

**COMPLAINT:** CMI Offshore Project (47096)

**REQUEST NUMBER:** 2017/10

**Compliance Review Monitoring Report I**

**Monitoring Period: March 2019 – July 2020**

**12 AUGUST 2020**

**Note:** This case was received under the Project Complaint Mechanism (PCM) - the former accountability mechanism of the EBRD - in accordance with the [2014 PCM Rules of Procedure](#) and the Monitoring stage was initially conducted under PCM Rules and Procedures.

Effective 1 July 2020, the Project Complaint Mechanism was replaced with the [Independent Project Accountability Mechanism](#), brought into effect through the [2019 Project Accountability Policy](#). Under the Policy's provisions for case transition, monitoring of the CMI Offshore Management Action Plan from the date above will be undertaken in alignment with the requirements of the [2019 Project Accountability Policy](#).

IPAM is the new independent accountability mechanism of the EBRD. It reviews environmental, social, and Project disclosure-related concerns raised by Project-affected people and civil society organisations. IPAM can address concerns through two avenues: i) Problem-solving, which supports dialogue between Complainants and Clients to resolve environmental, social and public disclosure concerns without attributing blame or fault; or ii) Compliance Reviews, which determine whether the EBRD has complied with its Environmental and Social Policy and Access to Information Policy in relation to the Project.

For more information about IPAM, please contact us at [ipam@ebrd.com](mailto:ipam@ebrd.com) or visit the [IPAM webpage](#).

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## EXECUTIVE SUMMARY

The EBRD [Project Complaint Mechanism](#) (PCM) completed a [Compliance Review](#) of the [CMI Offshore Project \(47096\)](#) in Turkmenistan in February 2019, identifying one instance of non-compliance with the EBRD's 2014 Environmental and Social Policy (ESP). The Compliance Review determined that Bank Management did not meet its obligations to consider the environmental and social risks presented by Project-related associated facilities / activities. The independent PCM Expert responsible for the Compliance Review made two recommendations to Bank Management:

**Recommendation 1:** Develop detailed ESP Guidance clarifying the requirements for identifying and characterizing potentially significant environmental and social impacts of Project-related facilities / activities.

**Recommendation 2:** Review the EIAs completed for the oil extraction operations serviced by the Client, in order to ensure that any critical environmental and social impacts influencing the EBRD Project were addressed through the Environmental and Social Action Plan (ESAP). The Expert highlighted the need for particular review of any direct, indirect or cumulative impacts to the Hazar State Nature Reserve, to ensure appropriate mitigation measures would be implemented within the scope of the Project.

### Management Action Plan

In response to the findings of non-compliance, the Bank developed a [Management Action Plan \(MAP\)](#) to address the Expert's findings and recommendations, which was approved by the EBRD Board of Directors on 5 February 2019. Bank Management committed to undertake two actions - each involving two sub-actions:

- 1.1. Clarify the environmental and social appraisal requirements for Project-related existing facilities, associated facilities and functionally-related other projects through the revised 2019 ESP, in line with peer multilateral development banks (MDBs) and EU Environmental Impact Assessment (EIA) Directives; and
- 1.2. Develop ESP Guidance on:
  - the scope and boundaries of past and present environmental and social issues / risks associated with existing or associated facilities, subject to the Bank's environmental and social appraisal; and
  - the circumstances under which the Bank's environmental and social appraisal would need to consider environmental /and social risks / impacts related to existing and new facilities not financed by EBRD.
- 2.1. Amending EBRD Guidance on environmental and social appraisal, requiring Clients to identify publicly available EIAs for associated facilities. This would enable EBRD to review and identify any critical environmental and social risks for the Client's operations. In the event that any material environmental or social risks were identified - which fell within the Client's influence to mitigate - Management committed to work with the Client to develop appropriate risk mitigation measures for inclusion in the ESAP; and
- 2.2. Preparing internal procedures to record all elements of the Bank's environmental and social appraisal, even when issues were not identified.

## **Management Action Plan Monitoring**

This is the first Management Action Plan Monitoring Report issued in relation to the CMI Offshore Project (“the Project”), and covers the period March 2019 to July 2020.

The purpose of this Monitoring Report is to update the EBRD Board of Directors, Relevant Parties and the public on the Bank’s implementation of the Board-approved Management Action Plan, in accordance with Paragraph 47 of the PCM Rules of Procedure (RPs).

It presents:

- a) the background and context associated with this PCM case;
- b) the monitoring activities undertaken by PCM during the December 2018 – May 2019 reporting period; and
- c) the findings and conclusions resulting from PCM monitoring.

The PCM has a mandate to monitor the implementation of the Board-approved MAP. This Monitoring Report reflects the status of MAP implementation to date. Following a review of the update received from Bank Management regarding these Actions, and efforts to verify this information with the Complainants, PCM has determined that:

- Action 1.1 of the MAP is complete; and
- Actions 1.2, 2.1, and 2.2 remain outstanding.

PCM will continue to monitor the implementation of Actions 1.2, 2.1 and 2.2 until their completion. PCM encourages Bank Management to finalise these actions by close of the next monitoring period.

### **SUMMARY OF ACTIONS**

<b>S.No.</b>	<b>ACTIVITY</b>	<b>TIMELINE</b>
1.	Compliance Review completion	January 2019
2.	Management Action Plan approval	February 2019
3.	1 <sup>st</sup> monitoring report covering period March 2019 – July 2020	12 August 2020

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## ABBREVIATIONS LIST

<b>EIA</b>	Environmental impact assessment
<b>ESAP</b>	Environmental and social action plan
<b>ESP</b>	EBRD Environmental and Social Policy
<b>IPAM</b>	Independent Project Accountability Mechanism
<b>MAP</b>	Management Action Plan
<b>MDB</b>	Multilateral development bank
<b>PCM</b>	Project Complaint Mechanism

# 1 Introduction

This is the first Compliance Review Monitoring Report for the CMI Offshore Project (“the Project”) covering the period March 2019 to July 2020. Its purpose is to update the EBRD Board of Directors, Relevant Parties and the public on Bank Management’s implementation of the Board-approved [Management Action Plan \(MAP\)](#), established to address PCM findings of Project non-compliance with the 2014 ESP.

This Monitoring Report provides an overview of:

- a) the background and context of the PCM case;
- b) the monitoring activities undertaken by PCM during the March 2019 -July 2020 monitoring period; and
- c) the monitoring findings and conclusions.

## 2 Background and Context

### 2.1 Complaint Submission and Eligibility Assessment

In October 2017, PCM received a Complaint from civic activists within Turkmenistan and members of the *Turkmenistan Working Group of the Civic Solidarity Program*, comprised of: Development of Democracy and Human Rights (Russia); Freedom Files (Russia); and Crude Accountability (USA) (“the Complainants”). PCM found three concerns raised in the Complaint eligible for further assessment through a Compliance Review, namely:

- 1) the appropriateness of Project categorisation;
- 2) the sufficiency of the Project’s Environmental and Social Impact Assessment (ESIA), in consideration of the differing 2014 ESP requirements dependent on categorisation; and
- 3) the concern that the Project was in fact an associated facility of an oil extraction project, with direct impacts to an internationally protected area.

Dr. Owen McIntyre was appointed to undertake the Compliance Review as an external PCM Expert.

### 2.2 Compliance Review Findings

On 5 February 2019, the PCM Expert found the Bank to be non-compliant with Performance Requirement 1.9 of the 2014 ESP. This instance of non-compliance related to the Complainants’ third concern, finding that:

[...] the oil extraction operations in the Cheleken oil field serviced by the Client [were] associated facilities / activities of the Project and, thus, direct, indirect or cumulative impacts likely to be associated therewith ought to have been considered in the environmental and social assessment process for the [CMI Offshore] Project.

The Compliance Review found there to be no evidence that the EBRD considered the implications of the EIAs completed for the oil extraction facilities / activities serviced by CMI Offshore. While due diligence for the CMI Offshore Project would not have required a full appraisal of the oil extraction facilities / activities serviced by the Client, EBRD should have informed itself and considered the associated environmental and social risks of these associated facilities / activities.

## 2.3 Compliance Review Recommendations

In response to the findings of non-compliance, the PCM Expert made two recommendations to the Bank: one that was systemic / procedural in nature, and the other, specific to the Project.

**Systemic / Procedural Recommendation 1** – Develop detailed ESP Guidance, clarifying the requirements for identifying and characterizing potentially significant environmental and social impacts of associated facilities / activities, in consideration of direct, indirect and cumulative impacts on the EBRD Project. The Expert identified that this Guidance should be aligned with best practice from peer MDBs, EU EIA Directives, and national EIA requirements.

The PCM Expert highlighted that the Bank's 2019 Environmental and Social Policy Review offered an opportunity to clarify the environmental and social appraisal requirements applied to functionally-related projects.

**Project-Specific Recommendation 2** – Review the EIAs completed for the oil extraction operations serviced by the Client, in order to ensure that any critical environmental and social impacts influencing the EBRD Project are addressed appropriately through the Environmental and Social Action Plan (ESAP). The Expert highlighted the need for particular review of direct, indirect or cumulative impacts to the Hazar State Nature Reserve, to ensure appropriate mitigate measures would be implemented within the scope of the Project.

## 2.4 EBRD Management Action Plan

In response to the PCM findings of Project non-compliance, the Bank prepared a Management Action Plan ([MAP](#)), 5 February 2019 outlining their proposed measures to respond to the findings of non-compliance.

Bank Management confirmed that the Compliance Review identified areas of the 2014 ESP that needed clarification through Bank's 2019 ESP policy review. Bank Management maintained its view that "[a]ppropriate environmental and social due diligence was carried out proportionate to the nature and scale of the Project and commensurate with the level of its environmental and social risks and impacts." Bank Management further informed PCM that despite the Project having been approved by the Board of Directors on 18 October 2017, the loan agreement was never signed and the Project was officially cancelled on 7 December 2017.

Management committed to undertake two actions (each consisting of two sub-actions):

### Management Action 1:

- 1.1. Clarify the environmental and social appraisal requirements for Project-related existing facilities, associated facilities and functionally-related other projects through the revised 2019 ESP, in line with peer multilateral development banks (MDBs) and EU Environmental Impact Assessment (EIA) Directives; and
- 1.2. Develop ESP Guidance on:
  - the scope and boundaries of past and present environmental and social issues / risks associated with existing or associated facilities, subject to the Bank's environmental and social appraisal; and
  - the circumstances under which the Bank's environmental and social appraisal would

need to consider environmental /and social risks / impacts related to existing and new facilities not financed by EBRD.

### **Management Action 2:**

Considering that the Project was subsequently cancelled, the Bank identified that it would not be in a position to address the second, Project-level recommendation. However, to implement lessons learned from the Project, Management committed to strengthen its systems and practices for other similar Projects by:

- 2.1. Amending EBRD Guidance on environmental and social appraisal, requiring Clients to identify publicly available EIAs for associated facilities. This would enable EBRD to review and identify any critical environmental and social risks for the Client's operations. In the event that any material environmental or social risks were identified - which fell within the Client's influence to mitigate - Management committed to work with the Client to develop appropriate risk mitigation measures for inclusion in the ESAP; and
- 2.2. Preparing internal procedures to record all elements of the Bank's environmental and social appraisal, even when issues were not identified.

## **3 Monitoring Update**

### **3.1 Monitoring Activities undertaken during the period March 2019 – July 2020**

The PCM tracks progress on MAP implementation until it is determined that all Actions have been completed as agreed, in accordance with the 2014 PCM Rules of Procedure.

In preparation of this Monitoring Report, PCM requested written confirmation (and associated documentation) from Bank Management on its MAP progress. The Mechanism carefully reviewed Management's submissions and associated documentation, and invited the Complainants to comment on Bank Management's implementation of the MAP. In this case, no comments were received from the Complainants.

### **3.2 Monitoring Findings**

Bank Management's progress on the MAP implementation, accompanied by the PCM's comments, are presented in **Table 1** below. For purposes of this report, the impact of COVID-19 on MAP implementation may be considered relevant from March 2020 onwards only.

### 3.3. Table 1: MAP Implementation Progress

Management Action Plan Commitment Approved by the EBRD Board of Directors	EBRD Management Implementation Update	Status of Management Action Plan Commitment	PCM Feedback
<b>Procedural / Systemic Management Actions</b>			
<p><b>Action 1.1:</b> Management will clarify the E&amp;S appraisal requirements for Projected-related existing / associated facilities (and other functionally-related projects) in the 2019 ESP.</p>	<p>The revised 2019 ESP now clarifies the E&amp;S appraisal requirements for Projected-related and associated facilities in Performance Requirement (PR) 1, as well as other functionally related projects, in line with relevant E&amp;S standards and safeguards set out by peer MDBs and EU EIA Directives.</p>	<p><b>Complete.</b></p>	<p>IPAM reviewed the new 2019 ESP and its clarifications regarding the E&amp;S appraisal process for Project-related existing and associated facilities outlined in PR1. These requirements will apply to all new Bank Projects approved <i>after</i> 1 January 2019.</p>
<p><b>Action 1.2:</b> Management will develop guidance on:</p> <ul style="list-style-type: none"> <li>a. the scope of past and present E&amp;S risks relevant to existing/ associated facilities, subject to the Bank's E&amp;S appraisal; and</li> <li>b. the circumstances under which Management's E&amp;S appraisal will need to consider E&amp;S risks and impacts related to existing and new facilities / activities not financed by the EBRD.</li> </ul>	<p>Management has a well-advanced draft external PR 1 Guidance document prepared for PR1, which includes the topic of associated facilities and existing facilities and how these should be considered. Management is also progressing on internal guidance.</p> <p>Upon finalisation, this internal and external guidance will be submitted to the accountability mechanism.</p> <p>New estimated completion date: September 2020</p>	<p><b>Incomplete - continued monitoring required.</b></p> <p><b>Expected date of completion October 2020</b></p>	<p>By end of September 2020, IPAM expects to receive the document (s) for review to ensure alignment with the MAP and Expert's recommendations.</p> <p>IPAM will also seek clarity on Management's implementation of said guidance on a project-by-project basis.</p>

<b>Project-Specific Management Actions</b>			
<p><b>Action 2.1:</b> Management will amend its ESP guidance on environmental and social appraisal, requiring Clients to identify publicly-available EIAs for associated facilities for EBRD's review. In the event that any material environmental or social risks are identified - which remain within the Client's control of influence to mitigate - Management will work with the Client to develop and agree on appropriate risk mitigation measures for inclusion in the ESAP.</p>	<p>The proposed internal and external guidance documents address this Action to an extent. Under the new 2019 Environmental and Social Policy, Management also requires Clients to assess environmental and social risks and impacts of associated facilities. Under the 2019 Policy, the caveat "under the Client's control" no longer exists.</p> <p>Upon finalisation, this internal and external guidance will be submitted to the accountability mechanism.</p> <p>New estimated completion date: September 2020</p>	<p><b>Incomplete - continued monitoring required.</b></p> <p><b>Expected date of completion</b> <b>October 2020</b></p>	<p>By end of September 2020, IPAM expects to receive the document (s) for review to ensure they adequately address Proposed Action 2.1</p>
<p><b>Action 2.2:</b> Management will prepare internal procedures to record all elements of the Bank's E&amp;S appraisal process, even when they do not identify relevant issues.</p>	<p>This Action is partly addressed in updated environmental and social procedures, which have yet to be published.</p> <p>Where this relates to associated facilities, the draft internal guidance under Action 1.2 will also describe how Management must clearly record what is an associated facility and what is not in their appraisal of a Project.</p> <p>New estimated completion date: September 2020.</p>	<p><b>Incomplete - continued monitoring required.</b></p> <p><b>Expected date of completion</b> <b>October 2020</b></p>	<p>By end of September 2020, IPAM expects to receive the document (s) for review to ensure they adequately address Proposed Action 2.2</p>

### **3.4 Monitoring Conclusions**

The IPAM notes Bank Management's efforts to date on MAP implementation, and understands that the current COVID-19 situation may have shifted priorities as of March 2020. However, it emphasises the need to finalise the pending Actions 1.2, 2.1 and 2.2 given the approval of the MAP in February 2019 (i.e., 17 months prior). IPAM encourages Management to address these commitments in the subsequent monitoring period, and expects Management to submit the relevant deliverables by end of September 2020 for their review by IPAM

The Mechanism shall continue to monitor the implementation of Actions 1.2, 2.1 and 2.2 and update the progress-completion in the second monitoring report scheduled for December 2020.