

European Bank for Reconstruction and Development

Independent Recourse Mechanism
Rules of Procedure

As approved by the Board on 6 April 2004

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EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

(EBRD)

INDEPENDENT RECOURSE MECHANISM

RULES OF PROCEDURE

INTRODUCTION

The Independent Recourse Mechanism (IRM) has been established pursuant to BDS 03-33 (Final), approved by the EBRD Board of Directors on 29 April 2003. The IRM is a system of processes and procedures designed to provide a mechanism for the independent review of complaints from local groups on whose common interest a Bank-financed project has, or is likely to have, a direct adverse and material effect. The IRM is thus aimed at enhancing the Bank's accountability. The IRM has two functions: Compliance Review and Problem-solving.

- The Compliance Review function focuses on the identification and review of instances of non-compliance by EBRD with specified EBRD policies. At the inception of the IRM, the policies that are within the scope of this function are (a) the Environmental Policy; and (b) the project-specific provisions of the Public Information Policy (particularly as set out in Part 3 of the Policy) but not including any other policies or strategies which may be referred to therein.
- The Problem-solving function focuses on the identification and implementation of initiatives aimed at resolving the issues underlying a complaint. Those initiatives may include independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting.

Without compromising the integrity or comprehensiveness of IRM processes, care shall be taken to ensure that IRM investigations, assessments, reviews and initiatives are carried out as expeditiously as possible and to minimize any disruption that they may cause to the daily operations of the Bank, project sponsors and Bank clients.

These Rules of Procedure set out detailed rules governing how complaints may be filed with the IRM and how such complaints are to be assessed and, if found eligible, processed by the IRM through Compliance Reviews, Problem-solving Initiatives or a combination of both. They also set out requirements relating to timelines, reports, disclosure of and access to information, and other issues relevant to the IRM and its processes.

Part 1

Definitions

1. **Definitions.** When used in these Rules, the following terms shall have the following meanings:
 - a. “Affected Group” means a group of two or more individuals from an Impacted Area who have a common interest and claim that a Project has, or is likely to have, a direct adverse and material effect on their common interest.
 - b. “Authorised Representative(s)” means one or two individuals duly appointed to represent, and act on behalf of, an Affected Group in relation to a Complaint.
 - c. "Bank" or "EBRD" means the European Bank for Reconstruction and Development.
 - d. “Bank Operation” means the provision of financing by the Bank, whether such financing is funded by the Bank's ordinary or Special Fund resources or by cooperation funds under EBRD’s administration.
 - e. “Board” means the Board of Directors of the Bank.
 - f. “Business Day” means a day on which the Bank is open for business in London.
 - g. “Chief Compliance Officer” means the Chief Compliance Officer of the Bank, or in the absence of the Chief Compliance Officer, the Acting Chief Compliance Officer.
 - h. “Complaint” means a written request received from an Affected Group as described in Part 2.
 - i. “Compliance Review” means a review carried out in accordance with these Rules to determine whether the Bank has complied with a Relevant EBRD Policy or Policies.
 - j. “Compliance Review Expert” means an Expert designated to carry out a Compliance Review.
 - k. “Eligibility Assessment” means the process, conducted jointly by the Chief Compliance Officer and the Eligibility Assessment Expert, by which the eligibility of a Registered Complaint is considered.
 - l. "Eligibility Assessment Expert" means the Expert designated to carry out, jointly with the Chief Compliance Officer, the Eligibility Assessment.

- m. "Eligibility Assessment Report" means a report, prepared jointly by the Eligibility Assessors, which sets out their recommendations on whether a Registered Complaint is eligible and, if eligible, what course of action should be taken.
- n. "Eligibility Assessors" means the Chief Compliance Officer and the Eligibility Assessment Expert.
- o. "Expert" means an individual on the Roster, and may include, if the context requires, an expert appointed on an ad hoc basis pursuant to paragraph 59.
- p. "Impacted Area" means any geographical area which is, or is likely to be, affected by a Project.
- q. "IRM" means the Independent Recourse Mechanism.
- r. "IRM Officers" means, as the context may require, the Experts, when appointed to conduct an Eligibility Assessment, a Compliance Review or a Problem-solving Initiative, the Problem-solving Facilitators, and/or the Chief Compliance Officer.
- s. "President" means the President of the Bank.
- t. "Problem-solving Completion Report" means the report prepared by the Chief Compliance Officer and/or the Problem-solving Facilitator, upon completion of a Problem-solving Initiative as set out in paragraph 48.
- u. "Problem-solving Facilitator" means an individual designated to carry out one or more Problem-solving Initiatives.
- v. "Problem-solving Initiative" means a process such as mediation, conciliation, dialogue facilitation, independent investigation or fact-finding, or reporting, designed to assist in the resolution of the issues underlying an eligible Complaint, other than those issues which are subject to a Compliance Review.
- w. "Problem-solving Initiative Report" means a report prepared by the Chief Compliance Officer in respect of a Complaint which the Eligibility Assessors consider to be eligible as set out in paragraph 44
- x. "Project" means a specific project or technical assistance that is designed to fulfil the Bank's purpose and functions, and in support of which a Bank Operation is outstanding or may reasonably be expected.
- y. "Register" means the public register to be established and maintained to track the receipt and processing of Complaints as described in sub-paragraph 50(c).

- z. “Registered Complaint” means a Complaint which the Chief Compliance Officer has registered, in accordance with paragraph 17, as being eligible for further processing.
- aa. “Relevant EBRD Policy” means all or any one of the following: the Environmental Policy, the project specific provisions of the Public Information Policy, and all or part of any Bank policy which may be hereafter adopted by the Board and specifically designated to be within the purview of the IRM compliance review function, together with any related implementing procedure.
- bb. “Relevant Parties or Party” means, in relation to any Complaint, the relevant Bank department or unit, the Project sponsor, the beneficiary of the Bank Operation and/or any entity or public authority actively involved in the specific aspects of the Project that are the subject of such Complaint.
- cc. “Roster” means the group of individual independent experts appointed by the Bank to assist in conducting Eligibility Assessments and Compliance Reviews.
- dd. “Terms of Reference” means the terms of reference for a Compliance Review or for a Problem-solving Initiative, as the case may be.

Part 2

Form and Contents of Complaints

- 2. **Complainant.** A Complaint may only be filed by an Affected Group.
- 3. **Form of Complaint.** A Complaint must be in the form of a written communication signed by the Authorised Representative of the Affected Group.
- 4. **Language of Complaint.** Complaints may be submitted in the native language of the Affected Group or in any one of the Bank’s four working languages (English, French, German or Russian).
- 5. **Delivery to EBRD principal office.** Complaints may be delivered by hand, mail, fax or email to:

IRM c/o Chief Compliance Officer
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2 JN
United Kingdom.

Fax: +44 (0) 207 338 7633
Email: IRM@ebrd.com

Where a Complaint has been delivered by fax or email, an acknowledgement signed by the Authorised Representative, together with evidence of the Authorised Representative's power to represent, and act on behalf of, the Affected Group, must also be sent by mail or hand delivered to the IRM c/o Chief Compliance Officer at the Bank's principal office or at one of the Bank's resident offices. A Complaint shall be deemed received when the Chief Compliance Officer has received the signed written communication or acknowledgement, as the case may be, at the Bank's principal office.

6. **Delivery to an EBRD resident office.** A Complaint may also be hand delivered to the IRM, c/o Chief Compliance Officer, at one of the Bank's resident offices, which shall forward it to the Chief Compliance Officer at the Bank's principal office as soon as possible, and in any event within four (4) Business Days. The Complaint shall be deemed received once it is received by the Chief Compliance Officer at the Bank's principal office.
7. **Other communications.** Any written communication containing grievances in relation to a Bank Operation or a Project which is addressed to the President and is, on its face, manifestly a Complaint within the meaning of these Rules, shall be promptly forwarded to the Chief Compliance Officer for processing in accordance with these Rules. The Complaint shall be deemed received once it is received by the Chief Compliance Officer at the Bank's principal office. Any other communication shall not be processed as a Complaint and shall be referred to the relevant department for further processing in accordance with the Bank's procedures and practices.
8. **Mandatory contents of Complaint.** A Complaint must contain the following information:
 - a. the date of the Complaint;
 - b. the name and contact details of each member of the Affected Group;
 - c. the name and contact details of the Authorised Representative of the Affected Group and evidence of his or her power to represent, and to act on behalf of, the Affected Group in relation to the Complaint;

- d. if the Authorised Representative is not locally based, evidence that there is no adequate or appropriate representation in the local community and evidence that the Authorised Representative is fluent in the native language of the Affected Group;
- e. if two Authorised Representatives are appointed by the Affected Group, an indication of whether each Authorised Representative is empowered to act separately or not;
- f. the name or a summary description of the Project;
- g. a description of why and how the Project has, or is likely to have, a direct adverse and material effect on the common interest of the Affected Group;
- h. a description of the good faith efforts used by the Affected Group to resolve the issue with the Bank and any other Relevant Party; and an explanation of why the Affected Group believes that there is no reasonable prospect of resolving the issue through an effective dialogue with the Bank or such other Relevant Party; and
- i. copies of all material correspondence and/or notes of meetings with the Bank and any other Relevant Party, as well as any other relevant material supporting the Complaint.

9. **Optional contents of Complaint.** In addition, a Complaint may, and should preferably, contain the following information:

- a. for ease of reference, an indication that the Complaint is filed in accordance with these Rules.
- b. if applicable, an indication of whether the identity of some or all of the members of the Affected Group needs to be kept confidential, and if so, the reasons for such confidentiality;
- c. if possible, the name or a summary description of the relevant Bank Operation;
- d. if possible, a description of the steps the Affected Group expects to be taken by the Bank or any one or more of the other Relevant Parties in order to address the direct adverse and material effect that the Project has, or is likely to have, on the common interest of such group;
- e. if possible, an indication of the steps the Affected Group expects to be taken by the IRM, e.g., a Compliance Review or a Problem-solving Initiative;

- f. if possible, an indication of any Relevant EBRD Policy that may have been violated and an indication of the EBRD action, or failure to act when required, that has caused such violation;
- g. if applicable, confirmation that the Affected Group or another group has filed (or is likely to file) the same or a similar grievance in respect of the Project with another party, institution or administrative body, and the details of any such filing; and
- h. if applicable, an indication of the language(s) in which the Affected Group expects to receive written communications in relation to the Complaint, subject to the provisions of paragraph 12.

Part 3

Processing of Complaints

10. **Effect of Complaint on Bank Operation.** Notwithstanding any other provision of these Rules, the filing, registration, assessment or processing of a Complaint or the carrying out of a Compliance Review or Problem-solving Initiative shall not have the effect of suspending processing of, or disbursements in respect of, the relevant Bank Operation. If at any time during the processing of a Complaint, an IRM Officer is of the opinion that serious, irreparable harm shall be caused by the continued processing of the Bank Operation or implementation of the Project, such IRM Officer may make an interim recommendation to suspend further work or disbursement. Such recommendation shall be considered in light of any contractual obligation or other relevant policies of the Bank and the decision concerning such recommendation shall be made:
- a. by the relevant Bank officer or body vested with the power to make such a decision; and
 - b. only if the Bank has the right to suspend or cancel in accordance with the terms of any applicable loan and/or investment and/or other agreement.
11. **Communications with Affected Groups.** Any communication from an Affected Group to the IRM shall be deemed validly delivered if delivered by its Authorised Representative and once it is received by the Chief Compliance Officer at the Bank's principal office. Any communication from the IRM to an Affected Group shall be deemed validly delivered if delivered to its Authorised Representative. The Authorised Representative shall be required to ensure that any material communication from the IRM is made available to all members of the Affected Group. Nothing in this paragraph shall prevent an IRM Officer from communicating with any individual of the Affected Group directly.

12. **Language of written communications.** In all cases, written communications in response to a Complaint shall be in English. If requested by the Affected Group, written communications in response to a Complaint may also be:
 - a. in one of the Bank's other three working languages (French, German and Russian); or
 - b. in the language of the Complaint, if the Chief Compliance Officer determines in his or her discretion and with due regard to considerations of transparency, cost and efficiency, that such request may be reasonably accommodated.
13. **Related Complaints.** Where two or more Complaints are received from the same or from different Affected Groups in relation to the same Project or Bank Operation and the substance of the Complaints is reasonably related, the Chief Compliance Officer may require either that the Complaints be reviewed together or that the further processing of subsequent Complaints be held in abeyance pending the results of the review of the initial Complaint. The Chief Compliance Officer may adjust the time periods for responding to any of the Complaints in order to take into account the joint review of the Complaints or the holding in abeyance of the subsequent Complaints. Where two or more Complaints from different groups are reviewed together, the Chief Compliance Officer may require that the Affected Groups nominate two Authorised Representatives to represent, and be able to act on behalf, of all Affected Groups in relation to the Complaints.
14. **Time periods.** Any time period referred to in these Rules may be extended by the Chief Compliance Officer for as long as is strictly necessary to ensure full and proper investigation, assessment, review and initiative. Any such extension shall be promptly notified to the Affected Group and all Relevant Parties. In considering whether any extension is required, the Chief Compliance Officer shall take into account, *inter alia*, the location of the Project site, the need for Bank staff to participate in the process, any time-sensitive issues relating to the Project, the availability of Experts and the need for translation of communications.
15. **Cooperation with other IFIs and Institutions.** Where a complaint, grievance or request has been filed by an Affected Group, or part thereof, with another international financial institution or entity, the Bank and IRM Officers shall work in close cooperation with such international financial institution or entity to avoid duplication of efforts in the investigation or processing of a Complaint.

Part 4 Eligibility of Complaints

16. **Manifest ineligibility.** Within five (5) Business Days of the receipt of a Complaint, the Chief Compliance Officer shall consider the Complaint in order to determine whether or not it is, on its face, manifestly ineligible. This shall be the

case, in particular, where the information required under paragraph 8 is not in form and substance satisfactory or sufficient to allow processing of the Complaint.

If the Complaint is manifestly ineligible, the Chief Compliance Officer shall, within five (5) Business Days of the receipt of the Complaint, send out a written notice to the Affected Group that the Complaint may not be registered, indicating the applicable reason or reasons for non-registration.

17. **Registration of Complaint.** If the Complaint is not manifestly ineligible, the Chief Compliance Officer shall register it in the Register and shall notify the Affected Group and any Relevant Party. Upon registration of a Complaint, the Chief Compliance Officer shall designate one of the Experts to assist in making an Eligibility Assessment of the Registered Complaint and the two of them shall work jointly as Eligibility Assessors. Such designation shall be made as soon as possible after the Complaint has been registered.
18. **Eligibility Assessment.** The Eligibility Assessors shall make an Eligibility Assessment of the Registered Complaint within thirty (30) Business Days of the receipt of the Complaint or twenty-five (25) Business Days of the acceptance of appointment by the Eligibility Assessment Expert, whichever is longer. A Registered Complaint shall be eligible for further processing if:
 - a. the Complaint relates to a Project, subject to either of the following conditions:
 - i. the Bank must have provided – and not withdrawn – a clear indication of its interest in financing the Project (such indication would usually be clearly provided if the Bank Operation has passed Approval by the Bank’s Technical Cooperation Committee or Final Review by the Bank’s Operations Committee); or
 - ii. the Bank must maintain a financial interest in the Project and the Complaint must have been filed within twelve (12) months after the date of the physical completion of the Project or, where physical completion is not an appropriate measure, within twelve (12) months after the date of the Bank Operation final disbursement or the date of cancellation of the undisbursed amount (with all such dates being determined by the Bank’s team in charge of the Bank Operation).
 - b. the Registered Complaint is from an Affected Group and there is *prima facie* evidence that the Project has, or is likely to have, a direct adverse and material effect on such group’s common interest;
 - c. the Affected Group has initiated good faith efforts to resolve the issue with the Bank and other Relevant Parties and there is no reasonable prospect of resolving the issue through the continuation of such efforts; and

- d. the Complaint is not specifically prohibited under paragraph 19.
19. **Ineligible Complaints.** Notwithstanding paragraph 18, a Complaint shall not be eligible for IRM processing to the extent that:
- a. it is frivolous or malicious;
 - b. its primary purpose is to seek competitive advantage through the disclosure of information or through impeding or delaying the Project or the Bank Operation;
 - c. it relates to procurement matters (in which case the Chief Compliance Officer shall redirect the Complaint to the proper office in the Bank);
 - d. it relates to an allegation of fraud or corruption (in which case the Chief Compliance Officer shall redirect the Complaint to the proper office in the Bank);
 - e. it relates to Article 1 of the Agreement Establishing the Bank, the Portfolio Ratio Policy or any other specified policy as may be identified by the Board from time to time;
 - f. it relates to the adequacy or suitability of EBRD policies; or
 - g. it relates to matters upon which an Eligibility Assessment Report has already been approved by the Board or the President, as the case may be, unless there is new evidence or new circumstances not known at the time of the previous review.
20. **Notice of potential ineligibility.** If the Eligibility Assessors are minded to recommend that the Complaint be declared ineligible, notice thereof shall be given to the Affected Group, which shall include a summary of the reasons for making such a recommendation. Such notice shall be given within fifteen (15) Business Days of the receipt of the Complaint or ten (10) Business Days of the acceptance of appointment by the Eligibility Expert, whichever is longer. A copy of such notice shall be provided to any Relevant Party. The Affected Group shall have ten (10) Business Days, if it wishes to respond and comment on the recommendation.
21. **Confidentiality.** If the Complaint contains a request under sub-paragraph 9(b), the Eligibility Assessors shall determine whether such confidentiality is warranted. All reasonable efforts shall be used to maintain the identities of members of the Affected Group confidential when requested. If in the reasonable opinion of the Eligibility Assessors, the review process cannot proceed with the requested confidentiality being maintained, the Affected Group shall be notified accordingly. The Eligibility Assessors shall then either agree the terms of proceeding with the

Affected Group or terminate the process if it is not possible to agree upon such terms.

22. **Whether a Compliance Review is warranted.** If the Eligibility Assessors are minded to recommend that the Complaint be declared eligible, they shall continue to review the Complaint for up to thirty (30) Business Days of the receipt of the Complaint or twenty-five (25) Business Days of the acceptance of appointment by the Eligibility Assessment Expert, whichever is longer to determine whether the Complaint is eligible for a Compliance Review. The objective of a Compliance Review shall be to establish if, and to understand why, any EBRD action, or failure to act, in respect of a Bank Operation have involved one or more material violations of policies in accordance with paragraphs 23 and 24, and, if such is the case, to recommend remedial changes in accordance with paragraph 34. If the Eligibility Assessors are minded to recommend that a Compliance Review is not warranted, as part of their assessment, the Eligibility Assessors shall give the Affected Group an opportunity of not less than ten (10) Business Days to comment upon the finding that a Compliance Review is not warranted and include such comments in the Eligibility Assessment Report. The period of ten (10) Business Days, where possible, shall be included in the thirty (30) or twenty-five (25) Business Day period referred to above. However, where the Eligibility Assessors require the full thirty (30) or twenty-five (25) Business Days, as the case may be, to conclude their assessment, the ten (10) Business Day period shall follow once the Eligibility Assessors have arrived at their conclusions.
23. **Material violation of a Relevant EBRD Policy.** The Eligibility Assessors shall consider whether any EBRD actions, or failure to act, in respect of the Bank Operation may have involved a material violation of a Relevant EBRD Policy and, in such a case, shall conclude that a Compliance Review is warranted. In considering whether there may have been such a violation, the Eligibility Assessors shall examine:
 - a. the Environmental Policy that was in effect on the date the Bank Operation was submitted to Concept Review; and
 - b. in respect of any other Relevant EBRD Policy, the Policy that was in effect on the date on which the relevant act was taken, or if an act was required to be taken and was omitted, the date on which such act should have been taken.
24. **Material violation of other EBRD policies.** If the Eligibility Assessors conclude that a Compliance Review is warranted in accordance with paragraph 23, they shall also examine whether any EBRD action, or failure to act, in respect of the Bank Operation may have involved a material violation of any other EBRD policy (except those referred to in sub-paragraph 19[e]), and any related implementing procedures. If so, the Eligibility Assessors may recommend the inclusion of any such possible violation within the scope of the Compliance Review.

25. **No Compliance Review.** Notwithstanding any other provision of these Rules, the Eligibility Assessors shall not conclude that a Compliance Review is warranted if the Complaint:
- a. relates to the actions that are the responsibility of parties other than the Bank, and do not otherwise involve a Bank action under, or the Bank's failure to take action that is required by, a Relevant EBRD Policy; or
 - b. relates to the laws, policies, and regulations of the relevant country of operations, and does not otherwise involve a material violation of a Relevant EBRD Policy.
26. **Conduct of an Eligibility Assessment.** Where possible, an Eligibility Assessment shall be conducted through a desk review. However, the Eligibility Assessors may also:
- a. solicit additional oral or written information from, or hold meetings with, the Affected Group and any Relevant Party;
 - b. undertake Project site visits;
 - c. retain additional expertise in accordance with paragraph 64; and
 - d. take any other action as may be required to complete the Eligibility Assessment within the required time frame.
27. **Eligibility Assessment Report.** Within thirty (30) Business Days of the receipt of a Complaint or twenty-five (25) Business Days of the acceptance of appointment of the Eligibility Assessment Expert, whichever is longer, the Eligibility Assessors shall set out their findings and recommendations in an Eligibility Assessment Report. The Eligibility Assessment Report shall:
- a. include a summary discussion of the relevant facts, the respective positions of any Relevant Party in relation to the subject matter of the Complaint and the steps taken to conduct the Eligibility Assessment, and attach a copy of the original Complaint; and
 - b. recommend to declare the Complaint:
 - i. ineligible and therefore, dismiss the Complaint. In such case, the Eligibility Assessment Report shall include any comments received from the Affected Group or any Relevant Party in accordance with paragraph 20; or

- ii. eligible, but not warranting a Compliance Review, without prejudice to the ability of the Chief Compliance Officer to recommend a Problem-solving Initiative in accordance with paragraph 44. In such case, the Eligibility Assessment Report shall include any comments received from the Affected Group or any Relevant Party in accordance with paragraph 22; or
 - iii. eligible and warranting a Compliance Review. In such case, the recommendation shall include Terms of Reference (which shall set out the scope and time frame of the Compliance Review and shall provide an estimate of the budget and a description of additional resources required to complete the review) and shall identify an Expert to conduct the Compliance Review. Such a recommendation shall be without prejudice to the ability of the Chief Compliance Officer to recommend a Problem-solving Initiative in accordance with paragraph 44.
28. **No consensus between Eligibility Assessors.** If the Eligibility Assessors do not reach consensus on the contents of the Eligibility Assessment Report, each Eligibility Assessor shall record his or her views on the points of divergence.
29. **Impartiality of Eligibility Assessment Report.** Recommendations and findings of an Eligibility Assessment Report shall be based only on the facts relevant to the Complaint under consideration and shall be strictly impartial.
30. **Submission of Eligibility Assessment Report.** The Eligibility Assessment Report shall be submitted by the Eligibility Assessors for consideration and decision:
- a. to the President, with a copy to the Board for information, if the relevant Bank Operation does not require Board approval or has not been approved by the Board at the time the Eligibility Assessment Report is ready for submission, or
 - b. to the President for transmittal to the Board, if the relevant Bank Operation has been approved by the Board at the time the Eligibility Assessment Report is ready for submission.
31. **Contents of eligibility decision.** In considering the Eligibility Assessment Report, the Board or the President, as the case may be, may:
- a. approve the recommendation(s); or
 - b. reject the recommendation(s); or
 - c. remit the Complaint back to the Eligibility Assessors (or to a different Expert) to reassess the recommendation regarding the eligibility of the

Complaint, the need for a Compliance Review, the designation of the Expert and/or the Terms of Reference for the Compliance Review, with a new recommendation, if any, being submitted to the Board or the President, as the case may be.

32. **Publicity of eligibility decision.** Any decision made by the President pursuant to sub-paragraph 30(a) shall be immediately copied to the Board. Subject to the provisions of the Public Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the Eligibility Assessment Report and the decision made by the Board or the President, as the case may be, pursuant to paragraph 31 shall be promptly communicated to the Affected Group and any Relevant Party, and a summary of the decision and the Eligibility Assessment Report shall be published on the IRM website.

Part 5 Compliance Reviews

33. **Conduct of a Compliance Review.** The Compliance Review Expert shall conduct the Compliance Review in accordance with the relevant Terms of Reference and within the required time frame. The Compliance Review Expert shall take any appropriate steps required to conduct the Compliance Review, and in particular may:
- a. solicit additional oral or written information from, or hold meetings with, the Affected Group and any Relevant Party;
 - b. undertake Project site visits;
 - c. retain additional expertise in accordance with paragraph 64; and
 - d. take any other action as may be required to complete the Compliance Review within the required time frame.

Prior to taking such steps, the Compliance Review Expert shall discuss the budget implications and administrative requirements of such steps with the Chief Compliance Officer.

34. **Contents of Compliance Review Report.** Upon completion of his or her investigations, the Compliance Review Expert shall report his or her findings and recommendations in a Compliance Review Report, which shall:
- a. include a summary discussion of the relevant facts, the respective positions of any Relevant Party in relation to the subject matter of the Complaint and the steps taken to conduct the Compliance Review;

b. set out the findings of the Compliance Review Expert which, unless otherwise provided in the Terms of Reference, shall be limited to determining whether or not any EBRD action, or failure to act, in respect of a Bank Operation have involved one or more material violations of policies in accordance with paragraphs 23 and 24;

c. if the Compliance Review Report concludes that any EBRD action, or failure to act, in respect of a Bank Operation has involved one or more material violations of policies in accordance with paragraphs 23 and 24, recommend:

i. any remedial changes to systems or procedures within the EBRD to avoid a recurrence of such or similar violations;

ii. any remedial changes in the scope or implementation of the Bank Operation, subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project-related agreements; and/or

iii. any steps to be taken to monitor the implementation of the changes referred to in (i) and (ii) above, and the person in charge of such monitoring (who shall be the Chief Compliance Officer unless the Board or the President, as the case may be, decides otherwise); and

d. attach a copy of the original Complaint, the response of the relevant Bank department(s) and a list of supporting documents relied upon in the investigation.

If recommendations set out in sub-paragraph (c) above are included in the Compliance Review Report, the Compliance Review Report shall include an assessment from the relevant Bank department setting out whether such recommendations are appropriate and if so, a timetable and an estimate of the human and financial resources required to implement such recommendations, if approved by the Board or the President, as the case may be.

35. **No award of compensation.** The Compliance Review Report may not recommend the award of compensation or any other benefits to Affected Groups beyond that which may be expressly contemplated in a Relevant Bank Policy.

36. **Impartiality of Compliance Review Report.** Prior to submitting the Compliance Review Report to the Chief Compliance Officer for transmittal, the Compliance Review Expert shall ensure that all factual information relating to the Affected Group or any Relevant Party is verified with such party. Recommendations and findings of a Compliance Review Report shall be based only on the facts relevant to the Complaint under consideration and shall be strictly impartial.

37. **Submission of Compliance Review Report.** The Compliance Review Report shall be submitted by the Compliance Review Expert for consideration and decision:
- a. to the President, with a copy to the Board for information, if the relevant Bank Operation does not require Board approval or has not been approved by the Board at the time the Compliance Review Report is ready for submission, or
 - b. to the President for transmittal to the Board, if the relevant Bank Operation has been approved by the Board at the time the Compliance Review Report is ready for submission.
38. **Communication of Compliance Review Report.** Subject to the provisions of the Public Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the Compliance Review Report shall be made available to the Affected Group and any Relevant Party at the same time as it is submitted for consideration and decision in accordance with paragraph 37.
39. **Contents of Compliance Review decision.** The Board or the President, as the case may be, shall decide whether or not to accept the findings and recommendations in the Compliance Review Report. Any decision made by the President shall be immediately copied to the Board.
40. **Publicity of Compliance Review decision.** Subject to the provisions of the Public Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the decision made by the Board or the President, as the case may be, pursuant to paragraph 39 shall be promptly communicated to the Affected Group and any Relevant Party. Subject to the same provisions, such decision and the Compliance Review Report shall be published on the IRM website.
41. **Monitoring of changes.** The person in charge of monitoring the implementation of the changes referred to in sub-paragraph 34(c), shall report on such implementation to the President or the Board, as the case may be, as often as required and in any event not less than once a year. Any report to the President shall be immediately copied to the Board.

Part 6

Problem-solving Initiatives

42. **Whether a Problem-solving Initiative is warranted.** If the Eligibility Assessors are minded to recommend that a Complaint be declared eligible, the Chief Compliance Officer shall consider whether a Problem-solving Initiative should be recommended. The objective of a Problem-solving Initiative is to restore an effective dialogue between the Affected Group and any Relevant Party with a view

to resolving the issue or issues underlying a Complaint, without seeking to attribute blame or fault to any such party. A Problem-solving Initiative may be conducted only if the Complaint has been declared eligible in accordance with paragraph 31, but irrespective of whether a Compliance Review is conducted.

43. **When a Problem-solving Initiative is warranted.** In considering whether a Problem-solving Initiative should be recommended, the Chief Compliance Officer shall use the same investigative methods as provided in paragraph 33 and shall take into consideration:
- a. whether the Problem-solving Initiative may assist in addressing undue, incidental effects resulting from Project conditionalities agreed in the context of the Bank Operation;
 - b. whether the Problem-solving Initiative is likely to have a positive result;
 - c. whether one or more specific Problem-solving Initiatives (e.g., independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting) are more appropriate for the issue to be resolved and whether the Affected Group and the Relevant Parties are amenable to such Problem-solving Initiatives;
 - d. whether the Bank has or continues to have sufficient leverage to influence change (e.g., as an equity investor, the Bank may only be able to influence change as any other minority shareholder);
 - e. whether the conduct of a Problem-solving Initiative may interfere with the conduct of a Compliance Review, if any;
 - f. whether the Problem-solving Initiative may duplicate, or interfere with, or may be impeded by, any other process pending before a court, arbitration tribunal or review body (such as an equivalent mechanism at another co-financier) in respect of the same matter or a matter closely related to the Complaint; and
 - g. any other relevant matters.
44. **Contents of Problem-solving Initiative Report.** The Chief Compliance Officer shall prepare a separate Problem-solving Initiative Report within forty-five (45) Business Days of the receipt of the Complaint and shall:
- a. include the considerations on which the recommendations are based;
 - b. include any relevant comments from the Affected Group and any Relevant Party;

- c. recommend whether a Problem-solving Initiative should be initiated, and
 - d. if the recommendation is to proceed with a Problem-solving Initiative, include Terms of Reference (which shall set out the scope and time frame of such Problem-solving Initiative and shall provide an estimate of the budget and a description of additional resources required to complete the initiative) and identify the person or group who could act as Problem-solving Facilitator; such Terms of Reference shall be prepared with due regard to the Terms of Reference for any concomitant Compliance Review in respect of the same Project.
45. **Decision to initiate a Problem-solving Initiative.** All Problem-solving Initiative Reports shall be submitted for the President's consideration and decision. Subject to the provisions of the Public Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the Problem-solving Initiative Report and the President's decision shall be made promptly available to the Affected Group and any Relevant Party. A summary of the decision and the Problem-solving Initiative Report shall be published on the IRM website.
46. **Board information about a decision to initiate a Problem-solving Initiative.** If the Bank Operation is subject to Board approval but has not been approved by the Board at the time of the President's decision, such decision, together with the Problem-solving Initiative Report, shall be attached to the relevant Board Operation Report when distributed. If the Bank Operation does not require Board Approval or has been approved by the Board at the time of the President's decision, such decision, together with the Problem-solving Initiative Report, shall be distributed to the Board for information.
47. **Conduct of a Problem-solving Initiative.** The Problem-solving Initiative shall be conducted in accordance with the relevant Terms of Reference. Persons to be selected to conduct a Problem-solving Initiative may be an Expert or such other person as the Chief Compliance Officer considers appropriate. The Chief Compliance Officer himself or herself may conduct a Problem-solving Initiative. The appointment of the Problem-solving Facilitator shall be approved by the President upon the recommendation of the Chief Compliance Officer.
48. **Problem-solving Completion Report.** Once the Problem-solving Initiative is completed, its findings and/or results shall be set out in a Problem-solving Completion Report, which shall be prepared by the Chief Compliance Officer and/or the Problem-solving Facilitator (as provided in the relevant Terms of Reference), and shall be submitted to the President. The Problem-solving Completion Report shall also be made available to the Board and to the public as follows:
- a. If the Bank Operation is subject to Board approval but has not been approved by the Board at the time of submission, the Problem-solving

Completion Report shall be attached to the relevant Board Operation Report when submitted. If the Bank Operation does not require Board Approval or has been approved by the Board at the time of the President's decision, the Problem-solving Completion Report shall be distributed separately to the Board for information; and

- b. Subject to receiving the prior approval of the parties to a Problem-solving Initiative and the provisions of the Public Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the Problem-solving Completion Report shall be published on the IRM website. If the parties to the Problem-solving Initiative do not agree to make the report public, the Chief Compliance Officer shall include a summary of the processes followed during and the general outcome of the Problem-solving Initiative in the Register.

49. **Monitoring of ongoing activities.** Where a Problem-solving Initiative involves monitoring of ongoing activities, the Chief Compliance Officer may delegate such monitoring, the responsibility for which shall remain with the Chief Compliance Officer, to such other person or persons as the Chief Compliance Officer considers appropriate, such as an Expert, a consultant, a local governmental or non-governmental organisation, civil society group, industry body or other international financial institution.

Part 7

Administration of the IRM

50. **Responsibilities of Chief Compliance Officer.** The Chief Compliance Officer shall have overall responsibility for the day-to-day operations and external relations of the IRM, which shall include, but not be limited to:
 - a. arranging for the selection of Experts as required upon resignation or expiration of an Expert's term of appointment in accordance with the Bank's procurement rules applicable to the selection of consultants and preparing the President's Recommendation and reports to the Board concerning the appointment and removal of Experts;
 - b. establishing such administrative procedures and guidelines necessary for the proper functioning of the IRM and the Roster;
 - c. overseeing the establishment and maintenance of a Register open to the public on the IRM website, which shall contain significant data concerning the delivery and registration of Complaints, as well as the conduct and outcome of Compliance Reviews and Problem-solving Initiatives;
 - d. maintaining a documentary record for each Complaint, as well as a library of all materials relevant to the functioning of the IRM;

- e. sending out notices of Registered Complaints to all Relevant Parties; noting the progress of each Complaint on the public Register and, if required by the circumstances, providing additional updates on such progress to the Affected Group and Relevant Parties; responding to requests for information from Affected Groups in respect of a particular Complaint;
- f. dealing with any requests for information about the IRM; publicizing and being the spokesperson of the IRM; establishing and maintaining an IRM website;
- g. ensuring that all timeframes are met and approving any extensions in accordance with paragraph 14; liaising with other IRM Officers, and ensuring that such IRM Officers fulfil their responsibilities generally and in accordance with any applicable Terms of Reference;
- h. without prejudice to the powers of the Board and the President under these Rules, taking any steps required to ensure the integrity of IRM processes, including the replacement of any Expert whose impartiality or independence in any Eligibility Assessment or in any Compliance Review is in doubt with another Expert;
- i. arranging for any translations of Complaints, reports or other documents that may be required;
- j. providing administrative and logistical support to other IRM Officers, including without limitation, making and supervising arrangements for meetings, site visits and IRM proceedings in London or elsewhere;
- k. administering the budgetary allocations for the IRM;
- l. overseeing the establishment and maintenance of one or more databases of consultants, researchers, technical experts, mediators, conciliators, facilitators, translators, interpreters, etc., whose services may be called upon in connection with Eligibility Assessments, Compliance Reviews and Problem-solving Initiatives; and
- m. undertaking any other tasks that may be necessary or incidental to the administration of the IRM and/or the Roster.

51. **Delegation by Chief Compliance Officer.** In his or her absence, the Chief Compliance Officer may delegate his or her authority to members of staff in his or her office.

52. **Appointment of Experts to Roster.** The Roster shall comprise up to ten individuals selected 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. The remuneration and other terms of appointment of Experts shall be determined by the President, such terms to include the right of the Board to remove an Expert without cost or liability to the Bank.
53. **Term of Experts.** Except for the first Experts, who shall be appointed for terms of three (3), four (4) and five (5) years, Experts shall be appointed to the Roster for a term of three (3) years. The term of any Expert may be renewed for one or more successive periods of three years, subject to the Expert agreeing to the continuation of the appointment. If an Expert is engaged in a Compliance Review at the time the Expert's term expires, the term shall be extended for such period as may be necessary to complete the Compliance Review, unless the Board removes the Expert in accordance with paragraph 61.
54. **Restriction on Bank employment.** An Expert shall not have worked for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director's Adviser 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 Adviser or consultant) at any point in the future.
55. **Capacity of Experts.** When performing IRM functions, Experts shall serve in their individual, personal capacity and shall be subject to the same privileges and immunities, relevant Code of Conduct provisions, conflict of interest rules and confidentiality provisions as experts performing missions for the Bank. Experts shall be required to act impartially and independently and shall not participate in the Eligibility Assessment or Compliance Review of any Complaint related to a matter in which they have or had a personal interest or significant involvement in any capacity. Experts shall immediately disclose to the Chief Compliance Officer:
- a. any circumstances which might be deemed to affect their impartiality or independence in the discharge of their IRM functions; and
 - b. any attempt to interfere with or improperly influence the discharge of their IRM functions.
56. **No communications by Experts.** Except as authorized by the Board or the President, as the case may be, Experts shall refrain from making any statement, whether private or public, to parties other than the Affected Group and any Relevant Party on matters under consideration by the IRM. Nothing in this paragraph shall prevent an Expert from undertaking any type of public consultation that he or she considers necessary as part of a Compliance Review or Problem-solving Initiative, as the case may be.

57. **Training of Experts in EBRD matters.** Experts shall be required to attend meetings organized by the Chief Compliance Officer for at least five days in each calendar year to enhance their knowledge of the Bank's policies, procedures and operations and to discuss the functioning of the IRM. The Chief Compliance Officer shall notify the Experts of any such meetings and shall set the agenda.
58. **Access to documentary records.** The Experts shall have full access to such documentary records maintained pursuant to sub-paragraph 50(d). Whenever an Expert obtains additional materials in the course of an Eligibility Assessment or Compliance Review, the Expert shall immediately provide a copy of such material for safekeeping in the documentary record.
59. **Ad hoc Experts.** If at any time no Expert from the Roster is available either to undertake or to complete an assignment, the Chief Compliance Officer may recommend the ad hoc designation of an expert who is not on the Roster but meets the same eligibility criteria. Such expert shall be appointed, on a no-objection basis, by the Board upon the recommendation of the President, to undertake or complete the specific assignment. Such ad hoc designations may be made on a direct selection basis, regardless of the expected value of the contract of appointment.
60. **Replacement of Experts.** If an Expert appointed to conduct an Eligibility Assessment or a Compliance Review resigns or is unable to complete such assignment, the Chief Compliance Officer shall:
- a. if such event occurs during an Eligibility Assessment, be solely responsible for the completion of such Eligibility Assessment; and
 - b. if such event occurs during a Compliance Review, make a recommendation to the Board or the President, as the case may be, on a proposed course of action to ensure the prompt completion of the Compliance Review.
61. **Removal of Experts.** Experts serve at the pleasure of the Board and may be removed from the Roster by the Board at any time, with or without cause.

62. **Terms of appointment of Problem-solving Facilitators.** When performing IRM functions, Problem-solving Facilitators appointed from outside the Bank shall serve in their individual, personal capacity and shall be subject to the same privileges and immunities, relevant Code of Conduct provisions, conflict of interest rules and confidentiality provisions as experts performing missions for the Bank. Problem-solving Facilitators shall be required to act impartially and independently and shall not participate in a Problem-solving Initiative in which they have or had a personal interest or significant involvement in any capacity, unless specifically authorized by the President. Problem-solving Facilitators shall immediately disclose to the Chief Compliance Officer:
- a. any circumstances which might be deemed to affect their impartiality or independence in the discharge of their IRM functions; and
 - b. any attempt to interfere with or improperly influence the discharge of their IRM functions.

Part 8

Conduct of IRM Proceedings

63. **Proceedings generally.** All IRM investigations, assessments, reviews and initiatives shall be carried out as expeditiously as possible without compromising the integrity or comprehensiveness of such process. The IRM Officers shall take due account of the need to include any Bank staff, persons from the Affected Group, any Relevant Party and other interested parties who may have relevant information. The IRM Officers shall take care to minimize the disruption to the daily operations of all involved parties.
64. **Additional expertise.** The IRM Officers shall be entitled to seek additional expertise to assist with an IRM investigation, assessment, review or initiative, if this is necessary for the successful performance of their duties and responsibilities. The IRM Officers shall first determine whether the relevant expertise is available from within the Bank without compromising the independence of the process. If such expertise cannot be made available due to a conflict of interest, or an appearance of a conflict of interest, the expertise may be sought externally, provided that the selection and appointment of any consultants, researchers, interpreters, translators and/or other technical experts shall:
- a. be made, to the extent possible, with due regard to the EBRD procurement rules regarding the selection and appointment of consultants and in consideration of the short time periods within which tasks requiring external expertise are to be completed;
 - b. be made under the supervision of the Chief Compliance Officer; and
 - c. be subject to the availability of the necessary budgetary resources.

65. **Access to staff and information, and confidentiality.** When conducting any investigation, assessment or review for an Eligibility Assessment or a Compliance Review, the IRM Officers shall have full access to relevant Bank staff and files, including electronic files, cabinets and other storage facilities and Bank staff shall be required to cooperate fully with them. However, the access to, and use and disclosure of, any information gathered by the IRM Officers during any such process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial information confidential (such as a confidentiality agreement). No IRM Officer or no staff member, consultant, researcher, interpreter, translator and other technical expert employed by the IRM may release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who has provided such document.
66. **Legal matters.** The General Counsel shall, upon request, provide all legal information and advice needed in respect of the Bank's policies and procedures and the Bank's rights and obligations in respect of the Bank Operation to which a Complaint relates.

Part 9 General Provisions

67. **Annual report.** The Chief Compliance Officer shall prepare an annual report describing the activities of the IRM during the preceding year. The Report shall be submitted to the President, for transmittal to the Board for information, and shall be thereafter published on the IRM website.
68. **Budget.** The Bank shall provide such budgetary resources as shall be sufficient to allow all of the activities permitted by these Rules to be carried out. The Chief Compliance Officer shall prepare an annual budget indicating the level of resources required to carry out its mandate.
69. **Amendment and effect of the Rules.** These Rules may be amended by the Board. These Rules shall prevail in the event of any inconsistency between these Rules and any other EBRD document and in the absence of an express provision to the contrary.
70. **Governing language.** It is intended that these Rules be translated into the national language of the Bank's countries of operations. If there is any discrepancy between the English version of these Rules and any other version, the English version shall govern.