



May 10, 2016
Office of the Compliance Advisor Ombudsman (CAO)

TERMS OF REFERENCE

CAO Compliance Investigation of IFC's Investment in Bilt Paper, Malaysia

Project #34602

Complaint 02

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

The focus of the CAO compliance process is on IFC/MIGA's appraisal and supervision of an investment, and whether or not IFC/MIGA complied with its own policy provisions to assure itself of the environmental and social performance of its investments. CAO does not undertake a compliance investigation of IFC/MIGA's client.

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 decisions and reasoning.

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

Background to the investment

Ballarpur International Graphic Paper Holdings (Bilt Paper) is a leading pulp and paper manufacturer with operations in India and Malaysia. Bilt Paper is a subsidiary of Ballarpur Industries Limited, an existing IFC client since 2000 in which IFC holds a small equity stake.

In addition, in August 2014, the IFC Board approved a \$250 million debt and equity investment in Bilt Paper and its subsidiary – Sabah Forest Industries (SFI or the company). SFI is a large integrated pulp and paper manufacturing company in Sabah, Malaysia. The purpose of IFC's investment included to support the company obtain Forest Stewardship Council or similar certification and to implement an environmental and social management system in accordance

with IFC Performance Standards (PS). IFC purchased the Bilt Paper equity in October 2014, but the loan to SFI was not disbursed. In September 2015, Bilt Paper announced that it had agreed to sell its stake in SFI. At the time of writing the sale was pending completion.

The complaint

In June 2015, CAO received a complaint in relation to SFI. The complaint was lodged by Building and Woodworkers International (BWI) union on behalf of the Sabah Timber Industry Employees Union (STIEU), a BWI affiliate in Sabah, Malaysia. The complainants allege that the company has persistently hindered workers' efforts to unionize in breach of ILO and IFC standards. The company has indicated that it supports the rights of workers to unionize. However, the company has challenged the legality of STIEU on the basis that it does not meet the requirements of Malaysian law.

In January 2016, CAO released a compliance appraisal in relation to the complaints, and decided to conduct a compliance investigation of IFC's E&S performance in relation to the project.

Scope of the compliance investigation

The focus of CAO's 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 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 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 specific questions in relation to the investment include:

1. Whether IFC's pre-investment review of the issues was commensurate to risk, particularly in relation to union issues?
2. Whether IFC responded adequately to freedom of association issues identified in the client's Labor and Working Conditions Audit?
3. Whether IFC's supervision of the project was sufficient to assess the status of project's compliance with the requirements of the Performance Standards, specifically as it relates to freedom of association issues?

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a finalized compliance investigation report ready by the end of January 2017.

A draft investigation report will be circulated to IFC senior management and all relevant IFC departments for factual review and comments. IFC's 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's 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 relation to labor and working conditions in the context of the private sector.
- Specific expertise in relation to collective bargaining and the right to organize.
- Knowledge of Malaysian Labor laws in relation to collective bargaining and the right to organize.
- Knowledge of IFC's E&S policies, standards and procedures, in particular Performance Standards 1 and 2.
- Experience in and knowledge of compliance issues in the context of development finance.
- Demonstrated ability to analyze policies and practices in complex institutional contexts.