

**Independent Recourse Mechanism:
Summary of Staff Responses to Public
Comments**

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The proposal for the Independent Recourse Mechanism (IRM) was posted on the EBRD web site from 23 October 2002 until 31 January 2003. Comments from various Bank stakeholders were solicited and received, including comments from NGOs, academics, colleagues at other IFIs and some of the Bank's private sector clients and sponsors.

Most comments were received as written submissions sent into the dedicated email address for the IRM. NGOs and Civil Society: Bank Information Center; BothENDS; CEE Bankwatch; Centre for International Environmental Law; Friends of the Earth International; Pacific Environment; Richard Bissell and Jim McNeil – former World Bank Inspection Panel Chairs; Timothy Murphy. Comments were also received at the workshops (held in four cities in January 2003) on the Environmental Policy Review. The following table sets out the comments received together with Bank staff responses.

Para No.	Proposal (as posted on the EBRD web site)	Comment	Bank Response
1.	<p>The purpose of the Independent Recourse Mechanism (IRM) is to review complaints or grievances from people who are, or are likely to be, adversely affected by certain Operational Aspects (defined below) of a Bank-financed project. If an eligible complaint is received, the IRM may try to assist in resolving the complaint or grievance to the satisfaction of all parties involved with the project (problem-solving). Additionally, the IRM, if it considers appropriate, may assess the Bank's compliance with relevant policies and procedures (Compliance Review).</p>	<ul style="list-style-type: none"> IRM has discretion to assess the Bank's compliance with relevant policies and procedures, only if it "considers appropriate". Terms such as "appropriate" should be avoided. The IRM should review all claims and judge them strictly on their merits. The IRM seems to be modelled on IFC's CAO. Experience there has shown that combining problem-solving and compliance audit are too difficult and at times, mutually exclusive. It is 'normal' [sic] for affected people to first attempt problem-solving, and barring success, to resort to the compliance review function. If an IRM official has been involved in problem-solving, they will have been in direct contact with EBRD Bank staff, making compliance audits difficult and lacking independence. It is suggested to bifurcate the roles and responsibilities between the two functions. 	<ul style="list-style-type: none"> Proposal has been amended to reduce the degree of discretion of the IRM to determine eligibility. IRM will consider each eligible claim to determine whether there is an issue of possible non-compliance requiring a compliance review. While the CCO will continue to act as the co-ordinator of both functions, the distinction between the two functions is made clearer. A compliance review will not be carried out by the same individual who may be assigned to problem-solve.
		<ul style="list-style-type: none"> The IRM should be a permanent mechanism with the sole authority to determine whether a complaint is eligible in accordance with an IRM policy. Add to the end of paragraph 1 that "Another purpose of the IRM is to provide the Bank with an opportunity to learn from its failings, in order to improve its operations and to prevent the negative impacts thereof in the future." 	<ul style="list-style-type: none"> The IRM is being established as a permanent mechanism. The Office of the Chief Compliance Office will be a permanent co-ordinator. The paper does recognise that the IRM will, on compliance reviews in particular, identify issues of a systemic nature and make recommendations to improve Bank performance in the future. The IRM's Annual Report would likely identify significant "lessons learned" from the compliance review and problem-solving initiatives.

		<ul style="list-style-type: none"> • The tone of the proposal is that the IRM will be much more focused on problem-solving than compliance. This is a good thing, but should not be confused with the G-8s call for independent inspection mechanisms. The existence of an ombudsman would not obviate the need for a truly independent, transparent and accountable inspection mechanism. • The title is a misnomer as it is limited in scope to environmental impacts. It should be called IRM on Environmental Impacts. • Two windows: there should be a clear distinction between problem-solving on the one hand and compliance review on the other. Although complementary, these are fundamentally two different exercises. There should be two different windows that operate independently of one another. Complainants should be able to choose which window they wish to access. 	<ul style="list-style-type: none"> • The IRM will undertake both compliance reviews and problem-solving. The eligibility criteria for compliance review function have been made more objective, enhancing the independence and transparency. The compliance review itself will be undertaken by an independent, objective expert. • The limitation of scope to environmental impacts has been deleted in relation to determining eligibility. Language has been amended so that the IRM will receive complaints concerning direct and adverse effects of projects. • There is a clear distinction between the two functions, although the CCO will continue to coordinate complaints received. Complainants may indicate which function they would like to see undertaken. Even if no selection is made, the CCO will consider whether there is an issue of possible non-compliance in all eligible complaints.
		<ul style="list-style-type: none"> • Clarify whether the complaint may be brought against the Bank and/or the client/borrower. • Trying to resolve issues to the "satisfaction" of all parties may be an impossible goal to set. • Overall approach is appropriate for private sector oriented institution. Should not be seen as a way of stopping projects, apportioning blame or raising general policy issues, but as a way of realising better projects and learning lessons for the future 	<ul style="list-style-type: none"> • A compliance review only relates to actions, or failures to act of the Bank, and not of any other party. Problem-solving is more focused on the problem itself and may address the issues relating to all parties involved including the Bank, client and complainants. Language clarified. • Language clarified. • Language modified. Proposal recognises that focus is not to apportion blame but to determine whether the Bank has complied with its policies and to assist in resolving problems arising in relations to Bank-financed projects

		<ul style="list-style-type: none"> • The two functions of problem-solving and compliance review are two fundamentally different functions and cannot be dealt with by the same individual. The two functions must be carried out by separate bodies/mechanisms. • The IRM is not independent as it reports to the President or the Board of Directors. 	<ul style="list-style-type: none"> • See above. • The IRM must be established consistent with the governance structure of the Bank. It is independent of Banking operations and the Environment departments, which are the departments most significantly involved in the design, assessment and implementation of projects.
2.	Operational Aspects refers to environmental impacts of projects which are addressed or covered by EBRD policies and procedures. The policies (or parts thereof) and procedures which relate to environmental impacts will be specifically identified and include the Environmental Policy and Procedures and to the extent relevant, the Public Information Policy.	<ul style="list-style-type: none"> • Scope is too narrow and unwise. "Social impacts" can be just as critical to the EBRD's development mandate and should be covered. None of the other IFI mechanisms are limited to environmental impacts or to environmental policies. The IRMs scope should be expanded to cover all of the policies and procedures of the EBRD and other applicable international norms in light of the EBRD's mandate to promote sustainable development. 	<ul style="list-style-type: none"> • The language for eligibility has been amended so that a complaint need only identify direct and adverse effects of Bank-financed projects. The Compliance Review function will continue to focus on compliance with specifically identified policies that relate to impacts of concern to local communities, i.e. the Environmental Policy and the Public Information Policy. The problem-solving function will be able to consider the whole range of issues of concern to local communities, provided that it is clear the Bank's transition mandate cannot be inhibited as a result of the mechanism.
		<ul style="list-style-type: none"> • EBRD projects have the potential to negatively affect citizens in ways that are either not environmental in nature or that are not covered by the environmental policies. The IRM should provide recourse in cases where harm is done due to the violation of Bank policy. • While it is necessary to define what policies are subject to compliance, reasonable aspects to recourse should be assured in cases where the lack of adequate policies give rise to unacceptable harm. • It is also conceivable that affected citizens may be negatively impacted in very significant ways that the drafters of existing policy could not envision. 	<ul style="list-style-type: none"> • See above. • The problem-solving function may consider issues about which the Bank has no specific policy. But in such cases there will be no requirement for the Bank to act beyond trying to work with the parties to minimize adverse impacts and arrive at a mutually acceptable resolution.. The mechanism cannot be used to judge the suitability or adequacy of policies. • See above.

		<ul style="list-style-type: none"> • Limiting IRM to environmental impacts is too narrow and it should examine social impacts as well. All policies should be subject to the IRM. The IRM should decide which policies are relevant. • The mechanism is too narrowly focused. The lack of other policies should be seen as a warning to the Board that there is too little oversight at the policy level at the EBRD. All policies at the EBRD should be subject to review. • Complaints should be not be limited to environmental impacts. Social and economic impacts are integral to EBRD's sustainable development mandate. • Does "environmental impacts" include transparency and disclosure issues? 	<ul style="list-style-type: none"> • A compliance review may be triggered by a possible violation of the Environmental Policy or the Public Information Policy, as these are the policies which result in the most direct affect on local communities. However, once a compliance review has been approved, the independent expert may examine the relevant related procedures of the Bank in making his determination of whether there has been a policy violation. The expert's TORs may also authorise the review of related policies. Additionally, the problem-solving function may consider any issue which directly and adversely affects a group, provided it meets the other criteria. • See above. • The Public Information Policy is within the scope of the compliance review function.
		<ul style="list-style-type: none"> • Not clear why IRM narrowly confined to environmental aspects of projects. Procurement issues could be addressed. Some social issues should be addressed. • There should be a social aspect to the document. If there are social issues that someone in the community wanted to raise, is there a mechanism to deal with this? • There should be a definition of environmental impacts to avoid confusion. Does it include social elements? 	<ul style="list-style-type: none"> • Scope of mechanism now refers to direct and adverse effects and specific policies namely the Environmental Policy and the Public Information Policy. • Procurement is a specialised area which is already dealt with through other channels in the Bank. The IRM is not intended to be a policy maker, but will look at issues of Bank compliance with its Environmental Policy, which includes certain social issues such as involuntary resettlement, indigenous peoples and cultural property. • See above. • Language has been modified. See above.

3.	<p>Problem-solving may require the use of one or more techniques such as mediation, conciliation, dialogue facilitation, fact-finding or investigation and reporting.</p> <p>The following officers and bodies will form part of the IRM:</p>		
4.(a)	<p>President as decision-maker in respect of complaints received prior to Board approval</p>	<ul style="list-style-type: none"> Involving the President creates a conflict of interest since the President and his staff are typically directly or indirectly involved in preparation of projects. Undermines the principle of independence. The eligibility of all complaints submitted should be considered by the IRM (not the President). The IRM would then submit a recommendation on the issue of eligibility to the Board of Directors. 	<ul style="list-style-type: none"> Any mechanism must respect the governance structure of the Bank and the President is responsible, pursuant to the Agreement Establishing the EBRD, for the operations of the Bank, and is accountable to the shareholders. Therefore, any proposed project which has not yet been approved by the Board remains within the President's sphere of responsibility. Any decision concerning problem-solving which, in effect, relates to the ongoing management of the Bank-financed project is also within the sphere of the President as it too relates to
		<ul style="list-style-type: none"> <u>The President as head of Bank Management and Chair of the Board of Directors and therefore cannot be considered an independent decision maker.</u> 	<p>the day-to-day management of operations. However, the compliance review function is carried out with the involvement of independent experts who submit their findings and recommendations to the President. In addition, other measures in the mechanism have been enhanced to strengthen the independence of the mechanism, such as making the eligibility criteria more objective</p>
4.(b)	<p>The Board of Directors (Board), as decision-maker in respect of complaints received after Board approval (Post-Board Phase).</p>		
4.(c)	<p>The Chief Compliance Officer (CCO), as co-ordinator</p>	<ul style="list-style-type: none"> Lack of independence: CCO reduces the independence of the IRM and may raise the appearance of conflicts of interest. Current responsibilities, reporting requirements and selection process for the CCO is not clear to those outside EBRD. 	<ul style="list-style-type: none"> The Office of the Chief Compliance Officer is independent of both Banking operations and the Environment Department and does not have any operational or managerial responsibility for ensuring compliance with EBRD operational policies. The CCO is currently responsible for handling certain

		<ul style="list-style-type: none"> • CCO should not have any operation or managerial responsibility for ensuring compliance with EBRD policies and procedures. Could raise a conflict of interest if he has already evaluated/reviewed compliance with policies, procedures and operations on a project that is later subject to claim from affected community. • The role of the CCO is very different and should not be mixed with the IRM. Role of CCO is, at times, like a police officer enforcing rules regarding staff activities. Such a staff person will not be in a good position to oversee problem-solving involving the same staff and external issues. • CCO, as an ethics officer, will not have the requisite skills, understanding or experience with environmental or social issues to be able to carry out the IRMs role effectively. 	<p>confidentiality and conflict of interest matters; co-ordinating initiatives for fighting corruption and money laundering; and conducting investigations into alleged misconduct of Bank officials, employees or consultants. The investigation into alleged non-compliance with Bank policies is consistent with the mandate of the CCO. It is recognised that some of the skills required will not be located in the office, and therefore, a roster of experts will be available to conduct the actual investigations, adding to the level of independence and objectivity. Similarly, in pursuing problem-solving, the IRM may use external expertise in order to assist in resolving problems.</p> <ul style="list-style-type: none"> • See above.
		<ul style="list-style-type: none"> • In its IRM role, the CCO should report directly to the Board of Directors and the Board should have a role in selecting the CCO. This gives the greatest degree of independence from day-to-day operations. • No clear process for selecting the CCO. Terms of reference for the position should be publicly vetted prior to the person being selected. • If CCO remains part of IRM, he/she should not be entitled to work for the Bank in the future, similar to experts on the roster. 	<ul style="list-style-type: none"> • In accordance with the Agreement Establishing the Bank, the President is responsible, as Chief of Staff, for the appointment of all Bank staff. • See above. • The CCO is to act as the co-ordinator for the mechanism and as noted above, is independent of Banking operations and the Environment Department. It is important to have a permanent office to co-ordinate the IRM activities and therefore, there is not the same need or rationale for the CCO to be subject to the same terms and conditions of the roster members. Any approved compliance review will be carried out by an independent expert.

		<ul style="list-style-type: none"> • Recommend that there be a separate panel established and that both the CCO and the panel members be selected by and report directly to the Board of Directors. • CCO seems to have authority to recommend a complaint either to the President or the Board. There should be some recourse for a complainant where they feel the CCO wrongly decided not to recommend their complaint. 	<ul style="list-style-type: none"> • The CCO as a co-ordinator of the mechanism will be a permanent Bank staff member which will facilitate continuity. The number of experts on the roster will be kept small which will address NGO concerns relating to a large unwieldy roster. It is considered not necessary at this time, without knowing the demands on the mechanism to appoint a full time, permanent panel. • Whether recommendations are made to the President or the Board is not left to the discretion of the CCO, it is determined by whether the relevant Bank operation has been approved by the Board or not. The mechanism also provides for ways in which a recommendation to declare a complaint ineligible may be reconsidered by the President, or the Board, as the case may be.
		<ul style="list-style-type: none"> • Chief Compliance Officer's title is misleading. There should be a Chair who is responsible for both functions of compliance and problem-solving. • The mechanism is not independent as it is an internal mechanism, managed by the President. The perception and reality of independence are vital to the credibility of the mechanism. • The people appointed to the IRM must have visible autonomy and effectiveness. The CCO is a staff member with a multiple of other duties. • If the CCO is responsible for EBRD's policy compliance, it will be difficult for him to accept complaints about compliance. • How can the CCO be responsible for ensuring compliance with EBRD policies and procedures and for investigating complaints arising out of EBRD's non-compliance? There is no independence in this situation. 	<ul style="list-style-type: none"> • It is consistent with the other duties of the CCO that he also act as co-ordinator for the IRM. • See above. The Board makes final decisions in all compliance reviews related to Board approved operations. The Board is fully informed of all other IRM decisions. • While the CCO has other duties, the Bank will commit the resources necessary to deal with the complaints which come into the IRM in a timely manner. The roster experts will have full autonomy to make their findings and recommendations. • See above. • See above.

		<ul style="list-style-type: none"> The CCO, as a Bank staff, cannot be independent. Independence of decision-making may become an issue. 	<ul style="list-style-type: none"> See above.
4.(d)	A roster of experts appointed by the Board on the recommendation of the President.	<ul style="list-style-type: none"> Roster has not worked well in IDB or ADB because roster members are not eligible about the institution; will not be able to place their work in the bank context, will not be accountable for their findings and recommendations and will frequently not be available when needed. Transaction costs of having a roster may make it as expensive as a part-time permanent panel. 	<ul style="list-style-type: none"> It is proposed to keep the roster small. Initially 3 roster members will be selected, with the ability to increase the number to 10, if required. Being located in London, the EBRD will be able to access a wide-range of potential candidates within easy commuting distance of the Bank. This will allow for regular meetings with the Bank, so that the members acquire a better understanding of Bank processes. It is expected that there will also be a larger pool of experts with direct IFI experience available to EBRD than the other two institutions mentioned.
		<ul style="list-style-type: none"> Quality of roster will not be high, as there will be few who are prepared to give up future work for the Bank to be on a roster, where there is likelihood of never being called. This supports proposal to establish a smaller, permanent, part-time panel. There should be a permanent, part-time panel of three people, to work as needed. Their duties would include writing procedures for the IRM, meeting with NGO and affected communities and other stakeholders to describe the IRM, issue an annual report, and meeting with other accountability mechanisms at other IFIs. A smaller roster will help ensure that members: (i) are available more often and can build their schedules around expected responsibilities; (ii) have a stronger interest in the success of the panel; (iii) over time, will develop expertise. A smaller panel will ultimately be more accountable to the success of the mechanism. 	<ul style="list-style-type: none"> As noted above, it is proposed to keep the number of experts limited, which should mitigate against the concerns raised. In addition, a provision has been added that if an expert is not called upon by the IRM, then he/she will not be prohibited from working for the Bank in the future. A permanent panel structure is not warranted. The sovereign operations focus of the World Bank results in a significantly different portfolio than that of the EBRD with its transition mandate. An annual report from the IRM will be issued. As noted above, a smaller roster is proposed.

		<ul style="list-style-type: none"> • Formal roster is not required for problem-solving, which could use consultant/experts on a more ad hoc basis. • This is reminiscent of ADB's roster which has not worked well. IRM should be established as a permanent bureau. One task would be compliance and the other problem-solving. There should be a separate desk to establish eligibility. The Chair of the IRM should be accountable to the Board of Directors. The Chair should have the authority to hire independent external experts. • Roster of experts should be appointed for a fixed term that is clearly specified (3-5 years being the norm). 	<ul style="list-style-type: none"> • The roster members will be used primarily (but not necessarily exclusively) for work on compliance reviews. It is provided that other experts beyond the roster may be used for problem-solving. It will be considered as each matter comes before the IRM. • See above. • The experts are appointed for a fixed term.
		<ul style="list-style-type: none"> • The CCO and the experts will be doing much of the same work, therefore, there should be no distinction made between the CCO and the experts in terms of employment rights and privileges. The Bank should not exclude experts from regular employment with the Bank or from consulting work, provided there is no conflict of interest. (It should be borne in mind that some roster members may never be called upon.) • Any ban on future work could be limited to those experts who actually carry out compliance work during their term. • Roster does not work well -- proven at other IFIs. The problem-solving doesn't need permanent positions. The compliance review should be a permanent panel of at least 3 members. The compliance function should have a separate secretariat which could assist complainants. 	<ul style="list-style-type: none"> • The CCO and the experts will be filling different roles. The CCO will be acting as co-ordinator for the IRM. It is important for this position to be permanent to ensure continuity, to respond to inquiries about and requests for assistance with the mechanism, etc. The experts, who will be conducting the compliance reviews, will be independent of the Bank. • Proposal adopted. • See above.

<p>The experts will be selected on the basis of their expertise in their relevant field, their knowledge of the workings of the EBRD, their familiarity with responsible corporate practices, including the need to maintain the confidentiality of sensitive business information, and their ability to act</p>	<ul style="list-style-type: none"> • Compliance panel members should have the mandate to handle complaints and answer directly to the Board. All relevant parties should be obliged to cooperate with the Compliance panel, including allowing for site visits and documentation requests. • The qualities of the experts should include: "a proven expertise in conflict mediation, familiarity with social, environmental or cultural practices and conditions relevant to development projects; work experience with civil society and community organisations". 	<ul style="list-style-type: none"> • Roster expert's reports will be submitted directly to the relevant decision maker (subject to the CCO ensuring the expert has fulfilled the relevant TORs). The Rules of Procedure will address procedural issues, but it is expected that the roster members will have access to Bank staff and files in conducting their reviews and will be entitled to undertake what investigations the expert considers necessary. • The experts will now be focusing on the compliance review function, therefore mediation/conciliation skills are less essential for roster members. The criteria have been modified to require experience with living conditions in the Bank's country of operations.
<p>thoroughly, fairly, independently, efficiently and with integrity. An expert shall not have worked for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director's Assistant or consultant) for at least 2 years prior to being appointed to the roster, and shall not be entitled to work for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director's Assistant or consultant) at any point in the future. In each case where a complaint has been considered to be eligible and the CCO recommends either problem-solving and/or a Compliance Review, the CCO will also recommend the expert or experts to be appointed from the roster to carry out the work. The recommendation is then submitted for approval to the President (in the pre-Board approval phase) or to the Board (in the post-Board approval phase), as the case may be.</p>	<ul style="list-style-type: none"> • How will the experts be identified? ENVAC could/should be involved in selecting the experts. 	<ul style="list-style-type: none"> • Experts will be selected following a competitive process in accordance with EBRD procurement rules on the selection of consultants.

	<p>In addition, an expert may be selected by the CCO to act as an assessor to assist determining whether a complaint is eligible in the first instance, where eligibility cannot be determined by a desk-review. Where an expert has acted as an assessor, he or she cannot then sit as an expert in respect of any such complaint. The size of the roster will be determined by the demands of the IRM.</p>	<ul style="list-style-type: none"> • An expert involved in assessing eligibility should not be excluded from subsequently investigating a complaint. Would be more cost-effective and efficient to allow an expert Panel member who has begun learning about the complain to continue on in the substantive part of the process. • All panel members (or at least 3) should be involved in determination of eligibility, based on more detailed review and site visit of one member (as with WB Inspection Panel -- where all members review and participate in all decisions and reports). 	<ul style="list-style-type: none"> • The prohibition has been removed. Therefore, it is possible for an expert to be involved in a compliance assessment and review. However, such appointment will need to be exercised with care to ensure that an expert is not compromised in acting objectively in making the initial assessment or in conducting a compliance review. • The IRM does not have a panel. Depending upon the nature of the complaint and the complexity of the project it will be possible to appoint more than one expert to undertake the compliance review.
		<ul style="list-style-type: none"> • The use of a lengthy roster has not worked at other IFIs. Roster members have little incentive to become well-versed in the strategies and workings of the Bank. Appointed panels with a limited number of members (even if part-time) are able to meet accountability needs much more effectively than a long roster of specialised professionals. • There should be a compliance panel with at least 3 permanent members to enable it to: <ul style="list-style-type: none"> • Provide institutional learning opportunity for the Bank and to limit future negative impacts; • Create institutional experience, expertise and knowledge; • Build trust with communities, civil society and the Board of Directors; • Be more readily available to serve the institution and assist affected communities in filing claims; and • Improve the accountability of findings and recommendations. 	<ul style="list-style-type: none"> • As noted above, a lengthy roster is not proposed. • See above.

<p>5.</p>	<p>Who can file a complaint?</p> <p>Any group of 2 or more individuals that is, or is likely to be, adversely affected by a Bank-financed project, or a duly appointed agent of such group.</p>	<ul style="list-style-type: none"> • WB inspection is limited to groups "within the borrower's own territory" • Clarify that there should be a "common interest" within the group. Consider whether NGOs may represent such a group with the approval of the Board. 	<ul style="list-style-type: none"> • It is not proposed to limit the scope of the IRM geographically in this way as Bank-financed projects can have transboundary effects. However, groups must be, or be likely to be, directly and adversely affected by the project. • Has been clarified. NGOs may act as authorised representatives of affected groups and it is not proposed that this will require Board approval.
		<ul style="list-style-type: none"> • Why are complaints limited to individuals? NGOs or other organisations committed to protecting species of flora and fauna should be entitled to bring a complaint in respect of endangered species. • One person should be entitled to file a complaint. • It is suggested that 'duly appointed agent' be omitted. Complaints should only be allowed from affected persons. • Does "people" (in first para) include NGOs, institutes, etc? 	<ul style="list-style-type: none"> • Complaints are limited to groups who are directly and adversely affected by a project. Such groups have significant interest in managing the resources of their environment. An interested NGO may assist them in bringing a complaint. If there are no members of the local community who share the concerns of the NGO, the Bank must recognise this. • The rationale of the IRM is to enhance the accountability of the EBRD and underpin its commitment to work with local communities interested or involved in the project. Most other IFIs do not permit a single individual to file a complaint. • Duly appointed agent has been retained as some of the vulnerable groups, for whose benefit the IRM is established, will need assistance in accessing the IRM. • NGOs may only act as authorised agents of directly and adversely affected groups, as the mechanism is about the application of Bank policies in practice; it is not about the adequacy or suitability of policies generally.

	<p>Complainants may ask that their identity be kept confidential, but anonymous complaints will not be accepted. The IRM will use all reasonable efforts to maintain the identity confidential when requested. However, there may be cases where it is not possible to proceed with an investigation, and/or a problem-solving exercise, where the complainants wish to maintain their identity confidential.</p>	<ul style="list-style-type: none"> Confidentiality is critical. The words "use all reasonable efforts" should be deleted and the IRM should keep identities confidential. CCO should not disclose names to other EBRD staff. This in turn requires separate locked office space. A compliance audit should not be affected by the confidentiality of complainants, and therefore, it is suggested that "an investigation, and/or" be deleted from last sentence. WB Inspection panel has undertaken compliance reviews where the identity has remained confidential. 	<ul style="list-style-type: none"> The CCO is well equipped and familiar with what is needed to keep information and identities confidential, as the CCO is also responsible for investigating fraud and corruption. There is separate locked office space for the Office of the CCO. Language has been amended
		<ul style="list-style-type: none"> This provision deals mostly with confidentiality. It should address eligibility and a separate provision added on confidentiality. Confidentiality should be assured at all times if the Complainants so request. NGOs should be allowed to represent anonymous individuals. The second and third sentences should be deleted. How will the mechanism maintain confidentiality of individual complainant? 	<ul style="list-style-type: none"> Bank staff consider that it is logical to speak of maintaining identities confidential in the same paragraph as "who can file". The CCO must know the identity of the complainants in order to properly assess eligibility. Such identity does not need to be made known to other Bank staff or third parties. The CCO is well equipped to protect confidential information within the Bank.
6.	<ul style="list-style-type: none"> There would be no special format for a complaint other than it must be in writing from an eligible complainant. The complaint may be submitted in the native language of the Complainant or any of the Bank's four working languages (English, French, German and Russian). The IRM will try to respond in the language of submission where possible. The IRM will, 	<ul style="list-style-type: none"> Last two sentences of first bullet should be deleted and replaced with "The IRM will respond in the language indicated by the Complainant. The IRM will ensure adequate translation if necessary or desired." The IRM should make notification of receipt of a complaint publicly available 	<ul style="list-style-type: none"> There are 4 working languages of the Bank. The IRM cannot guarantee that it will be able to respond in every language of every local community group within all of the Bank's countries of operations. It will make a reasonable effort to do so. The register of complaints will be publicly available.

	<p>in all cases, provide any written responses in any one of the four working languages of the Bank with which the complainant is most comfortable.</p>	<ul style="list-style-type: none"> • Written responses should be in English, Russian and the language of the complaint. • Complainants should be provided with timely and sufficient information, for example, monthly updates. • How is "eligible" defined? 	<ul style="list-style-type: none"> • Written responses will be in any one of the four working languages of the Bank in which the complainants are most comfortable and in the language of the complainants where possible. No changes are proposed. It is not reasonable to automatically translate responses into Russian if the complainants are not Russian-speaking. • Complainants will be provided with information about the progress of complaints. This will be more fully addressed in the Rules of Procedure and Guidelines. • Language has not been amended, but "eligible" complaint is described in the preceding paragraph, i.e., a group of two or more individuals with a common interest who are directly and adversely affected by a Bank-financed project.
	<ul style="list-style-type: none"> • The complaint must identify the project, and the harm or potential harm resulting from the project. The complaint may relate to the processes followed in preparation of the project; the adequacy of measures for the mitigation of environmental impacts; or the manner in which the project is implemented. If the complainant can identify the specific Bank policy or procedure that has not been complied with, it should be noted, but it is not necessary for the complainant to do so. 	<ul style="list-style-type: none"> • <u>The complaint should be able to relate to the adequacy of all adverse impacts of a project (not just environmental).</u> • Can a complaint be filed to object to the categorisation of a project as A or B. • Will the IRM accept suggestions for project improvements? 	<ul style="list-style-type: none"> • The proposal has been amended so that complaints relating to any direct and adverse effects of a Bank-financed project may be brought to the attention of the IRM and a problem-solving initiative may be pursued. To be eligible for a compliance review, however, there must be a possible violation of the Environment Policy or Public Information Policy. • This would be possible, but only in the context of a complaint filed in respect of direct and adverse effects, or the likelihood of such effects. In such case, if the complainants believe the Bank did not comply with the Environmental Policy in categorising such project, this could be identified in the complaint and it will be considered. • Such suggestions should first be made to the project sponsor/borrower. When approached, Banking operations and the Environment departments will convey valid suggestions to the appropriate party. The IRM is not intended to receive general comments on project design. To become involved in project design would compromise its independence from the Banking and Environment departments.

	<ul style="list-style-type: none"> The complaint must also indicate what steps the complainant has taken to resolve the matter, and should attach copies of correspondence with the government, sponsor, and/or Bank. The complaint should indicate what steps the complainant would like the Bank to take to address the adverse effects that have been or may be caused. 	<ul style="list-style-type: none"> It should be clarified that steps taken to "resolve" the matter are not a condition for eligibility. 	<ul style="list-style-type: none"> This is a common feature of all IFI mechanisms and no change is proposed. The mechanism is intended to be one of recourse, not a first port of call.
7.	All complaints should be addressed to the Chief Compliance Officer (CCO).	<ul style="list-style-type: none"> References to CCO should be replaced with "Chair" of the IRM. 	<ul style="list-style-type: none"> There is not a "chair" of the IRM as such and the CCO is the co-ordinator of the mechanism. Therefore, no change is proposed.
		<ul style="list-style-type: none"> It should be made clear that complaints may be received by fax, letter or email Also clarify that contact details will be made available in local language in project area Complaints should go directly to the experts. 	<ul style="list-style-type: none"> This will be incorporated in the Rules of Procedures/Guidelines. The IRM Guidelines will be translated into the official languages of the countries of operations over time. A requirement that contact details be made available in local language can be incorporated in the Rules of Procedure/Guidelines. The complaints should go to the CCO as co-ordinator of the mechanism. No change is proposed.
8.	Affected parties may file a complaint once the Bank has given a clear indication that it is likely the Bank will finance the project and as long as the Bank maintains a financial interest in the project. The CCO may, however, consider that it is premature to investigate a complaint relating to a project prior to a decision of senior management to submit the operation to the Board for approval.	<ul style="list-style-type: none"> Claim should be eligible once it is likely the project will be submitted to the Bank for financing and there is evidence of harm and/or policy violation. Delete second sentence; CCO should not retain discretion to decide complaint is too premature -- should accept the complaint, but then find , if necessary, that it is too premature to impose any remedy because Bank staff should be able to resolve the issue. 	<ul style="list-style-type: none"> Eligibility criteria have been substantially modified in response to the concerns raised. Criteria are now more objective, which should mitigate these concerns. See above.

		<ul style="list-style-type: none"> • The Bank's practice of withholding documentation and other information concerning projects that it is likely to finance may prevent legitimate claims from being filed until the project is "fait accompli". This is particularly true for Category B, C and FI projects, where there is far less documentation available. In addition, the CCO's discretion to consider that a complaint is premature will further limit the scope for bringing timely complaints and resolutions. 	<ul style="list-style-type: none"> • See above.
		<ul style="list-style-type: none"> • It is entirely likely that violations of policies and procedures could occur in the due diligence leading up to Management's decision to submit a project to Board for approval. Under this scenario, there will be no opportunity to conduct the Problem-solving function until it is too late, leaving compliance audit as only recourse. Point 8 could make problem-solving function meaningless and therefore should be deleted. • Complainants should be able to file a complaint at any time. Allowing for filing at earlier stages may provide information relevant to the Bank's assessment of a project it may consider for financing. • Complainants should be entitled to file at any time in the project cycle. The compliance review function should be able to undertake an impartial assessment of complaints irrespective of the Bank's leverage. In order to enable filing at early stage, project documents should be made public at earliest possible time. 	<ul style="list-style-type: none"> • It is possible for a complaint to be raised (and a problem-solving initiative undertaken) prior to Management's decision to submit an operation to the Board for approval provided that the Bank has given a clear indication it is considering financing (Final Review is likely to provide that indication). • As this is to be a recourse mechanism, complainants will need to have made good faith attempts to have their concerns addressed. In practice, however, it is expected that where the CCO receives a complaint which by application of the rules is too early, the complaint will be forwarded to the relevant Banking department. • See above.

		<ul style="list-style-type: none"> • Consider whether there should be a cut-off date for the filing of complaints as at the World Bank • Consideration might be given to changing the IRM into a post-Board approval mechanism only since there will be little time between "a clear indication of Bank financing" and Board approval and many issues only emerge once implementation begins 	<ul style="list-style-type: none"> • A cut-off point for filing complaints has been added. This will reduce the discretion given to the CCO to accept or reject complaints. However, the cut-off point has been selected bearing in mind that problems often arise during implementation of a project -- therefore, 12 months after physical completion (or last disbursement where no "physical completion" is involved) has been adopted as a reasonable cut-off date. • Proposal not adopted. Issues relating to compliance or warranting a problem-solving initiative may arise prior to Board approval.
		<ul style="list-style-type: none"> • What is meant by "affected parties"? 	<ul style="list-style-type: none"> • Affected parties are defined in clause 6 as being two or more individuals with a common interest who are, or are likely to be, directly and adversely affected by a Bank-financed project.
9.	<p>Upon receipt of a complaint, the CCO will determine if it is an eligible complaint. In particular, the CCO checks various factors including whether (i) it is from an eligible complainant; (ii) it is not specifically prohibited; (iii) there is <i>prima facie</i> evidence of adverse effects relating to Operational Aspects of the Bank-financed project; and (iv) the complainant has made good faith attempts to resolve the issues with the sponsor, Bank and/or government and these efforts are no longer on-going.</p>	<ul style="list-style-type: none"> • These factors are appropriate for determining eligibility and should be the only factors. This will increase predictability, consistency and certainty. Change wording to "CCO will determine if it is an eligible complaint based on the following factors:..." • Delete point (ii) -- it is not clear what is meant by "it is not specifically prohibited". • Point (iii) requires <i>prima facie</i> evidence of adverse affects, this should be deleted as projects which have less obvious affects should be equally scrutinised. • Delete point (iv) there are times when perceived or actual threats to personal safety may prevent a complainant from trying to resolve the issue earlier. 	<ul style="list-style-type: none"> • Criteria have been substantially amended and made more objective as noted above. • Language has been clarified. • It is considered that this threshold is not an onerous one. The complainants claim of direct and adverse effects must be a reasonable one. • No change is proposed. Complainants are not required to try to resolve the issue with the government or sponsor directly. Good faith attempts must have been made with the Bank, which will act responsibly. The identity of complainants to the IRM will be kept confidential where requested.

		<ul style="list-style-type: none"> • Clarify what is meant by "efforts are no longer on-going". • Need definition of "eligible" here. 	<ul style="list-style-type: none"> • Language has been modified. • Provision on eligibility has been clarified.
10.	In determining whether a complaint is eligible, the CCO will also take into consideration whether (i) the Bank's resources may be usefully employed in pursuing the complaint; (ii) a positive result is a likely outcome; (iii) the parties are amenable to mediation or conciliation processes; (iv) the Bank's leverage to affect changes is diminished as project implementation proceeds; (v) the Bank	<ul style="list-style-type: none"> • One of the standards for determining whether it is an effective and responsive mechanism is whether communities are able to get their complaints before an independent body for adjudicating rights and interests. Under the proposal the affected communities do not control this decision. 	<ul style="list-style-type: none"> • This section has been modified in response to concerns raised. Complainants will be entitled to request a compliance review, although this may be not be determinative. In addition, it has also been provided that even where complainants have not requested a compliance review, the IRM will review the Bank's actions in relation to the complaint to determine whether there was a possible policy violation.
	is limited in its actions (e.g., as an equity investor, the Bank would only be able to influence change as any other minority shareholder); or (vi) there are any other matters the CCO considers relevant. If a complaint is received once a project has been fully disbursed, the presumption is likely to be that the Bank will not have sufficient leverage to accept the complaint. However, the CCO may, on a review of the facts, still consider the complaint eligible, if the Bank's involvement will be likely to produce a positive result.	<ul style="list-style-type: none"> • Recommend that affected communities should be able to select a compliance review. • There is too much discretion given to the CCO and therefore, certainty will be lacking and the operation of the mechanism will be too dependent on the personality of the individual. It is recommended that paragraph 10 be deleted. [The point was made in person that as many complaints as possible should be allowed into the system in the first place, even if they are to be dispensed with and moved quickly through the system.] • Eligibility should be automatic if the technical standards in clause 9 are met. This will enhance certainty, and predictability as to how complaints are evaluated. This has worked well at WB and the similar provision at CAO has left many observers in civil society uncertain about how their complaints will be evaluated. 	<ul style="list-style-type: none"> • See above. • Eligibility criteria have been made more objective. The latitude is retained in respect of assessing whether problem-solving initiative would assist in resolving the issue. • See above.

		<ul style="list-style-type: none"> • Para 10, taken together with para 8, permits the CCO the discretion to refuse a legitimate complaint at effectively any stage in the project cycle. The factors the CCO is to consider in determining eligibility are so vague, undefined and equivocal as to render the IRM itself unaccountable. • It appears the CCO has the discretion to permit a complaint only if the complainant agrees to be "entangled" in expensive, methodologically undefined and unwarranted mediation and conciliation processes. These processes are increasingly being used by practitioners to shift the attention away from the underlying project problems and recast the problem as an issue of a "problem with communication". EBRD has a 	<ul style="list-style-type: none"> • In addition, proposal has been amended to include an in-built mechanism providing complainants with a right to provide comments in case their complaint is assessed as being ineligible by the CCO. • There is no requirement for parties to become "entangled" in problem-solving exercises. The nature of most of these techniques requires the co-operation of all parties involved. As noted above, each eligible complaint will be examined to consider whether there is possible policy violation by the Bank, even though this may not be sought by the complainants. However, complainants may prefer to pursue problem-solving techniques in order to deal
		<p>history of supporting these "conflict resolution" type schemes, that have in some cases actually increased the conflict and divisiveness. EBRD's misuse of these processes itself should be grounds for claims to the IRM by negatively affected people.</p> <ul style="list-style-type: none"> • The entire provision of para 10 should be deleted as it is too vague and unclear. It should also be noted that the IRM relates to an impartial assessment of the issues, irrespective of the Bank's leverage. • Para 10 should be deleted; there should be no discretion to refuse eligibility beyond the jurisdictional issues that are expressly set out. Roles and processes should be described in clear and unambiguous language. 	<p>with their concerns. It is often a question of improving communication and dialogue between the local communities and the project sponsor. It must be recognised that the IRM is not established to receive complaints about the functioning of the IRM itself. The establishment of the IRM is not an opportunity for NGOs or other groups to prevent or inhibit the Bank from pursuing its transition mandate. Transition means change and changes sometimes result in adverse affects for certain groups of people. The Bank is concerned to ensure that such adverse effects are minimised and mitigated against.</p> <ul style="list-style-type: none"> • See above. • See above.

		<ul style="list-style-type: none"> • "Usefully employed" is too vague. Consider whether time limits are more appropriate. • What does "resources usefully employed" mean? "Positive outcome" for who? Bank, complainant? 	<ul style="list-style-type: none"> • See above. • This language is intended to give discretion to the CCO (in deciding whether to recommend a problem-solving initiative) to consider whether the IRM should invest more time and resources in addressing the issues raised in the complaint. The positive outcome should be for the project as a whole, focusing on the concerns of the local community while bearing in mind the constraints placed on project sponsors, and the transition mandate of the Bank.
11.	<p>Eligibility of a complaint will be determined through a desk review of the complaint, where possible. This may not be adequate in all cases. The CCO may authorise additional investigation in order to determine the eligibility of a complaint either directly or through the appointment of an assessor. The assessor will report his or her findings to the CCO. Such additional investigations may include, if necessary, a site visit.</p>	<ul style="list-style-type: none"> • The CCO's findings at this stage should be made available to the complainant and the public before the President or the Board makes its decision. • It should be clarified that all parties to a project will co-operate with the IRM and that site visits are to be permitted by borrowers, sovereign and non-sovereign. • Consider the need to inform authorities of site visits, particularly in sovereign operations. 	<ul style="list-style-type: none"> • A provision has been included to require the CCO's finding of non-eligibility to be made known to the complainants prior to the report going to the President/Board in order for any comments of the complainants to be included. • It is stated that the CCO and/or expert may undertake a site visit.
12.	<p>Within [30] days of receipt of a complaint, the CCO shall make a recommendation concerning the complaint. The recommendation may be to:</p> <ul style="list-style-type: none"> • end the complaint process (either because the complaint is ineligible or there would be nothing to be gained from the IRM's involvement); or • appoint an expert to try to resolve the complaint using appropriate problem-solving techniques; and/or • appoint an expert to conduct a Compliance Review of the Bank's actions relating to the project. 	<ul style="list-style-type: none"> • The CCO's findings at this stage should be made available to the complainant and the public before the President or Board makes its decision. • 30 days is too long for a complainant to receive word on its complaint. IRM should acknowledge receipt within 5 days and register the complaint on a public registry. Occurs at both WB and CAO. If eligibility is narrowed to more technical review, then assessment could be done within, say, 15 days. • Needs to be rephrased if the roster of experts is not used. 	<ul style="list-style-type: none"> • See above. • The proposal has been amended to provide for acknowledgement and registration within 5 business days. The eligibility assessment will be done with 15 business days from receipt of the complaint. The CCO will have up to an additional 15 business days to assess whether there is a possible policy violation or there is scope for problem-solving. • Not applicable.

		<ul style="list-style-type: none"> Recommendations should be made directly to the Board of Directors on a no-objection basis. If the complaint is to be rejected, a draft report should be shown to the complainant prior to finalisation to ensure impartiality. If there is doubt about eligibility, there should be a site visit. 	<ul style="list-style-type: none"> The complainants will be advised where the recommendation is one of non-eligibility prior to a report going for decision.
13.	<p>The CCO's recommendations will be submitted either to the President or to the Board, through the President, depending upon the status of the relevant project. If the recommendation is to appoint an expert, then upon approval by the President or the Board, as the case may be, the expert will be appointed and will commence either the problem-solving exercise or the Compliance Review, as the case may be.</p>	<ul style="list-style-type: none"> This recommendation should not go to the President and/or the Board. To do so greatly reduces the independence and effectiveness of the IRM as it (i) unnecessarily politicises the process; (ii) interferes with the objective and professional nature of the IRM; (iii) allow for manipulation of the process by the Board/President and (iv) unduly lengthens the process. CCO should be able to implement its recommendations directly. This is the way at the CAO and WB recommendation go to Board on a "no-objection" basis. CCO should be replaced with Chair. And any recommendation not approved by the President should be referred to the Board. Recommendations of the Chair should be posted on an IRM web site. Why does the CCO report go through the President? It should go directly to the Board Does the local community have input into selecting the expert for a problem-solving exercise? 	<ul style="list-style-type: none"> Requiring President/Board approval respects the governance structure of the Bank. It will not unduly delay the process as time periods for submission of decisions for Board approval enable the Bank to be responsive to the needs of its operations. Recommendations of an expert on a compliance review will be made publicly available following consideration by the Board, subject to maintaining commercially sensitive information confidential. This is a matter of procedure. Any document sent for decision by the Board must go through the President. The President will forward the report to the Board as prepared by the expert. In undertaking the assessment of whether a problem-solving initiative is appropriate, the CCO may take the complainants' opinions in to consideration.
14.	<p>If following the preliminary review, or during a problem-solving exercise or Compliance Review, the CCO or the expert, as the case may be, is of the opinion that serious, irreparable harm will be caused by the continued processing or implementation of the project, a recommendation may be made to</p>	<ul style="list-style-type: none"> This is an excellent provision which surpasses other IFIs. This recommendation of the IRM should be made public as well. It is suggested that future loan agreements include a provision stating that further work/disbursements may be suspended in such an event. 	<ul style="list-style-type: none"> It is not proposed to include such a provision in the investment documentation. The cause of the complaint may not be within the control of the project sponsor/borrower. If the complaint is in fact related to activities of the project sponsor/borrower, the existing documentation would govern any action taken by the Bank.

	<p>the President to suspend further work or disbursement, as the case may be. However, if the Bank is under a contractual obligation, and there is no other grounds to suspend processing or disbursement, the contractual obligations should be honoured.</p>	<ul style="list-style-type: none"> • It is agreed that the Bank should not suspend contracts unless there is clear evidence that a party is in breach of its obligations and agree that such a decision should be made by the President or Board, as the case may be. The Bank should however, build in a provision that failure to mitigate damages caused by a project would constitute a breach. • As the IRM is most likely to be invoked while a project is being implemented, it is likely that there will be certain circumstances in which a project should be suspended and this should be reflected. 	<ul style="list-style-type: none"> • In conducting its due diligence on projects, the Bank will include in the legal documentation such covenants it believes are required in connection with mitigating adverse effects. Failure to comply with such covenants will constitute a breach of the project sponsor's obligations. • The CCO, or the independent expert, as the case may be, can recommend that suspension be considered, but it will be for the President or Board to determine whether such action should be taken in accordance with the terms of the applicable documentation.
15.	<p>During the Pre-Board Phase, the IRM involves recourse to the President. At this stage, while the Bank still maintains a greater degree of leverage, the IRM will, where practicable undertake problem-solving of issues raised by affected parties. As the President is not involved in the detailed appraisal, structuring and review of operations by the Banking Department or the Operations Committee, appeals to him constitute a credibly independent recourse against decisions made by these bodies or actions taken by the Bank in the early phases of an operation. Furthermore it may not be appropriate to involve any Board member in the review of issues associated with a project that has not yet been approved by the Board. An early involvement might also prejudice the positions that these Board members might be requested to take by their respective authorities.</p>	<ul style="list-style-type: none"> • It is recommended that all recourse be to the Board of Directors. Board has an interest in policy compliance at all stages of project processing. Disagree with the statement that the President is "credibly independent" -- since most complaints will be brought on controversial projects, senior management is likely to have been involved in moving the project forward during the pre-approval phase. Experience at other IFIs in involving the President in the first phase of inspection has not been positive. Recourse to President not credible, because President must delegate the issue to other management who may be conflicted or have the appearance of conflict of interest. • Disagree that engaging the Board earlier would prejudice the Board's decision on a project. To the contrary, earlier involvement means Board will have a more full and informed discussion with both staff and their home offices. The Board should be more engaged in controversial projects. 	<ul style="list-style-type: none"> • Before presented to the Board, it remains within the President's authority to deal with all issues arising out of a proposed project. The assessment of whether the complaint is eligible is made by the CCO. The President then decides whether to accept the report or not. All reports that are prepared in response to a complaint will be circulated to the Board at the same time. The President's decision will also be made known to the Board. In such a case the Board Operation Document will also make reference to the complaint and how it was addressed, so that the Board is making a fully informed decision. For Board approved operations, decisions are made by the Board (including the President as it Chairman) without the President being otherwise involved. • Language has been deleted from revised proposal. However, making distinction between operations that have not yet been approved, and those that have been approved is consistent with the governance structure of the Bank.

		<ul style="list-style-type: none"> Paragraph should be clarified to confirm both problem-solving and compliance audits are available during pre-board phase. Pre- and Post- Board phases would be irrelevant for a truly independent IRM. The President cannot be considered independent. All matters should be reported to the Board. 	<ul style="list-style-type: none"> Language clarified. See above.
16.	On the basis of the CCO's report, the President decides whether to adopt, amend or reject the CCOs recommendations.	<ul style="list-style-type: none"> The CCO's report should be made available to the complainant, the project sponsor, government and public at the same time that it is made available to the President, and before any final decision is made. 	<ul style="list-style-type: none"> Where the CCO's recommendation is to declare a complaint ineligible, the reasoned decision will be made available to the complainants prior to submission to the decision-maker so that the complainants may respond. Expert's reports on compliance reviews will be made available to the complainant (and other involved third parties) following consideration by the decision-maker. Release of an expert's report in a problem-solving initiative will be decided upon on a case-by-case basis. All reports released will be subject to the requirement that commercially sensitive information be kept confidential.
17.	If an expert is appointed to problem-solve, the expert should be available to work exclusively on the matter to ensure that project time-lines are met. After conducting a process of fact-finding or dialogue facilitation, mediation or conciliation for as long as is acceptable to the parties involved, the expert reports his or her findings to the President. In case the problem has not been solved to the satisfaction of the complainant, the expert's report includes recommendations, which the President has	<ul style="list-style-type: none"> The President's decision should explain the reasons for his finding, and not just a summary finding. There is no clear guidance to ensure adequate transparency and public disclosure in the IRM process. Explicit guidelines should require that all assessments, reports and recommendations should be available to claimants and to the public. 	<ul style="list-style-type: none"> President's full decision will be made available to the complainants and other involved parties, subject to maintaining commercially sensitive information confidential. See above.
	discretion to adopt, change or reject. The President makes his decision known to the complainant, the Banking team, and the project sponsor or borrower. The nature of the complaint and the actions taken by the IRM will be summarised in the Banking Operation Board report, if the operation is presented to the Board for approval	<ul style="list-style-type: none"> Delete statement that "time-lines are met". Focus should be on resolving the problem, not meeting time-lines. 	<ul style="list-style-type: none"> Language has been deleted. However, it should be noted that <i>all</i> stakeholders' interests need to be taken into consideration in the design of the IRM, which include the Bank's primarily private sector clientele.

		<ul style="list-style-type: none"> • When are decisions made known to the complainant, Board and other involved parties? • The President's decision should be released to the public within a set number of days following his decision. 	<ul style="list-style-type: none"> • See above. • See above. It does not seem necessary to set a time period within which the decision is to be released
18.	During the Post-Board Phase, the IRM involves recourse to the Board.		
19.	As above, the CCO's report contains a recommendation as to whether a Compliance Review or a problem-solving exercise or both should be conducted, together with a proposal to appoint one of the experts from the roster if appropriate. The Board decides whether or not to accept the CCO's recommendation and proposal. If an investigation is approved, after investigating the matter for as long as the expert finds useful, the expert reports his or her findings and recommendations to the Board. Recommendations may include remedial changes in the scope or implementation of the project. However, depending upon the stage of project development, recommendations may be limited to more systemic, prospective, internal changes within the EBRD to ensure future compliance with policies.	<ul style="list-style-type: none"> • The CCO's report should be made available to the complainant, the project sponsor, government and public at the same time that it is made available to the Board, and before any final decision is made. • The Board should also have to give reasons to a complainant if it decides to refuse/reject a complaint. • What is meant by "investigation"? Fact-finding? Review? • It would be clearer to state "If an investigation is <u>undertaken</u>" rather than <u>approved</u> 	<ul style="list-style-type: none"> • See above. • The Board's decision will be made publicly available, subject to maintaining any commercially sensitive information confidential. • The scope of any investigation, fact-finding, review would be set out in greater detail in the terms of reference for any specific problem-solving initiative. • Language modified.
20.	Board decides whether or not to accept the expert's recommendation. The Board also decides whether or not to publicise the report on the IRM web site. It would usually do so unless there are compelling reasons not to.	<ul style="list-style-type: none"> • There are no clear benchmarks or standards for disclosure. All assessments, reports and recommendations should be made available to the claimant and the public. • Find no compelling reasons will exist to deny public access to most reports. If necessary, parts of a report could be withheld. But in such case, the Board should identify which part is withheld and explain the reasons for not releasing those parts. 	<ul style="list-style-type: none"> • See above. • See above.

		<ul style="list-style-type: none"> • Reports of the experts should be published to ensure adequate transparency. • Prior to public release or publication of any reports by the IRM, the sponsors and involved parties should be entitled to review the draft report to ensure facts are correctly reported. • The IRM reports should always be published on an IRM web site. • Decisions should be released immediately -- information will be disclosed one way or another, it is better for the Bank to do so itself. 	<ul style="list-style-type: none"> • See above. • While it is not appropriate to have draft reports reviewed by other parties, any reports that are released would be released to the complainants and other involved third parties simultaneously so that clients would be able to issue their own statements. • See above. • See above.
21.	<p>Consistent with the practice at most other IFIs, the following matters will not be subject to the IRM:</p> <ul style="list-style-type: none"> • Frivolous or malicious complaints; 	<ul style="list-style-type: none"> • The scope of the IRM should not be limited. It is up to the IRM to decide whether to involve other offices. Delete "fraud" and "procurement matters". 	<ul style="list-style-type: none"> • In response to many NGO concerns, the scope of the IRM has been modified. Compliance reviews may only be triggered where there is possible compliance issue in respect of the Environmental Policy or Public Information Policy. Once a possible compliance issue has been identified, the independent expert will examine the Bank's actions in respect of any procedure of the Bank related to the possible policy violation. The review of other potential policy violations may be included in the TORs of the independent expert. Problem-solving initiatives may be taken in respect of any direct and adverse effects of the project, subject to meeting other criteria.
	<ul style="list-style-type: none"> • Complaints whose primary purpose is to seek competitive advantage through the disclosure of information or to impede the progress of the project; • Procurement matters (which will be redirected to the proper office in the Bank); • Matters of fraud or corruption (which will be redirected to the proper office in the Bank); 	<ul style="list-style-type: none"> • 2nd bullet point should be reworded. Implies that complaints aimed to impede a project should be barred. There may be legitimate reasons why a local community would like to slow down the progress of a project. Rephrase as follows: "Complaints whose primary purpose is to seek competitive advantage through the disclosure of information or through impeding or delaying the project." 	<ul style="list-style-type: none"> • Language modified.

	<ul style="list-style-type: none"> • Matters relating to compliance with Article 1 of the Agreement Establishing the Bank; • Complaints which directly relate to matters which are before some other judicial or review body (such as an equivalent mechanism at another IFI co-financier) and the results of which review would have a bearing on any actions or decisions taken, or to be taken, by the IRM in respect of such complaint; and • Matters upon which the IRM has already issued a response to a request, unless there is new evidence or new circumstances not known at the time of the previous review. 	<ul style="list-style-type: none"> • EBRD retains an institutional interest in compliance reviews even if there is an ongoing process at another accountability mechanism. IRM should retain the jurisdiction to conduct compliance reviews. Would delete this bullet point and if necessary elsewhere that the CCO will cooperate with other accountability mechanisms that may be reviewing the same or related projects. • EBRD alone can determine whether it complied with its own policies; therefore, the fact that another mechanism is involved should not prevent a compliance review from proceeding • Other than the above, does the IRM cover all projects at the Bank? Including technical co-operation operations and law and transition projects? 	<ul style="list-style-type: none"> • The ability of the IRM to examine a complaint (even if it is before another venue) is not absolutely prohibited. It is considered unnecessary to include any specific direction to co-operate with other accountability mechanisms, as this will occur as a matter of course as with other IFI issues of common concern. • See above. • Yes
		<ul style="list-style-type: none"> • What criteria will be used to determine if a complaint is frivolous or malicious? There is evidence that NGOs use this to buy time or frustrate the project. 	<ul style="list-style-type: none"> • A frivolous complaint is one which is clearly insufficient on its face and is presumably filed for mere purposes of delay or to embarrass. A malicious complaint is one that is filed for wrongful or mischievous motives and intent to cause injury.
22.	<p>An IRM procedure will not:</p> <ul style="list-style-type: none"> • have the effect of automatically suspending processing of, or disbursements, under the Project pending review or investigation; or • have the power to cancel a project following an investigation, unless the President or Board makes such a decision in the exercise of their respective powers 	<ul style="list-style-type: none"> • This provision should be deleted as it is dealt with elsewhere or state that the IRM will have the power to recommend suspension of Project until it is ensure that social, environmental or other damages caused by the project are adequately addressed. • IRM should have the ability to recommend that 	<ul style="list-style-type: none"> • No change is proposed and it is considered important to clearly indicate the limitations of the mechanism in order to manage expectations of what it can and cannot do. • This is provided for.

		the loan or disbursement be suspended or the project terminated.	
23.	The IRM officers and bodies will not be able to recommend the award of compensation or any other benefits to complainants.	<ul style="list-style-type: none"> This provision should be deleted. It is not found in any other IFI. IRM should have the full range of potential remedies available in making a recommendation. In some cases, compensation may be the only recourse available. IFC's CAO has recommended compensation in at least one case -- although compensation may ultimately come from the sponsor rather than the institution. Moreover, because the IRM's decisions are not legally enforceable, there is no reason to curb the potential for creative and effective resolutions IRM should have full power to award compensation or require mitigation measures. 	<ul style="list-style-type: none"> Language has been amended to provide that neither the CCO nor an expert can make any recommendations on compensation. Again, however, it is important to manage expectations. Even in its compliance review function, the IRM is not a judicial body, it does not investigate according to judicial standards, it is examining the Bank's compliance with its internal policies only, there is no finding of a causal relationship between the Bank's possible violation and any harm suffered by a local community -- in these circumstances it is inappropriate to speak of compensation or money damages. It is also important to recognise the distinction between the Bank as a lender and other parties who are in fact responsible for the project itself. Remedial measures will be considered on a case-by-case basis.
24.	When a Compliance Review is being undertaken, the IRM will not consider actions of any Party other than the Bank, such as government or local authorities, sponsors, or other investors.	<ul style="list-style-type: none"> This statement effectively renders the Problem-solving and compliance review moot on the policies and procedures to the extent they require the project sponsor to take responsibility. This provision should be changed so that all EBRD policy requirements of the project sponsors will be explicitly considered. This provision needs to provide that IRM may review third-party behaviour as may be necessary. 	<ul style="list-style-type: none"> The whole rationale for the compliance review function relates to the accountability of the Bank, not any other party. Other parties such as sponsors or borrowers may be held accountable in other ways. No change is proposed. The reason for establishing the compliance review function of the mechanism is to review Bank behaviour. To the extent a third party's behaviour is relevant to determine the Bank's own behaviour it may be considered, but only findings will be made concerning the Bank's behaviour. In its problem-solving function, the mechanism may assist parties who are willing to participate.

25.	When a problem-solving approach is being undertaken, the IRM will attempt to resolve the problem and will not attribute blame or fault. The focus of problem-solving is to move forward and not look backward.	<ul style="list-style-type: none"> • Suggest deleting second sentence. Although true, it implies that focus of compliance audit is not forward-looking. The compliance review, can and should be remedial. • This provision should be deleted. The IRM should identify lessons learned for future implementation of projects; this sends out defensive signals. Resolving a problem may require addressing a past wrong. 	<ul style="list-style-type: none"> • Language has been adjusted. • Language has been modified, however the focus of the Problem-solving initiative is to resolve a problem, and not to attribute blame.
26.	The IRM cannot guarantee that it will resolve all complaints to the satisfaction of the complainant. As a project is implemented the Bank will have diminishing leverage to compel parties to behave differently or adopt changes to the project scope, especially where additional costs are involved.	<ul style="list-style-type: none"> • While it is correct to manage expectations, the 2nd sentence should be deleted. 	<ul style="list-style-type: none"> • No change is proposed as this sentence is a statement of fact.
27.	Where recommendations have been made and approved by either the President or the Board, as the case may be, the CCO will monitor the implementation of these recommendations on a regular basis.	<ul style="list-style-type: none"> • This provision is a critical improvement on other mechanisms and we commend EBRD for including it. Monitoring can be improved by (i) releasing reports to the public; (ii) instructing the IRM to check in with the claimants as part of the monitoring and (iii) requiring the CCO to review any information received from the public as a part of monitoring the implementation of decisions made. • Inclusion of this provision is commended. • Monitoring should be reported on periodically and failure to implement should be legitimate grounds for a subsequent complaint. 	<ul style="list-style-type: none"> • It is expected that any monitoring issues of general applicability will be raised in the Annual Report of the IRM.
28.	Bank will specifically identify relevant policies and procedures that relate to Operational Aspects of design and implementation to which IRM will apply. The policies include Environmental Policy, Environmental Procedures and PIP (to extent relevant).	<ul style="list-style-type: none"> • No compelling reason to limit IRM to environmental impacts. Should include social impacts. Proposed limitation makes no sense in problem-solving phase or compliance phase. In problem-solving, focus in on problem-solving, not apportioning blame. In compliance review, affected communities and the Bank have an interest in all policies being followed, not just environmental policies. 	<ul style="list-style-type: none"> • See above.

		<ul style="list-style-type: none"> • Should be up to the IRM to determine what is relevant. All policies and procedures approved by the Board should be mandatory. All Bank policies and procedures should be subject to IRM review. To permit less will compromise the mechanism's credibility. • The Bank's policy on ethnic minorities should be mentioned. 	<ul style="list-style-type: none"> • See above. • See above.
29.	<p>Despite their titles, the Energy Operations Policy, Natural Resources Policy, Property Operations Policy, Shipping Operations Policy, Transport Policy and Agribusiness Operations Policy, which also appear on the Bank's web site, are more in the nature of strategies and will not therefore be included within the scope of the IRM.. However, these "policies" should be reviewed to identify any mandatory features which may have an environmental impact on a particular project. Any such mandatory policy requirements would be capable of forming the basis of an IRM review.</p>	<ul style="list-style-type: none"> • All EBRD policies and procedures should be subject to a compliance review. The IRM can be relied upon to determine what is mandatory and in a particular context. No valid reason to narrow the policies eligible for inspection in advance. • The fact that EBRD views these policies as non-binding strategies is very troubling and provides more evidence that EBRD is attempting to evade accountability. How and when will these policies/strategies be reviewed and how will stakeholders be permitted to give input into the process. • The exclusion of sectoral policies should be included earlier in the paper to confirm the 'ground rules' for the IRM 	<ul style="list-style-type: none"> • See above. • The Bank takes country and sector strategies very seriously and does not attempt to evade accountability. As required under the Public Information Policy, sectoral policies are made public on the web site and public comments are invited on draft sectoral policies and policy reviews. Upon approval of the new or revised policy, a summary of the comments received from the public and staff responses will be placed on the web as well. Country strategies are also posted on the Bank's web site following approval by the Board. The proposed changes to the Public Information Policy encourage public comment on revisions to country strategies, based on a Management issues papers to be posted on the web site prior to revising a country strategy.
30.	<p>In addition mandatory procedures which may affect environmental impacts of projects should be subject to IRM review.</p>	<ul style="list-style-type: none"> • IRM should not be limited to "environmental" impacts. 	<ul style="list-style-type: none"> • See above.

31.	As the Board approves each new policy, a decision will be taken as to whether the policy, or part thereof, should be subject to the IRM. The existing policies and procedures should all be reviewed to ensure they are clear, concise and unambiguous about the Bank's obligations under the policies.	<ul style="list-style-type: none"> • Delete paragraph as all policies and procedures should be subject to IRM. 	<ul style="list-style-type: none"> • See above.
32.	The General Counsel will provide the IRM with all legal information and advice needed in respect of Bank policies and procedures.	<ul style="list-style-type: none"> • To ensure independence, General Counsel should not provide legal advice to the IRM. Gaining an independent interpretation of those policies and procedures and how they are implemented is precisely the role of the independent IRM panels. It is appropriate however, for the IRM to seek the advice of General Counsel on the Bank's rights and obligations with respect to a particular project. • A fire-wall should be constructed within OGC to ensure that separate legal counsel is provided to the Bank on the one hand and the IRM on the other. The IRM should be entitled to obtain independent legal counsel where it considers necessary. 	<ul style="list-style-type: none"> • It is essential and consistent with the Bank's governance structure that the Bank's decision-makers have access to the Bank's chief legal counsel's institutional memory and advice on any matter as they may deem desirable. Neither the existence of this resource nor the specific advice provided limit in any way the powers of the President and/or the Board to make any procedural or substantive decision as they think appropriate.
33.	There are two components to confidentiality. Firstly, all IRM officers and bodies shall follow Bank procedures for maintaining information confidential. Commercially sensitive business information will be maintained confidential. Secondly, the identity of complainants and any involved third-parties may, upon request, be withheld by the Bank	<ul style="list-style-type: none"> • Replace the words "will, upon the request of the complainant" in the last sentence" in lieu of "may, upon request". • The IRM should also have access to all information, including commercially sensitive information, on the understanding that the IRM will maintain such information confidential. 	<ul style="list-style-type: none"> • Language modified • The CCO and independent expert undertaking a compliance review would have access to Bank files and would be required to comply with the Bank's Public Information Policy, including maintaining commercially sensitive information confidential. A problem-solving initiative may not require complete access to Bank files, this will be considered on a case-by-case basis.
34.	The CCO will prepare an annual report describing the activities of the IRM during the preceding year. The Report will be submitted to the President and Executive Committee for transmission to the Board for information.	<ul style="list-style-type: none"> • The Annual Report should include more than a description about the IRM's activities. It should be used to make general recommendations to the EBRD, based on the experience and lessons learned from the IRM's activities. 	<ul style="list-style-type: none"> • The content of the Annual Report will be developed over time and it is expected that broad lessons learned based on the experiences of the IRM will be summarised in the Report.

		<ul style="list-style-type: none"> • It should be specifically provided that the Annual Report will include accurate summaries of all complaints filed, determinations made and rationales for those determinations. • The IRM report should be submitted directly to the Board of Directors, not the President. 	<ul style="list-style-type: none"> • See above. • Submitting the report to the Board through the President is a procedural matter. See above.
		<ul style="list-style-type: none"> • The release of information is conditional and vague. Transparency enhances public trust in the Bank and its mechanisms. • The Annual Report should be published in all working languages of the Bank. 	<ul style="list-style-type: none"> • Certain modifications have been made to clarify. Detailed provisions concerning timing and release of information will be included in the Rules of Procedure. • Decisions to translate documents into other working languages of the Bank are made on a case-by-case basis.
35.	<p>The efficiency and effectiveness of the IRM will be reviewed upon completion of three (3) Years of operation, provided that the Board may postpone the review if the IRM has not had sufficient experience in processing complaints to make such a review meaningful.</p> <p>New provisions recommended:</p> <p>"The IRM will have (confidential) access to all documents and information, people and places it considers pertinent to its investigations. In this respect, the Bank's staff will cooperate with, and do what is necessary to facilitate, the IRM investigations."</p> <p>"The IRM and the Bank will actively introduce and publicise the function of the IRM to all the various stakeholder. The IRM will organise regional introduction workshops for this purpose."</p>	<ul style="list-style-type: none"> • The policy should clearly empower the IRM. • The IRM should be fully introduced to all potentially interested parties. 	<ul style="list-style-type: none"> • As noted above, it is anticipated that the independent experts will have access to Bank files and staff for compliance reviews and this will be included in more detail in the Rules of Procedure. • The establishment of the IRM will be made known to the Bank's stakeholders in a variety of ways: through the internet, the Resident Offices, publication of Guidelines specifically targeted to local communities. In addition, many in the NGO community are fully aware of the establishment of the IRM and will also inform local communities.

	<ul style="list-style-type: none"> • It should be noted as part of the IRM policy that the Board has the right to make exception under special circumstances and that the Board may exercise this right with respect to any or all aspects of the IRM policy. 	<ul style="list-style-type: none"> • Subject only to the powers retained by the Board of Governors, the Board has all powers to approve any deviation from or exception to the application of its own policies and it is considered not necessary to include a specific provision to this effect.
	<ul style="list-style-type: none"> • Consistent with its sustainable development mandate, EBRD should work towards establishing a suite of policy requirements to address critical social and economic issues, along the lines of the safeguard policies at World Bank. 	<ul style="list-style-type: none"> • The issue is addressed in the context of the review of the Environmental Policy.
	<ul style="list-style-type: none"> • To ensure better transparency, a complainant should be entitled to contact the IRM at any time and should be given sufficient and timely opportunities to express their opinions, e.g. before Board decisions on eligibility and final recommendations. • The IRM should have the specific power to prepare and issues rules of procedures and guidelines, which should be prepared and disseminated in all four working languages of the Bank. • Consideration should be given to publishing the guidelines in local languages in areas likely to be affected by Bank projects, and at least Category A projects. • There should be a public, register of complaints that are logged as they come into the Bank. • Consideration should be given to posting a public statement of when complaints are received. • There should be a separate workshop on the IRM. • Will the IRM cooperate with other groups and NGOs? 	<ul style="list-style-type: none"> • Complainants will be given reports on the progress of their complaint. • Power has been given to the IRM to prepare Rules of Procedure and Guidelines. They will be prepared by the CCO and subject to approval by the President. • The proposal is to produce the description of the IRM (Annex 1 to the Board paper) and the Guidelines in the official languages of our countries of operations. Translation will take place in a pragmatic way, starting with the largest borrowing countries and/or where projects with significant environmental issues are located. • Proposal adopted. • The registry will be made public. • The IRM was on the web site for an extended period of public consultation. • Asking the IRM to "co-operate" with NGOs may compromise its independence, as the IRM is to be neutral vis-à-vis all Bank stakeholders.

		<ul style="list-style-type: none"> • Document is too "cold" and may put local people off using the mechanism. The document needs to be more pro-active in encouraging people to raise issues and making it clear that there is support available. 	<ul style="list-style-type: none"> • This document is intended to be the policy framework and therefore, more legalistic in nature. Guidelines will be developed, which are targeted specifically to local communities, to address this concern.
		<ul style="list-style-type: none"> • The IRM is an excellent initiative. To work the IRM must strike a balance between being something EBRD "owns" (and ultimately to some extent controls) and something that is and is seen to be independent. Part of the latter can be achieved by making sure that your "experts" are truly independent and objective. It is most important to "prove" this and to have this proof built into the communications/publicity on the IRM. Also the processes of investigation and decision-making needs to be wholly transparent and likewise, this should all be on your web site and in other material that you make available on the IRM. • Project sponsors should be kept informed of complaints filed and given an opportunity to comment on actions taken in respect of the project if they wish. 	<ul style="list-style-type: none"> • Rules of procedure will address such issues in more detail. Sponsors should be advised when complaint lodged and should be given an opportunity to comment on the complaint processing.