



November 20, 2015
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*IFC investment in Bank Alfalah Limited, Pakistan
Project #34773*

Complaint 01

This compliance appraisal considers a complaint regarding an IFC investment in Bank Alfalah Limited (BAFL, or “the Company”). BAFL is a commercial bank in Pakistan, and is the sixth largest private bank in the country. In September 2014, IFC approved an equity investment of up to US\$67.48 million in the Company.

In May 2015, CAO received a complaint from a former employee of the Company whose employment had been terminated in March 2015. The complainant asserts that he was terminated without due process and that he was discriminated against on the basis of his religion. CAO determined that the complaint was eligible in May 2015. The complaint was referred to the CAO compliance function in September 2015 on the basis that the parties did not agree to dispute resolution.

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, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

As noted in previous CAO compliance appraisals, disputes between an employer and individual employees in relation to pay, benefits, or other employment related issues, will not generally raise substantial concerns regarding the E&S outcomes of an IFC investment such that would merit a CAO compliance investigation. Labor related complaints that have proceeded to a CAO compliance investigation have raised concerns regarding adverse impacts of client labor practices at the workforce level, for example in relation to the application of occupational health and safety requirements or anti-union discrimination.

In this case the complainant alleges that he was wrongfully terminated and that he was the subject of discrimination on the basis of his religion. While a resolution of these issues is no doubt important to the complainant, available evidence does not support a finding of substantial concerns regarding the environmental, and/or social outcomes of the project or issues of systemic importance to IFC, such that would merit a CAO compliance investigation. As a result, though identifying questions as to IFC’s appraisal and supervision of Performance Standard 2 (Labor and Working Conditions) in relation to this investment, 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

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Acronyms

Acronym	Definition
BAFL	Bank Alfalah Limited
BTOR	Back to Office Report
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
ESRP	Environmental and Social Review Procedures
FI	Financial Intermediary
HR	Human Resources
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standard
SII	Summary of Investment Information
SME	Small and Medium-sized Enterprise
SSV	Supervision Site Visit

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

Bank Alfalah Limited (BAFL, or “the Company”) is a commercial bank organized under the laws of Pakistan and is the sixth largest private bank in the country. In September 2014, IFC approved an equity investment of up to US\$67.48 million in the Company. As described by IFC, the investment was designed to:¹

- support the Company in growing its conventional and Islamic banking operations, and
- increase penetration into priority areas like SME banking, access to finance, and agribusiness finance.

Complaint and CAO Assessment

In May 2015, CAO received a complaint from a former employee of the Company whose employment had been terminated March 2015.

The complainant claims that:

- His employment was wrongfully terminated by the Company in March 2015, without cause or explanation, and without due process.
- As a member of a religious minority, he did not receive the same treatment in terms of salary increments and promotions as other employees of comparable education, years of experience and performance.
- His employment termination and lack of salary raises and promotion were due to discrimination on religious grounds in the work place.

The complainant asserts that he filed a notice of grievance through to Company’s grievance committee in March 2015, but that he has not received a response. The complainant also asserts that he filed a grievance against the Company in the National Industrial Relations Commission, in June 2015, the outcome of which is pending.

The complainant states that he would like to be reinstated to his former job or within a different department, in a position reflecting his experience, his performance and the salary increases that he believes are due to him for his service.

As set out in CAO’s assessment report,² the Company asserts that:

- It is an equal opportunity employer and that it has processes in place for appropriate employment termination.
- In relation to the particulars of this complaint, it does not see any evidence that due process was not followed, nor does it see evidence of labor discrimination.

The complainant expressed interest in pursuing a dispute resolution process convened by CAO. However, the Company decided not to participate in a dispute resolution process, considering that a legal process had been initiated by the complainant. Given the voluntary nature of CAO’s

¹ IFC Projects Database, BAFL Equity: Summary of Investment Information - <http://goo.gl/WfiPo1> (accessed October 26, 2015)

² CAO Assessment Report: Complaint regarding IFC Investment in Bank Alfalah (September 2015) - <http://goo.gl/VHJekA>

dispute resolution function and in accordance with CAO's Operational Guidelines, the complaint was referred to the CAO compliance function in September 2015.

III. Analysis of IFC Performance

This section outlines the IFC E&S policies and procedures as they apply to the project. It then analyses IFC's performance against these standards during preparation and implementation of the project and in the context of the issues raised by the complainant.

IFC Policies and Procedures

IFC's investment in the Company 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 IFC Sustainability Framework. As stated in the Sustainability Policy, IFC seeks to ensure that IFC-sponsored projects are implemented in accordance with the requirements of the Performance Standards through its due diligence and supervision efforts.³

Performance Standard 2 (PS2) sets the policies for IFC's client in dealing with its workforce. PS2 objectives include:⁴

- To promote the fair treatment, non-discrimination, and equal opportunity of workers.
- To establish, maintain, and improve the worker-management relationship.
- To promote compliance with national employment and labor laws.

IFC implements the commitments set out in the Sustainability Policy through its Environmental and Social Review Procedures (ESRP), which are updated periodically. The BAFL project was approved and currently being supervised under IFC's ESRP as last updated in July 2014.⁵

When financing a project, IFC first conducts an appraisal aimed at assessing the full business potential, risks, and opportunities associated with the investment. Once the project is approved and IFC has invested in a client, the investment is monitored throughout the project cycle to ensure compliance with the conditions in the loan agreement and IFC's policies and standards. This CAO compliance appraisal considers IFC's performance at these two stages in the project cycle as relevant to the issues raised by the complainant.

Pre-investment Environmental and Social Review

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. For the purposes of this compliance appraisal, a key question is whether IFC conducted an adequate pre-investment review of the labor related risks associated with its investment in the Company.

³ Sustainability Policy (2012), para. 7.

⁴ Performance Standard 2: Labor and Working Conditions (2102), "Objectives."

⁵ IFC, Environmental and Social Review Procedure Manual - <http://goo.gl/khgVDd>

Requirements

As required by the Sustainability Policy (2012), IFC's E&S due diligence should be commensurate with the nature, scale, and stage of the business activity, and with the level of E&S risks and impacts (para. 26).

In conducting the E&S review, IFC reviews available information on project E&S risks and impacts; inspects project sites and interviews relevant stakeholders; analyzes project E&S performance against PS requirements and other internationally recognized sources; and identifies E&S gaps and corresponding measures and actions to close them (para. 28). A central principle of the 2012 Sustainability Policy is that "IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time" (para. 22).

Regarding investments through FIs, IFC requires the FI clients to "apply relevant aspects of Performance Standard 2 to their workers" (para. 35).⁶ Relevant to the issues raised in the complaint, PS2 (Labor and Working Conditions) includes the following requirements:

Human Resources Policies and Procedures

- The client is required to adopt and implement human resources policies and procedures appropriate to its size and workforce. The policies and procedures should set out an approach that is consistent with the requirements of PS2 and national law (para. 8).

Non-Discrimination and Equal Opportunity

- The client will base the employment relationship on the principle of equal opportunity and fair treatment. The client will not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements, nor will it discriminate with respect to any aspects of the employment relationship, such as recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices. The client will take measures to prevent and address harassment, intimidation, and/or exploitation (para. 15).
- In countries where national law provides for non-discrimination in employment, the client will comply with national law (para. 16).

Retrenchment

- Prior to implementing any collective dismissals, clients are required to analyze alternatives to retrenchment. Absent viable alternatives to retrenchment, a retrenchment plan will be developed and implemented based on the principle of non-discrimination. The clients is required to comply with legal and contractual requirements related to notification of public authorities, and provision of information to, and consultation with workers (para. 18).

Grievance Mechanism

- The client will provide a grievance mechanism for workers to raise workplace concerns. The mechanism should involve an appropriate level of management and address concerns promptly without any retribution (para. 20).

⁶ IFC's PS Interpretation Note for FIs clarifies that all "FI clients must also manage the working conditions of their workforce in accordance with relevant aspects of Performance Standard 2 on Labor and Working Conditions...In the case of the financial sector this typically relates to employment practices and conditions." See para. IN11 and Sec. IV "Applying Performance Standard 2 on Labor and Working Conditions to the FI's Workforce" in "Interpretation Note on Financial Intermediaries" (2012) - www.ifc.org/IN-FI

IFC's pre-investment review of the Company

The concept of an IFC investment in the Company took shape in early 2014. As a part of the appraisal process, IFC reviewed information provided by the Company related to technical and E&S issues. IFC visited the Company in May 2014 and met with Company's Human Resources (HR) head and reviewed its HR policy handbook (January 2014 version). As explained to CAO by the IFC team, the Company's HR handbook was considered as covering the requirements of PS2. In relation to PS2 non-discrimination requirements, IFC noted that the Company had a documented sexual harassment policy. As explained to CAO by the IFC team, based on their knowledge, the issue of religious discrimination was not considered a significant risk in the banking sector in Pakistan, and thus was not raised. IFC also noted that the client had an internal grievance mechanism. In this context, IFC concluded that the "[Company's] HR practices [were] in conformity with PS2" and no PS2 related issues were included in the Company's Environmental and Social Action Plan.⁷

Project Supervision

IFC is required to monitor a client's E&S performance throughout the life of the investment. For the purposes of this compliance appraisal, a key question is whether IFC adequately supervised the Company's compliance with the requirements of PS2 as relates to the issues raised by the complaint.

Requirements

Project supervision is conducted on the basis of annual E&S Performance Reports⁸ submitted by the client and reviewed by IFC, discussions with the client, and site visits as required by the IFC's ESRP. The frequency and focus of supervision visits is commensurate with the identified risks.⁹ As set out in the ESRP, the purposes of E&S supervision include "to obtain information to assess the status of the client's compliance with the E&S requirements agreed upon; to assess the current level of E&S risk; [and] to provide guidance to clients on how to address E&S risk management issues..."¹⁰

If a client fails to comply with its E&S commitments, IFC will "work with the client to bring it back to compliance, and if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate."¹¹ For FI clients, IFC works with them "to help them address any shortcomings in their ESMS."¹²

In addition to reviewing a client's E&S Performance Reports, IFC conducts supervision site visits (SSVs) to certain clients. The ESRP suggests that IFC prioritizes SSVs to FI clients with high risk or poor E&S Risk Ratings, in the knowledge gap, or in the early stages of ESMS development and implementation.

⁷ IFC Projects Database, BAFL Equity: Summary of Investment Information - <http://goo.gl/WfiPo1>

⁸ The E&S Performance Report describes the details of and evaluate the Company's implementation and operation of the ESMS and its clients' E&S performance during the previous financial year.

⁹ Sustainability Policy (2012), para. 45.

¹⁰ ESRP 9, para.1, version 5, June 3, 2014.

¹¹ Sustainability Policy (2012), para. 24.

¹² Ibid, para. 45.

IFC's supervision of the investment

IFC invested in the Company in December 2014 and conducted a site supervision visit in February 2015. The Company submitted its E&S Performance Report for the year 2014 to IFC in May 2015. In October 2015, IFC completed a review of the Company's 2014 E&S Performance Report together with a Back to Office Report (BTOR) from the February 2015 site supervision visit. At this point, IFC noted that the Company had updated its HR policies on grievance, harassment, discipline and recruitment. The issues raised by the complaint are not discussed in IFC's supervision documentation.

Conclusion

At appraisal, IFC determined that the Company's HR practices were in conformity with IFC's PS2 on labor and working conditions. Based on available information it is unclear to CAO if IFC's review of the Company's HR practices was commensurate to risk.

The IFC team responsible for the project became aware of the complaint to CAO in the course of project supervision. In the context of PS2, the complaint raises potential issues regarding non-discrimination and fair treatment (para. 15), retrenchment (para. 18) and the operation of an effective grievance mechanism (para. 20). Based on available information, it is unclear to CAO whether IFC's supervision of this investment was sufficient to assess compliance with its E&S requirements in relation to these issues.

IV. 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, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

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In this case the complainant alleges that he was wrongfully terminated and that he was the subject of discrimination on the basis of his religion. While a resolution of these issues is no doubt important to the complainant, available evidence does not support a finding of substantial concerns regarding the environmental, and/or social outcomes of the project or issues of systemic importance to IFC, such that would merit a CAO compliance investigation. As a result, while identifying questions as to IFC's appraisal and supervision of Performance Standard 2 (Labor and Working Conditions) in relation to this investment, CAO has decided to close this case. In line with CAO Operational Guidelines, this decision does not preclude an investigation of IFC's application of PS2 to this investment, should additional facts be presented in the context of a future compliance appraisal.