

**Altain Khuder Debt & Equity**

REQUEST NUMBER: 2015/01

**Compliance Review Monitoring Report II – May 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](http://www.ebrd.com).

## Contact information

Inquiries should be addressed to:

The Project Complaint Mechanism (PCM)  
European Bank for Reconstruction and Development  
One Exchange Square  
London EC2A 2JN  
Telephone: +44 (0)20 7338 6000  
Fax: +44 (0)20 7338 7633  
Email: [pcm@ebrd.com](mailto:pcm@ebrd.com)

<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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*NOTE: Unless otherwise defined, capitalised terms used in this Compliance Review Monitoring Report refer to terms as defined in the PCM Rules of Procedure.*

## Executive summary

This is the second Compliance Review Monitoring Report of the Project Complaint Mechanism (PCM) regarding the Complaint on the Altain Khuder Tayan Nuur iron ore mining Project (both debt and equity) at an existing facility in Tseel soum, in Mongolia. Following a review of the Bank's compliance with its 2008 Environmental and Social Policy, the Compliance Review Expert made six findings of non-compliance in respect of the grounds set out in the Complaint. The Compliance Review determined that the Bank did not fully comply with Performance Requirement (PR) 1 and PR5 and PR10 of the ESP. EBRD Management subsequently prepared a Management Action Plan (MAP) in response to the recommendations outlined in the Compliance Review Report.<sup>1</sup>

During the first monitoring period, the PCM Officer took note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considered Actions 3, 4, 5 and 6 under the Complaint completed. During the current monitoring period the PCM Officer continued to monitor implementation of Actions 1 and 2. Due to the unchanged status of the relationship between the EBRD and the Client, PCM considers Actions 1 and 2 now closed and not requiring further monitoring. Should the relationship with the Client be restored in future, PCM urges Management to take the remedial steps as outlined in the Action Plan.

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<sup>1</sup> The Complaints, Compliance Review Report and Management Action Plan are available on the [PCM Register](#).

## 1. Introduction

This Compliance Review Monitoring Report is prepared pursuant to paragraph 47 of the 2014 Project Complaint Mechanism (PCM) Rules of Procedure whereby the PCM Officer is mandated to monitor the implementation of Management Action Plans prepared in response to the findings and recommendations<sup>2</sup> contained in Compliance Review Reports. PCM monitors the implementation of Management Action Plans and prepares Monitoring Reports at least biannually or until the PCM Officer determines that monitoring is no longer needed. Monitoring Reports are submitted to the President and Board, and then published in the PCM Register on the EBRD website.

PCM reviewed a Complaint about the EBRD's Altain Khuder Debt & Equity Project in Mongolia, completing the Compliance Review in April 2017. The Compliance Review Expert made six findings of non-compliance in respect of the grounds set out in the Complaint. The Compliance Review determined non-compliance was in the areas of effective communication of potential impacts to affected communities and stakeholder consultation documentation, grievance redress and Project monitoring, owing to unforeseen circumstances. The Compliance Review Report considered that while technically there would have been non-compliance by EBRD with the provisions of the Environmental and Social Policy in continued monitoring of the Project had it not gone into legal proceedings; those circumstances would appear to have made it impossible for EBRD to have fulfilled that responsibility.

The Compliance Review Report included recommendations to address the findings of non-compliance, in response to which EBRD Management prepared a Management Action Plan (available on the [PCM Register](#) on the EBRD website).

This is the second Compliance Review Monitoring Report regarding Altain Khuder Debt & Equity.

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<sup>2</sup> Pursuant to the PCM Rules of Procedure a Compliance Review Report will include recommendations to:

- a. address the findings of non-compliance at the level of EBRD systems or procedures to avoid a recurrence of such or similar occurrences; and/or
- b. address the findings of non-compliance in the scope of implementation of the Project taking into account prior commitments by the Bank or the Client in relation to the Project; and
- c. monitor and report on the implementation of any recommended changes.

## 2. Context

The PCM received a Complaint on 30 December 2014 regarding Altain Khuder's Tayan Nuur iron ore mining Project (both debt and equity) at an existing facility in Tseel soum in Mongolia. The Complaint was presented by the Mongolian non-governmental organization OT Watch and seven residents of Tseel soum. The Complaint was supported by CEE Bankwatch Network and the Centre for Research on Multinational Corporations (SOMO). The Complaint, registered on 15 January 2015 under the PCM Rules of Procedure, sought a Problem-solving Initiative and a Compliance Review. The Complaint alleged multiple violations of the Bank's Performance Requirements (PRs) under the 2008 Environmental and Social Policy resulting from adverse social and environmental impacts. In broad terms, the Complaint alleged inadequate compensation for involuntary resettlement, dust pollution and animal and human health impacts, water depletion and contamination, and inadequate stakeholder engagement.

The PCM conducted an Eligibility Assessment of the Complaint based on the eligibility criteria set in the PCM Rules of Procedure. The Eligibility Assessment Report, released on 28 August 2015, concluded that the Complaint was ineligible for a Problem-solving Initiative, but eligible for a Compliance Review.

In August 2015, Albab Akanda was appointed as PCM Compliance Review Expert. The PCM Compliance Review included a review of publicly available Project information and EBRD internal documents. Meetings were held with EBRD environmental and social staff and the Complainants.

The PCM Expert found EBRD non-compliant in respect of six of the grounds set out in the Complaint. The Compliance Review determined that the Bank failed to fully comply with PR1 and PR5 and PR10 of the 2008 ESP. PCM made recommendations relating to EBRD systems and procedures and activities at the Project level in relation to the Policy.

EBRD Management was requested to prepare a Management Action Plan, in accordance with the PCM Rules of Procedure. The Complainants submitted comments on the Management Action Plan. The final Compliance Review Report and Complainants' comments were submitted for information to the EBRD's Board of Directors, along with the Management Action Plan which was submitted for acceptance. The Board accepted the Management Action Plan, and the Compliance Review Report, Management Action Plan and Complainants' comments were publicly released on 7 April 2017.

### **3. Current monitoring period**

The PCM Officer reviewed an implementation update on the Management Action Plan regarding Altain Khuder Debt & Equity for the period November 2017-April 2018, which was provided by EBRD Management to the PCM in May 2018.

During the current monitoring period the PCM Officer continued to monitor implementation of Actions 1 and 2. Due to the unchanged status of the relationship between the EBRD and the Client, at this juncture PCM considers Actions 1 and 2 closed and not requiring further monitoring. Should the relationship with the Client be restored in future, PCM urges Management to take the remedial steps outlined in the Action Plan.

#### 4. PCM observations

In light of information received to date, and in accordance with the scope of the PCM Officer's monitoring role, the PCM Officer has made the observations regarding the implementation of the Management Action Plan concerning Altain Khuder Debt & Equity.

In the discussion below the Compliance Review recommendations are provided, along with the related action item(s) drawn from the Action Plan. The PCM's comments are also provided.

PCM has taken note of the actions of the Bank's Management including the revisions to the 2008 Environmental and Social Policy and Public Information Policy, as well as revised guidance for Clients and updates to the Operations Manual available on [www.ebrd.com](http://www.ebrd.com), which include specific guidance on monitoring of Projects in Corporate Recovery.

PCM considers all Actions in relation to this Complaint now completed.

##### Action 1. Breakdown in communications between EBRD and a client during project implementation

##### Implementation update

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.

- No specific action required.
- In response to this item, ESD updated the Operations Manual for monitoring to include the following provision: "The OT (or other department in charge of project monitoring within the Bank) must inform ESD when a project is likely to, or if it has been transferred to Corporate Recovery (or is involved in any other legal dispute) as this may impact our ability to monitor or otherwise influence the project."

This will therefore inform the ESD team when a situation arises that would preclude progress in project implementation and monitoring activities, and will allow the team to act accordingly. Therefore we request that this item is closed.

**PCM comments:** PCM considered the efforts taken by the Bank and the unchanged status of the relationship between the Client and the Bank. The Action item is closed and does not require further monitoring.

##### Action 2. Restoration of relations between EBRD and Altain Khuder

##### Implementation update

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

This situation has not happened, and it is considered unlikely that this will happen. Therefore, no action can be taken, and as this is considered unlikely to happen, we request that this item is closed.



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.

**PCM comments:** Due to the unchanged status of the relationship between the Client and the Bank, the PCM considers this Action closed and not requiring further monitoring.

## **5. Conclusions and next steps**

The PCM Officer has observed the steps taken by the Bank's Management to fulfil the commitments outlined in the Management Action Plan, and in November 2017 considered Actions 3, 4, 5 and 6 under this Complaint completed. During the current monitoring period the PCM Officer continued to monitor implementation of Actions 1 and 2. Due to the unchanged status of the relationship between the EBRD and the Client, PCM considers Actions 1 and 2 now closed.