

POLICY OF THE  
**INDEPENDENT  
CONSULTATION  
AND INVESTIGATION  
MECHANISM OF  
THE IIC**

CII/MI-1-1





INTER-AMERICAN INVESTMENT CORPORATION DOCUMENT

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MECHANISM OF THE IIC**

**December 15, 2015**



Under the Disclosure of Information Policy, this document is subject to public disclosure.



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# Glossary

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**Bank or IDB:** The Inter-American Development Bank.

**Board:** The Board of Executive Directors of the IIC.

**Borrower/Recipient/Client:** A party that has received financing in connection with an IIC-Financed Operation and that has entered into a loan, investment, technical cooperation, or guarantee agreement with the IIC.

**Business Day:** A day when the IIC is open for business in Washington, D.C.

**Compliance Review:** A formal investigation of whether the IIC has not complied with one or more of its Relevant Operational Policies.

**Compliance Review Panel:** The panel of experts assembled to investigate a given Request in the context of the Compliance Review Phase, described in paragraph 42 of this Policy.

**Compliance Review Phase:** The ICIM process described in Section I of this Policy.

**Compliance Review Phase Coordinator:** The ICIM Office staff member responsible for coordinating the Compliance Review Phase and serving as the Panel Chairperson for approved investigations, as described in paragraph 42 of this Policy.

**Consultation Phase:** The ICIM process described in Section H of this Policy.

**Consultation Phase Coordinator:** The ICIM Office staff member responsible for coordinating the Consultation Phase.

**Cross-Booked Operation:** Means the non-sovereign guaranteed operations that:

- a. Starting on January 1st, 2016, are originated, carried out and administered by IIC, and funded or guaranteed totally or partially by the IDB or with funds administered by the IDB.
- b. Were originated by the IDB but did not reach IDB management approval prior to January 1st, 2016, and subsequently are approved, carried out and administered by IIC.

**Disclosure of Information Policy:** The IIC's Disclosure of Information Policy approved on October 6, 2005 (CII/GN-129-7), and/or any successor access to information policy.

**Environmental and Social Sustainability Policy:** The IIC's Environmental and Social Sustainability Policy approved on July 24, 2013 (CII/GP-16-7), and/or any former or successor environmental and social safeguards policy.

**Executive Director:** A member of the Board of Executive Directors of the IIC.

**General Manager:** The general manager of the IIC.

**Harm:** Any direct, material damage or loss. Harm may be actual or reasonably likely to occur in the future.

**ICIM or the Mechanism:** The Independent Consultation and Investigation Mechanism of the IIC.

**ICIM Director:** The IDB official appointed by the IDB Board of Executive Directors as responsible for the ICIM, pursuant to the IDB-ICIM Policy.

**ICIM Office:** The office run by the ICIM Director established pursuant to the IDB-ICIM Policy.

**IDB-ICIM Policy:** The Independent Consultation and Investigation Mechanism Policy of the IDB.

**IDB Group:** The IIC, the IDB, and the MIF.

**IDB Legacy Portfolio:** As of January 1st, 2016, the IDB non-sovereign guaranteed operations:

- a. In which the loans have been partially or fully disbursed and amounts are outstanding.
- b. In which one or more guarantees have been issued but have not been cancelled or, if drawn, amounts are outstanding.
- c. That have been approved by IDB management, but have not been disbursed or issued.

**IIC:** The Inter-American Investment Corporation.

**IIC-Financed Operation or Project:** Any IIC investment or other financing activities, including any operational activities involving loans, equity or quasi-equity investments, grants, technical cooperation assistance, and

guarantees financed or to be financed in whole or in part with IIC funds, or with funds administered or guaranteed by the IIC, excluding the IDB Legacy Portfolio, and including Crossed-Booked Operations.

**Management:** The IIC manager or managers, in charge of the relevant IIC Financed Operation or any delegate thereof.

**MIF:** The Multilateral Investment Fund.

**Parties:** The Requesters, Management, the Borrower, and/or the Client, if applicable.

**Policy:** This ICIM Policy.

**Public Registry:** The public web-based registry maintained by the ICIM Office which provides all public documents related to Requests received by the ICIM Office, as established in paragraph 62 of this Policy.

**Relevant Operational Policies:** All policies as per paragraphs 11 and 12 of this Policy. The Relevant Operational Policy that will be applicable for an IIC-Financed Operation approved by the Board is the version in effect at the time of Board approval of the IIC-Financed Operation that is the subject of the Request, unless the relevant policy or legal documentation provides otherwise. Guidelines, procedures, or norms approved only by Management of the IIC are not subject to the Mechanism. In the event that the Board grants an explicit waiver of the obligation to apply a specific Relevant Operational Policy to a particular IIC-Financed Operation, that policy may not be used as grounds for submitting a Request to the ICIM.

**Request:** A communication submitted by the Requesters or their representative that alleges that they have suffered or may suffer Harm due to the failure of the IIC to comply with one or more of its Relevant Operational Policies within the context of an IIC-Financed Operation.

**Requesters:** Any two or more people residing in the country where an IIC-Financed Operation is implemented who have submitted a Request to the ICIM, considering that they have been or may be affected by the failure of the IIC to comply with one or more of its Relevant Operational Policies within the context of that operation.

**Roster:** A list of technical experts appointed on an ad hoc basis to be part of the Panel responsible for carrying out a Compliance Review.



**Short Procedure:** An abbreviated Board approval procedure, as defined by the Regulations of the Board, under which the ICIM Office may submit matters for the Board's consideration on a non-objection basis.

**Standard Procedure:** The submission of matters for inclusion on the agenda of the Board for consideration as defined by the Regulations of the Board.

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## A. Background

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1. In 1999, Management of the Inter-American Investment Corporation (Management) proposed to the Board of Executive Directors (Board) of the Inter-American Investment Corporation (IIC) to establish an independent investigation mechanism to investigate policy noncompliance stemming from allegations from adversely affected parties. This proposal sought to create an inspection function that is independent from Management to increase the transparency, accountability, and effectiveness of the IIC. The proposal was made in a manner consistent with the mandate conferred upon the Inter-American Development Bank (IDB) in 1994 by its Board of Governors.
2. In 2002, the Board approved the policy on the creation of the Independent Investigation Mechanism of the IIC<sup>1</sup> (IIM Policy of the IIC) establishing the rules and procedures to create its own Independent Investigation Mechanism based on those of the IDB, tailored to the IIC's private-sector mandate.
3. In February 2010, the IDB Board of Executive Directors approved the Policy Establishing the Independent Consultation and Investigation Mechanism. The policy went through a public consultation process in which the IIC participated as an observer in order to be able to adopt a revised mechanism in the future that would be consistent with the mechanism eventually adopted by the IDB and that would replace the IIM Policy of the IIC, reflecting the outcomes of this consultation. The policy then underwent a pilot phase, and its implementation was evaluated in 2012 by the IDB Office of Evaluation and Oversight. As a result, after further public consultation, in December 2014 the IDB Board of Executive Directors approved a new Policy of the Independent Consultation and Investigation Mechanism (IDB-ICIM Policy).
4. The Policy established herein supersedes the IIM Policy of the IIC in order to establish an Independent Consultation and Investigation Mechanism of the IIC based on the IDB-ICIM Policy using the ICIM Office of the IDB and applying modifications to the Policy so as to adapt it to the IIC's private-sector mandate. The Mechanism's powers and operating system are set forth below.

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<sup>1</sup> See "Policy and Operational Guidelines for the Independent Investigation Mechanism for the IIC" (CII/GN-139-4).

## **B. ICIM Objectives**

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5. The ICIM's objectives are to:
  - a. Provide a mechanism and process independent of Management in order to investigate allegations by Requesters of Harm produced by the IIC's failure to comply with its Relevant Operational Policies in IIC-Financed Operations;
  - b. Provide information to the Board regarding such investigations; and
  - c. Be a last-resort mechanism for addressing the concerns of Requesters, after reasonable attempts to bring such allegations to the attention of Management have been made.

## **C. Guiding Principles**

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6. The ICIM's guiding principles are to:
  - a. Be functionally independent from Management;
  - b. Efficiently and effectively address Requests;
  - c. Be objective, impartial, and transparent;
  - d. Work in a cost-effective manner and avoid duplication with other independent offices of the IDB Group; and
  - e. Reflect the highest professional and technical standards of the IDB Group.

## **D. Phases, Structure, and Composition of the ICIM**

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7. The ICIM's objectives are fulfilled through the following two phases to be selected by the Requesters, allowing the selection of the approach that best addresses the Requests:
  - a. Consultation Phase: This phase provides an opportunity for the Parties to address the issues raised in the Request in a voluntary, flexible and collaborative manner.

- b. Compliance Review Phase: This phase offers an investigative process related to the issues raised in the Request to establish whether the IIC has failed to comply with any of its Relevant Operational Policies and whether that has caused Harm to the Requesters.
- 8. The composition and organization of the ICIM Office will be as set forth in the IDB- ICIM Policy.
- 9. With respect of the application of this Policy, the Mechanism's Director is accountable to the Board of Executive Directors of the IIC, to which he or she will report periodically on the ICIM's operation and results.

## **E. ICIM Scope**

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- 10. The ICIM's scope of work covers all IIC-Financed Operations, as of the date they are approved by the Board or the General Manager, as the case may be. For clarification purposes, the IDB Legacy Portfolio is covered under the IDB-ICIM Policy and not within the scope of this Policy.
- 11. The ICIM applies to all Relevant Operational Policies, which include the following:
  - ➔ Environmental and Social Sustainability Policy.
  - ➔ Disclosure of Information Policy.
- 12. Relevant Operational Policies will also be deemed to include environmental and social policies approved following entry into effect of this Policy, as well as any other policies that the Board explicitly designates as falling within the purview of the ICIM.

## **F. General Criteria for Request Intake**

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- 13. WHO CAN FILE A REQUEST? Requests may be filed by:
  - a. Any group of two or more people residing in the country where an IIC-Financed Operation is implemented who are or anticipate being affected by such Operation;
  - b. A representative residing in the country where the IIC-Financed Operation is implemented or in another country, provided he or she indicates the persons on whose behalf he or she is acting

and provides written evidence of the authority to represent them.

14. **CONTENT AND FORM OF A REQUEST.** There is no specific format for a Request (for guidance see a Model Letter in Annex I). However, in order to be considered, it must include the following:
  - a. The name, address, and other contact information of the Requesters;
  - b. When a Request is made through a representative, it must clearly identify the people on whose behalf the Request is made and provide written evidence of the authority to represent the Requesters;
  - c. An indication of whether the Requesters wish to maintain their identity confidential and the reasons why;
  - d. A description of the IIC-Financed Operation and the country where it is implemented;
  - e. An allegation that the IIC failed to correctly apply one or more of its Relevant Operational Policies;
  - f. A clear explanation of the alleged Harm and its relation to the noncompliance of the Relevant Operational Policy in an IIC-Financed Operation, if known;
  - g. A description of the efforts made by or on behalf of the Requesters to address the issues in the Request with Management, and the results of those efforts; and
  - h. A statement as to whether the Requesters wish to use the Consultation Phase, the Compliance Review Phase, or both, or to request further information.
15. **CONFIDENTIALITY.** Anonymous Requests will not be accepted. In the event that the Requesters need to maintain their identity confidential due to fears of retaliation, the ICIM Office will maintain such confidentiality.
16. **HOW TO FILE A REQUEST.**
  - a. Requests should be addressed to the ICIM Office and submitted in writing by e-mail, mail, or fax.
  - b. The IIC's official languages are Spanish, English, Portuguese, and French. Requests submitted in other languages will be accepted, but additional time will be required for their translation and processing.

- c. Requests may be delivered to the ICIM Office in Washington, D.C. or to any IDB or IIC Country Office (addressed “To the attention of the ICIM Office”), from which they will be forwarded to the ICIM Office. The ICIM’s address is: Independent Consultation and Investigation Mechanism, Inter-American Development Bank Group 1300 New York Avenue, NW, Washington, D.C. 20577, United States. E-mail: [mecanismo@iadb.org](mailto:mecanismo@iadb.org). Tel: 202-623-3952; Fax: 202-312-4057.
- d. Potential Requesters may obtain information on the procedural requirements for submission of a Request on the ICIM website ([www.iadb.org/en/ICIM](http://www.iadb.org/en/ICIM)) or by contacting ICIM Office staff (at the addresses and numbers indicated above). The ICIM Office may provide information to potential Requesters on the scope of action, exclusions, eligibility criteria, Relevant Operational Policies, the difference between the Consultation Phase and the Compliance Review Phase, and other details of the ICIM process in general. Requesters will be advised that the ICIM does not award compensation, damages, or similar benefits. The ICIM cannot advise on the substantive aspects of a Request.

17. SEQUENCING OF REQUESTS AND OPTING OUT.

- a. Requesters may choose: (i) the Consultation Phase; (ii) the Compliance Review Phase; or (iii) both. When Requesters choose both phases, processing will be sequential and will begin with the Consultation Phase.
- b. Requesters may opt out of the Consultation Phase at any time during the process. If they had also chosen the Compliance Review Phase, it will then be initiated. It will not be possible to reopen the Consultation Phase once the Compliance Review Phase has begun.
- c. Requesters may opt out of the Compliance Review Phase, but it will be the responsibility of the ICIM Director to assess the relevance of continuing and to submit a recommendation on whether or not to continue with the process to the Board for consideration by Short Procedure.

18. IMPACT OF AN ONGOING CONSULTATION OR COMPLIANCE REVIEW PHASE. The fact that a Consultation Phase or Compliance Review Phase is initiated and ongoing does not halt the processing, execution, or disbursements of an ongoing

IIC-Financed Operation. If, based on the available information, the ICIM Director determines that serious irreparable Harm may result from the continued execution of an IIC- Financed Operation, the ICIM Director may recommend to the Board that execution be suspended. The decision on that recommendation will be made by the Board, subject to applicable IIC policies and legal documentation.

19. **EXCLUSIONS.** Neither the Consultation Phase nor the Compliance Review Phase will be applied to:
- a. Considerations of ethics or fraud, specific actions by IIC employees, nonoperational matters such as internal finance or administration, complaints of corrupt practices, and procurement decisions or processes. When receiving Requests regarding these issues, the ICIM Director will forward them to the relevant office and record the referral in the Public Registry;
  - b. Any Request that is anonymous, or on its face is without substance;
  - c. Particular issues or matters that have already been reviewed by the ICIM, unless justified by new evidence or circumstances not available at the time of the initial Request;
  - d. Particular issues or matters raised in a Request that are under arbitral or judicial review in an IIC member country. If, after determination of eligibility, the ICIM Office becomes aware of the existence of arbitral or judicial proceedings, the ICIM Director will be responsible for assessing the implications and submitting a recommendation on whether or not to move forward with the process to the Board for consideration by Short Procedure;
  - e. Requests related to operations that have not yet been approved by the Board or the General Manager. When receiving Requests related to this exclusion, the ICIM Director will forward the Request to Management, and record the referral in the Public Registry. During the operation's preparation, Management will take the Request into account and inform the ICIM Director of its response. In the event that the operation is subsequently submitted for consideration, the project document will include a summary of the Request, with Management's response and any action taken in regard to it; or
  - f. Requests that are filed more than 24 months after the last disbursement of the relevant IIC-Financed Operation.



20. **REGISTRY OF REQUESTS.**

- a. When a Request is received by the ICIM Office, it will verify that the Request contains all required information and, without prejudice to the eligibility process, that it is not clearly linked with any of the exclusions set forth in paragraph 19 of this Policy;
- b. Based on this review, within a maximum term of five Business Days as of receipt of the Request, the ICIM Director will make one of the following decisions:
  - i. If the Request does not include all the information required for its processing (see paragraph 14 of this Policy), the Director will communicate with the Requesters and inform them of the missing information, granting the Requesters a maximum term of 10 Business Days as of such communication to provide the information. If the information is not received within the indicated term, the process will be considered terminated, without prejudice to the fact that the Requesters may resubmit the Request once they have gathered the required information; or
  - ii. If the Request includes the required information and is not clearly linked with any of the aforementioned exclusions, the Director will proceed to issue a notice of registration to move forward with the processing of the Request within the framework of the ICIM process; or
  - iii. If the Request is clearly linked with any of the exclusions set forth in paragraph 19 of this Policy, and therefore cannot be taken up by the ICIM, the Director will inform the Parties of the decision, will forward the Request to the relevant unit of the IDB Group, thereby ending the ICIM process.
- c. In all cases, the decision will be recorded in the Public Registry and the Requesters, Management, and the Board will be informed thereof.

21. **RESPONSE BY MANAGEMENT.** Following the notice of registration of a Request, the ICIM Office will send a copy of the Request to Management, requesting a written response to the Request (“Management Response” or “Response”). At the end of a term of no more than 21 Business Days as of the date of the notice of registration, Management will send the ICIM Office its

Response, which will contain Management's perspective with respect to the allegations submitted by the Requesters and may include the request to temporarily suspend the eligibility process as provided in paragraph 23(c) of this Policy, if deemed appropriate by Management.

## **G. Determination of Eligibility**

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22. **ICIM ELIGIBILITY CRITERIA.** A Request will be deemed eligible by the ICIM if it is determined that it meets all of the following criteria:
- a. The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the IIC-Financed Operation is implemented. If the Request is filed by a representative, the identity of the Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.
  - b. The Request clearly identifies an IIC-Financed Operation that has been approved by the Board or the General Manager.
  - c. The Request describes the Harm that could result from potential noncompliance with one or more Relevant Operational Policies.
  - d. The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
  - e. None of the exclusions set forth in paragraph 19 of this Policy apply.
23. **ELIGIBILITY PROCESS.**
- a. The eligibility process involves the analysis of the Request with respect to the eligibility criteria (see paragraph 22 of this Policy) to determine whether the Request is eligible or not.
  - b. The ICIM Office will have up to 21 Business Days as of the date of receipt of the Response by Management to determine the Request's eligibility.
  - c. Should Management request a temporary suspension of the eligibility determination process in order to make corrections to the IIC-Financed Operation, the ICIM Director may grant a

term of suspension of up to 45 Business Days as of the date of receipt of the Response by Management if, and only if, there is a specific plan to make corrections and a proposed timeline for carrying out the activities. The ICIM Office will notify the Requesters as soon as it decides to grant the suspension.

- d. The ICIM Director, in consultation with the Consultation Phase Coordinator and the Compliance Review Phase Coordinator, will determine the eligibility of the Requests based on the eligibility criteria established in this Policy.
- e. In the eligibility determination process, the ICIM will consider all relevant information available at that time, including Management's Response, project documentation, and the information provided by the Requesters. It may also require an onsite visit to the country where the IIC-Financed Operation is being implemented. In such a case, the ICIM Director will consult with the Executive Director for said country. Site visits will comply with regular Bank and IIC procedures for official missions.
- f. When visits are made to project sites and meetings are held with the Requesters, the ICIM Office staff will inform them of procedural considerations, if necessary.
- g. At the end of the term referred to in paragraph 23 (b) of this Policy, the ICIM Office will issue an eligibility memorandum that will include a copy of the Request as well as the Response by Management. This memorandum will also include a description of the steps taken during the eligibility process, a summary of the facts and positions of the Parties, and a determination of whether the Request is eligible for the Consultation Phase, Compliance Review Phase, both, or neither. If eligible, the process will begin for the corresponding phase; otherwise, the process will be deemed concluded.
- h. Regardless of the result of the determination, the ICIM Director will promptly inform the Board, Management, and the Requesters thereof and will record the result in the Public Registry and publish relevant documents classified as public under the Disclosure of Information Policy.

## H. Consultation Phase

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24. **OBJECTIVE OF THE CONSULTATION PHASE.** The objective of the Consultation Phase is to provide an opportunity to the Parties to address the issues raised by the Requesters related to Harm caused by the failure of the IIC to comply with one or more of its Relevant Operational Policies in the context of an IIC-Financed Operation. The Consultation Phase provides an approach that ensures unbiased, equitable treatment for all the Parties. There is no guarantee that a Consultation Phase process will resolve all the concerns to the satisfaction of the Parties.
25. **CONSULTATION MODALITIES.** The Consultation Phase process is intended to be flexible, consensus-based, and tailored to the specific issues raised in the Request related to policy noncompliance. The methods to be used will depend on factors such as urgency, type of Harm involved, remedies sought, and the likelihood that the exercise will have a positive outcome. These methods include but are not limited to: information gathering, joint fact-finding, facilitation, consultation, negotiation, and mediation.
26. **VOLUNTARY NATURE.** Participation in the Consultation Phase is voluntary and requires the consent of all Parties. Any of the Parties, including the Requesters, who does not wish to move forward with the Consultation Phase, may unilaterally withdraw from the phase at any time. If the ICIM Director determines that this participant is essential for the process, the Consultation Phase process will be considered concluded.
27. **ASSESSMENT.** Immediately after the Request is declared eligible for the Consultation Phase, the ICIM will start the assessment stage, with the objective of understanding the Harm related to potential policy noncompliance raised by the Request, identifying and gathering information from the Requesters, Management, and other stakeholders, determining whether the Parties would agree to seek a resolution using consultation methods, and if so, the best process for addressing any policy noncompliance.
28. **NATURE OF THE ASSESSMENT.** While carrying out an assessment, the ICIM may utilize, but not be limited to, any of the following activities:
  - ➔ Desk review, including reviewing any relevant files;
  - ➔ Meetings with the Requesters, Management, Client, civil society organizations, and/or other stakeholders;

- ➔ Visits to the project site, in which case the ICIM Office will consult with the Executive Director for the country where the IIC-Financed Operation is implemented regarding said visit. Site visits will comply with regular Bank and IIC procedures for official missions.

29. **RESULTS OF THE ASSESSMENT.** Within a maximum term of 40 Business Days as of the date of determination of eligibility, the assessment will conclude with a decision on whether or not to conduct a Consultation Phase process. Based on the results of the assessment, the ICIM will:
  - a. Work with the Parties to reach an explicit agreement to move forward with the Consultation Phase process, establishing a method for addressing the issues raised; or
  - b. Determine that a collaborative resolution is not possible, in which case the Request will be forwarded to the Compliance Review Phase, if the Requesters have asked to pursue that phase. If they have not, the ICIM process will be declared concluded.
30. **ASSESSMENT REPORT.** The results of the assessment will be set forth in an assessment report, which the ICIM Office will deliver to the Board, Management, and the Requesters and publish it in the Public Registry. The report will include a general summary of the information gathered during the assessment and the reasons for the decision to proceed or not with the Consultation Phase process. In the event of proceeding with a Consultation Phase process, the assessment report will include the course of action, consultation method, and timeline agreed by the Parties for this process.
31. **CONSULTATION PHASE TIME FRAME.** The ICIM will complete the Consultation Phase process within a maximum period of 12 calendar months from the date of issue of the assessment report. This term may be extended if, at the end of it, the ICIM Director believes that an extension will help bring about a consensus-based resolution of the issues raised. Otherwise, the ICIM Director will consider the Consultation Phase process concluded.
32. **LIMITATIONS ON AGREEMENTS.** The Consultation Phase will not support agreements that are contrary to IIC policies or its code of ethics, or that would violate domestic laws of the Parties, or international law. The Consultation Phase itself does not result in award of compensation or similar benefits.

33. **CONSULTATION PHASE REPORT.** Upon completion of the Consultation Phase process, the ICIM Office will prepare a report on the results of the process. The report will be distributed to the Board for consideration by Short Procedure and to Management for information. After consideration by the Board, the report will be made available to the Requesters and published on the Public Registry.
34. **CONFIDENTIALITY.** The terms of the agreement will be published in the Public Registry unless all of the signing Parties agree on confidentiality, in which case the ICIM Office will record the result and publish a summary.
35. **MONITORING.** When applicable the ICIM Office will develop, in consultation with the Parties, a monitoring plan and time frame for the agreement reached, which will be included in the Consultation Phase report. The monitoring plan will be considered by the Board under Short Procedure, and its duration, not to exceed five years from the date the agreement was signed, will be determined on a case-by-case basis consistent with the terms of the agreement. The ICIM Office will submit a monitoring report to the Board for information at least annually, which will be published in the Public Registry. The monitoring plan will include:
  - a. That there is direct or outside monitoring of any agreement reached by the Parties;
  - b. That there are adequate measures to determine whether such agreement is being implemented appropriately.

## **I. Compliance Review Phase**

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36. **OBJECTIVE OF THE COMPLIANCE REVIEW PHASE.** The purpose of the Compliance Review Phase is to impartially and objectively investigate allegations by Requesters that the IIC has failed to comply with its Relevant Operational Policies and has caused Harm to the Requesters.
37. **SCOPE OF THE COMPLIANCE REVIEW PHASE.** The Compliance Review process is fact-finding in nature. It is not a judicial process and is not designed to establish guilt or innocence, or to adjudicate fault or apportion blame among the various Parties involved. The ICIM only has a mandate to investigate allegations of noncompliance with Relevant Operational Policies in IIC-Financed Operations. It does not have a mandate to investigate actions of

governments, public entities, local authorities, Borrowers, other lenders, sponsors, or investors in connection with the IIC-Financed Operation.

38. **CONDITIONS FOR A COMPLIANCE REVIEW PHASE.** A Request will proceed to the Compliance Review Phase if:
  - a. the Requesters have opted for both ICIM phases and, after their Request was declared eligible, the Consultation Phase ended without a consensus-based solution; or
  - b. the Requesters have opted only for the Compliance Review Phase, and their Request was declared eligible.
39. **RECOMMENDATION FOR COMPLIANCE REVIEW AND TERMS OF REFERENCE (TOR):** When a Request is transferred to the Compliance Review Phase, the Compliance Review Phase Coordinator, under the supervision of the ICIM Director, will prepare, within a maximum term of 21 Business Days, the recommendation and the TOR for the investigation, in consultation with Management and the Requesters. The TOR will include, but not be limited to, the objectives of the investigation, the items to be investigated, a description of the IIC-Financed Operation, a proposed timeline and budget for the investigation, and anticipated use of consultants. The TOR are intended solely for the guidance of the Compliance Review Phase and to inform interested Parties of what to expect.
40. **COMMENTS BY MANAGEMENT AND REQUESTERS.** Upon completion of the TOR, the ICIM Office will send a copy to Management and the Requesters, which will each have a term of up to 15 Business Days to make comments.
41. **CONSIDERATION OF THE RECOMMENDATION.** Upon receipt of Management's and Requesters' comments, or upon expiration of the term (whichever occurs first), the ICIM Office will submit its recommendation on whether or not to conduct a Compliance Review investigation to the Board, jointly with Management's comments, if any. The recommendation will be considered by the Board by Short Procedure. The decision by the Board regarding the recommendation will be communicated to the Requesters and Management; recorded in the Public Registry and the recommendation and TOR published after consideration.
42. **FORMATION OF THE COMPLIANCE REVIEW PANEL.** Upon approval of the Compliance Review, the ICIM Director, in consultation with the Compliance Review Phase Coordinator, will

identify and hire two independent experts to form the Panel that will conduct the Compliance Review. The Panel will be made up of the Compliance Review Phase Coordinator, who will act as Panel Chair, and two additional members who will be selected from the Roster based on the experience required in each case. Once formed, the Panel will be assisted by the ICIM's operating and administrative team, and by additional consultants, if necessary.

43. **CONDUCTING THE COMPLIANCE REVIEW.**

- a. The ICIM Office will promptly begin the Compliance Review once the Board has approved the investigation and the investigation team is formed.
- b. The ICIM Office will consult with the Executive Director for the country where the IIC-Financed Operation is being implemented regarding the site visit. Site visits will comply with regular IIC and Bank procedures for official missions.
- c. The time required will vary with the complexity and scope of the IIC-Financed Operation and the number of Relevant Operational Policies involved. The maximum term will be defined in the timeline included in the TOR, as indicated in paragraph 39 of this Policy. However, the ICIM Office will attempt to complete the investigation, including issuing the draft report, within a maximum term of six calendar months as of formation of the Panel. If more time than is established in the TOR is needed to complete the investigation, the ICIM Director will extend the time frame on a case-by-case basis, subject to the Board's no objection under Short Procedure.
- d. During the Compliance Review Phase, the ICIM Office will consult regularly with the Requesters and Management, including updating the Requesters and Management periodically on progress. The ICIM Office will also consult as needed with the Board member representing the country where the IIC-Financed Operation is implemented. Management will cooperate fully and proactively with the ICIM Office during the Compliance Review Phase.

44. **COMMENTS BY MANAGEMENT AND REQUESTERS.**

Once the ICIM Office has completed its investigation, it will issue a draft report including a review of its main findings of fact and recommendations, and forward them to Management and the Requesters for their comments. Management and the Requesters



will have a term of 21 Business Days to send comments on the draft report. The ICIM Office will consider the comments for its final report, but the contents of the final report are the exclusive decision of the ICIM Office, and the report should remain strictly impartial and objective.

45. **COMPLIANCE REVIEW REPORT.** In preparing its report, the ICIM Office will take into account all relevant facts that may have an impact on the case at hand. The ICIM Office report will include the Panel's findings as to whether (and if so, how and why) an action or omission by the IIC relating to an IIC-Financed Operation resulted in the failure to comply with one or more Relevant Operational Policies (indicating the Policy in question and a description of the noncompliance), and in Harm to the Requesters. The report should also include a description of the Compliance Review Phase methodology used for determining findings of Harm and how it is linked to the noncompliance of one or more Relevant Operational Policies. The ICIM Office may also provide its recommendations, views, or observations on findings or systemic issues relating to Relevant Operational Policy noncompliance. The Compliance Review report should be designed to provide the factual and technical basis for a decision by the Board on preventative or corrective action in connection with the IIC-Financed Operation under investigation.
46. **CONSIDERATION OF THE COMPLIANCE REVIEW REPORT.** Within a maximum term of 21 Business Days following receipt of the comments by Management and the Requesters, the ICIM Office will submit its final report for consideration under Standard Procedure by the Board, attaching as annexes the comments by the Requesters and Management. The Board will consider the report in an expedited manner.
47. **FINAL DECISION.** The Board will make the final decision regarding any actions that may be deemed appropriate or necessary, in light of the Compliance Review findings and recommendations. If deemed appropriate, the Board will instruct Management to develop, in consultation with the ICIM Office, an action plan and present it for consideration. Once approved by the Board, the ICIM Office will inform the Requesters of the Board's decision and any action plan prepared as well as progress in its implementation.
48. **REPORT RELEASE TO PUBLIC.** After Board consideration of the Compliance Review report, the report, and Management's and

the Requesters' responses will be published on the Public Registry and the final decision by the Board recorded.

49. **MONITORING.** When applicable, the ICIM Office will monitor implementation of any action plans or remedial or corrective actions agreed upon as a result of a Compliance Review. To do so, it will prepare a monitoring plan and timeline in accordance with the needs of the case and in consultation with the Requesters, Management, and other interested Parties, as applicable. Management will collaborate with the ICIM Office throughout the duration of the monitoring, which will be determined by the Board, on a case-by-case basis, not to exceed five years as of the date on which the Board approves Management's action plan. The ICIM Office will issue a monitoring report for distribution to the Board for information at least annually. This report will be published on the Public Registry.

## **J. Institutional and Administrative Considerations**

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50. **THE ICIM OFFICE.** In providing services to the IIC, the ICIM Office will report to the Board, not to Management, and will be run by the ICIM Director who will report directly to the Board with respect to matters in the purview of this Policy.
51. **COMPLIANCE WITH POLICIES OF THE IDB GROUP.** All ICIM Office staff is subject to the Bank's policies and code of ethics, and will act in a manner that does not give rise to any conflict of interest in relation to the provision of services to the IIC or jeopardize the objectivity or integrity of the ICIM.
52. **ELIGIBILITY TO WORK AT THE ICIM OFFICE.**
  - a. The ICIM Director, the Consultation Phase Coordinator, and the Compliance Review Phase Coordinator will be independent from Management and in general will be chosen from outside the IIC and the Bank.
  - b. Executive Directors, Alternate Executive Directors, Temporary Alternate Executive Directors, Counselors, and IIC or IDB staff wishing to serve in these positions may not serve in the ICIM until three years have lapsed since the end of their employment or relevant appointment with the IIC or the IDB. This requirement does not limit the staff working in the ICIM to apply for the positions listed in paragraph 52 (a) above.

- c. Upon completion of his or her service, the ICIM Director, the Compliance Review Phase Coordinator, and the Consultation Phase Coordinator may not work at the IIC in any capacity. This restriction does not apply to junior administrative and operational staff.
53. **ICIM DIRECTOR APPOINTMENT.** The ICIM Director of the IDB will be ex officio ICIM Director of the IIC and will be appointed and removed under the terms set forth in the IDB-ICIM Policy.
54. [This paragraph intentionally left blank.]
55. [This paragraph intentionally left blank.]
56. **AUTHORITY TO CONTRACT.** The ICIM Director is authorized to contract any external expert necessary under the terms set forth in the IDB-ICIM. These experts will not come from Management.
57. **AUTHORITY TO ADOPT ADMINISTRATIVE PROCEDURES.** The ICIM Director is authorized to establish guidelines and adopt internal administrative procedures that are consistent with this Policy and the IDB Group's other policies and procedures.
58. **ACCESS TO INFORMATION AND CONFIDENTIALITY.** The disclosure of all information produced and received by the ICIM Office will be subject to the Disclosure of Information Policy. In addressing a Request (or a request under the IDB-ICIM Policy), the ICIM Office will have access to all relevant information for the due discharge of its work, and IIC staff will cooperate fully with the ICIM Office to ensure such access. All information provided by any of the Parties to the ICIM Office as confidential will be maintained confidential at all times and may not be disclosed without the written authorization of the Party who provided the information, in accordance with the Disclosure of Information Policy.

## **K. General Provisions**

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59. **TIME PERIODS.** The time periods referred to may be exceptionally extended by the ICIM Director for as long as is strictly necessary to ensure the full and proper processing of Requests. To do so, the ICIM Director will submit the rationale for such an extension and the proposed new deadline for completion for consideration by the Board by Short Procedure. Management and the Requesters will be promptly notified of any extension, and the extension will be recorded in the Public Registry.

60. **OUTREACH ACTIVITIES.** The ICIM Office has a mandate to conduct public outreach throughout Latin America and the Caribbean. The ICIM Director will develop and implement an outreach strategy to inform civil society. The ICIM Director will coordinate with other IIC offices and units to ensure that information about the Mechanism is integrated into IIC activities and publications designed to promote information about the institution. Management will support the ICIM's efforts to publicize the Mechanism.
61. **PUBLICATIONS.** The ICIM Director will prepare an IDB Group annual report describing the Mechanism's activities during the previous year, including a description of Requests received and the outcome of the Requests, and follow-up of the ICIM process. The annual report may also discuss lessons learned, trends, and systemic issues, and provide recommendations on preventing noncompliance and other advice that stems directly from ICIM cases. The annual report will be sent to the IIC Board for information. The ICIM Office will also maintain an interactive website on which it will disseminate the annual report and other publications relevant to its work with the IDB Group, such as brochures, case studies, and best practices.
62. **PUBLIC REGISTRY.** The Mechanism will maintain a virtual Public Registry that will provide up-to-date information on Requests submitted to the Mechanism and their processing, and will include the publication of the public documents provided for under this Policy.
63. **LANGUAGES.** All ICIM reports will be published in Spanish and English. When a Request is from a Portuguese- or French-speaking country, the reports will also be issued in the relevant language. In the case of outreach materials, the ICIM Office will produce versions in the IIC's four official languages.
64. **LEGAL MATTERS.** If requested by the ICIM Director, the IIC Legal Department will provide legal information and advice regarding the IIC's rights and obligations in relation to a specific IIC-Financed Operation at issue in a Request, or regarding the interpretation of Relevant Operational Policies. Except with regard to the IIC's rights and obligations, the ICIM Director may also, at any time, seek external legal advice on Request-related issues as they arise.
65. **CONFLICTS OF INTEREST.** When any official of the ICIM has been previously involved in the planning, appraisal, implementation,

or evaluation of a project that comes before the ICIM, said official will recuse him or herself from working on that Request and will notify the ICIM Director immediately of any conflict. If the ICIM Director is potentially in conflict of interest, he or she will immediately inform the Board, recuse him or herself, and assign a team member to work on the Request.

66. **BUDGET.** The IIC will compensate the IDB for the ICIM Office's services under the terms of a service agreement. The ICIM Director will submit an annual request for resources to the Board, including any request for contingency funds, pursuant to the projected work plan. The Board will incorporate in IIC's budget the approved resources for the ICIM Office to provide its services to the IIC. The ICIM Director will report to the Board quarterly on the ICIM Office's budget status.
67. **IDB GROUP ENTITIES.** The ICIM Office will provide services related to projects financed by other members of the IDB Group in accordance with IDB-ICIM Policy.
68. **COOPERATION WITH OTHER INDEPENDENT ACCOUNTABILITY MECHANISMS.** When a Request involves another independent accountability mechanism, the ICIM Office will collaborate with the mechanism involved to share information, technical experts, and where possible, plan joint site visits. The objective of such collaboration is to improve the Mechanism's cost-effectiveness and avoid duplication of efforts for the Parties involved.
69. **COMMUNICATION WITH THE MEDIA.** The ICIM Office will issue its own press releases and public communications. Prior to any such release, the ICIM Director will inform the IIC's External Relations area. No ICIM Office official may speak to the media about any Request that is being processed by the ICIM Office or give press interviews during site visits.
70. **REVIEW OF THE ICIM POLICY.** This Policy will be independently reviewed in the time and form determined by the Board, within three years following this Policy's entry into effect.
71. **EFFECTIVENESS.** This Policy will become effective upon its approval by the Board of Executive Directors.

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# ANNEX I.

## MODEL FORM LETTER FOR REQUESTERS

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To:

Director

Independent Consultation and Investigation Mechanism  
Inter-American Development Bank Group  
1300 New York Avenue, N.W. Washington, D.C. 20577  
E-mail: mecanismo@iadb.org  
Phone: 202-623-3952; Fax: 202-312-4057

1. We **(insert names)** **(or)** represent the following individuals), who reside in the area known as \_\_\_\_\_, where the project is being carried out **(name and/or a brief description of the IIC-Financed Operation and the name of the country where the Project is taking place)** Our names and contact information are attached and **(if relevant)** proof of authority to represent the Requesters.
2. We have suffered or are likely to suffer Harm as a result of the IIC's failure to comply with one or more of its Relevant Operational Policies **(cite the Operational Policy or Policies deemed not to have been complied with by the IIC, if known)**
3. **(Describe the direct, material Harm that is occurring or is likely to occur and why you think it is related to relevant operational policy noncompliance).**
4. We have complained to IIC Management on the following dates **(list dates and names of IIC officials who were contacted)** by **(explain how the complaint was delivered, e.g., meeting, letter, phone call)**. Management's response was **(explain whether there was a response from Management, and so, what the result was. Enter any other information about prior contact with the IIC.)**
5. We choose **(enter Consultation or Compliance Review Phase, or both or, if not known, enter: We would like an explanation of the options in order to make a decision)**

6. **If you believe it is necessary for the ICIM Office to treat your identity as confidential, please so indicate, including the rationale.**
7. We request that the ICIM Office respond to our Request.

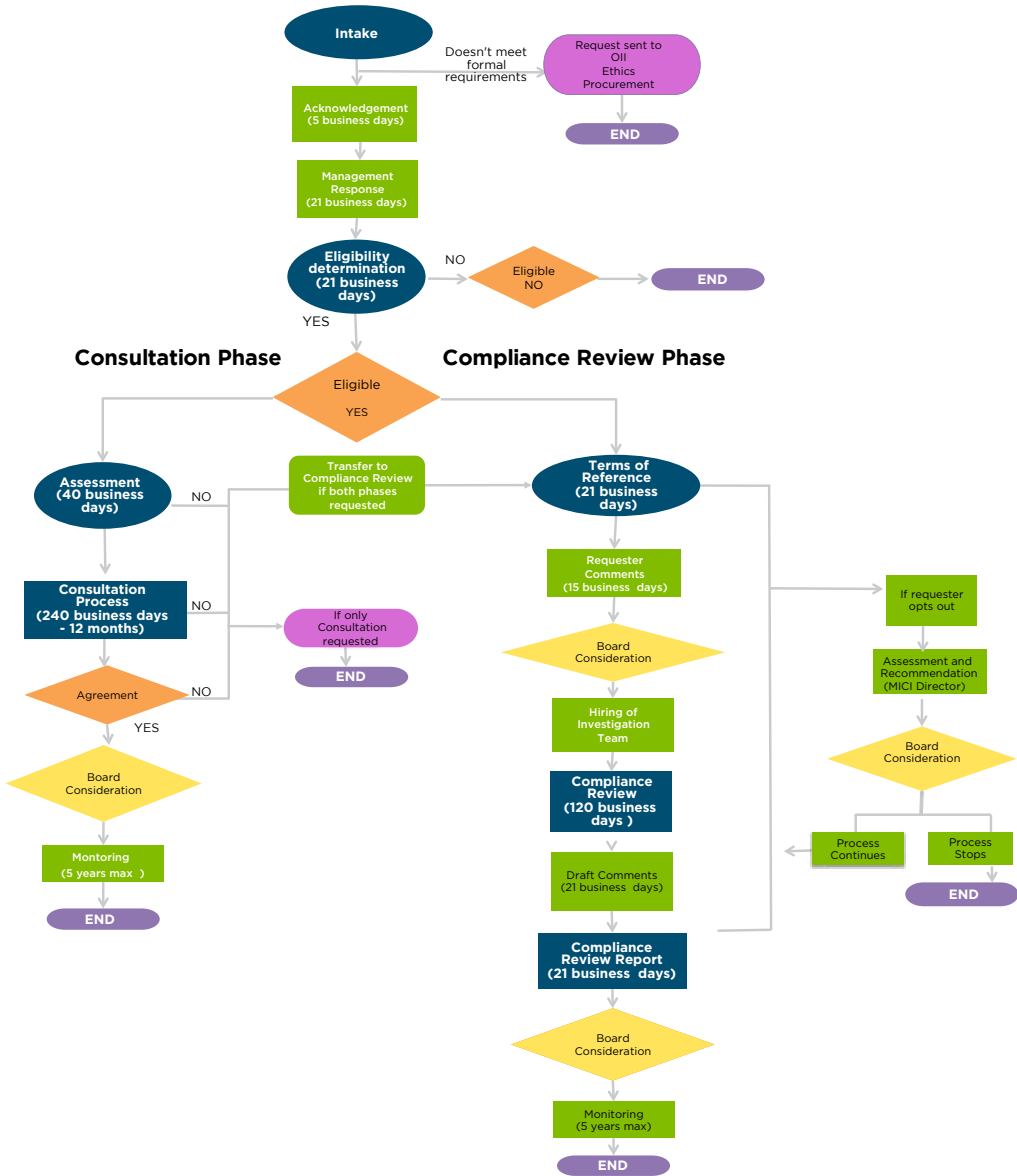
Signatures:

Date:

Contact addresses, phone number, fax number, email address.



# ANEX II. PROCESSING WORK FLOW





[www.iadb.org/mici](http://www.iadb.org/mici)