



**May 15, 2019**  
*Office of the Compliance Advisor Ombudsman (CAO)*

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## **COMPLIANCE APPRAISAL: SUMMARY OF RESULTS**

*Meridian Port Services Limited (IFC Project # 36706)*  
*Ghana*

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### *Complaint 1*

Meridian Port Services Limited (“MPS” or “the client”) is 70% owned by a joint venture between APM Terminals (“APMT”) and Bolloré Africa Logistics (“Bolloré”), and 30% owned by the Ghana Ports and Harbours Authority (“the Port Authority”).

To support the implementation of the client’s project involving the development and operation of a new container terminal in the Port of Tema, Ghana, in March 2016, IFC approved a USD 250-million A-loan as well as an additional USD 658-million B-loan to be mobilized from commercial banks and other international financial institutions.

In February 2018, CAO received a complaint from the owner of the Ave Maria Resort and Wellness Centre (“AVM” or “the complainant”) in relation to the port project. The complainant’s business was in the process of being acquired as part of the development of the port. The complaint raised issues of compliance with IFC’s land acquisition policies, alleging the premature termination of land lease agreement with the Port Authority and inadequate compensation for impacts on the complainant’s business. She also raised allegations of intimidation and forced removal to make way for the implementation of the project.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding environmental and social (E&S) outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the concerns raised by a complaint, results of a preliminary review of IFC’s E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response.

The complaint to CAO raises concerns about the Port Authority prematurely terminating the lease agreement of land on which her resort was located. Hence, she alleges that, contrary to PS5 requirements, she was forced to vacate the premises without prior compensation. She further alleges that, after a long-drawn-out court case, she was not awarded full compensation for rebuilding her business as recommended by the court appointed valuator, AESL. Thus, the complainant believes she was not compensated following the requirements of IFC’s PS5.

CAO found documentary evidence that the IFC was aware of the impact of the port expansion project on the resort during the pre-investment phase. IFC engaged with its client on the issue and accordingly included a remedial action in the ESAP to ensure that the resort owner would be compensated in line with PS5 requirements. Though the client was not in direct negotiations with the complainant, the negotiation process was supervised by IFC. There is documentary evidence that the client was advised by IFC to leverage their position and ensure that the negotiation

process and agreed compensation paid by the Port Authority would be consistent with PS5 requirements.

As the parties – the complainant and the Port Authority – could not reach an amicable solution, the matter was referred to the court for resolution. Subsequently, the court ordered: (1) the complainant to vacate the premises for the project to proceed; (2) the Port Authority to sign an undertaking committing to paying the compensation once a ruling was made; and (3) AESL, an independent valuator was appointed to determine compensation to be paid. It is documented that AESL was provided with PS5 requirements to guide its valuation of AVM and assess compensation to be paid. Thereafter, AESL submitted a valuation report with estimated compensation value of 19 million Ghana Cedis (USD 4 million). Upon review, the court awarded a sum of 12.7 million Ghana Cedi (approx. USD 2.7 million), which was paid over three installments and with final payment made to the complainant in September 2018. IFC conducted an analysis of the court's decision against relevant PS5 requirements and concluded that the outcome was consistent with relevant PS5 requirements.

Following a preliminary review of IFC's E&S performance in relation to this investment, CAO has determined that IFC's approach to the appraisal and supervision of this project in relation to the issues raised in the complaint, does not meet the threshold of raising substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC that would warrant a compliance investigation. In reaching this conclusion CAO notes: (a) that only one land owner, the complainant, is impacted by the project, and (b) that IFC reached a reasoned conclusion that the compensation awarded by the court was consistent with PS5 requirements. As a result, in accordance with its Operational Guidelines, CAO has decided to close this case.

## **About CAO**

*CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.*

CAO (Office of the Compliance Advisor Ombudsman) is an independent post 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 arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

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

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## Acronyms

<b>Acronym</b>	<b>Definition</b>
AESL	Architectural Engineering Services Limited
APMT	APM Terminals
AVM	Ave Maria Resort
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
ESIA	Environmental & Social Impact Assessment
ESAP	Environmental and Social Action Plan
ESRS	Environmental and Social Review Summary
GPHA	Ghana Ports and Harbours Authority
IFC	International Finance Corporation
LVB	Land Valuation Board
MIGA	Multilateral Investment Guarantee Agency
MPS	Meridian Port Services
PS	Performance Standards (IFC)

## **I. Overview of the Compliance Appraisal Process**

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## II. Background

### Investment

The project involves the development and operation of a new container terminal in the Port of Tema, Ghana, by Meridian Port Services Limited (“MPS” or “the client”). The port is located approximately 30 km east of the capital city, Accra. MPS is 70% owned by a joint venture between APM Terminals (“APMT”) and Bolloré Africa Logistics (“Bolloré”), and 30% owned by the Ghana Ports and Harbours Authority (“the Port Authority”). The client has been operating in Tema for over 10 years under a 20-year concession granted in 2004, and a concession extension agreement was concluded in June 2015 to build the new container terminal (the “new terminal”) in phases.<sup>1</sup>

According to IFC, the project represents investments related to Phase 1A of the construction of the new terminal, which consists of: (i) constructing a 700-meter quay for two container berths; (ii) creating a 70-ha yard; (iii) constructing a 3.5-kilometer breakwater; and (iv) dredging up to 16.9 meters.<sup>2</sup>

The project was categorized A,<sup>3</sup> as it was expected to have potential significant diverse E&S impacts, including (i) coastal erosion and sedimentation / accretion, potentially affecting an ecologically sensitive Ramsar site; (ii) sediment mobilization and seawater quality effects due to dredging and reclamation; (iii) increase of truck and vessel traffic due to construction and operation; (iv) influx of job seekers and management of community expectations; (v) resettlement of a resort; and (vi) effect on a natural feature (a rock) of cultural significance.<sup>4</sup>

The project was estimated to cost approximately USD 1.4 billion to be financed by MPS and a syndicate of lenders led by IFC. According to IFC’s project documentation, the IFC Board approved a USD 250-million A-loan in March 2016, as well as an additional USD 658-million B-loan to be mobilized from commercial banks and other international financial institutions.

### Complaint and CAO Assessment

In February 2018, CAO received a complaint from the owner of the Ave Maria Resort and Wellness Centre (AVM) in relation to IFC’s investment in the project. The complaint raised issues of compliance with IFC’s land acquisition and resettlement policies, alleging that they were given a short notice to vacate the property (AVM), and that compensation would be discussed at a later stage. They further raised allegations of intimidation and forced removal to make way for the expansion and construction of the project.<sup>5</sup>

CAO’s Assessment Report, completed in November 2018, provides further details on the complainant’s and the client’s perspective.<sup>6</sup>

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<sup>1</sup> IFC, Summary of Investment Information, Project #36706, October 2015 - <https://goo.gl/T2uvWg>

<sup>2</sup> *Ibid.*

<sup>3</sup> Per IFC’s 2012 Sustainability Policy, a project is categorized A when it involves “business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented.” (para. 40)

<sup>4</sup> IFC, Environmental & Social Review Summary, Project #36706, October 2015 - <https://goo.gl/X9N6Kj>

<sup>5</sup> CAO, MPS-01/Tema, Complaint, February 2018 - <https://goo.gl/5tt5sA>

<sup>6</sup> CAO, MPS-01/Tema, Assessment Report, November 2018 - <https://goo.gl/QBxAYN>

### ***Complainant's perspective***

The complainant alleges that in 2002, the Port Authority awarded her a renewable 25-year lease to create a recreational center with a restaurant and boutique hotel from the existing beach club infrastructure within the existing port. The lease did not make provisions for early termination. Upon obtaining the lease, she renovated the existing infrastructure and started operating AVM.

In 2014, the complainant notes to have been informed by the Director of the Port Authority about the Tema Port Expansion Project. However, she claims to have been assured that AVM would not be affected by the project. On the contrary, she was later informed by Port Authority officials that AVM would be affected and in March 2015, she received a written notice to vacate the premises within two months. The complainant further explained that in 2015, she met with IFC during the pre-investment appraisal visit and she was assured that she would not be forced to vacate the premises without being compensated first.

She further claims that, following legal advice to not leave the premises, the Port Authority got armed guards to intimidate her and prevent people from gaining access to AVM. She alleges to have been granted a court injunction which deescalated the situation. The court also encouraged her and the Port Authority to seek an out-of-court settlement. Hence, negotiations on appropriate compensation for relocating her business began. Both parties conducted separate valuations of the property to determine the appropriate compensation amount. The valuations conducted by the two parties were starkly different thus they reached an impasse. According to the complainant, the matter was referred to court in late 2017. The court resolution process included: (1) an order for the complainant to vacate the premises as the port expansion was of national interest, and (2) the ordering of the property valuation by an independent valuator.

Subsequently, three valuations were submitted to the court: (1) AVM's valuation of approximately 18 million Ghana Cedis (USD 3.8 Million); (2) the Port Authority's valuation of approximately 1.8 million Ghana Cedis (USD 382,000); and (3) the independent valuation from Architectural Engineering Services Limited (AESL), the court-appointed valuator, of approximately 19 million Ghana Cedis (USD 4 million). Pending the payment of compensation, it is reported that the Port Authority ordered the complainants to vacate the premises in January 2018. However, the complainant felt compelled to move prior to receiving compensation, and was informed by the Port Authority that compensation would be paid once the court had made a decision on the submitted valuations. The premises were subsequently demolished.

The complainant expressed concern about the loss of income due to time lapse between vacating the property, the court judgment on compensation, and receiving compensation from the Port Authority, which had no definitive date.

### ***Client's perspective***

The client explained that the Port Authority is responsible for providing concession area to the client for the port expansion project. AVM was located in the middle of the project area, and therefore could not remain on the premises. When the client took over the site, they waived one of the four conditions precedents for the go-ahead on the project - namely the requirement to take ownership free of encumbrance. This was intended to allow the Port Authority and the complainant time to find an amicable settlement regarding the complainant vacating the premises. The client maintains that throughout the discussions between the Port Authority and the complainant, it was in constant communication with the Port Authority to ensure that the IFC Performance Standards (PS) were adhered to when dealing with relocation and/or compensation of the complainant. The client also notes to have disassociated themselves from the Port Authority

employing intimidation tactics by use of armed guards, and the Port Authority was informed that this was not something that they could condone.

To facilitate compensation, the Port Authority conducted a valuation of the client's property to determine the appropriate compensation. However, the client explained that on review of the valuation conducted by the Port Authority, it was noted that the valuation formula used was not appropriate for the current situation and did not take into account IFC's Performance Standards. Subsequently, both parties failed to resolve the matter and the case was back to the court. The court ruled that the complainant had to vacate the premises because the port expansion project was of national interest. The client also confirms that an independent valuator, AESL was appointed by the court. The independent valuation for compensation of approximately 19 million Ghana Cedis (USD 4 million) was submitted. The client's understanding is that the Port Authority, being a public body accountable to parliament, reviewed the valuation to satisfy themselves that the proper formulas had been used. the Port Authority per its Survey Instructions to the independent valuator, requested that IFC Performance Standard 5 (PS5) be used as a basis for assessment. the Port Authority also tendered PS5 in court. the Port Authority admitted that their initial valuation did not factor in PS5 requirements, hence their subsequent actions in that regard. Pending the final court decision on compensation, the complainant still had to vacate the premises and the Port Authority swore an affidavit undertaking to pay compensation to the complainant in a timely manner.

The client also stated that the IFC team monitored the situation on a monthly basis, visited the site and held meetings with the Port Authority several times.

### ***Conclusions of the CAO Assessment***

The court issued its judgement in June 2018. The compensation awarded approximately two-thirds of the amount suggested by the court appointed valuator. The court also granted the Port Authority's request to pay the compensation in three installments.

The client and the complainant agreed that paying the compensation in installments was not in the latter's best interest. Thus, they both indicated an interest in addressing the payment arrangement through a CAO-facilitated dispute resolution process. Additionally, the complainant requested the client to consider discussing additional compensation. However, after internal deliberation, the client was unwilling to engage on the issue of additional compensation. Likewise, the issue of whether or not to pay in installments was rendered redundant given the passage of time and the fact that the Port Authority made the final installment payment in September 2018. Consequently, the complaint was referred to CAO's compliance function, in accordance with CAO's Operational Guidelines.<sup>7</sup>

### **III. Analysis**

This section outlines IFC's E&S policies and procedures as they apply to this investment. It then analyses IFC's performance against these standards during pre-investment review and supervision of the project and in the context of the issues raised by the complainants.

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<sup>7</sup> *Ibid.*

## **IFC Policy Framework and Requirements**

### ***IFC Policy Framework***

IFC's investment in the project was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework. Through the Sustainability Policy, "IFC seeks to ensure, through its due diligence, monitoring, and supervision efforts, that the business activities it finances are implemented in accordance with the requirements of the Performance Standards".<sup>8</sup>

At the pre-investment stage, IFC reviews the E&S risks and impacts of a proposed investment and agrees with the client on measures to mitigate these risks in accordance with the Performance Standards. Where a project is expected to result in involuntary resettlement – in this case, economic displacement (loss of assets or access to assets that leads to loss of income sources or other means of livelihood), as a result of project-related land acquisition and/or restrictions on land use, IFC's Performance Standard 5 (PS5: Land Acquisition and Involuntary Resettlement) provisions would be triggered.

Where IFC identifies gaps in the client's compliance with PS requirements, IFC agrees an E&S Action Plan (ESAP) with the client as part of IFC's investment.<sup>9</sup> Following IFC's investment, IFC supervises the client to ensure compliance with the Performance Standards and other specific E&S requirements agreed with the client, including agreed ESAP items.<sup>10</sup>

### ***Performance Standard 5 Requirements***

The main objective of PS5 is to avoid, or if not possible, minimize adverse social and economic impacts from land acquisition. This is accomplished by:

- **Developing a Resettlement Action Plan (RAP) and/or Livelihood Restoration Plan for projects involving physical or economic displacement.**

The RAP has to be prepared "regardless of the number of people affected", and "will be designed to mitigate the negative impacts of displacement; identify development opportunities; develop a resettlement budget and schedule; and establish the entitlements of all categories of affected persons" (para. 19). In the case of projects involving economic displacement, the client will "develop a Livelihood Restoration Plan to compensate affected persons and/or communities and offer other assistance that meet the objectives of this Performance Standard" (para. 25). "The mitigation of economic displacement will be considered complete when affected persons or communities have received compensation and other assistance according to the requirements of the LRP and this PS". (*Ibid.*)

- **Avoiding expropriation and encouraging the use of negotiated settlements.**

PS5 states that "to help avoid expropriation and eliminate the need to use governmental authority to enforce relocation, clients are encouraged to use negotiated settlements" (para. 3). It further requires that "the client will take possession of acquired land and related assets only after compensation has been made available" (para. 9).

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<sup>8</sup> IFC, 2012, Sustainability Policy, para. 7.

<sup>9</sup> IFC, 2012, Sustainability Policy, para. 28.

<sup>10</sup> IFC, 2012, Sustainability Policy, para. 45. IFC Environmental and Social Review Procedure 6, April 2013.

- **Compensating for loss of assets at full replacement cost and additional assistance to improve, or at least restore livelihoods.**

PS5 provides that “when displacement cannot be avoided, the client will offer displaced communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods ... Compensation standards will be transparent.” (para. 9.). It also requires that “economically displaced persons who face loss of assets or access to assets will be compensated for such loss at full replacement cost” (para. 27). Further, “in cases where land acquisition or restrictions on land use affect commercial structures, affected business owners will be compensated for the cost of reestablishing commercial activities elsewhere, for lost net income during the period of transition, and for the costs of the transfer and reinstallation of the plant, machinery, or other equipment.” (*Ibid.*)

### **IFC’s Pre-Investment Due Diligence and Supervision: Analysis and Discussion**

For the purposes of this compliance appraisal, a key question is whether IFC conducted an adequate pre-investment review of the risks associated with the Project as they relate to the issues raised in the complaint.

#### ***IFC’s Pre-investment Review***

##### **IFC’s appraisal and disclosure of information**

As part of its pre-investment review, IFC conducted a site visit in July 2015 during which meetings were held with several stakeholders including the owner of AVM. The investment was classified as a Category A project due to associated potential significant E&S impacts, including the resettlement of AVM. It is noted that the Port Authority had conducted an Environmental & Social Impact Assessment (ESIA) and MPS had agreed to develop additional studies to ensure compliance with IFC requirements and to implement appropriate measures to mitigate the project’s E&S impacts and risks.<sup>11</sup>

Information disclosed by IFC as part of its Environmental and Social Review Summary (ESRS) noted that the project would be constructed on land owned by the Port Authority, and land to be acquired from a small family-owned business – AVM – located within the project area. IFC understood that AVM was operating under a 25-year lease signed by the owner and the Port Authority in 2002. However, in March 2015, the owner was officially informed that the resort would be affected by the expansion project.<sup>12</sup> IFC’s due diligence documents note that the Port Authority indicated readiness to negotiate with the owner and to compensate for: (i) loss of business; (ii) properties and assets; and (iii) damages due to breach of contract.

The ESRS also notes that the project’s ESIA was reviewed by IFC. It is documented that the ESIA reported that consultations were ongoing between the Port Authority and the management of AVM to ensure an agreement was reached for an acceptable compensation payment. The ESIA Annex<sup>13</sup> includes a “Compensation Framework” which defines the compensation principles:

1. compensation to be paid prior to removal of structure/land entry; and

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<sup>11</sup> IFC, Environmental & Social Review Summary, Project #36706, October 2015 - <https://goo.gl/X9N6Kj>

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.* – ESIA accessible under “Client Documentation”

2. compensation to be at full replacement value or reinstatement cost (the full cost of materials and labor required to reconstruct a structure of similar surface and standing).<sup>14</sup>

To ensure compliance with PS5 requirements, IFC included an ESAP item which required its client to “monitor and report on the terms and the conclusion of the negotiations with Ave Maria resort and, as needed, ... collaborate with [the Port Authority] to achieve outcomes that are consistent with IFC PS5”.<sup>15</sup>

#### Engagement between the complainant and the Port Authority prior to investment approval

According to IFC project documentation, in March 2015, the owner of the AVM hired valuers to conduct an analysis of the worth of the resort business. The compensation valuation methodology comprised the following:

1. **Equivalent reinstatement value:** provision of adequate monetary compensation that will put the owner back in same position as if their assets were not acquired.
2. **Property market value:** defined as “the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in the arm’s-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”
3. **Existing value:** this is stated as the approach to assess the quantum of compensation payable to Ave Maria Holdings.
4. **Miscellaneous value:** claim for disturbance and professional fees incurred.

The compensation payable was estimated at 17,607,590 Ghana Cedis (approx. USD 3,717,158).

In October 2015, the owner filed an injunction against the Port Authority at the High Court to prevent it from breaking the lease agreement and for the right of the complainant to remain on the premises operating the resort. IFC’s documentation notes that, while awaiting the court hearing, the Port Authority was reported to have prevented access to the resort in an attempt to physically repossess the land on which the resort was located. The client is noted to have intervened to diffuse the situation and also informed the Port Authority that forceful removal of the complainant from the property was contrary to IFC requirements. Thereafter, the High Court judge recommended the parties – the complainant and the Port Authority – explore out-of-court settlement. The case was then adjourned.

#### ***IFC’s Supervision***

IFC started supervision of the project after the proposed investment was approved by the IFC Board in March 2016.

#### Engagement between the complainant and the Port Authority prior to IFC supervision visit

According to project documentation, the Port Authority conducted its own valuation of AVM in June 2016 to determine compensation. The official state agency – Land Valuation Board (LVB) –

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

conducted the valuation as it is mandated by Ghanaian law to conduct property valuations for the Port Authority. The following approach was used to determine compensation to be paid:

1. **Depreciated Replacement Cost Approach** - to determine the unexpired interest of the Lessee (Ave Maria Holdings) in the structures, and
2. **The Investment Approach** - to capitalize the profit rent (difference between the market and contractual rent) on the land per se. The land and structures were valued individually to the extent of the interest in the lease.

For the structures, the calculated claims payable to the complainant was estimated at 1,703,600.00 Ghana Cedis (approx. USD 359,649). the Port Authority notes that they offered to pay the complainant for the structures in place, as well as furniture, equipment, machinery, and for disturbance. The Port Authority further asserts that their valuation was in line with PS5 requirements, particularly paras 9, 19 and 25,<sup>16</sup> noting that their Relocation Action Plan considered “compensation at full replacement value and the provision of relocation assistance.”

In September 2016, the complainant submitted its own valuation report to the Port Authority, with an estimated compensation value of 17,607,590 Ghana Cedis (approx. USD 3,717,158). the Port Authority presented a counter offer. However, in November 2016, the complainant rejected the offer on the basis that it did not accurately reflect the value of her business, inconvenience caused and the requirements of PS5.

#### IFC Supervision visit and subsequent negotiations between the complainant and the Port Authority

In October 2016, IFC conducted a supervision site visit and noted that the resort owner had requested a court injunction on the project, but the court had encouraged one-on-one negotiations between the owner and the Port Authority. Subsequently, negotiations led by the Port Authority commenced and were focused on Ghanaian legal requirements. This included evaluation of assets being conducted by valuers from the government side. IFC reiterated the need for the client to conduct its own compensation assessment following PS5 guidelines, and to advise the Port Authority accordingly.

In December 2016, IFC’s supervision documents noted that the negotiations had reached an impasse and that the matter was back in the court for resolution. The client also maintained that a key permit condition for the project included the client implementing the resettlement/compensation framework (ESIA, Annex 7), to ensure adequate compensation was paid for any destroyed structure and like within 6 months from issuance of the construction permit.

Documentation of a supervision visit in May 2017, noted that the client had been actively advising the Port Authority on resolving the compensation matter. IFC thus reiterated the recommendation that the project’s RAP required the client to follow guidance provided by IFC and report on actions taken and proposed next steps to reach a PS5-compliant agreement. The client was required to provide IFC with all relevant documentation including letters, minutes of meetings, and valuation reports. IFC staff also reviewed the client’s security procedures at this point and concluded that access to AVM would not be disrupted.

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<sup>16</sup> PS5 paras 9, 19, 25: [...] “compensation is being provided to physically and/or economically displaced persons for loss of assets at full replacement cost and other assistance [...] compensation provided offers affected persons adequate opportunity to reestablish their livelihoods.”

In September 2017, the High Court ruled for the complainant to vacate the premises within 30 days, as the port extension project was of national economic importance. To resolve the compensation matter, the court appointed AESL to conduct an independent valuation of AVM. The valuation included the assessment of inventory and physical structures. IFC also noted that the Port Authority submitted IFC’s PS5 requirements to AESL for guidance in the valuation.

According to IFC’s supervision documents, the complainant appealed the ruling in October and November 2017 to prevent evacuation prior to being compensated. However, both appeals were dismissed. IFC noted that the Port Authority was ordered by the court to sign an undertaking to pay the compensation that would be awarded by the court.

AESL completed and submitted its valuation report to the court in December 2017. The compensation value was estimated at 19 million Ghana Cedis (approx. USD 4 million). In addition, the Port Authority and the complainant also submitted their respective valuations for consideration to the court. Thereafter, as per previous court ruling, the Port Authority officially wrote to the complainant to vacate the premises. The complainant vacated the premises in January 2018.

A final court ruling was issued in June 2018. In determining the compensation amount to be awarded, the Judge reviewed the three valuation reports presented by AESL, the complainant, and the Port Authority, and noted there were three key items of contention:

1. **Land value:** in calculating the land value based on unexpired lease term, AESL had used 12 years as the period left on the lease term. However, lease documents indicated there was 10 years remaining on the lease and the court adjusted this amount accordingly.
2. **Improvement on land:** the court’s assessment was that the cost rate for improvement of land used by AESL was not based on credible data. In determining a fair rate, the court averaged the highest and lowest of the three-cost rate figures presented in the valuations.
3. **Disturbance:** The court also averaged the highest and lowest of figures presented in the three valuations.

With the above three adjustments added to the rest of the valuation figures from the AESL report, the court awarded the sum of 12.7 million Ghana Cedis (approx. USD 2.7 million) to the complainant. the Port Authority paid the compensation in three installments. The last payment was made in September 2018.

Valuator	Date	Valuation in Ghana Cedis	Equivalent in USD
Complainant (AVM)	March 2015	18 million	3.8 million
Port Authority (GPHA)	June 2016	1.8 million	382,000
AESL (Court Ordered Valuation)	December 2017	19 million	4 million
Court Judgement	June 2018	12.7 million	2.7 million

*Table 1: Valuations of the Ave Maria Resort by different parties*

#### IFC’s supervision post-court ruling

During discussions with CAO in February 2019, IFC reiterated that though the client was not in direct negotiations with the complainant, they were advised to leverage their position and ensure that the negotiation process and agreed compensation with the Port Authority were consistent

with PS5 requirements. To assure itself of compliance, IFC noted that the client submitted monthly updates on how the matter was being addressed and progress being made.

According to IFC, the complainant was required to provide access to AVM's financial records to facilitate the accurate valuation of the business. However, IFC maintains that the complainant was unable to provide the requested documentation and the valuation was based on available information. The business closed down in January 2018 and this was in compliance with the court ruling made in September 2017. Further, IFC maintains that AESL applied PS5 principles to assess compensation for the business and property. However, it was the court's decision not to award the full compensation as assessed by AESL.

IFC documented a review of the court decision against PS5 compensation requirements. IFC's analysis states that the objective of the court was to conduct a fair assessment of full replacement cost. In deciding on compensation, IFC notes that the court identified missing information in the valuation documents provided by AESL, the complainant and the Port Authority. This included a lack of AVM financial records and a lack of information on severance pay due to employees as a result of which the court decided that the full valuation provided by AESL needed to be discounted. IFC's analysis concluded that the compensation awarded by the court was consistent with the requirements of PS5.

#### **IV. CAO Decision**

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

The complaint to CAO raises concerns about the Port Authority prematurely terminating the lease agreement of land on which her resort was located. Hence, she alleges that, contrary to PS5 requirements, she was forced to vacate the premises without prior compensation. She further alleges that, after a long-drawn-out court case, she was not awarded full compensation for rebuilding her business as recommended by the court appointed valuator, AESL. Thus, the complainant believes she was not compensated following the requirements of IFC's PS5.

CAO found documentary evidence that the IFC was aware of the impact of the port expansion project on the resort during the pre-investment phase. IFC engaged with its client on the issue and accordingly included a remedial action in the ESAP to ensure that the resort owner would be compensated in line with PS5 requirements. Though the client was not in direct negotiations with the complainant, the negotiation process was supervised by IFC. There is documentary evidence that the client was advised by IFC to leverage their position and ensure that the negotiation process and agreed compensation paid by the Port Authority would be consistent with PS5 requirements.

As the parties – the complainant and the Port Authority – could not reach an amicable solution, the matter was referred to the court for resolution. Subsequently, the court ordered: (1) the complainant to vacate the premises for the project to proceed; (2) the Port Authority to sign an undertaking committing to paying the compensation once a ruling was made; and (3) AESL, an independent valuator was appointed to determine compensation to be paid. It is documented that

AESL was provided with PS5 requirements to guide its valuation of AVM and assess compensation to be paid. Thereafter, AESL submitted a valuation report with estimated compensation value of 19 million Ghana Cedis (USD 4 million). Upon review, the court awarded a sum of 12.7 million Ghana Cedi (approx. USD 2.7 million), which was paid over three installments and with final payment made to the complainant in September 2018. IFC conducted an analysis of the court's decision against relevant PS5 requirements and concluded that the outcome was consistent with relevant PS5 requirements.

Following a preliminary review of IFC's E&S performance in relation to this investment, CAO has determined that IFC's approach to the appraisal and supervision of this project in relation to the issues raised in the complaint, does not meet the threshold of raising substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC that would warrant a compliance investigation. In reaching this conclusion CAO notes: (a) that only one land owner, the complainant, is impacted by the project, and (b) that IFC reached a reasoned conclusion that the compensation awarded by the court was consistent with PS5 requirements. As a result, in accordance with its Operational Guidelines, CAO has decided to close this case.