

# **Comments on the IFC's Working Draft: Framework for Discussion regarding Disclosure of Information**

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**Submitted by  
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This paper provides comments on the IFC's Working Draft: Framework for Discussion regarding Disclosure of Information that was prepared on November 24, 2004.

## **1. Comments on the review process**

### **Review process**

IFC provided three public consultations: 1) on the current Policy on Disclosure of Information in February-March 2004, 2) on the process for the review in March-April 2004 and 3) on the draft Disclosure Policy Approach paper in August-November 2004. However, we are very much regretted that IFC did not respond the comments from stakeholders, despite IFC propose in the draft that "IFC has an obligation to be responsive to the questions and concerns of its shareholders," Therefore, we urge IFC to respond to the stakeholders' comments immediately and publicize the revised version of the Policy on Disclosure of Information before IFC will finalizes the draft to be submitted to the Committee on Development Effectiveness (CODE), in order to ensure informed consultation in the update of the policy.

### **List of documents**

IFC should carry out a list of all documents produced and possessed by IFC in the process of project implementation. Because of the gap in the level of information between IFC staff and external stakeholders regarding IFC documents, it is difficult for external stakeholders to input further into the new policy.

## **2. Comments on General Principles**

### **Presumption in favor of disclosure**

The principle of "presumption in favor of disclosure" is included in the Policy on Disclosure of Information (1998), and is dropped out from the draft. The draft only states that "IFC has an obligation to be responsive to the questions and concerns of its shareholders." It is unclear whether IFC will disclose Information other than non-disclosure constraints. We strongly urge IFC to retain the principle "presumption in favor of disclosure" also in the new policy.

### **Purpose of the policy**

The draft states that “it is IFC’s general policy to be open about its activities, (omitted) to seek out opportunities to explain its work to the widest possible audience (page 1),” does not aim for formulation of democratic decision-making process and enhancement of quality of decision-making process. This aim causes delay of disclosure timing of SPI and EIA. The new policy should states that it is IFC’s general policy to be open about its activities, to seek out formulation of democratic decision-making process and enhancement of quality of decision-making process.

### **Information regarding World Bank**

Regarding Footnote 2 (page 1), all information produced and possessed by World Bank is subject to the World Bank’s Policy on Disclosure of Information. If the information held by IFC regarding the World Bank or its activities and operations are conflicted with a constraint under the IFC policy, that will be determined under the IFC’s policy as well as information regarding other third parties. All information produced and possessed by IFC should be subject to the IFC’s Policy on Disclosure of Information.

### **Documents produced before an effective date**

The draft states in the Footnote 3 that “document prepared by or provided IFC before [July 1], 2005, or subject to agreements entered into prior to that date, will continue to be subject to the IFC Disclosure of Information (page 1).” If there is a harm to disclose a document, it would not be disclosed under the new policy. This requirement does not have any appropriate reasons, and makes significantly narrow the subject of disclosure of the policy. Therefore, all information that produced and possessed by IFC should be subject to the new policy.

### **Definition of non-public business information**

The draft states that “IFC does not disclose non-public business information provided to IFC by its clients or other third parties (page 3).” IFC does not define the “non-public business information,” and it is too vague expression. IFC should make narrow definition of non-public business information that if disclosed, it would be materially prejudice, commercial interest and/or competitive position of clients or third parties.

### **Requirement to third parties**

The draft does not require that all documents provided to IFC should not include Information that if disclosed, it would be materially prejudice, commercial interest and/or competitive position of clients or third parties. When IFC receive a document from clients and other third parties, IFC should require them trying to exclude Information on materially prejudice, commercial interest and/or competitive position of clients or third parties from their documents (e.g. EIA and Feasibility Studies).

### **Confidential documents**

The draft states that internal documents and memoranda written by IFC staff or members of IFC’s Board of Directors or their advisors to their colleagues, supervisors or subordinates are not publicly available (page 3). However, the new policy attempt to be a criteria for information that will not be disclosed (page

2-3). With this definition of confidential information, all documents should be subject to request-based disclosure if documents are not subject to proactive disclosure. Therefore, all sentences that state certain documents are not made public should be deleted.

### **Information that IFC may delay or withhold**

The draft states that “IFC may delay or withhold the disclosure of certain information when, because of its content, wording or timing, disclosure is likely to have a material adverse impact on the interests of IFC (page 3),” However, such information would not be disclosed under other constraints, and IFC should clarify the meaning of this constraint or should delete it.

### **Definition of “publicly available”**

The draft states that “the term of publicly available is intended to refer to information and/or documents that IFC may disclose (page 3)” The draft also states that “certain publicly available information about IFC’s activities may be obtained online at IFC’s website (page 3-4)” However, these sentences are unclear whether IFC has an obligation to disclose “publicly available” information, and all “publicly available” information are available on the website. Therefore, IFC should state that “the term of publicly available is intended to refer to information and/or documents that IFC must disclose”, and “certain publicly available information about IFC’s activities must be obtainable online at IFC’s website.”

### **Legal documents**

The draft states that “consistent with the practice of commercial banks and of most public sector financial institution, IFC does not disclose legal documentation (page 3).” However, the constraint is also too vague. IFC should define legal confidential information that if disclosed, it would be materially prejudice the commercial interest and/or competitive position of clients or third parties.

### **Means of requests**

The draft is only defined a contact number for requesters (page 4), and there is no rule of how to deal with these requests. It is important to give due consideration to the needs of project affected people. To enhance the accessibility of IFC documents and facilitate informed participation of affected people, the process of information requests should be easy to use. For this, we recommend the following reforms.

- **Means of requests:** Filing of information requests should be allowed by mail, fax, e-mail and hand delivery.
- **Language of requests:** Requests should be allowed to file in English or any of the official or national languages.
- **Procedures of disclosure and partial disclosure:** IFC should specify detail procedures of request-based disclosure. If there is a confidential part in a document and the confidential information can be eliminated from the document, IFC should disclose the document as partial disclosure.
- **Due date of response:** IFC should specify a due date of response to the requester.

- **Reason for rejection:** If IFC reject a request, IFC should submit a response with a legitimate reason. The reason should also be made available on the IFC website.

### **Compliance review on disclosure**

There is no judicial court where people can file a case against the IFC's violations on the disclosure policy. Therefore, IFC should create an independent compliance review mechanism to ensure effective monitoring, reporting and review of the policy.

### **Translation**

The draft does not include any requirements on translation. In order to facilitate affected people's informed participation in the decision-making process, the new policy should require translation of following documents into understandable languages for affected people. Furthermore, a comprehensive policy on translation should be established.

- Summary of Project Investment (SPI) including all updates of the document
- Social and Environment and Impact Assessment (SEA) including all amendments
- Action Plan including Resettlement Plan and Indigenous Peoples Development Plan, etc. including all amendments
- Policy on Social and Environmental Sustainability and Performance Standards
- Policy on Disclosure of Information
- Operational Guidelines for the Compliance Advisor Ombudsman (CAO)

## **3. Comments on IFC Institutional Information**

### **Board minute and Board work plans and schedules**

The draft states that "disclosure of the minutes of the meetings of IFC's Board of Directors depends on the decision of the IBRD Board on the Bank's proposed changes to its disclosure policy (page 2)." World Bank announced on March 16 that the Board agreed to disclose the minutes of its meetings. IFC should explain how the minutes on IFC operations will be disclosed in this policy. Furthermore, we urge the World Bank Group to disclose all transcripts of Board meetings. The work plans and schedules of the Board should also be disclosed on the IFC website in timely manner so that concerned citizens and groups can make effective inputs to the Executive Directors of IFC prior to Board meetings.

### **Projects appraisal document**

Full contents of project appraisal document for the IFC's Board approval is our particular concern because once the Board approves policies or projects it is very difficult for affected peoples and civil society organizations to ask withdrawal of such decisions. Therefore, all proposals for Board consideration (including those circulated to the Board on non-objection basis) should be disclosed on the website at the same time they are circulated to the Board.

### **Policy and strategy paper**

The draft states that “policies will be publicly available once they have been approved unless IFC and the IFC Board of Directors agree that disclosure may have an adverse impact (page 2-3).” IFC should disclose all policy and strategy papers. IFC should explain the reasons if disclosure of a policy/strategy paper makes an adverse impact on a financial condition or business interests. If IFC revise a policy/strategy that have a significant impact for local people or environment, IFC should disclose all draft including final draft prior to the Board and should receive comments from stakeholders.

## **4. Comments on IFC Investment Specific Information**

### **Summary of Project Investment (SPI)**

Summary of Project Investment (SPI) was renamed from Summary of Project Information (page 1), and the draft states that SPI will be disclosed “when IFC considers there is reasonable certainty that an investment will be forwarded to the IFC Board of Directors for consideration and approval (page 1)” and “will be updated before the approval (page 2).” However, SPI should be updated within all process by the loan closing date/completion of the social and environmental monitoring. Therefore SPI should be disclosed once IFC start the consideration, updated within all process. The name of document should be “Summary of Project Information.”

### **SEA report and Action Plan**

Under the proposed aim “to seek out opportunities to explain its work to the widest possible audience,” the draft states that “once IFC determined that the client’s social and environmental assessment and then- current Action Plan are complete in all material respects, IFC will make these documents available through the InfoShop (page 3).” However it is ineffective that stakeholders submit comments to IFC once IFC determined SEA reports and/or Action Plans are satisfied. Therefore, these documents should be disclosed immediately after IFC received. The draft also states that if SEA reports and/or Action Plans are amended after disclosure to the public, these amendments would not restart minimum time periods. However, IFC should restart from an origin of minimum time requirement unless there is a minor change, in order to formulate democratic decision-making process and enhance quality of decision-making process

### **Environmental monitoring report**

The draft states “IFC will disclose monitoring reports required to be disclosed under the Performance Standards (PS).” However, PS-9 does not require disclosure of monitoring reports. Therefore, PS-9 should be reformed, and the Policy on Disclosure of Information also should require disclosure of social and environmental monitoring reports immediately after IFC received. IFC should disclose information on how IFC response to a client if significant environment and social impacts are clarified though environmental and social monitoring process.

### **Project evaluation document**

It is difficult for stakeholders to understand whether the each project is reached its objectives on poverty reduction and sustainability performance both are keys of the IFC's Mission Statement, if IFC does not disclose project evaluation documents. Therefore IFC should disclose that.

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