

Accountability Mechanism Compliance Review

A Guide to the Compliance Review Process
and Filing a Request for Compliance Review

November 2010

Asian Development Bank





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Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
Tel +63 2 632 4444
Fax +63 2 636 2444
www.adb.org

For orders, please contact:
Department of External Relations
Fax +63 2 636 2648
adbpub@adb.org

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Abbreviations

ADB	–	Asian Development Bank
BCRC	–	Board Compliance Review Committee
CRP	–	Compliance Review Panel
DMC	–	developing member country
OCRPF	–	Office of the Compliance Review Panel
OSPF	–	Office of the Special Project Facilitator
SPF	–	Special Project Facilitator

What Is the ADB Accountability Mechanism?

On 29 May 2003, the Asian Development Bank (ADB) approved a new Accountability Mechanism Policy replacing the 1995 Inspection Function Policy. The mechanism has two phases:

(i) a **consultation phase** involving ADB's Special Project Facilitator (SPF) who responds to specific problems raised by project-affected people in ADB-assisted projects through informal, consensus-based methods, e.g., consultative dialogue, good offices, or mediation; and

(ii) a **compliance review phase** implemented by an independent Compliance Review Panel (CRP) that investigates any actual or potential harm caused by noncompliance by ADB of its operational policies and procedures in any ADB-assisted project during the formulation, processing, or implementation of the project.

The ADB Accountability Mechanism took effect on 12 December 2003 and applies to both ADB-financed public and private sector projects. The mechanism is guided by the following principles:

- to enhance ADB's development effectiveness and project quality;
- to be responsive to the concerns of project-affected people and fair to all stakeholders;
- to reflect the highest professional and technical standards in its staffing and operations;
- to be independent and transparent; and
- to be cost-effective, efficient, and complementary to the other supervision, audit, quality control, and evaluation systems already existing at ADB.

The Office of the Special Project Facilitator and the Office of the Compliance Review Panel provide support to the consultation and compliance review phases, respectively.

The Compliance Review Phase

The compliance review phase of the ADB Accountability Mechanism serves as a forum where project-affected people (and in special circumstances, any member of ADB's Board of Directors) can air their complaints against ADB by filing a request for compliance review.

What Is a Compliance Review?

Compliance review is a process of investigating allegations of ADB's non-compliance with its operational policies and procedures during the formulation, processing, and implementation of an ADB-assisted project. It focuses on ADB's conduct and does not investigate the actions of the borrower, borrowing country, executing agency, implementing agency, or private sector-project sponsor. However, the actions of these parties are considered insofar as they directly relate to an assessment of ADB's compliance with its operational policies and procedures. Compliance reviews are conducted by an independent CRP.

The **Office of the Compliance Review Panel** supports the compliance review phase and the work of the Compliance Review Panel.

PART 1

The Compliance Review Panel

What Is the Compliance Review Panel?

The Compliance Review Panel (CRP) is an independent body appointed by ADB's Board of Directors upon the recommendation of the ADB President. It consists of three members: one full-time chair and two part-time members. Two CRP members are from ADB's regional countries, with at least one from a developing member country (DMC). The third member is from a nonregional country.

Each CRP member has a 5-year nonrenewable term, except that the first three members were appointed on a staggered basis of 3, 4, and 5 years, respectively. After serving on the CRP, former CRP members are barred from employment at ADB. A CRP member may be removed from office for cause only by a majority decision of the ADB Board.

What Is the Purpose of the Compliance Review Panel?

The purpose of the CRP is to determine and assess whether ADB has complied with its operational policies and procedures in an ADB-assisted project, and whether any noncompliance has, or may, directly, materially, and adversely harm any people during the formulation, processing, or implementation of the project under compliance review.

What Are the Basic Features of the Compliance Review Panel?

Independence and Impartiality

The CRP is an independent forum. No attempt may be made to interfere with its functions or to exert any undue influence on its activities.

CRP members will serve in their individual capacity and will disclose any other affiliations or interests that may be related to the

work of the CRP or ADB. CRP's findings and recommendations shall be strictly impartial. Only issues relevant to the request for compliance review under consideration will be used in CRP's findings and recommendations.

Confidentiality

The CRP is subject to ADB's confidentiality and disclosure of information policy, including those provisions aimed at ensuring that confidential business information is not disclosed. When requested, the CRP will withhold the identity of any requesting party and other sources of information.

Any material or information submitted to any CRP member specifically stating that it is confidential may not be released to any other party without the consent of the submitting party. The submitting party should note that the substance of the material or information may be used by the CRP in carrying out its work.

Disclosure

A CRP member will disclose to the CRP chair any of the following circumstances where that member and/or a close relative:

- has been involved, or is likely to be involved, in the design, processing, or implementation of a project under compliance review;
- has worked recently for, or has/had a financial interest in any company, firm, or other enterprise likely to benefit from the project (e.g., a consulting firm or supplier likely to bid on a contract under the project, or a landowner in the project);
- has any formal or informal relationship with the requester; and
- is subject to any other circumstances where the CRP member may otherwise appear to have a conflict of interest in the matter.

Disqualification

A CRP member will be disqualified from participating in a compliance review (including annual monitoring) where the member or a close family

relative has a personal interest or has had significant prior involvement in a project under compliance review in any capacity.

Overall Responsibility

The CRP chair has the overall responsibility for CRP's operations. The chair is the spokesperson for the CRP and, after consultation with other members, makes public statements on behalf of the CRP. Unless authorized by the chair, other CRP members may not make public statements on behalf of the CRP unless they make it clear that they are doing so in their own personal capacity.

Reporting

The CRP reports directly to ADB's Board of Directors on all its activities except on two occasions where it reports to the Board Compliance Review Committee (BCRC). BCRC has an oversight function on two activities of the CRP:

- clearing CRP's proposed terms of reference and time frame in the conduct of a compliance review, and
- reviewing CRP's draft reports on monitoring the remedial actions approved by the Board as a result of a compliance review.

What Are the Activities of the Compliance Review Panel?

Specific activities of the CRP are as follows:

- receiving and determining the eligibility of a request for a compliance review;
- engaging with all stakeholders, including ADB Management and staff, the requester, the executing agency/DMC government or the private project sponsor, and the Board member representing the

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country concerned, in a thorough understanding of the issues during the compliance review;

- coordinating its activities, to the extent appropriate, with those of the compliance review mechanism of any other cofinancing institution that is conducting a separate compliance review of the same project;
- conducting thorough and objective reviews of operational policy and procedural compliance;
- consulting with ADB Management and staff, the requester, the executing agency/DMC government or the private project sponsor, and the Board member representing the country concerned on its preliminary findings and recommendations;
- issuing draft reports to ADB Management and requesters that include findings and recommendations on policy compliance;
- issuing final reports to the ADB Board of Directors with its findings and recommendations;
- informing the requesters of the decision made by the Board on the final findings and recommendations of the review;
- monitoring implementation of decisions made by the Board;
- providing the requesters with the monitoring reports on the implementation of the decision made by the Board;
- issuing annual reports that provide advice based on lessons learned from past cases;
- developing a roster of independent technical experts who can assist it in carrying out its work; and
- liaising with accountability mechanisms at other institutions.

Annual Report

The CRP publishes an annual report that includes

- a description of the requests considered,
- a summary of CRP's activities in responding to each request,
- a summary of CRP's monitoring activities,
- information regarding CRP's budget and expenses, and

- policy advice, based on lessons learned from previous requests for compliance review.

Public Release of Reports

The CRP publishes the following reports or documents on its website and provides any person who requests a copy of:

- CRP's report on eligibility and the Board's decision, within 7 days from receipt of the Board's decision on authorization of a compliance review;
- the terms of reference, including scope of review, proposed methodology and time frame, within 14 days from receipt of the Board's authorization of a compliance review;
- the Board's final decision and CRP's final report along with any attachments, within 7 days of the Board's decision;
- CRP's monitoring reports at the same time they are provided to the Board and other stakeholders; and
- CRP's annual report within 4 months after the end of each calendar year.

Website

The CRP maintains its own website at <http://compliance.adb.org>

PART 2

The Compliance Review Process

What Is the Scope of a Compliance Review?

The scope of a compliance review includes all ADB operational policies and procedures relating to the formulation, processing, or implementation of the project (including situations where ADB is alleged to have failed in its follow-up on the borrower's obligations under the loan agreements with respect to such policies and procedures).

What Matters are Excluded from a Compliance Review?

All types of complaints excluded under the consultation phase are also excluded in the compliance review phase, and these are:

- matters not related to ADB's actions or omissions in the formulation, processing, or implementation of ADB-assisted projects;
- matters relating to the procurement of goods and services, including consulting services;
- allegations of fraud or corruption in ADB-assisted projects and by ADB staff;
- an ADB-assisted project for which a project completion report has been issued;¹
- matters already considered under the previous Inspection Function or by the CRP unless there is significant new evidence presented that was not known at the time of the original complaint or unless the subsequent complaint can be readily consolidated with the earlier complaint;

¹ A project completion report is issued by ADB within 1–2 years after the project is physically completed and in operation. In the case of private sector projects for which a project completion report is not issued, the cutoff date is 2 years after the project is physically completed and in operation; or, where physical completion is waived or is not relevant (e.g., financial intermediation projects), 1 year after the date of the final disbursement or termination of ADB's involvement in the project, whichever occurs earlier.

- matters about the adequacy or suitability of ADB's existing policies and procedures;
- matters considered to be frivolous, malicious, trivial, or generated to gain competitive advantage;
- matters within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or those relating to ADB personnel matters; and
- ADB's nonoperational housekeeping matters such as finance and administration.

In addition, CRP excludes the following:

- actions that are the responsibility of other parties, such as the 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;
- matters that do not involve an action or omission by ADB's failure to follow its operational policies and procedures;
- laws, policies, and regulations of the executing agency or DMC government concerned unless these directly relate to ADB's compliance with its operational policies and procedures; and
- a complaint that has not been filed first with the SPF (this exclusion does not apply to a request from Board members).

What Happens to My Request for a Compliance Review?

Your request will be handled as follows:

Step 1: Filing of the Request

- The request for a compliance review is received by the Secretary, CRP.

Step 2: Registration and Acknowledgment of the Request

Within 7 days from receipt of a request with the requisite basic information, the CRP will

- register the request on a register accessible to the public through CRP's website,

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- acknowledge receipt of the request,
- inform the ADB Board of Directors that a request has been registered, and
- release a press advisory that it has registered the request.

Step 3: Determination of Eligibility of the Request

Within 14 days from registration of the request, the CRP will determine the eligibility of the request and will inform the requester of its decision.

If the SPF has already determined that the complaint is ineligible for the consultation phase, the CRP will determine the eligibility of the request within 21 days from registration of the request.

At this stage, the CRP may consult all stakeholders, including ADB Management and staff, the requester, the executing agency or DMC government or the private project sponsor, and the Board member representing the country concerned. The determination of eligibility includes a desk-based review and/or a site visit.

If the CRP determines that the request is eligible, it will recommend to the Board that a compliance review be authorized.

If the CRP determines that the request is ineligible, it will also inform the Board of the ineligibility of the request.

Step 4: Board Authorization of the Compliance Review

Within 21 days from receipt of CRP's recommendation, the Board will authorize the compliance review on a no-objection basis.

Within 7 days from receipt of Board authorization, the requester will be informed. The Board's decision will then be posted on CRP's website.

Step 5: Conducting the Compliance Review

Within 14 days from receipt of Board authorization of the review, the CRP will seek clearance from the Board Compliance Review Committee (BCRC) of its terms of reference and time frame that will indicate the methodology and estimated duration of the review. Upon clearance by BCRC, the terms of reference and time frame will be provided to the Board and all stakeholders, and posted on CRP's website.

The CRP will then conduct the review. CRP's review is not time bound, but it will conduct the review in an expeditious manner.

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Step 6: Compliance Review Panel's Draft Report

At the completion of its review of compliance, the CRP will issue a draft report of its findings and recommendations to ADB Management and the requester for comments.

Step 7: ADB Management's and Requester's Responses to the Compliance Review Panel's Draft Report

ADB Management and the requester will be given 30 days from receipt of the draft report to provide their responses. Each party is free to provide comments on the draft report; however, only the CRP's final view on these matters will be reflected in its final report.

Step 8: Compliance Review Panel's Final Report

Within 14 days from receipt of the responses to draft report from ADB Management and the requester, the CRP will issue to the Board its final report with its findings and recommendations to ensure project compliance, including recommendations, if appropriate, for any remedial changes in the scope or implementation of the project.

Step 9: Board's Decision

Within 21 days from receipt of CRP's final report, the Board will consider the report and make the final decision regarding any recommendations on how to bring the project into compliance and/or mitigate any harm, if appropriate.

Within 7 days from the Board's decision, the Board decision and CRP's final report, with the responses attached, will be released to the requester, and then posted on CRP's website.

Step 10: Monitoring the Implementation of Remedial Actions

The CRP will monitor implementation of any remedial actions approved by the Board as a result of a compliance review. Unless the Board specifies a different timetable, the CRP will report as frequently as required or at least annually for 5 years. The CRP will prepare a monitoring report and submits this to BCRC. The report is then copied to the concerned stakeholders and uploaded to CRP's website.

After 5 years, the CRP may recommend further monitoring of the Board-approved remedial actions as necessary.

PART 3

Filing a Request for a Compliance Review

The filing of a request for a compliance review does not suspend or otherwise affect the formulation, processing, or implementation of the project unless agreed to by the DMC government or private project sponsor concerned and by ADB.

When Do I Submit a Request for a Compliance Review?

If you and other people in your community or village feel that you are suffering harm, or believe that you will suffer harm, because of an ADB-assisted project, and that this harm is caused by ADB's noncompliance with its operational policies and procedures in formulating, processing, and/or implementing its projects, you and others can submit a request for a compliance review.

However, before you can make a request for a compliance review, you and your group must first go through the consultation phase by filing a complaint with the SPF.

A request for a compliance review can be submitted if, under the consultation phase:

- the SPF finds your complaint ineligible,
- your group decides not to proceed with the consultation phase after receiving the SPF's findings and assessment of your complaint,
- your group finds the consultation process not useful, or
- if the consultation phase is terminated by the SPF or because other stakeholders abandon the consultation process.

Who Can File a Request for a Compliance Review?

The following can file a request for a compliance review:

- any group of two or more persons (such as an organization, association, society, or other grouping of individuals) residing in a borrowing country where an ADB-assisted project is located or in an ADB-member country adjacent to the borrowing country;
- a local representative of the affected group; or
- a non-local representative, in exceptional cases when a local representative cannot be found and the CRP agrees.

In addition, in special cases involving allegations of serious noncompliance with ADB's operational policies and procedures relating to an ongoing ADB-assisted project, a member of the ADB Board of Directors, after raising concerns first with ADB Management, may directly request the CRP to carry out a compliance review.

If a request for a compliance review is made through a representative, the request must

- clearly identify the people on whose behalf it is made, and
- provide evidence of authority to represent the requester or the project-affected people.

How Do I Submit a Request for a Compliance Review?

You must mail, fax, e-mail, or hand deliver your request for a compliance review to:

Secretary
Compliance Review Panel
Asian Development Bank
6 ADB Avenue
Mandaluyong City
1550 Metro Manila, Philippines
Tel +632 632 4149
Fax +632 636 2088
crp@adb.org

The request can be sent to the ADB headquarters in Manila, Philippines or to any ADB resident/regional mission or representative office (contact information can be found at www.adb.org/About/contact.asp). In case of fax or e-mail submissions, a hard copy (paper copy) should also be dispatched to the Secretary, CRP at the above address.

What Are the Contents of a Request for a Compliance Review?

A request for a compliance review must include the following:

- names, addresses, and other contact information of your group and/or your group's representative;
- whether your group wishes to keep your identities confidential and the reason(s) why;
- if you are representing an affected group, include evidence of authority to represent them;
- description of the harm or suffering you and your group are experiencing, or may experience;
- name and location of the ADB-assisted project;
- outcome or remedies that your group believes ADB should provide;
- explanations on the results of your group's efforts to bring your complaint first to the SPF;
- if your complaint was rejected by the SPF, an explanation on why your group is submitting a request for a compliance review;
- if your group cannot provide any of the aforementioned information, an explanation or reasons why; and
- any other matters or facts, with supporting documents, that you consider relevant to your group's request.

The requester is not required to cite alleged noncompliance with specific ADB policies; however, the requester may allege any policy noncompliance that the requester believes are linked to an ADB act or

omission because of ADB's alleged failure to follow its operational policies and procedures.

If a request does not have sufficient information, the CRP may seek further information and documentation from the requester before determining the eligibility of the request for a compliance review.

What Is the Format of a Request for a Compliance Review?

There is no specific format for a request for a compliance review. However, a sample form is shown on the next page.

What Language Should I Use?

You may submit your request for a compliance review in English or in any of the official or national languages of ADB's DMCs. If a request is submitted in a language other than English, additional time will be required for translation.

Can a Requester Seek Confidentiality of Identity?

A requester can insist that their identities be kept confidential but anonymous requests will not be accepted.

Before you can submit a request for a compliance review, you must first go through the consultation phase by filing a complaint with the Special Project Facilitator. For more information on the consultation phase, visit www.adb.org/spf.

Sample Request for a Compliance Review

(Translation in various languages are available at <http://compliance.adb.org>)

Date of this request: _____

To: Secretary, Compliance Review Panel
Asian Development Bank (ADB)
6 ADB Avenue
Mandaluyong City 1550, Philippines
Tel +632 632 4149
Fax +632 636 2088
E-mail crp@adb.org

Dear Secretary:

We, who have signed this letter, live in [INSERT PLACE OF RESIDENCE]

_____, which is affected by the following ADB project: [INSERT NAME OF ADB PROJECT] (“the project”).

We request that the Compliance Review Panel (CRP) help us by investigating whether ADB has complied with its operational policies and procedures regarding the project. We understand that the CRP must first determine whether our request is eligible.

We believe that ADB failed to follow its operational policies and procedures, especially in relation to: [INSERT LIST OF ADB’S OPERATIONAL POLICIES AND PROCEDURES ALLEGED TO HAVE BEEN VIOLATED]

_____.
Due to ADB’s failure to comply with these operational policies and procedures, we have suffered, or may suffer, damage or harm described below: [INSERT DESCRIPTION OF DAMAGE OR HARM ALLEGED TO HAVE BEEN CAUSED BY ADB’S NONCOMPLIANCE]_____.

We would like ADB to remedy the harm in the following manner:_____.

We have previously raised our concerns with ADB staff and with ADB’s Special Project Facilitator. This is a brief record of what happened:_____.

We now request the CRP to investigate whether ADB has complied with its operational policies and procedures because [we do not believe that the attempts to solve the problems have been purposeful] OR [we still believe that there is an issue of ADB’s noncompliance] OR [we are not satisfied with the outcome of the complaint procedure to date for the following reasons: [INSERT REASONS FOR UNSATISFACTORY OUTCOME OF CONSULTATIONS WITH ADB]

Aside from the information provided above, there are other documents that may help the CRP in assessing our request for compliance review. We attach a list of those documents and their sources.

Our names, addresses, and contact information are provided below.

Signature

Signature

[Address, telephone and fax numbers, and email for each person, where available]

(If the requesters are being represented by an association or another group, please include the text below.)

We, _____ (name of the representative), represent the above-named requesters. Please contact us through the following:

Name, Title, and Affiliation

Address:

Additional contact information:

Office of the Compliance Review Panel

The Office of the Compliance Review Panel (OCRCP) provides secretariat support to the Compliance Review Panel (CRP) and the Board Compliance Review Committee (BCRC). The OCRCP is headed by the Secretary and assisted by the Associate Secretary, Compliance Coordination Officer, and two administrative staff. The Secretary is responsible for the support and daily administration of the CRP's operations, the operation and administration of the OCRCP, and organization of OCRCP staff. The ADB President appoints the Secretary. The Secretary appoints the Associate Secretary and other OCRCP staff.

OCRCP's functions include

- carrying out information dissemination and conducting public outreach regarding the ADB Accountability Mechanism, and the functions of the Office of the Special Project Facilitator (OSPF) and the CRP, both within ADB and in member countries;
- providing advice or guidance to potential requesters for a compliance review;
- providing secretariat support to the BCRC, including administering its yearly operating expenses; and
- coordinating with the OSPF in carrying out public outreach on the ADB Accountability Mechanism.

The OCRCP coordinates with ADB's operations departments and the Department of External Relations as well as with nongovernment and civil society organizations to ensure that such information dissemination and public outreach are integrated with ADB's activities designed to promote interaction with project beneficiaries or stakeholders.

Contact us:

Secretary

Compliance Review Panel

Asian Development Bank

6 ADB Avenue

Mandaluyong City

1550 Metro Manila, Philippines

Tel + 63 2 632 4149

Fax +63 2 636 2088

crp@adb.org

www.compliance.adb.org

Special Project Facilitator

Asian Development Bank

6 ADB Avenue

Mandaluyong City

1550 Metro Manila, Philippines

Tel + 63 2 632 4825

Fax +63 2 636 2490

spf@adb.org

www.adb.org/spf

For more information on ADB, visit www.adb.org

Compliance Review: A Guide to the Compliance Review Process and Filing a Request for Compliance Review

This booklet serves as a guide to people affected by ADB-assisted development projects in filing a request for compliance review, explains the compliance review process, and provides information about the Compliance Review Panel. It consists of three parts: Part 1 features the Compliance Review Panel; Part 2 explains the compliance review process; and Part 3 outlines the procedures in filing a request for compliance review.

The booklet contains excerpts from the Operations Manual on the ADB Accountability Mechanism (19 December 2008), the Operating Procedures for the Compliance Review Panel (5 June 2004), and the Administrative Procedures for the Compliance Review Panel and the Office of the Compliance Review Panel (26 March 2004).

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 substantially reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than \$2 a day, with 903 million struggling on less than \$1.25 a day. 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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