

GONZALO CASTRO DE LA MATA
Chairman
The Inspection Panel

IPN REQUEST 18/04

July 24, 2018

**MEMORANDUM TO THE EXECUTIVE DIRECTORS
INTERNATIONAL DEVELOPMENT ASSOCIATION**

Request for Inspection

Republic of Tajikistan: Private Sector Competitiveness Project (P130091)

Notice of Non-Registration

Summary

1. In accordance with paragraph 17 of the Resolution¹ establishing the Inspection Panel (the “Panel”), I hereby inform you that on June 21, 2018, the Panel received a Request for Inspection (the “Request”) of the Private Sector Competitiveness Project (P130091) (the “Project”) in the Republic of Tajikistan.
2. The Request for Inspection was submitted by two citizens of Tajikistan, who have asked the Panel to keep their identities confidential. The Requesters state that they are employed by a foreign company that purchases cotton in Tajikistan (“the Company”). According to the Requesters, the Company entered into a contract with a local company to purchase cotton. They claim that harm occurred when a State-owned bank of Tajikistan (“the State-owned bank”) refused to pay the amount due under the guarantees that the Company had secured for its investment in cotton. The Requesters allege that the guarantees of the State-owned bank were called following the local company’s breach of contract, specifically its failure to deliver to the Company the cotton purchased or to return the money paid for it.
3. The Request refers to a 2017 arbitration award by a Swiss arbitration tribunal, which decided in the Company’s favor. According to the Requesters, to date the State-owned bank has not honored the guarantees. In the Requesters’ view, the State-owned bank’s actions equal an unlawful expropriation that caused them economic harm. They allege that the Bank’s failure to implement and monitor the Project contributed to the harm.
4. After conducting its due diligence, the Panel is not registering this Request for Inspection.

¹ The World Bank Inspection Panel, International Development Association, Resolution No. IDA 93-6 (referred to as the “Resolution”).

The Project

5. The Project was approved on May 10, 2012, and restructured on July 25, 2014, to reflect a change from three components to five components.² The original three components focused on key constraints to business development and investment by simplifying business registration, improving regulations and infrastructure for financial services; and by encouraging development of the mining industry.³ The revised components entail a refocusing of the Project on a set of core enablers for competitiveness. These are: (1) encouraging competitiveness and development of the mining industry; (2) strengthening business registration systems and processes; (3) institutional strengthening to support a single window for construction permits; (4) improving financial infrastructure; and (5) project management.⁴

6. Sub-component 3 under component 4 concerns the strengthening of banking regulation and supervision, and provides support for legal, regulatory, and supervisory reforms in the financial sector.⁵ Under this sub-component, support is provided to the National Bank of Tajikistan (NBT) to review and revise its legislation and regulations and to upgrade its IT system for bank supervision.⁶

7. The Project's closing date has been extended until December 31, 2019, to enable the completion of ongoing and planned activities.⁷

8. The Project is a Category B Project and has triggered the Bank's Policy on Environmental Assessment (OP/BP 4.01) and Access to Information.

The Request

9. The Requesters are two citizens who are employed by a foreign company that purchases cotton in Tajikistan. They claim that harm occurred when a State-owned bank refused to honor its guarantees to the Company. They claim the guarantees were supposed to secure an investment in cotton, and calling the guarantees became relevant after the local provider failed to deliver to the Company the amounts of cotton purchased. The Requesters state that when the State-owned bank did not honor its guarantees, the Company commenced arbitration proceedings and received an arbitration award in the Company's favor on July 17, 2017. However, the Requesters explain that the State-owned bank refuses to pay the amount due, as determined by the award.

10. According to the Requesters, the State-owned bank was selected to provide the guarantees due to its involvement with the Project. The Requesters allege that the Bank's failure to implement and monitor the Project contributed to the harm they suffer. The Requesters claim that they "have been deprived of their right to peaceful enjoyment of their property, including the right to fair, full and prompt

² Restructuring Paper on a Proposed Project Restructuring of Private Sector Competitiveness Project, July 25, 2014

³ Project Appraisal Document on a Proposed Grant in the Amount of SDR 6.5 Million (US\$10.00 Million Equivalent) to the Republic of Tajikistan for a Private Sector Competitiveness Project, April 11, 2012, p.7

⁴ Restructuring Paper on a Proposed Project Restructuring of Private Sector Competitiveness Project, July 25, 2014, p. 9

⁵ Project Appraisal Document on a Proposed Grant in the Amount of SDR 6.5 Million (US\$10.00 Million Equivalent) to the Republic of Tajikistan for a Private Sector Competitiveness Project, April 11, 2012, p. 37.

⁶ Restructuring Paper on a Proposed Project Restructuring of Private Sector Competitiveness Project (P130091), July 25, 2014, p. 32.

⁷ Restructuring Paper - Private Sector Competitiveness - P130091, June 27, 2018.

compensation.”⁸ The Requesters allege that they have lost the ability to carry out trading activities, have been deprived of their property and a large part of their livelihood, and have suffered financial damage including loss of profit.⁹

11. According to the Requesters, the Bank failed to take any steps to ensure that the State-owned bank honors its guarantees and remedies the situation. The Requesters claim that the Bank is in non-compliance with several of its policies, including Bank Policy on Disputes over Defaults on External Debt, Expropriation and Breach of Contract (OP/BP 7.40).

Panel’s Observations and Determination

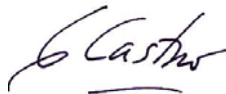
12. In accordance with its Operating Procedures,¹⁰ after receiving the Request on June 21, 2018, the Panel issued a Notice of Receipt of the Request on its website on June 26, 2018. The Panel conducted its due diligence by reviewing the information contained in the Request and Project documents.

13. The Panel met with Management on July 5, 2018, to understand the Project activities and the alleged harm claimed by the Requesters. Management informed the Panel that it had had contact with the Requesters’ representative on several occasions and, in that context, had researched the possible link between the alleged harm and the Project. Management noted that the alleged harm was not linked to the Project or any other Bank project.

14. The Panel assessed the Request and observed that the alleged harm relates to a dispute between the State-owned bank and the Company. The Panel understands that component 4 of the Project is providing technical assistance to the NBT, as well as training and capacity building of the NBT’s supervision department, through the improvement of Tajikistan’s financial infrastructure. However, while the State-owned bank is a key actor of Tajikistan’s financial system, the Project activities are not related to ensuring the State-owned bank’s payment of guarantees. Therefore, the Panel does not find the Project to be plausibly linked to the alleged harm. The Panel thus concludes that the Request does not meet all the admissibility criteria for Registration.

15. Considering the foregoing and in accordance with the Panel Resolution, its Clarifications, and its Operating Procedures, the Panel is not registering the Request for Inspection.

Yours Sincerely,



Gonzalo Castro de la Mata

Attachments

Mr. Jim Yong Kim, President, International Development Association
The Executive Directors and Alternates, International Development Association
Mr. Stephen D. Sutton, Suttons Solicitors

⁸ The Request, p. 5.

⁹ Ibid.

¹⁰ Inspection Panel Operating Procedures, dated April 2014.