



January 24, 2018
Office of the Compliance Advisor Ombudsman (CAO)

Terms of reference for Compliance Investigation of IFC

IFC's investments in Minera Yanacocha S.R.L. (Project # 2983, 4449, 9502), Peru

Yanacocha-09/ Yanacocha-10

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 CAO's compliance function to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

The focus of CAO's 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 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.

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

Background to the investment

Minera Yanacocha S.R.L. ("the client") was established in 1992 to develop gold deposits in the Andes Mountains in the Department of Cajamarca, Peru. Since its establishment, four open pit mines have been developed; Carachugo, Maqui Maqui, Yanacocha and La Quinua. A fifth open-pit mine, Minas Conga, was planned, however, extraction of the mine has not commenced. IFC made an equity and loan investment in the client in 1993. Thereafter, IFC provided two further loans to the client. All loans were repaid by 2005. At the time CAO received the Yanacocha-09 and Yanacocha-10 complaints, IFC held a five percent equity stake in the client.

The complaint

Between January and May 2017, CAO received two complaints [Yanacocha-09, Yanacocha-10] from seventeen current and former workers, on issues pertaining to operational health and safety (OHS) at the client's various operations. Specifically, the complainants raise concerns related to long term health issues and illnesses that they allege are linked to both chronic and acute exposure to toxic gases and heavy metals in the workplace.

The complaints were transferred to CAO's compliance function for appraisal between July and September 2017. As both complaints raise similar issues, CAO merged the complaints and prepared one compliance appraisal report. Based on a preliminary review of IFC's documentation and discussions with the IFC team, CAO decided to trigger an investigation into these investments.

Scope of the compliance investigation

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

CAO Operational Guidelines (March 2013) provide the working definition of compliance investigations adopted by CAO:

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 policies, procedures and standards. It will also consider whether World Bank Group E&S policies and procedures as applied to this project provide an adequate level of protection.

In the context of World Bank Group E&S policies, CAO's outstanding questions in relation to the investment include:

1. Whether IFC's pre-investment review of the client's approach to occupational health and safety issues was commensurate to risk;
2. Whether IFC structured its supervision of the project in a manner that was sufficient to assess client compliance with IFC occupational health and safety requirements?
3. Whether IFC met its supervision duty in relation to the specific occupational health and safety concerns raised by the complainants?

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready by September 2018.

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 identification and mitigation of occupational health and safety risks to open pit mining workers;
- Experience and knowledge relevant to conduct occupational health and safety audits;
- Expertise in reviewing implementation of i) World Bank Environmental Health and Safety guidelines for occupational health and safety in mining sector; and ii) good international industry practice for occupational health and safety in mining sector;
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts;
- Fluency in Spanish preferred.