



September 2, 2016
Office of the Compliance Advisor Ombudsman (CAO)

TERMS OF REFERENCE

CAO Compliance Investigation of IFC Financing of Alexandria Portland Cement Company, Egypt

Project #27022 and #30274

Complaint 01

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).

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

The focus of CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. 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.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board 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

Titan Group is an existing IFC client and Greece's leading private cement company. Alex Development Limited (ADL or "the client") is a subsidiary of Titan Egyptian Investment Ltd. The client requested investment to expand its operations in Egypt. In December 2009, IFC approved an equity investment of EUR 80 million in the client. The client is the holding company for the Titan Group's Egyptian cement plants. This consists of two operations: Alexandria Portland

Cement Company (APCC or “the project operator”) and Beni Suf Cement Company (BSCC). The transaction resulted in IFC acquiring through ADL a 15.2% minority stake in APCC.

The stated purpose of IFC’s investment was to help fund the construction of a second integrated cement production line in BSCC; to invest in vertical integration into aggregates and ready-mix concrete; to improve the plants’ environmental performance by upgrading pollution abatement and improving energy efficiency; and to complete various debottlenecking projects at both APCC and BSCC.

An investment agreement was signed between the client and IFC in March 2010 and IFC disbursed EUR 80 million in November 2010.

The complaint

In April 2015, CAO received a complaint submitted by a group of Wadi al-Qamar community members and former APCC employees, with support of local non-governmental organizations, including the Egyptian Initiative for Personal Rights (together, “the complainants”). The complainants argued that IFC financing of the project is inconsistent with IFC’s E&S sustainability policies.

The complaint alleges violations of IFC’s environmental and social (E&S) standards, including:

- non-compliance with national laws in relation to the project’s operational license, labor contracts, and construction of a metal wall on public road;
- Lack of disclosure and community’s consultation of project’s Environmental Impact Assessment;
- Absence of community engagement in relation to the project’s operation, which causes pollution, noise disturbance and tremors;
- Unequal treatment between direct and contractor workers, particularly in relation to wages, collective bargaining and profit sharing;
- Denial of payment of benefits to workers who have taken early retirement, since 2003;
- Violation of workers’ rights to peaceful sit-ins by calling the police to disperse strikes and assemblies by force.

CAO determined that the complaint was eligible and carried out an assessment, which included in-depth discussions with stakeholders. As there was no agreement among the involved parties to proceed with a CAO-facilitated dispute resolution process, the complaint was transferred to the CAO compliance function for appraisal in May 2016.

In July 2016, CAO released its compliance appraisal in relation to the complaint, and decided to conduct a compliance investigation of IFC’s E&S performance in relation to the project.

Scope of the compliance investigation

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

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 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, CAO will conduct a compliance investigation of IFC's investment in the client in relation to the issues raised in the complaint.

The compliance investigation will consider whether IFC's investment in the client 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 (PS) and Policy on Disclosure of Information as applied to this project provide an adequate level of protection. The CAO appraisal report identified specific questions regarding the application of IFC's Sustainability Framework to the investment, including:

1. Whether IFC's pre-investment E&S review of the client was commensurate to risk;
2. Whether IFC took adequate steps to assure itself of compliance with national law, particularly in relation to the environmental license of the project;
3. Whether IFC took adequate steps to assure itself of compliance with community engagement, consultation and disclosure requirements;
4. Whether IFC took adequate steps to assure itself of proper application of PS 2 to the project, especially in relation to contractor workers;
5. Whether IFC took adequate steps to assure itself of proper application of PS 3 to the project, especially in relation to the impacts of the cement plant's conversion to coal;
6. Whether IFC properly applied its requirements in relation to cumulative impact assessment to the project prior to investment.

IFC's knowledge of the project operator's environmental and social performance is of relevance beyond IFC's direct investment in the client given exposure through an IFC financial intermediary investment.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance Investigation Report ready by May 2017.

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

Upon receiving comments from IFC on the consultation draft, CAO Compliance will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the Investigation Report and the IFC response to the President of the World Bank Group. 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 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 response

to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

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

- Significant expertise in the assessment and management of risks around air emissions, including fugitive emissions, particularly in relation to cement plants;
- Significant expertise in Egyptian legislation and policies in relation to permitting procedures required for expansion and operation of projects,
- Significant expertise in workers' rights and labor contracts in the private sector;
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1 (Social and Environmental Assessment and Management Systems), Performance Standard 2 (Labor and Working Conditions) and Performance Standard 3 (Pollution Prevention and Abatement);
- Experience and knowledge relevant to the conduct of compliance investigations;
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.