



TERMS OF REFERENCE

Terms of reference for audit of IFC

CAO Compliance

Ref: C-I-R9-Y12-F165

April 16, 2013

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**Avianca S.A./ Colombia**

**Case of**

Complaint from Global Unions on behalf of unions representing employees of Avianca

**About CAO**

CAO (Office of the Compliance Advisor/Ombudsman) is an independent office that reports directly to the president of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance arm of CAO, to appraise whether the concerns raised in the complaint merit a compliance audit of IFC/MIGA.

CAO's compliance mandate is to audit IFC, and how IFC assured itself of the environmental and social performance of its investments. The focus of this process is thus on IFC's appraisal and supervision of an investment, and whether or not IFC complied with its own policy provisions. CAO does not audit IFC's client.

CAO discloses the findings of its compliance appraisal in an appraisal report to inform the president and boards of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

For more information about CAO, please see [www.cao-ombudsman.org](http://www.cao-ombudsman.org)



## **Background to the investment**

Avianca (“the Company/Client”) is one of the largest airlines in Latin America and the largest in Colombia, operating from its main base at El Dorado International Airport, Bogota. IFC invested in the company in 2009 with a view to supporting it to renew its fleet, reduce costs, improve efficiency and safety as well as provide better passenger service.

IFC’s commitment to the company totaled US\$50 million comprising a subordinated (or C) loan of US\$15 million and a straight senior (or A) loan of US\$35 million disbursed in November 2008 and July 2009 respectively.

Since its merger with San Salvador based Taca Airlines in 2009, Avianca has been a subsidiary of a holding company, AviancaTaca Holding S.A., which in turn is owned by Synergy Group Corp., the Brazil based conglomerate which controlled Avianca at the time of the IFC investment. Synergy Group holds approximately two-thirds of the shares of AviancaTaca while the original owners of Taca have a one-third stake in the merged group.

The complaint in this case was drafted by International Trade Union Confederation (ITUC) in cooperation with the International Transport Workers Federation (Global Unions) on the basis of consultation with national level unions (ACAV/ACDAC) representing employees of Avianca. The key allegations of the complaint included:

- That Avianca has violated IFC Performance Standard 2 (PS2) – Labor and Working Conditions – in particular by discriminating against union members and taking various measures to discourage union membership;
- That IFC failed at various stages in the project cycle to properly manage issues related to compliance with PS2 at Avianca;
- That IFC and/or Avianca failed to disclose documents as required by the IFC Performance Standards and Policy on Disclosure of Information;
- That IFC failed to conduct a rigorous assessment of PS2 compliance at Taca Airlines subsequent to its 2009 merger with Avianca.

Having reviewed the complaint and related documentation CAO concludes that a number of issues raised by the Complainants merit further investigation, CAO decided in January 2013 to conduct an audit of IFC’s environmental and social performance in relation to this investment.

## **Scope of the Audit**

The focus of compliance auditing is on IFC, and how IFC assured itself of project environmental and social performance at appraisal and during supervision.

As set out in CAO’s appraisal report the focus of the compliance audit will be the following:

- a) whether IFC exercised due diligence in its review and supervision of the PS2 risks attached to the Project; in particular
  - whether IFC's approach to PS2 issues during the E&S review process was commensurate to risk and otherwise compliant with relevant policies and procedures;
  - whether IFC was in a position to make an informed judgment as to the likelihood that the investment would meet the requirements of PS2 prior to disbursement; and
  - whether IFC's record of supervision constituted an adequate and timely response to specific concerns being raised by unions regarding the client's PS2 performance.
- b) whether IFC policies, procedures and staffing structures provide a robust framework for the advancement of the objectives of PS2 in its clients.

The scope of the audit also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

### **Audit Criteria, Approach and Preliminary Timeline**

The audit criteria are the conditions for IFC's involvement, including IFC policies, performance standards, guidelines, procedures, and other requirements. Specifically these include the IFC's Policy and Performance Standards on Environmental and Social Sustainability (2006); relevant International Labour Organization and United Nations Conventions (as set out in Performance Standard 2) and applicable provisions of national law.

In the context of this audit CAO also notes the recent publication of the World Bank's *World Development Report 2013* which emphasizes the importance of 'good jobs' in the private sector as a driver of economic and social development. For IFC, a 'good job' has been defined as one which reflects the core elements of PS2, "and recognizes that the pursuit of economic growth through employment creation and income generation should be accompanied by protection of the fundamental rights of workers."<sup>i</sup>

The approach to the audit is described in the CAO Operational Guidelines (April 2007), and states that the working definition of compliance auditing adopted by CAO Compliance is as follows:

A compliance audit is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the audit criteria.

The audit will typically be based on a review of documents, interviews, observation of activities and conditions, or other appropriate means. The verification of evidence is an important part of the audit process.

The preliminary time schedule is for CAO to have a draft audit report ready by August 2013. CAO's Operational Guidelines state that the draft audit report is to be circulated to senior management of



IFC and all relevant departments for factual review and comment. Comments should be submitted in writing to the CAO within 15 working days of receipt by the departments. Upon receiving comments on the draft, CAO Compliance finalizes the report. The final report is submitted to the senior management of IFC for a response. The audit report and any response from IFC is forwarded to the Office of the President of the World Bank Group. Once the President is satisfied with the response by IFC management, the Office of the President provides clearance for the audit report and the response. After clearance, CAO Compliance shares the audit report and the management response with the World Bank Group Board and discloses both documents on the CAO Web site.

As per its established practice CAO will engage an audit panel to work with it on this task. For this particular audit, CAO considers the following as necessary for the audit panel;

- Significant expertise in relation to issues of labor standards and working conditions, particularly in the context of emerging economies.
- Knowledge of IFC's Performance Standards, particularly Performance Standard 2, as well as applicable Environmental and Social Review Procedures.
- Experience and knowledge of compliance auditing.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.
- Relevant country and / or regional experience.

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<sup>i</sup> *IFC Jobs Study: Assessing Private Sector Contributions to Job Creation and Poverty Reduction* (2013), p.131.