



Project
Complaint
Mechanism

COMPLAINT: SOUTHEAST EUROPE EQUITY FUND II

REQUEST NUMBER: 2017/05

ELIGIBILITY ASSESSMENT REPORT FOR A COMPLIANCE REVIEW – February 2018

The Project Complaint Mechanism (PCM) is the independent 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

Inquiries should be addressed to:

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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 set out in the Definitions and Abbreviations incorporated within the PCM Rules of Procedure 2014.

EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) received a Complaint in relation to the EBRD's investment in the Southeast Europe Equity Fund II, then managed by Bedminster Capital Management L.L.C. A subproject of the Fund is American Hospital Albania, a subsidiary of which is American Hospital Kosova (or the American Hospital in Kosovo). The Complainant has alleged noncompliance with the Bank's 2008 Environmental and Social Policy; in particular, the Complainant raised concerns about unfair treatment by the American Hospital in Kosovo when, in January 2016, its Board decided not to extend his contract after four years of service as executive director. The Complainant also alleged that his contract ended without any cause or written justification and he was not allowed to do a handover of his duties and responsibilities. The Complainant also asserted the Kosovar staff of the Hospital have been subjected to systemic discrimination and some were terminated from their employment. The Complainant requested that both Problem-solving and Compliance Review be undertaken by the PCM.

In the context of this Eligibility Assessment, the Bank has asserted that the 2003 Environmental Policy is applicable to the Project. In consideration of the Bank's responsibilities under the 2003 Environmental Policy in relation to the issues raised in the Complaint, the Eligibility Assessors have determined that the Complaint is eligible for a Compliance Review. Any consideration of the question of the application of the 2008 Policy may be subject to further consideration in the context of the Compliance Review, if considered relevant.

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

A separate report will follow in the coming weeks addressing eligibility for a Problem-solving Initiative.

I. BACKGROUND

1. On 2 August 2017 the PCM received a Complaint regarding the Southeast Europe Equity Fund II (the Project), in relation to the American Hospital in Kosovo ultimately financed by the Fund.¹ In his Complaint, the Complainant requested both a Problem-solving Initiative and a Compliance Review. The Complaint was registered by the PCM Officer on 18 August 2017 in accordance with paragraphs 11-13 of the PCM Rules of Procedure, and was subsequently published in the PCM Register pursuant to paragraph 20 of the PCM RPs. On 13 September 2017 Ms Halina Ward 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.
2. According to the Project summary document, the Project is a regional private equity fund with a target size of USD 200 million. The Fund is investing for long-term capital appreciation through privately-negotiated transactions in equity of companies operating in Southeast Europe and neighbouring countries.
3. The Project was approved by the EBRD Board of Directors on 6 September 2005 and is categorised “FI” under the 2003 Environmental Policy.²
4. In its communication with the Bank Management PCM was informed that Bedminster Capital Management LLC was replaced with a new manager, SEAF LLC, at the end of March 2017.³

II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

5. The Eligibility Assessors have undertaken a general examination of the Complaint, and additional information provided by the Complainant, Client and EBRD Management to determine if the eligibility criteria as set out in the PCM RPs for a Compliance Review are met.
6. A site visit was not considered necessary for the purposes of this Eligibility Assessment as the Assessors deemed it sufficient and appropriate to determine eligibility through a document-based review together with discussions with the parties.
7. PCM has engaged in a number of meetings and phone calls with the Complainant, Bank staff and the Client since first receiving the communication from the Complainant on 2 August 2017.

III. SUMMARY OF THE RELEVANT PARTIES' VIEWS

1. Complainant

8. The Complainant is a national of Kosovo, who worked as Executive Director for the American Hospital in Kosovo in Pristina. The American Hospital in Kosovo was ultimately owned by the Southeast Europe Equity Fund II, then managed by Bedminster Capital Management L.L.C.
9. The Complainant was hired by the American Hospital Kosovo on January 16, 2012 in the position of Executive Director of the Hospital and served in that position up until January 2016, when his contract ended and the Hospital board decided not to extend it further.

¹ Complaint Number 2017/05, available at <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html> and annexed to this report.

² Project Summary Document for the Southeast Europe Equity Fund II, available at: <http://www.ebrd.com/work-with-us/projects/psd/southeast-europe-equity-fund-ii.html>

³ Bank staff email to the PCM, dated 16 August 2017.

10. The Complainant asserts that he was treated unfairly when the Board decided not to extend his management agreement after four years of service. He alleges that he was prevented from fulfilling his work responsibilities during the six months prior to end of his contract without written justification or amendment of his contract. The Complainant alleges also that he was not allowed to handover his duties and responsibilities.
11. According to the Complainant, the unfair treatment was extended to other Kosovar colleagues who worked in the hospital, among them people working closely with him. The Complainant asserts that the positions of some staff had been changed, and that for some this resulted in the termination of their employment. He has stated that he believes this is associated with fear and discrimination.
12. The Complainant explains that in April 2016 he filed a Complaint with the Office of Accountability of the Overseas Private Investment Corporation (OPIC), OPIC being a co-investor of the Southeast Europe Equity Fund II with EBRD.⁴ It is PCM's understanding that OPIC's Office of Accountability has found the Complaint ineligible for registration according to that mechanism's operational guidelines.
13. In February 2016 the Complainant initiated legal proceedings against the American Hospital in Kosovo for not respecting the terms of his labour contract and for material and non-material damage.⁵
14. In his Complaint to PCM, the Complainant describes the alleged harm caused to him by the EBRD Project:
- *Violated my human and worker rights as well as the rights of many other Kosovar colleagues;*
 - *Misused my professional and personal integrity;*
 - *Discriminated Kosovar professionals by not offering them publicly a chance to apply for managerial positions at the hospital;*
 - *Installed fear and insecurity among Kosovar staff;*
 - *Ruined the enormous efforts made in raising the human resources capacity of Kosovars in the health care sector;*
 - *Violated the objective of the investment by not working on sustainability of the project and allowing business practices that would prioritize financial interests only.*⁶
15. The Complainant's desired outcome from a PCM process is stated in the Complaint as follows:

*I would like that lessons learned from this project are taken seriously for other projects of EBRD. For this project in particular, I would like that they try to solve whatever can be still solved and make sure this will not happen in the future for the employees of EBRD's clients in Kosovo.*⁷

2. Bank Management

16. Bank Management submitted its written response in relation to the Complaint to the PCM Officer on 13 October 2017. In its response, the Bank Management states that it has no objection to the PCM facilitating a Problem-solving Initiative to help address the issues raised by the Complainant.

⁴ Complaint.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

17. The response states that Bedminster Capital Management was required to apply OPIC's Environmental Due Diligence Procedures as agreed by all parties, as well as adhering to the joint OPIC/EBRD Environmental Exclusion and Referral Lists and local/national environmental and health and safety laws and regulations.
18. According to the response, the Bank Management received Annual Environmental Reports from the Fund Manager and they did not report any significant material Environmental, Health and Safety issues relating to the Project.⁸

3. Client

19. The Client, Southeast Europe Equity Fund II LP, is a private equity fund established as a Cayman Islands exempted limited partnership. Bedminster Capital Management LLC was appointed as Fund Manager to provide advice and assistance with respect to investment decisions and other activities of the Fund.⁹ The PCM has been informed that SEAF LLC replaced Bedminster Capital in May 2017.
20. The Client submitted its written response to the PCM in relation with the Complaint on 5 October 2017.
21. In its response to the Complaint, the Client explains that the American Hospital is a provider of healthcare services in Albania and Kosovo and is majority-owned by Southeast Europe Equity Fund II, which includes EBRD as an investor.
22. The Client's response states that in 2011 the American Hospital in Kosovo was incorporated by the American Hospital in Albania as a fully owned subsidiary to provide healthcare services for patients in the Republic of Kosovo.
23. The Client's response confirms that the Complainant was appointed on 15 January 2012 as executive director of the Hospital under a 2-year fixed term management agreement with the possibility of an automatic annual one year extension of the agreement. No reason was required for either party to decide not to renew the agreement.
24. In addition, the Client explains that the Complainant agreement was extended automatically by one year terms and in September 2015, the Board of the Company decided not to extend the Management Agreement after completion of the then-current one year terms, and that decision was communicated to the Complainant.
25. The Client has confirmed that litigation is ongoing in Kosovo and that it is ready to defend the case in court.
26. In conversations with PCM and in its written response, the Client has stated that it rejects the Complainant's allegations around staff rights violations and discrimination issues. The response asserts that over 97% of the personnel and management positions in the Hospital are held by Kosovar employees.¹⁰

IV. DETERMINATION OF ELIGIBILITY

27. The Eligibility Assessors have examined the Complaint to determine whether the relevant eligibility criteria are met under paragraphs 24, 25, 27 and 28 of the PCM RPs, and

⁸ Bank Management response, dated 13 October 2017, annexed to this report.

⁹ Project summary document.

¹⁰ Client response, dated 5 October 2017, annexed to this report.

considered the response of EBRD Management and the Client to the Complaint in accordance with paragraph 29 of the PCM RPs. PCM has also reviewed additional information from the Complainant, the Client as well as Bank staff (in particular, the Banking and Environment & Sustainability Departments) since the Complaint was filed.

28. 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.

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

- The Complainant refers to both functions of the PCM in his Complaint.
- The Complainant has indicated the outcomes sought as a result of use of the PCM process:

I would like that lessons learned from this project are taken seriously for other projects of EBRD. For this project in particular, I would like that they try to solve whatever can be still solved and make sure this will not happen in the future for the employees of EBRD's clients in Kosovo.¹¹

- The Complainant has submitted correspondence exchanged with the Client relating to his Complaint.
- The Complainant has provided sufficient information to enable the Eligibility Assessors to identify a Relevant EBRD Policy.

30. Pursuant to paragraph 28 of the PCM RPs, the Eligibility Assessors do not consider that the Complaint was filed fraudulently or for a frivolous or malicious purpose, or that its primary purpose is to seek competitive advantage through the disclosure of information or through delaying the Project.

31. In considering whether the Complaint meets the eligibility criteria for a Compliance Review, the Eligibility Assessors have considered the requirements set out in paragraph 24(b) of the PCM RPs.

32. First, the Complaint must be filed within 24 months after the date on which the Bank ceases to participate in a Project. The Complaint meets this requirement, as the Bank continues to hold an investment in the Fund.

33. Second, the Complaint must relate to a Relevant EBRD Policy. The Complainant's allegations concern labour rights, decent working conditions and social standards.

34. Although the Complainant has framed his Complaint in terms of the 2008 Environmental and Social Policy, the Bank asserts that the applicable Policy is the 2003 Environmental Policy, as this was the Policy in force when the Bank invested in the Fund.

35. The 2003 Environmental Policy incorporates labour issues in the definition of "environment":

In line with its mandate to promote environmentally sound and sustainable development, the term "environment" is used in this Policy in a broad sense to incorporate not only ecological aspects, but also workers protection issues...

¹¹ Refer to the Complaint annexed to this report.

These include occupational health and safety, harmful child labour, forced labour and discriminatory practices.¹²

36. The Eligibility Assessors must further consider paragraph 27 of the PCM RPs, which provides:

Where the Complaint raises issues appropriate for a Compliance Review, the Eligibility Assessors will, in their determination of eligibility, also consider whether the Complaint relates to: (a) actions or inactions that are the responsibility of the Bank; (b) more than a minor technical violation of a Relevant EBRD Policy unless such technical violation is alleged to have caused harm; (c) a failure of the Bank to monitor Client commitments pursuant to a Relevant EBRD Policy.¹³

37. In addition, the Eligibility Assessors take note that specific obligations of the Bank are included in the provisions of Art. 18 of the 2003 Policy – Financial Intermediary Projects:

Prior to establishing relationships with IFIs, the EBRD conducts environmental due diligence on the FI and its portfolio. This involves an assessment of the FI's existing environmental policies and procedures visa-vis the Bank's environmental requirements and their capacity to implement them, as well as a general assessment of the environmental issues associated with the FI's existing and likely future portfolio.

The FI will adopt and implement environmental procedures satisfactory to the EBRD and integrate them as fully as possible into its credit investment appraisal and monitoring procedures. The structure of these procedures should mirror the EBRD's own environmental appraisal and monitoring process, i.e. it should include screening of all transactions, due diligence activities, setting of environmental requirements, and monitoring of the clients' environmental performance, should the transactions proceed.

The FI will require sub-projects to comply, at a minimum, with the environmental regulations and standards and public disclosure and consultation requirements of the country where the sub-project is located.

The FI is required to monitor the environmental performance of its sub-projects and to submit to the EBRD periodic (usually annual) reports on the implementation of its environmental procedures and the environmental performance of its investment lending portfolio. In addition, the EBRD will encourage its IFIs to disclose information on the environmental aspects of its activities to external stakeholders.¹⁴

38. The Eligibility Assessors consider that paragraph 27(a) of the PCM RPs is satisfied. The issues raised in the Complaint highlight matters for which the Bank had a responsibility under the 2003 Environmental Policy in relation to due diligence on the FI and its portfolio, and monitoring of the Client's commitments.

39. The issue raised by the Complainant in relation to whether the 2008 Environmental and Social Policy has any application to the Project may be subject to further consideration in the context of the Compliance Review, if considered relevant.

40. The Eligibility Assessors consider that the Complaint raises more than a minor technical violation of a Relevant Policy.

¹² EBRD 2003 Environmental Policy.

¹³ *Ibid.*

¹⁴ *Ibid.*

V. CONCLUSION

41. On the basis of the information set out above, the Eligibility Assessors have found that the eligibility criteria for a Compliance Review are met. A separate report will follow regarding eligibility for Problem-solving.

COMPLAINT: SOUTHEAST EUROPE EQUITY FUND II

Request: 2017/05

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 to 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 2003 Environmental 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 Relevant EBRD Policies apply, and examine associated compliance issues; such issues being limited to matters raised in the Complaint.

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.

ANNEXES

Annex 1: Complaint

Annex 2: Bank Management Response

Annex 3: Client Response

Annex 1: Complaint

1. Name of the person

[REDACTED]

2. Contact information

[REDACTED]

3. Is there a representative making this Complaint on behalf of the Complainant

NO

4. Are you requesting that this complaint be kept Confidential

NO

5. Please provide the name or a description of the EBRD Project at issue:

The project is American Hospital in Kosovo and is located in Pristina, Republic of Kosovo. The name of the local company is American Hospital Kosova sh.p.k, owned by Bedminster Capital Management L.L.C (BMC), 22 Thorndal Circle, Darien, Connecticut 06820, USA..

Bedminster Capital Management manages the South East Europe Equity fund II, majority of which is funded by OPIC and EBRD. BMC has invested in health care sector in Albania since 2008 and in Kosovo since 2011.

American Hospital Kosovo sh.p.k, BMC company in Kosovo, is currently managing the largest general Hospital in Kosovo with 5400 m², 65 patient beds and more than 200 employees located in Prishtina, Shkupi street nr. 25 near Clinical University Center of Kosovo.

6. Please describe the Harm that has been caused or might be caused by the Project

First of all, my concerns extend beyond my personal grievances with the American Hospital Kosovo Project, and are focused to protect primarily the Kosovar professional staff that is currently put under enormous undue pressure. In addition, I wish to defend the main interest of the public interest of investment in this project, which is to build a sustainable local Kosovar capacity to provide quality health care services in Kosovo. I believe that public-private investments should be carried out in adherence to the highest corporate conduct standards, and in compliance with the governing investment laws and regulations.

I was hired by the company American Hospital Kosova sh.p.k at the end of 2011 and signed my Management Agreement as the Executive Director of the company and Hospital, on January 16, 2012. My engagement had clear objectives of establishing the company in Kosovo and creating the American Hospital in Kosovo. I was reporting directly to the Board of the American Hospital.

At the end of 2011, I started the process of mobilizing a professional team which would be the backbone for the creation of the company and the hospital. In a record time, by April 2012, the first American Hospital was opened in Hajvalia, suburbs of Prishtina, Kosovo, and after more than three years of functioning, in August 2015 the hospital expanded its operations to a more central location, with larger premises in Pristina. Over the course of four years of its existence,

the hospital managed to create an excellent reputation and helped a lot of Kosovar patients in need.

My contract with American Hospital ended without any cause or written justification in January 2016.

I have filed a complaint with OPIC in 2016 and due to EBRD being part of the South East Europe Equity fund, I have been recently advised by OPIC Accountability Office to file my complaint with EBRD as well.

My concerns extend beyond my personal grievances, and are focused to protect primarily the Kosovar professional staff and the public interest of the funds engaged in development of this business. The motivation behind this is to have lessons learned and avoid this kind of situations in future.

I consider that I have been treated unfairly by Bedminster Capital Management (BCM), respectively American Hospital Kosova Sh.p.k. when the board of BCM decided not to extend my management agreement and refused to honor the terms of my agreement after four years of dedicated hard work, without appropriate indication that this might happen. I was as well not allowed to make handover of my duties and responsibilities.

This unfair treatment was extended to my local colleagues who were close to me and worked hard to establish the hospital. Their positions have been changed, and for some this resulted in the termination of their employment.

I believe that Bedminster Capital management has:

- Violated my human and worker rights as well as the rights of many other Kosovar colleagues
- Misused my professional and personal integrity;
- Discriminated Kosovar professionals by not offering them publicly a chance to apply for managerial positions at the hospital;
- Installed fear and insecurity among Kosovar staff
- Ruined the enormous efforts made in raising the human resources capacity of Kosovars in the health care sector.
- Violated the objective of the investment by not working on sustainability of the project and allowing business practices that would prioritize financial interests only.

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 regarding the issues in this complaint

NO

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

At that time I believed that I will be able to resolve the situation on my own, but could not do it. After my contract ended, I filed a complaint with OPIC, not knowing that I should file to both, OPIC and EBRD. Analysis of my complaint in OPIC took long time, from my submission in April 2016 until May 2017, when I was advised to file a complaint with EBRD as well.

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

I believe that my labor rights were not respected in line with ESP2008 art 3:

3. The EBRD will seek to ensure through its environmental and social appraisal and monitoring processes that the projects it finances:

- o are socially and environmentally sustainable
- o respect the rights of affected workers
- o and communities and are designed and operated in compliance
- o with applicable regulatory requirements and good international practice.

I believe that the EBRD has in the sub-project with the American Hospital failed to promote decent work in line with ESP2008 art 5:

5. The Bank will seek to finance projects that have the potential to realize additional environmental and social benefits, such as socio-economic benefits to project-affected communities and, where appropriate and feasible, equitable access amongst project-affected parties to those benefits. Particular attention will be given to projects which include elements that focus upon priority environmental and social issues facing the region and which promote implementation of relevant EU strategies. The EBRD will build partnerships with clients to assist them in adding value to their activities, improve long-term sustainability and strengthen their environmental and social management capacity.

I believe that in this sub-project the EBRD has failed to ensure the implementation of national and international labor law and best practice as committed in ESP2008 art 9 and art 13:

10. The EBRD will actively seek, through its investments, to contribute to the effective implementation of relevant principles and rules of international law related to environment, labor, corporate responsibility and public access to environmental information. These principles and rules are set forth in instruments such as treaties, conventions and multilateral, regional or bilateral agreements, as well as in relevant non-binding instruments.

I believe that in this sub-project the EBRD has failed to ensure that its contractors is following appropriate social standards

13. In its internal operations, the EBRD will pursue best practices in environmental management (including energy and resource efficiency, waste reduction and recycling) and human resources management (such as equal opportunity, work/life balance, health and safety). The EBRD will seek to work with suppliers and contractors who follow similarly high environmental and social standards. The Bank will take into account sustainability issues for the procurement of internal goods and services.

I believe that the EBRD should have ensured the enforcement of its policy in the American Hospital sub-project, which was financed through the Southeast Europe Equity Fund II (project # 34894), in line with ESP2008 art 17. 24 and 28:

17. In this Policy, the term “project” refers to the business activity for which EBRD financing is sought by the client regardless of the type of EBRD operation. EBRD operations (that is to say, the act of providing financing) comprise a range of different types of financing for proposed projects, such as project finance/limited recourse finance, corporate finance, working capital, quasi-equity, equity, or grants.

24. A proposed project will be classified as FI if the EBRD provides financing to a financial intermediary (FI). Working with FIs is a key way for the EBRD to promote sustainable financial markets and provide a vehicle to channel EBRD funding to the micro, small and medium-sized enterprise (SME) sector. They include, among others, private equity funds, banks, leasing companies, insurance companies and pension funds. [...]

The PCM should review if the EBRD has identified and addressed the failure of the client to follow best labor practices and regulations in line with ESP2008 art 34-37 on monitoring.

The health sector is a new sector for the EBRD as part of its investments in services. From this point of view it is important to understand if the EBRD has done sufficient and good quality ESDD and monitoring as part of its attempts to take a ‘proactive and innovative approach to promote projects and initiatives that are specifically designed to deliver significant environmental and social benefits’ which includes ‘financing pilot projects to explore potential new lines of business with high environmental or social benefits’ in accordance with ESP2008 art. 43-45

I believe that in this sub-project the EBRD has failed to ensure that its client meets all applicable Performance Requirements.

Central to this is a consistent approach to seek to avoid adverse impacts on workers, communities, and the environment, or if avoidance is not possible, to reduce, mitigate, or compensate for the impacts, as appropriate. The PRs also provide a solid base from which clients may improve the sustainability of their business operations.

I believe that client should have strictly comply with Performance Requirement 2 (PR2) in respect of workers’ rights, treating workers fairly and worker/management relationship

Please note that based on your interest, and request, I am ready to provide your office with the concrete evidence that further supports the above statements.

10. Please describe any other complaint you may have made to try to address the issue at question

I have filed a Request form for affected parties of Their representative with OPIC, office of accountability on April 18th 2016 and got a reply in August 19th 2016 stating “We have reviewed your complaint and reached the decision that it is not an eligible claim as it is found to be personnel matter other than labour rights as set out in the paragraph 4.4.3 of OA ‘Operational Guidelines Handbook for Problem – Solving and Compliance Review Services”.

I resubmitted my complaint to OPIC Office of Accountability on September 6th 2016, during May 2017 I have had interview with OPIC Office of Accountability and have been advised to file a joint

complaint to both OIPIC and the Project Complaint Mechanism (PCM) of the European Bank for Reconstruction and Development (EBRD.)

I have as well on February 15th, 2016 opened a court case in Basic court in Prishtina for American Hospital sh.p.k not respecting the terms of my work contract and for material and non-material damage. The court process has not started yet.

11. Are you seeking a Compliance Review where the PCM would determine whether the EBRD has failed to comply with its Relevant Policies

I am seeking compliance review to determine whether the EBRD has ensured that Bedminster Capital Management in his project in Kosovo, has conducted its business in line with the Relevant EBRD Policies.

My complaint has not only personal motivation, I think Bedminster Capital Management, respectively American Hospital should have conducted business in strict compliance with the human and labour rights standards and in compliance to the laws of the country were they implement their projects.

As I mentioned in my initial complain to OPIC I was effectively prevented to fulfill my responsibilities as a manager without any cause or written justification and I could not do an handover of responsibilities and this was pure discrimination, however my concerns extend beyond my personal grievance and are focused also on local staff mistreatment, discrimination, unethical practices, violation of human and worker rights, fear, prioritization of financial interests versus capacity building and creation of opportunities for better treatment of population.

I think it would be of public interest for PCM to investigate if the client has complied with EBRD or / and OPIC objectives for the project / fund and making them 'fix their system' of management and comply with the objectives of the funding. In addition to my personal interest, this would as well be my desired outcome.

12. Are you seeking a Problem-solving Initiative where the PCM would help you to resolve a dispute or problem with the Project

YES

13. What results do you hope to achieve by submitting this Compliant to PCM?

I would like that lessons learned from this project are taken seriously for other projects of EBRD. For this project in particular, I would like that they try to solve whatever can be still solved and make sure this will not happen in the future for the employees of EBRD's clients in Kosovo.

Annex 2: Bank Management Response

EBRD management has no objection to the PCM facilitating a problem solving initiative to help address the issues raised by the Complainant. Management is aware that the PCM officer has already initiated discussions with the individual concerned (17th August 2017) and is awaiting the written communication by the Complainant to Bedminster Capital Management the prior Fund Manager of the Southeast Europe Equity Funds for PCM's consideration.

Bedminster Capital Management was required to apply OPIC's Environmental Due Diligence Procedures as agreed by all parties, as well as adhering to the joint OPIC/EBRD Environmental Exclusion and Referral Lists across its entire investment portfolio. All investments in portfolio companies were also required to meet local/national environmental and health and safety laws and regulations. The Fund Manager provided regular Annual Environmental Reports to the Bank.

The investment into American Hospital, Kosovo in 2H 2008 was subject to licensing and inspection by national health and local government in Kosovo and Albania. There were no environmental issues relating to the project reported by the Fund Manager. No significant material Environmental, Health and Safety issues or other issues of concern were raised in the annual reports provided by the Fund.

Annex 3: Client Response

Re: American Hospital Group / Project Complaint Mechanism

Date: October 5th, 2017

Following EBRD's notification of the filing of a complaint via its Project Complaint Mechanism ("PCM") by [REDACTED] the former Executive Director of American Hospital Kosovo, SEEF II hereby provides a response outlining its perspectives on the matters raised in the complaint. Overall, SEEF II disputes the allegations raised by [REDACTED] and the responses below seek to clarify key matters raised in the complaint.

A. Objections regarding legal interpretation of the provisions included in the management agreement

1. American Hospital sh.a. ("**American Hospital Albania**" or the "**Company**") is the leading provider of healthcare services in Albania and Kosovo and is majority-owned by Southeast Europe Equity Fund II (B) LP, which includes EBRD as an investor.
2. In 2011, as part of the Company's long-term expansion plan, American Hospital Albania incorporated "American Hospital Kosova sh.p.k.", a fully owned subsidiary, to provide healthcare services in Republic of Kosovo ("**American Hospital Kosovo**" or the "**Subsidiary**").
3. To further this initiative, the Board of the Company appointed [REDACTED] as executive director of the Subsidiary (the "**Executive**") under a 2-year fixed term management agreement (the "**Management Agreement**"). The Management Agreement was signed on 15 January 2012 and incorporated customary terms and conditions for this type of agreement including the possibility of an automatic annual one year extension of the agreement, unless one party notifies the other party that the agreement will not be extended. No reason was required for either party to decide not to renew the agreement.
4. The Management Agreement was extended automatically by 1-year terms through January 2015 and through January 2016. On 25 September 2015, the Board of the Company decided that will not extend the Management Agreement after completion of the then-current one year term, and on 29 September 2015 such decision was notified to the Executive. By providing such formal notification, the Company exercised its clear rights contained in the Management Agreement, and the decision was timely communicated in writing to the Executive in accordance with provisions of the Management Agreement.
5. To be clear, the Company did not terminate the Management Agreement before its term but simply decided not to again extend the term. The Executive has claimed falsely that the Company's exercise of its of unqualified non-renewal rights as an action to terminate the agreement without cause.
6. Since the Executive has claimed that the Management Agreement was terminated without cause, the Executive is seeking the compensation he would have been entitled under the respective termination clause (but which is not otherwise due if the term of the Management Agreement is not extended). The Company is strongly disputing

Executive's view of the winding up of the Management Agreement, and is confident that the Company's view will be quickly confirmed in a court of law.

7. The Executive has opened a case in the Kosovar court system. Interestingly, the Executive's legal complaint is significantly different than the complaint submitted to EBRD via the Project Complaint Mechanism. While the PCM action states that the Executive was compelled to file such complaint "*on grounds of protecting the Kosovar professional staff and to defend the public interest of investment in this project*", his complaint filed in Kosovo court focuses solely on substantiating Executive's arguments regarding the provisions of the Management Agreement and requests compensation from the Subsidiary.
8. The Subsidiary has now submitted its clear response to the issues raised by the Executive. The Subsidiary has strongly rejected such claims believes that it will prevail in the legal case. The case is currently ongoing in the courts of Pristina, Kosovo.

B. Objections regarding statements by the Executive

1. Throughout the PCM complaint the Executive depicts an employment environment at the Subsidiary where, for example:
 - a. *"Discriminated Kosovar professionals were not offered publicly a chance to apply for managerial positions at the hospital";*
 - b. *"There was installed a climate fear and insecurity among Kosovar staff"*
 - c. *"The Subsidiary ruined the enormous efforts made in raising the human resources capacity of Kosovars in the health care sector"*
 - d. *"It was violated the objective of the investment by not working on sustainability of the project and allowing business practices that would prioritize financial interests only"*
2. The Company, the Subsidiary, and SEEF II strongly rejects these allegations as baseless and false. SEEF II is proud of the achievements of the Company in establishing a leading presence in Kosovo. A comprehensive survey of local stakeholders would reveal that our view is shared by Kosovar patients, physicians, public institutions and our Kosovar employees and collaborators alike. SEEF II and the Company would be pleased to arrange for EBRD or its advisors to have multiple independent conversations with current employees at all levels to gain direct insights on the working environment and professional advancement opportunities at the hospital regardless of national origin.
3. The success of American Hospital in Kosovo has created positive effects on multiple levels across Kosovo's economy:
 - a. It contributed to retention of scarce qualified medical personnel in Kosovo, who decided to remain and work in Kosovo rather than emigrate in Western Europe after completing their studies
 - b. It provided a modern medical environment and a medium for continuous improvement of professional skills of medical personnel by addressing increasingly complicated pathologies and surgeries

- c. It had a positive effect on taxes paid locally, as Kosovar patients were increasingly treated in the country rather than going abroad
4. By way of example, with the exception of a limited number of physicians from Greece, Turkey and Albania who work in the Subsidiary, over **97%** of the personnel and management positions are filled with Kosovar employees. This figure starkly contradicts the representation that Kosovar employees are not provided with opportunities to ascend to medical and management positions at the Subsidiary.
5. SEEF II, on behalf of the Company and the Subsidiary, rejects allegations in relation to human and workers' rights violations by the Company or the Subsidiary.
6. SEEF II, on behalf of the Company and the Subsidiary, rejects allegations made by the Executive such as (i) failure to promote decent work conditions, (ii) failure to implement national and international labor law and best practices, (iii) failure to ensure its contractors followed appropriate social standards, (iv) failure to ensure meeting of applicable performance requirements, etc. No evidence was provided to substantiate these claims because such claims are wholly without merit.

We would be pleased to provide further information or clarifications on these matters, as requested.