AFRICAN DEVELOPMENT BANK GROUP

THE INDEPENDENT REVIEW MECHANISM

GUIDELINES, SPOT CHECK ADVISORY REVIEW OF PROJECT COMPLIANCE

Guidelines

October, 2015
1. BACKGROUND AND CONTEXT

1.1. On 30th June, 2004, The Boards of Director adopted Resolution B/BD/2004/9 – F/BD/2004/7 instituting the Independent Review Mechanism (IRM). This Resolution defined the IRM functions, which are compliance review and problem solving, and introduced the composition of the IRM consisting of a Compliance Review and Mediation Unit ("CRMU") and a Roster of Experts (the "IRM Experts"). The IRM mandate is to handle requests from persons who are adversely affected by any project financed by an entity of the African Development Bank Group (Bank Group). Such requests shall be presented to the CRMU by two or more persons (such as, community of persons, an organization, association, society or other grouping of individuals) ("Requestors") or by a qualified representative of the affected persons who demonstrate that their rights or interests have been or are likely to be directly affected by the failure of the relevant Bank Group entity to comply with any of its operational policies and procedures in respect of the design, appraisal and/or implementation of complained about project.

1.2. The Boards of Directors subsequently approved the IRM operational Rules and Procedures in June 2006. In line with the provisions of Resolution B/BD/2004/9 – F/BD/2004/7, the performance of the IRM has been reviewed by the Boards twice, in 2010 and in 2014. The reviews are generally undertaken to take stock of the best experiences gained from the mechanism, draw on the experiences of similar Independent Accountability Mechanisms (IAMs) of other Multilateral Development Banks and examine how to improve the scope and functions of the accountability mechanism. These mandatory reviews led to amendments of the IRM enabling Resolution and its Operating Rules and Procedures in 2010 (Resolution B/BD/2010/10 – F/BD/2010/04) and recently in 2015 (Resolution B/BD/2015/03 – F/BD/2015/02).

1.3. While Resolution B/BD/2004/9 – F/BD/2004/7 of 2004 and Resolution B/BD/2010/10 – F/BD/2010/04 of 2010 mandated the IRM to perform compliance review and problem-solving functions, Resolution B/BD/2015/03 – F/BD/2015/02 has expanded this core mandate to include an advisory role to the Bank Group’s on compliance review and problem solving matters.

1.4. The compliance review function is undertaken by the IRM Experts. It focuses on issues of non-compliance of any financed operation with the Bank Group operational policies and procedures. The problem-solving function is undertaken by CRMU. The function is exercised whereby the parties (i.e., the Bank, the complainants and project promoters) are amenable to reach a settlement agreement, and used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in resolving the underlying issues.

1.5. The advisory function was considered by the Boards of Directors of the Bank Group a welcome development in view of the opportunity it offers CRMU/IRM to enhance learning and promote the culture of compliance in the Bank. The objective of enhancing accountability is a key feature of the Bank’s 10 Year Strategy (2013-2022). In adopting the 2015 Resolution, the Boards stressed the need to clarify the scope of the advisory function, and to clearly outline the procedures, especially for the new spot check advisory reviews of project compliance to avoid any conflict of interest by the IRM Experts.
1.6. These IRM Guidelines have been developed to set out the operational procedures for the advisory function, which includes the modalities for conducting spot check advisory reviews of project compliance and the scope of the advisory service.

2. THE ADVISORY FUNCTION

2.1. Scope of the Advisory Function

2.1.1. The advisory function complements the compliance review and problem-solving roles of the CRMU/IRM. The function is undertaken through advisory services to the Bank carried out by CRMU, and the spot-check advisory reviews of project compliance under the responsibility of the IRM Experts.

2.1.2. The advisory function is authorized when the President and/or the Boards are of the opinion that projects, programs, policies and procedures of the Bank Group can benefit from the accumulated experience of the IRM and support efforts of staff and Management to strengthen the social and environmental outcomes of high risk projects funded by the Bank Group. The advisory function will be carried out to provide independent opinions on systemic issues, and technical advice on projects and programs of the Bank Group.

2.1.3. The main steps of the advisory function are to gather information from selected high risk projects, draw lessons from the experience of the IRM/CRMU for the purpose of advising Management on compliance issues associated with these projects (spot check) and those related to projects handled through problem-solving (advisory service). The role will allow CRMU to provide Management with technical information on the performance of these projects, thereby enhancing services to the client countries and extending project benefits to people or other beneficiary stakeholders without compromising the independence of the IRM and CRMU.

2.1.4. The specific objectives of the advisory function will depend on the nature of the request, but will typically include:

(a) Bringing about systemic improvements in implementation of environmental and social policies, procedures, strategies and/or guidelines of the Bank Group by addressing deficiencies in systems, policies, procedures, strategies or guidelines;

(b) Improving the social and environmental impact of projects funded by the Bank-Group by advising the Bank Management on emerging, strategic, or systemic issues or processes based on lessons learnt and trends identified by CRMU;

(c) Helping the Bank Group to advise the borrowers on environmental and/or social obligations contained in the Bank Group policies and procedures related to the implementation of Bank financed projects and to safeguard development impacts; and
(d) Providing information and recommendations on emerging trends arising from the experience of the CRMU.

2.2. *Initiation of the Advisory function*

2.2.1. The Advisory function will be triggered:

(a) Upon receipt by CRMU of a request for advice or technical opinion from the President and/or the Boards of Directors; or

(b) Upon approval by the President and/or the Boards of Directors of a proposal submitted by the Director of CRMU for such advisory service.

2.3. *Principles of the Advisory Function*

2.3.1. The advisory function should:

(a) Fall within the mandate of the CRMU/IRM as defined in the Operating Rules and Procedures of the Independent Review Mechanism (IRM);

(b) Focus on issuing independent opinions on systemic issues and technical advice on projects and programs of the Bank Group;

(c) Serve only the institutional learning process of the Bank Group; and

(d) Help the Bank benefit from experiences gained in the compliance review and problem solving exercises, without compromising the independence of CRMU / IRM.

3. **SPOT-CHECK ADVISORY REVIEWS OF PROJECT COMPLIANCE**

3.1. The exercise is a compliance review/investigation. It is conducted to establish whether or not there has been an infringement of any Bank Group operational policies and procedures in respect of the design, appraisal and/or implementation of a project. Compared with a compliance review triggered by an external complaint, the spot check investigation is initiated internally within the Bank.

3.1. *Selection of the project to be subject of the spot check advisory reviews of project compliance*
3.1.1. The spot check advisory reviews of project compliance will be undertaken through a two-step procedure.

(a) **Step 1:** At the beginning of each calendar year, CRMU will, in consultation with Management, select not more than two (2) projects on which the IRM Experts will conduct spot-checks to assess the Bank Group’s compliance with its policies and procedures. The project shall be listed in the CRMU work program. If in the opinion of the Director of CRMU, after consultation with the Chairperson of the Roster of IRM Experts it is not feasible to undertake the advisory review because of the workload imposed on the IRM Experts by ongoing compliance review/investigations, the Director may propose to the Boards to forego the Spot check advisory reviews of project compliance for that particular year. He will inform the Boards and the President and provide the justification for such a decision.

(b) **Step 2:** Once the projects have been selected and agreed upon with Management, the Director CRMU shall submit the list of the selected projects to the Boards for approval. Such recommendation shall include the Terms of Reference of the spot-check advisory reviews of project compliance, the duration for each spot check review which shall not exceed six months, and the estimated budget for the review.

3.2. **Selection criteria**

3.2.1. The following criteria will guide the selection of the projects subject to spot check advisory review of project compliance:

(a) Category 1 (i.e., high-risk, environmentally and socially) and on-going projects;

(b) Preferably, project close to the completion stage; and

(c) Project not already subject to a compliance review investigation.

3.3. **Modalities of the spot-check advisory reviews of project compliance**

3.3.1. **Responsibility for conducting a Spot-check advisory reviews of project compliance**

(a) Each year, one of the IRM Experts shall be responsible for the Spot-check advisory reviews of project compliance. This role will rotate yearly among the IRM Experts. The Director of CRMU and the Chairperson of the IRM Roster of Experts will select the Expert for the task. The choice will be made in consultation with the other IRM Experts. A system of annual rotation among the IRM Experts will be instituted.

(b) The other IRM Experts will provide technical assistance to support the work of the IRM Expert selected.
3.3.2. **Conduct of Spot check advisory reviews of project compliance**

3.3.2.1. The IRM Expert shall conduct the spot check advisory review of project compliance in accordance with the relevant Terms of Reference approved by the Boards of Directors, the provisions of the Operating Rules and Procedures of the IRM and within the required time frame. The IRM Expert shall take any appropriate steps required to conduct the spot check advisory review of project compliance, and in particular shall:

(a) Solicit additional information from Management;

(b) Undertake field visits to the site of the selected project;

(b) Take any other action as may be required to complete the spot check advisory review of project compliance. Prior to taking such steps, the IRM Expert shall take into account the budget implications and administrative requirements of such steps.

3.3.3. **Time frame**

3.3.3.1. The timeframe from the beginning to the conclusion of a spot-check advisory review of project compliance activity concerning a particular project shall not exceed six (6) months.

3.3.4. **Spot-check advisory review of project compliance report**

3.3.4.1. Within thirty (30) business days of the completion of his/her investigation, the IRM Expert shall:

(a) Prepare a draft spot check advisory compliance review report containing findings and recommendations. The Report shall be submitted to the Bank Management for comments and validation of factual issues. The Bank Management shall submit its comments to CRMU/IRM within twenty-one (21) business days from the date of receipt of the draft report of the spot check advisory review of project compliance from CRMU; and

(b) Upon receipt of comments from Bank Management, the Expert shall finalize the report (“Spot Check Advisory Review of Project Compliance Report”), which shall:

(i) Include a summary discussion of the relevant facts;

(ii) Set out the findings which 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 and procedures;
(iii) If the Expert 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, he or she shall recommend:

- Any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;
- Any remedial changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements already committed by the Bank or any other relevant party in existing project-related agreements; or
- Any remedial action to be taken by Management.

3.3.5. Submission of the Spot check advisory reviews of project compliance Report

3.3.5.1. The Director of CRMU shall submit the spot check advisory review of project compliance 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 spot check advisory review of project compliance report is ready for submission, or

(b) The Boards, if the Boards have approved the relevant Bank Group-financed project at the time the Spot Check Advisory Review of Project Compliance Report is ready for submission.

3.3.6. Contents of the Decision

3.3.6.1. The Boards or the President, as the case may be, shall decide whether or not to accept the recommendations contained in the spot check advisory review of project compliance 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.

3.3.7. Publicity of the Decision

3.3.7.1. The decision made by the Boards or the President, as the case may be, shall be promptly communicated to the public. Such decision and the spot check advisory review of project compliance report shall be published on the Bank Group’s website.

4. ADVISORY SERVICE

4.1. CRMU shall provide advice or technical opinion in the form of Advisory Note on compliance review issues related to Bank policies and procedures and also on lessons emerging
from handling problem solving cases. The advice or technical opinion will not be project-specific.

4.2. An advisory note shall be developed as a result of studies, problem solving activities and/or analysis of Bank policies and procedures. They shall target one or just a few specific issues or themes arising from problem solving exercises and/or compliance review.

4.1. Modalities of the Advisory Service

4.1.1. Who conduct the advisory activity?

4.1.1.1. The Director CRMU is responsible for providing the advisory service. The IRM Experts and CRMU staff shall provide technical support to the Director CRMU regarding advisory service on matters of compliance review and problem solving, respectively.

4.1.2. Advisory Note

4.1.2. The Director of CRMU shall:

(a) Prepare a draft Advisory note containing the advice or technical opinion and submit to the Bank Management for review and comments. The Bank Management shall submit its comments to the Director CRMU within twenty-one (21) business days from the date of receipt of the draft report from CRMU; and

(b) Upon receipt of comments from Bank Management, the Director CRMU shall finalize the Advisory Note, which shall:

   (i) Include a summary discussion of the relevant facts; and

   (ii) The advice or technical opinion of CRMU.

4.1.3. Submission

4.1.3.1. The Director shall submit the Advisory Note to the President and/or the Boards for consideration and decision. The note to the President with a copy to the Boards for information is done if the relevant Bank Group-financed project has not been approved by the Boards at the time the Advisory Note is ready for submission. The note to the Boards is in the case when the Boards have approved the relevant Bank Group-financed project at the time the Advisory Note is ready for submission.

4.1.4. Contents of Decision
4.1.4.1. The Boards or the President, as the case may be, shall decide whether or not to accept the advice or technical opinion in the Advisory Note. 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.

4.1.5. **Publicity of Advisory Note**

4.1.5.1. The decision made by the Boards or the President, as the case may be shall be promptly communicated to the public. Such decision and the Advisory Note shall be published on the Bank Group’s website.