

Comments on IFC's Disclosure Framework

Bruce Jenkins
Jennifer Kalafut

We welcome the opportunity to comment on the IFC's "Framework for Discussion Regarding Disclosure of Information" (Working Draft, November 24, 2004). Timely access to relevant information by stakeholders affected by and concerned with IFC financed operations is a core element of promoting sustainable development. Institutional transparency is a fundamental principle of good corporate governance and accountability. The IFC's disclosure framework is a critical instrument in achieving these important goals.

GENERAL COMMENTS

The IFC's Working Draft Disclosure Framework occurs at a critical time in the evolution of transparency standards among corporations, national governments, and international institutions. The corporate scandals of recent years have highlighted the need for far stronger transparency requirements for corporate governance and decision-making. Over 50 countries have now adopted freedom of information legislation that significantly expands citizens' access. International institutions, and in particular the international financial institutions (IFIs), have been the subject of ever stronger calls for greater openness in their operations and decision-making. Greater transparency has been increasingly linked with improved development outcomes. As critical dimensions of IFC operations strongly impact citizens' abilities to make informed decisions about their livelihoods, it is incumbent on the IFC to recognize the rights of its stakeholders to open access to information.

The IFC's draft disclosure framework needs to be strengthened in many important areas, including its general principles, institutional information, and investment-specific information. The latter area must in particular be strengthened to ensure that stakeholders—especially project-affected communities—are ensured earlier access to project information.

We are surprised that the IFC has not taken the opportunity of this review to systematically expand IFC transparency and stakeholder access to information. We do welcome some notable areas of improvement proposed by the framework, namely the release of client monitoring reports during project implementation and the advance disclosure of Action Plans. However, the areas of expanded disclosure are far and few between. In many respects, the disclosure framework does not move the IFC significantly forward in terms of transparency. In fact, the IFC appears to be falling behind the transparency standards of other international financial institutions (IFIs), including those of their private sector lending arms. The draft disclosure framework could be significantly strengthened to demonstrate IFC's leadership in defining best corporate transparency practices.

As outlined below, several international financial institutions have moved far beyond what the IFC has proposed in its draft disclosure framework. We understand that the IFC seeks to position itself as a standard setter for best corporate practices, but do not feel that the draft framework positions the IFC in this way. We do not believe that the IFC's business model of financing private sector clients obviates the need for significantly expanded corporate transparency.

Of particular concern, the November 24 working draft:

- drops the fundamental “principle in favor of disclosure” that should guide judgments regarding access to information.
- does not establish procedures for an information request process.
- does not significantly narrow the range of constraints that it applies to the release of information.
- does not address IFC’s responsibilities for dissemination and translation of information.
- does not significantly expand disclosure of IFC financial information.
- requires only aggregate, not-project specific, development impact reporting.
- maintains overly closed governance transparency standards at the IFC.
- does not expand disclosure of draft IFC guiding documents.
- neglects to address entire categories of information, such as evaluation materials.
- fails to ensure earlier access to project information by potentially affected communities.
- does not increase minimum mandatory standards for the early disclosure of social and environmental assessments.
- does not set milestones for the early release of Action Plans and does not require Action plans to be translated into local languages.
- shifts important “in-country” disclosure requirements from the IFC to clients.
- provides no operational details on implementing IFC’s transparency commitments related to revenue and contract transparency in extractive industries and provides inadequate standards for the disclosure of contracts related to “essential services.”

It is of particular concern that the IFC is proceeding to finalize its revised disclosure policy without providing any information to stakeholders on the proposed transparency standards of over one-half of the IFC’s portfolio, that is lending to financial intermediaries, equity investments, and corporate loans.

Process Note: The IFC’s plan to release a second draft of the disclosure framework for only a 30-day comment period is exclusionary and an unnecessarily restrictive approach to stakeholder participation in this important policy review. We are particularly concerned given that the IFC has still to clarify its project categorization scheme (which carry critical disclosure requirements), operationalize its extractive industries transparency commitments, and has not addressed financial intermediary projects, equity investments, and corporate loans. We recommend that the second draft include full proposals on all these areas and that the comment period be extended to a minimum of 90 days.

Below we provide analysis and specific recommendations for strengthening the proposed disclosure framework. Annex 1 contains just a list of our recommendations. We look forward to discussing our recommendations with you in more detail and to reviewing a strengthened second draft.

RECOMMENDATIONS

SECTION 1: PRINCIPLES, PROCEDURES AND CONSTRAINTS

1.1 A PRINCIPLE OF PRESUMED DISCLOSURE

The IFC’s 1998 Disclosure Policy “embodies a presumption in favor of disclosure where disclosure would not materially harm the business and competitive interests of clients.” In its draft Disclosure Policy Framework, the IFC proposes to remove this presumption. This is a step backwards by the IFC.

We recognize that there are often legitimate reasons for confidentiality. However, in the absence of a compelling reason not to disclose, the IFC should promote openness as a matter of principle. The “presumption” is the guiding principle used not only in the disclosure policies of other international financial institutions (IFIs), but also is common to national access to information laws.

While the IFC commits to the routine disclosure of some information on its website and in public information centers, it limits disclosure to only those documents and types of information specifically listed in its disclosure policy. Without a presumption in favor of disclosure, all other information held by the IFC is presumed confidential. Any request for this information from the public to the IFC is likely to be denied due to this lack of a presumption of transparency. Instead, we believe that any denials of requests for information should be based on the protection of legitimate interests rather than occurring by default.

Removal of the presumption in favor of disclosure also represents a weakening of the IFC’s disclosure policy. There has been a global trend towards greater openness at both the national and international levels in recent years, as evidenced through the growing number of national freedom of information laws and the upward harmonization of MDB disclosure policies. The IFC’s decision to remove the positive presumption would represent a significant step backwards for transparency at the institution. Rather than backtracking, the IFC should be using the disclosure policy review to provide more definition and a set of procedures to give life to the principle of a presumption in favor of disclosure.

♥ **Recommendation:**

- **The IFC should retain a stated presumption in favor of disclosure in its revised disclosure policy.**

1.2 INFORMATION REQUEST PROCESS

The establishment of a well-defined information request process would allow the IFC to better implement the principle of a presumption in favor of disclosure and to promote greater institutional transparency and public access to information.

An information request process would complement the IFC’s current approach to disclosure. Key elements, or “process guarantees,” of such an information request process would include the following obligations: clear procedures on where requests are to be sent and in what form, time bound rules for responding to and processing of requests, clarity on the forms (photocopy, electronic, etc) of access, a requirement for written notice with reasons for any denial of requested information, and clear steps for a requester to appeal a denied information request. A set of well-defined constraints (see below section) would help govern IFC decision-making on fulfilling such requests. An appointed information officer would help to ensure accountability and oversight of the process.

The Asian Development Bank (ADB), in its current disclosure policy, states that the ADB will “provide a response to the [information] request, either by providing such information or indicating the reasons such information cannot be provided, within 22 working days of the receipt of the request by the Bank.”¹ In its proposed Public Communications Policy (to be discussed by Executive Directors in April 2005), the ADB adds another process guarantee through respecting “to the extent possible, any preference indicated by a requester as to the form of disclosure of

¹ Asian Development Bank, *Policy on Confidentiality and Disclosure of Information* (August 1994), p. 29.

information.”² The European Investment Bank (EIB) has developed an extensive set of process guarantees in its disclosure documents: *Rules on Public Access to Documents* and *Code of good administrative behaviour*. The later document includes articles on: Non-discrimination (Article 5), Courtesy (Article 9), Replying to letters in the language used by the citizen (Article 11), Acknowledgement of receipt (Article 12) and, Reasoned replies and their deadlines (Article 13).

Based on a presumption in favor of disclosure, the public should have a right to appeal decisions by the IFC not to disclose. If the IFC refuses to disclose requested information and the requestor feels that either a disclosure policy constraint has been improperly applied or that there is an overwhelming public interest in the information, the requestor should be informed that s/he can appeal the decision to an independent body (such as the office of the Compliance Advisor Ombudsman or an office where the potential conflict of interest could be minimized). This body should be charged with reviewing refusals to disclose information and generating opinions regarding the legitimacy of the refusal.

The European Investment Bank was the first of the major international financial institutions to develop an appeals mechanism for complaints regarding access to information. According to the bank’s *Code of good administrative behaviour* “if a person considers that the replies given violate his/her rights or interests, such person shall be entitled to lodge a complaint.”³ This complaint can be given to the Secretary General of the Bank, for administrative appeal, or can be lodged with the European Ombudsman, who can provide an independent opinion on the disclosure complaint.

Similarly, the ADB’s draft Public Communications Policy (PCP) recommends that the Bank establish a Public Disclosure Advisory Committee within management to receive complaints related to information requests. While this committee does not satisfy a conflict of interest test, it is a first step towards promoting more accountability to the presumption in favor of disclosure.

The World Bank has recently approved a provision to simplify and accelerate disclosure when requests for information are received. This provision authorizes Bank management to disclose several types of information not explicitly covered by its disclosure policy, unless Executive Directors object. This provision is essential in order to effectively operationalize a presumption in favor of disclosure and should be adopted as well by the IFC.

♥ Recommendation:

- **In order to better implement the presumption in favor of disclosure, the IFC should establish minimum process guarantees around the information request process.**
- **The IFC should recommend a process through which the public can appeal refusals to disclose information.**
- **Subject to the disclosure policy constraints, IFC Management should be authorized to disclose information not specifically listed in the disclosure policy.**

1.3 CONSTRAINTS TO INFORMATION DISCLOSURE

The presumption in favor of disclosure should be balanced by a regime of exemptions to disclosure. These exemptions should be narrowly defined and based on harm that would be incurred by the IFC’s client if the information were disclosed. Several of the constraints listed in the draft disclosure framework, however, are overly broad and do not put the onus on IFC’s client to justify what harm would be caused by certain disclosures. The IFC should narrow and make more precise the exceptions it will apply to access to information.

² Asian Development Bank, *Public Communications Policy Working Paper* (December 2004), para. 99.

³ European Investment Bank, *Code of good administrative behaviour*, (2001), Article 16.

The ADB, in its soon to be adopted disclosure policy, lists confidential information to include “financial information; pricing, sales and marketing data; product research and development; marketing plans and techniques; client and supplier lists; computer programs; and designs, processes, technology, operating methods patent information, performance specifications, schematics, know-how, and nonpublic business information for which ADB has given an express commitment to a part that it be kept confidential.”⁴

The IFC does not provide anywhere near this level of specificity in defining business confidential information. Instead, the IFC simply provides blanket authority for a client to define its own level of confidentiality:

“IFC does not disclose non-public business information provided to the IFC by its clients or other third parties for the purposes of enabling IFC to assess a potential investment or to monitor and evaluate IFC’s investments unless the source of such information consents to such disclosure.”⁵

Rather than allowing a client to determine its own level of confidentiality, the IFC should more clearly define the categories of information that it normally considers to be of a confidential nature, as the ADB has attempted. Further, the IFC should require clients to clearly articulate why certain information should remain confidential when provided to IFC, and the IFC should carefully review this justification.

In addition, the IFC should apply a standard rule of segregation applicable to all its disclosure constraints. Just because one or more specific confidential items appear in a document does not mean that the entire document should be withheld. Instead, the document should be released with only the exempt confidential business information deleted.

Furthermore, at times the interest in protecting business confidentiality comes into conflict with a strong public interest in disclosure. Public interest in disclosure is greatest when information concerns the potential for grave environmental, health or safety hazards to the community. In every case where the IFC is aware of a significant threat to the public which may be averted by timely disclosure to the community, the IFC should make such a disclosure, whether or not such information includes otherwise confidential business information. Withholding confidential business information needs to be subject to a balancing test in which the interest in protecting human health, the environment, livelihoods, or property “overrides” the interest in business confidentiality.

Finally, the draft disclosure framework includes a constraint that states that the “IFC does not disclose legal documentation or correspondence pertaining to IFC investments” (p.3). We are unclear how this constraint squares with the IFC’s commitment to disclose a client’s Action Plan, which we have been told will be covenanted. Further, this constraint will conflict with the IFC’s pledge to require disclosure of key terms of contracts related to extractive industries projects. Given the development mission and public charter of the IFC, we believe that the legal agreements signed by the IFC should be disclosed, with proprietary and commercially sensitive business information segregated from disclosure. At a minimum, the IFC should modify this constraint to more accurately reflect IFC’s commitments and proposed practices.

⁴ Asian Development Bank, *Public Communications Policy Working Paper* (December 2004), para. 169.

⁵ International Finance Corporation, *IFC Framework for Discussion Regarding Disclosure of Information* (Working Draft November 24, 2004), p. 3

♥ **Recommendation:**

- **The IFC should clearly articulate information that is considered business confidential such as industrial trade secrets and commercial or financial information, the disclosure of which would likely cause substantial harm to the competitive position of the person from whom the information was obtained.**
- **In its disclosure policy, the IFC should outline clear rules regarding the application of disclosure policy constraints, including a standard rule of segregation.**
- **The IFC should adopt a “public interest override” to ensure that in cases where the public interest in disclosure outweighs the interest in confidentiality, the information would be disclosed.**
- **Disclose IFC legal agreements, with proprietary and commercially sensitive business information segregated from disclosure. At a minimum, modify constraint on disclosing legal documents to accurately reflect IFC’s plan to disclose Action Plans and commitment to require contract transparency in extractive industries.**

1.4 INFORMATION DISSEMINATION AND TRANSLATION

The utility of disclosing information is dependent on the degree to which the information is accessible and comprehensible. IFI disclosure policies should give due consideration to dissemination and translation issues to ensure that key stakeholders—particularly project affected communities—can access and utilize critical information. While the draft disclosure framework outlines that information can be obtained from the IFC’s website, from the InfoShop or by contacting Corporate Relations, the IFC does not specify how information, especially investment-specific information, will be disseminated locally nor does it indicate that information needs to be provided in a relevant language.⁶

In August 2003, the World Bank Group approved a strategy to strengthen Public Information Centers (PICs)⁷ and a Translation Framework⁸ that outlines a method for the Bank to move towards the translation of more information into local and national languages. At the time, Bank management received specific instruction from the Board to develop the PICs and Translation strategies so that they could also be applied to the IFC and MIGA. However, the IFC’s draft Disclosure Policy Framework makes no mention of either strategy, nor does it integrate the main recommendations from those strategies into its proposals.

The Asian Development Bank, in its proposed Public Communications Policy, makes several specific commitments to the dissemination and translation of information. It states that for public or private sector projects or programs, information “is made available in an appropriate form (e.g. for ethnic minorities, or in a gender-sensitive manner) and language(s). At minimum, the ADB ensures that mechanisms are in place to provide affected people with the same updated information as contained in the most recent publicly available [Project Information Document].”⁹ The ADB goes on to define some appropriate dissemination mechanisms including “theatre, local gatherings and events, billboards, public address systems, and community television and radio

⁶ IFC proposed Performance Standard 9 makes very general reference to the obligations of the client for dissemination and translation. It states: “To ensure effective engagement, the client will provide affected communities and key stakeholders with relevant and adequate information in a timely manner and in a form and language that are understandable and accessible.” The IFC, however, should be more specific to the meaning of such terms as “timely” and “accessible” and provide minimum standards in its disclosure framework.

⁷ World Bank Group, *Strengthening the World Bank’s Public Information Centers*, August 6, 2003.

⁸ World Bank Group, *A Document Translation Framework for the World Bank Group*, August 6, 2003.

⁹ Asian Development Bank, *Public Communications Policy Working Paper* (December 2004), para. 115.

programs, bulletin postings in public areas, such as schools, post offices, and local government bureaus.”¹⁰

The ADB has also proposed requirements for the translation of specific documents. For instance, it recommends that all final Country Strategy Papers and Updates be “translated into a widely understood language within 90 calendar days after its endorsement by the Board.”¹¹ The European Bank for Reconstruction and Development (EBRD) has also begun to translate critical documents. On a pilot basis, the EBRD translates approved Country Strategies into at least one relevant national language.¹²

♥ **Recommendation:**

- **Dissemination of information to locally affected communities in a language that they can understand should be a key objective of the IFC’s disclosure policy. The IFC’s disclosure policy should direct people to the WBG’s PICs and Translation strategies for more information regarding availability of information and should, wherever possible, specify dissemination and translation requirements.**

SECTION 2: INSTITUTIONAL TRANSPARENCY

Public institutions bear a duty to publicly disseminate key types of information absent specific requests for that information, such as information on its structure, , finances, services, rules and regulations, policies, and decision-making processes and outcomes. Given the IFC’s mission—“to promote sustainable private sector investment in developing countries, helping to reduce poverty and improve people’s lives”—the IFC faces high expectations on the level of its own transparency.

The draft disclosure framework does not provide for a significant increase in IFC institutional transparency. Following are several recommendations regarding ways in which the IFC should expand its routine disclosure of institutional information.

2.1 FINANCIAL INFORMATION

In its draft disclosure framework, the IFC outlines financial information that it currently discloses in its Annual Report and that is available from the United States Security and Exchange Commission. However, the IFC does not make proposals to *increase* the disclosure of budgetary and financial information. Clear, detailed reporting on the allocation of resources is a primary means for the public to understand IFC’s actual priorities in pursuing its poverty alleviation mission and to evaluate its development effectiveness.

Although many IFIs fail to disclose budget information in detail, the World Bank has recently decided to disclose its administrative budget. The World Bank also discloses management’s annual work program and budget proposal and its medium-term strategic framework that contains some budgetary and financial information.

♥ **Recommendation:**

- **The IFC should disclose detailed information on its operational budget, including a clear indication of departmental budgets and other aspects of resource allocations.**
- **The IFC should release detailed information on actual expenditures.**

¹⁰ Asian Development Bank, *Public Communications Policy Working Paper* (December 2004), para. 99.

¹¹ Asian Development Bank, *Public Communications Policy Working Paper* (December 2004), para. 106.

¹² European Bank for Reconstruction and Development, *Public Information Policy* (July 2003), p. 5.

2.2 DEVELOPMENT IMPACT

Public support and a mission of poverty alleviation convey a high degree of responsibility on the IFC to demonstrate that the projects and investments it undertakes achieve significant development results. The draft disclosure framework proposes an incomplete chain of accountability in reporting on development impacts. While the draft indicates that anticipated development impact will be disclosed for each project (through the SPI), reporting on actual development results of these projects will only be undertaken on an annual, aggregate basis. While a report on the IFC's "average" development impact would be welcome, stakeholders would be better served if the IFC would also require project-level development results reporting.

❖ Recommendation:

- **Require that the annual development impact report include disaggregated, project-level development impact reporting data.**

2.3 OPERATIONS OF THE BOARD OF DIRECTORS

While the IFC discloses names and contact information for its Board of Directors, other information pertaining to the operations of the Board—including any written statements from Executive Directors and a detailed account of Board discussions—remains confidential. Such secrecy inhibits the ability of members of the public to understand how they are being represented at the Board, much less contribute to critical policy and project decisions.

Several IFIs require the advanced disclosure of a Board calendar or agendas for Board meetings. The World Bank discloses a monthly calendar listing major upcoming discussions at the Board. Similarly, the African Development Bank (AfDB) requires the disclosure of "the Board's rolling monthly agenda"¹³ and the Asian Development Bank proposes to disclose a "tentative schedule and topics of forthcoming Board discussions"¹⁴ three weeks in advance of Board meetings. The International Monetary Fund (IMF), as part of its transparency initiative, posts on its website the tentative calendar of the formal meetings and seminars of the Executive Board for the next seven days. The EBRD also has a dedicated webpage listing the program for Board discussions of forthcoming Country Strategies and Sector Policies. Finally, the Inter-American Development Bank (IDB) requires that "agendas for the meetings of the Board of Executive Directors and modifications thereof will be made available to the public at the same time that they are made available to the Executive Directors."¹⁵ While some IFC agenda items are at times listed on the Board calendar released by the World Bank, this calendar is very limited and does not provide a complete schedule of upcoming IFC project, policy and strategy discussions.

The draft disclosure framework explicitly states that "documents prepared for the consideration of, or review and approval by, the IFC's Board of Directors are not publicly available unless expressly authorized for disclosure by the Board" (p. 2). This is an unnecessarily restrictive approach to the decision-making process at a publicly supported international institution, particularly one chartered with a mission of alleviating poverty and improving peoples' lives. Given the public's interest (1) to understand how their input on a project or policy has been received and if it has been properly reflected in the final draft document, and (2) to effectively communicate to their government or the IFC Executive Director any concerns about the policy or project before final approval, Board papers should be routinely disclosed when circulated to the Board for approval, subject to well-defined constraints on disclosure. The assertion that the

¹³ African Development Bank, *Policy on Disclosure of Information* (March 2004), paragraph 4.45.

¹⁴ Asian Development Bank, *Public Communications Policy* (November 2004), paragraph 152.

¹⁵ Inter-American Development Bank, *Disclosure of Information Policy*, p. 8.

release of draft Board documents will in all cases “compromise the integrity of IFC’s deliberative process” is clearly an exaggeration, especially given the volume and frequency of sensitive issues that are openly decided by governments around the world, with full availability of draft documentation.

The World Bank has made the most progress towards requiring the disclosure of final draft documents. Effective as of April 1, 2005, the Bank will begin a pilot program to disclose the final drafts of key operational policies under development. There has been significant discussion at the Bank on whether to simultaneously disclose widely consulted draft Board documents at the time they are distributed to the Board. The importance of disclosure of final draft documents applies equally to IFC policies, strategies and project documents for private sector operations. The IFC should use this disclosure policy review to establish a new IFI transparency best practice and recommend the disclosure of Board documents when they are circulated to the Board, subject to well-defined constraints.

Currently, the public has little way of knowing how they are being represented at the Board of Directors. While the IFC will disclose press releases with major decisions of the Board, these offer very limited information. Several shareholders, including the United States, publish a range of Board votes on a government website but do not provide any further detail on Board deliberations. Summaries or transcripts of Board meetings, which would provide the public with a more accurate account of Directors’ positions on major policies and projects, are not disclosed. The Inter-American Development Bank is the only IFI that currently discloses minutes of Board meetings (and also discloses Board sub-committee reports to the full Board) and the World Bank (possibly including the IFC) will begin to release minutes starting April 1, 2005. While disclosure of minutes is an important step toward better “good governance,” the IFC should be seeking to establish new best practices for IFI transparency. The disclosure of summaries and transcripts of Board meetings would provide stakeholders with detailed information on how they are being represented at the Board. Though far from ideal, the IMF does disclose transcripts of Board meetings after ten years of issuance.¹⁶

Finally, the IFC should encourage the disclosure of written statements by Executive Directors. The World Bank Group has often pointed to the Rules of Procedure of the Board as to why written statements cannot be disclosed. However, these procedures need to be balanced with the public’s interest in how they are being represented. Minutes will now be published. The U.S. Executive Director already discloses statements concerning inspection cases at the MDBs and several directors disclosed their statements regarding the Extractive Industries Review. The IFC should encourage Board members in its disclosure policy to disclose formal written statements.

❖ **Recommendation:**

- **The IFC should disclose a detailed calendar listing the tentative agenda for Board meetings. This calendar should be updated on a rolling basis to provide at least a 4-week advance notice of policy and project discussions.**
- **The IFC should publicly disclose the most final documentation on a policy, strategy or project when it is circulated to the Board for approval.**

¹⁶ The IMF discloses Board “minutes” that are more than ten years old. IMF minutes are substantively different from Board minutes at other institutions. IMF Board minutes are very detailed and can be more than 100 pages in length. IMF minutes, although not a legal transcript, are almost a verbatim account of Board meetings and are therefore considered by the authors to be transcripts. For more information, see <http://www.imf.org/external/np/arc/eng/archive.htm>.

- **The IFC should disclose a summary of Board meetings and encourage the disclosure of written statements prepared by the Executive Directors.**

2.4 GUIDING DOCUMENTS: POLICIES, STRATEGIES AND GUIDELINES

The IFC develops several types of operational policies, strategies and guidelines, including policies on environmental and social sustainability (performance standards), sector and country strategy papers, and guidance papers covering a variety of issues. The draft disclosure framework recommends that IFC disclose policies and strategies in final form, after Board approval. Furthermore, with prior approval from the Board of Directors, the IFC may disclose drafts of policies “that are likely to have a broad impact” for public consultation. However, there is no mention of a disclosure standard governing IFC guidelines.

Many IFIs are beginning to move towards a more transparent and participatory development process for its guiding documents. In its proposed disclosure policy, to be approved in April 2005, the Asian Development Bank recommends disclosure of a list of policies and strategies to be developed or reviewed in the coming year. This provision will apply to safeguard policies and sector and thematic strategies. Such an announcement provides the public with some advance notification of upcoming opportunities to participate in policy, strategy and guideline formulation. The IFC would benefit from providing a similar review schedule to the public. With such a calendar, the IFC could more easily assess public interest in an upcoming review and could properly plan the necessary scope of consultations.

We recognize that not all policies, strategies and guidelines deserve equal amount of public consultation. However, each should undergo a minimum mandatory comment period and should be publicized online in draft form for feedback. While some policies, strategies or guidelines may require more extensive public consultation, including face-to-face meetings and the possible disclosure of multiple document iterations, the IFC would benefit from soliciting some public comment on all its guiding documents and from standardizing its approach. At a minimum the IFC should apply a standard public notice and comment rule when revising or developing one of its guiding documents.

🔍 Recommendation:

- **The IFC should disclose a calendar of planned revisions to policy, strategy and guidelines in the upcoming 12 months.**
- **At a minimum, for all policies, strategies and guidelines to be revised or development, the IFC should disclose at least one draft of the review document for a 120-day online commenting period.**

2.5 EVALUATIONS

The draft Disclosure Policy Framework does not address documents developed by the IFC’s independent evaluations department (OEG). While OEG is governed by its own disclosure policy, IFC should use this opportunity to consider increased disclosure of OEG reports. Currently, several types of documents are not disclosed by OEG. These include:

- Special Evaluation Studies
- Expanded Project Supervision Reports (XPSRs)
- Evaluative Notes
- Annual Summary of Investment Assessment Report (IAR) Lessons
- Annual Review of IFC’s Evaluation Findings
- Annual Review of IAR/XPSR Program and Results

- IAR Abstracts
- Country Impact Reviews
- Country Impact Notes
- Annual Portfolio Performance Reviews
- Annual Report on Operations Evaluations

❖ **Recommendation:**

- **The IFC should re-consider, based on a revised list of disclosure constraints, which OEG reports must remain confidential. For instance, although Country Impact Reviews (CIRs) contain no company confidential information, they are not disclosed because they contain “summary IFC profitability information.”¹⁷ In cases such as these where confidentiality is determined solely by the IFC, the IFC should work towards greater openness.**

SECTION 3: INVESTMENT SPECIFIC TRANSPARENCY

The IFC’s draft Disclosure Policy Framework states that IFC “discloses information by methods appropriate to the nature of the information and its intended recipients.” (p. 3). However, the requirements proposed in the draft framework do not adequately fulfill this commitment. The disclosure framework does not ensure early and expanded access to project information by stakeholders. While the draft Performance Standards contain general language on the release of “relevant” and “timely” information to local stakeholders, the disclosure framework should provide adequate minimum disclosure standards that will help ensure timely sharing of information. The IFC bears direct obligations to stakeholders affected by the projects it finances and should not seek to “outsource” all its disclosure responsibilities to its clients.

3.1 SUMMARY OF PROPOSED INVESTMENT (SPI)

The Summary of Project Information, to be renamed Summary of Proposed Investment (SPI), is currently the only project document prepared by the IFC and disclosed in advance of project approval. The disclosure framework does not ensure early release of the SPI nor its local disclosure.

The disclosure framework nominally strengthens the minimum disclosure timeline for Category A projects (from 30 days to 60 days before Board consideration) compared to the current disclosure policy. However, this is still an inadequate timeframe for ensuring that stakeholders can make informed decisions on high-impact projects under development. Further, the disclosure framework drops the 1998 disclosure policy’s statement that such timelines are to be considered “absolute minimums” and that information should be disclosed “as early as possible.” Also, it is ironic that the disclosure framework contains no requirement for local disclosure (by either the IFC or the client), given that the SPI is now to include “how and where information about the proposed investment can be obtained locally.”

❖ **Recommendation:**

- **Require disclosure of SPI “as early as possible.”**
- **Require an absolute minimum SPI disclosure of 120 days before Board consideration for both Category A and B projects.**
- **Require disclosure locally in a form and language that are understandable and accessible to project affected communities.**

¹⁷ International Finance Corporation, *Disclosure of IFC’s Evaluation Products* (October 1998), page 7.

3.2 SOCIAL AND ENVIRONMENTAL ASSESSMENTS

The draft Performance Standards propose a fully integrated Social and Environmental Assessment for IFC-financed projects that are anticipated to have such impacts. This is a welcome development. The disclosure framework should provide stakeholders earlier access to these assessments. Unfortunately, the framework simply maintains the 60-day Category A, 30-day Category B pre-Board date disclosure timelines of the current policy. The IFC should increase the minimum timeframes to provide for early, more meaningful engagement with stakeholders. In practice, the IFC already ensures that most Category A assessments are completed at least 120 days before the Board date. It should formalize this practice in its new policy.

The framework also weakens important disclosure provisions of current policy, as outlined below:

- **No early local disclosure requirement:** The framework states that the client will disclose assessments locally, but it only applies the (inadequate) 60-day/30 day disclosure timeframes to the IFC’s disclosure on its website/InfoShop. There is no timeframe mentioned for local disclosure. The framework refers to the draft Performance Standards regarding disclosure requirements, however, PS 1 only refers to informing communities in a “timely manner” and draft Guidance Note 1 only refers to the 60/30-day minimums (para. 48).
- **Weakened client incentive to disclose:** Existing policy contains an explicit clause for ensuring client compliance to disclose assessments: “If a project sponsor does not consent to the release of the EA report [Category A], the IFC will suspend further consideration of the project.”¹⁸ The new disclosure framework does not contain a similar threshold for stopping consideration of a project.
- **Loss of early milestone disclosure benchmarks:** Current disclosure and environmental assessment policies set specific disclosure time frames: for Category A, a summary of the project and its potential impacts are to be disclosed at an initial consultation “before terms of reference for EA are finalized,” and a summary of EA conclusions is to be disclosed at second consultation “after EA report is prepared.” The draft Performance Standards and disclosure framework do not contain such milestones.
- **Weakened IFC disclosure responsibility:** IFC to date is responsible for disclosing Category A environmental assessment reports “to the public in-country ... as early as possible.”¹⁹ Client is to assume this responsibility in the new framework.
- **Loss of disclosure specificity for Category B projects** (the largest category of IFC projects): The IFC currently shares disclosure responsibilities with project sponsors. The IFC prepares an Environmental Review Summary (ERS) of the sponsor’s environmental analysis, which the sponsor discloses locally and the IFC discloses through the Bank’s InfoShop. ERS is being dropped, including the IFC’s responsibility to prepare and disclose such a summary document.
- **No disclosure “as early as possible”:** The framework has dropped this phrase from current policy.

♥ Recommendation:

¹⁸ International Finance Corporation, *IFC’s Policy on Disclosure of Information (September 1998)*, p. 3.

¹⁹ International Finance Corporation, *IFC’s Policy on Disclosure of Information (September 1998)*, p. 3.

- **Require disclosure of *draft* social and environmental assessments as early as possible and before they are finalized.**
- **Require final S&EA disclosure “as early as possible”**
- **Require minimum disclosure timeframe of 120 days before Board consideration for Category A projects.**
- **Continue to require IFC to disclose Category A assessments locally.**
- **Require early local disclosure for all social and environmental assessments (again with a minimum of 120 days for Category A projects), with summary information accessible in a language and form understandable to local communities.**

3.3 ACTION PLANS

The disclosure framework does not establish benchmarks for the early disclosure of draft Action Plans. In fact, the disclosure framework fails to provide any time bound local disclosure requirements for Action Plans (the 60 day/30 day minimums only apply to IFC’s disclosing of Action Plans on its website/InfoShop). The proposed 60-day/30day timeframes (together with vague language in the Performance Standards) are not adequate to ensure meaningful stakeholder dialogue.

The framework also fails to specify that social and environmental documentation (or summaries thereof) and the client’s Action Plan need to be provided in a form and language that are understandable and accessible to project affected communities.

The framework also does not provide for disclosure of IFC’s assessment of client progress on meeting Action Plan objectives, including disclosure of when a client is out of compliance. Anticipated disclosure of the IFC’s assessment of Action Plan compliance would provide further client incentive for fulfilling its commitments.

The disclosure framework also does not address when and how a client would notify local communities that it intends to amend the Action Plan.

❖ **Recommendation:**

- **Require the disclosure of Action Plans “as early as possible” and “no later than 120 days before the Board date for Category A projects.”**
- **The framework should establish milestone requirements for early release. One possible milestone could be “draft Action Plan will be disclosed locally by client soon after first round of consultations with project affected communities and before final draft Action Plans are prepared.”**
- **Include a requirement that Action Plan be disclosed locally in a form and language that are understandable and accessible.**
- **Include a requirement for disclosure of IFC’s assessment of client progress on meeting Action Plan objectives, including disclosure of when a client is out of compliance.**
- **Require early local notification of client’s intent to amend the Action Plan, not just ex-post release of basis of decision.**

3.4 BOARD PAPER

The IFC should disclose the most complete record of an approved project. The Asian Development Bank will soon be disclosing a summary Board paper (RRP) for its private sector projects. The World Bank routinely discloses its Project Appraisal Documents after Board approval.

♥ **Recommendation:**

- **The IFC should disclose the final Board Paper on an approved project, subject to well-defined constraints on disclosure.**

3.5 MONITORING AND IMPLEMENTATION

In a very welcome development, the disclosure framework proposes that “clients will monitor implementation of their Action Plans on a regular basis and report on the results...in accordance with the Performance Standards” (p. 3) This is a significant step forward in providing relevant information to stakeholders during project implementation.

Disclosure of client monitoring information could be further strengthened. The draft Guidance Notes indicate that IFC clients must submit “Monitoring Reports on social and environmental performance” to the IFC (Guidance Note 9, para. 22), but do not indicate that these reports will be disclosed. It should be noted that the Asian Development Bank has proposed that private sponsors be required to disclose their environmental and social monitoring reports. The EBRD requires that “As part of the annual environmental reporting requirements to the Bank, the Project Sponsors will be asked to provide a summary on the environmental status and implementation of project environmental requirements for publication on the Bank's website, to be attached to the Project Summary Document for the project.”²⁰

The draft disclosure framework could strengthen the disclosure of monitoring information during project implementation by requiring that the IFC disclose more its own monitoring information. IFC’s assessments of client compliance with its Action Plans, including when a client is out of compliance (as noted above), should be disclosed. Further, the IFC should disclose its own Project Supervision Reports.

The disclosure framework contains an unnecessary restriction pertaining to the disclosure of monitoring information under the draft Performance Standards. Some draft Performance Standards do not address whether all monitoring information is to be disclosed. They should. The disclosure framework should require that all monitoring reports required by the Performance Standards be disclosed, not just “[a]ny monitoring reports required to be disclosed under the Performance Standards” (p. 3). in the Performance Standards.

♥ **Recommendation:**

- **Strengthen disclosure of monitoring information by requiring disclosure of client’s Monitoring Reports on social and environmental performance to the IFC in addition to specifically developed reports for local communities.**
- **Require disclosure of IFC project monitoring information, including project supervision reports.**
- **Require disclosure of all monitoring reports required by the Performance Standards, not just those affirmatively identified as disclosable.**

3.6 REVENUE AND CONTRACT TRANSPARENCY

The IFC should take the opportunity of its disclosure policy review to clarify, operationalize, and expand upon the transparency commitments it made in the World Bank Management Response to the Extractive Industries Review. It is disappointing that the draft disclosure framework provides no specificity on implementing these commitments. Transparency of extractive industries investments has attracted widespread external stakeholder interest. It is concerning that the IFC is

²⁰ European Bank for Reconstruction and Development, *Environmental Policy* (July 2003), Section VII, part 3.

proceeding to finalize the revision of its disclosure policy without providing these stakeholders any specific information on how these commitments will be implemented.

The draft disclosure framework simply cross-references Management’s Response to the EIR (pp. 3-4). The World Bank Group committed itself to requiring revenue transparency immediately for new “significant” extractive projects and within two years for smaller ones. The Bank also committed itself to require disclosure of relevant terms of key contracts and agreements wherever these are of public concern. The paragraph devoted to extractive industries in the draft disclosure framework makes no mention of contract transparency.

Discussion of contract transparency regarding “essential services” (water, electricity, gas, telecommunications) follows in the next paragraph (p. 4) and contains vague commitments in which the “IFC encourages its clients to make publicly available tariffs and other similar key contractual terms that directly affect consumers.” ‘Encouraging’ rather than ‘requiring’ such disclosures is a far lower standard that has been long sought by many civil society stakeholders.

♥ **Recommendation:**

- **Include binding requirement for revenue transparency for all extractive industries investments (while we believe this requirement should apply to all projects immediately, a phase-in for smaller projects could be footnoted to match the IFC’s EIR commitments).**
- **Require contract transparency—including Host Country Agreements, Inter-Governmental Agreements, and Production Sharing Agreements—for all extractive industries projects, not just those deemed “significant.”**
- **Require rather than encourage contract transparency for all projects that provide “essential services” (with sensitive information segregated).**
- **Provide clear definitions of the specific projects requiring revenue and contract transparency, as well as an explanation for any discrepancy in requirements for large and small projects.**
- **Require mandatory disclosure of the transparency related requirements contained in loan agreements, as well as an explanation of where the required information must be disclosed (for example in the SPI).**

3.7 OTHER IMPORTANT RECOMMENDATIONS

- **The draft Performance Standards indicate that in certain cases the IFC may waive their application. The IFC should be required to disclose its intent and rationale to waive application of a Performance Standard, not just provide an ex-post release of the basis of a waiver decision.**
- **IFC should be required to disclose how it determined that “there is broad community support for the project by affected communities” for large projects with significant adverse impacts (see Guidance Note 1, para. 42). There appears to be no requirement for the IFC to disclose a record the basis of its decision in this critical area.**
- **Include specific requirement that that client must disclose documentation of “free and prior informed consultations.” Guidance Note 1, para. 41, states that the client must document the process, but does not specify whether this documentation is to be included in the clients’ assessments.**
- **Include explicit disclosure requirements of Indigenous Peoples Development Plan and Resettlement Action Plan in disclosure policy.**

Annex 1: List of Recommendations on IFC's Draft Disclosure Framework (Working Draft November 24, 2004)

SECTION 1: PRINCIPLES, PROCEDURES AND CONSTRAINTS

1.1 A PRINCIPLE OF PRESUMED DISCLOSURE

- The IFC should retain a stated presumption in favor of disclosure in its revised disclosure policy.

1.2 INFORMATION REQUEST PROCESS

- In order to better implement the presumption in favor of disclosure, the IFC should establish minimum process guarantees around the information request process.
- The IFC should recommend a process through which the public can appeal refusals to disclose information.
- Subject to the disclosure policy constraints, IFC Management should be authorized to disclose information not specifically listed in the disclosure policy.

1.3 DISCLOSURE CONSTRAINTS

- The IFC should clearly articulate information that is considered business confidential such as industrial trade secrets and commercial or financial information, the disclosure of which would likely cause substantial harm to the competitive position of the person from whom the information was obtained.
- In its disclosure policy, the IFC should outline clear rules regarding the application of disclosure policy constraints, including a standard rule of segregation.
- The IFC should adopt a "public interest override" to ensure that in cases where the public interest in disclosure outweighs the interest in confidentiality, the information would be disclosed.
- Disclose IFC legal agreements, with proprietary and commercially sensitive business information segregated from disclosure. At a minimum, modify constraint on disclosing legal documents to accurately reflect IFC's plan to disclose Action Plans and commitment to require contract transparency in extractive industries.

1.4 INFORMATION DISSEMINATION AND TRANSLATION

- Dissemination of information to locally affected communities in a language that they can understand should be a key objective of the IFC's disclosure policy. The IFC's disclosure policy should direct people to the WBG's PICs and Translation strategies for more information regarding availability of information and should, wherever possible, specify dissemination and translation requirements.

SECTION 2: INSTITUTIONAL TRANSPARENCY

2.1 FINANCIAL INFORMATION

- The IFC should disclose detailed information on its operational budget, including a clear indication of departmental budgets and other aspects of resource allocations. The IFC should release detailed information on actual expenditures.
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2.2 DEVELOPMENT IMPACT

- Require that the annual development impact report include disaggregated, project-level development impact reporting data.

2.3 OPERATIONS OF THE BOARD OF DIRECTORS

- The IFC should disclose a detailed calendar listing the tentative agenda for Board meetings. This calendar should be updated on a rolling basis to provide at least a 4-week advance notice of policy and project discussions.
- The IFC should publicly disclose the most final documentation on a policy, strategy or project when it is circulated to the Board for approval.
- The IFC should disclose a summary of Board meetings and encourage the disclosure of written statements prepared by the Executive Directors.

2.4 GUIDING DOCUMENTS: POLICIES, STRATEGIES AND GUIDELINES

- The IFC should disclose a calendar of planned revisions to policy, strategy and guidelines in the upcoming 12 months.
- At a minimum, for all policies, strategies and guidelines to be revised or development, the IFC should disclose at least one draft of the review document for a 120-day online commenting period.

2.5 EVALUATIONS

- The IFC should re-consider, based on a revised list of disclosure constraints, which OEG reports must remain confidential. For instance, although Country Impact Reviews (CIRs) contain no company confidential information, they are not disclosed because they contain “summary IFC profitability information.” In cases such as these where confidentiality is determined solely by the IFC, the IFC should work towards greater openness.

SECTION 3: INVESTMENT SPECIFIC TRANSPARENCY

3.1 SUMMARY OF PROPOSED INVESTMENT (SPI)

- Require disclosure of SPI “as early as possible.”
- Require an absolute minimum SPI disclosure of 120 days before Board consideration for both Category A and B projects.
- Require disclosure locally in a form and language that are understandable and accessible to project affected communities.

3.2 SOCIAL AND ENVIRONMENTAL ASSESSMENTS

- Require disclosure of *draft* social and environmental assessments as early as possible and before they are finalized.
- Require final S&EA disclosure “as early as possible”
- Require minimum disclosure timeframe of 120 days before Board consideration for Category A projects.
- Continue to require IFC to disclose Category A assessments locally.
- Require early local disclosure for all social and environmental assessments (again with a minimum of 120 days for Category A projects), with summary information accessible in a language and form understandable to local communities.

3.3 ACTION PLANS

- Require the disclosure of Action Plans “as early as possible” and “no later than 120 days before the Board date for Category A projects.”
- The framework should establish milestone requirements for early release. One possible milestone could be “draft Action Plan will be disclosed locally by client soon after first round of consultations with project affected communities and before final draft Action Plans are prepared.”
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- Require early local notification of client’s intent to amend the Action Plan, not just ex-post release of basis of decision.

3.4 BOARD PAPER

- The IFC should disclose the final Board Paper on an approved project, subject to well-defined constraints on disclosure.

3.5 MONITORING AND IMPLEMENTATION

- Strengthen disclosure of monitoring information by requiring disclosure of client's Monitoring Reports on social and environmental performance to the IFC in addition to specifically developed reports for local communities.
- Require disclosure of IFC project monitoring information, including project supervision reports.
- Require disclosure of all monitoring reports required by the Performance Standards, not just those affirmatively identified as disclosable.

3.6 REVENUE AND CONTRACT TRANSPARENCY

- Include binding requirement for revenue transparency for all extractive industries investments (while we believe this requirement should apply to all projects immediately, a phase-in for smaller projects could be footnoted to match the IFC's EIR commitments).
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- Require rather than encourage contract transparency for all projects that provide “essential services” (proprietary or commercial sensitive information could be segregated).
- Provide clear definitions of the specific projects requiring revenue and contract transparency, as well as an explanation for any discrepancy in requirements for large and small projects.
- Require mandatory disclosure of the transparency related requirements contained in loan agreements, as well as an explanation of where the required information must be disclosed (for example in the SPI).

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- The draft Performance Standards indicate that in certain cases the IFC may waive their application. The IFC should be required to disclose its intent and rationale to waive application of a Performance Standard, not just provide an ex-post release of the basis of a waiver decision.
- IFC should be required to disclose how it determined that “there is broad community support for the project by affected communities” for large projects with significant adverse impacts (see Guidance Note 1, para. 42). There appears to be no requirement for the IFC to disclose a record the basis of its decision in this critical area.
- Include specific requirement that that client must disclose documentation of “free and prior informed consultations.” Guidance Note 1, para. 41, states that the client must document the process, but does not specify whether this documentation is to be included in the clients' assessments.
- Include explicit disclosure requirements of Indigenous Peoples Development Plan and Resettlement Action Plan in disclosure policy.