



The Compliance Review Function of the
Asian Development Bank's
**Accountability
Mechanism**





Improving lives and livelihood. Fish sellers at the Moc Market in Bac Giang Province, Viet Nam, have benefited from the Rural Infrastructure Sector Project of ADB.

What is the ADB Accountability Mechanism?

The Accountability Mechanism of the Asian Development Bank (ADB) provides an independent forum for people adversely affected by ADB-assisted projects. It allows project-affected people to voice their concerns and seek solutions to their problems. They can also request compliance review of alleged noncompliance by ADB with its operational policies and procedures. ADB, through its project design and implementation procedures, makes every effort to prevent problems and ensure compliance from the outset. The Accountability Mechanism is a last resort.

The Accountability Mechanism has two functions. The problem solving function is led by the Special Project Facilitator (SPF), and the compliance review function by the Compliance Review Panel (CRP). Project-affected people can choose between the two functions.

To provide an easily accessible single entry point for project-affected people, a complaint receiving officer will receive all complaints.

What are the guiding principles of the Accountability Mechanism?

- Responsiveness to project-affected people's concerns
- Fairness to all stakeholders
- Independence and transparency
- Cost-effectiveness and efficiency
- Complementarity with other ADB systems (including supervision, audit, quality control, evaluation)

What is the problem solving function?

The problem solving function responds to problems of local people affected by ADB-assisted projects. It assists people who are directly, materially, and adversely affected by problems caused by ADB-assisted projects. Its problem solving approaches are nonformal, flexible, and consensus-based. It does not assign blame, but focuses on finding ways to address the problems of project-affected people. The SPF heads the problem solving function and reports directly to the President of ADB.

The problem solving function of the Accountability Mechanism does not replace the project administration and problem solving functions of the operations departments.

What is the compliance review function?

The compliance review function investigates alleged noncompliance by ADB with its operational policies and procedures. The CRP consists of three members, one of whom is the chair. The CRP is a fact-finding body acting on behalf of the ADB Board of Directors. It investigates alleged noncompliance by ADB with its operational policies and procedures in any ADB-assisted project. Noncompliance might have occurred during the formulation, processing, or implementation of a project that directly, materially, and adversely affects local people. A compliance review does not investigate the borrowing country, the executing agency, or a private sector client.

The Office of the Compliance Review Panel (OCRCP) has developed a series of four guidebooks for the stakeholders involved in the compliance review: affected people and their nongovernment organization or civil society organization partner, government, private sector borrowers, and ADB management and staff. These guidebooks provide detailed information and suggestions to each stakeholder to enable effective participation in a compliance review.

Who can file a complaint ?

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

- any group of two or more people directly, materially, and adversely affected, in a borrowing country where the ADB-assisted project is located, or in a member country adjacent to the borrowing country;
- a local representative of such affected persons;
- a nonlocal representative, in exceptional cases where local representation cannot be found and the SPF or the CRP agrees; or
- for the compliance review, one or more ADB Board members.

Confidentiality

The identities of complainants are kept confidential if the complainants request confidentiality. The identities of representatives will not be kept confidential. Anonymous complaints are not accepted.

Cutoff date for filing a complaint

The latest date by which a complaint can be filed is 2 years after the loan or grant closing date. This date is known in advance, is disclosed to the public, and can be found on the ADB project website.

How to file a complaint

Complaints must be made in writing addressed to the CRO and may be submitted by mail to the OCRP's address, by e-mail to crp@adb.org, or hand-delivered to the CRO or through any ADB office.

What matters are not eligible for complaints to both the problem solving and the compliance review functions?

- matters unrelated to ADB's actions or omissions;
- matters that the complainants have not made good faith efforts to address with the operations department concerned;
- ADB-assisted projects for which 2 years or more have passed since the loan or grant closing date;
- decisions related to procurement of goods and services, including consulting services;
- frivolous, malicious, or trivial complaints, or complaints made to gain competitive advantage; and
- allegations of fraud and corruption

Additional matters not eligible for the problem solving function

The problem solving function will also exclude matters being dealt with or already dealt with under the CRP, except complaints considered ineligible for compliance review by the CRP.

Additional matters not eligible for the compliance review function

The compliance review function also excludes matters being dealt with by the problem solving function up to the completion of step 3 of the problem solving process (see flowchart).

What complainants should do before filing a complaint

Complainants are urged to make good faith efforts to solve problems with the ADB operations department before filing a complaint with ADB's Accountability Mechanism. However, this recommendation does not preclude complainants from filing a complaint directly with the Accountability Mechanism regarding their concerns.



Improving lives and livelihood. Farmer shows off her harvest in ADB area of activity, Bhutan.

EXCLUSIONS

Complaints will not be entertained if they are

- about actions unrelated to something ADB did or did not do in formulating, processing, or implementing an ADB-assisted project;
- about an ADB-assisted project for which 2 years or more have passed since the loan or grant closing date;
- about matters that complainants have not made good faith efforts to address with the operations department concerned;
- 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;
- about allegations of fraud or corruption in ADB-assisted projects or by ADB staff;
- about the adequacy or suitability of ADB's existing policies and procedures;
- frivolous, malicious, trivial, or generated to gain competitive advantage;
- within the jurisdiction of the ADB Appeals Committee or Administrative Tribunal, or relate to ADB personnel matters; and/or
- about ADB's nonoperational housekeeping matters, such as finance and administration.

Additional exclusions under the problem solving function are those

- about matters already considered by the SPF, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint; and/or

- about matters being dealt with or already dealt with by the CRP (including those that have completed the compliance review process), except complaints considered ineligible for compliance review by the CRP.

Additional exclusions under the compliance review function are those

- relating to actions that are the responsibility of other parties such as the borrower, the executing agency, or a potential borrower, unless the conduct of those other parties is directly relevant to the assessment of ADB's compliance with its operational policies and procedures;
- that do not involve ADB noncompliance with its operational policies and procedures;
- relating to laws, policies, and regulations of the borrowing country, unless they relate directly to ADB's compliance with its operational policies and procedures;
- about matters already considered by the CRP, unless the complainants have new evidence previously not available to them and unless the subsequent complaints can be readily consolidated with the earlier complaint; and/or
- about matters being dealt with by the SPF up to the completion of step 3 of the problem solving function.



FOUR GUIDEBOOKS IN THE PALM OF YOUR HAND

The Office of the Compliance Review Panel (OCRP) has developed a series of four guidebooks for the stakeholders involved in the compliance review: affected people and their nongovernment organization or civil society organization partner, government, private sector borrowers, and ADB management and staff. These guidebooks provide detailed information and suggestions to each stakeholder to enable effective participation in a compliance review.

Download these guidebooks at: www.compliance.adb.org

PROCESS OF RECEIVING COMPLAINTS

STEP 1

Within 2 days of receipt of the complaint

RECEIVING AND REGISTERING A COMPLAINT

- The complaint is filed with the complaint receiving officer (CRO).
- The CRO informs the SPF, the CRP chair, and the operations department about the complaint, with a copy of the complaint letter.
- The CRO registers the complaint on the Accountability Mechanism website.

Notes:

- i. Complaints received by other ADB departments should be forwarded to the CRO.
- ii. The CRO ensures the confidentiality of complainants' identities at their request.

STEP 2

Within 2 days of receipt of the complaint

ACKNOWLEDGING THE COMPLAINT

- The CRO acknowledges receipt of the complaint and sends an information packet to the complainants.

- The CRO gives complainants, who have clearly chosen either problem solving or compliance review, 21 calendar days to change their choice and to notify the CRO.
- If the choice is unclear, the CRO requests complainants to clarify their choice.

STEP 3

5 days after the 21-day deadline for complainants to change their choice

FORWARDING THE COMPLAINT

- The CRO decides to forward the complaint for handling to
 - the SPF;
 - the CRP chair; or
 - other departments or offices, if the complaint falls outside the Accountability Mechanism mandate.
 - The CRO sends his or her decision to
 - the SPF;
 - the CRP chair;
 - the operations department; and
 - other departments or offices, if any.
- If there are no objections to the CRO's decision (see note below), the CRO will forward the complaint to the relevant party.

Returning complaint to complainants (if necessary)

The CRO will return the complaint to the complainants with a request to clarify the choice of function if

- the choice was unclear; or
- an objection is raised by the SPF, the CRP chair, the operations department, or other relevant department or office.

The complainants must clarify their choice within 60 calendar days of the CRO's request for clarification.

Note: Within 3 days of the CRO's decision, the SPF, the CRP chair, the operations department, or any other relevant department or office may object if any one of them feels that the CRO has misinterpreted the complainants' choice of function.

Note: If the complaint needs to be returned, the CRO again sends the information packet to the complainants to explain the two available functions.

STEP 4

Within 2 days of forwarding the complaint to the relevant party, or failure of the complainants to clarify their choice

INFORMING THE COMPLAINANTS

- The CRO informs the complainants and their representative(s), if any, which party will handle the complaint and the contact person(s).
- If the complainants did not clarify their choice within 60 calendar days, the CRO will inform them that the Accountability Mechanism process has ended.

COMPLIANCE REVIEW PROCESS

STEP 1

Within 5 days of receipt of the complaint

REQUESTING MANAGEMENT RESPONSE

The CRP carries out an initial assessment of the complaint and determines whether it falls within its mandate.

ADB Management to respond within 21 working days from receipt of the CRP's request for Management's response

- If the complaint falls within its mandate, the CRP forwards it to Management for response, with a copy to the Board Compliance Review Committee (BCRC).
- The CRP informs the borrower and the Board member representing the borrowing country concerned about the receipt of the complaint.
- The CRP ensures the confidentiality of the identities of complainants, if they request it.

STEP 2

Within 21 days of receipt of ADB Management's response

DETERMINING ELIGIBILITY

- The CRP reviews the complaint, Management's response, and other relevant documents, as well as site visit (if needed), and determines the eligibility of the complaint.
- The CRP informs the complainants, the borrower, the Board member representing the country concerned, ADB Management, and the operations department of its determination concerning eligibility.



The CRP forwards the complaint to the operations department if complainants did not make prior good faith efforts to resolve the issues with the department.

STEP 3

BOARD AUTHORIZATION OF COMPLIANCE REVIEW

- The CRP submits its eligibility report through the BCRC to the Board.
- If the CRP determines that the complaint is eligible, it will recommend that the Board authorize a compliance review.

Within 21 calendar days from receipt of the CRP report to the Board

The Board decides whether to authorize a compliance review.

Within 7 working days from the Board decision

The OCRP informs the complainants of the Board decision.

STEP 4

Within 10 working days from Board authorization of a full compliance review

CONDUCTING COMPLIANCE REVIEW

- The CRP prepares, and the BCRC clears, the terms of reference (TOR) for the compliance review.
- The OCRP provides the TOR to the Board for information, with a copy to Management.
- The CRP begins the compliance review upon TOR clearance by the BCRC.

Time allotted for the compliance review proper depends on various factors, such as the complexity of the project, translation requirements, and site visits. No time limits apply to this investigative stage.

- The CRP consults all relevant parties.
- The compliance review may include desk reviews, meetings, discussions, and a site visit.

STEP 5

After the compliance review, comments from the complainants, the borrower, the BCRC, and ADB Management are expected within 45 working days from the issue of the CRP draft report.

COMPLIANCE REVIEW PANEL'S DRAFT REPORT

- The CRP issues a draft report of its findings to the complainants, the borrower, and ADB Management for their comments.
- The CRP sends the draft report to the BCRC for review.

Comments from the complainants, the borrower, and ADB Management are expected within 45 working days from the issuance of the CRP draft report.

STEP 6

Within 14 working days from receipt of comments

COMPLIANCE REVIEW PANEL'S FINAL REPORT

- The CRP revises the report as it deems warranted.
- The CRP issues a final report to the Board through the BCRC.

STEP 7

Within 21 calendar days from receipt of the CRP final report

BOARD CONSIDERATION OF THE COMPLIANCE REVIEW PANEL REPORT

The Board considers the CRP report.

Within 7 working days after Board consideration of the CRP report

The OCRP releases the CRP report to the complainants and borrower, and posts the report on the CRP website.

STEP 8

Within about 60 working days from Board consideration of the CRP final report

MANAGEMENT'S REMEDIAL ACTIONS

- If the CRP report concludes that ADB's noncompliance caused direct and material harm, Management proposes remedial actions.
- Management must get the borrower to agree to the remedial actions.
- Management submits a proposed remedial action plan to the Board, with the CRP comments attached.

STEP 9

Within 21 calendar days from receipt of Management's proposal

BOARD'S DECISION

The Board decides on Management's proposed remedial actions.

Within 7 working days from Board decision

The approved remedial action plan, with the CRP's comments, is released to the complainants and the borrower, and posted on the CRP website (compliance.adb.org).

STEP 10

Within 10 working days from receipt of comments

MONITORING AND CONCLUSION

- The CRP monitors the implementation of remedial actions and prepares monitoring reports annually (or as often as specified by the Board).
- The CRP submits its monitoring report to the Board after the BCRC's review. The OCRP makes the reports available to the complainants, the borrower, the Board, the Management, ADB staff, and the public.

For questions, clarifications, and additional information, please contact:

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For more information about the Asian Development Bank's Accountability Mechanism, visit www.adb.org/site/accountability-mechanism/main.

*Cover page: Indonesia Mission 2009: A rice farmer smiles as she lifts her harvest.
All photos are from ADB*



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