January 9, 2019
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

IFC Financing of Alexandria Portland Cement Company: Egypt

Project #27022 and 30274

Complaints 02 and 03

In December 2009, IFC approved an equity investment of EUR 80 million in Alex Development Limited (ADL). ADL is the holding company for the Titan Group's Egyptian cement plants: Alexandria Portland Cement Company (APCC); and Beni Suef Cement Company (BSCC or "the project"). The transaction resulted in IFC acquiring, through ADL, a 15.2% minority stake in the project. Titan, ADL, APCC and BSCC are herein collectively referred to as "the client".

This compliance appraisal addresses two complaints (ADL-02 and ADL-03) regarding ADL's Beni Suef cement plant that were received by CAO in February and May 2017.

The ADL-02 complaint was filed in February 2017 by seven former workers of BSCC. The ADL-02 complainants raise concerns regarding labor issues. They allege that they were suspended from work without cause in November 2016 and subsequently forced to take early retirement, leading to loss of wages and financial hardship. They also raise concerns regarding occupational health and safety breaches including an alleged fatality in January 2017.

The ADL-03 complaint was filed in May 2017 by three former employees of BSCC on behalf of over 300 former workers who were retrenched by BSCC in 2003. While this occurred before IFC's investment in the project, disputes in relation to the retrenchment were ongoing at the time of IFC's investment and continue today. CAO's mandate in relation to the ADL-03 complaint thus relates to IFC's review and supervision of its client's handling of the ongoing dispute with its former workers, and not to the specifics of the 2003 retrenchment.

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 environmental and social (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 concerns raised by a complaint, results of a preliminary review of IFC's E&S performance in relation to these issues, and a more general assessment of whether a compliance investigation is the appropriate response.

The ADL-02 and ADL-03 complainants raise concerns regarding project impacts on the health, safety and livelihoods of current and former workers that are substantial in nature, considering both the impacts of retrenchment, loss of wages and workplace injuries, and the number of potentially impacted workers. A review of IFC's pre-investment due diligence and supervision of

the project raises compliance questions relevant to the issues in the complaints, namely, whether IFC discharged its review and supervision duties in relation to:

i. the client's suspension and retrenchment of workers in 2016/2017;
ii. the client's OHS policies and practices; and
iii. the client's handling of its ongoing dispute with workers alleging forced early retirement in 2003.

In this context, CAO concludes that the ADL-02 and ADL-03 complaints merit a compliance investigation

In conducting this compliance investigation, it is important to note that CAO is not a legal enforcement mechanism and has no authority with respect to judicial processes. As a result, CAO has no role in adjudicating disputes between the client and its former workers. Rather, CAO's compliance investigation will focus on how IFC assured itself of client compliance with the its Sustainability Policy, Performance Standards, and other relevant IFC requirements.

Terms of Reference for the compliance investigation are attached in Annex 1.

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) 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). The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and thus to improve the environmental and social performance of IFC and MIGA. CAO consists of three unique and complementary functions, Dispute Resolution, Compliance and Advisory, which together provide a flexible framework for handling people's complaints and addressing systemic concerns about IFC and MIGA projects.

About CAO's Compliance Function

CAO's Compliance function provides oversight of IFC and MIGA investments with the objective of improving environmental and social (E&S) performance of the institutions. The compliance function is activated when either of the parties opt for it following CAO's assessment of the complaint or when the Dispute Resolution process does not lead to an agreement between the parties. The compliance function can also be initiated by the CAO Vice-President, the President of the World Bank Group or IFC/MIGA senior management. Following a compliance investigation, CAO may determine that it is necessary to monitor actions taken by IFC or MIGA until such actions assure CAO that its compliance findings are being addressed.[1]

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

[1] CAO Operational Guidelines, 2013, para. 4.4.6.

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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

The Beni-Seuf Cement Company

This appraisal relates to environmental and social (E&S) concerns pertaining to Alexandria Development Limited (ADL)'s BSCC cement plant ("the company"). The company is located in Beni Suef, 110km south of Cairo, Egypt.[2] BSCC was established in October 1993 as a state-owned company.[3] At that time, the Government of Egypt held ninety-five percent of the shares in the company while the employee union was a 5% shareholder.

In 1999 a French multinational cement company, Lafarge, purchased 76% of BSCC under a government privatization program.[4] Subsequently, in November 1999, Titan Group (Titan) and Lafarge formed a joint venture (JV) in Egypt – Lafarge Titan Egyptian Investments Limited (LTEIL).[5] Thus, Titan indirectly acquired half of Lafarge's stake in BSCC, equivalent to 38% of the total shares.[6] LTEIL acquired from the Government its remaining 19% share of the company in 2000. In 2005, Titan acquired the employee union's 5% stake in BSCC through their subsidiary, Alexandria Portland Cement Company S.A. (APCC). LTEIL hence became sole owners of BSCC. In May 2008, Lafarge divested from LTEIL and its 50% stake was bought by APCC. Accordingly, 99.98% of the share capital of BSCC is held by Titan Group through ADL and APCC.[7]

IFC Exposures to Titan Egypt

IFC is exposed to the company through a direct investment in Titan's Egyptian business and through financial intermediary investments.

Direct Investment
Titan Group is an existing IFC client and Greece's leading private cement company. ADL is a wholly-owned subsidiary of Titan Egyptian Investment Ltd. In November 2010, IFC approved an equity investment in ADL, which in turn is a holding company of APCC (see *Figure 1* below). APCC operates a cement plant in Alexandria, and owns BSCC, which operates a cement plant in Beni Suef. IFC's investment was for equity of up to EUR 80 million, which represents an indirect shareholding of 15.2% of APCC's outstanding share capital.

The stated purpose of IFC's investment was to help fund the construction of a second integrated cement production line at BSCC; to invest in vertical integration into aggregates and ready-mix concrete; to improve the plants' environmental performance by upgrading pollution abatement and improving energy efficiency; and to complete various debottlenecking projects at both APCC and BSCC.

The investment was classified as Category B, indicating that IFC assessed it as having limited potential E&S risks and impacts.

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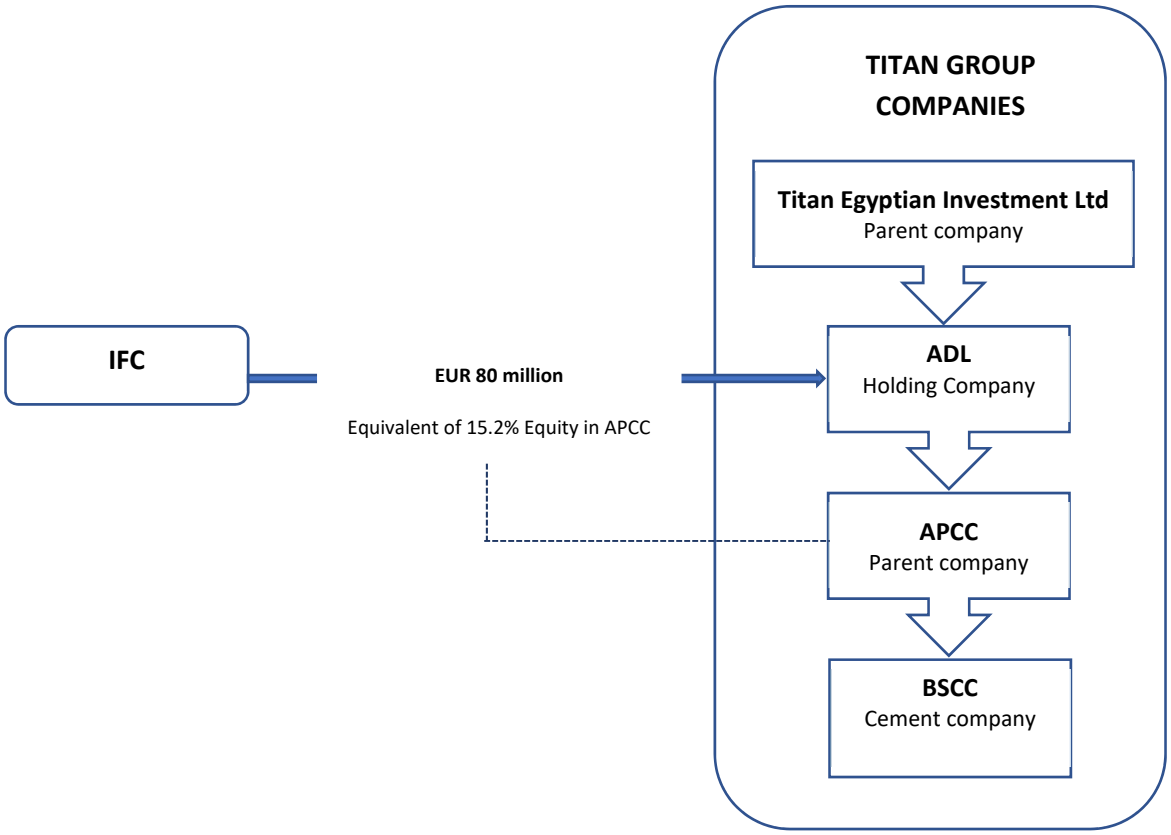
[2] Titan Cement Egypt Website, "Beni Suef Cement Company (BSCC)," available at: https://goo.gl/d2HFTv.
[3] EEC, Case No IV/M.1460 – LAFARGE/TITAN: Notification of 9 February 1999 pursuant to Article 4 of Council Regulation no 4064/89, Mergers Procedure Article 6(1)(b) decision, available at: https://goo.gl/VwmueJ.
[4] LafargeHolcim, Press Release, "Lafarge and Titan Cement Company invest jointly in Egypt," February 17,1999, available at: https://goo.gl/JJFzsX.
[5] *Ibid.*
[6] *Ibid.*
[7] Titan Cement Company S.A., Integrated Annual Report 2017, "Litigation matters in Egypt," p. 121, available at: https://goo.gl/xgVQxr.

Financial Intermediary Exposure

IFC also has an exposure to the project through a bank in which it holds equity. This bank has made loans to APCC, the parent company of BSCC. Given IFC's direct exposure, CAO has not further explored the financial intermediary exposure as part of this compliance appraisal.

Figure 1: IFC Direct Investment in Titan Egypt



The Complaints: ADL-02 and ADL-03

Position of the ADL-02 complainants

In February 2017, a second complaint in relation to IFC's investment in the client was filed.[8] The complaint was filed by seven former BSCC workers and raises concerns related to labor issues including claims of suspension without cause and without pay, forced early retirement, and occupational health and safety breaches. The complainants are supported by the Egyptian Association for Collective Rights, the Egyptian Center for Civil and Legislative Reform and Bank Information Center. During CAO's assessment, the parties did not agree to a CAO facilitated dispute resolution process. The assessment concluded in June 2018 and was referred to CAO's compliance function for appraisal.

[8] CAO, Egypt / Alex Dev Ltd-02/Beni Suef, filed February 13, 2017, case summary available at: https://goo.gl/G4T8EL. Note the first CAO complaint in relation to the investment concerned the company's Alexandria cement plant. CAO, Egypt / Alex Dev Ltd-01/Wadi al-Qamar, filed April 9, 2015, case summary available at: https://goo.gl/NZZF0t.

The complainants claim the client did not consult with or inform the workers about an early retirement plan prior to their suspension. The complainants allege that in November 2016, they were prevented from entering their work site by company security without any reasons being given. Further, they allege that the company posted a notice outside the work site informing the complainants about the retirement plan and asserting that the company had a legal basis to lock the workers out of the premises. The complainants contend that this justification was not valid.

The complainants believe that they were suspended because they chose to speak out against what they saw as unfair treatment by the company. They claim they were suspended for a period of four months (from November 2016 to March 2017) during which their monthly salaries were withheld. After the lockout, the complainants report that they protested outside BSCC premises for around ten days, and that they were supported by other workers.

The complainants state that the client prevented them from resuming work once the suspension period elapsed. In March 2017 the complainants agreed to an early retirement package equivalent to 2 months' salary per year of service. The complainants contend this is the minimum allowed under national law, which provides that workers should receive the equivalent of between 2 to 6 months' salary per year of service. The complainants explain that, due to psychological and financial distress, they felt that they had little choice but to accept the package on offer in March 2017. The complainants note that other workers who were offered early retirement packages in the following months were offered an equivalent of three months' salary per year of service. They argue that this differential treatment is unfair. As a consequence of their suspension and termination, the complainants state that they have suffered financial distress.

Regarding OHS concerns, the complainants maintain that the client does not provide a safe environment for its workers and that workers are frequently injured. They note specifically an accidental death of a driver in January 2017 that they claim was caused by poor OHS practices in the plant, and an injury of a contract worker on-site in October 2015. In exchanges with CAO, complainants also claimed that the workers are affected by air quality issues due to the use of coal in the plant.

Position of the ADL-03 complainants

In May 2017, three former BSCC workers filed a complaint with CAO on behalf of more than 300 former employees.[9] The Egyptian Association for Collective Rights, the Egyptian Center for Civil and Legislative Reform and Bank Information Center provided support to the complainants. This is the third complaint CAO has received in relation to IFC's investment in the client.[10] During CAO's assessment, the parties did not agree to a CAO facilitated dispute resolution process. The assessment concluded in October 2017 and was referred to CAO's compliance function for appraisal.

The complainants claim that about 452 workers were retrenched under an involuntary early retirement scheme implemented by BSCC in or around 2003 at the time when the company was operated by the Lafarge – Titan joint venture (the "2003 retrenchment").[11] The complainants

[9] CAO, Egypt / Alex Dev Ltd-03/Beni Suef, filed May 10, 2017, case summary available at: https://goo.gl/MsS6q2.

[10] CAO, Egypt / Alex Dev Ltd-01/Wadi al-Qamar, filed April 9, 2015, case summary available at: https://goo.gl/NZZF0t; CAO, Egypt / Alex Dev Ltd-02/Beni Suef, filed February 13, 2017, case summary available at: https://goo.gl/1jLc5s.

[11] "Complaint to the CAO office regarding the compliance of Beni Suef Cement Company (Titan) Funded by the International Finance Corporation," available at: https://goo.gl/ufKPJp.

allege their retrenchment, which followed the privatization of BSCC, was unfair and contrary to the privatization contract terms. Prior to the events of the "Arab Spring," which commenced in Egypt in January 2011, the complainants state that they did not pursue redress from the company because they feared retaliation.

Legal actions brought by other former workers in relation to forced early retirement were ongoing at the time of IFC's investment. The complainants claim that their efforts to engage with the company to address the early retirement policy and impacts on the workers were not effective. Complainants allege that company management declined to meet with workers' representatives when they raised the issues. In June 2011, a group of former workers staged protests outside BSCC premises. Subsequently, plant management agreed to meet with workers' representatives. However, this did not lead to a resolution of the issues.

A group of workers who were retrenched in 2003 (including the complainants) filed a case with the local administrative court in September 2011 seeking that: (i) the BSCC privatization be reversed; and (ii) they be reinstated and compensated. In 2014, the court ruled to uphold the privatization but decided in favor of the complainants with respect to their employment. BSCC was ordered to reinstate the retrenched workers and, as compensation for damages, retroactively pay salaries and other benefits from the date of termination.

According to the complainants, the company appealed the February 2014 court ruling and the appeal was dismissed by the court in March 2015. Further, the complainants explained that in April 2015, the relevant authorities issued a directive to BSCC for the 2014 court ruling to be implemented. However, the complainants reported that BSCC challenged the directive on the basis that the February 2014 decision was in favor of only the two workers in whose names the complaint was brought. Thereafter, attempts to settle the dispute through mediation have been unsuccessful. Subsequent court decisions have considered the scope and enforcement of the decision. Due to the lack of implementation, the complainants state that some affected workers have commenced filing for individual rulings in their names. They believe that BSCC's alleged failure to implement the court ruling in favor of the group of former workers is a violation of IFC's Performance Standard 2 and is contrary to Egyptian and international law.

The complainants also express concern that involuntary early retirements are a pattern that continues at BSCC today, with the aim to reduce the permanent workforce and replace them through cheaper, subcontracted workers.

Project Operator Perspective

ADL-02

As summarized in CAO's June 2018 Assessment Report,[12] the company maintains that all relevant national law and PS requirements are complied with. Regarding the seven former workers who were suspended in November 2016, the company notes: 1) they were suspended as unlawful work stoppages occurred due to their protest activities and 2) they were offered retirement packages which they willingly accepted in the presence of the workforce union representative. In relation to OHS issues, the company believes the injured worker caused the incident that resulted in his injury and this was not the first time this worker caused a health and safety incident. Nonetheless, the company maintains their willingness to support the worker in getting medical treatment. Regarding the accidental death, the company confirmed that an

[12] CAO Assessment Report, June 2018, Alex Dev-02/Beni Suef, https://bit.ly/2wE272V

accident occurred in Beni Suef town but maintains that nobody in the company was involved in the accident.

ADL-03
The client's position in relation to the ADL-03 complaint was summarized in CAO's October 2017 Assessment Report.[13] In relation to retrenched workers, BSCC asserts that the executable court judgement it received was issued in favor of only two former employees. The client asserts that it promptly executed the judgement upon receiving a final execution notice from the competent court. The client noted that a number of former workers were still submitting claims before various courts in an attempt to return to their previous jobs at BSCC. In the client's view, these workers voluntarily resigned and received generous compensation. BSCC maintains that it would always respect and execute all final court judgments but state that no final court judgment had been issued with regard to the larger group of retrenched workers.

III. Analysis

As part of this appraisal, CAO conducted a preliminary analysis of the policy and standards relevant to IFC's investment in the client and considered whether there are indications that these policies or standards may not have been adhered to by IFC. CAO also considered whether there were indications that IFC provisions may not have provided an adequate level of protection.

This section summarizes the appraisal analysis. It outlines CAO's initial review of IFC's E&S due diligence and supervision of its investment in the context of the issues raised by the complainant.

A. Policy and Performance Standards Framework

IFC's investment was made in the context of its 2006 *Policy and Performance Standards on Social and Environmental Sustainability* ("Policy" & "PS").

The Policy provides that, as part of its due diligence, IFC will conduct an E&S review of the project that is "appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks and impacts."[14] The Policy notes that "where there are significant historical social or environmental impacts associated with the project, including those caused by others, IFC works with its client to determine possible remediation measures."[15] IFC then weighs the costs and benefits of the project and develops project-specific conditions for the proposed investment. These are presented to the IFC board for approval.[16]

After IFC's investment, if a client fails to comply with its E&S commitments, IFC will "work with the client to bring it back into compliance to the extent feasible and, if the client fails to reestablish compliance, exercise remedies when appropriate."[17]

The ADL-02 and ADL-03 complaints raise issues regarding client implementation of IFC's labor standards and IFC review and supervision of client compliance with national law as relates to

[13] CAO Assessment Report, October 2017, Alex Dev-03/Beni Suef, https://goo.gl/WS6zCD.
[14] Sustainability Policy, 2006, para. 13.
[15] *Ibid.*
[16] Sustainability Policy, 2006, para. 16.
[17] IFC Policy on Environmental and Social Sustainability (2006), para 26: available at, http://goo.gl/9eh8hg.

E&S issues. The Performance Standards contain a general requirement that IFC supported projects "must comply with applicable national laws."[18]
Performance Standard 1: Social and Environmental Assessment and Management Systems (PS1) requires that, when assessing the environmental and social impacts of a project, IFC clients will take into account "[…] Applicable laws and regulations of the jurisdictions in which the project operates that pertain to social and environmental matters, including those laws implementing host country obligations under international law […]".[19]

Performance Standard 2: Labor and Working Conditions (PS2) has as one of its key objectives "to promote […] compliance with national labor and employment laws".[20] PS2 further requires that IFC clients provide reasonable working conditions and terms of employment that, at a minimum, comply with national law.[21] PS2 requires that if retrenchment of a significant number of workers is anticipated […], the client develop a plan to mitigate the adverse impacts of retrenchment on employees. In addition, the plan will not be discriminatory and will be in consultation with the employees, their organizations, and where appropriate the government." [22] Regarding occupational safety, PS2 requires that the client provide the workers with a safe and healthy work environment and take steps to prevent accidents and work injuries by minimizing, so far as reasonably practicable, the causes of hazards.[23] PS2 also provides for worker to be able to raise grievances with their employer without retribution.[24]

B. IFC Performance

This section summarizes CAO's initial review of the complaints, relevant project documentation and discussions with the IFC project team.

IFC E&S Review Stage
In July 2009, IFC conducted a pre-investment site visit to the BSCC plant. An E&S Review Summary (ESRS), along with an E&S Action Plan (ESAP) were disclosed on IFC's website in November 2009. [25] Regarding labor and working conditions, IFC noted that the company appeared to have good relations with its employees and had not had any labor actions in the previous seven years. The ESRS noted that no retrenchment had occurred as a result of the client's buy-out of Lafarge, and that none was expected in the context of the project. The IFC project team informed CAO that they became aware of concerns about retrenchments at BSCC during the E&S review, including ongoing legal cases raising similar issues to the ADL-03 complainants. However, the ESRS did not refer to ongoing court proceedings related to the 2003 retrenchment. IFC staff advised CAO that IFC was comfortable enough to proceed with the investment considering the ongoing retrenchment related litigation because the lawsuits did not seem to be a systemic issue and because IFC understood that the client was addressing and managing them.

[18] Performance Standards, 2006, Introduction, para. 3.
[19] PS1, 2006, para. 4.
[20] PS2, 2006, Objectives.
[21] PS2, 2006, para. 8.
[22] PS2, 2006, para. 12.
[23] PS2, 2006, para. 16.
[24] PS2, 2006, para. 13.
[25] IFC, Titan Egypt: Environmental & Social Review Summary (ESRS), November 10, 2009, available at: https://goo.gl/sw8GgP

In relation to occupational health and safety, the ESRS stated that the company had "a well-established and extremely effective" OHS program in place.[26] IFC found injury and accident rates were consistent with global best practice for the cement industry. IFC further indicated that the company had a strong and consistent approach to OHS and use of personal protective equipment (PPE).

An ESAP was agreed with the client and disclosed in November 2009 and updated in 2012 and 2015. CAO notes that no actions related to labor, retrenchment, stakeholder engagement or OHS procedures were included in any of the ESAP versions. Rather the ESAP was focused on environmental issues.

IFC Project Supervision

IFC is required to supervise a client's E&S performance "…to obtain information to assess the status of project's compliance with the PS and other specific E&S requirements agreed at commitment […]".[27]

IFC staff were aware of workers impacted by the 2003 retrenchments protesting at BSCC in June 2011. The IFC project team noted to CAO that such protests had become more common following the Arab Spring. IFC followed up with the company and requested information on the retrenchment of the former workers, including how the compensation packages were determined. IFC was aware of the September 2011 court action brought by the ADL-03 complainants. IFC reported that they did not get involved in the preparation of the client's litigation strategy in this matter as they were not a named party in the lawsuit. However, IFC notes that it has engaged with the company's in-house legal team, IFC internal counsel, and IFC external counsel on the situation. IFC reports that it has monitored the development of the cases by requesting updates from the client on a quarterly basis, after any court dates, and during each site visit.

IFC was also aware of the February 2014 court ruling against the company in relation to the 2003 retrenchments. The decision ordered the company to: (i) reinstate all workers registered on BSCC payroll as of June 30, 1999 who were affected by the early retirement scheme; and (ii) pay compensation for damages including back pay (salaries, bonuses and pensions) entitled in full employment.[28]

In 2014, IFC enhanced its supervision of the client's labor practices and HR systems, making recommendations to the client regarding retrenchment and OHS issues, with a focus on contract workers. However, no action plan was agreed with the client to address these issues. IFC's supervision record contains no analysis of any compliance implications of the ongoing dispute between the client and the workers who were retrenched in 2003. IFC noted that the role of the project team is not to provide legal counsel to the client and IFC's default position is to respect the court process and expect the client to comply with the law accordingly.

In December 2016, IFC was notified of "targeted redundancies" that were underway to terminate the employment of low performing staff and that seven workers had declined the terms offered. IFC supervision documentation acknowledged that the recent retrenchment fell short of PS2

[26] IFC, Titan Egypt: Environmental & Social Review Summary (ESRS), November 10, 2009, available at: https://goo.gl/sw8GgP.
[27] ESRP 6, Version 7, April 15, 2013. https://goo.gl/3dDX6J
[28] Council of State Magistrate Court, Seventh Circuit, decision in case number 43213, February 15, 2014 (on file with CAO). For English language summary see: Sharkawy & Sarhan, Newsletter,"Privatization of Beni Suef Cement Company Confirmed to the Law," March 1, 2014: https://goo.gl/oV6uQn.

requirements in certain respects. Over the following months, IFC followed up with the client seeking further information about the offer, noting that the seven workers had been suspended. The company reported to IFC in early March 2017 that the workers had met with BSCC management and had submitted their resignation in the presence of union representatives. The following month, IFC followed up with the company regarding the ADL-02 complaint to CAO and sought additional details from the company on the terms of settlement with the seven workers and the OHS incidents reported in the complaint. Supervision documentation provides no indication that IFC reviewed whether the client's approach to retrenchment through the "targeted redundancies" in 2016 addressed PS2 requirements for planning, consultation and non-discrimination. However, the project record indicates that IFC did engage with its client on the terms and conditions of a separate retrenchment process carried out at BSCC in 2017.

Observations on IFC Performance

The ADL-02 and ADL-03 complaints from former workers of BSCC raise a number of questions regarding IFC's review and supervision of this investment.

First, the client's 2003 retrenchment occurred before IFC's investment and as a result was not subject to IFC's Performance Standards. However, IFC is required to assess "significant historical social or environmental impact associated with [a] project" and "determine possible remediation measures."[29] Based on the information reviewed in the context of this compliance appraisal, CAO has questions as to whether IFC correctly applied this requirement when considering its decision to invest.

Second, IFC is required to review and supervise investments for compliance with national law as relevant to E&S issues.[30] The ongoing disputes between the client and the workers who were retrenched in 2003 raise issues of compliance with national law. Based on the information reviewed in the context of this compliance appraisal, CAO has questions as to whether IFC gave appropriate consideration to the legal compliance issues raised by the ADL-03 complainants ongoing disputes with the client.

Third, the retrenchment of workers in 2016 was governed by PS2 as it took place during the period of IFC's investment. IFC was informed by the client of the suspension and subsequent retirement of the seven former workers who are the complainants in the ADL-02 complaint. IFC acknowledges that the company did not have a formal retrenchment plan in place at that time. In this context, CAO has questions as to IFC's review and supervision of PS2 requirements on retrenchment as applied to the project, in particular requirements for planning, consultation and non-discrimination in relation to retrenchment, and the application of these requirements to the ADL-02 complainants.

Fourth, while the ESRS reaches positive findings regarding client OHS performance, CAO is unclear as to whether this conclusion was supported by client E&S documentation or audits. CAO is similarly unclear as to the adequacy of IFC's supervision of client OHS performance, both generally, and in relation to the specific incidents raised by the ADL-02 complainants.

[29] Sustainability Policy, 2006, para. 13.
[30] Performance Standards, 2006, Introduction, para. 3.

IV. CAO Decision

This compliance appraisal considers two complaints regarding the impacts of the company's actions on its former workers.

The ADL-02 complainants are seven former workers who allege to have been suspended without cause and without pay and felt that they were pressured to accept an unfair retirement package. The complaint also highlights OHS issues. The complainants and the company present different accounts of the lockout, suspension, and compensation package offered to the seven workers. CAO considers that these matters require verification that is beyond the scope of an appraisal. CAO's initial review of project documentation demonstrates that IFC were aware of the targeted redundancies, suspension and resignation of these seven workers at the time. The project record demonstrates that IFC identified possible inconsistencies with PS2 and sought further information from its client. However, there is no record of an IFC assessment of the client's compliance with PS2 retrenchment requirements or whether remedial action was required in relation to the issues raised by the ADL-02 complainants.

The ADL-03 complainants represent a group of workers who were among over 300 impacted by retrenchments implemented in 2003. The complainants argue that their retrenchment and the protracted disputes with the company about the issue have had serious impacts on the finances of their households. The complainants have pursued remedy from the company since 2011, initially by attempting to address their concerns through direct engagement with company management and through protest action. When these efforts were not successful, the complainants brought legal action against the company requesting their re-employment and claiming compensation for lost earnings and benefits. In February 2014, the Cairo Administrative Court issued a ruling that the client reinstate workers who were retrenched in 2003. The company and the complainants have taken subsequent court actions to overturn the decision, or to clarify and ensure its implementation, respectively. The client has stated that it executed the judgment in relation to two individuals named in the 2014 decision, however the complainants allege that the claims of the larger group of workers remain unaddressed.

IFC's stated position has been that the ADL-03 dispute between former workers and the client is a matter for the Egyptian courts, not a matter to be addressed through IFC supervision of the client. CAO has questions as to whether this approach is consistent with the requirements of IFC's Sustainability Policy.

In summary, the ADL-02 and ADL-03 complainants raise concerns regarding project impacts on the health, safety and livelihoods of current and former workers that are substantial in nature, considering both the impacts of retrenchment, loss of wages and workplace injuries, and the number of potentially impacted workers. A review of IFC's pre-investment due diligence and supervision of the project raises compliance questions relevant to the issues in the complaints, namely, whether IFC discharged its review and supervision duties in relation to:

i. the client's suspension and retrenchment of workers in 2016/2017;
ii. the client's OHS policies and practices; and
iii. the client's handling of its ongoing dispute with workers alleging forced retirement in 2003.

In this context, CAO concludes that the ADL-02 and ADL-03 complaints merit a compliance investigation

In conducting this compliance investigation, it is important to note that CAO is not a legal enforcement mechanism and has no authority with respect to judicial processes. As a result, CAO has no role in adjudicating disputes between the client and its former workers. Rather, CAO's compliance investigation will focus on how IFC assured itself of client compliance with the its Sustainability Policy, Performance Standards, and other relevant IFC requirements.

Terms of Reference for the compliance investigation are attached in Annex 1.

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January 9, 2019
Office of the Compliance Advisor Ombudsman (CAO)

ANNEX: TERMS OF REFERENCE

IFC Financing of Alexandria Portland Cement Company: Egypt

Project #27022 and 30274

Complaints 02 and 03

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 CAO Compliance is on IFC and MIGA, not their client. This applies to all IFC's business activities including the real sector, financial markets, and advisory services. 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.

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 decision.

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

Background to the investment

Titan Group is an existing IFC client and Greece's leading private cement company. Alex Development Limited (ADL or "the client") is a subsidiary of Titan Egyptian Investment Ltd. The client requested investment to expand its operations in Egypt. In December 2009, IFC approved an equity investment of EUR 80 million in the client. The client is the holding company for the Titan Group's Egyptian cement plants. This consists of two operations: Alexandria Portland Cement Company (APCC) and Beni Suef Cement Company (BSCC or "the company). The transaction resulted in IFC acquiring through ADL a 15.2% minority stake in APCC.

The stated purpose of IFC's investment was to help fund the construction of a second integrated cement production line in BSCC; to invest in vertical integration into aggregates and ready-mix concrete; to improve the plants' environmental performance by upgrading pollution abatement and improving energy efficiency; and to complete various debottlenecking projects at both APCC and BSCC.

An investment agreement was signed between the client and IFC in March 2010 and IFC disbursed EUR 80 million in November 2010.

The complaints

The ADL-02 complaint was filed in February 2017 by seven former workers of BSCC. The ADL-02 complainants raise concerns regarding labor issues, including suspension without cause, non-payment of wages, forced early retirement, occupational health and safety breaches, a contract worker injury in October 2015 and accidental death of a worker in January 2017.

The ADL-03 complaint was filed in May 2017 by three former employees of BSCC on behalf of over 300 former workers. The ADL-03 complaint raises concerns regarding a retrenchment scheme that was carried out at BSCC in 2003. While this occurred before IFC's investment in the project, disputes in relation to the retrenchment were ongoing at the time of IFC's investment and continue today.

During CAO's assessment of the two complaints, the parties did not agree to a CAO facilitated dispute resolution process. Hence, the cases were referred to CAO's compliance function for appraisal.

In January 2019, CAO released its compliance appraisal in relation to the two 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 this CAO 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 (PS) and Policy on Disclosure of Information as applied to this project provide an adequate level of protection. The CAO appraisal report identified specific questions regarding the application of IFC's Sustainability Framework to the investment, including whether IFC discharged its review and supervision duties in relation to:

i. the client's suspension and retrenchment of workers in 2016/2017,
ii. the client's OHS policies and practices; and
iii. the ongoing dispute between the client and workers alleging forced retirement in 2003.

IFC's knowledge of the project operator's environmental and social performance is of relevance beyond IFC's direct investment in the client given exposure through an IFC financial intermediary investment.

Compliance Investigation Process and Preliminary Timeline

The preliminary time schedule is for CAO to have a draft compliance Investigation Report ready by October 2019.

A draft Investigation Report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC 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 Compliance 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 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 Egyptian legislation and policies in relation to labor, retrenchment, and operational health and safety;
- Significant expertise in workers' rights and labor contracts in the private sector;
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1 (Social and Environmental Assessment and Management Systems) and Performance Standard 2 (Labor and Working Conditions);
- Experience and knowledge relevant to the conduct of compliance investigations;
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.