



TERMS OF REFERENCE

Terms of reference for Compliance Investigation of IFC

CAO Compliance Ref: C-I-R6-Y13-F180

July 26, 2013

India Infrastructure Fund

India

Case of

Odisha Chas Parivesh Surekhsa Parishad and the Delhi Forum

About CAO

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

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

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

CAO discloses the findings of its Compliance Investigation in an Investigation Report to inform the President and Boards of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

For more information about CAO, please see www.cao-ombudsman.org

Background to the investment

The India Infrastructure Fund (the Fund) is a project equity fund that makes equity and equity-related investments in the infrastructure sector in India. This is one of the first funds of its kind in India, focusing on project-level investments. The Fund is managed by IDFC Project Equity Company Limited (the Investment Manager), which is wholly owned by the Infrastructure Development and Finance Company Limited, an existing IFC client.

In September 2007, the IFC Board approved a commitment to the Fund of US\$100m, on the understanding that this would allow IFC to nominate a member to the Investment Committee of the Fund. IFC's investment was subsequently negotiated to US\$50m. With this commitment, IFC was able to nominate a member to the Advisory Board, but was not able to nominate a member to the Investment Committee of the Fund. Various capital calls have been made on IFC's commitment since Board approval.

One of the Fund's portfolio investments is GMR Kamalanga Energy Limited (GKEL). GKEL is a special purpose vehicle set up by GMR Energy Limited to develop and operate a 1400MW coal-based power plant near Kamalanga village in Dhenkanal, a district of Odisha State. Capital calls specifically relating to GKEL were met by IFC in January 2009, March 2011, May 2011, September 2011, December 2011, March 2012, May 2012, October 2012 and February 2013.

Scope of the Compliance Investigation

The focus of Compliance Investigations is on IFC, and how IFC assured itself of project environmental and social performance at appraisal and during supervision. In the Appraisal report, CAO found that a review of certain aspects of this Project which relate to its nature as an early equity mining investment might better inform the application of policies (or other Compliance Investigation criteria) to future projects.

The approach to the Compliance Investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of Compliance Investigations adopted by CAO Compliance is as follows:

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

As set out in CAO's Appraisal report, the Compliance Investigation will focus on whether IFC's investment in the Fund (in the context of the Fund's investment in GKEL) was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Environmental and Social Sustainability and Policy on Disclosure of Information provide adequate levels of protection in relation to the issues raised in the complaint.



CAO's outstanding questions in relation to the investment relate to whether in the context of IFC's E&S policies, standards and procedures:

1. IFC's approach to the identification and management of E&S risks around its investment in the Fund was adequate.
2. Legal arrangements between IFC and the Fund provided an adequate structure for managing E&S risk in the case of non-compliance with relevant E&S obligations, either by the client or its sub-clients;
3. Supervision of the GKEL Project was adequate;
4. IFC's supervision of its investment in the Fund was adequate; and
5. Disclosure requirements as applied to the Project were adequate.

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

Compliance Investigation Process and Preliminary Timeline

The Compliance Investigation criteria are the conditions for IFC's involvement, including IFC policies, performance standards, guidelines, procedures, and other requirements. Specifically these include the IFC's Policy and Performance Standards on Social and Environmental Sustainability (2006); and the Policy and Performance Standards on Environmental and Social Sustainability (2012).

The preliminary time schedule is for CAO to have a draft Compliance Investigation report ready by December 2013.

A draft Investigation Report will be circulated to IFC/MIGA senior management and all relevant IFC/MIGA departments for factual review and comment. IFC/MIGA comments should be submitted in writing to CAO within 20 working days of receipt by IFC/MIGA.

Upon receiving comments from IFC/MIGA on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC/MIGA senior management for official response. A notification will be posted on CAO's website. IFC/MIGA has/have 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC/MIGA response to the President. The President has no editorial input as to the content of the compliance Investigation Report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC/MIGA senior management, the President will provide clearance for the Investigation Report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the Investigation Report and the IFC/MIGA response to the Board. CAO will also alert relevant stakeholders of the disclosure of



both documents on CAO's website, and in cases where the investigation was initiated by a complaint, share the documents with the complainant.

As per its established practice CAO will engage one or more external experts to work with it on this task. For this particular Compliance Investigation, CAO considers the following as necessary for the Compliance Investigation panel:

- Significant expertise in relation to the structure of IFC investments in financial markets, including private equity funds.
- Identification and management of E&S risks around major infrastructure projects.
- Knowledge of IFC's Performance Standards, as well as applicable Environmental and Social Review Procedures.
- Experience and knowledge of compliance investigations.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.