



Project
Complaint
Mechanism

COMPLAINT: CMI Offshore Project

REQUEST NUMBER: 2017/10

ELIGIBILITY ASSESSMENT REPORT – February 2018

The Project Complaint Mechanism (PCM) is the accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of Complaints from one or more individual(s) or organisation(s) concerning an EBRD Project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the Project-specific provisions of the Public Information Policy; and Problem-solving, which has the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault. Affected parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

Contact information

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<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism.html>

How to submit a Complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html>

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Unless otherwise indicated capitalised terms used in this report are those as set forth in the PCM Rules of Procedure.

EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) received a Complaint in relation to the EBRD's financing of the CMI Offshore Project (the Project), alleging non-compliance with the Bank's 2014 Environmental and Social Policy (ESP). In particular, the Complainants allege the Project is incorrectly categorized B instead of A. The Complainants consider the Project an associated facility of an oil extraction project, which is directly impacting an internationally protected area in Turkmenistan. Complainants also alleged that the EBRD has violated its Turkmenistan Country Strategy, which excludes financing of the oil and gas sector due to the country's failure to meet key governance and economic benchmarks as articulated in Article 1 of the Agreement Establishing the Bank and in the Country Strategy for Turkmenistan. The Complainants requested that a Compliance Review be undertaken by the PCM.

In consideration of the Bank's responsibilities under the ESP in relation to the issues raised in the Complaint, the Eligibility Assessors have determined that the Complaint is eligible for a Compliance Review.

The PCM Eligibility Assessors find that the Complaint satisfies the criteria for a Compliance Review, as set out in the PCM Rules of Procedure (PCM RPs).

I. BACKGROUND

1. On 13 October 2017 the PCM received a Complaint regarding the CMI Offshore Project.¹ The Complaint was submitted by the Turkmenistan Working Group of the Civic Solidarity Platform (comprised of the Centre for the Development of Democracy and Human Rights (Russia), Crude Accountability (USA), Freedom Files (Russia), and civic activists from inside Turkmenistan (the Complainants). The Complainants requested that the PCM undertake a Compliance Review.
2. At the time the Complaint was submitted to the PCM, the CMI Offshore Project was not a Board approved Project; however, it was approved by the Board five days later, on 18 October 2017. PCM registered the Complaint on 20 October 2017 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (PCM RPs). The Complaint was subsequently posted on the PCM Register pursuant to paragraph 20 of the PCM RPs. On 1 November 2017 Ms. Susan Wildau was appointed as an Eligibility Assessor to conduct the Eligibility Assessment jointly with the PCM Officer, in accordance with paragraph 22 of the PCM RPs.
3. In summary, the Complainants have raised the following concerns in relation to the Project: allegations about incorrect project categorization; allegations that the project is an associated facility of an oil extraction project and directly impacts an internationally protected area; and as a consequence of alleged improper project categorization, a related claim that EBRD failed to conduct an Environmental and Social Impact Assessment in line with its policies. Further, the Complainants alleged that the EBRD violated its Country Strategy for Turkmenistan, which excludes financing of the oil and gas sector due to the country's failure to meet key governance and economic benchmarks as articulated in Article 1 of the Agreement Establishing the Bank and in the Country Strategy itself.²
4. A senior loan of up to USD 21 million will be provided for 5 years to enable CMI Offshore Ltd. to continue its growth programme in Turkmenistan and Kazakhstan. The Bank's loan will be used to support the Company in balance sheet restructuring and in acquiring new vessels.
5. The transition impact of the project will focus on supporting private foreign direct investments, skill transfers and environmental impact. CMI Offshore provides marine and logistics services to offshore oil and maritime sectors in the Caspian Sea region.
6. The EBRD Board of Directors approved the project on 18 October 2017, as a category B Project under the 2014 Environmental and Social Policy. The total loan amount is expected to be USD 21,000,000.00.³

II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

7. The Eligibility Assessors have undertaken a general examination of the Complaint, and additional information provided by the Complainants, EBRD Management and the Client, to determine if the eligibility criteria set out in the PCM RPs are satisfied.
8. A site visit was not considered necessary for the purposes of this Eligibility Assessment as the Assessors deemed it sufficient and adequate to determine eligibility primarily through a document-based review.

¹ Complaint Number 2017/10, available at and annexed to this report <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html>.

² Complaint.

³ Project Summary Document for CMI Offshore Project, available at <http://www.ebrd.com/work-with-us/projects/psd/cmi-offshore.html>.

9. PCM had meetings and written communication with the Complainants, Bank staff and the Client since the receipt of the Complaint, during the October - November 2017 timeframe.

III. SUMMARY OF THE RELEVANT PARTIES' VIEWS

1. Complainants

10. The Complaint and supporting documents provided by the Complainants describe the alleged harm caused by the EBRD Project, as follows:

- *The offshore transportation route of the Anchor Handling Tug Supply (AHTS) vessel(s), which will be purchased with this loan, crosses through the Hazar Nature Reserve, a Wetland of International Importance protected under the RAMSAR Convention. Hazar is home to over 50 species of endemic fish, at least 10 of which are endangered. It is also habitat for 264 species of birds, including 55 nesting species; 37 species of reptiles, including two endangered species of snake; and 47 species of mammals, 12 of which are endangered. Transportation of hydrocarbons through this fragile ecosystem not only makes CMI Offshore a very high-risk project, but also violates the international protection designation of the Reserve.*
- *The EBRD's reliance on the opinion of country officials instead of conducting an independent assessment to ascertain whether there are impacts on an internationally protected area not only contradicts the purpose of the Environmental and Social Policy, but is also extremely dangerous, especially in a country like Turkmenistan, where corruption, nepotism, economic dependence on hydrocarbons and foreign investment, and complete lack of environmental oversight require the highest levels of international due diligence in investments.*
- *The anticipated risks and impacts to the fragile and unique ecosystem of the Hazar Reserve, which has been rightly protected under the Ramsar Convention, need to be carefully assessed through an independent environmental assessment in line with EBRD policy. Further, the high degree of corruption in Turkmenistan necessitates an independent assessment of the situation.*
- *The EBRD has labelled this project Category B because it maintains that no additional harm or risks will be caused by the project because the company will be using a transportation route that is already in use. [...] Investment in CMI Offshore for the purchase of boats servicing oil rigs carries grave risks, and needs to be evaluated in accordance with those risks. EBRD financing would create serious negative impacts to the Hazar Nature Reserve, and the EBRD has an obligation to assess the risks within the context of the proposed project.*
- *[...] this project is labeled as 'Transportation' and not as 'Energy' because the EBRD failed to review the impact of the project within the context of risk to the Hazar Reserve. The project does not take place in a vacuum, and, as the Environmental and Social Policy states, vessels servicing off shore oil extraction are an associated facility of that larger oil extraction operation, and the oil extraction operators are third parties to the EBRD CMI Offshore project.*
- *Not only do the CMI transportation routes cross into internationally protected areas, but the broader offshore oil extraction operation is high risk and necessitates that CMI Offshore be classified as Energy, as it is an associated facility of that energy project, and, thus, categorized as 'A'.*

- *Due to Turkmenistan’s egregious human rights and governance record, the EBRD’s Turkmenistan Country Strategy prevents the Bank from financing the oil and gas sector. The associated risks of this project are directly connected to the oil and gas sector. In accordance with Article 1 of the EBRD’s founding documents, this investment should be disqualified.*
- *By investing in CMI Offshore, a foreign company registered in Greece, EBRD is not contributing to the development of the transportation sector in the country or benefitting the Turkmen people in any way. Labeled as a transportation project, it enables the extractive industries in Turkmenistan, and thus supports the corrupt, dictatorial regime that they fuel.⁴*

2. Bank Management

11. Bank Management submitted its written response⁵ to the PCM in relation to the Complaint on 21 November 2017.
12. According to the Bank’s response, the Project has been categorised as a Category B project in accordance with paragraph 23 of the 2014 Environmental and Social Policy.
13. Bank Management clarified that despite the fact that the Company provides maritime logistic support and services to offshore oil developers in the region, it is not directly involved in the exploration, extraction or transportation of oil or gas.
14. Management highlights the fact that the Project involves a loan to the Company for the acquisition of an existing AHTS vessel, which is already being operated by the Company under a hire-purchase contract, and thus will not result in any additional environmental or social risks or impacts compared with the current situation.
15. In response to the Complaint, EBRD Management states that as part of project due diligence, the Bank commissioned an independent environmental and social audit (ESA). The ESA confirmed that no special protected areas exist within the territory of CMI Offshore’s activities.
16. As part of their due diligence, the Bank consulted the Administration of the State Nature Reserve Hazar. The agency confirmed that, “the operations maintained by the CMI Offshore’s vessels to service the objects offshore do not represent a threat to its flora and fauna and other allied areas under protection.”⁶ They also advised that within that area of operations, “There is no spawning ground of fish recorded in the Red book of Turkmenistan as well as of scarce types of fishes.”⁷

3. Client

17. In written communication with the PCM, the Client mentioned that they had been in contact with the Complainants earlier during the year, in reference to the same issues - environmental impact of the Project. The Client shared that correspondence with the PCM.
18. Further, the Client clarified that they received a written response from the Administration of the State Nature Reserve Hazar confirming the Contract Area “Cheleken” does not comprise the territory of the Nature Reserve; that the operations maintained by the branch’s vessels to

⁴ Complaint and supporting documents provided by the Complainants.

⁵ The Bank Management response dated 21 November in annex to this report.

⁶ *Ibid.*

⁷ *Ibid.*

service the objects offshore do not represent a threat to its flora and fauna and other allied areas under protection; and that within the area of operations there is no spawning ground of fish recorded in the Red book of Turkmenistan as well as of scarce types of fishes.⁸

IV. DETERMINATION OF ELIGIBILITY

19. The Eligibility Assessors have examined the Complaint to determine whether it meets the relevant eligibility criteria under paragraphs 24-28 of the PCM RPs and considered the responses of Bank Management and the correspondence with the Client in accordance with paragraph 29 of the PCM RPs. The PCM has also sought additional information and documentation from Bank staff (in particular, the Banking and Environment & Sustainability Departments) and the Client.

20. Pursuant to paragraph 24 of the PCM RPs, the Eligibility Assessors do not judge the merits of the allegations in the Complaint and do not make a judgement regarding the truthfulness or correctness of the Complaint in making their determination on eligibility.

21. The Eligibility Assessors have also determined that the criteria outlined in paragraph 25 of the PCM RPs have been met:

- The Complainants have requested the PCM to undertake a Compliance Review to address the issues raised in the Complaint.
- The Complainants have indicated the outcomes sought as a result of use of the PCM process:

Crude accountability hopes that the Board decision for this project is delayed until it is re-categorized as a Category A and an Environmental and Social Impact Assessment is carried out. Further, we hope that the PCM will undertake a compliance review of this project with respect to the Turkmenistan Country Strategy.⁹

- The Complainants have submitted copies of their correspondence with the Bank and other relevant documents related to their Complaint.
- The Complainants have indicated in their Complaint details of a Relevant EBRD Policy:

We believe that EBRD has failed to comply with its Environmental and Social Policy and has incorrectly categorized the project. It has failed to conduct an Environmental and Social Impact Assessment. As the project is an associated facility of an oil extraction project, and directly impacts an internationally protected area, it should be categorized as Category A and not B.

We believe that the EBRD has also violated its Turkmenistan Country Strategy, which excludes financing of the oil and gas sector due to the country's failure to meet key governance and economic benchmarks as articulated in Article 1 and in the country strategy itself.¹⁰

22. Pursuant to paragraph 28 of the PCM RPs, the Eligibility Assessors have found that the Complaint was not filed fraudulently or for a frivolous purpose and its primary purpose is not to seek competitive advantage through the disclosure of information or through delaying the

⁸ Written correspondence with the Client during October - November 2017.

⁹ Complaint.

¹⁰ *Ibid.*

Project. The Eligibility Assessors have also found that the issues raised in the Complaint do not trigger third party obligations.

1. Eligibility for a Problem-solving Initiative

23. PCM's Problem-solving function has the objective of restoring a dialogue between the Complainant(s) and the Client to resolve the issues underlying a Complaint without attributing blame or fault. In their Complaint, the Complainants have not indicated an interest in pursuing a dialogue process with the Client, convened by the PCM. Under these circumstances, the Eligibility Assessors have considered it fruitless to recommend a Problem-solving Initiative.

2. Eligibility for a Compliance Review

24. In considering whether the Complaint meets the eligibility criteria for a Compliance Review, the Eligibility Assessors have concluded that the conditions set out in paragraph 24(b) of the PCM RPs have been met:

- the Complaint was filed within the prescribed timeframes; and
- the Complaint relates to the EBRD 2014 Environmental and Social Policy.¹¹

25. Further, the Eligibility Assessors have considered that the Complaint raises more than a minor technical violation of the relevant policies.

26. The Eligibility Assessors consider that paragraph 27(a) of the PCM RPs is also satisfied. The issues raised in the Complaint highlight matters that are the responsibility of the Bank. Under the 2014 Environmental and Social Policy the Bank has responsibilities in relation to adequate categorization of the Project and corresponding responsibilities to require an Environmental and Social Impact Assessment for Category A projects.

27. The Eligibility Assessors determined that the issues regarding the country strategy for Turkmenistan and the reference to Article 1 of the Agreement Establishing the Bank raised in the Complaint are outside PCM's jurisdiction and consequently, will not be subject to a Compliance Review. PCM is limited to examining issues that fall within the definition of a "Relevant EBRD Policy". According to the Definitions and abbreviations section of the PCM RPs, a "Relevant EBRD Policy" refers to the "2014 Environmental and Social Policy and Performance Requirements, 2008 EBRD Environmental and Social Policy and Performance Requirements, previous EBRD environmental policies, and/or project specific provisions of the 2014 Public Information Policy and previous Public Information Policies and any Policies approved in the future by the Board of Directors designated to be included in this Definition." Further, as stated in PCM RP 14, the PCM Officer will not register a Complaint if it [only] "relates to Article 1 of the Agreement Establishing the Bank." PCM notes that the Complaint raises other issues that fall within the definition of a "Relevant EBRD Policy" and consequently comprise matters that can be considered in a Compliance Review.

28. Based on this assessment, the Eligibility Assessors have found the Complaint eligible for a Compliance Review, in accordance with the Terms of Reference set out below.

¹¹ Paragraph 24(b) of the PCM RPs stipulates that: "To be held eligible for a Compliance Review, the Complaint must be filed within 24 months after the date on which the Bank ceased to participate in the Project and must relate to a Relevant EBRD Policy."

V. CONCLUSION

29. On the basis of the information set out above, the Eligibility Assessors have found that the Complaint satisfies the eligibility criteria for a Compliance Review.

COMPLAINT No: 2017/10 CMI Offshore Project

TERMS OF REFERENCE FOR A COMPLIANCE REVIEW

Application

1. These Terms of Reference apply to any inquiry, action or review process undertaken as part of the Compliance Review, with a view toward determining, as per PCM RP 41 if (and if so, how and why) any EBRD action, or failure to act, in respect of the Project has resulted in non-compliance with a Relevant EBRD Policy, in the present case, the EBRD's 2014 Environmental and Social Policy. If it is determined that there has been non-compliance, the Compliance Review will recommend remedial changes in accordance with PCM RP 44.
2. Activities carried out as part of the Compliance Review, and subject to these Terms of Reference, are subject to modifications, which the Compliance Review Expert and the PCM Officer may, at any time, expressly agree upon, except any modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice.

Compliance Review Expert

3. In accordance with PCM RP 40 the PCM Officer will appoint a PCM Expert who was not the Eligibility Assessor, to act as the Compliance Review Expert and to conduct the Compliance Review.
4. The Compliance Review Expert shall conduct the Compliance Review in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to, *inter alia*, the rights and obligations of the Relevant Parties, the general circumstances surrounding the Complaint and due respect for EBRD staff.

Time Frame

5. The Compliance Review will commence as soon as possible following the posting of the Eligibility Assessment Report containing these Terms of Reference in the PCM Register on the EBRD website.
6. Every effort shall be made to ensure that the Compliance Review is conducted as expeditiously as circumstances permit, and it is intended that the Compliance Review shall be concluded within 60 Business Days of its commencement. At the request of the Compliance Review Expert, the PCM Officer may extend this time period for as long as necessary to ensure full and proper conduct of the Compliance Review. Any such extension shall be promptly notified to all Relevant Parties.

Scope of Compliance Review

7. Based on the issues raised in the Complaint, the Compliance Review Expert will determine which provisions of applicable Relevant EBRD Policies apply, and examine core compliance issues (such issues being limited to matters raised in the Complaint), particularly:
 1. Did the Bank satisfy its obligations in relation with the EBRD 2014 Environmental and Social Policy, paragraph 8, which stipulates that EBRD will not knowingly finance

- projects that would contravene country obligations under relevant international treaties and agreements, as identified during project appraisal?
2. Did EBRD satisfy its obligations in relation with paragraphs 23, 24, 25 and 27 of its 2014 Environmental and Social Policy concerning the proper categorization of the Project and the associated due diligence required by the Policy?
 3. Did the EBRD satisfy its obligations in assessing and incorporating associated facilities into the assessment, categorization and sector designation?
 4. Did the Bank define the project in compliance with the EBRD 2014 Environmental and Social Policy, paragraph 2?
 5. Did EBRD satisfy its obligations with regard to the Project's business sector designation, classifying it as a "Transport" sector project, rather than "Power and Energy"; and is EBRD in compliance with paragraph 39 of EBRD's 2014 Environmental and Social Policy?

Procedure: Conduct of the Review

8. The Compliance Review Expert may conduct the Compliance Review process in such a manner as he/she considers appropriate, taking into account the PCM Rules of Procedure, the concerns expressed in the Complaint and the general circumstances of the Complaint.
9. Specifically, the Compliance Review Expert may:
 - a) Review the Complaint to frame the compliance issues to be included in the Compliance Review;
 - b) Review all documentation relevant to the Complaint;
 - c) Consult with EBRD staff involved in the Project, including personnel from the Bank's Environment and Sustainability Department, the Project Team, and the relevant EBRD Resident Office;
 - d) Solicit additional oral or written information from, or hold meetings with, the Complainants, any other Relevant Party and, further, any interested person or party as may be appropriate for the conduct of the Compliance Review;
 - e) Identify any appropriate remedial changes in accordance with PCM RP 41, subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project-related agreements; and
 - f) Take any other action as may be required to complete the Compliance Review within the required time frame and in consultation with the PCM Officer, as appropriate.

Procedure: General

10. The Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files, and Bank staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review.
11. In conducting the Compliance Review, the Compliance Review Expert shall take care to minimize any disruption to the daily operations of all involved parties, including relevant Bank staff.
12. Generally, all Relevant Parties shall cooperate in good faith with the Compliance Review Expert to enable the Compliance Review to be carried out and concluded as expeditiously as

possible and, in particular, endeavour to comply with requests from the Compliance Review Expert for obtaining access to sites, submission of written materials, provision of information and attendance at meetings. The Compliance Review Expert will advise the PCM Officer of situations where the actions or lack of action by any Relevant Party hinders or delays the conduct of the Compliance Review.

13. Access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial and/or other information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who owns such document.

Compliance Review Report

14. In accordance with PCM RP 42, the Compliance Review Expert shall prepare a Report. The Report may include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review. The Relevant Parties shall be provided an opportunity to comment on the draft Report, and the Compliance Review Expert shall consider the comments of the Relevant Parties when finalizing the Report. In addition, in cases of non-compliance, the Report shall include recommendations according to PCM RP 44.
15. The recommendations and findings of the Compliance Review Report shall be based only on the circumstances relevant to the present Complaint and shall be strictly impartial.
16. Prior to submitting the Compliance Review Report to the Relevant Parties and to the Board in accordance with PCM RP 43, or sending the draft Compliance Review Report to the Bank's Management and the Complainants in accordance with PCM RP 45, the PCM Officer will verify that there are no restrictions on the disclosure of information contained within the Report, and will consult with the Relevant Parties regarding the accuracy of the factual information contained therein.

Exclusion of Liability

17. Without prejudice to the privileges and immunities enjoyed by PCM Experts, the Compliance Review Expert shall not be liable to any party for any act or omission in connection with any Compliance Review activities undertaken pursuant to these Terms of Reference.

ANNEX 1: COMPLAINT

Step 1: Details of the Complaint

<p>1. Name of the Person(s) or Organisation(s) filing the Complaint (“the Complainant”).</p> <p>The Turkmenistan Working Group of the Civic Solidarity Platform (comprised of the Centre for the Development of Democracy and Human Rights (Russia), Crude Accountability (USA), Freedom Files (Russia), and civic activists from inside Turkmenistan)</p>
<p>2. Contact information of the Complainant (Please include address and, if possible, phone number and email address).</p> <p></p>
<p>3. Is there a representative making this Complaint on behalf of the Complainant?</p> <p>Yes (if yes, please provide the Name and Contact information of the Representative):</p> <p><i>Please attach proof that the Representative has been authorised by the Complainant to file the Complaint. For example, this can be in the form of a letter signed by the Complainant giving permission to the Representative to make the Complaint on his behalf.</i></p> <p>No X</p>
<p>Is proof of authorisation included with the Complaint?</p> <p>Yes No X</p>
<p>4. Are you requesting that this Complaint be kept confidential?</p> <p>Yes (if yes, please explain why you are requesting confidentiality)</p> <p>No X</p>
<p>5. Please provide the name or a description of the EBRD Project at issue.</p> <p>This complaint is for the CMI Offshore project in Turkmenistan, which is currently pending final review; with a target Board date of October 18, 2017. Project number is 47096</p>
<p>6. Please describe the harm that has been caused or might be caused by the Project (<i>please continue on a separate sheet if needed</i>):</p> <p>Please see Annex 1.</p>
<p>Step 2: Problem-solving Initiative</p> <p>7. If you are requesting the PCM’s help through a Problem-solving Initiative, you must have made a genuine effort to contact the EBRD or Project Sponsor (Client) regarding the issues in this complaint.</p> <p>a. Have you contacted the EBRD to try to resolve the harm caused or expected to be caused by the Project?</p> <p>Yes X (If yes, please list when the contact was made, how and with whom):</p>

Please See Annex 2.

Please also describe any response you may have received.

Please see Annex 2.

No (please go to question 8)

Please provide a record of this contact with the EBRD, as instructed at the end of this form.

b. Have you **contacted the Project Sponsor** (Client) to try to resolve the harm caused or expected to be caused by the Project?

Yes (if yes, please list when the contact was made, how and with whom)

Please also describe any response you may have received.

No X (please go to question 8)

Please provide a record of this contact with the Project Sponsor (Client), as instructed at the end of this form.

8. If you have not contacted the EBRD and/or Project Sponsor (Client) to try to resolve the harm or expected harm, please explain why.

Step 3: Additional information

Although not required, it would be helpful to the PCM if you could also include the following information:

9. If you believe the EBRD may have failed to comply with its own policies, please describe which EBRD policies.

We believe that EBRD has failed to comply with its Environmental and Social Policy and has incorrectly categorized the project. It has failed to conduct an Environmental and Social Impact Assessment. As the project is **an associated facility of an oil extraction project**, and directly impacts an internationally protected area, it should be categorized as Category A and not B.

We believe that the EBRD has also violated its Turkmenistan Country Strategy, which excludes financing of the oil and gas sector due to the country's failure to meet key governance and economic benchmarks as articulated in Article 1 and in the country strategy itself.

10. Please describe any other complaints you may have made to try to address the issue(s) at question (for example, court cases or complaints to other bodies).

N/A

11. Are you seeking a Compliance Review where the PCM would determine whether the EBRD has failed to comply with a Relevant EBRD Policy in respect of an approved Project? **Yes X**
No

12. Are you seeking a Problem-solving Initiative which has the objective of restoring a dialogue between you and the Project Sponsor (Client) to resolve the issue(s) underlying your Complaint

without attributing blame or fault? Yes No X
13. What results do you hope to achieve by submitting this Complaint to the PCM? Crude accountability hopes that the Board decision for this project is delayed until it is re-categorized as a Category A and an Environmental and Social Impact Assessment is carried out. Further, we hope that the PCM will undertake a compliance review of this project with respect to the Turkmenistan Country Strategy.
Date:

ANNEX 2: BANK MANAGEMENT RESPONSE

1. INTRODUCTION

The project involves a senior loan of up to \$21 million for CMI Offshore Ltd. (the “Company”), a private company that provides maritime transportation and logistical services in the Caspian Sea region to oil and natural gas companies. Specifically, a \$10 million tranche will be used to finance the buy-out of CM Rahil, a tug supply vessel currently operating in Turkmenistan and to partially refinance outstanding loans for the purchase of two other vessels to be chartered in Turkmenistan. A separate tranche of \$11 million will be used for the purchase of future vessel acquisitions for the fleet of vessels in Turkmenistan and Kazakhstan. The company will provide \$7.5 million of its own equity for the remaining project costs. The use of loan proceeds is limited to Turkmenistan and Kazakhstan.

The Project was approved by the EBRD Board of Directors on 18 October 2017 and is subject to the 2014 Environmental and Social Policy.

The Complaint claims that EBRD has failed to comply with its Environmental and Social Policy and has incorrectly categorized the project and failed to conduct an Environmental and Social Impact Assessment. As the project is an associated facility of an oil extraction project, and directly impacts an internationally protected area, it should have been categorized as Category A and not B.

The Complaint also claims that EBRD has also violated its Turkmenistan Country Strategy, which excludes financing of the oil and gas sector due to the country’s failure to meet key governance and economic benchmarks as articulated in Article 1 and in the country strategy itself.

2. MANAGEMENT RESPONSE

2.1 REGARDING CATEGORISATION OF THE PROJECT.

The Project has been categorised B in accordance to the 2014 Environmental and Social Policy taking in account the reasons described below.

In accordance with the 2014 Environmental and Social Policy (the “ESP”), paragraph 23., EBRD categorises each project to determine the nature and level of environmental and social investigations, information disclosure and stakeholder engagement required. This will be commensurate with the nature, location, sensitivity and scale of the project, and the significance of its potential adverse future environmental and social impacts.

The Company provides maritime logistic support and services to offshore oil developers in the region; however, it is not directly involved in the exploration, extraction or transportation of oil or gas. It operates a fleet of Anchor Handling Tug Supply / Platform Supply Vessel (AHTS/PSV) units, Standby / Rescue vessels, tugs, crew boats, passenger ferries, barges and survey / diving ships and its services include, among others, emergency response and recovery support and oil spill containment and response in the event of any offshore emergency.

The Project involves a loan to the Company for the acquisition of an existing AHTS vessel, which is already being operated by the Company under a hire-purchase contract. The Project will thus not result in any additional environmental or social risks or impacts compared with the current

situation. The vessel operates from the port of Hazar to the Cheleken Contract Area (comprises two offshore developments, Lam and Zhdanov; see illustration below).

As part of the Bank's due diligence for the Project, an independent environmental and social audit (ESA) of the Company, its vessels and operations has been carried out against the EBRD's Environmental and Social Performance Requirements, and international maritime safety and environmental regulations and standards, including the International Convention for the Prevention of Pollution from Ships (MARPOL) and other



International Maritime Organization (IMO) conventions. The independent ESA confirmed that there are no special protected areas within the territory of CMI Offshore's activities. Moreover, the Administration of the Hazar State Nature Reserve provided an opinion that: "the Cheleken Contract Area does not comprise the territory of the Nature Reserve" and that "the operations maintained by the CMI Offshore's vessels to service the objects offshore do not represent a threat to its flora and fauna and other allied areas under protection."

The independent ESA also confirmed that the Company operates its vessels within established and controlled navigation routes. It has obtained a number of international environmental and safety certifications and registrations, has sound safety and operational track record and is compliant with the - International Safety Management (ISM) Code and the International Ship and Port Facility Security (ISPS) Code. The ESA also concluded that replacement of old vessels with modern vessels will improve safety and reliability and environmental performance of the operations.

Categorisation B is consistent with the Bank's previous, similar maritime logistic projects. For example, in 2010, the Bank signed a loan with Circle Maritime Invest JSC to finance acquisition of tug boats for operation in the Kazakhstan segment of the Caspian Sea and in 2014 the Bank signed an extension to this loan to finance a survey vessel.

An option to extend a second USD 11 million tranche of the loan at a later stage for the acquisition of further vessels, including liftboats, craneships, hoverbarges or hovercrafts, is integrated in the Project concept. The provision of this Tranche 2 of the loan will be at the EBRD's sole discretion and subject to the Bank's further due diligence and approval. Therefore, Tranche 2 will undergo a full Environmental and Social Due Diligence and information disclosure prior to the Bank approval. In accordance with the 2014 ESP, this will include screening to identify relevant environmental and social issues and carrying out assessments and studies that are commensurate with the level of potential risks and impacts. It is expected that new vessels to be acquired with the Tranche 2 will provide similar maritime transportation and logistical services to those envisaged in the context of Tranche 1 finance. The environmental and social risks and impacts, therefore, are also expected to be similar to those of Tranche 1.

2.1 IMPACT ON THE HAZAR NATURE RESERVE

The Hazar Nature Reserve has been registered as a Ramsar Convention site (under the Convention on Wetlands of International Importance) since 1976. As such, the access to the reserve is restricted except for scientific purposes. Fishing and hunting activities are also prohibited and a penalty is imposed on offenders. However, the Hazar Nature Reserve area has a buffer zone of one kilometre in width around the designated reserve area that is partly dissected by a navigation channel to/from the Turkmenbashi port.

The Turkmenbashi Port is the gateway for all marine imports into Turkmenistan. The number of ships calling at the Turkmenbashi Port is more than 60 daily. The vessels using the existing navigation channel have no apparent impact on the reserve. Yet, there could be significant impact within a contained area of the reserve in case of an accidental spill or release of pollutants from vessels that transport oil or other hazardous materials. Furthermore, the Turkmenbashi port is undergoing a substantial development, including navigation channel dredging activities in the past years which could have adverse impacts on water and sediment quality on the territory of the Hazar Nature Reserve.

To date, the only time the CMI Offshore vessels enter the Hazar Nature Reserve is when they first arrive under tow to pass the import custom clearance and registration at the Turkmenbashi port. The vessels are bareboat registered in Turkmenbashi as this is the main port of registry in Turkmenistan and head of the Turkmen Seaport maritime authorities. The vessels are then moved to Hazar and shuttle between the Port of Hazar and the Cheleken Contract Area (comprises two offshore developments, Lam and Zhdanov). This route is strictly regulated by the navigation rules. Nevertheless, the possibility cannot be excluded that there will be a need in the future for the vessels to visit the Turkmenbashi Port again (for registration, inspection or maintenance purposes).

As part of the ESDD, the Administration of the State Nature Reserve Hazar provided a statement, as follows: “In response to your letter the Administration of the Hazar State Nature Reserve hereby informs that the Cheleken Contract Area does not comprise the territory of the Nature Reserve. We further acknowledge that the operations maintained by the CMI Offshore’s vessels to service the objects offshore do not represent a threat to its flora and fauna and other allied areas under protection. We also advise that within this area of operations there is no spawning ground of fish recorded in the Red book of Turkmenistan as well as of scarce types of fishes.”

2.1 REGARDING ARTICLE 1 AND THE COUNTRY STRATEGY.

The Management notes that this issue does not relate to the ESP or project-specific provisions of the Public Information Policy and, therefore, appears to fall outside the scope of the Relevant Policies that are subject to PCM. The Management further notes that according to the PCM Rules and procedures, paragraph 14, “The PCM Officer will not register a Complaint if it: b) relates to Article 1 of the Agreement Establishing the Bank”. Nevertheless, below for the ease of reference is a response to this issue which Management has provided to the EBRD Board of Directors and the Complainant.

“With regards to its Article 1 mandate, the Bank monitors compliance on an ongoing basis. A complete assessment of progress against the 14 criteria which constitute the Political Aspects of the Bank’s mandate is undertaken as part of the country strategy review, which last took place in 2013-2014. Please also note that the Political Assessment carried out by the Bank does not

cover the entire spectrum of human rights, but focuses on civil and political rights, which are directly linked to the transition towards multiparty democracy and pluralism as defined in the Bank's Article 1 mandate. The current strategy, adopted on 7 May 2014, notes that the overall human rights record remains "poor" and "more progress is needed".

The Bank currently envisages commencing the next strategy review, including review of compliance with Article 1, in the second half of 2017. Following usual procedure, consultation workshops with national and international civil society organisations will be held during the drafting stage of the country strategy."