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Independent Complaints Mechanism FMO



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1. Background Information

1.1 Introduction

1.1.1 With this document, FMO introduces its Independent Complaints Mechanism (hereafter also: the 'Mechanism') and accompanying Procedure. This document describes the structure and governance of the Complaints Procedure, which allows External Parties to file a Complaint concerning an FMO-Related Subject. In this way FMO strives to implement a more robust and independent procedure and to communicate transparently about it to stakeholders.

1.1.2 The Mechanism provides stakeholders a tool, enabling alternative and pre-emptive resolution of disputes between the latter and FMO as financier of projects involved. At the same time the Mechanism assists FMO in implementing and adhering to its own policies and procedures and as such the Mechanism is a learning-by-doing process.

1.1.3 The Mechanism, including the Independent External Panel, is a joint initiative with the Deutsche Investitions- und Entwicklungsgesellschaft (DEG). All information in this document, except for references to FMO policies and procedures, is relevant for DEG as well. Both institutions use the same Panel and have a joint approach when Complaints for co-financed projects are received.

1.1.4 This Complaints Mechanism is aimed to align with other FMO policies and procedures, like Environmental, Social and Governance policies (including Human Rights)¹:

- FMO strives to achieve positive sustainable development outcomes through its investments. At the same time FMO recognizes that such development can also have negative impacts on local communities and the physical environment within which they live or upon which they depend for their livelihoods. FMO is committed to ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process and that natural resources are managed efficiently and sustainably, i.e. are not depleted at the expense of future generations.
- FMO also recognizes the responsibility of businesses to respect human rights, wherever they operate and independently of States' abilities and willingness to fulfill their human rights obligations. FMO itself respects human rights, and also acknowledges the responsibility of its business clients to respect human rights. Meeting this responsibility also means creating access to an effective mechanism that can facilitate early indication of, and prompt remediation of various project-related Complaints.

1.1.5 As part of this responsibility FMO supports its clients in addressing environmental, social and related issues arising from their business activities by requiring them to establish and administer appropriate mechanisms to address project-related complaints from affected communities. In addition to these mechanisms and procedures, the role of administrative and/or legal procedures available in the host country should also be considered. When applicable, an information request or resolution can be sought with the project company. Nonetheless, there may be cases where Complaints from those affected by FMO-supported business activities are not fully resolved at the business activity level.

¹ The most recent version of all relevant policies can be found on the site www.fmo.nl

1.2 Institutional Framework

1.2.1 The FMO Complaints Mechanism is not a legal enforcement mechanism. It offers an effective avenue for addressing concerns and it promotes a mutually constructive relationship between FMO and external parties.

1.2.2. Consequently this document shall not be deemed to confer any additional rights of access to justice to the persons lodging a Complaint under the procedure set forth therein.

1.2.3 FMO has an extensive control and accounting structure with an Internal Audit Function reporting directly to the Chief Executive Officer and the Supervisory Board of FMO. The FMO Complaints Mechanism will be 'hosted' by the office of FMO's Internal Audit Function.

1.2.4 FMO strives that its activities respect National and EU policies and international standards.

1.2.5 FMO has a close relationship with other Financial Institutions such as other European Development Financial Institutions (EDFI) and Multilateral Financial Institutions. It maintains a frequent dialogue with these institutions and aims at alignment and coordination with other EDFI members.

1.2.6 FMO will consult and strives to be member of the global network of Independent Accountability Mechanisms (IAM).

2. Principles

2.1 Definitions

Definitions for key items used in this Complaints Mechanism:

2.1.1 External Party:

Any external party submitting a Complaint (non-exhaustive examples: customers, individual persons or groups, workers, Non-Governmental Organizations representing affected persons).

2.1.2 FMO-Related Subject:

Any item, which can be subject of a Complaint (non-exhaustive examples: projects, procedures, policies, practices, events, employees).

2.1.3 Complaint:

An expression of dissatisfaction of an External Party which has been or will be affected by a project that has been or will be financed by FMO. Admissibility Criteria have to be met.

2.1.5 Admissibility Criteria:

Characteristics of a Complaint which have to be met, before FMO starts processing a Complaint.

2.1.6 Independent External Panel:

A group of three persons with expertise on environmental, social, legal and financial products and processes. The Independent External Panel (hereafter also: the 'Panel') is fully independent of FMO and

performs and is responsible for testing of admissibility, Mediation, Compliance Review and reporting on individual Complaints.

2.1.7 Complaints Office:

Function performed by FMO's Internal Audit employees, which registers and acknowledges receipt of Complaints, coordinates adequate fulfilment of the Complaints process and provides practical support to the Independent External Panel.

2.2 Guiding Principles

2.2.1 Subject to applicable legal constraints, the FMO Complaints Mechanism shall be transparent in its operations and outputs.

2.2.2 The FMO Complaints Office shall be independent from operational activities and of the services, which are responsible for the activities challenged by the complainant(s). The Mechanism ensures that each Complaint is dealt with by the highest standards of objectiveness and commitment whilst safeguarding the interest of all the internal and external stakeholders of FMO.

2.2.3 The FMO Complaints Mechanism shall be accessible to affected people and/or their representatives and be effective in responding in a timely manner to concerns expressed by people being or feeling affected by FMO decisions.

2.2.4 In the light of these principles, the development of the FMO Complaints Mechanism shall be the result of a consultative process with FMO's various stakeholders.

2.2.5 If the Complaint concerns aspects like fraud, bribery, corruption and/or money laundering the relevant part of the Complaint will be handed over to FMO's Internal Audit Function.

2.3 Purpose

2.3.1 The FMO Complaints Mechanism serves the following functions:

- Evaluate and report for each admissible Complaint the compliance with FMO policies and other applicable standards;
- Attempt, whilst acting as a problem solving function, to resolve concerns raised by the complainant(s) through a consensual process;
- Provide advice and recommendations to the FMO Management; and
- Follow-up and report on efforts to take corrective actions whenever applicable.

2.3.2 In order to ensure proper corporate responsibility and accountability of FMO towards all its stakeholders, the Mechanism offers Problem Solving / Mediation (if possible) and Compliance Review.

2.3.3 The Mechanism applies to all projects financed by FMO. However, decisions concerning the investment mandate, its credit policy guidelines or other generic aspects (e.g. FMO's business model) fall outside the scope of the Mechanism.

2.4 Applicable Standards

2.4.1 One element of the Complaints Mechanism is to review compliance of FMO's activities with FMO Policies. In particular:

- a. Environmental, Social and Corporate Governance (ESG) Policy:
 - i. Corporate Governance Policy;
 - ii. Environmental & Social Policy;
 - iii. Human Rights Policy;
 - iv. Client Protection Principles;
- b. General Investment Criteria;
- c. Exclusion List;
- d. KYC & Anti-Money Laundering;
- e. Anti-Bribery & Corruption Policy;
- f. Disclosure Policy;
- g. Whistleblowers Scheme.

2.4.2 All policies can be found under www.fmo.nl and are (amongst others) based upon relevant laws, principles and guidelines, such as the IFC Performance Standards, the Equator Principles and the Guiding Principles on Business and Human Rights ("Ruggie Framework").

3. Rules of Procedure

3.1 Complaint and Admissibility

3.1.1 The communication by letter and/or e-mail should be written in English or in the official language of the country of the project. The response by letter and/or e-mail will be in English with – if applicable – a translation in the local language.

3.1.2 The External Party who sends a Complaint is requested to submit the following (the "Receipt Items"), which determines the course of and time for providing a response:

- description of the Complaint, with an indication which of its policies FMO has allegedly breached;
- a clear description of the project and location to which the Complaint is related;
- name and full address, telephone number and if possible e-mail address;
- name of FMO employee whom the Complainant had contact with (if applicable);
- a copy of information related to - or relevant for - the Complaint, including an overview of actions (e.g. legal, contacts with project sponsors) that have already been taken to solve the issue.

3.1.3 Any person or group, including civil society organizations representing affected people, may lodge a Complaint.

3.1.4 The following specific criteria are applicable for admissibility of Complaints:

- The "Receipt Items" (as defined above) should be made available to FMO;
- The External Party must be affected or likely to be affected by an FMO-supported project;
- If an External Party is representing others, it must identify the people it represents and explicit evidence of the representative authority must be provided;
- FMO must have or will have an active financial relationship with the project;
- There must be an indication of a relationship between the project and the alleged impacts;
- The Complaint must contain allegations with substantial, (in)direct and adverse impacts or risks;

- If applicable, other actions and consultations with relevant responsible parties have already been taken place. This applicability will be determined by the Independent External Panel.

3.1.5 The FMO Complaints Mechanism cannot investigate:

- Complaints with the objective of gaining a competitive economic advantage or that are excessive, repetitive (i.e. covering the same aspects of a project), clearly frivolous or malicious in nature;
- Identical Complaints aimed at Mediation that already have been lodged with other high standard administrative mechanisms (being member of the network of Independent Accountability Mechanisms) or judicial review mechanisms or which have been settled by the latter (as indicated in paragraph 1.2 coordination and cooperation with other mechanisms will be aimed for);
- If during the investigations of a Complaint, it appears that some parts concern fraud and/or corruption, the relevant part of the Complaint will be handed over to FMO Internal Audit Function.

3.1.6 Anonymous Complaints are not accepted. Nevertheless, without prejudice a Complainant has the right of confidential treatment of the Complaint. Once a Complaint has been deemed admissible, other affected stakeholders typically will be notified about the Complaint. The Mechanism will strictly respect and safeguard a party's request for confidentiality (if applicable), including confidentiality of entities. The Mechanism will indicate publicly when it has restricted disclosure of information in response to such a request from an External Party.

3.1.7 Complaints must be lodged within one year from the date on which the facts, upon which the allegation is grounded, could be reasonably known to the Complainant(s). The reasonability will be determined by the Independent External Panel.

3.2 Description of the Procedure

3.2.1 After receipt of a Complaint, the FMO Complaints Office will ensure that an acknowledgement of receipt is sent to the Complainant(s) within five working days. The acknowledgement informs the Complainant(s) of the date by which the Mechanism's official reply to the Complainant can be expected.

3.2.2 The Complaint is forwarded to the Independent External Panel by the Complaints Office. Based on criteria, as defined in paragraph 3.1, the Independent External Panel decides on admissibility of the Complaint. During this phase, the Panel can request further information from the complainant and FMO to clarify the complaint. In case of partial or total inadmissibility of the Complaint, the Panel will endeavour to provide, if possible, the Complainant with an advice on which measures could be taken and/or to which institution the concerns may be addressed.

3.2.3 Once a Complaint has been declared admissible, the Independent External Panel will launch a Preliminary Review into the issue(s) raised by the Complainant; it will review the relevant documentation and records; ensure coordination of the different FMO services involved and whenever deemed necessary will hold meetings with the appropriate internal and external stakeholders in order to gather the required information.

3.2.4 Based on the Preliminary Review and in consultation with the External Parties the Independent External Panel decides on conducting Mediation or a Compliance Review. These activities are the core phases of FMO's Complaints Mechanism.

3.2.5 FMO's Complaints Mechanism offers the flexibility of conducting a Compliance Review after the Mediation phase and vice versa. It is the Independent External Panel that decides upon this. Refer to the scheme in Annex 1.

3.2.6 In the Mediation Phase, a Complaint will be handled by the Independent External Panel. Activities of this dispute resolution process can include information sharing, fact-finding, dialogue and mediation.

3.2.7 Once a Complaint has been declared admissible for Compliance Review, the Independent External Panel will launch a full inquiry into the issue(s) raised by the Complainant; it will review the relevant documentation and records; ensure coordination of the different FMO services involved and whenever deemed necessary will hold meetings with the appropriate internal and external stakeholders in order to gather all the required information.

3.2.8 After the Mediation Phase and/or the Compliance Review is closed, the Panel prepares a draft report that includes the allegations, findings, conclusions and recommendations if any, and sends it to the concerned FMO services for opinion and comments for factual checks (to be received within 10 working days). Nonetheless, it is up to the Independent Expert Panel to decide upon the final text.

3.2.9 The report may contain recommendations, such as operational corrective actions and / or improvements to existing policies and/or procedures. Agreed corrective actions must include an implementation plan as well as a detailed timeframe.

3.2.10 The Panel sends the draft report also to the Complainant for opinion and comments for factual checks (to be received within 15 working days). Nonetheless, it is up to the Independent Expert Panel to decide upon the final text.

3.2.11 For each Complaint the Panel will prepare a final Conclusions Report to the attention of the FMO Management Board and Supervisory Board.

3.2.12 The Panel sends the final Conclusions Report to the Complainant(s) and informs the Complainant about the FMO Management Board's decision.

3.2.13 Effective and timely implementation of corrective actions will be strictly monitored by FMO's Complaints Office. This follow-up on proposed corrective actions and recommendations will be conducted within 12 months after issuing the Conclusions Report.

3.3 Methods of Inquiry

3.3.1 The Independent Expert Panel may, taking into account the nature of the particular Complaint, use a variety of additional investigatory methods, including but not limited to:

- Contacts with the Complainant, affected people, government officials and project authorities of the country where the project is located, promoters of FMO financed projects and representatives of local and international non-governmental organizations;
- Visiting project sites;

- Requesting written or oral submissions on specific issues from the Complainant, affected people, independent experts, government or project officials, promoters of FMO financed projects, FMO staff, or local or international non-governmental organizations; and
- Hiring independent experts to facilitate Mediation or to research specific issues relating to the Complaint.

3.3.2 The Panel will ensure that imposed and/or agreed delays and notices are respected.

3.3.3 In cases of Mediation the deadlines may be extended in consultation with the Complainant(s) in order to allow for comprehensive stakeholder engagement and to manage legitimate expectations.

3.3.4 FMO strives to conduct all phases within predefined time constraints. The response time can however be extended if the case is complex or the workload on the process is extensive. In those cases, FMO will inform the External Party duly within the predefined timelines. The following time constraints apply:

- An acknowledgement of receipt by FMO should be sent within five (5) working days after receipt of the Complaint;
- FMO strives to decide on admissibility within 25 working days after acknowledgement of receipt;
- There is no time constraint on the response for the Mediation phase;
- FMO strives to finalize the Compliance Review phase 75 working days after the Complaint has been deemed admissible.

3.4 Resources

3.4.1 Adequate budgetary support will be provided to the Mechanism so that it can be effective and independent in carrying out various activities in a timely manner.

3.4.2 The composition and appointment of members of the Panel is the responsibility of FMO's Chief Executive Officer and will be approved by FMO's Supervisory Board. The members have diverse expertise (e.g. environmental, social, legal, financial). The members of the Panel must be independent, i.e. they should not have had any involvement in FMO project related activities for at least a period of two consecutive years.

3.4.3 The Panel will consist of three members and will be appointed for two years with an optional prolongation period of two years. It is intended to plan successive appointments in such a way, that adequate composition is continuously safeguarded.

3.4.4 The Panel is available for questions, information and advice. If needed, the Independent External Panel is authorized to hire experts. The Independent External Panel decides about the Complaint and responds to FMO and the External Party.

3.5 Reporting & Transparency

3.5.1 It is important for FMO to communicate effectively about the Mechanism. An introduction and description of the procedure will be provided on FMO's website.



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3.5.2 FMO will publish a register of Complaints with statuses and outcomes (including follow-up on actions and recommendations) on FMO's website, taking into account privacy and confidentiality regulations and FMO's Disclosure Policy.

3.5.3 The Independent External Panel (assisted by the Complaints Office) will report annually to FMO's Supervisory Board (Audit and Risk Committee) on the Complaints. This report will be published on FMO's website.

3.6 Evaluation

3.6.1 This Complaints Mechanism will be reviewed in case of e.g. new (international) laws, regulations or FMO Policies and may be updated accordingly in due course. It will be revised immediately when needed and will at least be evaluated once every four years.

Appendix 1: Process flow Complaints Mechanism

