



COMPLIANCE MONITORING REPORT

IFC Investment in Bilt Paper B.V. (Project #34602), Malaysia

Complaint 02

Monitoring of IFC's Response to: CAO Investigation of IFC Investment in Bilt Paper B.V., Malaysia (Bilt-02)

June 22, 2020

Office of the Compliance Advisor Ombudsman (CAO)

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

Table of Contents

Introduction	4
Background.....	4
Summary of IFC Management Response	5
Observations from CAO Monitoring (April 2018 – June 2020)	6
Project-Level Developments.....	6
Proposed Sale of Sabah Forest Industries.....	7
Certification of Sabah Timber Industry Employees Union.....	7
Stall in sale and re-tender of SFI.....	7
IFC Engagement with relevant parties	8
IFC Policies, Procedures, Practice or Knowledge	9
Environmental and Social Review	9
IFC Disclosure, Commitment and Subscription	10
IFC Supervision	11
Conclusion	11
Annex – Summary of Investigation Findings	13

Introduction

CAO's compliance function oversees investigations of IFC/MIGA's environmental and social (E&S) performance with a view to assessing compliance with relevant requirements and improving the E&S performance of the institutions.

Following a CAO compliance investigation, CAO monitors actions taken by IFC/MIGA until such actions demonstrate to CAO that its compliance findings are being addressed.

CAO's monitoring considers IFC/MIGA's response to a compliance investigation at two levels:

- Firstly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the project level.
- Secondly, CAO considers actions taken or proposed by IFC/MIGA that respond to CAO findings at the level of IFC/MIGA policies, procedures, practice or knowledge.

The first level of analysis is designed to address project level concerns identified by CAO. The second level is designed to document progress in the IFC/MIGA's approach to the identification and management of E&S risk.

This is CAO's first monitoring report documenting CAO's assessment of IFC's response to its investigation of IFC's investment in Bilt Paper B.V., Malaysia ("the compliance investigation"), which was finalized in April 2018.¹ This report documents IFC's response to the compliance investigation in the period from April 2018 to June 2020.

Background

CAO's compliance investigation considered IFC's investment in Bilt Paper B.V. (Bilt Paper) and Sabah Forest Industries (SFI or "the client", and together with Bilt Paper, "the company"). SFI owns an integrated pulp and paper manufacturing unit, and holds the lease on a large concession of natural forest and industrial tree plantations in Sabah, Malaysia. SFI is a subsidiary of Bilt Paper.

In August 2014, the IFC board approved a US\$250 million debt and equity investment in Bilt Paper and SFI, comprising US\$100 million equity in Bilt Paper, and three loans to SFI: an A loan of up to US\$50 million, a B loan of up to US\$62.5 million, and a syndicated loan of up to US\$37.5 million (IFC Project #34602). IFC purchased Bilt Paper equity in October 2014. The proposed A loan and syndicated loan to SFI were committed in October 2014 but not disbursed.

The compliance process was triggered by a complaint received in June 2015 from the Building and Woodworkers International (BWI) union on behalf of the Sabah Timber Industry Employees Union (STIEU), a BWI affiliate in Sabah, Malaysia (together, "the complainants"). The complainants alleged that the company had persistently hindered workers' efforts to unionize, by mounting a series of legal challenges to the recognition of STIEU. The complainants contended that the client's actions contravene IFC's Performance Standard 2 on Labor and Working Conditions, Malaysian laws on freedom of association (FoA), and international labor standards.

¹ CAO Investigation of IFC Investment in: Bilt Paper B.V. (Project #34602), April 13, 2018, available at: <https://goo.gl/zQY9bF>. The CAO investigation, IFC's response to the investigation and related materials are available on the CAO website, see <https://goo.gl/N543BV>.

In 2016 and 2017, BILT and its group companies, including SFI confronted liquidity constraints which resulted in temporary shutdowns and reduced productivity.² In mid-2017, SFI was taken under receivership at the petition of creditors.³

CAO's compliance investigation was released in April 2018.⁴ The compliance investigation considered whether IFC properly applied Performance Standard 2 requirements on FoA to the client. Relevant to the issues raised by the complainants these included requirements: (a) not to discourage workers from forming or joining organizations of their choosing and (b) to refrain from attempts to influence and control workers' organizations.

CAO found that IFC did not correctly apply these requirements to SFI during its review and supervision of the investment and thus that IFC contributed to a situation where SFI was able to avoid recognizing STIEU.

A summary of findings as presented in the April 2018 investigation report is set out in the Annex.

In May 2018, the sale of SFI to a private Malaysian-owned company, Pelangi Prestasi Sdn Bhd (PPSB), was confirmed by the Chief Minister of Sabah.⁵ However, as of the date of writing this report, the sale had not been completed and IFC's investment in Bilt Paper remains active.

Summary of IFC Management Response

IFC prepared a management response to the investigation which was released together with the investigation report.⁶ At the project level, IFC's response acknowledged that, at the time of IFC's pre-investment due diligence, SFI was not in compliance with PS2 due to, among other aspects, attempts to block union formation processes through legal action.

In response to union concerns regarding FoA at SFI, IFC noted that it required an independent and publicly disclosed labor audit and that this resulted in (i) a public commitment from Bilt Paper to address identified issues in accordance with PS2 provisions, and (ii) a commitment to cooperate with the Malaysian Government-led union formation process. IFC stated that it had followed up on the implementation of these measures through periodic supervision visits and third-party audits.

IFC's response acknowledged that SFI fell out of compliance with PS2 FoA requirements in June 2016 when it again attempted to block union formation through legal action. IFC noted several factors that it says hindered its ability to help the client move into compliance at this point, including: (i) efforts by Bilt Paper to sell SFI since 2015, (ii) uncertainty associated with ongoing legal proceedings related to the union formation, and (iii) subsequently, financial distress at SFI as well as at Bilt Paper.

² *Daily Express*, "Bid to recover RM13m debt," September 30, 2016, available at: <https://goo.gl/tMt4mf>; Annual Report, Bilt, 2016-17, p. 11, available at: <https://goo.gl/tbNZDt>.

³ *The Borneo Post*, "SFI to temporarily lay off its Staff," December 1, 2017, available at: <https://goo.gl/C3nxv4>.

⁴ CAO, "Compliance Investigation: IFC Investment in Bilt Paper B.V. (Project #34602), Malaysia, Complaint 02," April 13, 2018, available at <https://bit.ly/3hla0uX>.

⁵ Olivia Miwil, *New Straits Times*, "RM 1.2 billion takeover saves jobs for 1,500 paper mill workers in Sipitang," May 7, 2018, available at: <https://goo.gl/XHKtb5>.

⁶ IFC Management's Response to the CAO Investigation Report on Bilt Paper B.V., Malaysia, May 15, 2018, available at: <https://goo.gl/4dBbKe>.

IFC determined that there was little scope under the circumstances for further IFC intervention, given the expected imminent sale of SFI's assets already finalized under a court receivership. Once the sale went through, IFC noted that neither it nor Bilt Paper would have any direct contractual relationship with SFI or leverage to effect further progress.

IFC committed that it would, in any case, engage with the new owner to explain IFC's E&S due diligence findings and, to the extent relevant, mitigation measures associated with achieving PS2 compliance.

IFC's response acknowledged that labor matters, including freedom of association, "need to be represented and disclosed as material risks in the same way as other challenging environmental and social risks..." and committed that, moving forward, "IFC will more prominently identify Freedom of Association risks in its Board reports."⁷

Observations from CAO Monitoring (April 2018 – June 2020)

During the monitoring period, CAO sought information from IFC on its project-level and system-level responses to the investigation findings. CAO also sought information from the complainants regarding IFC's engagement to address the investigation findings. CAO received communications from the complainants regarding the status of the SFI sale in September 2018. The complainants did not respond to CAO requests for comment during the subsequent monitoring period.

This section summarizes key developments during the monitoring period at the project level and provides an overview of IFC actions to address CAO findings at the level of policies, procedures, practice and knowledge.

Project-Level Developments

During the monitoring period, IFC has not reported any action that addresses CAO's project-level findings. These include findings in relation to:

- Shortcomings in IFC's review and pre-investment engagement with the client on PS2 compliance issues related to the client's known opposition to the formation of an externally affiliated labor union.
- IFC's decision to proceed with its investment in the client without ensuring that the client was meeting ESAP commitments not to oppose but rather to facilitate union formation.
- Inadequate supervision by IFC of the project in relation to freedom of association issues raised by the complainants, and IFC's failure to exercise remedies in light of its client's failure to comply with PS2.

In explaining the decision not to take up the findings with its client, IFC noted its lack of leverage and standing to engage with the receiver of SFI or with the new owner. IFC noted that the sale of SFI has not been completed as authorities did not agree to transfer the relevant forestry licenses from SFI to the new buyer. IFC noted that SFI operations have been shut down during this period. IFC also did not report engaging with the proposed buyer of SFI. Relevant developments are discussed in further detail below.

⁷ IFC Management's Response to the CAO Investigation Report on Bilt Paper B.V., Malaysia, May 15, 2018, p. 2, available at: <https://goo.gl/4dBbKe>.

Proposed Sale of Sabah Forest Industries

The purchaser, PPSB, is a member of the Albukhary Group of Companies, a Malaysian-owned conglomerate with activities in a range of sectors including banking, e-commerce, construction, engineering, sugar, oil palm plantation and airport management.⁸

As noted above, in April 2018, the receiver reached an agreement with PPSB to purchase SFI.⁹ Several approvals were needed before the sale would be finalized, including regulatory approvals for the transfer of relevant forestry licenses. These conditions were intended to be satisfied by July 4, 2018.

In April-May 2018, media reports indicated that Sabah government officials announced terms of the takeover including commitments to pay back-wages to existing SFI employees and provide support and training for workers and their families.¹⁰

IFC, the complainants and PPSB reported that the buyer paid a deposit of the bid price and paid salaries of SFI staff including the shortfall arising from a temporary layoff program.¹¹ In doing so, the buyer reported that it had satisfied the state government's prerequisites.

Certification of Sabah Timber Industry Employees Union

According to the complainants, the remaining workers reported back to work in July 2018 and were paid a basic salary by PPSB without overtime up until March 2019.¹²

In October 2018, SFI workers voted to certify STIEU as their collective bargaining agent.¹³ The complainants reported that the unofficial election result was 72.88 per cent for STIEU, with 680 of the 933 eligible workers voting for the union. The complainants also reported that SFI management continued to obstruct union formation by refusing to allow the election to take place on site.

Stall in sale and re-tender of SFI

Following elections in May 2018, the new Sabah state government announced a review of all timber concession holders, including forest management units.¹⁴ In March 2019, the government decided not to approve the transfer of forestry licenses to PPSB and introduced a new condition on future timber license grants that the acquirer have paper and pulp expertise.¹⁵

⁸ *The Star Malaysia: StarBizweek*, "Group manages 712,000-acre forest estate in Sabah," June 1, 2019, p. 11, available at: <http://bit.ly/2uqu0hy>.

⁹ *Paper Mart*, "Sabah Forest Industries Takeover to be Completed by the Year-End," May 7, 2018, available at: <http://bit.ly/38eF67Y>.

¹⁰ *The Borneo Post*, "Pelangi Prestasi's takeover of SFI guarantees continued employment for 1,500 locals," May 9, 2018, available at: <http://bit.ly/2NsvX3F>.

¹¹ IFC staff interview; PPSB Media Statement, April 24, 2019, "Pelangi Prestasi Sdn Bhd Statement on Notice of Re-Tender of One of Southeast Asia's Largest Pulp and Paper Mill with an Integrated Timber Complex Located in Sabah, Malaysia," available at: <http://bit.ly/2tftOBC>; Engrit Liaw, *Malaysiakini*, "1,500 Sipitang timber workers hopeful for their job security," July 8, 2019, available at: <http://bit.ly/2uW659Y>.

¹² Engrit Liaw, *Malaysiakini*, "1,500 Sipitang timber workers hopeful for their job security" July 8, 2019, available at: <http://bit.ly/2uW659Y>.

¹³ BWI, "STIEU wins secret ballot despite SFI's obstruction," October 30, 2018, available at: <http://bit.ly/2QXwaxV>.

¹⁴ Durie Rainer Fong, "Shafie orders review of concessions to root out illegal logging," *Free Malaysia Today*, May 28, 2018, available at: <http://bit.ly/2TvU1Gt>.

¹⁵ *Free Malaysia Today*, "Let proper experts run Sabah Forest Industries, says ex-banker," June 8, 2019, available at: <http://bit.ly/2TvQdW0>.

According to media reports, conditions precedent for the sale and purchase agreement were not satisfied following several extensions, and the agreement was due to automatically terminate on April 1, 2019.¹⁶ In April 2019, the receiver issued a notice inviting interested parties to submit offers for SFI's assets SFI.¹⁷

In May 2019, a statement by the Malaysian Trades Union Congress Sabah chairman noted that no information about the status of the sale or its impact on workers had been shared by the state government, and that workers were suffering due to continued non-recognition of the union.¹⁸

IFC reported to CAO that, at this time, the facility was not operating. While some workers were reported still to be living in the company-owned accommodation, others had left to seek work elsewhere. IFC reported that migrant workers typically had two-year contracts, that would likely not have been renewed.

In June 2019, media reported that PPSB filed a civil suit against SFI, the receiver, and LMP. In parallel, the Malaysian High Court also allowed an injunction application brought by PPSB to restrain implementation of the new preconditions on timber license grants. In July 2019, the High Court recommended that the parties explore mediation, taking into account the 1,500 SFI workers who were impacted by the delayed sale.¹⁹

A statement published by STIEU secretary-general, Engrit Liaw, in July 2019 noted that SFI workers' status had been uncertain since SFI went into receivership in late 2017.²⁰ The complainants expected that a High Court decision would provide certainty to allow the workers to engage with their employers.

In October 2019, the suit was allowed to proceed and hearings were set for December 2019.²¹ At the time of writing, the judicial review proceedings are reported to be ongoing.²²

IFC Engagement with relevant parties

During the monitoring period, the IFC team reported to CAO that they had attempted to engage with the receiver to seek updates on progress of the sale and the facility operations. According to IFC, it no longer has any standing to engage formally with the receiver, and has not been able to obtain clear information about the status of SFI operations.

IFC has not engaged directly with the complainants or their representatives during the supervision period.

IFC also has not engaged with the proposed purchaser of SFI, PPSB.

¹⁶ Ganeshwaran Kana, *The Star Online*, "Tycoon in legal tussle over timber licenses," June 1, 2019, available at: <http://bit.ly/2Rh5dFm>.

¹⁷ *Ibid*.

¹⁸ *Borneo Post Online*, "Address workers' issues, MTUC Sabah urges govt," May 1, 2019, available at: <http://bit.ly/2R2CZhQ>.

¹⁹ Hafiz Yatim, *theedgemarkets.com*, "Judge asks Syed Mokhtar-linked firm to explore mediation in dispute with SFI," July 9, 2019, available at: <http://bit.ly/3714X2P>.

²⁰ Engrit Liaw, "1,500 Sipitang timber workers hopeful for their job security" July 8, 2019, available at: <http://bit.ly/2uW659Y>.

²¹ Hafiz Yatim, *theedgemarkets.com*, "Syed Mokhtar's firm allowed to proceed with suit over SFI takeover," October 23, 2019, available at: <https://bit.ly/3fLXFE1>.

²² David Thien, *The Daily Express*, "Challenging year for Sabah's timber industry," January 1, 2020, available at: <http://bit.ly/2TG0U8z>; Timothy Achariam, *theedgemarkets.com* "Court allows Sabah Forest Industries' bid for another judge to hear takeover suit," February 6, 2020, available at: <https://bit.ly/3d1cf8Y>.

IFC Policies, Procedures, Practice or Knowledge

During the monitoring period, IFC reported steps that have been and are being taken that respond to CAO's investigation findings at the level of policy, procedures, practice or knowledge. This section assesses IFC's actions in relation to the three phases of IFC's investment – (i) E&S review; (ii) disclosure, approval and commitment; and (iii) supervision.

Environmental and Social Review

CAO Investigation Findings

At the time of IFC's due diligence, it was aware that there was a long-running dispute over union formation at SFI. IFC required the client to commission an external labor audit of the company and secured a commitment from its client in the environmental and social action plan (ESAP) not to oppose formation of a union. However, these actions were not sufficient to address the PS2 risks at the time. In particular:

1. IFC's E&S review and the labor audit did not adequately consider relevant requirements of PS2 that the client should allow a workers' organization of the workers' choosing, and that the management should not seek to influence or control such mechanism. This raised compliance issues because the client had expressed that it was opposed to the formation of an externally-affiliated labor union.
2. IFC understood that there were regulatory processes underway to recognize a union, led by the Government of Malaysia, and required that its client cooperate with this process. IFC's stated position is that the government-facilitated process was expected to culminate in resolution of the union recognition issue at SFI. CAO found that IFC fell short of Sustainability Policy requirements because it did not take into account country and sector risks arising from the client's operations; and
3. The commitment by the client not to oppose formation of "a union" and to take steps towards union recognition did not address the client's stated preference for an internal union, and was not detailed enough to assure compliance with PS2.

Relevant IFC Actions

IFC has prepared additional guidance to staff that may help to address the above non-compliance issues at a systems level.

- *Labor Handbook Review*: In 2019, IFC initiated a review and update of its 2008 Labor Handbook. The Handbook is intended to be a resource for IFC clients that elaborates on PS2 implementation in practice. In relation to worker's organizations, the Handbook is intended to include guidance relating to evidence of compliance with PS2 paragraphs 13 and 14, as well as examples of common-non conformances. As of June 2020, IFC is working with external subject-matter experts to prepare the revised text. IFC is preparing to provide training for staff alongside the release of the updated Handbook.
- *Contextual Risk Analysis*: Contextual risk screening has been a mandatory part of IFC project due diligence and supervision since 2017, when IFC issued an internal 'Tip Sheet' for IFC staff. The Tip Sheet provides a definition of contextual risk, and guidance as to identifying, assessing, and documenting contextual risk during review and supervision of a project. It also provides additional sources of information for contextual risk. Relevant to the Bilt response it references labor related risks and freedom of association in particular

as examples of contextual risk and includes US Department of Labor and ILO Reports as potential resources for contextual risk identification. In December 2019, IFC launched an internal pilot Contextual Risk Framework that includes an index to triage high risk contexts and a Good Practice Note for specialists to deepen their contextual risk screening at the sub-national level during project due diligence and supervision. Once piloting is complete, it is anticipated that the framework will be released for public consultation in FY21. While formal updates to IFC's Environmental and Social Review Procedures (ESRP) that are expected to include references to contextual risk screening have been delayed, IFC reports that contextual risk screening is already required as part of its E&S due diligence process in practice. IFC reports also that mainstreaming contextual risk is being explored in country strategy and private sector diagnostic discussions, as well as part of the World Bank Group's fragility, conflict and violence strategy implementation.

IFC Disclosure, Commitment and Subscription

CAO Investigation Findings

After disclosure of the project and prior to its approval, the complainants contacted IFC in August 2014 through its online labor portal. Over several months, the complainants shared information with IFC about the client's ongoing efforts to promote an internal forum for workers' representation and opposition to the formation of externally-affiliated union. CAO found that:

1. IFC's presentation of the project to its board did not include material information related to the client's long-running dispute over union formation and the labor portal complaint;
2. IFC did not update its disclosures to reflect substantial new information about project risks and adverse impacts presented by the labor portal complaint;
3. IFC processed its investment without ensuring that the client was meeting its ESAP commitment not to oppose but rather to facilitate union formation.

Relevant IFC Actions

In its response to the compliance investigation, IFC noted that moving forward, it would more prominently identify FoA risks in its Board reports. No other systemic actions were presented.

During the monitoring period, IFC implemented significant changes in its organizational structure relating to environmental and social support for projects, policies and complaint response that are relevant to CAO's findings:

- *Establishment of E&S Policy and Risk department including a Stakeholder Grievance Response team:* In April 2019, IFC CEO announced that the institution would focus on proactive resolution of issues that arise in its projects, including more systemic engagement with complaints or concerns.²³ The new policy and risk department was described as a "regulator" of IFC's E&S functions.²⁴ As part of the new E&S Policy and Risk department, IFC has formed a centralized team to engage with complainants both within and outside of the CAO process. The team facilitates stakeholder grievance response by project teams and can mobilize a rapid response team as needed.²⁵

²³ Philippe Le Houérou, *Devex*, "At IFC, accountability is of utmost importance," April 10, 2019, available at: <https://bit.ly/3fr3gzD>.

²⁴ Philippe Le Houérou, *Devex*, "Opinion: Stepping up our game on environmental and social issues," June 13, 2019, available at: <https://bit.ly/2MVBHCm>.

²⁵ IFC Website, "Accountability," available at: <https://bit.ly/2N0krvC>.

IFC Supervision

CAO Investigation Findings

Generally, CAO found that IFC did not adequately supervise the project in relation to the FoA issues raised by the complainants. CAO recognized different phases of supervision, in particular:

1. During the initial stages of supervision, IFC did not conduct the analysis needed to determine compliance, despite evidence that the client had taken steps to hinder recognition of STIEU;
2. In 2015/2016, IFC suspended supervision at the company's request, despite indications that the client was not in compliance with PS2 requirements; and
3. In 2016, IFC acted consistently with the Sustainability Policy when it recommended that its clients take steps toward union recognition (as required by PS2) in parallel with its ongoing litigation. However, when the client declined to follow IFC's recommendation, IFC did not take further action to ensure compliance. CAO found that IFC did not meet the Sustainability Policy requirement to exercise remedies as appropriate if a client fails to comply with the Performance Standards.

IFC's Actions in Response to the Findings

During the monitoring period, IFC did not announce any specific actions at the level of IFC's policies, procedures, practice or knowledge related to CAO's supervision findings. CAO notes that actions described above in relation to the Labor Handbook updates and the creation of the Stakeholder Grievance Response team may go some way towards addressing CAO's non-compliance findings by strengthening project team capacity to assess and supervise PS2 issues, and by facilitating ongoing engagement with complainants.

However, CAO finds significant gaps in IFC's policies, procedures, practice or knowledge that were highlighted in the compliance investigation remain. In particular, CAO notes that no guidance has been issued by IFC to its staff in relation to:

- whether and in what circumstances project teams may decide to suspend supervision of a client;
- assessing E&S compliance against Performance Standards in contexts where the client is engaged in litigation under domestic legal frameworks, and particularly where litigation activities have the effect of interfering with workers' efforts to form worker organizations of their own choosing; or
- when and how IFC might choose to exercise remedies in response to a client's continued non-compliance with E&S commitments.

During the supervision period, IFC staff noted to CAO that an external labor consultant is available to teams to provide additional support on PS2 issues. CAO notes that this external support was offered to the Bilt-02 project team during its supervision but was declined.

Conclusion

IFC has not reported any actions taken to address CAO's findings at the project level. IFC explains this decision on the basis that it has no standing to engage formally with the receiver who was appointed to administer the company in 2017, and, having invested through the parent company, Bilt, IFC has no direct contractual relationship with SFI. Although STIEU was certified as SFI workers' collective bargaining agent in October 2018, the plant has been shut down and the workers' employment status remains uncertain.

CAO notes that, IFC's response to the investigation report committed that it would engage with the new purchaser to explain its E&S due diligence findings and mitigation measures associated with achieving PS2 compliance. The purchase of SFI has been stalled since mid-2018, and IFC has not engaged with the proposed purchaser.

At the level of IFC's policies, procedures, practice and knowledge, CAO notes that IFC is undertaking a review and update of its Labor Handbook, which is intended to include guidance on freedom of association issues and will highlight key indicators for implementation of PS2 requirements in practice. In relation to contextual risk, CAO understands that this is now a routine part of IFC due diligence screening in practice. Although IFC indicated in 2017 that it planned to issue a revised ESRP Manual that incorporates contextual risk assessment into the project due diligence phase, no updates have yet been approved, though internal guidance to staff on contextual risk screening is available.

At the systems level, IFC has implemented significant organizational changes in relation to its project-specific support and policy-level work on environmental and social issues. These changes have introduced a separate E&S risk and policy team that will act as an E&S "regulator" and provide more structured support for teams in responding to stakeholder grievances at the project level. However, key gaps that contributed to non-compliance in supervision of the project have not been addressed.

Monitoring Outcomes

CAO finds that IFC's response to this compliance investigation at the level of the project is Unsatisfactory, as IFC has taken no actions that address CAO's findings in relation to the project.

CAO finds that IFC's response at the level of its policies, procedures, practice and knowledge, is Partially Unsatisfactory. While IFC's attention to contextual risk screening in particular has developed significantly in the period since the Bilt investment, other potentially systemic aspects of CAO's findings have not been addressed.

Nevertheless, CAO has decided to close its monitoring of the investigation considering that the client no longer has managerial oversight or control of SFI.

Matters relating to IFC's supervision of client compliance with PS2 freedom of association commitments may be addressed through CAO's ongoing Advisory mandate.

Annex – Summary of Investigation Findings

Finding No. 1: Environmental and Social Review

Given a range of significant potential E&S risks and impacts IFC appropriately categorized the project “A” and disclosed a labor audit commissioned by the client.

Neither the labor audit nor IFC’s review of the project considered PS2 compliance issues related to the client’s known opposition to the formation of an externally affiliated union or its promotion of an in-house joint consultative committee.

IFC’s pre-investment review did not consider labor and freedom of association related risks that emerged from the country and sector context in which the client was operating.

A client commitment not to oppose formation of a union was captured as a mitigation measure and incorporated into the client’s Environmental and Social Action Plan (ESAP), however, details of what this meant were not agreed.

Considering contextual risk factors and the fact that the company was involved in a long running dispute over union formation, IFC’s pre-investment review and proposed mitigation measures were insufficient to provide assurance of PS2 compliance.

Finding No. 2: IFC Disclosure, Commitment and Subscription

IFC’s presentation of the project to its board did not include material information which IFC was aware of prior to board approval, particularly information related to the client’s long-running dispute over union formation and a complaint from the unions received through IFC’s labor portal.

Although the labor portal complaint included substantial new information about the adverse risks or impacts described in the ESRS and the mitigation measures described in the ESAP, IFC did not update its disclosures as required.

IFC processed its investment without ensuring that the client was meeting ESAP commitments not to oppose but rather to facilitate union formation.

Finding No. 3: IFC Supervision

IFC did not adequately supervise the project in relation to the FoA issues raised by the complainants.

During the initial stages of supervision (2014/15) IFC did not conduct the analysis necessary to determine compliance, despite evidence that the client had taken steps to hinder recognition of STIEU.

In 2015/16 IFC suspended supervision at the company’s request, despite indications that the client was not in compliance with the requirements of PS2.

In 2016, IFC acted consistently with the Sustainability Policy when it recommended to its client an approach that it stated would enable SFI to meet the requirements of PS2. This involved taking steps toward union recognition in parallel with its ongoing litigation. However, the client declined to follow IFC’s recommendation and, to date, no further action has been taken by IFC to ensure compliance. In these circumstances, IFC has not met the requirement of the Sustainability Policy to exercise remedies as appropriate if a client fails to comply with the Performance Standards.