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DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

ELIGIBILITY MEMORANDUM

REQUEST MICI-CO-2015-0091

**BAYPORT COLOMBIA: FINANCIAL INCLUSION
FOR BASE OF THE PYRAMID PUBLIC EMPLOYEES**

(CO-L1147)

This document was prepared by Victoria Márquez Mees, ICIM Director (MEC/MEC).

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1.	Project abstract http://www.iadb.org/Document.cfm?id=38809297
2.	Bayport's environmental and social strategy http://www.iadb.org/Document.cfm?iid=38809303
3.	Environmental and social management report: "Bayport Colombia: Financial Inclusion for Base of the Pyramid Public Employees" http://www.iadb.org/Document.cfm?id=38809378

EXECUTIVE SUMMARY

REQUEST MICI-CO-2015-0091 BAYPORT COLOMBIA: FINANCIAL INCLUSION FOR BASE OF THE PYRAMID PUBLIC EMPLOYEES (CO-L1147)

On 3 July 2015, Mr. Fernando Sanabria Suárez submitted a Request on behalf of himself and a second Requester, who asked that his identity be kept confidential.

In that Request, the Requesters allege financial harm as the result of an individual loan taken by Mr. Sanabria from the company Bayport, Colombia, which is the borrower in the operation, “Bayport Colombia: Financial Inclusion for Base of the Pyramid Public Employees” (CO-L1147) (“the Project”). Mr. Sanabria indicates that his finances and those of the party he represents have been adversely impacted by the cost of the loan and its payment terms, of which, he alleges, he was not informed, and which he considers unlawful under Colombian law.

The project, “Bayport Colombia: Financial Inclusion for Base of the Pyramid Public Employees” (CO-L1147) (“the Project”) is a non-sovereign guaranteed loan operation approved by the Board of Executive Directors on 9 July 2014.

The Director of the Independent Consultation and Investigation Mechanism (ICIM), in accordance with Section G of the ICIM Policy (document MI-47-3), upon review of the relevant information, concludes that this Request is **ineligible** as it does not meet one or more of the eligibility criteria of the Policy.

This determination is being communicated to the Requesters, Management, the Board of Executive Directors, and other interested parties through the Public Registry. Following this action, the processing of Request MICI-CO-2015-0091 will be deemed concluded.

I. THE PROJECT¹

- 1.1 The project “Bayport Colombia: Financial Inclusion for Base of the Pyramid Public Employees” (loan CO-L1147) is a non-sovereign guaranteed A/B loan operation of the Opportunities for the Majority program of the Inter-American Development Bank (IDB or “the Bank”). The IDB’s Board of Executive Directors approved the loan on 9 July 2014 for an amount of up to US\$50 million, to be granted to Bayport Colombia S.A.S., a nonbank financial intermediary (financial institution), in the form of an A loan of up to US\$15 million and a B loan of up to US\$35 million.
- 1.2 The objective of the project is to increase financial access for Base of the Pyramid public employees and retirees in Colombia by scaling up an innovative loan origination program repaid via payroll deductions (libranzas)² developed by Bayport Colombia S.A.S. The use of funds will support the company’s loan origination activity and allow it to scale its existing portfolio to provide financing for home improvements, education, health, micro and small enterprises, and agricultural activities.
- 1.3 The Relevant Operational Policies applicable to the project are the Environment and Safeguards Compliance Policy (OP-703) and the Access to Information Policy (OP-102).

II. THE REQUEST³

- 2.1 On 3 July 2015, Mr. Fernando Sanabria Suárez submitted a Request on behalf of himself and a second Requester, who asked that his identity be kept confidential. The Requesters allege financial harm as the result of an individual loan taken by Mr. Sanabria from the company Bayport, Colombia in February and March 2015. Mr. Sanabria indicates that his finances and those of the party he represents have been adversely impacted by the cost of the loan and its payment terms, of which, he alleges, he was not informed, and which he considers excessive.
- 2.2 Mr. Sanabria states that he signed the loan contract without knowing and/or understanding some of the contractual conditions. Specifically, he refers to a high initial payment and the amount of the “analysis fee” (“comisión de estudio”), a charge made as part of the loan, which he regards as significantly higher than the 2.5% he had understood at the time he signed the contract.
- 2.3 He also indicates that at the time of signature he did not have enough time to read the documents and that he was not explicitly informed of the percentage of this charge.
- 2.4 Faced with these circumstances, he sought funds from other sources so that he could terminate the contractual relationship with Bayport early. He also comments that, although he repaid the amount received, which he states was equivalent to 60 days’ work, the analysis fee was withheld for 30 days.

¹ The information in this section was taken from the Environmental and Social Management Report. “Bayport Colombia: Financial Inclusion for Base of the Pyramid Public Employees,” available only in English, which may be accessed from the electronic links section of this document and/or the Bank website.

² “Libranza” refers to the repayment of a loan through direct payroll deductions.

³ This section presents a summary of the original Request, which may be accessed in the Public Registry.

- 2.5 Consequently, Mr. Sanabria states that he is in a worse financial position than before taking the loan from Bayport, which, he claims, runs counter to the poverty reduction objectives of the Bank.
- 2.6 In terms of contact with Bank Management, the Representative included in his Request information on contact with Management after it communicated with him upon being informed by the ICIM of his first communication.

III. MANAGEMENT'S RESPONSE⁴

- 3.1 In accordance with paragraph 21 of the ICIM Policy, on 8 September 2015 the ICIM received Management's Response, a summary of which is set out below.
- 3.2 Management affirms that, the Bank correctly applied all Relevant Operational Policies for the operation in question, and that the borrower has stated that it is in compliance with all applicable laws.
- 3.3 Management also indicates that during the due diligence process it verified that the interest rates and fees charged by Bayport to its clients were aligned with the market and compliant with the maximum interest rates established by the Financial Superintendency of Colombia. The maximum interest rate ("tasa de usura") applicable to all financial intermediaries is set on a semiannual basis and includes both the interest rate and related fees such as analysis fees.
- 3.4 Lastly, it notes that Bayport's negotiations with the IDB were closed on 11 May 2015, and the first disbursement was made on 17 June 2015.

IV. ICIM ACTIONS

- 4.1 In accordance with Section G of the ICIM Policy and the eligibility criteria of paragraph 22, the chronology of the review process for the determination of eligibility was as follows (see Table 1):

⁴ This section contains a summary of Management's Response, the original version of which is attached as Annex 2.

Table 1
Chronology of Actions by the ICIM

Date	Actions
3 July	Request received
20 July	IDB Management notified of the Request
23 July	A period of 10 business days granted to the Requesters, to submit information required for registration to the ICIM
3 August	Additional information received from the Requesters
4 August	Telephone conversation with the Representative to clarify requirements for registration of the Request
6 August	Additional information received from the Requesters
7 August	Request registered, and notification to Requesters and Management
11 August	Meeting of the ICIM with IDB Management to explain the ICIM process
8 September	Management's Response received
7 October	Eligibility Memorandum Issued by the ICIM

- 4.2 During the analysis, several different documents were reviewed, telephone conversations were held with the Representative of the Requesters, and face-to-face meeting were held with the Bank's project team. We wish to thank all those involved for the time devoted to the ICIM process and the information provided.

V. ELIGIBILITY ANALYSIS

- 5.1 The Director of the Independent Consultation and Investigation Mechanism (ICIM), upon review, has determined that Request MICI-CO-2015-0091 is **ineligible** as it does not meet one or more of the eligibility criteria of the ICIM Policy, as described below.
- 5.2 In relation to paragraph 22.c, for the Request to be eligible, it must describe the Harm that could result from potential noncompliance with one or more Relevant Operational Policies. Upon review of Request MICI-CO-2015-0091, the ICIM finds that the Requesters have described the adverse impact as the result of the loan made by Bayport. However, the ICIM does not find that such adverse impact is the result of potential noncompliance by the Bank, since, on the date the loan was made to Mr. Sanabria, the IDB had not formalized the contractual relationship with Bayport. Therefore, the ICIM finds that criterion 22.c has not been met because no link can be established between the alleged Harm and the potential noncompliance by the Bank with one or more of its Relevant Operational Policies.
- 5.3 In relation to paragraph 22.d, the Request must describe the efforts that the Requesters have made to address the issues in the Request with Management and include a description of the results of those efforts, or an explanation of why contacting Management was not possible. Upon review of Request MICI-CO-2015-0091, the ICIM finds that the Requesters did not contact Management prior to entering into contact with the ICIM and its only contact with the project team was at the initiative of Management, once informed by the ICIM that the Request had been received. Therefore, the ICIM finds that criterion 22.d has not been met, since no evidence was found that the Requesters had made efforts to address the

issues in the Request with Management, nor did they offer an explanation as to why this was not done.

VI. CONCLUSION

- 6.1 The ICIM Director, in accordance with Section G of the ICIM Policy (document MI-47-3), concludes that this Request is **ineligible** as it does not meet one or more of the eligibility criteria of the Policy.
- 6.2 This determination is being communicated to the Requesters, Management, the Board of Executive Directors, and other interested parties through the Public Registry. Following this action, the processing of Request MICI-CO-2015-0091 will be deemed concluded.

REQUEST

From: FERNANDO SANABRIA SUAREZ
To: ICIM
Subject: ALERT AND COMPLAINT
Date: Friday, 3 July 2015 5:12:33 PM
Attachments: BAYPORT (2).pdf

Dear Sir or Madam:

I do not know whether you investigate the ethics of organizations financed by the IDB and the adverse impact of the practices of these organizations that increase poverty in Colombia, Latin America, and Africa.

On the Web, I find that the IDB is financing project number CO-L1147, whose borrower is Bayport Colombia S.A.S. (operation number R3247B/OC-CO).

Bayport Colombia S.A.S. takes advantage of the financing needs of base of the pyramid public sector employees and retirees in Colombia with low levels of financial inclusion and high levels of unmet basic needs by charging them large sums of money that adversely impact the resources of working families.

My case is one example. This is my experience:

1. BAYPORT S.A.S. charged me in a single month 15% of the loan they had made to me, 68% of which corresponds to an analysis fee (SEE ATTACHED FILE).

Although in theory, the percentage for the analysis fee was 2.5%, in reality they charged me much more. The total amount charged as interest and analysis and other fees was 9,865,000 Colombian pesos (Col\$) (approximately US\$4,935). Of that amount, Col\$6,700,000 (approximately US\$3,350) corresponded to the analysis fee (see attached file). As you can see, this is a form of fraud on workers.

BAYPORT S.A.S. argues that, by signing the contract, I was aware of this situation. Although it is, in fact, written, it is not very clear, and they never made it explicit to me when I signed (I HAD TO SIGN MANY PAGES BUT THE REPRESENTATIVE DID NOT GIVE ME TIME TO READ THEM). She only spoke to me about interest, but did not warn of what could happen to me.

I have to work more than 60 days to earn that much money, and with that amount I could pay for one year of my daughter's education.

2. Moreover, they are unlawfully withholding the deduction that the company where I work made from my wages and deposited in the account of BAYPORT S.A.S. simultaneously with the payment I made. BAYPORT answers that it is returning the amount of the payment to me possibly after June 30. That is, they are working for two or three months with my money, if they return the over Col\$2 million (approximately US\$1,000) that they are withholding. Investigating, I found that BAYPORT's main office is in Mauritius (a tax haven).

These organizations submit projects disguised as support for populations, to secure funds at low interest, but their conduct adversely affects the progress of working families and increases extreme poverty in the world.

Cordially,

Fernando Sanabria Suárez

A solid black rectangular box used to redact the signature of Fernando Sanabria Suárez.

Bogotá, 3 August 2015

Ms. Victoria Marquez-Mees
Acting Director

Independent Consultation and Investigation Mechanism

Dear Ms. Victoria:

Thank you for addressing my case.

Please find below the information requested for my complaint to be processed.

1. My name is FERNANDO SANABRIA SUAREZ. I am a Colombian citizen, citizen identification document number [REDACTED].

Although I have discovered that numerous complaints have been made against BAYPORT S.A.S. with oversight organizations in Colombia (Superintendency of Industry and Commerce, Superintendency of Corporations and Legal Persons of Bogotá, and others), I have no way to access that information. However, I very respectfully suggest that this request be made institutionally.

Additionally, on the Internet I found several complaints, which are attached in the Excel file, "ALGUNAS DENUNCIAS" [COMPLAINTS].

2. DESCRIPTION OF MY CONTACT WITH BAYPORT AND ITS REPRESENTATIVES

Believing in the good faith of BAYPORT S.A.S., an organization that presents itself to Colombian society and international organizations as "Bayport Colombia for the benefit of low income public employees," through the sales representative or agent of BAYPORT, [REDACTED], I applied for a payroll deduction loan (monthly payroll deduction).

The amount requested was Col\$67 million. [REDACTED], representative of BAYPORT S.A.S., as part of the loan application procedure, asked me to sign and put my fingerprint on several documents without allowing much time to read them, informing me that the monthly payment of Col\$2,091.00 would be deducted from my wages. She did not inform me of any other types of charges.

In March 2015, BAYPORT S.A.S. charged me in a single month 15% of the loan amount, 68% of which corresponds to an analysis fee. The total charged as interest, guarantees, analysis fee, and other fees was Col\$9,865,000, Col\$6,700,000 of which corresponds to the analysis fee (see certificate of indebtedness).

When I commented to [REDACTED] sales representative of BAYPORT S.A.S., on the unclear analysis charge, she replied, surprised, that this had to be a mistake because the charge could not be so high.

Observing this irregular situation, I decided to terminate my relationship with this type of company and sought to borrow the funds elsewhere.

In April 2015, the entity where I work deducted from my wages a payment in the amount of Col\$2,091.00. I then paid Col\$74,740,306, i.e., in one month I paid Col\$76,831,323, Col\$6,700,000 of which corresponds to the analysis fee.

On 29 May 2015, I sent a complaint by certified mail regarding this high-handed charge to **Mr. Sergio Serna, General Manager**, and to **Mr. Gian Capanessi, Director of Operations, of BAYPORT S.A.S.** (see annex).

On 4 June 2015, BAYPORT S.A.S. answered me that “these charges were signed and accepted by you at the time the transaction was executed” (see annex).

I want to be clear that I affirm under oath that they told me to sign a number of documents without giving me time to read them, and only spoke about interest but did not made verbally explicit the percentage of the analysis fee, in other words, I signed without knowledge of this loan surcharge.

On 16 July 2015, Bayport S.A.S. sent me a response by email to the complaints that I made through the Superintendency of Corporations, in which BAYPORT S.A.S. reaffirmed its response of 4 June, arguing that: *“It is important to be clear that you were informed of, and signed, these contractual conditions assumed with the company ...”*

Moreover, BAYPORT S.A.S. glosses over with misleading arguments their unlawful withholding, for nearly 30 days, of my funds, corresponding to a payment that the company where I work had sent to BAYPORT, despite the fact that I had repaid the debt in full.

3. DIFFICULTIES AND PROBLEMS THAT BAYPORT S.A.S. CAUSED ME AND THEIR NONCOMPLIANCE WITH THE POLICIES OF THE INTER-AMERICAN DEVELOPMENT BANK

When I applied to BAYPORT S.A.S. for the loan, I was in a difficult financial position and believed that this loan would give me some leverage to improve my financial condition. However, by contracting this loan, I increased my debt and had greater difficulties because with the funds to pay the loan surcharges I could have paid two semesters of my daughter’s university education or paid other debts.

To earn what I had to pay BAYPORT S.A.S., I have to work nearly 60 days. In other words, this loan left me worse off than I was before receiving it.

One of the policies of the IDB is: *“The Bank requires that all borrowers (including grant beneficiaries) as well as suppliers, contractors, and consultants participating in Bank-financed projects adhere to the highest ethical standards, both during the bidding process and throughout execution of a contract.”* I believe that Bayport S.A.S. deviates from this policy by mistreating its customers and imposing these exaggerated and unclear surcharges on the working population of developing countries, who are those who suffer most from the existing inequity and who most easily fall into these types of situations out of financial necessity.

The IDB publishes as one of its objectives: *“To apply sound policies and practices with equitable and transparent procedures for the creation of reliable and stable markets able to attract efficient suppliers and contractors, and safeguard the principles of responsible management and the effective use of public funds.”* What I have described above in my case shows that BAYPORT S.A.S. was not sufficiently transparent.

The priorities of the IDB ARE:

- a. To reduce poverty and social inequality;
- b. To address the needs of small and vulnerable countries;
- c. To promote development through the private sector.

I have two questions:

- I. Does charging in one or two months 15% of the amount of a loan made to a working person reduce poverty in a country?
- II. Does the IDB support institutions that conduct themselves as described above?

4. HOW MY REQUEST IS TO BE PROCESSED

If my Request is selected by you, I agree to its processing by the ICIM in two stages:

- a. Consultation Phase
- b. Verification Phase

CONTACT INFORMATION OF THE REQUESTER

NAME: Fernando Sanabria Suarez

AGE: 57

EMAIL ADDRESS: [REDACTED]

HOME ADDRESS: [REDACTED]

TELEPHONE: [REDACTED]

MOBILE PHONE: [REDACTED]

CONTACT INFORMATION OF BAYPORT S.A.S.

NAME: BAYPORT S.A.S.

EMAIL ADDRESS: servicioalcliente@bayport.com.co

ADDRESS: CALLE 71#10-68, PISO 2, BOGOTÁ

TELEPHONE: 1 745-8920

MOBILE PHONE: [REDACTED]

[REDACTED]

Fernando Sanabria Suárez

FILES ATTACHED TO THE REQUEST

The Request was accompanied by six documents. Said documents are confidential and as such they cannot be disclosed.

Annex II

IDB Management response to the ICIM Request regarding “Bayport Colombia: Financial Inclusion for BOP Public Employees (CO-L1147)”

This document establishes Management’s response to the Request filed by Mr. Fernando Sanabria on August 3, 2015 with the Independent Consultation and Investigation Mechanism (the “ICIM”) in relation to the above-mentioned project. Any terms that are not expressly defined in this document shall have the meaning ascribed to such terms in the Policy of the Independent Consultation and Investigation Mechanism (the “ICIM Policy”).

Management would like to thank the ICIM for its time and collaboration particularly with the explanation of the new ICIM Policy.

After a thorough review of the Request, Management’s position is that:

1. The Bank correctly applied all Relevant Operational policies; and
2. The Request does not meet important content criteria established by the ICIM Policy in paragraph 14 and therefore the request should not have been accepted by the ICIM as per paragraph 20.b.i and should not proceed pursuant to paragraph 22 of the ICIM Policy.

In regards to the information contained in the Request, Management would like to express the following:

- i. **The Request does not make reference to a Relevant Operational Policy and fails to explain the relation of the harm with a non-compliance of a Relevant Operational Policy in a Bank financed operation.**

Paragraph 22 (c) of the ICIM Policy indicates that a Request must describe the “Harm that could result from potential noncompliance with one or more Relevant Operational Policies”. The latter are listed in Paragraph 11 of the ICIM policy. Even though the Requester alleges that he suffered Harm, the Request fails to clearly establish or allege any relation between the Harm and the non-compliance of a Relevant Operational Policy¹ in the context of a Bank-Financed Operation.

- ii. **The ICIM shall be a mechanism of last-resort for addressing the concerns of the Requesters, after reasonable attempts to bring such allegations to the attention of Management have been made.**

Paragraph 22 (d) of the ICIM Policy stipulates that in order for a Request to be deemed eligible, it must “describe the efforts that the Requesters have made to address the issues in the Request with Management and include a description of the results of those efforts, or an explanation of why contacting Management was not possible”. The Request does not provide information of efforts that the Requesters have made to address the issues with Management, nor include a description of the results of those efforts.

Additionally, Management would like to point out the following:

1. During the due diligence phase, the Project Team reviewed Bayport’s operations and verified, among other things, that the interest rates and fees charged by Bayport to its clients were aligned

¹ The only reference included in the request to a policy of the Bank is related to the *Policies for the procurement of works and goods financed by the IDB (GN-2349-9) (“Procurement Policy”)*, which is not listed in Paragraph 11 of the ICIM Policy.

with the market and compliant with the maximum interest rate established by the *Superintendencia Financiera de Colombia*².

2. The loan agreement between the Bank and Bayport includes: (i) Bayport's obligation to conduct its business in accordance with the financing documents and prudent industry practice, all applicable laws and authorizations and (ii) Bayport's representation that it is in compliance with all applicable laws in all material respects. Management confirms that they have no knowledge of a breach of such obligation and representation.
3. Finally, in addition to all the above, the documents presented by the Requesters indicate that on March 24th, 2015, one of the Requesters [REDACTED] received a document from Bayport Colombia S.A.S confirming the status of its loan. If indeed there was an applicable Relevant Operational Policy that was not complied with in this case, which we determined above is not the case, there still would not be a link between the alleged harm and the policy non-compliance since the IDB loan was closed on May 11, 2015 and was only disbursed on June 17, 2015. As such, the loan to this Requester was not originated with IDB resources.

In conclusion and for the above-mentioned reasons, Management considers the Request to be without substance, not compliant with the formal criteria set forth in the ICIM Policy and consequently should not be given any further consideration by the ICIM.

² The maximum interest rate, in this case the usury rate for consumer lending (*Tasa de Usura*), is set on a semi-annual basis by the *Superintendencia Financiera de Colombia*, applies to all financial intermediaries and includes both the current interest rate and all administrative related fees such as analysis fees ("*estudio de crédito*").