



November 19, 2019
Office of the Compliance Advisor Ombudsman (CAO)

Terms of reference for Compliance Investigation of IFC

*IFC Investments in Rizal Commercial Banking Corporation (RCBC)
(IFC Project #30235, #32853, #34115, #37489)
Philippines*

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).

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.

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.

Once CAO concludes a compliance appraisal, a summary of the appraisal results is made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO prepares a terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

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

Rizal Commercial Banking Corporation (RCBC or “the client”) is a large universal bank in the Philippines, providing a wide range of banking and other financial products and services, including commercial and retail banking, credit cards, asset management, and treasury and investment banking products and services. IFC has made multiple investments to support RCBC. In March 2011, IFC made its first equity investment in RCBC.¹ In March 2013, IFC provided equity and loan investments to establish a special purpose vehicle to acquire and service RCBC’s non-performing assets.² In April 2013, IFC’s Asset Management Company made an equity investment in the client.³ In November 2014, IFC provided the client with a loan to support growth in its small medium enterprise (SME) portfolio.⁴ In November 2015, IFC participated in a RCBC bond issue through a US\$75 million investment.⁵

The complaint

In October 2017, a national NGO, the Philippine Movement for Climate Justice (PMCJ) submitted a complaint to CAO on behalf of several communities living in the proximity of 19 active or proposed coal-fired power plants located in different parts of the Philippines, and on their own behalf as an alliance of organizations of concerned citizens of the Philippines fighting climate change. Two international NGOs, Inclusive Development International (IDI) and Bank Information Center Europe (BIC Europe), also supported the complaint.

The complaint asserts that RCBC has provided financial support to 19 coal-fired power plants and raises environmental and social concerns related to the development and operation of the plants, including impacts on biodiversity, health impacts caused by air pollution, inadequate compensation for physical displacement, loss of livelihoods, and violation of Indigenous Peoples’ rights. The complaint also raises issues about climate change impacts on the Philippines and its residents, including the complaint signatories, identifying the RCBC funded coal projects as contributing to climate change. Further, the complaint raises issues related to RCBC’s environmental and social risk management system, lack of consultation and information about the named coal plants and their impacts, and the absence of effective grievance mechanisms for the affected communities. Finally, the complaint raises issues about IFC, asserting that there is a lack of transparency regarding IFC’s financial intermediary portfolio, and IFC’s monitoring and supervision of RCBC’s environmental and social performance.

The complaint was transferred to CAO’s compliance function for appraisal in April 2019. Based on a preliminary review of IFC’s documentation and discussions with the IFC team, CAO decided to trigger an investigation.⁶

¹ IFC Disclosure, Summary of Proposed Investment (SPI): project number 30235. Available at <http://bit.ly/2J0EsQa>.

² Business World Online, February 26, 2013, *RCBC bad asset, share sale ‘credit positive’*, available at <http://bit.ly/2lu6lKB>.

³ IFC Disclosure, Summary of Investment Information (SII): project number 32853. Available at <http://bit.ly/2WXbJkq>; Philstar, April 30, 2013, *IFC completes equity investment in RCBC*. Available at <http://bit.ly/2N1x1qU>.

⁴ IFC Disclosure, Summary of Investment Information (SII): project number 34115. Available at <http://bit.ly/2MWRx75>.

⁵ IFC Disclosure, Summary of Investment Information (SII): project number 37489. Available at <http://bit.ly/2RrC0WQ>.

⁶ CAO Appraisal available at <http://bit.ly/2X6XATh>.

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 investments in RCBC in relation to the issues raised in the complaint.

The Compliance Investigation will consider whether IFC's investments in RCBC were 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 as applied to this project provide an adequate level of protection.

In the context of IFC's E&S policies, Performance Standards and procedures, CAO's outstanding questions in relation this case include:

1. whether IFC's pre-investment E&S reviews of the client was commensurate to risk and established a realistic expectation that the client would meet IFC's E&S requirements within agreed timeframes;
2. whether IFC's supervision of the client, including IFC's processing of additional investments, included adequate consideration of client implementation of IFC's E&S requirements and the developing E&S risk profile of the client's lending;
3. whether IFC responded adequately to project level E&S concerns raised in the complaint to CAO; and,
4. whether IFC's approach to its investments was consistent with climate change and greenhouse gas mitigation requirements under relevant policies, including the Sustainability Policy, Performance Standards and EHS Guidelines.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance Investigation Report ready by September 2020.

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 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 Panelist(s)

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:

1. Significant expertise in evaluating and implementing Financial Intermediary E&S risk management systems
2. Knowledge of IFC's E&S policies, standards and procedures
3. Experience and knowledge relevant to conducting reviews of FI E&S risk management systems
4. Experience and knowledge of conducting E&S reviews of large power facilities
5. Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts
6. Experience of conducting compliance reviews.