularly disadvantaged parties.¹⁶

In the context of CAO's Ombuds operations, it is not entirely clear whether and when the commitment to impartiality and the commitment to provide recourse are in tension. A review of Ombuds case documents and interviews with CAO Ombuds staff suggests that the tension may play out primarily in the extensive efforts that Ombuds staff and consultants have made to promote sponsor and IFC responsiveness in cases where that responsiveness may not be in IFC's or the sponsor's interest (e.g. Mahindra Farm Service, Lukoil). In these cases, the persistence of CAO Ombuds staff may have prolonged the assessment/convening effort beyond the point where a fully impartial intervener would have stopped.

More fundamentally, the Ombuds function as currently exercised and CAO's mandate as stated in the current Operational Guidelines may not be fully aligned. The Operational Guidelines state the mandate as:

- To assist IFC and MIGA in addressing complaints by people affected by IFC/MIGA projects (or projects in which those organizations play a role) in a manner that is fair, objective, and constructive, and
- To enhance the social and environmental outcomes of IFC/MIGA projects (or projects in which those organizations play a role).

In practice, the Ombuds function seems to be primarily mandated to assist people affected by IFC/MIGA projects to resolve their complaints, while encouraging and supporting project sponsors, IFC and MIGA to respond constructively to complaints, and by doing so, to improve the social and environmental outcomes of IFC and MIGA supported projects.

Recommendation 3.2.1: Review and consider refining the CAO's mandate as it applies to Ombuds work, to ensure full alignment between stated mandate and Ombuds practice.

¹⁶ See for example J. Forester and D. Stitzel, "Beyond Neutrality: The Possibilities of Activist Mediation in Public Sector Conflicts," *Negotiation Journal* 5(3), 1989: 251-264.

3.2.2 Guidance for Ombuds Processes

General guidance for Ombuds processes: There is little documented guidance for Ombuds staff or consultants on how to conduct assessments and problem solving processes. CAO Ombuds staff indicate that there would be limited value from highly detailed guidance on assessment or problem solving. There is a need for professional judgment case-by-case, and a concern that too much reliance on written procedure could seriously impair the creativity and judgment needed to make progress in highly contentious cases.

On the other hand, written guidance that is not highly directive, but does help staff and consultants cross-check their professional judgment, could help to reduce unevenness in several areas of Ombuds work where variation in practice may not be in CAO's interest.

Recommendation 3.2.2.1: CAO should develop appropriate written guidance to support its Ombuds work, while continuing to use professional judgment and creativity as the primary tools in each case. Specific options for written guidance include:

- a. Talking points to ensure that CAO staff and consultants provide full, clear and consistent explanation of CAO's mandate; multiple roles and accountabilities; and problem solving, compliance and advisory options to stakeholders. The talking points should be consistent with the language of CAO's TOR and Operational Guidelines.
- b. Questions and/or criteria to assist in making determinations on the feasibility of a problem solving approach within the 120 day time frame allocated for assessment, building on the questions outlined in section 2.3.3 of the Operational Guidelines.
- c. Principles and strategies for designing a problem-solving process, elaborating on the options outlined in section 2.4.1 of the Operational Guidelines.
- d. Questions and/or criteria to assist in determining whether a problem-solving process or a specific issue has reached an impasse, and should be turned over to the Compliance function.
- e. Questions and/or criteria to assist in determining whether a proposed or potential agreement among the parties in a particular case is likely to resolve the issues to all parties' satisfaction, and to satisfy the Ombuds requirements for agreements (non-coercive, aligned with IFC and MIGA policies, conforming to national and international law) outlined in section 2.4.2 of the Operational Guidelines

Parallel track transfer of issues from Ombuds to Compliance: In at least two cases, Wilmar and Agrokasa, Ombuds staff have transferred specific issues to Compliance at the request of some stakeholders, while continuing to engage all stakeholders in ongoing efforts at problem solving. In both cases, the transfer of some issues to Compliance appears to have had some benefit to the problem-solving process, by ensuring that key stakeholders who otherwise might have “walked away from the table” maintained their participation in the problem-solving process. It has also enabled a Compliance appraisal to proceed without forcing a halt to the problem solving process.

However, the transfer of issues has also had some negative impacts: sponsors in the Wilmar case challenged the integrity of the CAO process, indicating that they felt betrayed after having made a good faith effort to resolve issues through problem-solving.

Recommendation 3.2.2.2: Whether the practice of issue transfer is one that CAO wishes to continue or not, CAO should address the inconsistency between practice and the current Operational Guidelines.

As currently worded, the Operational Guidelines appear to preclude the issue transfer option. Section 2.3.3. on Assessment indicates that an assessment will lead either to an Ombuds process or a Compliance appraisal, but not both. Section 2.4.4 on non-agreement situation indicates that cases will be transferred from Ombuds to Compliance; it does not authorize the transfer of issues to Compliance.

Recommendation 3.2.2.3: If CAO does wish to continue allowing the option of issue transfer to compliance, amend the Guidelines so that they do not preclude this possibility.

If amended to allow issue transfer, the Guidelines should specify that the CAO VP has the final authority over issue transfer, using clear criteria, while leaving the Ombuds team maximum discretion to work with stakeholders in particular cases to assess whether, when and how issues may need to transfer to Compliance.

3.3 Guidance for the Compliance Function

Compliance has generally worked within the parameters set by the Operational Guidelines. Nevertheless it needs to review them to ensure that key elements are codified so that it enhances its functional maturity, professional credibility, and sustainability.

3.3.1 Defining and distinguishing Compliance appraisal and audit

The Operational Guidelines, as written, are not clear in describing the Compliance process as a whole. Compliance follows a two-stage process (i.e. appraisal and audit) each with its own set of criteria and ‘triggers’ and yet terminology used in the Operational Guidelines confuses the two. This confusion is picked up in IFC/MIGA as well who perceive that all Compliance’s work is audit.

The function and its distinctive two-step process must be clearly defined in the Operational Guidelines with each step clearly separated from the other. However, because audits flow from appraisal decisions, this dependency should be shown clearly. The purpose of doing so is to enhance certainty, transparency and prevent further confusion in the minds of the ‘targets’ of Compliance work.

Recommendation 3.3.1: Review the Operational Guidelines to better differentiate the appraisal step from the audit step and to show how and where they are linked, and use the outreach and communications strategy to make a renewed effort to clarify the distinction to the stakeholder groups.

3.3.2 Renaming the ‘Audit’ stage

The word ‘audit’ immediately brings to mind the work done by the Internal Auditing Department (IAD). This results in general confusion.

Recommendation 3.3.2: CAO should consider other words that might better describe the ‘audit’ function such as verification, examination, or analysis. Other oversight departments in the WBG use the words inspection, review, and investigation, so these are best avoided.

3.3.3 Other Issues

- a. **Audit Focus and Naming of Reports:** The fact that Compliance audit focuses on the IFC/MIGA – and not its client – is not articulated enough in the Operational Guidelines. Nor do they disclose that the audit team must, of necessity, review certain documents, actions and decisions of the client as a normal part of its work. This could mislead a client.

Also, the naming of the Report suggests that the client – and not IFC/MIGA – is the focus of Compliance work (e.g. Wilmar).

Recommendation 3.3.3.1: The Operational Guidelines should clarify the audit focus and its implications for the client as well as review the report-naming protocol to ensure that there is transparency and consistency.

- b. **Audit ‘Standards’:** Compliance has developed its own standards that take best practice and amend them for its own purposes. While these are generally acceptable, there is a perception that the standards followed are those of an external standard setting body when they are not.

Recommendation 3.3.3.2: State in the OGs that the standards applied in Compliance work are derived from best practice and adapted to specific CAO needs.

- c. **Process Expectations:** The Operational Guidelines are silent about Compliance’s need to communicate process expectations and outputs to IFC/MIGA staff upfront and during an engagement.

Recommendation 3.3.3.3: Amend the Operational Guidelines to require Compliance staff to fully brief IFC/MIGA staff on what to expect from an audit: the objectives, the timeline; the output; and what CAO expects of IFC and MIGA to assist in the audit process.

- d. **Operating Manual:** Compliance seeks to follow generally accepted auditing practice. However, the absence of a manual - that takes the Operational Guidelines to a more detailed level - means that Compliance management is required to expend unnecessary effort on staff and consultants to ensure that appraisals and audits are completed to an acceptable standard. With an expected increase in Compliance work, this is inefficient and ineffective. An operating manual allows:

- CAO to adopt generally accepted auditing practice and adapt it for both the appraisal and audit functional needs;
- Staff and consultants to quicker gain an understanding of CAO operations and Compliance processes and standards and apply them to the appraisal and/or audit work without constant reference to management;
- Staff and consultants alike to produce consistent work over time and ensure a quality product; and
- Allows staff and consultants to use their judgment within acceptable parameters.

Recommendation 3.3.3.4: CAO’s Compliance composes an operating manual, seek outside review and VP approval, and introduce it.

- e. **Feedback to Complainant/s:** Because the focus of a compliance audit is non-compliance by the IFC/MIGA the results of the audit are communicated to primarily to them. The complainant is not necessarily

met again. Although the audit results are posted on the website, best practice is that there is direct communication with the complainant at the conclusion of the audit to discuss the outcome, findings and agreed action. This fosters enhanced CAO credibility and pressures the IFC/MIGA to deliver on promises made.

Recommendation 3.3.3.5: Amend the Operational Guidelines to specify under what set of circumstances it would be advantageous for complainants to have an opportunity for direct engagement with the Compliance audit panel following the conclusion of the audit.

3.4 Guidance for the Advisory Function

3.4.1 Background on Advisory Role

The scope of the Advisory role as defined by the CAO TOR is to provide advice to IFC and MIGA management and to the World Bank group President on broader environmental and social issues related to policies, standards, procedures, guidelines, resources and systems established to ensure adequate review and monitoring of IFC and MIGA projects and to provide project specific advice. The CAO early on stated that they would not conduct project specific advice in order to avoid a conflict of interest. This was agreed and clarified by the President in 2002, and the prohibition on project specific advice is in the current guidelines (page 32, section 4.3.2).

The CAO is unique in that it is the only IAM that has an Advisory role. The Advisory role has vast potential and mandate that could result in significant impact on IFC and MIGA. Some of this potential has been untapped for various reasons discussed below and in section 4. The Advisory role is both reactive and proactive. A request for an Advisory role can come from the IFC /MIGA Senior Management, operational departments, World Bank President or Board, but can also be initiated by the CAO VP in the course of Ombuds or Compliance activities if systemic or other environmental and social concerns arise.

Since 2007, Advisory issued four major Advisory Notes:

- ✓ A Guide on Designing and Implementing grievance mechanisms,
- ✓ A Guide on Participatory Water Monitoring,
- ✓ A Guide to improving IFC's and MIGA's Development Impact; and
- ✓ A Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Information Disclosure.

3.4.2 Advisory Issues in the Operational Guidelines; Guidance for Advisory Practice

Currently there is some guidance in the Operational Guidelines for the Advisory role. The Advisory section of the Operational Guidelines indicates how CAO should determine the objective and scope of the advice; questions to be asked when appraising requests for advice; the ‘approach’ to the Advisory role; and the prohibition on project specific advice. Some additional operational guidance gained from recent insights and practical experience could further clarify the how CAO provides advice to IFC/MIGA.

Recommendation 3.4.2.1: CAO should develop operational guidance to make the Advisory function more proactive and strategic in its focus. Specific options include the following:

- a. Once a quarter, CAO staff could meet on possible advisory pieces growing from Ombuds and Compliance casework and lessons learned, and discuss possible interventions on important issues or trends.
- b. Develop a series of questions for Advisory staff to ask when reviewing Ombuds and Compliance cases, to determine whether the cases suggest systemic compliance issues, troubling trends, and/or sector-specific problems.
 - i. Where thematic compliance assessment seems warranted, develop an operational procedure for defining specific thematic or systemic compliance questions, developing TOR and conducting compliance reviews to assess those issues.
- c. When developing a TOR for advisory work:
 - i. develop a check list to determine target audiences within and beyond the World Bank Group;
 - ii. develop questions (pros and cons) to assist in determining whether CAO should do a longer advisory note or a shorter targeted memorandum (when this is not self evident).
- d. When preparing and developing an advisory piece:
 - i. determine the best way to ensure advice will impact or influence IFC/MIGA. Every piece should have a communications and distribution strategy attached to it;
 - ii. ensure that there are specific targeted recommendations to IFC/MIGA that will require a response.
- e. Ensure that the Management Action Tracking Record (MATR) is used for Advisory notes and that management responses to CAO advisory notes are included in the MATR reports to the President.

4 CAO's Operations Under the Current Operational Guidelines

4.1 Division of Labor Among CAO's Three Functions in Response to Complaints

Currently, the CAO Ombuds function takes the lead in determining case eligibility, conducting assessments to determine the potential for collaborative problem-solving, and determining whether stakeholders involved in a problem-solving process have reached an impasse on the case overall or on a specific issue, triggering a transfer of the case or the issue to Compliance. Complaints that are fully resolved to the satisfaction of the stakeholders (i.e. with no issues transferred to Compliance) do not currently undergo Compliance appraisal.

There is not full agreement among CAO staff on the effectiveness of the current process, which is codified in the Operational Guidelines. The underlying disagreement is about the weighting or prioritization of Ombuds and Compliance functions in response to complaints. Though all staff recognizes the legitimacy of both functions, there is a divergence of views on whether one function should have priority in CAO's response to complaints, or whether both functions should have equal weight.

In a practical sense, this lack of agreement has translated into tension over the sequencing of assessment for problem-solving potential and appraisal for compliance issues; timing of the release of Compliance appraisal reports and the assessment of sponsors' actions in those reports; time frames and deadlines for Ombuds problem-solving processes; timing of Compliance audits when triggered by appraisal; and content and timing of the release of audit reports and the assessment of sponsors' actions in those reports.

Since the Wilmar case, which involved both an Ombuds process and a Compliance audit, and triggered a response at the level of the World Bank President, the CAO VP has been interested in reviewing complaints more consistently for compliance issues. The CAO VP and staff have held extensive discussions on how to achieve this goal, while maintaining the effectiveness of the Ombuds problem-solving function. (See Appendix II summarizing the current practice, and the range of issues and options for modifications to current practice that have been discussed.)

4.1.1 Goals and Guiding Principles for Promoting Problem-Solving, Institutional Compliance and Improved Performance

Goals: The IRT understands that CAO's goals in revising the current practice are to increase the consistency with which Compliance issues arising in CAO cases are

reviewed, and the institutional impact of those reviews on IFC and MIGA environmental and social performance, while minimizing risks to collaborative problem solving.

Recommendation 4.1.1: We recommend the following principles to guide decisions that CAO makes about changing current practice.

1. CAO's problem-solving, Compliance and Advisory functions are complementary, but cannot all be applied equally in CAO's response to every complaint;
2. Problem-solving provided through the Ombuds function is of primary importance to affected communities and sponsors in many cases; and
3. Ensuring IFC and MIGA accountability and strengthening their environmental and social performance are of primary importance to national and international NGOs and World Bank Group stakeholders in many cases.
4. Effectively balancing these stakeholder interests and concerns requires CAO to make case-by-case judgments, assessing and weighing:
 - the interests and concerns of complainants, communities and sponsors;
 - the potential for these stakeholders to resolve complaints collaboratively with CAO assistance;
 - the likelihood that the complaint raises significant IFC or MIGA compliance issues;
 - the likelihood that addressing IFC or MIGA compliance with environmental and social standards would lead to a satisfactory resolution of the complaint from the viewpoint of complainants and their communities;
 - the broader significance of IFC and MIGA compliance issues in the complaint, in the context of IFC and MIGA's ongoing work in the sector, and/or in their use of particular investment vehicles;
 - the likelihood that addressing IFC or MIGA compliance in this case, or in a set of similar cases (using the thematic Advisory appraisal option) would lead to improvement in IFC or MIGA performance.
5. CAO must maintain transparency in the way it conducts its eligibility, assessment and appraisal functions, but also has authority and responsibility to manage the time and manner of its public disclosures, to maximize its ability to exercise multiple functions effectively in particular cases.

4.1.2 Procedural Trade-offs in CAO Responses to Complaints

The IRT recognizes that achieving the goals that CAO has laid out and applying the principles we recommend will be challenging.

Some CAO staff are concerned that because it does not conduct Compliance appraisal of cases that are resolved to the satisfaction of the parties, CAO may inadvertently be undermining CAO's effectiveness in holding IFC and MIGA accountable for compliance with their environmental and social standards. In other words, CAO may be "cleaning up messes" that had their origins in IFC or MIGA failure to ensure compliance, without bringing those compliance issues to light.

CAO staff have discussed with IRT several options to strengthen the consistency of Compliance review:

1. Compliance appraisal proceeds in parallel with Ombuds assessment as the first step in reviewing every eligible complaint. Some staff believe that a requirement for early Compliance appraisal in every case could undermine stakeholders' incentives to participate in problem solving until and unless there is a resolution of the compliance issues, or clarification that there are no significant compliance issues. Moreover, a contentious Compliance appraisal and/or audit could permanently undermine the potential for collaboration.

2. Compliance appraisal is undertaken at the end of every case. Some staff believe that this could lead to backlash from sponsors or complainants who had reached agreement, risking the gains made through collaboration. Delaying appraisal until the end of the case could also compromise the ability of the Compliance function to gain access to compliance-relevant information from IFC, MIGA and/or other stakeholders.

3. The VP uses existing authority under the Advisory function to trigger "thematic" Compliance appraisals of several investments, if and when CAO's work on a particular complaint raises more systemic concerns about IFC or MIGA practice in a specific sector, industry or investment vehicle. This option would enable CAO to look at compliance issues arising from particular complaints without necessarily triggering an appraisal of every complaint. It would have the benefit of enabling CAO to review and advise IFC and MIGA on potential environmental and social risks that may affect more than one project, but it would not have the same Compliance impact on the individual complaint as an appraisal targeted specifically to that complaint.

4. No change in current practice, but revised Operational Guidelines make it more clear that when complainants want a complaint to go directly to Compliance, the CAO VP has the discretion to transfer the complaint. By making rapid transfer of the complaint to Compliance based on initial assessment more explicit as a choice for complainants, this option could increase the likelihood

that serious compliance issues were transferred more quickly and regularly to Compliance.

5. The CAO as a whole, under the authority of the VP, conducts a joint information gathering process, to determine whether to go forward with either Compliance or Ombudsman action. This option would include a site visit by CAO staff that must assess the complaint and offer both the Ombuds and Compliance as potential avenues for CAO intervention and trust the complainant to make the best decision on how to go forward. This option would explicitly put more authority in the hands of the complainant, but could make it more difficult for CAO to distinguish its problem-solving and compliance review roles.

4.1.3 Recommended options for balancing CAO's functions in response to complaints

Both the status quo and several options for strengthening the consistency of Compliance review have been summarized above, along with their trade-offs and risks. The IRT shares the view that some adjustment to the status quo is warranted to improve the consistency of Compliance review, while safeguarding the effectiveness of the Ombuds process.

Recommendation 4.1.3.1: We recommend that CAO take the following steps:

- Amend the Operational Guidelines to make it clear that eligibility assessment is the responsibility of the CAO as a whole, not of the Ombuds function.
- Require IFC and MIGA to allow CAO free and unrestricted access to documents (and staff) related to the project/investment as of the day of eligibility determination, backed by a letter from the Office of the President to IFC and MIGA EVPs confirming this requirement.
- As recommended above, amend the Operational Guidelines to allow the transfer of specific issues from problem solving to Compliance review.
- Clarify in the Operational Guidelines that the VP has the final authority to determine whether and when a complaint, or an issue within a complaint, should transfer from Ombuds to Compliance, and specify the key criteria that will guide the VP's decisions on transfers (e.g. the interests of the stakeholders, the nature of the issues, and the potential for Compliance appraisal to address significant issues in IFC or MIGA performance).
- Test the use of the CAO VP's authority to undertake a thematic Compliance appraisal in response to systemic concerns raised in complaints, by undertaking an Advisory review of a set of projects in a "high risk" area identified by CAO, in consultation with the Office of the President, and with

IFC and/or MIGA management as appropriate. Document fully the rationale for the thematic appraisal, the process, the findings and recommendations, and document ad track IFC/MIGA management response as part of CAO's regular reporting to the President and to CODE (via the MATR).

Recommendation 4.1.3.2: We also recommend that CAO consider a test pilot of Compliance appraisal in parallel with Ombuds-led stakeholder assessment.

If CAO decides to go ahead with a test of parallel Ombuds assessment and Compliance appraisal, we recommend that CAO consider the following procedures to minimize the risk of confusion about CAO roles, and the risk of damage to stakeholder incentives to participate in problem-solving:

- The office of the VP clarifies in writing and orally with local, national and international stakeholders that CAO will be conducting an appraisal of IFC/MIGA compliance in parallel with its assessment of the potential for problem solving, with no sharing of information between the Ombuds and Compliance functions during their parallel processes.
- The office of the VP states that it will make a determination of how CAO can best assist in the resolution of the complaint based on the information generated from both the stakeholder assessment and the Compliance appraisal.
- The Compliance appraisal limits its appraisal process to review of documents provided by IFC or MIGA and interviews with IFC or MIGA staff; avoids direct contact between Compliance staff and complainants or sponsors except when absolutely essential to generate information needed for the appraisal; and adopts a time frame of 120 days, equivalent to the time frame for stakeholder assessment.
- The Ombuds assessment focuses on learning stakeholders' interests and concerns on substantive issues and exploring the potential for collaborative problem solving on some or all issues; explaining clearly and consistently the distinction between its work and the work that the Compliance function is doing to appraise IFC/MIGA compliance; and gathering feedback from the complainants on their level of interest in and expectations from Compliance review.
- When the results of Compliance appraisal and stakeholder assessment are available, the office of the VP reviews both reports with the lead Ombuds and Compliance staff, and makes a determination on how best to proceed (neither problem solving nor compliance audit; one or the other; or both, and if both, in what sequence).
- The VP determines the time and manner in which the findings from assessment and appraisal are disclosed to stakeholders, while maintaining timeliness and transparency. Within the 120 day limit, a lag of up to several weeks between the release of one set of findings and the release of the other

could be justifiable, but pressure for disclosure and concern about CAO's role will mount the longer the delay between the release of one set of findings and the release of the other.

- If there is reason to proceed with both a problem-solving process and a Compliance audit, and stakeholders are in principle willing to go forward with that understanding, then the sequencing should be driven by the specific circumstances of the case. If there is agreement among stakeholders that some issues should be addressed through Compliance review while others should simultaneously proceed to problem solving, then CAO can use the "issue transfer" option to allow both problem solving and audit at the same time.

Finally, if there is a test of this approach or any other substantial departure from current practice, we recommend that CAO carefully consider what complaint to test, document each CAO activity, stakeholder responses and CAO adjustments, in order to generate as much learning potential as possible from the pilot.

4.2 Operation of the Ombuds function

As noted in the section on methodology, our findings on CAO's Ombuds operations are based primarily on interviews with current and former CAO staff, supplemented by review of CAO case documentation (close-out reports, case summaries prepared for CODE, MATR, and stakeholder Monitoring and Evaluation survey responses), brief discussions of specific cases in interviews with some IFC and MIGA counterparts, and consultant assessments (notably the case studies prepared by David McDowell, and discussions with CBI staff who have assisted in CAO Ombuds cases).

We have not independently interviewed any non-IFC/MIGA stakeholders involved in CAO's Ombuds cases. Therefore, our findings must be understood as a synthesis of staff and key informant perceptions, rather than an in-depth, case-by-case review using primary documentation and stakeholder interviews. Our findings and recommendations on the operation of the Ombuds function follow.

4.2.1 Case Resolution

Roughly half of cases resolved or headed toward resolution: CAO's Ombuds function has addressed 27 eligible complaints since the new Operational Guidelines went into effect in April 2007. For purposes of reviewing the Ombuds process and outcomes, IRT has counted very closely related complaints with nearly identical stakeholders and very similar issues, on which Ombuds staff and consultants

worked nearly continuously, as “combined cases.”¹⁷ With this metric, the Ombuds function has responded to 22 cases. Nine cases have been resolved (some with constraints on the resolution of some issues and/or transfer of some issues to Compliance); two have reached a stage of well-institutionalized and generally constructive dialogue; three are ongoing at varying stages of resolution; four have transferred to Compliance; and four are currently being assessed.

OMBUDSMAN CASES POST-APRIL 2007	
Complaint	Resolution status
1. India: AD Hydro Power/ Himachal Pradesh	Resolved (within constraints)
2. Indonesia: Wilmar-01/West Kalimantan	Resolved/monitoring; transfer of some issues to Compliance
3. Georgia: BTC Pipeline-30/32/Vale	Resolved
4. Kenya: Pan African Paper-01/Webuye	Resolved (within constraints)/monitoring
5. Russian Federation: Russky Mir II-01/02/03/Taman	03 Resolved (01 and 02 transferred to compliance)
6. Philippines: Ambuklao-Binga Hydroelectric Power-01/Binga	Resolved
7. Turkey: Standard Profil-II-01/Duzce	Resolved/monitoring
8. Turkey: Assan Aluminium-01/Dilovasi	Resolved/monitoring
9. Sri Lanka: Rainforest Ec lodge Linkages-01/Deniyaya	Resolved
10. Ecuador: Interagua-01/Guayaquil	Ongoing--moving toward resolution
11. Nicaragua: Nicaragua Sugar Estate Limited-01/ León and Chichigalpa	Ongoing--moving toward resolution
12. Indonesia: Wilmar-02/Sumatra	Ongoing
13. Peru: Agrokasa-01/Ica	Ongoing—some issues transferred to Compliance
14. Cambodia: Cambodia Airport II-01/Preah Sihanouk	Ongoing
15. Kazakhstan: Lukoil Overseas-01/02/03/Berezovka	Transfer to Compliance
16. India: Mahindra Farm Services 01-04/Confidential	Transfer to Compliance
17. Georgia: BTC Pipeline-31/Naokhrebsi	Transfer to Compliance
18. India: Ramky/ Gummidipoondi	Transfer to Compliance
19. Chile: Aconcagua-01/Santa Barbara	Assessment
20. Colombia: TCBuen-01/Buenaventura	Assessment
21. Panama: Pando Montelirio-01/Chiriqui	Assessment
22. Peru: Maple Energy-01/Nuevo Sucre and Canaan	Assessment

This quantitative tally of case resolution and transfer is not sufficient to determine whether there are either significant shortcomings in the Ombuds function, or a high

¹⁷ The combined cases are the three Russky Mir complaints; the two BTC Vale complaints; and the three Lukoil complaints.

degree of success. The Ombuds cases have varied dramatically in their complexity and in the types of issues they raise, from a small group of landowners with a grievance about compensation paid for land, to a multi-level (community to international) dispute about the impacts of palm oil plantations and the standards that should govern IFC trade facilitation investments. There has also been significant variation in the type and scale of Ombuds problem-solving approaches.

Nonetheless, most cases that reach the CAO Ombudsman are highly polarized disputes, where communications have broken down and there is a very high level of mutual suspicion and skepticism about the potential for consensual resolution. In these cases, a mutually acceptable resolution should be viewed as a significant accomplishment by the parties assisted by the Ombuds function.

4.2.2 Involvement of IFC and MIGA investment officers and management in Ombuds case work

The Ombuds team makes judgments about the desirability of engaging IFC staff in problem-solving on a case by case basis. Direct involvement of IFC staff is not always useful. However, there have been several cases in which IFC staff have been very helpful to resolution (e.g. Kenya Paper, Agrokasa) and others where staff have been decidedly unhelpful (e.g. Wilmar, Mahindra).

At the senior management level, the quarterly meetings between the CAO VP and the IFC Risk Management Committee have helped focus IFC senior management attention more consistently on specific cases where Ombuds processes are underway. IFC management interviews suggest that management sees the Ombuds function as a net positive for IFC and wishes to support it, but the Risk Management Committee has not always ensured a constructive or usefully neutral IFC role in Ombuds cases.

Overall, it appears that where CAO seeks a constructive or hands-off role for IFC, IFC response remains heavily dependent on individual investment officer and management assessment of IFC responsibility, client relationship and public relations risk.

Recommendation 4.2.2: Where the Ombuds team seeks a specific role and action from IFC or MIGA, and the IFC or MIGA response is not as desired, the CAO VP should seek direct and proactive engagement of IFC/MIGA senior management to clarify IFC/MIGA's stance, ensure clear communication with the Ombuds team, and promote responses that will assist the problem-solving process.

The value of senior management intervention to support an appropriate role for IFC/MIGA may go beyond the specific case, by signaling to investment officers that senior management is actively aware, monitoring and supporting the resolution of

issues through the Ombuds process.

4.2.3 Time required for assessment

CAO staff prepared a table showing the times required for the complaints that CAO has handled since early 2007 to go through each step in CAO procedures, from complaint acceptance through eligibility determination and assessment, to problem solving and/or transfer to Compliance. Granted that there is enormous variability of situations and issues across CAO complaints, the average time for assessment is still close to 130 days, 10 days over the 120 day upper limit set in the current Operational Guidelines.

It appears that the practice of Ombuds staff and consultants is to leave no stone unturned in the assessment process, in a strong and professional effort to find a way forward to a mutually acceptable problem-solving process. The question this raises for the Ombuds team and CAO generally is whether the 120 day time frame in the Guidelines should be extended, or assessment deadlines adhered to more firmly, except in cases of extreme complexity.

Recommendation 4.2.3: Adhere to the 120 day limit for assessment in all but exceptionally complex cases, and seek to bring down the average assessment time, primarily by devoting more resources to assessment.

As a practical matter, adhering to the 120 day time frame more consistently, and reducing the average assessment time below 120 days (e.g. aiming for 90 days as an average), could require a higher level of investment in staff and consultant time to engage stakeholders, review information gained from interviews and documents, develop process options and proposals, test them, and then either confirm and document commitment to problem solving, or close out Ombuds involvement if the problem-solving route does not appear viable.

4.3 Compliance

Compliance, like the Ombudsman, is a reactive function and is almost exclusively reliant on Ombuds for its work input. For various reasons Compliance only began to realize its potential to impact the IFC/MIGA in recent years through a combination of increased appraisals as well as audits that impacted the IFC significantly (e.g. Wilmar). Compliance has generally worked within the parameters set by the Operational Guidelines. Its methodology has been consistent in recent years and there is a need to increase formality, ensure that its staff and consultants alike have taken a disciplined approach to their work and judgment. However, the Operational Guidelines have not provided enough clarity as to how to interpret the Guidelines, nor is there an approved manual that gives more detailed instruction to staff and consultants alike on the standard of work expected.

In discussing the role of Compliance with some of its stakeholders, issues arose that need clarification. These include:

4.3.1 External Misperceptions of CAO's Compliance Function

It is apparent that the roles, responsibilities, and interlinkages between the CAO's component functions were not well enough understood. The Compliance function was the most misunderstood. The separate appraisal and audit stages in Compliance are not seen as separate. The general view is that there is only one activity in Compliance – that of audit even though the statistics show that the bulk of Compliance work is on appraisals with only a small number resulting in an audit. One reason offered is that the Wilmar audit, in particular, has had a big impact within the WBG. The Operational Guidelines are not clear enough about the distinctions between appraisal and audit and the language used is somewhat confusing.

Recommendation: The CAO must attempt, particularly through its outreach and communications strategy, to better communicate the role of Compliance and how its two activities (i.e. appraisal and audit) differ in sequence and effect.

4.3.2 Other Findings

Audit Focus: When Compliance begins an audit, an effort is made to satisfy IFC/MIGA clients that the focus is on IFC/MIGA and not the client. Nevertheless, to perform satisfactorily, the audit team, of necessity, must keep the client's actions, decisions, interactions with IFC/MIGA, etc. in view at all times. This potentially challenging issue is not addressed in the Operational Guidelines and the CAO may well mislead IFC/MIGA clients especially when the audit is titled using the IFC/MIGA client name (e.g. Wilmar) and results in mistrust.

Recommendation 4.3.2.1: The Operational Guidelines should note the challenge of keeping the focus on IFC/MIGA rather than the client and spell this out more carefully in audit reports to prevent accusations of non-transparency.

Process Expectations: Compliance does not communicate to IFC/MIGA staff enough what they should expect from the process itself: the likely time horizon; demands for information; staff time; what the output will be, etc.

Recommendation 4.3.2.1: Compliance staff should assess each appraisal and audit process for its likely impact on IFC/MIGA staff and communicate this clearly upfront.

Names assigned to Compliance stages: The word 'audit' immediately brings to mind the work done by the Internal Auditing Department (IAD). This results in some confusion.

Recommendation 4.3.2.2: CAO should consider other words that might better describe the 'audit' function such as verification, examination, or analysis. Other

oversight departments in the WBG use the words inspection, review, and investigation, so are best avoided.

Interaction with IFC/MIGA staff: The Operational Guidelines require that a draft audit report 'be circulated to senior management of IFC/MIGA and all relevant departments for a factual review' (Operational Guidelines Para. 3.4 page 25). This does not, however, require the CAO to entertain any discussion with the IFC/MIGA beyond verifying the facts of the audit before it is published - along with management responses. Best practice audit is to engage with management as early and as much as possible to encourage buy-in to the findings and recommendations before the report is finalized. The report then incorporates the response of management without in any way impacting the CAO's independence or professional opinion.

Recommendation 4.3.2.3: Encourage increased interaction between the CAO team and IFC/MIGA management over audit related findings and issues, and incorporate these in the final report.

Feedback to Complainant/s: Although the focus of Compliance is on IFC/MIGA compliance issues stemming from complaints that have been processed through Ombuds, the generally do not interact with the complaints once the Compliance work is completed. There is a view within the IRT, that it would be advantageous to the complainant to receive direct feedback in certain circumstances.

Recommendation 4.3.2.4: Decide under what circumstances it would be appropriate for Compliance to go beyond a desk audit and have direct interaction with complainants, especially to communicate results.

4.4 Advisory Practice

4.4.1 Advisory Operations under the Current Guidelines

Advisory Principles: The Advisory role under the current guidelines is the only function that has a clear freestanding set of principles that underpin its role (Guidelines, Section 4.1.2, and page 28). While the other functions have some inherent principles in the description, they do not have a separate section on specific principles. The Advisory principles are clearly articulated and are sufficient to facilitate understanding of the advisory role by IFC/MIGA and other stakeholders.

Advisory Interaction and Engagement with IFC/MIGA: While the scope of this report does not focus on the impacts of Advisory on the IFC/MIGA, it is important to note IRT findings that IFC staff and officials interviewed often were not familiar with the advisory notes or felt that the IFC did not have basic understanding of the Advisory role.

Some felt there should be more interaction both on engaging the IFC when determining whether to write an advisory note, and after the advisory note was completed. This process for IFC engagement prior to developing an advisory note came to a turning point after the Grievance Mechanism Advisory Note was concluded and circulated, and it was learned that the IFC was already in the process of designing its own mechanism, thus pre-empting the CAO's report and IFC benefitting from the CAO's expertise on the subject. A series of exchanges between the IFC EVP and the CAO VP in 2008 resulted in an agreement on increased engagement during the initial stages of advisory formulation that would include sharing the Advisory TORs and draft advisory note with senior management, and considering comments provided by management. However, the CAO reserved the right not to accept the comments.

Recommendation 4.4.1.1: Each advisory note should have a well thought out strategy for impact, and a distribution and communications strategy both inside and outside IFC/MIGA.

Strategic engagement and proactive work such as a quick phone call or short memo can be a very effective use of the Advisory function. For example, an October 2007 interoffice memorandum from the CAO VP to Robert Zoellick on CAO concern over the approach (and lack of in country capacity and lack of coordination) to the extractive industries sector in the oil and gas sector in Peru resulted in a review of the oil and gas industry and governing institutions in Peru. Meeting with the IFC Corporate Risk Committee around the portfolio are also an effective use of the Advisory role. This role is appreciated by IFC staff and some stated that they would like to see more of this type of interaction. Under these guidelines, the CAO has stated that Advisory should be written form. This is to protect the office and ensure that advice is not misunderstood.

Recommendation 4.4.1.2: CAO should consider how it can build and expand on the model of the IFC Corporate Risk Committee meetings. CAO should consider more strategic short advisory notes on systemic issues as they arise from Ombuds or Compliance. IRT agrees that advice should be in written form, even to summarize a meeting.

Tracking IFC Responses to Advisory Notes: Tracking and ensuring adequate responses and action as a result of advisory notes is challenging. In response to the recent advisory note on Review of IFC Policy and Performance Standards, IFC sent an extensive response that agreed with most of CAO's finding and recommendations, but indicated that they already had the bulk of issues under control. The response was quite detailed and the challenge for CAO will be to determine IFC's follow up and implementation of recommendations and develop a plan for tracking it over time.

Recommendation 4.4.1.3: This response to the Review of IFC policy standards will be an opportunity to loop advisory into the MATR. Although Advisory is supposed

to be part of this system, IFC response and action on advisory reports do appear to be in the system yet.

Private Sector Response to Advisory Notes: The grievance mechanism advisory note has resulted in demand from the private sector field for workshops on developing mechanisms. Two workshops have been requested from the private sector in Australia and South Africa. There are some staff and IRT views that these workshops are beyond CAO's mandate and TOR since do not relate directly to IFC/MIGA accountability or improving IFC development outcomes, especially because the private sector companies are generally not IFC clients.

Recommendation 4.4.1.4: While the response from private sector is important, CAO should ensure that its human and financial resources are used for work around IFC, MIGA and their clients.

Advisory Profile within the CAO office: There is some sense among staff that the Advisory role is less important than the Ombuds or Compliance. The Operational Guidelines also suggest a secondary role when they stipulate that Advisory activities "must be consistent and supportive of, and not prejudicial, to the Ombudsman and Compliance roles, and that the limited resources of the CAO are applied to the Advisory role only where appropriate" (Guidelines, Page 28, Section 4.1.2). 18 Other staff view it as an important, but underutilized resource.

There is currently no CAO staff person dedicated exclusively to the Advisory role, as there are for the Ombuds and Compliance functions. This may contribute to the role being underutilized and lacking a clear strategy and leadership to hold IFC accountable and engage the IFC on social and environmental issues in a proactive way. As a result Advisory reports and interventions tend to be done on an ad hoc basis.

There is also no dedicated budget for the Advisory role and Advisory actions appear in the guidelines to be limited by budget. One of the questions under the Advisory appraisal is: Are there adequate resources to respond effectively to the Advisory request? This suggests a need for proactive budgetary planning by the CAO office.

Recommendation 4.4.1.5: IRT believes that the Advisory role would flourish with a dedicated budget and the right staff person. CAO should explore the pros and cons to the office as a whole to dedicate added resources that would assist more proactive work, develop a yearly advisory strategic plan, and draw from Compliance and Ombuds cases more systematically.

Alternative uses for Advisory: As discussed above a request for Advisory can be triggered by a broad number of entities, including the World Bank Board. Regarding a request from the Board, there is no stipulation whether the request should come only from the full Board or could come from a Board committee (such as CODE), from an individual Board member, or grouping of Board members.

Some CAO staff have suggested that a request for activating Advisory should be broader to include civil society, NGOs and claimants. For example, the Advisory function could be available to complainants as one 'menu' option in addition to Ombuds and Compliance as long as the request was related to systemic issues derived from a complaint. There is not currently no TOR or Operational Guideline prohibition on expanding to outside stakeholders because it could come through the CAO VP authority.

In addition, as discussed above, Advisory thematic reviews would be another tool for the CAO VP to investigate systemic issues that grow out of Compliance and Ombuds. In the Operational Guidelines there is a prohibition on Compliance undertaking "institutional or programmatic audits" but the language leaves it open for Advisory. ¹⁹

Recommendation 4.4.1.7: There are numerous creative and substantial ways to utilize the Advisory role even within the current TOR and Guidelines. CAO as an office should explore these opportunities.

Future Challenges: The IFC trend away from project lending will create opportunities and challenges for the Advisory role. Some CAO staff suggestions for dealing with IFC structures such as financial intermediaries and asset management include Advisory interventions on climate change (how will the IFC address its climate change strategy in the new instruments); labor issues; following up on the Performance Standards Advisory Note on more targeted specifics on how the IFC can implement and track e & S performance and development outcomes in financial intermediaries; a critique on IFC reporting systems, a critique on IFC business practices in the current climate; and a proactive note on how the decentralization will potentially impact E & S issues and implementation.

Recommendation 4.4.1.8: Many of these suggestions are interesting and should be explored in greater depth.

¹⁹ Guidelines, page 22, section 3.3.2

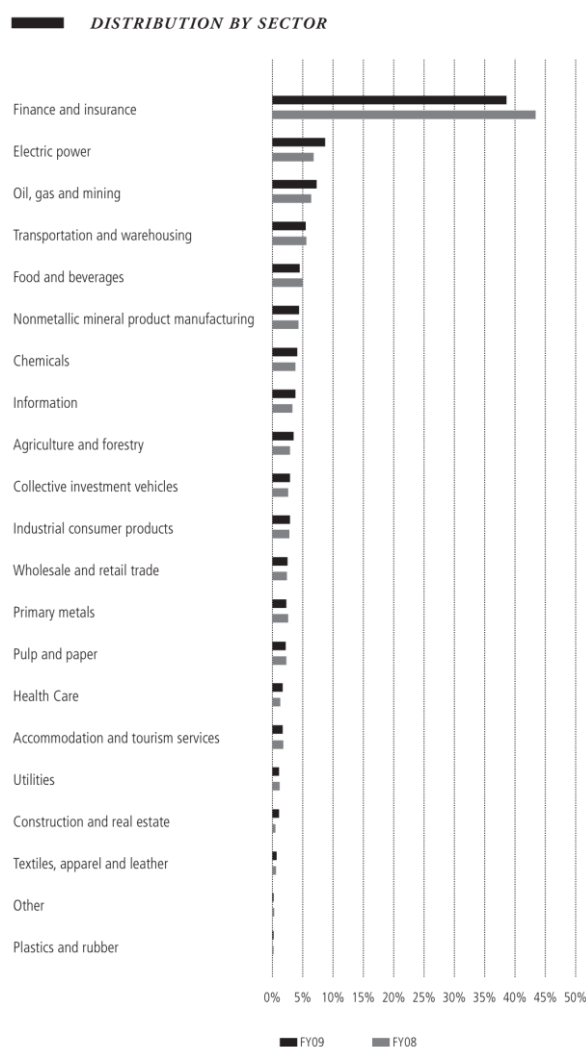
5 Trends in IFC and MIGA Business Lines and Operations, and Implications for CAO

5.1 IFC's portfolio and operations

Based on a review of the *IFC ROAD MAP FY10-12: Creating Opportunity in Extraordinary Times* (April 2009), IFC's 2009 Annual Report, discussions with IFC management, and discussions with CAO staff, the IRT sees the following factors and trends in IFC's portfolio and operations as potentially significant.

5.1.1 IFC Portfolio Trends: Investments in Financial Intermediaries; Creation of AMC; Growth of Advisory Services

FI Portfolio: As the adjacent chart (Disbursed Portfolio, FY2009 vs. FY2008, from IFC's 2009 Annual Report, Volume 2) makes clear, IFC is increasing its investments in financial intermediaries (FIs). The FI share of the portfolio has grown rapidly in the last five years. FI investments now make up by far the largest single sector in the portfolio. The FI share of the portfolio is expected to stabilize at roughly 50% in the next several years.



For CAO, IFC's heavy investment in the FI sector raises several important questions about its future role in receiving and responding to complaints about environmental and social impacts of IFC investments.

CAO's Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information (May 2010) identified several important issues and trends in IFC's FI portfolio (pp. 21-23). For CAO's own work, major questions include:

- How meaningful a complaint recourse role can CAO expect to play with regard to the FI portfolio, given the low likelihood that communities affected by end-uses of IFC funds invested in FIs will learn of IFC's involvement or of the CAO as a recourse option?
- Is there a significant, ongoing Advisory role for CAO to play in reviewing E&S issues in the FI portfolio and supporting effective IFC E&S performance?
- Is there a need for CAO to add to its staff and/or consultant roster individuals with expertise in assessing the E&S impacts of FIs?

Recommendation 5.1.1.1: CAO should follow up the excellent *Review of IFC's Policy and Performance Standards* by continuing to track management response to its recommendations, particularly to assess how IFC is ensuring its FI investments meet its E&S performance standards. If CAO decides to undertake regular review of IFC's FI portfolio, CAO should consider adding specialist expertise to its staff and/or consultant roster.

AMC: The Asset Management Company is a significant new IFC financial intermediation initiative. Through AMC, IFC intends to mobilize third-party resources, create specialized funds, and invest them in areas that IFC staff have developed, with IFC as a co-investor. Because AMC has been created as a wholly-owned subsidiary with a separate corporate identity, and will be investing funds in projects and other financial vehicles developed by IFC staff, it raises basic questions about whether and how IFC's E&S accountability for investments will apply to investments made through the Asset Management Corporation.

Recommendation 5.1.1.2: CAO should continue to monitor AMC's development closely, and seek clarification from IFC management if necessary to determine how IFC intends to ensure that AMC investments comply with its E&S standards.

Advisory Services: IFC is expanding the use of Advisory services in several sectors, including advice to FIs through its Access to Finance advising; and advice to a wide range of companies on E&S risk management and sustainability. IFC's provision of Advisory services to companies in high-impact sectors (e.g. infrastructure, agribusiness, extractive industries) may be a net positive for E&S performance. However, it is also possible in some circumstances that IFC advice could raise questions about compliance with IFC's E&S standards. CAO's *Review of IFC's Policy and Performance Standards* found a "lack of clarity and gaps in the institutional

infrastructure regarding application of the Performance Standards to advisory services” (p.20).

With regard to CAO’s role, there are issues parallel to those with IFC’s FI portfolio. It is unlikely that potentially affected communities will be aware of IFC’s Advisory Services role, even if IFC advice were contributing to negative impacts. Therefore it is unlikely that CAO will function effectively as a recourse mechanism for communities potentially affected by CAO’s Advisory work.

Recommendation 5.1.1.3: CAO should continue to monitor IFC’s Advisory Services; track management responses to its recommendations in the *Review of IFC’s Policy and Performance Standards*; and when appropriate, seek clarification about how IFC is ensuring that its advice is fully consistent with its E&S policies and standards. As with the FI portfolio, CAO should consider conducting regular reviews of IFC Advisory Services as part of its own Advisory mandate.

5.1.2 IFC Decentralization

IFC expects to continue decentralizing its staff, growing its regional presence and creating additional Regional Operations Centers, in addition to the one just opened in Istanbul. IFC management interviews indicated that there is a strong IFC commitment to a matrixed approach, with headquarters management of major sectors and delivery of sectoral expertise to regions and countries, while investment development and management is increasingly regionally based.

The implications of this trend for CAO are not entirely clear. Decentralization may increase the challenge of building and maintaining awareness of CAO among IFC staff. Conversely, decentralization may bring IFC staff into closer relationships with sponsors and potentially with communities. There may be cases where decentralization increases IFC’s ability to support CAO with problem solving.

Recommendation 5.1.2: The IRT does not see a need to place CAO staff in IFC regional operations centers. However, CAO should factor decentralization into its communications and outreach strategy (see Section 6 below), and should consider having staff visit Istanbul and other regional operations centers regularly for awareness raising, relationship building, case and issue discussions.

5.2 MIGA’s portfolio and operations

Though MIGA represents a relatively small proportion of CAO’s functional work, trends in its operations may still be significant for CAO. Based on interviews with MIGA staff, we see three areas of MIGA’s evolution that may be relevant to CAO:

- Creation of an Asia hub, with implications parallel to IFC’s decentralization
- Increasing underwriting in post-conflict and fragile states, with potentially higher E&S risks, and less MIGA ability to conduct due diligence
- Trust fund-supported technical assistance to MIGA clients on E&S risk management for investments in Africa, with potential positive impacts but

also potential risks from advising in environments with weak client capacity and/or commitment

Recommendation 5.2: MIGA senior management has indicated an interest in intensified CAO advice to MIGA on its E&S due diligence and performance management. CAO should explore ways that it can provide targeted advice to MIGA management, perhaps in ways analogous to its *Review of IFC's Policy and Performance Standards*, or in less formal discussion and documentation.

6 Strengthening CAO's Organizational Systems for Sustainability

CAO operates very effectively as a small, highly motivated and disciplined team at all levels of seniority and across all functions. However, it is heavily dependent on its incumbent VP and staff for its effectiveness. There is unfortunately no guarantee that future staff will all be of the same caliber.

After ten years of experience, the IRT believes that the Office could benefit from a more robust set of organizational systems for planning, resource allocation, quality assurance, communications, and succession planning. Setting up these systems now will reduce the risk of unevenness in the quality of CAO's future operations, especially as and when there is significant staff turnover.

Certain key organizational elements have still to be developed in the CAO. Doing so will assist management in determining its goals and objectives, align its resources accordingly, and help it become accountable for all of its activities. These include:

6.1 CAO Strategic Planning for Budget and HR Decision-making

Strategic Planning: The CAO has not defined its business objectives and developed a CAO-wide strategic plan. Nor have the Ombuds, Compliance and Advisory functions articulated annual strategies or budget requirements (aligned to the overall CAO strategy). The purpose of a business strategy is to encourage greater focus on strategic issues, use resources efficiently and effectively, and be held accountable for results.

The IRT recognizes that significant aspects of the Ombuds and Compliance work are difficult to plan in advance because these functions are triggered by complaints. Nonetheless, the portfolio of existing work and the past several years of experience provide a baseline on which to define objectives, plan and budget, while allowing for contingencies.

Recommendation 6.1.1: CAO should use annual strategic planning for the Office as a whole and for each function to clarify operational objectives, contingencies, and budget and human resource implications.

Budget Determination: CAO's budget has been determined on the basis of past experience of Ombuds' larger caseload, Compliance's lesser caseload – and without a dedicated budget for Advisory's activities. Should Ombuds require additional resources, an imprest account (of \$800K) is available for its use only, for the purposes of dispute resolution. It is not calculated using the strategic objectives for the year as a starting point and estimating the resources needed to achieve these objectives. Nor does it set aside any resources for Advisory work. Doing so would highlight its true budgetary needs for the CAO as a whole and provide useful data should it require additional resources to achieve its agreed output.

Recommendation 6.1.2: CAO should develop its budget in alignment with stated strategic objectives for all of the CAO office and use these objectives as the basis for estimating its needs going forward.

6.2 Systems for Quality and Consistency, Based on Explicit Standards

CAO staff aim to perform their work in a disciplined manner, but also need creativity and flexibility to perform their work. The challenge for CAO is to build up quality assurance systems that promote consistent quality and enhancing the CAO's overall credibility, without compromising creativity or undermining the critical role of professional judgment.

Quality assurance is not only a form of self-protection, but it provides stakeholders with a certainty as to what the standards of operations are within the CAO function. However, while articulating the approaches that each of the Ombuds, Compliance, and Advisory functions follow in their work, the current Operational Guidelines do not provide clear standards against which to assess the quality of CAO's work. For example,

- **Ombuds:**
 - **Assessments:** "Assessments will be carried out in a flexible manner" and may include any combination of activities such as reviewing files, meeting complainant/s, visiting project sites, and holding public meetings (see Operational Guideline 2.3.3 Assessment – page 16). As written, this statement provides no guidance as to the minimum essential criteria that must be followed by staff and consultants.
 - **Complaint Resolution:** "The CAO Ombudsman and the stakeholders may use one or more of the following approaches to address issues" including facilitation and information-sharing, joint fact finding, dialogue and negotiation, and conciliation and mediation (see Operational Guideline 2.4.1 Approaches to complaint resolution – page 17). As mentioned above, there is no guidance as to the basic elements necessary to promote complaint resolution.
- **Compliance:**
 - **Appraisals:** "to guide the appraisal process, the CAO applies several basic criteria. These are framed as a series of questions to test the value of undertaking a compliance audit, and whether IFC/MIGA readily can document compliance" (see Operational Guideline 3.3.1 – page 23). While questions are helpful as a guide, the Operational Guidelines do not articulate what the criteria that constitutes a satisfactory response. It is left to the judgment of the staff member or consultant.

- **Audits:** “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” (see Operational Guideline 3.2 – page 21). The criteria include policies, performance standards, guidelines, etc. For auditing of a compliance nature, the Operational Guidelines should describe what the minimum standards are to satisfy the Compliance audit definition.
- **Advisory:**
 - The Operational Guidelines imply - but do not provide - general or specific guidance on how a high standard Advisory product is achieved.

Recommendation 6.2.1: The CAO should define standards of performance for each of its functions, building on the Evaluation survey questions and other sources of practice standards.

Monitoring and evaluation for quality assurance: The CAO’s relatively recent move to set up an M&E system for its Ombuds and Compliance work, using stakeholder surveys, is an important step forward. Particularly useful are the survey questions for each function, which spell out in some detail *de facto* performance standards for each function. However, the response rates are low, and a non-random, very small sample of stakeholder feedback does not provide a meaningful basis for assessing the quality of CAO’s work.

Recommendation 6.2.2: CAO should strengthen substantially its M&E systems to assess the quality of its work in each of its three functions. CAO should then conduct periodic evaluations and make the results available through its reporting channels. The CAO should also make periodic use of outside evaluators to support its quality assurance goals.

6.3 Communications and Outreach Strategy and Capacity

The CAO VP recently appointed a full-time staff member to improve CAO’s communications and outreach to its stakeholders in general. While the objective is clear, a strategy has not been finalized and approved nor have budget resources been allocated specifically for this objective. As discussed above, the IFC/MIGA are both changing their business models and introducing new products which have future E&S implications.

Internally, the CAO does not have a communications protocol to ensure consistency or completeness of high-level ‘messages’²⁰ at the CAO level or from those initiated by the Ombudsman, Compliance, or Advisory functions; nor is there a set of agreed upon criteria to ensure a more disciplined approach to the way stakeholders are communicated with. As examples: CAO staff and consultants do not necessarily send consistent or complete messages about the CAO processes and tools to affected people or NGOs; and, the style of written communications from Ombudsman, Compliance, or Advisory differ.

Taken together, communications and outreach is recognized as a key CAO activity yet it lacks key tools to deliver on its promises.

Recommendation 6.3: That a risk-assessed communications and outreach strategy (covering written, verbal and internet media) be articulated, agreed, and resourced; and that agreed upon protocols and criteria are introduced in the CAO to ensure the effectiveness of this key function going forward.

6.4 Succession Issues

It should be expected that there will be natural attrition at the senior levels of the CAO. It is therefore important to take steps now to strengthen the Office and ensure that the lessons learned from its pioneering work are built into the CAO DNA. Areas for consideration are:

- Developing upcoming managers and supervisors;
- Codifying internal practices; and
- Ensuring the specific CAO knowledge is captured in the database for use by future staff.

Recommendation 6.4: The CAO staff develops a knowledge base using available information and staff recollections that staff agree will be valuable in informing and adapting newcomers to CAO's unique operations, insights, and experience.

²⁰ E.g.: There is inconsistency and incompleteness about the CAO's Mission, Role, and its Guiding Principles as described in its Terms of Reference, Operational Guidelines, and Annual Report.

7 Conclusion

For the last ten years, the CAO has served its stakeholders with integrity, independence and distinction. CAO's three roles are unique among IAMs, and the model is considered to be the 'state of the art' by other accountability mechanism panel members and experts in the field.

While the CAO has a unique and compelling structure, the structure also presents challenges to the CAO VP to ensure the smooth daily operations, interactions and development of the functions, and continuity of the CAO office as a whole. Thus CAO is still striving to ensure that the three functions work in a complimentary fashion to ensure maximum impact in fulfilling the CAO mandate. The proper functioning of the office is particularly crucial in the current IFC/MIGA investment climate and future investment trends.

The CAO has a solid foundation of experience, best practices and lessons learned to build on. The recommendations in this IRT report are meant to update, clarify and codify the CAO's mandate, TOR, and Operational Guidelines, as well as ensure that CAO's basic operations and foundational principles and standards are robust enough to meet future challenges.

Appendix I: Persons Interviewed

CAO Staff

Meg Taylor, Vice President CAO
Amar Inamdar, Principle Specialist, Ombudsman
Henrik Linders, Senior Specialist, Compliance
Julia Gallu, Specialist, Ombudsman
Andrea Repetto Vargus, Specialist, Ombudsman
Scott Adams, Senior Specialist, Ombudsman
Emily Horgan, Program Officer
Susana Rodriguez, Research Analyst
Clare Gardoll, Research Analyst
Paula Panton, Executive Assistant

IFC

Jyrki Koskelo, Vice-President, Global Industries
Atul Mehta, Vice President, Global Infrastructure Sector
Rachael Kyte, Vice President, Business Advisory Services
William Bulmer, Head of Mining Division, Oil, Gas, Mining and Chemicals
Department

Office of the President

Marie-Chantal Uwanyiligira, Assistant to the President
Julie Nelson, Former Assistant to the President

MIGA

James Bond, CEO, MIGA
Edith Quintrell, Director of Operations
Judith Pearce, Risk Management
Deniz Baharoglu, Sector Leader, Environmental and Social , Economics and Policy
Group

CAO Consultants

David McDowell, Retired, former Strategic Advisor
Kate Kopischke, Independent Consultant

CAO Strategic Advisors

David Hunter

Appendix II: Memo on Ombuds/Compliance Sequencing Issues

Options for Revision of CAO Operational Procedures

Summary of CAO Staff Discussions, March-April 2010

Prepared by the Consensus Building Institute

May 26, 2010

I. Background and Rationale for Possible Revision of CAO Operational Guidelines and Procedures

CAO's current Operational Guidelines have been in use since April 2007. The current Guidelines support both collaborative problem solving by complainants and other stakeholders, and Compliance appraisal/audit of complaints that cannot be resolved by collaborative problem solving.

Currently, Ombuds staff screen all incoming complaints for eligibility.²¹ Ombuds staff and consultants assess eligible complaints to determine whether collaborative problem solving could lead to satisfactory resolution of the issues raised in the complaint. If there appears to be potential for success, Ombuds staff and consultants work with the stakeholders to reach agreement on a process for problem solving. Ombuds staff and consultants also provide information to complainants and other stakeholders about the Compliance function.

Under the current operational procedures, complainants and sponsors may choose to proceed with a problem solving effort after the Ombuds assessment report is released. They may also choose not to; in those instances, the case is transferred to the Compliance function for compliance appraisal, and for audit if the appraisal indicates high likelihood of a material compliance breach.

If complainants and other stakeholders do proceed to a mutually satisfactory resolution of the issues with assistance from the Ombuds function, their case is closed, without referral to the Compliance function for appraisal. If the effort to reach a satisfactory resolution breaks down and Ombuds staff determine that it cannot be revived, they transfer the case to Compliance for appraisal.

There is a shared perception among CAO staff that the current set of operational procedures has strengthened the effectiveness of the Ombuds function as a problem-solving mechanism. Previously, CAO staff conducting the initial

²¹ CAO has already decided that in a formal sense, all complaints should be reviewed by the Office as a whole, not by the Ombuds function. None of the eligibility criteria will change, and operationally the procedure for eligibility screening will remain effectively the same. Compliance staff will now have the same access to all complaint-related information during eligibility screening that Ombuds staff have.

assessment also appraised compliance issues. By ensuring the neutrality of the Ombuds function on the question of compliance and by focusing the Ombuds staff and consultants solely on seeking opportunities for collaborative resolution, the current procedures appear to have enhanced the credibility and effectiveness of the Ombuds function with complainants and sponsors. In addition, the uncertainty for all stakeholders about the consequences of an appraisal/audit may increase the attractiveness of the problem-solving option for stakeholders in some cases.

With regard to the Compliance function, the current procedures do not provide an automatic Compliance appraisal of all eligible complaints. Only cases that cannot be resolved through Ombuds-supported problem solving go to Compliance for review. Since the new Operational Guidelines came into effect, CAO has received a total of 27 eligible complaints. Of these, 12 eligible complaints were referred to Compliance after Ombuds assessment indicated no potential for problem-solving; when the case reached an impasse during a problem solving process; or when parties agreed to refer a specific issue for Compliance appraisal while continuing problem solving on other issues. Two appraised complaints have been audited.

Though the number of audits has been relatively low, CAO's recent audit of the IFC Wilmar palm oil investment had a significant institutional impact on IFC and beyond. This experience has raised for at least some in CAO the question of whether a stronger focus on compliance could lead to greater institutional impact. In addition, some in CAO wonder whether the current Operational Guidelines allow IFC and MIGA to avoid accountability for compliance issues on some complaints that are resolved through collaborative problem solving. In combination, these factors have led CAO to review the potential for more consistent review of compliance issues in the complaints it receives, and/or for more direct effort to examine potential systemic compliance issues through CAO's Advisory function.

II. Increasing Compliance Appraisal of Complaints: Questions, Benefits and Risks

The questions currently facing CAO are:

1. Is Compliance appraisal of all eligible complaints (including those that are successfully resolved with Ombuds support) desirable from the standpoint of CAO's mandate?
2. If so, would a change of Operational Guidelines to require appraisal of all eligible complaints pose risks to the effectiveness of the Ombuds function as a neutral problem-solving mechanism?
3. If there are risks to the effectiveness of the Ombuds function, how could the design of procedures for Compliance review of all eligible complaints minimize those risks?
4. If Compliance appraisal of all eligible complaints is not desirable, what other mechanisms within its mandate could CAO use to increase the accountability of IFC and MIGA for compliance with their respective E&S performance standards?

5. Does the current practice where Compliance engages post Ombudsman potentially compromise the Compliance function's access to relevant project information?

Potential benefits of Compliance appraisal for all complaints: In brief, staff discussion identified four primary reasons why appraisal of all complaints would be desirable for CAO:

- Ensure that CAO holds IFC/MIGA accountable for compliance on all eligible complaints, not only in those cases where stakeholders do not reach a voluntary resolution;
- If Compliance appraisal is undertaken early after eligibility review, the potential to ensure access to the full range of relevant project information, and more timely action on compliance issues by IFC (in cases where there are material compliance issues);
- Contribution to CAO's advisory role, by providing additional information about patterns of IFC/MIGA (non)compliance that can guide CAO advice to IFC/MIGA;
- Greater balance in the activities of CAO as an office, relative to the status quo where Ombuds activity is the majority of all CAO activity.

Risks to the effectiveness of the Ombuds function from Compliance appraisal of all complaints: Staff discussion identified several potential risks to the effectiveness of the Ombuds function, depending on A) the timing of Compliance appraisal relative to Ombuds-supported assessment and problem-solving; B) the results of the appraisal; and Compliance) the way in which the results of Compliance appraisal (and audit in cases where audits are undertaken) are communicated to stakeholders and the public.

- If Compliance appraisal (or audit) is undertaken during an ongoing Ombuds-supported assessment or problem-solving process, the simultaneous pursuit of both functions may raise questions in the minds of stakeholders about the neutrality of the Ombuds function and the degree of separation between the Ombuds and Compliance functions.
- If Compliance appraisal is undertaken simultaneously with problem solving, some stakeholders may decide to opt out of the problem-solving process until CAO findings from Compliance appraisal (or audit) are produced.
- If Compliance appraisal findings are made public during an ongoing Ombuds-supported assessment or problem-solving process, the public finding that there are grounds for a Compliance audit could polarize the stances of both complainants and sponsors, making problem solving difficult or impossible.
- Conversely, if the Compliance appraisal finding is that there are no grounds for a Compliance audit, that finding could significantly reduce incentives for the sponsor to continue participating in problem solving.
- Whatever the Compliance appraisal findings, there is a risk that the Ombuds function would be perceived as having lost its neutrality, despite the best efforts

of CAO to maintain a distinction between the Ombuds and Compliance functions and staff.

- Whatever the findings, making Compliance appraisal mandatory, particularly at the assessment or early collaboration stages of a problem solving process, arguably reduces the stakeholders' joint control over the process relative to CAO's own control of the process.

III. Options for Strengthening CAO's Oversight of IFC/MIGA Compliance

In light of these potential benefits and risks of Compliance appraisal on every project, CAO staff have identified and assessed four options for increasing the use of the Compliance function:

1. Simultaneous Compliance appraisal and Ombuds assessment of all eligible complaints
2. Post-ombuds Compliance appraisal of all cases
3. Compliance appraisal after Ombuds assessment
4. Targeted Advisory reviews based on both Ombuds and Compliance experience

Following are a brief description of each option, and a table comparing benefits and risks of each option for accountability and problem solving.

1. Simultaneous Compliance appraisal and Ombuds assessment of all eligible complaints

The underlying intent of this option is to maximize the opportunity for immediate review of compliance issues raised by eligible complaints, while preserving some flexibility for CAO to craft its response to the complaint in light of findings from both the Ombuds assessment and Compliance appraisal.

In this option, Compliance staff would appraise all eligible complaints in parallel with Ombuds assessment. The CAO VP would review both assessment and appraisal findings, consult with both Ombuds and Compliance staff, and determine the appropriate next steps, including problem-solving recommendations to stakeholders, and/or further Compliance action. The Compliance appraisal findings and Ombuds assessment report on a complaint might be released simultaneously or sequentially. Some staff felt that any "stagger" in the release of findings should be relatively brief, perhaps 30 days or less, while others felt that CAO would benefit from case-by-case flexibility in the order of release, and in the amount of time between the release of the two reports.

In principle, this option could lead to four different outcomes depending on the results of assessment and appraisal, and on complainant, sponsor and other

stakeholder responses: problem-solving only; audit only; both problem solving and audit; or neither problem solving nor audit.

2. Post-Ombuds Compliance appraisal of all cases

The underlying intent of this option is to give as much opportunity for collaborative problem solving as possible, while still ensuring Compliance appraisal of every case.

In this option, Compliance staff would appraise compliance not only for cases where stakeholders did not resolve the complaint through collaborative problem solving, but also for cases where the stakeholders had reached a successful resolution. After the case was declared resolved by Ombuds, it would be referred to Compliance for review. The Compliance appraisal would look backward from the day the complaint was received, as well as looking at the status of compliance at the end of the problem-solving process.²² It would not use information provided under Ombuds confidentiality ground rules during the problem solving process, but would consider the impact of the problem solving process on achieving compliance.

3. Compliance appraisal after Ombuds assessment

The underlying intent of this option is to give a substantial opportunity for collaborative problem solving, while ensuring a reasonably timely Compliance appraisal and public CAO response on compliance issues in every case.

In this option, Compliance appraisal would begin after the Ombuds assessment was completed. There would be a time limit on the Compliance appraisal, roughly aiming to coincide with the average length of time it has taken to resolve cases using collaborative problem solving.

In one variant of this option, the delivery of Compliance appraisal results would not necessarily terminate CAO support for an ongoing problem-solving process; stakeholders could consider the Compliance appraisal results and make their own determination about whether to continue working on some or all issues with CAO support. In another variant of this option, CAO Ombuds involvement would end at the point in time that the Compliance appraisal finding was released, whether or not the stakeholders wished to continue with collaborative problem solving.

4. Targeted Advisory reviews based on both Ombuds and Compliance experience

The underlying intent of this option is to have greater systemic impact on IFC/MIGA accountability and compliance, while preserving the current separation of problem-solving processes from Compliance appraisals.

²² CAO has also decided to seek full access to all IFC/MIGA project documents for each complaint immediately after the complaint is received, in order to ensure as full a record as possible for compliance appraisal.

In this option, the current Operational Guidelines would stay in place. Cases that were resolved to the satisfaction of complainants and other stakeholders would not go to Compliance appraisal. However, the CAO in its Advisory capacity would review the experience, information and evidence from both Ombuds and Compliance appraisal/audit cases regularly (e.g. annually), and make a determination about whether that information suggested systemic patterns of non-compliance.

If so, CAO could trigger additional, targeted audits of IFC/MIGA projects to test whether the same non-compliance issue(s) appeared. Using the combined evidence, CAO could make Advisory recommendations to IFC/MIGA. A variant of this option would have CAO recommend specific, targeted audits to other audit/accountability bodies in the World Bank Group, rather than undertaking those audits itself.

The table on the next page presents a summary of potential accountability and problem-solving benefits and costs for each option, based on staff discussion.

IV. Next Steps

CAO staff will consider these options and may refine them in the coming weeks. In May 2010, CAO will consult with its Strategic Advisors Group on the options under discussion, and use their feedback to move toward decisions on changes to its current Operational Guidelines.

Possible benefits and risks for accountability and problem-solving				
	1. Simultaneous Compliance appraisal and Ombuds assessment	2. Post-Ombuds Compliance appraisal of all cases	3. Compliance appraisal after Ombuds assessment	4. Targeted Advisory audits based on both Ombuds and Compliance experience
Accountability benefits	<ul style="list-style-type: none"> • Every complaint appraised • Timely review of evidence (less opportunity to change the record) • Perception that CAO is more focused on accountability than in the recent past 	<ul style="list-style-type: none"> • Every complaint appraised • Perception that CAO is more focused on accountability than in the recent past 	<ul style="list-style-type: none"> • Every complaint appraised • Perception that CAO is more focused on accountability than in the recent past • More timely than option 2 	<ul style="list-style-type: none"> • Systemic issues more likely to be addressed than if CAO limited to audits of complaints only • Perception that CAO is more focused on accountability than in the recent past
Accountability risks		<ul style="list-style-type: none"> • Less timely review of evidence compared to option 1 • Less parallelism in ombuds and compliance processes than option 1 	<ul style="list-style-type: none"> • Less timely than option 1 • Less parallelism in ombuds and compliance processes than option 1 	<ul style="list-style-type: none"> • Complaints resolved through problem solving will not be appraised, though CAO could consider them in deciding whether/where to undertake targeted audits
Problem-solving benefits		<ul style="list-style-type: none"> • Fewer disincentives for collaborative problem solving than in option 1 	<ul style="list-style-type: none"> • Fewer disincentives for collaborative problem solving than in option 1 	<ul style="list-style-type: none"> • Preserves current set of incentives for stakeholders to undertake problem solving
Problem-solving risks	<ul style="list-style-type: none"> • Confusion of CAO roles and reduced trust in Ombuds process • Reduced stakeholder interest in/control of collaborative problem solving while appraisal is ongoing • Unbalanced incentives for problem solving post-appraisal, whether it triggers audit or finds no compliance issues 	<ul style="list-style-type: none"> • Companies/IFC / MIGA may be more cautious and less forthcoming knowing that there will be a compliance audit 	<ul style="list-style-type: none"> • Appraisal parallel to problem solving process may create stakeholder disincentives as in option 1 • Time pressure may reduce stakeholders' commitment to long-term relationship building and problem solving 	<ul style="list-style-type: none"> • If CAO considers public record from problem solving in targeting audits, IFC/MIGA staff/ management may be more cautious about information disclosure in problem solving



Assessment of Compliance Advisor/Ombudsman (CAO) Operations: An Internal Review for the CAO Vice-President

Terms of Reference

The Compliance Advisor/Ombudsman (CAO) is committed to enhancing the development impact and sustainability of projects supported by the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA).

CAO aims to respond quickly and effectively to complaints from affected communities and support IFC and MIGA in improving the social and environmental outcomes of their work, thereby fostering a higher level of accountability.

Background

Since the establishment of the CAO in 1998, the CAO has initiated two external reviews of its activities conducted in 2003 and 2006. CAO is committed to ongoing evaluation of its functions to ensure its robustness in meeting its terms of reference. After ten years of operations, the CAO is initiating an internal review to assess the extent to which the office is following its own guidelines, systems, and procedures, in accordance with CAO's Terms of Reference drafted at its inception. This process will also require consideration of how the IFC's business model has changed since 1998. CAO has developed, and over time amended, a set of Operational Guidelines that represent CAO's interpretation of how best to satisfy its terms of reference. The review conducted in 2006 entitled 'A Retrospective Analysis of CAO Effectiveness' resulted in an update to the Operational Guidelines, which were adopted in April 2007.

Objectives

The CAO is seeking expert consultants to undertake an internal desk review aimed at assessing whether the CAO is satisfying its role as an accountability mechanism for the private sector arms of the World Bank Group and to identify potential ways to strengthen the functions of the office in the future. The Review Team will be required to critically analyze a sample of previous CAO cases and previous external reviews; the evolutionary process culminating in the current Operational Guidelines; as well as the existing Monitoring and Evaluation System.

In order to address these objectives, the review will consist of three major steps:

- First, it will be necessary to analyze the manner in which the CAO has

- interpreted its role and mission from its original Terms of Reference, which is exemplified by the updated Operational Guidelines and Mandate;
- Secondly, an assessment will be undertaken of whether the CAO has acted in accordance with the Operational Guidelines, by evaluating a sample of cases handled since April 2007, as well as current practices and procedures;
 - Thirdly, an analysis of the level of response from IFC/MIGA to the recommendations resulting from CAO interventions as well the changing business model of IFC will be necessary to complement this process; and
 - Finally, upon analyzing the results of the prior two steps, an assessment of how the functions of the office could be strengthened in the future will also be required.

In order to achieve these objectives, the Review Team will be expected to interview and facilitate discussions with the CAO Vice-President, the CAO office staff and consultants as well as counterparts in the IFC and MIGA. In addition, first-hand knowledge may be obtained via interviews with relevant external stakeholders, as deemed necessary.

Review Team

The Review Team will comprise three external consultants. The three individuals will be selected by the CAO Vice-President after internal consultation within the CAO Office. The three external consultants selected are expected to function as a team and interact with each other in relation to all aspects of their work, in particular in relation to production of a final report. The three external consultants will also be required to nominate a team leader.

The Review Team will report directly to the CAO Vice-President. A special assistant will be made available to the Review Team by the CAO Vice-President to provide administrative and logistical support.

Work Schedule and Timeline

At the commencement of the review process, the team will convene to discuss their work program with the CAO office. The CAO will provide background discussions and provide the necessary reports and documents, as appropriate.

A draft report shall be submitted directly to the CAO Vice-President, at which time she will convene appropriate CAO staff in order to discuss the team's draft findings. Nevertheless, it is ultimately at the discretion of the team members as to whether to incorporate any CAO Vice-President and/or Staff comments in finalizing their report. The Review Team will produce a final report of its findings by September 10, 2010.

Contract Administration

The contract shall be governed, by the World Bank/IFC General Terms and Conditions. The team is expected to work for approx. 20 days from June 1- September 10, 2010.

Consultant Qualifications

The independent consultants should have knowledge of how the World Bank Group operates; possess a background in project and/or program evaluation; and exhibit extensive knowledge of dispute resolution and compliance systems, as well as accountability mechanisms. In addition, CAO will seek out individuals who are able to write with precision and conciseness and produce an objective assessment of the issues addressed above.