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## TERMS OF REFERENCE

Terms of reference for compliance investigation of IFC

C-I-R5-714-F199

June 26, 2014

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## **IFC Investment in Delta-Wilmar**

### **Case of**

Wilmar-3 / Jambi

### **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).

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](http://www.cao-ombudsman.org)

## Background

The Wilmar Group is an agribusiness conglomerate specializing in the production and trade of plant oils. Since 2003, IFC has made four investments with the Wilmar Group.

CAO received the Wilmar-3 complaint in November 2011. The Wilmar-3 complaint alleges that PT Asiatic Persada (PTAP) has developed oil palm plantations on land under the customary ownership of indigenous communities in Jambi Province, Indonesia. PTAP was a subsidiary of Wilmar until March 2013. The Wilmar-3 complaint also raised broader issues related to the Wilmar supply chain in Indonesia.

CAO finalized an audit of IFC's investments in Wilmar in June 2009. The 2009 CAO audit report made a number of findings of non-compliance. These included findings that IFC did not handle palm oil supply chain risks around the investments in accordance with its environmental and social requirements.

In June 2014 CAO released a compliance appraisal in relation to the Wilmar-3 complaint.

## 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.

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.

In relation to the issues raised by the complaint the compliance investigation will consider:

- whether IFC adequately assured itself that the environmental and social CODs of its loans to Delta-Wilmar were in fact met prior to disbursement in January 2010; and
- whether IFC supervised its Delta-Wilmar investments in accordance with applicable E&S policies, procedures and standards.

More specifically in relation to project supervision, the compliance investigation will consider:

- whether IFC adequately assured itself that Delta-Wilmar conducted a supply chain analysis in accordance with the requirements of Performance Standard 1;
- whether IFC adequately assured itself that Delta-Wilmar was meeting its obligations in relation to consultation and disclosure under Performance Standard 1;

- whether IFC adequately assured itself that Delta-Wilmar developed Action Plans to meet the requirements of the Performance Standards; and
- whether IFC responded adequately to the issues raised by the Wilmar-3 complaint in the context of Delta-Wilmar's environmental and social obligations to IFC;

In relation to these issues CAO will examine IFC's actions only with respect to its supervision of its Delta-Wilmar investments in the period after the finalization of its June 2009 audit report. Given the issues raised by the complaint the investigation will also restrict itself to the supply chain impacts of the Delta-Wilmar investments in Indonesia.

As in all cases, the scope of the investigation includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

### **Compliance Investigation: Process and Timeline**

CAO aims to have a draft compliance investigation report ready for IFC's factual review and comment by October 2014. IFC will have a period of 20 working days for factual review and comment.

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.

### **External Panelists**

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

- Expertise in relation to issues of sustainable development and business with a focus on agricultural supply chain issues.
- Knowledge the IFC Performance Standards particularly Performance Standards 1, 5 and 7.
- Understanding of IFC's operations, procedures and practices.
- Significant professional experience in a development context.