

MANAGEMENT RESPONSE TO FINDINGS

EBRD Management welcome the opportunity to provide this Management Response to Findings and Management Action Plan. We present below our understanding of the complaint; the review, the findings and the recommendations of the Compliance Review Report; and our Response.

Complaint

The complaint comes from a former employee of the American Hospital of Kosovo, a subsidiary of American Hospital Sh.A., an investee of Southeast Europe Equity Fund II (the “**Fund**” or “**SEEF II**”), a private equity fund in which the Bank is invested. In the complaint, the complainant alleges unfair treatment and discrimination relating to the non-renewal of his contract of employment at the hospital; and further general discrimination against Kosovars following the on boarding of a new, mainly Albanian, management team in 2015. The complaint was launched using the terminology and procedures outlined in the EBRD 2008 Environmental and Social Policy and it is worthwhile to note that the Compliance Review Report (the “**Report**”) immediately identifies that it is the 2003 Environmental Policy (the “**2003 Policy**”) which applies in terms of compliance. However, allegations remain pertinent. The review considered EBRD’s actions in light of the requirements of the 2003 Policy and the Bank’s Environmental Procedures for Private Equity Funds that were in place at the time of the transaction¹.

Review and findings

The complaint was dealt with in the Report in two sections; first the complaint of personal harm due to the termination of the complainant’s contract of employment with the American Hospital of Kosovo. Here, the Report concludes that under the 2003 Policy and Environmental Procedures for Private Equity Funds, the Fund, its manager, Bedminster Capital Management (the “**Fund Manager**”)² and its investees should comply with local employment law and, correspondingly, that Kosovo maintains a robust set of legal protections which are available to the complainant. It was also noted that the Fund Manager, under the terms of the funding agreement, maintained the right to hire and dismiss staff as they deemed appropriate. The finding in respect to the claim of personal harm is that the Project Complaint Mechanism (“**PCM**”) is not a forum to adjudicate on individual contractual disputes. The Bank was found compliant in this regard.

The second area of review pertained to a series of allegations relating to discrimination against Kosovar employees by the American Hospital of Kosovo’s Albanian management, which, per the complaint, created a ‘climate of fear’ for Kosovars. Evidence of this wider claim was provided by way of a letter of complaint sent from 22 staff to the Hospital Chairman describing the attitude and behaviour of senior Albanians which, it is alleged, resulted in the resignation and dismissal of numerous (unquantified) Kosovar employees. In addition, the complainant provided the details of 11 former personnel he reported as being subject to unfair treatment; 8 of these had dialogue with the PCM Team. Responding, Small Enterprise Assistance Funds (acting as Fund Manager since May 2017) highlighted that the American Hospital of Kosovo employs 1,800 people, 97% of whom are Kosovar and, as such, rejected the allegations of discrimination.

¹ The Bank’s investment in Southeast Europe Equity Fund II was approved by the EBRD Board on 6 September 2005 and the project was signed on 15 December 2005.

² In May 2017, Fund investors replaced Bedminster Capital Management as Fund Manager with Small Enterprise Assistance Funds.

The Report stated that the Procedures for Private Equity Funds, which were in place for projects governed by the 2003 Policy, provided a list of issues that should be included in an Annual Environmental and Social Report (AESR) (including details of social issues addressed during due diligence and complaints from staff). The Report held that the AESRs completed did not fully address the list. The Bank was therefore found non-compliant in regard to our monitoring responsibilities.

However, the Report further points out that the Bank has upgraded the Performance Requirements and monitoring requirements since the time of the 2003 Policy. As such, this should act to counter the ‘...gap in expectations resulting from a fast-developing social awareness and expectation of transparency and equal opportunities versus a static interpretation of requirements deriving from procedures designed more than a decade earlier...’.

Recommendation

The Report recommends that the Bank adopts a ‘dynamic’ approach to monitoring and requires Continuous Risk Improvement at client operations by changing funding arrangements to include a requirement that compliance standards will be allowed to change over time to reflect future policy changes. This is further recommended as all projects will therefore be monitored with one common framework.

Management Response and Action Plan

EBRD Management notes the finding of compliance in regard to the individual’s issues and accepts the finding of non-compliance in regard to monitoring requirements.

As stated in the Report, the Bank has updated Procedures and Policies on a number of occasions since the time of signing SEEF II. The current 2014 Policy is under review with a view to strengthening appraisal and monitoring requirements should such actions be deemed necessary. The Bank’s Responsibility Index is now in place for Funds in which the Bank invests and includes more detailed reporting requirements than previously existed. In addition, the Bank can commit to renewing its FI monitoring strategy to take a more active approach to funds (per the requirements that are currently placed on funds under the Environmental Procedures for Active Funds, which have replaced the previous Procedures under which SEEF II operates).

It is Management’s view that whilst the Report’s recommendation to implement changes to the terms and conditions of funding arrangements to allow for a ‘dynamic’ approach to monitoring recognises the issue of evolving compliance standards, it is not a practical or commercial option. Ultimately, clients will not sign funding arrangements which bind them to unknown and uncertain future conditions which are not defined, expressed or predictable. The Bank will however, as the item in its proposed Action Plan, commit to including elements of Continuous Risk Improvement in the Environmental and Social Management Plans that the Funds operate under. Such an action would recognise and encourage the development of a ‘dynamic’ approach to environmental risk management.