

**Public Consultation on
Proposed IFC/MIGA Approach to Remedial Action and
Draft IFC Responsible Exit Principles**

**Independent Accountability Mechanisms (IAMs) consultation session
Online meeting 8 March 2023**

Following the release of the proposed IFC/MIGA *Approach to Remedial Action*; and the IFCs draft *Responsible Exit Principles* in February 2023, IFC/MIGA launched a global public consultation process to elicit comments and submissions on both documents.

The consultation period began with a hybrid Informational Session on 28 February 2023, and will conclude on 20 April 2023 after nine further virtual consultation sessions covering all global time zones. Submissions can also be made by email to accountabilityconsultation@worldbankgroup.org. All details appear on the dedicated consultation [webpage](#).

Facilitators' Summary Report: Final

Introduction:

This Summary Report presents questions, inputs and comments received during a consultation meeting for **Independent Accountability Mechanisms** held on 8 March 2023 at 9:00 AM Washington DC time. The session was attended by 37 participants and conducted in English without interpretation.

The session was conducted by a team of professional facilitators. IFC and MIGA representatives provided presentations on the process to date, which covered background to the process; the documents themselves; and next steps towards finalising the documents for consideration by the **Committee on Development Effectiveness (CODE)** of the IFC and MIGA Boards of Directors. The goal was to collect as many comments, questions, reflections and recommendations from participants as possible, and have some dialogue between participants and IFC/MIGA on key issues.

This Summary is based on comprehensive notes taken during the meeting by a team of Note-takers. It is divided into themes, some of which may overlap, and inputs intersect. The final Report, at the end of the consultation period, will elaborate on the key points.

The session was divided into two parts: the proposed IFC/MIGA Approach to Remedial Action; followed by the draft IFC Responsible Exit Principles.

A. APPROACH TO REMEDIAL ACTION

Several participants expressed support for the development of an Approach to Remedial Action and for IFC/MIGA and welcomed the opportunity to provide comments and recommendations as well as being able to ask some questions of IFC/MIGA.

1. Scope of the Approach to Remedial Action

- **Definitions and clarifications:** Several participants commented on the concepts and terms used in the Approach and said that it would be useful for the paper to explain how IFC/MIGA define “remedy” – specifically who defines “remedy,” and that affected people should be the ones deciding what “remedy” should look like. In addition, a participant asked which “provisions will be applied” and to what?
- **Concepts:** Comments were made about uniformity in language and concept, and participants suggested that the following need to be defined and elaborated in the next drafts of both documents so as to provide guidance in their application:
 - reasonable period of time to reach compliance;
 - leverage and absence of leverage;
 - exceptional circumstances.
- **Language:** Participants commented that the document would benefit from being specific in the use of language, and thus provide a better sense of how the Approach will apply and in which contexts. Specifically:
 - whether all types of projects will have access to the contractual provisions proposed in the Approach or only high-risk projects;
 - whether and why elements of the Approach will or will not apply to sovereign projects, which would be preferable to having an unclear blanket statement. The language in the document should be made more neutral to allow for elements of the Approach that may be applicable to public sector projects. The Approach should avoid assumptions around private versus sovereign operations and be clear as to whether it relates only to non-sovereign operations;
 - whether it applies only to cases where a **Management Action Plan (MAP)** has already been developed;
 - explain the meaning behind: “provisions will be applied” as well as information around to which projects these “provisions” would apply;
 - what is meant by “community dialogue”; and
 - whether the Approach is sufficiently robust.
- **Divergence from established international standards (OHCHR and UN):** Participants commented that the Approach seems to be fundamentally at odds with the remedy ecosystem approach advanced by the **Office of the UN High Commissioner on Human Rights (OHCHR)** which is based on established international standards, and questioned why that would be so.
- **Implication of Approach on IAMS’ Compliance review:** The Approach makes IAMS’ compliance review more difficult because compliance determines whether an **International Finance Institution (IFI)** was in compliance, or not; it investigates the IFI, not the client. Some participants commented that the Approach needs to expand on the compliance context, given that their understanding is that most of the document is based on the notion of non-compliance, and it should acknowledge circumstances where the IFIs may be non-compliant. The Approach needs to explain how it applies where compliance or non-compliance with **Environmental and Social (E&S)** standards may not have been or cannot be assessed; where an IFI may be found to be non-compliant; or in circumstances when a client cannot or will not apply remedial action. When an IFI is found to be non-compliant, only exceptionally does the Approach propose anything other than placing the cost and burden of remedy on the client, not the IFI. A participant commented that IFC/MIGA needs to clarify

how it intends to use leverage or influence over clients particularly if compliance cannot be measured.

- **Assessing risk:** Participants commented that IFC/MIGA should concern itself not only with risks to IFC/MIGA and/or their clients, but also with risks to affected people and the environment. Mitigating litigation risk, as referenced in paragraph 31, only speaks to risks of increased litigation from the framework; it does not address the litigation risks emerging from *not* providing remedy. Risks need to be assessed consistently across different actors.
- **Enhancements:** Participants expressed the view that Enhancements need to be applied to all projects, not just in “exceptional circumstances”; and that the Approach should provide more guidance on the thresholds for “special circumstances”.
- **Compliance Advisor Ombudsman (CAO) case contexts:** A participant asked whether IFC/MIGA will respond only to complaints coming directly to the IFC/MIGA, or also to complaints lodged with the CAO. It was suggested that the Approach needs to explain how it relates to IFC/MIGA involvement in CAO cases that share the same features, in particular Dispute Resolution. Moreover, one participant expressed the view that, as with many aspects of the Approach, the Approach provides no specific objective, commitment or defined actions that would improve access to CAO. This being the case, the participant queried how the success of the pilot would be judged in this respect.
- **Pilot phase:** A participant remarked that it was unclear how the Approach will be applied during its pilot phase. Others commented that the expected output and outcome indicators for the pilot phase are far too vague *e.g.*, “provisions incorporated in contract templates”, “increased client awareness”, “improved utilisation of influence”, “exceptional circumstances” (referencing paragraph 17 d). They asked: What is the bar, and said that IFC/MIGA should spell it out and set clear measurable criteria. Without this, how will progress be reported or judged? A comment was made that the pilot phase should address projects which are on the institutional radar for poor performance as these are the ones that often give rise to complaints.

2. Roles and responsibilities in the Remedy ecosystem

- **Development Finance Institution (DFI) responsibility:** A participant suggested that there is an opportunity in the remedy ecosystem for IFC/MIGA to be specific about the roles of institutions. IFC/MIGA has a pivotal role among DFIs and investors that needs to be explained. IFC/MIGA should clarify their own roles and responsibilities and what tools they will apply in cases where a client may be unwilling to or cannot apply remedial actions, or has responded inadequately. Participants felt that the current language in the document suggests that the institution is distancing itself from responsibility. Countries take on responsibility for remedy, as do sectors including the private sector, so DFIs also need to be required to take on this responsibility.
- **Influence of approach on other institutions:** Participants commented that it is of concern that IFC/MIGA do not specify how the Approach will influence other institutions. They said that IFC/MIGA should explain who the “others” are in the remedy ecosystem that are expected to provide remedy, and why it seems that they are not able or required to provide remedy when they are invested in the same project as IFC. IFC/MIGA needs to envisage the specific role of other IFIs in the remedy ecosystem, especially those who apply the IFC Performance Standards (PSs) whether through their parallel lending or through IFC-managed

loans. Often IFIs have very little ability to influence clients' decision making, so the Approach needs to explain how this influence would be leveraged. According to participants, the Approach needs to describe what happens with the responsibility that IFIs have.

- **Clients:** When an IFI is found to be non-compliant, only exceptionally does the Approach propose anything other than placing the cost and burden of remedy on the client, not the IFI. Participants commented that the Approach must specify the role of the client and the role of the IFI. In terms of E&S compliance capacity, the Approach requires that the client institution is evaluated on a case-by-case basis, and yet there is no systematic approach to ensuring that all clients have the tools to comply with all E&S standards.
- **Monitoring:** The Approach presents an opportunity for IFC/MIGA to monitor ongoing E&S risks, building in elements that will help to monitor change and how emerging risks can be addressed. For example, a participant suggested that it would be constructive to describe a system which:
 - explains which elements of the Approach help IFC/MIGA and client institutions in monitoring the project for E&S risks and compliance;
 - measures the number of complaints being received in the system and how they are being investigated;
 - measures the number of complaints coming through the management mechanism and how they are being investigated;
 - records how they are being investigated; and
 - creates visibility into the types of complaints the **Grievance Redress Mechanisms (GRMs)** are receiving and how they are being investigated, as well as monitoring how well a GRM is performing.

In this way, IFC/MIGA can keep an eye on how things are going before complaints are lodged with the CAO.

3. Preparation for Remedial Action

- **Risk:** According to participants, the Approach appears to be lacking a risk-rating process for Clients and this aspect needs to be strengthened. The Approach needs to describe how IFC/MIGA might manage such risk assessment and support, and provide remedy for clients that have low capacity or lack willingness to build effective risk management tools. This is notable particularly in countries where fragility, conflict and violence are present.
- **Contingencies:** Participants commented that IFC/MIGA should think about objective criteria to select cases for contingency financing on a "case by case" basis and make that criteria public, as they are not set out in the Approach. The focus on contingency funding, minimizing a burden on the client, should be balanced with a strong component to minimize the burden on the complainants who have suffered because of a project.
- **Funds:** A participant proposed that the private sector be required (by lenders) to set aside funds in case there are E&S issues to address. It was noted that many private companies are already setting aside funds for remedy, and several countries are introducing laws to require the private sector to set aside such funds. This participant commented that this responsibility lies with stakeholder institutions i.e., lenders.
- **Capacity building:** Participants agreed that there is a need for capacity building, but a point was made that the Approach lacks clarity around for whom capacity building should be provided. It was posited that IFC/MIGA should clarify and implement a risk-rating process to

determine whether or not a client requires strengthening through capacity building where that client has limited capacity or willingness to implement effective risk management processes or tools.

4. Access to Remedial Action

- **Communication:** Participants noted that the Approach highlights the importance of access to independent accountability mechanisms. However, to ensure access to remedy, they commented that communities need to be informed consistently of their redress options (including access to institutions like CAO). IFC/MIGA should highlight specific actions that they will take to achieve that goal and avoid relying on communities accessing websites, as few members of a project-affected community are likely to have access to the internet. A participant commented that the Approach does not provide any specific objective commitments or defined actions that would improve complainants' access to CAO. It is not clear how the success of the pilot/framework in this respect will be judged.
- Several participants recommended that the Approach needs to set out IFC/MIGA's clear plans to make CAO, and its level of involvement in projects, known to clients and communities at the outset, and describe clearly the responsibilities of the client institution in this regard.

5. Facilitate and Support Remedial Action

- **Entry points:** According to a participant, IFC/MIGA should take a closer look at entry points: where they can support "others" and define who those "others" are (including the client).
- **MAP and CAP:** Participants commented that IFC/MIGA should clarify the different facilitation and support processes, such as **Management Action Plans (MAPs)** and **Corrective Action Plans (CAPs)** (referencing paragraph 24 of the Approach) and determine whether IFC/MIGA could support clients in implementing their existing Action Plans, without necessarily needing to develop a MAP/CAP.
- **Dispute resolution:** A participant suggested that, where parties in a dispute resolution process have reached settlement, IFC/MIGA should support the implementation of the terms of an agreement even though they may not require developing a MAP or CAP.
- **Enabling activities:** According to participants, IFC/MIGA should be clear as to whether fact-finding, technical studies and capacity building would be carried out in relation to complaints that come directly to IFC only, or whether these activities will be addressed through IFC/MIGA's response to a complaint through CAO. Regarding enabling activities, a participant commented that the Approach needs to clarify what is meant by supporting joint fact-finding activities and community development as they relate to CAO cases, and also whether this includes the potential for one of the stakeholders to finance an expert's fees.
- **Exceptional or special circumstances:** A participant commented that "exceptional circumstances" in the document needs elaboration. The IFC should use established normative frameworks such as the **United Nations Guiding Principles on Human Rights (UNGP)** framework as a basis. According to this participant it must also be made clear whether or not IFC has leverage, as in post exit, when the client or situation still qualifies as a "special circumstance" for remedial action?

6. Process

- **Second draft and consultation:** There were several requests from participants that the IAMs be given the opportunity for further engagement with IFC/MIGA in considering the next draft of the Approach.

B. RESPONSIBLE EXIT PRINCIPLES

- Participants commented that IFC should define their plans in relation to responsible exit early in the investment and project cycle, and explain to stakeholders how to prepare for responsible exit early.
- **Remedy post exit:** Comment was made that it is not clear whether IFC is considering remedy post exit. Incidences have been noted where exits have taken place, denying communities the opportunity to engage in CAO processes that could have contributed to enabling remedy. The IFC must consider how to implement responsible exit when the (former) client is no longer invested in the project.
- **Consultation:** Participants stated that consultation with project-affected communities is always important. Just as the IFC consults communities at the outset of a project, so it should consult communities at the exit stage.
- **Client:** A participant suggested that a client's financial health (status and capacity to support an exit process) should be ensured even while they are going through a responsible exit process.
- **Overlap:** In terms of the overlap between remedy, remedy financing and exit, a participant commented that at a minimum, where there are outstanding E&S issues at exit, prepayment fees should not be waived but rather collected and set aside for the purpose of remedy. Additional financing mechanisms should also be considered.
- **Responsible Entry:** Compliance with E&S issues should, according to a participant, also be considered as part of responsible entry.
- **Definitions and clarifications:** To ensure consistency of language and understanding across both Remedy and Exit documents, participants proposed that the following concepts be defined and elaborated uniformly in the next drafts of the Approach to Remedy and Responsible Exit Principles, with guidance as to their application:
 - special circumstances post-exit;
 - E&S issues which may trigger IFI staff to consider an exit.
- **Active and Passive Exit:** Participants urged IFC to clarify the distinction between active and passive exits and to consider each context. A number of views were expressed around the application of the Responsible Exit Principles: one being that the Principles seem to relate to active exit only. According to a participant, a pre-payment at the client's initiative could be defined in the legal agreements as an active exit. The Responsible Exit Principles should, in this participant's view, be applied to passive as well as to active exits, regardless of whether exit was initiated by the IFC or the client.

- Participants stated that in any case where there is unresolved E&S harm, IFC's exit should be regarded as active. In some cases, IFC's leverage in passive exits through parent companies may be significant (and possibly as relevant as a minor equity investment), a context that should be considered in the Responsible Exit Principles.
- **Leverage:** A participant commented that the Responsible Exit Principles should be more concrete regarding tools and ways that the IFC can enhance leverage post exit. The participant suggested that the IFC should consider (in the Responsible Exit Principles) what it has at its disposal, for example Dispute Resolution mechanisms, and cite examples from the IFC portfolio. IFC should assess its leverage points to give it space for decision-making. It must be made clear whether or not IFC has leverage post exit, and when a client or situation qualifies as a "special circumstance" for remedial action. In the context of CAO cases, a participant commented that IFC should consider (when re-drafting the document) whether the Responsible Exit Principles would restrict the ability of IAMs to provide access to various types of remedy post-exit. How would IFIs be able to continue to exert leverage in these situations?
- **Exit During DR:** Participants proposed that the Responsible Exit Principles should explain how they will apply in cases where the IFC is engaged in exit during an ongoing Dispute Resolution or Compliance process and how IFC would retain influence/leverage in such active cases. CAO's ability to provide access to certain kinds of remedy is restricted by leverage limitations. A participant said that the Principles do not explain how CAO can continue to have leverage and influence during and after a responsible exit process.
- **Legal agreements/liability and constraints:** A participant commented that IFC controls the nature of its contracts and should consider putting responsible exit provisions in legal agreements to ensure that active exits unfold through legal agreements. The Responsible Exit Principles do not explain adequately where the principles present an apparent waiver e.g., institutional constraints which mention circumstances such as liability issues. The Responsible Exit Principles should discuss the legal basis of responsible exit and propose legal provisions that would enhance IFC's leverage to achieve responsible exit; including cases where there remain outstanding concerns around E&S impacts when a client is moving towards or wishes to pre-pay. This participant stated that this should also be applied when a CAO investigation or Dispute Resolution process is pending or ongoing.
- **Liability:** Participants commented on the need for the Responsible Exit Principles to expand on institutional constraints such as liability issues and whether or when, and how, such constraints might be used to mitigate/avoid the application of these principles.
- **Threats and Risks of Reprisal:** Several comments were made that the risk or threat of reprisal against stakeholders or communities should be taken seriously and considered in the Responsible Exit Principles both at exit and post exit.
- **Piloting:** A participant asked that the Responsible Exit Principles clarify whether the pilot applies to projects in active exit only. IFC is encouraged to allow for a further period for consultation on the pilot.