

## OPERATING PROCEDURES OF THE IDB INVEST ACCESS TO INFORMATION EXTERNAL PANEL

### 1) Introduction

- 1.1 **Board Approval of the Access to Information Policy.** On April 23, 2019, the Board of Executive Directors (“Board”) of the Inter-American Investment Corporation (“IDB Invest”) approved a new Access to Information Policy (“Policy”) which became effective on January 1, 2020. The Policy provides that IDB Invest will allow access to any information in its possession that is not deemed confidential pursuant to a list of exceptions set out in the Policy.
- 1.2 **The Right to a Review.** Under the Policy, anyone requesting information (“Requester”) from IDB Invest has the right to request a review of the decision to deny access to the information requested, on the grounds that the denial of the requested information is contrary to the provisions of the Policy.
- 1.3 **The Review Mechanism** consists of two possible stages:
  - a) **Administration Committee.** An internal administrative body of IDB Invest Management that conducts first-stage reviews of information denials that do not relate to Board Records.<sup>1</sup>
  - b) **Access to Information External Review Panel (“Panel”).** A body independent from Management that conducts second-stage reviews at the request of Requesters who have been denied information by the Administration Committee. The Panel’s decisions in such cases are final.
- 1.4 **Operating Procedures of the Access to Information External Panel.** IDB Invest established the operating procedures set forth in this document (the “Procedures”) to facilitate the work of the Panel in discharging the functions determined by the Policy.
- 1.5 **Changes to the Procedures.** IDB Invest may amend, supplement or revise these Procedures at any time. Changes to the Procedures will not affect any pending reviews at the time a change to the Procedures is approved.
- 1.6 **Reservations.** Nothing in these Procedures, and no information provided or obtained during the proceedings under these Procedures, constitutes or should be considered to alter, abrogate, or be a limitation upon or a waiver of the status, immunities, and privileges of IDB Invest as set forth in the Agreement Establishing the Inter-American Investment Corporation, or other provisions of national or international law, which remain reserved.

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<sup>1</sup> For requests involving Management’s information denials regarding Board records, the Requester may seek a review by the Board of Executive Directors, which has the authority to uphold or reverse Management’s information denials regarding such records. The Board’s decisions are final and not subject to further review.

## 2) **Mandate of the Access to Information External Review Panel**

2.1 **Mandate.** The Panel conducts the second-stage review of denials of information by the Administration Committee. For the Panel to review the Administration Committee's decision, the Requester must submit an application for review alleging that IDB Invest has violated the Policy in denying access to information (other than Board records) that would otherwise be disclosed under the provisions of the Policy. The decision of the Panel shall be consistent with the Policy.

2.2 **Admitting an Application for Review.** To carry out this mandate, the Panel admits an application for review only when such application meets the following criteria:

a) **Term.** Applications must be filed within 30 calendar days of the notification to the Requester of the Administration Committee's decision to deny access to the requested information.

b) **Content:** Applications for review must be submitted to the Transparency Hub in writing. Requests for review must be presented in one of the four official languages of IDB Invest and include:

- i. Information identifying the Requester and providing its contact information;
- ii. Date of the initial request for information and the date(s) of notification of the decision(s) denying access to information;
- iii. Detailed description of the information requested; and
- iv. Brief statement explaining the general basis for submitting the request for review, indicating a reasoned interpretation of the Policy.

c) **Jurisdiction.** The application must request the review of matters under the purview of the Panel's jurisdiction. Applications will be admissible when they relate to a decision of the Administrative Committee to deny access to the requested information. The Panel does not have jurisdiction to consider applications relating to requests to override the Policy, or applications to review Board decisions pertaining to Board records.

2.3 **Dismissing an Application for Review without consideration of the merits.** The Panel will dismiss any application for review deemed inadmissible or outside of its scope of authority in accordance with the criteria set forth in sections 2.1 and 2.2 of these Procedures.

2.4 **The Policy – Basis for Consideration and Decision.** Upon admission of an application in accordance with section 2.2 of these Procedures, the Panel will review the documents of record listed in section 7.2 of these Procedures. In reaching a decision, the Panel will determine whether the Administration Committee properly applied the provisions of the Policy when deciding to uphold Management's information denial. The scope of the Panel's review will be circumscribed to whether the Administration Committee had a reasonable basis for its denial. Such consideration and decision will be based solely on:

a) The Panel's mandate as set out in section 2.1;

- b) The terms of the Policy and any implementation guidelines as they are written, using as means of interpretation the ordinary meaning of the words;
- c) The standard of review, as described in section 7.1;
- d) The documents of record, as listed in section 7.2; and
- e) Any other input that IDB Invest and the Requester may provide and that the Panel may consider at its discretion. IDB Invest and the Requester may provide input in writing.

Decisions will be based on the Policy, and no other rules, laws or regulations will be used by the Panel members as a basis for considering applications for review filed pursuant to the Policy or for justifying the Panel's decisions.

- 2.5 **Timeline for Decisions.** Within 30 calendar days of receipt of the application, the External Panel will review the Administration Committee's decision and make a final decision on whether the requested Information should be disclosed in accordance with the Policy. If the External Panel requires more time to reach a decision, it will provide an estimated date of decision to the Secretariat, which in turn will notify the Requester in writing.
- 2.6 **Role of the Panel Members.** The members of the Panel will prepare for and participate in the sessions of the Panel, whether held virtually or in person, as may be required. The Panel members will provide all necessary input on reports prepared by IDB Invest concerning the Panel's activities and decisions.

### 3) Membership

- 3.1 **Selection and Appointment.** The Panel consists of three members nominated by IDB Invest General Manager and appointed by the Board of Executive Directors.
- 3.2 **Appointment.** Each member's appointment to the Panel is for a three-year renewable term up to a maximum of six years. Any renewal or extension of a member's terms of appointment will be recommended by IDB Invest General Manager to the Board of Executive Directors for approval.
- 3.3 **Nature of Service.** Contracting for services of the Panel members during their respective term of appointment will follow IDB Invest rules for contracting individual consultants – including remuneration-, except as otherwise approved by IDB Invest General Manager. Members of the Panel shall render their services on an as-needed basis. At the start of their appointment, Panel members will receive a one-time payment equivalent to five (5) days or forty (40) hours of work performed as compensation for time spent in training offered by IDB Invest as well as for time spent familiarizing themselves with the institution, its policies, procedures and operations. Panel members will receive compensation for attending trainings or activities related to access to information issues requested by IDB Invest. Also, Panel members will be compensated for time spent preparing for and during sessions of the Panel, which shall fall within a minimum and maximum range of one (1) to seven (7) days, depending on the

- complexity of the matters being considered. If a Panel session appears to require more than the maximum of seven (7) days, the Panel chair, after consulting with the Panel members, will consult with the Secretariat, who will consider the appropriateness of a new maximum for the Panel session.
- 3.4 In the performance of their functions Panel members will be considered officials of IDB Invest entitled to enjoy the privileges and immunities set forth for IDB Invest employees under the Agreement Establishing the Inter-American Investment Corporation.
- 3.5 **Restrictions on IDB Group Employment.** Members of the Panel will not be eligible to accept any staff, consultant or contractor position for the IDB Group during the term of their respective appointment to the Panel and until three years have elapsed from the date of the end of their service as a member of the Panel, except for eligibility as members of the IDB's Access to Information External Panel. For purposes of this section, the IDB Group is understood as the IDB, IDB Invest and IDB Lab.
- 3.6 **Conflicts of Interest.** Members of the Panel will be bound by *The Code of Ethics and Professional Conduct* of IDB Invest with the exception of those provisions which the Ethics Office determines could reasonably be construed as restricting the Panel's independence or impartiality. In the event that a personal or financial interest or business relationship of a Panel member or of his/her family member could reasonably be considered to reflect unfavorably on or discredit the IDB Group or otherwise give rise to a real or apparent conflict of interest with the Panel member's participation in a matter before the Panel, the Panel member will inform the Ethics Office, the Chair (as defined in section 4.1 of these Procedures) and the Secretariat. Unless the conflict is resolved, as confirmed by the Ethics Office, the Panel member shall recuse him/herself from the matter at issue and inform the Chair and Secretariat of such recusal.
- 4) Organization**
- 4.1 **Selection of Chair and Vice Chair for Each Session.** The members of the Panel will choose one member to act as the Chair of the Panel ("Chair"), and one member to act as Vice-Chair of the Panel ("Vice Chair") for each session. A session will conclude once all pending requests for that session have been adjudicated and the decisions have been conveyed to the Secretariat. The Panel members will make their selection, at the end of each session, for the following session. The selected Chair will organize the following session and conduct the related meetings which may be done virtually or in person, depending on the circumstances as further specified in sections 5.1 and 5.2 of these Procedures. The Chair will also preside over the Panel deliberations, and act as the official channel of communication with the Secretariat, for the relevant Panel session. The Vice-Chair will act as Chair in the Chair's absence or in case the Chair is unable to act.
- 4.2 **Secretariat.** The Corporate Affairs team of the Department of Strategy and Development (DSP/CAT) will serve as the Secretariat of the Panel. The Secretariat will inform the Panel on matters of IDB Invest Policy, including any interpretation of the Policy issued by the Administration Committee or the Board, applicable to the individual request for review under

consideration by the Panel. The Secretariat will also perform its responsibilities recognized under these Procedures or otherwise necessary for assisting the Panel in the exercise of its mandate and discharge of its functions and responsibilities, including but not limited to:

- a) providing *liaison* support between the Panel and IDB Invest in connection with the necessary arrangements for its activities, such as contracting, payment of remuneration and other approved expenses to Panel members, travel and training coordination with the appropriate IDB Invest units;
- b) preparing and overseeing the annual budget for the functioning of the Panel, including forecasting, in consultation with the Panel members, the level of resources necessary for such functions;
- c) coordinating with the IDB and peer institutions regarding the potential harmonization of practices and sharing of experiences; and
- d) providing the final decision on all administrative matters pertaining to the adequate functioning of the Panel.

## 5) Sessions

- 5.1 **Frequency.** The Panel sessions will be held as needed and depending on the caseload of requests for review. The Secretariat will determine frequency of the Panel sessions, in consultation with the corresponding session Chair, and will fix the dates of the sessions in coordination with the Panel members, ultimately working to ensure that the Panel can meet its obligation of rendering decisions within thirty (30) calendar days of IDB Invest receipt of the request for review. If, however, more time is needed to reach a decision, the Panel shall communicate an estimated date of decision to the Secretariat, which in turn will inform the Requester accordingly, through the Transparency Hub.
- 5.2 **Form of Meetings.** The sessions of the Panel will ordinarily be held virtually by means in which all members may hear each other simultaneously and participate in the discussion. In all instances the Secretariat will decide upon the form of the meeting. The Secretariat will make and/or inform the members of the Panel of the necessary arrangements (e.g., travel arrangements; reservation of facilities, including video conference where convenient) with sufficient time in advance.

## 6) Communications

- 6.1 **Means of Communications.** The members of the Panel may communicate directly with each other and with the Secretariat. Communications among Panel members and between Panel members and the Secretariat that transmit information regarding requests for review and related documents must be made through the IDB Invest communication network and, for this purpose, IDB Invest will provide Panel members with dedicated and secure emails.

- 6.2 **No Direct Communications with Requesters.** Members of the Panel may not communicate directly with Requesters. Any communications concerning applications for review (i.e., requests for clarification, additional information or conveyance of decisions) will be directed through the Secretariat.
- 6.3 **Public Statements.** Any public statements made by the members of the Panel concerning the Panel's work must be made in line with the relevant rules of IDB Invest, as they may be amended from time to time, including but not limited to the Policy, and the Code of Ethics and Professional Conduct of IDB Invest.
- 6.4 **Communications of the Chair.** When the Panel is in session, the Chair of the Panel is the official channel of communication between the Panel and the Secretariat. The Chair of the Panel communicates all decisions taken by the Panel to the Secretariat in accordance with section 6.1 of these Procedures.
- 6.5 **Role of the Secretariat.** The Secretariat will:
- a) Transmit the documents listed in section 7.2 of these Procedures, to the Panel members through IDB Invest communication network systems;
  - b) Retain all original documents related to the Panel and its Procedures, as well as arrange for the appropriate distribution of copies and filing;
  - c) Transmit all Panel decisions to the Transparency Hub who will inform the Requesters of the information;
  - d) Publish the Panel decision within five (5) working days of the Panel rendering a decision; and
  - e) Create and maintain a registry of historical applications for review and decisions thereof available for consultation.
- 7) **Procedures for Considering Requests for Review**
- 7.1 **Standards of Review.** In reaching a decision, the External Panel will determine whether the Administration Committee properly applied the provisions of the Policy when deciding to uphold Management's Information Denial. The scope of the External Panel's review will be circumscribed to whether the Administration Committee had a reasonable basis for its Denial. The decision will be determined by a unanimous vote. All decisions will clearly specify the reasons for the decision and in cases where the External Panel reverses the Information Denial, it will include the requested Information.
- 7.2 **Documents Transmitted to the Panel.** Requests for review will be transmitted to the members of the Panel by the Secretariat reasonably in advance of the Panel session, taking into account the nature and volume of the caseload before the Panel, together with the finalized agenda of the requests to be heard by the Panel, and copies of the following documents (to the extent possible) in connection with each request to be heard by the Panel:

- a) the original request for information received from the Requester (the “Request”);
- b) any response from IDB Invest or other party to the original request for information;
- c) IDB Invest response to the Requester communicating its decision to deny access to the requested information;
- d) the Requester’s request for review filed before the Administration Committee;
- e) the Administration Committee decision on the request for review;
- f) the Requester’s application for review filed before the Panel;
- g) any other input that the parties may provide and that the Panel may consider at its discretion including comments by IDB Invest Management in support of its decision.

7.3 **Review of Requested Information.** The Panel will review copies of the requested information on a confidential basis, and in accordance with section 10.1 of these Procedures. Information provided to the Panel will be in the same form as provided to the Administration Committee. Certain confidential information may be redacted from the documents at IDB Invest’s discretion. Documents that are owned by third parties may be withheld or redacted at the direction of the owners of the documents. The Panel members shall be made aware of any such withholding or redaction of the information submitted for their consideration.

7.4 **Assessment of Request for Review.** Upon receipt of a request for review, the Panel will assess the request and accompanying documents and:

- a. admit the request for review and decision only if such request fulfills the admissibility and Panel’s scope of authority criteria set forth in section 2.2 of these Procedures; or
- b. dismiss the request for review in accordance with section 2.3 of these Procedures.
- c. When the application for review includes information pertaining to an IDB Invest client or a third-party, the Secretariat will consult with such client or third-party on whether the information requested is confidential as contemplated under the Policy exceptions and will inform the Panel of the results of this consultation for the Panel to consider in its decision in accordance with the Policy.

7.5 **Admission or Dismissal in its Entirety or in Part.** The Panel may admit or dismiss an application in its entirety or in part. A request for review may be admitted and/or dismissed in part if the request raises multiple matters that might require a partial admission and/or dismissal.

7.6 **Dismissal – without review of the merits.** The Secretariat will inform the Panel through its transmittal memo when an application may be eligible for dismissal without review of the merits in accordance with section 2.3 of these Procedures. Such an assessment from the

Secretariat is neither a decision that an application should be dismissed nor a precondition for such dismissal by the Panel. If and when the Panel confirms the request should be dismissed without review of the merits, the Secretariat will inform the Requester of the decision and provide an explanation, through the Transparency Hub. When the request is dismissed by the Panel for reasons other than timeliness of filing of the application, in accordance with section 2.2 a), Requester may seek to correct and resubmit the request within fifteen (15) calendar days of receipt of notice of dismissal.

7.7 **Considerations of Requests for Review.** Except when a request is dismissed without a review on the merits, the Panel will consider and decide on the request for review and accompanying documents in accordance with sections 2.1 and 2.4 of these Procedures and on that basis will decide to:

- a) uphold, in its entirety or in part, the Administration Committee's decision to uphold the initial IDB Invest decision to deny access to the requested information; or
- b) reverse, in its entirety or in part, the Administration Committee's decision to uphold the initial IDB Invest decision to deny access to the requested information.

## 8) Decisions

8.1 **Decisions.** The Panel will take decisions by a unanimous vote of all its members which will be recorded in minutes prepared by the Chair with support from the Secretariat and be signed by the Panel members. The Panel will strive to reach a consensus through constructive discussions among Panel members. If the Panel does not reach a consensus, it may record that it did not reach a unanimous vote and its members may record their individual opinion.

8.2 **Quorum.** Quorum for a meeting will be three (3) Panel members, unless a Panel member has recused him or herself from participating in a review due to a conflict of interest under section 3.7 of these Procedures. In such cases, quorum will be reduced to two (2) Panel members.

8.3 **Recording Decisions.** The Secretariat shall record the decisions of the Panel in writing, which shall include the basis for the decision as communicated by the Panel. Each member of the Panel may provide input towards finalizing the written decision of the Panel and may record any individual opinion as part of the Panel's decision.

8.4 **Available Remedy.** No remedy other than making the requested information available to the Requester shall be awarded. In the event that the Panel reverses a decision to deny access, the Panel's decision will list the information to be made available to the Requester and the Secretariat will instruct IDB Invest to disclose the document(s) in the same form as such document(s) have been provided to the Panel for consideration of the application for review. The Panel may also, in its decision, indicate information within a document(s) which may be redacted by IDB Invest to enable the document(s) to be disclosed.

8.5 **Communication to the Secretariat.** The Chair of the Panel will communicate all decisions taken by the Panel in writing to the Secretariat in accordance with sections 6.1 and 6.4 of these Procedures and will make best efforts to do so within a reasonable period of time after



the end of the respective session, taking into account economy and efficiency and the timeline for the response per section 2.5 of these Procedures.

- 8.6 **Communication to the Requester.** The Secretariat is responsible for notifying the Transparency Hub of the Panel's decision in writing; the Transparency Hub will post the decision on the IDB Invest website and send the link to the Requester. The decisions of the Panel, on reviews mandated by the Policy for Panel consideration, are final.

## 9) Expenses

- 9.1 **Panel Expenses.** The expenses incurred by the Panel directly in support of its fulfillment of the Panel's mandate and these Procedures will be borne by IDB Invest. Expenses incurred by the members of the Panel, individually, and by the Panel as a body, must be reasonable and in line with relevant IDB Invest policies and will be reviewed and approved by the Secretariat, taking into account the principles of economy and efficiency.

- 9.2 **Standard for Daily Fee.** In addition to receiving reimbursement for expenses reasonably incurred, members of the Panel will receive a daily fee, as indicated in their respective contracts, for the equivalent of each eight-hour day of work performed in connection with the discharge of their functions as members of the Panel. Claims for daily fees should be submitted by the Panel members individually to the Secretariat within seven calendar days from the relevant date of completion of the work (e.g., completion date of a Panel session, or completion date of travel on authorized IDB Invest business).

- 9.3 **Travel Arrangements.** In the event that Panel members are required to travel on authorized IDB Invest business under these Procedures, Panel members must follow the Secretariat's instructions to make arrangements for their travel.

- a) All travel arrangements shall be made in coordination with the Secretariat.
- b) **Personal Days.** If Panel members plan to arrive earlier or leave later than the dates specified by the Secretariat for their travel, the additional days will be considered as personal days and the related expenses will be treated as personal expenses not reimbursable by IDB Invest.
- c) **Authorized Maximum.** Panel members are responsible for ensuring that the rate charged by the hotel is within the authorized maximum room rate approved by IDB Invest.
- d) **Payments and Receipts.** Panel members will need to:
  - i. Personally pay for the hotel and expenses associated with their travel on authorized IDB Invest business (e.g., transportation between the city center and the airport, transportation between the hotel and the office);
  - ii. Retain all receipts and any other documentation pertaining to travel on authorized IDB Invest business (including original airline ticket stubs, itemized hotel statements); and
  - iii. Provide all receipts and any other documentation as referred to in subsection (ii) above to the Secretariat for reimbursement within the provided timeframe.

- e) **Per Diem.** Panel members will receive a *per diem* allowance in accordance with IDB Invest policy (for cost of meals, including beverages, valet services, tips and gratuities) for their official work days while on travel on authorized IDB Invest business.
  - f) Any travel required from Panel members, including per diem allowances, must be documented and will be payable in accordance with applicable rates at the time of travel, as determined by IDB Invest travel policies.
- 9.4 **No Duplication of Remuneration or Expenses.** In the case of Panel members who are simultaneously members of the IDB Access to Information External Panel, the respective Panel member will alert the Secretariat of any remuneration or expense that may be simultaneously payable under the terms of their engagement with the IDB. In such cases, the Secretariat will coordinate with the IDB the allocation of such costs and inform the Panel member accordingly, to avoid duplication of payments.
- 10) Miscellaneous Provisions**
- 10.1 **IDB Invest Property.** All materials produced or acquired by the Panel as part of their functions and these Procedures shall remain the property of IDB Invest. All information provided to or obtained by Panel members, in their capacity as Panel members, should not be further disclosed or distributed without the prior written consent of IDB Invest, unless the information is classified by IDB Invest as “public” and has been publicly disclosed. IDB Invest retains the exclusive right to publish or disseminate, in any of its official languages, reports arising from the above-mentioned materials.
- 10.2 The Panel members must destroy all documents received in the course of the discharge of their functions, in accordance with these Procedures and/or at the direction of IDB Invest. Only the Secretariat will be authorized to keep and maintain a record of the requests for review and the Panel’s decisions thereof.