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TERMS OF REFERENCE

Terms of reference for compliance investigation of IFC

C-I-R9-Y11-F133

February 6, 2014

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## **IFC Investment in Amalgamated Plantations Private Limited (APPL), India**

### **Case of**

Complaint from Workers in relation to IFC's Tata Tea project (#25074) in Assam, India

### **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).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance arm of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA. Compliance appraisals of one or more IFC/MIGA projects may also be triggered by the CAO Vice President, President of the World Bank Group or IFC/MIGA senior management.

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

### ***Investment***

As described in the IFC's Statement of Project Information, this investment was designed to enable the establishment of a company which would acquire and manage the 24 tea plantations located in Assam and West Bengal previously owned by Tata Tea Limited (TTL). The purpose of the project was to implement a sustainable employee-owned plantation model in which the management and employees would have a significant shareholding (15%-20%).

The total project cost including capital expenditure and working capital is estimated at \$87 million; IFC's commitment to the project was an INR 300 million (US\$ 7.8 million) equity investment for 19.9% of the common share capital of Amalgamated Plantations Private Limited (APPL). TTL holds a 49.6% shareholding of APPL with the remaining balance held by other investors.

The total grant area under the plantations is approximately 24,000 hectares with about 20,000 hectares in Assam and 4,000 hectares in West Bengal. The project employs an approximate 30,000 people.

### ***CAO Vice President triggered compliance process***

In January 2013, CAO issued a compliance appraisal in response to a request from the CAO Vice President. The January 2013 compliance appraisal considered IFC's E&S performance in light of concerns raised by unions representing workers on APPL. These concerns formed the basis of a complaint from the International Union of Food Workers (IUF) to IFC which was submitted through IFC's Communication Portal for Performance Standard 2. Union concerns with regard to the project referred to two incidents which were also reported in the media:

**Incident one** took place on 9 August 2009 when a pregnant tea garden worker at the Nowera Nuddy estate, who had allegedly made a request for maternity leave at an APPL clinic, collapsed at work in the field. This event led to a labor dispute which in turn resulted in a lock out, initially for two weeks and, following a further breakdown in negotiations, for a subsequent period of three months starting mid-September 2009.

**Incident two** relates to a 25 year old worker at the Powai estate who collapsed and died at work on 28 May 2010 after allegedly being assigned to pesticide spraying duties. This event led to a protest the same evening and a clash with police as a result of which two protesters were shot dead and up to 18 others were injured.

More generally, the complaint from IUF raised issues with regard to the following at APPL:

- Occupational health and safety systems and practices;
- Non-discrimination, equal opportunity and human resources policies;
- Working conditions and terms of employment;
- Freedom of Association and access to an adequate grievance mechanism.

### ***Complaint from workers***

In February 2013, CAO received a complaint from three local NGOs regarding APPL's tea plantations in Assam, India. The complaint was made on behalf of workers from the plantations of Nahorani, Majuli, and Hattigor. The complaint raises concerns about working and living conditions on the APPL plantations, specifically citing long working hours, inadequate compensation, poor hygiene and health conditions, and restricted freedom of association among plantation workers. Further, the complainants question a worker share-buying program, contending workers have been pressured into buying shares, often without proper consultation or sharing of information about the risks of such an investment. CAO determined that the complaint met its eligibility criteria. The complaint was transferred to CAO compliance in November 2013.

### **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 and the January 2013 compliance appraisal, the compliance investigation will consider:

- whether IFC exercised due diligence in its review and supervision of the Environmental and Social risks attached to the Project;
- whether IFC policies and procedures provide adequate guidance to staff on how to respond effectively to complaints regarding clients' E&S performance; and
- whether IFC policies, procedures and staffing structures as applied to this project provided a robust framework for the advancement of the objectives of the Performance Standards in its clients.

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

CAO aims to have a draft compliance investigation report ready for IFC's factual review and comment by May 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.

*CAO terms of reference for compliance investigation of IFC: APPL, India*



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 panel:

- Expertise in relation to issues of sustainable development and business with a focus on labor issues.
- Knowledge of IFC's Performance Standards and the core labor standards of the International Labor Organization.
- Understanding of IFC's operations, its role, environmental and social standards (particularly Performance Standard 2), practices and corporate culture.
- Significant professional experience in a development context.