



Independent  
Project  
Accountability  
Mechanism

**REQUEST: Lydian (Amulsar Gold Mine) - Extension**

REQUEST NUMBER: 2020/02

**ASSESSMENT REPORT – August 2020**

7 AUGUST 2020

The Independent Project Accountability Mechanism (IPAM) is the accountability mechanism of the EBRD. It receives and reviews concerns raised by Project-affected people and civil society organisations about Bank-financed Projects, which are believed to have caused harm. IPAM may address Requests 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 dialogue between the Requesters and the Client to resolve the issue(s) underlying a Request without attributing blame or fault. Affected Parties can request one or both of these functions.

For more information about IPAM, contact us or visit <https://www.ebrd.com/project-finance/ipam.html>.

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**How can IPAM address my concerns?**

Requests about the environmental, social and transparency performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

 <https://www.ebrd.com/project-finance/independent-project-accountability-mechanism/how-ipam-works.html>

## EXECUTIVE SUMMARY

The Independent Project Accountability Mechanism (IPAM) received a Request from community members (Requesters) from Jermuk, Vayots Dzor Region, Gndevan and Kechout residential area in Armenia and five CSOs. The Requesters and CSOs assert that EBRD has failed to comply with its Environmental and Social Policy and that resident local communities have been negatively impacted by EBRD's equity investments in Lydian International Limited's activities associated with the development of the [Lydian \(Amulsar Gold Mine\) - Extension](#).

The Requesters have asked for the Compliance Function to determine whether EBRD has complied with its Environmental and Social Policy or the Project-specific provisions of its Access to Information Policy in respect of the Project.

IPAM Staff undertook as part of this assessment an in-depth analysis to understand the issues raised in the Request, discuss both IPAM Problem Solving and Compliance functions and assess the Parties willingness to engage in each function. The engagement with all Parties sought to establish under para 2.3. of the IPAM Policy whether the Case could proceed to Problem Solving or be transferred to a Compliance Assessment.

The Assessment Report findings recommend that the Request proceed to the Compliance Function pursuant to para. 2.6. of the IPAM Policy for its Assessment as per the Compliance Eligibility Criteria defined.

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*Unless otherwise indicated capitalised terms used in this report are those as set forth in the April 2019 IPAM Project Accountability Policy.*

## Acronyms/List of Definitions

CAO	Compliance Advisor Ombudsman of the International Finance Corporation of the World Bank Group
Client/Company/ Lydian	Lydian International Limited
CSO	Civil Society Organization
EBRD	European Bank for Reconstruction and Development
ESAP	Environmental and Social Action Plan
ESIA	Environmental and Social Impact Assessment
ESP	Environmental and Social Policy
IFC	International Finance Corporation
IPAM	Independent Project Accountability Mechanism
PCM	Project Complaint Mechanism
Policy	IPAM Project Accountability Policy that governs IPAM functioning
PS	Problem Solving

## I. BACKGROUND

### 1. THE PROJECT AND ITS CURRENT STATUS

EBRD approved on 20 July 2016 an investment in the amount of CAD 11.4 million to sustain its shareholding in a public listed company, traded on the Toronto Stock Exchange, and operating in Armenia. The investment has been provided as an equity injection for the acquisition of additional shares from the capital of Lydian International Limited (“**the Client**” or “**the Company**”), allowing the Bank to protect its existing shares from dilution. The financing thus provided had been earmarked for financing of the Environmental and Social Mitigation Measures (ESMM) undertaken by the Company with respect to the Environmental and Social Action Plan (ESAP) on the mine development of its Amulsar Gold Mine<sup>1</sup>. The equity investment supplements the Bank’s earlier involvement in the Project during its exploration and development stage.

The Company had a forbearance agreement with its lenders, which was not extended in December 2019 as a result of which the Company applied for, and was granted a Protection order in Canada, allowing it to restructure its business and financial affairs. Based on the above, a corporate restructuring plan was adopted resulting in the Company’s existing senior secured lenders in Lydian Canada, Lydian UK and Lydian Armenia CJSC owning and controlling the assets while Lydian International Limited being subjected to closure proceedings before the competent Jersey court. At the time of issuance of this report, the proceedings are still pending and their completion will result in the termination of EBRD’s shareholding in the Client.

### 2. IPAM ASSESSMENT

EBRD’s Independent Project Accountability Mechanism (IPAM) reviews issues raised by Individuals or Organisations concerning Bank-financed Projects, which are believed to have caused, or to be likely to cause, harm. At the outset of this process and after registering a Request, IPAM conducts an assessment<sup>2</sup> to:

- develop a clear understanding of the issues raised;
- discuss the Problem Solving and Compliance functions, their scope and possible outcomes with the Parties;
- assess the Parties’ willingness to engage in each of the above functions, while considering Requesters’ preference for functions in account;
- consider the updated status of other grievance resolution efforts, if applicable;
- determine if the Case will be transferred to Compliance Assessment, if no agreement to pursue Problem Solving is reached.

This Assessment Report represents the outcome of the Assessment stage and includes findings made during the process. Its content is made available to Requesters, the Client and Bank Management and is further published on the [IPAM Case Registry](#).

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<sup>1</sup> The Project Summary Document is available at <https://www.ebrd.com/work-with-us/projects/psd/lydian-amulsar-gold-mine-extension.html>

<sup>2</sup> The assessment is conducted under para. 2.3. of the Policy

### 3. THE REQUEST

On 19 May 2020, a Request<sup>3</sup> was received related to the [Lydian \(Amulsar Gold Mine\) – Extension Project](#). The Request was submitted jointly by twenty three local residents and co-signed by a regional CSO CEE Bankwatch Network and four local CSOs: (i) “EcoLur” Informational NGO; (ii) “Forests of Armenia” NGO; (iii) Green Armenia” NGO; and (iv) “Armenian Environmental Front” Civic Initiative.

The Requesters allege failures of the Bank to comply with its Environmental and Social Policy and public disclosure of information. In summary, the Requesters and CSOs have raised the following concerns:

- Performance Requirement (PR) 1: Assessment and Management of Environmental and Social Impacts and Issues - it is alleged that the Project has negatively affected the water, air, land, wildlife and community health and livelihoods of 5 residential settlements of Jermuk;
- PR 3: Resource Efficiency, Pollution Prevention and Control - it is alleged that the Project had caused dust pollution and had an impact on the water supply which has contributed to the pollution of drinking and irrigation water, along with fish farms in Gndevaz ;
- PR 4: Health and Safety - it is alleged that uranium pollution and dust emanating from the project site might impact the health of residents;
- PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources - it is alleged that IUCN red-list species and species protected by the Bern convention<sup>4</sup> might have been impacted by the Project;
- PR 8: Cultural Heritage - it is alleged that the Project negatively impacted the cultural and historical heritage of the city of Jermuk and thereby damaging its reputation as a prestigious health spa centre; and finally
- PR 10: Information Disclosure and Stakeholder Engagement- it is alleged that the Jermuk Community was not consulted in public discussions conducted as part of the national led EIA process.

The Request asks for the Compliance review function of IPAM to be applied to the Case.

### 4. REGISTRATION OF THE REQUEST

The Request was registered on 12 June 2020 under para. 11-14 of the 2014 PCM Rules and Procedures. However, given that the IPAM came into effect on 1 July 2020, the Request is being processed from that date onwards as per the 2019 IPAM Policy.

#### 4.1. Registration Criteria

During the assessment stage, the Request was screened to ensure that all Registration criteria set in the 2019 IPAM Policy were also met. This process acknowledged that:

- i. All mandatory information had been provided
- ii. The Request raises issues related to specific obligations of the Bank under the Environmental and Social Policy;

<sup>3</sup> The Request was received by IPAM predecessor – the Project Complaint Mechanism (PCM), whose functions were of similar nature to those of IPAM. As PCM effectively transitioned into IPAM as of 1<sup>st</sup> July 2020 the Request, having been filed before the transition, shall be by processed by IPAM pursuant to Section V of IPAM Policy.

<sup>4</sup> Bern Convention on the Conservation of European Wildlife and Natural Habitats, signed on 19 September 1979 and effective from 1 June 1982

- iii. The Request relates to a Project that has been approved and the Request was submitted within 24 months of the date that the Bank ceases to have a financial interest in the Project;
- iv. None of the exclusions that prevent registration are met.

#### 4.2. Other Determinants of Registration

The current Request follows two earlier complaints filed with PCM in 2014<sup>5</sup> raising concerns of a similar nature. As part of the eligibility assessment undertaken at that time, it was established that the case was not eligible for either a Problem-solving Initiative or a Compliance Review. The above was concluded on the premise that EBRD funding at the time focused merely on exploration and project preparation activities, while the Complainants were alleging potential environmental and social impacts of the Company's proposed gold mining activities to which EBRD did not have a role at the time.

On 16 April 2014 two separate Complaints were also filed with the Compliance Advisory/Ombudsman (CAO) of the International Finance Corporation of the World Bank Group (IFC), raising substantially similar concerns as those received by PCM. CAO found the complaints eligible for further assessment in December 2014, and merged them into a single case for a compliance investigation, with the Compliance Report issued in August 2017. The case was finally closed in October 2018 as IFC had no ongoing investment in the Company, and in light of IFC's decision not to engage in a project-level response with its former client or the complainants<sup>6</sup>.

IPAM has analysed the status of each of these processes and has determined that processing the current Request does not duplicate or interfere with or be impeded by other processes.

## II. STEPS TAKEN IN THE ASSESSMENT

Upon case registration and further to para. 2.3. of the Policy, IPAM has undertaken a general appraisal of the Request along with a desk review of the additional documents and information provided by the Requesters, CSOs, EBRD staff and the Client. The appraisal methodology sought to develop a clear understanding of the issues presented in the Request and to ensure sufficient clarity around the scope and potential outcome of IPAM Problem Solving and Compliance Review functions and importantly - Parties' willingness to engage in them.

Due to the prevailing COVID-19 health crisis and the moratorium on EBRD staff travel, a site visit could not be facilitated. Instead, a series of virtual meetings were held with Requesters, CSO representatives, the Client and Bank staff from June - July 2020.

The consultations convened with Requesters and CSOs on 21 July 2020 included signatories to the Request, observers from the Project-affected communities and representatives of the 5 CSO's to the Request, and had the following objectives:

- Understand the Requesters' and CSOs general experience with Lydian activities;

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<sup>5</sup> The Requests were registered under case No. 2014/02 and 2014/03 which were subsequently assessed together.

<sup>6</sup>For detailed information on the complaints filed and the Compliance Review findings go to [CAO Case Registry](#)

- Explore, in general terms, the underlying needs and interests of Requesters and CSOs and consider any potential risk of retaliation;
- Clarify what the IPAM Problem Solving and the Compliance Review functions can and cannot achieve in order to manage Parties' expectations; and
- Survey Requesters' views about whether a Problem Solving might be helpful (or not) and assess their interest in pursuing a constructive dialogue with the client.

In addition, online meetings with the Client were convened to increase IPAM's understanding the Company's perspectives on the issues raised, to clarify the IPAM functions and procedures and explore willingness to engage in a Problem solving exercise.

### III. SUMMARY OF THE RELEVANT PARTIES VIEWS

#### 1. Requesters' view

In-depth consultations with the Requesters revealed a strong interest to pursue the Compliance Review function of IPAM. Requesters emphasised that efforts to date to seek to engage with the Client had, in their opinion, proved futile. Additionally, the lack of trust coupled with unfulfilled agreements between the Parties is perceived as a major hindrance in exploring Problem Solving further. In light of the alleged environmental and social impacts experienced thus far, Requesters underlined that the only recourse they deem appropriate at this stage would be for a Compliance Review to be undertaken by IPAM. In their view, it was important that accountability for alleged impacts (past and present) to the environment and resident communities were required to be addressed and this could only be afforded through a Compliance Review process being undertaken. Further, they cited heightened tensions surrounding recent changes in the Client structure and the lack of clarity on functions moving forward would not enable a constructive dialogue at this time,

During the conversations, Requesters also commented on what their expectations were in relation to an IPAM process and listed the following expected outcomes

- Improvement in the environmental and social situation in Jermuk;
- Restoration of livelihood and tourist development;
- Ensuring healthy, clean and safe environment;
- Stakeholder engagement on matters relevant for the entire Community.
- Closure of the project.

#### 2. Client's view

Meetings conducted with the Client indicated their willingness to take part in a Problem Solving function in an effort to move discussions with stakeholders forward and with the intent of resolving issues. They hold the view that with the establishment of a new company structure, engagement

as part of a Problem Solving process would provide an opportunity for the Client to discuss and agree with the Requestors on a mutually acceptable way forward.

### 3. EBRD Management's view

Management commented that Lydian is a long-standing EBRD Client and that joint activities relating to the project included:

- Exploration and development of zinc, lead, silver and gold deposits in the Western Balkans, where EBRD's support amounted to equity participation in the Project Company (February 2009).
- Support for the exploration and development of Lydian's Amulsar gold project in Armenia (drilling and feasibility studies) via equity's participation (May 2009).
- Support for the development programme of Lydian's Amulsar gold project in Armenia (start of production) facilitated via EBRD's equity participation in the Project (July 2016),
- In relation to the Project, the Bank stated that environmental and social due diligence on the Project was undertaken and that the issues presented in the Request had been adequately addressed by the Company.

The Bank highlighted that its participation was not in the form of debt funding and was merely limited to a shareholder function with equity participation of around 5 %. Additionally, during the meetings it was noted that Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited, received in June 2020 a Sanction and Implementation Order from the Ontario Superior Court of Justice approving the Company's plan of arrangement with its secured creditors as part of bankruptcy procedures initiated in December 2019. Pursuant to the aforementioned Order and its entering into effect, EBRD is no longer considered an equity shareholder in the Company, EBRD's shareholding is subject to termination proceedings that are currently pending before the Jersey Court. The project is now owned by Lydian Canada Ventures in which EBRD has no financial interest.

EBRD Management indicated that given the lack of financial interest and any legal standing in the Project, the Bank is not in a position to support either a Problem Solving or Compliance Review function or subsequent monitoring of the implementation of their respective outcomes. They did however indicate they would support IPAM's findings and facilitate the next steps of the process by providing additional documents upon request.

## IV. SAFETY AND RETALIATION ISSUES

As established in para. 3.1 k) "IPAM has a zero-tolerance policy for Retaliation against Requesters or any other individuals involved in an IPAM process or outreach activity, and rejects any form of threat, intimidation, harassment, violence, or discrimination based on the fact that they have exercised their right to raise concerns".

During the assessment stage, CSOs informed IPAM of recent violent episodes in the project area. In line with its risk assessment procedures, IPAM consulted with the Requesters if they had any

concrete concerns regarding retaliation, to which they responded that currently they did not. Therefore, no measures are currently been implemented but IPAM will review the situation periodically to ensure that adequate measures are established if needed.

## V. ASSESSMENT FINDINGS

As per paragraph 2.3. of the IPAM Policy, the Mechanism has reviewed the Request and has determined the following:

- Problem Solving would offer limited potential for a constructive dialogue and a positive outcome due to the lack of trust between the Parties given the background of allegations by the Requesters of a series of breached agreements;
- There are no indications that the Parties may be able to maintain a safe environment for conducting meaningful dialogue;
- The Parties share irreconcilable differences in their own principles which would not be possible to be resolved in the course of the Problem Solving.

## VI. CONCLUSIONS AND NEXT STEPS

On the basis of the assessment results and pursuant to para. 2.3.a) point v) letter b) of the Policy, it is determined that the Request will be transferred to a Compliance Assessment as no agreement has been reached to pursue Problem Solving and Requesters have expressed their interest to have their Request transferred to Compliance.

As per the IPAM Policy, this Assessment Report shall be submitted to the Board and the President for information, and simultaneously made available to Requesters, Bank management and the Client. The Report will also be published on the IPAM Case Registry in English and Armenian.

## Annex 1 IPAM Problem Solving Flowchart

