

COMPLAINT: LUKOIL SHAH DENIZ STAGE II

REQUEST NUMBER: 2017/07

ELIGIBILITY ASSESSMENT REPORT – November 2017

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>

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
I. BACKGROUND	4
II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT	4
III. SUMMARY OF THE RELEVANT PARTIES' VIEWS	5
IV. DETERMINATION OF ELIGIBILITY	6
V. CONCLUSION	7
VI. TERMS OF REFERENCE FOR A COMPLIANCE REVIEW	8
Annex 1: Complaint	12
Annex 2: Bank Management Response	15

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 Lukoil Shah Deniz Stage II Project in Azerbaijan (the Project), alleging non-compliance with the Bank's 2008 Environmental and Social Policy (ESP). In particular, the Complainants raised concerns around three main areas: Project approval process; due diligence towards affected communities; and disclosure of project-related information. The Complainants requested that a Compliance Review be undertaken by the PCM.

In consideration of the Bank's responsibilities under the ESP as well as Public Information Policy (PIP) 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 5 September 2017 the PCM received a Complaint regarding the Lukoil Shah Deniz Stage II Project in Azerbaijan.¹ The Complaint was submitted by two civil society organizations: Crude Accountability, a US based NGO and Public Association for Assistance to Free Economy (PAAFE), Azerbaijan (the Complainants). The Complainants requested that the PCM undertakes a Compliance Review. The Complaint was registered by the PCM Officer on 6 September 2017 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (PCM RPs), and was subsequently posted in the PCM Register pursuant to paragraph 20 of the PCM RPs. On 18 September 2017 Mr Neil Popovic 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. In summary, the Complainants have raised the following concerns in relation to the Project: lack of adequate consultation with local communities; limited access to information and redress for local communities; lack of compensation for local residents' property damage arising from project-related accidents; need for soil, air and water quality monitoring; soil contamination and its negative impact on fruit and vegetable production.²
3. The Project is an A/B loan to LUKOIL to provide financing for its share in Stage 2 development of the Shah Deniz, an offshore gas exploration and production Project in Azerbaijan. LUKOIL has a 10% interest in the Shah Deniz field. The Project is managed by BP plc.
4. The Project includes two additional bridge-linked offshore gas platforms, 26 subsea wells, 500km of subsea pipelines, and the expansion of the gas plant at Sangachal Terminal and the South Caucasus Gas Pipeline expansion.
5. The Project was approved by the EBRD Board of Directors on 22 July 2015, as a category A Project under the 2008 Environmental and Social Policy. The total loan amount is expected to be up to USD 1 billion, with both Mandated Lead Arrangers (EBRD and ADB) arranging USD 500 million each. Approximately a half of the total loan amount is expected to be syndicated under the A/B Loan programmes of both the EBRD and the ADB.³

II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

6. 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.
7. 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 through primarily a document-based review.

¹ Complaint Number 2017/07, available at <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html> and annexed to this report.

² Complaint.

³ Project Summary Document for Lukoil Shah Deniz Stage II Project, available at <http://www.ebrd.com/work-with-us/projects/psd/lukoil-shah-deniz-stage-ii.html>. The Client is LUKOIL Overseas Shah Deniz Ltd, which is an SPV beneficially owned by LUKOIL Overseas Holding GmbH, a subsidiary of OAO LUKOIL in charge of the development of the Group's non-Russian exploration and production activities.

8. PCM had meetings and written communication with the Complainants, Bank staff and the Client since the receipt of the Complaint in early September 2017.

III. SUMMARY OF THE RELEVANT PARTIES' VIEWS

1. Complainants

9. In their Complaint the Complainants described the alleged harm caused by the EBRD Project:

- *Lack of adequate consultation with local communities;*
- *Lack of access to information and redress for local communities;*
- *Lack of compensation for local residents' property damage arising from project-related accidents (gas pipeline explosion);*
- *Lack of necessary soil, air and water quality monitoring; and*
- *Inability to grow fruits and vegetables in the impacted villages due to contamination of the soil.⁴*

10. The Complaint includes a detailed community impact analysis, including testimony from affected community members. Further, the Complainants provide comprehensive analysis of "procedural violations as detailed in the independent audit prepared by the [Independent Environmental and Social Consultant]."

2. Bank Management

11. Bank Management submitted its written response⁵ to the PCM in relation to the Complaint on 6 October 2017.

12. According to the Bank's response, the Project has been structured to comply with the requirements of the 2008 Environmental and Social Policy applicable to an EBRD category A Project and relevant EBRD Performance Requirements.

13. Bank Management asserts that the Environmental and Social Impact Assessment was prepared for BP plc and is available on their website. Further, Bank Management states that an Environmental and Social Due Diligence was undertaken by an independent consultant, which included a detailed review of the ESIA relative to the 2008 Environmental and Social Policy. The main gap identified was the lack of Environmental and Social Management Plans available in the public domain, for which a derogation was requested and granted by the EBRD Board of Directors, and disclosed in the Project Summary Document.

14. Management highlights that the final report of the independent consultant for the Project is available on the EBRD website and that the Project is closely monitored.

15. In response to the Complaint, EBRD Management states that:

- The Project was completed in compliance with the 2008 Environmental and Social Policy, and the Public Information Policy.
- Management believes that the necessary steps were taken to ensure that local communities were consulted as part of the disclosure and consultation process completed for the Project, as demonstrated in the BP Environmental and Social Impact Assessment.

⁴ Complaint

⁵ The Bank Management response is annexed to this report.

- Management acknowledges that the independent consultant determined some “partial compliance” in a few instances, however points out the consultant’s determination that the “community engagement process in place includes a structured and systematic engagement with local communities that the process communicates potential impacts to communities, and addresses how the project proposed to manage and mitigate these impacts.”
- The Project Summary Document clearly outlines the request for a derogation to the 2008 Environmental and Social Policy due to the lack of disclosure of Environmental and Social Management Plans. Management states that a summary of Project-related plans has recently been disclosed by BP and is available at https://www.bp.com/en_az/caspian/sustainability/environment/env-and-social-documentation/ShahdenizESIAs/ESIA.html.⁶

IV. DETERMINATION OF ELIGIBILITY

16. The Eligibility Assessors have examined the Complaint to determine whether the relevant eligibility criteria under paragraphs 24-28 of the PCM RPs are met, and considered the response of Bank Management 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 Department).
17. 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.
18. The Eligibility Assessors have also determined that the criteria outlined in paragraph 25 of the PCM RPs have been met:
 - The Complainants have indicated in their Complaint that they request that a Compliance Review be undertaken by the PCM to address the issues raised in the Complaint.
 - The Complainants have indicated the outcomes sought as a result of use of the PCM process:

It is our hope that the Client conducts adequate consultations and provides access to information to the local communities, conducts soil, air and water quality monitoring and if contamination is evident, corrects it for the four affected communities, provides training and jobs to residents in impacted communities, compensated for damage to property done by the gas pipeline explosion in 2016.⁷

- 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 communication to the PCM that local affected communities have not had access to the Client for redress.
- The Complainants have indicated in their Complaint details of a Relevant EBRD Policy:

EBRD 2008 Environmental and Social Policy - Performance Requirements 1, 2, 3, 4, 6 and 10 and the EBRD Public Information Policy.⁸

⁶ Ibid.

⁷ Complaint.

⁸ Ibid.

19. 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 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

20. 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 a dialogue process with the Client held under the auspices of the PCM. Under these circumstances, the Eligibility Assessors have considered it fruitless to recommend a Problem-solving Initiative.

2. Eligibility for a Compliance Review

21. 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 2008 Environmental and Social Policy – in particular, PRs 1, 2, 3, 4, 6 and 10 – and the EBRD Public Information Policy.⁹

22. Further, the Eligibility Assessors have considered that the Complaint raises more than a minor technical violation of the Relevant Policies.

23. The Eligibility Assessors consider that paragraph 27(a) of the PCM RPs is also satisfied. The issues raised in the Complaint highlight matters for which the Bank had a responsibility. Under the 2008 Environmental and Social Policy the Bank has responsibilities in relation to adequate due diligence and monitoring of Client commitments in relation to consultation, redress and grievance management, community health and safety and environmental protection. Further, the Bank has obligations with respect to disclosure of Project information under the PIP.

24. 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.

V. CONCLUSION

25. 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.

⁹ 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."

COMPLAINT: LUKOIL SHAH DENIZ STAGE II PROJECT
Request: 2017/07

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 2008 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:

Project Approval process

- Did EBRD satisfy its obligations during the Project approval process in line with the 2008 Environmental and Social Policy, more specifically PR 1.5 and the relevant provisions of the Public Information Policy for “Category A” Projects (para 3.4.1)?

Disclosure of Project related Information

- Did EBRD satisfy its obligations in relation to information disclosure (including the amount and nature of EBRD’s investment), the consultation process and stakeholder engagement before, during and after the Project approval process, in line with the 2008 Environmental and Social Policy and the relevant provisions of Public Information Policy for “Category A” Projects (paras 3.1.1 and 3.4.1)?
- Did the Bank ensure the adequate and timely disclosure of project-related information in the Project Summary Document and the Environmental and Social Impact Assessment on the EBRD website and on the Client website, in line with 2008 Environmental and Social Policy, PR 10.13-14 and specific provisions of the Public Information Policy? Were the Greenhouse Gas emissions in relation to the Project adequately disclosed in line with the relevant provisions of the Public Information Policy for “Category A” projects (para 3.4.1)?
- In light of the lack of Environmental and Social Management Plans available in the public domain, did the Bank satisfy its obligations to ensure that the community members impacted by the Project have been made aware of the Stakeholder Engagement Plan and Social and Environmental Management Plan in relation to the Project as defined by the Public Information Policy, more specifically para 3.4.2?
- Did the Bank ensure that environmental and social impacts and issues were appraised in the context of Project’s area of influence? Was the impact assessment for associated facilities and their impacts on local communities in compliance with the 2008 Environmental and Social Policy, para 32, PR 1.6?

Due diligence and monitoring connected with affected communities

- Did EBRD meet its obligations to conduct adequate due diligence towards affected communities? Have the potentially affected individuals and groups been identified, consulted and involved in the Project decision-making process, in line with the 2008 Environmental and Social Policy, PR 5.12 and PR 7 and PR 10.8?
- Whether the Bank met its obligation to ascertain that the vulnerable groups were assessed and treated separately to ensure that impacts do not fall disproportionately on them as required in the 2008 Environmental and Social Policy, more specifically para PR1.14, PR 1.19 and PR 10.8?
- Whether the Bank took sufficient steps to ensure that community members were made aware of the availability of the Client grievance mechanism and how they can access it to submit complaints in relation to the EBRD funded Project in line with 2008 Environmental and Social Policy, more specifically PR 5.13 and PR 10?
- Did the Bank adequately monitor Client commitments as stated in the Stakeholder Engagement Plan and the Environmental and Social Management Plan? Do these plans contain the details and commitments to manage or mitigate potentially significant environmental and social impacts of the Project in line with 2008 Environmental and Social Policy, more specifically PR 1.14-15 and PR 10.17?
- Did the Bank satisfy its monitoring obligations, if any, in relation to the December 2016 incident affecting the Massiv III settlement?

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>Crude Accountability, [REDACTED] (civil society representative, Azerbaijan), Public Association for Assistance to Free Economy (PAAFE)</p>
<p>2. Contact information of the Complainant (Please include address and, if possible, phone number and email address).</p> <p>Crude Accountability</p> <p>Public Association for Assistance to Free Economy (PAAFE)</p>
<p>3. Is there a representative making this Complaint on behalf of the Complainant?</p> <p>Yes <input type="checkbox"/> (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 xxx <input type="checkbox"/></p>
<p>Is proof of authorisation included with the Complaint?</p> <p>Yes <input type="checkbox"/> No xxx <input type="checkbox"/></p>
<p>4. Are you requesting that this Complaint be kept confidential?</p> <p>Yes <input type="checkbox"/> (if yes, please explain why you are requesting confidentiality)</p> <p>No xxx <input type="checkbox"/></p>
<p>5. Please provide the name or a description of the EBRD Project at issue.</p> <p>Lukoil Shah Deniz Stage II Project number: 46766</p>
<p>6. Please describe the harm that has been caused or might be caused by the Project (please continue on a separate sheet if needed):</p> <p>Lack of adequate consultation with local communities, lack of access to information and redress for local communities, lack of compensation for local residents’ property damage arising from project-related accidents (gas pipeline explosion), lack of necessary soil, air and water quality monitoring, inability to grow fruits and vegetables in the impacted villages due to contamination of the soil.</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>

a. Have you **contacted the EBRD** to try to resolve the harm caused or expected to be caused by the Project?

Yes ☐ X (If yes, please list when the contact was made, how and with whom):

Please See Annex A for documentation of good faith engagement with the staff

Please also describe any response you may have received.

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.

We have been in contact with the EBRD staff. Local affected communities have not had access to client for redress.

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.

EBRD Social and Environmental Policy, EBRD Public Information Policy, EBRD Performance Requirements 1, 2, 3, 4, 6, 10.

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).

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 XXX ☐

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

It is our hope that the Client conducts adequate consultations and provides access to information to the local communities, conducts soil, air and water quality monitoring and if contamination is evident, corrects it for the four affected communities, provides training and jobs to residents in impacted communities, compensated for damage to property done by the gas pipeline explosion in 2016.

Date: 5 September 2017

ANNEX 2: BANK MANAGEMENT RESPONSE

1. Introduction

The project involves financing to Lukoil Overseas Shah Deniz (LOSD) for their participation in the Stage 2 development of Shah Deniz, an offshore gas production project in Azerbaijan. Lukoil has a 10% interest in the Shah Deniz field and the project is managed by BP plc.

The Project was approved by the EBRD Board of Directors on 22 July 2015 and is subject to the 2008 Environmental and Social Policy.

The Complaint makes three main claims as follows: 1) that the project was approved after the start of construction and that the final audit report was dated after the Board date; 2) that there was inadequate consultation with the project affected communities; and 3) lack of disclosure of information as part of the ESIA.

2. Management Response

The Project has been structured to comply with the requirements of the 2008 Environmental and Social Policy applicable to an EBRD category A project and relevant EBRD Performance Requirements (“PRs”). The ESIA for the project was prepared for BP plc and is available on their web site. An Environmental and Social Due Diligence (ESDD) was undertaken by an independent consultant. The ESDD included a detailed review of the ESIA relative to the EBRD 2008 ES Policy and associated PRs. The main gap identified related to the lack of Environmental and Social Management Plans in the public domain. As part of the Bank’s work with LOSD and BP, we leveraged disclosure of the Fishermen’s Livelihood Restoration Program (FLRP); however the other management plans were not disclosed at that time (although recently they have been released. Based on this, a derogation was requested and granted by the EBRD’s Board of Directors and disclosed in the Project Summary Document (PSD). The final report of the independent consultant for this project is available on the EBRD web site, along with the results of post-Board approval monitoring. The Bank has been closely monitoring the Project with this independent consultant.

In response to the Complaint registered by the PCM on 9th September 2017 in relation to the LOSD Shah Deniz project, the EBRD’s Management would like to note the following:

- Management are confident that this project was completed in compliance with the Environmental and Social Policy, 2008. There is no prohibition in either the 2008 Environmental or Social Policy nor in the 2014 Environmental and Social Policy in regards to financing projects where construction has started. Further, paragraph 33 of the 2014 ES Policy clearly anticipates this situation.
- Management believe this project is also compliant with the Public Information Policy (PIP). All requirements of the PIP were satisfied (and in fact were exceeded) by disclosure of the documents (including all required documents plus the due diligence report and monitoring reports of the Independent Consultant) on the Project Summary Document and Environmental and Social Impact Assessment web pages.
- Management review of this project indicated that all local communities were in fact consulted as part of the disclosure and consultation process completed for the project. Section 8 and Appendix 8B of the disclosed BP Environmental and Social Impact Assessment presents the details of public consultation and presentations conducted prior to start of construction for Shah Deniz 2. As shown here extensive public consultation has been ongoing for this project dating back to 2008. This consultation included meetings in the villages of Shangachal and Umid, and household surveys of 200 people from Sangachal, Umid, Azim Kend and Masiv 3. Under the project Community Liaison Officers (CLOs) have been appointed and are known to the local communities.

These CLOs are conduits for any questions or concerns raised by the local communities to be provided to BP. The engagement did not stop at ESIA approval stage; it continues through construction and will continue during operations.

- The Independent Environmental and Social Consultant (IESC) highlight the issue of consultation with project affected people in Section 6.2 of their report, available on the EBRD web page. As shown on Table 6.2 the IESC indicates that the project documents demonstrate PR compliance, although only partial compliance relating to a few items. The partial conformances relate to lack of disclosure of the ESMPs (as mentioned in the request for derogation noted in the PSD), consultation by third party operators of associated facilities, external communication methods and grievance mechanisms. The IESC states in Table 9.1 that records consultation meetings were reviewed from the SD2 project engagement log from December 2010 through to March 2015 in the communities of Umid, Sangachal and Azim Kend covering numerous topics. Further, the IESC states that although the actual ESMPs have not been disclosed, there is sufficient evidence to suggest that the ongoing community engagement process in place for SD2 includes a structured and systematic engagement process with local communities that the process communicates potential impacts to communities, and addresses how the project proposed to manage and mitigate these impacts. Further, this report states that meetings continued through the period April 2016 to March 2017 with records of two meetings with local communities over this time period.
- In terms of the lack of disclosed Environmental and Social Management Plans, the PSD and the Board documents for this project clearly outline the request for derogation to the ES Policy, specifically paragraphs 14 and 15 of PR 1 due to the lack of disclosure of Environmental and Social Management Plans. While it is true that this derogation is not captured in the list of derogation in the EBRD Annual Sustainability report (2016), this is clearly set forth in the PSD and the Board document. It should be noted that a summary of these plans has recently been disclosed by BP and can be found at the following https://www.bp.com/en_az/caspian/sustainability/environment/env-and-social-documentation/ShahdenizESIAs/ESIA.html