



Project
Complaint
Mechanism

JVARI-KHORGA INTERCONNECTION

REQUEST NUMBER: 2017/02

COMPLIANCE REVIEW REPORT – June 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.

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

<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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EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) received a Complaint in relation to EBRD's financing of the Jvari-Khorga Interconnection Project in Georgia. The Complainant alleges that he did not receive payment during six months that he worked as Project Manager for Jyoti Structures Ltd (JSL), a contractor (Contractor) to the Project Client (Client), and that he was terminated from his employment with JSL without receiving his salary owed or notice period payment as a result of his raising the issue of non-payment of his salary with the Client. Though the Complainant requested that both Problem-solving and Compliance Review be undertaken, the PCM Eligibility Assessors determined that the Complaint was only eligible for a Compliance Review. The Complainant raises issues that fall within the scope of the 2008 Environmental and Social Policy (ESP) – in particular Performance Requirement 2, Labour and Working Conditions – and which trigger Bank responsibilities under the Policy.

The Compliance Review Expert finds that the Bank failed to comply with the requirement to carry out adequate due diligence or to monitor the Client's commitment arising under PR 2.19(i) of the 2008 ESP to ensure that adequate measures were taken by the Client to ascertain that the Contractor was a reputable and legitimate enterprise.

In addition, the Compliance Review Expert has determined that the Bank failed to comply with the requirement to carry out adequate due diligence or to monitor the Client's commitment arising under PR 2.19(ii), in combination with PR 2.6 and PR 2.12, to ensure that adequate measures were taken by the Client to ensure that the Contractor met its obligations to its workers, including the payment of salaries owed.

Finally, the Compliance Review Expert has determined that the Bank failed to comply with the requirement to carry out adequate due diligence or to monitor the Client's commitment arising under PR 2.19(ii), in combination with PR 2.18, to ensure either that the Client required the Contractor to provide an effective grievance mechanism for its workers or, alternatively, provided access to non-employee workers to effective resolution of grievances by means of its own grievance mechanism.

Therefore, the PCM Compliance Review Expert finds that the Bank has failed to carry out adequate due diligence or to monitor the Client's commitments arising under PR 2 of the applicable 2008 ESP relating to labour and working conditions, and makes a number of recommendations at the level of EBRD systems or procedures intended to avoid a recurrence of such or similar occurrences.

I INTRODUCTION

Factual Background

1. On 21 April 2017 the PCM received a Complaint regarding the Jvari-Khorga Interconnection Project in Georgia.¹ The Complainant requested both a Problem-solving Initiative and a Compliance Review. The Complaint was registered by the PCM Officer on 8 May 2017 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (RPs), and was subsequently posted in the PCM Register pursuant to paragraph 20 of the PCM RPs. On 8 May 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. The Project constitutes a €60 million sovereign loan, co-financed with KfW, for the construction of (i) a new 500kV/220kV substation at Jvari, (ii) a double circuit 500kV/8km transmission line from the Kavkasioni line to the Jvari substation, and (iii) a double circuit 220kV/60km transmission line between Jvari and Khorga. The Project was approved by the EBRD Board of Directors on 16 October 2013 and is categorised “A” under the 2008 Environmental and Social Policy.
3. The borrower is the Government of Georgia, who has lent on to Georgian State Electrosystem (GSE), the state-owned transmission and dispatching company. GSE subsidiary EnergoTrans is implementing the Project. The Bank has a direct relationship with GSE through a Project Agreement.
4. The Complainant first raised the issue of non-payment of his salary and the salaries of a number of other JSL staff with EnergoTrans on 31 January 2017, requesting that the amount owed be deducted from payments due to JSL and remitted to those workers.² The problem of non-payment of salaries due to JSL workers was noted at the March 2017 Progress Meeting on the Project, where it was agreed that a meeting with top management at JSL was required by the end of March 2017.³ However, the next Progress Meeting in April 2017 noted a potential takeover of Jyoti Ltd and announced,⁴ in relation to subcontractor payments, that ‘the Employer will initiate necessary steps (clarification with EBRD, etc.)’.⁵ However, it does not appear that any such meeting with Jyoti management took place and EnergoTrans expressed a lack of confidence in JSL management.⁶ In response to repeated communications from EBRD in April 2017, EnergoTrans informed EBRD that such non-

¹ Complaint Number 2017/02, available at <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html> and attached in an annex to this report.

² Letter from Complainant to EnergoTrans, dated 31 January 2017. It should be noted that EnergoTrans raised this matter immediately with JSL management, stressing the seriousness of the matter and, in particular, the very distressed state of the Complainant. See e-mail from EnergoTrans to JSL, dated 1 February 2017.

³ Minutes of Meeting – Progress Meeting 19 (24 March 2017), at para. 8. The issue appears to have been first raised with Mr Uwe Armonies (Fichtner GmbH), EnergoTrans and the EBRD PCM in an e-mail dated 6 March 2017.

⁴ Minutes of Meeting – Progress Meeting 20 (12 April 2017), at para. 0.

⁵ Minutes of Meeting – Progress Meeting 20 (12 April 2017), at para. 8.

⁶ An e-mail from EnergoTrans to EBRD, dated 19 April, noted:

‘Even though we got official letter from the top manager of Jyoti assuring to cover all obligations (we also had telephone conversations with different management levels) we are not sure that this will be fulfilled until new management is appointed.’

payment was a 'general problem'⁷ and noted that, in addition to other individual employees, Jyoti's sub-contractors had also not been paid and were owed some €600,000.⁸

5. In August 2017 the Eligibility Assessors determined⁹ that the Complaint did not satisfy the criteria for a Problem-solving Initiative, as any Problem-solving Initiative undertaken by PCM would be unlikely to assist in resolving the concerns raised by the Complainant or otherwise to achieve positive results. However, the Eligibility Assessors also determined that the Complaint was eligible for a Compliance Review, as the issues raised fall within the scope of EBRD's 2008 Environmental and Social Policy – in particular Performance Requirement 2, Labour and Working Conditions – which imposes responsibilities upon the Bank. The Eligibility Assessment Report contains detailed terms of reference for the conduct of this Compliance Review.
6. In August 2017 the PCM Officer appointed Prof Owen McIntyre to act as Compliance Review Expert for the conduct of this Compliance Review.
7. During the conduct of the Eligibility Assessment, Bank Management informed PCM of the start of administrative proceedings regarding the insolvency of Jyoti Structures Ltd.¹⁰ A public announcement was issued in India inviting all creditors, including (former) employees, to lodge claims for payments due from Jyoti Structures Ltd.

Positions of the Relevant Parties

Complainant

8. The Complainant worked as a Project Manager for Jyoti Structures Ltd. (the Contractor), the company appointed as the main contractor for Package B (Construction of 500 kV and 220 kV OHLs) of the Jvari-Khorga Interconnection Project. The Complainant reports that he was not paid any salary from September 2016 and, further, that when he demanded his salary be paid in January 2017 his services were terminated (with effect from 2 February 2017) without payment for the required notice period.¹¹ It should be noted, however, that the Client contends that the Georgian portion of the Complainant's salary, including expenses incurred by the Complainant while residing in Georgia, appears to have been paid.¹²

Bank Management

9. According to Bank Management's response to the Complaint,¹³ the Project has been structured to comply with the requirements of the 2008 Environmental and Social Policy applicable to category "A" projects and the relevant Performance Requirements. The response states that all actions required to implement the Project in compliance with the Environmental and Social Policy are reflected in the Environmental and Social Action Plan for the Project, which was agreed with the Client prior to the approval of the Project by the EBRD

⁷ E-mail from EnergoTrans to EBRD, dated 19 April.

⁸ E-mail from EnergoTrans to EBRD, dated 20 April.

⁹ See Complaint No. 2017/20, Eligibility Assessment Report (EAR), available at <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html> and attached in an annex to this report.

¹⁰ See EAR, at 6.

¹¹ Complaint.

¹² See Para. 15, *infra*.

¹³ Bank Management Response, submitted 5 July 2017, annexed to this report.

Board of Directors. According to the response, the Bank has been closely and regularly monitoring the Project, including site visits and frequent meetings with GSE and EnergoTrans.

10. In response to the Complaint, EBRD Management states that:¹⁴

- Management was informed of the concerns raised by the Complainant at the time the Complainant filed his Complaint with the PCM.
- Based on communications EBRD has received from EnergoTrans, the issue of non-payment of salary to the Complainant is part of a wider mix of issues, related to financial difficulties faced by the Contractor. Reportedly, other employees as well as Georgian sub-contractors experienced late or missing salaries/payments.
- The Contractor stated in a communication to EnergoTrans dated 22 May 2017 that the dispute between the Contractor and the Complainant in relation to the termination of the Complainant's appointment (including the non-payment of the outstanding salary) is expected to be resolved through the courts in India, as both the Contractor and the Complainant are located in India.
- EnergoTrans has been aware of the case since mid-January 2017, and since that time has been engaging with the Complainant and the Contractor to resolve the problem.
- EBRD is monitoring the issue.¹⁵

The Client¹⁶

11. The Client notes that JSL was selected as the main contractor for Package B in April 2014 and that the company's financial information was then checked. An examination of JSL's annual reports and corporate balance sheet showed the company to be in good financial shape, with the Client's auditors' only expressing concern regarding JSL Group's purchase of a factory in the US, which left the company with significant but manageable debt having regard to its cash-flow position. JSL's financial position was rechecked at the second stage of the tendering process. JSL is currently insolvent, but arrangements are due to be finalised imminently, which will either result in bankruptcy or in a takeover of the company by management.

12. At the time of the tendering process, JSL was listed among the top five Indian construction companies and had a very professional website identifying its track record of successfully completed infrastructure projects. In addition, other companies had confirmed that JSL was a reputable company. As the Client was predominantly concerned with environmental and health and safety requirements during the tendering process, it was significant that JSL possessed all three relevant ISO Certification Standards (ISO 9001 – Quality and Customer Satisfaction Standards; ISO 14001 – Environmental Management System Standards; ISO 18001 – Occupational Health & Safety Standards). The Client notes that, at that time, there were not very many ISO-certified foreign construction companies operating Georgia and that the Client placed a lot of value in ISO certification because it included detailed examination of social and employment issues (including payment of salaries and overtime) and such certification was renewed each year. For this reason, the Client did not itself seek references relating to JSL's social and employment record.

13. The Client explains that the tender documents and the contract¹⁷ with the Contractor contained only general references the EBRD Environmental and Social Policy and to relevant

¹⁴ See EAR, at 6.

¹⁵ See Bank Management response, annexed to this report.

¹⁶ Telephone meeting between the Compliance Review Expert, EBRD ESD and the Client, 5 April 2018.

¹⁷ See Tender Documents – Construction of: Supply and Installation – Construction of approximately 8 km of 500 kV double circuit and approximately 60 km of 220 kV double circuit Overhead Lines - Package B: Volume II – The Contract (September 2013).

Georgian legislation, rather than specific references to the requirements relating to labour and working conditions set out under PR 2.

14. The Client insists that it had actively engaged with the Contractor and the Complainant regarding the dispute, but that JSL was generally not amenable to finding a negotiated resolution. For example, JSL rejected a range of payment measures suggested by the Client. In addition, JSL's human resources department was reluctant to provide in writing any details regarding the origins or nature of the ongoing dispute between the Contractor and the Complainant, though company officials did make some unsubstantiated accusations against the Complainant orally. Generally, the Client actively sought to protect the interests of the Complainant, and thereby to meet the Requirements of the EBRD ESP, though it enjoyed limited leverage over the Contractor as JSL had already been paid for the services provided.
15. To the best of the Client's knowledge, the Complainant has received the Georgian portion of his salary, including expenses owed to the Complainant relating to his time in Georgia,¹⁸ though the Contractor has been very reluctant to disclose to the Client details of any payments made to the Complainant. The Client understands that the portion of the Complainant's salary that is due to be paid in India is subject to court proceedings in India.
16. The Client believes that the Complainant understood that his communications with the Client in relation to his dispute with the Contractor amounted to engagement with the employee grievance mechanism established pursuant to the EBRD ESP. The Client insists that a grievance mechanism existed for employees, as evidenced by the reference to a Grievance Resolution Process at section 8.4 of the Stakeholder Engagement Plan. However, the Complainant's engagement with the Client constituted the first ever application of such a process, and so each step had to be considered *de novo*. The Client confirms that the Grievance Resolution Process employed was quite informal in nature.

Steps Taken in the Conduct of the Compliance Review

17. The Compliance Review Expert has undertaken a detailed examination of the Complaint and all additional information provided by the Complainant, as well as all relevant project information provided by Bank Management, including relevant correspondence with the Client, in order to determine if the Bank has met all relevant requirements under PR 2 of the 2008 Environmental and Social Policy. In the circumstances of the present Complaint, a site visit would not have been useful and so the Compliance Review has been conducted primarily on the basis of a review of relevant documents.
18. The Compliance Review Expert has engaged with Bank Management on an ongoing basis as necessary, and held two conference calls with Bank Management to discuss matters arising – on 14 August 2017 and 19 December 2017. The Compliance Review Expert held a meeting with relevant Bank staff at EBRD HQ in London on 9 March 2018 and held a conference call with the Client and ESD on 5 April 2018.

¹⁸ See record of payment to Mr Rajesh Pandey, 31 January 2017.

II RELEVANT EBRD POLICY OBLIGATIONS

19. As this Complaint concerns the non-payment of salary due to an employee of a contractor engaged on a Bank-financed Project, and the subsequent termination of his employment, the key compliance question is that of whether the Bank met its obligation to assess and monitor compliance with the requirements of PR 2 on *Labour and Working Conditions* set down in EBRD's 2008 Environmental and Social Policy. It is helpful, therefore, to assess the implications of relevant and applicable elements of PR 2.
20. It is useful to note first of all, before examining the applicable substantive labour-related requirements of PR 2, that PR 2.19 extends the protection offered to workers by these same requirements to "non-employee workers", providing that
'In the case of non-employee workers engaged by the client through contractors or other intermediaries to work on project sites or perform work directly related to the core functions of the project, the client will: (i) ascertain that these contractors or intermediaries are reputable and legitimate enterprises; and (ii) *require that they apply the requirements stated in paragraphs 6 to 16 and 18 above.*'
21. Therefore, it appears that two distinct requirements arise for the Bank by virtue of PR 2. Firstly, the Bank must satisfy itself that the Client has taken reasonable steps, pursuant to PR 2.19(i), to ascertain that contractors or intermediaries engaged in the Project are 'reputable and legitimate enterprises'. Secondly, the substantive protections provided under PR 2.6 – 2.16 and 2.18 clearly apply to the Complainant, thereby requiring that the Bank ought to have overseen the Client's efforts to ensure the Contractor in question applied these requirements. While the precise steps required to meet the obligation arising under PR 2.19(i) are not set out in any detail in the ESP, and must be assessed on a case-by-case basis, the requirements arising under PR 2.6, 2.12 and 2.18 are examined in detail below.¹⁹
22. PR 2.6 obliges the Bank to ensure that a client clarifies the details of the working relationships it forms with its workers, stipulating that
'The client will document and communicate to all workers their working conditions and terms of employment including *their entitlement to wages*, hours of work, overtime arrangements and overtime compensation, and any benefits (such as leave for illness, maternity/paternity, or holiday).'
- PR 2.19(ii) applies so as to extend the protection intended under PR 2.6 to "non-employee workers", thereby requiring the Bank to oversee the steps taken by the Client to ensure that contractors engaged on the Project clarify their working relationships with their employees. More specifically relating to work-related remuneration, PR 2.12 directs that
'Wages, benefits and conditions of work offered should, overall, be comparable to those offered by equivalent employers in the relevant region of that country / region and sector concerned.'
23. The inclusion of both provisions makes it clear that one of the protections for workers intended under the 2008 ESP is that of payment of adequate remuneration for work performed, either by a client's employees or by "non-employee workers", leading the Eligibility Assessors in the present Complaint reasonably to conclude that
'the Bank's responsibility includes adequate due diligence and monitoring of GSE's commitment under the 2008 Policy, to ensure that contractors satisfy the relevant

¹⁹ Although non-payment of remuneration due for work performed might fall foul of national labour and social security laws, with which EBRD-funded projects are required to comply under PR 2.7, it is not necessary to consider this requirement any further in relation to the present Complaint.

requirements of the Policy, including in relation to terms of employment, wages, benefits and conditions of work.’²⁰

24. As regards awareness of the risk of non-compliance with ESP requirements on labour and working conditions, it is telling that in 2017 EBRD ESD adopted a PR 2 Assurance Process ‘as a practical tool to accompany specialists in their due diligence practice – sharing knowledge of useful “red flags”, generic risks relating to region and sector, and aiming to align approaches in designing mitigation strategies’.²¹ This Assurance Process confirms that construction is a “high PR2-risk sector” for the purposes of pre-appraisal screening, as it ‘represents a high-risk activity *with respect to contracts, wages, working hours and OHS*’.²² For the purposes of identifying when heightened due diligence might be required to ensure compliance with PR 2 labour and working conditions, the Assurance Process lists among the “risk criteria” employed to identify “high-risk projects”, large numbers of ‘*non-employee workers*’ and ‘*vulnerable workers*’.²³ In addition, a ‘[l]arge third-party contractor workforce’ is listed among the “red flags” which, when identified in the process of due diligence conducted on any project regardless of country or sector, requires further follow up, possibly leading to heightened due diligence.²⁴ Such “red flags” are also relevant for the design of an appropriate monitoring and reporting framework, which should facilitate ‘the process of checking an operation’s performance against appraisal expectation’, and ‘may be established through specific ESAP points, or covenanted additional requirements, or a combination of both’.²⁵ Finally, the 2017 PR 2 Assurance Process stipulates that ‘[i]n the Annual Environment and Social Reporting (AESR) framework, clients are required to provide information that can provide ongoing indications of PR2 red flags’, including ‘Number of direct employees / Number of contracted workers’.²⁶ It is apparent, therefore, that non-national contracted workers in the construction sector represent an acknowledged labour risk under PR 2 of the ESP.

25. PR 2.18 further provides that a client will provide an easily accessible grievance mechanism where workers, and by extension “non-employee workers”,²⁷ may raise reasonable workplace concerns. Few would argue that “reasonable workplace concerns” would not include the non-payment of salary for work performed. The ESP further provides that such a mechanism should ‘address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution’. PR 2.18 states that ‘[t]he mechanism should not impede access to other judicial or administrative remedies that might be available under law or through existing arbitration procedures’, which suggests that it is intended to operate to complement more formal legal dispute resolution options, for example, where these are characterised by excessive expense or delay.

²⁰ See Complaint 2017/02: *Jvari-Khorga Interconnection Project, Georgia*, Eligibility Assessment Report (August 2017), at 8. Regarding the reference in PR 2.12 to locally comparable conditions, the Eligibility Assessors have quite reasonably assumed, at 6, that

‘non-payment for work carried out by an individual cannot be a justifiable practice in Georgia.’

²¹ EBRD ESD, *PR2 Assurance Process for Labour Risk Assessment* (Internal Document, November 2017), at 2.

²² *Ibid.*, at 4 (emphasis added).

²³ *Ibid.*, at 6 (emphasis added). These “risk criteria” are set out as follows:

- a. *Non-employee workers*: if more than 50% of the estimated project workforce is composed of non-employee workers (contractor workers and/or provided by labour intermediaries); or
- b. *Vulnerable workers*: if more than 50% of the estimated project workforce is composed of: non-national (excl. ex-pat) or internal migrant workers; ethnic minority workers; seasonal workers ...

²⁴ *Ibid.*, at 7.

²⁵ *Ibid.*, at 8.

²⁶ *Ibid.*, at 9.

²⁷ By expressly referring to paragraph 18 of PR 2, PR 2.19 extends the entitlement to such a grievance mechanism to “non-employee workers”.

26. Therefore, it is necessary in conducting the present Compliance Review to determine the following matters:
1. Did the Bank meet its obligation to satisfy itself that the Client had taken reasonable steps, pursuant to PR 2.19(i), to ascertain that Jyoti Structures Ltd. (JSL), as a contractor engaged in the Project, was a 'reputable and legitimate enterprise';
 2. Did the Bank adequately discharge its responsibility to monitor that JSL, as a contractor engaged on the Project, had met its obligations to its workers arising under PR 2;
 3. Did the Bank take steps to assess and monitor that the Client has provided an accessible grievance mechanism pursuant to PR 2.18, from which the Complainant could have sought redress for the alleged non-payment of salary due for work performed.

III ANALYSIS

EBRD responsibility to carry out adequate due diligence to ensure that the Client would ascertain and to monitor whether JSL was a 'reputable and legitimate enterprise', pursuant to PR 2.19(i).

27. It is not the Bank's practice specifically to highlight, in the absence of any apparent particular risk, the requirement on the part of the Client under ESP PR 2.19(i) to ascertain that contractors engaged in a Bank-funded Project, such as JSL, were 'reputable and legitimate enterprises'. Bank Management has explained that nothing uncovered in due diligence conducted in the course of project appraisal suggested a risk of non-payment of employees' salary by any contractors eventually selected.²⁸ Thus, while the Bank did highlight PR 2 more generally, there did not appear to EBRD to be any reason specifically to raise the requirement contained in PR 2.19(i).²⁹ The Environmental and Social Action Plan (ESAP) agreed between the Client and the Bank did stipulate a general requirement that the Client should 'Consider tenderers' past ESHS [environmental, social, health & safety] performance in evaluating tenders, either as part of total score or as a disqualifying factor in case of substandard performance'.³⁰

However, this approach to the implementation of PR 2.19(i) might not be considered adequate in relation to projects involving works to be carried out substantially by contractors.

28. Bank Management also explained that the loan approval process, which is informed by the environmental and social appraisal process stipulated under the ESP, is quite separate from the process for the selection and approval of contractors,³¹ which could mean that the central relevance of the non-employee protection elements of PR 2, and in particular PR 2.19(i), to the latter process might not always be fully appreciated by the Client. This danger suggests that EBRD should have actively highlighted the requirement contained in PR 2.19(i).

29. It occurs to the Compliance Review Expert that, in the case of projects where significant works are to be carried out by contractors, PR 2.19(i) imposes an obligation upon the Bank specifically to highlight the Client's duty to ascertain that contractors are 'reputable and legitimate enterprises', and to review the measures taken in this regard by the Client, as well as the information relied upon by the Client to ascertain contractors' status as 'reputable and legitimate enterprises'. It may be necessary for the Bank to provide guidance to clients on what kind of information might be considered appropriate in the circumstances.³² It is important to remember that the 2008 ESP expressly provides that

'It is the responsibility of the client to ensure that the required due diligence studies ... are carried out in accordance with PRs 1 through 10, and submitted to the EBRD for review as part of its own appraisal. The EBRD will review the information provided, and provide guidance to the client on how the project can meet the Bank's requirements.'³³

²⁸ Conference call with EBRD ESD, 19 December 2017.

²⁹ Conference call with EBRD ESD, 19 December 2017. However, the Bank did identify the need to specifically include in the ESAP a requirement to consider tenderers' past ESHS performance as ESAP Action 1.4. As past ESHS performance may be regarded as relevant to any determination of a contractor being a reputable and legitimate enterprise, the Bank considers this requirement to be consistent with PR2.19(i).

³⁰ Environmental and Social Action Plan, PR 1.4.

³¹ Conference call with EBRD ESD, 19 December 2017.

³² Such guidance might include, for example, third part labour assessments or audits, a detailed PR 2 assessment, or further tailored in-house due diligence, as recommended under EBRD's 2017 *PR 2 Assessment Process for Labour Risk Assessment*, *supra*, n. 21, at 5, 6 and 8.

³³ 2008 ESP, para. 14.

30. Therefore, the Compliance Review Expert has determined that the Bank has failed to comply with the requirement under PR 2.19(i) to monitor that the Client took adequate measures to 'ascertain that these contractors or intermediaries are reputable and legitimate enterprises'.

EBRD responsibility to carry out adequate monitoring to ensure that the Client required JSL to meet its obligations to its workers under PR 2.19(ii), in combination with PR 2.6 and PR 2.12

31. It appears that the Bank has not employed a broad and comprehensive understanding of the obligation arising under PR 2.19(ii) to ensure that JSL, as a contractor engaged on the Project, had met all its obligations to its workers arising under PR 2.6 to PR 2.16 and PR 2.18. In particular, there is no reference anywhere in the project documentation to the entitlement of non-employee workers to the payment of reasonable wages confirmed under PR 2.6 and PR 2.12. For example, the screening determination of applicable PRs included in the Environmental and Social Impact Assessment Report (ESIA Report) prepared by the Client for the Project only considered the requirements of ESP PR 2 on 'Labour and Working Conditions' as applicable to the extent that:

'This PR would require HR policies of GSE and EnergoTrans to meet international best practices. Also, H&S [health & safety] at construction sites, construction worker accommodations and work places (substations, etc.) is an item of particular importance for the ESIA.'³⁴

32. Similarly, the Environmental and Social Action Plan for the Project only regarded certain elements of PR 2 as particularly relevant,³⁵ including the development and dissemination of a written human resources policy and procedure,³⁶ the development and implementation of an Occupational Health and Safety Plan,³⁷ and the requirement that contractors only use suitably trained and certified workers.³⁸ Further, Annual Reports on the Project only focused on such matters, to the apparent exclusion of the requirements arising under PR 2.6 and 2.12.³⁹ Similarly, a site monitoring mission conducted by EBRD at the commencement of the

³⁴ ESIA Report (Foundation World Experience for Georgia, February 2012), at 20.

³⁵ PR 2.3 of the 2008 ESP provides that

'The Bank will agree with the client how the relevant requirements of this Performance Requirement (PR) will be addressed, as part of the client's overall environmental and social action plan and/or management system.'

³⁶ ESIA Report (Foundation World Experience for Georgia, February 2012), at 144.

³⁷ ESIA Report (Foundation World Experience for Georgia, February 2012), at 143-144.

³⁸ Black Sea Energy Transmission Network Environmental and Social Action Plan (2013), at 3-4.

³⁹ See Annual Report: Kavkasioni-Jvari-Khorga Transmission Line and Substations, dated 17 August 2017, at 2-3. See also, Annual Report 2016, at 4-5. EBRD notes, however that the annual reports include the following question:

'Have there been any changes to the following policies or terms and conditions during the reporting period in any of the following areas:

- Union recognition
- Collective Agreement
- Non-discrimination and equal opportunity
- Equal pay for equal work
- Gender Equality
- Bullying and harassment, including sexual harassment
- Employment of young persons under age 18
- Wages (wage level, normal and overtime)
- Overtime
- Working hours
- Flexible working / work-life balance
- Grievance mechanism for workers

construction phase focused on such matters as occupational health and safety, biodiversity impacts and resettlement.⁴⁰

33. Though the Environmental and Social Action Plan did include a requirement that the Client should

‘Consider tenderers’ past ESHS [environmental, social, health & safety] performance in evaluating tenders, either as part of total score or as a disqualifying factor in case of substandard performance’,⁴¹

it is not clear that ESHS performance was understood to include tenderers’ / contractors’ past performance in terms of remuneration of their workers or security of employment. As regards the key performance indicator to be reported to EBRD in respect of this requirement, the annual reports simply note:

‘E&S performance considered in contractor selection

Contractors with good E&S records selected’⁴²

It is clear that EBRD was in a position to identify the criteria to be considered in such E&S records during the selection of tenderers,⁴³ as the August 2017 annual report notes in relation to implementation of this ESHS requirement that

‘Tenderers’ past ESHS performance (among others) were assessed and this was one of the decisive factors in recognizing that their qualification corresponds to the tender’s conditions (all relevant documents were agreed with international lenders)’.⁴⁴

34. As an example of international best practice, recent World Bank Group policy on the inclusion of “ESHS Enhancements” in procurement and bidding documents requires that applicants must declare previous ESHS problems which have resulted in contract termination or suspension:

‘Applicants/Bidders/Proposers are now required to make a declaration listing any civil works contracts that have been suspended or terminated by an employer, and/or performance security called by an employer, for ESHS reasons. *This information will be used to inform enhanced due diligence.*⁴⁵

In certain types of projects, such a declaration might be framed so as to include past or unresolved labour or employment disputes.

35. The Complainant first raised the issue of non-payment of the salaries of a number of JSL staff with EnergoTrans on 31 January 2017, requesting that the amount owed be deducted from

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- Health & safety

⁴⁰ Back to Office Report, dated 2 October 2015, at 1.

⁴¹ Environmental and Social Action Plan, PR 1.4.

⁴² See Annual Report, dated 17 August 2017, at 1.

⁴³ It is worth pointing out in this regard that EBRD’s 2017 *PR 2 Assessment Process for Labour Risk Assessment*, *supra*, n. 21, notes, at 5, that

‘construction represents a high risk activity with respect to contracts, wages, working hours and OHS (see ESD Contractor Management Toolkit)’.

The Assessment Process also contains, at 7, a comprehensive list of “red flags” regarding labour and working conditions to suggest further follow-up, possibly leading to heightened due diligence. Such “red flags” are grouped under headings, including:

- HR, workforce and contracting arrangements
- Equal opportunity and non-discrimination
- Worker engagement and freedom of association
- Forms of labour coercion
- Child labour and young workers.

⁴⁴ Annual Report, dated 17 August 2017, at 1.

⁴⁵ World Bank, *Summary of Environmental, Social, Health and Safety (ESHS) Enhancements: Standard Procurement Documents (SPDs) & Standard Bidding Documents (SBDs)*, (10 March 2017), at 1, available at pubdocs.worldbank.org/.../Summary-of-key-ESHS-enhancements-March-102017.doc

payments due to JSL and remitted to those workers.⁴⁶ The problem of non-payment of remuneration due to JSL workers was noted at the March 2017 Progress Meeting on the Project, where it was agreed that a meeting with top management at JSL was required by the end of March 2017.⁴⁷ However, the next Progress Meeting in April 2017 noted a potential takeover of Jyoti Ltd and announced,⁴⁸ in relation to subcontractor payments, that ‘the Employer will initiate necessary steps (clarification with EBRD, etc.)’.⁴⁹ However, it does not appear that any such meeting with Jyoti management took place and EnergoTrans expressed a lack of confidence in JSL management.⁵⁰ In response to repeated communications from EBRD, in April 2017 EnergoTrans informed EBRD that such non-payment was a ‘general problem’⁵¹ and noted that, in addition to other individual employees, Jyoti’s sub-contractors had also not been paid and were owed some €600,000.⁵² This alone suggests that problems with JSL, including the issue of non-payment of workers and sub-contractors, had been ongoing for some time, and the Compliance Review Expert has seen nothing to reassure him either that:

- (i) adequate steps were taken at contractor selection stage to enquire into the Contractor’s past performance in terms of its treatment of workers; or
- (ii) adequate steps were taken by the Client between January and April 2017 to ensure payment of salary owed to the Complainant.

36. In correspondence dated 2 August 2017, JSL informed EnergoTrans that on 4 July 2017 JSL entered into court ordered insolvency resolution proceedings, initiated by the State Bank of India due to the company having defaulted on a corporate loan, and on 12 July 2017 the appointed Interim Resolution Professional, Ms Vandana Garg, invited all creditors (including employees) to lodge claims for monies owed. Moreover, JSL also restated the contention set out in earlier correspondence to EnergoTrans (dated 22 May 2017) that the Complainant’s services were terminated by JSL management ‘owing to his irresponsible behaviour and actions of disobedience’, though the company failed to provide any further details.⁵³ However, this statement would appear to be at odds with the Complainant’s general performance record, as evidenced by JSL’s revision in December 2015 of the Complainant’s ‘retainership fee’ from the sum of AED 23,000 (€5,319) per month⁵⁴ to AED 31,200 (€7,215) per month.⁵⁵ It would appear, therefore, that JSL terminated the Complainant’s employment, on spurious grounds of professional misconduct, in order to prevent him from

⁴⁶ Letter from Complainant to EnergoTrans, dated 31 January 2017. It should be noted that EnergoTrans raised this matter immediately with JSL management, stressing the seriousness of the matter and, in particular, the very distressed state of the Complainant. See e-mail from EnergoTrans to JSL, dated 1 February 2017.

⁴⁷ Minutes of Meeting – Progress Meeting 19 (24 March 2017), at para. 8. The issue appears to have been first raised with Mr Uwe Armonies (Fichtner GmbH), EnergoTrans and the EBRD PCM in an e-mail dated 6 March 2017.

⁴⁸ Minutes of Meeting – Progress Meeting 20 (12 April 2017), at para. 0.

⁴⁹ Minutes of Meeting – Progress Meeting 20 (12 April 2017), at para. 8.

⁵⁰ An e-mail from EnergoTrans to EBRD, dated 19 April, noted:

‘Even though we got official letter from the top manager of Jyoti assuring to cover all obligations (we also had telephone conversations with different management levels) we are not sure that this will be fulfilled until new management is appointed.’

⁵¹ E-mail from EnergoTrans to EBRD, dated 19 April.

⁵² E-mail from EnergoTrans to EBRD, dated 20 April.

⁵³ The Letter of Termination of Employment issued to the Complainant by JSL, dated 2 February 2017, simply alludes to ‘Point C’ of the Appointment Letter (dated 1 August 2012), which refers to the following ground of termination:

‘That you are found guilty of committing breach of any of the conditions of the employment or rules and regulations of the Operations Division, insobriety, dishonesty, disobedience or neglect of duty or any other misconduct.’

⁵⁴ See Letter of Appointment on Retainership Basis, dated 1 August 2012.

⁵⁵ See Letter re Revised Retainership Fee, dated 1 December 2015.

pursuing with the Client, his claims for payment of his salary, and for payment of the salaries of his JSL co-workers.⁵⁶

37. Examining international best practice relating to the nature of the Bank's due diligence obligation to ensure that 'the client will ... require that they [contractors] apply the requirements stated in paragraphs 6 to 16 and 18' of PR 2,⁵⁷ and more particularly the requirements related to the payment of wages set out under PR 2.6 and PR 2.12, it is useful to note that practice guidance developed by the International Finance Corporation (IFC), highlights precisely such risks. For example, the IFC's *Environmental and Social Management System Implementation Handbook: Construction* lists among the key 'labor' risks arising in the construction industry:

- Failure to monitor contractors' and subcontractors' compliance with and enforcement of labor laws;
- Low awareness of labor laws among contractors and subcontractors as minimum working conditions are typically absent from the subcontracting process;
- Use of migrant/temporary labor subject to working conditions below minimum standards established by law; and
- Low wages.⁵⁸

In addition, the Implementation Handbook lists among the top three risks encountered in the construction industry,

'Use of migrant labor is widespread in the construction industry ... Temporary work and unfair contracting leave migrant workers vulnerable to violations of freedom of association, forced labor, harassment, *unlawful deduction of wages, unpaid overtime and other labor violations.*'⁵⁹

Such guidance coheres with the EBRD's own 2017 *PR 2 Assurance Process for Labour Risk Assessment*, which emphasises 'non-employee workers', a 'large third-party contractor workforce' and 'vulnerable workers' among high-risk criteria.⁶⁰

38. It is not unreasonable, therefore, to expect that the Bank should have taken active steps, in the specific context of a construction project, such as the Jvari-Khorga Interconnection Project, that would rely heavily on contractors, to ensure that the Client took reasonable measures to investigate the record of a contractor in terms of that contractor's past treatment of workers, and to require that the results of such an investigation be shared with the Bank. Neither is it unreasonable to expect that, if required, the Bank should have assisted the Client through the provision of guidance regarding the steps required to conduct such an investigation in an appropriate manner.⁶¹

⁵⁶ The Letter of Termination of Employment, dated 2 February 2017, issued two days after the Complainant's Letter to EnergoTrans, dated 31 January 2017, requested that the amount owed to JSL workers be deducted from payments due to JSL and remitted to those workers.

⁵⁷ ESP PR 2.19(ii).

⁵⁸ IFC, *Environmental and Social Management System Implementation Handbook: Construction* (Revision 2.2, 4 June 2014), at 21, available at <https://www.ifc.org/wps/wcm/connect/c03aa6804493c5bba71aafc66d9c728b/ESMS+Handbook+Construction.pdf?MOD=AJPERES>

⁵⁹ *Ibid.*, at 22 (emphasis added).

⁶⁰ *Supra*, n. 21, at 6-7.

⁶¹ The Bank's own 2017 *PR 2 Assurance Process*, *ibid.*, at 6-9, provides detailed guidance regarding the steps likely to be required. Similarly, the IFC's *Implementation Handbook: Construction*, *supra*, n. 4558, advises, at 22, that

'There are different ways to conduct a risk assessment. ... A common method for labor risks is to use a checklist of risk factors, such as employee demographics, regional labor laws, contracting arrangements, etc.'

39. On this basis, notwithstanding the general requirement included in the ESAP for the Client to develop procedures for managing contractors,⁶² the Compliance Review Expert has determined that the Bank failed to comply with the requirement under PR 2.19(ii), in combination with PR 2.6 and PR 2.12, to take specific steps to ensure that the Client took adequate measures to ensure that JSL, as a contractor engaged on the Project, met all its obligations to its workers.

EBRD responsibility to ensure that the Client provided an accessible grievance mechanism under PR 2.19(ii), in combination with PR 2.18

40. The Environmental and Social Action Plan for the Project specifically refers to the development and implementation of an employee grievance mechanism, requiring that the Client will

‘Develop and implement a formal grievance mechanism for employees and disseminate information about its uses to the workforce, in the language(s) of the workforce. Ensure contractors have similar mechanism, or ensure access to EnergoTrans’s.’⁶³

The ESAP further sets out the Client’s commitment to report to the Bank on the operation of the mechanism, including details of grievances received and resolutions reached.

41. Strictly interpreted, PR 2.19(ii) appears to stipulate that the Client must ensure that the Contractor itself ‘will provide a grievance mechanism for workers’,⁶⁴ as it states that ‘the client will ... require that they [i.e. contractors] apply the requirements stated in paragraphs 6 to 16 and 18 above’.⁶⁵ However, the Compliance Review Expert accepts that the safeguard contained in the combined requirement of PRs 2.18 and 2.19(ii) could reasonably be regarded as satisfied if the Client has ensured that the dispute between the Complainant and the Contractor was immediately referred to the Client’s own grievance mechanism.

42. However, there is limited evidence to suggest that this matter had been referred to any formal Project grievance mechanism. On the contrary, in correspondence to EnergoTrans dated 22 May 2017, JSL management advised

‘Since R. Pandey [the Complainant] was residing in India and our Company having has registered office in India, any dispute arising out of termination of his appointment including the salary dues were to be adjudicated only by the Courts of India having necessary jurisdiction.’⁶⁶

43. As JSL has now entered a process of insolvency resolution in India, under the Indian Insolvency Bankruptcy Code (IBC) the Complainant was prohibited from taking any court proceedings against the company during a 180 day moratorium period (commencing from 4 July 2017). His only option was to submit a claim to the Interim Resolution Professional (IRP), which will be considered by the IRP on the basis of the relative priority accorded to all creditors under the IBC.⁶⁷

44. Though Bank Management contends that the Client’s grievance mechanism established pursuant to PR 2.18 need not consist of a formal process, and might consist of little more than a capacity to receive and respond to correspondence from an aggrieved party,⁶⁸ this

⁶² Black Sea Energy Transmission Network Environmental and Social Action Plan (2013), at 4, Action 1.5.

⁶³ Black Sea Energy Transmission Network Environmental and Social Action Plan (2013), at 4. See also, Annual Report, date 17 August 2017, at 2.

⁶⁴ PR 2.18.

⁶⁵ PR 2.19(ii).

⁶⁶ Reproduced in an e-mail from JSL to EnergoTrans dated 2 August 2017.

⁶⁷ See e-mail from JSL to EnergoTrans dated 2 August 2017.

⁶⁸ Conference call with EBRD ESD, 19 December 2017.

would appear to be at odds with the stated requirement for the Client to '[d]evelop and implement a formal grievance mechanism for employees' and to '[e]nsure contractors have similar mechanism, or ensure access to EnergoTrans's/GSE's'.⁶⁹ The informality with which the Complainant's grievance was handled would, at best, only correspond to Step 1 of the four steps set out in the outline of a grievance policy and procedure contained in the Bank's own *Employee Grievance Mechanism Guidance Note*.⁷⁰ Such informality also militates against several of the four '[k]ey principles of an effective grievance mechanism' set out therein, including transparency, confidentiality and accessibility.⁷¹

45. Informality may also be difficult to reconcile with the requirement to report to the Bank a summary of grievances and resolutions.⁷² Indeed, the EBRD 2017 *PR 2 Assurance Process for Labour Risk Assessment* lists among 'ongoing indications of PR 2 red flags,' on which information must be provided under the Annual Environment and Social Reporting (AESR) framework, whether 'employees raised any grievances concerning the project company, including harassment or bullying during the reporting period'.⁷³ It further suggests that relevant 'tailored ESAP items to mitigate risk' would include a requirement that '[t]he [client] will provide a quarterly report on worker grievances and their resolutions'.⁷⁴ It is worth noting that the Annual Report dated August 2017 contained no mention of the present dispute, casting doubt on whether the Client's undoubted good faith efforts to resolve the differences between the Complainant and the Contractor were clearly understood by all parties as an application of the Project Grievance Resolution Process. At any rate, it is not clear on the evidence available to the Compliance Review Expert that the Complainant understood that his correspondence with the Client amounted to engagement of the Client's formal grievance mechanism, or that the Complainant was even aware of the existence of such a mechanism.⁷⁵

46. The Client clearly understands the Complainant's letter to the Client of 31 January 2017, requesting that the salaries owed be deducted from payments due to JSL,⁷⁶ as having initiated a process within the formal Project grievance mechanism.⁷⁷ However, even if one accepts this position, the mechanism does not appear to have operated effectively to 'address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution'.⁷⁸ In fact, the prospect for any redress for the Complainant appears to have been exhausted quite easily under this process. Though the Client reports that it managed to secure the payment of salaries owed to the three other JSL employees involved in the Complainant's original request, it explains that:

⁶⁹ Black Sea Energy Transmission Network Environmental and Social Action Plan (2013), at 4. See also, Annual Report, date 17 August 2017, at 2 (emphasis added).

⁷⁰ EBRD, *Employee Grievance Mechanism Guidance Note* (December 2017), at 3. Available at: <http://www.ebrd.com/documents/admin/labour-and-working-conditions-wages-and-working-hours-guidance-note.pdf>

⁷¹ *Ibid.*, at 2.

⁷² Black Sea Energy Transmission Network Environmental and Social Action Plan (2013), at 4. See also, Annual Report, date 17 August 2017, at 2.

⁷³ *Supra*, n. 21, at 9.

⁷⁴ *Ibid.*, at 9-10 (emphasis added).

⁷⁵ PR 2.18 further provides that

'The client will inform the workers of the grievance mechanism at the time of hiring, and make it easily accessible to them.'

While the Client is confident that the Complainant was aware of the Grievance Resolution Process and understood his interactions with the Client as occurring within this framework, there is little independent corroborating evidence of this.

⁷⁶ Letter from Complainant to EnergoTrans, dated 31 January 2017.

⁷⁷ However, one might also understand that a grievance process commenced before 11 January 2017, as a letter from the Client to EBRD ESD, dated 11 January 2017, explains:

'When we got information about Mr. Rajesh Pandey we also started separate process.'

⁷⁸ As per the 2008 ESP, PR 2.18.

'As for Mr. Pandey, we were informed that *this was their internal case* and Mr. Pandey abused their rules and regulations. That's why he was kicked out and not paid.'⁷⁹
It is not clear that the Client endeavoured seriously to employ any leverage it possessed over the Contractor to ensure its meaningful participation with the Grievance Resolution Process consistent with the spirit and intent of PR 2.19(ii) and PR 2.18. This has resulted in the Complainant having no other option other than to pursue judicial resolution of his claim against a bankrupt company in India. He is likely to rank quite low in the relative hierarchy among creditors and faces the prospect of considerable delay before the courts.

47. Therefore, on this basis the Compliance Review Expert has determined that the Bank failed to monitor performance of the requirement under PR 2.19(ii), in combination with PR 2.18, to ensure either that the Client required the Contractor to provide an effective grievance mechanism for its workers or, alternatively, provided access to non-employee workers to effective resolution of grievances by means of its own grievance mechanism.

⁷⁹ Letter from the Client to EBRD ESD, dated 11 January 2017 (emphasis added).

IV RECOMMENDATIONS

48. Pursuant to Paragraph 44 of the 2014 PCM Rules of Procedure (RPs), the Compliance Review Expert, on finding the Bank in non-compliance with a Relevant EBRD Policy, makes the following recommendations, which are specifically intended to 'address the findings of non-compliance at the level of EBRD systems or procedures in relation to a Relevant EBRD Policy, to avoid a recurrence of such or similar occurrences'.⁸⁰
49. In conducting Project due diligence and monitoring, the Bank should ensure strict adherence to its own recently developed (internal) PR 2-specific risk assessment tool,⁸¹ which is designed to assist in identifying Projects presenting a significant risk of breach of, *inter alia*, the safeguards stipulated for non-employee workers. This document also sets out the measures which the Bank should employ to address such risks, including:
- Pre-appraisal labour risk screening;
 - Third-party labour assessment / audit;
 - Further heightened PR 2 due diligence;
 - Specific monitoring;
 - Covenanted notification requirements; and/or
 - PR 2 Reporting.
- The Bank may also have regard to international best practice on ensuring compliance with safeguard policies on labour and working conditions, having particular regard to that which addresses the rights of non-employee / contract workers.⁸²
50. In order to ensure that Clients take adequate measures, where appropriate, to ascertain that contractors are 'reputable and legitimate enterprises', pursuant to PR 2.19(i) [and PR 2.21(i) of the 2014 ESP], the Bank should consider introduction of enhanced non-employee worker protection requirements into the process of selection of contractors, which might, for example, include:⁸³
- A requirement for bidders to make a declaration during the bidding process listing previous ESHS problems or disputes, including those relating to workers' remuneration and other entitlements, which have resulted in contract termination or suspension, or in findings of non-compliance before independent accountability mechanisms (IAMs);⁸⁴
 - A requirement for the Client to set out clearly the minimum ESHS requirements, including those relating to workers' remuneration and other entitlements, at the outset of the bidding process;
 - A requirement for bidders to submit, as part of their bid/proposal, an ESHS Code of Conduct that will apply to their employees and sub-contractors, and details of how it will be enforced;

⁸⁰ RPs, para. 44(a).

⁸¹ PR 2 Assurance Process for Labour Risk Assessment, *supra*, n. 21.

⁸² See, for example, IFC, *Environmental and Social Management System Implementation Handbook: Construction* (Revision 2.2, 4 June 2014), at 22, available at <https://www.ifc.org/wps/wcm/connect/c03aa6804493c5bba71aafc66d9c728b/ESMS+Handbook+Construction.pdf?MOD=AJPERES>

⁸³ See further, World Bank, *Summary of Environmental, Social, Health and Safety (ESHS) Enhancements: Standard Procurement Documents (SPDs) & Standard Bidding Documents (SBDs)*, (10 March 2017), at 1 et seq., available at pubdocs.worldbank.org/.../Summary-of-key-ESHS-enhancements-March-102017.doc

⁸⁴ EBRD's 2017 PR 2 Assurance Process for Labour Risk Assessment, *supra*, n. 21, already asks, at 5, as part of pre-appraisal screening whether there has been 'a labour-related IFI complaint in the same sector and country as the proposed project?'

- A requirement for bidders to submit, as part of their bid/proposal, ESHS Management Strategies and Implementation Plans required to manage ESHS risks arising in the Project, including risks relating to workers' remuneration and other entitlements;
- A requirement, where screening identifies the existence of significant ESHS risks, for a successful contractor to provide a sum of money as an ESHS Performance Security;
- A requirement for Clients to include in contracts (with contractors) specific ESHS reporting requirements relating to safeguards for non-employee workers;
- A requirements for inclusion in contracts (with contractors) of provisions allowing interim payments to be withheld in the case of a failure to perform an ESHS obligation, including an obligation relating to safeguards for non-employee workers; etc.

51. In order to assist Clients in complying with the requirement under PR 2.19(ii), in combination with PR 2.18, and to ensure that Clients either require contractors to provide effective grievance mechanisms for workers or, alternatively, provides access to non-employee workers to effective resolution of grievances by means of their own grievance mechanisms, the Bank should actively highlight its recent Guidance Note on Employee Grievance Mechanisms⁸⁵ and, in particular, Section 5 ('Grievance mechanism for non-employee workers'), which advises on the design, publicising and effective operation of such formally constituted grievance mechanisms in accordance with established international best practice.

⁸⁵ EBRD, *Employee Grievance Mechanism Guidance Note* (December 2017), at 3. Available at: <http://www.ebrd.com/documents/admin/labour-and-working-conditions-wages-and-working-hours-guidance-note.pdf>