



## NORTH AMERICAN DEVELOPMENT BANK

### POLICY FOR INDEPENDENT ASSESSMENTS

*Recognizing that* Chapter II, Article III, Section 14(c), of the *Agreement between the Governments 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) provides that the Bank shall establish procedures whereby the Board of Directors may obtain independent assessments to determine whether the terms of Chapter III of the Agreement or the procedures established by the Board of Directors pursuant to that chapter have been observed; and

*Recognizing that* federal, state, and local agencies of the Parties have the primary authority to regulate, enforce and generally oversee all environmental activities affecting the public within their jurisdiction;

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

#### ARTICLE I – DEFINITIONS

- 1.1. Managing Director: The Managing Director of the Bank.
- 1.2. Board: The Board of Directors of the Bank.
- 1.3. Group: Any organization or association of two or more individuals.

#### ARTICLE II – PURPOSE OF AN INDEPENDENT ASSESSMENT

2.1. The Board of Directors may obtain an independent assessment to determine whether the provisions of Chapter III of the Charter or of the policies adopted by the Board pursuant to that chapter have been observed. This policy for independent assessments shall not apply with respect to any matter that is not directly related to the observance of the provisions of Chapter III of the Charter or of the policies established by the Board.

#### ARTICLE III – REQUEST FOR AN INDEPENDENT ASSESSMENT

- 3.1. The following entities may request that the Board of Directors obtain an independent assessment:
  - (a) Any non-governmental organization through a duly appointed representative;
  - (b) Any group through a duly appointed representative;
  - (c) Any border community through a duly appointed representative; or
  - (d) State or local authorities from the border.

3.2. The request to carry out an independent assessment shall be submitted in writing to the Board through the Managing Director as soon as possible after the alleged non-observance of the provisions of Chapter III of the Agreement or of the policies adopted by the Board pursuant to that chapter, becomes apparent. If the request is submitted in only one of the official languages, the Bank will translate such request before it may be considered by the Board. The Bank shall strive to carry out the translation within fifteen (15) working days after the request has been received.

3.3 The request must contain sufficient information and arguments to allow the Board to evaluate the possible non-observance of the provisions of Chapter III of the Charter or of any procedure adopted by the Board pursuant to such chapter. In this sense, the request must explicitly state the provision(s) and/or policies that allegedly have not been observed, and contain sufficient legal basis and evidence to determine whether or not such non-observance has occurred.

#### **ARTICLE IV – PROCEDURE FOR OBTAINING AN INDEPENDENT ASSESSMENT**

4.1. Upon receipt of a request for an independent assessment, the Managing Director will forward it to the Board for consideration. The Board will evaluate the request within sixty (60) working days from the date the Bank received the request. In making its decision, the Board will analyze whether all the requirements set forth in Article III of these policies have been met. For purposes of analyzing the request, the Board will have the support of the Managing Director, Chief Environmental Officer and the General Counsel of the Bank.

4.2. If the Board denies the request, it will notify the interested party in writing of the basis for its decision. The party presenting the request may correct the existing deficiencies and present the request again within sixty (60) days of receiving this notification.

4.3. If, after analyzing the request, the Board concludes that the provisions of Chapter III of the Charter or of the policies adopted by the Board pursuant to such chapter may not have been observed, the Board will determine whether to obtain an independent assessment. In making its decision, the Board will take into account whether it will benefit substantially from the independent assessment.

4.4. Once it is determined that an independent assessment is warranted, the Board will instruct the Managing Director to inform the public of the request and of the Board's decision to obtain an independent assessment. This notice to the public will be made in accordance with the policies established by the Board.

4.5. From the moment it makes its decision, the Board will have forty-five (45) working days to form a panel in accordance with this policy.

4.6. Independent assessments shall be undertaken by a six-member panel whose membership shall be equally divided between U.S. and Mexican representatives. Panel members shall be appointed by the Board in accordance with the guidelines set forth in Article V of this policy. A new panel shall be appointed for each case, although the members of one panel may be appointed to serve on a different panel. In the event that there are two or more requests relating to the same matter, there will be only one process and one panel.

4.7. Once the panel has been formed, the Board, through the Managing Director, will inform the public, in accordance with the procedures established by the Board.

#### ARTICLE V – PANEL SELECTION

5.1. In selecting a panel, the Board of Directors will ensure that membership is comprised of the following:

- (a) Two public members (one from each country) who are border residents;
- (b) Two attorneys (one from each country) who have extensive knowledge of environmental and other relevant law and experience in dispute resolution; and
- (c) Two experts (one from each country) on technical and/or environmental issues or on any other issue the Board considers appropriate for the evaluation in question, who will be recommended to the Board by the panel members in Section 5.1. (a) and (b).

5.2 The Board of Directors shall ensure that the members of any panel:

- (a) Have experience with issues related to environmental infrastructure problems along the U.S.-Mexico border;
- (b) Have knowledge of the provisions contained in Chapter III of the Charter and the procedures adopted pursuant to such chapter;
- (c) Have extensive experience and knowledge related to the specific issue(s) being addressed;
- (d) Are not officials or employees of a federal, state or local government agency of one of the Parties; however, the two expert panel members as described in Section 5.1 (c) may be government officials or employees if recommended by the other panel members; and
- (e) Are not members, employees or contractors of the Bank and are not shareholders or employees of companies hired by the Bank or any company related to the matter being addressed.

5.3. When appointing panel members, the Board may also consider advice from interested parties, including non-governmental organizations; federal, state, and local agencies from each Party; or any business or academic association.

5.4. The Bank will cover the reasonable expenses in which panel members incur in carrying out their duties. Panel members shall not receive additional remuneration.

5.5. The Bank shall provide all necessary support to the panel members in the performance of their duties.

**ARTICLE VI – TERMS OF REFERENCE FOR THE INDEPENDENT ASSESSMENT**

6.1 The Board shall establish the terms of reference for each panel. At a minimum, the terms of reference should include:

- (a) Specific inquiries that are to be undertaken based on facts and on the direction provided by the Board;
- (b) Inquiry guidelines necessary to determine whether the Bank complied with the provisions contained in Chapter III of the Agreement or with the policies established by the Board; and
- (c) Possible recommendations by the panel to the Board of Directors based on the analysis and inquiry carried out.

6.2. Once panel member selection is complete, the Board shall establish a reasonable time period in which the panel shall submit its assessment. This time period may only be modified by the Board. The sessions of the panel shall be private, unless the Board establishes otherwise.

6.3. In preparing its assessment, the panel shall follow the guidelines established by the Board of Directors. Specifically, it may consider the following:

- (a) any relevant technical or scientific information;
- (b) information that has been made available to the public;
- (c) information that has been submitted by interested persons and organizations; and
- (d) information submitted by the Parties.

6.4. The panel's decision must be adopted by the majority of its members; however, panelists may furnish separate opinions for issues on which a unanimous decision cannot be reached.

**ARTICLE VII – PANEL REPORT**

7.1. Once the panel has concluded its analysis, it will prepare a report containing its conclusions regarding the case and indicating the basis for its decision. The report shall be sent to the Board through the Managing Director.

7.2 Within twenty (20) working days of receipt of the report from the panel the Board will make the report available to the public. The public notice shall include any measures to be implemented by the Bank based on the panel's report or the reason(s) why no specific measures will be implemented. However, if at the time of such public notice, the Bank has not yet determined if it will adopt any specific measures, it may notify the public of its decision at a later date.