



July 29, 2015
Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*IFC investment in Plato, Kyrgyzstan
Project #32583*

Complaint 01

This compliance appraisal considers a complaint regarding an IFC investment in T.C. Plato Meslek Yuksekoku (Plato, or “the Company”). The Company is a Turkish private education provider which started operations in 2009 with two vocational education institutes: Plato College for Higher Education in Istanbul, Turkey, and Plato University of Management and Design (PUMD) in Bishkek, Kyrgyzstan.

IFC’s investment in the Company is a convertible loan of US\$6 million with the intent to support the Company’s expansion in Turkey, Central Asia (Kyrgyzstan and Kazakhstan), and the Middle East and North Africa (likely Egypt and/or other countries depending on opportunities). The total project cost is estimated at \$12 million.

In April 2015, CAO received a complaint in relation to PUMD in Bishkek, Kyrgyzstan. The complaint was lodged by a former employee of the University. The complainant alleges that mismanagement by the Company led to the liquidation of the University and ultimately the complainant’s unlawful dismissal from work without due process and withheld compensation. CAO determined that the complaint was eligible in April 2015. During the CAO assessment phase, the Company indicated it preferred that the complaint be handled by CAO’s Compliance function. Given the voluntary nature of a CAO dispute resolution process, this complaint was referred to the CAO compliance function in June 2015.

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 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 E&S concerns raised in a complaint, results of a preliminary review of IFC’s E&S performance in relation to these issues, the existence of questions as to the adequacy of IFC’s requirements, and a more general assessment of whether a compliance investigation is the appropriate response in the circumstances.

Absent aggravating circumstances, disputes between an employer and individual employees around issues of pay and benefits will not raise substantial concerns regarding the E&S outcomes of an IFC investment such that would merit a CAO compliance investigation.

While CAO has identified questions as to IFC’s appraisal and supervision of its investment in the Company, given the nature of the complaint, CAO finds that a compliance investigation is not the appropriate response in this instance. As a result, in accordance with its Operational Guidelines, CAO has decided to close this case.

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).

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

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Acronyms

Acronym	Definition
AMR	Annual Monitoring Report
CAO	Office of the Compliance Advisor Ombudsman
E&S	Environmental and Social
ESAP	Environmental and Social Action Plan
ESRP	Environmental and Social Review Procedures
ESRR	Environmental and Social Risk Rating
ESRS	Environmental and Social Review Summary
HR	Human Resources
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
PS	Performance Standard
PUMD	Plato University of Management and Design
SII	Summary of Investment Information

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

Investment

T.C. Plato Meslek Yuksekokulu (Plato, or “the Company”) is a Turkish private education provider which started operations in 2009 with two vocational education institutes: Plato College for Higher Education in Istanbul, Turkey, and Plato University of Management and Design (PUMD, or “International Plato University” since late 2012) in Bishkek, Kyrgyzstan. IFC’s investment in Plato is a convertible loan of US\$6 million. As described by IFC the investment was designed to support:

“[Plato’s] 2012-15 expansion plan which constitutes: (i) expansion of its vocational learning centers across Turkey, (ii) introduction of new programs in its existing university in Bishkek and establishment of vocational training centers in Kazakhstan, and (iii) entrance into the Middle East and North Africa region with offering of quality post-secondary vocational education programs relevant to labor market needs...”¹

Complaint and CAO Assessment

In April 2015, CAO received a complaint in relation to PUMD in Bishkek, Kyrgyzstan. The complaint was lodged by a former employee of the University. The complainant alleges that mismanagement by the Company led to the liquidation of the University and ultimately the complainant’s dismissal. Specifically, the complainant in this case raises concerns regarding unfair dismissal from work and withheld compensation.²

CAO determined that the complaint met its three eligibility criteria in April 2015, and began an assessment of the complaint. CAO’s assessment of the complaint consisted of email and telephonic correspondence with the Complainant, the Company, and the IFC team.

As set out in CAO’s assessment report,³ the Company clarified that: (1) PUMD ceased educational activities in August 2014, and academic staff were dismissed at that time; (2) the Company stopped being a shareholder in PUMD in April 2015; and (3) PUMD was not liquidated and was still operational as of June 2015. The Company further contends that it has followed national law and acted in good faith in its dealings with its former employees. It prefers that the complaint be handled by CAO’s Compliance function, and that disputes regarding national labor law and regulations be mediated or judged by local courts.

Since a CAO dispute resolution process requires voluntary agreement to participate by the complainant and Company at a minimum, in accordance with CAO’s Operational Guidelines, this complaint was referred to CAO Compliance in June 2015 for appraisal of IFC’s E&S performance during due diligence and supervision of the project.

¹ IFC Projects Database, Plato: Summary of Investment Information - <http://goo.gl/u9P3eC> (accessed July 20, 2015)

² The complainant also raised some allegations of corrupt work practices, which fall outside of CAO’s mandate.

³ CAO Assessment Report: Plato (June 2015) - <http://goo.gl/gLJQWW> (accessed July 20, 2015).

III. Analysis of IFC Performance

This section outlines the IFC E&S policies and procedures as they apply to the project. It then analyses IFC's performance against these standards during preparation and implementation of the project and in the context of the issues raised by the complainant.

IFC Policies and Procedures

IFC's investment in the Company was made in the context of its 2012 Policy on Environmental and Social Sustainability ("the Sustainability Policy") and Performance Standards (PS), together referred to as the IFC Sustainability Framework. As stated in the Sustainability Policy, IFC seeks to ensure that IFC-sponsored projects are implemented in accordance with the requirements of the Performance Standards through its due diligence and supervision efforts.⁴

Performance Standard 2 (PS2) sets the policies for IFC's client in dealing with its workforce. PS2 objectives include:⁵

- To promote the fair treatment, non-discrimination, and equal opportunity of workers.
- To establish, maintain, and improve the worker-management relationship.
- To promote compliance with national employment and labor laws.
- To protect workers, including vulnerable categories of workers such as children, migrant workers, workers engaged by third parties, and workers in the client's supply chain.
- To promote safe and healthy working conditions, and the health of workers.
- To avoid the use of forced labor.

IFC implements the commitments set out in the Sustainability Policy through its Environmental and Social Review Procedures (ESRP), which are updated periodically. The Plato project was approved under IFC's ESRP as updated in June 2011 and supervised under the subsequent updated versions of the ESRP.

When financing a project, IFC first conducts an appraisal aimed at assessing the full business potential, risks, and opportunities associated with the investment. Once the project is approved and IFC has invested in a client, the investment is monitored throughout the project cycle to ensure compliance with the conditions in the loan agreement and IFC's policies and standards. This CAO compliance appraisal considers IFC's performance at these two stages in the project cycle as relevant to the issues raised by the complainant.

Preliminary Issue: Scope of IFC's E&S Responsibilities

CAO notes IFC's view that issues arising from the closure of the Company's Bishkek campus should be considered outside the scope of the IFC project on the basis that the operations of PUMD in Bishkek were not, in fact, supported by IFC's loan.

For the purposes of this appraisal, CAO considers that IFC's duty to supervise E&S issues extended to the operations of PUMD in Bishkek. This determination is supported by IFC's loan agreement with the client: a corporate loan, which includes the Company's Kyrgyz operations as part of the project definition.

⁴ Sustainability Policy (2012), para. 7.

⁵ Performance Standard 2: Labor and Working Conditions (2102), "Objectives."

Pre-investment Environmental and Social Review

At the pre-investment stage, IFC reviews the E&S risks and impacts of a proposed investment and agrees with the client on measures to mitigate these risks in accordance with the Performance Standards. For the purposes of this compliance appraisal, a key question is whether IFC conducted an adequate pre-investment review of the labor related risks associated with its investment in the Company.

Requirements

As required by the Sustainability Policy (2012), IFC's E&S due diligence should be commensurate with the nature, scale, and stage of the business activity, and with the level of E&S risks and impacts (para. 26). Where the proposed use of funds is not fully defined at the time of the due diligence, IFC's E&S due diligence may be expanded to cover other business activities of the client as part of IFC's risk management considerations (para. 26). In conducting the E&S review, IFC typically reviews all available information on the project E&S risks and impacts; inspects project sites and interviews relevant stakeholders; analyzes project E&S performance against PS requirements and other internationally recognized sources; and identifies E&S gaps and corresponding measures and actions to close them (para. 28). A central principle of the 2012 Sustainability Policy is that "IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time" (para. 22).

Relevant to the issues raised in the complaints, PS2 (Labor and Working Conditions) includes the following requirements:

Human Resources Policies and Procedures

- Clients are required to adopt human resources policies appropriate to their size and workforce. The policies should set out an approach that is consistent with the requirements of PS2 and national law. (para. 8).
- The client's human resources policy has to be understandable to employees. Clients must ensure that employees have information regarding their rights under national labor and employment law, including their rights related to wages, compensation, and benefits (para. 9).

Retrenchment

- Prior to implementing any collective dismissals, Clients are required to analyze alternatives to retrenchment. Absent viable alternatives to retrenchment, a retrenchment plan will be developed and implemented based on the principle of non-discrimination. The clients are required to comply with all legal and contractual requirements related to notification of public authorities, and provision of information to, and consultation with workers (para. 18).
- The client should ensure that all workers receive notice of dismissal and severance payments mandated by law and collective agreements in a timely manner. All outstanding back pay and social security benefits and pension contributions and benefits will be paid (i) to the workers on or before termination of the working relationship, (ii) where appropriate, for the benefit of the workers, or (iii) in accordance with a timeline agreed through a collective agreement. Where payments are made for the benefit of workers, workers will be provided with evidence of such payments (para. 19).

IFC's pre-investment review of the Company

The concept of an IFC investment in the Company took shape since mid-2012. As a part of the project appraisal process, IFC reviewed information provided by the Company related to technical and E&S issues. IFC visited the Company's existing education premises in Turkey and

Kyrgyzstan in September 2012. IFC met with Company's senior management including the Human Resources (HR) director at the Company's headquarters in Balat, Turkey. IFC also reviewed relevant documents pertaining to the HR Policies and Procedures.⁶

Based on its appraisal, IFC categorized the proposed project as a Category B, meaning that the project was expected to have limited adverse social and/or environmental impacts that could be readily addressed through appropriate mitigation measures.

Potential E&S issues identified at appraisal included human resources policy and practices. According to the Project's Environmental and Social Review Summary (ESRS) prepared in November 2012, IFC reviewed a staff handbook for the PUMD facility, noting that this handbook includes some aspects such as a hiring policy, salary structure, working hours, maternity leave, that are "in compliance with Performance Standard 2, but not comprehensively."⁷ The ESRS further notes that the Company needs to update this staff handbook to transform it into a group-wide HR policy and procedures for all their facilities to meet PS2 by "incorporating but not limited to" non-discrimination and equal opportunity, working conditions, retrenchment, grievance mechanism, etc.⁸

Remedial actions responding to the E&S issues IFC identified are specified in an Environmental and Social Action Plan (ESAP) dated October 30, 2012, and attached with the ESRS.⁹ Regarding labor issues, the ESAP required an upgrade of HR policy and procedure in accordance with PS2 by March 15, 2013.¹⁰ IFC disclosed the ESRS and a Summary of Investment Information (SII) in November 2012.

Project Supervision

IFC is required to monitor a client's E&S performance throughout the life of the investment. For the purposes of this compliance appraisal, a key question is whether IFC adequately supervised the Company's compliance with the requirements of PS2 as relates to the issues raised by the complaint.

Requirements

Project supervision is conducted through the annual monitoring report(s) (AMR) submitted by the client and reviewed by IFC, discussions with the client, and site visits as required by the IFC's ESRP. As set out in the ESRP, "the purpose of E&S supervision is to develop and retain the information needed to assess the status of compliance with the Performance Standards (PSs) [...] and the Environmental and Social Action Plan (ESAP or Action Plan)."¹¹ If a client fails to comply with its E&S commitments, IFC will "work with the client to bring it back to compliance, and if the client fails to reestablish compliance, IFC will exercise its rights and remedies, as appropriate."¹²

In addition to reviewing a client's AMR, IFC conducts site supervision visits to certain clients. Criteria for prioritizing supervision site visits include the client's environmental and social risk

⁶ IFC Projects Database, Plato: Environmental & Social Review Summary, November 2012, <http://goo.gl/4gkext> (accessed July 20, 2015).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Note, the ESAP as finally agreed with the client deferred the target date for updating the HR policy by one month.

¹¹ ESRP 6, para.1, version 5, August 16, 2010.

¹² Sustainability Policy (2012), para. 24.

rating (ESRR). The ESRP suggests that IFC should conduct supervision site visits of Category B projects with partly unsatisfactory ESRR on an annual basis.¹³

IFC's supervision of the company

Disclosure of project information

In analyzing IFC's supervision of the Company, CAO notes that IFC's is required to update its disclosed ESRS to show the "status of implementation of the [client's] ESAP."¹⁴ As at the date of this compliance appraisal, IFC had not disclosed an ESAP status update for the Company.

General supervision of labor issues

IFC made the first disbursement to the Company in May 2013 on the basis of a temporary waiver of the ESAP item related to HR Policies and Procedures.¹⁵

The Company submitted its first AMR in June 2014. IFC reviewed the Company's AMR and noted that the Company was using national law as the base for its HR policy for employment and management of academic personnel. IFC also noted that the Company was working on a new HR policy which would integrate international standards with local requirements in accordance with PS2. As of October 2014 IFC determined that the Company's HR Policies and Procedures ESAP item was pending completion. At this point, IFC determined the client's E&S performance was partially unsatisfactory.

IFC also conducted a site supervision visit to the Company's Istanbul campus in February 2015. Based on the supervision visit, IFC concluded that the client had made progress in relation to the development of its HR Policies and that its overall E&S performance was satisfactory.

Supervision of retrenchment in Kyrgyzstan

IFC was aware of the Company's decision to reduce the size of its workforce in Kyrgyzstan and of the issues raised by the complainant. As part of project supervision, IFC E&S staff met with representatives of the Company with a view to understanding the retrenchment process and the issues raised by the complainant.

IFC staff informed CAO that the Company engaged a lawyer to provide advice on the retrenchment process and ensure that it met the requirements of Kyrgyz law. However, this advice was not available to CAO and it is unclear whether IFC reviewed this advice in the context of the requirements of PS2 (paras. 18 & 19) outlined above. IFC staff advised CAO that they were not able to comment on whether the dismissal of the complainant was in accordance with Kyrgyz law.

Conclusion

IFC identified gaps in the Company's HR policy and required the Company to address these as part of its ESAP. In the course of supervision, IFC noted improvements in the development of the Company's HR policies, though completion of the agreed ESAP item was delayed. Relevant to the issues raised by the complainant, CAO is unclear as to whether IFC took adequate measures to ensure that the Company's HR policies and practices met the requirements of PS2, which included compliance with Kyrgyz law.

¹³ This requirement can be waived if "adequate supervision information is available from other sources" (ESRP 6, para. 2.6, version 5, August 16, 2010).

¹⁴ IFC Access to Information Policy 2012, para. 41(b).

¹⁵ IFC Projects Database, Plato: Summary of Investment Information - <http://goo.gl/u9P3eC> (accessed July 20, 2015)

IV. Decision

The purpose of a CAO compliance appraisal is to determine whether an investigation of IFC's E&S performance is required in response to a complaint. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S 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 in the circumstances.

Absent aggravating circumstances, disputes between an employer and individual employees around issues of pay and benefits will not raise substantial concerns regarding the E&S outcomes of an IFC investment such that would merit a CAO compliance investigation.

While CAO has identified questions as to IFC's appraisal and supervision of its investment in the Company, given the nature of the complaint, CAO finds that a compliance investigation is not the appropriate response in this instance. As a result, in accordance with its Operational Guidelines, CAO has decided to close the case.