



THE IDB INDEPENDENT INVESTIGATION MECHANISM

The rules and procedures relating to the establishment and functioning of the Independent Investigation Mechanism are stated below.

1. APPLICABILITY

1.1 The Independent Investigation Mechanism may apply in cases of complaints that the Bank has failed in the design, analysis or implementation of proposed or ongoing operations to follow its own established operational policies, or norms formally adopted for the execution of those policies (including enforcement of compliance with borrower's obligations required by such policies and/or norms), when material adverse effects have or might reasonably be expected to occur as a result of such failure by the Bank.

1.2 For the purposes of this Mechanism, the term "Bank-supported operations" is used to cover the whole range of Bank operational activities, i.e., loan, technical cooperation and guarantee operations.

1.3 For the purposes of this Mechanism, "operational policies or norms" consist of those which apply to the design, appraisal and/or implementation of Bank operations, funded in whole or in part by loans or grants from Bank funds or funds administered by the Bank.

1.4 For the purposes of this Mechanism, the term "borrower/recipient" is used to cover the recipients of funding of any kind of Bank operations.

1.5 The following shall not be covered by the provisions of this Mechanism:

(a) Requests with respect to actions which are the responsibility of other parties, such as a borrower/recipient, or potential borrower/recipient, and which do not involve any action or omission on the part of the Bank;

(b) Requests concerning procurement matters, which will continue to be addressed under existing procedures;

(c) Any action which does not consist of Bank-supported operations, as herein defined;

(d) In the case of loan operations, requests filed after the loan financing the project has been fully disbursed (for the purpose of this Mechanism, when ninety-five percent of the loan proceeds have been disbursed).

(e) Requests related to a particular matter or matters over which a recommendation has already been made under the provisions of this Mechanism, unless substantial new evidence or circumstances not known at the time of the prior request are introduced.

2. ROSTER OF INVESTIGATORS

2.1 A permanent Roster of Investigators (hereinafter called the Roster) will be maintained to exercise the Independent Investigation Mechanism.

2.2 The Roster shall consist of fifteen individuals of no fewer than ten different nationalities from Bank member countries, representing a broad range of technical expertise and skills. The Roster shall be composed of individuals of integrity and recognized competence in areas related to socio-economic development, who are familiar with Latin America and the Caribbean, and who have indicated a willingness to serve on investigative panels or to advise the Bank on other matters related to the Mechanism.

2.3 After consultation with the Executive Directors, the President of the Bank shall nominate individuals to the Roster, to be confirmed by appointment by the Board of Executive Directors.

2.4 Former staff members of the Bank may not be appointed to the Roster unless a minimum of two years have elapsed following the termination of their services in the Bank. For purposes of this provision, the term "staff members of the Bank" shall mean any individual employed directly by the Bank in any capacity, whether as a consultant or employee, full or part time, on a limited term or permanent basis, and any Executive Director, Alternate Executive Director, or member of their staff.

2.5 Appointment to the Roster will be for a five-year, non-renewable term. No right to compensation shall arise solely on the basis of appointment to the Roster.

2.6 Individuals appointed to the Roster may be removed therefrom by a decision of the Board of Executive Directors before the end of the term of appointment for cause, or may resign by written notice to the Board of Executive Directors. In the event an individual is removed or resigns from the Roster, a replacement may be appointed by the Board of Executive Directors to complete that term of appointment. Individuals so appointed may not be extended for a second, full term.

2.7 A member of the Roster shall not participate in the review of any request related to a matter in which he/she has a personal interest or had significant personal involvement in any capacity, which might be related to a country of which he/she is a citizen, or in which a conflict of interest might otherwise appear to exist. A member of the Roster who is contracted to recommend to the Board whether an investigation should be authorized may not thereafter serve on a panel investigating the matter which was the subject of the recommendation.

2.8 A member of the Roster may not be employed by the Bank for a period of two years following the termination of his or her appointment to the Roster.

3. AFFECTED PARTIES

3.1 The Bank shall receive requests for investigation presented to it by an affected party in the territory of a borrower/recipient.

3.2 For the purposes of this Resolution, an "affected party" shall be a community of persons such as an organization, association, society or other grouping of individuals. The affected party must offer reasonable evidence that its rights or interests have been or are likely to be directly and materially affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies or norms.

3.3 A request for investigation may be filed by a representative of an affected party. A request filed by a local representative (or, by another representative in exceptional cases when no appropriate local representative is available and the Executive Directors so agree at the time they consider the request for investigation) of an affected party shall include written evidence that the representative is an authorized agent of the affected party.

4. INVESTIGATION

4.1 A request for investigation must be presented in writing. The complaint must state all relevant facts, and annex any evidence in the possession of the complaining party of the validity of its allegations, or indicate where such evidence may be obtained. The complaint must indicate the steps already taken to bring the allegations to the attention of the Bank's Management, and the response of Management to these allegations.

4.2 Any such request from outside the Bank shall indicate that the Bank has failed to follow or enforce its own operations policies

or formally-adopted norms, when designing, analyzing or implementing a loan, technical cooperation or guarantee operation. The request shall also specify how by such alleged failure by the Bank, the complaining party has or might reasonably be expected to suffer material adverse effects.

4.3 The request for investigation will be forwarded to the Coordinator, who shall proceed as follows:

a. The Coordinator, in consultation with the Legal Department, will determine whether the request is in compliance with requirements for applicability of the Mechanism. If the request is not in compliance with the requirements for application of the Mechanism, including procedural requirements for presenting a request, the Coordinator will send a reply to the requesting party indicating the specific reason that the request is not in compliance. A copy of the reply to the requesting party will be provided, through the Secretary of the Bank, to the Board of Executive Directors along with a copy of the request.

b. In the event that the Coordinator, in consultation with the Legal Department, concludes that the request meets the requirements for application of the Mechanism policy, the Coordinator will ask the President to appoint an individual from the Roster as a consultant to review the request. If the consulting member of the Roster concludes that the request is frivolous or non-substantive, a copy of the request will be provided to the Board of Executive Directors, but Management will not be asked to prepare a response. With the concurrence of the Board that the claim does not require a Management response and that an investigation is not warranted, the party submitting the claim will be informed that the request has been denied.

c. If the consulting member of the Roster concludes that the request is not frivolous and is substantive, the Coordinator will forward a copy of the request and all supporting documentation, along with a statement confirming that the request is in accordance with the requirements of the Mechanism for such requests to be considered, to the Board of Executive Directors and through the President to the appropriate representatives of the Bank's Management for a response.

4.4 When a response is required, the Bank's Management shall prepare and deliver to the Coordinator the written response to the request within a period of 30 calendar days of receipt of the

request. The Coordinator will forward the completed Management response to the member of the Roster appointed by the President to act as a consultant, and copies will be provided to the Board of Executive Directors.

4.5 The consulting member of the Roster will review the request and Management's response, and will prepare a recommendation to the Board whether an investigation should be authorized. The consulting member of the Roster may require the requesting party or the Bank's Management to provide any additional information or supporting documentation the consultant considers necessary to formulate the recommendation.

4.6 The consulting member of the Roster will submit the recommendation in writing to the Coordinator who will forward the recommendation to the Board through the Secretary of the Bank. At the same time, the Coordinator will notify the requesting party that the matter is before the Board for consideration.

4.7 At a meeting called by the President, the Board of Executive Directors will determine whether an investigation should be conducted.

4.8 Within 15 calendar days after the determination by the Board as to whether an investigation will proceed, the Coordinator will notify the requesting party of the Board's decision in this respect.

4.9 In exceptional circumstances, when a serious violation of the Bank's operational policies or norms may have occurred, a Director may request that the Board convene a Panel for the purpose of conducting an investigation without the necessity of a request from outside the Bank. The determination by the Board as to whether an investigation should proceed based on such request will be made following receipt of a response from Management.

5. PANELS

5.1 In the event that the Board of Executive Directors determines that an investigation is warranted, they shall name a Panel from the individuals on the Roster, in consultation with the President.

5.2 A Panel will be composed of no fewer than three individuals from the permanent Roster, each of a different nationality, selected in each case on the basis of their particular aptitude to deal with the case at hand. In consultation with the President, the Board will select one member of the Panel to serve as its

chair.

5.3 The Panel will determine the investigating procedures necessary to arrive at a finding on the complaint presented.

5.4 Whenever a Panel is convened, the Office of the Secretary of the Bank will act as Secretariat for the Panel.

5.5 In the discharge of its functions, the Panel shall have access to all staff who may contribute information and to all pertinent Bank records and shall have full authority to consult as needed with the appropriate Bank offices.

5.6 The Panel shall maintain the confidentiality of any information to which it has access, but which is required by Bank policies to be confidential.

5.7 In the event a Panel does not possess all of the technical expertise which it considers necessary to a determination of a case before it, the Panel may, with the prior consent of the Board, contract to have outside expert technical advice provided.

5.8 The borrower/recipient and the Executive Director representing the borrowing/recipient country shall be consulted on the subject matter during the investigation, and shall be provided with an opportunity to record their views.

5.9 Any part of the investigation to be carried out in the territory of a borrowing/recipient country shall be carried out with its prior consent, which shall be confirmed in advance through the office of its Executive Director.

5.10 In the performance of their functions, members of a Panel shall be considered officials of the Bank entitled to enjoy privileges and immunities accorded to Bank officials under the Bank's Articles of Agreement. They shall receive compensation for the actual work they perform, at a level to be determined by the Board of Executive Directors upon a recommendation of the President. Reimbursement of expenses may be provided at levels not to exceed those provided to members of the Bank's Administrative Tribunal.

5.11 A Panel may seek the advice of the Bank's Legal Department on matters related to the Bank's rights and obligations with respect to the request under consideration and other questions that may arise concerning the Mechanism policy.

6. FINDINGS

6.1 In investigating a specific case, a Panel shall endeavor to arrive at its findings and recommendations by consensus. In the

absence of consensus, the views of each participating member of the Panel shall be expressly stated. Findings of the Panel will take into consideration all relevant factors that may have an impact on the case at hand.

6.2 A Panel shall submit its findings in a written report to the Board of Executive Directors and the President. The investigation report of the Panel shall address all relevant facts, and shall conclude with the Panel's findings on whether the Bank has complied with all relevant Bank operational policies and norms, and any recommendations the Panel may wish to make in regard to its findings. Any information which is required by Bank policies to be confidential shall be segregated and submitted separately as a confidential annex to the Panel's report.

6.3 Within 30 calendar days from receiving the Panel's report, the Bank's Management will submit to the Executive Directors a reply stating its response to such findings.

7. BOARD DECISIONS

7.1 On the basis of the Panel's investigation and of Management's report as mentioned in the preceding paragraphs, the Board of Executive Directors shall determine what preventive or corrective action, if any, should be taken.

7.2 Management shall implement the decision of the Board of Executive Directors and report on such implementation to the Board, within a period designated by the Board as appropriate to the circumstances, on any measures taken to ensure compliance with the applicable Bank operational policies or norms. In the event that an operation which is the object of an investigation under this Mechanism is subsequently submitted to the Board for approval, the findings of the Panel and the measures taken by Management will be recorded in the proposed operation documentation submitted to the Executive Directors.

8. REPORTING REQUIREMENTS

8.1 The Bank will make publicly available the investigation report submitted by the Panel pursuant to paragraph 6.2, and the Management's response thereto, within a period of ninety calendar days following receipt by the Board of the report and response. Annexes to the report which contain information that is confidential in accordance with Bank policies will not be released.

8.2 The Bank will make publicly available the report of Management on the implementation of measures taken to ensure compliance with the applicable Bank policies or norms as decided by the Board of

Executive Directors in response to the Panel's investigation and Management's response. Unless confidentiality issues are raised in relation to the Bank's Information Disclosure Policy in reference to that document, a copy of the report will be provided to the requesting party and the document will be made available to the public on request within fifteen calendar days following Board approval of the reported measures taken by Management. In the event that confidentiality issues are raised in connection with the document, an abstract of the report will be prepared for public release and provided to the requesting party. If the confidentiality issues are resolved, the full report will be released.

8.3 In cooperation with the members of Panels, the Coordinator shall issue in the first trimester of each calendar year an annual report concerning any requests received and investigations undertaken and their results. The report will be transmitted to the President and to the Board of Executive Directors through the Secretary of the Bank. It will also be available to interested outside parties on request.

9. EVALUATION OF EXPERIENCE

9.1 Two years after the effective date of this Mechanism, the Office of Oversight and Evaluation shall issue a special report on the experience of the Independent Investigation Mechanism. On the basis of the special report, and any comments thereon which the Bank's Management may wish to submit, the Executive Directors will assess the experience with this process.

10. ADMINISTRATION

10.1 A Bank officer from the Office of the Secretary shall be designated as the Coordinator to have primary responsibility for providing support functions for the Mechanism. The Coordinator will be responsible for administration of i) processing all requests for investigations as well as responding to inquiries about the Mechanism; ii) providing support to investigative panels as necessary; iii) performing all general administrative tasks necessary to support the Mechanism; and iv) developing and supplying reports and information related to the Mechanism.

10.2 The Bank officer assigned to provide the functions required of the Mechanism's Coordinator will report to the Board of Executive Directors through the Secretary of the Bank.

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