



**March 6, 2018**

*Office of the Compliance Advisor Ombudsman (CAO)*

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## **COMPLIANCE APPRAISAL: SUMMARY OF RESULTS**

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*Strominvest (IFC Project #31993)*

*Belarus*

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JV Strominvest LLC (“the client”) is a Belarusian construction company focused on developing commercial property and affordable housing projects in Belarus. IFC made two investments in the client (IFC project #26107 and #31993). This compliance appraisal pertains to IFC’s second investment - a €15 million corporate loan to support the client’s general working capital needs including the construction of an affordable housing project in Minsk, Republic of Belarus (“the investment”). IFC’s disclosure noted the investment was to support development of affordable housing projects in Belarus. IFC’s E&S reviewed considered of the construction of two 19-story buildings and one 10-story building at Kamennaya Gorka 3, Minsk. IFC disbursed the investment in December 2015.

In March 2016, CAO received a complaint from a local Minsk resident who filed on behalf of himself, his mother, and other residents in the same area. The complainants raise concerns regarding a feasibility study conducted by Strominvest into a potential residential and commercial development in their neighborhood (“the Timiriazeva project”). They allege that the Minsk city government placed restrictions on their property because of the study. The complainants raise concerns that they will be forcibly evicted and moved to Strominvest’s affordable housing residences in Kamenaya Gorka, approximately nine kilometers from their current location, without due compensation. Commencing in 2014, the complainants assert that government authorities tried to deprive them of their homes to resell them to Strominvest. During the process of CAO’s appraisal, the complainant asserted that he had experienced threats to his personal safety that gas and water to his house had been cut off due to his opposition to the project.

The client acknowledges that they conducted the feasibility study in relation to the Timiriazeva project. However, as of the date of CAO’s April 2017 assessment report, the client’s position was that they had decided not to proceed with the project due to the costs associated with demolition, resettlement, and compensation for residents. Subsequently, however, the client informed IFC that it expects to move forward with the Timiriazeva project following receipt relevant government approvals expected in February 2018.

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of IFC’s E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC’s requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

IFC's investment was structured to support the client's general corporate purposes including the construction of an affordable housing project. In such circumstances, IFC is required to consider the client's ability to meet its E&S requirements across its entire business. IFC's appraisal, however, focused on the affordable housing project, Kamenaya Gorka and did not consider whether the client had in place policies that reflected IFC requirements for land acquisition in accordance with Performance Standard 5 (Land Acquisition and Resettlement). This was particularly relevant as IFC identified another project in the client's pipeline involving the relocation of 90 households. To the extent that the client was reliant on government involvement in the land acquisition process, IFC's Sustainability Policy also required an assessment of third party and contextual risk. This type of assessment was absent from IFC's appraisal documentation.

IFC became aware of concerns from residents in the area of the Timiriazeva project through local media and the CAO complaint in 2016. In reviewing the client's performance in the context of these concerns, IFC concluded that the client was in compliance with its E&S requirements. CAO is concerned that IFC, once notified of the complainant's concerns, did not review the client's Environmental and Social Management System to ensure that it reflected the requirements of IFC Performance Standard 5. However, in October 2017, after the client advised IFC that it was considering reengaging with the Timiriazeva project, IFC advised the client that it would need to apply Performance Standard 5 to any land acquisition and suggested a consultant who could assist in this respect. In doing this IFC, provided advice that was consistent with its obligation to address E&S impacts that were not foreseen at appraisal. In December 2017, the client decided to voluntarily repay the IFC loan due to excess liquidity. At the same time, the client informed IFC that it intended to move forward with the Timiriazeva project with approvals expected from the city government in February 2018.

CAO has decided to close this case without further investigation. In reaching this conclusion, CAO notes potential non-compliance in relation IFC's review and supervision of the application of Performance Standard 5 to the client's operations. CAO also notes IFC's advice to the client in October 2017 that any acquisition of land for the Timiriazeva project would need to be conducted in accordance with the requirements of Performance Standard 5. At the same time, CAO notes that the client pre-paid its loan to IFC in December 2017, prior to receiving approval to proceed with the project and prior to any acquisition of land for the project. While CAO notes the complainant's assertion that the city government has placed restrictions on his ability to sell his house and his assertion that gas and water to his house had been cut off due to his opposition to the Timiriazeva project, it is not clear that these issues raise questions in terms of compliance with IFC's requirements for review and supervision of project E&S risks. In these circumstances, CAO finds that a compliance investigation – which would focus on IFC's application of its E&S standards to the client's operations - is not the appropriate response.

## **About the 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. The 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).

For more information about the CAO, please visit [www.cao-ombudsman.org](http://www.cao-ombudsman.org)

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## Acronyms

<b>Acronym</b>	<b>Definition</b>
CAO	Office of the Compliance Advisor Ombudsman (IFC and MIGA)
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESMS	Environmental and Social Management System
IFC	International Finance Corporation
ISO 9001	International Organization for Standardization 9001: Quality Management Systems
MIGA	Multilateral Investment Guarantee Agency
PSs	Performance Standards (IFC)
PS5	Performance Standard 5 (Land Acquisition and Resettlement)
OHSAS 18001	Occupational Health and Safety Assessment Series 18001: Occupational health and safety management systems

## I. Overview of the Compliance Appraisal Process

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.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

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.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

## II. Background

### Investment

JV Strominvest LLC (“the client”) is a Belarusian construction company focused on developing commercial property and affordable housing projects in Belarus. IFC made its first investment in the client in 2008, a US\$10.75 million loan, to support the development of a commercial real-estate building in Minsk.<sup>1</sup> The construction of the commercial real-estate building was completed in 2008.<sup>2</sup> The client repaid this loan in June 2016.

IFC made its second investment in the client in 2015, a €15 million corporate loan to support the client’s general working capital needs including the construction of an affordable housing project in Minsk, Republic of Belarus (“IFC investment”). IFC’s disclosure noted the proposed affordable housing project comprised of the construction of two 19-story buildings and one 10-story building at Kamennaya Gorka 3, Minsk (See map, Annex A).<sup>3</sup>

### Complaint and CAO Assessment

In March 2016, CAO received a complaint from a local Minsk resident who filed on behalf of himself, his mother, and other community members.<sup>4</sup> The complaint was made in relation to IFC’s second investment with the client. The complainants reside within the neighborhood of Timiriazeva, Gvardeyskaya, and Panfilova Streets, Minsk (see map, Annex A). The complainants raise concerns regarding a feasibility study conducted by Strominvest for a potential residential and commercial development in this neighborhood (henceforth “Timiriazeva project”). They allege that the client’s pursuit of the Timiriazeva project resulted in Minsk city government placing restrictions on the use of their homes.<sup>5</sup> The residents expressed how they feel trapped and treated unfairly because city government restrictions and circumstances beyond their control have rendered them unable to sell or make improvements to their property since 2014. They assert that they have no information as to when the restrictions will be ended. They want the site to be developed as quickly as possible, with a clear timetable and fair compensation, in cash or in-kind, provided to the local residents.<sup>6</sup>

The complainants submitted a YouTube video from September 2015, in which they raise these issues with the city authorities and the client during an information session on the Timiriazeva project.<sup>7</sup> According to the complainants and the company 150-200 people would be displaced if the project goes ahead.

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<sup>1</sup> IFC. Summary of Proposed Investment, Strominvest/Erilin (#26107). See <https://goo.gl/RpiyYa>

<sup>2</sup> *Tvoya Stolitsa. Company Services Portfolio*, pg 12, see <https://goo.gl/depV6i>

<sup>3</sup> IFC. Summary of Investment Information (SI), Strominvest II (#31993). See <https://goo.gl/Zwn50C> and IFC. Environmental and Social Review Summary, <https://goo.gl/lv7Zpn>

<sup>4</sup> Combined, the complaint comes from 6 households.

<sup>5</sup> CAO. Assessment of a complaint regarding IFC’s investment in Strominvest. See <https://goo.gl/iR96Nj> and Complaint to CAO. See <https://goo.gl/4wKBPT>

<sup>6</sup> CAO. Dispute Resolution Conclusion Report, August 2017. See <https://goo.gl/RrvdKB>

<sup>7</sup> YouTube recording of City and client information session with residents available at <https://goo.gl/FAuxrb>

As noted in CAO's April, 2017 Assessment Report, the complainants are concerned that they will be forcibly evicted and moved to Strominvest's affordable housing residences in Kamenaya Gorka, approximately nine kilometers from their current location, without due compensation see map, Annex A). The complainants also assert that there has been insufficient community consultation and access to information about the project.<sup>8</sup>

The client acknowledges that in October 2014 it received in a two-year Land Allocation Certificate to conduct a feasibility study for the potential Timiriazeva project.<sup>9</sup> Following the preparation of the feasibility study, the client decided not to proceed with the Timiriazeva project due to the costs associated with demolition, resettlement, and compensation for residents. The client noted that it did not submit a construction site master plan and that their Land Allocation Certificate to develop the site lapsed in October 2016.<sup>10</sup>

During CAO's appraisal, the client stated that restrictions imposed on the complainants' use of their property have been in place for 18 years, long before the client conducted its feasibility study. These restrictions, the client asserted, are the responsibility of the city government. The client did acknowledge that during the period it held the Land Allocation Certificate a cutoff date was established which limited the ability of people to take up residence in the propose area of the Timiriazeva project.

The complainants and the client initially agreed to a CAO-facilitated dispute resolution process to try to resolve the issues raised in the complaint. However, a resolution could not be reached and as a result, the complaint was transferred to CAO's compliance function in August 2017.

In communications with CAO's compliance team in October 2017, the complainant asserted that he has experienced threats to his personal safety and that gas and water to his house had been cut off due to his opposition to the Timiriazeva project. The complainant alleged that this was carried out by local authorities in the client's interest.

### **III. Analysis**

This compliance appraisal considers IFC's E&S pre-investment review and supervision of its 2015 investment in Strominvest as relate to the issues raised in the complaint.

#### **IFC Policy Framework**

IFC's second investment in the client was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the Sustainability Framework. During its appraisal and supervision, IFC seeks to

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<sup>8</sup> *Ibid.* CAO. Assessment of a complaint regarding IFC's investment in Strominvest. See <https://goo.gl/iR96Nj> and Complaint to CAO. See <https://goo.gl/4wKBPT>

<sup>9</sup> The Timiriazeva project is not located as the same site as the Kamennaya Gorka 3 project.

<sup>10</sup> CAO. Assessment of a complaint regarding IFC's investment in Strominvest. See <https://goo.gl/iR96Nj>, and CAO Dispute Resolution Conclusion Report. See <https://goo.gl/56DWQn>



assure itself that the business activities it finances will be implemented in accordance with the requirements of its Performance Standards.<sup>11</sup>

IFC's Sustainability Policy recognizes that a client's ability to achieve E&S outcomes consistent with the PS may be dependent on third party actions, including those of government agencies. As part of its pre-investment due diligence, IFC reviews its client's identification of third party risks and will determine whether such risks are manageable and under what conditions to achieve PS consistent outcomes.<sup>12</sup>

Performance Standard 5 (PS5): Land Acquisition and Involuntary Resettlement, is relevant to the issues raised in this complaint. PS5 requires disclosure of relevant information and participation of affected communities during the process of planning, implementation, monitoring and evaluation of compensation payments, livelihood restoration activities and resettlement. PS5 requires a client to "consider feasible alternative project designs to avoid or minimize physical and/or economic displacement, while balancing environmental, social, and financial costs and benefits, paying particular attention to impacts on the poor and vulnerable." Where a project leads to displacement, including "restrictions on land use," "the client will offer displaced communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods".<sup>13</sup> Where land acquisition and resettlement is the responsibility of the government, "the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard."<sup>14</sup>

Where a client's activities could expose it land acquisition or restrictions upon land use but these are generally unknown at the time of IFC's appraisal, PS5 requires a client to develop a Resettlement and/or Livelihood Restoration Framework outlining general principles compatible with PS5. The implementation of this requirement is managed through the client's Environmental and Social Management System (ESMS).<sup>15</sup>

In conducting its pre-investment appraisal for equity or general corporate financing projects, IFC's E&S review procedures require IFC's review to cover the full range of client operations.<sup>16</sup> The appraisal involves an "investigation of the capacity, maturity, and reliability of the client's E&S corporate management system to effectively manage E&S performance, including its ability to enable current and future project compliance with IFC's PSs."<sup>17</sup>

### **IFC's Appraisal**

A key question for CAO is whether IFC exercised due diligence in its appraisal and supervision in relation to the above requirements at each stage of the investment cycle.

IFC disclosed the investment as a "a corporate loan aimed to finance working capital needs related to the development of two affordable housing projects in Belarus."<sup>18</sup> Reflecting the client's

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<sup>11</sup> IFC. Sustainability Policy (2012), para 7

<sup>12</sup> IFC. Sustainability Policy (2012), para 23

<sup>13</sup> IFC. Performance Standard 5, para 8-10.

<sup>14</sup> IFC. Performance Standard 5, para 30.

<sup>15</sup> IFC. Performance Standard 5, para 4 and 16.

<sup>16</sup> IFC. ESRP 3.2, version 7, para 2.1

<sup>17</sup> *Ibid.*

<sup>18</sup> IFC. Summary of Investment Information (SII), Strominvest II. <https://goo.gl/Zwn50C>

need for working capital, IFC structured the investment as a general corporate loan, rather than a project finance investment.<sup>19</sup>

IFC conducted an E&S due diligence visit for the proposed investment in November 2014. The focus of the visit was on a proposed affordable housing project at Kamennaya Gorka 3. During the appraisal, IFC reviewed the client's approach to environmental, health and safety issues. IFC visited the client's completed residential project at Kamennaya Gorka 5 and the proposed affordable housing project at Kamennaya Gorka 3.<sup>20</sup>

As part of its pre-investment review, IFC prepared a summary of the real estate sector in Belarus. IFC noted that the government owns all non-developed land in Belarus and grants long leases to developers or grants land for free with an obligation to provide infrastructure. In the latter case, a timeframe for completion is set, with penalties and possible forfeiture if obligations are not met. An assessment of the land acquisition process in Belarus and risks to achieving outcomes that are consistent with Performance Standard 5 is absent.

In reviewing the client's E&S Management System (ESMS), IFC noted that the client had an ISO 9001 certified Quality Management System and OHSAS 18001 certified Occupational Health and Safety Management System. IFC noted, however, that the client did not have a formal ESMS. At the same time, IFC determined that the client had in-house capacity to assess and manage E&S risks and impacts, internal procedures to monitor compliance with Belarusian regulations, and systems to monitor and evaluate the E&S performance of contractors. Based on IFC's supervision of the prior investment and the appraisal of the new investment, IFC concluded that the client's approach to managing E&S issues was commensurate with the level of risk the investment presented, and the client had adequate capacity to ensure compliance with the Performance Standards.<sup>21</sup>

IFC noted that the client planned to develop four sites. At one of these sites IFC noted 90 households would need to be relocated.<sup>22</sup> In mitigating this risk, IFC noted that: i) IFC would not finance this specific project; and, ii) the client had developed a relocation plan. As current housing was determined to be in a poor state, IFC concluded that if the process was managed appropriately, people's livelihoods would materially improve. An analysis of this resettlement process against the requirements of PS5 was, however, not conducted.

With regard to Kamennaya Gorka 3, IFC noted that the vacant land at the site had been made available by the Government and that it had the necessary zoning permit together with the majority of the necessary consents. On this basis IFC concluded that the Kamennaya Gorka 3 development would not result in physical or economic displacement. As a result, IFC concluded that Performance Standard 5 (PS5) was not applicable.<sup>23</sup> As IFC concluded that the client was in compliance with its requirements, an E&S Action Plan was not developed for the investment.

IFC explained to CAO that the Timiriacheva project was not presented to IFC during its due diligence, as it was not in the client's active pipeline at the time of IFC's appraisal in November

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<sup>19</sup> Project finance are loans ringfenced to a defined purpose and/or development of a specific asset. A corporate loan supports the general operations of the business.

<sup>20</sup> IFC. Environmental and Social Review Summary (ESRS), <https://goo.gl/lv7Zpn>

<sup>21</sup> *Ibid.*

<sup>22</sup> This is not the project subject to this CAO complaint.

<sup>23</sup> IFC. Environmental and Social Review Summary (ESRS), <https://goo.gl/lv7Zpn>

2014. At the same time, CAO notes that the client held a Land Allocation Certificate for the Timiriazeva project which was valid from October 2014 to October 2016.<sup>24</sup>

IFC's investment was approved by the IFC Board in October 2015.<sup>25</sup>

### *Discussion*

IFC's investment was to support the client's general corporate purposes including the construction of an affordable housing project. In such circumstances, IFC's appraisal procedures require a review of the client's ESMS to effectively manage E&S performance, including its ability to enable current and future project compliance with IFC's Performance Standards.

Based on supervision of the prior investment and the appraisal of the new investment, IFC concluded that the client's approach to managing E&S issues was commensurate with the level of risk the new investment presented, and that the client had adequate capacity to ensure compliance with the Performance Standards.

However, in considering the risk of the new investment, IFC's appraisal focused on Kammenaya Gorka 3. The existence of resettlement at another project in the client's pipeline involving the relocation of 90 households was noted in IFC's appraisal, however, these issues were disregarded on the premise that IFC's financing would not support this activity. Limiting the scope of appraisal in this way was inconsistent with IFC's requirements for E&S due diligence in contexts where general corporate finance is being provided.

IFC's appraisal provided a summary of the real estate sector in Belarus. However, this did not include an assessment of risk related to the role of the state in land acquisition and resettlement. Relevant to the issues raised in the complaint, CAO notes that land for urban development projects in Belarus is generally acquired via the government, and there are reports that the compensation for property acquired is often underassessed.<sup>26</sup> This generates challenges in terms of a developer's ability to meet the requirements of PS5.

IFC's pre-investment review is required to engage with contextual or third-party risks that a client may face in achieving outcomes consistent with PS5. This includes reviewing the client's approach to achieving PS5 compliance at the management system level for current and future activities. Where gaps are noted, IFC is required to support its client in resolving these gaps as part of an ESAP. In this instance, however, a documented review of the client's approach to managing and addressing land acquisition issues against the requirements of PS5 was absent.

### **IFC Supervision**

In June 2016, the client submitted its Annual Monitoring Report (AMR) for 2015 to IFC.

In reviewing this report, IFC noted the submission of the complaint to CAO and local media reports of resident opposition to a housing project the client was considering. IFC noted that it was monitoring media reports and had discussed the issues with the client. IFC also noted that the project was in a preparatory stage, which included an environmental assessment of the area and

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<sup>24</sup> CAO. Assessment Report, Annex B, available at <https://goo.gl/iR96Nj>

<sup>25</sup> IFC. Summary of Investment Information (SII), Strominvest II. <https://goo.gl/Zwn50C>

<sup>26</sup> Danish Institute of Human Rights. 2016. *Human Rights and Business Country Guide: Belarus*. Available at <https://goo.gl/b6YPf7>

consultations with local community. Upon review of the client's reporting, IFC determined the client was in material compliance with IFC's E&S requirements.

IFC supervision documentation from 2017 provides a status update on the CAO complaint noting that local residents had voiced their concerns about city government restrictions put in place since 2014 which prevented them from selling or making improvements to their homes. At this point, IFC again concluded that the client was in compliance with its E&S requirements, though no analysis of PS5 related risk was presented.

During CAO's assessment phase, which ended in April 2017, the client affirmed that it had conducted a feasibility study of the proposed development, but decided not to proceed with the development due to the costs associated with demolition, resettlement, and compensation for residents in the light of the current economic situation. In this context, it was noted that the client's Land Allocation Certificate for the site had lapsed on October 8, 2016.<sup>27</sup> As a result, the client asserted that it would need to apply for further permission to develop the project.

After the complaint was filed, the complainants presented CAO with letters from the city government to local residents indicating the city government's intention to value the land in order to allow Strominvest to design residential structures and supporting infrastructure within the neighborhood of Timiriazeva, Gvardeyskaya, and Panfilova Streets – where the complainants reside. These letters are dated in 2017, after the client's Land Allocation Certificate had lapsed.

In October 2017, the client informed IFC that it may reengage with the Timiriazeva project in the future if it became commercially viable. At this point, IFC informed the client that if the Timiriazeva project were to proceed, PS5 requirements would apply to any displacement caused. In November 2017, IFC offered to introduce the client to a third-party consultant to assist the client with preparing a Resettlement Action Plan. IFC supervision documentation does not discuss any steps taken by the client to operationalize PS5 requirements as part of its ESMS.

Regarding the restrictions on the use and sale of the complainants' homes, IFC asserts that the Comprehensive Master City Plan, developed by the city government, determines areas for development within Minsk resulting in a bidding process for Land Allocation Certificates. IFC asserts that restrictions on use of land are decisions of the city government. While the complainants acknowledge that the restrictions are imposed by the city government, they claim that this was done at the behest of the client as part of its ongoing efforts to acquire the property.

In December 2017, the client decided to voluntarily repay the IFC loan due to excess liquidity. At the same time, the client informed IFC that it intended to move forward with the Timiriazeva project with approvals expected from the city government in February 2018.

### *Discussion*

The complaint raises issues related to the application of PS5 to the Timiriazeva project. The complainants assert that restrictions on their property were imposed in 2014 by the city government at the behest of the client. They also raise concerns related to the adequacy of the client's disclosure and consultation in relation to the project.

The client maintains that restrictions on the complainants' use of their property have been in place for 18 years, long before the client conducted its feasibility study. The client acknowledges,

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<sup>27</sup> CAO Assessment of a complaint regarding IFC's investment in Strominvest, see <https://goo.gl/iR96Nj>

however, that during the period it held the Land Allocation Certificate a cutoff date was established which limited the ability of people to take up residence in the proposed area of the Timiriazeva project.

As IFC did not envisage an exposure to PS5 risk through its loan, issues of land acquisition and resettlement were not incorporated into the supervision framework for the project. IFC became aware of concerns from residents in the area of the Timiriazeva project through local media and the CAO compliant in 2016. At this point IFC did not take any additional steps to assess the client's commitment or capacity to implement PS5. While noting that the client was in the process of undertaking an environmental assessment (EA) for the project, IFC did not request to review the client's EA process for Performance Standards compliance.<sup>28</sup>

In a context where a complaint had been made and where disputes relating to the acquisition of land for urban development projects were publicly reported,<sup>29</sup> CAO is concerned that IFC did not take early steps to ensure that the client had in place an ESMS that reflected the requirements of PS5. However, in October 2017, after the client advised IFC that it was considering reengaging with the Timiriazeva project, IFC advised the client that it would need to apply PS5 to any land acquisition and suggested a consultant who could assist in this respect. Accordingly, IFC provided advice that was consistent with its obligation to address E&S impacts that were not foreseen at appraisal.<sup>30</sup>

#### **IV. CAO Decision**

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to IFC. In deciding whether to initiate an investigation, CAO weighs factors including whether i) there is evidence of potentially significant adverse E&S outcomes now or in the future; ii) there are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC; or, iii) there is evidence that indicates that IFC's provisions, whether or not complied with, have failed to provide an adequate level of protection. CAO also considers a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

The complainants allege that the Timiriazeva project has resulted in restriction on the use of their property. Further, they are concerned that Timiriazeva project will result in them being evicted from their residence without due compensation.

While the client previously noted that it did not intend to proceed with the Timiriazeva project due to costs associated with demolition, resettlement, and compensation for residents, in late 2017, the client informed IFC that it intended to move forward with the Timiriazeva project with approvals expected from the city government in February 2018. At the same time, the client decided to voluntarily repay the IFC loan due to excess liquidity.

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<sup>28</sup> The applicability of PS5 is established during the environmental and social risks and impacts identification process. PS5, para 4.

<sup>29</sup> See Danish Institute of Human Rights, 2016, *Human Rights and Business Country Guide: Belarus*. Available at <https://goo.gl/b6YPf7>

<sup>30</sup> IFC Sustainability Policy (para. 45) provides If changed business activity circumstances might result in altered or adverse environmental or social impacts, IFC will work with the client to address them.

The purpose of IFC's investment was to support the client's general corporate purposes including the construction of an affordable housing project. IFC's appraisal, however, focused primarily on one affordable housing project, Kamenaya Gorka. Based on available evidence, it is not apparent that IFC reviewed the client's ESMS for consistency with PS5. This was particularly relevant as IFC identified another project in the client's pipeline involving the relocation of 90 households. More broadly, CAO notes a lack of contextual and third-party risk analysis in IFC's appraisal documentation. This type of risk analysis is required when the client's ability to achieve environmental or social outcomes consistent with the Performance Standards will be dependent on third party actions. The role of the Minsk city government in acquiring land for development was a relevant factor which should have been considered in relation to the client's business model.

In relation to project supervision, CAO is concerned that IFC did not review the client's ESMS to ensure it reflected the requirements of PS5, as soon as the complainants raised concerns in 2016. Positively, however, CAO notes that in October 2017, IFC advised its client that it would need to apply PS5 to the Timiriazeva project if it proceeded with land acquisition.

Having considered IFC's E&S performance and the concerns regarding adverse impacts raised by the complainants, CAO has decided to close this case without further investigation. In reaching this conclusion, CAO notes potential non-compliance in relation IFC's review and supervision of the application of Performance Standard 5 to the client's operations. CAO also notes IFC's advice to the client in October 2017 that any acquisition of land for the Timiriazeva project would need to be conducted in accordance with the requirements of Performance Standard 5. At the same time, CAO notes that the client pre-paid its loan to IFC in December 2017, prior to receiving approval to proceed with the project and prior to any acquisition of land for the project. While CAO notes the complainant's assertion that the city government has placed restrictions on his ability to sell his house and his assertion that gas and water to his house had been cut off due to his opposition to the Timiriazeva project, it is not clear that these issues raise questions in terms of compliance with IFC's requirements for review and supervision of project E&S risks. In these circumstances, CAO finds that a compliance investigation – which would focus on IFC's application of its E&S standards to the client's operations - is not the appropriate response.



## Annex A: Map of Affordable housing project and location of complainants

