

CAC  operational
COMPLIANCE ADVISOR GROUP
GUIDELINES



Mission

CAO's mission is to serve as a fair, trusted, and effective independent recourse and accountability mechanism, and to improve the environmental and social performance of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA).

The Operational Guidelines

These Operational Guidelines set forth how CAO will carry out its different roles. The Operational Guidelines were first issued in 2000, and are periodically updated.

Further Information about CAO

CAO aims for maximum disclosure of reports, findings, and outcomes of a CAO process by reporting results on its website. These Operational Guidelines, CAO's Terms of Reference, and all other public documents are available in print and on CAO's website at www.cao-ombudsman.org. These Operational Guidelines are available in Arabic, Chinese (Mandarin), English, French, Portuguese, Russian, and Spanish, in addition to other local languages as relevant, to inform people affected or potentially affected by IFC/MIGA projects about the operations of CAO and about how to lodge a complaint.

Information related to CAO cases is available in English and, when possible, in the local language(s) relevant to the complainant.

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1. OVERVIEW OF CAO

1.1 CAO'S MANDATE, TERMS OF REFERENCE, AND OPERATIONAL GUIDELINES

The Office of the Compliance Advisor Ombudsman (CAO) was created in 1999 by the World Bank Group as the independent recourse and accountability mechanism of the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) for environmental and social concerns. CAO is an independent office that reports directly to the President of the World Bank Group (the President). CAO's mandate is to:

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

In executing this mandate, the CAO process provides communities and individuals with access to a grievance mechanism that offers redress for negative environmental and/or social impacts associated with IFC/MIGA projects. This includes impacts related to business and human rights in the context of the IFC Policy and Performance Standards on Environmental and Social Sustainability.

CAO's Terms of Reference, instituted by the President, establish CAO's mandate and form the basis for these Operational Guidelines. CAO's mandate provides a mechanism for any individual or group of individuals to lodge a complaint about the environmental and/or social aspects of an IFC/MIGA supported project. The Terms of Reference are available on CAO's website. Printed copies of CAO's governing documents can be obtained from CAO's office.

To carry out its mandate, it is essential that CAO be able to work in a flexible manner and retain its discretion. While these Guidelines provide a procedural framework to inform CAO, the complainant, and those engaged in a CAO process, they are not intended to unduly restrict CAO.

CAO has no authority with respect to judicial processes. CAO is not an appeals court or a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in host countries. In cases where CAO is engaged in complaints that overlap the jurisdiction of other organizations' accountability mechanisms, CAO will collaborate in a manner that is consistent with its Terms of Reference and mandate, to ensure that the complaint is handled in a manner that is fair and efficient.

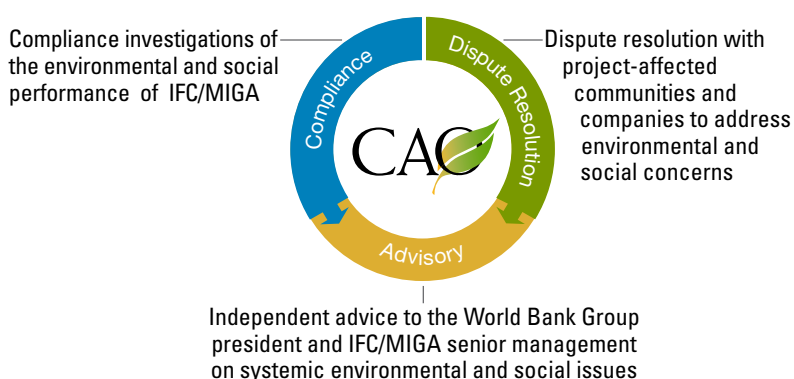
1.2 CAO'S THREE ROLES

CAO has three complementary roles:

- **Dispute Resolution role:** In responding to complaints, CAO attempts to resolve the issues raised using a flexible, collaborative, problem-solving approach. The focus of CAO's Dispute Resolution role is on accessing directly those individuals and/or communities affected by the project and helping them, the client, and other relevant stakeholders resolve complaints, ideally by improving environmental and social outcomes on the ground (see section 3).

- **Compliance role:** CAO oversees compliance investigations of the environmental and social performance of IFC and MIGA, particularly in relation to sensitive projects, to ensure compliance with policies, standards, guidelines, procedures, and conditions for IFC/MIGA involvement, with the goal of improving IFC/MIGA environmental and social performance (see section 4).
- **Advisory role:** CAO is a source of independent advice to the President and the senior management of IFC and MIGA. Advice is based on insights gathered from CAO's dispute resolution and compliance interventions and is focused on broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues based on the experiences gained through its case work, with the goal of fostering systemic improvements in IFC/MIGA (see section 5).

FIGURE 1. CAO'S THREE ROLES



1.3 INDEPENDENCE AND IMPARTIALITY

CAO strives to be an independent, transparent, credible, accessible, and equitable mechanism that provides a predictable process. CAO is not identified with or beholden to any sector or interest. Independence from the line management of IFC and MIGA enables CAO to deliver on its mandate. CAO's independence and impartiality also encourages the trust and confidence of project clients, communities, nongovernmental organizations (NGOs), and civil society generally. Trust and confidence are prerequisites for CAO to be able to operate according to its mandate.

CAO reinforces its independence and impartiality in a number of ways:

- CAO staff are recruited by the CAO Vice President.
- Contracts for CAO staff restrict specialists and staff above that level from obtaining employment with IFC or MIGA for a period of two years after they end their engagement with CAO. The CAO Vice President is restricted for life from obtaining employment with the World Bank Group.
- The CAO office is physically located in a secure area, and only CAO staff have direct access.
- The CAO Vice President and staff exercise caution in becoming involved in internal processes within IFC/MIGA, which might compromise the neutrality of the Office.
- To avoid any conflicts of interest, CAO maintains its independence and impartiality by not giving project-specific advice to IFC/MIGA.

The credibility of CAO staff and consultants under its employ is critical to CAO's work. If a CAO staff or consultant has a conflict of interest in relation to a particular case, that person will withdraw from involvement in that case. In exceptional circumstances, contractual arrangements for CAO consultants may impose time-bound restrictions on their future involvement with IFC or MIGA.

1.4 CONFIDENTIALITY AND INFORMATION DISCLOSURE

Confidentiality and information disclosure are essential to CAO's independence and impartiality, and important tools in achieving effective outcomes. CAO makes every effort to ensure transparency and maximum disclosure of its reports, findings, and outcomes. This includes reports and findings from its dispute resolution processes, compliance investigations, and advisory work, as well as CAO Annual Reports (see appendix A). CAO also recognizes and protects a party's right to confidentiality. Information disclosure will respect a party's request for confidentiality, as well as the terms and regulations outlined below.

As articulated in its Terms of Reference, CAO is bound by IFC and MIGA disclosure policies that require the confidentiality of certain business information to be respected. CAO is also bound by the Staff Rules of the World Bank Group, which require staff to treat information with discretion and not to disclose information improperly. Furthermore, while CAO reports related to a case may be released publicly, CAO may not publish information received from parties in the course of a case if disclosure of that material is restricted under IFC or MIGA disclosure policies.

CAO cannot accept anonymous complaints, and once a complaint has been deemed eligible, other affected stakeholders, including IFC/MIGA, typically will be notified about the complaint. As noted above, CAO will safeguard a party's request for confidentiality, including confidentiality of identities. CAO will indicate publicly when it has restricted disclosure of information in response to such a request from a party.

In cases where a CAO Dispute Resolution case is transferred to CAO Compliance, confidential information received during the dispute resolution process will not be shared with CAO Compliance, unless explicit permission to do so is provided by the relevant parties. This is to ensure that participants can engage openly and frankly during the dispute resolution process without compromising their position, should CAO later conduct a compliance investigation of IFC/MIGA.

1.5 REPORTING TO THE PRESIDENT AND INFORMING THE BOARD OF THE WORLD BANK GROUP

CAO reports to the President, as established in CAO's Terms of Reference, and provides quarterly reports, and briefings as requested. CAO informs the World Bank Group Board (the Board) of its activities through case and Annual Reports, which are all publicly available. The primary focus of these reports is to provide an overview of CAO's activities and monitor the implementation of recommendations.

CAO also provides an annual update to the Board's Committee on Development Effectiveness (CODE), and offers periodic technical briefings to supplement this information. In addition, CAO provides CODE with a Management Action Tracking Record (MATR), which annually records actions taken by IFC/MIGA in response to CAO's recommendations and findings.

Although CAO reports to the President, it also communicates with the Board on a regular basis and as requested. Regarding its case work, CAO shares the following information with the President and the Board:

- The determination that a complaint has been found eligible.
- The outcome of a CAO Assessment.
- CAO Dispute Resolution Conclusion Reports.
- CAO Compliance Appraisal and Investigation Reports.

1.6 COMMUNICATIONS AND OUTREACH

The accessibility of CAO depends on effective communications with potentially affected people, civil society organizations, IFC/MIGA clients, IFC/MIGA staff, and other stakeholders. CAO takes a proactive approach to raising awareness about the Office among these stakeholders to ensure that they know about CAO's existence, understand its mission and mandate, and are familiar with how CAO works to address complaints about IFC/MIGA projects.

CAO seeks to enhance interactions with its stakeholders in the following ways:

- Publishing CAO Operational Guidelines, CAO's Terms of Reference, information brochures, and other materials in the official languages of the World Bank Group [Arabic, Chinese (Mandarin), English, French, Russian, Spanish, and Portuguese], and additional languages where deemed necessary, and making these documents available in hard copy, online, and by other culturally appropriate means;
- Meeting with potentially affected people and their representatives, upon request;
- Disseminating information about CAO in the markets where IFC/MIGA does/do business through civil society organizations, World Bank Group offices, partner independent accountability mechanisms, the business community, academia, and other organizations;
- Conducting outreach to local, national, and international civil society and other stakeholders, to provide information about CAO's work;
- Seeking advice from experts with in-country and/or regional knowledge to improve CAO's communications with stakeholders and CAO's overall accessibility to potentially affected people, and;
- Being responsive to local constraints that may impede peoples' ability to access CAO's services and/or participate in a CAO process.

The working language of CAO is English, but CAO works to facilitate communications with its stakeholders in any language, including the submission of complaints and publication of CAO reports and materials. All publicly disclosed CAO reports relating to complaints — including assessment reports, agreements, compliance appraisals and investigations, and conclusion reports — are translated into the local language of the relevant complainants. Where deemed necessary, CAO will translate these materials into additional local languages and present them in a culturally appropriate manner.



The Complaints Process

2. THE COMPLAINTS PROCESS

2.1 LODGING A COMPLAINT

2.1.1 Grounds for complaint

Complaints may be made by those who believe they are affected, or potentially affected, by the environmental and/or social impacts of an IFC/MIGA project.

Complaints may relate to any aspect of the planning, implementation, or impact of an IFC/MIGA project, including but not limited to:

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

The grounds on which a complaint may be made have been broadly defined to encourage individuals or group(s) of individuals with concerns about a project to seek redress.

2.1.2 Who can lodge a complaint?

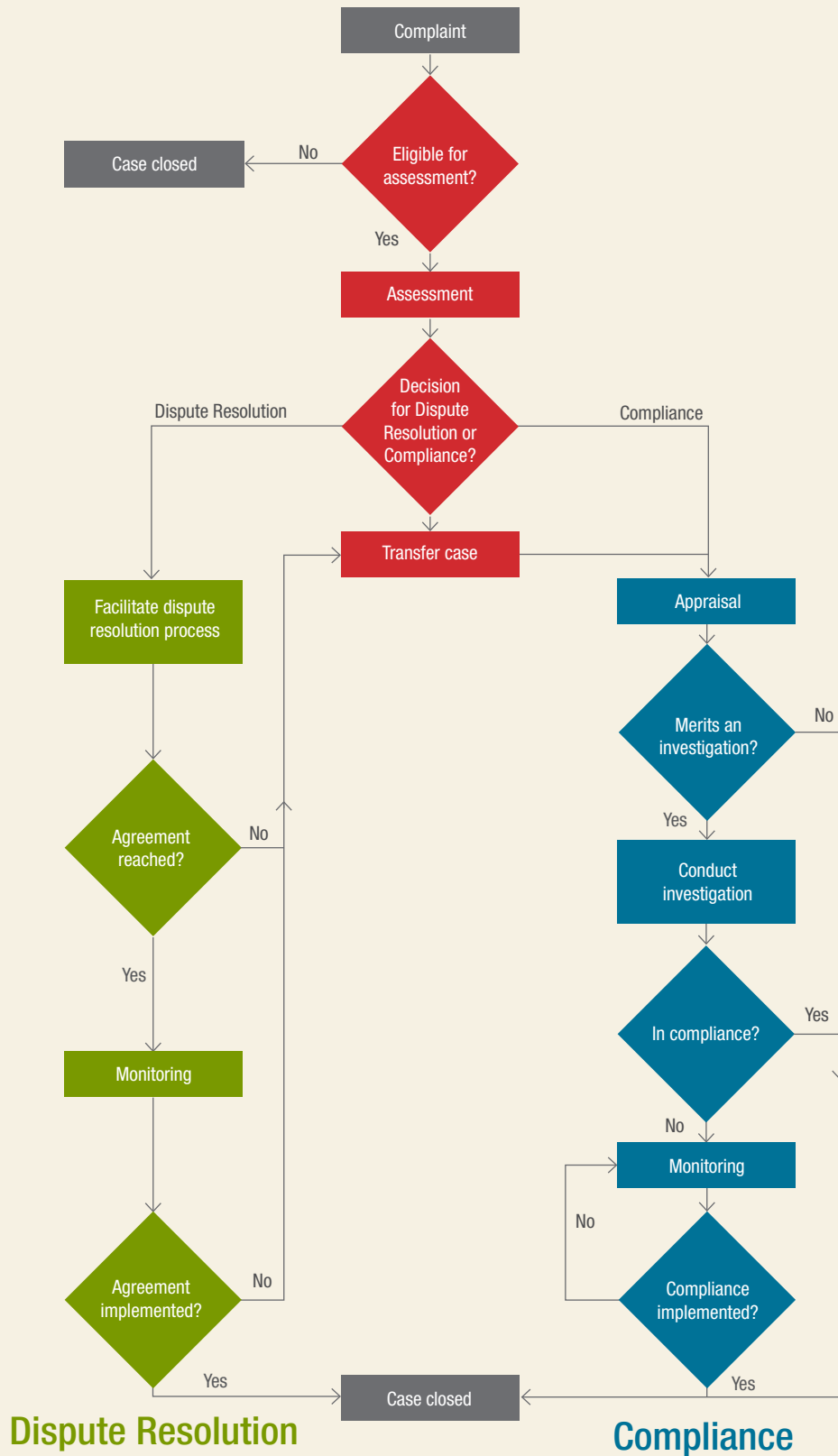
Any individual or group of individuals that believes it is affected, or potentially affected, by the environmental and/or social impacts of an IFC/MIGA project may lodge a complaint with CAO.

If a complaint is lodged by a different organization or individual on behalf of those affected, the organization should clearly identify the people on whose behalf the complaint is made, and provide explicit evidence of authority to present the complaint on their behalf. CAO will seek proof that those affected have granted such authorization.

2.1.3 How to lodge a complaint

Complaints should be submitted in writing and may be presented in any language. CAO will attempt to respond in the language of the complaint. (CAO's language policy is covered in section 6.) Complaints should be sent or delivered to the Office of the CAO in Washington, DC. The full address of the Office of the CAO appears on the back cover of these Operational Guidelines. CAO will provide confidentiality upon receiving a complaint if requested to do so by the complainant (see section 1.4).

FIGURE 2. CAO PROCESS FOR HANDLING COMPLAINTS



2.1.4 What to include in a complaint

There are no formal requirements for lodging a complaint with CAO, but complaints should include the following information:

- The complainant's name(s), address, and other contact information.
- If the party lodging the complaint is doing so on behalf of an affected person or community, it must identify on whose behalf the complaint is made. It must also present evidence that it has been requested to present the complaint on behalf of the project-affected people/person.
- Whether the complainant wishes that their identity or any information communicated as part of the complaint should be kept confidential (stating reasons).
- The identity and nature of the IFC/MIGA project.
- A statement of the way in which the complainant believes it has been, or is likely to be, affected by environmental and/or social impacts of the project.

In addition, the complainant may wish to provide information on the following:

- What has been done by the complainant to attempt to resolve the problem, including specifically any contact with IFC/MIGA staff, the client, or host government?
- What aspects of a problem remain unsettled?
- Where noncompliance with IFC/MIGA environmental and social policies, guidelines, or procedures is thought to have occurred, which policies, guidelines, or procedures are thought to have been violated? There is no requirement for a complainant to specify particular policies, guidelines, or procedures, but some may wish to do so.
- A clear statement of results that the complainant views as the most desirable outcome of the process.
- Any other relevant facts (any supporting documents or other relevant materials should be attached).

On request, CAO will provide guidance on how to lodge a complaint, without providing advice regarding the substance of the complaint. A model complaint letter is provided in appendix B. Potential complainants may also contact CAO for clarification before lodging a complaint.

2.2 SCREENING A CASE FOR ELIGIBILITY

The first step taken by CAO after receiving a complaint is to acknowledge receipt of the complaint. After acknowledgement, the CAO will screen the complaint against CAO's eligibility criteria. If the initial submission is not clear, CAO will seek additional information or clarification from the complainant. CAO expects the eligibility screening to take no more than 15 working days from acknowledgement of receipt of the complaint. If a decision is taken to reject the complaint, the CAO will close the file on the complaint and inform the complainant in writing of this decision. Complaints that are found eligible will be announced on CAO's website. CAO's eligibility decision is procedural, and does not constitute a judgment on the merits of the substance of the complaint.

2.2.1 Eligibility criteria

CAO will deem the complaint eligible if:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to CAO's mandate to address environmental and social impacts of IFC/MIGA projects.
3. The complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint.

Complaints deemed by CAO to be malicious, or generated to gain competitive advantage, are ineligible for assessment. If the complaint includes allegations of fraud and/or corruption, CAO will refer those allegations to the World Bank Department of Institutional Integrity (INT). Furthermore, if a complaint includes allegations pertaining to an International Bank for Reconstruction and Development/International Development Association (IBRD/IDA) project, CAO will inform the World Bank Inspection Panel about the complaint. CAO does not accept complaints relating to IFC/MIGA procurement decisions.

2.3 ASSESSMENT

Once CAO determines a complaint eligible, it will conduct an assessment of the complaint to:

- Develop a thorough understanding of the issues and concerns raised in the complaint.
- Engage with the complainant and IFC/MIGA client (the parties).
- Identify the local communities and any additional stakeholders relevant to the complaint.
- Explain to the stakeholders the different roles of CAO.
- Determine which CAO role the parties seek to initiate.

CAO's assessment of the complaint does not entail any judgment on the merits of the complaint.

CAO will carry out assessments in a flexible manner, which may include any combination of the following activities:

- Reviewing IFC/MIGA files;
- Meeting with the complainant, IFC/MIGA staff and client, government officials of the country where the project is located, representatives of local and international nongovernmental organizations, and other stakeholders;
- Visiting project sites, and;
- Holding public meetings in the project area.

The assessment of a complaint will be carried out by CAO dispute resolution experts. When planning a visit, CAO will notify IFC/MIGA, the client, complainant, and other relevant stakeholders of its plans.

Following a CAO assessment process, if there is no agreement to undertake CAO-facilitated dispute resolution, the complaint will proceed to the CAO Compliance role.

If the CAO Dispute Resolution role is triggered, CAO will facilitate a process designed to address the issues raised in the complaint, and other issues that may have been identified during the assessment.

If the CAO Compliance role is triggered, CAO will conduct an appraisal of IFC's/MIGA's involvement in the project, and determine if an investigation is warranted.

In either case, CAO will complete the assessment within 120 working days of the date a complaint was determined eligible for assessment. CAO will provide an Assessment Report to the parties, the President, the Board, and the public.

The Assessment Report will include the following elements:

- A broad summary of the information gathered during the assessment.
- The decision of the parties to pursue a dispute resolution process or compliance appraisal.

If at any time after the completion of the assessment, CAO believes that resolution of the case is unlikely to be possible through a dispute resolution process or that it would be an inefficient use of resources, the complainant will be advised of the reasons for the decision to conclude the CAO-facilitated dispute resolution process. The case will then be transferred to Compliance for appraisal.

2.4 TIMELINES FOR HANDLING A COMPLAINT

CAO is committed to ensuring that complaints are handled in a timely manner. CAO will track its handling of complaints using internal systems, following the general process outlined in figure 2. If the nature of the complaint or special circumstances requires more flexibility, CAO, in consultation with the parties, will review the timeline for handling the complaint.

The following steps will normally be followed by CAO when a complaint is received:

STEP 1 Acknowledgement of receipt.

STEP 2 Eligibility screening and decision whether the complaint meets the criteria for further assessment by CAO (15 working days).

STEP 3 Assessment (120 working days) to:

- Develop a thorough understanding of the issues and concerns raised in the complaint.
- Engage with the complainant and IFC/MIGA client.
- Identify the local communities and any additional stakeholders relevant to the complaint.
- Explain to the stakeholders the different roles of CAO.
- Determine which CAO role the parties seek to initiate.

STEP 4

- a) **Dispute Resolution:** If the parties agree to seek joint resolution to the issues, a mutually agreed process will be designed and implemented. Where the issues are resolved by agreement between the parties, the process goes to monitoring/close out (step 5). If at any point in this process a party no longer wishes to pursue dispute resolution, the case is transferred to Compliance.
- b) **Compliance:** If one or more of the parties choose Compliance, or the case is transferred from Dispute Resolution, a two-step approach is initiated. The first step is a compliance appraisal (45 working days). The appraisal assesses the outcomes on the ground and their relevance in the context of IFC's/MIGA's policy provisions. If the appraisal determines that a compliance investigation is not warranted, CAO will release an Appraisal Report and close the case. Otherwise, CAO will proceed to the second step, and conduct a compliance investigation. The compliance process does not require agreement from all parties to be initiated.

STEP 5 Monitoring and follow-up.

STEP 6 Conclusion of CAO's involvement.



Dispute Resolution

3. DISPUTE RESOLUTION

3.1 PRINCIPLES OF AND APPROACH TO DISPUTE RESOLUTION

Engaging in a dispute resolution process is a voluntary decision, and requires agreement between the complainant and client, at a minimum. The main objective of CAO's Dispute Resolution role is to help resolve issues raised about the environmental and/or social impacts of IFC/MIGA projects and improve outcomes on the ground. As a nonjudicial, nonadversarial, neutral forum, CAO's approach provides a process through which parties may find mutually satisfactory solutions. This role facilitates an approach that ensures equitable treatment of participants in a dispute resolution process.

CAO recognizes that local communities, minorities, and vulnerable groups often have much to gain or lose from a project. CAO also recognizes that it is these groups of people who typically live with the impacts and benefits of the project, and therefore will have an ongoing relationship with the client. As such, CAO seeks to work directly with the project-affected community.

3.2 ASSISTING IN THE RESOLUTION OF ISSUES

3.2.1 Approaches to dispute resolution

CAO and the relevant stakeholders may use a number of different approaches in attempting to find resolution of the issues. Each approach will be chosen in consultation with the parties, and may include:

Facilitation and information sharing

In many cases, the complaint will raise questions of fact regarding current or anticipated impacts of a project. The CAO Dispute Resolution team may be able to help complainants obtain information or clarifications that result in resolution from the perspective of complainants.

Joint fact-finding

Joint fact-finding is an approach that encourages the parties to jointly agree on the issues to be examined; the methods, resources, and people that will be used to conduct the examination; and the way that information generated from the process will be used by the parties.

Dialogue and negotiation

Where communication among parties has been limited or disrupted, the CAO Dispute Resolution team may encourage the parties to engage directly in dialogue and negotiation to address and resolve the issues raised in the complaint. The CAO Dispute Resolution team may offer training and/or expertise to assist the parties in this process.

Mediation and conciliation

Mediation involves the intervention by a neutral third party in a dispute or negotiation with the purpose of assisting the parties in voluntarily reaching their own mutually satisfying agreement. In conciliation, the third-party neutral may make recommendations to the participants in the conciliation process.

3.2.2 Reaching and documenting agreements

The major objective of a dispute resolution approach is to address the issues raised in the complaint—and any other significant issues relevant to the complaint identified during the assessment or the dispute resolution process—in a way that is acceptable to the parties. The objective, nature, and requirements of agreements should be specific. Incentives or disincentives, time-bound or otherwise, may form a part of any agreement.

In pursuit of resolution, CAO will not support agreements that would coerce one or more parties, be contrary to IFC/MIGA policies, or violate domestic laws of the parties or international law.

3.2.3 Monitoring and follow-up

Where the parties have reached agreement, CAO will assist the parties in monitoring implementation of the agreement(s). This may be achieved by setting mutually agreed timelines and outcome indicators within the body of the agreement.

Any agreements reached by the parties will usually contain a program and timelines for implementation. The CAO Dispute Resolution team will monitor whether the agreements have been implemented, and publicly disclose the outcomes on CAO's website.

3.2.4 Conclusion

Upon the implementation of a monitored agreement, and/or when the Dispute Resolution team has transferred the case, CAO will release a Conclusion Report that summarizes core process steps and outcomes, as well as the rationale for closing the complaint on the Dispute Resolution side.



Compliance

4. COMPLIANCE

4.1 THE PURPOSE AND EMPHASIS OF COMPLIANCE APPRAISALS AND INVESTIGATIONS

CAO Compliance oversees compliance appraisals and investigations of the environmental and social performance of IFC/MIGA at the project level. The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

When conducting compliance appraisals and investigations, CAO will consider how IFC/MIGA assured itself/themselves of compliance with national law, along with other compliance investigation criteria.

CAO Compliance role follows a two-step approach. The first step is a compliance appraisal. The second is a compliance investigation.

4.2 THE COMPLIANCE APPRAISAL PROCESS

4.2.1 Initiating a compliance appraisal

Compliance appraisals of one or more IFC/MIGA projects are initiated in response to any of the following circumstances:

- A request from the CAO Vice President based on project-specific or systemic concerns resulting from CAO Dispute Resolution and Compliance casework.
- A request from the President or senior management of IFC/MIGA.

Compliance appraisals of IFC/MIGA projects are also initiated in response to complaints when:

- The outcome of the CAO assessment process determines that the Compliance role should be triggered.
- CAO Dispute Resolution transfers a case to CAO Compliance.

The purpose of the appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA. The scope of the appraisal will be defined by issues raised in the complaint and identified during the CAO assessment phase, or defined in the request for appraisal by the CAO Vice President, or President, or IFC/MIGA senior management. For appraisals of more than one IFC/MIGA project, CAO will initiate consultation with IFC/MIGA senior management.

In those cases where the CAO Vice President initiates a compliance appraisal, a memorandum explaining the rationale for the proposal to investigate will be submitted to IFC/MIGA senior management.

While CAO does not place prescriptive limits to a compliance appraisal, CAO applies several basic criteria to guide the process. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will hold discussions with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project; how IFC/MIGA assured itself/themselves of compliance with these criteria; how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection; and, generally, whether a compliance investigation is the appropriate response.

4.2.2 Disclosure of appraisal results

Once CAO concludes an appraisal, it will advise IFC/MIGA, the President, and the Board in writing. If an appraisal results from a case transferred from CAO's Dispute Resolution role, the complainant will also be advised in writing. A summary of all appraisal results will be made public.

4.3 DEFINITIONS AND APPROACH TO COMPLIANCE INVESTIGATIONS

CAO's working definition of a compliance investigation is as follows:

An investigation 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 compliance investigation criteria.

The compliance investigation criteria include IFC/MIGA policies, Performance Standards, guidelines, procedures, and requirements whose violation might lead to adverse environmental and/or social outcomes. Compliance investigation criteria may have their origin, or arise from, environmental and social assessments or plans, host country legal and regulatory requirements (including international legal obligations), and the environmental, social, health, or safety provisions of the World Bank Group, IFC/MIGA, or other conditions for IFC/MIGA involvement in a project. In the case of specific IFC business activities such as Advisory Services and special financing, compliance investigation criteria will include and observe the specific policy provision paragraphs of the IFC Sustainability Framework relating to that particular business activity.

The compliance investigation will typically be based on a review of documents, interviews, observation of activities and conditions, or other appropriate means. The verification of evidence is an important part of the compliance investigation process.

4.4 THE COMPLIANCE INVESTIGATION PROCESS

4.4.1 Initiating a compliance investigation

Compliance investigations are initiated upon the completion of an appraisal that determines whether the issues presented in the request for a compliance investigation, or issues related to the complaint, meet the appraisal criteria for conducting an investigation. While CAO Compliance may seek clarifications during the investigation, it will not accept an expansion away from the scope identified in the Appraisal Report, and defined in the Terms of Reference for the compliance investigation (see section 4.4.3). Should additional issues or concerns emerge during an investigation, these will be subject to a separate appraisal at the discretion of the CAO Vice President.

4.4.2 CAO compliance investigations

When CAO Compliance conducts compliance investigations of IFC/MIGA, at issue is whether:

- The actual environmental and/or social outcomes are consistent with, or contrary to, the desired effect of the policy provisions.
- The failure to address environmental and/or social issues as part of the review process resulted in outcomes that are contrary to the desired effect of the policy provisions.

4.4.3 Developing Terms of Reference for compliance investigations

When conducting a compliance investigation, CAO will publicly disclose, either as part of the Appraisal Report or as a stand-alone document, an outline for the Terms of Reference. The Terms of Reference will specify:

- The objectives and scope of the investigation.
- The specific investigation criteria identified during appraisal.
- A brief description of the project to be investigated.
- The approach to the investigation, methods, and specific consultant tasks.
- A schedule for the investigation tasks, identifying the timeframe and reporting requirements.

In crafting the Terms of Reference for investigations involving more than one IFC/MIGA project, the CAO will initiate consultation with the institution.

4.4.4 Staffing for compliance investigations

CAO is responsible for managing the compliance investigation process, determining the knowledge and skills required to undertake the compliance investigation, and hiring specialists with appropriate expertise to form a compliance panel.

The key considerations CAO takes into account when hiring external panelists for compliance investigations are expertise, independence, and impartiality. The panelists will have a CAO-specific confidentiality requirement in addition to the general confidentiality provisions provided by World Bank Group contracts.

4.4.5 Report preparation and disclosure

The Investigation Report will be prepared by CAO Compliance team with the use of information gathered by expert panel members, as needed. The report will typically include:

- A brief description of the project.
- A description of the underlying issues that gave rise to the investigation.
- The objectives and scope of the investigation.
- The criteria against which the investigation was conducted.
- The findings of the investigation with respect to noncompliance and any adverse environmental and/or social outcomes, including the extent to which these are verifiable.

A draft Investigation Report will be circulated to IFC/MIGA senior management and all relevant IFC/MIGA departments for factual review and comment. IFC/MIGA comments should be submitted in writing to CAO within 20 working days of receipt by IFC/MIGA.

Upon receiving comments from IFC/MIGA on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC/MIGA senior management for official response. A notification will be posted on CAO's website. IFC/MIGA has/have 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC/MIGA response to the President. The President has no editorial input as to the content of the compliance Investigation Report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC/MIGA senior management, the President will provide clearance for the Investigation Report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the Investigation Report and the IFC/MIGA response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and in cases where the investigation was initiated by a complaint, share the documents with the complainant.

4.4.6 Monitoring and closure of compliance investigations

In cases where IFC/MIGA is/are found to be in compliance, CAO will close the investigation.

In cases where IFC/MIGA is/are found to be out of compliance, CAO will keep the compliance investigation open and monitor the situation until actions taken by IFC/MIGA assure CAO that IFC/MIGA is addressing the noncompliance. CAO will then close the compliance investigation.

CAO makes public the current status of all compliance cases.



5. ADVISORY

5.1 THE ORIGIN AND PRINCIPLES OF THE ADVISORY ROLE

5.1.1 The origin of the Advisory role

CAO's Terms of Reference define the scope of CAO's Advisory role to include advice to the President and IFC/MIGA on broader environmental and social issues related to policies, standards, guidelines, procedures, resources, and systems established to improve the performance of IFC/MIGA projects.

5.1.2 Principles that underpin the Advisory role

A number of principles underpin CAO's Advisory role:

- CAO's advice aims to improve IFC/MIGA performance systemically.
- CAO does not give advice on specific projects, thereby preserving its independence and impartiality should the project(s) be subject to a subsequent CAO process.
- CAO provides advice on broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic concerns.
- CAO advice is derived from experience gained through its dispute resolution and compliance work.
- CAO advice is given formally in writing.

5.2 INITIATING THE ADVISORY ROLE AND DETERMINING THE SCOPE OF ADVICE

5.2.1 Initiating the Advisory role

Advice is initiated by the CAO Vice President, and is triggered in the following ways:

- At the discretion of the CAO Vice President regarding lessons learned from CAO's Dispute Resolution and Compliance roles;
- At the discretion of the CAO Vice President to the World Bank Group President on systemic and critical issues relating to CAO's casework, and;
- A request from the President or IFC/MIGA senior management.

Each formal written request for advice will be reviewed by the CAO Vice President, who will determine whether advisory work should be initiated.

CAO informs IFC/MIGA senior management when it initiates advisory work and when it responds to a request for advice. Upon the initiation or request for advice, CAO will produce a Terms of Reference or approach paper, which it will share with IFC/MIGA senior management for comments and suggestions. CAO always issues its advice in writing, which may take different forms, such as Advisory Notes and/or memoranda.

5.2.2 Determining the objectives and scope of advice

The specific objectives of the advisory work will depend on the nature of the request, but will typically include:

- Bringing about systemic improvements in environmental and/or social performance of IFC/MIGA by addressing deficiencies in systems, policies, guidelines, or procedures, or the interpretation or application thereof;
- Helping IFC/MIGA understand how their environmental and/or social obligations may be met more effectively;
- Advancing the boundaries of environmentally and/or socially responsible behavior on the part of IFC/MIGA by advising on emerging, strategic, or systemic issues or trends or processes, and;
- Advancing the boundaries of environmentally and/or socially responsible behavior in the private sector, civil society, and academia through lessons derived from CAO cases.

CAO will produce a Terms of Reference or approach paper that clearly outlines the scope of advice.

5.2.3 Screening criteria for requests for advice

Requests for advice are screened by CAO to ensure that advisory work is undertaken only after all of the following criteria have been met:

- The advice will be consistent with CAO's mandate to address environmental and social concerns.
- The advice will address strategic issues, trends, systemic issues, policies, guidelines, or procedures of IFC/MIGA.
- The advice will address matters that are not adequately dealt with by existing forms of IFC/MIGA guidance or advice.
- The advice will not be project-specific.

5.3 THE APPROACH TO THE ADVISORY ROLE

5.3.1 Transparency, effectiveness, and information disclosure

As a matter of principle, CAO strives for transparency across its three roles and is committed to the maximum disclosure of all Advisory Notes that have been finalized. However, in instances where the advice is requested as part of an internal World Bank Group deliberative process, CAO may elect not to disclose an advisory memorandum. CAO's Advisory role will not disclose any confidential information acquired by CAO's Dispute Resolution and Compliance roles. To that end:

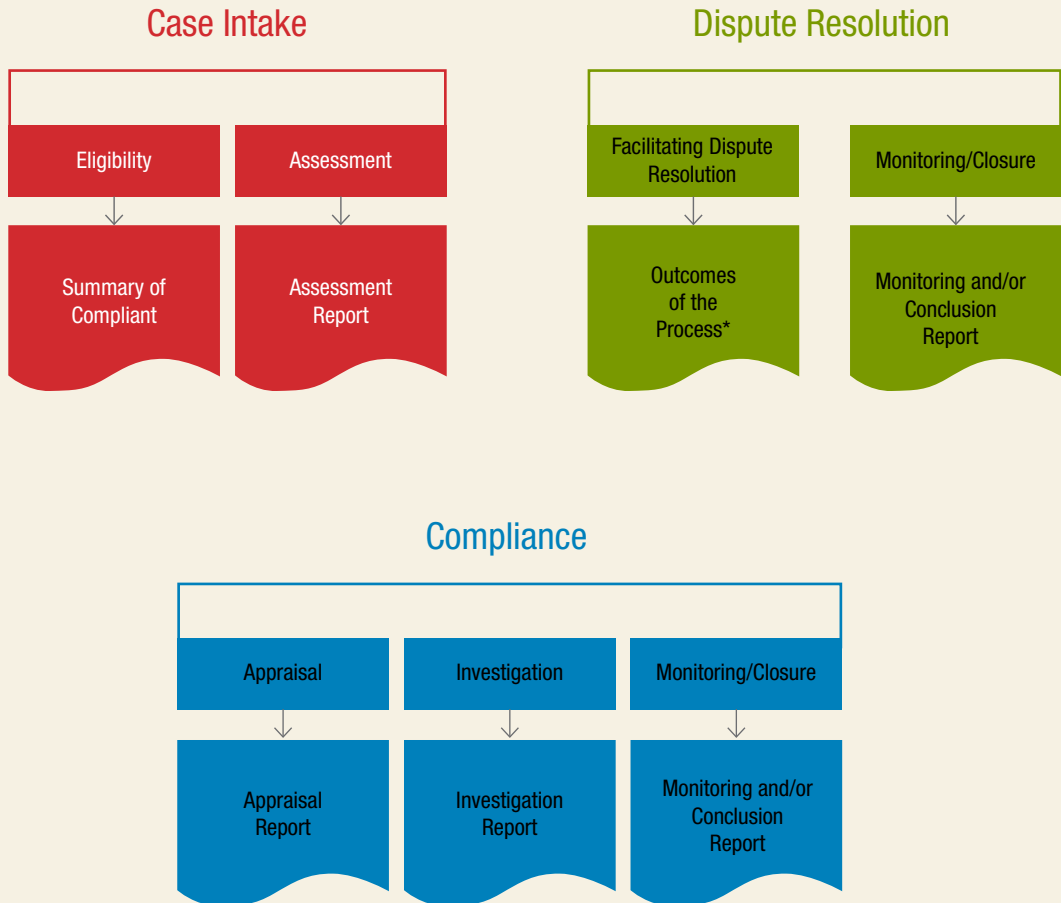
- In cases where the advice stems from CAO dispute resolution activities or compliance investigations on projects that have already been subject to some level of external disclosure by CAO, the specific project that triggered the advice may be referred to in publicly disclosed documents.
- In cases in which advice is publicly disclosed and has been based on lessons learned from a number of IFC/MIGA projects, the individual projects may not be identified in the Advisory Note.

5.3.3 Monitoring and follow-up

Advice will be integrated into CAO's monitoring and evaluation activities. CAO monitors IFC's/MIGA's implementation of advice and reports CAO's findings to the President.

Annexes

APPENDIX A. DISCLOSURE OF CASE DOCUMENTS



*Outcomes from a CAO facilitated Dispute Resolution process will be publicly disclosed only with the consent of the parties.

APPENDIX B. MODEL LETTER OF COMPLAINT TO CAO

Office of the Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue NW
Washington, DC 20433 USA
Tel: + 1 202-458-1973
Fax: +1 202-522-7400
e-mail: cao-compliance@ifc.org

I/we, _____, lodge a complaint concerning the _____ project, located in _____.

This complaint is made on behalf of _____ (ignore if not applicable).

I/we live in the area known as _____ (show on an attached map if possible). I/we can be contacted through the following address, telephone and fax numbers, and e-mail:

Street address _____
Mailing address (if different from street address) _____
Country _____ Postal code _____
Telephone _____
Fax _____
e-mail _____

I/we do not wish our identity to be disclosed (ignore if not applicable).

I/we have been, or are likely to be affected by environmental or social impacts of the project in the following way(s):

If possible, please provide the following information:

- A description of the name, location, and nature of the project (provide a map, if possible).
- A description of the actions taken by me/us to try to resolve these issues (include dates or time frame, if possible).
- A list of other person(s) contacted by me/us in attempting to resolve these issues (attach copies of correspondence, if possible).
- Any other relevant facts to support this complaint.

In addition, please answer the following question:

- I/we would like to see this complaint resolved in the following way: (CAO cannot guarantee to help the complainant achieve this result, but this information will help focus on problem-solving approaches.)

Attach copies of any relevant documents and other material.

Note: CAO will keep the identity of complainant confidential if requested to do so, but will not accept anonymous complaints. Material may also be submitted on a confidential basis to support a complaint and will not be released without the consent of the party that submitted it.

Complainants should be aware that other parties, including the client and IFC or MIGA staff, will usually be informed about the substance of the complaint. Complainants should inform CAO at the very beginning of any discussions or correspondence about any information that complainants do not wish to be disclosed. A process for handling the complaint will be agreed with the complainant.

GLOSSARY

Board

Four Boards of Executive Directors represent four institutions of the World Bank Group. CAO interacts with two of these Boards: the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA). The Executive Directors serving on these Boards are usually the same.

CAO

The Office of the Compliance Advisor Ombudsman, the independent recourse and accountability mechanism for IFC and MIGA for environmental and social concerns.

CAO Vice President

The head of the Office of the Compliance Advisor Ombudsman.

CAO Advisor

CAO advisory role and staff.

CAO Compliance

CAO compliance role and staff.

CAO Dispute Resolution

CAO dispute resolution role and staff.

Client (IFC)

An entity (private or government) to which IFC provides Investment or Advisory Services, or in the case of an IFC investment through a financial intermediary, a client or subclient of an IFC client. The term may also refer more broadly to the party that is most appropriate to address the issues raised in the complaint, including the entity that is implementing/has implemented the project in question.

Client (MIGA)

The Project Enterprise or the Guarantee Holder as defined in MIGA's Contract of Guarantee, or any other entity responsible for conducting the Investment Project or borrowing the Guaranteed Loan under the MIGA Loan Agreement. The term may also refer more broadly to the party that is most appropriate to address the issues raised in the complaint, including the entity that is implementing/has implemented the project in question.

CODE

Committee on Development Effectiveness, a committee of the Board of Directors of the World Bank Group with the mandate of monitoring and assessing the effectiveness of the World Bank Group in fulfilling its mission of reducing poverty.

Complainant

Individual(s) or group(s) of individuals who are identified in a complaint to CAO as affected or potentially affected by the environmental and/or social impacts of an IFC/MIGA project.

IFC

International Finance Corporation, a member of the World Bank Group that promotes growth in the developing world by financing private sector investments and providing technical assistance and advice to governments and businesses. IFC provides both loan and equity finance for business ventures in developing countries.

MIGA

Multilateral Investment Guarantee Agency, a member of the World Bank Group that encourages foreign direct investment in developing countries by providing guarantees to foreign investors against loss caused by noncommercial risks. MIGA also provides technical assistance to promote foreign investment.

NGO

Nongovernmental organization or civil society organization.

Parties

The complainant and IFC/MIGA client.

Project

IFC and/or MIGA business activities, including those in which specific physical elements, aspects, and facilities likely to generate risks and impacts have yet to be identified. This includes aspects from the early developmental stages through the entire lifecycle (design, construction, commissioning, operation, decommissioning, closure or post closure) of a physical asset, investments, advice, or other business activity.

Terms of Reference

Define the terms for a specific task, clarifying the scope, limitations, tasks, and objectives of the undertaking.

Working Days

Working days are Monday to Friday excluding holidays, as defined by the World Bank Group. The number of working days to process a complaint to CAO, as stated in the Operational Guidelines, excludes time needed for translation, which can take several working days, depending upon the language.



World Bank Group
Multilateral Investment
Guarantee Agency



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