



November 15, 2020
Office of the Compliance Advisor Ombudsman (CAO)

Terms of Reference for Compliance Investigation of IFC

IFC Investment in Myanmar Awba Group Company Ltd. (IFC Project #35880)
Myanmar

Complaint 01

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).

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 to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

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 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.

Once CAO concludes a compliance appraisal, a summary of the appraisal results is made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO prepares terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

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

Myanma Awba Group Company Ltd. (“Awba,” or “the client”) is a leading producer and distributor of agricultural inputs in Myanmar. Awba’s business lines include manufacturing and packaging of crop protection products, including herbicides, fungicides, and insecticides, and fertilizers.

In 2016, IFC provided a loan to Awba to support the expansion of the client’s operations in Myanmar. As described by IFC, the project includes: “the construction of additional fertilizer warehouse storage facilities and fertilizer distribution stations, the acquisition of a second chemical license for its Myanma Awba Group in order to construct a new agro-chemical formulation plant in an industrial zone next to the existing Government Hmawbi pesticide factory [also known as Myanmar Pesticide Industry, MPI], equipment (bottling and packaging machinery), warehouse storage facilities and working capital.”¹

Relevant, given the issues raised in the complaint, though not mentioned in IFC’s project disclosures, the MPI factory had been operated by the client since 2008 as a joint venture. The plant was built in the 1990s and was operated by the government until 2007. According to the CAO Assessment, Awba’s Board had approved to relinquish the factory in June 2018.

According to IFC, the client’s new facility in an industrial zone in Hmawbi Township, Hmawbi Agricultural Inputs Complex (HAIC), is undergoing construction in three phases with expected completion in 2020. The first phase of the development of the HAIC was completed in 2018.

The Complaint, CAO Assessment, and Dispute Resolution

In October 2017, CAO received a complaint from a local individual on behalf of himself and other local community members living in the vicinity of the HAIC and MPI plants.²

In February 2018, a supplement to the complaint was submitted to CAO, expanding the items of concern and noting that the complainants are from a total of nine villages: Wanet Chaung village, Nyaung Gone village, Ye Ta Shay village, Pa Ywet Seit Gone Village, Shan Gone village of Sat Tha Daw village tract, Bo Daw Na Gone village, San Gyi village, and Tha Byay Gone village.

The parties initially agreed to a CAO-facilitated dispute resolution process, however, there was a lack of agreement among the parties for the dispute resolution process to progress. Thus, the complaint was transferred to the CAO compliance function for appraisal in June 2020.³

The complainants raise concerns about the environmental and social (E&S) impacts of MPI and HAIC. The complainants raise allegations in relation to: 1) contamination of local water sources with associated health impacts; 2) air pollution and strong odors causing dizziness and nausea; 3) restrictions on road access; 4) unfair and unsafe labor practices; 5) lack of consultation in the ESIA process and inadequate grievance handling procedures; 6) impact on flora and fauna due to air and water pollution; and 7) differential impacts on the livelihoods of ethnic minority groups in the local area.

Scope of the Compliance Investigation

The focus of a CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment during due diligence and supervision, however, in assessing the performance of the project and IFC’s/MIGA’s implementation of

¹ IFC (2016) Summary of Investment Information (SII) and Environmental and Social Review Summary (ESRS), project number 35880. Available at: <https://bit.ly/3jArKcA> and <https://bit.ly/2XITBhr>, respectively.

² Complaint to CAO in relation to IFC’s investment in Myanma Awba Group Company Ltd. (October 2017), available at: <https://bit.ly/Awba-CAOCASE>

³ CAO Dispute Resolution Conclusion Report (June 2020), available at: <https://bit.ly/AwbaDRConclusion>

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.

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,⁴ CAO will conduct a compliance investigation of IFC's investment in Awba in relation to the issues raised in the complaint.

The compliance investigation will consider whether IFC's investment in the client was reviewed and supervised in accordance with applicable IFC policies, procedures, and standards. It will present findings of the investigation with respect to noncompliance and any adverse environmental and/or social outcomes, including the extent to which these are verifiable. CAO may also present observations as to the underlying causes of any non-compliance or adverse outcome found.

The CAO Appraisal Report identified questions regarding the application of IFC's Sustainability Framework to the investment, particularly in relation to the two pesticide plants MPI and HAIC, which include the following:

1. whether IFC's pre-investment E&S review of the client was commensurate with the level of E&S risk and impacts arising from its operations, particularly as it relates to the MPI joint venture;
2. how IFC assessed and mitigated historical pollution from the MPI joint venture against PS3 requirements;
3. whether IFC adequately assessed and retained documentation to justify its determination that PS7 (Indigenous Peoples) was not applicable to this investment and/or that PS1 requirements on vulnerable groups were properly applied given ethnic minorities in the project area;
4. whether IFC disclosed relevant E&S project information, specifically the initial 2015 EIA for the HAIC plant following Access to Information Policy requirements;
5. how IFC assured itself of the client's compliance with PS1 requirements for disclosure, consultation, and grievance handling;
6. how IFC assured itself of the environmental, health, and safety (EHS) performance of the client's MPI and HAIC operations, including air emissions and water contamination as well as impacts on community health against PS3 and PS4 requirements, EHS Guidelines, and Myanmar law requirements; and
7. how IFC assessed and mitigated residual impacts when the client exited the MPI joint venture in 2018 given the requirements of PS1.

As noted in the appraisal report, the signatories of the complaint do not include workers employed by the contractors of the project, nor do they include former workers at the MPI plant or

⁴ CAO Appraisal Report (October 2020), available at: <https://bit.ly/AwbaAppraisal>

former/current workers at HAIC. Therefore, labor-related issues raised in the complaint were excluded from the scope of the appraisal and hence will be excluded from the scope of the investigation.

Compliance Investigation Process and Preliminary Timeline

The preliminary schedule is for CAO to have a draft compliance investigation report ready by November 2021.

A draft investigation report will be circulated to IFC's senior management and all relevant IFC departments for factual review and comments. IFC's comments should be submitted in writing to CAO within 20 working days of receipt.

Upon receiving comments from IFC on the consultation draft, CAO will finalize the report. The final report will be submitted to IFC's 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's 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 IFC's 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 investigation. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Expertise in pesticide manufacturing operations, including assessment and management of risks related to water quality and air emissions in Myanmar;
- Knowledge of Myanmar legislation and policies in relation to permitting procedures required for expansion and operation of projects;
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts), Performance Standard 3 (Resource Efficiency and Pollution Prevention), and Performance Standard 4 (Community Health, Safety, and Security);
- Experience and knowledge relevant to conducting compliance investigations; and
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.