APPRAISAL REPORT

CAO Appraisal for Investigation of IFC
CAO Compliance
CAO Ref Code: C-I-R6-Y11-F133
February 6, 2014

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

Summary

This CAO compliance appraisal responds to a complaint from workers on three plantations belonging to Amalgamated Plantations Private Limited (APPL), a company which manages tea plantations in the Northeast of India, in which IFC has an active investment.

The complaint which triggered this appraisal 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 information about the risks of such an investment.

This compliance appraisal builds on a January 2013 compliance appraisal in relation to the same project triggered by the CAO Vice President.[1] At that point it was decided that a compliance investigation of IFC's Environmental and Social (E&S) performance in relation to this investment was warranted.

Having reviewed the complaint and documentation in relation IFC's management of E&S issues related to its investment in APPL, CAO concludes that this complaint raises potentially significant adverse E&S impacts associated with the project.

[1] See: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=192

Based on the IFC documentation considered in the course of this compliance appraisal, it appears that IFC is engaging with its client around issues raised in the complaint, with a focus on developing the client's approach of E&S management, compliance auditing, and certification.

For reasons set out in CAO's January 2013 compliance appraisal, however, CAO has questions as to the adequacy of implementation of IFC's policies, procedures and standards, in particular requirements to:

- conduct an E&S review that is "commensurate with the level of social and environmental risks" of the project (IFC, Policy on Social and Environmental Sustainability, 2006, para. 13);
- assess whether the client's E&S Assessment meets the requirements of IFC Performance Standard 1 (PS1), and if not request that the client undertake additional assessment(s) (Policy on Social and Environmental Sustainability, 2006, para 17);
- identify any gaps between the client's assessment, the Performance Standards in the Environmental and Social Review Summary (ESRS), and where gaps exist, develop an Environmental and Social Action Plan (ESAP) to close these gaps (E&S Review Procedure, 2006, para. 3.2.1);
- ensure that AMRs provide adequate information to assess the client's performance against the requirements of the investment agreement and the Performance Standards: and that
- follow up to ensure that the root causes of serious incidents are being investigated and appropriate corrective action is taken to prevent reoccurrence (E&S Review Procedure, 2009, para 6.2.8).

In addition the current complaint raises issues with regard to IFC's approach to:

- the application of consultation and disclosure requirements of the Policy on Social and Environmental Sustainability (2006. para. 20) and PS1 (para. 19ff & 26), in particular in relation to the Employee Stock Ownership Program.

In this context, CAO will conduct a compliance investigation of IFC's E&S performance in relation to its investment in APPL, considering both the issues raised by the current complaint and those discussed in its January 2013 compliance appraisal. Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.

About CAO

The 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 lending arms of the World Bank Group: the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

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

1. Overview of the CAO 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 CAO compliance for appraisal and potential compliance investigation.

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

The focus of CAO compliance is on IFC and MIGA, not their client. 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 may 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 compliance 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, the CAO applies several criteria. These criteria test the value of undertaking a compliance investigation. Thus, as part of the appraisal process CAO considers 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 on the 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, the 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 President of the World Bank Group, and the IFC/MIGA Board in writing. If a compliance appraisal results from a complaint, the complainant will also be advised the outcome. The appraisal report will be made public on the CAO website.

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.

2. 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.

Complaint

In February 2013, CAO received a complaint from three NGOs from Assam on behalf of workers concerned about labor and living conditions on three of APPL's tea plantations in Assam, India. The three NGOs are People's Action for Development (PAD), Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA), and the Diocesan Board of Social Services (DBSS). The complaint is made on behalf of workers from the plantations of Nahorani, Majuli, and Hattigor. CAO determined that the complaint met its three eligibility criteria and began an assessment of the complaint.

Ombudsman Assessment Report

The CAO assessment explored the possibility of a dispute resolution process in relation to the complaint. A CAO Assessment Report was published in November 2013. As a CAO assisted dispute resolution process was found not to be feasible, this complaint was referred to CAO Compliance for appraisal.

3. Scope of Appraisal

This appraisal report supplements a previous CAO compliance appraisal regarding IFC's investment in APPL dated January 8, 2013. The January 2013 appraisal was initiated in response to a request from the CAO Vice President and determined that CAO should conduct a compliance investigation of IFC's E&S performance in relation to its investment in APPL. The CAO Vice President request was triggered in response to allegations regarding incidents on the plantations of Nowera Nuddy in West Bengal and Powai in Assam.

The scope of this appraisal is therefore limited to: (a) the issues raised in the February 2013 complaint to CAO (read together with CAO's November 2013 assessment report); and (b) additional supervision activities undertaken by IFC since the publication of CAO's January 2013 appraisal report.

Issues as documented in the Complaint and CAO's Assessment Report

The complaint to CAO and the CAO Assessment Report raise the following issues:

Employee Stock Ownership Program (ESOP)
The complainants question the worker share-buying program, contending workers have been pressured into buying shares, often without proper information about the risks of such an investment.

Diversification
The complainants claim that APPL built a fishery on the paddy land of 16 families, but the jobs provided in return were temporary employment with long hours and minimum benefits. In another case, it is alleged that the company claimed workers' fishery as Company land and shut it down without compensating the workers.

Manipulation of audits
The complainants state that external audits on Company's Occupational Health & Safety (OHS) compliance were prepared for in advance, that auditors never tried to visit labor lines, and that management made sure that labor lines were kept far from auditors.

Labor and working conditions
The complaint cites long working hours, inadequate compensation, poor hygiene and health conditions, discrimination with regard to health benefit for spouses of women workers, barriers to voicing grievances, restrictions on freedom of association workers, and unsafe use of pesticides. Among other concerns the complaint cites cases in which productivity targets are so difficult to meet workers engage other family members, including children, to receive a single wage

Living conditions
The complaint lists examples of poor living conditions including insufficient housing, expensive electricity with limited supply, inadequate access to quality medical care, and lack of support for children's education.

Respect and dignity
The complaint states that workers do not feel respected due to lack of communication with the Company, low quality of health and water services, verbal abuse, and threat of retaliation.

Communication gap between management and workers
The complaint states that workers seem to have little knowledge on the Company's growth and are unclear about ESOP's implications on workers.

From the perspective of CAO's mandate, the general question raised is whether IFC exercised due diligence in its review and supervision of E&S aspects of the Project, particularly as they relate to the above issues.

4. Discussion

The discussion that follows covers only IFC's supervision of the project from January 2013 compliance appraisal to date. For discussion of IFC's approach to pre-project E&S due diligence and supervision from commitment in April 2009 to December 2012, see CAO's Vice President triggered compliance appraisal in relation to this project.

<u>IFC's supervision of APPL (January 2013 –)</u>

IFC's supervision of APPL during 2013 is documented in a Site Supervision Visit Back to Office Report (BTO) dated December 30, 2013.

The December 2013 BTO notes that IFC conducted a two day Site Supervision Visit (SSV) in July 2013 visiting the 3 plantations named in the CAO complaint. The BTO notes that the IFC team met with representatives of the three NGOs that submitted the Complaint.

SSV's scope was to supervise the "efficacy of APPL's environment and social management system, in particular issues related to labor working conditions, occupational health and safety and other concerns raised in the CAO complaint by 3 civil society organizations." Based on the site visit and review of additional documents, IFC and APPL undertook what is described as a "detailed and focused discussion" of a range of E&S issues including: (a) documentation of its management systems; (b) hazard identification and risk assessment; (c) pesticide use; (d) grievance redress processes; (e) processes for follow up and close out of internal and external audit findings; and (f) organization structure to strengthen consistency in implementation of the management system across estates.

The BTO also notes steps taken by APPL to address a range of E&S issues including health, safety, labor working and living conditions. These include: (a) implementing a food safety management system certified to ISO 22000; (b) implementing an employee and labor working condition management system certified to SA 8000; (c) subscribing to standards prescribed by Ethical Tea Partnership (ETP); (d) working towards implementing systems to obtain Rain Forest Alliance (RFA) certification; (e) its ongoing commitment to meet IFC Performance Standards; and (e) its operation of an organic plantation.

The BTO goes on to outline a series of challenges which APPL faces in developing an effective and integrated approach to ensuring that E&S standards are applied consistently across its 25 plantations. With a view to overcoming these challenges, IFC and APPL discussed a 12 point action plan. This focused on the engagement of an external expert to work with the company on the development and execution of its approach to meeting the requirements of ISO 22000, SA 8000, ETP, and RFA.

Based on the results of the SSV and subsequent discussions with the client, IFC maintained an E&S Risk Rating of 3 (partly unsatisfactory) for the project. Upon implementation of the Action Plan, however, IFC expressed the view that the E&S Risk Rating could be expected to increase to 2 (Satisfactory).

At the time of writing neither the client Annual Monitoring Reports (AMR) nor IFC reviews of these AMRs for the years 2011-12 (due June 2012) and 2012-13 (due June 2013) were available for review via IFC's operational portal (iDesk).

5. CAO Decision

Having reviewed the complaint and documentation in relation to IFC's management of E&S issues related to its investment in APPL, CAO concludes that this complaint raises potentially significant adverse E&S impacts associated with the project.

Based on the IFC documentation considered in the course of this compliance appraisal, it appears that IFC is engaging with its client around issues raised in the complaint, with a focus on developing the client's approach of E&S management, compliance auditing, and certification.

For reasons set out in CAO's January 2013 compliance appraisal, however, CAO has questions as to the adequacy of implementation of IFC's policies, procedures and standards, in particular requirements to:

- conduct an E&S review that is "commensurate with the level of social and environmental risks" of the project (Policy on Social and Environmental Sustainability, 2006, para. 13);
- assess whether the client's E&S Assessment meets the requirements of PS1, and if not request that the client undertake additional assessment(s) (Sustainability Policy, 2006, para. 17);
- identify any gaps between the client's assessment, the Performance Standards in the Environmental and Social Review Summary (ESRS), and where gaps exist, develop an Environmental and Social Action Plan (ESAP) to close these gaps (E&S Review Procedure, 2006, para. 3.2.1);
- ensure that AMRs provide adequate information to assess the client's performance against the requirements of the investment agreement and the Performance Standards: and that
- follow up to ensure that the root causes of serious incidents are being investigated and appropriate corrective action is taken to prevent reoccurrence (E&S Review Procedure, 2009, para. 6.2.8).

In addition, the current complaint raises issues with regard to IFC's approach to:

- the application of consultation and disclosure requirements of the Sustainability Policy (2006) (para. 20) and PS1 (para. 19ff & 26), in particular in relation to the Employee Stock Ownership Program.

In this context, CAO decides to conduct a compliance investigation of IFC's E&S performance in relation to its investment in APPL, considering both the issues raised by the current complaint and those discussed in its January 2013 compliance appraisal. Terms of Reference for this compliance investigation will be issued in accordance with CAO's Operational Guidelines.