



PRELIMINARY ASSESSMENT REPORT:

India/Mahindra Farm Services-01,-02,-03,-04/Confidential

Complaints Regarding
the Mahindra ShubhLabh Services Ltd. (MSSL) project

July 31, 2007

Office of the Compliance Advisor/Ombudsman
International Finance Corporation/
Multilateral Investment Guarantee Agency

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INTRODUCTION

The Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO reports directly to the President of the World Bank Group. Its mandate is to assist in addressing complaints brought by communities affected by IFC or MIGA projects in a fair, objective, and constructive manner, and to enhance the social and environmental outcomes of these projects.

The CAO case name for these complaints is “India/Mahindra Farm Services -01, -02, -03, -04/Confidential.”

The purpose of this preliminary assessment report is to present the issues and views gathered by the CAO Ombudsman from each of the parties to the complaints, and to identify opportunities for resolving them. The CAO will not make this report public; it is intended only for the parties’ consideration in determining how or whether they wish to proceed with an agreement-seeking process.

A final report regarding this complaint will be made public by the CAO only at the conclusion of the CAO Ombudsman assessment period, when the parties either have reached an agreement to attempt to negotiate the issues, or reached an impasse and choose to discontinue negotiations. In the case of the latter, the CAO Ombudsman will conclude its involvement in the complaint and transfer it to CAO Compliance for appraisal.

THE COMPLAINTS

On October 23 and 26, 2006, and on February 6 and March 4, 2007, the CAO received complaints regarding Mahindra ShubhLabh Services Limited (MSSL), an agricultural service company based in Mumbai, India. The complaints include a number of grievances about MSSL’s business practices, which the complainants believe contributed to loss of income and ultimately loss of livelihood for MSSL franchisees and for hundreds of farmers whom the business was intended to benefit. The complaints also raise concerns about MSSL’s sale to franchisees of certain pesticides that complainants believe may not comply with relevant government or IFC standards.

In addition, the complaints contend the original MSSL business model presented to investors and franchisees no longer exists. Instead, the company launched an agrichemical and seed dealership without first informing or consulting with the franchisees and farmers who were part of the internationally financed scheme.

Each of the complainants is a former MSSL franchisee, and each has requested confidentiality. The complainants say they would be willing to reveal their identities on the condition that MSSL agrees to not retaliate or impose negative consequences in response to their complaints.

THE MAHINDRA FARM SERVICES PROJECT

The project sponsor is Mahindra & Mahindra Ltd., which holds 100 percent of MSSL. IFC’s Mahindra Farm Services project (#11230) provided a \$2.2 million equity investment in MSSL for

development of 180 Agricultural Service Centers (ASCs) over a four-year period. The service centers were to provide farmers a one-stop shop that would supply (i) appropriate inputs such as seed, fertilizers, and pesticides, (ii) rental equipment, (iii) information on agriculture techniques and market information, (iv) contractual farm input application and advisory services, and (v) access to crop finance from commercial banks. IFC approved the investment on September 12, 2002, and the subscription agreement between MSSL and IFC was signed on March 27, 2003.

According to the IFC's 2002 Environmental Review Summary, the objective of the project's business model is "to improve farming profitability and sustainability by increasing agricultural yields, and reducing production costs and chemical pest control dependency... Moreover, the project will benefit the health and well being of farmers and the environment by promoting integrated pest management, non-chemical methods and informed management of chemical products."

CAO OMBUDSMAN ASSESSMENT

I. Rational

CAO Ombudsman assessments seek to clarify issues and concerns raised by complainants, to gather information on the stakeholders' perspectives and interests, and to assist the parties in determining how they might be able to resolve the issues. It does not gather information to determine fault or make judgments on the merits of a complaint.

CAO screened each complaint at the time of receipt and determined each was eligible for further assessment. To be eligible for CAO involvement, complaints must demonstrate that:

- The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
- The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
- The complainant may be affected if the social and/or environmental impacts raised in the complaint occurred.

The CAO's eligibility criteria regarding environmental and social impacts were met in this case because:

1. The complaints by former MSSL franchisees include concerns about the company's use of pesticides that may be hazardous to the environment.
2. Issues regarding the complainants' loss of livelihood raise concerns about the social impacts of such losses, including increased risk of poverty, inequality and community conflict, and threats to the well-being of the complainants' and farmers' families.

II. Methodology

Following receipt of the complaints, the CAO Ombudsman spoke by telephone with each complainant to discuss the issues, to explain CAO's operational procedures and complaint-handling process, and to schedule meetings in advance of a March 2007 assessment trip to

India. CAO also spoke by telephone with the CEO and CFO of MSSL to describe the complaints, explain CAO procedures, and schedule a meeting in Mumbai during the upcoming visit.

A CAO team also held meetings with the IFC project team in advance of the assessment trip, and with IFC's Director of Business Risk. At those meetings, CAO summarized the issues raised in the confidential complaints and discussed CAO's intention to visit the complainants in their respective communities.

During the March field visit, the CAO Ombudsman met with the individual complainants to discuss their concerns in detail. Each one provided CAO with copies of documentation, including start-up documents and correspondence with MSSL, news releases from MSSL's launch, contract agreements, lists of the products currently being offered by MSSL, and correspondence regarding the specific complaints and efforts to resolve them with management.

Following the meetings with the complainants, CAO met in Mumbai with a group of representatives from MSSL. The company's CEO and CFO were both present at that meeting. Two IFC-India staff members also were present. The CAO summarized the key issues raised in the written complaints and in the assessment interviews. MSSL and IFC responded with questions, concerns, and their own perspectives on the situation.

On April 23, 2007, the CAO sent draft summaries of the issues and perspectives to the two respective parties and requested the parties to review those summaries to ensure CAO had accurately represented their perspectives. The draft summaries were based on CAO's notes from assessment interviews, meetings and follow-up discussions. Responses and brief modifications to the complainants' summaries were returned to CAO between April 24 and May 19. A response from MSSL with more substantial modifications was returned on June 5, 2006.

III. Key issues raised by the complainants

According to the complainants:

1. MSSL made commitments to franchisees, to shareholders, and to financiers that a full range of agricultural inputs would be available at competitive prices in local service centers throughout India. Complainants say these commitments were never realized and as a result, they lost their sole source of income and incurred debt and depletion of their life savings. They say many of the farmers they recruited to participate in the scheme also lost income and incurred debt.
2. MSSL's inability to meet its commitments to franchisees and farmers resulted from a business model that was not viable and ultimately failed. As the company began to incur losses, it transferred a greater portion of its own risk to the franchisees, without advance communication or a strategy for how franchisees should assume that risk. Complainants say the increasing exposure compounded their mounting losses, and in time led to their financial collapse.
3. In its effort to rebuild as a profitable enterprise, MSSL abandoned the service-center model financed by the IFC and others, and re-organized as a retailer of agricultural products. Complainants believe some of the pesticides currently being sold by MSSL may be

hazardous to the environment and banned by the Indian government, contradicting MSSL's and IFC's commitment to non-chemical pest management and alternative chemical control methods.

4. A social and environmental Corrective Action Plan (CAP) for MSSL's use of pesticides, drafted by the IFC, required all retail sales to include safety instructions in the franchise area's local language, and required MSSL to provide training for farmer groups, extension agents, and local applicators in safety, handling, and storage of pesticides through awareness campaigns, demonstrations, seminars, and village shows. Complainants say these CAP requirements, among others, were never met.
5. Besides incurring debt, job loss, and loss of life savings, some complainants' say they have lost the trust of community members and farmers who once respected and relied upon them. They say the reputation damage is a result of the company's business practices, not theirs, and that it hinders the possibility of rebuilding profitable local businesses in the future.
6. Because of the excellent reputation of the Mahindra name throughout India, and because the MSSL concept was supported by the World Bank Group, complainants trusted the viability of the business model and the profit-loss projections distributed during MSSL's and IFC's recruitment of franchisees. Complainants believe the magnitude of the losses incurred by franchisees and farmers, and MSSL's transition from the original concept to agrichemical retailer, discredits both the World Bank Group and Mahindra & Mahindra, and fails to meet the project's expressed objective of creating jobs and benefiting the health and well being of farmers and the environment.
7. The arbitration clause contained in the franchise agreement is not a feasible option for resolving the issues because the cost of traveling to Mumbai – where MSSL says the proceedings must take place – is prohibitive, and because the arbitrator is perceived as biased toward big business and company interests.

IV. Additional specific allegations by the complainants

In addition to the more general issues summarized above, the following specific issues were raised by the complainants during the assessment interviews and in the written complainants.

1. MSSL's 10-year profit and loss projections, which were presented to the franchisees during recruitment and contract signing, were miscalculated or misrepresented. First-year loss was projected by MSSL to be 2.75 lakh rupees, but complainants say their losses were up to nine times greater within the first one to two years. Complainants believe the projections were not met for a number of reasons, including:
 - a) During recruitment, MSSL described existing tie-up relationships with major national and international manufacturers of agricultural inputs, ensuring purchase and distribution of these inputs at competitive prices. Complainants say such relationships did not exist, and retail rates were never competitive on local markets.
 - b) Products supplied by MSSL often exceeded quantities ordered or required by franchisees, who were unable to dispose of the excess, despite having been charged by MSSL for it. In addition, complainants say MSSL supplied and charged franchisees with products unrelated to the ACS business model or market demand – including cattle feed, water pumps, cables, and generators.

- c) The project's technical assistance program was incompatible with realities on the ground. Technicians frequently did not arrive for scheduled appointments, were not proficient in the local language or the local crops, and refused to conduct consultations in the field – instead requiring farmers to travel to village offices. Despite these conditions, franchisees say they were required to pay full price for this service.
 - d) Promises of new crop projects, buy-backs, and certain agricultural inputs were made but frequently never realized. MSSL withdrew from these projects or commitments at critical times for farmers, leading to unexpected losses for both the farmers and the franchisees.
 - e) MSSL's frequent failure to supply necessary inputs forced franchisees to buy at retail rates from suppliers other than MSSL, sometimes with the knowledge and support of MSSL, in order to fulfill obligations to farmers at critical points in the planting or growing cycle.
 - f) Indemnity arrangements and crop financing schemes were onerous, requiring franchisees to underwrite loans to high-risk borrowers who were increasingly unable to meet their credit obligations. The lengthy process for approval of farmers' credit applications caused delays in the delivery of required inputs, leading to reduced crop yields and further financial loss.
2. MSSL did not communicate – formally or informally – with complainants about its intent to abandon the service-center business, or about how the change in business direction might impact franchisees and farmers. When franchisees began raising these concerns, they say their grievances were ignored, and many of those who persisted were threatened or sidelined. According to the complainants, franchisees who attended a 2003 meeting convened by the company were publicly requested by MSSL officials to refrain from speaking negatively about MSSL and its business position.
 3. Tractors and other machinery that MSSL leased or sold to franchises often did not function properly, and requests to MSSL for repairs or repayments were not forthcoming or not complete.
 4. The Pesticide Management Manual prepared for the ASCs, as required by IFC's Corrective Action Plan, was completed and delivered to franchisees only after the majority of franchisees had stopped operating the centers or had discontinued their affiliation with MSSL.
 5. Key documents such as blank / post-dated checks, contracts, demand promissory notes and agreement bonds were not returned to franchisees, despite multiple requests to MSSL and to the banks, even when outstanding debts had been repaid. This has led to significant mistrust and in some cases conflict between franchisees and farmers.
 6. Several years after termination of the MSSL service center model and subsequent switch to agrichemical dealership, complainants say the website of its principal financier, IFC, has not changed to reflect the client's new business direction. Complainants believe this exclusion indicates the financier either does not know about MSSL's new business model, or that it does not wish for the new business to be publicly known.
 7. A number of other former franchisees considered filing complaints through the CAO but, according to the complainants, decided against it for fear of recrimination. While some of the

complainants have not met in person, they are now communicating through a contact list of former franchisees that was generated at a 2003 meeting convened by MSSL.

(Complainants provided CAO with this contact list, indicating specific former franchisees who they believe have been similarly impacted. CAO did not contact anyone on this list. One former franchisee whose name appears on the list sent a confidential e-mail to CAO offering to provide documentation in support of the current complaints. CAO has not contacted that individual. Estimates by both the complainants and the company indicate that approximately 55 franchises were established during the life of the ASC project. Of those, several are apparently still operating today – primarily in the South.)

8. The loss of income and associated losses for farmers, coupled with the time and energy franchisees have expended to resolve these issues, has strained community and family relationships for the complainants. Several of the complainants say the situation has led to psychological stress which ultimately required medical treatment.

V. Response and perspectives of MSSL

1. According to MSSL, the original business model did not roll out as expected. There are a number of reasons for this, including:

- a) Issues with financing:

- The franchisees were poor credit managers of the Commercial Bank's funds, and their profit and growth expectations were unrealistic. This is despite the fact that both MSSL and the bank conducted credit finance trainings/meetings with the franchisees. MSSL explained the complete business model to the franchisees, and the infrastructure and other requirements for setting up the centers were well documented in the Franchisee Agreement.
- Some franchisees used their own discretion to supply inputs even to farmers whose loan applications were not sanctioned by the bank. This was perhaps being done by franchisees in order to increase their customer base, or in some cases to run a parallel business outside the scheme, which constitutes a violation of the franchisee agreement. For this act of the franchisees, neither the bank nor MSSL are responsible. The company wrote letters to those franchisees asking them to refrain from these practices.
- MSSL believes that in some cases, franchisees collected money from farmers towards repayment of the bank loan but did not repay the bank. MSSL suspects the complainants may be such franchisees. MSSL, with help from the bank, took up the matter strongly with those franchisees.
- In some situations, the crop buy-back arrangements did not come through in time. In those cases, the company made arrangements for selling the farmers' produce to wholesale grain merchants in association with the franchisee. According to the arrangement, farmers were required to repay bank loans with profits from the wholesale trader, but did not do so. In many cases, franchisees had no control over farmers – even though the selection of those farmers was carried out by the franchisees themselves. The result was that the bank did not get its money back, which over a period rendered their participation in the scheme unviable.

- The net result of the poor handling of bank loans by the franchisees was that in July 2005, the private banks stopped working with the MSSL service center business, as the rate of loan recoveries was poor. Thus the number of operational franchisee service centers decreased, as the franchisees were unwilling to continue operations in the absence of bank financing.
- b) Poor credit management/business practices by the franchisees:
- Some franchisees were operating in default of the franchisee agreement, and this contributed to the decline of the business under the scheme. These franchisees bought inputs from outside suppliers, and then refused to pay the agreed royalty fees and other dues to MSSL. In one such situation, to settle the dispute, MSSL followed the arbitration procedure specified in the IFC's Standard Franchisee agreement. In that case, a highly respected Mumbai High Court-appointed arbitrator ruled in MSSL's favor.
2. MSSL made the following efforts to correct the situation:
- a) In order to differentiate products and avoid the decline of the business, MSSL launched its own brand of seed and agrochemicals, increased the number of dealers, and started certification and buy-back programs for specific crops in specific regions. MSSL also sent letters to some franchisees informing them of the launch of its own brand of seed and agrochemicals. To extend business support to those franchisees, MSSL offered special credit limits on the agri-inputs upon fulfillment of standard trade conditions. The special credit scheme was available to franchisees for up to a cumulative amount of 3 lakh rupees (the amount of the franchise sign-up fee). This offer was not extended to franchisees who MSSL considered to be in default of the terms of the franchisee agreement.
 - b) In situations where MSSL found genuine deficiency in the quality of the equipment and services provided by the company, the company was proactive in taking back defective implements and paying the finance company and the franchisee in order to settle the issue/accounts. In some cases, the company even reduced or entirely wrote off franchisee debts, at significant loss to MSSL's own account.
 - c) Responses by MSSL to grievances filed by franchisees are well documented and there was significant engagement by MSSL with the franchisees on an ongoing basis.
3. Regarding sale of unauthorized pesticides:
- a) The Company says is not selling environmentally hazardous pesticides. In the beginning of the project the company was given 12 months to discontinue the sale of class 1a pesticides, and 18 months to discontinue sale of class 1b pesticides. But MSSL discontinued sale of both class 1a and 1b pesticides within 12 months, well before the time limit set by the IFC. An independent audit conducted by IFC has confirmed this.

VI. CAO Ombudsman's assessment of the context and issues

The complaints by the former MSSL franchisees are raised in the context of a national agrarian crisis that has led to loss of livelihood and, in many cases, suicide for scores of farmers across India. In September 2006, the geneticist M.S. Swaminathan, who lead the country's Green

Revolution 40 years ago and today chairs the National Commission on Farmers, described the situation as “an extreme manifestation of some deep-seated problems which are now plaguing our agriculture... They are climatic. They are economic. They are social.” (*New York Times*, September 19, 2006.)

The underlying causes for these conditions have been a subject of much debate, both within India and internationally. Broadly, they include:

- Indebtedness of small and marginal farmers, and accumulation of loans beyond their capacity to repay
- Rising costs of cultivation
- Declining prices of farm commodities
- Lack of credit availability for small farmers
- Drought and repeated crop failures.

Some blame the Indian government’s elimination of subsidies and promotion of cash crops. Others fault the surge in financing by multinational lenders, which exposed Indian farmers to global competition and access to biotechnology, but not to better prices, access to bank loans, irrigation or crop insurance. Still others blame developers and dealers of new agricultural inputs, who in turn fault farmers for a general lack of capacity to implement modern agri-business techniques or to effectively manage credit and/or pesticide application.

Whatever the root causes of the nationwide agricultural crisis, the current complaints raise simultaneous questions about the responsibility of private sector financiers in safeguarding livelihoods among the rural poor, who are often unable to recover from entrepreneurial risk. In the case of the IFC – whose investments seek to help people escape poverty, generate productive jobs, and promote open and competitive markets – particular attention should be given to identifying, monitoring and mitigating risks associated with changing market or environmental conditions.

Throughout this assessment, the parties have expressed willingness to explore solutions that might lead to positive outcomes. During conversations with the CAO Ombudsman, MSSL told CAO that because of the possibility of further investigations, and because the Indian press is increasingly focused on the plight of Indian farmers, the company is eager to resolve the issues with franchisees and focus on more productive ventures.

IFC’s participation in helping its client achieve that goal could strengthen the likelihood of a successful outcome, and could encourage other solution-seeking processes in the larger context of India’s challenging agricultural sector.

VII. Possibilities for Resolution

As described previously, the aim of a CAO Ombudsman process is to help disputing parties consider the range of possible solutions or strategies for resolving the issues. During the assessment interviews, the complainants and MSSL identified the following options for resolving this complaint:

1. Complainants’ ideas for resolution

- a) Regional meetings could be convened between complainants, other former franchisees who have not filed complaints but have experienced similar losses, MSSL, and IFC. These meetings should be facilitated by a neutral party, with an agenda that enables the parties to exchange perspectives and discuss possibilities for resolution.
- b) MSSL should reimburse the sign-up fee of 3 lakh rupees to complainants and other former franchisees who can demonstrate similar losses.
- c) Any outstanding payments that franchisees made for purchase or rental of faulty or nonfunctioning equipment should be returned in full to the franchisees.
- d) To restore trust between former franchisees and farmers, MSSL should work with the credit banks to ensure that promissory notes, blank checks and other relevant documents are returned to the former franchisees.

2. MSSL ideas for resolution:

- a) Although MSSL has already made significant effort to resolve conflicts with franchisees, the company would be willing to explore options for meeting with complainants to discuss any outstanding grievances and possibilities for resolution. This could involve individual meetings or small group meetings in the complainants' different regions, at which an IFC representative could be present.
- b) As MSSL continues to expand the fruit export component of its current business, it would consider re-opening business relationships with franchisees – provided those franchisees are not defaulters and are located in MSSL's current operating zone.
- c) Alternatively, the differences of opinion between MSSL and the franchisees should be resolved through the settlement mechanism already provided under the arbitration clause of the franchisee agreement.

3. CAO Ombudsman's summary of ideas and suggestions for resolution

Despite their differences of opinion regarding culpability for the complainants' alleged losses, the parties have the following interests in common:

- An expressed desire to work together to identify a mutually agreeable solution;
- Resolving the situation, which has been stressful and time-consuming for both parties, as soon as possible in order to move forward with more productive ventures;
- An eagerness to pursue sustainable agriculture concepts – including organic farming and models such as community-supported agriculture. During conversations with the CAO, both the complainants and MSSL representatives said they believe sustainable agriculture projects could result in better returns for farmers and producers by connecting them directly to Indian and global consumers, and could help reduce the use of synthetic chemicals.

Notwithstanding their stated desire to attempt an agreement-seeking process with the complainants, MSSL also has said their willingness to do so is dependent upon the identities of the confidential complainants. MSSL contends it has amicably resolved conflicts with some former franchisees, and among those, several continue to work with MSSL today. There are other franchisees, however, with whom the company has been unable to reach agreement and whom the company considers to be indebted to MSSL and in default of the Franchise

Agreement. MSSL representatives have said they do not wish to negotiate with franchisees who they believe owe the company money, have maligned MSSL publicly, or are involved in activities that damage the company's reputation.

In considering its options for resolution, MSSL simultaneously recommended that the parties should adhere to terms in the Franchise Agreement regarding the resolution of disputes, which states:

“All disputes, differences of opinion and controversies arising between the Parties out of this Agreement shall be resolved amicably, failing which they shall be finally settled by a sole arbitrator appointed by the parties. The Arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. Arbitration proceedings shall take place in Mumbai.”

The complainants contend that the stipulation requiring arbitration proceedings to take place in Mumbai is not tenable, especially in light of their current financial situation. They say the costs associated with travel and accommodation in Mumbai are prohibitive, both financially and in terms of time they would otherwise spend in pursuit of income generation. In addition, they do not believe the sole arbitrator selected by MSSL for a current case involving a former franchisee is nonpartisan, due to the arbitrator's previous position as a judge with India's High Court – a court the complainants believe favors large commercial interests over those of small-scale farmers and entrepreneurs.

In view of these stated interests, positions and ideas for resolution, as described by the stakeholders throughout this assessment, the CAO Ombudsman offers the following suggestions for the parties' consideration:

- a) If MSSL is genuine in its desire to engage in good faith with the complainants to discuss options for resolution, regardless of whether they consider those complainants to be in default, a meeting or series of meetings between the parties could achieve their collectively stated desire to reach a mutually agreeable solution, and to put the longstanding conflict behind them. For such an approach to be successful, however, several conditions would need to be met. These include:
 - A commitment by MSSL of no retribution or retaliation that might be harmful to the complainants;
 - A commitment by the complainants to be open and straightforward about the factors leading to their individual circumstances;
 - A willingness by both parties to engage in interest-based negotiations, with an explicit desired outcome of compromise, conciliation and resolution of the outstanding issues;
 - An agreed time-frame and agreed locations for the meetings;
 - An agreed set of goals and ground rules to guide the meetings and to ensure a purpose-driven process from the outset.

As suggested by the parties, these meetings should be facilitated by a nonpartisan mediator or facilitator, selected and agreed by all the parties, and should involve appropriate representation of the IFC.

Such a meeting is unlikely to be successful without a common statement of purpose, or if the parties' are unwilling to move from long-held positions to more forward-looking interests and solutions.

- b) If the parties believe a mediated approach is unlikely to result in satisfactory resolution of the complaints, they may also consider an arbitrated solution designed collaboratively, and in accordance with India's 1996 Arbitration and Conciliation Act. The Act includes several important clauses that should address the complainants' concerns regarding cost and neutrality of the arbitrator. According to the Act:
- The parties to a dispute are free to agree on a procedure for appointing an arbitrator or arbitrators, and are free to determine the number of arbitrators, provided it is not an even number.
 - Failing an agreement on selection of a procedure, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.
 - A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
 - The parties are free to agree on the place of arbitration.

In addition to these terms, the Act also states that parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings, that parties shall be treated with equality, and that each party shall be given a full opportunity to present his case.

If the parties choose to pursue an arbitrated approach under the terms of the Act or other agreed terms, they should consider use of a three-person arbitration panel, in which each party selects an arbitrator, and the two appointed arbitrators select a third arbitrator. Such panels are commonly used in commercial and other types of disputes, and are preferred over entrusting decisions to one individual.

In the event the parties choose such an approach, the CAO Ombudsman can be requested to facilitate collaborative design of the process and selection of the appropriate arbitrators, or to help the parties identify a suitable facilitator for this activity.

- c) A third alternative for the parties' consideration is a "med-arb" approach, which offers features of both mediation and arbitration. Med-arb begins with a written commitment from both parties to bind themselves to either a mediated or an arbitrated outcome. The process starts with the assistance of a trained mediator selected by the parties. If an agreement is successfully mediated, it is signed by the parties and constitutes closure of the complaint. However, if the parties reach impasse, the mediator may then either change roles and become an arbitrator, or s/he can assist the parties in identifying an individual or panel of arbitrators. Either immediately at the close of the mediation, or at an agreed later date, the arbitrators will take evidence from the parties and render a binding decision.

The primary advantage of this approach is that the parties are assured of finality (either by agreement or by binding decision), and at the same time they have an opportunity to shape a more creative and voluntary resolution.

As with the previous option for resolution, the CAO Ombudsman can be requested to facilitate the design of a med-arb process, including selection of a mediator(s) and a timeline for carrying out the work.

CONCLUSION AND NEXT STEPS FOR THE PARTIES

The CAO Ombudsman has not made a judgment on whether or not the concerns raised in this complaint have merit. Rather, it has provided information and suggestions to help the parties determine how to address the concerns.

This report is intended only for the parties' review, and as a guide to determine how or whether they wish to proceed. A report will not be made public until the stakeholders agree on a way forward – either by implementing one of the recommendations in this report or an alternative collaborative solution, or by opting to discontinue negotiating through the CAO Ombudsman.

In accordance with its mandate, the CAO Ombudsman works with the stakeholders to produce an explicit agreement on a process for addressing the issues. The parties involved in the current complaint have each expressed a willingness to attempt to resolve the issues with the assistance of a nonpartisan third-party – either independently or through an arbitrated process such as that spelled out in the Franchise Agreement. Given this expressed willingness, the CAO Ombudsman has pursued efforts to help the parties determine a course of action to close the complaint through a negotiated settlement.

However, if the parties are unable or unwilling to resolve the issues collaboratively, the Ombudsman will conclude its involvement in the case and transfer it to CAO Compliance for appraisal. An appraisal process helps determine whether a compliance audit is warranted. The focus of compliance auditing is on IFC and MIGA, and how those institutions assure themselves of project performance and adherence to the project's relevant policies and guidelines.

Once the stakeholders have had an opportunity to review this preliminary report, and to consider the various options for moving forward, the CAO Ombudsman will schedule individual conversations with the parties to discuss their desired next steps and ideas for resolution.

The parties may also submit written responses to the CAO Ombudsman, and request specific additional information regarding CAO's operational procedures.

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