

AFRICAN DEVELOPMENT BANK GROUP



THE INDEPENDENT REVIEW MECHANISM



Operating Rules and Procedures

16th June 2010

TABLE OF CONTENTS

| | | |
|---|---|----|
| I. | Introduction..... | 1 |
| a. | Purpose..... | 1 |
| b. | Functions..... | 1 |
| c. | Composition..... | 2 |
| d. | Participants..... | 2 |
| II. | Subject Matter of Requests | 2 |
| a. | Scope..... | 2 |
| b. | Limitations | 3 |
| III. | Preparation of a Request | 3 |
| a. | Who can file a Request? | 4 |
| b. | Contents of a Request | 4 |
| c. | Form of Request..... | 5 |
| Format | 5 | |
| Confidentiality | 5 | |
| Language..... | 5 | |
| Representatives | 5 | |
| Documents | 6 | |
| d. | Delivery of Request | 6 |
| e. | Advise on Preparation..... | 6 |
| f. | Effect of Filing a Request | 6 |
| IV. | Procedures on Receipt of a Request..... | 7 |
| a. | Register | 7 |
| Contents of Notice | 7 | |
| b. | Request Additional Information | 8 |
| c. | Outside Scope | 8 |
| Records | 8 | |
| d. | Need for Review | 8 |
| e. | Revised Request..... | 8 |
| f. | Extension of Time Periods..... | 9 |
| V. | Management's Response | 9 |
| Clarification | 9 | |
| VI. | Problem-Solving | 10 |
| a. | Problem-Solving Exercise | 10 |
| b. | Problem-Solving Report | 11 |
| Successful Problem-solving Exercise..... | 11 | |
| Unsuccessful Problem-Solving Exercise | 11 | |
| c. | Conversion of a Problem-Solving Exercise to Compliance Review | 12 |
| VII. | Compliance Review | 12 |
| a. | Recommendation for a Compliance Review | 12 |
| b. | Denial by Director of a Compliance Review | 13 |
| c. | Conduct of a Compliance Review | 13 |
| d. | Panel Deliberations | 13 |
| e. | Compliance Review Report | 14 |
| Contents | 14 | |
| No Award of Compensation | 14 | |

| | |
|---|----|
| Impartiality..... | 15 |
| Submission..... | 15 |
| Communication of the Compliance Review Report..... | 15 |
| Contents of Decision..... | 15 |
| Publicity of Compliance Review decision..... | 15 |
| Monitoring of changes | 16 |
| VIII. Administration of the CRMU | 16 |
| a. Term of Director | 16 |
| b. Responsibilities of the Director | 16 |
| c. Delegation by Director..... | 17 |
| d. Appointment of Experts to Roster | 18 |
| Roster | 18 |
| Selection Criteria | 18 |
| Term of Experts | 18 |
| Restriction on Bank Group employment | 18 |
| Capacity of Experts..... | 18 |
| No communications by Experts..... | 19 |
| Training of Experts in Bank Group matters..... | 19 |
| Access to documentary records | 19 |
| Replacement of Experts | 19 |
| Removal of Experts..... | 19 |
| IX. Conduct of CRMU Proceedings | 20 |
| a. Proceedings generally | 20 |
| b. Additional expertise | 20 |
| c. Access to staff and information, and confidentiality | 20 |
| d. Legal matters..... | 21 |
| X. General Provisions | 21 |
| a. Annual report | 21 |
| b. Budget..... | 21 |
| c. Business Days | 21 |
| d. Immunities and Privileges..... | 21 |
| e. Amendment and effect of the Rules..... | 21 |

I. Introduction

The Compliance Review and Mediation Unit ('CRMU'), headed by a Director (the "Director CRMU"), is the focal unit of the Independent Review Mechanism (the "IRM") established by the Boards of Directors of the African Development Bank (the 'Bank') and the African Development Fund (the 'Fund') pursuant to Resolutions B/BD/2004/9 - F/BD/2004/7 and B/BD/2004/10 adopted by the Boards of Directors on 30th June 2004 (collectively the 'Enabling Resolution') and amended pursuant to Resolution B/BD/2010/10 – F/BD/2010/04 of 16th June 2010.

The Amended Enabling Resolution establishes the IRM's authority and these Operating Rules and Procedures ('Rules') to provide detail to the operational provisions. The text is based on the Amended Enabling Resolution.

a. Purpose

The IRM has been established for the purpose of providing people adversely affected by a project financed by the Bank, the Fund, the Nigeria Trust Fund and other Special Funds administered by the Bank (collectively the 'Bank Group') with an independent mechanism through which they can request the Bank Group to comply with all its own policies and procedures. The mechanism is, therefore, available when two or more affected persons believe that the Bank Group has failed to comply with any of its policies and procedures; that this failure has, or threatens, to adversely affect them and that efforts have been made to ask the Bank Group's Management (the 'Management') itself to remedy the problem. CRMU will disseminate information about the IRM to Bank staff, civil society organizations, affected communities and the general public. The Bank Management shall mainstream information about the IRM in Bank policies and procedures and project documents.

b. Functions

The role of the IRM is to perform both compliance review and problem-solving functions. Through its compliance review function, the IRM will, in the case of Bank Group-financed sovereign guaranteed projects, focus on issues of non-compliance by an institution within the Bank Group with any of its operational policies and procedures in respect of the design, implementation or supervision of such project, and, in the case of private sector and/or non-sovereign guaranteed Bank Group-financed projects, on social and environmental compliance. The problem-solving function will be used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. These techniques will include independent fact-finding, mediation, conciliation, dialogue facilitation taking into consideration best customary practices for handling complaints.

The IRM functions will be triggered when the CRMU receives a request for compliance review and/or problem solving. CRMU will make a preliminary review of the complaint and determine whether the case is more appropriate for problem-solving or compliance review with consideration of the requestor(s) preference. The CRMU will facilitate and undertake problem-solving exercises while compliance reviews will be conducted by a Panel of IRM Experts. The Compliance review

process will be initiated with a joint determination of the eligibility of the request by the Director CRMU and the IRM Experts. In case of a deadlock in determining the eligibility of the request, the Director of CRMU shall have the casting vote.

The CRMU will make recommendations to the Boards of Directors of the Bank and Fund (collectively the 'Boards') or the President of the Bank Group (the 'President'), as the case may be, on remedial action that may be taken following a problem-solving exercise and/or on the initiation of a compliance review exercise with respect to any particular complaint.

The CRMU may monitor the implementation of recommendations or agreements made by CRMU or Review Panels and approved by either the Boards or the President, as the case may be, following the completion of a problem-solving or compliance review exercise.

c. Composition

The Director assisted by compliance officers and support staff heads the CRMU. The CRMU will maintain a roster of three (3) experts ('Roster') appointed by the Boards on fixed, non-renewable 5 year terms. The CRMU shall provide administrative and technical support to compliance review panels when undertaking compliance reviews.

d. Participants

During the preliminary review period – from the receipt of a complaint and request for an independent review and/or a problem-solving exercise up to the time a decision is made on whether to register the request – the CRMU will accept statements or evidence from (i) the Requestors or their representative; (ii) the Bank's Management; and (iii) any other individual or group of individuals invited by the Director to present evidence or comments.

During a problem-solving exercise or substantive compliance review, the following shall be entitled to submit information or evidence relevant to the complaint: (i) any person who is either a party to the problem-solving exercise or review; and (ii) the authorized representative of a party or parties that satisfies the Director or a compliance review panel ('Panel'), as the case may be, that he has or they have a direct interest in the subject matter of the complaint, apart from the general public interest (collectively 'interested person(s)').

II. Subject Matter of Requests

a. Scope

1. The CRMU is authorized to accept requests for review ('Request(s)') from two or more persons with a common interest ('Requestors') who allege that an actual or threatened material adverse effect on the affected persons' rights or interests arises directly from an act or omission of a member institution of the Bank Group as a result of the failure by the said institution to follow any of its own operational policies and procedures during the design, appraisal and/or implementation of a Bank Group-financed project. Requestors will be

encouraged and required, prior to submitting a Request, to make good faith efforts to resolve their complaints with Management.

b. *Limitations*

2. CRMU is not authorized to receive Requests relating to:
 - (i) procurement by the Bank Group or its borrowers from suppliers of goods and services financed by or expected to be financed by the Bank Group under a loan or grant agreement, or from losing tenders for the supply of such goods and services which shall continue to be addressed under other existing procedures;
 - (ii) fraud or corruption;
 - (iii) matters before the Administrative Tribunal of the Bank;
 - (iv) matters before other judicial review or similar bodies;
 - (v) frivolous or malicious complaints;
 - (vi) complaints motivated by an intention to gain competitive advantage;
 - (vii) matters over which the CRMU, a Panel, the President or the Boards has/have already made a recommendation or reached a decision after having received and reviewed a Request, unless justified by clear and compelling new evidence or circumstances not known at the time of the prior request;
 - (viii) complaints filed more than 12 months after the physical completion of the project concerned or more than 12 months after the final disbursement under the loan or grant agreement or the date of cancellation of the undisbursed amount;
 - (ix) actions that are the responsibility of other parties, including the borrower or potential borrower, and which do not involve any action or omission on the part of the Bank Group;
 - (x) the adequacy or unsuitability of Bank Group policies or procedures; and
 - (xi) private sector or other non-sovereign guaranteed projects except in instances of an alleged breach of the Bank-Group's agricultural, education, health, gender, good governance or environmental policies.

III. Preparation of a Request

3. The CRMU's operational proceedings begin when a Request is received. This section of the Rules is primarily designed to give further guidance to potential Requestors on what facts and explanations they should provide.

a. *Who can file a Request?*

4. The CRMU has authority to receive Requests that complain of a violation of the Bank Group's policies and procedures from the following people or entities:

- (a) any group of two or more people in the country or countries where the Bank Group-financed project is located who believe that as a result of the Bank Group's violation, their rights or interests have been, or are likely to be, adversely affected in a direct and material way. They may be an organization, association, society or other grouping of individuals;
- (b) a duly appointed local representative acting on explicit instructions as the agent of adversely affected people,
- (c) in exceptional cases, referred to in paragraph 13 below, a foreign representative acting as agent of adversely affected people, or
- (d) the Boards of Directors of the Bank Group.

b. *Contents of a Request*

5. In accordance with the Enabling Resolution, Requests should contain the following information:

- (a) a description of the project, stating all the relevant facts including the harm suffered by or threatened to the affected parties;
- (b) a description of how the parties have been or are likely to be materially and adversely affected by the Bank Group's act or omission and what rights or interests of the parties were directly affected;
- (c) where possible, an explanation of how Bank Group policies, procedures or contractual documents were seriously violated;
- (d) where possible, a description of how the act or omission on the part of the Bank Group has led or may lead to a violation of the specific provision;
- (e) a description of the steps taken by the affected parties to resolve the problem with Bank Group staff, and explanation of how the Bank Group's response was inadequate unless the Requestor(s) have requested confidential treatment pursuant to paragraph 8 of the IRM Rules;
- (f) in Requests relating to matters previously submitted to the CRMU, a statement specifying what new evidence or changed circumstances justify revisiting the issue; and
- (g) if some of the information cannot be provided, an explanation should be included.

c. Form of Request

Format

6. No specific format is necessary. The requirements of submission of requests will be interpreted with flexibility with the view of allowing affected people and communities to use the means at their disposal to submit complaints.
7. All Requests must be submitted in writing, dated and signed by the Requestors and contain their names, contact addresses and an address to which correspondence shall be sent (if different from the Requestors' address(es)). The Requestors and any other interested persons may, however, request that their identities be kept confidential, and if so, the reasons for such confidentiality.

Confidentiality

8. If the Request contains a confidentiality request under paragraph 7 above, the Director shall determine whether such confidentiality is warranted. All reasonable efforts shall be used to keep confidential the identities of the Requestors and other interested persons. If in the reasonable opinion of the Director, the review process cannot proceed with the requested confidentiality being maintained, the Requestors and other interested persons shall be notified accordingly. The Director shall then agree the terms of proceeding with the Requestors and other interested persons or terminate the process if it is not possible to agree upon such terms.

Language

9. The working languages of the IRM shall be the official languages of the Bank (i.e. English and French). Requests may be submitted directly by affected people themselves in their local language if they are unable to obtain a translation. Where Requests are not in either English or French, the time needed to translate and ensure an accurate and agreed translation may delay acceptance and consideration of the Request.
10. The CRMU will endeavor to respond to Requests in the language of submission, where practicable, but will in any event respond in either of the official languages of the Bank Group with which the Requestors are most comfortable.

Representatives

11. Where the Requestors are affected persons, or entities, representing affected people, Requestors their representative shall attach to the Request written signed proof that they have authority to act on behalf of the affected people.
12. If a non-affected representative submits the Request, he or she must provide evidence of representation authority and the names and contact address of the affected parties must be provided. Proof of representational authority, which shall consist of the original signed copy of the affected parties explicit instructions and authorization, must be attached

13. In addition, in cases of non-local representation, the CRMU will require clear evidence that there is no adequate or appropriate representation in the country or countries where the project is located or has a direct and material impact.

Documents

14. The following documents should be attached:

- (a) all correspondence with Bank Group staff;
- (b) notes of meetings with Bank Group staff;
- (c) a map or diagram, if relevant, showing the location of the affected parties or area affected by the project; and
- (d) any other evidence supporting the Request.

15. If all the information listed cannot be provided an explanation should be included with the Request.

d. Delivery of Request

16. Requests must be sent to the CRMU at the Bank Group's principal office or Temporary Relocation Agency ('TRA') by any suitable means or to any of the Bank Group field offices. In the latter case, the Bank Group's resident representative shall, after issuing a receipt to the Requestors, promptly and without reviewing the content of the request forward it to the Director of CRMU through the next pouch and inform the Director of CRMU by email, fax or telephone about the receipt and forwarding of the Request to CRMU.

e. Advise on Preparation

17. People or entities seeking advice on how to prepare and submit a Request may contact the CRMU, which will provide information or may meet and discuss the requirements with potential Requestors.

f. Effect of Filing a Request

18. Notwithstanding any other provision in these Rules, the filing, assessment, registration or processing of a Request or the carrying out of a compliance review or problem-solving exercise shall not have the effect of suspending processing of, or disbursements in respect of, the relevant Bank Group-financed project. If at any time during the processing of a Request, the Director or the Review Panel is of the opinion that serious, irreparable harm shall be caused by the continued processing or implementation of the Bank Group-financed project, the Director and/or the Review Panel 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 Group and the decision concerning such recommendation shall be made:

- (a) by the relevant Bank Group officer or body vested with the power to make such a decision; and

- (b) only if the Bank Group has the right to suspend or cancel in accordance with the terms of any applicable loan and/or investment and/or other agreement.

IV. Procedures on Receipt of a Request

- 19. When the CRMU receives a Request, the Director, on the basis of the information contained in the Request, shall, within fourteen (14) days of receipt of the Request, conduct a preliminary review to determine if the Request contains a *bona fide* allegation of harm arising from a Bank Group-financed operation and thereafter either register the Request, or ask for additional information or find the Request outside the IRM's mandate.

a. Register

- 20. If a Request contains a *bona fide* allegation of harm arising from a Bank Group-financed operation, and it appears to contain sufficient required information, the Director, with due consideration of the preference of the Requestors, shall make a determination on whether the Request should be: (i) registered for a problem-solving exercise; and/or (ii) considered further for recommendation for a compliance review. Once this determination is made, the Director shall register the Request in the register of Requests (the 'Register'); promptly notify the Requestors, the Boards and the President of the registration, the proposed remedial course of action and the reasons therefore and transmit to the Boards and/or the President as the case may be a copy of the Request with the accompanying documentation, if any.

Contents of Notice

- 21. The notice of registration shall:
 - (a) record that the Request is registered and indicate the date of the registration and dispatch of that notice;
 - (b) the notice will include the name of the project, the country or countries where the project is located, the names of the Requestors unless anonymity is requested, and a brief description of the Request;
 - (c) notify the Requestors that all communications in connection with the Request will be sent to the address stated in the Request, until another address is indicated to the CRMU; and
 - (d) request the Bank's Management to provide the CRMU, within twenty-one (21) days after receipt of the notice and Request, with written evidence that it has complied, or intends to comply with the Bank Group's relevant policies and procedures. The notice shall specify the due date of the response.

b. Request Additional Information

22. If the Director finds the contents of the Request or documentation on representation insufficient, he or she may ask the Requestors to supply further information.
23. Upon receipt of a Request, the Director shall send a written acknowledgment to the Requestors, and will specify what additional information is required.
24. The Director may decline to register a Request until all necessary information and documentation is filed.

c. Outside Scope

25. If the Director finds that the matter is without doubt manifestly outside the IRM's mandate, he or she shall notify the Requestors of his or her refusal to register the Request and of the reasons therefore. This will include, without limitation, Requests that:
 - (a) are clearly outside the IRM's mandate including those listed in paragraph 2 above;
 - (b) do not show the steps taken or effort made to resolve the matter with Management;
 - (c) are from a single individual or from a non-authorized representative of affected parties;
 - (d) are correspondence, including but not limited to letters, memoranda, opinions, submissions or requests on any matter within the IRM's mandate which are not requests for a review; and
 - (e) are manifestly frivolous, absurd or anonymous.

Records

26. The number of such Requests and communications received shall be noted in the Register on a quarterly basis and the yearly total included in an annual report prepared by the CRMU (the 'Annual Report').

d. Need for Review

27. In cases where additional information is required, or where it is not clear whether a Request is manifestly outside the IRM's mandate, the Director shall designate an Expert to review the Request and advise on whether it meets the requirements for registration.

e. Revised Request

28. If the Requestors receive significant new evidence or information at any time after the initial Request was submitted, they may consider whether or not it is serious enough to justify the submission of a revised Request.

29. If a revised Request is submitted the time period for Management's response and the CRMU or the Panel's recommendation, as the case may be, will begin again from the time such revised Request is registered.

f. Extension of Time Periods

30. Any time period referred to in these Rules may be extended by the Director 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 Requestors and all interested persons. In considering whether any extension is required, the Director shall take into account, *inter alia*, the location of the Bank Group-financed project, the need for Bank staff to participate in the process, any time-sensitive issues relating to the Bank Group-financed project, the availability of Experts and the need for translation of communications.

V. Management's Response

31. Within twenty-one (21) days after being notified of a Request, Management shall provide the CRMU with evidence that it has, or intends to comply with the Bank Group's relevant policies and procedures. After the CRMU receives Management's response, it shall promptly enter the date of receipt in the Register. A copy of the Management Response shall be sent to the Requestors for information.
32. If there is no response from Management within twenty-one (21) days, the CRMU shall notify the Boards and the President accordingly and send a copy to the Requestors.

Clarification

33. In order to undertake a problem-solving exercise and/or make an informed recommendation, the CRMU or the Panel, as the case may be, may request clarification from Management; in the light of Management's response, request more information from the Requestors; and provide relevant portions of Management's response for comment. A time limit for receipt of the information requested shall be specified; and
- (a) whether or not such clarification or information is received within the time limit, undertake and conclude the problem-solving exercise and/or make its recommendation to the Boards or the President as hereinafter provided or otherwise terminate the process within twenty-one (21) days of receipt, or at the expiry of the time limit for the receipt, of Management's clarification; or
 - (b) in the event it is not possible for the Requestors to provide the information quickly, the CRMU, or the Panel, as appropriate may advise the Requestors to submit an amended Request; the Boards and Management will be notified that the process will recommence when the amended Request is received.

VI. Problem-Solving

a. Problem-Solving Exercise

34. In considering whether a problem-solving exercise should be undertaken, the Director shall take into consideration:
- (a) whether the problem-solving exercise is appropriate and may assist in addressing undue, incidental effects resulting from Bank Group-financed project conditionalities agreed in the context of the project concerned;
 - (b) whether the problem-solving exercise is likely to have a positive result;
 - (c) whether the Requestors and any interested persons are amenable to such problem-solving exercise;
 - (d) whether the Bank Group has or continues to have sufficient leverage to influence change;
 - (e) whether the conduct of a problem-solving exercise may interfere with the conduct of a compliance review, if any;
 - (f) whether the problem-solving exercise 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 Request; and
 - (g) any other relevant matters.
35. If, as provided in paragraph 34 above, the Director determines that a Request may be handled through a problem-solving exercise, he or she shall invite all the relevant parties, namely the Requestors, Management representatives and other interested persons to participate in the exercise.
36. The objective of a problem-solving exercise is to restore an effective dialogue between the Requestors and any interested persons with a view to resolving the issue or issues underlying a Request, without seeking to attribute blame or fault to any such party. A problem-solving exercise may be conducted only if the Request has been registered in accordance with paragraph 20, but regardless of whether a compliance review is or will be conducted.
37. In undertaking the problem-solving exercise, the Director may use a variety of problem-solving techniques, including independent fact-finding, mediation, conciliation and dialogue facilitation including use of best customary practices.

b. Problem-Solving Report

38. The Director shall prepare a separate problem-solving exercise report ('Problem-Solving Report') within thirty (30) days of the conclusion of the problem-solving exercise and shall include:
- (a) the facts underlying the Request;
 - (b) the considerations on which the conclusions and recommendations, if any, are based; and
 - (c) any relevant comments from the Requestors and any interested persons.

Notwithstanding the above, the Director can decide to provide interim reports to the Boards and the President on the progress of a problem-solving exercise for information.

Successful Problem-solving Exercise

39. If the problem-solving exercise is successful, the Director will include in the Problem-Solving Report the solution agreed upon by the Requestors, Management and any interested person. The Problem-Solving Report shall be provided to all parties in the problem-solving exercise and to the Boards and the President.
40. The CRMU will monitor the implementation of the solution agreed upon in a problem-solving exercise. Where the project forming the subject matter of the Request has not yet been presented to the Boards for their approval, the Director shall submit the monitoring report to the President and, as and when the project is submitted for Board approval, to the Boards. Any report to the President shall be immediately copied to the Boards.

Unsuccessful Problem-Solving Exercise

41. If the problem-solving efforts are not successful, either within a period of three (3) months from the commencement of the problem-solving exercise or by common consent of the parties, the Director will declare the problem-solving exercise unsuccessful and submit in the Problem-Solving Report a description of the efforts made, the reasons for their failure and make recommendations on steps the Bank Group could take to deal with the unresolved issue. The Problem-Solving Report should be submitted to the parties in the problem-solving exercise, the Boards and the President.
42. The President, in cases where the project that is the subject matter of the Request has not yet been submitted for Board approval, and the Boards, in cases of projects that they have already approved, will decide whether to accept or reject the Director's recommendations for remedial action. If the President or Boards decide to reject the recommendation, they will inform all participants in writing of their reasons for doing so. A summary of the decision and the Problem-Solving Report shall, subject to the Bank Group's Disclosure

of Information Policy and any requests for confidentiality, be published on the Bank Group's website.

c. Conversion of a Problem-Solving Exercise to Compliance Review

43. Where at the conclusion of a problem-solving exercise, whether or not successful, the Director determines, as provided in paragraph 44 below, that a compliance review is warranted, the Director may include in the Problem-Solving Report a recommendation that the project undergo a compliance review. Such a recommendation will be submitted to the President or Boards, as the case may be, for ratification in accordance with paragraph 46.

VII. Compliance Review

a. Recommendation for a Compliance Review

44. If, as provided in paragraphs 20, 33 or 43 above, the Director and the IRM Experts determine that there is prima facie evidence the Requestors have been harmed or threatened with harm by a Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures, they shall within thirty (30) days of such determination submit a report recommending a compliance review of the project in issue to the (a) President, with a copy to the Boards, if the Request relates to a Bank Group-financed operation that has not been approved by the Boards, or (b) Boards if the Request relates to a Bank Group-financed operation that has been approved by the Boards.
45. The compliance review recommendation shall include draft Terms of Reference which shall set out the scope and time frame for the compliance review and shall provide an estimate of the budget and a description of additional resources required to complete the review. IRM Experts shall constitute the Review Panels to conduct compliance reviews with administrative and technical support from CRMU.
46. In considering the recommendation for a compliance review, the Boards or the President, as the case may be, may:
- (a) approve the recommendation(s) on a 'non-objection' basis; or
 - (b) remit the Request to the Director and the IRM Experts to reassess the recommendation regarding the draft Terms of Reference for the compliance review, with a new recommendation, if any, being submitted to the President or the Boards as the case may be.
47. Any decision made by the President pursuant to paragraph 46 in respect of an operation that has not been approved by the Boards shall be immediately copied to the Boards. Subject to the provisions of the Bank Group's Disclosure of Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the recommendation for a compliance review

and the decision made by the President or the Boards, as the case may be, pursuant to paragraph 46 shall be promptly communicated to the Requestors and any other interested person, and a summary of the decision and the recommendation for a compliance review shall be published on the Bank Group's website.

b. Denial by Director of a Compliance Review

48. Where, following the receipt and registration of a Request in which the Requestors have sought a compliance review and such Request has been processed through a problem-solving exercise, and the Director determines that the Request is not eligible for a compliance review, the Request shall be referred to the IRM Experts who shall determine the eligibility or otherwise of the Request for compliance review within twenty-one (21) days of the Director's determination.
49. If the IRM Experts determine that the Request is not eligible for a compliance review, they shall inform the Boards or the President (where the project in issue has not been approved by the Boards) of the ineligibility. If the IRM Experts determine that the Request is eligible for a compliance review, they shall recommend to the Boards or to the President, as the case may be, that a compliance review be authorized. Such compliance review recommendation shall include the details prescribed in paragraph 45 above.

c. Conduct of a Compliance Review

50. The Panel shall conduct the compliance review in accordance with the relevant approved Terms of Reference and within the required time frame. The Panel 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 Requestors and any interested party;
 - (b) undertake site visits to the project(s) in issue;
 - (c) retain additional expertise in accordance with paragraph 74; 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 Panel shall take into account the budget implications and administrative requirements of such steps.

d. Panel Deliberations

51. The members of the Review Panel shall each have one (1) vote and decisions of the Panel shall be taken by simple majority.

e. Compliance Review Report

Contents

52. Within thirty (30) days of the completion of its investigations, the Panel shall report its findings and recommendations in a report ('Compliance Review Report'), which shall:
- (a) include a summary discussion of the relevant facts, the respective positions of any interested party in relation to the subject matter of the Request and the steps taken to conduct the compliance review;
 - (b) set out the findings of the Panel which, unless otherwise provided in the Terms of Reference, shall be limited to determining whether or not any action by the Bank Group, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies in accordance with paragraph 1;
 - (c) if the Panel concludes that any Bank Group action, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies in accordance with paragraph 1, recommend:
 - i. any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;
 - ii. any remedial changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements already committed to by the respective Bank Group institution 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 Director and an Expert so appointed unless the Boards or the President, as the case may be, decide otherwise); and
 - (d) have attached thereto a copy of the original Request, the Management response and a list of supporting documents relied upon in the compliance review.

No Award of Compensation

53. The Compliance Review Report may not recommend the award of compensation or any other benefits to the Requestors or any other person, entity or government beyond that which may be expressly contemplated in a relevant Bank Group policy.

Impartiality

54. Recommendations and findings of a Compliance Review Report shall be based only on the facts relevant to the Request under consideration and shall be strictly impartial.

Submission

55. The Panel shall submit the Compliance Review Report for consideration and decision to:
- (a) the President, with a copy to the Boards for information, if the relevant Bank Group-financed project has not been approved by the Boards at the time the Compliance Review Report is ready for submission, or
 - (b) the Boards, if the Boards have approved the relevant Bank Group-financed project at the time the Compliance Review Report is ready for submission.

Communication of the Compliance Review Report

56. Subject to the provisions of the Bank Group's Disclosure of 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 Requestors and any other interested persons at the same time as it is submitted for consideration and decision in accordance with paragraph 55.

Management Response and Action Plan

57. After the President and the Boards receive the Compliance Review Report, the Bank's Management shall be required to:
- (a) prepare a Response and an Action Plan based on the findings of the Compliance Review Report. This Response and Action Plan shall be submitted to the President, the Boards of Directors, CRMU and the Requestors within 90 days. In case of co-financed projects, the Compliance Review Panel can grant the Management an adjustment to this timeframe on a case by case basis, and
 - (b) consult with CRMU to agree on a date for a joint presentation of the Compliance Review Report and the Management Response and Action Plan to the Boards of Directors at a meeting within a time period not normally exceeding 30 days from the date on which the Action Plan is distributed to the Boards.

Contents of Decision

58. The Boards 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 in respect of a Bank Group-financed project that has not been approved by the Boards shall be immediately copied to the Boards.

Publicity of Compliance Review decision

59. Subject to the provisions of the Bank Group's Disclosure of Information Policy (in particular those relating to the disclosure of confidential information and/or

documents), the decision made by the Boards or the President, as the case may be, pursuant to paragraph 58 shall be promptly communicated to the Requestors and any interested party. Subject to the same provisions, such decision and the Compliance Review Report shall be published on the Bank Group's website.

Monitoring of changes

60. The persons in charge of monitoring the implementation of the changes referred to in sub-paragraph 52(c), shall report on such implementation to the Boards or the President, 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 Boards.

VIII. Administration of the CRMU

a. Term of Director

61. The Director shall be appointed by the President with the concurrence of the Boards, for a five (5) year term that may be renewed only once for a successive five (5) year period. The Director shall not have worked for the Bank Group in any capacity whatsoever for the period of at least five (5) years prior to his or her appointment and shall not be entitled to work for the Bank Group in any capacity whatsoever for a period of three (3) years following each 5 year period served as Director following the expiry of his or her appointment. The Director may only be removed from his/her position through the same process as was followed for his/her appointment,

b. Responsibilities of the Director

62. The Director 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 for the Roster as required upon resignation or expiration of an Expert's term of appointment in accordance with the Bank Group's procurement rules applicable to the selection of consultants and preparing the President's recommendation and reports to the Boards concerning the appointment and removal of Experts;
 - (b) establishing such administrative procedures and guidelines necessary for the proper functioning of the CRMU and the Roster;
 - (c) overseeing the establishment and maintenance of the Register open to the public on the Bank Group's website, which shall contain significant data concerning the delivery and registration of Requests, as well as the conduct and outcome of problem-solving exercises and compliance reviews;
 - (d) maintaining a documentary record for each Request, as well as a library of all materials relevant to the functioning of the IRM;

- (e) sending out notices of registered Requests to all interested persons; noting the progress of each Request on the Register and, if required by the circumstances, providing additional updates on such progress to the Requestors and other interested persons; responding to requests for information from Requestors and other interested persons in respect of a particular Request;
 - (f) dealing with any requests for information about the IRM; publicizing and being the spokesperson of the IRM;
 - (g) insuring that all timeframes are met and approving any extensions in accordance with paragraph 30; liaising with other CRMU officers and the Experts, and ensuring that such CRMU officers and Experts fulfill their responsibilities generally and in accordance with any applicable Terms of Reference;
 - (h) without prejudice to the powers of the Boards and the President under these Rules, taking any steps required to ensure the integrity of CRMU processes, including the replacement of any Expert whose impartiality or independence in any compliance review is in doubt;
 - (i) arranging for any translations of Requests, reports or other documents that may be required;
 - (j) providing administrative and technical support to other CRMU officers and the Experts, including without limitation, making and supervising arrangements for meetings, site visits and IRM proceedings in the Bank Group's principal office or elsewhere;
 - (k) administering the budgetary allocations for the CRMU;
 - (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 compliance reviews and problem-solving exercises;
 - (m) undertaking any other tasks that may be necessary or incidental to the administration of the CRMU and/or the Roster.
- c. *Delegation by Director***
63. In his or her absence, the Director may delegate his or her authority to members of staff in his or her office in accordance with the Bank Group's Delegation of Authority Manual as may be amended from time to time.

d. Appointment of Experts to Roster

Roster

64. (a) The Roster shall comprise three (3) individuals selected in accordance with the Bank's procurement rules applicable to the selection of consultants and appointed by the Boards on the recommendation of the President. The Experts shall be paid a daily honorarium (fee) when called upon to work for the IRM and be guaranteed a minimum of 12 days of work per annum. The honorarium (fee) shall be equivalent to the remuneration paid by other multilateral development banks for similar officials as adjusted by the Boards from time to time and be applicable to contracts with Experts appointed to the Roster after the adoption of these revised IRM Rules. The Experts shall be reimbursed their travel and other expenses on the basis as provided in the Bank's Travel policy for senior management staff.
- (b) On the President's recommendation, after consultation with the IRM Experts, the Boards of Directors shall appoint one of the members of the Roster of Experts as the Chairperson of the Roster each time a new member of the Roster is appointed.

Selection Criteria

65. The Experts shall be nationals of members of the Bank or State participants in the Fund and shall be selected on the basis of their knowledge of Africa, their experience, expertise, integrity and ability to act independently. In making these appointments, the Boards and the President shall pay due regard to maintaining a reasonable degree of diversity of expertise, experience, nationality and gender.

Term of Experts

66. Except for the first three (3) Experts, who shall be appointed by lot for non-renewable terms of three (3), four (4) and five (5) years respectively, Experts shall be appointed to the Roster for a non-renewable term of five (5) years. 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 73.

Restriction on Bank Group employment

67. An Expert shall not have worked for the Bank Group (either as a staff member, Bank official, Executive Director, Alternate Director, Executive Director's Assistant or 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 Group (either as a staff member, Bank official, Executive Director, Alternate Director, Executive Director's Advisor or Assistant or consultant) for a period of two years after the expiry of his or her term.

Capacity of Experts

68. 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 officials of the Bank Group. Experts shall be required to act impartially and independently and shall not participate in a compliance review of any Request related to a matter in which they have or had a personal interest or significant involvement in any capacity. Experts shall not interfere in the political affairs of members of the Bank nor shall they be influenced in their deliberations or decisions by the political character of the member(s) concerned. Experts shall immediately disclose to the Director:

- (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.

No communications by Experts

69. Except as authorized by the Boards or the President, as the case may be, Experts shall refrain from making any statement, whether private or public, to parties other than the Requestors and any interested person 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.

Training of Experts in Bank Group matters

70. Experts shall be required to attend meetings organized by the Director for at least five days in each calendar year to enhance their knowledge of the Bank Group's policies, procedures and operations and to discuss the functioning of the IRM. The Director shall notify the Experts of any such meetings and shall set the agenda.

Access to documentary records

71. The Experts shall have full access to such documentary records maintained pursuant to sub-paragraph 61(d). Whenever an Expert obtains additional materials in the course of a compliance review, the Expert shall immediately provide a copy of such material for safekeeping in the documentary record.

Replacement of Experts

72. If a Panel Member conducting a compliance review resigns or is unable to complete such assignment, the Director shall make a recommendation to the Boards through the President on a proposed course of action to ensure the prompt completion of the compliance review.

Removal of Experts

73. The Boards may remove Experts from the Roster at any time for cause.

IX. Conduct of IRM Proceedings

a. Proceedings generally

74. All IRM inquiries, assessments, reviews and exercises shall be carried out as expeditiously as possible without compromising the integrity or comprehensiveness of such process. The Director and Panels shall take due account of the need to include any Bank staff, Requestors and any other interested persons who may have relevant information. The Director and Panels shall take care to minimize the disruption to the daily operations of all involved parties.

b. Additional expertise

75. The Director and/or a Panel shall be entitled to seek additional expertise to assist with an inquiry, assessment, review or exercise, if this is necessary for the successful performance of their duties and responsibilities. They shall first determine whether the relevant expertise is available from within the Bank Group 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 Bank Group's 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 Director; and
- (c) be subject to the availability of the necessary budgetary resources.

c. Access to staff and information, and confidentiality

76. When conducting any inquiry, assessment or review for a problem-solving exercise or a compliance review, the Director or a Panel shall have full access to relevant Bank Group 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 Director or a Panel during any such process shall be subject to the Bank Group's Disclosure of Information Policy, any requests by an interested person for confidentiality and any other applicable requirements to keep sensitive commercial information confidential (such as a confidentiality agreement). No CRMU officer, Expert, staff member, consultant, researcher, interpreter, translator and other technical expert employed by the CRMU 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.

d. *Legal matters*

77. The General Counsel shall, upon request, provide all legal information and advice needed in respect of the Bank Group's policies and procedures and the Bank Group's rights and obligations in respect of the Bank Group-financed project to which a Request relates.

X. *General Provisions*

a. *Annual report*

78. The Director shall prepare the Annual Report describing the activities of the IRM during the preceding year, including a discussion of any identifiable trends relating to the activities of the Bank Group that have emerged from the IRM's problem-solving exercises and compliance reviews and of the lessons that the IRM has learnt about the impacts and challenges in implementing the Bank Group's operating policies and procedures.
79. The Annual Report shall be prepared in consultation with all the Experts on the Roster and shall be submitted to the Boards and the Boards of Governors for information, and shall be published on the Bank Group's website.

b. *Budget*

80. The Bank Group shall provide such budgetary resources as shall be sufficient to allow all of the activities permitted by these Rules to be carried out. The Director shall prepare an annual budget indicating the level of resources required to carry out its mandate.

c. *Business Days*

81. Any reference to 'days' in these procedures shall be deemed to be a day on which the Bank Group is open for business in its principal office.

d. *Immunities and Privileges*

82. Nothing contained in these Rules shall be deemed to be a waiver by the Bank or the Fund of the immunities and privileges conferred by the Agreement establishing the African Development Bank, the Agreement establishing the African Development Fund, the Agreement establishing the Nigeria Trust Fund and the agreements establishing any other Special Funds administered by the Bank.

e. *Amendment and effect of the Rules*

83. The Boards may amend these Rules. These Rules shall prevail in the event of any inconsistency between these Rules and any other Bank Group document and in the absence of an express provision to the contrary.