



CAO ASSESSMENT REPORT

Second Complaint regarding IFC's Investment in Egyptian Indian Polyester Company - Sokhna, Egypt (IFC Project #28878)

April 2018

Office of the Compliance Advisor Ombudsman
for the
International Finance Corporation and
Multilateral Investment Guarantee Agency,
Members of the World Bank Group
www.cao-ombudsman.org

About the CAO

The Office of the Compliance Advisor Ombudsman (CAO) is the independent accountability mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), the private sector arms of the World Bank Group. CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA projects in a manner that is fair, objective, and constructive, and to enhance the environmental and social outcomes of those projects.

For more information, see www.cao-ombudsman.org.

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LIST OF ACRONYMS

CAO	Office of the Compliance Advisor Ombudsman
DPL	Dhunseri Petrochem Ltd
EIPET	Egyptian Indian Polyester Company
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency

1. OVERVIEW

In August 2017, CAO received a complaint from an individual formerly engaged by the Egyptian Indian Polyester Company (EIPET or the Company), an IFC client with operations located in Sokhna, Egypt. The Complainant raised concerns regarding unpaid remuneration and the Company's unmet obligations with regard to the termination of his contract. The CAO determined the complaint eligible in October 2017. During the assessment period, the Complainant and the Company expressed the desire to address the issues through dialogue facilitated by CAO.

2. BACKGROUND

2.1 The Project

IFC has an active category B project with Egyptian Indian Polyester Company – Sokhna (#28878) in Egypt. The IFC investment supported the establishment of a 420,000 tons per annum, greenfield polyethylene terephthalate (PET) resin plant in the Eldorado Integrated Development and Free Zone S.A.E. in Ain Sokhna, Egypt.

EIPET is a joint venture project set up by Dhunseri Petrochem Ltd. (DPL) and Egyptian Petrochemical Holding Company (Echem), an agency of the Government of Egypt. The project is estimated to cost approximately \$160 million, with the IFC investment being an A-loan of \$35 million.

2.2 The Complaint

In August 2017, CAO received a complaint from an individual formerly engaged by EIPET as a consultant in the role of Vice President of Logistics, regarding the IFC-supported project in Ain Sokhna, Egypt. The Complainant claims that the Company failed to compensate him for work done between April 2015 and November 2015, and that the Company did not comply with the terms of his contract, which requires three months' advance notice, prior to terminating the contract, or payment in lieu thereof. At the time the complaint was filed, the Complainant claimed that he had been waiting for outstanding remuneration due to him for over a period of two years and four months. This is the second complaint received by CAO regarding the project.¹

3. ASSESSMENT SUMMARY

3.1. Methodology

The aim of the CAO assessment is to clarify the issues and concerns raised by the Complainant, by gathering information and views from different stakeholders without making a judgment on the merits of the complaint. The assessment also seeks to determine whether the Complainant and the Company would like to pursue a dispute resolution process facilitated by CAO, or whether the complaint should be handled by CAO's Compliance function for appraisal of IFC's performance (see Annex A for CAO's complaint-handling process).

In this case, CAO's assessment of the complaint included:

¹ Information regarding Egyptian Indian Polyester Company - Sokhna-01 can be found at http://www.cao-ombudsman.org/cases/case_detail.aspx?id=1254

- a desk review of project documentation;
- telephone discussions with the Complainant;
- telephone discussions with the IFC project team; and
- telephone discussions with an EIPET representative in Egypt and a DPL representative in India.

3.2. Summary of Issues

Complainant's perspective

The Complainant indicated that he was engaged by EIPET in April 2014 in the role of Vice President (Logistics), reporting to the MD/CEO of the Company. He was an expatriate from India, based at the project site in Egypt, and noted that his work permit and his wife's dependent spouse visa were sponsored by EIPET. He stated that at the time of his recruitment, given his age, he was offered a consultancy contract rather than an employee contract. However, his understanding of this arrangement was that he would not be treated differently from other employees.

He was offered a contract to work for a duration of two years, between April 2014 and April 2016. However, the Complainant claims that the last payment he received from the Company was for March 2015, and that he was informed on 1 November 2015, that his services were no longer needed and that his contract would be terminated as of 30 November 2015.

The Complainant believes that the Company breached the terms of his contract by failing to provide him with three months' notice, or payment in lieu of notice, prior to termination. Therefore, he believes compensation should cover the outstanding remuneration and the remainder of the contract until April 2016. The Complainant is therefore claiming payment for the full term of his contract - from April 2015, when payment stopped, to April 2016, when the contract was due to terminate.

He indicated his openness to engage in dialogue with the Company under the auspices of the CAO, in order to find a solution to the issues raised.

Company's perspective

DPL and EIPET representatives explained the Company's situation, indicating that operations were impacted by declining oil prices in 2014 and that cost-cutting measures had been taken thereafter, including reducing international staff. Despite these measures, the Company had to halt the project, which has not been operational since May 2015.

DPL and EIPET indicated that they were aware of the Complainant's claims, and clarified that unlike some other expatriates, the Complainant was a consultant with the Company, not an employee on the Company's payroll. DPL and EIPET stated their willingness to talk with the Complainant in order to resolve the issues raised in the complaint. But also stated that until the plant becomes operational again, which they believe will happen soon, there would be limitations on how and when any claim stemming from a Company's creditor could be resolved.

4. NEXT STEPS

During the assessment, the Complainant, DPL, and EIPET indicated to CAO their willingness to address the issues raised in the complaint through a CAO-facilitated dialogue process. Since the parties are unable to meet in person, CAO commenced facilitating the process using online dispute resolution (ODR). This process is ongoing and outcomes from the process will be captured in a dispute resolution report once the process is concluded.

ANNEX A. CAO COMPLAINT HANDLING PROCESS

Once CAO declares a complaint eligible, an initial assessment is conducted by CAO's Dispute Resolution function. The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) help stakeholders understand the recourse options available to them and determine whether they would like to pursue a collaborative solution through CAO's Dispute Resolution function, or whether the case should be reviewed by CAO's Compliance function.

As per CAO's Operational Guidelines,² the following steps are typically followed in response to a complaint that is received:

- Step 1: **Acknowledgement** of receipt of the complaint.
- Step 2: **Eligibility**: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).
- Step 3: **CAO assessment**: Assessing the issues and providing support to stakeholders in understanding and determining whether they would like to pursue a consensual solution through a collaborative process convened by CAO's Dispute Resolution function, or whether the case should be handled by CAO's Compliance function to review IFC's/MIGA's environmental and social due diligence. The assessment time can take up to a maximum of 120 working days.
- Step 4: **Facilitating settlement**: If the parties choose to pursue a collaborative process, CAO's dispute-resolution process is initiated. The dispute-resolution process is typically based on or initiated by a Memorandum of Understanding and/or mutually agreed-upon ground rules between the parties. It may involve facilitation/mediation, joint fact finding, or other agreed resolution approaches leading to a settlement agreement or other mutually agreed and appropriate goals. The major objective of these types of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the dispute-resolution process, in a way that is acceptable to the parties affected.³

OR

Compliance Appraisal/Investigation: If the parties opt for a Compliance process, CAO's Compliance function will initiate an appraisal of IFC's/MIGA's environmental and social due diligence of the project in question, to determine whether a compliance investigation of IFC's/MIGA's performance related to the project is merited. The appraisal time can take up to a maximum of 45 working days. If an investigation is found to be merited, CAO Compliance will conduct an in-depth investigation into IFC's/MIGA's performance. An investigation report with any identified non-compliances will be made public, along with IFC's/MIGA's response.

Step 5: **Monitoring and Follow-up**

Step 6: **Conclusion/Case Closure**

² For more details on the role and work of CAO, please refer to the full Operational Guidelines: http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

³ Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, CAO Dispute Resolution will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the Dispute Resolution team will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Dispute Resolution has closed the complaint and transferred it to CAO Compliance for appraisal.