



# A GUIDEBOOK ON THE COMPLIANCE REVIEW FUNCTION OF ADB'S ACCOUNTABILITY MECHANISM

For ADB Management and Staff

*This document is a draft for discussion purposes only.  
October 4, 2017*

**ASIAN DEVELOPMENT BANK**



## **Abbreviations**

ADB - Asian Development Bank

AM - Accountability Mechanism

BCRC - Board Compliance Review Committee

CRO - Complaints Receiving Officer

CRP - Compliance Review Panel

DMC - developing member country

NGO/CSO - Non-Government Organization / Civil Society Organization

OCRP - Office of the Compliance Review Panel

OSPF - Office of the Special Project Facilitator

OD - Project Operations Departments

OGC - Office of the General Counsel

OM - ADB's Operations Manual

SPF - Special Project Facilitator

TOR - Terms of Reference



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## Foreword

The Asian Development Bank (ADB) is mandated to help reduce poverty in the Asia-Pacific region.

ADB works towards this goal by helping developing member countries improve the quality of life of their citizens who comprise most of the world's poor. It extends loans, technical assistance and grants that seek to catalyze sustainable and all-inclusive economic growth across the region.

ADB also ensures that the projects it funds will not result in any material harm to the communities and people concerned. Preventing further impoverishment from involuntary resettlement and environmental degradation, especially of the poor, is one of ADB's priorities as an institution involved in sustainable development.

Well-developed audit, supervision, quality control and evaluation systems prevent and address most issues that occur during the planning and implementation of ADB-assisted projects. In addition, ADB has instituted an accountability mechanism that complements these systems, particularly with a policy review mechanism as a grievance redress platform of 'last resort' for affected people. First established in 2003, the Accountability Mechanism was updated and improved with the issuance of a new Accountability Mechanism Policy in 2012.

ADB's Accountability Mechanism has two functions: Problem Solving and Compliance Review. This guidebook seeks to facilitate better understanding of one component of the Accountability Mechanism: the Compliance Review.

This is one among a series of four guidebooks prepared particularly for (i) the ADB Management and staff; (ii) borrowers; (iii) NGOs/CSOs and affected persons; and (iv) private sector clients.

With these guidebooks, it is hoped that ADB will be even better equipped to take on the decisive role of responding to the needs of people who may be unduly, adversely, or potentially harmed by ADB-assisted projects that fail to meet the rigorous standards of ADB's policies.

This guidebook is not to replace the Accountability Mechanism Policy 2012, but is an instrument to better understand the actions needed by each stakeholder under the AM Policy 2012. Should any discrepancies arise between this guidebook and the AM Policy 2012, the Policy and its related operations manual (OM L.1) prevails.

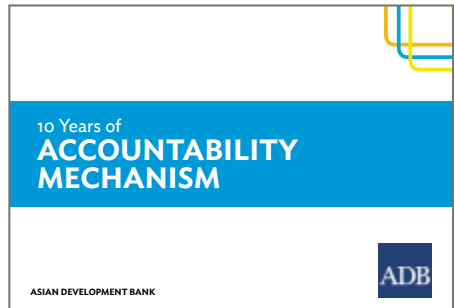
**DINGDING TANG**

Chair, Compliance Review Panel  
Concurrent Head,  
Office of the Compliance Review Panel

# Background

## ACCOUNTABILITY MECHANISM

In its charter, the ADB, like other multilateral development institutions, is granted immunity from being sued in court as protection from partiality and interference. The Accountability Mechanism provides balance to such immunity, by giving affected peoples an ultimate recourse to express and have their complaints addressed.



An effective accountability mechanism ensures compliance with ADB's multiple operational policies and procedures, especially its safeguard policies. It complements existing grievance redress mechanisms at the project operations level, which is still the primary means by which ADB seeks to address the legitimate concerns of people affected by ADB-assisted projects.

The Accountability Mechanism is designed to further enhance the effectiveness of ADB's development initiatives and continually improve the quality of its projects by being responsive to the concerns of project-affected people, and fair to all stakeholders. Its fundamental objective is to address the concerns of its stakeholders who are directly affected by its projects, i.e., the people on the ground. To be an efficient and cost-effective tool, the Accountability Mechanism reflects the highest professional and technical standards in staffing and operations while maintaining independence and transparency in its processes. Its processes are time-bound, to ensure appropriate solutions are implemented in a timely manner.

The Accountability Mechanism offers two approaches:

1. **Problem-Solving Function** - which seeks to address complaints involving at least two directly affected or likely to be affected persons on any aspect of an ADB-assisted project, and is pursued through a range of informal, flexible, and consensus-based methods to solve the problem; and
2. **Compliance Review Function** - which investigates alleged noncompliance by ADB of its operational policies and procedures that have resulted, or are likely to result in, direct, adverse, and material harm to project-affected people.

There are distinctions between the two functions.

- Thus, non-compliance with ADB safeguard policies is a fundamental aspect of compliance review while that is not the case with problem solving.
  - Compliance review has a systemic function which reaches beyond solving a particular dispute of the Affected Peoples. Compliance review findings are applicable to all Affected Peoples, regardless whether they have complained or not.
  - Importantly, compliance review results in Board-approved remedial action plans, which are expected to bring projects back into compliance.
  - Compliance reviews are thus instruments with several objectives: to help Affected Peoples to seek recourse, to address non-compliance issues which resulted in harm or likely harm; and to support enforcement of ADB policies and procedures.
- Compliance review is triggered by a complaint regarding noncompliance with ADB's operational policies and procedures, whereas the problem solving function can be triggered when people complain of being adversely affected by an ADB-assisted project, irrespective of noncompliance.

As a means of redress of ‘last resort’, the Compliance Review Function of the ADB’s Accountability Mechanism provides an independent forum for people with a legitimate claim on being adversely affected by ADB-assisted projects, to articulate their concerns and be assisted in resolving the issues they have identified. Compliance Review also serves as an internal governance mechanism for ADB to improve future project design and implementation, through an analysis of design and operational decisions which led to noncompliance issues and harm. Thus, it serves several goals at once, as a learning mechanism and a corrective measure to support the enforcement of ADB’s policies and procedures.

It is not a judicial mechanism presided by an adjudicatory body, as it is different from, and in no way related to national legal systems or international courts. It is expected to result in practicable solutions, not judicial remedies such as injunctions or monetary damages.

This guidebook seeks to clarify the role of ADB Management and staff involved in the Compliance Review Function.

The cooperation and support of every ADB personnel are keys to the success, not only of the Compliance Review Function, but also of the entire Accountability Mechanism.



# ROLES OF THE ADB OFFICES IN THE ACCOUNTABILITY MECHANISM

## **Operations Department Staff (including Resident Mission Staff)**

ADB's operations departments (ODs) ensure that the institution's policies and operational procedures are followed so that the people who are most at risk are protected as development projects are planned and implemented. Measures already in place at the ODs to identify potential problems and mitigate them as soon as possible.

Should a complaint be lodged with the Complaints Receiving Officer (CRO), the Accountability Mechanism is triggered and action will be taken by either the Special Project Facilitator (SPF) or the Compliance Review Panel (CRP). Whether the complaint goes through problem-solving or the compliance review process, the cooperation of the ODs are necessary so that ADB can respond more effectively.

ADB ODs are also expected to assist in disseminating information about the Accountability Mechanism, and in coordinating, from time to time, any assistance that the Problem Solving or the Compliance Review Function may require.

For instance, ADB Resident Missions may be requested to help secure mission clearances for site visits, by liaising with government, the private sector borrower and the Accountability Mechanism team. They may also be asked to help design and implement remedial actions.

## **Compliance Review Panel (CRP)**

The Compliance Review Panel (CRP) is a fact-finding body of the ADB Board of Directors that processes complaints requesting compliance review. Headed by the CRP Chair, its mandate is to do compliance review and monitor the implementation of remedial actions after a compliance review.

Additionally, the CRP Chair also heads the Office of the Compliance Review Panel (OCRP).

## **Office of the Compliance Review Panel (OCRP)**

The OCRP operationally and administratively supports the work of the CRP. The OCRP facilitates the CRP Chair's communication and coordination with the ADB Board, Management, staff, and the SPF. It also conducts outreach programs on Compliance Review for various project stakeholders.

### **Board Compliance Review Committee (BCRC)**

The Board Compliance Review Committee (BCRC) is the body tasked by the Board to be the focal point of communication between the Board and the CRP on matters of Compliance Review. It approves the CRP's terms of reference for compliance review, reviews the CRP's draft reports, decides on monitoring timeframes, reviews and endorses the administrative planning of the CRP and the OCRP, and oversees qualification for the CRP membership, in consultation with the ADB President. It is also tasked to dialogue with the ADB Management, following a member country's refusal of site visitations for the CRP, on the reasons behind such refusal, should this adverse situation arise.

### **Complaints Receiving Officer (CRO)**

The CRO at ADB Headquarters ensures easy accessibility by serving as a single-entry point for complaints from project-affected people. The CRO's duty is to facilitate and track the progress of the complaint throughout the Accountability Mechanism process. The CRO is engaged by both the SPF and the CRP Chair.

## The Compliance Review Process

Compliance review has a relatively longer and far-reaching impact on ADB's operations as it is expected to result in the improvement of ADB's operational policies and procedures as well as their implementation. The impact of such changes will be applied to projects that ADB and its partners will support in the future. It provides review of alleged noncompliance with ADB's operational policies and procedures, which may have caused, or is likely to cause, direct and material harm to people on ADB-assisted projects.

The Compliance Review Function of ADB's Accountability Mechanism has 10 steps. ADB staff are requested to familiarize themselves with these steps as well as with their corresponding roles in the process<sup>1</sup>.

**1 Requesting** Management response

**2 Determining** eligibility

**3 Board authorization** of compliance review

**4 Conducting** compliance review

**5 Compliance Review Panel's draft report**

**6 Compliance Review Panel's final report**

**7 Board consideration** of the Compliance Review Panel's Report

**8 Management's remedial actions**

**9 Board's decision**

**10 Monitoring and conclusion**

<sup>1</sup> A resource book on the Compliance Review Function is under development to provide further guidance on the process.

## 1 Requesting Management response

## ADB Management <sup>1</sup>



CRP Chair sends a letter to complainants in order to:

- acknowledge the receipt of complaint;
- confirm request for confidentiality of identity of complainants (if it is indicated in the complaint letter); and
- ask consent for the web posting of the complaint.



LEAD TIME: **Within 5 working days**

The CRP Chair appoints a lead CRP reviewer, in concurrence with the Chair of the Board Compliance Review Committee (BCRC) <sup>2</sup>.

The CRP Chair sends a letter to inform the borrower/developing member country (DMC), simultaneously sending a memo to the Board Member representing the DMC concerned, notifying receipt of the complaint.

The CRP makes an initial assessment and confirms whether the complaint falls within the compliance review mandate. <sup>1</sup>

CRP lead reviewer, with the support of OCRP, prepares an assessment report substantiating this initial assessment with the appropriate rationale, to form the basis for CRP's discussion and decision.

CRP sends a memo to ADB Management to: inform about receipt of complaint; and request for a response.

A copy of the memo is sent to the BCRC Chair.

The concerned ADB operations department (OD) may collect necessary material and provide relevant information to CRP/OCRCP, if needed.

ADB Management may consider collecting necessary materials and provide relevant information to the CRP/OCRCP, if needed.

With the assistance of safeguard specialists and staff from the Office of the General Counsel, the concerned ADB staff members need to prepare Management's response, and provide this response to the CRP through a memo duly signed by the Vice President concerned. <sup>2</sup>

<sup>1</sup> In this document, Management generally refers to the operations departments, from resident mission up to the vice-president to which the concerned operations department is reporting.



**1 Q:** What makes a complaint fall within the compliance review mandate? **A:** Six requirements need to be fulfilled at this initial stage:

- The complaint is about an ADB-assisted project.
- No more than 2 years have lapsed since the closing date of the project.
- At least two individuals directly harmed or likely to be harmed by the project are filing the complaint.
- Alleged harm may be linked to noncompliance with ADB's operational policies and procedures.
- Prior good faith effort to address the problem was made with the ADB ODs and Resident Missions concerned.
- The complaint is not among the exclusions listed on pages 30-31.

**1 Q:** What happens when CRP finds that the complaint does not fall within the compliance review mandate? **A:** A complaint is considered by the CRP as not within the mandate of the compliance review if it is i) incomplete on the five basic requirements mentioned; ii) incomplete on documentary information requirements for filing a complaints; iii) it has not been raised with the concerned ADB OD. In either case, the complaint is sent to the concerned ADB OD for appropriate action or attention.)

**2 Q:** What should Management's response contain? **A:** ADB Management must provide evidence that (i) ADB has complied with the relevant ADB policies and procedures; or (ii) there are serious failures attributable exclusively to ADB's actions or omissions in complying with its policies and procedures, but Management intends to take actions to ensure compliance, as appropriate.

## 2 Determining eligibility



### ADB Management



The CRP reviews the complaint, the ADB Management's response, and all relevant documents on the project. If needed, a site visit to the project may be undertaken to determine the eligibility of the complaint.



**LEAD TIME: *Within 21 working days from receipt of CRP's request for Management's response to the complaint.***

At this stage, the CRP:

- checks the identity of the complainants and establish whether they are indeed directly harmed or will likely be directly harmed by the ADB project,
- checks that there is evidence of probable noncompliance, and
- initially assesses if there is a strong likely link between the current or future harm and the noncompliance by ADB.

The CRP informs the complainants, borrower, Board Member representing the country concerned, ADB Management, and OD, of the CRP's determination concerning eligibility. <sup>1</sup>

Upon request by the CRP, ADB Management may discuss with CRP to clarify its response, or other issues.

ADB Management will provide its necessary assistance to CRP/OCRP in the arrangement of CRP's site visit to the project, including meeting with the borrower and other government agencies concerned, as needed.

The ADB OD concerned may hold an informal meeting with the CRP/OCRP to better understand how to proceed with the compliance review in accordance with the requirements of the AM policy, if the complaint is found eligible.



**1 Q:** When is a complaint considered eligible? **A:** The Compliance Review will address noncompliance with ADB's operational policies and procedures that concern and impact the entire ADB-funded project, and not just specific, individual components. Its scope will be ADB's operational policies and procedures as they relate to formulating, processing, or implementing an ADB-assisted project. Further details can be found under "Eligibility Criteria" on pages 30-31.

### 3 Board authorization of compliance review

### ADB Management



The CRP submits its eligibility report to the Board, through the BCRC.



If the CRP determines the complaint is eligible, CRP will recommend, through the BCRC, that the Board authorize a compliance review.

The Board makes a decision whether or not to authorize a review. <sup>1</sup>

**LEAD TIME: *Within 21 calendar days from CRP's submission of report to the Board***

Upon request by the BCRC or a Board Member, the ADB Management may need to provide a clarification regarding its response.

The CRP informs the complainants, ADB Management, and the borrower of the Board's decision.

**LEAD TIME: *Within 7 working days from Board authorization of compliance review***

ADB Management may request an informal meeting with CRP/OCRCP on the next steps – on how to be engaged in the compliance review

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**1 Q:** What would happen if the Board does not authorize a Compliance Review?

**A:** No compliance review will happen. <sup>3</sup>

<sup>3</sup> [https://lnadbg4.adb.org/diro035p.nsf/attachments/SAM-EligibilityReport-18Aug\\_Web.pdf/\\$FILE/SAM-EligibilityReport-18Aug\\_Web.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/SAM-EligibilityReport-18Aug_Web.pdf/$FILE/SAM-EligibilityReport-18Aug_Web.pdf)



#### 4 Conducting compliance review



ADB Management



After Board authorization, the CRP submits the Terms of Reference (TOR) to the BCRC for approval. Once approved, the CRP submits the TOR to the Board and Management. **LEAD TIME: *Within 10 working days from Board authorization of compliance review***



Upon the request of the CRP/ OCRP, ADB Management may provide needed information for the CRP's consideration to prepare the TOR for compliance review.

The CRP begins the compliance review upon TOR approval by the BCRC.

The CRP consults with all relevant parties.

The compliance review may include desk reviews, meetings, discussions, and site visits. ①

**LEAD TIME: *Indefinite, due to variable factors such as complexity of the project, need for translation, scheduling of site visit, among others. (No time limits apply to this investigative stage.)***

ADB operations departments:

- Provide documents required by CRP;
- Respond to interviews and fact-finding queries by CRP;
- Assist CRP to arrange site visits to the project;
- In the adverse chance of a refusal, prepare information paper on the reasons behind the borrowing country's refusal of site visits.



① **Q:** What can be done if approval for project site visit is not allowed for one reason or another? **A:** The CRP will prepare and complete its report using available information and appropriate assumptions.

#### 5 Compliance Review Panel's draft report



ADB Management



The CRP issues a draft report of its findings to the complainants, borrower, and ADB Management, to request for comment. The draft report is also forwarded to the BCRC for review.

**LEAD TIME: *Within 45 working days from sending of draft CRP report***



In consultation with the borrower, other ADB departments concerned (such as SDCC and OGC), ADB staff concerned will prepare the ADB Management's comments to the draft report, to be submitted to CRP/OCRP. If needed, an informal meeting with CRP will be requested that may help the staff to better understand the issues of non-compliance which may have resulted, or is likely to result, in direct and material harm to people.

## 6 Compliance Review Panel's **final report**

 ADB Management



The CRP finalizes the report. In considering comments received from the various stakeholders, it may affirm or reject assertions based on the CRP's findings.




The CRP provides the final draft report to the BCRC for review, which includes a matrix summarizing the response of CRP to each of the comments made by the complainants, the borrower, and the ADB Management.

The CRP issues a final report to the Board, through the BCRC, for its consideration.

LEAD TIME: **Within 14 working days**

Upon request of the BCRC, ADB Management or the concerned staff may need to clarify their comments for the CRP's draft report.

## 7 Board **consideration** of the Compliance Review Panel's report

 ADB Management



The Board considers the CRP's report.  
LEAD TIME: **Within 21 calendar days**



Board Members may request ADB Management and staff to clarify their comments on the draft CRP report.

CRP Chair releases the CRP report to the complainants, ADB Management and borrowers, and publishes this report on the CRP's website.

LEAD TIME: **Within 7 working days from Board consideration**

ADB management may consider providing a link to this report on the ADB project website.

8 Management's remedial **actions**

## ADB Management



If the CRP's report concludes that ADB's non-compliance caused direct and material harm or likely harm, the ADB Management proposes remedial actions. <sup>1</sup>

LEAD TIME: ***Within 60 working days***



In consultation with the borrower (and perhaps project-affected people), the ADB Management prepares its remedial actions in response to the findings of the CRP report. The remedial actions should ensure that the project will be brought back into compliance with ADB's operational policies and procedures.

Draft proposed remedial actions will be provided to the CRP for review and comment, before finalization.

The CRP reviews and comments on the proposed remedial actions.

LEAD TIME: ***Within 5 working days from receipt of draft remedial actions***

If needed, the draft remedial actions will be revised based on comments of the CRP, prior to submission to the Board.

Prior to submission of the proposed remedial action plan to the Board, the ADB Management needs to obtain the borrower's agreement on these remedial actions.

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**1 Q:** What should the Remedial Action Plan contain?

**A:** It should identify the actions to be done, the time frame for the actions, parties responsible for implementing the remedial actions; estimates of costs to implement the remedial actions, and parties to shoulder the costs.

Management sends its remedial actions to the Board for consideration, with the CRP's comments attached.

Upon request by Board members, a pre-board meeting will be arranged to clarify the remedial actions.

ADB Management may need to revise the remedial action again in accordance with the discussion and the decisions from the Board meeting.

9 Board's **decision**

## ADB Management



Upon receipt of the proposed plan for remedial actions, the Board reviews and decides on the proposal.

LEAD TIME: ***Within 21 calendar days***



The approved remedial actions plan, with the CRP's comments, are released to the complainants and the borrower and published on the CRP's website. **1**  
LEAD TIME: ***Within 7 days from Board decision***

ADB staff arranges for a meeting between the affected people (including the complainants, if possible) and the borrower to discuss implementation of the remedial actions.

ADB Management may also consider requesting for an informal meeting with the CRP to discuss implementation of the remedial actions, and request the CRP to be engaged at this early stage. **2**

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**1 Q:** Should remedial actions start only after Board approval? **A:** No, the OD can start implementing remedial actions at the soonest time feasible to avoid more harm and cost in time and resources.

**2 Q:** What happens if the Board-approved remedial actions will not be fully implemented within 3 years? **A:** Since the CRP provides annual monitoring reports on the implementation of remedial actions, slow progress is identified early and reported to the BCRC. Hence, appropriate actions will have to be taken before the end of the 3-year monitoring period stated in the AM Policy.

## 10 Monitoring and conclusion



## ADB Management



**LEAD TIME: 3 years maximum, from Board approval**

ADB Management to implement the Board-approved remedial actions.



The CRP monitors the implementation of remedial actions and prepares draft annual monitoring reports.

In consultation with the borrower and the affected people (if possible), ADB Management prepares quarterly progress reports on the implementation of Board-approved remedial actions, and submits these reports to the BCRC and the CRP for their information, prior to publishing the reports on the ADB project website.

The CRP reports quarterly to the BCRC on the progress of the remedial actions, to keep the Board updated.

Upon the CRP's request, ADB Management assists the CRP in arranging for site visits to the project and meetings with the borrower or other government agencies concerned.

The CRP prepares annual monitoring reports in consultation with ADB Management, the borrower, affected people (including the complainants), and the NGO/CSO concerned.  
**LEAD TIME: Annually or at such other times specified by the Board**

The CRP may send its draft monitoring report to OD concerned for fact checking prior to sending of report to BCRC.

The CRP publishes its monitoring reports on its website at the same time that these are issued to the ADB Board of Directors.

The CRP submits the final annual monitoring report to the Board (through the BCRC) for information.

Upon the request of a BCRC member, ADB Management may need to clarify some aspects of the CRP monitoring report.

The CRP makes the reports available to the complainants, the borrower, the ADB Board, Management and staff, and the public on the CRP Website.  
**LEAD TIME: As soon as the annual monitoring reports are available**

ADB Management may revise or update its remedial action plan, to respond to the request of the ADB Board, on issues identified as “non-complied” with ADB policies and procedures.

The CRP will post the following information and documents on their website at the times specified below:

- a. **The complaint letter** (or the request for compliance review)—upon the CRP’s receipt of the complaint letter and subject to the agreement of the complainants—within 7 days of receipt of the complaint;
- b. **A general description** of the complainant—within 7 days from the CPR’s receipt of the complaint letter, if the complainants have not consented to disclosure of the complaint letter;
- c. **The CRP report determining that the complaint is eligible** and the Board decision on authorization of compliance review, together with Management’s response—within 7 days of the Board decision;
- d. **The CRP report determining that the complaint is ineligible**, together with Management’s response—within 7 days of circulation of the report to the Board;
- e. **The terms of reference for the compliance review** within 10 days of the Board’s authorization of the compliance review;
- f. **The CRP’s final compliance review report**, attaching responses, if any, to the draft report from Management and, subject to their consent, from the complainants, the government, and/or client, as applicable—within 7 days of the Board’s consideration of the final report;
- g. **Management’s proposed remedial actions, CRP comments on the remedial actions, and the Board’s decision**—within 7 days of the Board’s decision; and
- h. **Monitoring reports on implementation of any remedial actions approved by the Board**—upon circulation to the Board and other stakeholders.

ADB Management will post, at the minimum, the following reports on the ADB or Project website:

- a. **Quarterly progress report** on implementation of the remedial actions;
- b. **All additional reports** that are part of the remedial actions.

# Frequently Asked Questions

This section provides basic information to help ADB Management and staff better appreciate the Accountability Mechanism's Compliance Review Function as well as their role in it.

## I. Accountability Mechanism

1. How is the Accountability Mechanism a developmental effectiveness tool?
2. What is an ADB-assisted project?
3. How is the Accountability Mechanism, particularly the compliance review, a governance tool for ADB?
4. How is the Accountability Mechanism set up?

## II. Filing a Complaint

1. When can complaints be filed with the Accountability Mechanism?
2. Why is 2 years after project closing date the cutoff date for AM to accept complaints?
3. What can be complained about?
4. Who may submit complaints?
5. How is a complaint filed?
6. What are the submission requirements for complaints?
7. What differentiates compliance review from problem solving?
8. How will the complaint decide on which Accountability Mechanism approach to pursue?
9. Can the complaints change their mind anytime in the Accountability Mechanism process in terms of the specific route they want to pursue?
10. How should ADB staff treat complainants?

11. Will the complainants be assured of privacy by keeping their identities confidential?

## III. Compliance Review

1. What is the mandate of the Compliance Review Panel?
2. What is the scope of compliance review?
3. Will ADB's Accountability Mechanism Policy be applicable solely to ADB-funded projects?
4. If compliance review is focused in ADB's compliance to its policies and procedures, to what degree does the CRP engage with DMC governments?
5. Who pays the cost of remedial actions?
6. Since site visits seem to be part of the compliance review process, what happens when a borrowing country or private sector borrower declines to grant the requested site visit?
7. How long are remedial actions to be monitored for efficacy?
8. Should particular complaints be found ineligible, are there additional measures to be expected?
9. Can complaints go through the local or national legal system and to the CRP simultaneously?

## I. Accountability Mechanism

### 1. How is the Accountability Mechanism a developmental effectiveness tool?

The design of the Accountability Mechanism recognizes that ADB already has several well-developed audit, evaluation, and learning systems. It is an integral part of ADB's compliance system aimed at ensuring that ADB projects benefit and not harm people affected by them. As a grievance redress mechanism of last resort, it provides feedback on ADB's performance and enables itself to correct noncompliances through remedial actions. Lessons learned from these mistakes are also fed back to operations to improve the way ADB designs and implements future projects.

### 2. What is an ADB-assisted project?

An "ADB-assisted project" is a project financed or to be financed, or administered or to be administered, by ADB; and covers both sovereign and non-sovereign operations.

### 3. How is the Accountability Mechanism, particularly the compliance review, a governance tool for ADB?

As a governance tool, the Accountability Mechanism enables ADB to self-correct and hold itself responsible for any direct and material harm brought about by ADB-assisted projects to affected persons.

### 4. How is the Accountability Mechanism set up?

To facilitate prompt resolution of complaints, ADB encourages complainants to first seek redress at the project operations level, by filing complaints directly to the project departments concerned. However, if not satisfied, complainants have the option of filing their complaints for redress through the Accountability Mechanism. It has a clear work flow on how to deal with complaints – including who is responsible and what are the time lines for action.

Invoking the Accountability Mechanism begins by filing a complaint with the Complaints Receiving Officer (CRO) at ADB Headquarters. The CRO ensures easy accessibility with a single-entry point for complaints from project-affected people. The CRO's duty is to facilitate and track the progress of the complaint.



## II. Filing a Complaint

### 1. When can complaints be filed with the Accountability Mechanism?

Complaints can be lodged during project formulation, processing, implementation, and up to 2 years after the project closing date.

### 2. Why is 2 years after project closing date the cutoff date for the Accountability Mechanism to accept complaints?

As ownership of a project is with the borrower, ADB's influence to initiate changes wanes over time, and 2 years is a fair period to ensure project guarantees. It is an improvement over the previous 2003 AM policy, which had a shorter prescriptive period. To serve notice to the public, project closing dates are published on the ADB website.

### 3. What can be complained about?

People affected by ADB projects can complain about ADB's actions resulting in direct and material harm (or likely harm, in the future) while a project is being designed or formulated, processed, or implemented. Specifically, the CRP entertains complaints about harm to affected persons that is directly linked to ADB's noncompliance with its operational policies and procedures.

### 4. Who may submit complaints?

For both problem-solving and compliance review functions, complaints may be filed by:

- Any group of two or more people directly harmed or likely to be harmed by a project, in a borrowing country where the ADB-assisted project is located. (Note: complainants can be from the same family)
- A local representative of such affected persons, with proof of authorization.
- A non-local representative of such affected persons, in exceptional cases where local representation cannot be found, and SPF or CRP concurs.
- An ADB Board Member, after first raising concerns with Management, in cases involving allegations of serious violations of ADB's operating policies and procedures.

## 5. How is a complaint filed?

From the closing date of a loan or grant for an ADB-assisted project, there is a 2-year period within which complaints on the project can be received for consideration.

After exhausting all the grievance mechanisms at the project and operations department levels, complainants must directly file their complaints in writing, addressed to the Complaints Receiving Officer (CRO) of ADB Headquarters. The complaint can be submitted by email, fax, mail, or personal delivery. Complaints may also be accepted at any ADB office, and it is the responsibility of that office to forward these to the CRO.

The role of the CRO at ADB Headquarters is to ensure easy accessibility with a single-entry point for complaints from project-affected people. The CRO's duty is to facilitate and track the progress of the complaint and to provide a measure of transparency and responsiveness in the Accountability Mechanism.

*From the closing date of a loan or grant for an ADB-assisted project, there is a 2-year period within which complaints on the project can be received for consideration.*

## 6. What are the submission requirements for complaints?

Complaints must be written in English or in any official language of the developing member countries. Should the complainant require assistance in filing, he or she may approach a concerned non-government organization of civil organization society to propose representation.

The complaint must specify the following:

- a. Names, designations, addresses, and contact information of the complainants and their representative;
- b. If a complaint is made through a representative, identification of the project-affected people on whose behalf the complaint is made and evidence of the authority to represent them;
- c. Whether the complainants choose to keep their identities confidential;
- d. Whether the complainants choose to undergo problem solving with the SPF or compliance review with the CRP;
- e. A brief description of the ADB-assisted project, including the name and location;
- f. A description of the direct and material harm that has been, or is likely to be, caused to the complainants by the ADB-assisted project;

- g. A description of the complainants' good faith efforts to address the problems first with the operations department concerned, and the results of these efforts; and
- h. If applicable, a description of the complainants' efforts to address the complaint with the OSPF, and the results of these efforts.
- d. The desired outcome or remedies that complainants believe ADB should provide or help through the Accountability Mechanism; and
- e. Any other relevant matters or facts with supporting documents.

### **7. What differentiates compliance review from problem solving?**

Complainants may also provide the following optional information:

- a. An explanation of why the complainants claim that the direct and material harm alleged is, or will be, caused by the alleged failure by ADB to follow its operational policies and procedures in the course of formulating, processing, or implementing the ADB-assisted project;
- b. A description of the operational policies and procedures that have not been complied with by ADB in the course of formulating, processing, or implementing the ADB-assisted project;
- c. A description of the complainants' efforts to address the problems with the project-level grievance redress mechanisms concerned, and the results of these efforts;

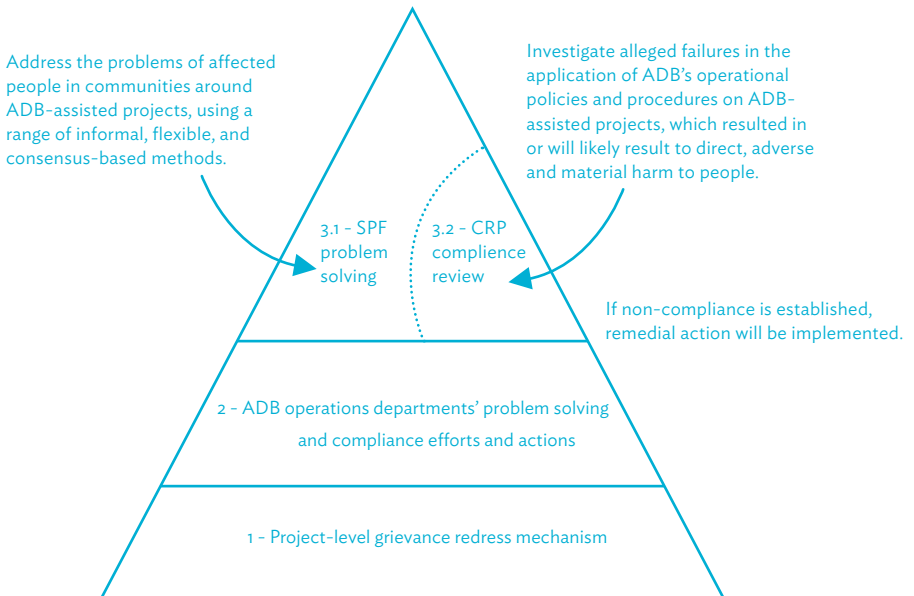
Compliance review is triggered by a complaint regarding noncompliance with ADB's operational policies and procedures, alleging it to be the cause of harm. In comparison, problem solving can be sought when people complain of being adversely affected by an ADB-assisted project, even where no contention can be made on the application of ADB's operating policies and procedures.

Compliance review has a corrective function, as it brings a project back from noncompliance into compliance with ADB's operating policies and procedures, with the implementation of the Board-approved remedial actions that result from a compliance review. The findings would benefit all affected people, regardless of whether they were party to the complaint.

### 8. How will the complainant decide on which Accountability Mechanism approach to pursue?

Part of the information required upon filing is the complainants’ choice of whether to undergo Problem-Solving with the Special Project Facilitator (SPF), or to opt for **Compliance Review** with the Compliance Review Panel (CRP).

Within two days of receiving the complaint, the CRO furnishes an Accountability Mechanism information packet to the complainants. The complainants must inform the CRO on their choice of either working on Problem-Solving or Compliance Review within 21 calendar days. This gives the opportunity for the complainants to change the status of choice on which office to address their complaints or to clearly identify their choice, if not clearly indicated in the initial complaint letters.



### **9. Can the complainants change their mind anytime in the Accountability Mechanism process in terms of the specific route they want to pursue?**

When complainants opt for Problem-Solving, and the process is completed (with or without agreement reached on remedial measures), the complainant may subsequently file for Compliance Review, should there still be serious concerns over noncompliance with the ADB's policies and procedures.

*Complainants cannot switch from Compliance Review to Problem-Solving. Complainants cannot also request for Problem-Solving upon completion of a Compliance Review. This is because Compliance Review warrants a broader application of remedial measures that benefits not only the specific complainants, but an entire class of affected stakeholders.*

### **10. How should ADB staff treat complainants?**

The ADB Accountability Mechanism has maintained a high degree of transparency in information disclosure while ensuring that the required confidentiality is also met. Each case will be treated with utmost care and respect.

### **11. Will the complainants be assured of privacy by keeping their identities confidential?**

The CRO , OSPF, the CRP, and OCRP respects the complainants' right to confidentiality, and adheres to such throughout the process, by ensuring strict compliance to confidentiality procedures among ADB staff, Management, and Board. Note, however, that anonymous complaints will not be accepted.

*Operations departments should ascertain whether confidentiality is being requested by the complainants, and take necessary actions as done by the Complaints Receiving Officer, to ensure such confidentiality.*

#### Keeping the identities of the complainant confidential: SOME BEST PRACTICES

- Removing names and signatures of the complainants, particularly in documents for publication.
- Concealing details that might reveal complainants' identities in CRP reports and communications with the borrower and Management.
- Liaising with complainants through NGO/CSO representatives and relying on these relationships as conduits of information between complainants and the CRP.
- If necessary, and only as permitted by NGO/CSO representatives, when scheduling meetings with complainants, consider potential sources of threat (such as police, government, or private borrowers' presence) that might impede safety and free communication for complainants - for avoidance, as a measure of security.

## III. Compliance Review

### 1. What is the mandate of the Compliance Review Panel?

The CRP is a fact-finding body on behalf of ADB's Board. It reports to the Board through the Board Compliance Review Committee (BCRC). The CRP examines whether direct and material harm alleged by complainants is the result of ADB's failure to follow its operational policies and procedures in the course of formulating, processing, or implementing an ADB-assisted project.

For projects already in implementation, the CRP examines the applicable operational policies and procedures at the time of the ADB Board's or President's approval of the project (unless otherwise specified in the relevant project, procedural or policy documents).

For proposed projects that have yet to meet the Board or President's approval, the applicable operational policies and procedures to be examined are those applicable at the time of the filing of the complaint.

Relative to a request for problem-solving with SPF, a request for compliance review is not an appeal to a higher authority.

### 2. What is the scope of compliance review?

The Accountability Mechanism ensures that the rights of vulnerable groups are protected which are set forth in ADB's **Safeguard Policy Statement of 2009** and ADB's **Operations Manual** on provisions covering the Environment, Indigenous Peoples, and Involuntary Resettlement Safeguards; Public Communications Policy; Gender and Development; and Incorporation of Social Dimension into ADB Operations. Of the 51 Operations Manual sections, 37 are subject to Compliance Review, pertaining to those areas of concern mentioned, as these are generally the operational policies and procedures that cause direct and material harm when not complied with.

The CRP does not consider the policies and procedures of other institutions, except when ADB's policies and procedures have explicitly incorporated those of the other institutions.

A compliance review will not investigate the borrowing country, the executing agency, or the private sector client. The review of these other parties will be considered to the extent that they are directly relevant to an assessment of compliance with ADB's operational policies and procedures.

It is equally important to note the eligibility criteria, and the exclusions from eligibility that determines coverage of Compliance Review. (See side-bar.)

Complainants are encouraged to first address their problems using project-level grievance redress mechanisms to facilitate prompt resolution on the ground. This is not, however, a precondition for access to the Accountability Mechanism.

## ELIGIBILITY CRITERIA

The compliance review will address grievances that concern and impact the entire ADB-funded project, and not just specific, individual components.

### Exclusions for non-eligibility

Complaints are **excluded from both problem solving and compliance review** functions if these are:

- a. About actions not related to ADB's actions or omissions in the course of formulating, processing, or implementing ADB-assisted projects;
- b. About matters that complainants have not made good faith efforts to address with the operations department concerned;
- c. About an ADB-assisted project for which two years or more have passed since the loan or grant closing date;
- d. Frivolous, malicious, trivial, or generated to gain competitive advantage;
- e. About decisions made by ADB, the borrower or executing agency, or the private sector client on the procurement of goods and services, including consulting services;
- f. About allegations of fraud or corruption in ADB-assisted projects and/or misconduct by ADB staff;
- g. About the adequacy or suitability of ADB's existing policies and procedures;



- h. Within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal, or relate to ADB personnel matters; and/or about ADB's non-operational administrative matters, such as finance and administration.

**The compliance review function also excludes complaints that:**

- a. Relate to actions that are the responsibility of other parties, such as a borrower, executing agency, or potential borrower, unless the conduct of these other parties is directly relevant to an assessment of ADB's compliance with its operational policies and procedures;
- b. Do not involve ADB's noncompliance with its operational policies and procedures;
- c. Are being dealt with by the SPF up to the completion of step 3 under the problem solving function;
- d. Relate to the laws, policies, and regulations of the borrowing country, unless they directly relate to ADB's compliance with its operational policies and procedures; and/or
- e. About matters already considered by the CRP, unless the complainants have new evidence previously not available to them and the subsequent complaint can be readily consolidated with the earlier complaint. In such cases, any resubmission or consolidation of a complaint, as the case may be, should occur within 2 years after the loan or grant closing date.

### **3. Will ADB's Accountability Mechanism Policy be applicable solely to ADB-funded projects?**

The Accountability Mechanism applies to all ADB-assisted sovereign and non-sovereign projects, including ADB co-financed projects.

In cases where country safeguard systems are used for ADB-assisted projects in accordance with Safeguard Policy Statement 2009, the use of the country safeguard systems will not alter the role and function of ADB's Accountability Mechanism, including the roles of the SPF and the CRP.

### **4. If Compliance Review is focused on ADB's compliance to its policies and procedures, to what degree does the CRP engage with DMC governments?**

Loan agreements stipulate the borrower's adherence to ADB's operational policies and procedures. ADB works in partnership with governments - informing, guiding and capacitating them towards compliance to these operating policies and procedures at every stage of the project cycle. As these policies are built with safeguards on local communities and environments, any lapses on abiding by ADB's operating policies and procedures would not be to anyone's interest. As partners in development, both parties should work proactively together towards compliance to the ADB's policies, when found lacking in this regard.

As compliance review is focused on the

ADB's capacity to advise the borrower towards performing in accordance with its operating policies and procedures, compliance review does not directly inquire about the conduct of government, unless this information is relevant in assessing how ADB enacted compliance to its operating policies and procedures. On site visits and meetings with government, the CRP seeks to understand how ADB conducted itself with government, in its involvement with government officials and project personnel, in light of compelling compliance to ADB's operating policies and procedures, across all stages of the project, from design to implementation.

### **5. Who pays the cost of remedial actions?**

As legal ownership of the project lies with the borrower, but being partners in development with the ADB, it is the responsibility of the project owners to cooperate with ADB Management, in carrying out the Board-approved remedial actions. This may entail the cost of additional compensation and infrastructure relating to resettlement, and other environment-related mitigation measures. Studies may be warranted prior to implementation, and ADB can facilitate grants and extend technical assistance for such studies, to capacitate government agencies in resettlement, to aid other agencies in facilitating livelihood training and other interventions, and to provide the means for monitoring the effectivity of the

remedial measures, such as requisitioning for air or water quality monitoring equipment.

On either sovereign or non-sovereign projects, project ownership entails a responsibility and a commitment to improving the lives of local communities, in exchange for the overall benefits of a project to a country or a region, or to the stockholders of a corporation.

As noncompliance to ADB's operating policies and procedures may result in human costs and economic costs as well, the ADB ODs, Resident Missions, and governments are enjoined to be more thorough and circumspect at ensuring compliance to ADB's operating policies and procedures from the beginning. Compliance review aids in the regard, as an institutional learning mechanism with a long view.

### **6. Since site visits seem to be part of the compliance review process, what happens when a borrowing country or private sector borrower declines to grant the requested site visit?**

ADB expects borrowing countries to cooperate, but if requests are declined, CRP will continue with its compliance review and deliver findings without a site visit, drawing appropriate inferences from all available information. In the absence of a necessary site visit, CRP may give added weight to the complainants' views, with Management submitting an information paper to the

Board explaining a country's refusal to grant access to its site.

ADB's Resident Missions and operations departments are requested to aid in facilitating site visits, liaising with the project owners and the government of the developing member country in which the project is located, to obtain the necessary permissions for the CRP to visit the site.

### **7. How long are remedial actions to be monitored for efficacy?**

To ensure that adverse effects of a project are effectively addressed, remedial actions are to be monitored in implementation for a maximum of three years. Upon the CRP's request, site visits may need to be arranged on their behalf by ADB Management and staff, to include possible meetings with implementing agencies or stakeholders concerned.

### **8. Should particular complaints be found ineligible, are there additional measures to be expected?**

When a complaint is found ineligible for either problem-solving or compliance review, the SPF or the CRP sends the complaint to the concerned operations department for the complaint to be addressed. (e.g., Operations Services and Financial Management Department for procurement issues or Office of Anti-corruption and Integrity for anti-corruption and integrity issues.)

For complaints found to be ineligible due to:

- i) lack of strong evidence of harm or noncompliance;
- ii) absence of apparent link between harm and noncompliance; or
- iii) failure to establish harm or likely harm to the complainants,

A report is submitted to the Board detailing the CRP's findings on its eligibility determination.

The complainant is informed of the actions taken on the case by the CRO or by the CRP (if the complaint was sent to the CRP). All CRP reports, including determination of eligibility or status of a complaint, are posted on its website at [compliance.adb.org](http://compliance.adb.org).

### **9. Can complaints go through the local or national legal system and to the CRP simultaneously?**

Yes, as they are different systems with different rules. As their investigative goals would be different, different conclusions would result, which would provide for different outcomes.

Compliance review provides a determination on the issue of project compliance particular only to ADB's operating policies and procedures. Unlike a court verdict, compliance review is not a punitive but a constructive measure, as the focus is on bringing back a project from noncompliance to compliance with ADB's operational policies and procedures. Its purpose is institutional effectiveness and improved governance. As a corrective measure, it addresses complaints through remedial actions, with the end view of improving project outcomes.

For questions, clarification and any additional information, please contact:

**Complaints Receiving Officer**

Accountability Mechanism

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For more information on the Asian Development Bank's Accountability Mechanism, visit:  
<https://www.adb.org/site/accountability-mechanism/main>

Asian Development Bank Compliance Review Panel:  
<https://lnadbg4.adb.org/diroo35p.nsf?Open>

***Notice of disclaimer: This guidebook serves only to inform on the Compliance Review Function of the ADB's Accountability Mechanism Policy of 2012. Any contentions on provisions explained in this material may refer to the aforementioned policy document or related documents, such as the ADB Manual of Operations Section L.1, for more detailed information.***

# **A Guidebook on The Compliance Review Process of ADB's Accountability Mechanism**

## **About the Asian Development Bank**

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to the majority of the world's poor. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.



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