



## **CAO ASSESSMENT REPORT**

**Second Complaint regarding IFC Investment in Bilt Paper B.V.  
(Project # 34602)**

**Sipitang, Malaysia**

September 2015

Office of the Compliance Advisor Ombudsman  
*for the* International Finance Corporation/  
Multilateral Investment Guarantee Agency  
**[www.cao-ombudsman.org](http://www.cao-ombudsman.org)**

## **About the Compliance Advisor Ombudsman**

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective and constructive and to enhance the social and environmental outcomes of those projects.

For more information, see [www.cao-ombudsman.org](http://www.cao-ombudsman.org).

**TABLE OF CONTENTS**

1. OVERVIEW..... 4

2. BACKGROUND ..... 4

    2.1. The Project..... 4

    2.2. The Complaint ..... 4

3. ASSESSMENT..... 4

    3.1. Methodology .....4

        3.1.1. Summary of IssuesMethodology ..... 4

        3.1.2. Next Steps..... 5

**LIST OF ACRONYMS**

BILT	Ballarpur Industries Limited
BWI	Building and Woodworkers International
CAO	Compliance Advisor Ombudsman
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
SFI	Sabah Forest Industries
STIEU	Sabah Timber Industry Employees Union

## **1. OVERVIEW**

In June 2015, the Building and Woodworkers International (BWI) union filed a complaint on behalf of its local affiliate in Sabah, Malaysia, raising concerns about labor rights in connection with Bilt Paper, an IFC client. During the assessment, the complainants opted for having the complaint reviewed by CAO Compliance. Given the voluntary nature of CAO's dispute resolution process, the complaint is being referred to CAO's Compliance function. This Assessment Report provides an overview of the assessment process, including a description of the project, the complaint, the assessment methodology, and next steps.

## **2. BACKGROUND**

### **2.1. The Project**

According to IFC, IFC invested \$100 million in equity in Bilt Paper B.V., a company incorporated in the Netherlands. Bilt Paper owns subsidiaries which are leading pulp and paper manufacturers in India and Malaysia. Bilt Paper is a subsidiary of Ballarpur Industries Limited (BILT), which is headquartered in India and is also an IFC investee company (project # 10066 in 2000) and (project # 20798 in 2003). IFC's investment further comprises a \$50 million direct loan, and \$100 million in syndicated loans to Sabah Forest Industries (SFI), whose operations are located in the Sabah state of Malaysia. The investment is classified as a Category A project.

### **2.2. The Complaint**

In June 2015, Building and Woodworkers International (BWI) union filed a complaint on behalf of the Sabah Timber Industry Employees Union (STIEU), a BWI affiliate in Sabah, Malaysia. The complaint raises concerns about freedom of association for the workers of SFI and project compliance with IFC's Performance Standard 2 on Labor and Working Conditions. Section 3.1 contains a more detailed description of the issues raised in the complaint.

## **3. ASSESSMENT**

CAO determined that the complaint met its eligibility criteria in June 2015, and started its assessment of the complaint. The purpose of a CAO assessment is to clarify the issues and concerns raised by the complainants, to gather information on how other stakeholders see the situation where relevant, and to discuss CAO's Dispute Resolution and Compliance functions with the parties. During assessment, CAO does not gather information to make a judgment on the merits of the complaint. (See Annex A for a complete description of the CAO complaint handling process.)

### **3.1. Methodology**

CAO's assessment of the complaint consisted of:

- a review of project documents;
- telephonic conversations with the complainants and their representatives;
- telephonic conversations with representatives of Bilt Paper; and
- discussions with the IFC project team.

### **3.1.1. Summary of Issues**

This section summarizes the complainants' and Bilt Paper's perspectives regarding the CAO complaint. This summary does not comprise a judgment by CAO about the merits of the complaint.

#### *Complainants' perspective*

The complainants raise concerns about a lack of freedom of association and collective bargaining within SFI's operations in Malaysia. The complainants state that workers at the Malaysia operations have repeatedly tried to form a labor union and that this has been prevented by the company on several occasions, including by encouraging workers to create an in-house union and by legally challenging union efforts to gain recognition, rather than engaging with their workers in good faith. The company has filed three judicial reviews of STIEU's voting process. The complainants contend that these actions by SFI contravene Malaysia's labor law on freedom of association as well as IFC's Performance Standard 2. They report having raised their concerns both with the company and IFC, but do not believe that subsequent actions have addressed the issue or allowed the workers to freely choose a union to represent them.

The complainants believe that there are insufficient good-faith conditions to engage in dialogue with the company, and therefore communicated their decision to have the complaint referred to CAO Compliance for appraisal.

#### *Bilt Paper's perspective*

Representatives of Bilt Paper stated that the company supports the rights of workers to associate and they point to the fact that in their Indian operations, the labor force is unionized. They state that any union activity naturally needs to follow relevant Malaysian laws and regulations, and note that in their understanding, the current set up of STIEU does not meet all the requisite conditions. SFI has therefore challenged what they consider to be irregularities in accordance with Malaysian law, and these legal processes are underway.

The company believes they are complying with national law and IFC's Performance Standards, and stated their openness to participating in a collaborative process convened by CAO.

Bilt Paper also confirmed with CAO that they are in the process of selling SFI. A sale of SFI would not take away CAO's mandate to handle the complaint, which is established at the eligibility stage.

### **3.1.2. Next Steps**

The complainants expressed interest in pursuing a CAO Compliance process. Given the voluntary nature of the dispute resolution process, and in accordance with CAO's Operational Guidelines, the case will be referred to CAO Compliance for appraisal of IFC's due diligence in regards to the project.

## Annex A: CAO Complaint Handling Process

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

This document is a preliminary record of the views heard by the CAO team, and explanations of next steps depending on whether the parties choose to pursue a Dispute Resolution process or prefer a CAO Compliance process. *This report does not make any judgment on the merits of the complaint.*

As per CAO's Operational Guidelines,<sup>1</sup> the following steps are typically followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint

Step 2: **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)

Step 3: **CAO assessment:** CAO conducts an assessment of the issues and provides support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.

Step 4: **Facilitating settlement:** If the parties choose to pursue a collaborative process, CAO's dispute resolution function is initiated. The dispute resolution process is typically based or initiated by a Memorandum of Understanding and/or a mutually agreed upon ground rules between the parties. It may involve facilitation/mediation, joint fact-finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected<sup>2</sup>.

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<sup>1</sup> For more details on the role and work of CAO, please refer to the full Operational Guidelines: [http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines2013\\_ENGLISH.pdf](http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines2013_ENGLISH.pdf)

<sup>2</sup> Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal of IFC/MIGA project performance.

**Compliance Appraisal/Investigation:** If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring** and follow-up

Step 6: **Conclusion/Case closure**