

**DOCUMENT OF THE EUROPEAN BANK
FOR RECONSTRUCTION AND DEVELOPMENT**

INDEPENDENT RECOURSE MECHANISM

As approved by the Board of Directors on 29 April 2003

PRESIDENT'S RECOMMENDATION

On 14 May 2002, the Board of Directors of the EBRD held an Executive Session. At that session, it endorsed the principle of establishing a mechanism whereby local groups that may be directly and adversely affected by a Bank-financed project would be able to raise their complaints or grievances with an arm of the Bank that would be independent from project operations. The desire to enhance the accountability and transparency of the institution are the primary reasons for establishing such a mechanism.

In developing the mechanism, the following elements have been taken into consideration (i) the Bank's transition mandate; (ii) the Bank's obligation "to promote in the full range of its activities environmentally sound and sustainable development"; (iii) the Bank's institutional status and governance structure; (iv) the experience of other international financial institutions (IFIs) with similar mechanisms; and (v) comments from Bank stakeholders including Bank staff, members, clients and civil society.

The mechanism to be established at the EBRD will be called the Independent Recourse Mechanism (IRM). It is expected that the IRM will commence operating within four to six months following Board approval. In principle, the adequacy of the mechanism to fulfil its purpose and its efficiency should be reviewed upon completion of two years of operation.

I am satisfied that the establishment of the Independent Recourse Mechanism is consistent with the Agreement Establishing the Bank. I recommend that the Board approve the establishment of the IRM substantially on the terms of the attached report. I also recommend that the attached report and its annexes be published on the Bank's web site, together with a summary of comments received during the public consultation period and staff responses.

Jean Lemierre

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The EBRD's Independent Recourse Mechanism

I. Introduction

On 14 May 2002, the Board of Directors of the EBRD held an Executive Session. At that session, it endorsed the principle of establishing a mechanism whereby local groups that may be directly and adversely affected by a Bank-financed project would be able to raise their complaints or grievances with an arm of the Bank that would be independent from project operations. The desire to enhance the accountability and transparency of the institution are the primary reasons for establishing such a mechanism.

Since May 2002, in order to provide its stakeholders, including Bank shareholders and staff, civil society and private sector investors, with an opportunity to participate in the creation of the mechanism, the Bank has held internal and external consultations on the proposed mechanism. A proposal was submitted to the Board's Financial and Operational Policies Committee (FOPC) in September 2002. Following FOPC's endorsement, the proposal was posted on EBRD's web site in English and Russian for public comment. The comment period closed on 31 January 2003 to coincide with the completion of the public consultation period and workshops on the Environmental Policy Review. A summary of the comments received and staff responses has been circulated to the Board for information and, following approval of this Report, will be posted on the Bank's web site.

At the same time, the Bank has continued its analysis of similar mechanisms established by other international financial institutions (IFIs), some of which are currently under review.

This report examines in greater detail the rationale for the establishment of an accountability mechanism at the EBRD. It explains how, in developing a proposal, the EBRD has taken various elements into consideration, including (i) the focus of the Bank's mandate; (ii) the Bank's obligation "to promote in the full range of its activities environmentally sound and sustainable development"; (iii) the Bank's institutional status and governance structure; (iv) the experience of other IFIs with similar mechanisms; and (v) specific comments from the Bank's stakeholders.

The detailed description of the mechanism is set out in Annex 1 and a flowchart describing the mechanism's eligibility rules is set out in Annex 2.

It is expected that the EBRD mechanism will commence operating within four to six months following Board approval. In principle, the adequacy of the mechanism to fulfil its purpose and its efficiency should be reviewed upon completion of two years of operation. Such a review would examine all aspects of the mechanism, including the allocation of resources, the role of the Chief Compliance Officer and the scope of policies within the purview of the compliance review function.

II. Rationale

1. Purpose

It is well established under international law that IFIs have special privileges and immunities designed to enable them to carry out their operational activities without interference from national laws and national courts. Like other IFIs, the EBRD is not regulated by any bodies other than those forming part of its governance structure. By and large, the EBRD is beyond the reach of administrative and judicial recourse mechanisms established under national legislation to the same extent as other IFIs, except where immunities are waived.

It is the exclusive duty and responsibility of the EBRD's governance bodies to regulate its activities through the adoption of policies, procedures and rules and to monitor the Bank's compliance with its regulatory framework. As administrators and officers of a public institution, they necessarily take account of the requirements and needs of the Bank's stakeholders when making decisions. Where their decisions concern EBRD's project operations, they consider the interests of the groups that are or might be affected by Bank-financed projects. However, in the current governance structure of the Bank, there is no formal mechanism that enables such groups to make their specific concerns known to the Bank's decision-makers. Until 1993, this was also the case in other IFIs. Since that year, starting with the World Bank, most IFIs have established mechanisms designed to formalise the means of recourse of the groups affected by the projects that these IFIs finance. Two different approaches have developed.

Some mechanisms aim at reviewing whether or not the IFI has failed to apply its own policies in connection with an operation.¹ This type of mechanism focuses on the institution's compliance. It requires a causal connection between the failure to comply with policies and the harm that gives rise to the complaint. The role of the mechanism is to determine whether there has been "a serious Bank failure to observe its operational policies and procedures with respect to project design, appraisal and/or implementation"² and such failure has caused, either wholly or partly, material adverse effects on a group. This approach is not necessarily providing satisfactory results to the affected groups since it focuses on the institution's actions, rather than the problem itself.

The other type of mechanism has a wider purpose and focuses on the concerns of the affected groups, irrespective of whether they are related to a compliance issue. The mechanism takes on the role of problem-solver or ombudsman, with a view to correcting, to the extent possible, the problem that has arisen. This mechanism is predicated on the idea that it may be most advantageous for all parties to resolve problems (without the

¹ The World Bank, the Asian Development Bank (AsDB) and the Inter-American Development Bank (IDB) have adopted this type of inspection mechanism. It should be noted that the AsDB is in the process of reviewing its Inspection Function, and is likely to adopt a new structure.

² "Conclusions of the Board's Second Review of the Inspection Panel", 20 April 1999, relating to the second review of the World Bank's Inspection Panel undertaken in 1999.

need to apportion blame or fault) early with the view to avoiding larger and more intractable problems at a later stage.³

As each function in isolation does not address all of the issues, it is proposed that the EBRD adopt an approach that allows for both compliance reviews and problem-solving initiatives. The focus of the mechanism would be on the compliance review function to address the critical issue of the Bank's accountability for its actions. Upon receipt of an eligible complaint from an affected group, the mechanism would be required to investigate whether or not there is *prima facie* evidence that the Bank has failed to observe its own policies that are within the purview of the mechanism. If so, the mechanism would order that a compliance review be conducted. However, the problem-solving function would also be part of the mechanism, in order to facilitate the early resolution of the issues that have arisen in connection with the design, appraisal or implementation of a project. It would not be necessary to show *prima facie* evidence of non-compliance with Bank policies to undertake a problem-solving initiative. More generally, the problem-solving function would confirm that the Bank is open to dialogue and seeks the satisfaction of all parties involved in the projects the Bank finances.

2. Status

A mechanism designed to strengthen the accountability of an institution requires that all its decisions be based on an independent assessment of the matters under review, be made through transparent processes and be disclosed to all interested parties. At the same time, the governance structure of the institution, as established by its constituent documents and its obligation to serve its public and private sector clients in the most efficient manner must be preserved.

With a view to ensuring the independence of the mechanism, other IFIs have established permanent offices and/or panels to carry out the compliance review function and/or the problem-solving function. Such independence may however be ensured through other means of a less bureaucratic and costly nature, more suited to the institution's specific mandate, organisation and resources. The EBRD needs a mechanism that is adapted to its focus on project finance and private sector development. While protecting the affected parties' right to exercise recourse, the EBRD's accountability mechanism should not impair its delivery capacity, in all its project operations, whether for the public or private sector clients. The EBRD's organisation also mandates that the allocation of powers among its Board of Governors, Board of Directors and President be maintained.

³ To date the IFC/MIGA mechanism - the Compliance, Advisor/Ombudsman (CAO) is the only IFI to adopt this approach. In fact, the CAO has three roles: Ombudsman (problem-solving), Advisor (on environmental and social policies), and Compliance Auditor. The Ombudsman focuses on problem solving, through mediation or other means, rather than being only an investigative body. In the course of investigating a complaint, the CAO may decide to conduct a compliance audit to determine if IFC/MIGA did comply with its own policies, any such compliance audit would proceed separately from the Ombudsman process. As noted, the AsDB is currently reviewing its policy and it is expected that AsDB will adopt a new mechanism which incorporates both problem-solving and compliance review.

Finally the opening of ways of recourse to affected groups must be effected within the budgetary restraint that the Bank has imposed on itself for many years.

The proposed mechanism would make full use of the EBRD's existing Office of the Chief Compliance Officer (CCO) as coordinator of its processes and initial assessor of complaints received from affected groups. The CCO is not involved in project operations and his independence is further ensured through his direct reporting to the President and access to the Chairman of the Board's Audit Committee.

The proposed mechanism would involve the President and/or the Board (including the President as its chairman) as makers of the key IRM decisions such as declaring a complaint eligible, deciding that a compliance review is warranted and appointing an independent expert, as well as reviewing the recommendations of the independent expert and following up as appropriate. The respective roles of the Board and President in IRM matters would reflect the institutional allocation of powers but, instead of being based on staff studies, their decisions would be based on assessments made by independent experts.

The role of these experts is an important element in establishing the independence of the mechanism. They would participate in all assessments to declare complaints eligible and would conduct all compliance reviews. The experts would be selected from a roster of three to ten individuals retained in accordance with the Bank's procurement rules applicable to the selection of consultants and appointed by the Board, on the recommendation of the President, for a renewable term of 3 years. Rules of incompatibility and conflicts of interest would apply to the experts and further strengthen their independence from the Bank's governance bodies and departments involved in project operations.

The independence of the mechanism would also be ensured through transparent processes and appropriate disclosure to all interested parties. Decisions on the eligibility of complaints received from affected groups would be made on the basis of objective criteria, with the scope for the exercise of discretion being reduced to the minimum required to protect the institution from frivolous and malicious requests. Before a complaint is declared ineligible, the affected group would be given an opportunity to provide comments and to have such comments made available to the President and the Board. Complainants would be kept informed of the progress of the processing of the complaint. After final consideration of the recommendations of the independent experts, the compliance review report would be provided to the complainants and other involved parties, and made public, subject to protecting commercially sensitive information. Information and disclosure would also be ensured by making the register of complaints publicly available and by requiring the preparation and publication of an annual report describing the activities of the IRM during the preceding year.

3. Scope

It is common practice at other IFIs to identify, expressly, what matters are within the scope of the accountability mechanism. This is done in two ways: first, by setting criteria that complaints must meet in order to be considered; and secondly by identifying the IFI's policies, a violation of which can give rise to a compliance review.

(a) Criteria for complaints

In all IFIs, criteria have been set with a view to excluding complaints that should not be within the remit of an accountability mechanism. Non-eligible complaints typically include:

- frivolous or malicious complaints;
- complaints generated to gain competitive advantage;
- complaints regarding matters that should be handled by other bodies within the IFI (e.g., procurement, fraudulent or corrupt practices, misconduct); and
- complaints relating to matters over which the mechanism has already issued a finding.

Where the criteria are less prescriptive, as is the case at the IFC and MIGA, more discretion is given to the mechanism to discontinue an investigation at any time. The IFC and MIGA's CAO can close the complaint process if she believes "that problem-solving approaches or investigation are not appropriate or would be an inefficient use of resources". The CAO must, however, give the complainants reasons for terminating the complaint process.

In order to promote objectivity and certainty, and limit the discretion of the mechanism, it is proposed that a prescriptive approach be adopted.

(b) Policies within the scope of an accountability mechanism

IFIs have defined the policy scope of their accountability mechanisms in different ways. IFIs such as World Bank, AsDB and IDB permit compliance reviews in respect of policies or procedures *relating to the design, assessment and implementation of a project*. In addition, complainants are required to identify the specific policies that have allegedly been violated. This latter requirement has been seen to impose an unfair burden on affected groups, which may not be aware of all of the relevant policies of the IFIs. At the IFC and MIGA, the CAO's mandate is restricted to examining the environmental and social impacts of a project but complainants are only required to show that adverse effects are likely to arise as a result of the projects financed or to be financed.

Adopting a combination of the two approaches, the EBRD's mechanism would consider complaints from groups that are, or are likely to be, directly and adversely affected by a Bank-financed project. This would allow the problem-solving function to come into play even where no compliance issue is at stake. However, a complaint would be eligible for

a compliance review if it relates to an issue addressed by specifically identified EBRD policies. The identified policies would be those which are more significantly designed to protect local communities, that is, the Environmental Policy and provisions of the Public Information Policy which relate to project-specific information⁴. It should be noted that the Environmental Policy addresses certain social issues such as compliance with specified internationally recognised labour standards, protection of workers' health and safety and safeguards relating to cultural property, indigenous peoples and involuntary resettlement, all of which would be within the purview of a compliance review by the mechanism. Going forward, as and when the Board adopts new policies, the Board would decide whether such policies or part thereof, should be within the scope of the compliance review function.

In assessing whether, and why, there may have been a policy violation, the independent expert may consider the relevant Bank procedures. In addition, the independent expert may consider compliance with other Bank policies that are related to the possible violation of the Environmental Policy or the project-specific provisions of the Public Information Policy which is the subject of the compliance review, if so directed in the expert's terms of reference.

4. Sovereign and non-sovereign operations

There is a notable difference between the mechanisms of the IFIs exclusively or primarily involved in public sector financing (World Bank, AsDB, and IDB) and those exclusively involved in private sector financing (IFC and MIGA). At present, the former only have a compliance review function. The latter have both the compliance review and problem-solving functions; however, the choice of which function to use in respect of any complaint is left largely to the discretion of the mechanism, which to date has focused on problem-solving initiatives. In establishing an accountability mechanism, the Bank must have regard to its unique transition mandate and to its ability to operate in support of both the public and private sectors, with a mandated focus on the latter.

IFIs with a public sector focus have been careful to limit the remit of their mechanism, in order to ensure that the mechanism would not be used to review the actions of client governments. The 1999 World Bank review of the inspection panel emphasised that the "Panel's role is to investigate the Bank and not the borrower". Likewise, the EBRD should confine the mechanism's compliance reviews to a review of the Bank's failure to observe its own policies. As for the problem-solving function, one could ask if it would be compatible with sovereign operations. One of the most obvious risks is that the mechanism might have to mediate disputes between affected groups and state authorities. With the state being also the Bank's shareholder and borrower or guarantor, the Bank might be perceived as being implicated in conflicts of interest. However, on balance, it seems that the problem-solving function could be usefully applied to disputes arising in the context of public sector projects. Since most problem-solving techniques (e.g.,

⁴ For the avoidance of doubt, a compliance review relating to the Public Information Policy would consider compliance with project-specific requirements of the Public Information Policy itself and not any other policy or strategy which may be referred to therein.

mediation, conciliation and facilitation) require the co-operation of all parties, projects underpinning sovereign operations would be subjected to such techniques if all parties agreed that this would be of assistance.

By adopting their CAO mechanism in 1999, IFC and MIGA showed that it was possible to include private sector operations within the purview of an IFI accountability mechanism. However this must be done with care, taking into account the special needs of private sector clients, such as the need to work to tight time frames, to have certainty of access to the IFI's financing, to work with multiple co-financiers, to rely on the sanctity of contracts and to have their commercially sensitive information protected.

In order to alleviate any concern in those respects, it should be made clear that no procedure undertaken by the mechanism to be established at the EBRD would have the effect of automatically suspending processing of, or disbursements to, a project pending investigation or review; or have the power to suspend or cancel a Bank operation following an investigation. Commercially sensitive information would not be disclosed.

5. Pipeline and portfolio operations

All IFIs have operations in the pipeline and significant portfolios of operations. This raises the issue of which operations may come within the purview of the accountability mechanism. The earlier established mechanisms, all of which focus on compliance reviews, allow for the filing of complaints in respect of pipeline operations and provide that no complaints may be received once 95% of the loan has been disbursed. Because of the CAO's focus on problem-solving, IFC and MIGA have elected not to apply any deadline or cut-off point. However, as stated above, the CAO has a very broad discretion to discontinue the complaint process at any time.

In order to provide for certainty and reduce the degree of discretion in the mechanism, the EBRD's mechanism would have a cut-off point beyond which complaints would no longer be eligible. However, fixing such cut-off by reference to loan disbursement may be arbitrary and would not be practical for the EBRD, which has a wide range of financing instruments. It would seem more appropriate to accept complaints in respect of projects that have been operating long enough to allow any latent problems to surface, provided that such problems can still be corrected. Under the EBRD mechanism, complaints would be eligible if filed within a period of twelve months following the date of physical completion of the project (such date to be determined by the relevant Bank team), or, where physical completion is not an appropriate indicator (e.g., financial intermediation projects), if the complaint has been filed within twelve months after the date of the final disbursement (or cancellation of the Bank operation).

6. Powers

The World Bank's inspection mechanism is only authorised to make a finding as to whether or not the institution's policies have been violated. It does not have the power to make any remedial recommendations -- such recommendations come from management.

For other IFIs' accountability mechanisms established subsequently, it has become standard for the mechanism to have the power to make recommendations that address the issue of the institution's non-compliance. Consistent with the more recent trend, the EBRD mechanism should also be empowered to make recommendations that address any issues of non-compliance. It is recognised that, depending upon the stage of project development, recommendations may of necessity be limited to more systemic, prospective, internal changes within the EBRD to ensure future compliance with policies.

Experience at other IFIs has indicated that, in addition to having the power to make recommendations, accountability mechanisms should be empowered to monitor the implementation of those recommendations. Accordingly, the EBRD mechanism should also have the power to require a periodic review of the implementation of any recommendations approved. Where possible, such monitoring would be undertaken by the expert whose recommendations have been approved.

Like the inspection mechanisms in other IFIs, the EBRD mechanism will not be intended to extend the financial responsibility for project flaws (even where the compliance review finds the EBRD has not observed its own policies). In order to manage stakeholders' expectations, the limits of what the review mechanism can and cannot accomplish should be clearly identified. In particular, it must be clear that the establishment of the mechanism will not undermine the status and immunities afforded the EBRD under its constituent documents.

III. Proposed mechanism

1. Summary description

The proposed mechanism is called the Independent Recourse Mechanism (IRM). It consists of a system of processes and procedures designed to provide a venue for an independent review of complaints or grievances from groups who are, or are likely to be, directly and adversely affected by a Bank-financed project.

Through its compliance review function, the IRM focuses on issues of non-compliance by the Bank with specified EBRD policies. The policies that are within the scope of the IRM are the Environmental Policy and project-specific provisions of the Public Information Policy (particularly as set out in Part 3 of the Policy) and any other policy that the Board may decide to include within the purview of the compliance review function.

The IRM also includes a problem-solving function to be used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. Those techniques include independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting.

By establishing the IRM, the EBRD does not intend to restrict an individual or a group's ability to petition the Bank directly, through the office of the President or otherwise. The

Bank must be able to continue to respond to and work with all interested parties in a flexible, informal way in order to achieve its mandate by providing project finance. Therefore, affected groups are asked to make good faith attempts to resolve their complaints or grievances with the relevant Bank department prior to raising the issue with IRM.

By providing recourse to groups affected, or likely to be affected, by Bank-financed projects, the IRM will strengthen the Bank's accountability and increase the transparency of its decisions in relation to its project operations. The IRM's organisation and procedures will also be designed to permit the mechanism:

- to provide timely responses;
- to be user-friendly and non-bureaucratic;
- to protect the confidentiality of sensitive commercial information;
- to take into account the governance structure of the institution and to preserve the respective powers and responsibilities of its organs;
- not to undermine the Bank's status as an international organisation; and
- not to create an undue financial burden on the institution's budgetary resources.

A more detailed description of the mechanism is set out in Annex 1.

2. Costs

There will be costs involved in establishing and operating the IRM, including:

- costs associated with preparing, translating, printing and distributing materials describing and advertising the mechanism;
- travel costs to visit the site in order to conduct an initial assessment or investigation, as may be necessary;
- costs of independent experts to assess, jointly with the CCO, the eligibility and legitimacy of the complaint;
- costs of independent experts to conduct compliance reviews;
- costs of external expertise to assist in any problem-solving initiatives;
- costs of selecting and maintaining the roster of experts (including training seminars and travel costs);
- costs of additional staff required to ensure the proper and timely operation of the mechanism within the short time limits required by the mechanism; and
- time of staff working on project operations, as may be needed to be spent in reviewing and responding to any complaints or requests for information from the IRM.

Without knowing the number and nature of the complaints the IRM might receive, or the IRM function that will be most often in use, it is difficult to make an estimate of the extent of the financial and human resources necessary for the operation of such a mechanism. The Bank undertakes to make adequate resources available to ensure that the IRM is able to fulfil its mandate.

IV. Next Steps

Upon Board approval, the Bank will establish an internal selection committee to select the independent experts following a competitive process in accordance with EBRD procedures for selection of consultants. From among the candidates identified by the selection committee, the President will initially recommend 3 experts for appointment to the roster. The appointment will be made by the Board for a renewable term of 3 years. Simultaneously, the CCO and OGC will finalise the detailed Rules of Procedure for the mechanism for approval by the Board and the Guidelines for approval by the President.

Consistent with the spirit of the Public Information Policy, Annex 1 of this Report and the Guidelines will be translated into the official languages of the EBRD countries of operations. A pragmatic approach will be adopted and the materials will be translated into Russian first, followed by the official language of the EBRD's largest borrowers or countries of operations in which projects with significant environmental components are located, and ultimately into the official language of all countries of operations.

It is expected that the IRM will commence operating within four to six months following Board approval. A review of the mechanism will take place once it has completed two years of operation. Such a review would examine all aspects of the mechanism, including the allocation of resources, the role of the Chief Compliance Officer and the scope of policies within the purview of the compliance review function.

Annex 1 – EBRD’s Independent Recourse Mechanism

I. Purpose

1. The European Bank for Reconstruction and Development (EBRD or the Bank) has established the Independent Recourse Mechanism (IRM) to enhance its accountability and the transparency of its decisions in relation to its project operations. In developing the IRM, the EBRD has taken the following elements into consideration (i) the focus of the Bank's mandate; (ii) the Bank's obligation "to promote in the full range of its activities environmentally sound and sustainable development"; (iii) the Bank's institutional status and governance structure; (iv) the experience of other international financial institutions with similar mechanisms; and (v) specific comments from the Bank’s stakeholders.
2. The IRM consists of a system of processes and procedures designed to provide a venue for an independent review of complaints or grievances from groups that are, or are likely to be, directly and adversely affected by a Bank-financed project.
3. Through its compliance review function, the IRM focuses on issues of non-compliance by the Bank with specified EBRD policies. The policies that are within the scope of the IRM are the Environmental Policy and the project-specific provisions of the Public Information Policy (particularly as set out in Part 3 of the Policy)⁵ and any other policy that the Board may decide to include within the purview of the compliance review function. It should be noted that the Environmental Policy addresses certain social issues such as compliance with specified internationally recognised labour standards, protection of workers’ health and safety, and safeguards relating to cultural property, indigenous peoples and involuntary resettlement, all of which would be within the purview of a compliance review by the mechanism. In assessing whether, and why, there may have been a policy violation, the relevant Bank procedures may also be considered. In addition, during a compliance review compliance with other Bank policies which are related to the possible violation of the Environmental Policy or project-specific provisions of the Public Information Policy which is the subject of the compliance review may be considered, if so directed in the expert's terms of reference.
4. The IRM also includes a problem-solving function to be used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. Those techniques may include independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting.

⁵ For the avoidance of doubt, a compliance review relating to the Public Information Policy would consider compliance with project-specific requirements of the Public Information Policy itself and not any other policy or strategy which may be referred to therein.

5. By establishing the IRM, the EBRD does not intend to restrict an individual or a group's ability to petition the Bank directly, through the office of the President or otherwise. The Bank must be able to continue to respond to and work with all interested parties in a flexible, informal way in order to achieve its mandate by providing project finance. Affected groups are asked to make good faith attempts to resolve their complaints or grievances with the relevant Bank department prior to raising the issue with the IRM.

II. Officers and bodies forming part of the IRM

6. The following officers and bodies will form part of the IRM:
 - The Board of Directors (Board), as decision-maker in respect of compliance reviews relating to Board approved operations.
 - The President, as decision-maker in respect of compliance reviews relating to an operation which has not yet been approved by the Board and in respect of any problem-solving initiative.
 - The Chief Compliance Officer (CCO), as co-ordinator. The CCO reports directly to the President and is independent of the Banking departments, the Environment Department and other departments or units involved in project operations. The CCO's other responsibilities include ensuring that the Bank's processes follow the highest standards of integrity and conducting investigations into cases of alleged misconduct by Bank officials, employees or consultants.
 - A roster of experts of three to ten individuals appointed by the Board on the recommendation of the President for a renewable term of three years. The experts will be retained in accordance with the Bank's procurement rules applicable to the selection of consultants on the basis of their expertise, in areas relevant to the IRM, their knowledge of the workings of the EBRD, their exposure to transition issues and living conditions in the Bank's countries of operations, their familiarity with responsible corporate practices, including the need to maintain the confidentiality of commercially sensitive information, and their ability to act thoroughly, fairly, independently, efficiently and with integrity. An expert shall not have worked for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director's Assistant or consultant) for at least two years prior to being appointed to the roster, and, if called upon to work for the IRM during his or her term, shall not be entitled to work for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director's Assistant or consultant) at any point in the future. The term of appointment of the first roster members will be staggered to ensure continuity on the roster.

III. Filing complaints

7. Who can file a complaint?

Any group of two or more individuals with a common interest that is, or is likely to be, directly and adversely affected by a Bank-financed project, or a duly appointed agent of such group. Complainants may ask that their identity be kept confidential, but anonymous complaints will not be accepted. The IRM will use all reasonable efforts to maintain their identity confidential when requested. However, there may be cases where it is not possible to process a complaint if the complainants wish to maintain their identity confidential.

8. What must the complaint say?

- There will be no special format for a complaint other than it must be in writing. The complaint may be submitted in the native language of the complainants or any of the EBRD's four working languages (English, French, German and Russian). The IRM will try to respond in the language of submission where possible. Submission in a language other than English may result in delays due to the need for translation. The IRM will, in all cases, provide any written responses in any one of the four working languages of the Bank with which the complainants are most comfortable.
- The complaint must identify the project, and the harm or potential harm resulting from the project. The complaint may relate to the processes followed in preparation of the project; the adequacy of measures for the mitigation of project impacts; or the manner in which the project is implemented.
- The complaint must also indicate what steps the complainants have taken to resolve the matter, and should attach copies of correspondence with the government, sponsor, and/or EBRD.
- The complaint should indicate what steps the complainants would like the EBRD to take to address the adverse effects that have been or may be caused. In particular, the complaint should, preferably, indicate whether the complainants are seeking a compliance review. If possible, the complaint should specify which of the EBRD's policies or procedures may have been violated and what EBRD action, or failure to act when required, has caused such violation.

9. Who should the complaint be addressed to?

- All complaints should be addressed to the CCO.

- Where the President receives a letter from a group claiming that it is, or is likely to be, directly and adversely affected by a particular Bank-financed project, the President will either forward the letter to (i) the CCO for further processing where it is clear the complainants have already made good faith attempts to resolve the issue with relevant Bank department and are not satisfied with the results; or (ii) to the relevant Bank department where it appears that no previous good faith attempts have been made to resolve the issue. In the latter case, complainants will be advised that they may file a complaint with the IRM if they are not satisfied with the outcome of their discussions with such department.

IV. Receipt, processing and eligibility of a complaint

10. Affected parties may file a complaint at any time, but should be aware that the complaint will not be considered if it does not meet the eligibility criteria set out in clauses 12 and 13 and, in respect of a compliance review, clause 16.
11. Upon receipt of a complaint, the CCO will register and acknowledge the complaint within five business days of its receipt, unless it is manifestly frivolous or malicious or the complainants have clearly made no previous good faith attempts to resolve the issue with the relevant Bank department. If a complaint is not registered, the complainants will be notified accordingly. Upon registration of a complaint, the CCO will appoint one of the independent experts from the roster to assist in assessing the eligibility of the complaint.
12. The CCO, jointly with the appointed independent expert, will assess if the complaint is eligible for further processing, within fifteen business days of its receipt. A complaint will be eligible if:
 - the complaint is from a group of two or more individuals with a common interest;
 - such group is, or is likely to be, directly and adversely affected by a Bank-financed project and there is *prima facie* evidence of such direct and adverse effects;
 - the complaint is not specifically prohibited under clause 13;
 - the complainants have raised and made good faith attempts to resolve the issues with the relevant Bank department, and are not satisfied with the response;
 - the complaint relates to an operation that:
 - ✓ has not yet been approved by the Board, but for which the Bank has clearly indicated its interest in financing the project (such indication would usually be

clearly provided if the operation has passed the EBRD Operations Committee's Final Review); or

✓ has been approved by the Board, and the Bank maintains a financial interest in the project; and

- where the Bank maintains a financial interest in the project, the complaint has been filed within a period of twelve months following the date of physical completion of the project (such date to be determined by the relevant Bank team), or, where physical completion is waived or is not relevant (e.g., financial intermediation projects), the complaint has been filed within twelve months after the date of the final disbursement (or cancellation of the Bank operation).

13. The following matters will not be eligible for processing by the IRM:

- Frivolous or malicious complaints;
- Complaints the primary purpose of which is to seek competitive advantage through the disclosure of information or through impeding or delaying the project;
- Procurement matters (which will be redirected to the proper office in the Bank);
- Matters of fraud or corruption (which will be redirected to the proper office in the Bank);
- Matters relating to Article 1 of the Agreement Establishing the Bank, the Portfolio Ratio Policy and any other specified policy as may be identified by the Board from time to time;
- Complaints related to the adequacy or suitability of EBRD policies; and
- Matters upon which the IRM has already issued a response to a request, unless there is new evidence or new circumstances not known at the time of the previous review.

14. If the CCO and independent expert find the complaint to be ineligible, the CCO shall make the reasoned recommendation available (within the fifteen business day period referred to above) to the complainants, the sponsor and/or government and the relevant Bank department. The complainants may comment on the recommendation within ten business days. Upon receipt of any comments, the CCO will attach such comments to the report.

15. Eligibility of a complaint will be assessed through a desk review of the complaint, where possible. This may not be adequate in all cases. The CCO and independent expert may decide that they need to conduct additional investigation in order to

assess the eligibility of a complaint. Such additional investigations may include, if necessary, a site visit and/or consultations with some or all stakeholders.

V. Compliance reviews

16. In order to be eligible for a compliance review, the complaint will need to meet an additional criterion. The CCO and the appointed independent expert will consider whether there is a possibility that the Bank has acted contrary to, or failed to act when required in accordance with, the mandatory provisions of an EBRD policy which is within the purview of the compliance review function of the IRM. If the CCO and independent expert are of the opinion that there was a possible material policy violation which warrants a compliance review, the CCO's report will recommend the appointment of a named expert from the roster and will include the specific terms of reference for the compliance review.
17. In determining whether or not a compliance review is warranted, the IRM will consider the policy that was in effect on the date the relevant action was taken, or the date an act was required to be taken and was omitted. The following policies are included within the purview of the compliance review function:
 - Environmental Policy;
 - Project-specific provisions of the Public Information Policy (particularly as set out in Part 3 of the Policy)⁶; and
 - Going forward, any other policy, or part thereof, as and when adopted by the Board, which the Board decides should be included within the purview of the compliance review function.
18. In addition to the specific prohibitions contained in clause 13, complaints will not be subject to a compliance review if:
 - They relate to the actions that are the responsibility of parties other than the Bank, or that do not otherwise involve a Bank action under, or the Bank's failure to take action that is required by, a policy that is within the purview of the compliance review function; or

⁶ See previous footnote.

- They relate to the laws, policies, and regulations of the relevant country of operation, unless they directly relate to the Bank's compliance with the policies that are within the purview of the compliance review as defined by the expert's terms of reference (see clause 23).
19. Within thirty business days of receipt of a complaint, the eligibility and compliance review assessment report will be submitted (i) to the President for his decision, if the relevant operation has not yet been approved by the Board, and (ii) to the President for transmittal to the Board for a decision, if the relevant operation has been approved by the Board. Reports that require a decision of the President will also be transmitted to the Board for information. The eligibility and compliance review assessment report will include a recommendation to either:
- end the complaint process (either because the complaint is ineligible or because it raises no issues of a possible material policy violation); or
 - conduct a compliance review of the EBRD's actions relating to the project and for that purpose appoint another designated expert from the roster, whose terms of reference will be included in the report.
20. If the recommendation is to dismiss the complaint because it is ineligible or does not raise issues of a possible, material violation of the Environmental Policy or project-specific provisions of the Public Information Policy, the President (in the case of operations that have not yet been approved by the Board) or the Board (in the case of Board approved operations) may approve the recommendation or may remit the matter back to the CCO for further investigation or for the appointment of a new expert to reassess eligibility. If the expert recommends that the complaint be declared eligible, a new report will be prepared, recommending the appointment of a named expert from the roster (who may be the same or a different expert, than the expert undertaking the eligibility re-assessment), together with the specific terms of reference for the compliance review.
21. If the recommendation is to conduct a compliance review and appoint an expert, then upon approval by the President or the Board, as the case may be, the expert will be appointed forthwith.
22. If following the eligibility assessment, or during a compliance review, the CCO or the expert, as the case may be, is of the opinion that serious, irreparable harm will be caused by the continued processing of the operation or implementation of the project, a recommendation may be made to the President to suspend further work or disbursement, as the case may be. However, if the Bank is under a contractual obligation, and there are no other grounds to suspend processing or disbursement, the contractual obligations will be honoured.

23. If a compliance review is undertaken, the appointed expert will investigate for as long as the expert considers necessary. In assessing whether, and why, there may have been a policy violation, the relevant Bank procedures may also be considered (e.g., the Environmental Procedures in relation to the Environmental Policy). The expert may consider compliance with other Bank policies which are related to the possible violation of the Environmental Policy or project-specific provisions of the Public Information Policy, if so directed in the terms of reference. The CCO will ensure the expert fulfils his or her terms of reference.
24. The expert will report his or her findings and recommendations (i) to the President for his decision, if the relevant operation has not yet been approved by the Board, and (ii) to the President for transmittal to the Board for a decision, if the relevant operation has been approved by the Board. Reports that require a decision of the President will also be transmitted to the Board for information. The Report will include the relevant Bank department's comments on the findings of the expert. Unless otherwise provided in the terms of reference, the findings of the expert will be limited to determining whether or not there has been a material policy violation. Recommendations may include systemic, prospective, internal changes within the EBRD to ensure future compliance with policies. Recommendations may also include remedial changes in the scope or implementation of the operation or the project.
25. The President or the Board, as the case may be, will decide whether or not to accept the expert's findings and recommendations. Following consideration by the President or the Board, as the case may be, the complainants and any other involved party will be made aware of the report, and any decisions taken as a result. Subject to maintaining confidentiality of any commercially sensitive information, the expert's report and the Bank's response will be made available to the public.
26. Where recommendations have been made and approved by either the President or the Board, as the case may be, the CCO will monitor the implementation of these recommendations on a regular basis. The President or the Board, as the case may be, may also decide that such monitoring will be undertaken by the expert whose recommendations have been approved or by another expert from the roster.

VI. Problem-solving initiatives

27. When making the eligibility and compliance review assessment of the complaint, the CCO should also consider whether problem-solving techniques might be usefully employed to resolve the issues underlying the complaint. Such techniques may include independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting. The CCO may recommend the use of such techniques irrespective of whether the eligibility and compliance review assessment report recommends a compliance review. The CCO's recommendation will be provided in a separate report to the President and, if appropriate, will identify a problem-solver and will include the specific terms of reference for the problem-solving initiative.

The President will decide whether any problem-solving initiative recommended should be undertaken.

28. While a problem-solving initiative may be desirable in respect of a Bank-financed project, the EBRD cannot be prevented from agreeing conditionalities in pursuit of its transition mandate. In determining whether problem-solving is appropriate, the CCO will take into consideration (i) whether the problem-solving initiative may assist in addressing undue, incidental effects resulting from agreed project conditionalities; (ii) whether a positive result is a likely outcome; (iii) whether the parties are amenable to problem-solving techniques such as mediation or conciliation; (iv) whether the Bank continues to have leverage to affect change or is limited in its actions (e.g., as an equity investor, the Bank would only be able to influence change as any other minority shareholder); (v) whether there is a risk that the appointment of a problem-solver may interfere with a compliance review, if any; (vi) whether there is a risk that the problem-solving initiative duplicates or interferes with, or may be impeded by, some other process pending before a court, arbitration tribunal or review body (such as an equivalent mechanism at another IFI co-financier) in respect of the same matter or a matter closely related to the complaint; or (vii) any other relevant matters.
29. After conducting a problem-solving process of for as long as is acceptable to the parties involved, the expert will report his or her findings to the President. In case the problem has not been solved to the satisfaction of the complainants, the expert's report may include recommendations, which the President has discretion to adopt, change or reject. The President will make his decision known to the complainants, the relevant department and the project sponsor or borrower. The nature of the complaint and the actions taken by the IRM will be summarised in the Banking Operation Report, if the operation is subsequently presented to the Board for approval. For Board approved projects, the expert's report and President decision will be circulated to the Board for information.

VII. What the IRM will not do

30. An IRM procedure will not:
- have the effect of automatically suspending processing of, or disbursements to, the project pending investigation or review; or
 - have the power to suspend or cancel a Bank operation following an investigation. Such a decision may only be made (i) by the President or Board in the exercise of their respective powers; and (ii) if the Bank has the right to suspend or cancel in accordance with the terms of any applicable credit and/or investment agreement.
31. The CCO and experts will not be able to recommend the award of compensation or any other benefits to complainants beyond what may be expressly contemplated in the relevant Bank policy.

32. When a compliance review is being undertaken, the IRM will not consider actions of any party other than the Bank, such as government or local authorities, sponsors, or other investors. The focus of the compliance review is to understand if and why the Bank has failed to observe its own policies and to avoid a recurrence of material policy violations.
33. When a problem-solving initiative is being undertaken, the IRM will work with all stakeholders to resolve the problem and will not seek to attribute blame or fault. The focus of problem-solving is to move forward and to promote the environmental and transition impact of the relevant project.
34. There is no guarantee that the IRM will resolve all complaints to the satisfaction of the complainants. As a project is implemented the Bank will have diminishing leverage to cause parties to behave differently or adopt changes to the project scope, especially where additional costs are involved.

VIII. Miscellaneous

35. **Confidentiality:** IRM officers and bodies will follow Bank policies and procedures on the disclosure of commercially sensitive information. Additionally, the Bank will upon request of the complainants or any involved third party, withhold the identity of complainants and such third party.
36. **Procedures and guidelines:** the IRM will develop its own Rules of Procedures and a set of Guidelines specifically targeted at local communities on how to access the mechanism. The Rules of Procedures shall be submitted to the Board for approval on the basis of a recommendation from the President. The Guidelines will be approved by the President and translated into the official languages of the EBRD's countries of operations, beginning with the countries in which the largest volume of lending occurs or in which projects with potential significant environmental impacts are located.
37. **Time periods:** any time period may be extended by the CCO for as long as is strictly necessary to ensure full and proper investigation, assessment and reporting; any such extension will be promptly notified to the complainants and other involved parties.
38. **Legal matters:** the General Counsel will provide the IRM with all legal information and advice needed in respect of interpreting the Bank's policies and procedures.
39. **Annual report:** the CCO will prepare an annual report describing the activities of the IRM during the preceding year. The Report will be submitted to the President, for transmittal to the Board for information and will be published on the Bank's web site.
40. **Commencement of Operations and Review:** The IRM will commence operations following approval of the Rules of Procedures and Guidelines and appointment of

the roster of experts, which is expected to be 4 to 6 months following Board approval of this proposal. The effectiveness of the IRM will be reviewed after two years of operations. The review will examine all aspects of the mechanism, including the adequacy of resources allocated to it, the role of the Chief Compliance Officer and the scope of policies within the purview of the compliance review function.

Annex 2 – IRM Eligibility Flowchart

