



## NORTH AMERICAN DEVELOPMENT BANK

### POLICY REGARDING COMPLAINTS FROM GROUPS AFFECTED BY PROJECTS

*Recognizing that Chapter II, Article III, Section 14(c), of the Agreement Between the Government of the United States of America and the Government of the United Mexican States (the Parties) Concerning the Establishment of a North American Development Bank (the Charter) requires the Bank to establish procedures whereby the Board of Directors can receive complaints from groups affected by projects that the Bank has assisted or recommended for certification and financing; and*

*Recognizing that federal, state and local agencies from both nations have the primary authority to regulate, enforce and generally oversee environmental activities affecting the public within their respective jurisdictions; and*

*Further recognizing that measures that may be taken by the Bank under the Charter to address matters raised in a complaint consist mainly of consultation, cooperation and facilitation with the complainants, project sponsors, government agencies, national and international institutions and private investors; and also consist, insofar as possible, of ensuring that project sponsors adhere to the certification requirements established for their individual projects by the Board of Directors;*

The Board of Directors of the Bank adopts the following policy.

#### ARTICLE I – DEFINITIONS

1.1. Group affected by one or more projects. Two or more people who are affected in a direct and material way by one or several projects that the Bank has assisted or approved for certification and financing. Members of the group must reside in the area where the project(s) causing the effects is (are) located or in an area where the effects of the project(s) occur or are likely to occur based on evidence. Groups may include an organization or other association of individuals. The group affected by the project(s) may appoint a representative acting on instructions as its agent.

#### ARTICLE II – SUBJECT MATTER OF COMPLAINTS

2.1. Projects about which complaints will be considered under this policy shall be those for which the Bank has:

- (a) provided technical or other assistance requested by the project applicant; or
- (b) approved for certification and financing pursuant to a decision of the Board of Directors.

2.2. A complaint under this policy must be based on the health or environmental effect(s) of the project(s) or on evidence or facts that enable the complainant to foresee the health or environmental effects of the project(s).

### **ARTICLE III – CONTENTS OF COMPLAINTS**

- 3.1. The group affected by the project(s) must provide the following information:
- (a) a description of the project(s), including how the project(s) meet the requirements of Article II of this policy;
  - (b) a description of the facts or evidence supporting the complaint, including how the group is affected or likely to be affected by the project(s), as defined in Article I of this policy;
  - (c) any other supplemental information supporting the complaint; and
  - (d) copies of any correspondence with Bank staff or with third parties, including the applicants of the project(s) that is (are) the subject matter of the complaint, and any government agency that has participated in the project(s).
- 3.2. If the complaint relates to a matter previously addressed pursuant to this policy, the complainant shall also state whether new evidence or changed circumstances now exist.

### **ARTICLE IV – FORM AND TIMING OF COMPLAINTS**

- 4.1. Complaints shall be submitted in writing to the Board of Directors through the Managing Director of the Bank. If a complaint is provided in only one official language, the Bank will ensure that it is available in both languages before it is considered by the Board of Directors. In this case, the Bank shall strive to have the complaint translated within fifteen (15) working days from the date it was received.
- 4.2. Complaints shall be dated and signed by a member, or members, of the group affected by a project(s), and contain the address (and telephone number, when available) of such person or persons.
- 4.3. The representative of a group affected by a project(s) shall submit written proof, satisfactory to the Bank, that the representative has authority to act on behalf of the group.
- 4.4. Complaints shall be sent by registered or certified mail, or delivered by hand, to the Board in care of the Managing Director.
- 4.5. Complaints shall be submitted in as timely and expeditious a manner as circumstances permit. Specifically, complaints pursuant to paragraphs 2.1. (a) and (b) of this policy shall be submitted no later than two years from the date that the project becomes fully operational.
- 4.6. All complaints submitted in accordance with the time limitation established in paragraph 4.5. shall be formally addressed by the Board in accordance with this policy. All

other complaints concerning projects assisted or certified by the Bank arising after the time limitation set forth above shall be directed to the appropriate local, state or national authorities, and a certified copy of the complaint shall also be sent to the Board of Directors, which shall continue to play an informal and facilitative role with respect to such complaints among the appropriate authorities, the project sponsor and the complainant, and shall provide available information regarding the project(s) that is (are) the subject of the complaint.

## **ARTICLE V – RESOLUTION OF COMPLAINTS**

5.1. Upon receipt of a complaint pursuant to this policy, the Managing Director, with the assistance of Bank staff, shall notify the Board of Directors of the complaint and will notify the public through the Bank’s periodic publication. The notice shall include a brief description of the complaint.

5.2. The Board of Directors, with the assistance of Bank staff, shall review each complaint received by the Bank and assess whether a complaint meets the requirements of Articles II, III and IV of this policy. If the Board of Directors determines that any of those provisions have not been met, the complaint shall be rejected, and the Bank shall notify the complainant by certified mail, return receipt requested, of the reason(s) why the complaint was rejected by the Board of Directors, and will publish a summary of the reasons for the rejection in its periodic publication. Once a complaint is rejected, the complainant shall have one opportunity to submit an amended complaint that fully satisfies the requirements of this policy. If the Board of Directors, with the assistance of Bank staff, determines that the amended complaint does not meet the requirements of this policy, the Board of Directors shall reject the amended complaint, informing the complainant of its reason(s) for rejecting it, and will publish a summary of the reasons for the rejection in its periodic publication.

5.3. If, after making initial inquiries pursuant to paragraph 5.2. of this policy, the Board of Directors, with the assistance of Bank staff, decides that further information is necessary to adequately assess or respond to the complaint, the Board of Directors may request such information from:

- (1) the complainant; or
- (2) any other public or private institution it deems appropriate.

5.4. Any other organization or individual may submit information or recommendations to the Board with respect to the complaint. The brief description of the complaint provided as notice shall be sufficiently detailed to enable the public to submit information or recommendations to the Board of Directors. The Board of Directors must keep a file containing copies of the complaint, including any supporting information from the complainant. The information contained in this file shall be made available to the public.

5.5. The Board shall issue a determination in writing on each complaint, and shall strive to issue that determination within no more than six months following the date on which the Board is notified of the complaint. The determination shall be forwarded simultaneously to the complainant by certified mail, return receipt requested, and shall be included in the Bank's periodic publication.

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**APPROVED: JUNE 19, 2018**

- 5.6. The Board's determination on the complaint shall include:
- (a) a clear statement of the conclusion with respect to the complaint;
  - (b) a full statement of the reasons supporting the conclusion; and
  - (c) steps, if any, the Board intends to take as a result of the complaint, including a timetable for undertaking such steps.
- 5.7. The Managing Director, at the request of the Board, may assist in the review of complaints.
- 5.8. Other than for purposes of the amendment process described in paragraph 5.2. of this policy, the Board shall not consider a complaint on the same subject and from the same affected group as a prior complaint that has already been fully considered by the Board, unless new evidence is presented or changed circumstances exist.