

December 17, 2018

Mr. Osvaldo L. Gratacós
Compliance Advisor Ombudsman
International Finance Corporation
2121 Pennsylvania Avenue, N.W.
Washington DC 20433

Subject: IFC Management Response to CAO Investigation Report on Bidco Bev. & Det., Kenya (Project #33385)

Dear Mr. Gratacós:

Thank you for the opportunity to respond to the CAO compliance investigation report in relation to IFC's 2014 investment in Bidco Bev. Det., Kenya (#33385). This investment supported the extension of the client's existing detergent facility at Thika, and the development of a new beverage facility in Ruiru, Kenya. The issues in the CAO complaint focus on the Thika site and relate to casual workers and terms of employment; occupational health and safety (OHS); union recognition; and grievance procedures and discrimination.

During due diligence, IFC identified several key E&S issues, including OHS; life and fire safety; emissions; community engagement; and especially supply chain sustainability, which included the challenging issue of palm oil. Following IFC's due diligence, IFC and the client agreed a 13-part Environmental and Social Action Plan (ESAP), covering issues for improvement related to management systems, staff capacity, adherence to local labor laws, reporting, OHS, emissions, driver safety, stakeholder engagement, and human resources. In addition to multiple visits by IFC's Portfolio Team, IFC's E&S specialist has visited the client three times to supervise the client's ESAP implementation.

Among the range of E&S issues considered, casual worker rights, contracts, and benefits merited further scrutiny and documentation at the pre-investment stage. In the period between commitment (2014) and first disbursement (2016), which coincided with the client's 2015 review and conversion of 1200 out of 1403 casual workers to fixed-term contracts, IFC had limited information about the process and the disputes that arose. While in many ways the conversion was beneficial – providing stability and improved employment terms for converted workers – the information regarding the conversion process that IFC obtained during this period was insufficient and diminished its ability to help the client consider retrenchment requirements applicable under the Kenya Employment Act, which exceed PS2 requirements for non-employee workers.

To better inform an evaluation of these labor issues, the client has agreed to undertake a review of its current labor-related policies and procedures, and of the 2015 conversion of casual workers. The retrospective component seeks to ensure that PS2 requirements (particularly regarding retrenchment) have been satisfied for the affected employees, and that all workers, including those converted to contract employment, have been paid adequate compensation in compliance with Kenyan labor law as interpreted by the Employment and Labour Relations Court of Kenya in response to associated complaints.

On OHS, IFC agrees with the assessment that the client provides an OHS environment above the standard encountered in many other Kenyan factories. During supervision, IFC has intensified efforts to improve client reporting, and commits to provide additional support to the client on Personal Protective Equipment (PPE) policies and use, as well as prevention controls, and on accident and near-miss reporting, root cause analysis, and corrective measures.

IFC also welcomes recognition of its identification of shortcomings in the client's grievance procedures and requested corrective actions that resulted in positive improvements. A revised grievance procedure was finalized in June 2018; IFC will continue to engage with the client on its implementation and effectiveness.

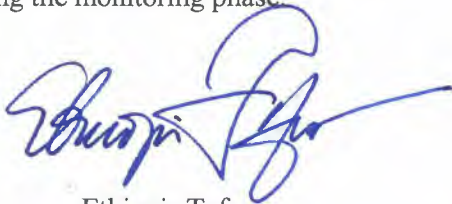
At a systemic level, IFC notes that labor issues can be a recurrent challenge in its investments. IFC has begun updating its Labor Handbook to improve guidance to staff and will include issues related to worker classification and associated rights and benefits. IFC now regularly contracts external labor experts to support specialists on projects with complex labor issues.

While IFC requires its clients to comply with local law, the purpose of its Performance Standards is to promote a consistent, risk-based and principled approach to E&S issues across all the countries in which it operates, reflecting good international industry practice, against which it can perform robust independent due diligence and supervision. In contrast, IFC does not procure expertise on all aspects of the dynamic and diverse local E&S law across its many countries of operation. IFC relies on its clients' representations and warranties regarding compliance with local law and on clients' required reporting of material litigation, though it supplements this with local staff insight and media tracking services. Once IFC is aware of concerns around a client's compliance with local law, it escalates its due diligence and/or supervision in a commensurate way.

The possibility of a voluntary dialog process under the auspices of the CAO dispute resolution could have been helpful to all. It is unfortunate that the complainants could not provide CAO with an indication of their objective. Some of the complainants pursued a process before the Employment and Labor Relations Court of Kenya, which ruled on July 13, 2018 regarding a class action of 296 individuals, that the claimants were not casual employees but were employees of the client, and their services should have been terminated in accordance with the procedure provided under the Employment Act for termination of contracts. In this connection, the court granted specific relief. The court did not make a finding regarding the issue of unfair termination of service. As indicated in the itemized answer, IFC will work with the client to find appropriate solutions to the remaining issues raised.

IFC welcomes the feedback on its performance and, along with its client, remains committed to engage with the relevant project stakeholders. A complete and itemized response to the CAO's key investigation findings on IFC's compliance is attached in an Annex to this letter. We look forward to continuing our dialogue with CAO during the monitoring phase.¹

Sincerely,



Ethiopis Tafara
Vice President and General Counsel



Stephanie von Friedeburg
Vice President and Chief Operating Officer

¹ The information in this letter and its enclosures is provided solely in the context of the CAO process, which is a mechanism internal to IFC. Because the CAO is not a court or legal enforcement mechanism, neither this information nor the information to which it responds constitutes evidence or gives rise to any legal claims against IFC. Nothing contained herein nor in CAO's reports is intended as a waiver of any of IFC's privileges and immunities under its Articles of Agreement or any other applicable law, and IFC reserves all rights.

Annex: IFC Tabulated Management Response: Bidco, Kenya (Project #33385)

| | CAO Compliance Assessment | Nature of Compliance | IFC Response with Actions Taken or Proposed | Expected Timeline |
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| 1. | IFC's due diligence in identifying the casual workers employment category and the client's process to convert casual workers to fixed term employees. | Sufficiency of IFC's due diligence on client's PS2 implementation related to employment policies. | <p><u>Project-level:</u> IFC notes CAO's views that casual worker rights, contracts, and benefits could have been further scrutinized and documented at the pre-investment stage. At the pre-investment phase, IFC's due diligence identified two distinct types of contracts – direct and contracted – without fully recognizing that contracted workers were mostly casual workers, with associated higher risk. Post-investment, during supervision, IFC followed up but was slow to engage with the client to ensure proper resolution of issues, as time elapsed between IFC's E&S due diligence (ESDD) and first disbursement. While the client was cooperative in providing detailed information on the labor-related complaints and lawsuits, this was done at IFC's request and after media coverage had begun on this matter.</p> <p>After IFC raised this issue, the client agreed to complete – and has already begun to submit to IFC – a detailed human resources / labor report on a quarterly basis. This report provides information and data on the implementation of human resources policies and practices, allowing the client to alert IFC to any new issues or disputes that have arisen in the prior three months. It also informs IFC, on a timely basis, about the resolution of pending labor cases. The client has further agreed to additional efforts regarding converted workers, as described below in item 2.</p> <p><u>Systemic:</u> To improve identification of labor issues at the due diligence phase: 1) IFC is in the process of updating its Labor Handbook,² which will include additional guidance about worker classification and associated rights and</p> | <p>Ongoing – Implemented from 03.26.18</p> <p>Expected completion June 2020</p> |

² Measure and Improve Your Labor Standards Performance. Performance Standard 2 Handbook for Labor and Working Conditions. https://www.ifc.org/wps/wcm/connect/a4aab30048865910b81afa6a6515bb18/SAI_IFC_LaborHandbook_Ch1-Intro.pdf?MOD=AJPERES

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| | | | <p>benefits. Following completion of the update, IFC will develop supplementary training and tools to support implementation.</p> <p>2) IFC has specialist labor consultant support on contract to help E&S staff in projects with high-risk labor issues. IFC will increase the awareness of the availability of this support among specialists.</p> <p>To improve awareness of labor (and other) issues arising in supervision:</p> <p>1) IFC subscribes to RepRisk, an ESG media scanning service, which alerts specialists to negative media stories regarding clients/projects that merit additional follow-up with clients.</p> <p>2) IFC will revise its Environmental and Social Review Procedure (ESRP) to instruct E&S specialists that when more than 12 months have elapsed between ESDD and first disbursement, the ESDD will be reviewed before disbursement to confirm that its conclusions and resulting client actions remain consistent, appropriate, and comprehensive. If additional Performance Standards issues are identified in this review, IFC will require clients to adapt their environmental and social management systems to manage such issues in compliance with Performance Standards requirements.</p> | <p>Ongoing – effective since 07.01.2014</p> <p>Ongoing – effective since 07.01.15</p> <p>Expected completion 06.30.19</p> |
| 2. | IFC’s consideration and advice to the client concerning the PS2 provisions on retrenchment of workers. | Sufficiency of IFC’s supervision on client’s PS2 implementation related to retrenchment. | <p><u>Project-level:</u></p> <p>The client’s 2015 decision to cease employing casual workers was a welcome transition for many workers, who were converted to regular employees with benefits and increased employment security. Questions regarding retrenchment arose from the fact that national labor law exceeds PS2 requirements for non-employee workers. The Kenya Employment Act defines specific requirements for conversion of casual workers to other types of contracts based on length and regularity of service, and requires additional measures in case of termination. These include some of the requirements under the PS2 retrenchment provision, such as notice of dismissal and severance payment (paragraph 19). IFC notes, per item 1, that the lack of identification of distinct contract types and risks associated with different worker categories led to a diminished ability for IFC help the client apply retrenchment requirements applicable to the 203 workers (out of the total 1403 casual workers) not converted to fixed-term contracts.</p> <p>A court ruling on July 13, 2018 from the Labour and Employment Relations</p> | Supervision visit |

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| | | | <p>Court of Kenya granted to each of 296 complainants (the 203 workers referenced above plus 93 other previous casual workers at Bidco, the group having some overlap with the complainants triggering CAO's review) one-month salary in lieu of notice and one-month salary in lieu of leave, for each complete year of service between 2009 and 2013. The client has agreed to undertake a review that assesses both current labor practices as well as any outstanding actions related to the 2015 conversion of casual workers. IFC will seek that this is conducted by a credible and reputable third party. As part of this process, IFC will review the client's current human resources practices during its supervision activities to ensure alignment with PS2. The client has agreed to revise its Retrenchment Policy to apply to all employee categories under Kenyan labor standards.</p> <p><u>Systemic:</u> To improve identification of labor issues such as retrenchment during due diligence, IFC is updating its Labor Handbook, and developing additional tools and training, as described in item 1. The Handbook will include additional guidance about worker classification and associated rights and benefits.</p> | <p>scheduled on 12.17.18</p> <p>Retrenchment Policy revision completion expected 01.30.19.</p> <p>Labor review completion expected 04.30.19</p> <p>Expected completion June 2020</p> |
| 3. | IFC's assessment of the client's OHS systems. | Sufficiency of IFC's due diligence on client's PS2 implementation related to OHS. | IFC is pleased that CAO found that at the pre-investment stage, IFC ensured that the client appropriately identified OHS risks and required a system to provide workers with a safe and healthy work environment including preventive and protective measures, OHS training, and emergency preparedness and response arrangements. | N/A |
| 4. | IFC's supervision that the client is operating its OHS systems in accordance with good international industry practice, reporting incidents, analyzing their root causes and | Sufficiency of IFC's supervision on client's PS2 implementation related to OHS. | <u>Project-level:</u> IFC notes CAO's observation in relation to the pace of escalation of supervision interactions with the client, towards progressively achieving compliance with the Performance Standards. IFC has intensified its supervision activities in the past two years. There have been several follow-up engagements with the client, who was co-operative but sometimes slow, in submitting supporting documents regarding implementation, such as information about accidents, accident investigation reports, and corrective actions. | |

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| | implementing corrective measures. | | <p>To support the client in good international industry practice for OHS, IFC will work with the client’s management and staff to fully leverage their current activities (including independent third party audits) in identifying hazards; provide good practice examples of preventative and protective measures that emphasize modification, substitution or elimination of hazardous conditions or substances; and provide guidance to improve accident and near-miss reporting, root cause analysis, and corrective measures. With regards to residual risks, and their associated hazards, IFC will work with the client to ensure that Personal Protective Equipment (PPE) access, distribution and training is comprehensive and commensurate to those remaining hazards. IFC will regularly adjust the resourcing and regularity of supervision activities (site visits and follow up reporting) based on the level of concerns identified with regards to OHS.</p> <p><u>Systemic:</u> IFC will assign an OHS Lead from amongst its Environmental and Social specialists to help promote best practice and to act as a resource to advise colleagues on OHS matters in their projects.</p> | <p>Implementation initiated by 02.28.19</p> <p>Effective from 02.01.19</p> |
| 5. | IFC’s assurance that the client is not interfering in the workers’ decisions to form or join workers organizations of their choosing. | Sufficiency of IFC’s review and supervision on client’s PS2 implementation related to union recognition. | IFC appreciates CAO’s recognition that there is no compliance issue as Kenyan Courts have ruled on this issue and a union recognition agreement remains in force. | N/A |
| 6. | IFC’s assurance that the client has in place PS2 compliant grievance handling policies and procedures. | Sufficiency of IFC’s supervision on PS2 related to client’s grievance mechanism policies and implementation. | IFC welcomes CAO’s recognition of the progressive nature of the client’s fulfillment of the Performance Standards, and appreciates CAO’s finding that IFC’s supervision and guidance were commensurate with the risk and resulted in positive improvements in the client’s grievance handling policies and procedures. | N/A |

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| 7. | IFC's assurance that the client has in place policies against discrimination and retaliation. | Sufficiency of IFC's review and supervision on PS2 related to client's non-discrimination policies and implementation. | <p><u>Project-level:</u> IFC notes that CAO's investigation does not provide a basis to determine whether discrimination and retaliation are occurring. CAO's discussion with the KCAAWU union representative indicated that currently the union believes that no discrimination is occurring.</p> <p>As part of its ongoing supervision, IFC will focus on the implementation and effectiveness of non-discrimination policies and procedures, especially in view of the multiple ethnicities of staff at different levels of Bidco's organizational structure. During site supervisions, IFC will engage in person with management and staff to seek comfort and assurance on the effective implementation of such discrimination policies. IFC will also continue to engage with the client on the management and effectiveness of its grievance mechanism so that the client improves its understanding of employee issues and works to resolve them fairly and objectively.</p> <p><u>Systemic:</u> IFC now has specialist labor consultant support on contract to help E&S staff in projects with high-risk labor issues.</p> | <p>Ongoing</p> <p>Ongoing – effective since 07.01.2014</p> |
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