

CAO ASSESSMENT AND CONCLUSION REPORT

**Regarding a Complaint in Relation to
IFC's Investment in Asyaport Liman Anonim Sirketi in Türkiye
(IFC 32902 & 37619)**

October 2023

Office of the Compliance Advisor Ombudsman (CAO)
for
the International Finance Corporation (IFC) and the
Multilateral Investment Guarantee Agency (MIGA)
www.cao-ombudsman.org

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism of the International Finance Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), members of the World Bank Group. We work to facilitate the resolution of complaints from people affected by IFC and MIGA projects in a fair, objective, and constructive manner, enhance environmental and social project outcomes, and foster public accountability and learning at IFC and MIGA.

CAO reports directly to the IFC and MIGA Boards of Executive Directors. For more information, see www.cao-ombudsman.org

About CAO Assessments

Any person who believes they may be harmed by an IFC or MIGA project can lodge a complaint to CAO. We apply three simple eligibility criteria to accept a complaint. For eligible complaints, we then assess the concerns with the complainant(s), project sponsor, and other relevant stakeholders.

Once a complaint is determined to be eligible, we review the concerns raised in it. This assessment is conducted in consultation with the complainant, IFC and MIGA client and project teams, and other relevant stakeholders.

Purpose

The objective of the CAO assessment process is to develop a thorough understanding of the issues the complaint raises, work to understand all perspectives, engage with all key stakeholders to the complaint, consult with them to determine the process they choose to address the complaint, and consider the status of other grievance resolution efforts made to resolve the issues raised.

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ACRONYMS

Asyaport	Asyaport Liman Anonim Sirketi
CAO	Office of the Compliance Advisor Ombudsman
EBRD	European Bank for Reconstruction and Development
EIA	Environmental Impact Assessment
IFC	International Finance Corporation
GTL	Global Terminal Limited
MIGA	Multilateral Investment Guarantee Agency
TIL	Terminal Investment Limited
TILH	Terminal Investment Limited Holding
THL	Terminal Holding Limited

1. OVERVIEW

On January 15, 2023, a complaint was lodged with CAO by a resident of Barbaros village (“the complainant”). The complaint raised concerns related to the Asyaport container terminal (“the terminal”), which is located on the Marmara Sea near Barbaros village, Tekirdag Province, Türkiye. The complainant claimed that they¹ were suffering from the adverse impacts of the construction and operational activities of the terminal, that were taking place at the time of the complaint filing. CAO found the complaint eligible on June 9, 2023, and began the assessment of the complaint. During the assessment process, the complainant discontinued their communication with CAO, citing safety issues as the main concern, and withdrew themselves from the assessment process. Consequently, the case was closed at the Assessment stage.

2. BACKGROUND

2.1 The Project

The terminal is a 70%-30% joint venture between Global Terminal Limited (GTL) and the Turkish Soyuer family. GTL is a wholly owned subsidiary of Terminal Investment Limited (TIL). TIL is a wholly owned subsidiary of Terminal Investment Limited Holding (TILH). TILH was established in 2000 and has been domiciled in Luxembourg since 2016. TILH is owned by Terminal Holding Limited (THL, 57.3%), Global Infrastructure Partners (32.7%) and GIC Private Limited (10%). THL is fully owned by Mediterranean Shipping Company Holding S.A., domiciled in Switzerland.

In 2013, along with its co-financiers the European Bank for Reconstruction and Development (EBRD and IsBank, IFC committed a \$75 million loan over 10 years for the construction of the terminal. In 2019, a follow-up investment of \$12 million from IFC, along with another \$12 million from EBRD, was approved for the purchase of new equipment for the terminal to reach full design capacity and increase efficiency. Asyaport has been an IFC client since 2013 and prepaid the loan to IFC on February 24, 2023. The prepayment took place in February 2023 after the complaint was lodged with CAO on January 15, but prior to the CAO making an eligibility decision about the complaint and its communication with IFC.

At the time of IFC’s investment, IFC’s estimation of the development impact of the project was that it would help facilitate trade between Black Sea countries and Mediterranean and further afield countries, by developing a much-needed efficient deepwater transshipment container terminal. The project would also create direct and indirect employment opportunities and increase revenues for the Government of Türkiye through bolstered economic activity and higher tax payments, and royalty and lease payments. According to IFC, that would improve the port infrastructure to facilitate Türkiye’s growing share of international trade and help the country realize future gains from developing water transport, which, when compared to road transport, has lower freight rates, more capacity, lower social costs from fewer road accidents, and less environmental impact.

The Project was classified as Category B.

2.2 The Complaint

A complaint was lodged with CAO on January 15, 2023, by a resident from the Barbaros village, who alleged a number of social and environmental impacts that the residents were

¹ In order to keep the identity of the complainant fully private and adhere to the request for confidentiality, neutral gender terms are used throughout this report.

suffering from the construction and activities of the terminal. The details of these complaints are explained further below.

3. ASSESSMENT SUMMARY

3.1 Methodology

CAO's assessment aims to gain a better understanding of the issues and concerns raised in the complaint through discussion with the complainant(s), IFC client(s) and/or subclient(s), and other relevant stakeholders. CAO explains the options available to the parties and helps them determine whether they wish to initiate a CAO-facilitated Dispute Resolution process or a Compliance process to address the issues raised in the complaint.

Appendix A provides additional information on the steps of the Complaint Handling Process.

In this case, CAO's assessment of the complaint included:

- a desk review of project documentation;
- email communications with the complainant;
- virtual meetings with the representatives of Asyaport; and
- virtual meetings with IFC's project team and with IFC's Stakeholders Grievance Redress team.

The CAO assessment process does not entail a judgment on the merits of the complaint; rather, it seeks to understand the facts and empower those involved to make informed decisions on how to address the issues raised. The issues raised in the complaint and during assessment by the complainants and IFC's client are described below.

3.2 Summary of Views

Complainant's perspective

The complainant shared that the terminal has been a long-standing source of problems for the residents of the Barbaros village. The complainant stated that the construction and activities of the terminal are having a detrimental environmental impact on its surroundings, including damage to the nearby beaches and depletion of the local fish population in the surrounding area.

The complainant explained to CAO that the safety of community members, particularly children, is at risk from the unsafe transport and storage of containers of the terminal in their neighborhoods; and the employees are working in unsafe conditions at the terminal.

The complainant did not want their identity to be revealed and indicated that they are concerned for their safety and associated risks for bringing this complaint forward to CAO.

Company's perspective

The company expressed its disagreement with CAO's eligibility decision and raised concerns about the eligibility of post-IFC exit complaint. In relation to the complainants' allegations, they explained that there had been a thorough review of the environmental impact that the terminal extension would have before the start of the additional pier construction. They shared that a "Environmental Impact Assessment (EIA)," which is a national regulatory requirement, has

been prepared in 2021² for the analysis and evaluation of the permanent or temporary potential impacts of the project and the effect on the environment. During the EIA process, stakeholders, affected community members and other interested parties, were given the opportunity to raise their environmental concerns. The Ministry of Environment Urbanization and Climate Change completed its review, which included the above-mentioned public consultation process, and determined that the project was proceeding in a manner that was in line with the environmental regulations. They are of the view that there has been no adverse impact on the surrounding environment and that such allegations are unsubstantiated. The consequent environmental permit for the expansion had been issued on 17th February 2022, by the Ministry of Environment and Climate Change of Turkiye.

The company's view is that the safety concerns raised by the community are unrealistic. According to the company, the terminal operator cannot store containers outside the port, as the port area is securely bound. The Turkish customs office also inspects the terminal on a regular basis, and such placement of containers and any safety concerns would have been raised and resolved if they occurred.

Additionally, the company disagreed that the workers employed at the terminal are working in unsafe conditions. They claimed that the Asyaport is one of the best performing terminals in the Mediterranean region when considering the frequency and severity of accidents that take place in terminals. The company did not agree with the safety concerns raised, but expressed their willingness to collaborate with the CAO to address any identified issues.

4. ASSESSMENT CONCLUSION

During the assessment process, the complainant discontinued their communication with CAO, citing safety issues as the main concern, and withdrew themselves from the assessment process. Consequently, the case is closed at the Assessment stage.

² Asyaport informed CAO that the English version of the most recent EIA was finalized on February 17, 2022.

5. APPENDIX A. CAO COMPLAINT-HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is carried out by CAO Dispute Resolution specialists. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function or whether the case should be reviewed by CAO's Compliance function.

As per the IFC/MIGA Independent Accountability Mechanism (CAO) Policy,³ the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgment** of receipt of the complaint.

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of CAO (no more than 15 business days).

Step 3: **Assessment:** Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 90 business days, with the possibility of extension for a maximum of 30 additional business days if after the 90-business day period (1) the parties confirm that resolution of the complaint is likely; or (2) either party expresses interest in dispute resolution, and there is potential that the other party will agree.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's Dispute Resolution function is initiated. The dispute resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected.⁴

OR

Compliance Appraisal/Investigation: If the parties opt for an investigative process, the complaint is transferred to CAO's Compliance function. The complaint is also transferred to the Compliance function when a dispute resolution process results in partial or no agreement. At least one must provide explicit consent for the transfer, unless CAO is aware of concerns about threats and reprisals. CAO's Compliance function reviews IFC/MIGA's compliance with environmental and social policies, assesses related harm, and recommends remedial actions where appropriate following a three-step process. First, a compliance appraisal determines whether further investigation is warranted. The appraisal can take up to 45 business days,

³ For more details on the role and work of CAO, please refer to the IFC/MIGA Independent Accountability Mechanism (CAO) Policy: <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/889191625065397617/ifc-miga-independent-accountability-mechanism-cao-policy>

⁴ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public that CAO Dispute Resolution has concluded the dispute resolution process and transferred it to CAO Compliance for appraisal.

with the possibility of extending by 20 business days in exceptional circumstances. Second, if an investigation is warranted, the appraisal is followed by an in-depth compliance investigation of IFC/MIGA's performance. An investigation report will be made public, along with IFC/MIGA's response and an action plan to remediate findings of noncompliance and related harm. Third, in cases where noncompliance and related harm are found, CAO will monitor the effective implementation of the action plan.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**