

BDR(04)33

**BY THE BOARD OF DIRECTORS
OF
THE OVERSEAS PRIVATE INVESTMENT CORPORATION**

BE IT RESOLVED, that the **General Policy and Guidelines** as submitted to the Board of Directors on July 29, 2004 entitled: *“Accountability and Advisory Mechanism for the Overseas Private Investment Corporation,”* a copy of which is attached hereto, be and hereby is adopted as a general policy of the Corporation.



**Approved by Notational Vote of
the Board of Directors on September 20, 2004**

Connie M. Downs

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Corporate Secretary**

Accountability and Advisory Mechanism for the Overseas Private Investment Corporation

Preamble

The Overseas Private Investment Corporation (OPIC) is establishing an Accountability and Advisory Mechanism (AAM) in response to guidance from Congress (see Appendix A) and consultations with stakeholders.

During the first half of 2004, OPIC prepared and circulated a concept paper for comment from a broad range of interested parties. Comments were offered by and consultations were held with: Members of Congress, staff of OPIC's Congressional authorizing committees, OPIC's Board of Directors and their public sector liaisons, the Office of Management and Budget, a diverse group of non-governmental environmental, labor and human rights organizations, industry associations and individual corporate users of OPIC services. (For written comments on the Concept Paper see Appendix B).

As directed by Congress, OPIC, with the assistance of a consultant, reviewed the best practices of all of the multilateral and bilateral financial institutions ("international financial institutions" or "IFIs") cited by Congress as having accountability mechanisms with objectives similar to those proposed for OPIC. Informational meetings were also held with representatives of selected IFIs with experience in developing and operating accountability mechanisms.

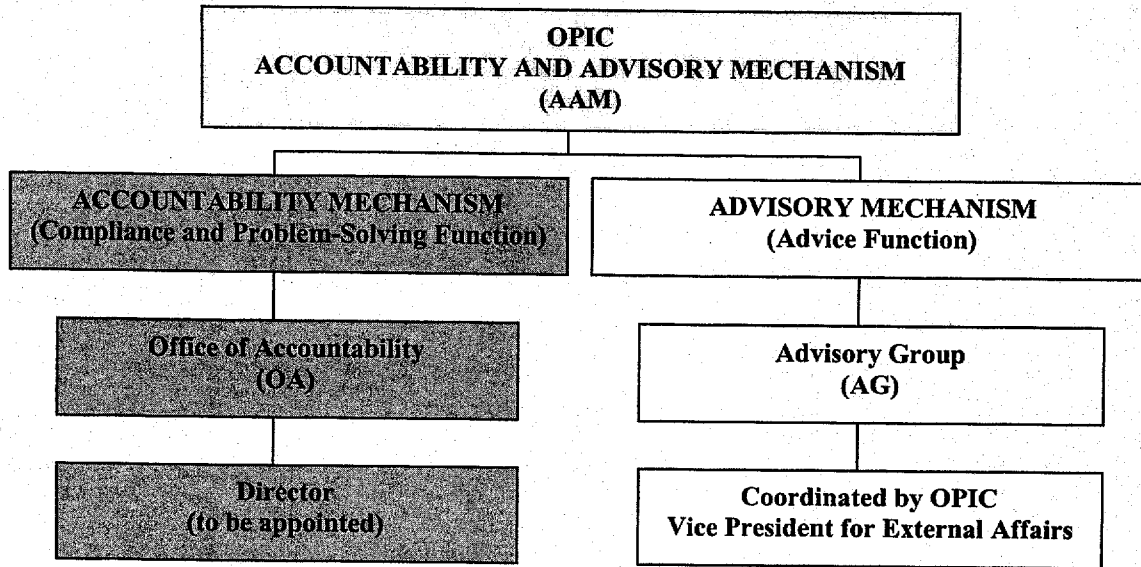
The following proposal is intended to represent the process and procedures approved by the OPIC Board of Directors as guided by Congressional Report language and practical application resulting from stakeholder consultations.

Implementation Paper

1. **Introduction.** The Overseas Private Investment Corporation (OPIC) is establishing an Accountability and Advisory Mechanism (AAM). This mechanism is designed to accomplish the following three objectives:
 - Evaluate and report on OPIC compliance with environmental, social, labor, and human rights standards;
 - Provide a forum for addressing the concerns of locally affected communities regarding specific OPIC projects; and
 - Provide advice regarding OPIC policies and procedures.
2. **Principles.** OPIC has identified the following principles to guide the establishment and implementation of the AAM:
 - The mechanism should enhance OPIC's mission effectiveness;
 - The mechanism should be transparent and fair to all stakeholders;

- The mechanism should be accessible and responsive to the concerns of locally impacted communities; and
- The mechanism should be cost-effective and consistent with OPIC’s mission, statutory framework, and culture.

3. **Structure.** To accomplish the three main objectives for the AAM, OPIC will:
- a. create a new Office of Accountability to carryout the compliance and problem-solving functions; and
 - b. create an Advisory Group to carry out the advisory function which will be coordinated by OPIC’s existing Office of External Affairs.



4. **Office of Accountability (OA).**

- a. **Functions.** The Office of Accountability will perform the following functions:
 1. **Compliance Review:** to provide a forum to investigate and report on complaints regarding OPIC’s compliance with its governing statutes, rules, policies, and procedures in the context of specific projects; and
 2. **Problem-solving:** review and try to resolve outstanding complaints of local communities relating to the impacts of OPIC-supported projects on such communities, with or without allegations of non-compliance on the part of OPIC.
- b. **Access to the OA.** Taking into consideration prevailing practices at other IFIs and OPIC’s own structure within the U.S. Government, the OA will be accessible to the below-designated categories of affected stakeholders. These stakeholders will be considered to have requisite “standing” to request a response and report from the OA with respect to:

- Compliance Review: (1) impacted communities in the host country and those documented as their authorized representatives; and (2) OPIC management and Board
 - Problem-solving: (1) impacted communities in the host country and those documented as their authorized representatives; and (2) project sponsors
- c. **OA Outreach to eligible stakeholders.** OPIC will work to ensure that local communities are aware of the OA and its procedures. Future project sponsors will be made aware of the problem-solving mechanism available to them on a mutually voluntary basis.
- d. **Scope of the OA function.** The compliance review and problem-solving functions are, respectively, aimed at ensuring that OPIC has complied with, and that local communities have a forum to raise issues regarding, applicable statutes, rules, policies and procedures within the scope of OPIC's statutory mandate. These statutory mandates, as identified by Congress in its guidance to OPIC are extensive, and include environmental and social concerns, labor, and human rights.

Some types of claims will be specifically excluded, including for example:

- Claims that do not involve OPIC's responsibilities;
 - Claims raising issues already decided in previous claims;
 - Claims relating to procurement decisions or the selection of consultants;
 - Claims meant primarily to harass a business competitor or to otherwise gain competitive advantage;
 - Claims that appear to raise criminal wrongdoing, for example under the Foreign Corrupt Practices Act;
 - Claims based on allegations that the existing policy framework is inadequate; and
 - Claims made prior to or after OPIC's support of a project. For purposes of the Office of the OA, OPIC "support" of a project will be deemed to have begun once OPIC has made a threshold decision to support a project on one or more of the policy grounds cited above. OPIC support is deemed to end at the termination of OPIC's contractual relationship with a project, or in the case of a financial intermediary (FI), when the FI is no longer contractually engaged in the project.
- e. **OA Employment Status, Selection, and Lines of Reporting.** OPIC is subject to the relevant rules and regulations governing hiring in the U.S. government. Within this personnel framework, OPIC intends to hire the OA Director (Director) at a senior level as an appointee approved by the President of OPIC. To ensure the Director's ability to independently assess complaints and problems and make recommendations, the Director will report directly to the President and CEO and will be invited to report on its activities to the OPIC Board of Directors at regularly scheduled Board meetings.

- f. **Authorities and Remedies.** The OA would receive and investigate claims from eligible parties, draw independent conclusions and make recommendations to the President regarding OPIC compliance or future steps to resolve a conflict. The OA would have necessary authorities to conduct such work, including the ability to review all of the documents relating to the project; to interview staff that worked on the project; and to conduct site visits. The OA will have the ability to employ consultants and bring in expertise as needed to respond to specific requests, subject to budget constraints. As an employee of OPIC, the work and reports of the OA shall be integrated into the overall decision-making of the agency under governance of the President and CEO and the Board of Directors, where agency authority continues to reside.
 - g. **Reporting and Transparency.** Maximizing transparency and information disclosure of the compliance review process is critical for the OA's credibility and public confidence in the process. Subject to applicable law, it is expected that the OA's reports would be made available to the claimants and to the project sponsors. OPIC thus expects that, wherever possible, findings of the OA would also be made public in a timely manner, subject to OPIC's operational and statutory responsibilities, including provisions of both the Trade Secrets Act and the Freedom of Information Act. Wherever necessary, appropriate measures will be taken to maintain the confidentiality of communications where complainants request such protection.
- 5. **Advisory Group (AG).** OPIC will form an Advisory Group to be coordinated by its existing Office of External Affairs. The Advisory Group will formalize and institutionalize OPIC's current practice of holding regular quarterly meetings with interested stakeholders to provide independent information and opinion to OPIC regarding relevant issues, including the adequacy of OPIC's existing policy framework for fulfilling OPIC's public policy mission.
 - a. **Participation in the AG.** The AG will be open to representatives of a broad spectrum of OPIC stakeholders including those from the non-governmental as well as the business communities and will include participation by liaisons of the six U.S. government agencies (in addition to OPIC) represented on OPIC's Board.
 - b. **Scope of the AG functions.** The role of the AG will focus more broadly on OPIC policies and procedures rather than on specific OPIC-supported projects. In addition to OPIC's policies and procedures with respect to the environment, labor and human rights and transparency, the AG will be a forum for raising and discussing the full range of OPIC public policy mandates, including U.S. economic effects, and the "cumulative impacts" of OPIC policies and projects.