

External Review: IFC/MIGA Update of Enabling Remedial Solutions – August 2021

1. The *External Review of IFC's and MIGA's Environmental and Social Accountability (E&S), including the Compliance Advisor Ombudsman (CAO)'s Role and Effectiveness*, made a number of recommendations to strengthen the E&S accountability of IFC and MIGA. The responses to the recommendations have been clustered into three areas to facilitate implementation: (1) the IFC/MIGA Independent Accountability Mechanism (CAO) Policy; (2) non-policy actions for IFC/MIGA to implement; and (3) an IFC/MIGA approach for enabling remedial solutions. This update covers the IFC/MIGA approach for enabling remedial solutions. Key milestones in this area are as follows:

Work program of Working Group

- Research and Exploration (Q3 and Q4 of FY21) – completed
- Preparation of Issues and Options Paper (Q1 and Q2 of FY22) – currently underway
- Deliver Issues and Options Paper to Committee on Development Effectiveness (CODE) (end Q2 of FY22)
- Formal Stakeholder consultation on Issues and Options Paper (Q3 of FY22)
- Development of Recommendations for IFC/MIGA Management, to present to Board (end Q4 of FY22)

2. The Working Group completed a research and exploratory phase focusing on exploring various concepts and key terms related to enabling remedial solutions and reviewed the approaches that other financial institutions are contemplating. A relevant concept emerging from the literature review is that of a *'remedy ecosystem'*, where different actors have different but complementary roles to play in the remedy conversation. The *'remedy ecosystem'* approach looks at preparedness for remedy before adverse impacts occur; preparing for remedial options in cases where impacts occur; and studying how financial institutions can use leverage differently to enable remedial solutions. The literature review also provided a basis to assess areas where IFC/MIGA policies, procedures and guidelines align with and may serve as components of a *'remedy ecosystem'*.

3. The *'remedy ecosystem'* concept is closely associated with the discussion in the literature on *'connection to harm'*. In this context, there are seen to be generally three ways in which a business can be involved in an adverse impact: (i) it may cause the impact through its own activities; (ii) it may contribute to the impact through its own activities—either directly or through some outside agency or (iii) it may neither cause nor contribute to the impact, but be involved because the impact is caused by an entity with which it has a business relationship linked to its own operations, products or services. Appropriate action would vary according to whether the business causes or contributes to an adverse impact or is linked to an adverse impact. The linkage may enable a business to use its leverage to influence the entity causing the impact to prevent or mitigate that impact. In this case, businesses do not have the responsibility to provide for remediation but may choose to do so. Inadequate due diligence can add weight to the determination of contribution as opposed to linkage.

4. The *'grievance mechanism infrastructure'*, refers to several avenues that may be pursued by project-affected people to seek remediation, such as judicial, and non-judicial processes, multi-stakeholder processes, international bodies, and others, in addition to project-level grievance mechanisms and IFC/MIGA grievance response arrangements. These various mechanisms provide some avenues for remedial solutions and depending on the circumstances they may complement, conflict, or duplicate one another.

5. Building on the information gathered a draft *'Issues and Options Paper'* is being prepared, presenting principles and possible avenues for enhancing the IFC/MIGA approach to enabling remedial solutions where IFC's/MIGA's non-compliance has contributed to harm, including the main implications, issues and challenges associated with these.

6. A formal consultation process with a wide range of stakeholders will be conducted on the draft *'Issues and Options Paper'*. Inputs from this consultation process will inform discussions on the recommendations to be developed by the Working Group to be presented to the Board.