

Altain Khuder Debt & Equity

REQUEST NUMBER: 2015/01

Compliance Review Monitoring Report I – November 2017

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

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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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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 first 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 (ESP), 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.¹

During this first monitoring period, the PCM Officer reviewed the update provided by EBRD Management on implementation of the Management Action Plan as well as related documentation. The PCM Officer also sought the Complainants' comments on implementation of the Management Action Plan.

The PCM Officer takes note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considers Actions 3, 4, 5 and 6 under this Complaint completed. The PCM Officer will continue to monitor implementation of Actions 1 and 2. The next Monitoring Report is expected to be issued in April 2018.

¹ 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 recommendations² 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 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 that the Bank's non-compliance has been in the areas of effective communication to the affected communities of potential impacts 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 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 first Compliance Review Monitoring Report regarding the Altain Khuder Debt & Equity Projects.

² 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 alleges multiple violations of the Bank's Performance Requirements under the 2008 Environmental and Social Policy resulting from adverse social and environmental impacts. In broad terms, the Complaint alleges 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 in the PCM Rules of Procedure. The Eligibility Assessment Report for Compliance Review, 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 ESP.

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 the Altain Khuder Debt & Equity Projects for the period April - October 2017, which was provided by EBRD Management to the PCM in November 2017. PCM took note of the updated Operations Manual on Project monitoring to include a specific provision related to monitoring obligations for Projects in Corporate Recovery. PCM also reviewed the guidance note on Grievance Mechanisms for Clients available on www.ebrd.com.

The PCM Officer also invited Complainants to provide their comments regarding Management's implementation of the Management Action Plan and took note of the written comments received from Complainants.

Complainants had the following comments in relation to specific actions of the Management Action Plan:

- Complainants are not convinced that EBRD considered how they could continue their involvement with Project impacted communities in this case, or in any other case, if the communication with the Client is restored.
- Complainants expressed the lack of clarity about the status of the Altain Khuder Project(s) which are listed as active in the EBRD list of Projects on www.ebrd.com, at the same time the Management is indicating their relationship with the Client has not been restored.

In addition to comments specific to the monitored actions, Complainants shared the following:

- The herders have recently reported that Altain Khuder has resumed activities with heavy vehicle traffic.
- The company has not engaged with the local communities to provide them with information on those activities. Neither has the company completed the road that was meant to benefit local communities.

And further:

- We recommend that EBRD undertake a post-resettlement survey and offer assistance to any household found to be worse off after resettlement.
- EBRD could also engage local authorities to explore possibilities for completing the road construction.³

³ Complainants comments to the Altain Khuder Management Action Plan Implementation update, dated 22 November 2017.

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 Actions of the MAP concerning the Altain Khuder Debt & Equity.

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

PCM took note of the actions taken by 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 which include specific guidance on monitoring of Projects in Corporate Recovery. PCM considers Actions 3, 4, 5 and 6 under this Complaint 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: The PCM considers it is premature to close this action and will continue to monitor implementation during the next monitoring period.

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 include a site visit, meetings with site personnel, and

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.

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: The PCM considers it is premature to close this action and will continue to monitor implementation during the next monitoring period.

Action 3. Community Engagement

Implementation update

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.

As no action is required, we request that this item is closed.

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.

PCM comments: The action item has been completed. PCM considers no further monitoring is required.

Action 4. Accountability and grievance mechanisms

Implementation update

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

As no action is required, we request that this item is closed.

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.

PCM comments: The action item has been completed. PCM considers no further monitoring is required.

Action 5. Local socioeconomic and political structures

Implementation update

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.

As no action is required, we request that this item is closed.

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.

PCM comments: The action item has been completed. PCM considers no further monitoring is required.

Action 6. Project documentation

Implementation update

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

As no action is required, we request that this item is closed.

PCM comments: The action item has been completed. PCM considers no further monitoring is required.

5. Conclusions and next steps

The PCM Officer takes note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considers Actions 3, 4, 5 and 6 under this Complaint completed. The PCM Officer will continue to monitor implementation of Actions 1 and 2. The next Monitoring Report is expected to be issued in April 2018.