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

Clients' consultation session
Online meeting 05 April 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.
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> The consultation period began with a hybrid Informational Session on 28 February 2023, and will conclude on 20 April 2023 after a total of nine 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 **IFC and MIGA Clients** held on 05 April 2023 at 10 am Washington DC time. The session was attended by 12 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/MIGA Board of Directors. The goal was to collect as many comments, questions, reflections and recommendations from participants as possible.

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

1 Scope of the Approach to Remedial Action

- Several participants expressed the view that they saw nothing new in the proposed Approach.

- A participant made the point that, as each project has a specific **Environmental and Social Impact Assessment (ESIA)** study which identifies potential impacts and associated mitigation plans, the Approach needs to be clear as to the difference between what is already addressed in an ESIA and what new activity, if any, is being proposed.

- The question was asked as to why an **Environmental and Social Action Plan (ESAP)** is not sufficient.

- A participant commented that it was not clear from the Approach how IFC/MIGA propose to manage cases already lodged with the **Compliance Advisor Ombudsman (CAO)**.

- Another participant commented that the Approach does not explain any mitigation or action plan for handling compliance in the future.

- A participant shared their experience of a CAO compliance process to serve as an example of the challenges where complainants' perceived negative impacts from a project are not found, through compliance, to be *material* or *significant*. Clarification was sought on how IFC/MIGA intends to deal with such cases, and for this to be made explicit in the Approach. It was suggested that IFC/MIGA include in the Approach examples of similar cases and how they had been addressed by IFC/MIGA.

2 Roles and responsibilities in the Remedy ecosystem

- A participant asked what new activity clients are expected to implement during the project cycle over and above implementing mitigation as described in an ESIA, and whether this new activity would require clients to review current projects.

- Concerns were expressed by several participants around unclear roles and responsibilities in financing remedy; and the changes that may need to be made in relation to costing.

- A participant commented that they were not able to understand from the Approach who might take on the responsibility, upon signing of an agreement, for creating estimates or calculations of resources needed to implement remedial action.

- A separate comment was made by a participant seeking clarity around who would take on the additional cost of remedy implementation.

- Participants commented that greater clarity is needed concerning any extension of time and resources that would be needed to implement remedy.

- A participant suggested that the Approach explain whether IFC/MIGA is expecting the client to develop their own capacity and prepare for remedial action, or whether IFC/MIGA envisions expanding the role of Environmental and Social Due Diligence consultants.

3 Preparation for Remedial Action

- Several participants raised the issue of costing remedial action. One made a clear recommendation that the costing of a remedial action should be included in an ESAP, which would help clients in gaining certainty when addressing risk. One participant commented that the costs of their substantial risk planning and remedial action have to date been punitive. The participant explained that they have had multiple experiences of ESAPs where there is a clear requirement for a costing, but the developer is never sure how much to calculate. It would be helpful if IFC/MIGA could assist in budgeting for risk mitigation.

- Another participant proposed that IFC/MIGA maintain a risk-based approach to remedy so as to avoid the cost of remedial action being punitive to the client. This would include assessing the risk scenarios for projects so that potential remedial actions are costed.

- A participant remarked on the challenge of assuring that the extent of risk assessment undertaken in relation to the actual remedial action required is proportionate to risk; for example with reference to "extreme risk scenario planning" and its attendant cost.

- A participant also underscored the importance of understanding the context as far as possible before engaging in an "extreme remedial action".

4 Access to Remedial Action

- A participant shared the view that the Approach should consider how to assess the legitimacy of a future grievances to secure a clear path to remedy when it is found to be necessary.

- A participant asked how it is that people are lodging complaints and grievances through existing mechanisms.

5 Facilitate and Support Remedial Actions

- It was further suggested by a participant that the Approach include a proposal that the World Bank set up a trust fund for various exigencies in the development context, including climate resilience, that could be capped and would help to deliver on some of the remedial actions. There was a suggestion that clients could also tap into existing MIGA/IFC trust funds to cover the costs of some assessments for extreme risk scenarios.

B. RESPONSIBLE EXIT PRINCIPLES

- Several participants asked for more information regarding the process of exit itself.

- A participant asked IFC to set out a clear process as to *how* to close out on a project, and how a client would prepare for exit. They acknowledged that although it may not be easy to map out, it nevertheless requires careful thought.

- Participants asked for clarity around the meaning of "Active Exit" and what this actually means for a client. A participant specifically requested "stipulations" around Active Exit.

- A participant commented that there is neither a time frame nor guidance provided for "Passive Exit", nor is there reference to how this may sit alongside E&S requirements.

- Several participants had questions on managing a situation where a grievance is lodged with the CAO post-IFC exit. A participant enquired whether the nature of financing (equity or debt) would be a factor in such complaints? In the context of IFC exit from equity financing, it was suggested by the participant that it would require greater willingness on the part of the [former or outgoing] client to close out due to IFC's reduced leverage, citing a particular example where the new project "asset owner" was not motivated to address lingering issues post IFC exit. The participant proposed that this needs clarification in the Responsible Exit Principles.

- A participant commented that, in the event of an exit from equity, IFC assumes a lot of goodwill from the new project owner who may not have any connection with IFC in the context of the particular project.

- Participants asked specifically for detail around the background to what is meant by and expected of E&S performance in the context of responsible exit. Specifically, it is not clear how this applies at the corporate level where IFC is holding equity, and how it may all be assessed for responsible exit in terms of overall sustainability.

- A participant suggested, on IFC relinquishing financing of a project to another Development Finance Institution or developer, that a key contact point in the new management be identified or else there is no motivation for any of the actors remaining on site to provide remedy.

- Another participant shared the view that other Intermediary Finance Institutions would learn from these Responsible Exit Principles.