DRAFT IFC/MIGA INDEPENDENT ACCOUNTABILITY MECHANISM (CAO) POLICY

Background, Overview of Policy, and Key Changes to CAO Process

Public Consultation Process
April 5 – May 19, 2021
What is the IFC/MIGA Compliance Advisor Ombudsman (CAO)?

CAO is the independent accountability and recourse mechanism for IFC and MIGA. CAO’s purpose is to:

• facilitate the resolution of complaints from people who may be affected by IFC & MIGA projects;

• enhance the environmental and social outcomes of IFC/MIGA projects; and

• foster public accountability and learning to improve performance and reduce the risk of harm to people and the environment.
Background: External Review & Policy Development

- **June 2020**
  - Completion of External Review & Preparation of Roadmap

- **October 2020**
  - Roadmap Endorsed by IFC & MIGA Boards
  - Boards endorsed Working Group Roadmap with target date for approval of new Policy and change in CAO’s reporting line by June 30, 2021.

- **January 2021**
  - Policy Outline Developed
  - Boards endorse policy outline and summary of revisions to CAO Operational Guidelines for informal consultation with Reference Group.

- **February 2021**
  - Informal Stakeholder Feedback
  - Reference Group convened to provide feedback on Policy outline as well as on key issues being considered by Working Group.

- **March 2021**
  - Draft Policy Completed
Draft IFC/MIGA Independent Accountability Mechanism Policy: “CAO Policy”

• Draft Policy responds to recommendations from *External Review of IFC/MIGA Accountability, including CAO’s Role and Effectiveness* commissioned by the IFC & MIGA Boards and completed in June 2020.

• Policy was drafted by *Joint CAO/IFC/MIGA Working Group*, led by CAO Vice President and IFC Chief of Staff. It is a consultation draft that has not been endorsed or approved by the Boards.

• Policy drafting followed a *principles-based approach* that generated constructive and *mutually-agreed solutions* to a range of challenging issues.

• Draft Policy builds on *CAO’s Operational Guidelines* and *20+ years of practice*.

• Draft Policy articulates CAO’s *mandate, principles*, and *functions*, with clear and transparent processes—ready for *shift of CAO’s reporting line to the Boards*.

• *Reflects External Review recommendations* and input from internal and external stakeholders.

• Feedback from *public consultation* will inform the final draft Policy for *review and approval by the Boards* in June 2021. The draft remains subject to change following further review and comments from the Boards.
Draft Policy Builds on Current CAO Framework

Current Framework
- CAO Terms of Reference
- CAO Operational Guidelines
- CAO, IFC & MIGA Guidance Documents (including CAO Handbook)

Proposed Final Framework
- IFC/MIGA Independent Accountability Mechanism Policy (CAO Policy)
- CAO, IFC & MIGA Guidance Documents
**Policy Highlights:**
**Balanced to Optimize Effectiveness**

- Reinforces CAO’s independence
- Articulates oversight role of the Boards in relation to CAO processes
- Affirms value of CAO’s three functions—dispute resolution, compliance and advisory
- Strengthens procedural fairness and transparency for all relevant stakeholders
- CAO processes aligned to enhance project-level outcomes and institutional learning
Policy Highlights: Promotes Access to CAO with Early Resolution of Complaints

- Respects complainant’s choice in process
- Provides opportunities for IFC/MIGA and client engagement to resolve complaints early and proactively
- Promotes dissemination of project-level information about CAO to affected communities, along with applicable grievance mechanisms
- Threats and reprisals approach integrated in the Policy
Policy Highlights: Ensures Clear and Predictable Processes

Draft Policy clarifies key aspects of the CAO process for predictability and alignment with mandate:

- Clarifies criteria for eligibility of complaints
- Clarifies criteria for compliance appraisals
- Establishes requirements for Management Action Plan (MAP) in response to compliance findings
- Clarifies role of compliance monitoring
- Establishes clear timelines and expectations for case handling
Key Changes to CAO Process #1: Governance

Change in CAO’s reporting line from the President to the Boards strengthens CAO’s governance and independence from Management, addressing a key recommendation from the External Review.

✓ **CAO’s reporting line** – changed from the President of the World Bank Group to the IFC and MIGA Boards of Directors to strengthen CAO’s governance and independence.

✓ **Head of CAO** – title changed from CAO Vice President to CAO Director-General (CAO-DG) to align with reporting line to the Board.
Key Changes to CAO Process #2: Eligibility of Complaints

CAO’s eligibility criteria clarified and refined while maintaining complainant access and choice.

✓ **Financial Intermediaries (FIs) and supply chain** – greater clarity in policy regarding eligibility of complaints related to FIs, suppliers, sub-contractors.

✓ **Pre-Board approval** – complaints on projects yet to be approved by Board will not be eligible.

✓ **Post-exit** – complaints on projects post-IFC/MIGA exit will now be eligible in exceptional circumstances up to 15 months post-exit.

✓ **Prior efforts** – not a requirement, but a new check made by CAO during eligibility screening on prior efforts to address issues with IFC/MIGA or client. Complainant retains choice of access to CAO.
Key Changes to CAO Process #3: Assessment

Assessment process largely the same with reduced timeframe and opportunity for early resolution of issues by IFC/MIGA and client.

- **Timeframe** – Assessment period reduced to 90 business days. CAO DG may extend assessment to 120 business days based on defined criteria.

- **Early resolution** – IFC/MIGA may support constructive resolution of issues during assessment process, with the consent of complainants and client/sub-client.

- **Disclosure of complaint** – Complaints posted on website together with CAO assessment report at end of assessment process. Client may choose to provide response, which will also be posted.
Key Changes to CAO Process #4:
Dispute Resolution

Dispute resolution process now includes explicit complainant consent for transfer to compliance and potential for IFC/MIGA engagement.

- IFC/MIGA engagement in process – IFC/MIGA may be invited to participate in CAO dispute resolution process where appropriate and agreed by complainant and client.

- Transfer of Cases – Cases no longer automatically transferred to compliance where partial / no agreement reached through dispute resolution. Complainant to provide explicit consent, otherwise case will close. Exception made if concerns of threats and reprisals.
Key Changes to CAO Process #5:
Compliance Appraisal

*Clarified appraisal process with opportunity for early action by IFC/MIGA to address compliance concerns before investigation.*

- **Compliance appraisal** – Criteria clarified and IFC/MIGA management and/or client may provide a response when case transfers to compliance.

- **Decision to investigate** – CAO-DG makes the decision to investigate. IFC/MIGA Executive Vice President may request Board review in exceptional circumstances. Board review will be based on technical criteria and timebound.

- **Deferral** – CAO-DG may defer the decision to investigate if Management response includes specific commitments commensurate to the issues raised in the complaint. Timeline for deferral is typically no more than 6 months.
Key Changes to CAO Process #6: Compliance Investigation

Investigation process strengthens roles of complainant, client and IFC/MIGA in remedial actions to address non-compliances and harm.

✓ Complainant review and comment – Opportunity for factual review and comment on draft investigation report, with appropriate confidentiality measures in place.

✓ Client review – During factual review, IFC/MIGA may share the draft investigation report with clients.

✓ Management Action Plans (MAPs) – Timebound remedial IFC/MIGA action plans to address non-compliances and related harm. MAP process includes consultation with complainants & engagement with clients.

✓ Monitoring – CAO will verify effective implementation of corrective actions in Board-approved MAP.
Key Changes to CAO Process #7: Advisory

Advisory process enhances collaboration with IFC/MIGA and provides greater flexibility in format of advisory work.

✓ Collaboration with IFC/MIGA – CAO will seek ways of working collaboratively with IFC/MIGA, and other actors as appropriate, when developing advisory work while maintaining independence.

✓ Greater flexibility in the format of advisory work – Written reports, interactive tools, and in-person learning will enhance impact through well-targeted and timely products.
Key Changes to CAO Process #8: Threats and Reprisals

*Threats and reprisals approach integrated in the draft Policy.*

- **Explicit reference to threats and reprisals** – Draft Policy explicitly indicates CAO, IFC and MIGA’s commitment to take threats and reprisals seriously.

- **Steps to address retaliation concerns** – Includes steps for CAO to address concerns and risks arising from threats and reprisals related to its processes or activities.

- **Integrated in policy** – Threats and reprisals referenced in core principles, complaints processes, and outreach.
Key Changes to CAO Process #9: Outreach

*Outreach mandate reiterated, including the role of IFC/MIGA in raising awareness about CAO and applicable grievance mechanisms.*

- **Project-level disclosure** – IFC/MIGA to work with clients to disseminate information at the project-level about CAO and its availability as a recourse in case other mechanisms for dealing with harmful project impacts are not successful.
Key Changes to CAO Process #10: Remedy

Access to remedy defined in policy and reflected explicitly and implicitly throughout CAO process.

✓ **Access to remedy** – Explicit reference that CAO facilitates access to remedy for project-affected people in a manner that is consistent with international principles related to business and human rights included within the Sustainability Framework.

  **Definition** – “Access to remedy is understood to be the process of addressing grievances and harm stemming from a Project or a Sub-Project consistent with the broader remedy framework for grievances under the Sustainability Framework, which includes Project-level grievance mechanisms, operational grievance response systems within IFC and MIGA, and CAO.”

✓ **Compliance** – Focus on harm and remediation in compliance process, including Management Action Plans.

✓ **Advisory** – Advisory work to help reduce risk of harm.

✓ **Responsiveness** – Early resolution and increased responsiveness by IFC/MIGA and support to clients.
Key Changes to CAO Process #11: Access to Information and Disclosure

Full CAO access to IFC/MIGA project-related information and clarified regime for information disclosure in CAO reports.

☑ Access to client information – Required contractual provisions to permit CAO access to client’s project records and to project site for purpose of carrying out CAO’s role under the policy.

☑ Disclosure of E&S information – Presumption in favor of disclosure of E&S information in CAO reports while maintaining confidentiality of sensitive commercial information. Disclosure by CAO of non-public environmental and social information in summary form, subject to IFC/MIGA Access to Information Policy and other applicable requirements.

☑ Resolution of disclosure issues – Resolution of disclosure issues between CAO and IFC/MIGA through dialogue, including with Board Committee Chair and Vice-Chair.
RECAP: Changes from Complainant Perspective

- Enhanced focus on facilitating access to remedy.
- Clarified eligibility criteria (FIs, supply chain) and opening for post-exit complaints.
- More explicit options for early resolution with support from CAO, IFC, and MIGA.
- Posting of complaints postponed to assessment phase.
- Option for complainants to withdraw after dispute resolution.
- Deferral option at appraisal to allow for IFC/MIGA actions to address compliance issues.
- Complainant included in factual review & comment of compliance investigations and consulted in relation to Management Action Plan.
RECAP: Changes from Client Perspective

• Possibility for early resolution of complaints more explicit.

• More IFC/MIGA support throughout.

• Posting of complaints postponed to assessment, with option to publish client position alongside.

• Client access to compliance investigation reports during IFC/MIGA factual review and comment phase.

• Client agreement required on relevant actions in the Management Action Plan.

• Conditions for closure of CAO monitoring explicitly spelled out.
Next Steps

- Informal stakeholder feedback
- Next progress report to CODE/COGAM
- Draft Policy to CODE/COGAM
- 45-day public consultation on the draft Policy
- Final draft Policy to CODE/COGAM

- February
- March
- April
- May
- June 30, 2021

Working through outstanding issues, resolving areas of disagreement (including through further engagement with CODE/COGAM), Policy drafting

Further revisions of draft Policy
Overview of Public Consultation Process

Following discussion with Board members, draft Policy provided for 45-day public consultation beginning April 5, 2021.

Consultation includes series of virtual meetings involving all stakeholder groups (communities, civil society, IFC/MIGA clients, and other interested stakeholders.)

Dedicated consultation website with draft Policy documents, translations and information materials. Written comments can be submitted via survey tool or email.

Feedback from consultations will be used by Working Group to inform finalization of the Policy.

Disclaimer: The draft CAO policy is a consultation draft that has not been endorsed or cleared by the IFC and MIGA Boards. The draft remains subject to change following further review and comments from the Boards.