

Altain Khuder



Project
Complaint
Mechanism

REQUEST NUMBER:

Management Action Plan

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1. Introduction

EBRD Management welcome the opportunity to provide this Management Action Plan, prepared in accordance with the 2014 PCM Rules of Procedure.

Management note that revisions to the 2014 Environmental and Social Policy and Public Information Policy, as well as guidance for Clients, have improved in the intervening years since Altain Khuder was approved; therefore some of the actions have already been completed.

The PCM report concludes that, in light of the relationship between the Bank and the Client, that no substantive recommendations could be made with regard to achieving full compliance with the Performance Requirements. The following six recommendations were made to help with similar situations or projects that may arise in the future (CRR, Article 203).

2. Recommendations, PCM Expert Comments and Proposed Management Actions (XI, 205:CRR)

PCM Recommendation 1: Breakdown in communications between EBRD and a client during project implementation

1. Review EBRD systems and procedures to identify actions that could be taken by EBRD, including continuing involvement in project-impacted communities, in the event that there is a breakdown in relations between EBRD and a client that precludes progress in project implementation and monitoring activities

Management Comment 1: Breakdown in communications between EBRD and a client during project implementation

Management note that when a project is not repaid in line with the financing agreements and a financial loss is anticipated for EBRD, it is handed over to an internal process called *Corporate Recovery*. The purpose of Corporate Recovery is to recover any such failed financial investment for the Bank. Very often, in particular when enforcement actions are involved, a relationship with a Client may break down. At this stage, it is rarely possible to enforce any non-financial commitments agreed with the Client. In addition, during ongoing legal proceedings between the Bank and the Client, the Bank may be limited as to what to say or do in public in relation to, or as a result of, those legal proceedings. The Bank may no longer be receiving environmental and social reports from the Client and therefore not have up-to-date information on the project or its impacts. Additionally, Bank staff and its consultants may no longer be able to access the project site for monitoring purposes, and in such instances, any actions that the Bank may take would be constrained.

Under such circumstances, there would not be a benefit to the communities near the project from EBRD's continuing involvement/communication with them, given that EBRD would be unlikely to have current information about the project or its impacts and would not be in a position to obtain such information from the Client. We are therefore concerned that such efforts to continue communication with local communities would be based on outdated or misleading information and could result in false expectations within the communities. Further, once the Bank enters Corporate Recovery and/or legal proceedings there are limitations on what we can disclose.

Where cases are not litigious, the Bank continues its normal monitoring commitments, including impacts on local communities and stakeholder engagement.

Management Action 1: Breakdown in communications between EBRD and a client during project implementation

If communication between the Bank and the Client breaks down, further monitoring at the project level by EBRD may not be possible.

- a. The Bank will continue to respond to stakeholders, when contacted, in accordance with the requirements of the Public Information Policy, but may not be in a position to provide information requested or to take any action with respect to the ESAP.

- b. ESD will review post approval project implementation and monitoring processes and tools to consider situations when there is a breakdown in relations with a client that would preclude progress in project implementation and monitoring activities. Projected Deadline: end of 2017

MAP 1: [date] Progress Report (1)

PCM comments

PCM Recommendation 2: Restoration of relations between EBRD and Altain Khuder

2. In the event that working relations between EBRD and Altain Khuder are restored, review the progress of implementation of ESAP recommendations; suggest corrective measures if needed; monitor Altain Khuder's implementation of corrective measures; and establish a consultative framework with the communities to ensure that any concerns are recognized and addressed.

Management Action 2: Restoration of relations between EBRD and Altain Khuder

EBRD is in the process of enforcing its rights under the loan agreement. In the event that a working relationship with this Client is restored and the project be transferred back to the Banks' normal banking operations, EBRD's monitoring and reporting requirements would be re-established and an assessment of current status against the ESAP commitments would need to be undertaken. Under such a development, EBRD would promptly request and implement monitoring events that would likely include a site visit, meetings with site personnel, and meetings with local communities. Normally, costs of monitoring are borne by the Client, so it is unclear whether any Bank resources other than staff time would be needed for this potential action. Given the sector and country of the project, resumption of monitoring and assessing the current environmental and social status of the project would be given a priority if the relationship is restored.

MAP 2: [date] Progress Report (1)

PCM comments

PCM Recommendation 3: Community Engagement

3. Recognize more fully that community involvement during project development, as much in private sector initiatives as in the public sector, is an obligation in development activities in which EBRD should be closely involved to ensure that clients are aware of responsibilities

Management Action 3: Community Engagement

EBRD's policy and performance requirements on engagement with communities/affected stakeholders do not differentiate between private sector and public sector. While the requirements are concentrated in PR10, there are also consultation requirements in performance requirements 1, 2, 4, 5, 6, 7, and 8.

The Bank continues to develop guidance on implementing policy requirements on the EBRD website and in discussions with clients. There is significantly more guidance available in 2016 on the EBRD website than was available at the time that the Altain Khuder project was approved, e.g. [PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources](#).

With regard to the Altain Khuder project, we note that all of the consultation requirements with local communities were being implemented at the time that communications with the EBRD broke down. The Client was quite active with the local communities at the time of due diligence, and had an ongoing relationship with them, including established Community Liaison Officers and a grievance mechanism,

which were verified by independent consultants.

Management believe that the current performance requirements and practices of ESD sufficiently reflect this obligation for community involvement, and ESD informs clients of this obligation on a project by project basis, as required in EBRD performance requirements. No action is specified; however, the Bank will update the PCM on any future guidance or initiatives.

MAP 3: [date] Progress Report (1)

PCM comments

PCM Recommendation 4: Accountability and grievance mechanisms

4. As this aspect is mandated for all EBRD operations, and although circumstances may vary considerably, structured processes should be agreed, fully documented and made available to all parties.

Management Action 4: Accountability and grievance mechanisms

EBRD requires grievance mechanisms for both internal and external stakeholders for all projects, and starting in 2015, these requirements were included in Key Performance Indicators (KPIs) which are monitored at the individual project level.

Grievance Mechanisms, both for workers and the public, are in addition to legal rights. EBRD has a guidance note on the EBRD website on Grievance Mechanisms that is available for Clients, consultants, and the public (<http://www.ebrd.com/downloads/about/sustainability/grievance-mechanism.pdf>). Given that this guidance has already been published and a structured monitoring process is already in place for grievance mechanisms, there is no additional external action identified.

MAP 4: [date] Progress Report (1)

PCM comments

PCM Recommendation 5: Local socioeconomic and political structures

5. Although socioeconomic studies form an essential part of project processing and supervision, particular care should be taken to ensure that projects are more clearly informed, where relevant and important, by insight into local laws, customs and procedures, particularly with respect to land tenure, to ensure that PRs are followed substantively.

Management Action 5: Local socioeconomic and political structures

Management note that EBRD does not process nor *supervise* projects; its role is monitoring the commitments agreed with the Client. In this particular case, EBRD was unable to monitor the commitments agreed with the Client after communications broke down.

Clients have a duty of care to operate in compliance with local environmental and social laws, customs, procedures, including land tenure. In accordance with commitments to PR10, consultation with stakeholders specifically has to be done in a way that is culturally appropriate and therefore we believe that no further action is required to address this recommendation. EBRD performance requirements further state that projects should be structured to meet applicable laws (this includes local and customary laws). This action is already completed.

MAP 5: [date] Progress Report (1)

PCM comments

PCM Recommendation 6: Project documentation

6. In the event that environmental appraisal, and associated documentation are not made available for public disclosure, ensure that there are ways of disseminating and recording formal communication (summaries) to affected communities on environmental and social impacts of projects in a form that is understood by those communities.

Management Comment on Recommendation 6

Recommendation 6 is fully incorporated in the EBRD Performance Requirement 10. Article 7 (below) allows for increased stakeholder engagement that is proportionate to the nature and scale of the project and its potential impacts on the local communities. A project in the mining sector would normally trigger increased requirements. Articles 16 and 17 require disclosure to local communities of information about the project and its environmental and social impacts, in a culturally appropriate manner.

In addition, EBRD has been working to increase the amount of information disclosed by EBRD on Category B projects and will report on progress in the 2016 Public Information Policy Implementation Report.

2014 ESP PR10 references

1. The nature and frequency of stakeholder engagement will be proportionate to the nature and scale of the project and its potential adverse impacts on the affected communities, the sensitivity of the environment and the level of public interest. In order to tailor the engagement to the specifics of the client and the project, it is essential that clients identify stakeholders as outlined below. The requirements of national law with respect to public information and consultation, including those laws implementing host country obligations under international law, must always be met.

Information disclosure

16. Disclosure of relevant project information helps stakeholders understand the risks, impacts and opportunities of the project. If communities may be affected by adverse environmental or social impacts from the project, the client will provide them with access to the following information (the Information):
 - the purpose, nature, scale and duration of the project activities
 - risks to, and potential impacts on, stakeholders and proposed mitigation plans
 - the envisaged stakeholder engagement process, if any, and opportunities and ways in which the public can participate
 - the time and venue of any envisaged public consultation meetings, and the process by which meetings are notified, summarised and reported
 - the process by which any grievances will be managed.
17. The Information will be disclosed in the local language(s), as identified in the SEP, and in a manner that is accessible and culturally appropriate. This will take into account specific needs of groups that may be differentially or disproportionately affected by the project because of their status, or groups of the population with specific information needs.

Management Action 6

Recommendation 6 is fully incorporated in the 2014 ESP EBRD Performance Requirement 10. This action is already completed.

MAP 6: [date] Progress Report (1)

PCM comments