

**Public Consultation on Draft IFC/MIGA
Independent Accountability Mechanism (CAO) Policy**

**EUROPE & CENTRAL ASIA REGION
KYIV¹ CONSULTATION**

**Virtual Stakeholder Meeting May 7, 2021
Facilitators' Report**

I. SUMMARY

In August 2020, IFC and MIGA Boards of Directors (“Boards”) released the report of the *External Review of IFC’s/MIGA’s Environmental and Social Accountability, including the Compliance Advisor Ombudsman’s (CAO) Role and Effectiveness* (the **External Review**). In response to recommendations from the External Review, the Boards tasked a Joint CAO/IFC/MIGA Working Group (the “Working Group”) to develop a draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy (“CAO Policy”).

The draft policy outlines the CAO’s purpose, mandate and functions; core principles; governance; and core principles and is available for public consultation between April 5 and May 19, 2021. The public consultation phase comprises nine virtual consultations sessions covering all regions of the world. The process also allows for written comments on the draft policy to be shared by email or using an online feedback form available on the dedicated website for the consultation process.

This report summarizes the outcomes of the session held for Europe and Central Asia region countries on May 7, 2021 at 3 p.m. Kyiv time. The session was designed to obtain feedback from community members, civil society, private sector, and representatives of international finance institutions (IFIs), including their respective independent accountability mechanisms (IAMs). Twenty-five (25) participants attended the meeting.

The session was conducted in English by a team of professional facilitators, with support from note-takers and Russian-English interpreters. Members of the CAO/IFC/MIGA Working Group responsible for drafting the policy presented background on the process to date, the key elements of the draft CAO Policy, including enhancements to CAO’s processes, and next steps in the process toward finalizing the policy for approval by the IFC and MIGA Boards in June 2021². Participants were asked to provide their input and questions on the topics they wished to focus on. This report covers the comments and questions from participants and summarizes answers from members of the Working Group. The agenda for the session is attached as Annex I.

II. STAKEHOLDER FEEDBACK AND QUESTIONS

Using an anonymous Zoom poll, participants were asked to select the order in which they wished to discuss the different sections of the draft policy: 1) Purpose, Mandate, Functions and Core Principles (including Remedy); 2) Governance; 3) Eligibility of Complaints; 4) Assessment; 5) Dispute

¹ The city corresponds to the location where the session would have taken place if it had been held in person rather than virtually.

² The presentation can be found and downloaded [here](#). IFC/MIGA also presented on other actions they are developing to [strengthen environmental and social accountability](#) as well as on their work program on [enabling remedial solutions](#).

Resolution; 6) Compliance; 7) Advisory; 8) Threats and Reprisals; 9) Outreach; and 10) Access to Information and Disclosure.

The order of topics prioritized by the participants were:

- Dispute Resolution (56%);
- Threats and Reprisals (56%);
- Purpose, Mandate, Functions and Core Principles (including Remedy) (44%);
- Eligibility of Complaints (44%);
- Assessment (44%);
- Access to Information and Disclosure (38%);
- Governance (38%)
- Compliance (31%)
- Advisory (19%);
- Outreach (13%)

For each of the selected topics, a 15-minute space was opened to listen to stakeholder input and questions. Since participants had different levels of knowledge of, and exposure to CAO, for the most part, the conversation followed a question and answer format. While the focus was on the selected topics, related issues were also raised in the subsequent questions and inputs from stakeholders.

Dispute Resolution

Role of IFC/MIGA: To a question expressed by one stakeholder regarding the role of IFC/MIGA in the dispute resolution (DR) process, the Working Group indicated that it is fundamentally to facilitate resolution by observing, supporting the process or encouraging their clients to actively engage in the resolution of complaints as quickly and as equitably as possible.

Role of CAO: Following up on the role of IFC, another stakeholder expressed interest in understanding how this involvement can be assured and measured, considering that the third-party mediators are running the DR processes, not CAO. The stakeholder expressed a particular interest in understanding the extent of IFC's participation under the new draft policy, and how IFC's involvement contributes to the DR process. The Working Group explained that IFC/MIGA participation would have to be agreed by the parties to the DR process – the complainants and the client. It was indicated that the role of mediators is articulated in more detail under the new draft Policy, and this provides for more flexibility by design, while the main principles remain the same –neutrality, fairness and equity, confidentiality and voluntary participation. The feedback provided by the Working Group also included that CAO mediators are meant to facilitate resolution while remaining neutral, and that CAO engages mediators who have the level of expertise and ability to understand and work in the specific cultural context and who can be accepted as impartial by the parties. Participants were also informed that any party may withdraw from the DR process at any time.

Timeline and basic information for the DR process: A stakeholder expressed interest in understanding the terms of the DR process, and if there is a timeline indicated in the new draft policy. In response, the Working Group informed that, while there are new timelines in assessment and compliance, there are no timelines set for DR in the new draft policy or imposed by CAO, and that it is the parties' prerogative to set deadlines or not, as they are collaboratively designing and implementing the process. The principle is to ensure a flexible and voluntary approach that would enable parties to set a DR process timeline, depending on criteria such as the complexity of the issue or the number of parties involved.

Threats and Reprisals

Client protection: A stakeholder expressed that the concerned chapter in the policy should protect both parties. In this stakeholder's view, the current draft Policy should also include protection for clients' reputation which can be harmed intentionally or unintentionally by protests and negative public relations campaigns.

The Working Group informed that this section of the Policy is built on the current "CAO Approach to Responding to Concerns of Threats and Incidents of Reprisals in CAO Operations" and refers to the safety and wellbeing of all participants in the process. With regard to the client's reputation, it is protected in various sections of the draft Policy. Complaints that are clearly fraudulent, frivolous, malicious, or generated to gain competitive advantage will be deemed ineligible. Eligible complaints will only be publicly reported at the end of the assessment phase, along with a response from the client. The draft Policy also provides three opportunities for client and/or IFC/MIGA involvement in the compliance process: (1) appraisal, where IFC/MIGA and/or the client can provide a response when a case transfers to CAO's Compliance function; (2) once a decision is made that investigation is merited, IFC/MIGA can share the draft investigation report with clients; or (3) Management Action Plans (MAPs) prepared in consultation with both clients and complainants.

Equal rights for all parties: A stakeholder commented on the importance of both parties having equal rights during the dispute resolution process. A suggestion was made to set targets for CAO to run each stage of the process efficiently with clear key performance indicators (KPIs), controlling points quarterly, and great involvement of each party, CAO, and IFC/MIGA). In this participant's view, in the absence of timelines and targets, it will not be possible to assess progress.

The Working Group explained that "fairness and equitability" is a core principle of the policy, along with transparency, accessibility and continuous learning from stakeholders. The principle of fairness and equitability is applicable to all parties, and not only in the DR process, but within all stages of the CAO process. Further, the stakeholders were invited to provide feedback or suggestions on any other ways to incorporate fairness, as this is the purpose of the consultation.

Power imbalances: While the principle of having a fair process was acknowledged as important, another stakeholder explained that the imbalance of power in the process is specific to the dispute resolution space, as it is usually involving large companies with economic power and political links on one side and local communities on the other. The stakeholder recognized that CAO, especially the DR function, does everything it can to respect both sides. The Working Group confirmed that the power imbalances are a reality and are taken into account in the design and implementation of dispute resolution processes.

Purpose, Mandate, Functions and Core Principles (including Remedy)

Remedy: A stakeholder expressed interest in understanding what sort of remedy CAO can provide. Also, a request was made for IFC's remedy paper to be shared. The Working Group explained that the thinking on remedy is holistic. There is research being done on what good practices on remedy are and there is an existing body of international instruments, such as the United Nations Guiding Principles (UNGPs) on Business and Human Rights, among others. The approach to remedy covers the reduction of harm related to noncompliance and aims for concrete and timebound responses to harm, which could include different responses, such as acknowledgement/apologies, concrete steps, and compensation. In the context of CAO, at the end of the compliance process, the new draft Policy

requires a Management Action Plan to respond to noncompliance findings. The purpose is to implement a solution and then CAO will monitor said actions, to make sure there is remediation happening. IFC/MIGA's draft issue paper on this issue should be ready by the first quarter of 2022 and will be published and available to the public. Links to CAO DR case studies were also provided as a reference for examples of possible remedies.

Eligibility of Complaints

Criteria and timing: A stakeholder questioned the objectivity of current eligibility criteria, noting that the current text leaves too much room for subjective interpretation. The participant also asked if the eligibility decision is made before or after the assessment.

The Working Group explained that eligibility is decided within 15 business days from CAO's acknowledgment of receipt of the complaint and before the assessment stage. Eligibility criteria are meant to be a simple and low bar for CAO to decide whether the case should go forward or not, and the decision does not constitute a judgment on the merits of the complaint. The assessment stage is an opportunity to consult with all parties, which allows CAO to get a better sense of the case and to help parties make an informed decision as to which CAO function they wish to initiate. The Dispute Resolution function provides an opportunity for parties to dive more deeply into the issues. And, when the complaint goes to compliance, there is an additional appraisal stage to determine whether the complaint merits a compliance investigation.

Assessment

Depth of assessment: A stakeholder commented that there are no requirements on the quality and depth of the assessment and asked why. The Working Group responded that a policy is as good as its implementation. Several procedures and tools will be developed to implement it, building on more than 20 years of CAO experience.

Early resolution: In response to a question about what happens to a complaint in case of early resolution, the Working Group confirmed that, according to the draft Policy, if a resolution is reached during the 90-day period, CAO will draft an assessment and conclusion report and close the case with the consent of the complainants.

III. NEXT STEPS

The Working Group closed the meeting reflecting on the issues raised and thanking participants for their contributions. In terms of next steps, the Working Group will carefully consider written and verbal feedback received during the consultation period as they finalize the draft CAO policy for consideration and approval by the IFC and MIGA Boards in June 2021. In addition to a summary report from each regional and global consultation meeting, a consolidated consultation report that summarizes feedback received during the public consultation period and indicates how feedback was addressed in the final CAO policy will be released.

ANNEX I: AGENDA

Agenda for Public Consultation Meetings on Draft IFC/MIGA Independent Accountability Mechanism (CAO) Policy

Kyiv, May 7, 2021 – 3:00 PM

TIME	TOPIC
30 MINUTES	<ul style="list-style-type: none">• Welcome, background and purpose of the meeting• Policy timeline and update on IFC/MIGA efforts on non-policy actions and enabling remedial solutions.• Overview of CAO process, building on the CAO framework, Policy highlights and discussion topics.
10 MINUTES	Poll on topics of interest by Participants
75 MINUTES	Presentations on the topics of interest identified by the poll Comments and Questions from Participants on Draft CAO Policy
5 MINUTES	Closing remarks and Next Steps