

DOCUMENT OF THE INTER-AMERICAN DEVELOPMENT BANK

**POLICY ESTABLISHING THE  
THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM**

**FEBRUARY 17, 2010**

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## **POLICY ESTABLISHING THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM**

### **EXECUTIVE SUMMARY**

This document sets forth a final version of the Policy Establishing the Independent Consultation and Investigation Mechanism of the Inter-American Development Bank.

#### **Action Requested of Board**

Management recommends that the Board of Executive Directors approve the Policy establishing the Independent Consultation and Investigation Mechanism of the IDB, as set forth in Annex I of this document.

## ANNEX I

### POLICY ESTABLISHING THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM OF THE INTER-AMERICAN DEVELOPMENT BANK

#### **Introduction and objective.**

During the discussions regarding the Eighth General Increase in the Resources of the Bank, the Board of Governors of the Inter-American Development Bank (the “IDB” or the “Bank”) mandated that the Bank establish an independent inspection function in order to “increase the transparency, accountability and effectiveness of the Bank’s performance”. The Governors directed that such a function would “be performed independently from Management, [and] would investigate allegations by affected parties that the Bank had failed to apply correctly its own operational policies.”<sup>1</sup>

In 1994, the Bank’s Board of Executive Directors established the Independent Investigation Mechanism, which created a process for the investigation of allegations by parties claiming to be adversely affected by Bank-financed operations in which the Bank had failed to comply with its own operational policies.

This Policy (the “Policy”) for the Independent Consultation and Investigation Mechanism (the “Mechanism”) of the Bank responds to a mandate from the IDB Board of Executive Directors for the establishment of an enhanced Mechanism, and reflects the lessons learned from the Independent Investigation Mechanism, the developments in the international accountability mechanisms of other multilateral development banks and the input received during the public consultation process for the Mechanism proposal.

Consistent with the mandate from the Bank’s Board of Governors, this Policy has been developed to provide a forum and process to address complaints from parties that allege that they are or might be adversely affected by IDB operations.

This Policy supersedes the Independent Investigation Mechanism policy (see IDB document GN-1830-11). The Mechanism shall have the powers and shall function as stated below.

#### **A. Definitions.**

As used in this Policy, the following terms shall have the following meanings:

1. **Bank or IDB:** The Inter-American Development Bank.

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<sup>1</sup> See Agreement regarding the Eighth General Increase in the Resources of the Bank, AB-1704, par. 2.97 (Aug. 1994).

2. **Bank-Financed Operation:** Covers all Bank investment or other financing activities, whether with or without sovereign guarantee (public or private sector), and includes any operational activities involving loans, grants, technical cooperation assistance and guarantees financed or to be financed in whole or in part from Bank funds or from funds administered or guaranteed by the Bank, including MIF operations. Requests may be filed with respect to operations not yet approved by the Board (a) after the signing of the mandate letter, for non-sovereign guaranteed operations, or (b) after the project number has been issued, for sovereign guaranteed and MIF operations.
3. **Board:** The Board of Executive Directors of the Bank.
4. **Borrower/Recipient:** A party that has received financing in connection with a Bank or MIF operation and that has entered into a loan, technical cooperation or guarantee agreement with the Bank. In the case of operations not yet approved by the Board or the Donors Committee, as the case may be, references to “borrower/recipient” are intended to cover the party or parties expected to receive the financing in connection with the proposed operation.
5. **Chairperson:** The person serving as Chairperson of the Panel.
6. **Compliance Review:** Involves a formal investigation of whether the Bank violated its own Relevant Operational Policies. The investigation is conducted by the Chairperson and two other members of the Panel and results in a report.
7. **Compliance Review Phase:** The process whereby a Compliance Review is conducted by the Panel.
8. **Consultation Phase:** The process conducted by the Project Ombudsperson, which involves one or more consensual methods of addressing the concerns of a Requester. The Consultation Phase precedes the Compliance Review Phase.
9. **Days:** Calendar or business days, as indicated. A business day refers to a day in which the IDB is open for business in Washington, D.C.
10. **Disclosure of Information Policy:** The Bank’s policy on Disclosure of Information (OP-102), as it may be amended from time to time.
11. **Donors Committee:** The Donors Committee of the MIF.
12. **Executing Agency.** The entity designated in the relevant legal documentation to execute all or part of the project.
13. **Executive Secretary:** The person appointed to serve as the Executive Secretary of the ICIM Office pursuant to Section 85.
14. **ICIM:** The Independent Consultation and Investigation Mechanism of the IDB.

15. **ICIM Office:** The office of the Independent Consultation and Investigation Mechanism at the IDB.
16. **IIC:** The Inter-American Investment Corporation.
17. **Management:** The Bank Manager or Managers in charge of the relevant Bank-Financed Operation, or his or her delegate(s).
18. **Mechanism:** The Independent Consultation and Investigation Mechanism; the Mechanism process includes both the Consultation and the Compliance Review Phases.
19. **MIF:** The Multilateral Investment Fund.
20. **Panel:** The five-person body established pursuant to Section 77. With respect to a Compliance Review, references to the “Panel” shall mean the Chairperson and the two other persons selected to conduct the Compliance Review.
21. **Policy:** This ICIM Policy.
22. **President:** The President of the Bank.
23. **Project:** A specific project or technical assistance and in support of which a Bank-Financed Operation, or MIF funding, as appropriate, is outstanding or may reasonably be expected.
24. **Project Ombudsperson:** The person appointed to serve as Project Ombudsperson pursuant to Section 74.
25. **Registry:** The public registry established pursuant to Section 95.
26. **Relevant Operational Policies:** The ICIM applies to all “Relevant Operational Policies”, which initially will be deemed to include only the following: those Board-approved environmental and associated safeguards, equality in gender, and information disclosure policies, as they may be amended from time to time (currently codified as OP-102 (Disclosure of Information), OP-703 (Environmental and Safeguards Compliance Policy), OP-704 (Disaster Risk Management Policy), OP-761 (Women in Development), OP-765 (Indigenous People), and OP-710 (Involuntary Resettlement)), which apply to the design, appraisal, approval and/or implementation of Bank-Financed Operations, as well as those relating to the enforcement of compliance with a borrower/recipient’s obligations required by such policies. In addition, “Relevant Operational Policies” will be deemed to include other Board-approved Bank operational policies that relate to the design, appraisal, analysis and/or implementation of Bank-Financed Operations, as well as those relating to the enforcement of compliance with a borrower/recipient’s obligations required by such policies, as such Bank operational policies are approved by the Board following the effectiveness of the ICIM; and will include all such other operational policies that are in effect three years from the effectiveness of the ICIM. The Relevant Operational Policy that shall be applicable shall be the version in effect at the time of the Request (for projects not yet approved by the Board) or, for projects approved by the Board, the version in effect at the time of Board approval of the operation that is the subject of the Request, unless the relevant policy

or legal documentation provides otherwise. Guidelines, procedures or norms approved only by the Management of the Bank are not subject to the Mechanism.

27. **Request:** Any communication relating to this Policy from a Requester.
28. **Requester:** Any one or more persons, groups, associations, organizations or entities residing in the country(ies) where the Bank-Financed Operation is or will be implemented, or a duly appointed representative in accordance with Section 30.
29. **TOR:** The Panel's terms of reference prepared in accordance with Section 58.

## **B. Requests to the Mechanism.**

30. Who can present a Request? A Request may be presented by one or more persons, groups, associations, entities or organizations (including, without limitation, from groups, associations, entities or organizations that are community based, or that are formed by indigenous or Afro descendant peoples or entities that are organized as non-governmental organizations), residing in the country(ies) where the Bank-Financed Operation is or will be implemented. A Request may be presented through a representative located in the project host country or elsewhere, but any such Request must identify the person(s) on whose behalf the representative is acting and provide evidence of the representative's authority to represent them.

31. Content and form of a Request. A Request need not follow any particular format. Guidance on how to complete and file a Request will be available to prospective Requesters by accessing the ICIM website ([www.iadb.org/mecanismo](http://www.iadb.org/mecanismo)) or by contacting the Executive Secretary. Requests can be processed more expeditiously if they include relevant facts, such as contact information for the Requester, the identity and location of the Bank-Financed Operation, a clear explanation of the harm alleged, an allegation that the Bank failed to apply one or more of its Relevant Operational Policies, the alleged act or omission of the Bank in contravention of its Relevant Operational Policies, the steps taken to discuss the matter with Management and its response, and a statement of the outcome that the Requester would like to see. Requesters will be advised that the purpose of the Mechanism is not the award of compensation or similar benefits.

32. How to submit a Request.

- a. Requests may be received in writing, via electronic or regular mail, fax, or text message to the ICIM Office phone number. Oral Requests will be accepted, subject to subsequent receipt of a signed communication.
- b. The official languages of the IDB are Spanish, English, Portuguese and French. Requests will be processed if received in other languages, although additional time for processing and translations may be necessary.
- c. Requests may be delivered to the ICIM Office at the address that follows or to any IDB Office (attention ICIM Office), which shall direct the Request to the ICIM Office. The ICIM address is Independent Consultation and Investigation Mechanism Office, Inter-American Development Bank, 1300

New York Ave., N.W., Washington, D.C. 20577 USA; Email: [mecanismo@iadb.org](mailto:mecanismo@iadb.org); Telephone: 202-623-3952; Fax: 202 312-4057.

33. Confidentiality. Anonymous Requests will not be accepted. The Office will protect the confidentiality of a Requester if so requested in the Request and will consult with the Requester about the process for handling a confidential Request.
34. Acknowledgment of Requests. The Executive Secretary shall acknowledge receipt of a Request within five (5) business days. This acknowledgment is purely for administrative purposes. Acknowledgments shall be issued by electronic mail, or regular mail if no electronic mail address is available.
35. Sequencing of Requests. A Request may request that both a Consultation Phase exercise and Compliance Review be undertaken, but the Consultation Phase Request will be processed first... See Section C of this Policy for requirements under the Consultation Phase and Section D for requirements under the Compliance Review Phase.
36. Reporting on Requests. The Executive Secretary shall keep track of the number and nature of eligible and ineligible Requests and report on the same in the ICIM's annual report and via the Registry.
37. Exclusions. Neither the Consultation Phase nor the Compliance Review Phase will be applied to:
- a. actions that are the responsibility of parties other than the Bank, such as a borrower/recipient, technical cooperation beneficiary, or executing agency, and that do not involve any action or omission on the part of the Bank;
  - b. Requests related exclusively to the laws, policies or regulations of the host country(ies), borrower/recipient or the executing agency;
  - c. actions or activities that do not relate to a Bank-Financed Operation or that are not subject to the Bank's Relevant Operational Policies;
  - d. procurement decisions or processes (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank);
  - e. a particular matter or matters that have already been reviewed pursuant to the Mechanism, or its predecessor, unless justified by new evidence or circumstances not available at the time of the initial Request;
  - f. Requests dealing with a Bank-Financed Operation that are filed after twenty-four (24) months of the last disbursement;
  - g. ethics or fraud questions, specific actions of Bank employees, non-operational matters such as internal finance or administration, allegations of



corrupt practices, or other matters subject to review by other bodies established by the Bank (in which case the Executive Secretary shall redirect the Request to the appropriate office within the Bank);

- h. any Request that on its face (i) is without substance, or (ii) has been submitted to gain a competitive business advantage; and
- i. Requests that raise issues under arbitral or judicial review by national, supranational or similar bodies.

### **C. The Consultation Phase.**

38. Purpose of the Consultation Phase. The purpose of the Consultation Phase is to provide an opportunity, applying consensual and flexible approaches, to address the concerns of a party that believes it has been or could reasonably be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-Financed Operation.

39. Registration of a Request under the Consultation Phase. The Executive Secretary shall forward all Requests to the Project Ombudsperson no later than five (5) business days following receipt. Within fifteen (15) business days of receipt by the Project Ombudsperson, he or she shall determine the eligibility of the Request for purposes of the Consultation Phase. If a Request is deemed eligible, the Project Ombudsperson shall cause the Executive Secretary to promptly register it in the Registry and notify the Requester, Board (or the Donors Committee, in the case of a MIF-funded operation), the President, and the project execution agency and/or borrower/recipient.

40. Eligibility criteria for the Consultation Phase. Requests shall be deemed eligible for the Consultation Phase if the Project Ombudsperson determines the following, either via the Request or via IDB records:

- a. the names and contact information for the Requester are available;
- b. the names and contact information for the Representative, if any, and proof of the authorization are available;
- c. the Bank-Financed Operation(s) at issue has been identified;
- d. the Requester resides in the country where the relevant Bank-Financed Operation is or will be implemented (or a qualified Representative has been appointed);
- e. none of the exclusions set forth in Section 37 applies;
- f. the Requester has reasonably asserted that it has been or could be expected to be directly, materially adversely affected by an action or omission of the IDB in violation of a Relevant Operational Policy in a Bank-Financed Operation and has described in at least general terms the direct and material harm caused or likely to be caused by such action or omission in the Bank-Financed Operation;
- g. the parties are amenable to a Consultation Phase exercise, and, with respect to an issue raised in the Request, a Consultation Phase exercise, may assist

in addressing a concern or resolving a dispute or is likely to have a positive result; and

- h. the Requester has taken steps to bring the issue to the attention of Management. The Project Ombudsperson shall consult with Management as to its response and if Management is involved in addressing the concerns raised, the Project Ombudsperson shall allow forty-five (45) calendar days from the date of acknowledgment by the Executive Secretary of the Request before it is registered pursuant to Section 39.

41. Requests ineligible for the Consultation Phase. Prior to making a determination of ineligibility, the Project Ombudsperson shall provide a Requester reasonable opportunity to complete or correct a Request. If a Request is deemed ineligible, the Project Ombudsperson shall in writing notify the Requester, the Board (and the Donors Committee, in the case of a MIF-funded operation), the President, the borrower/recipient and/or executing agency and the public, including the reasons for the ineligibility determination. Unless the Requester has already indicated that it wishes to proceed with a Compliance Review in the Request, the Executive Secretary will promptly contact the Requester and inquire whether the Requester desires that the Request be considered for a Compliance Review. If the Requester wishes to proceed under the Compliance Review Phase, the Executive Secretary will forward the Request to the Panel Chairperson for a determination of eligibility under the Compliance Review Phase.

42. Assessment. Following registration, the Project Ombudsperson shall conduct an assessment. The purpose of the assessment is to clarify the issues and concerns raised by the Request, identify and gather information from stakeholders, including potentially other parties similarly situated to the Requester, inquire as to the views and incentives of all stakeholders, and help determine whether a resolution to the issues raised can be reached and what is the best process for doing so. Any party, except the Project Ombudsperson, that does not wish to proceed with a Consultation Phase exercise may unilaterally opt out at any time during the assessment.

43. Nature of assessment. The nature and extent of the assessment will be determined by the Project Ombudsperson based on the issues raised by the Requester. An assessment may involve a desk review, a site visit, discussions with the Requester, Management, or other relevant parties, public meetings, retainer of experts, or other steps.

44. Result of the assessment. Based on the results of the assessment, the Project Ombudsperson will either (a) work with the stakeholders to produce an explicit agreement to proceed on a Consultation Phase exercise, establishing a process for addressing the issues raised by the Requester or identified through the assessment, or (b) determine that a collaborative resolution is not possible, in which case the Project Ombudsperson will deliver the Request and all pertinent information to the Executive Secretary for forwarding to the Panel. The assessment will conclude with a decision whether or not to proceed in a Consultation Phase exercise, and, as appropriate, a clear outline of the course of action proposed and agreed to by the parties.

45. Timeframe and reporting. The assessment will be completed within one hundred and twenty (120) calendar days of the date the Request was determined eligible. The Project Ombudsperson will

provide an assessment report to the stakeholders, the President, the Board (or the Donors Committee in the case of a MIF-funded operation) and the public via the Registry.

46. Consultation Phase exercise. The objective of a Consultation Phase exercise is to address issues raised by the Requester. There is no guarantee that the Consultation Phase will resolve all issues to the satisfaction of the parties. Consultation Phase exercises will be tailored to the individual Request, depending on factors such as its urgency, principal parties, potential or actual harm involved, remedies sought and the likelihood that the consultation will have positive outcomes. For example, any or more of the following could be used: fact-finding, promoting further discussion and negotiation among the parties to stimulate self-generated solutions; retainer of experts; and more active, consensual, problem-solving approaches such as facilitation, conciliation or mediation or review or investigation. Because the Consultation Phase process is intended to be flexible and tailored to the needs of each operation, there are no standard rules, timeframes or procedures for this phase, except as otherwise explicitly set forth in this Policy.

47. Voluntary nature. Any party, except the Project Ombudsperson, can opt out of any part of the Consultation Phase process at any time, in which case the Consultation Phase shall be deemed concluded. A Consultation Phase exercise requires the consent of the Requester, the project executing agency or borrower/recipient and any other parties deemed essential by the Project Ombudsperson. All parties must consent to their participation in the Consultation Phase exercise by approving the recommended course of action, including reaching agreement on the approach and method of consultation, funding arrangements, timing and binding nature of the outcome, as applicable.

48. Impact of Consultation Phase. The fact that a Consultation Phase exercise is initiated or ongoing does not halt the processing or execution of the Bank-Financed Operation, including disbursements by the Bank or the MIF, as the case may be. In cases where the Project Ombudsperson believes that serious, irreparable harm may result if processing or execution of a Bank-Financed Operation continue, the Project Ombudsperson may recommend to the President, the Board or Donors Committee, as appropriate, that processing or execution be halted. The decision on the recommendation will be made by the body vested with the power to make such decision, subject to applicable Bank policies and legal documentation.

49. Country non objection for site visit. Any part of the Consultation Phase process to be conducted in the territory of the borrower/recipient country may be conducted only after obtaining the written non objection of the country, which must be requested in advance of the visit through the office of the relevant Executive Director.

50. Limitations. The Project Ombudsperson will not support agreements that would be coercive to one or more parties, are contrary to Bank policies or its code of ethics, or that would violate domestic laws of the parties or international law. Neither the Project Ombudsperson (nor any expert participating in the Consultation Phase) may interfere with the processing or execution of a Bank-Financed Operation. The Consultation Phase, by itself, shall not result in the award of compensation or any other benefits to any person, entity or government. This does not preclude, however, the possibility of compensation or other benefits that may be expressly contemplated in any relevant Bank policy and legal documentation or as may be duly and explicitly agreed to by the parties involved.

51. Consultation Phase report. The Project Ombudsperson shall be required to prepare a report on the Consultation Phase exercise and its results, which will be distributed to the President, Board (and the Donors Committee, in the case of a MIF-funded operation), Requesters, and posted on the Registry. The terms of a settlement agreement or approved recommendation will be made public via the Registry, unless all of the signatory parties agree on confidentiality, in which case the Project Ombudsperson shall cause an abstract to be posted on the Registry.

52. Monitoring. The Project Ombudsperson is responsible for making arrangements to provide for (a) direct or outside monitoring of any agreement reached by the parties to the consultation and (b) adequate measures to determine whether such agreement is being implemented in an appropriate manner. The Project Ombudsperson shall consult with the Requester with respect to the monitoring measures. Monitoring reports shall be issued at least semi-annually for so long as the Project Ombudsperson deems appropriate. Monitoring protocols and reports shall be made public via the Registry. The Project Ombudsperson will notify the President, Board (and the Donors Committee, in the case of a MIF-funded operation), the Requester, and other relevant parties of the results of its periodic monitoring exercises and of any recommendations that may result therefrom.

#### **D. The Compliance Review Phase.**

53. Purpose of the Compliance Review Phase. The purpose of the Compliance Review Phase is to establish a process (a “Compliance Review”) that enables a Requester to request an investigation of a Bank-Financed Operation by a Panel of independent experts if the Requester reasonably asserts that its rights or interests have been, or could be expected to be directly, materially adversely affected by the failure of the IDB to follow its Relevant Operational Policies in a Bank-Financed Operation. The objective of a Compliance Review investigation shall be to establish whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requester.

54. Prerequisites for a Compliance Review. A Request will proceed from the Consultation Phase to consideration under the Compliance Review Phase if the Requester has expressed a desire for a Compliance Review and if:

- a. the Consultation Phase has been terminated or concluded for any reason, or
- b. the Request was deemed ineligible under the Consultation Phase.

55. Eligibility review by the Chairperson. The Executive Secretary shall forward all Requests to the Panel Chairperson no later than five (5) business days after they meet the criteria set forth in Section 54. Within fifteen (15) business days of receipt by the Panel Chairperson, he or she shall determine the eligibility of the Request for purposes of the Compliance Review Phase. The Project Ombudsperson will deliver to the Panel Chairperson all materials and analyses relating to the Request at the Consultation Phase, including the Project Ombudsperson’s determination on the eligibility criteria. The Panel Chairperson will review the Request for eligibility, independently of the determination of the Project Ombudsperson. If a Request is deemed eligible, the Panel Chairperson shall cause the Executive Secretary to promptly register it in the Registry and notify the Board and the Donors

Committee, in the case of a MIF-funded operation, the President, and the project execution agency and/or borrower/recipient.

56. Eligibility criteria for the Compliance Review Phase. Requests shall be deemed eligible for the Compliance Review Phase if the Panel Chairperson determines the following, either via the Request or via IDB records:

- a. the names and contact information for the Requester are available;
- b. the names and contact information for the Representative, if any, and proof of the authorization are available;
- c. the Bank-Financed Operation(s) at issue has been identified;
- d. the Requester resides in the country where the relevant Bank-Financed Operation is or will be implemented (or a qualified Representative has been appointed);
- e. none of the exclusions set forth in Section 37 applies;
- f. the Requester has reasonably asserted that it has been or could be expected to be directly, materially adversely affected by an action or omission of the IDB in violation of a Relevant Operational Policy in a Bank-Financed Operation and has described in at least general terms the direct and material harm caused or likely to be caused by such action or omission in the Bank-Financed Operation;
- g. with respect to an issue raised in the Request, a Compliance Review may assist in determining whether (and if so, how and why) any Bank action or omission, in respect of a Bank-Financed Operation, has resulted in non compliance with a Relevant Operational Policy and direct, material adverse effects (potential or actual) to the Requester; and
- h. the Requester has taken steps to bring the issue to the attention of Management. The Panel Chairperson shall consult with Management as to its response and if Management is involved in addressing the concerns raised, the Panel Chairperson shall allow forty-five (45) calendar days from the date of receipt by the Executive Secretary of the Request for purposes of the Compliance Review before it is deemed eligible. The Panel Chairperson may waive this requirement in his or her discretion if the 45-day period has been invoked by Management during the Consultation Phase.

57. Results of the eligibility review. Within 15 business days, the Chairperson shall instruct the Executive Secretary to notify the Requester whether the Request has been deemed eligible for purposes of the Compliance Review Phase or not. Prior to making a determination of ineligibility, the Panel Chairperson shall provide a Requester reasonable opportunity to complete or correct a Request. If the Request is deemed ineligible, the Requester, the other Panel members, the Board (and the Donors Committee, in the case of a MIF-funded operation), the President, the borrower/recipient and/or executing agency and the public (via the Registry) shall be notified in writing, including the reasons for the determination of ineligibility.

58. Scope of investigation. If a Request is deemed eligible for purposes of the Compliance Review Phase, the Chairperson will identify two other members of the Panel to serve on the investigative team for such Request, based on their expertise and availability. The Chairperson and the two other members will then act as a Panel and will prepare terms of reference (“TOR”) for conducting the Compliance Review. The TOR shall include: the objectives of the investigation, the specific investigative criteria identified, a brief description of the Bank-Financed Operation, proposed schedule and budget for the investigation, anticipated use of consultants, and a statement of the deliverables, which shall comprise the Panel report described in Section 64. In preparing the TOR, the Panel shall consult with the Requester and Management, who shall each have twenty (20) business days to provide comments in writing on the TOR. The comments from the Requester and Management are for the Panel’s information and will not be considered binding. As limited information is available to the Panel prior to its investigation, the TOR are intended solely to guide the Compliance Review process.

59. Panel recommendation. The Panel shall submit a recommendation to conduct a Compliance Review and the TOR to (a) the Board (and the Donors Committee, in the case of a MIF-funded operation), or (b) the President, with a copy to the Board (and the Donors Committee, in the case of a MIF-funded operation), if the Request relates to a Bank-Financed Operation that has not been approved by the Board or the Donors Committee, as the case may be. In considering the recommendation, the Board, the Donors Committee or the President, as the case may be, shall either (a) approve the recommendation and the TOR on a “non objection” basis, or (b) object, in which case the recommendation and the TOR shall be considered by the Board or the Donors Committee, as the case may be, in accordance with their respective regulations. Any decision by the President concerning a Compliance Review shall be immediately communicated to the Board (or the Donors Committee, in the case of a MIF-funded operation). Notice of the action by the Board, Donors Committee or the President, as the case may be, shall be posted on the Registry and communicated to the project executing agency, borrower/recipient, Requester and public (via the Registry).

60. Panel review. The Panel shall conduct the Compliance Review in accordance with the TOR and any administrative procedures adopted by the Panel. The Executive Secretary has no substantive role in the conduct of the investigation, and shall serve in a purely administrative fashion as Panel Secretary.

61. Input for Panel. In discharging its functions, the Panel must consult all concerned stakeholders, including Management, the Requester, the borrower/recipient or executing agency, and the relevant Executive Director. All will be given an opportunity to record their views in writing and written submissions will be annexed to the final Panel report. The Panel may make site visits, arrange to have outside expert technical advice, and take any other action as may be required to complete the Compliance Review.

62. Timing. The Panel’s investigation and deliberations are not time bound because the amount of time will vary depending on the nature, complexity and scope of the Bank-Financed Operation and Relevant Operational Policies involved. The Panel shall cause a notice to be posted on the Registry and inform the Requester, Management, the borrower/recipient or executing agency, the Board (or the Donors Committee, in the case of a MIF-funded operation) and President if it appears that completion of the Compliance Review will require thirty (30) calendar days or more than the maximum time contemplated in the TOR.

63. Country non objection for site visit. Any part of the investigation to be conducted in the territory of a borrowing/recipient country may be conducted only after obtaining the written non objection of the country, which must be requested in advance of the visit through the office of the relevant Executive Director.

64. Report. In preparing its report, the Panel shall take into account all relevant facts that may have an impact on the case at hand. The report shall include the Panel's findings as to whether (and if so, how and why) any Bank action or omission in respect of a Bank-Financed Operation has resulted in non compliance with a Relevant Operational Policy (identifying each such Policy and describing any such non compliance) and direct, material adverse effects (potential or actual) to the Requester (including a description of any such effects), and a description of the Panel's methodology used to determine its findings of harm, causality and the link to each Relevant Operational Policy with which there may have been non-compliance. The Panel may also include its recommendations, views or observations in regard to its findings or systemic or other issues, subject to consideration of applicable Bank policies and legal documentation. Recommendations, findings and views of the Panel shall be strictly impartial.

65. Fact-finding nature. In deciding on the content of its report, the Panel should consider that the Mechanism is not a judicial process designed to establish guilt or innocence or to adjudicate fault or apportion blame among the various parties involved. In addition, it is not within the Panel's mandate to: (a) investigate actions of any party other than the Bank, such as government or local authorities, borrower/recipient, other lenders, sponsors or other investors in connection with the Bank-Financed Operation; or (b) allocate responsibility for any adverse effects among the Bank, the borrower/recipient or other parties. The Panel's report should be designed to provide the factual and technical basis for a decision by the Board, Donors Committee or President, as the case may be, on preventive or corrective action in connection with the Bank-Financed Operation under investigation.

66. Impact of Compliance Review. In cases where the Panel believes that serious, irreparable harm may result if processing or execution of a Bank-Financed Operation continue, the Panel may recommend to the President, Board or Donors Committee, as appropriate, that processing or execution be halted. The decision on the recommendation will be made by the body vested with the power to make such decision, subject to applicable Bank policies and legal documentation. The Panel shall not recommend the award of compensation or any other benefits to any person, entity or government. This does not preclude, however, the possibility of compensation or other benefits that may be expressly contemplated in any relevant Bank policy and legal documentation.

67. Panel decision-making. The Panel must try to arrive at its findings by consensus; but, if this is not possible, the views of each participating member of the Panel must be expressly stated in its report.

68. Management and Requester input. At the completion of its Compliance Review, the Panel will issue a draft report or outline of its principal findings of fact to Management and the Requester for comments. Both Management and the Requester will have forty five (45) calendar days from receipt of the draft or outline to provide their comments in writing to it. The Panel may make changes before issuing its final report, which shall be the sole responsibility of the Panel, but which shall include in an annex the comments received and any written submissions pursuant to Section 61. The Panel shall distribute its final report to (a) the President (with a copy to the Board or the Donors Committee, in the

case of a MIF-funded operation), if the relevant Bank-Financed Operation does not require Board or Donors Committee approval, as the case may be, or has not been approved by the Board or Donors Committee, or (b) the Board or the Donors Committee, in the case of a MIF-funded operation (with a copy to the President) if the Bank-Financed Operation has been approved by the Board or the Donors Committee, as the case may be.

69. Receipt of Panel report. Once the Board (or the Donors Committee, in the case of a MIF-funded operation) or the President, as the case may be, has received the report of the Panel, the Board, Donors Committee or the President, as applicable, shall take note of the report. The Board, Donors Committee or the President, as the case may be, may meet with the Panel regarding the report.

70. Publication. Within twenty (20) calendar days from distribution of the Panel report, the Panel report, with the comments from the Requester or Management and any other written submissions pursuant to Section 61, will be posted on the Registry and delivered to the Requester.

71. Final decision. The Board (or the Donors Committee, in the case of a MIF-funded operation) or the President, as the case may be, shall make the final decision regarding any actions that may be deemed appropriate or necessary in light of the Panel findings, and instruct Management to carry out such actions. The Board (or the Donor Committee, in the case of a MIF-funded operation) or the President, as appropriate, shall notify the Panel and ICIM Office of such decision and instruct Management to inform the Panel of any resulting action plan. The Executive Secretary shall make public such decision and any resulting action plan via the Registry and shall inform the Requester, borrower/recipient and other stakeholders.

72. Monitoring. At the request of the Board (or the Donors Committee, in the case of a MIF-funded operation), the Panel will monitor implementation of any remedial or corrective actions agreed upon as a result of a Compliance Review. The Panel will consult with the Requester, Management and other stakeholders, as appropriate, with respect to its monitoring activities and will prepare monitoring reports. The Panel will distribute monitoring reports at least semi-annually to the Board (or the Donors Committee, in the case of a MIF-funded operation) and the President, for so long as the Panel deems necessary or appropriate. Monitoring reports shall be posted on the Registry.

#### **E. Institutional and Administrative Aspects.**

73. The ICIM Office. The Bank will establish and maintain an office (the “Office of the Independent Consultation and Investigation Mechanism” or the “ICIM Office”) to serve as the executive secretariat for the Mechanism and perform the functions set forth in this Policy. The Office shall report to the Board, not to Management. The Project Ombudsperson, the Panel and the Executive Secretary and any other employees or consultants assigned to the Mechanism shall constitute the ICIM Office staff.

74. The Project Ombudsperson. The Consultation Phase shall be managed by a Bank employee designated as Project Ombudsperson. The Project Ombudsperson shall be a full time employee, at a level equivalent to an executive level. The Project Ombudsperson shall be appointed by the Board, following a selection process similar to the one used for the Director of the Evaluation and Oversight Office of the IDB. The Project Ombudsperson will be appointed for a period of three (3) to five (5)



years, renewable by mutual consent. The Project Ombudsperson shall be independent of any unit or official of the Bank and shall act on his or her own initiative, consistent with this Policy.

75. Qualifications for the Project Ombudsperson. The Project Ombudsperson should have knowledge of and experience with environmental sustainability and social issues, international development organizations, and civil society, preferably in Latin America and the Caribbean, and flexible dispute resolution methods. Integrity, empathy and the ability to engage with civil society are also preferred. If the Project Ombudsperson at any time experiences a conflict with respect to a Consultation Phase exercise, he or she shall notify the Board, in which case an alternate Project Ombudsperson may be appointed.

76. Duties of the Project Ombudsperson. The duties of the Project Ombudsperson shall include:

- a. assessing eligibility for the Consultation Phase and processing Requests thereunder;
- b. conducting the Consultation Phase, including contracting outside experts, as appropriate, and providing information to prospective Requesters;
- c. conducting, in coordination with the appropriate Bank units, training and providing advice to operational units in their problem-solving activities, but not for specific cases under review or that may reasonably be expected to come under review by the Mechanism;
- d. undertaking contacts with the public, publishing periodic reports, disseminating lessons learned, and conducting the outreach and training activities described in Section 92;
- e. adopting administrative procedures for the operation of the Consultation Phase; and
- f. undertaking any other tasks that may be necessary or incidental to the Consultation Phase.

77. The Panel. The Bank will establish an independent Panel whose main function is to carry out Compliance Review Phase investigations pursuant to this Policy. The Panel will report to the Board. The Panel shall be independent of any unit or official of the Bank and shall act on its own initiative, consistent with this Policy.

78. Composition and selection. The Panel shall be composed of five (5) individuals appointed by the Board. Panel members shall be selected for their recognized technical competence, integrity and independent judgment, and knowledge of economic, social and sustainable development, preferably in Latin America and the Caribbean. The Panel members will be nationals from different member countries of the Bank. The Board shall appoint the initial Panel Chairperson and thereafter the Panel members shall select the Chairperson. The Chairperson shall serve in such capacity for the duration of his or her appointment.

79. Term. The Panel members shall be appointed for a non-renewable term of five (5) years, with the exception of the first Panel, the members of which shall be appointed for staggered non-renewable terms of three or four years. The first Panel Chairperson shall be appointed for a non-renewable term of three (3) years.

80. Eligibility for Panel service. Executive Directors, Alternate Executive Directors, Counselors, Advisers, or any employee of the Bank or persons holding consultant appointments shall not serve on the Panel until two (2) years have elapsed from the end of their service to the Bank. If a Panel member is called to work for the Mechanism during his or her term, the Panel member shall not be entitled to work for the Bank (either as employee, consultant, Executive Director, Alternate Executive Director, or advisor, assistant or consultant thereto) in any capacity for five (5) years after the expiry of his or her term.

81. Nature of service. The Chairperson of the Panel and the other members of the Panel shall render their services on an as-needed basis. The Chairperson shall serve on each Compliance Review that is ongoing during his or her term. Contracting for services of Panel members will follow Bank rules for contracting consultants, except as expressly otherwise determined by the Board. In the performance of their functions, Panel members shall be considered officials of the Bank entitled to enjoy the privileges and immunities accorded to Bank employees under the Agreement Establishing the Inter-American Development Bank.

82. Remuneration. Panel members shall be paid an annual honorarium and remuneration for work performed on a Panel at levels to be determined by the Board. They shall be reimbursed for their travel and expenses on the same basis as the judges of the Bank's Administrative Tribunal.

83. Training of Panel members. Panel members shall be required to attend meetings for at least five (5) calendar days in each calendar year to enhance their knowledge of the Relevant Operational Policies and discuss the functioning of the Mechanism.

84. Resignation or removal from office. Members of the Panel may resign or be removed for cause by the Board, without cost or liability to the Bank. In the event a member is removed or resigns from the Panel, a replacement may be appointed by the Board to complete that term or appointment.

85. The Executive Secretary. The day to day administrative duties of the ICIM Office shall be managed by a Bank employee designated as Executive Secretary. The Executive Secretary shall be appointed by the Board, following a selection process similar to the one used for the Director of the Office of Evaluation and Oversight of the IDB. The Executive Secretary shall be a full time employee of the IDB, at a level equivalent to an executive level.

86. Duties of the Executive Secretary. The Executive Secretary shall have overall responsibility for the day to day activities of the ICIM Office, which shall include:

- a. receiving and acknowledging Requests;
- b. creating and maintaining the Registry;

- c. providing administrative support to the Project Ombudsperson in connection with the Consultation Phase and other Project Ombudsperson activities, including contracting, travel, and any training for Bank units;
- d. providing administrative support to the Panel in connection with the Compliance Review Phase and other Panel activities, including contracting, travel, and coordinating training for the Panel with the appropriate Bank units;
- e. preparing, in consultation with the Project Ombudsperson and the Panel Chairperson, an annual budget indicating the level of resources required for the forecasted activities of the ICIM Office, the Consultation Phase and the Compliance Review Phase for the coming year;
- f. coordinating with peer institutions concerning potential harmonization of accountability mechanisms and sharing of experiences;
- g. in coordination with the Project Ombudsperson and the Panel, undertaking contacts with the public, publishing reports and materials, disseminating lessons learned, and conducting the outreach and training activities described in Section 92;
- h. coordinating with the Board, the Office of the President, the Secretariat and other Bank units to facilitate communications, document distribution and reporting to/from the Panel and the Project Ombudsperson;
- i. adopting administrative procedures, in conjunction with the Project Ombudsperson and the Panel Chairperson, as appropriate, for the operation of the Mechanism and the ICIM Office; and
- j. undertaking any other tasks that may be necessary or incidental to the administration of the Mechanism or the ICIM Office.

87. Adherence to Bank policies. The Panel, Project Ombudsperson, Executive Secretary and any staff of the ICIM Office are subject to all Bank policies and codes of ethics, and shall protect against conflicts of interest that could weaken the objectivity and integrity of the ICIM Office and the Mechanism.

88. Authority to consult experts. The Executive Secretary, Project Ombudsperson and the Panel will have the authority to hire independent experts and/or other consultants when needed to supplement their expertise and/or resources. In addition, the Executive Secretary, Project Ombudsperson or the Panel may seek the advice of the Bank's Legal Department with respect to legal questions that may arise concerning the Mechanism or any matter under consideration.

89. Authority to adopt administrative procedures. The Project Ombudsperson and the Panel will have the authority to establish and adopt procedures for the administration of their respective Consultation Phase or Compliance Review Phase activities.

90. Access to staff and information. When conducting any review, investigation or assessment for the Mechanism, the Project Ombudsperson, the Panel, Executive Secretary, ICIM Office staff and any consultants working with any of them shall have full access to relevant IDB staff and files, and IDB staff shall be required to cooperate fully with the Mechanism.

## **F. General.**

91. Time periods. Any time period referred to in this Policy may be extended by the Project Ombudsperson or Panel Chairperson, as appropriate, for as long as is strictly necessary to ensure the full and proper processing of Requests. The Requester and other relevant parties shall be notified of any extension and it shall be noted on the Registry.

92. Outreach and training. The ICIM Office will conduct outreach throughout Latin America and the Caribbean and among civil society generally. With the assistance of the Executive Secretary, the Project Ombudsperson and the Panel will develop and implement an outreach strategy to inform civil society and potential Requesters about the Mechanism. Outreach efforts will be developed for a variety of locations and tailored to different audiences, and use different approaches. Outreach may include cooperation with other institutions' accountability mechanisms or alliances with educational institutions, national or local ombudspersons, and others, as appropriate. The ICIM Office will coordinate with other Bank units, as appropriate, to ensure that the Mechanism's information dissemination and public outreach are integrated with the IDB's activities designed to promote information about the Bank, its projects and policies, interaction with civil society and project stakeholders, and dissemination of lessons learned. In addition, the ICIM Office will conduct training about the Mechanism and lessons learned within the IDB.

93. Publications. The Executive Secretary, with input from the Project Ombudsperson and the Panel, shall prepare an annual report describing the activities of the Mechanism during the preceding year, and will create and distribute printed materials about the Mechanism, including an information pamphlet for IDB staff and clients about what is required once a Request is registered and materials for potential Requesters with information about how to file a Request. The ICIM Office may also develop and publish case studies and information on lessons learned. The annual report and other materials will be available on the Mechanism website. The Mechanism may maintain its own website.

94. Transparency. The Mechanism, its activities and staff shall be subject to the Bank's Disclosure of Information Policy. Decisions regarding the confidentiality of information required by the Disclosure of Information Policy to be kept confidential shall be made by the Project Ombudsperson or the Panel, as the case may be. In case of a conflict between the provisions of the Disclosure of Information Policy regarding the Mechanism and this Policy, this Policy shall prevail. Materials or information submitted to the Bank or the Mechanism on a confidential basis from any party may not be released to other parties without the consent of the party that submitted it.

95. Public Registry. The ICIM Office shall establish a public Registry to provide information on the status of Requests under the Mechanism, including notices as of the date of any decision or report made public hereunder. The Registry will be accessible to the public electronically. Upon request and/or via the Bank's Public Information Centers, the ICIM Office will also make available "hard copies" of documents posted on the Registry and distributed to the public electronically.
96. Communications with the media. The ICIM Office shall issue its own press releases and public communications. Prior to any such release the ICIM Office will inform the Bank's Office of External Relations. Neither the Project Ombudsperson, Panel nor Executive Secretary shall give any media interviews with respect to ongoing Consultation Phase exercises or Compliance Reviews, including monitoring. The Project Ombudsperson, Panel and ICIM Office staff shall maintain a low profile in the host project country, with the understanding that their activities may require them to undertake consultations with the public.
97. IDB Group entities. The Executive Secretary, ICIM Office staff, Project Ombudsperson and the Panel may perform services with respect to MIF-funded projects, in which case they will also report to the Donors Committee. The Executive Secretary, ICIM Office staff, Project Ombudsperson and Panel may also perform services for the IIC, subject to such agreements as may be necessary and appropriate between the IDB and IIC.
98. Cooperation with other institutions. Where a Request or Bank-Financed Operation involves another international financial institution or entity, the ICIM Office, Project Ombudsperson or Panel, as appropriate, shall endeavor to collaborate with such institution or entity.
99. Review of the Mechanism Policy. Two (2) years after the effective date of the Mechanism, the Board shall request an independent evaluation of the Mechanism. On the basis of such evaluation, and any comments thereon from Management, the Board will assess the experience with Mechanism.
100. Effectiveness. The Mechanism will become effective ninety (90) calendar days after the Board has given its final approval to this Policy, unless otherwise extended by the Board. During this transition period from the Independent Investigation Mechanism to the Independent Consultation and Investigation Mechanism, Requests for the activation of the Mechanism process will be accepted but they will not be processed until the Independent Consultation and Investigation Mechanism becomes effective. The eligibility of Requests filed during the transition period will be determined as of the date of the Request. Any Requests filed prior to the Board's final approval of this Policy will be processed under the rules and procedures of the Independent Investigation Mechanism.