



APPRAISAL REPORT

CAO Appraisal for Audit of MIGA

CAO Compliance

C-M-R5-Y11-F146

October 3, 2011

PT Weda Bay Nickel Indonesia

**Case of MIGA's Guarantee Linked to the Engineering and Feasibility Phase
of Developing the PT Weda Bay Nickel Project**

Summary

On August 11, 2010, MIGA issued a guarantee for its client's equity investment in the PT Weda Bay Nickel Project. During the guarantee period, it was anticipated that the engineering and feasibility studies necessary to complete a feasibility study for the operation of the mine would be conducted. The guarantee does not cover the construction or operation phase.

The CAO appraisal asks the question: Has MIGA at this stage assured itself that it has diligently reviewed and assessed the environmental and social risk, and potential environment and social impacts of the development of the WBN Project?

Specifically, the CAO's appraisal for audit investigated whether there is evidence of risk of significant adverse social and environmental outcomes from the guarantee and the related project that indicates that policy provisions have failed to provide an adequate level of protection. The CAO finds that this is not the case.

The CAO's appraisal for audit also investigated whether a compliance audit could yield information or findings that might improve the application of policies (or other audit criteria) to future projects. The CAO finds that an audit of MIGA's due diligence of the guarantee related to the engineering and feasibility phase of developing the PT Weda Bay Nickel Project, against the policy provisions applicable, would yield limited information and would be of limited value beyond what this appraisal has identified.

The CAO concludes that this case does not merit an audit of MIGA, in the current stage. The CAO will close this case with no further action.

Office of the Compliance Advisor/Ombudsman (CAO)
for the
International Finance Corporation (IFC)
Multilateral Investment Guarantee Agency (MIGA)
Members of the World Bank Group



Contents

1. Overview of the Appraisal Process and Compliance Audits
2. Background and Concerns that Led to the Appraisal
3. Scope of the Appraisal for a Compliance Audit of MIGA
4. Findings of the CAO Appraisal
5. The CAO Decision

About the 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.

The 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

1. Overview of the Appraisal Process and Compliance Audits

When the CAO receives a complaint about an IFC/MIGA project, the complaint is first referred to the ombudsman arm of the CAO, *CAO Ombudsman*, which works to respond quickly and effectively to complaints through facilitated settlements, if appropriate. If CAO Ombudsman concludes that the parties are not willing or able to reach a facilitated solution, the case will be transferred to the compliance arm of the CAO, *CAO Compliance*, to appraise the concerns raised in the complaint for a *compliance audit* of IFC/MIGA. Alternatively, a compliance audit can be initiated by request from the President of the World Bank Group, the senior management of IFC or MIGA, or at the discretion of the CAO Vice President.

A *CAO compliance appraisal* is a preliminary investigation to determine whether the CAO should proceed to a compliance audit of IFC/MIGA. Through CAO compliance appraisals, the CAO ensures that compliance audits of IFC/MIGA are initiated only for those cases that may raise substantial concerns regarding social or environmental outcomes.

A compliance audit is concerned with assessing the application of relevant policy provisions and related guidelines and procedures to determine whether IFC/MIGA is/are in compliance. The primary focus of compliance auditing is on IFC/MIGA, but the role of the sponsor may also be considered.

A compliance audit appraisal, and any audit that ensues, must remain within the scope of the original complaint or request. It cannot go beyond the confines of the complaint or request to address other issues. In such cases, the complainant or requestor should consider a new complaint or request.

The CAO compliance appraisal will consider how IFC/MIGA assured itself/themselves of compliance with national law, reflecting international legal commitments, along with other audit criteria. The CAO has no authority with respect to judicial processes. The CAO is not an appeals court or a legal enforcement mechanism, nor is the CAO a substitute for international court systems or court systems in host countries.

The appraisal criteria are set forth in CAO's Operational Guidelines. The criteria are framed as a series of questions to test the value of undertaking a compliance audit of IFC or MIGA. The criteria are as follows:

- Is there evidence (or perceived risk) of adverse social and environmental outcomes that indicates that policy provisions (or other audit criteria) may not have been adhered to or properly applied?
- Is there evidence of risk of significant adverse social and environmental outcomes that indicates that policy provisions, whether or not complied with, have failed to provide an adequate level of protection?
- Is there evidence (or perceived risk) of significant adverse social and environmental outcomes where policy provisions, standards, or other audit criteria were not thought to be applicable but perhaps should have been applied?



- Is there evidence that the application of some aspect of a policy, standard, guideline, or procedure resulted in adverse social and environmental outcomes?
- Can the cause of adverse social and environmental outcomes not be readily identified and corrected through the intervention of the project team without a detailed investigation of the underlying causes or circumstances?
- Could a compliance audit yield information or findings that might better inform the application of policies (or other audit criteria) to future projects?

During appraisal, CAO Compliance holds discussions with the IFC/MIGA project team and other relevant parties to understand the validity of the concerns and to explore whether an audit would be warranted.

After a compliance appraisal has been completed, the CAO can choose only one of two options: to close the case, or to initiate a compliance audit of IFC/MIGA.

The CAO will report and disclose the findings and decision of the CAO compliance appraisal in an appraisal report in order to inform the President of the World Bank Group, the Boards of the World Bank Group, senior management of IFC/MIGA, and the public in writing about its decision.

If the CAO decides to initiate a compliance audit as a result of the compliance appraisal, the CAO will draw up a Terms of Reference for the audit in accordance with CAO's Operational Guidelines.

2. Background and Concerns that Led to the Appraisal

In July 2010, the CAO received a letter from Indonesian NGOs and citizens raising concerns related to proposed development of a nickel and cobalt mine and hydrometallurgical processing plant in the North Maluku Province of eastern Indonesia by PT Weda Bay Nickel (WBN).

MIGA had issued a guarantee for the main investor covering the time period when it was expected that WBN would conduct feasibility and engineering work.

The CAO assisted the complainants in understanding and exploring their options for resolving the concerns raised. In June 2011, the CAO dispute resolution team concluded that the dialogue process convened by the CAO was not an option for the involved parties. Therefore, the case was transferred to CAO's Compliance function for appraisal, per CAO Operational Guidelines.

Investment Background

On August 11, 2010, MIGA issued a guarantee of \$207 million to Strand Minerals (Indonesia) Pte. Ltd of Singapore for its equity investment in the PT Weda Bay Nickel Project. Strand Minerals is jointly owned by Eramet SA of France and Mitsubishi Corporation of Japan. The coverage is for a period of up to three years against the risks of transfer restriction, expropriation, breach of contract, and war and civil disturbance.

During this period, it is anticipated that approximately \$230 million will be invested for the engineering and feasibility studies necessary to conclude a feasibility study for the operation of a nickel-cobalt mine with a hydrometallurgical processing plant on Halmahera Island. Once the studies are complete, an investment decision will be taken on whether to continue developing the mine and building a processing plant. MIGA anticipates that the final investment decision should be made before the end of 2012.

3. Scope of the Appraisal for a Compliance Audit of MIGA

The CAO appraisal asks the question: Has MIGA assured itself that it has diligently reviewed and assessed the environmental and social risk, and potential environment and social impacts, of the development of the WBN Project?

An appraisal of this scope necessitated revisiting the scope of the review, the diligence with which it was carried out, and how MIGA assures itself of performance through reviews, monitoring, and follow up of the implementation of Standards and Guidelines, as well as project-specific actions to mitigate risk identified by MIGA and its client.

Relevant for the scope is the fact that the guarantee covers the period for engineering and feasibility studies necessary to conclude a feasibility study for the operation of the mine and associated facilities.

This does not exclude a responsibility for MIGA to assess the potential impacts that might occur during future construction and operation. However, the main objective of the period of the engineering and feasibility studies is to conduct these studies with such diligence that the assessments of potential impacts are consistent with the requirements and guidance spelled out in

MIGA's policies and review procedures. This limits the level of detail that can be expected at the early stage in which MIGA assessed the potential impacts and risks of the engineering and feasibility, and issued the guarantee. However, it does not limit the overall diligence that can be expected, and the requirement for MIGA to assess and identify mitigation measures either to reduce uncertainty in order to proceed with specific actions or decisions, or to identify specific actions.

MIGA's Standards, Guidelines, and Procedures

The framework of MIGA's due diligence is provided by MIGA's Performance Standards, in combination with relevant EHS Guidelines. The Environmental and Social Review Procedures require MIGA to review the project against the Performance Standards and good international practice standards as set out in the EHS Guidelines. In addition, an assessment typically includes a review of the track record, technical capacity, corporate and project-specific management systems of the client/operator, and business and technical risk and associated risk mitigation measures.

Issues Raised by the Complainants

Based on the original complaint to the CAO, and further stakeholder discussions undertaken as part of the CAO Assessment, the concerns raised were summarized as related to one of the following:¹

- WBN social and environmental impact assessments, and related management system (quality and completeness of assessments and studies)
- Pollution and sedimentation control (especially impact on local water resources)
- Land acquisition and compensation schemes (especially ensuring fair process)
- Biodiversity conservation and sustainable natural resource management
- Consultation with Forest Tobelo people and avoiding and/or properly mitigating impacts
- Cultural heritage preservation
- Improving WBN project-related community development, involvement, and consultation
- Design and implementation of grievance mechanism(s) to address and resolve the concerns of affected communities/individuals throughout the long-term life of the project.

MIGA's Due Diligence and Follow-up

During its due diligence of the guarantee related to the WBN Project engineering and feasibility phase, MIGA classified the project as Category A under MIGA's Environmental and Social Review procedures. MIGA did not expect impacts on critical habitats or on species biodiversity, or consequences of pollution, to be significant during the engineering and feasibility phase. However, MIGA identified several significant potential impacts during the construction and operations phase, such as: potential erosion; impacts on biodiversity; effects of disposal of solid residues; and consequences of population influx. MIGA stated that these impacts could be irreversible if not addressed properly.

¹ CAO Ombudsman Assessment Report, *Complaint Regarding the MIGA PT Weda Bay Nickel Project (#8113)*, Halmahera Island, North Maluku, Indonesia, June 2011.

MIGA identified Performance Standards 1–8 as relevant and applicable.

MIGA also identified that, in order to assess the impacts of construction and operations, the client had committed to conduct further work and studies related to: terrestrial biodiversity; marine biodiversity and the ecology of the Sagea Lagoon; community social assessment; public consultation and disclosure plan; community and indigenous people development plan; cultural heritage preservation plan; land acquisition and compensation plan; greenhouse gas emissions assessment; metals background study; residue management impact assessment; karst limestone deposit analysis; Kobe River watershed study; and population influx.

MIGA stated that the project sponsors had committed to comply with MIGA Performance Standards and the Equator Principles; the World Bank Group (WBG) Environmental, Health and Safety (EHS) Guidelines; the World Business Council for Sustainable Development Mining Guidelines; and the International Council on Metals and Minerals (ICMM) Sustainable Development Framework, and that third party ISO 14001 certification of the managements system would be sought.

Performance Standards requirements related to the engineering and feasibility phase

PS 1. MIGA requested an Environmental and Social Management Plan, including plans for emergency response and evacuation, worker safety, water use, solid and liquid waste, hazardous materials, soil erosion control and surface run-off management, biodiversity management, and information disclosure and public consultation. MIGA requested that the land acquisition and compensation plan be completed and submitted to MIGA for review before any land was acquired.

PS 2. MIGA assured itself that a workplace health and safety plan was in place consistent with PS2 requirements and relevant guidelines, and that it covered all workers and subcontracted labor.

PS 3. Based on PS 3, MIGA assessed the pollution impacts of the project and concluded that they would not be significant during the exploration and feasibility phase. Site visits by MIGA and monitoring carried out by WBN did not indicate significant impacts. Hazardous materials use was assessed as limited. Soil erosion was reported to be mitigated by drainage and appropriate stockpiling techniques.

PS 4. Based on PS 4, MIGA assessed the potential project impacts on community health, safety and security, and concluded that most potential impacts would arise only in the construction and operation phases of the project.

PS 5. MIGA assessed the project's land acquisition, and concluded that it would not require physical displacement of families, including during the construction and operations phase, but in some cases land acquisition would cause economic displacement. MIGA assured itself that the process would follow both national laws and PS 5.

PS 6. Based on PS 6, MIGA assessed potential impacts on habitats and species biodiversity and concluded that they would be limited during the exploration and feasibility phase. However, MIGA concluded that construction of roads and drill sites would require some forest clearing, and that road construction would result in some opening of access to forest areas as well as limited forest clearing. However, MIGA concluded that human presence during the exploration and feasibility phase would not increase significantly, and thus any increased access would be unlikely to lead to



increased encroachment. Potential negative impact from soil erosion as a consequence of the building of roads and test pits during design and exploration was assessed to likely be short in duration and reversible if appropriately mitigated.

PS 7. MIGA noted that WBN social and environment staff have had brief contacts with indigenous people during exploration and feasibility activities, but MIGA concluded that potential impacts are likely to occur mainly as a consequence of construction and operations.

PS 8. Based on PS 8, MIGA reports that no cultural heritage finds were reported during construction of the project airport, the base camp, the mining test pit, or any other facilities built for the exploration and design phase.

4. Findings of the CAO Appraisal

The CAO finds that MIGA diligently reviewed and assessed the issues and potential impacts related to the engineering and feasibility phase in line with standards, guidelines, and industry practice applicable at the time.

The CAO finds that MIGA identified and reviewed the expected issues and potential impacts related to the construction and operation phase in line with standards, guidelines, and industry practice applicable.

The CAO finds that the issues raised by the complainants with regard to the engineering and feasibility phase had been identified by MIGA, and that MIGA assured itself that specified mitigation measures were being implemented. However, the efforts needed to ensure due process when handling these issues, especially in the current phase, where the technical separation between engineering and construction might be hard to understand for all involved, cannot be underestimated.

The CAO finds that many of the issues raised by the complainants relate to the overall impacts of the development, and specific potential impacts of the construction and operation. The CAO finds that MIGA had identified the issues raised, and MIGA had identified the need for mitigation measures. However, at the time of the complaint, most issues were pending further studies before commitment to specific actions could be made.

The CAO notes that MIGA has not approved a guarantee for the construction and operation phase, and does not intend to do so until MIGA is assured the project will comply with the relevant policy provisions and Performance Standards.

Conclusions of the CAO Appraisal

The CAO appraisal investigated whether there is evidence of risk of significant adverse social and environmental outcomes that indicates that policy provisions have failed to provide an adequate level of protection—whether or not MIGA complied with them. The CAO finds that this is not the case.

The appraisal also investigated whether a compliance audit could yield information or findings that might improve the application of policies (or other audit criteria) to future projects. The CAO finds that an audit of MIGA's due diligence related to the guarantee for the engineering and feasibility study phase of WBN Project, against the applicable policy provisions, would yield limited information and be of limited value beyond what this appraisal has identified.

5. The CAO Decision

The CAO concludes that this case does not merit an audit of MIGA's due diligence and monitoring of its involvement linked to the engineering and feasibility study phase of WBN Project. The CAO will close this case with no further action.

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